

Version No. 072
Road Safety Act 1986
Act No. 127/1986

Version incorporating amendments as at 15 December 2002

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. *Purposes*

The purposes of this Act are—

- (a) to provide for safe, efficient and equitable road use; and
- (b) to improve and simplify procedures for the registration of motor vehicles and the licensing of drivers; and
- (c) to prevent the rebirthing of stolen vehicles; and

S. 1(c)
repealed by
No. 57/1998
s. 4(4)(b),
new s. 1(c)
inserted by
No. 92/2001
s. 4.

- (d) to ensure the equitable distribution within the community of the costs of road use.

2. *Commencement*

This Act (including the items in Schedule 3 and the amendments in Schedule 4) comes into operation on a day or days to be proclaimed.

3. Definitions

(1) In this Act—

"accompanying driver offence" means an offence under section 49(1) which is committed by a person who is taken to be in charge of a motor vehicle by reason of the operation of section 3AA(1)(d);

S. 3(1) def. of "accompanying driver offence" inserted by No. 23/2001 s. 3(1), amended by No. 92/2001 s. 5(2).

"accompanying licensed driver" means a person, other than a commercial driving instructor acting as such, who is sitting beside a person, who is driving a motor vehicle for which that person does not hold an appropriate driver licence, for the purpose of enabling that person lawfully to drive that motor vehicle on a highway;

S. 3(1) def. of "accompanying licensed driver" inserted by No. 92/2001 s. 5(1).

"accredited agency" means a person or body approved for the purposes of sections 50, 50AAB(5) and 50A by the Secretary to the Department of Human Services within the meaning of the **Health Act 1958**;

S. 3(1) def. of "accredited agency" inserted by No. 5/1990 s. 4(a), amended by Nos 46/1998 s. 7(Sch. 1), 1/2002 s. 3(2).

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S. 3(1) def. of "accredited drink-driving education program" inserted by No. 5/1990 s. 4(a), amended by No. 46/1998 s. 7(Sch. 1) (as amended by No. 12/1999 s. 3(Sch. 1 item 25)), amended as "accredited driver education program" by No. 14/2000 s. 4(1).

"accredited driver education program" means a program that is run by an accredited agency and that is approved for the purposes of section 50A by the Secretary to the Department of Human Services within the meaning of the **Health Act 1958**;

S. 3(1) def. of "alcohol interlock" inserted by No. 1/2002 s. 3(1).

"alcohol interlock", in relation to a motor vehicle, means a device capable of—

- (a) analysing a breath sample for the presence of alcohol; and
- (b) if it detects more than a certain concentration of alcohol, preventing the motor vehicle from being started;

S. 3(1) def. of "alcohol interlock condition" inserted by No. 1/2002 s. 3(1).

"alcohol interlock condition" means a condition imposed on a driver licence or permit in accordance with a direction under section 50AAA;

S. 3(1) def. of "approved alcohol interlock" inserted by No. 1/2002 s. 3(1).

"approved alcohol interlock" means an alcohol interlock of a type approved by the Corporation under section 50AAE(3);

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"approved alcohol interlock supplier" means a person or body approved by the Corporation under section 50AAE(5);

S. 3(1) def. of "approved alcohol interlock supplier" inserted by No. 1/2002 s. 3(1).

"approved health professional" means—

S. 3(1) def. of "approved health professional" inserted by No. 14/2000 s. 4(3).

(a) a registered nurse, within the meaning of the **Nurses Act 1993**, registered in division 1 of the register kept under that Act;

(b) a person approved under sub-section (4) to take a blood sample for the purposes of Part 5;

* * * * *

S. 3(1) def. of "articulated truck" inserted by No. 89/1991 s. 4(1)(a), repealed by No. 57/1998 s. 4(1)(a).

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S. 3(1) def. of "authorised officer" repealed by No. 57/1998 s. 4(1)(a).

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S. 3(1) def. of "Authority" repealed by No. 44/1989 s. 41(Sch. 2 item 34.1(a)).

"axle" means one or more shafts positioned in a line across a vehicle, on which one or more wheels intended to support the vehicle turn;

S. 3(1) def. of "axle" substituted by No. 57/1998 s. 5(1).

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"bill of sale" means bill of sale within the meaning of Part VI of the **Instruments Act 1958**;

S. 3(1) def. of "breath analysing instrument" amended by No. 17/1994 s. 4(1).

"breath analysing instrument" means—

- (a) the apparatus known as the Alcotest 7110 to which a plate is attached on which there is written, inscribed or impressed the numbers "3530791" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in; or
- (b) apparatus of a type approved for the purposes of section 55 by the Minister by notice published in the Government Gazette or for the purposes of any corresponding previous enactment by the Governor in Council by notice published in the Government Gazette for ascertainment by analysis of a person's breath what concentration of alcohol is present in his or her blood;

S. 3(1) def. of "bus" inserted by No. 89/1991 s. 4(1)(b).

"bus" means a motor vehicle which (together with any trailer attached to it) seats more than 12 adults (including the driver);

S. 3(1) def. of "Chief General Manager" inserted by No. 5/1990 s. 4(b), repealed by No. 46/1998 s. 7(Sch. 1).

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- "commercial driving instructor"** means a person who, for financial gain or in the course of any trade or business, is teaching a person, who is driving a motor vehicle of a kind described in section 33(3), for which that person does not hold an appropriate driver licence, to drive that motor vehicle on a highway;
- S. 3(1) def. of "commercial driving instructor" inserted by No. 92/2001 s. 5(1).
- "commercial motor vehicle"** means a commercial goods vehicle or a commercial passenger vehicle within the meaning of Part VI of the **Transport Act 1983** but includes a tow truck within the meaning of that Part;
- "Contracting State"** means a foreign country that is a signatory to the United Nations Convention on Road Traffic, Geneva, 1949;
- S. 3(1) def. of "Contracting State" inserted by No. 57/1998 s. 6.
- "Corporation"** means the Roads Corporation;
- S. 3(1) def. of "Corporation" inserted by No. 44/1989 s. 41(Sch. 2 item 34.1(b)).
- "corresponding law"** means a law of another State or a Territory of the Commonwealth which the Minister by Order published in the Government Gazette declares to be a law that creates an offence substantially similar to any one of the offences created by section 49(1);
- "dentist"** means a dentist within the meaning of the **Dentists Act 1972**;
- S. 3(1) def. of "dentist" inserted by No. 14/2000 s. 4(3).
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S. 3(1) def. of
"Director of
the Victorian
Institute of
Forensic
Medicine"
inserted by
No. 14/2000
s. 4(3).

"Director of the Victorian Institute of Forensic Medicine" means the Director within the meaning of the **Coroners Act 1985**;

S. 3(1) def. of
"drink-driving
infringement"
inserted by
No. 53/1989
s. 4(a),
amended by
Nos 89/1991
s. 4(1)(c),
17/1994
s. 4(2),
23/2001
s. 3(2).

"drink-driving infringement" means an offence under section 49(1)(b), (f) or (g), other than an accompanying driver offence, in circumstances where¹—

- (a) the concentration of alcohol in the blood of the person is less than 0.15 grams per 100 millilitres of blood; and
- (b) the offence is a first offence having regard to the provisions of section 48(2) or would, because of section 50AA, be treated as a first offence for the purposes of sub-sections (1), (1A), (1AB) and (1B) of section 50;

"driver licence" means a licence granted under Part 3;

S. 3(1) def. of
"drug"
amended by
No. 78/1987
s. 4(1)(a),
substituted by
No. 14/2000
s. 4(2).

"drug" means a substance that is a drug for the purposes of this Act by virtue of a declaration under sub-section (3) or any other substance (other than alcohol) which, when consumed or used by a person, deprives that person (temporarily or permanently) of any of his or her normal mental or physical faculties;

S. 3(1) def. of
"excessive
speed
infringement"
inserted by
No. 53/1989
s. 4(b).

"excessive speed infringement" means an offence of a kind referred to in section 28(1)(a);

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"full driver licence" means a driver licence other than a probationary driver licence;

S. 3(1) def. of "full driver licence" inserted by No. 78/1987 s. 4(1)(b).

"garage address" of a vehicle means—

S. 3(1) def. of "garage address" inserted by No. 57/1998 s. 6.

- (a) in relation to a heavy vehicle, the principal depot or base of operations of the vehicle;
- (b) in relation to any other vehicle, the place nominated by the applicant for registration as the place where the vehicle is normally kept;

"GCM" (gross combination mass) of a motor vehicle means the greatest possible sum of the maximum loaded mass of the motor vehicle and of any vehicles that may lawfully be towed by it at one time—

S. 3(1) def. of "GCM" inserted by No. 57/1998 s. 6.

- (a) as specified by the motor vehicle's manufacturer; or
- (b) as specified by the Corporation if—
 - (i) the manufacturer has not specified the sum of the maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

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S. 3(1) def. of
"gross vehicle
mass"
inserted by
No. 89/1991
s. 4(1)(d),
substituted as
"GVM" by
No. 57/1998
s. 5(2)(a).

"GVM" (gross vehicle mass) of a vehicle means the maximum loaded mass of the vehicle—

- (a) as specified by the vehicle's manufacturer; or
- (b) as specified by the Corporation if—
 - (i) the manufacturer has not specified a maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

S. 3(1) def. of
"heavy trailer
combination"
inserted by
No. 89/1991
s. 4(1)(d),
repealed by
No. 57/1998
s. 4(1)(a).

* * * * *

S. 3(1) def. of
"heavy
vehicle"
inserted by
No. 57/1998
s. 6.

"heavy vehicle" means a motor vehicle or trailer that has a GVM greater than 4.5 tonnes;

S. 3(1) def. of
"highway"
substituted by
No. 57/1998
s. 5(3).

"highway" means road or road related area;

"hire-purchase agreement" means hire-purchase agreement within the meaning of the **Hire-Purchase Act 1959**;

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"infringement" means a parking infringement or a traffic infringement;

"international driving permit" means a permit issued by—

S. 3(1) def. of "international driving permit" inserted by No. 57/1998 s. 6.

(a) a competent authority of a Contracting State or a subdivision of such a State; or

(b) an association duly empowered by such an authority—

in accordance with the United Nations Convention on Road Traffic, Geneva, 1949;

"interstate learner permit" means a permit or authority to learn to drive a motor vehicle issued under an Act of another State or Territory of the Commonwealth which corresponds with this Act;

"large vehicle" means—

S. 3(1) def. of "large vehicle" inserted by No. 89/1991 s. 4(1)(e), amended by No. 57/1998 s. 4(1)(b).

(a) a bus; or

(b) a motor vehicle (other than a bus) that is being used as a single unit and has a GVM greater than 15 tonnes; or

(c) a motor vehicle (other than a bus) that is being used in combination with one or more trailers and has a GCM greater than 15 tonnes;

"licence restoration report" means a report from an accredited agency on an applicant for an order under section 50(4);

S. 3(1) def. of "licence restoration report" inserted by No. 5/1990 s. 4(c).

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S. 3(1) def. of
"motor
vehicle"
substituted by
No. 57/1998
s. 5(4).

"motor cycle" means a two-wheeled motor vehicle and includes a motor cycle with a trailer, forecar or sidecar attached;

"motor vehicle" means a vehicle that is used or intended to be used on a highway and that is built to be propelled by a motor that forms part of the vehicle but does not include—

- (a) a vehicle intended to be used on a railway or tramway; or
- (b) a motorised wheel-chair capable of a speed of not more than 10 kilometres per hour which is used solely for the conveyance of an injured or disabled person; or
- (c) a vehicle that is not a motor vehicle by virtue of a declaration under subsection (2)(b);

"owner", in relation to a motor vehicle or trailer, includes a part owner and also—

- (a) includes a person who has the possession and use of it under or subject to a hire-purchase agreement or a bill of sale or like instrument or under or subject to a written hiring agreement (not being a hire-purchase agreement) which requires that person to register the motor vehicle or trailer in that person's name; but
- (b) does not include a person in whom the property in the motor vehicle or trailer or any absolute or conditional right or licence to take possession of the motor vehicle or trailer is vested under or subject to a hire-purchase agreement or a bill of sale or like instrument or written hiring agreement which requires

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another person to register the motor vehicle or trailer in the name of that other person but who has not for the time being the possession and use of the motor vehicle or trailer;

"parking infringement" means the parking of a vehicle, or leaving it standing, whether attended or not, in contravention of—

(aa) section 90E; or

(a) the regulations; or

* * * * *

(c) any other Act, rule, regulation or by-law;

"Parliamentary reserve" has the same meaning as it has in the **Parliamentary Precincts Act 2001**;

"permissible non-prescription drug" means—

(a) a Schedule 2 poison within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** that is listed in Appendix K of Part 5 of the Commonwealth standard within the meaning of that Act; or

(b) a Schedule 3 poison within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981**;

* * * * *

"pharmacist" means a pharmacist within the meaning of the **Pharmacists Act 1974**;

S. 3(1) def. of "parking infringement" amended by Nos 12/1989 s. 4(1)(Sch. 2 item 105.1), 25/1996 s. 7, 14/2000 s. 16.

S. 3(1) def. of "Parliamentary reserve" inserted by No. 4/2001 s. 29(1).

S. 3(1) def. of "permissible non-prescription drug" inserted by No. 14/2000 s. 4(3).

S. 3(1) def. of "permit" repealed by No. 57/1998 s. 4(2)(a).

S. 3(1) def. of "pharmacist" inserted by No. 14/2000 s. 4(3).

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S. 3(1) def. of
"pre-
registration
certificate"
repealed by
No. 57/1998
s. 4(3)(a).

* * * * *

S. 3(1) def. of
"prescribed
concentration
of alcohol"
amended by
No. 5/1990
s. 4(d).

"prescribed concentration of alcohol" means—

- (a) in the case of a person to whom section 52 applies, the concentration of alcohol specified in that section; and
- (b) in the case of any other person, a concentration of alcohol present in the blood of that person of 0.05 grams per 100 millilitres of blood;

S. 3(1) def. of
"prescription
drug"
inserted by
No. 14/2000
s. 4(3).

"prescription drug", in relation to a person, means a Schedule 4 poison or Schedule 8 poison within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** which that person is authorised or licensed by or under that Act to have in his or her possession;

S. 3(1) def. of
"presiding
officer"
inserted by
No. 4/2001
s. 29(1).

"presiding officer" has the same meaning as it has in the **Constitution Act 1975**;

S. 3(1) def. of
"prime
mover"
inserted by
No. 89/1991
s. 4(1)(f).

"prime mover" means a motor vehicle which is constructed, designed or adapted for connecting to a semi-trailer;

S. 3(1) def. of
"probationary
driver
infringement"
inserted by
No. 5/1990
s. 4(e).

"probationary driver infringement" means a prescribed offence within the meaning of section 21(3);

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"probationary driver licence" means a licence referred to in section 21 during the period of probation of that licence;

S. 3(1) def. of "probationary driver licence" inserted by No. 78/1987 s. 4(1)(c).

"prosecution officer" means—

S. 3(1) def. of "prosecution officer" amended by No. 44/1989 s. 41(Sch. 2 item 34.1(c)).

- (a) a person who is appointed by the Chief Commissioner of Police for the purposes of Part 7; or
- (b) an officer of the Corporation who is authorised in writing to take proceedings either generally or in any particular case by the Corporation; or
- (c) a person who is referred to in paragraph (c) or (e) of section 77(2);

* * * * *

S. 3(1) defs of "public place", "recreation vehicle" repealed by No. 57/1998 s. 4(4)(a).

"register of written-off vehicles" means the register of written-off vehicles required by section 16D;

S. 3(1) def. of "register of written-off vehicles" inserted by No. 92/2001 s. 5(3).

* * * * *

S. 3(1) def. of "registered owner" repealed by No. 30/1997 s. 7(a).

"registered medical practitioner" means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

S. 3(1) def. of "registered medical practitioner" inserted by No. 23/1994 s. 118(Sch. 1 item 50.1).

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S. 3(1) new def. of "registered owner" inserted by No. 30/1997 s. 7(b), substituted as "registered operator" by No. 57/1998 s. 5(5)(a).

"registered operator" of a vehicle means the person recorded on the register as the person responsible for the vehicle;

S. 3(1) def. of "rigid" inserted by No. 89/1991 s. 4(1)(g), substituted by No. 57/1998 s. 5(6).

"rigid" means not articulated, other than in respect of an articulated bus;

S. 3(1) def. of "road" inserted by No. 57/1998 s. 6.

"road" means—

- (a) an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles; or
- (b) a place that is a road by virtue of a declaration under sub-section (2)(a)—

but does not include a place that is not a road by virtue of a declaration under sub-section (2)(a);

S. 3(1) def. of "road related area" inserted by No. 57/1998 s. 6.

"road related area" means—

- (a) an area that divides a road; or
- (b) a footpath or nature strip adjacent to a road; or
- (c) an area that is open to the public and is designated for use by cyclists or animals; or

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- (d) an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles; or
- (e) a place that is a road related area by virtue of a declaration under sub-section (2)(a)—

but does not include a place that is not a road related area by virtue of a declaration under sub-section (2)(a);

"semi-trailer" means a vehicle without its own motive power which is capable of being drawn by a prime mover in such a way that it is attached to and pivoted on the prime mover by imposition on it on or in front of the rear axle of the prime mover so that the semi-trailer is free to turn relative to the prime mover when the prime mover is rounding a curve and so that part of the mass of the semi-trailer and of any load carried on it is borne by the prime mover;

S. 3(1) def. of "semi-trailer" inserted by No. 89/1991 s. 4(1)(g).

"serious injury" has the same meaning as in section 15 of the **Crimes Act 1958**;

"substance" means substance in any form (whether gaseous, liquid, solid or other) and includes material, preparation, extract and admixture;

S. 3(1) def. of "substance" inserted by No. 14/2000 s. 4(3).

"tailgating infringement" means an offence under section 87A;

S. 3(1) new def. of "tailgating infringement" inserted by No. 30/1997 s. 7(d).

"tare mass", in relation to a trailer, means its unladen mass when it is in ordinary running condition and not carrying persons or goods;

S. 3(1) def. of "tare mass" inserted by No. 89/1991 s. 4(1)(h).

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S. 3(1) def. of "tailgating infringement" inserted by No. 5/1990 s. 4(f), repealed by No. 30/1997 s. 7(c).	*	*	*	*	*
S. 3(1) def. of "taxi-cab" inserted by No. 58/1995 s. 4.			"taxi-cab" has the same meaning as in Part VI of the Transport Act 1983 ;		
S. 3(1) def. of "the register" inserted by No. 57/1998 s. 6.			"the register" means the register of vehicles maintained in accordance with the regulations;		
			"tractor" means a motor vehicle that is a tractor by virtue of a declaration under sub-section (2)(c);		
S. 3(1) def. of "traffic infringement" amended by Nos 54/1987 s. 16(4)(a), 53/1989 s. 4(c), 5/1990 s. 4(g), 89/1991 s. 17(1)(a), 84/1994 s. 56, 30/1997 s. 7(e), 14/2000 s. 26(1), 37/2002 s. 51(1).			"traffic infringement" means—		
			(a) an offence, other than a parking infringement, against this Act or the regulations which is a prescribed offence for the purposes of Part 7; or		
			(b) an offence against section 45E or 45F of the Environment Protection Act 1970 relating to the deposit of litter on, from or towards any vehicle; or		
			(c) an offence against the Transport Act 1983 or the regulations made under that Act which is a prescribed offence for the purposes of Part 7; or		
			(d) a drink-driving infringement; or		
			(e) an excessive speed infringement; or		
	*	*	*	*	*
			(g) a probationary driver infringement; or		

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(h) an offence against section 109 of the **Transport Accident Act 1986** which is a prescribed offence for the purposes of Part 7;

"trailer" means a vehicle that is built to be towed, or is towed, by a motor vehicle, but does not include a motor vehicle that is being towed;

S. 3(1) def. of "trailer" substituted by No. 57/1998 s. 5(7).

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S. 3(1) def. of "Tribunal" repealed by No. 120/1993 s. 62.

"truck" means a rigid motor vehicle that is principally constructed as a load carrying vehicle;

S. 3(1) def. of "truck" inserted by No. 89/1991 s. 4(1)(i), substituted by No. 57/1998 s. 5(8).

"use" of a vehicle includes standing the vehicle on a road or road related area;

S. 3(1) def. of "use" inserted by No. 57/1998 s. 6.

"vehicle" means a conveyance that is designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn, and includes bicycle or other pedal-powered vehicle, trailer, tram-car and air-cushion vehicle but does not include railway locomotive or railway rolling stock;

"written-off vehicle" has the meaning given in section 16B.

S. 3(1) def. of "written-off vehicle" inserted by No. 92/2001 s. 5(3).

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S. 3(1A)
inserted by
No. 4/2001
s. 29(2).

(1A) The provisions of this Act and the regulations relating to—

- (a) parking infringements (other than parking infringements involving a contravention of section 90E); and
- (b) the parking of vehicles; and
- (c) any other prescribed offence; and
- (d) any other prescribed matter—

apply to the Parliamentary reserve as if the Parliamentary reserve were a highway.

(2) The Governor in Council may by Order published in the Government Gazette—

S. 3(2)(a)
substituted by
No. 57/1998
s. 4(4)(c).

- (a) declare any place or class of places, whether open to vehicles or not, to be or not to be a road or roads or a road related area or road related areas for the purposes of this Act; and
- (b) declare any motor vehicle or class of motor vehicles not to be a motor vehicle or motor vehicles for the purposes of this Act; and
- (c) declare any motor vehicle or class of motor vehicles to be a tractor or tractors for the purposes of this Act; and

S. 3(2)(d)
amended by
No. 57/1998
s. 4(4)(d)(i).

- (d) declare any vehicle, implement, machine or other structure or class of vehicles, implements, machines or other structures to be a trailer or trailers for the purposes of this Act.

S. 3(2)(e)
repealed by
No. 57/1998
s. 4(4)(d)(ii).

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(3) The Minister may, by Order published in the Government Gazette, declare any substance to be a drug for the purposes of this Act.

S. 3(3)
inserted by
No. 14/2000
s. 4(4).

(4) The Director of the Victorian Institute of Forensic Medicine may, in writing, approve a person to take blood samples for the purposes of Part 5 if the Director is of the opinion that the person has the appropriate qualifications, training and experience to take such samples.

S. 3(4)
inserted by
No. 14/2000
s. 4(4).

3AA. *Circumstances in which person is to be taken to be in charge of a motor vehicle*

S. 3AA
inserted by
No. 92/2001
s. 6.

(1) Without limiting the circumstances in which a person is in charge of a motor vehicle, the following persons are to be taken to be in charge of a motor vehicle for the purposes of this Act—

- (a) a person who is attempting to start or drive the motor vehicle;
- (b) a person with respect to whom there are reasonable grounds for the belief that he or she intends to start or drive the motor vehicle;
- (c) a commercial driving instructor while the person whom he or she is teaching to drive is driving or in charge of the vehicle;
- (d) an accompanying licensed driver while the person whom he or she is sitting beside is driving or in charge of the vehicle.

(2) Sub-section (1)(c) or (d) does not affect any liability of the person being taught or accompanied for any offence committed by that person while driving or being in charge of the motor vehicle.

S. 3AB
inserted by
No. 92/2001
s. 6.

3AB. *Circumstances in which person is to be taken to be driving a motor vehicle*

Without limiting the circumstances in which a person is driving a motor vehicle, a person who is steering a motor vehicle which is being towed by another motor vehicle is to be taken to be driving the towed motor vehicle for the purposes of this Act, whether or not the towed motor vehicle has any other means of propulsion and whether or not the person steering it has any control over its means of propulsion.

S. 3A
inserted by
No. 57/1998
s. 7.

3A. *Application of Commonwealth Acts Interpretation Act 1901*

- (1) The Acts Interpretation Act 1901 of the Commonwealth applies to the interpretation of this Act, except that, in relation to Victoria—
 - (a) "Gazette" refers to the Victorian Government Gazette; and
 - (b) "Minister" refers to the responsible Minister of Victoria.
- (2) This section does not prevent the **Interpretation of Legislation Act 1984** from applying to this Act to the extent that it can do so consistently with the application of the Acts Interpretation Act 1901 of the Commonwealth.

4. *Act to bind Crown*

This Act binds the Crown in right of Victoria and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—REGISTRATION

Division 1—Corporation as registration authority

Pt 2 Div. 1
(Heading and
ss 5AA, 5AB)
inserted by
No. 57/1998
s. 8.

5AA. *Functions of Corporation*

S. 5AA
inserted by
No. 57/1998
s. 8.

The functions of the Corporation under this Part are—

- (a) to administer the registration system established by the regulations; and
- (b) to maintain a register of motor vehicles and trailers in accordance with the regulations; and
- (ba) to maintain a register of written-off vehicles in accordance with the regulations; and
- (c) to collect registration and permit fees determined in accordance with this Act; and
- (d) to provide information about motor vehicles, trailers and registered operators in accordance with this Act.

S. 5AA(ba)
inserted by
No. 92/2001
s. 7(a).

5AB. *Powers of Corporation*

S. 5AB
inserted by
No. 57/1998
s. 8.

- (1) For the purpose of carrying out its functions under this Part, the Corporation may, in accordance with the regulations—
 - (a) register or refuse to register a motor vehicle or a trailer; and
 - (b) renew or refuse to renew the registration of a motor vehicle or a trailer; and

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- (c) transfer or refuse to transfer the registration of a motor vehicle or a trailer from one person to another; and
 - (d) permit or refuse to permit the use of an unregistered motor vehicle or trailer; and
 - (e) impose conditions on the registration of a motor vehicle or a trailer or on a permit to use an unregistered motor vehicle or trailer; and
 - (f) cancel or suspend the registration of a motor vehicle or a trailer; and
 - (fa) enter or refuse to enter a vehicle on the register of written-off vehicles; and
 - (fb) amend or refuse to amend an entry on the register of written-off vehicles; and
 - (fc) remove or refuse to remove an entry from the register of written-off vehicles; and
 - (g) collect registration and permit fees (including fees in relation to the register of written-off vehicles) determined in accordance with this Act; and
 - (h) specify a GCM for a motor vehicle in the circumstances envisaged in paragraph (b) of the definition of GCM in section 3(1); and
 - (i) specify a GVM for a motor vehicle or trailer in the circumstances envisaged in paragraph (b) of the definition of GVM in section 3(1); and
- S. 5AB(1)(fa)**
inserted by
No. 92/2001
s. 7(b).
- S. 5AB(1)(fb)**
inserted by
No. 92/2001
s. 7(b).
- S. 5AB(1)(fc)**
inserted by
No. 92/2001
s. 7(b).
- S. 5AB(1)(g)**
amended by
No. 92/2001
s. 7(c).
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- (j) require proof of compliance with the **Transport Accident Act 1986** and the **Duties Act 2000**; and
- (k) fix fees for services provided by the Corporation in connection with—
- (i) the registration, or the late renewal of registration, of motor vehicles or trailers;
 - (ii) the issue of number plates, permits, tester's licences and certificates of roadworthiness;
 - (iii) the entry of vehicles on the register of written-off vehicles, the amendment, removal and inspection of entries and the issuing of certificates in relation to information from the register; and
- (l) exercise other powers conferred by the regulations.
- (2) The Corporation must cause details of fees fixed under sub-section (1)(k) to be published in the Government Gazette.

S. 5AB(1)(j) amended by No. 79/2000 s. 285(Sch. 1 item 5A) (as amended by No. 46/2001 s. 28).

S. 5AB(1)(k) substituted by No. 92/2001 s. 7(d).

Division 2—Registration

Pt 2 Div. 2 (Heading) inserted by No. 57/1998 s. 8.

5. Purposes of registration

The purposes of registration are—

- (a) to ensure that the design, construction and equipment of motor vehicles and trailers which are used on a highway meet safety and environmental standards; and

- (b) to enable the use of motor vehicles and trailers on highways to be regulated for reasons of safety, protection of the environment and law enforcement; and
- (c) to provide a method of establishing the identity of each motor vehicle or trailer which is used on a highway and of the person who is responsible for it.

6. *Application of Part*

This Part applies only to motor vehicles and trailers which are used or intended for use on a highway.

S. 6A
inserted by
No. 57/1998
s. 10.

6A. *Corporation not to register vehicles based outside Victoria*

The Corporation must not register a vehicle unless it is satisfied that the vehicle's garage address is in Victoria.

7. *Offence if vehicle or trailer not registered*

- (1) A person must not—
 - (a) use on a highway a motor vehicle or a trailer;
or
 - (b) own a motor vehicle or a trailer which is used on a highway—

unless that motor vehicle or trailer is registered under this Part or exempted from registration under the regulations or is used as specified in a registration permit granted in accordance with the regulations.

- (2) A person must not—
 - (a) use a motor vehicle or trailer in breach of any condition of its registration; or

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- (b) being the registered operator of a motor vehicle or a trailer, permit or allow it to be so used or employ a person to so use it. **S. 7(2)(b) amended by No. 57/1998 s. 5(5)(b).**
- (3) A person who contravenes sub-section (1) or (2) is guilty of an offence and liable to a penalty not exceeding— **S. 7(3) substituted by No. 57/1998 s. 11(1) (as amended by No. 73/1998 s. 13(2)).**
- (a) in the case of an individual—
- (i) 25 penalty units for a first offence;
- (ii) 50 penalty units for a second or subsequent offence;
- (b) in the case of a body corporate—
- (i) 125 penalty units for a first offence;
- (ii) 250 penalty units for a second or subsequent offence.
- * * * * *
- S. 7(4) repealed by No. 57/1998 s. 11(2).**
- (5) A person may not be convicted of more than one offence under sub-section (1) or sub-section (2) in respect of the same circumstances.
- * * * * *
- S. 7(6) repealed by No. 57/1998 s. 11(2).**
- * * * * *
- S. 7(7) repealed by No. 89/1991 s. 4(2).**
- * * * * *
- S. 7(8) repealed by No. 57/1998 s. 11(2).**
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S. 8
repealed by
No. 57/1998
s. 12(1).

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S. 9
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

9. *Effecting registration, renewal or transfer*

(1) Registration, renewal of registration and transfer of registration may be applied for and granted or refused only in accordance with the regulations.

Note to s. 9(1)
inserted by
No. 92/2001
s. 8.

Note: Section 16F contains prohibitions on registration and renewal of registration in respect of written-off vehicles.

S. 9(1A)
inserted by
No. 120/1993
s. 56,
amended by
No. 30/1997
s. 5(1).

(1A) The Corporation must ensure that an applicant for registration, renewal of registration or transfer of registration of a motor vehicle or trailer is informed at the time of making the application that any information given or document submitted in connection with the application, or a copy of such a document, may be disclosed or used for investigation, law enforcement and other purposes in accordance with section 92.

S. 9(2)
repealed by
No. 57/1998
s. 9(a).

* * * * *

S. 9(3)
amended by
No. 57/1998
s. 5(5)(c),
repealed by
No. 57/1998
s. 9(a).

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9A. *Obligations of registered operator*

S. 9A
inserted by
No. 57/1998
s. 13.

(1) This Act and the regulations do not affect the obligations of a registered operator to comply with the **Transport Accident Act 1986** and the **Duties Act 2000**.

S. 9A(1)
amended by
No. 79/2000
s. 285(Sch. 1
item 5A) (as
amended by
No. 46/2001
s. 28).

- (2) The registered operator of a vehicle must, in accordance with the regulations—
- (a) ensure that any devices, plates and documents issued by the Corporation are installed or displayed on the vehicle; and
 - (b) ensure that documents prescribed by the regulations are carried in the vehicle when the vehicle is in use; and
 - (c) when required to do so by the Corporation, produce documents prescribed by the regulations; and
 - (d) comply with any directions given by, and conditions imposed by, the Corporation about the registration of the vehicle; and
 - (e) keep records required to be kept by the regulations about the registration of the vehicle.

9B. *Register does not provide evidence of title*

The register of vehicles maintained by the Corporation does not provide evidence of title to any motor vehicle or trailer.

S. 9B
inserted by
No. 57/1998
s. 13.

10. Power to require compliance with standards

- (1) The Minister may, by notice in the Government Gazette, require compliance with standards for registration relating to the construction, efficiency, performance, safety, design and equipment of, and the method of identifying, motor vehicles and trailers.
- (2) A standard may include a code of practice.
- (3) A notice under sub-section (1) must specify the class or classes of motor vehicles and trailers to which the standards apply.
- (4) The standards must be available for inspection on request at a place which is open to the public and is specified in the notice.
- (5) Unless the Minister otherwise specifies in the notice relating to a particular standard, a standard applies only to motor vehicles or trailers manufactured 12 months or more after the date of the notice.

S. 11
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4),
repealed by
No. 57/1998
s. 9(b).

* * * * *

S. 12
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.4),
57/1989
s. 3(Sch.
item 173.1).

12. Appeal to Magistrates' Court

- (1) If the Corporation decides to—
 - (a) refuse an application for registration of a motor vehicle or trailer; or
 - (b) refuse to register a motor vehicle or trailer unconditionally under this Part; or

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(c) cancel or suspend the registration of a motor vehicle or trailer—

the applicant or owner may, in accordance with the regulations, appeal against that decision to the Magistrates' Court.

(2) On an appeal under sub-section (1) the court must—

(a) re-determine the matter of the refusal, cancellation or suspension; and

(b) hear any relevant evidence tendered by the appellant or the Corporation; and

(c) without limiting its discretion, take into consideration anything that the Corporation ought to have considered.

(3) Every decision of the Magistrates' Court on an appeal under this section is final and conclusive and must be given effect to by the Corporation.

13. *Power to inspect motor vehicles and trailers*

S. 13
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

(1) An authorised officer for the purposes of this section or a member of the police force may at any reasonable time inspect a motor vehicle or trailer which is being used on a highway and which the officer or member believes on reasonable grounds does not comply with this Act or the regulations.

S. 13(1)
amended by
No. 58/1995
s. 5(1).

(2) An authorised officer for the purposes of this section or a member of the police force may, by notice in accordance with sub-section (3), require to be produced for inspection at a place specified in the notice a motor vehicle or trailer which the officer or member has reasonable grounds for suspecting has within the preceding 30 days been

S. 13(2)
amended by
No. 58/1995
s. 5(1).

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used or will be used on a highway and which the officer or member believes on reasonable grounds does not comply with this Act or the regulations.

S. 13(3)
amended by
No. 57/1998
s. 5(5)(d).

- (3) A notice must be in writing and must be served on the registered operator or, if the motor vehicle or trailer is not registered, on the owner.
- (4) An inspection may include any tests which the inspecting officer or member of the police force decides to be appropriate.
- (5) A person who refuses or fails—
 - (a) to allow a motor vehicle or trailer to be inspected when required under this section; or
 - (b) to produce a motor vehicle or trailer for inspection at the place specified in a notice within 7 days after service of the notice on that person—

is guilty of an offence.

Penalty: 5 penalty units.

S. 13(6)
inserted by
No. 58/1995
s. 5(2).

- (6) In this section "**authorised officer for the purposes of this section**" means—
 - (a) an officer of the Corporation authorised in writing by the Corporation for the purposes of this section; or

S. 13(6)(ab)
inserted by
No. 37/1996
s. 3(1),
amended by
No. 46/1998
s. 7(Sch. 1).

- (ab) a person employed under Part 3 of the **Public Sector Management and Employment Act 1998** in the police force of Victoria who is authorised in writing by the Chief Commissioner of Police for the purposes of this section; or

S. 13(6)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

- (b) an employee in the Department of Infrastructure authorised in writing by the Secretary to the Department of Infrastructure for the purposes of this section.

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14. Defective vehicles

- (1) A member of the police force or a person referred to in section 13(6) may, in accordance with the regulations, on discovering a vehicle that does not comply with this Act or the regulations—
- (a) issue a warning or a vehicle defect notice; or
 - (b) impose conditions on the use of the vehicle; or
 - (c) prohibit the use of the vehicle.
- (2) A vehicle defect notice may be withdrawn or cleared in accordance with the regulations.

S. 14 amended by Nos 44/1989 s. 41(Sch. 2 item 34.4), 58/1995 s. 6, 37/1996 s. 3(2), 46/1998 s. 7(Sch. 1), substituted by No. 57/1998 s. 14.

* * * * *

S. 15 amended by No. 44/1989 s. 41(Sch. 2 item 34.4), repealed by No. 57/1998 s. 4(3)(b).

15A. Suspension or cancellation of vehicle tester authorisations²

- (1) The Corporation may, in accordance with the regulations, suspend for 30 days or more or cancel an authorisation granted to a person under regulations made under item 9 of Schedule 2 if it is of the opinion that—
- (a) the person has ceased to be a fit and proper person to hold the authorisation; or
 - (b) the person's premises are no longer suitably equipped to carry out examinations and tests; or
 - (c) none of the person's employees is qualified to carry out examinations and tests; or

S. 15A inserted by No. 120/1993 s. 57.

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- (d) any provision of the regulations which applies in respect of authorised persons and the testing of vehicles has not been complied with.
- (2) The Corporation may, in accordance with the regulations, immediately suspend until the charge has been determined an authorisation granted to a person under regulations made under item 9 of Schedule 2 if the person is charged with—
- (a) an offence involving violence or the threat of violence; or
 - (b) theft or an offence involving deception or fraud; or
 - (c) an offence against paragraph (e) or (f) of section 61(1); or
 - (d) an offence involving the risk of injury to the public—
- and may, in accordance with the regulations, cancel the authorisation if the person is convicted of any such offence.
- (3) The Corporation may, in accordance with the regulations, suspend for 3 months an authorisation granted to a person under regulations made under item 9 of Schedule 2 if the person incurs 12 or more demerit points within any 3 year period.
- (4) The circumstances in which demerit points are incurred or cancelled and the number of points incurred are as prescribed.
- (5) The holder of an authorisation granted under regulations made under item 9 of Schedule 2 may appeal to the Magistrates' Court against a decision of the Corporation to suspend or cancel that authorisation.

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- (6) An appeal against a decision of the Corporation made under sub-section (3) may only be made on either or both of the following grounds:
 - (a) That demerit points have been recorded against the appellant in error or because of wrongful or mistaken identity;
 - (b) That a miscalculation has been made in assessing the total number of demerit points incurred by the appellant.
- (7) The giving, in accordance with the regulations, of a notice of appeal against a decision of the Corporation made under sub-section (3) stays the suspension of the authorisation pending the determination of the appeal.
- (8) On an appeal under this section the Magistrates' Court must—
 - (a) re-determine the matter of the suspension or cancellation; and
 - (b) hear any relevant evidence tendered by the appellant or the Corporation; and
 - (c) without limiting its discretion, take into consideration anything that the Corporation ought to have considered.
- (9) On an appeal against a decision of the Corporation made under sub-section (3) the Magistrates' Court may—
 - (a) in allowing the appeal, give to the Corporation any directions it thinks proper for the amendment of any demerits register kept by the Corporation; or
 - (b) in dismissing the appeal, order that the suspension take effect from a date specified in the order.

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- (10) Every decision of the Magistrates' Court on an appeal under this section is final and conclusive and must be given effect to by the Corporation.

S. 16
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.4),
84/1994
s. 57(1),
58/1995
s. 7(1).

16. *Seizure of number plates*

- (1) An authorised officer for the purposes of this section or a member of the police force may take possession of any number plate which the officer or member has reasonable grounds for suspecting—

- (a) is being used other than in accordance with this Act and the regulations; or
(b) was not issued in accordance with this Act and the regulations—

and may retain it until the Corporation is satisfied that it was not being so used and that it was issued in accordance with this Act and the regulations.

S. 16(1A)
inserted by
No. 92/2001
s. 9.

- (1A) A member of the police force, or an officer of the Corporation authorised by the Corporation for the purposes of this sub-section, may take possession of any number plate displayed on a motor vehicle or trailer which the member has reasonable grounds for suspecting—

- (a) does not bear the registration number last assigned to that motor vehicle or trailer by the Corporation; or
(b) is displayed on a motor vehicle or trailer—
(i) that is not registered under Part 2 or exempted from registration under the regulations; and

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- (ii) in relation to which the period during which the registration of the vehicle may be renewed in accordance with the regulations has expired—

and may return it to the Corporation or retain it until the member is satisfied that circumstances exist that allow it to be used without being subject to being taken possession of under this subsection.

(2) In this section "**authorised officer for the purposes of this section**" means—

- (a) an officer of the Corporation or an officer or agent of the Transport Accident Commission authorised in writing by the Corporation for the purposes of this section; or
- (b) an employee in the Department of Infrastructure authorised in writing by the Secretary to the Department of Infrastructure for the purposes of this section.

S. 16(2) inserted by No. 84/1994 s. 57(2), substituted by No. 58/1995 s. 7(2).

S. 16(2)(b) amended by No. 46/1998 s. 7(Sch. 1).

Division 3—Written-off Vehicles

Pt 2 Div. 3 (Heading and ss 16A–16F) inserted by No. 92/2001 s. 10.

16A. Purposes of Division

The purposes of this Division are—

- (a) to curtail trade in stolen motor vehicles by preventing vehicle information about written-off vehicles, particularly vehicle identifiers, being used to register stolen motor vehicles;
- (b) to facilitate inspections of written-off vehicles that have been repaired;

S. 16A inserted by No. 92/2001 s. 10.

- (c) to make information available to prospective purchasers about whether a motor vehicle has previously been written off.

S. 16B
inserted by
No. 92/2001
s. 10.

16B. Definitions

In this Division—

"insurer" means a person who carries on the business of insuring motor vehicles and includes any other person, or class of person, declared to be an insurer by the regulations;

"interstate written-off vehicles register" means a register kept under a law of another State or of a Territory that corresponds to the register required by section 16D;

"late model vehicle" means a motor vehicle that is not more than 15 years old (age being determined by the date of manufacture);

"motor wrecker" means a person who carries on the business of—

- (a) demolishing or dismantling motor vehicles or parts of, or accessories for, motor vehicles; or
- (b) buying motor vehicles and substantially demolished or dismantled motor vehicles and selling substantially demolished or dismantled motor vehicles (whether or not the person also sells parts of, or accessories for, motor vehicles);

"repairable write-off" means a motor vehicle that is written off but is not a statutory write-off;

"self-insurer" means a corporation or partnership that owns 5 or more late model vehicles—

- (a) that are registered under Division 2 for use on a highway or registered for use on a highway by a registration authority in another State or a Territory; and
- (b) in respect of which there is no insurance policy with an insurer covering loss or damage of each vehicle;

"statutory write-off" means a motor vehicle that is written off and is—

- (a) a motor vehicle (other than a motor cycle) that has been damaged by at least 3 of the following impact damage indicators—
 - (i) damage to an area of the roof equal to or exceeding 300 millimetres by 300 millimetres; or
 - (ii) damage to an area of the cabin floor pan equal to or exceeding 300 millimetres by 300 millimetres; or
 - (iii) damage to an area of the firewall equal to or exceeding 300 millimetres by 300 millimetres; or
 - (iv) any damage to the suspension; or
 - (v) damage (cracked or broken) to major mechanical components such as the engine block and transmission casings; or

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- (b) a motor cycle that has impact damage (excluding scratching) to the suspension and at least 2 areas of structural frame damage; or
- (c) a motor vehicle (other than a motor cycle) that has been—
 - (i) immersed in salt water above the doorsill level for any period; or
 - (ii) immersed in fresh water up to the dashboard or steering wheel for more than 48 hours; or
- (d) a motor cycle that has been—
 - (i) fully immersed in salt water for any period; or
 - (ii) fully immersed in fresh water for more than 48 hours; or
- (e) a motor vehicle that has been burnt to such an extent that it is only fit for wrecking or scrap; or
- (f) a motor vehicle that has been stripped of all, or a combination of most, interior and exterior body parts, panels and components;

Examples

Examples of interior and exterior body parts, panels and components of a motor vehicle are the engine, wheels, bonnet, guards, doors and boot lid.

"vehicle identifier", in relation to a motor vehicle, means—

- (a) in the case of a motor vehicle manufactured before 1 January 1989, the number quoted on the compliance plate that uniquely identifies the vehicle and sets it apart from similar vehicles
-

and that corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle; or

- (b) in any other case, the vehicle identification number (or "VIN") marked on the motor vehicle in accordance with clause 58 of Schedule 8 to the Road Safety (Vehicles) Regulations 1999 or in accordance with a law of another State or a Territory that corresponds with that clause;

"written-off vehicle" means—

- (a) a statutory write-off; or
- (b) a repairable write-off.

16C. *When is a vehicle written off?*

- (1) For the purposes of this Division, a motor vehicle is written off if—
 - (a) the vehicle has been damaged by collision, fire, flood, accident, trespass or other event or circumstances; and
 - (b) the insurer or self-insurer of the vehicle or, if there is no insurer or self-insurer, the registered operator of the vehicle makes a determination that the extent of the damage is such that the vehicle's fair salvage value plus the cost of repairing it for use on a road or road related area would be more than its fair market value immediately before the event or circumstances that caused the damage.
- (2) An insurer of a vehicle referred to in sub-section (1)(a) is taken to have made a determination under sub-section (1)(b) if the insurer—

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- (a) allows a claim for the full insured value of the vehicle; or
 - (b) disposes of the vehicle to a third party.
- (3) A self-insurer of a vehicle referred to in sub-section (1)(a) is taken to have made a determination under sub-section (1)(b) if the self-insurer disposes of the vehicle to a third party.
- (4) A registered operator of a vehicle referred to in sub-section (1)(a) is taken to have made a determination under sub-section (1)(b) if the registered operator disposes of the vehicle to a motor wrecker.
- (5) Nothing in sub-section (2), (3) or (4) limits the circumstances in which an insurer, self-insurer or registered operator may be taken to have made a determination referred to in sub-section (1)(b).

S. 16D
inserted by
No. 92/2001
s. 10.

16D. *Register of written-off vehicles*

- (1) The Corporation must maintain a register of written-off vehicles in accordance with the regulations.
- (2) Entries on the register of written-off vehicles may be made, amended and removed only in accordance with the regulations.
- (3) The Corporation must ensure that a person who notifies the Corporation of a written-off vehicle, or who applies for an entry on the register of written-off vehicles to be amended or removed, is informed at the time of notification or application (as the case requires) that any information given or document submitted in connection with the notification or application, or a copy of such a document, may be disclosed or used for investigation, law enforcement and other purposes in accordance with section 92.

16E. Appeals regarding written-off vehicle registration

S. 16E
inserted by
No. 92/2001
s. 10.

- (1) If the Corporation decides to—
- (a) refuse to enter a vehicle on the register of written-off vehicles; or
 - (b) refuse to amend an entry on the register of written-off vehicles; or
 - (c) refuse to remove an entry from the register of written-off vehicles—

a person referred to in sub-section (2) may appeal against that decision to the Magistrates' Court in accordance with the regulations.

- (2) An appeal may be made under sub-section (1) by—
- (a) the owner of the vehicle; or
 - (b) a person who notified the Corporation that the vehicle was a written-off vehicle; or
 - (c) a person who applied for the entry to be amended or removed.
- (3) On an appeal under sub-section (1), the court must—
- (a) re-determine the matter of the refusal; and
 - (b) hear any relevant evidence tendered by the appellant and the Corporation; and
 - (c) without limiting its discretion, take into consideration anything that the Corporation ought to have considered.
- (4) The Corporation must give effect to the decision of the Magistrates' Court on an appeal.

S. 16F
inserted by
No. 92/2001
s. 10.

16F. *Prohibition on registration of vehicles that have written-off vehicle identifiers*

- (1) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on the register of written-off vehicles as a statutory write-off.
- (2) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if—
 - (a) its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on an interstate written-off vehicles register as a statutory write-off; and
 - (b) the Corporation knows of the entry on the interstate register.
- (3) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on the register of written-off vehicles as a repairable write-off except as permitted by the regulations.
- (4) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if—
 - (a) its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on an interstate written-off vehicles register as a repairable write-off; and
 - (b) the Corporation knows of the entry on the interstate register—except as permitted by the regulations.

PART 3—LICENSING OF DRIVERS

17. *Purposes of licensing*

The purposes of licensing are—

- (a) to ensure that people who drive motor vehicles on highways are competent drivers; and
- (b) to ensure that drivers are aware of safe driving practices and road law; and
- (c) to ensure that people who are, or who become, unsuited to drive are not permitted to drive on highways; and
- (d) to enable the identification of drivers for the purposes of law enforcement and accident investigation.

18. *Offence if driver not licensed*

(1) A person who drives a motor vehicle on a highway—

S. 18(1)
amended by
No. 58/1995
s. 8(a).

(a) without holding a driver licence or permit which authorises the holder to drive such a motor vehicle (unless exempted under the regulations); or

S. 18(1)(a)
amended by
No. 58/1995
s. 8(b).

(b) in breach of any condition of a driver licence or permit; or

S. 18(1)(b)
amended by
No. 58/1995
s. 8(c).

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S. 18(1)(c)
inserted by
No. 58/1995
s. 8(c),
amended by
No. 57/1998
s. 15.

(c) being a person who is exempted under the regulations from the requirements of paragraph (a) because he or she holds an appropriate licence or permit issued in another State, Territory or country, in breach of any condition of that licence or permit—

is guilty of an offence and, unless sub-section (2) applies, is liable to a penalty not exceeding 25 penalty units or to imprisonment for not more than 3 months.

S. 18(2)
substituted by
No. 19/1991
s. 5.

(2) If the court is satisfied—

(a) that the person has held an appropriate licence (whether issued in Victoria or in another State or Territory) or an International Driving Permit at some time before the commission of an offence against sub-section (1); and

(b) that the licence was not cancelled for an offence relating to the driving of a motor vehicle committed by the person in Victoria or in another State or Territory—

that person is liable to a penalty not exceeding 10 penalty units or to imprisonment for not more than one month.

S. 19
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

19. *Driver licences*

(1) The Corporation may, on the application of a person over the age of 18 years, grant a driver licence if it is satisfied that the applicant is qualified to hold such a licence.

(2) The Corporation may, before granting a licence, require the applicant—

(a) to pass any appropriate tests; and

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- (b) to comply with any prescribed procedures and requirements; and
- (c) to have any prescribed qualification.
- (3) A licence authorises a person to drive on a highway any categories of motor vehicle indicated in the licence for the term, and subject to any conditions, specified in the licence.
- (4) A licence may be applied for, granted, renewed or refused only in accordance with the regulations.
- (5) Subject to sub-section (6), a person who holds a driver licence must have the licence in his or her possession at all times while driving or in charge of a large vehicle.

S. 19(5)
inserted by
No. 89/1991
s. 5(1).

Penalty applying to this sub-section: 5 penalty units.

- (6) Sub-section (5) does not apply in respect of a large vehicle being used on a journey wholly within a radius of 80 kilometres from the place of business from which the large vehicle normally operates.
- (7) A person who holds a full driver licence issued only because of the order of the Magistrates' Court made on an application under section 50(4) of this Act or section 89(2) of the **Sentencing Act 1991** must have the licence in his or her possession while driving or in charge of a motor vehicle at any time during the period of 3 years (or any longer period during which an alcohol interlock condition as defined in section 3(1) of this Act or section 87P(1) of the **Sentencing Act 1991**, as the case requires, applies to the licence) from the first issue of a licence on that order³.

S. 19(6)
inserted by
No. 89/1991
s. 5(1).

S. 19(7)
inserted by
No. 17/1994
s. 5,
amended by
No. 1/2002
s. 9(1)(a)(b).

Penalty applying to this sub-section: 5 penalty units.

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S. 20
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

20. *Variation of driver licences*

- (1) The holder of a driver licence who satisfies the Corporation that he or she is qualified to drive a category of motor vehicle in addition to any category indicated in his or her licence may on application to the Corporation have that licence varied to include that additional category.
- (2) An application for a licence variation may be made, granted or refused only in accordance with the regulations.
- (3) The Corporation may, before granting a licence variation, require the applicant—
 - (a) to pass any appropriate tests and to undergo any appropriate training; and
 - (b) to comply with any prescribed procedures and requirements; and
 - (c) to satisfy it that he or she—
 - (i) has held a driver licence for the period determined by the Corporation; and
 - (ii) has had adequate driving experience; and
 - (iii) has attained the age specified by the Corporation.

S. 21
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

21. *Probationary driver licences*

S. 21(1)
substituted by
No. 5/1990
s. 5(1),
amended by
Nos 19/1991
s. 6(1),
89/1991 s. 6,
substituted by
No. 17/1994
s. 6(1).

- (1) If a driver licence is granted to a person who has not previously held one, that licence must, unless the regulations otherwise provide, be granted on probation until—
 - (a) the date specified in the licence; or

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(b) the date on which the person passes any appropriate tests that the Corporation requires him or her to pass to obtain a full driver licence—

whichever is later.

(1A) A person who holds a probationary driver licence must have the licence in his or her possession at all times while driving or in charge of a motor vehicle.

S. 21(1A)
inserted by
No. 5/1990
s. 5(1).

Penalty: 5 penalty units.

(2) If a driver licence which is granted to a person on probation expires or is cancelled by a court or the Corporation before the completion of the full cumulative probationary period applicable to the holder of the licence and subsequently a new driver licence is granted to that person, that new licence must, unless the regulations otherwise provide, be granted on probation until—

S. 21(2)
amended by
Nos 19/1991
s. 6(2),
17/1994
s. 6(2).

(a) the date specified in the licence; or

S. 21(2)(c)
inserted by
No. 19/1991
s. 6(2),
re-numbered
as s. 21(2)(a)
by No.
89/1991
s. 17(3)(a).

(b) the date on which the person passes any appropriate tests that the Corporation requires him or her to pass to obtain a full driver licence—

S. 21(2)(d)
inserted by
No. 19/1991
s. 6(2),
re-numbered
as s. 21(2)(b)
by No.
89/1991
s. 17(3)(b).

whichever is later.

(3) If a person who holds a probationary driver licence is convicted by a court of a prescribed offence, the court must, in addition to any other

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penalty it may impose, suspend that licence for at least one month.

S. 21(4)
amended by
No. 5/1990
s. 5(2).

(4) In sub-section (3) "**prescribed offence**" means an offence under sub-section (1A) or an offence that is specified in the regulations to be a prescribed offence for the purposes of that sub-section.

(5) If a court makes an order suspending a probationary driver licence, whether under sub-section (3) or otherwise, the probationary period of the licence to which the order relates is, by force of that order, extended by the number of months that is equal to 6 more than the number of months of the suspension.

S. 21(6)
inserted by
No. 19/1991
s. 6(3).

(6) A reference in this Act or the regulations to the probationary period, or the period of probation, of a licence must be taken to be a reference to the period ending—

(a) on the date specified in the licence; or

(b) on the date on which the holder of the licence passes any appropriate tests that the Corporation requires him or her to pass to obtain a full driver licence—

whichever is later.

S. 21(7)
inserted by
No. 17/1994
s. 6(3).

(7) The Corporation may, on the application of the holder of a probationary driver licence issued before the commencement of section 6 of the **Road Safety (Amendment) Act 1994** on the order of the Magistrates' Court made on an application under section 50(4), vary that licence to convert it into a full driver licence.

S. 22
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

22. Learner permits

(1) The Corporation may, on the application of a person over the prescribed age, grant a learner permit if it is satisfied that the applicant is qualified to hold such a permit.

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(2) In sub-section (1), "**prescribed age**" means—

(a) in the case of a learner permit to drive a motor cycle, 18 years; and

S. 22(2)(a)
amended by
No. 92/2001
s. 11.

(b) in any other case, 16 years.

S. 22(2)(b)
amended by
No. 5/1990
s. 6.

(3) The Corporation may, before granting a permit, require the applicant—

(a) to pass any appropriate tests and undergo any appropriate training; and

(b) to comply with any prescribed procedures and requirements.

(4) A learner permit authorises the holder to drive on a highway any category of motor vehicle indicated in the permit for the term and subject to the conditions specified in the permit.

(5) A learner permit may be applied for, granted, renewed, extended or refused only in accordance with the regulations.

* * * * *

S. 23
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4),
repealed by
No. 57/1998
s. 4(2)(b).

23A. *Information to be given to applicants for licences or permits*

The Corporation must ensure that an applicant for a driver licence or a learner permit is informed at the time of making the application that any information given or document submitted in connection with the application, or a copy of such a document, may be disclosed or used for

S. 23A
inserted by
No. 120/1993
s. 58,
amended by
Nos 30/1997
s. 5(2),
57/1998
s. 4(2)(c).

investigation, law enforcement and other purposes in accordance with section 92.

S. 24
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

24. *Cancellation, suspension or variation of licences and permits by Corporation*

- (1) The Corporation must, if required by the regulations or section 25 to do so—
 - (a) suspend for the prescribed time the driver licence or permit of any person;
 - (b) cancel the driver licence or permit of any person;
 - (c) vary the driver licence or permit of any person by excluding or including a category of motor vehicle;
 - (d) vary the conditions to which the driver licence or permit of any person is subject by imposing, removing or amending a condition.
- (2) The Corporation may, in accordance with the regulations—
 - (a) suspend for any time that it thinks fit the driver licence or permit of any person;
 - (b) cancel the driver licence or permit of any person;
 - (c) vary the driver licence or permit of any person by excluding or including a category of motor vehicle;
 - (d) vary the conditions to which the driver licence or permit of any person is subject by imposing, removing or amending a condition.
- (3) In suspending, in accordance with the regulations, a driver licence or permit on the ground that it would be dangerous for the person to drive a motor vehicle because of illness or bodily

S. 24(3)
inserted by
No. 58/1995
s. 9.

infirmity, defect or incapacity or because of the effects of treatment for any of those things, the Corporation may do so on the basis of a report given by a registered medical practitioner and without conducting any other hearing or investigation into the matter before the suspension is imposed.

25. Demerits Register

S. 25
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

(1) The Corporation must keep a Demerits Register and must record against a person any demerit points that are incurred by that person.

S. 25(1)
amended by
No. 53/1989
s. 5(1).

(2) The circumstances in which demerit points are incurred, the number of points incurred the determination of the date on which points are to be recorded as incurred and the circumstances in which, if points are incurred before a conviction or finding of guilt is recorded or made, the points may be cancelled are as prescribed.

S. 25(2)
amended by
No. 58/1995
s. 10.

(2A) Without limiting sub-section (2), the Corporation must, in respect of the day on which the offence is alleged to have been committed, record 10 demerit points against a person—

S. 25(2A)
inserted by
No. 92/2001
s. 12.

(a) who is found guilty of an offence under section 49(1)(b), (f) or (g) but the court does not record a conviction and, in accordance with section 50(1AB), does not cancel the person's driver licence or permit; or

(b) who is convicted or found guilty of an offence under section 49(1)(b), (f) or (g) in circumstances in which section 50(1) applies and the court does not cancel the person's driver licence or permit; or

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- (c) to whom a traffic infringement notice has been issued in respect of a drink-driving infringement if—
- (i) no notice of objection to the infringement notice has been given and the 28 day period referred to in section 89C has expired; and
 - (ii) the person's driver licence or permit is not cancelled by force of section 89C(1).

S. 25(2B)
inserted by
No. 92/2001
s. 12.

- (2B) Nothing in sub-section (2A) prevents regulations being made under a power conferred by this Act that make provision to the same effect as that sub-section.

S. 25(3)
substituted by
No. 53/1989
s. 5(2),
amended by
Nos 19/1991
s. 20(1),
37/1996
s. 4(1),
57/1998
s. 4(5)(a).

- (3) The Corporation must serve a notice containing the prescribed particulars on the holder of a driver licence or learner permit who incurs 12 or more demerit points within any 3 year period.

S. 25(3A)
inserted by
No. 53/1989
s. 5(2),
amended by
No. 19/1991
s. 20(1).

- (3A) A person on whom that notice is served may, within 21 days after service of the notice, notify the Corporation that he or she elects to extend the demerit point period.

S. 25(3B)
inserted by
No. 53/1989
s. 5(2),
amended by
No. 19/1991
s. 20(1),
substituted by
No. 37/1996
s. 4(2),
amended by
No. 73/1998
s. 4(1)(a).

- (3B) If a person notifies the Corporation under sub-section (3A) that he or she elects to extend the demerit point period, the Corporation must, if the person incurs 1 or more additional demerit points in relation to any offence committed within the 12 month period commencing on the date determined by the Corporation and specified in the notice served under sub-section (3) as the commencement date of the 12 month period—
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| (a) suspend his or her driver licence or learner permit for 6 months and an additional 2 months for each 4 demerit points in excess of 12 recorded against the person as at the date of issue of the notice under sub-section (3); and | S. 25(3B)(a) amended by Nos 57/1998 s. 4(5)(a), 73/1998 s. 4(1)(b)(c). |
| (b) when calculating demerit points recorded against that person at any time after the end of the period of suspension, disregard all demerit points recorded against the person as at the date of issue of the notice under sub-section (3); and | S. 25(3B)(b) amended by No. 73/1998 s. 4(1)(c)(d). |
| (c) serve on the person a notice containing the prescribed particulars. | S. 25(3B)(c) inserted by No. 73/1998 s. 4(1)(d). |
| (3C) If a person notifies the Corporation under sub-section (3A) that he or she elects to extend the demerit point period, the Corporation must, if the person incurs no additional demerit points in relation to any offence committed within the 12 month period commencing on the date determined by the Corporation and specified in the notice served under sub-section (3) as the commencement date of the 12 month period, when calculating demerit points recorded against that person at any time after the end of that 12 month period, disregard all demerit points recorded against that person as at the date of issue of the notice under sub-section (3). | S. 25(3C) inserted by No. 53/1989 s. 5(2), amended by No. 19/1991 s. 20(1), substituted by No. 37/1996 s. 4(2), amended by No. 73/1998 s. 4(2)(a)(b). |
| (3D) If a person on whom a notice under sub-section (3) is served does not, in accordance with sub-section (3A), notify the Corporation that he or she elects to extend the demerit point period, the Corporation must— | S. 25(3D) inserted by No. 53/1989 s. 5(2), amended by No. 19/1991 s. 20(1), substituted by No. 37/1996 s. 4(2). |

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S. 25(3D)(a)
amended by
Nos 57/1998
s. 4(5)(a),
73/1998
s. 4(3)(a)(b).

(a) suspend his or her driver licence or learner permit for 3 months and an additional 1 month for each 4 demerit points in excess of 12 recorded against the person as at the date of issue of the notice under sub-section (3); and

S. 25(3D)(b)
amended by
No. 73/1998
s. 4(3)(b).

(b) when calculating demerit points recorded against that person at any time after the end of the period of suspension, disregard all demerit points recorded against the person as at the date of issue of the notice under sub-section (3).

S. 25(4)
amended by
Nos 53/1989
s. 5(3),
37/1996
s. 4(1),
73/1998
s. 4(4).

(4) The suspension of a driver licence or learner permit under this section takes effect on and from the date determined by the Corporation and specified in the notice served under sub-section (3) or (3B)(c).

S. 25(4A)
inserted by
No. 73/1998
s. 4(5).

(4A) A notice under sub-section (3) or (3B)(c) sent by post addressed to the holder of the licence or permit at his or her current address as shown in any record maintained under this Act must be taken to have been served on that person 14 days after the date of issue of the notice unless at any time after that period of 14 days the Corporation is satisfied that the notice has not been served on that person.

S. 25(4B)
inserted by
No. 73/1998
s. 4(5).

(4B) The service of a notice under sub-section (3) or (3B)(c) is not a condition precedent to a suspension under this section taking effect but if at any time after the period of 14 days after the date of issue of the notice the Corporation is satisfied that the holder of the licence or permit has not been served with the notice, it must cancel the suspension with effect from the date on which it took effect, determine another effective date and

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specify that date in another notice served under sub-section (3) or (3B)(c), as the case requires.

- (4C) If a driver licence or permit suspended under this section is cancelled or suspended by the Corporation under another provision of this Act or by a court or by operation of this Act, the period from that cancellation or other suspension taking effect until a new licence or permit is issued or the other suspension is completed (as the case requires) does not count in calculating the period of suspension under this section and the suspension under this section is stayed during that period.

S. 25(4C)
inserted by
No. 73/1998
s. 4(5).

- (4D) If the Corporation is required by this section to suspend a driver licence or permit that has been cancelled or suspended by the Corporation under another provision of this Act or by a court or by operation of this Act, the date determined by the Corporation under sub-section (4) must not be earlier than the date on which a new licence or permit is issued or the other suspension is completed, as the case requires.

S. 25(4D)
inserted by
No. 73/1998
s. 4(5).

- (5) The circumstances in which demerit points are cancelled are as prescribed.
- (6) The fact that demerit points are recorded against the holder of a driver licence or learner permit is not admissible in evidence in any court proceedings other than proceedings on an appeal under section 26(1)(c).

S. 25(6)
amended by
No. 37/1996
s. 4(1).

26. *Appeal to Magistrates' Court*

- (1) If the Corporation decides to—
- (a) refuse an application for a driver licence, a driver licence variation or a permit; or
- (b) in accordance with section 24, suspend, cancel or vary in any way a driver licence or permit; or

S. 26
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.4),
57/1989
s. 3(Sch.
item 173.2).

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S. 26(1)(c)
amended by
Nos 53/1989
s. 5(4),
37/1996
s. 4(3).

(c) in accordance with section 25(3B)(a) or (3D)(a), suspend a driver licence or learner permit—

the applicant or holder may, in accordance with the regulations and subject to sub-section (2), appeal against that decision to the Magistrates' Court.

(2) An appeal under sub-section (1)(c) may only be made on either or both of the following grounds:

S. 26(2)(a)
substituted by
No. 73/1998
s. 4(6).

(a) That the appellant was not the person against whom the Corporation was required by this Act and the regulations to record certain demerit points;

(b) That a miscalculation has been made in assessing the total number of demerit points incurred by the appellant.

S. 26(3)
amended by
Nos 37/1996
s. 4(3),
73/1998
s. 4(7).

(3) The giving, in accordance with the regulations, of a notice of appeal under sub-section (1)(c) stays the suspension of the licence or learner permit until—

S. 26(3)(a)
inserted by
No. 73/1998
s. 4(7).

(a) the date on which the appeal is determined;
or

S. 26(3)(b)
inserted by
No. 73/1998
s. 4(7).

(b) if the appeal is discontinued, the date on which notice in writing of discontinuance is given in accordance with the regulations to both the Magistrates' Court and the Corporation.

(4) On an appeal under sub-section (1) the court must—

(a) re-determine the matter of the refusal, suspension, cancellation or variation; and

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- (b) hear any relevant evidence tendered by the appellant or the Corporation; and
 - (c) without limiting its discretion, take into consideration anything that the Corporation ought to have considered.
- (5) If the court is satisfied that the refusal, suspension, cancellation or variation—
- (a) results from a driving disqualification of the appellant in another State or Territory of the Commonwealth; or
 - (b) was required by the regulations or section 25—
- the court must confirm the decision of the Corporation.
- (6) On an appeal under sub-section (1)(c) the court may—
- (a) in allowing the appeal, give to the Corporation any directions it thinks proper for the amendment of the Demerits Register; or
 - (b) in dismissing the appeal, order that the suspension take effect from a date specified in the order.
- (7) Every decision of the Magistrates' Court on an appeal under this section is final and conclusive and must be given effect to by the Corporation.

26A. *Appeal to Magistrates' Court against police decision*

- (1) If a member of the police force decides to forbid a person to drive a motor vehicle under section 62 or take any other action under that section, the person in respect of whom the action has been taken may, in accordance with the regulations, appeal against that decision to the Magistrates' Court.

S. 26A
inserted by
No. 58/1995
s. 11.

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- (2) On an appeal under sub-section (1) the court must—
 - (a) re-determine the matter of the action taken; and
 - (b) hear any relevant evidence tendered by the appellant or the member of the police force; and
 - (c) without limiting its discretion, take into consideration anything that the member ought to have considered.

S. 27
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

27. *Power of Corporation to require tests to be undergone*

- (1) The Corporation may require the holder of a driver licence or a permit or an applicant for a driver licence, a driver licence variation or a permit to undergo a test or tests to find out if that person is unfit to drive, or if it is dangerous for that person to drive, motor vehicles or a category or categories of motor vehicles.
- (2) A person may be required under sub-section (1) to undergo a test of health or competence or any other appropriate test to be carried out by a person specified by the Corporation.
- (3) A test must be carried out by a person of the class prescribed in relation to that class of test.
- (4) No action may be taken against a person who carries out a test under this section and who expresses to the Corporation an opinion formed by that person as a result of the test.
- (5) No action may be taken against a person who, in good faith, reports to the Corporation any information which discloses or suggests that a person is unfit to drive or that it may be dangerous to allow that person to hold or be granted a driver licence, a driver licence variation or a permit.

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28. Power of court to cancel, suspend or vary licences and permits

S. 28
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

(1) If a court convicts a person of, or is satisfied that a person is guilty of, an offence against this Act or of any other offence in connection with the driving of a motor vehicle, the court—

S. 28(1)
amended by
No. 78/1987
s. 5(1).

(a) in the case of an offence of driving a motor vehicle at a speed—

S. 28(1)(a)
substituted by
No. 53/1989
s. 6.

(i) of 130 kilometres per hour or more; or

(ii) of 25 kilometres per hour or more in excess of that permitted, whether generally or in relation to the particular vehicle or circumstances—

S. 28(1)(a)(ii)
amended by
No. 46/2002
s. 7(a).

must suspend for such time as the court thinks fit (not being less than the period specified in Column 2 of Schedule 5 ascertained by reference to the speed at which the vehicle was driven as specified in Column 1 of that Schedule), all driver licences and permits held by that person; and

(b) in any case but subject to paragraph (a), may suspend for such time as it thinks fit or cancel all driver licences and permits held by that person and, whether or not that person holds a driver licence, disqualify him or her from obtaining one for such time (if any) as the court thinks fit.

(1A) Sub-section (1) does not affect the obligation of a court to cancel a licence or permit and disqualify the offender in any case in which cancellation and disqualification are mandatory under section 50(1), 60(2), 61(6) or 64(2).

S. 28(1A)
inserted by
No. 78/1987
s. 5(2).

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- (2) If the court is satisfied that the circumstances of the case are so unusual as to warrant it, an order made under sub-section (1)(b) may be limited in its application to a category or categories of motor vehicles and such an order has effect according to its terms and this section applies to such an order with such modifications as are necessary.
- (3) A court must cause particulars of an order made under sub-section (1) to be sent immediately to the Corporation.
- (4) If under sub-section (1) a court disqualifies a person from obtaining a driver licence for any time without expressly cancelling any driver licence or permit held by that person, any driver licence or permit held by that person is, unless the order specifies otherwise, to be taken to have been cancelled by that order.
- (5) Sub-section (1) does not apply to an offence under section 56(7) unless the court is satisfied that the person convicted or found guilty of the offence had less than 3 hours before the time of the offence driven or been in charge (within the meaning of Part 5) of a motor vehicle.
- (6) Sub-section (1) does not apply to an offence to which section 66 applies unless the court is satisfied that the person convicted or found guilty of the offence was the actual driver of the motor vehicle at the time of the offence.
- (7) A driver licence or permit cancelled by a court is of no effect and a person whose licence or permit is cancelled is (without affecting the power of the court to impose a longer period) disqualified from obtaining a further licence or permit for the period specified by the court or, if no period is specified, for 3 months.

S. 28(4)
amended by
No. 78/1987
s. 5(3)(a)(b).

S. 28(5)
amended by
No. 92/2001
s. 13(1).

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* * * * *

S. 28(8)-(10)
repealed by
No. 89/1991
s. 7.

Note: A period during which a licence or permit is cancelled or suspended under this section is in addition to, and does not count as part of, a period of suspension under section 25 (see section 25(4C) and (4D)).

Note to s. 28
inserted by
No. 46/2002
s. 7(b).

28A. *Effect of suspension of licence or permit*

A driver licence or permit suspended by a court or by the Corporation or by operation of this Act is, during the suspension, of no effect and a person whose licence or permit is suspended is, during the suspension, disqualified from obtaining a further licence or permit.

S. 28A
inserted by
No. 89/1991
s. 8.

28B. *Disqualified person must not apply for licence or permit*

(1) A person who is disqualified from obtaining a driver licence or permit must not apply for or obtain a licence or permit.

Penalty: 5 penalty units.

(2) A licence or permit so obtained is of no effect.

S. 28B
inserted by
No. 89/1991
s. 8.

29. *Appeal to County Court*

(1) A person who is disqualified from obtaining a licence or permit by order of the Magistrates' Court or whose licence is cancelled or suspended or varied by order of the Magistrates' Court may, under Division 4 of Part 4 of the **Magistrates' Court Act 1989**, appeal to the County Court against the order in the same manner as a person may appeal from summary conviction by the Magistrates' Court.

(2) The giving of notice of appeal to the County Court does not stay the operation of the order but the court making the order may, in its discretion, stay

S. 29(1)
amended by
No. 57/1989
s. 3(Sch. item
173.3(a)(b)).

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the operation of the order pending the decision of the appeal.

S. 29(3)
amended by
No. 57/1989
s. 3(Sch.
item 173.4).

- (3) This section does not apply to an order of the Magistrates' Court made on an appeal under section 26.

30. *Offence to drive while disqualified etc.*

S. 30(1)
amended by
No. 37/1996
s. 5.

- (1) A person must not drive a motor vehicle on a highway while the authorisation granted to him or her to do so under this Part is suspended or during a period of disqualification from obtaining such an authorisation.

Penalty: For a first offence, 30 penalty units or imprisonment for 4 months;

For a subsequent offence,
imprisonment for not less than 1 month
and not more than 2 years.

S. 30(2)
amended by
No. 49/1991
s. 119(7)
(Sch. 4
item 17.1).

- (2) Section 49 of the **Sentencing Act 1991** does not apply with respect to proceedings for an offence against sub-section (1).

S. 31
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

31. *Cancellation of registration by court*

- (1) A court convicting a person of an offence against section 30(1) may, if the circumstances warrant it, order the cancellation of the registration of the motor vehicle in respect of which the offence was committed, if that motor vehicle is owned by that person, and order the Corporation not to register that vehicle again during such time (if any) as the court specifies.

- (2) If the court considers that another person who is not present in court may be substantially affected by such an order, the court must issue a summons

to that other person to show cause why the order should not be made.

- (3) On the return of the summons, the court may, after hearing the evidence brought before it—
 - (a) refuse to order that the registration be cancelled; or
 - (b) order that the registration be cancelled, and order the Corporation not to register that vehicle again during such time (if any) as the court specifies.
- (4) A court must cause particulars of an order made under this section to be sent immediately to the Corporation and the Corporation must give effect to the order as soon as possible.

32. *Offence to employ unlicensed driver*

- (1) A person who employs, permits or allows a person to drive a motor vehicle on a highway is guilty of an offence if the driver does not hold a permit or licence which authorises him or her to drive such a motor vehicle.

Penalty: 15 penalty units or imprisonment for 3 months.

- (2) It is a defence to a charge under sub-section (1) for the person charged to prove that the person charged believed, after making all reasonable enquiries, that the driver held a permit or licence which authorised him or her to drive the motor vehicle concerned.
- (3) A person who is employed to drive a motor vehicle on a highway is guilty of an offence if he or she does not notify his or her employer if he or she does not hold or continue to hold a permit or licence which authorises him or her to drive such a motor vehicle.

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S. 33
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.4),
57/1989
s. 3(Sch.
items
173.5(a)(b),
173.6),
repealed by
No. 120/1993
s. 59,
new s. 33
inserted by
No. 63/1998
s. 3.

33. *Driving instructor authorities*

S. 33(3)
amended by
No. 73/1998
s. 9.

- (1) The Secretary to the Department of Infrastructure may, on the application of the holder of a full driver licence, grant a driving instructor authority if the Secretary is satisfied that the applicant is qualified to hold such an authority.
- (2) The Secretary may, before granting an authority, require the applicant—
 - (a) to demonstrate that he or she is a fit and proper person to hold an authority; and
 - (b) to pass a training course approved by the Secretary or otherwise demonstrate to the Secretary's satisfaction that he or she is competent to hold an authority; and
 - (c) to comply with any prescribed procedures and requirements.
- (3) An authority authorises the holder to teach other persons to drive a motor vehicle, other than a motor cycle, with a GVM of not more than 4.5 tonnes and with a seating capacity of not more than 12 adults including the driver, for the term, and subject to any conditions, specified in the authority.
- (4) The Secretary may, by notice in writing to the applicant, refuse to grant an authority.
- (5) If the Secretary decides to refuse to grant an authority, the applicant may appeal against the refusal to the Magistrates' Court.
- (6) On an appeal under sub-section (5) the applicant must—
 - (a) file a notice of appeal at the venue of the Magistrates' Court nearest to the applicant's residence or place of business; and

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- (b) send a copy of the notice of appeal to the Secretary—
within 28 days after the date of the notice of refusal to grant the authority.
- (7) On an appeal under sub-section (5) the court must—
 - (a) re-determine the matter of the refusal; and
 - (b) hear any relevant evidence tendered by the appellant or the Secretary; and
 - (c) without limiting its discretion, take into consideration anything that the Secretary ought to have considered.
- (8) If the driver licence of the holder of an authority is cancelled or otherwise ceases to be held by that person, the authority of that person thereupon automatically ceases to have any effect.
- (9) If the driver licence of the holder of an authority is suspended for any time, the authority of that person is, unless cancelled or suspended under sub-section (10), thereupon automatically suspended for the same time.
- (10) The Secretary may, if of the opinion that the holder of an authority is unfit to hold the authority, by notice in writing to the holder of the authority, cancel the authority or suspend or vary the authority for such period as the Secretary determines.
- (11) The Secretary must not suspend, cancel or vary an authority unless the holder of the authority has been given a reasonable opportunity to show cause why the authority should not be cancelled, suspended or varied.
- (12) An authority is of no effect while suspended.

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(13) If the Secretary decides to cancel, suspend or vary an authority, the holder of the authority may appeal against the cancellation, suspension or variation to the Magistrates' Court.

(14) On an appeal under sub-section (13) the applicant must—

(a) file a notice of appeal at the venue of the Magistrates' Court nearest to the applicant's residence or place of business; and

(b) send a copy of the notice of appeal to the Secretary—

within 28 days after the date of the notice of cancellation, suspension or variation of the authority.

(15) On an appeal under sub-section (14) the court must—

(a) re-determine the matter of the cancellation, suspension or variation; and

(b) hear any relevant evidence tendered by the appellant or the Secretary; and

(c) without limiting its discretion, take into consideration anything that the Secretary ought to have considered.

(16) Every decision of the Magistrates' Court on an appeal under sub-sections (5) or (13) must be given effect to by the Secretary.

S. 33A
inserted by
No. 63/1998
s. 3.

33A. *Offence to teach driving without driving instructor authority or in breach of condition of authority*

(1) A person who for financial gain, or in the course of any trade or business, teaches another person to drive a motor vehicle of a kind described in section 33(3) on a highway—

(a) without holding a driving instructor authority; or

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(b) in breach of any condition of such an authority—

is guilty of an offence.

Penalty: 8 penalty units.

(2) It is a defence to a charge under sub-section (1) for the person charged to prove that the person being taught to drive held a driver licence at the time of being taught.

33B. Requirement to display photograph

When teaching a person to drive pursuant to a driving instructor authority, the holder of the authority must display an identity photograph of himself or herself in the prescribed format and in the prescribed location in any motor vehicle from time to time being used for teaching purposes.

Penalty: 5 penalty units.

S. 33B
inserted by
No. 63/1998
s. 3.

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Pt 4 (Heading
and ss 34–46)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
items 105.2,
105.3),
44/1989
s. 41(Sch. 2
item 34.4),
13/1992 s. 4,
repealed by
No. 57/1998
s. 4(4)(e).

* * * * *

PART 5—OFFENCES INVOLVING ALCOHOL OR OTHER DRUGS

47. *Purposes of this Part*

The purposes of this Part are to—

- (a) reduce the number of motor vehicle collisions of which alcohol or other drugs are a cause; and
- (b) reduce the number of drivers whose driving is impaired by alcohol or other drugs; and
- (c) provide a simple and effective means of establishing that there is present in the blood of a driver more than the legal limit of alcohol.

48. *Interpretative provisions*

(1) For the purposes of this Part—

- (a) if it is established that at any time within 3 hours after an alleged offence against paragraph (a) or (b) of section 49(1), a certain concentration of alcohol was present in the blood of the person charged with the offence it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the person's blood at the time at which the offence is alleged to have been committed; and
- (ab) if it is established that at any time within 3 hours after an alleged offence against paragraph (ba) of section 49(1), a certain drug was present in the body of the person charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the person's body at

S. 48
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

S. 48(1)(ab)
inserted by
No. 14/2000
s. 5(1).

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the time at which the offence is alleged to have been committed; and

S. 48(1)(b)
amended by
No. 92/2001
s. 13(2).

(b) a person is not to be taken to be in charge of a motor vehicle unless that person is a person to whom section 3AA(1)(a), (b), (c) or (d) applies.

S. 48(1AA)
inserted by
No. 63/1998
s. 4,
substituted by
No. 23/2001
s. 4(1),
repealed by
No. 92/2001
s. 13(3), new
s. 48(1AA)
inserted by
No. 1/2002
s. 4.

(1AA) Despite sub-section (1)(b) and section 3AA, a person is not to be taken to be in charge of a motor vehicle merely because the person attempts, or intends, to start the motor vehicle if the motor vehicle has an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by such a supplier.

Note: For "approved alcohol interlock" and "approved alcohol interlock supplier", see section 3(1).

S. 48(1AAA)
inserted by
No. 23/2001
s. 4(2),
repealed by
No. 92/2001
s. 13(3).

* * * * *

S. 48(1AB)
inserted by
No. 63/1998
s. 4,
substituted by
No. 23/2001
s. 4(3),
repealed by
No. 92/2001
s. 13(3).

* * * * *

S. 48(1AC)
inserted by
No. 14/2000
s. 5(2).

(1AC) For the purposes of an alleged offence against paragraph (ba) of section 49(1) it must be presumed that a drug found by an analyst to be present in the sample of blood or urine taken from the person charged was not due solely to the consumption or use of that drug after driving or being in charge of a motor vehicle unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given

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by him or her which is corroborated by the material evidence of another person.

- (1AD) For the purposes of sections 55A and 55B, a driver is not to be taken to be impaired unless his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to drive properly. **S. 48(1AD) inserted by No. 14/2000 s. 5(2).**
- (1A) For the purposes of an alleged offence against paragraph (f) or (g) of section 49(1) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the blood of the person charged or found by an analyst to be present in the sample of blood taken from the person charged (as the case requires) was not due solely to the consumption of alcohol after driving or being in charge of a motor vehicle unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person. **S. 48(1A) inserted by No. 53/1989 s. 7(1).**
- (2) If a person who is convicted of an offence against⁴— **S. 48(2) substituted by No. 89/1991 s. 9.**
- (a) any one of the paragraphs of section 49(1); or
 - (b) section 56(2) as in force from time to time after the commencement of section 11 of the **Road Safety (Drivers) Act 1991**; or
 - (c) section 56(7) as in force immediately prior to the commencement of section 11 of the **Road Safety (Drivers) Act 1991**—
- has at any time been found guilty or been convicted of—
- (d) an offence, other than an accompanying driver offence against the same or any other of those paragraphs or that section; or **S. 48(2)(d) amended by No. 23/2001 s. 4(4).**
-

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- (e) an offence against any previous enactment corresponding to any of those paragraphs or that section or any corresponding law; or
- (f) an offence under section 318(1) of the **Crimes Act 1958** where the culpable driving is constituted by behaviour referred to in paragraph (c) or (d) of section 318(2) of the Act—

the conviction for the offence against that paragraph or section is to be taken to be a conviction for a subsequent offence.

S. 48(3)
amended by
Nos 78/1987
s. 6, 14/2000
s. 5(3).

- (3) An approval or authority given under or for the purposes of section 55 or 55A(3) by the Chief Commissioner of Police may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.
- (4) For the avoidance of doubt it is declared that nothing in this Part requires a person who is in a dwelling to allow a member of the police force or an officer of the Corporation to enter that dwelling without a warrant.

49. Offences involving alcohol or other drugs

- (1) A person is guilty of an offence if he or she—
 - (a) drives a motor vehicle or is in charge of a motor vehicle while under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the motor vehicle; or
 - (b) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood; or

S. 49(1)(b)
amended by
No. 23/2001
s. 5(a).

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|--|---|
| (ba) drives a motor vehicle or is in charge of a motor vehicle while impaired by a drug; or | S. 49(1)(ba) inserted by No. 14/2000 s. 6(1)(a). |
| (c) refuses to undergo a preliminary breath test in accordance with section 53 when required under that section to do so; or | S. 49(1)(c) amended by No. 89/1991 s. 10. |
| (ca) refuses to undergo an assessment of drug impairment in accordance with section 55A when required under that section to do so or refuses to comply with any other requirement made under section 55A(1); or | S. 49(1)(ca) inserted by No. 14/2000 s. 6(1)(b). |
| (d) refuses or fails to comply with a request or signal to stop a motor vehicle given under section 54(3); or | |
| (e) refuses to comply with a requirement made under section 55(1), (2), (2AA), (2A) or (9A); or | S. 49(1)(e) substituted by No. 17/1994 s. 7(a), amended by No. 23/2001 s. 5(b). |
| (ea) refuses to comply with a requirement made under section 55B(1); or | S. 49(1)(ea) inserted by No. 14/2000 s. 6(1)(c). |
| (f) within 3 hours after driving or being in charge of a motor vehicle furnishes a sample of breath for analysis by a breath analysing instrument under section 55 and— | S. 49(1)(f) substituted by No. 53/1989 s. 7(2), amended by Nos 23/2001 s. 5(c), 46/2002 s. 8. |
| (i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood; and | S. 49(1)(f)(i) amended by No. 23/2001 s. 5(d). |

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S. 49(1)(g)
substituted by
No. 53/1989
s. 7(2),
amended by
No. 17/1994
s. 7(b).

- (ii) the concentration of alcohol indicated by the analysis to be present in his or her blood was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle; or
- (g) has had a sample of blood taken from him or her in accordance with section 55 or 56 within 3 hours after driving or being in charge of a motor vehicle and—

S. 49(1)(g)(i)
amended by
No. 23/2001
s. 5(e).

- (i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis the prescribed concentration of alcohol or more than the prescribed concentration of alcohol was present in that sample; and
- (ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle.

S. 49(2)
amended by
No. 23/2001
s. 6(1).

- (2) A person who is guilty of an offence under paragraph (a) of sub-section (1), other than an accompanying driver offence, is liable—
 - (a) in the case of a first offence, to a fine of not more than 25 penalty units or to imprisonment for a term of not more than 3 months; and
 - (b) in the case of a subsequent offence, to imprisonment for a term of not more than 12 months.

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(3) A person who is guilty of an offence under paragraph (b), (ba), (c), (ca), (d), (e), (ea), (f) or (g) of sub-section (1), other than an accompanying driver offence, is liable—

S. 49(3)
amended by
Nos 14/2000
s. 6(2)(a)–(c),
23/2001
s. 6(2).

(a) in the case of a first offence, to a fine of not more than 12 penalty units; and

(b) in the case of a subsequent offence, to a fine of not more than 25 penalty units or to imprisonment for a term of not more than 3 months.

(3AA) A person who is guilty of an accompanying driver offence is liable to a fine of not more than 5 penalty units.

S. 49(3AA)
inserted by
No. 23/2001
s. 6(3).

(3A) In proceedings for an offence under paragraph (ba) of sub-section (1), proof that—

S. 49(3A)
inserted by
No. 14/2000
s. 6(3).

(a) the person drove or was in charge of a motor vehicle; and

(b) one or more drugs were present in the person's body at the time at which he or she drove or was in charge of the motor vehicle; and

(c) the behaviour of the person on an assessment of drug impairment carried out under section 55A was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and

(d) the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable to drive properly—

is, in the absence of evidence to the contrary but subject to sub-sections (3B) and (3C), proof that the defendant drove or was in charge of a motor vehicle while impaired by a drug.

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S. 49(3B)
inserted by
No. 14/2000
s. 6(3).

- (3B) If on an analysis carried out in accordance with this Part, no drug other than a permissible non-prescription drug or a prescription drug was found present in the person's body, it is a defence to a charge under paragraph (ba) of sub-section (1) for the person charged to prove that—
- (a) he or she did not know and could not reasonably have known that the permissible non-prescription drug or the prescription drug, or the combination of those drugs, so found would impair driving if consumed or used in accordance with advice given to him or her by a registered medical practitioner, a dentist or a pharmacist in relation to the drug or combination of drugs; and
 - (b) he or she consumed or used that drug or combination of drugs in accordance with that advice.

S. 49(3C)
inserted by
No. 14/2000
s. 6(3).

- (3C) In sub-section (3B), "**advice**" means written or oral advice and includes anything written on a label accompanying the drug.
- (4) It is a defence to a charge under paragraph (f) of sub-section (1) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.
- (5) It is a defence to a charge under paragraph (g) of sub-section (1) for the person charged to prove that the result of the analysis was not a correct result.

S. 49(6)
amended by
No. 53/1989
s. 7(3).

- (6) In any proceedings for an offence under paragraph (f) or (g) of sub-section (1) evidence as to the effect of the consumption of alcohol on the defendant is admissible for the purpose of rebutting the presumption created by section 48(1A) but is otherwise inadmissible.
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- (7) On convicting a person, or finding a person guilty, of an offence under sub-section (1) the court must cause to be entered in the records of the court—
- S. 49(7)
amended by
No. 41/1992
s. 4(a).
- (a) in the case of an offence under paragraph (b) of sub-section (1), the level of concentration of alcohol found to be present in that person's blood; and
- (b) in the case of an offence under paragraph (f) of sub-section (1), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and
- (c) in the case of an offence under paragraph (g) of sub-section (1), the level of concentration of alcohol found to be present in the sample of blood.
- (8) If on a prosecution for an offence under paragraph (a) of sub-section (1), the court is not satisfied that the defendant is guilty of that offence but is satisfied that the defendant is guilty of an offence under paragraph (ba) of that sub-section, the court may find the defendant guilty of an offence under paragraph (ba) and punish the defendant accordingly.
- S. 49(8)
inserted by
No. 14/2000
s. 6(4).

49A. Accredited agencies

- S. 49A
inserted by
No. 78/1994
s. 4.
- (1) A person or body may apply to the Secretary to the Department of Human Services for—
- S. 49A(1)
amended by
No. 46/1998
s. 7(Sch. 1).
- (a) approval for itself for the purposes of sections 50, 50AAB(5) and 50A;
- S. 49A(1)(a)
amended by
No. 1/2002
s. 5.
- (b) approval for a program for the purposes of section 50A.
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S. 49A(2)
amended by
No. 46/1998
s. 7(Sch. 1).

- (2) A person or body applying under sub-section (1) must pay to the Secretary to the Department of Human Services, as required by the regulations, the fee prescribed in respect of—
- (a) the making of the application;
 - (b) the processing of the application, including any visits made to the applicant;
 - (c) the granting, renewal or variation of an approval.

S. 49A(3)
amended by
No. 46/1998
s. 7(Sch. 1).

- (3) The Secretary to the Department of Human Services may grant an approval subject to any conditions, limitations or restrictions specified in the approval.
- (4) The regulations may specify the period during which an approval continues in force.

50. *Provisions about cancellation and disqualification*

S. 50(1)
amended by
No. 78/1987
s. 7(1)(a)(b),
substituted by
No. 53/1989
s. 8(1),
amended by
No. 41/1992
s. 4(b).

- (1) On convicting a person to whom section 52 applies, or finding such a person guilty, of an offence under section 49(1)(b), (f) or (g) the court may where—

S. 50(1)(a)
amended by
No. 23/2001
s. 7(1).

- (a) the concentration of alcohol in the blood of that person was less than 0.05 grams per 100 millilitres of blood; and
- (b) the offence is a first offence—

if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being more than 6 months.

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- (1A) Subject to sub-section (1AB), on convicting a person, or finding a person guilty, of an offence under section 49(1)(b), (f) or (g) in circumstances in which sub-section (1) does not apply, the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than—
- (a) in the case of a first offence, the period specified in Column 2 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood of the offender as specified in Column 1 of that Schedule; and
- (b) in the case of a subsequent offence, the period specified in Column 3 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood of the offender as specified in Column 1 of that Schedule.
- (1AB) If a court finds a person guilty of an offence under section 49(1)(b), (f) or (g) but does not record a conviction, the court is not required to cancel a driver licence or permit or disqualify the offender from obtaining one in accordance with sub-section (1A) if it appears to the court that at the relevant time the concentration of alcohol in the blood of the offender—
- (a) in the case of a person previously found guilty of an offence against any one of the paragraphs of section 49(1) or any previous enactment corresponding to any of those paragraphs or any corresponding law, was less than 0.05 grams per 100 millilitres of blood; or
- S. 50(1A)**
inserted by
No. 53/1989
s. 8(1),
amended by
No. 41/1992
s. 4(c).
- S. 50(1AB)**
inserted by
No. 41/1992
s. 4(d).
- S. 50(1AB)(a)**
amended by
No. 23/2001
s. 7(2)(a).

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S. 50(1AB)(b)
amended by
Nos 23/2001
s. 7(2)(b),
92/2001 s. 14.

(b) in any other case, was less than 0.07 grams per 100 millilitres of blood.

S. 50(1B)
inserted by
No. 53/1989
s. 8(1),
amended by
No. 41/1992
s. 4(e).

(1B) On convicting a person, or finding a person guilty, of an offence under section 49(1)(a), (c), (d) or (e) the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than—

(a) in the case of a first offence, 2 years; and

(b) in the case of a subsequent offence, 4 years.

S. 50(1C)
inserted by
No. 14/2000
s. 7(1).

(1C) On convicting a person, or finding a person guilty of an offence under section 49(1)(ba), the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 12 months; and

(b) in the case of a subsequent offence, 2 years.

S. 50(1D)
inserted by
No. 14/2000
s. 7(1).

(1D) On convicting a person, or finding a person guilty of an offence under section 49(1)(ca) or (ea), the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 2 years; and

(b) in the case of a subsequent offence, 4 years.

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| (2) Any period of suspension imposed on a person under section 51 must be deducted from the period of disqualification imposed on that person under this section. | S. 50(2)
substituted by
No. 78/1987
s. 7(2). |
| (3) Except on the order of the Magistrates' Court made on an application under sub-section (4), a driver licence or permit must not be issued to a person who has been disqualified from obtaining one under this section or section 89C unless—

(a) the offence was under section 49(1)(b), 49(1)(f) or 49(1)(g); and

(b) the concentration of alcohol in the blood of that person was less than 0.10 grams per 100 millilitres of blood; and

(c) it was that person's first such offence. | S. 50(3)
amended by
Nos 78/1987
s. 7(3),
53/1989
s. 8(2),
57/1989
s. 3(Sch.
item 173.7). |
| (4) A person to whom sub-section (3) applies may, at the end of the period of disqualification and on giving 28 days written notice of the application and of the venue of the Court at which it is to be made to the Chief Commissioner of Police and the appropriate registrar of the Court, apply to the Magistrates' Court for an order as to the issue of a driver licence or permit. | S. 50(4)
amended by
Nos 78/1987
s. 7(3),
57/1989
s. 3(Sch. item
173.8(a)(b)),
5/1990 s. 7(1),
92/2001
s. 15(1)(a)(b). |
| (4A) If a person applies under sub-section (4) for an order and the offence in respect of which the person was disqualified was—

(a) an offence under section 49(1)(b), (f), or (g) which was—

(i) a first offence and the level of concentration of alcohol in that person's blood was 0.15 grams or more per 100 millilitres of blood; or

(ii) a subsequent offence; or | S. 50(4A)
inserted by
No. 5/1990
s. 7(2). |

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S. 50(4A)(b)
amended by
Nos 19/1991
s. 7(1),
14/2000
s. 7(2)(a)–(c).

(b) an offence under section 49(1)(a), (ba), (c),
(ca), (d), (e) or (ea)—

the court must have regard to the reports referred
to in sub-section (4B).

**Note to
s. 50(4A)**
inserted by
No. 1/2002
s. 6(a).

Note: In some cases, the court is not required to have regard
to the report referred to in sub-section (4B)(a): see
section 50AAA(3)(a).

S. 50(4B)
inserted by
No. 5/1990
s. 7(2).

(4B) A person who applies for an order under sub-
section (4) and to whom sub-section (4A)(a) or
(4A)(b) applies must obtain from an accredited
agency⁵—

S. 50(4B)(a)
amended by
Nos 58/1995
s. 12, 14/2000
s. 7(3).

(a) at least 12 months (or, if the offence in
respect of which the person was disqualified
was an offence under section 49(1)(ba), (ca)
or (ea), at least 6 months) before applying for
the order, an assessment report about the
person's usage of alcohol or drugs, as the
case requires; and

(b) within 28 days before applying for the order,
a licence restoration report.

**Note to
s. 50(4B)**
inserted by
No. 1/2002
s. 6(b).

Note: In some cases, the person is not required to obtain the
report referred to in paragraph (a): see section
50AAA(3)(a).

S. 50(4C)
inserted by
No. 5/1990
s. 7(2).

(4C) If a person applies under sub-section (4) for an
order and neither paragraph (a) nor (b) of sub-
section (4A) applies, the court may request a
licence restoration report from an accredited
agency.

S. 50(4D)
inserted by
No. 89/1991
s. 11,
amended by
No. 14/2000
s. 7(4).

(4D) On an application under sub-section (4) the court
may, in exceptional circumstances, reduce the
period referred to in sub-section (4B)(a).

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(5) On an application under sub-section (4) the court may make or refuse to make the order sought, and for the purpose of determining whether or not the order should be made—

(a) the court must hear any relevant evidence tendered either by the applicant or by the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court; and

S. 50(5)(a)
amended by
No. 23/1994
s. 118(Sch. 1
item 50.2).

(b) without limiting the generality of its discretion, the court must have regard to—

(i) the conduct of the applicant with respect to intoxicating liquor or drugs (as the case may be) during the period of disqualification; and

(ii) the applicant's physical and mental condition at the time of the hearing of the application; and

(iii) the effect which the making of the order may have on the safety of the applicant or of the public; and

(iv) any licence restoration report obtained under sub-section (4B)(b) or (4C) and any report obtained under sub-section (4B)(a).

S. 50(5)(b)(iv)
inserted by
No. 5/1990
s. 7(3).

Note: The court may, in making the order sought, be permitted or required to direct the Corporation to impose an alcohol interlock condition on a driver licence or permit granted to the applicant: see section 50AAA.

Note to
s. 50(5)
inserted by
No. 1/2002
s. 6(c).

(6) This section does not apply to a person who is convicted or found guilty of an accompanying driver offence.

S. 50(6)
inserted by
No. 23/2001
s. 8.

S. 50AAA
inserted by
No. 1/2002
s. 7.

50AAA. *Direction to impose alcohol interlock condition*

- (1) This section applies if—
- (a) a person was disqualified under section 50 from obtaining a driver licence or permit because he or she was convicted or found guilty of an offence under section 49(1)(a) (other than an offence involving only drugs) or under section 49(1)(b), (c), (d), (e), (f) or (g); and
 - (b) the offence was not an accompanying driver offence; and
 - (c) the person makes an application under section 50(4) for an order as to the issue of a driver licence or permit; and
 - (d) the court considers it appropriate to make the order.
- (2) If the offence—
- (a) was a first offence; and
 - (b) in the case of an offence under section 49(1)(b), (f) or (g), the concentration of alcohol in the person's blood at the relevant time was 0.15 grams or more per 100 millilitres of blood—

on making the order, the court may direct the Corporation that it can only grant the person a driver licence or permit that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by such a supplier.

Note: For "approved alcohol interlock" and "approved alcohol interlock supplier", see section 3(1).

- (3) If the offence was not a first offence—
- (a) despite section 50(4A) and (4B), the person is not required to obtain, and the court is not required to have regard to, a report referred to in section 50(4B)(a); and
 - (b) on making the order, the court must direct the Corporation that it can only grant the person a driver licence or permit that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by such a supplier.

50AAB. *When an alcohol interlock condition can be removed*

**S. 50AAB
inserted by
No. 1/2002
s. 7.**

- (1) If the court gives a direction under section 50AAA(2) or (3)(b), it must specify in the direction a period during which the person concerned cannot apply to the court for the removal of an alcohol interlock condition imposed on his or her driver licence or permit.
- (2) If the direction is given under section 50AAA(2), the specified period must be at least 6 months after the condition is imposed.
- (3) If the direction is given under section 50AAA(3)(b), the specified period must be—
 - (a) at least 6 months after the condition is imposed if—
 - (i) the offence concerned was a second offence; and
 - (ii) in the case of an offence under section 49(1)(b), (f) or (g), the concentration of alcohol in the person's blood at the relevant time was less than 0.15 grams per 100 millilitres of blood; or

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- (b) in any other case, at least 3 years after the condition is imposed.
 - (4) The Corporation must not remove an alcohol interlock condition imposed on a person's driver licence or permit unless the court orders, on the application of the person, that the condition be removed.
 - (5) Within 28 days before applying for the removal of an alcohol interlock condition imposed on a person's driver licence or permit, the person must obtain from an accredited agency a report that—
 - (a) covers all of the period, but at least 6 months, since an approved alcohol interlock was installed by an approved alcohol interlock supplier, or a person or body authorised by such a supplier, in a motor vehicle driven by the person during that period; and
 - (b) includes—
 - (i) an assessment by each approved alcohol interlock supplier who maintained or authorised a person or body to maintain the approved alcohol interlock during that period on the extent to which the person complied with the manufacturer's instructions for using the approved alcohol interlock; and
 - (ii) an assessment of the person's use of alcohol during that period; and
 - (iii) the last licence restoration report obtained by the person.
 - (6) In determining whether to make an order to remove an alcohol interlock condition imposed on a person's driver licence or permit—
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- (a) the court must hear any relevant evidence tendered by either the person or the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court; and
- (b) the court, without limiting the generality of its discretion, must have regard to—
 - (i) the person's use of alcohol in the period since the condition was imposed; and
 - (ii) the person's physical and mental condition at the time of the hearing of the application; and
 - (iii) the effect that the making of the order may have on the safety of the person or the public; and
 - (iv) any report obtained under sub-section (5).

50AAC. Appeals against direction or period specified in direction

**S. 50AAC
inserted by
No. 1/2002
s. 7.**

- (1) If the court gives a direction under section 50AAA(2) or (3)(b), the person in respect of whom the direction is given may appeal to the County Court under section 83 of the **Magistrates' Court Act 1989** against—
 - (a) in the case of a direction under section 50AAA(2)—
 - (i) the giving of the direction; or
 - (ii) the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock condition if that period is more than 6 months; or

- (b) in the case of a direction under section 50AAA(3)(b)—the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock condition if that period is more than the minimum period set out in section 50AAB(3)(a) or (b) (whichever applies)—

as if the direction were a sentencing order of a kind referred to in section 83 of the **Magistrates' Court Act 1989**.

- (2) That Act applies with respect to the appeal with any necessary modifications.

S. 50AAD
inserted by
No. 1/2002
s. 7.

50AAD. Offences and immobilisation orders

- (1) A person whose driver licence or permit is subject to an alcohol interlock condition is guilty of an offence if—
- (a) the person breaches that condition; or
 - (b) the person drives a motor vehicle with an approved alcohol interlock in accordance with that condition but the motor vehicle has been started—
 - (i) with the approved alcohol interlock disengaged; or
 - (ii) in a way that does not comply with the manufacturer's instructions for the use of the approved alcohol interlock; or
 - (iii) in a way other than by the person blowing directly into the appropriate part of the approved alcohol interlock.

Note: Sections 50AAH and 50AAI may affect whether a person has breached the condition.

- (2) A person who is guilty of an offence against subsection (1) is liable to a fine of not more than 30 penalty units or to imprisonment for a term of not more than 4 months.

- (3) If—
- (a) a person breaches an alcohol interlock condition by driving a motor vehicle with a type of alcohol interlock—
 - (i) the approval of which is cancelled under section 50AAH; or
 - (ii) that is installed or maintained by a person or body whose approval as an alcohol interlock supplier is cancelled under section 50AAI; or
 - (iii) that is installed or maintained by a person or body who would be authorised by an approved alcohol interlock supplier except that the supplier's approval is cancelled under section 50AAI; and
 - (b) the person is charged with an offence against sub-section (1)(a) in respect of that breach—

it is a defence if the person proves that he or she reasonably believed at the time of the breach that the type of alcohol interlock was an approved alcohol interlock, or the person or body was an approved alcohol interlock supplier or authorised by such a supplier, as the case may be.
- (4) A court finding a person guilty, or convicting a person, of an offence against sub-section (1)(b) may, if the court considers it appropriate to do so, order that the motor vehicle concerned be immobilised (whether by wheel clamps or any other means) for a period specified in the order of up to 12 months.
- (5) An order under sub-section (4) may be made subject to specified conditions.

- (6) The court may make an order under sub-section (4) whether the motor vehicle is owned by the offender or another person.
- (7) If the court considers that another person, who is not present at the hearing concerning the making of an order under sub-section (4), may be substantially affected by such an order, the court must issue a summons to that other person to show cause why the order should not be made.
- (8) On the return of the summons, the court may, after hearing the evidence brought before it, make or refuse to make the order.

S. 50AAE
inserted by
No. 1/2002
s. 7.

50AAE. *Approval of types of alcohol interlocks and alcohol interlock suppliers*

- (1) A person or body may apply to the Corporation for—
 - (a) approval of a type of alcohol interlock; or
 - (b) approval as an alcohol interlock supplier—for the purposes of this Act.
- (2) An application must be made in the manner and form determined in writing by the Corporation and must be accompanied by—
 - (a) the prescribed application fee (if any); and
 - (b) any other things that are prescribed.
- (3) The Corporation may approve, in writing, a type of alcohol interlock if it is satisfied that—
 - (a) the person or body applying for the approval has a right to sell or lease the type of alcohol interlock; and

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- (b) the type of alcohol interlock is suitable to be approved for the purposes of this Act having regard to—
 - (i) its effectiveness in preventing a motor vehicle from being started if it detects more than a certain concentration of alcohol; and
 - (ii) the extent to which it is resistant to tampering; and
 - (iii) its capacity to record information about its use; and
 - (iv) any other matter the Corporation considers relevant.
- (4) In considering whether to approve a type of alcohol interlock, the Corporation must apply the guidelines for the approval of types of alcohol interlocks made by the Corporation under section 50AAG.
- (5) The Corporation may approve, in writing, a person or body as an alcohol interlock supplier if it considers it appropriate to do so having regard to—
 - (a) whether—
 - (i) the person or body; and
 - (ii) the employees or agents (if any) of the person or body who install or maintain approved alcohol interlocks—
are fit and proper persons to install and maintain approved alcohol interlocks; and
 - (b) the relevant qualifications and experience of the person or body and of those employees and agents (if any) of the person or body; and

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- (c) the arrangements and standards put in place by the person or body for—
 - (i) installing approved alcohol interlocks; and
 - (ii) maintaining approved alcohol interlocks including regular inspections, re-calibration and the recording of information about its use; and
- (d) the arrangements put in place by the person or body for installing and maintaining approved alcohol interlocks in rural areas; and
- (e) the adequacy for the purposes of this Act of—
 - (i) the premises, equipment and resources of the person or body; and
 - (ii) the record-keeping and reporting arrangements of the person or body; and
 - (iii) the arrangements of the person or body for handling complaints; and
- (f) the ability of the person or body to comply, and record its compliance, with the guidelines for the installation or maintenance of approved alcohol interlocks made by the Corporation under section 50AAG; and
- (g) the terms and conditions on which the person or body supplies, or intends to supply, approved alcohol interlocks to customers, or a particular class of customer, including the cost of the approved alcohol interlock, its installation and regular maintenance; and
- (h) any other matter the Corporation considers relevant.

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- (6) The Corporation must not approve a person or body as an alcohol interlock supplier unless it is satisfied that the person or body will provide concessions to assist with the cost of installation and regular maintenance of an approved alcohol interlock to—
- (a) classes of persons specified by the regulations for the purposes of this sub-section; or
 - (b) if the regulations do not specify classes of persons for the purposes of this sub-section, persons who hold a health care card (within the meaning of the Social Security Act 1991 of the Commonwealth).
- (7) In considering whether to approve a person or body as an alcohol interlock supplier, the Corporation must apply the guidelines for the approval of persons or bodies as alcohol interlock suppliers made by the Corporation under section 50AAG.
- (8) If the Corporation refuses to give an approval under sub-section (3) or (5), it must give written notice of the refusal and the reasons for it to the person or body who applied for the approval.
- (9) Subject to sections 50AAH and 50AAI, an approval under this section remains in force for the period specified by the Corporation when the approval is given.

50AAF. *Conditions on approvals*

- (1) An approval under section 50AAE may be given subject to specified conditions.
- (2) The Corporation must specify in the approval of an alcohol interlock supplier that it is a condition of the approval that the supplier must—

S. 50AAF
inserted by
No. 1/2002
s. 7.

- (a) comply with the guidelines (if any) under sections 50AAG(1)(b)(ii) and (c); and
 - (b) ensure that each of the following persons or bodies comply with those guidelines—
 - (i) the supplier's employees and agents (if any) who install or maintain approved alcohol interlocks; and
 - (ii) the persons or bodies (if any) authorised by the supplier to install or maintain approved alcohol interlocks.
- (3) The Corporation may at any time—
- (a) vary or revoke a condition on an approval; or
 - (b) impose a new condition on an approval—
- by giving written notice to the person or body concerned, allowing the person or body at least 10 working days to make written representations about the proposed action.

S. 50AAG
inserted by
No. 1/2002
s. 7.

50AAG. Guidelines

- (1) The Corporation may make guidelines for any of the following matters—
 - (a) the approval of types of alcohol interlocks, including the way in which the Corporation has regard to the matters in section 50AAE(3)(b);
 - (b) the approval of persons or bodies as alcohol interlock suppliers, including—
 - (i) the way in which the Corporation has regard to the matters in section 50AAE(5); and
 - (ii) the type of concessions that must be provided for the purposes of section 50AAE(6);

- (c) the installation or maintenance of approved alcohol interlocks, including the terms and conditions on which approved alcohol interlocks are supplied to customers or a particular class of customer.
- (2) The guidelines—
- (a) must be in writing and be published in the Government Gazette; and
 - (b) must be laid before each House of Parliament within 6 sitting days of that House after the guidelines are published in the Government Gazette; and
 - (c) may apply, adopt or incorporate any matter contained in another document, whether as—
 - (i) amended by the guidelines; or
 - (ii) contained in that document at a particular time or from time to time.

50AAH. Cancellation of approval of types of alcohol interlocks

**S. 50AAH
inserted by
No. 1/2002
s. 7.**

- (1) The Corporation may cancel the approval of a type of alcohol interlock under section 50AAE if the Corporation is satisfied that it is appropriate to do so because—
- (a) the type of alcohol interlock is defective to the extent that it is no longer suitable to be approved for the purposes of this Act (whether because the information it records about its use is misleading or for any other reason); or
 - (b) since the type of alcohol interlock was approved, the Corporation has approved one or more other types of alcohol interlocks that the Corporation considers are more suitable to be approved for the purposes of this Act.

- (2) If the Corporation cancels the approval of a type of alcohol interlock under sub-section (1)(a), the Corporation—
- (a) must ensure that a notice is published in the Government Gazette, and a newspaper circulating generally throughout Victoria, stating that the approval of the type of alcohol interlock is cancelled with effect from a specified day (which must be after both of those notices are published); and
 - (b) must send a notice to each approved alcohol interlock supplier stating that the approval of the type of alcohol interlock is cancelled with effect from that specified day; and
 - (c) may send a notice to a person whose driver licence or permit is subject to an alcohol interlock condition, at the latest address the person has notified to the Corporation, stating that the person breaches the condition if he or she drives a motor vehicle with that type of alcohol interlock after the day specified in the notice (which must be at least one month after the notice is sent).
- (3) If the Corporation cancels the approval of a type of alcohol interlock under sub-section (1)(a), a person whose driver licence or permit is subject to an alcohol interlock condition breaches the condition if he or she drives a motor vehicle with that alcohol interlock after the later of the following—
- (a) the day specified in the notice published under sub-section (2)(a);
 - (b) if the person is sent a notice under sub-section (2)(c), the day specified in that notice.

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- (4) If the Corporation cancels the approval of a type of alcohol interlock under sub-section (1)(b)—
- (a) the Corporation must send a notice to each approved alcohol interlock supplier stating that the approval is cancelled with effect from a specified day; and
 - (b) an alcohol interlock of that type that was installed in a motor vehicle before the specified day is taken to continue to be approved, despite the cancellation, for the purposes of this Act and the **Sentencing Act 1991**.
- (5) In sub-sections (2)(c) and (3), "alcohol interlock condition" includes an alcohol interlock condition imposed in accordance with a direction under section 89A of the **Sentencing Act 1991**.

Note: Under section 50AAD(3), a person who breaches an alcohol interlock condition because the approval of a type of alcohol interlock has been cancelled has a defence if the person proves that he or she reasonably believed that the type of alcohol interlock was approved.

50AAI. Cancellation of approval of alcohol interlock supplier

- (1) The Corporation may, by giving written notice to an approved alcohol interlock supplier, cancel the supplier's approval under section 50AAE if the Corporation is satisfied that it is appropriate to do so because the supplier—
- (a) has failed to comply with one or more conditions of the approval; or
 - (b) is no longer supplying, installing or maintaining alcohol interlocks.

S. 50AAI
inserted by
No. 1/2002
s. 7.

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- (2) If the Corporation cancels the approval of an alcohol interlock supplier, the Corporation—
- (a) must ensure that a notice is published in the Government Gazette, and a newspaper circulating generally throughout Victoria, stating that the approval of the alcohol interlock supplier is cancelled with effect from a specified day (which must be after both of those notices are published); and
 - (b) may send a notice to a person whose driver licence or permit is subject to an alcohol interlock condition, at the latest address that the person has notified to the Corporation, stating that the person breaches the condition if—
 - (i) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle; and
 - (ii) the person drives the motor vehicle with that approved alcohol interlock—after the day specified in the notice (which must be at least one month after the notice is sent).
- (3) If the Corporation cancels the approval of an alcohol interlock supplier, a person whose driver licence or permit is subject to an alcohol interlock condition breaches the condition if—
- (a) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle after the later of the following—
 - (i) the day specified in the notice published under sub-section (2)(a); or

- (ii) if the person is sent a notice under subsection (2)(b), the day specified in the notice; and
 - (b) the person drives the motor vehicle with that approved alcohol interlock after the later of those days.
- (4) In sub-sections (2)(b) and (3), "alcohol interlock condition" includes an alcohol interlock condition imposed in accordance with a direction under section 89A of the **Sentencing Act 1991**.

Note: Under section 50AAD(3), a person who breaches an alcohol interlock condition because the approval of an alcohol interlock supplier has been cancelled has a defence if the person proves that he or she reasonably believed that the supplier was approved.

50AAJ. Review by Tribunal

**S. 50AAJ
inserted by
No. 1/2002
s. 7.**

- (1) A person or body whose interests are affected by a decision of the Corporation—
 - (a) under section 50AAE to refuse to give an approval; or
 - (b) under section 50AAH or 50AAI to cancel an approval—may apply for review of the decision to the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if notice of the decision is published under section 50AAH(2)(a) or 50AAI(2)(a) in both the Government Gazette and a newspaper, the day on which the later notice is published; or

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- (c) if notice of the decision is given or sent to the person or body under section 50AAE(7), 50AAH(2), 50AAH(4), 50AAI(1) or 50AAI(2), the day on which the notice is given or sent to the person or body; or
- (d) if the person or body requests a statement of reasons for the decision under the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which—
 - (i) the statement is given to the person or body; or
 - (ii) the person or body is informed under section 46(5) of that Act that the statement will not be given.

S. 50AA
inserted by
No. 17/1994
s. 8,
amended by
No. 1/2002
s. 8.

50AA. Previous convictions⁶

In determining for the purpose of a provision specified in column 1 of the following table whether an offence (in this section referred to as "the relevant offence") is a first offence, any other offence in respect of which a conviction was recorded or a finding of guilt was made 10 years or more before the event specified in relation to that provision in column 2 is to be disregarded if not to do so would make the relevant offence a subsequent offence for the purpose of that provision.

TABLE

<i>Column 1</i>	<i>Column 2</i>
Sections 50(1), (1A), (1AB) and (1B) and 51(1)	The commission of the relevant offence
Sections 50(3) and 50A(1)	The making of the application for the driver licence or permit
Section 50(4A)(a)	The making of the application under section 50(4)

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<i>Column 1</i>	<i>Column 2</i>
Section 50AAA(2) and (3)	The making of an application under section 50(4)
Section 50AAB(3)	The making of an application under section 50(4)

50A. Driver education programs

S. 50A
inserted by
No. 5/1990
s. 8.

(1) The Corporation must not issue a driver licence or permit to a person whose driver licence or permit is cancelled, or who is disqualified from obtaining a driver licence or permit, on conviction, or on being found guilty, of an offence under section 49(1)(b), (f) or (g) and who, at the time of the offence, was under 25 years old unless it is satisfied that the person has, if the offence is a first offence and the level of concentration of alcohol in that person's blood was less than 0.15 grams per 100 millilitres of blood, completed an accredited driver education program.

S. 50A(1)
amended by
Nos 19/1991
s. 7(2),
41/1992 s. 4(f),
14/2000
s. 7(5).

(1A) The Corporation must not issue a driver licence or permit to a person whose driver licence or permit is cancelled, or who is disqualified from obtaining a driver licence or permit, on conviction, or on being found guilty, of an offence under section 49(1)(ba), (ca) or (ea) and who, at the time of the offence, was under 25 years old unless it is satisfied that the person has, if the offence is a first offence, completed an accredited driver education program.

S. 50A(1A)
inserted by
No. 14/2000
s. 7(6).

(2) The Corporation must cancel the driver licence or permit of a person who was convicted, or found guilty, of an offence under section 49(1)(b), (f) or (g) and whose driver licence or permit was not cancelled on the conviction or finding of guilt, unless it is satisfied that the person has completed

S. 50A(2)
amended by
Nos 19/1991
s. 7(3),
41/1992
s. 4(g)(i)(ii),
14/2000
s. 7(7).

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an accredited driver education program within 3 months after being required by the Corporation by notice in writing to do so.

S. 50A(3)
amended by
Nos 19/1991
s. 7(3),
49/1991
s. 119(7)
(Sch. 4 item
17.2), 14/2000
s. 7(7).

- (3) If a person is charged with an offence under section 49(1), and on the hearing the court releases the person on him or her giving an undertaking under section 75(1) of the **Sentencing Act 1991**, the court must attach to the undertaking a condition that the person completes an accredited driver education program.

S. 50A(4)
amended by
No. 14/2000
s. 7(7).

- (4) The Corporation may in its discretion exempt any person from the requirement to complete an accredited driver education program.

S. 51
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

51. *Immediate suspension of driver licence or permit in certain circumstances*

S. 51(1)
amended by
Nos 78/1987
s. 8(a)–(d),
57/1998
s. 4(5)(a),
46/2002
s. 9(1)(a).

- (1) If a person is charged by a member of the police force or an officer of the Corporation with—

S. 51(1)(a)
substituted by
No. 46/2002
s. 9(1)(b).

- (a) an offence under paragraph (b), (f) or (g) of section 49(1) where it is alleged that the concentration of alcohol in the person's blood was—
- (i) if the person holds a full driver licence, 0·15 grams per 100 millilitres of blood or more; or
 - (ii) if the person holds a learner permit or probationary driver licence, 0·07 grams per 100 millilitres of blood or more; or

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(b) an offence under paragraph (c), (d) or (e) of section 49(1); or

S. 51(1)(b)
amended by
Nos 19/1991
s. 8, 46/2002
s. 9(1)(c).

(c) an offence that would be a subsequent offence within the meaning of section 48(2) if the person were convicted—

S. 51(1)(c)
inserted by
No. 19/1991
s. 8,
substituted by
No. 46/2002
s. 9(1)(d).

any member of the police force or, if the accused had been driving or in charge of a commercial motor vehicle, any officer of the Corporation may, at any time after the making of the charge until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her driver licence or permit is immediately suspended until the charge has been determined and requiring the accused to surrender immediately to the person who gave the notice the licence document or permit document.

(1A) If a person is charged by a member of the police force with an offence under paragraph (ba), (ca) or (ea) of section 49(1), any member of the police force may, at any time after the making of the charge until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her driver licence or permit is immediately suspended until the charge has been determined and requiring the accused to surrender immediately to the person who gave the notice the licence document or permit document.

S. 51(1A)
inserted by
No. 14/2000
s. 8(1).

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S. 51(1B)
inserted by
No. 46/2002
s. 9(2).

- (1B) Any member of the police force may give a person a notice (containing the prescribed particulars) informing the person that his or her driver licence or permit is immediately suspended and requiring the person to surrender the licence or permit document to the member of the police force if—
- (a) paragraph (f) or (g) of section 49(1) applies to the person; and
 - (b) a certificate is issued under section 55(4) or 57 stating the concentration of alcohol present in the person's blood as indicated by the analysis of the person's breath or blood sample; and
 - (c) that concentration is—
 - (i) if the person holds a full driver licence—0.15 grams per 100 millilitres of blood or more; or
 - (ii) if the person holds a learner permit or probationary driver licence—0.07 grams per 100 millilitres of blood or more; or
 - (iii) if the person has, within 10 years before the commission of the alleged offence, been found guilty or convicted of an offence (other than an accompanying driver offence) referred to in section 48(2)(a), (b), (c), (e) or (f)—the prescribed concentration of alcohol or more than the prescribed concentration of alcohol.

S. 51(1C)
inserted by
No. 46/2002
s. 9(2).

- (1C) A notice under sub-section (1B) may be given at any time within 12 months after the certificate is issued and must specify the period of suspension in accordance with sub-section (3).

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- (2) For the purposes of this section a person is charged with an offence when a copy of the information that is signed by the member of the police force or the officer of the Corporation is given to the person.
- (3) Immediately on the giving of a notice under sub-section (1), (1A) or (1B) the person's driver licence or permit is suspended—
- (a) if the notice is given under sub-section (1) or (1A), until the charge has been determined by a court; or
 - (b) subject to sub-section (3A), if the notice is given under sub-section (1B), until the lesser of—
 - (i) 12 months after the notice is given; or
 - (ii) the period, after the notice is given, set out in Column 2 of Schedule 1 that corresponds to the blood alcohol concentration in Column 1 of that Schedule that is stated in the certificate.

S. 51(3)
amended by
No. 14/2000
s. 8(2),
substituted by
No. 46/2002
s. 9(3).

(3A) If—

- (a) a person's driver licence or permit is suspended in accordance with a notice under sub-section (1B); and
- (b) less than 28 days before the end of the period of suspension, a traffic infringement notice is issued against the person in respect of the alleged offence—

S. 51(3A)
inserted by
No. 46/2002
s. 9(3).

the period of suspension under sub-section (3)(b) is not affected by the person giving a notice of objection to the traffic infringement notice before the end of that period but, if the person does not give a notice of objection before the end of that period, the period is extended until the end of the 28 day period for giving the notice of objection.

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S. 51(3B)
inserted by
No. 46/2002
s. 9(3).

(3B) If—

- (a) a person's driver licence or permit is suspended in accordance with a notice under sub-section (1B); and
- (b) 28 days or more before the end of the period of suspension, a traffic infringement notice is issued against the person in respect of the alleged offence—

the period of suspension under sub-section (3)(b) is not affected by the person giving a notice of objection to the traffic infringement notice within the 28 day period for doing so.

Note: If the person does not give a notice of objection within the 28 day period for doing so the person's driver licence or permit may be cancelled under section 89C(1).

S. 51(3C)
inserted by
No. 46/2002
s. 9(3).

(3C) If—

- (a) sub-section (3A) or (3B) applies to a person; and
- (b) the person does not give a notice of objection to the traffic infringement notice within the 28 day period for doing so; and
- (c) the person's driver licence or permit is cancelled under section 89C(1)—

any period of suspension under this section ends when the driver licence or permit is cancelled under section 89C(1) and the period for which the person is disqualified under that section from obtaining a driver licence or permit is reduced by the period of the suspension (as extended, if applicable, by sub-section (3A)).

S. 51(3D)
inserted by
No. 46/2002
s. 9(3).

(3D) If a person who is given a notice under sub-section (1B) is charged with the alleged offence during the period of suspension (as extended, if applicable, by sub-section (3A)), from

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the time the charge is laid the notice is taken to be instead a notice under sub-section (1) or (1A) (whichever is applicable).

Note: The period of suspension therefore continues until the charge is determined by a court (see sub-section (3)(a)).

- (4) A person who gives a notice under sub-section (1), (1A) or (1B) must cause a copy of that notice to be sent immediately to the Corporation.

S. 51(4)
amended by
Nos 14/2000
s. 8(2),
46/2002
s. 9(4).

- (5) A person who, without just cause or excuse, refuses or fails to surrender a document as required by a notice under sub-section (1), (1A) or (1B) is guilty of an offence.

S. 51(5)
amended by
Nos 14/2000
s. 8(2),
46/2002
s. 9(4).

Penalty: 5 penalty units.

- (6) The accused has the burden of proving just cause or excuse.
- (7) A licence or permit suspended under this section is, during the suspension, of no effect and a person whose licence or permit is so suspended is, during the suspension, disqualified from obtaining a further licence or permit.
- (8) A person must not while he or she is disqualified from obtaining a licence or permit apply for or obtain a licence or permit.

Penalty: 5 penalty units.

- (9) A licence or permit so obtained is of no effect.

- (9A) The Chief Commissioner of Police may cancel a notice under sub-section (1), (1A) or (1B) by notifying (in writing) the person to whom the notice was given and must cause a copy of the cancellation to be sent immediately to the Corporation.

S. 51(9A)
inserted by
No. 46/2002
s. 9(5).

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S. 51(10)
amended by
Nos 57/1989
s. 3(Sch.
item 173.9),
14/2000
s. 8(2),
46/2002
s. 9(6).

(10) A person to whom a notice is given under sub-section (1), (1A) or (1B) may appeal against that notice to the Magistrates' Court.

S. 51(10A)
inserted by
No. 53/1989
s. 9,
amended by
No. 57/1989
s. 5(5)(a).

(10A) A person who appeals under sub-section (10) must give 14 days' written notice of the appeal (including particulars of the alleged exceptional circumstances) to the Chief Commissioner of Police and a registrar of the Magistrates' Court.

S. 51(10B)
inserted by
No. 53/1989
s. 9,
amended by
No. 23/1994
s. 118(Sch. 1
item 50.3).

(10B) In determining the appeal the court must hear any relevant evidence tendered either by the applicant or by the Chief Commissioner of Police and any evidence of a registered medical practitioner required by the court.

(11) On an appeal under sub-section (10) the court may make an order—

- (a) confirming the notice; or
- (b) cancelling the notice.

S. 51(12)
amended by
No. 57/1989
s. 3(Sch.
item 173.10).

(12) The Magistrates' Court must not make an order under sub-section (11) cancelling a notice unless it is satisfied that exceptional circumstances exist which justify the making of such an order.

S. 51(12A)
inserted by
No. 46/2002
s. 9(7).

(12A) If a person whose driver licence or permit is suspended in accordance with a notice under sub-section (1), (1A) or (1B) is before a court for any reason in relation to the alleged offence, the court may make an order cancelling the notice if it is satisfied that exceptional circumstances exist which justify making the order.

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(13) Every order of the Magistrates' Court under subsection (11) is final and conclusive and must be given effect to by the Corporation.

S. 51(13)
amended by
No. 57/1989
s. 3(Sch.
item 173.11).

(14) If on the subsequent hearing of the charge the accused's driver licence or permit is cancelled and the accused is disqualified from obtaining one for a specified time, the court must take into account in fixing the period of disqualification the period of suspension under this section.

52. Zero blood alcohol

S. 52
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

(1) This section applies to any person who is driving or in charge of a motor vehicle without holding a full driver licence which authorises the holder to drive such a motor vehicle, but does not apply to a person who—

S. 52(1)
substituted by
No. 78/1987
s. 9(1),
amended by
No. 37/1996
s. 6(1).

(a) is not the holder of a full driver licence merely because he or she has failed to renew his or her licence; or

(b) is—

(i) the holder of a licence to drive such a motor vehicle, which is issued under—

S. 52(1)(b)(i)
amended by
No. 37/1996
s. 6(2).

(A) an Act of another State or a Territory of the Commonwealth that corresponds with this Act; or

(B) a law of another country—

and which is not a provisional licence or a licence which is on probation; and

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- (ii) exempted under the regulations from the requirement to hold a driver licence or permit.

S. 52(1A)
inserted by
No. 89/1991
s. 12,
substituted by
No. 37/1996
s. 6(3).

- (1A) This section also applies to a person who is the holder of a full driver licence which authorises him or her to drive a large vehicle, while that person is driving or in charge of a large vehicle.

S. 52(1B)
inserted by
No. 17/1994
s. 9,
substituted by
No. 37/1996
s. 6(4),
amended by
No. 1/2002
s. 9(2)(a)(b).

- (1B) This section also applies, during the period of 3 years (or any longer period during which an alcohol interlock condition as defined in section 3(1) of this Act or section 87P(1) of the **Sentencing Act 1991**, as the case requires, applies to the licence) from the first issue of a licence on that order, to a person who is driving or in charge of a motor vehicle while holding a full driver licence which authorises the holder to drive such a motor vehicle issued only because of the order of the Magistrates' Court made on an application under section 50(4) of this Act or section 89(2) of the **Sentencing Act 1991**⁷.

S. 52(1C)
inserted by
No. 58/1995
s. 13,
amended by
No. 37/1996
s. 6(5).

- (1C) This section also applies to a person who is the holder of a full driver licence which authorises him or her to drive a taxi-cab, while that person is driving or in charge of a taxi-cab.

S. 52(1D)
inserted by
No. 63/1998
s. 5.

- (1D) This section also applies to a person who for financial gain, or in the course of any trade or business, is teaching a person, who does not hold a driver licence, to drive on a highway a motor vehicle of a kind described in section 33(3) while that person is in charge of the motor vehicle being used for teaching purposes by virtue of section 48(1AA).

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| <p>(1E) Subject to sub-sections (1F) and (1G), this section also applies during the period of 1 year from the issue of a driver licence which authorises the holder to drive a motor cycle, while the holder is driving or in charge of a motor cycle, whether or not the holder also holds a driver licence which authorises him or her to drive another kind of motor vehicle.</p> | <p>S. 52(1E) inserted by No. 23/2001 s. 9(1) (as amended by No. 92/2001 s. 33).</p> |
| <p>(1F) If the Corporation is satisfied that a person has appropriate licensed motor cycle driving experience (wherever obtained), it may—</p> <p style="margin-left: 40px;">(a) waive the application to the person of sub-section (1E); or</p> <p style="margin-left: 40px;">(b) specify a shorter period than 1 year for the purposes of that sub-section.</p> | <p>S. 52(1F) inserted by No. 23/2001 s. 9(1) (as amended by No. 92/2001 s. 33).</p> |
| <p>(1G) If a driver licence referred to in sub-section (1E) is suspended (whether by a court or the Corporation) during the period of 1 year referred to in that sub-section (or the shorter period applying under sub-section (1F)), the period applying to the person for the purposes of sub-section (1E) is extended by a period equal to the period of the suspension.</p> | <p>S. 52(1G) inserted by No. 23/2001 s. 9(1) (as amended by No. 92/2001 s. 33).</p> |
| <p>(2) The prescribed concentration of alcohol in the case of a person to whom this section applies is any concentration of alcohol present in the blood of that person.</p> | <p>S. 52(2) amended by Nos 78/1987 s. 9(2), 53/1989 s. 21(1), substituted by No. 5/1990 s. 9(a), amended by 23/2001 s. 9(2).</p> |
| <p style="text-align: center;">* * * * *</p> | <p>S. 52(3)–52(7) repealed.⁸</p> |

S. 53
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

53. Preliminary breath tests

- (1) A member of the police force may at any time require—
- (a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or
 - (b) the driver of a motor vehicle that has been required to stop at a preliminary breath testing station under section 54(3); or
 - (c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours driven or been in charge of a motor vehicle when it was involved in an accident; or
 - (d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident—

S. 53(1)(c)
amended by
No. 19/1991
s. 9(1).

S. 53(1)(d)
inserted by
No. 19/1991
s. 9(1).

to undergo a preliminary breath test by a prescribed device.

S. 53(2)
amended by
Nos 60/1994
s. 29(1)(a)(b),
46/1998
s. 7(Sch. 1).

- (2) An officer of the Corporation or of the Department of Infrastructure who is authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, for the purposes of this section may at any time require any person he or she finds driving a commercial motor vehicle or in charge of a commercial motor vehicle to undergo a preliminary breath test by a prescribed device.

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(3) A person required to undergo a preliminary breath test must do so by exhaling continuously into the device to the satisfaction of the member of the police force or the officer of the Corporation or of the Department of Infrastructure.

S. 53(3)
amended by
Nos 60/1994
s. 29(2),
46/1998
s. 7(Sch. 1).

(4) A person is not obliged to undergo a preliminary breath test if more than 3 hours have passed since the person last drove, was an occupant of or was in charge of a motor vehicle.

S. 53(4)
amended by
No. 19/1991
s. 9(2).

54. *Preliminary breath testing stations*

(1) A member of the police force may set up a preliminary breath testing station on or in the vicinity of any highway.

(2) A preliminary breath testing station—

(a) consists of such facilities as are necessary to enable the making of preliminary breath tests in quick succession; and

(b) must be identified by suitable signs, lights or other devices.

(3) A member of the police force who is on duty and wearing uniform at a preliminary breath testing station may request or signal any person driving a motor vehicle to stop the motor vehicle.

(4) Members of the police force who are on duty at a preliminary breath testing station must ensure that no person is detained there any longer than is necessary.

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55. *Breath analysis*

S. 55
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

S. 55(1)
amended by
Nos 53/1989
s. 21(2),
19/1991
s. 10(1)(b),
17/1994
s. 10(1)(2),
60/1994
s. 29(3)(a)(b),
46/1998
s. 7(Sch. 1),
57/1998
s. 25(1),
92/2001
s. 16(1).

S. 55(1)(a)
amended by
No. 19/1991
s. 10(1)(a).

(1) If a person undergoes a preliminary breath test when required by a member of the police force or an officer of the Corporation or of the Department of Infrastructure under section 53 to do so and—

- (a) the test in the opinion of the member or officer in whose presence it is made indicates that the person's blood contains alcohol; or
- (b) the person, in the opinion of the member or officer, refuses or fails to carry out the test in the manner specified in section 53(3)—

any member of the police force or, if the requirement for the preliminary breath test was made by an officer of the Corporation or of the Department of Infrastructure, any member of the police force or any officer of the Corporation or of the Department of Infrastructure may require the person to furnish a sample of breath for analysis by a breath analysing instrument and for that purpose may further require the person to accompany a member of the police force or an officer of the Corporation or of the Department of Infrastructure authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, for the purposes of section 53 to a place or vehicle where the sample of breath is to be furnished and to

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remain there until the person has furnished the sample of breath and been given the certificate referred to in sub-section (4) or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

Example

A person may be required to go to a police station, a public building, a booze bus or a police car to furnish a sample of breath.

Example to s. 55(1) inserted by No. 92/2001 s. 16(2).

- (2) A member of the police force may require any person whom that member reasonably believes to have offended against section 49(1)(a) or (b) to furnish a sample of breath for analysis by a breath analysing instrument (instead of undergoing a preliminary breath test in accordance with section 53) and for that purpose may further require the person to accompany a member of the police force to a place or vehicle where the sample of breath is to be furnished and to remain there until the person has furnished the sample of breath and been given the certificate referred to in sub-section (4) or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

S. 55(2) amended by Nos 53/1989 s. 21(2), 19/1991 s. 10(2)(a)(b), 17/1994 s. 10(2), 92/2001 s. 16(1).

Example

A person may be required to go to a police station, a public building, a booze bus or a police car to furnish a sample of breath.

Example to s. 55(2) inserted by No. 92/2001 s. 16(2).

- (2AA) A member of the police force may require any person who is required to undergo a drug assessment under section 55A to furnish a sample of breath for analysis by a breath analysing instrument and may, for that purpose, require the person to remain at the place at which the person is required to remain for the purposes of the drug assessment until—

S. 55(2AA) inserted by No. 23/2001 s. 10(1).

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(a) the person has furnished the sample of breath and been given the certificate referred to in sub-section (4) and the drug assessment has been carried out; or

(b) 3 hours after the driving, being an occupant of or being in charge of the motor vehicle—

whichever is the sooner.

S. 55(2A)
inserted by
No. 17/1994
s. 10(3),
amended by
Nos 58/1995
s. 14(a)(b),
23/2001
s. 10(2).

(2A) The person who required a sample of breath under sub-section (1), (2) or (2AA) may require the person who furnished it to furnish one or more further samples if it appears to him or her that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 100 millilitres of blood because the amount of sample furnished was insufficient or because of a power failure or malfunctioning of the instrument or for any other reason whatsoever.

(3) A breath analysing instrument must be operated by a person authorised to do so by the Chief Commissioner of Police.

S. 55(4)
amended by
No. 78/1987
s. 10,
substituted by
No. 17/1994
s. 10(4),
amended by
Nos 100/1995
s. 51(1),
57/1998
s. 4(5)(a).

(4) As soon as practicable after a sample of a person's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the person whose breath has been analysed a certificate containing the prescribed particulars produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in his or her blood⁹.

S. 55(4A)
inserted by
No. 19/1991
s. 22(1),
repealed by
No. 17/1994
s. 10(5).

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(5) A person who furnishes a sample of breath under this section must do so by exhaling continuously into the instrument to the satisfaction of the person operating it.

(6) A person is not obliged to furnish a sample of breath under this section if more than 3 hours have passed since the person last drove, was an occupant of or was in charge of a motor vehicle.

**S. 55(6)
amended by
No. 19/1991
s. 10(3).**

* * * * *

**S. 55(7)(8)
repealed by
No. 17/1994
s. 10(5).**

(9) A person must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.

**S. 55(9)
amended by
No. 41/1992
s. 4(h).**

(9A) The person who required a sample of breath under sub-section (1), (2) or (2AA) from a person may require that person to allow a registered¹⁰ medical practitioner or an approved health professional nominated by the person requiring the sample to take from him or her a sample of that person's blood for analysis if it appears to him or her that¹¹—

**S. 55(9A)
inserted by
No. 17/1994
s. 10(6),
amended by
Nos 100/1995
s. 51(2),
14/2000
ss 17(1), 18,
23/2001
s. 10(3).**

(a) that person is unable to furnish the required sample of breath on medical grounds or because of some physical disability; or

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(b) the breath analysing instrument is incapable of measuring in grams per 100 millilitres of blood the concentration of alcohol present in any sample of breath furnished by that person for any reason whatsoever—

and for that purpose may further require that person to accompany a member of the police force to a place where the sample is to be taken and to remain there until the sample has been taken or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

S. 55(9B)
inserted by
No. 17/1994
s. 10(6),
amended by
Nos 100/1995
s. 51(2),
14/2000
s. 17(2).

(9B) The registered¹² medical practitioner or approved health professional who takes a sample of blood under sub-section (9A) must deliver a part of the sample to the person who required it to be taken and another part to the person from whom it was taken¹³.

S. 55(9C)
inserted by
No. 17/1994
s. 10(6).

(9C) A person who allows the taking of a sample of his or her blood in accordance with sub-section (9A) must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis.

S. 55(9D)
inserted by
No. 17/1994
s. 10(6),
amended by
Nos 100/1995
s. 51(2),
14/2000
s. 17(1).

(9D) A person must not hinder or obstruct a registered¹⁴ medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with sub-section (9A)¹⁵.

Penalty applying to this sub-section: 12 penalty units.

S. 55(9E)
inserted by
No. 17/1994
s. 10(6),
amended by
Nos 100/1995
s. 51(2),
14/2000
s. 17(3)(a)(b).

(9E) No action lies against a registered¹⁶ medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional

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believed on reasonable grounds was allowed to be taken under sub-section (9A)¹⁷.

- (10) A person who is required under this section to furnish a sample of breath for analysis may, immediately after being given the certificate referred to in sub-section (4), request the person making the requirement to arrange for the taking in the presence of a member of the police force of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the member of the police force.
- (11) A part of a sample of blood taken under sub-section (10) must be delivered to the person who required the sample of breath under this section.
- (12) Nothing in sub-section (10) relieves a person from any penalty under section 49(1)(e) for refusing to furnish a sample of breath.
- (13) Evidence derived from a sample of breath furnished in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under sub-section (10) if reasonable efforts were made to comply with the request.
- (14) If the question whether a breath analysing instrument was incapable of measuring in grams per 100 millilitres of blood the concentration of alcohol present in any sample of breath furnished by a person is relevant on a hearing for an offence against section 49(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this sub-section, a document—
- (a) purporting to be a print-out produced by that instrument in respect of that sample; and

S. 55(10)
amended by
Nos 17/1994
s. 10(7)(a)(b),
23/1994
s. 118(Sch. 1
item 50.4),
14/2000
s. 17(1).

S. 55(12)
amended by
No. 17/1994
s. 10(8).

S. 55(13)
inserted by
No. 17/1994
s. 10(9).

S. 55(14)
inserted by
No. 17/1994
s. 10(9).

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S. 55(14)(b)
amended by
No. 100/1995
s. 51(3).

- (b) purporting to be signed by ¹⁸the person who operated the instrument—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

S. 55A
inserted by
No. 14/2000
s. 9.

55A. Drug assessment

- (1) A member of the police force may at any time require—
- (a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or
 - (b) the driver of a motor vehicle that has been required to stop at a preliminary breath testing station under section 54(3); or
 - (c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours driven or been in charge of a motor vehicle when it was involved in an accident; or
 - (d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident; or
 - (e) any person whom he or she has required under section 53 to undergo a preliminary breath test; or

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- (f) any person required under section 55 to furnish a sample of breath or from whom a sample of blood was required to be taken under section 55(9A)—

to undergo an assessment of drug impairment if, in the opinion of the member, that person's behaviour or appearance indicates that he or she may be impaired for a reason other than alcohol alone and for that purpose may further require the person to accompany a member of the police force to a place where the assessment is to be carried out and to remain there until the assessment has been carried out or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

- (2) A person is not obliged to undergo an assessment of drug impairment if more than 3 hours have passed since the person last drove, was an occupant of or was in charge of a motor vehicle.
- (3) An assessment of drug impairment must be carried out by a member of the police force authorised to do so by the Chief Commissioner of Police.
- (4) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice under sub-section (5).
- (5) The Corporation may, by notice published in the Government Gazette, specify the procedure to be followed in assessing drug impairment.
- (6) The carrying out of an assessment of drug impairment must be video-recorded unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances.
- (7) If the person on whom an assessment of drug impairment was carried out is subsequently
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charged with an offence under paragraph (ba) of section 49(1), a copy of the video-recording, if any, must be served with the summons or, if a summons is not issued, within 7 days after the making of the charge.

- (8) Subject to sub-section (9), the video-recording of the carrying out of an assessment of drug impairment on a person is only admissible in a proceeding against that person for an offence against this Act for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the procedure specified in a notice under sub-section (5).
- (9) Evidence obtained as a result of an assessment of drug impairment carried out on a person is inadmissible as part of the prosecution case in proceedings against that person for any offence if the video-recording of the assessment and any related material and information should have been but has not been destroyed as required by section 55C.
- (10) In any proceeding under this Act—
- (a) the statement of any member of the police force that on a particular date he or she was authorised by the Chief Commissioner of Police under sub-section (3) to carry out an assessment of drug impairment; or
 - (b) a certificate purporting to be signed by the Chief Commissioner of Police that a member of the police force named in it is authorised by the Chief Commissioner under sub-section (3) to carry out an assessment of drug impairment—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that member.

55B. Blood and urine samples

(1) If a person undergoes an assessment of drug impairment when required under section 55A to do so and the assessment, in the opinion of the member of the police force carrying it out, indicates that the person may be impaired by a drug or drugs, any member of the police force may require the person to do either or both of the following—

- (a) allow a registered medical practitioner or an approved health professional nominated by that member to take from the person a sample of that person's blood for analysis;
- (b) furnish to a registered medical practitioner or an approved health professional nominated by that member a sample of that person's urine for analysis—

and for that purpose may further require the person to accompany a member of the police force to a place where the sample is to be taken or furnished and to remain there until the sample has been taken or furnished or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

(1A) A member of the police force must not require a person to allow a sample of his or her blood to be taken for analysis under sub-section (1)(a) if that person has already had a sample of blood taken from him or her under section 55 after the driving, being an occupant of or being in charge of the motor vehicle.

(2) The registered medical practitioner or approved health professional who takes a sample of blood or is furnished with a sample of urine under this section must deliver a part of the sample to the member of the police force who required it to be

S. 55B
inserted by
No. 14/2000
s. 9.

S. 55B(1A)
inserted by
No. 23/2001
s. 11.

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taken or furnished and another part to the person from whom it was taken or by whom it was furnished.

- (3) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood, or be furnished with a sample of the urine, of any other person in accordance with this section.

Penalty: 12 penalty units.

- (4) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood, or being furnished with any sample of urine, which the practitioner or approved health professional believed on reasonable grounds was required to be taken from, or be furnished by, any person under this section.
- (5) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under paragraph (ba) of section 49(1), a copy of a written report on that assessment prepared by the member of the police force who carried it out and containing the prescribed particulars must be served with the summons or, if a summons is not issued, within 7 days after the making of the charge.

S. 55C
inserted by
No. 14/2000
s. 9.

55C. *Destruction of identifying information*

- (1) In this section, "**relevant offence**" means—
- (a) an offence under section 49(1)(ba) or (ea); or
 - (b) any other offence arising out of the same circumstances; or

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- (c) any other offence in respect of which the evidence obtained as a result of the assessment of drug impairment has probative value.
- (2) If an assessment of drug impairment has been carried out on a person under section 55A and—
 - (a) the person has not been charged with a relevant offence at the end of the period of 12 months after the assessment; or
 - (b) the person has been so charged but the charge is not proceeded with or the person is not found guilty of the offence, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police must, subject to sub-section (4), destroy, or cause to be destroyed, at the time specified in sub-section (3) any video-recording made of the assessment and any related material and information.

- (3) A video-recording and any related material and information referred to in sub-section (2) must be destroyed—
 - (a) in a case to which sub-section (2)(a) applies, immediately after that period of 12 months; or
 - (b) in a case to which sub-section (2)(b) applies—
 - (i) within 1 month after the conclusion of the proceeding and the end of any appeal period; or
 - (ii) if the proceeding has been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month after dismissal under that section.
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- (4) A member of the police force may, before the end of a period referred to in sub-section (3)(b), apply without notice to the Magistrates' Court for an order extending that period and, if the Court makes such an order, the reference to the period in sub-section (3) is a reference to that period as so extended.
- (5) If the Magistrates' Court makes an order under sub-section (4), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the assessment of drug impairment was carried out.
- (6) If a video-recording or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the assessment was carried out so requests, within 14 days after receiving the request, notify that person in writing whether the destruction has occurred.
- (7) A person who knowingly—
- (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—
- a video-recording or related material and information required by this section to be destroyed is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.
- (8) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any video-recording or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence is guilty of an offence punishable by a fine of not more than
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120 penalty units or to imprisonment for a term of not more than 12 months.

56. Blood samples to be taken in certain cases¹⁹

(1) In this section—

S. 56 amended by No. 44/1989 s. 41(Sch. 2 item 34.4), amended by No. 19/1991 s. 11(1).

* * * * *

S. 56(1) def. of "designated place" repealed by No. 7/1995 s. 3(1).

"doctor" means a registered medical practitioner and includes a police surgeon.

S. 56(1) def. of "doctor" amended by No. 23/1994 s. 118(Sch. 1 item 50.5).

(2) If a person of or over the age of 15 years enters or is brought to a place for examination or treatment in consequence of an accident (whether within Victoria or not) involving a motor vehicle, the person must allow a doctor to take from that person at that place a sample of that person's blood for analysis.

S. 56(2) amended by Nos 78/1987 s. 11(1)(a)-(c), 53/1989 ss 10, 21(3), substituted by No. 19/1991 s. 11(1), amended by No. 7/1995 s. 3(2).

Penalty: For a first offence, 12 penalty units.

For a subsequent offence, 25 penalty units or imprisonment for 3 months.

(3) On convicting a person, or finding a person guilty, of an offence under sub-section (2) the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for the time that the court thinks fit, being not less than—

S. 56(3) amended by No. 53/1989 s. 10, substituted by No. 19/1991 s. 11(1), amended by No. 41/1992 s. 4(i).

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S. 56(4)
amended by
Nos 78/1987
s. 11(2)(a)(b),
53/1989 s. 10,
substituted by
No. 19/1991
s. 11(1).

- (a) for a first offence, 2 years; and
 - (b) for a subsequent offence, 4 years.
- (4) Sub-section (2) does not apply if—
- (a) in the opinion of the doctor first responsible for the examination or treatment of the person the taking of a blood sample from that person would be prejudicial to his or her proper care and treatment; or
 - (b) a member of the police force has notified the doctor first responsible for the examination or treatment of the person, in writing, that the person has undergone a preliminary breath test which did not indicate that the prescribed concentration of alcohol was exceeded; or
 - (c) a member of the police force or a member of an ambulance service has notified the doctor first responsible for the examination or treatment of the person, in writing, that the person was an occupant of and was not driving or in charge of any vehicle involved in the accident; or
 - (d) a member of the police force or a doctor has notified the doctor first responsible for the examination or treatment of the person, in writing, that a sample of the person's blood was taken by a doctor before the person entered or was brought to the place for examination or treatment.

S. 56(4)(d)
amended by
No. 7/1995
s. 3(3).

S. 56(5)
amended by
Nos 78/1987
s. 11(3),
53/1989 s. 10,
substituted by
No. 19/1991
s. 11(1),
amended by
No. 7/1995
s. 3(4).

- (5) A person to whom sub-section (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of his or her blood by a doctor at a place which he or she enters or to which he or she is brought for examination or treatment.

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- (6) If a sample of a person's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceedings except—
- (a) for the purposes of section 57; or
- (b) for the purposes of the **Transport Accident Act 1986**—
- but may be given—
- (c) to the Transport Accident Commission under the **Transport Accident Act 1986** and, for the purposes of applications relating to that Act, to the Victorian Civil and Administrative Tribunal; and
- (d) to the Corporation for the purposes of accident research.
- (7) A person must not hinder or obstruct a doctor attempting to take a sample of the blood of any other person in accordance with this section.
- Penalty: 12 penalty units.
- (8) No action lies against a doctor in respect of anything properly and necessarily done by the doctor in the course of taking any sample of blood which the doctor believes on reasonable grounds was required or allowed to be taken from any person under this section.
- S. 56(6) amended by No. 78/1987 s. 11(4).
- S. 56(6)(a) inserted by No. 78/1987 s. 11(4).
- S. 56(6)(b) inserted by No. 78/1987 s. 11(4).
- S. 56(6)(c) inserted by No. 78/1987 s. 11(4), amended by No. 11/2002 s. 3(Sch. 1 item 57.1(a)(b)).
- S. 56(6)(d) inserted by No. 78/1987 s. 11(4).
- S. 56(7) amended by No. 19/1991 s. 11(2)(a)–(c).
- S. 56(8) amended by No. 19/1991 s. 11(3)(a)–(c).

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S. 56(9)
inserted by
No. 78/1987
s. 11(6),
amended by
Nos 53/1989
s. 21(4),
19/1991
s. 11(4).

- (9) A blood sample that is, after 9 December 1987, taken from a person by a doctor who honestly and reasonably believes that he or she is required to take the sample, whether or not the person consents to the taking, is deemed to have been taken by the doctor who was first responsible for the examination or treatment of that person.

57. Evidentiary provisions—blood tests

- (1) In this section—

(a) **"properly qualified analyst"** means—

- (i) an approved analyst; or
(ii) a person who is considered by the presiding judge, a coroner, or the Magistrates' Court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under sub-section (4) or (4A), as the case requires; and

S. 57(1)(a)(ii)
amended by
Nos 53/1989
s. 11(1),
14/2000
s. 10(3),
92/2001
s. 34(2).

(ab) **"properly qualified expert"** means—

- (i) an approved expert; or
(ii) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under sub-section (4B); and

S. 57(1)(ab)
inserted by
No. 14/2000
s. 10(1).

(b) **"approved analyst"** means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section; and

S. 57(1)(b)
amended by
No. 14/2000
s. 10(2).

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- (c) "**approved expert**" means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified expert for the purposes of this section. S. 57(1)(c) inserted by No. 14/2000 s. 10(2).
- (2) If the question whether any person was or was not at any time under the influence of intoxicating liquor or any other drug or if the question as to the presence of alcohol or any other drug or the concentration of alcohol in the blood of any person at any time or if a finding on the analysis of a blood sample is relevant²⁰— S. 57(2) amended by Nos 53/1989 s. 11(2)(a)(b)(d), 66/1990 s. 3(1), 23/1994 s. 118(Sch. 1 item 50.6), 14/2000 ss 10(4), 17(4), 23/2001 s. 12(1).
- (a) on a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or S. 57(2)(a) amended by No. 17/1994 s. 11(1)(a).
- (ab) on a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the **Crimes Act 1958** arising out of the driving of a motor vehicle; or S. 57(2)(ab) inserted by No. 17/1994 s. 11(1)(b).
- (b) on a trial or hearing for an offence against section 318(1) of the **Crimes Act 1958**; or
- (c) on a hearing for an offence against section 49(1) of this Act; or S. 57(2)(c) amended by No. 53/1989 s. 11(2)(c).
- (d) in any proceedings conducted by a coroner— S. 57(2)(d) inserted by No. 53/1989 s. 11(2)(c).

then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the taking, after that person drove or was in charge of a motor vehicle, of a sample of blood

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from that person by a registered medical practitioner or an approved health professional, of the analysis of that sample of blood by a properly qualified analyst within twelve months after it was taken, of the presence of alcohol or any other drug and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis and, if a drug is present, evidence may be given by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to drive properly).

S. 57(3)
amended by
Nos 23/1994
s. 118(Sch. 1
item 50.6),
57/1998
s. 4(5)(a),
14/2000
s. 17(4).

(3) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any proceedings referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

S. 57(4)
amended by
No. 57/1998
s. 4(5)(a).

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood analysed by the analyst is admissible in evidence in any proceedings referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

S. 57(4A)
inserted by
No. 14/2000
s. 10(5).

(4A) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of blood analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Act is admissible in evidence in any proceedings referred to in sub-section (2) and, in the absence

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of evidence to the contrary, is proof of the facts and matters contained in it.

- (4B) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a person's ability to drive properly) is admissible in evidence in any proceedings referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it. **S. 57(4B) inserted by No. 14/2000 s. 10(5).**
- (5) A certificate given under this section must not be tendered in evidence at a trial or hearing referred to in sub-section (2)(a), (ab), (b) or (c) without the consent of the accused unless a copy of the certificate is proved to have been personally served on the accused more than 10 days before the day on which the certificate is tendered in evidence. **S. 57(5) amended by Nos 53/1989 s. 11(3), 89/1991 s. 17(1)(b), 17/1994 s. 11(2).**
- (6) An affidavit or statutory declaration by the person who has personally served a copy of the certificate on the accused is admissible in evidence at a trial or hearing referred to in sub-section (2)(a), (ab), (b) or (c) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration²¹. **S. 57(6) amended by Nos 53/1989 s. 11(3), 89/1991 s. 17(1)(b), 17/1994 s. 11(2), 100/1995 s. 51(4)(a)(b).**
- (7) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for cross-examination and that person must attend accordingly. **S. 57(7) substituted by No. 19/1991 s. 12, amended by No. 17/1994 s. 11(3).**
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S. 57(7A)
inserted by
No. 19/1991
s. 12.

(7A) The court must not grant leave under sub-section (7) unless it is satisfied—

(a) that the informant has been given at least 7 day's notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the blood referred to in a certificate given by an analyst under sub-section (4) was not that of the accused; or

S. 57(7A)(b)(ii)
amended by
Nos 23/1994
s. 118(Sch. 1
item 50.6),
14/2000
s. 17(4).

(ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or

S. 57(7A)(b)(iia)
inserted by
No. 14/2000
s. 10(6).

(iia) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the blood not been contaminated in that way; or

S. 57(7A)(b)(iii)
substituted by
No. 7/1995
s. 3(5).

(iii) there is a reasonable possibility that the sample was not taken in accordance with the Code of Practice for Taking Blood Samples from Road Accident Victims; or

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- (iiia) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample drove or was in charge of the vehicle; or
- (iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.
- (7B) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under sub-section (7).
- (8) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the person to be examined or from whom a sample of blood is to be collected has expressed consent to that examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the person was in fact incapable by reason of his or her mental condition from effectively giving consent to the examination or collection.
- (9) Except as provided in sections 55(9A), 55B and 56, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the person from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.

**S. 57(7A)
(b)(iiia)
inserted by
No. 23/2001
s. 12(2).**

**S. 57(7B)
inserted by
No. 17/1994
s. 11(4).**

**S. 57(8)
amended by
Nos 23/1994
s. 118(Sch. 1
item 50.6),
14/2000
s. 17(5)(a)(b).**

**S. 57(9)
amended by
Nos 17/1994
s. 11(5),
14/2000
s. 10(7).**

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S. 57(11)
inserted by
No. 78/1987
s. 12.

(10) The mere failure or refusal of a person to express consent must not be used in evidence against that person or referred to in any way against that person's interests in any proceedings.

(11) A certificate purporting to be signed by a person—

(a) who took a blood sample; or

(b) who analysed a blood sample—

in accordance with provisions of an Act of another State or a Territory that substantially corresponds to section 56 of this Act and in accordance with any regulations made under the corresponding Act is admissible in evidence in any proceeding referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

S. 57(12)
inserted by
No. 78/1987
s. 12.

(12) Sub-sections (5), (6), and (7) apply in respect of a certificate referred to in sub-section (11) as if the certificate was given under this section.

S. 57A
inserted by
No. 14/2000
s. 11.

57A. Evidentiary provisions—urine tests

(1) In this section—

"approved analyst" means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section;

"approved expert" means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified expert for the purposes of this section;

"properly qualified analyst" means—

- (a) an approved analyst; or
- (b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under sub-section (4);

"properly qualified expert" means—

- (a) an approved expert; or
- (b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under sub-section (5).

(2) If a question as to the presence of a drug in the body of a person at any time is relevant on a hearing for an offence against section 49(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

- (a) of the furnishing by that person, after that person drove or was in charge of a motor vehicle, of a sample of urine to a registered medical practitioner or an approved health professional;
- (b) of the analysis of that sample of urine by a properly qualified analyst within twelve months after it was taken;

**S. 57A(2)(a)
amended by
No. 23/2001
s. 13(1).**

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- (c) of the presence of a drug in that sample of urine at the time of analysis;
 - (d) by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to drive properly).
- (3) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any hearing referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of urine analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Act is admissible in evidence in any hearing referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (5) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a person's ability to drive properly) is admissible in evidence in any hearing referred to in sub-section (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (6) A certificate given under this section must not be tendered in evidence at a hearing referred to in sub-section (2) without the consent of the accused unless a copy of the certificate is proved to have been personally served on the accused more than

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10 days before the day on which the certificate is tendered in evidence.

- (7) An affidavit or statutory declaration by the person who has personally served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in sub-section (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.
- (8) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.
- (9) The court must not grant leave under sub-section (8) unless it is satisfied—
 - (a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and
 - (b) that—
 - (i) there is a reasonable possibility that the urine referred to in a certificate given by an analyst under sub-section (4) was not that of the accused; or
 - (ii) there is a reasonable possibility that the urine referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way

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that a drug found on analysis would not have been found had the urine not been contaminated in that way; or

S. 57A(9)
(b)(iia)
inserted by
No. 23/2001
s. 13(2).

(iia) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample drove or was in charge of the vehicle; or

(iii) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(10) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend the court on the hearing of an application for leave under sub-section (8).

58. Evidentiary provisions—breath tests

S. 58(1)
amended by
No. 66/1990
s. 3(2).

(1) If the question whether any person was or was not at any time under the influence of intoxicating liquor or if the question as to the presence or the concentration of alcohol in the blood of any person at any time or if a result of a breath analysis is relevant²²—

S. 58(1)(a)
amended by
No. 17/1994
s. 12(1)(a).

(a) on a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

S. 58(1)(ab)
inserted by
No. 17/1994
s. 12(1)(b).

(ab) on a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the **Crimes Act 1958** arising out of the driving of a motor vehicle; or

(b) on a trial or hearing for an offence against section 318(1) of the **Crimes Act 1958**; or

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(c) on a hearing for an offence against section 49(1) of this Act—

then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the concentration of alcohol indicated to be present in the blood of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 55 and the concentration of alcohol so indicated is, subject to compliance with section 55(4), evidence of the concentration of alcohol present in the blood of that person at the time his or her breath is analysed by the instrument.

(2) A document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the blood of a person and purporting to be signed by the person who operated the instrument²³ is admissible in evidence in any proceedings referred to in sub-section (1) and, subject to sub-section (2E), is conclusive proof of—

S. 58(2)
amended by
Nos 19/1991
s. 22(2),
89/1991
s. 13(a)(b),
17/1994
s. 12(2)(a)–(d),
100/1995
s. 51(5),
57/1998
s. 4(5)(a).

(a) the facts and matters contained in it; and

S. 58(2)(a)
inserted by
No. 17/1994
s. 12(2)(b).

(b) the fact that the instrument used was a breath analysing instrument within the meaning of this Act; and

S. 58(2)(b)
inserted by
No. 17/1994
s. 12(2)(b).

(c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 55; and

S. 58(2)(c)
inserted by
No. 17/1994
s. 12(2)(b).

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S. 58(2)(d)
inserted by
No. 17/1994
s. 12(2)(b).

(d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and

S. 58(2)(e)
inserted by
No. 17/1994
s. 12(2)(b).

(e) the fact that the instrument was in proper working order and properly operated; and

S. 58(2)(f)
inserted by
No. 17/1994
s. 12(2)(b),
substituted by
No. 100/1995
s. 51(6).

(f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the instrument and given to the accused person as soon as practicable after the sample of breath was analysed²⁴—

unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court or agreed to by the informant, that he or she requires the person giving the certificate to be called as a witness or that he or she intends to adduce evidence in rebuttal of any such fact or matter²⁵.

S. 58(2A)
inserted by
No. 17/1994
s. 12(3).

(2A) A notice under sub-section (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing.

S. 58(2B)
inserted by
No. 17/1994
s. 12(3).

(2B) The accused person may not, except with the leave of the court, introduce expert evidence at the hearing if the nature of that evidence was not indicated in a notice under sub-section (2).

S. 58(2C)
inserted by
No. 17/1994
s. 12(3).

(2C) If an accused person gives notice to the informant in accordance with sub-section (2) that he or she requires the person giving a certificate to be called as a witness and the court is satisfied that that person—

(a) is dead; or

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(b) is unfit by reason of his or her bodily or mental condition to testify as a witness; or

(c) has ceased to be a member of the police force or is out of Victoria and it is not reasonably practicable to secure his or her attendance; or

(d) cannot with reasonable diligence be found—
the court must order that sub-section (2) has effect as if the notice had not been given.

(2D) A certificate referred to in sub-section (2) remains admissible in evidence even if the accused person gives a notice under that sub-section but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that sub-section.

**S. 58(2D)
inserted by
No. 17/1994
s. 12(3).**

(2E) Nothing in sub-section (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in sub-section (2)²⁶ and, if the informant does so, the certificate remains admissible in evidence but ceases to be conclusive proof of that fact or matter only.

**S. 58(2E)
inserted by
No. 17/1994
s. 12(3),
amended by
No. 100/1995
s. 51(7).**

(3) A certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner under section 55 to operate breath analysing instruments is admissible in evidence of the authority of that person.

(4) Evidence by a person authorised to operate a breath analysing instrument under section 55—

(a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument within the meaning of this Part;

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(b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her;

(c) that, in relation to the breath analysing instrument, all regulations made under this Part with respect to breath analysing instruments were complied with—

is, in the absence of evidence to the contrary, proof of those facts.

S. 58(5)
substituted by
No. 17/1994
s. 12(4).

(5) The statement on oath of a person authorised to operate a breath analysing instrument under section 55 when called as a witness that any apparatus used by him or her on any occasion under section 55 had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions "Alcotest 7110" and "3530791" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument within the meaning of this Act.

S. 58A
inserted by
No. 89/1991
s. 14.

58A. *Avoidance of certain provisions in contracts of insurance*

(1) Any covenant, term, condition, or other provision of a contract or other agreement is void to the extent that it purports to exclude or limit the liability of an insurer under a contract of insurance in the event of the driver or person in charge of a large vehicle having a concentration of alcohol present in his or her blood as indicated by an analysis of his or her breath or blood of not more than .05 grams per 100 millilitres of blood.

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- (2) Sub-section (1) applies to a contract of insurance whether entered into before or after the commencement of section 14 of the **Road Safety (Further Amendment) Act 1991**.
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PART 6—OFFENCES AND LEGAL PROCEEDINGS

59. *General duty of driver or person in charge of motor vehicle*

S. 59
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

S. 59(1)
amended by
No. 92/2001
s. 17(1).

S. 59(1)(a)(i)
amended by
Nos 60/1994
s. 29(4)(a)(b),
46/1998
s. 7(Sch. 1).

S. 59(1)(a)(ii)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 105.4).

- (1) The driver or person in charge of a motor vehicle on a highway has the following duties—
- (a) to stop the motor vehicle, produce for inspection his or her driver licence document or permit document and state his or her name and address if requested or signalled to do so by—
 - (i) a member of the police force or an officer of the Corporation or of the Department of Infrastructure (being an officer authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, in that behalf); or
 - (ii) an officer of or person authorised in writing in that behalf by any municipal council who has reasonable grounds for believing that any provision of the regulations relating to the mass or dimensions of a motor vehicle or trailer or to the number of hours during which a person may drive a motor vehicle or to the carrying of a log book on a motor vehicle is being contravened; and
 - (b) to obey any lawful direction given to him or her by a member of the police force under sub-section (5); and
 - (c) if requested or signalled to do so by a member of the police force or an officer of the Corporation (being an officer authorised

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in writing by the Corporation in that behalf), to stop the motor vehicle, produce for inspection his or her log book, permit any entry in the log book to be copied and permit the person inspecting it to make any entry in it and to search the motor vehicle if that person has reasonable grounds for suspecting that more than one log book is carried on the vehicle; and

- (d) if requested or signalled to do so by a member of the police force or an officer of the Corporation (being an officer authorised in writing by the Corporation in that behalf) or by an officer of or person authorised in writing in that behalf by any municipal council, to stop the motor vehicle and allow it together with its load and any trailer attached to the motor vehicle and the load of the trailer (whether those loads are goods or passengers or both) to be weighed or to be taken to be weighed at a weighbridge or weighing machine that is agreed on by the driver or person in charge of the motor vehicle and the person making the request or, if there is no agreement, at the weighbridge or weighing machine that is nominated by the person making the request.

S. 59(1)(d)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 105.5),
92/2001
s. 17(2).

- (2) Subject to sub-sections (3) and (4), a person who fails to do anything that he or she is required to do under sub-section (1), or who when required to state his or her name and address states a false name or address, is guilty of an offence and liable—

- (a) if the offence consists of failing to obey any lawful direction given by a member of the police force or failing to produce for inspection his or her driver licence document

S. 59(2)(a)
amended by
No. 5/1990
s. 10(1)(a).

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or permit document, to a penalty of not more than 5 penalty units;

**S. 59(2)(b)
amended by
No. 5/1990
s. 10(1)(b).**

- (b) if the offence consists of failing to produce for inspection his or her log book or failing to state his or her name or address or stating a false name or address or failing to permit an entry in his or her log book to be copied or failing to permit an entry to be made in his or her log book or failing to permit his or her vehicle to be searched for another log book, to a penalty of not more than 5 penalty units or imprisonment for a term of not more than 1 month;
- (c) if the offence consists of failing to stop the motor vehicle or failing to allow it together with its load to be weighed, to a penalty, in the case of a first offence, of not more than 10 penalty units or, in the case of a subsequent offence, of not more than 20 penalty units or imprisonment for a term of not more than 4 months.

**S. 59(3)
amended by
Nos 5/1990
s. 10(2),
89/1991
s. 5(2),
58/1995 s. 15.**

- (3) A person, other than a person who holds a probationary driver licence or who is driving or in charge of a large vehicle in respect of which section 19(5) applies or who has been issued with a driver licence under an order of the Magistrates' Court made on an application under section 50(4), who fails to produce for inspection his or her driver licence document or permit document is not guilty of an offence if that person—
 - (a) gives a reasonable excuse for the failure; and
 - (b) provides a specimen of his or her signature; and
 - (c) within 7 days produces his or her driver licence document or permit document at the police station (if any) specified by the

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- member of the police force or other person who requested its production.
- (4) A driver or person in charge of a motor vehicle who fails to stop when required to do so in accordance with sub-section (1)(a) is not guilty of an offence if—
- (a) the person making the request or signal is not in uniform; and
 - (b) the driver or person in charge believed that that person was not—
 - (i) a member of the police force or an authorised officer of the Corporation or of the Department of Infrastructure, as the case requires; or
 - (ii) an officer of or person authorised in writing in that behalf by a municipal council.
- (5) A member of the police force may give such reasonable directions to a person driving or in charge of a motor vehicle on a highway as are, in the opinion of that member, necessary—
- (a) for carrying into execution the provisions of this Act or the regulations; or
 - (b) for the purposes of any traffic survey being carried out in the vicinity of the highway.
- (6) If a driver or person in charge of a motor vehicle who is requested under sub-section (1)(d) to allow his or her motor vehicle together with its load to be weighed fails to allow it to be so weighed, the person making the request may impound the vehicle and its load, together with any trailer attached to the vehicle and the load of the trailer,

S. 59(4)
amended by
No. 92/2001
s. 17(3)(a).

S. 59(4)(b)
amended by
No. 92/2001
s. 17(3)(b).

S. 59(4)(b)(i)
amended by
Nos 60/1994
s. 29(5),
46/1998
s. 7(Sch. 1).

S. 59(4)(b)(ii)
amended by
No. 12/1989
s. 4(1)(Sch. 2
item 105.6).

S. 59(5)
amended by
No. 92/2001
s. 17(4).

S. 59(6)
amended by
Nos 53/1989
s. 12(1),
92/2001
s. 17(5)(a)(b).

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and may cause the vehicle to be driven or towed onto a weighing device or to a weighbridge or weighing machine that is agreed on by the driver or person in charge and the person making the request or, if there is no agreement, to the weighbridge or weighing machine that is nominated by the person making the request, to be weighed.

**S. 59(7)
amended by
No. 92/2001
s. 17(6).**

- (7) If a motor vehicle that is used on a highway and its load, together with any trailer attached to the motor vehicle and the load of the trailer, exceeds the prescribed maximum weight or any prescribed maximum dimension, a member of the police force or an officer of the Corporation (being an officer authorised in writing by the Corporation in that behalf) may require the driver or person in charge of the motor vehicle to unload any part of the load that is necessary to bring the motor vehicle, trailer or load within the prescribed maximum weight or dimension.

**S. 59(8)
amended by
No. 92/2001
s. 17(7)(a).**

- (8) If a driver or person in charge of a motor vehicle fails to comply with a requirement under subsection (7) to unload—

**S. 59(8)(a)
amended by
No. 92/2001
s. 17(7)(b).**

- (a) the driver or person in charge is guilty of an offence and is liable for a first offence to a penalty of not more than 5 penalty units and for a subsequent offence to a penalty of not more than 10 penalty units; and

**S. 59(8)(b)
amended by
No. 53/1989
s. 21(5).**

- (b) the person making the requirement may drive the motor vehicle and the trailer, if any, to a police station or other convenient place and the vehicle, trailer and load may be impounded there by any member of the police force.

- (9) A reference in this section to a driver licence document or permit document includes a reference to any other document which evidences

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the authorisation of the driver to drive the motor vehicle.

- (10) Neither the Crown nor the person making a request under sub-section (1)(d) or a requirement under sub-section (7) nor any other person is liable for any loss or damage occasioned by or arising out of anything done in the exercise or purported exercise in good faith of the powers conferred by this section.

S. 59(10)
inserted by
No. 53/1989
s. 12(2).

60. *Duty of owner of motor vehicle to give information about driver*

- (1) An owner of a motor vehicle is guilty of an offence if, when required to do so by a member of the police force who is acting in the execution of duty, he or she fails to give any information which it is within the power of the owner to give and which may lead to the identification of any person who was the driver of the motor vehicle on any occasion or fails to make all reasonable enquiries in order to obtain that information.

S. 60(1)
amended by
No. 78/1987
s. 13.

- (2) A person guilty of an offence under this section is liable—

S. 60(2)
amended by
No. 19/1991
s. 13(1)(a)(b).

- (a) if the requirement is made by a member of the police force who is investigating an accident involving a motor vehicle that resulted in a person being killed or suffering serious injury—to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than 4 months or to both;
- (b) in any other case—to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than 2 months or to both—

and on conviction the court must cancel all driver licences and permits held by that person and, whether or not that person holds a driver licence,

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disqualify him or her from obtaining one for, in the case of a first offence, at least 2 years and, in the case of a subsequent offence, at least 4 years.

S. 60(3)
substituted by
No. 92/2001
s. 18(1).

- (3) For the purposes of this section "**owner**" means—
- (a) the owner or the person in whose name the motor vehicle was registered at the time when the vehicle was being driven by the person about whom the information is sought or at the time when the requirement is made; or
 - (b) any person who had possession or control of the vehicle at either of those times; or
 - (c) if the motor vehicle displayed a number plate at either of those times—
 - (i) the person who, at the time at which the registration number borne by that number plate was last assigned by the Corporation or the corresponding body under a corresponding Act, was the person in whose name the motor vehicle, to which that registration number was assigned, was registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, whether or not that motor vehicle is the same as the motor vehicle about which information is sought; or
 - (ii) the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being entitled, or last entitled, to use or possess that number plate at the time when the
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vehicle was being driven by the person about whom the information is sought or at the time when the requirement is made.

60A. Duty of owner of trailer to give information

**S. 60A
inserted by
No. 53/1989
s. 13.**

- (1) An owner of a trailer is guilty of an offence if, when required to do so by a member of the police force who is acting in the execution of duty, he or she fails to give any information which it is within the power of the owner to give and which may lead to the identification of any person who was the driver of the motor vehicle to which the trailer was attached on any occasion or fails to make all reasonable enquiries in order to obtain that information.
- (2) A person guilty of an offence under this section is liable—
 - (a) if the requirement is made by a member of the police force who is investigating an accident involving a motor vehicle or trailer that resulted in a person being killed or suffering serious injury—to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than 4 months or to both;
 - (b) in any other case—to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than 2 months or to both.
- (3) For the purposes of this section "**owner**" means—
 - (a) the owner or the person in whose name the trailer was registered at the time when the trailer was attached to the motor vehicle that was being driven by the person about whom the information is sought or at the time when the requirement is made; or

**S. 60A(3)
substituted by
No. 92/2001
s. 18(2).**

- (b) any person who had possession or control of the trailer at either of those times; or
- (c) if the trailer displayed a number plate at either of those times—
 - (i) the person who, at the time at which the registration number borne by that number plate was last assigned by the Corporation or the corresponding body under a corresponding Act, was the person in whose name the trailer, to which that registration number was assigned, was registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, whether or not that trailer is the same as the trailer about which information is sought; or
 - (ii) the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being entitled, or last entitled, to use or possess that number plate at the time when the trailer was attached to the motor vehicle that was being driven by the person about whom the information is sought or at the time when the requirement is made.

61. *Duty of driver etc. if accident occurs*

- (1) If owing to the presence of a motor vehicle an accident occurs whereby any person is injured or any property (including any animal) is damaged or destroyed, the driver of the motor vehicle—
 - (a) must immediately stop the motor vehicle; and

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- (b) must immediately render such assistance as he or she can; and
- (c) must at the scene of the accident as soon as possible give his or her name and address and also the name and address of the owner of the motor vehicle and the identifying number of the motor vehicle—
 - (i) to any person who has been injured or to the owner of any property which has been damaged or destroyed; or
 - (ii) to a person representing the injured person or the owner of the property; and
- (d) must at the scene of the accident as soon as possible give those names and addresses to any member of the police force who is present; and
- (e) if any person is injured and no member of the police force is present at the scene of the accident, must as soon as possible report in person full particulars of the accident at the police station that is most accessible from the scene of the accident if that station is open and, if it is not open, at the next most accessible station; and
- (f) if any property is damaged or destroyed and neither the owner of the property nor any person representing the owner nor any member of the police force is present at the scene of the accident, must as soon as possible report in person full particulars of the accident at the police station that is most accessible from the scene of the accident if that station is open and, if it is not open, at the next most accessible station.

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- (2) If a motor vehicle which has been left standing on a highway moves of its own accord from the position in which it was left and is involved in an accident whereby any person is injured or any property (including any animal) is damaged or destroyed, the person who left the motor vehicle so standing must as soon as possible after becoming aware of the accident comply as far as the circumstances permit with the requirements of sub-section (1).
- (3) If as a result of the accident a person is killed or suffers serious injury then a person who contravenes paragraph (a) or (b) of sub-section (1) is guilty of an indictable offence and liable to a penalty of not more than 80 penalty units or to imprisonment for a term of not more than 2 years.
- (4) If—
- (a) as a result of the accident a person is killed or suffers serious injury then a person who contravenes paragraph (c), (d), (e) or (f) of sub-section (1) is guilty of an offence; or
 - (b) as a result of the accident a person is otherwise injured then a person who contravenes any provision of this section is guilty of an offence—
- and liable for a first offence to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than 4 months and for a subsequent offence to a penalty of not more than 40 penalty units or to imprisonment for a term of not less than 4 months and not more than 12 months.
- (5) If no person is killed or suffers injury as a result of the accident then a person who contravenes any provision of this section is guilty of an offence and liable for a first offence to a penalty of not

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more than 5 penalty units or to imprisonment for a term of not more than 14 days and for a subsequent offence to a penalty of not more than 10 penalty units or to imprisonment for a term of not less than 14 days and not more than 1 month.

- (6) On conviction of a person for an offence against this section, if a person is killed or suffers serious injury as a result of the accident, the court must cancel all driver licences and permits held by the convicted person and, whether or not that person holds a driver licence, disqualify him or her from obtaining one for, in the case of a first offence, at least 2 years and, in the case of a subsequent offence, at least 4 years.
- (7) If a person who is convicted of an offence against any provision of this section has at any time been convicted of an offence against another provision of this section or any previous enactment corresponding to any of those provisions, the conviction for the offence against that provision is to be taken to be a conviction for a subsequent offence.

**S. 61(6)
amended by
No. 19/1991
s. 13(2)(a)(b).**

62. *Power to prevent driving by incapable persons*

- (1) A member of the police force who is of the opinion on reasonable grounds that a person, driving or about to drive a motor vehicle, is by reason of his or her physical or mental condition incapable of having proper control of the motor vehicle may do all or any of the following things, namely—
- (a) forbid that person to drive the motor vehicle while so incapable;
- (b) require that person to deliver up forthwith all ignition or other keys of the motor vehicle in his or her actual possession;

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- (c) take such other steps as may in the opinion of the member of the police force be necessary to render the motor vehicle immobile or to remove it to a place of safety.
- (2) Nothing in sub-section (1) authorises the detention of any keys or the immobilization or detention of any motor vehicle for any longer period than is necessary in all the circumstances of the case in the interest of the person driving or about to drive it or of any other person or of the public.
- (3) Subject to sub-section (4), a person who contravenes any prohibition or requirement made by a member of the police force under sub-section (1) or in any manner attempts to obstruct any member of the police force in the exercise of any power conferred on that member by this section is guilty of an offence and liable for a first offence to a penalty of not more than 5 penalty units and for any subsequent offence to a penalty of not more than 8 penalty units or to imprisonment for a term of not more than 1 month.
- (4) A court may only find a person guilty of an offence under sub-section (3) if the court is satisfied that the member of the police force had reasonable grounds for believing that in all the circumstances of the case the action taken by him or her under sub-section (1) was necessary in the interest of that person or of any other person or of the public.

S. 63
amended by
No. 14/2000
s. 12.

63. *Power to enter motor vehicles*

A member of the police force may, for the purpose of establishing the identity of the driver of a motor vehicle or arresting a person or carrying out the provisions of section 53, 54, 55 or 55A, enter the motor vehicle using, if necessary, reasonable force, if the driver refuses or fails to

obey any lawful direction given to him or her by the member of the police force.

63A. *Removal of vehicles obstructing driveways etc.*

**S. 63A
inserted by
No. 57/1998
s. 16.**

- (1) A member of the police force may move or cause to be moved a vehicle which is parked or left standing in front of a—
 - (a) right-of-way; or
 - (b) passage; or
 - (c) private drive—or so close to a right-of-way, passage or private drive as to obstruct access to, or egress from, it by vehicles or pedestrians.
- (2) A member of the police force may move or cause to be moved a vehicle which—
 - (a) is parked or left standing contrary to the regulations; and
 - (b) in the opinion of the member of the police force, is—
 - (i) a danger to other road users; or
 - (ii) causing or likely to cause traffic congestion.
- (3) A member of the police force acting in accordance with sub-section (1) or (2) may—
 - (a) enter a vehicle using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving it; and
 - (b) move the vehicle to the nearest convenient place.
- (4) The Chief Commissioner of Police may recover from the owner of a vehicle moved under sub-section (3) any reasonable costs incurred in moving it.

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64. *Dangerous driving*

S. 64(1)
amended by
No. 13/1992
s. 5(1)(a)(b).

(1) A person must not drive a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case.

S. 64(2)
amended by
Nos 78/1987
s. 14, 13/1992
s. 5(2).

(2) A person who contravenes sub-section (1) is guilty of an offence and is liable to a fine of not more than 240 penalty units or to imprisonment for a term of not more than 2 years or both and on conviction the court must, if the offender holds a driver licence or permit, cancel that licence or permit and must, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time (not being less than 6 months) as the court thinks fit.

(3) If on a prosecution for an offence under this section the court is not satisfied that the defendant is guilty of that offence but is satisfied that the defendant is guilty of an offence against section 65, the court may convict the defendant of an offence against section 65 and punish the defendant accordingly.

65. *Careless driving*

A person who drives a motor vehicle on a highway carelessly is guilty of an offence and liable for a first offence to a penalty of not more than 12 penalty units and for a subsequent offence to a penalty of not more than 25 penalty units.

S. 66
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

66. *Offences detected by a photographic detection device*

S. 66(1)
amended by
No. 92/2001
s. 18(3).

(1) If—

(a) a prescribed offence occurs; and

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(b) the offence is detected by a prescribed detection device—

S. 66(1)(b)
amended by
No. 5/1990
s. 11(1).

the person who at the time of the occurrence of the offence is the owner of the motor vehicle involved in the offence is guilty of an offence as if that person were the driver of the motor vehicle at the time of the offence unless the court is satisfied that the motor vehicle was a stolen motor vehicle or that the number plates displayed on the motor vehicle were stolen.

(2) Nothing in sub-section (1) affects the liability of the actual driver, but if—

S. 66(2)
amended by
Nos 53/1989
s. 14(a)(b),
57/1989
s. 3(Sch.
item 173.14).

(a) in the case of a monetary penalty, the full amount of the penalty is paid by the actual driver or owner in relation to the offence (whether under Part 7 or on the order of the Magistrates' Court) and has not been refunded under section 88(4); and

S. 66(2)(a)
inserted by
No. 53/1989
s. 14(a),
amended by
No. 5/1990
s. 11(2)(a)(b).

(b) in the case of a penalty involving the imposition of demerit points, the demerit points are recorded against the actual driver or owner in relation to the offence; and

S. 66(2)(b)
inserted by
No. 53/1989
s. 14(b).

(c) in the case of a penalty involving both a monetary penalty and the imposition of demerit points—

S. 66(2)(c)
inserted by
No. 53/1989
s. 14(b).

(i) the full amount of the penalty is paid by the actual driver or owner in relation to the offence (whether under Part 7 or on the order of the Magistrates' Court) and has not been refunded under section 88(4); and

S. 66(2)(c)(i)
amended by
No. 5/1990
s. 11(2)(a)(b).

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- (ii) the demerit points are recorded against the actual driver or owner in relation to the offence—

no further penalty must be imposed on or recovered from the owner or actual driver in relation to the offence.

S. 66(2A)
inserted by
No. 92/2001
s. 19.

- (2A) Despite anything to the contrary in sub-section (2), the payment of a penalty or the recording of demerit points in respect of a prescribed offence—

- (a) may be recorded for the purposes of a heavy vehicle registration suspension scheme within the meaning of section 89(7); and

- (b) does not prevent the suspension of the registration of a heavy vehicle under that scheme.

- (3) Notwithstanding anything in sub-section (1) or (2), an owner of a motor vehicle is not by virtue of sub-section (1) guilty of an offence if—

S. 66(3)(a)
amended by
No. 33/1994
s. 24(2)(a).

- (a) before or within 28 days after the service on the owner of—

- (i) a summons; or

S. 66(3)(a)(ii)
substituted by
No. 57/1989
s. 3(Sch. item
173.15(a)).

- (ii) a charge under Schedule 3 to the **Magistrates' Court Act 1989**; or

S. 66(3)(a)(iii)
amended by
No. 57/1989
s. 3(Sch. item
173.15(b)).

- (iii) a courtesy letter under Schedule 7 to that Act—

(whichever is first served) in respect of the offence, the owner supplies to the informant in a sworn statement in writing or in a statutory declaration the name and address of the person who was driving the motor vehicle at the relevant time; or

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(b) the owner satisfies the informant by sworn statement in writing or by a statutory declaration that the owner did not know and could not with reasonable diligence have ascertained the name and address of the person who was driving the motor vehicle at the relevant time.

S. 66(3)(b) amended by Nos 33/1994 s. 24(2)(b), 30/1997 s. 7(f).

* * * * *

S. 66(3)(c) repealed by No. 5/1990 s. 11(3).²⁷

(3A) A proceeding against the person named in a statement or declaration supplied under sub-section (3)(a) for an offence arising out of the driving of a motor vehicle at the relevant time may be commenced not later than 12 months after the date on which the statement or declaration was supplied²⁸.

S. 66(3A) inserted by No. 33/1994 s. 25(1).

(4) A statement or declaration purporting to be made under sub-section (3)(a) if produced in any proceedings against the person named therein and in respect of the offence concerned is, in the absence of evidence to the contrary, proof that that person was driving the motor vehicle at all relevant times relating to the offence.

S. 66(4) amended by No. 33/1994 s. 24(2)(c).

(5) In this section "**owner**" means—

S. 66(5) amended by No. 5/1990 s. 11(5).

(a) the person in whose name the motor vehicle is registered at the time of the offence under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth; or

S. 66(5)(a) amended by No. 57/1998 s. 5(5)(e).

(b) if the Corporation has received notice of transfer of registration under the regulations, the person whose name is disclosed in the

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records kept by the Corporation as being entitled to possession of the motor vehicle at the time of the offence; or

- (c) if the motor vehicle is not registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being the owner of or entitled to possession of the motor vehicle at the time of the offence; or

S. 66(5)(ca)
inserted by
No. 92/2001
s. 18(4).

- (ca) if the motor vehicle displays a number plate—
- (i) the person who, at the time at which the registration number borne by that number plate was last assigned by the Corporation or the corresponding body under a corresponding Act, was the person in whose name the motor vehicle, to which that registration number was assigned, was registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, whether or not that motor vehicle is the same as the motor vehicle involved in the offence; or
- (ii) the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being entitled, or last entitled, to use or possess that number plate at the time of the offence; or

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(d) if the motor vehicle displays a general identification mark by means of a special identification plate issued under the regulations, the person to whom the mark is assigned at the time of the offence.

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S. 66(6)
amended by
No. 78/1987
s. 15,
repealed by
No. 58/1988
s. 4(1).

* * * * *

S. 67
amended by
Nos 78/1987
s. 15, 58/1988
s. 4(2),
53/1989 s. 15,
repealed by
No. 5/1990
s. 11(6).

68. *Speed trials*

(1) A person who on a highway drives or is in charge of a motor vehicle which is being used in a race or speed trial is guilty of an offence.

Penalty: For a first offence, 8 penalty units.

For a subsequent offence, 15 penalty units.

(2) A person who, alone or with any other person, organizes or manages a race or speed trial held or to be held on a highway and carries out or causes to be carried out any preparations for the conduct of that race or speed trial is guilty of an offence.

Penalty: For a first offence, 8 penalty units.

For a subsequent offence, 15 penalty units.

(3) The Minister may by notice published in the Government Gazette declare that the provisions of sub-sections (1) and (2) and of any regulations

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S. 68(4)
amended by
No. 78/1987
s. 16.

(except as specified in the notice) do not apply with respect to a race or speed trial held or to be held on a highway or part of a highway specified in the notice on a day and between the hours so specified.

- (4) The Minister may, on the application of a motoring organisation, by notice published in the Government Gazette declare that the provisions of sub-sections (1) and (2) and of any regulations (except as specified in the notice) do not apply with respect to any function or event that is organised and conducted by that motoring organisation.
- (5) The Minister may, by instrument, delegate to any person the power of the Minister under sub-section (3) or (4) to issue notices.
- (6) In this section, "**speed trial**" means an organised motor vehicle event, or any part of such an event, that is a competitive test of speed an object of which is, or requires for its attainment, the travelling over a distance in the shortest possible time, but does not include an event, or any part of an event, in which it is a condition of participation that participants comply with all applicable road laws.

69. Offence to procure use of motor vehicle by fraud

A person is guilty of an offence if that person—

- (a) procures the use or hire of a motor vehicle by fraud or misrepresentation; or
- (b) aids or abets a person in procuring the use or hire of a motor vehicle by fraud or misrepresentation.

Penalty: 10 penalty units or imprisonment for 2 months.

70. Tampering or interfering with motor vehicle without just cause or excuse

- (1) A person who, without just cause or excuse, tampers or interferes with a motor vehicle owned by any other person is guilty of an offence.

Penalty: 2 penalty units or imprisonment for 14 days.

- (1A) A person must not, without just cause or excuse, tamper or interfere with specified equipment fitted or attached to a motor vehicle.

S. 70(1A)
inserted by
No. 5/1990
s. 12.

Penalty: 25 penalty units.

- (1B) In sub-section (1A), "**specified equipment**" means equipment of a type specified for the purposes of this section by the Minister in a notice published in the Government Gazette.

S. 70(1B)
inserted by
No. 5/1990
s. 12.

- (1C) If a person is convicted of an offence against sub-section (1A), the Corporation must cancel for 4 years any driver licence or permit held by the person, and disqualify him or her for 4 years from holding or obtaining a driver licence or permit.

S. 70(1C)
inserted by
No. 5/1990
s. 12.

- (2) The accused has the burden of proving just cause or excuse.

71. Obtaining licence etc. by false statements

A person who—

S. 71
amended by
No. 53/1989
s. 16(1)(2).

- (a) by any false statement or any misrepresentation or other dishonest means obtains or attempts to obtain any licence, permit, log book or registration, or the renewal of any licence, permit or registration, or any certificate under this Act or any information to which section 92 applies; or

S. 71(a)
amended by
No. 58/1995
s. 16.

- (b) without lawful authority or excuse possesses any licence, permit, log book or certificate so obtained—

is guilty of an offence and liable to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than 2 months, and any licence, permit, log book or registration, or any certificate so obtained is void and of no effect.

72. Forgery etc. of documents and identification marks

- (1) A person is guilty of an offence if that person—
- (a) forges; or
 - (b) fraudulently alters or uses; or
 - (c) fraudulently lends or allows to be used by any other person—

any notice, registration label, certificate, licence, permit or other document or any identifying number or general identification mark that is authorised by or required by or under this Act.

Penalty: 10 penalty units or imprisonment for 2 months.

- (2) A person is guilty of an offence if that person makes, uses, knowingly has custody or possession of, sells or utters any paper or other material purporting to be a notice, registration label, certificate, licence, permit or other document or any identifying number or general identification mark that is authorised or required by or under this Act.

Penalty: 10 penalty units or imprisonment for 2 months.

- (3) A person is not guilty of an offence under this section by reason only that the person makes or uses an identifying number in such circumstances as are prescribed.

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73. *Offence to alter, deface or place number on engine of motor vehicle*

S. 73
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

A person is guilty of an offence if that person—

- (a) without the permission in writing of the Corporation alters or defaces any number on the engine of a motor vehicle purporting to be the number of that engine; or
- (b) places on the engine of a motor vehicle any number purporting to be the number of that engine without previously forwarding to the Corporation a notice in writing stating that a number is to be placed on that engine and containing particulars of the number and the registered number of the motor vehicle.

Penalty: 10 penalty units or imprisonment for 2 months.

74. *Offence to sell, use or possess anti-speed measuring devices*

S. 74
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

- (1) A person must not own, sell, use or possess a device the sole or principal purpose of which is to prevent the effective use of a prescribed speed measuring device or to detect when a prescribed speed measuring device is being used.

Penalty: 20 penalty units.

- (2) A person must, if required to do so by a member of the police force or an officer of the Corporation or an employee in the Department of Infrastructure (being an officer or employee authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, in that behalf), surrender to that member or officer or employee any device referred to in sub-section (1).

S. 74(2)
amended by
Nos 60/1994
s. 29(6)(a)(b),
46/1998
s. 7(Sch. 1),
74/2000
s. 3(Sch. 1
item 110.1(a)-
(c)), 11/2002
s. 3(Sch. 1
item 57.2).

Penalty: 5 penalty units.

- (3) A court that convicts a person of an offence against sub-section (1) or before which a person is charged with an offence against sub-section (1) of which the person is found guilty or to which the person pleads guilty and in respect of which a conviction is not recorded may order that the device by means of which the offence was committed be forfeited to the Government of Victoria.
- (4) All devices forfeited under sub-section (3) must be destroyed or otherwise disposed of as the Chief Commissioner of Police directs.

S. 74A
inserted by
No. 19/1991
s. 14.

74A. *Offence to sell certain breath analysing instruments*

A person must not sell a breath analysing instrument of a type which is specified in Australian Standard 3547-Breath Alcohol Testing Devices for Personal Use, published by the Standards Association of Australia, as amended from time to time, unless the instrument complies with that Standard.

Penalty: 20 penalty units.

75. *General penalty*

A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by another provision of this Act is liable—

- (a) in the case of a person previously convicted of the offence, to a penalty of not more than 3 penalty units or to imprisonment for a term of not more than 1 month; and
- (b) in any other case, to a penalty of not more than 1 penalty unit.

76. *Arrest without warrant*

- (1) A member of the police force may arrest without warrant any person who within his or her view commits an offence against any regulation made
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under clauses 42 to 49 in Schedule 2 and who on being requested to give his or her name and address refuses or fails to do so or gives a name or address which the member of the police force reasonably suspects to be false.

- (2) If a person who is arrested for an offence under this Act was in charge of a motor vehicle, any member of the police force may drive or convey the motor vehicle to a police station and keep it there pending the admission of the arrested person to bail or, if that person is not the owner of the motor vehicle, pending a demand for the vehicle by its owner.

77. Power to prosecute

- (1) In this section—

(a) "**Corporation**" means the Roads Corporation or the Public Transport Corporation; and

S. 77(1)(a) substituted by No. 44/1989 s. 41(Sch. 2 item 34.2).

* * * * *

S. 77(1)(b) repealed by No. 4/2001 s. 29(3).

- (2) The following people may prosecute for any offence against this Act or the regulations—

S. 77(2) amended by No. 44/1989 s. 41(Sch. 2 item 34.4).

(a) any member of the police force;

(ab) a protective services officer appointed under Part VIA of the **Police Regulation Act 1958**, if the offence occurs on land or premises that are, or are in the vicinity of—

S. 77(2)(ab) inserted by No. 14/2000 s. 19(1).

(i) a place of public importance that the officer has been directed to protect; or

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- (ii) a place where there is present a person holding an official or public office, whom the officer has been directed to protect;
- S. 77(2)(b) substituted by No. 12/1989 s. 4(1)(Sch. 2 item 105.7), amended by No. 60/1994 s. 29(7).**
- (b) a municipal council or any member of staff of a municipal council who is authorised in writing to do so either generally or in any particular case by the municipal council;
- S. 77(2)(c) repealed by No. 12/1989 s. 4(1)(Sch. 2 item 105.8), new s. 77(2)(c) inserted by No. 60/1994 s. 29(8), amended by Nos 46/1998 s. 7(Sch. 1), 74/2000 s. 3(Sch. 1 item 110.2).**
- (c) any employee in the Department of Infrastructure who is authorised in writing to do so either generally or in any particular case by the Secretary to the Department of Infrastructure;
- S. 77(2)(d) amended by No. 19/1991 s. 20(2).**
- (d) any officer of a Corporation who is authorised in writing to do so either generally or in any particular case by that Corporation;
- S. 77(2)(da) inserted by No. 4/2001 s. 29(4).**
- (da) the presiding officers of the Legislative Council and the Legislative Assembly, if the offence occurs on the Parliamentary reserve;
- (e) any officer who is authorised in writing to do so either generally or in any particular case by a public authority or other person prescribed for the purposes of this subsection, if the offence occurs on land or premises which are vested in, or under the control of, that public authority or person.

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- (3) If proceedings are taken by a member of the police force or an officer of a Corporation or an employee in the Department of Infrastructure or a protective services officer the proceedings may be conducted before the court by any other member of the police force or officer of that Corporation or employee in that Department or protective services officer, as the case requires.
- S. 77(3)
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.4),
19/1991
s. 20(2),
60/1994
s. 29(9)(a)(b),
46/1998
s. 7(Sch. 1),
14/2000
s. 19(2)(a)(b),
74/2000
s. 3(Sch. 1
item 110.3
(a)(b)).
- (4) Proceedings for any offence which relates to the parking or leaving standing of a vehicle may be taken by any officer appointed either generally or in any particular case by a public authority or other person prescribed for the purposes of this sub-section, if the offence occurs on land or premises which are vested in, or under the control of, that public authority or person.
- (5) Any money that is recovered by way of fine for a prescribed offence must be paid into the Consolidated Fund, unless the charge is filed by an officer who is appointed by a public authority or by any other person who is prescribed for the purposes of this sub-section, in which case the money that is recovered by way of fine must be paid into the prescribed fund in respect of that public authority or person.
- S. 77(5)
amended by
No. 57/1989
s. 3(Sch. item
173.16).
- (6) If a parking infringement (other than a parking infringement involving a contravention of section 90E) or other offence prescribed for the purposes of section 3(1A) occurs on land which is part of the Parliamentary reserve, no prosecution may be taken in respect of it except on the written direction of a presiding officer authorising the prosecution either generally or in a particular case.
- S. 77(6)
substituted by
No. 4/2001
s. 29(5).
-

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S. 77(7)
substituted by
No. 4/2001
s. 29(5).

(7) In a prosecution for an offence in relation to a parking infringement (other than a parking infringement involving a contravention of section 90E) or other offence prescribed for the purposes of section 3(1A) occurring on the Parliamentary reserve, a certificate which purports to be signed by a presiding officer stating that a person is authorised to take proceedings in respect of that parking infringement or offence is evidence, and, in the absence of evidence to the contrary, is proof, that the person is so authorised.

S. 77(8)
substituted by
No. 4/2001
s. 29(5).

(8) All courts must take judicial notice of the signature of a presiding officer on a certificate referred to in sub-section (7).

S. 78
amended by
Nos 57/1989
s. 3(Sch. item
173.17(a)-(c)),
49/1991
s. 119(7)
(Sch. 4
item 17.3),
89/1991 s. 15,
repealed by
No. 41/1992
s. 5.

* * * * *

79. Evidence of speed

If in any criminal proceedings the speed at which a motor vehicle travelled on any occasion is relevant, evidence of the speed of the motor vehicle as indicated or determined on that occasion by a prescribed speed measuring device when tested, sealed and used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the motor vehicle on that occasion.

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80. *Certain matters indicated by camera devices are sufficient evidence*

S. 80
amended by
No. 58/1988
s. 4(3)(a).

If in proceedings for an offence to which section 66 applies the fact that the driver of the vehicle disobeyed a traffic control signal or drove the motor vehicle in a particular portion of a highway on any occasion is relevant, evidence of that fact as indicated or determined on that occasion by—

(a) a detection device prescribed for the purposes of section 66; or

S. 80(a)
amended by
No. 5/1990
s. 13(1).

(b) an image or message produced by a detection device prescribed for the purposes of section 66 or by a prescribed process—

S. 80(b)
amended by
Nos 5/1990
s. 13(1),
19/1991 s. 15,
14/2000
s. 20(1).

when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the fact that the driver of the motor vehicle disobeyed a traffic control signal or drove the motor vehicle in that portion of the highway on that occasion.

* * * * *

S. 80(2)
amended by
No. 78/1987
s. 15,
repealed by
No. 58/1988
s. 4(3)(b).

80A. *Certain matters indicated by camera devices are sufficient evidence*

S. 80A
inserted by
No. 84/1994
s. 58,
amended by
No. 14/2000
s. 20(2).

If in proceedings for an offence to which section 66 applies the fact that the unregistered vehicle was being driven at a particular time and place or that number plates were or were not being

displayed at a particular time is relevant, evidence of that fact as indicated or determined at that particular time by an image or message produced by a detection device prescribed for the purposes of section 66, or by a prescribed process, when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the fact that an unregistered vehicle was being driven at a particular time and place or that number plates were or were not being displayed at a particular time.

S. 81
amended by
Nos 78/1987
s. 15, 58/1988
s. 4(4)(a)(b),
5/1990
s. 13(2)(a)(b),
14/2000
s. 20(1),
substituted by
No. 92/2001
s. 20.

81. *Certain matters indicated by speed cameras are sufficient evidence*

- (1) If in proceedings for an offence to which section 66 applies the speed at which a motor vehicle travelled on any occasion is relevant, evidence of the speed of the motor vehicle as indicated or determined on that occasion by—
- (a) a detection device prescribed for the purposes of section 66 when tested, sealed and used in the prescribed manner; or
 - (b) an image or message produced by a detection device prescribed for the purposes of section 66 when tested, sealed and used in the prescribed manner; or
 - (c) an image or message produced by a prescribed process when used in the prescribed manner—

is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the motor vehicle on that occasion.

- (2) If in proceedings for an offence to which section 66 applies the speed limit at the time and place at which a motor vehicle travelled on any occasion is relevant, evidence of the speed limit at that time and place as indicated or determined on that occasion by an image or message produced by a prescribed process when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed limit on that occasion.

82. Evidence of mass

- (1) For the purposes of any prosecution under this Act or the regulations the mass carried on any axle of a motor vehicle or trailer as determined by a prescribed device when tested, sealed and used in the prescribed manner is, after due allowance of the prescribed limits of error, proof, in the absence of evidence to the contrary, of the mass.
- (2) Without prejudice to any other method of determining the mass of a motor vehicle or of its load or of both, the mass of the load of any motor vehicle carrying passengers may, for the purposes of this Act or the regulations, be calculated on the basis that the mass of 16 adult passengers is 1 tonne.

83. Evidence of testing and sealing

A certificate in the prescribed form to the effect that any device referred to in section 79 or 82 has been tested or sealed in the prescribed manner, signed or purporting to be signed by a person authorised to do so by the regulations is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof that the device has been so tested or sealed.

S. 83
amended by
No. 92/2001
s. 21.

S. 83A
inserted by
No. 92/2001
s. 22.

83A. Evidence relating to prescribed detection devices

- (1) A certificate in the prescribed form purporting to be issued by an authorised person certifying—
 - (a) that a prescribed detection device for the purposes of section 66 was tested, sealed or used in the prescribed manner; or
 - (b) that an image or message described in the certificate was produced by a detection device prescribed for the purposes of section 66 or by a prescribed process; or
 - (c) as to any other matter that appears in, or that can be determined from, the records kept in relation to the detection device or the prescribed process by the police force of Victoria—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

- (2) In this section "**authorised person**" means a person authorised for the purposes of this section by the Chief Commissioner of Police.

S. 84
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

84. General evidentiary provisions

S. 84(1)
amended by
Nos 60/1994
s. 29(10),
46/1998
s. 7(Sch. 1),
57/1998
s. 4(5)(a),
92/2001
s. 23(1).

- (1) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Infrastructure or an authorised person certifying as to any matter which appears in or can be calculated from the records kept by the Corporation or the Department of Infrastructure or a delegate of the Corporation or the Department of Infrastructure is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

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(2) Without affecting the generality of any provision of the **Evidence Act 1958**, a certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act and which purports to relate in any way to—

(a) the registration or non-registration of a motor vehicle or trailer; or

(ab) the registration number assigned to a motor vehicle or trailer; or

S. 84(2)(ab)
inserted by
No. 92/2001
s. 23(2).

(ac) the person who is entitled to use or possess a number plate bearing a particular registration number; or

S. 84(2)(ac)
inserted by
No. 92/2001
s. 23(2).

(b) the person who is the owner of a motor vehicle or trailer or in whose name a motor vehicle or trailer is registered; or

(c) the fact that any person is or is not or was or was not permitted under a learner permit or licensed to drive a motor vehicle or a motor vehicle of any particular class; or

(d) the suspension or cancellation of any registration or driver licence; or

(e) the GVM, load capacity or identification of any motor vehicle or trailer; or

S. 84(2)(e)
amended by
No. 57/1998
s. 5(2)(b).

(f) any other matter relating to the use of motor vehicles or trailers on highways—

is, for the purposes of this Act, admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in it.

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S. 84(3)
amended by
Nos 60/1994
s. 29(10),
46/1998
s. 7(Sch. 1),
57/1998
s. 4(5)(a),
14/2000 s. 21.

(3) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Infrastructure certifying that on a particular date a motor vehicle or trailer was registered in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was, if that date is before 1 May 1999, the owner and in any other case the registered operator of that motor vehicle or trailer.

(4) A certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act certifying that on a particular date a motor vehicle or trailer was registered under the corresponding Act in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was the owner of that motor vehicle or trailer.

S. 84(4A)
inserted by
No. 92/2001
s. 23(3).

(4A) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Infrastructure or an authorised person certifying that on a particular date—

- (a) a particular registration number was assigned to a particular motor vehicle or trailer; or
- (b) a particular person was entitled to use or possess a number plate bearing a particular registration number—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that motor vehicle or trailer or that person was entitled to use or possess that number plate, as the case requires.

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- (4B) A certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act certifying that on a particular date—
- (a) a particular registration number was assigned under the corresponding Act to a particular motor vehicle or trailer; or
 - (b) a particular person was entitled under the corresponding Act to use or possess a number plate bearing a particular registration number—

S. 84(4B)
inserted by
No. 92/2001
s. 23(3).

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that motor vehicle or trailer or that person was entitled to use or possess that number plate, as the case requires.

- (5) In any proceedings for a contravention of section 7(1) proof that a motor vehicle or a trailer attached to a motor vehicle was used on a highway without having affixed to it both the identifying number-plates and the appropriate registration label (if any) required by or under this Act is, in the absence of evidence to the contrary, proof that the motor vehicle or trailer was used in contravention of section 7(1).
- (6) In any proceedings for an offence against this Act or the regulations the statement of a member of the police force or an officer of the Corporation or of the Department of Infrastructure—
- (a) that writing or markings on a motor vehicle or trailer indicates or indicate the tare mass of the vehicle or trailer is admissible in evidence and, in the absence of evidence to

S. 84(6)
amended by
Nos 60/1994
s. 29(11),
46/1998
s. 7(Sch. 1).

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the contrary, is proof of the unladen mass of the vehicle or trailer;

- (b) as to the mass of a motor vehicle or trailer which he or she has examined is admissible in evidence and, in the absence of evidence to the contrary, is proof of the mass of the vehicle or trailer;
- (c) that a name written on a motor vehicle or trailer indicates that the named person owns the vehicle or trailer is admissible in evidence and, in the absence of evidence to the contrary, is proof that the named person owns the vehicle or trailer;
- (d) that an address written on a motor vehicle or trailer indicates that the address is the place of business from which the vehicle or trailer normally operates is admissible in evidence and, in the absence of evidence to the contrary, is proof that the specified address is the place of business from which the vehicle or trailer normally operates.

(7) In any proceedings for an offence described in section 66(1)—

S. 84(7)(a)
amended by
No. 5/1990
s. 13(3)(a)(b).

(a) an image or message produced by a detection device prescribed for the purposes of section 66 used to detect speeding offences when tested, sealed and used in the prescribed manner; or

S. 84(7)(b)
amended by
No. 5/1990
s. 13(3)(a)(b).

(b) an image or message produced by a detection device prescribed for the purposes of section 66 used to detect traffic control signal offences when used in the prescribed manner—

showing or indicating—

(c) the date, time or location of the alleged offence or the registration number or general

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identification mark of a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the offence took place on that date or at that time or at that location or in respect of the motor vehicle with that registration number or general identification mark (as the case may be); or

(ca) a number plate bearing a registration number displayed on a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the motor vehicle involved in the offence was the motor vehicle to which that registration number was assigned at the date and time of the offence; or

S. 84(7)(ca)
inserted by
No. 92/2001
s. 23(4).

(d) that a plate marked with the letter P was displayed on a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the motor vehicle was being driven by the holder of a licence issued on probation under this Act during the prescribed period after the date of the issue of the licence; or

(e) that a plate marked with the letter L was displayed on a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the motor vehicle was being driven by the holder of a learner permit.

(8) In this section—

"authorised person" means a person who is authorised or who is the holder of a position authorised for the purposes of this section by the Corporation.

S. 84(8)
inserted by
No. 92/2001
s. 23(5).

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S. 84A
inserted by
No. 19/1991
s. 16,
amended by
No. 14/2000
s. 26(2).

84A. *Unofficial breath analysing instruments*

Evidence of the taking of a test indicating the presence or concentration of alcohol in the blood of a person by a breath analysing instrument installed in any licensed premises under the **Liquor Control Reform Act 1998**, or of the results of that test, is inadmissible in any court or tribunal in any proceedings, whether civil or criminal.

PART 7—INFRINGEMENTS

85. Definitions

In this Part—

"owner" means—

- (a) the person in whose name the motor vehicle is registered at the time of the offence under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth; or
- (b) if the Corporation has received notice of transfer of registration under the regulations, the person whose name is disclosed in the records kept by the Corporation as being entitled to possession of the motor vehicle at the time of the offence; or
- (c) if the motor vehicle is not registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being the owner of or entitled to possession of the motor vehicle at the time of the offence; or
- (ca) if the motor vehicle displays a number plate—
 - (i) the person who, at the time at which the registration number borne by that number plate was

S. 85 amended by No. 44/1989 s. 41(Sch. 2 item 34.4).

S. 85 def. of "owner" amended by Nos 57/1998 s. 5(5)(f), 92/2001 s. 18(5).

last assigned by the Corporation or the corresponding body under a corresponding Act, was the person in whose name the motor vehicle, to which that registration number was assigned, was registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, whether or not that motor vehicle is the same as the motor vehicle involved in the offence; or

(ii) the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being entitled, or last entitled, to use or possess that number plate at the time of the offence; or

(d) if the motor vehicle displays a general identification mark by means of a special identification plate issued under the regulations, the person to whom the mark is assigned at the time of the offence;

"vehicle" includes a motor vehicle and a trailer.

86. *Liability of owner for parking infringement*

S. 86(1)
amended by
No. 92/2001
s. 18(6).

(1) The owner of a vehicle in relation to which a parking infringement occurs is guilty of an offence against the Act, rule, regulation or by-law contravened, in all respects as if that person had been the actual offender who was guilty of the infringement, unless the court is satisfied that the vehicle was a stolen vehicle or that the number plates displayed on the vehicle were stolen.

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(2) Sub-section (1) does not affect the liability of the actual offender, but where the full amount of any penalty has been paid by the actual offender or owner in relation to any parking infringement (whether pursuant to section 89 or on the order of the Magistrates' Court) no further penalty may be imposed on or recovered from the owner or actual offender in relation to that infringement.

S. 86(2)
amended by
No. 57/1989
s. 3(Sch. item
173.18).

(3) Despite sub-sections (1) and (2), the owner of the vehicle is not by virtue of this section guilty of an offence if—

(a) before or within 28 days after the service on the owner of—

S. 86(3)(a)
amended by
Nos 33/1994
s. 24(3)(a),
78/1994
s. 5(1).

(i) a summons;

(ii) a charge under Schedule 3 to the
Magistrates' Court Act 1989; or

S. 86(3)(a)(ii)
substituted by
No. 57/1989
s. 3(Sch. item
173.19(a)).

(iii) a courtesy letter under Schedule 7 to
that Act—

S. 86(3)(a)(iii)
amended by
No. 57/1989
s. 3(Sch. item
173.19(b)).

(whichever is first served) in respect of the parking infringement concerned the owner supplies to the informant in a sworn statement in writing or in a statutory declaration the name and address of the person who was in charge of the vehicle at the relevant time; or

(b) the owner satisfies the court that the owner did not know and could not with reasonable diligence have ascertained that name and address.

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S. 86(4)
amended by
No. 57/1989
s. 3(Sch. item
173.20).

(4) In sub-section (3) a reference to "the informant" in relation to a courtesy letter under Schedule 7 to the **Magistrates' Court Act 1989** is a reference to the appropriate officer under that Part.

S. 86(4A)
inserted by
No. 33/1994
s. 25(2).

(4A) A proceeding against the person named in a statement or declaration supplied under sub-section (3)(a) in respect of the parking infringement concerned may be commenced not later than 12 months after the date on which the statement or declaration was supplied²⁹.

S. 86(5)
amended by
No. 33/1994
s. 24(3)(b).

(5) Any statement or declaration purporting to be made under sub-section (3)(a) if produced in any proceedings against the person named in it and in respect of the parking infringement concerned is evidence that that person was in charge of the vehicle at all relevant times relating to that parking infringement.

87. *Service of parking infringement notices*

S. 87(1)
amended by
Nos 17/1994
s. 13, 25/1996
s. 5(1),
57/1998
s. 4(5)(b)(i).

(1) If a person who is referred to in section 77(2) or an officer who is referred to in section 77(4) has reason to believe that a parking infringement has been committed in respect of any vehicle on land or premises other than a council controlled area within the meaning of Part 7A, he or she may serve or cause to be served a parking infringement notice as provided in the regulations.

S. 87(1AA)
inserted by
No. 4/2001
s. 29(6).

(1AA) Despite sub-section (1), if a parking infringement (other than a parking infringement involving a contravention of section 90E) occurs on land which is part of the Parliamentary reserve, no parking infringement notice in respect of it may be served except on the written direction of a presiding officer authorising the serving of a parking infringement notice either generally or in a particular case.

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- (1AB) In a prosecution in relation to a parking infringement notice served in accordance with this section occurring on the Parliamentary reserve, a certificate which purports to be signed by a presiding officer, stating that a person is authorised to serve that parking infringement notice or take proceedings in respect of that parking infringement notice is evidence, and, in the absence of evidence to the contrary, is proof, that the person is so authorised. **S. 87(1AB) inserted by No. 4/2001 s. 29(6).**
- (1AC) All courts must take judicial notice of the signature of a presiding officer on a certificate referred to in sub-section (1AB). **S. 87(1AC) inserted by No. 4/2001 s. 29(6).**
- (1A) Without limiting sub-section (1), if a person, not being a member of staff of the municipal council, who is authorised in writing to do so either generally or in any particular case by a municipal council has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of the municipal council, he or she may serve or cause to be served a parking infringement notice as provided in the regulations. **S. 87(1A) inserted by No. 25/1996 s. 5(2).**
- (1B) If— **S. 87(1B) inserted by No. 25/1996 s. 5(2).**
- (a) a member of the police force; or
 - (b) a member of staff of the municipal council; or
 - (c) a person, not being a member of staff of the municipal council, who is authorised in writing to do so either generally or in any particular case by the municipal council—
- has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of a municipal council, being land that is a council controlled area within the meaning of Part 7A, he or she may
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serve or cause to be served a parking infringement notice as provided in the regulations.

S. 87(1C)
inserted by
No. 25/1996
s. 5(2).

- (1C) A municipal council may only authorise under sub-section (1A) or (1B)(c) a person whom it is satisfied—
- (a) is competent to exercise the functions conferred on an authorised person by or under this Part; and
 - (b) is of good repute, having regard to character, honesty and integrity; and
 - (c) has agreed in writing to exercise the functions conferred on an authorised person by or under this Part according to performance criteria established from time to time by the municipal council.

S. 87(1D)
inserted by
No. 25/1996
s. 5(2).

- (1D) A municipal council must issue an identity card to any person authorised by it under sub-section (1A) or (1B)(c).

S. 87(1E)
inserted by
No. 25/1996
s. 5(2).

- (1E) An identity card under sub-section (1D) must—
- (a) contain a photograph of the authorised person; and
 - (b) contain the signature of the authorised person; and
 - (c) be signed by a member of staff of the municipal council authorised by the municipal council to do so either generally or in any particular case.

S. 87(1F)
inserted by
No. 25/1996
s. 5(2).

- (1F) A person issued with an identity card under sub-section (1D) must produce it on being requested to do so.

Penalty: 5 penalty units.

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|---|--|
| (1G) Any action taken or thing done by a person authorised under sub-section (1A) or (1B)(c) is not invalidated by his or her failure to produce his or her identity card. | S. 87(1G)
inserted by
No. 25/1996
s. 5(2). |
| (1H) A person must not falsely represent himself or herself to be a person authorised under sub-section (1A) or (1B)(c).

Penalty: 10 penalty units. | S. 87(1H)
inserted by
No. 25/1996
s. 5(2). |
| (2) Every parking infringement notice must contain the prescribed particulars. | S. 87(2)
amended by
No. 57/1998
s. 4(5)(b)(ii). |
| (3) The penalty prescribed for the purposes of this section for any parking infringement, other than a penalty for a parking infringement referred to in sub-section (3A) or a penalty fixed by any municipal council pursuant to sub-section (4), is the amount prescribed by the regulations in respect of infringements of the kind in question. | S. 87(3)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 105.9),
25/1996
s. 6(1). |
| (3A) The penalty for a parking infringement constituted by a contravention of section 90E is \$100 or the higher amount prescribed by the regulations in respect of infringements of that kind. | S. 87(3A)
inserted by
No. 25/1996
s. 6(2). |
| (4) Despite sub-section (3), a municipal council may by resolution fix a penalty of an amount not greater than \$50 for a parking infringement in contravention of a regulation under this Act in respect of which regulations under this Act prescribe a penalty of an amount not greater than the penalty to be fixed, and the penalty so fixed is the penalty prescribed for the purposes of this section in respect of such a parking infringement occurring within the municipal district of that municipal council. | S. 87(4)
amended by
No. 78/1987
s. 17,
substituted by
Nos 12/1989
s. 4(1)
(Sch. 2 item
105.10) (as
amended by
No. 13/1990
s. 38(2)(q)),
14/2000 s. 22. |

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S. 88
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

88. *Traffic infringements*

S. 88(1)
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 105.11),
53/1989
s. 17(a),
60/1994
s. 29(12)(a)(b),
44/1997
s. 34(1),
46/1998
s. 7(Sch. 1),
57/1998
s. 4(5)(c)(i).

- (1) A person who is referred to in section 77(2)(a), (c) or (d) who has reason to believe that a person has committed a traffic infringement of a kind that is prescribed for the purposes of this Part may issue or cause to be issued and serve or cause to be served on that person a traffic infringement notice in accordance with the regulations.

S. 88(1A)
inserted by
No. 53/1989
s. 17(b),
amended by
Nos 5/1990
s. 11(7),
44/1997
s. 34(2).

- (1A) Despite sub-section (1), a traffic infringement notice in respect of a drink-driving infringement, or of an infringement detected by a detection device prescribed for the purposes of section 66, may only be issued or caused to be issued by a member of the police force.

S. 88(2)
amended by
No. 57/1998
s. 4(5)(c)(ii).

- (2) Every traffic infringement notice must contain the prescribed particulars, including—

S. 88(2)(a)
inserted by
No. 53/1989
s. 17(c).

- (a) in the case of a traffic infringement notice in respect of a drink-driving infringement, the concentration of alcohol alleged to have been present in the person's blood; and

S. 88(2)(b)
inserted by
No. 53/1989
s. 17(c).

- (b) in the case of a traffic infringement notice in respect of an excessive speed infringement, the speed at which the motor vehicle is alleged to have been driven and the permitted speed.

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(3) A traffic infringement notice may be withdrawn, whether the appropriate penalty has been paid or not, at any time within 28 days of the service of the notice, by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which contains the prescribed particulars and is signed by a prosecution officer.

S. 88(3)
amended by
No. 57/1998
s. 4(5)(c)(iii).

(3A) Despite sub-section (3), a withdrawal notice in relation to a traffic infringement notice of a kind referred to in sub-section (1A) must be signed by a member of the police force.

S. 88(3A)
inserted by
No. 5/1990
s. 11(8).

(4) If the appropriate amount specified in the notice as the penalty for the infringement has been paid before the notice is withdrawn the amount so paid must be refunded upon the notice of withdrawal being given.

(5) The penalty for the purposes of this section in respect of any traffic infringement is the amount prescribed in respect of that infringement.

(6) A person referred to in section 77(2)(a), (c) or (d) who has reason to believe that a person (other than the driver of a motor vehicle) has committed a traffic infringement may require that person to state his or her name and address.

S. 88(6)
amended by
No. 57/1998
s. 4(5)(c)(iv).

(7) A person must not refuse or fail to state his or her name and address, or state a false name or address.

Penalty: 2 penalty units.

89. *Payment of penalty*

(1) Subject to sub-section (4), if before the expiration of the period specified in the infringement notice for the payment of the penalty or, where the person giving the notice so allows, at any time before the service of a summons in respect of the infringement, the amount of the penalty shown on the notice is paid at the appropriate place—

S. 89(1)
amended by
No. 57/1998
s. 4(5)(d).

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- (a) the offender must be taken to have expiated the infringement by payment of the penalty; and
- (b) no further proceedings may be taken in respect of the infringement; and
- (c) no conviction for the infringement may be regarded as having been recorded.

S. 89(2)
amended by
No. 57/1989
s. 3(Sch.
item 173.21).

(2) Every penalty paid pursuant to this section must be applied in the same manner as if the offender had been convicted of the infringement in the Magistrates' Court on a charge filed by the member of the police force or authorised officer who served the infringement notice or caused it to be served.

(3) Payment of any penalty under this section may be effected in accordance with the regulations.

S. 89(4)
amended by
No. 57/1989
s. 3(Sch. item
173.22).

(4) If an infringement notice has been served and the amount of the penalty is not paid before the expiration of the period specified in the notice as the time for payment or where, in the case of a traffic infringement notice, the notice has been withdrawn, nothing in this section in any way prejudices the institution or prosecution of proceedings for the infringement in question (whether pursuant to Schedule 3 to the **Magistrates' Court Act 1989** or otherwise) but in any case, where the court is satisfied that an infringement notice was served in respect of the infringement and has not been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose (including, without limiting the generality of the foregoing, the purposes of any enactment imposing, authorising or requiring the imposition of any disqualification, disability or higher penalty on convicted people or people convicted on more than one occasion) except in relation to—

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- (a) the making of the conviction itself; and
- (b) any subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal or order to review.
- (5) Despite anything to the contrary in this section, the regulations may provide that demerit points are incurred under section 25 in respect of a traffic infringement by a person to whom sub-section (1) or (4) of this section applies.
- (6) Despite anything to the contrary in this section, the fact that payment of a penalty was made or a conviction was imposed by the court in respect of an infringement for which an infringement notice was served—
- (a) may be recorded for the purposes of a heavy vehicle registration suspension scheme; and
- (b) does not prevent the suspension of the registration of a heavy vehicle under that scheme.
- (7) In sub-section (6) a heavy vehicle registration suspension scheme is a scheme established under the regulations permitting the suspension of the registration of heavy vehicles for speeding offences and includes any corresponding scheme established under the Interstate Road Transport Act 1985 of the Commonwealth or under an Act of another State or Territory.
- 89A. *Effect of drink-driving infringements and excessive speed infringements***
- (1) Section 89 does not apply to drink-driving infringements or excessive speed infringements.
- (2) Subject to section 89B, a traffic infringement notice that is issued in respect of a drink-driving infringement or excessive speed infringement

S. 89(6)
inserted by
No. 92/2001
s. 24.

S. 89(7)
inserted by
No. 92/2001
s. 24.

S. 89A
inserted by
No. 53/1989
s. 18.

S. 89A(2)
amended by
No. 5/1990
s. 15(4).

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takes effect, 28 days after the date of the notice, as a conviction for the offence specified in the notice, unless the person to whom the notice was issued objects, within that time and in accordance with this section, to the infringement notice³⁰.

- (3) Despite sub-section (2), if an infringement notice is withdrawn under sub-section (7)(c) the person to whom the notice was issued must for all purposes be taken not to have been convicted of the offence specified in the notice.
- (4) A person may object to the infringement notice by giving notice in writing of the objection to the person specified for that purpose in the infringement notice.
- (5) A notice of objection must state—
 - (a) that the person to whom the infringement notice was issued refuses to pay the penalty; and
 - (b) that the person requests that the matter be dealt with by a court; and
 - (c) whether or not the person intends to defend any charge arising out of the facts specified in the infringement notice.
- (6) The giving of notice of objection to the infringement notice has the effect that—
 - (a) the infringement notice is cancelled; and
 - (b) the person to whom the infringement notice was issued may only be proceeded against by a charge filed for the alleged offence.
- (7) If an infringement notice is issued in respect of a drink-driving infringement and it subsequently appears that the offence in respect of which the notice was issued is not a traffic infringement of a kind that is prescribed for the purposes of this Part—

S. 89A(4)
amended by
No. 5/1990
s. 15(5).

S. 89A(5)(c)
amended by
No. 37/1996
s. 7.

S. 89A(6)(b)
amended by
No. 57/1989
s. 5(5)(b).

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- (a) the infringement notice operates as if the infringement were so prescribed; and
 - (b) any cancellation, disqualification or suspension, and any extension of probation, that results from the operation of the notice is valid; and
 - (c) any member of the police force may, during the period of cancellation, disqualification or suspension, withdraw the infringement notice by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which contains the prescribed particulars and is signed by a prosecution officer; and
 - (d) the person may be proceeded against by a charge filed for the alleged offence.
- (8) A court which convicts a person or finds a person guilty after an infringement notice has been withdrawn in accordance with sub-section (7)(c) must take into account any period of cancellation, disqualification or suspension, and any extension of probation, of a driver licence or permit that resulted from the operation of the notice that had passed before the date of the conviction or finding.

S. 89A(7)(c)
amended by
No. 57/1988
s. 4(5)(e).

S. 89A(7)(d)
amended by
No. 57/1989
s. 5(5)(b).

S. 89A(8)
amended by
No. 41/1992
s. 6(1)(a)(b).

89B. *Extension of time to object if no actual notice*

S. 89B
inserted by
No. 53/1989
s. 18.

- (1) If a traffic infringement notice that is issued in respect of a drink-driving infringement or an excessive speed infringement is not delivered personally to the person to whom it was issued, and that person is not in fact aware, before the notice takes effect as a conviction, that it had been

S. 89B(1)
amended by
No. 57/1989
s. 5(5)(c)(i).

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issued, the person may, within 7 days after becoming aware of it, apply in accordance with the regulations to the Magistrates' Court to have the time for objecting to the notice extended.

- (2) The court must not grant an extension of time unless it is satisfied that the person was not in fact aware, before the infringement notice took effect as a conviction, that it had been issued.
- (3) If the court grants an extension of time, and if a notice of objection is given, in accordance with section 89A(4) or with any order made by the court, before the expiry of the extended time, the giving of the notice has the effect that—
 - (a) the conviction is set aside; and
 - (b) any cancellation, disqualification or suspension, and any extension of probation, that resulted from the conviction is set aside; and
 - (ba) any demerit points recorded as a result of the conviction are cancelled; and
 - (c) anything done by the person before he or she became aware that the infringement notice had been issued that constituted an offence only because of any cancellation, disqualification or suspension, or any extension of probation, that resulted from the conviction must be taken not to constitute that offence; and
 - (d) any of the procedures set out in Schedule 7 to the **Magistrates' Court Act 1989** that are being used for the enforcement of the amount specified in the infringement notice as payable in respect of the offence for which the notice was issued must be

S. 89B(3)(ba)
inserted by
No. 73/1998
s. 4(8).

S. 89B(3)(d)
amended by
No. 57/1989
s. 5(5)(c)(ii)
(A)(B).

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discontinued and any warrant issued under that Schedule ceases to have effect; and

- (e) the infringement notice is cancelled; and
- (f) the person may only be proceeded against by a charge filed for the alleged offence; and

S. 89B(3)(f)
amended by
No. 57/1989
s. 5(5)(c)(iii).

- (g) any period of cancellation, disqualification or suspension, and any extension of probation, of a driver licence or permit that—

S. 89B(3)(g)
amended by
No. 41/1992
s. 6(2).

- (a) resulted from the conviction; and
- (b) occurred after the person became aware that the infringement notice had been issued—

must be taken into account by any court which subsequently convicts the person, or finds the person guilty, of the offence in respect of which the infringement notice was issued.

- (4) Despite anything to the contrary in any other Act, a charge referred to in sub-section (3)(f) may be filed not later than 12 months after the date of the notice of objection.
- (5) Any reference in sections 89C or 89D to the 28 day period must, if a court has granted an extension of that period in a particular case, be read as a reference to the extended period.

S. 89B(4)
amended by
No. 57/1989
s. 5(5)(c)(iv).

89C. *Cancellation of licence or permit for drink-driving infringements*

S. 89C
inserted by
No. 53/1989
s. 18.

- (1) Any driver licence or permit held by a person to whom a traffic infringement notice has been issued in respect of a drink-driving infringement is cancelled, and the person is disqualified from obtaining one, for a period ascertained in

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accordance with Column 2 of Schedule 1 by reference to the blood alcohol concentration specified in the notice if—

S. 89C(1)(a)
amended by
No. 23/2001
s. 14(1),
substituted by
No. 92/2001
s. 25.

- (a) the blood alcohol concentration specified in the notice is—
 - (i) 0.05 grams per 100 millilitres of blood or more, if section 52 applies to the person; or
 - (ii) 0.07 grams per 100 millilitres of blood or more, in any other case; and
- (b) no notice of objection to the infringement notice has been given and the 28 day period has expired.

**Note to
s. 89C(1)**
inserted by
No. 46/2002
s. 10(a).

Note: The period for which the person is disqualified from obtaining a driver licence or permit is reduced if the person's licence was already suspended in accordance with a notice under section 51(1B) (see section 51(3C)).

- (2) A probationary driver licence held by a person to whom a traffic infringement notice has been issued in respect of a drink-driving infringement is suspended for 1 month, and the period of probation is extended by 7 months, if—

S. 89C(2)(a)
amended by
No. 23/2001
s. 14(2).

- (a) the blood alcohol concentration specified in the notice is less than 0.05 grams per 100 millilitres of blood; and
- (b) no notice of objection to the infringement notice has been given and the 28 day period has expired.

S. 89C(3)
amended by
No. 5/1990
s. 15(7).

- (3) A permit held by a person to whom a traffic infringement notice has been issued in respect of a drink-driving infringement is suspended for 1 month and the person is disqualified from obtaining a further licence or permit for 1 month if—

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- (a) the blood alcohol concentration specified in the notice is less than 0.05 grams per 100 millilitres of blood; and
- (b) no notice of objection to the infringement notice has been given and the 28 day period has expired.
- (3A) If a person to whom a traffic infringement notice has been issued in respect of a drink-driving infringement—
- (a) is exempted under the regulations from the requirements of section 18(1)(a) because he or she holds an appropriate licence or permit issued in another State, Territory or country; and
- (b) does not give notice of objection to the infringement notice and the 28 day period has expired—
- the person is disqualified from driving a motor vehicle on a road in Victoria for the period for which he or she would have been disqualified, suspended or suspended and disqualified under this section had the person held a licence or permit under this Act.
- (4) Any cancellation and disqualification under sub-section (1), suspension and extension of probation under sub-section (2) or suspension and disqualification under sub-section (3) or disqualification under sub-section (3A) takes effect on the expiry of the 28 day period.
- (5) When any cancellation or suspension has taken effect, the Corporation may, by notice in writing served on the person whose licence or permit is cancelled or suspended, require that person to surrender any licence or permit document to the Corporation.

S. 89C(3)(a)
amended by
No. 23/2001
s. 14(3).

S. 89C(3A)
inserted by
No. 57/1998
s. 17(1).

S. 89C(4)
amended by
Nos 5/1990
s. 15(8),
57/1998
s. 17(2).

S. 89C(5)
amended by
No. 44/1989
s. 42(3).

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- (6) A person on whom a notice is served under subsection (5) must comply with the notice within the time specified in it.

Penalty: 5 penalty units.

- (7) Payment of a penalty in respect of a drink-driving infringement may be made in accordance with the regulations.

- (8) A person, other than a person referred to in subsection (3A), who pays a penalty in respect of a drink-driving infringement must, on or before the expiry of the 28 day period, surrender his or her licence or permit document in accordance with the regulations, if the concentration of alcohol specified in the notice to have been present in the person's blood is more than 0.05 grams per 100 millilitres of blood.

S. 89C(8)
amended by
No. 57/1998
s. 17(3).

S. 89D
inserted by
No. 53/1989
s. 18.

89D. *Suspension of licence or permit for excessive speed infringements*

- (1) Any driver licence or permit held by a person to whom a traffic infringement notice has been issued in respect of an excessive speed infringement is suspended for a period ascertained in accordance with Column 2 of Schedule 5 by reference to the speed specified in the notice and the person is disqualified from obtaining a further licence or permit for that period if no notice of objection to the infringement notice has been given and the 28 day period has expired.

S. 89D(1)
amended by
No. 5/1990
s. 15(9).

- (1A) If a person to whom a traffic infringement notice has been issued in respect of an excessive speed infringement—
- (a) is exempted under the regulations from the requirements of section 18(1)(a) because he or she holds an appropriate licence or permit

S. 89D(1A)
inserted by
No. 57/1998
s. 18.

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issued in another State, Territory or country;
and

- (b) does not give notice of objection to the infringement notice and the 28 day period has expired—

the person is disqualified from driving a motor vehicle on a road in Victoria for the period for which he or she would have been suspended and disqualified under this section had the person held a licence or permit under this Act.

* * * * *

S. 89D(2)
repealed by
No. 46/2002
s. 11(a).

- (3) Any suspension or disqualification under this section takes effect on the expiry of the 28 day period.

S. 89D(3)
amended by
Nos 5/1990
s. 15(10),
46/2002
s. 11(b).

- (4) When any suspension has taken effect, the Corporation may, by notice in writing served on the person whose licence or permit is suspended, require that person to surrender any licence or permit document to the Corporation.

S. 89D(4)
amended by
No. 44/1989
s. 42(3).

- (5) A person on whom a notice is served under subsection (4) must comply with the notice within the time specified in it.

Penalty: 5 penalty units.

- (6) Payment of a penalty in respect of an excessive speed infringement may be made in accordance with the regulations.

- (7) A person, other than a person referred to in subsection (1A), who pays a penalty in respect of an excessive speed infringement must, on or before the expiry of the 28 day period, surrender his or

S. 89D(7)
amended by
No. 57/1998
s. 18(2).

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her licence or permit document in accordance with the regulations.

Note to s. 89D inserted by No. 46/2002 s. 11(c).

Note: A period during which a licence or permit is suspended under this section is in addition to, and does not count as part of, a period of suspension under section 25 (see section 25(4C) and (4D)).

S. 89E inserted by No. 53/1989 s. 18.

89E. Application and modification of certain provisions of Magistrates (Summary Proceedings) Act 1975

S. 89E(1) amended by No. 57/1989 s. 5(5)(d)(i).

- (1) The following provisions of Schedule 7 to the **Magistrates' Court Act 1989** do not apply to or in relation to a traffic infringement notice in respect of a drink-driving infringement or an excessive speed infringement—

S. 89E(1)(a) substituted by No. 57/1989 s. 5(5)(d)(ii).

(a) clause 3(6);

S. 89E(1)(b) substituted by No. 57/1989 s. 5(5)(d)(ii).

(b) clause 4(2)(e) and (g);

S. 89E(1)(c) substituted by No. 57/1989 s. 5(5)(d)(ii).

(c) clause 9(1)(a) and (b).

S. 89E(2) amended by No. 57/1989 s. 5(5)(e)(i)(ii).

- (2) Sub-clause (3) of clause 8 of Schedule 7 to the **Magistrates' Court Act 1989** applies to and in relation to a traffic infringement notice in respect of a drink-driving infringement or an excessive speed infringement as if that sub-clause did not include "and with respect to applications for revocation of enforcement orders".

S. 89E(3) amended by No. 57/1989 s. 5(5)(f)(i)(ii).

- (3) Clause 10 of Schedule 7 to the **Magistrates' Court Act 1989** applies to and in relation to a traffic infringement notice in respect of a drink-

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driving infringement or an excessive speed infringement as if sub-clause (1) of that clause did not include "or any person against whom an enforcement order has been made".

- (4) Subject to sub-sections (1) to (3), and sections 89A to 89D of this Act, the procedures set out in Schedule 7 to the **Magistrates' Court Act 1989** may be used for the enforcement of the amount specified in a traffic infringement notice issued in respect of a drink-driving infringement or an excessive speed infringement as payable in respect of the offence for which the notice was issued.

S. 89E(4)
amended by
No. 57/1989
s. 5(5)(g).

90. Proof of prior convictions

- (1) If a person is served with a summons for any infringement and it is alleged that he or she has been previously convicted or found guilty of any infringement or infringements there may be served with the summons a separate document containing the prescribed particulars signed by the informant setting out particulars of the alleged prior convictions or findings of guilt.
- (2) The document setting out the alleged prior convictions or findings of guilt—
- (a) must be endorsed with a notice containing the prescribed particulars; and
- (b) may be served in any manner in which the summons for the infringement may be served.
- (3) If the court by whom any person has been convicted or found guilty is satisfied that a copy of any such document was served on that person at least 14 days before the hearing of the

S. 90(1)
amended by
Nos 41/1992
s. 6(3)(a)(b),
57/1998
s. 4(5)(f).

S. 90(2)
amended by
No. 41/1992
s. 6(4).

S. 90(2)(a)
amended by
No. 57/1998
s. 4(5)(f).

S. 90(3)
amended by
No. 41/1992
s. 6(5)(a).

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information the document is admissible and is evidence—

- (a) that the person was convicted or found guilty of the offences alleged in the document; and
- (b) of the particulars relating to the convictions or findings of guilt set out in the document.

S. 90(3)(b)
amended by
No. 41/1992
s. 6(5)(b).

(4) Any such document may not be tendered in evidence without the consent of the defendant if the defendant is present at the hearing of the information.

S. 90(5)
amended by
Nos 57/1989
s. 3(Sch.
item 173.23),
41/1992
s. 6(6)(a)–(c).

(5) Without limiting the generality of the provisions of Division 5 of Part 4 of the **Magistrates' Court Act 1989**, where any evidence of prior convictions or findings of guilt has been tendered pursuant to the provisions of this section, the court may set aside, on any terms as to costs or otherwise that the court decides, any conviction, finding or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted, or found guilty, of the offences as alleged in the document.

PART 7A—PRIVATE PARKING AREAS

Pt 7A
(Heading and
ss 90A–90H)
inserted by
No. 25/1996
s. 4.

90A. Definitions

S. 90A
inserted by
No. 25/1996
s. 4.

In this Part—

"council controlled area" means an area in respect of which there is in force an agreement under section 90D;

"driver", in relation to a motor vehicle that has been parked or left standing, means the person who was driving the motor vehicle when it was parked or left standing;

"owner", in relation to a motor vehicle, has the same meaning as in Part 7;

"parking services", in relation to land, means services in relation to the regulation or control of the parking of motor vehicles on the land including the issue of parking infringement notices;

"public parking area" means—

- (a) an area provided on land for the parking of motor vehicles by members of the public on payment of a charge; or
- (b) any area that is prescribed to be a public parking area, or is included in a class of areas that is prescribed to be public parking areas, for the purposes of this Part.

S. 90B
inserted by
No. 25/1996
s. 4.

90B. *Abolition of distress damage feasant in relation to motor vehicles*

- (1) The common law remedy of distress damage feasant is abolished to the extent to which it applies in relation to trespass on land by motor vehicles.
- (2) Nothing in this Part affects any right that a person may have, apart from this Part, to remove or cause to be removed from land a motor vehicle that has been parked or left standing on that land.
- (3) Sub-section (2) does not apply to a motor vehicle that has been detained or immobilised in contravention of section 90C.

S. 90C
inserted by
No. 25/1996
s. 4.

90C. *Detention or immobilisation of motor vehicles*

- (1) A person, not being—
 - (a) a member of the police force; or
 - (b) the sheriff or any other person authorised by law to execute a warrant against the motor vehicle; or
 - (c) a person authorised to do so by or on behalf of the owner or driver of the motor vehicle—

must not detain or immobilise (whether by wheel clamps or any other means) a motor vehicle that has been parked or left standing (whether attended or not) on land to which this section applies.

Penalty: 20 penalty units.

- (2) This section applies to land other than land that is—
 - (a) a public highway within the meaning of the **Local Government Act 1989**; or
 - (b) a declared road within the meaning of the **Transport Act 1983**; or
 - (c) a public parking area.

- (3) Nothing in this section affects the exercise of any power over a motor vehicle that a person may have as the holder of a security interest (within the meaning of the **Chattel Securities Act 1987**) in the motor vehicle or under a possessory lien or pledge over the motor vehicle.

90D. Agreements

S. 90D
inserted by
No. 25/1996
s. 4.

- (1) The owner or occupier of any land (other than land on which, apart from section 90E, a parking infringement could be committed in respect of a vehicle) may enter into an agreement with the municipal council in whose municipal district the land is situated for the provision by that council of parking services.
- (2) The agreement must provide for—
- (a) compliance by the owner or occupier with specified requirements in relation to—
 - (i) restricting access to the land by motor vehicles;
 - (ii) signs to be placed, or markings to be made, on the land;
 - (iii) the siting, installation and maintenance of signs and markings;
 - (b) the kind of parking services to be provided by the municipal council and the times at which, or circumstances in which, those parking services are to be provided;
 - (c) the fees, costs and charges (if any) to be paid to the municipal council by the owner or occupier;
 - (d) rights of access to the land by persons authorised by the municipal council in connection with the provision of parking services and the duties and obligations to be
-

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- complied with by those persons while exercising those rights;
- (e) any other matter that may be prescribed.
- (3) The agreement may contain—
- (a) a provision leaving any matter to be determined, approved or dispensed with by a specified person or body;
 - (b) a provision providing for the suspension of obligations under the agreement in specified circumstances;
 - (c) any other provisions that are not inconsistent with this Part or the regulations.
- (4) A provision of an agreement under this section that specifies requirements in relation to signs or their siting must—
- (a) where appropriate and subject to any standards notified under sub-section (5), provide for signs of the kind used for the regulation and control of vehicular traffic on highways;
 - (b) require signs installed on the land to be prominently displayed and clearly visible to users of the land;
 - (c) require the installation of a sign indicating the place to which a vehicle towed from the land under section 90F is to be taken and stored pending payment of the release fee or giving a telephone number from which information about that place may be obtained at any time of the day or night;
 - (d) comply with standards notified under sub-section (5).

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- (5) The Minister may, by notice in the Government Gazette, require compliance with standards for signs in council controlled areas.
- (6) A standard may apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—
 - (a) wholly or partially or as amended by the standard; or
 - (b) as issued or published at the time the notice is published or at any time before then; or
 - (c) as issued or published from time to time.
- (7) The standards must be available for inspection on request at a place which is open to the public and is specified in the notice.

90E. *Parking in council controlled areas*

A person must not park a motor vehicle, or leave a motor vehicle standing, in a council controlled area or part of a council controlled area—

- (a) contrary to the inscription on any sign associated with the area or part; or
- (b) except in the manner indicated by the inscription on any sign associated with the area or part; or
- (c) contrary to any limitation in respect of days, periods of the day, classes of persons or classes of vehicles indicated by the inscription on any sign associated with the area or part.

Penalty: 3 penalty units.

**S. 90E
inserted by
No. 25/1996
s. 4.**

S. 90F
inserted by
No. 25/1996
s. 4.

90F. *Removal of vehicles from council controlled areas*

- (1) A member of the police force may, in accordance with this section, remove, or cause to be removed, from a council controlled area a motor vehicle that has been parked or left standing in that area and in respect of which a parking infringement has been committed.
- (2) A member of the police force may only act under sub-section (1) if a parking infringement notice has been served in respect of the parking infringement and—
 - (a) the member of the police force is satisfied that the owner or occupier of the council controlled area has requested the owner or driver of the vehicle to remove it and that person has refused to do so; or
 - (b) in the opinion of the member of the police force, the vehicle—
 - (i) is obstructing access to, or egress from, the council controlled area by vehicles or pedestrians; or
 - (ii) is obstructing the free passage of vehicles or pedestrians within the council controlled area; or
 - (iii) has been left unattended for more than 48 hours; or
 - (iv) is endangering life or property or otherwise causing concern about safety.
- (3) A vehicle removed in accordance with this section from a council controlled area must be towed from the area by a tow truck within the meaning of Part VI of the **Transport Act 1983** operating in accordance with a licence granted under Division 8 of that Part.

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- (4) The authority to tow within the meaning of Part VI of the **Transport Act 1983** must be signed by a member of the police force.
- (5) A vehicle that has been towed under this section must be taken to, and stored at, the place specified in the authority to tow and released to its owner or the owner's agent on payment by that person of a release fee.
- (6) The amount of a release fee must not exceed the prescribed amount or, if there is no prescribed amount, an amount that reasonably represents the cost of towing, storing and releasing the vehicle (including any relevant overhead and other indirect costs).

90G. *Entry by police to council controlled areas*

- (1) A member of the police force may, for the purpose only of issuing parking infringement notices or authorising the towing of motor vehicles, enter any place that is a council controlled area.
- (2) Nothing in this section limits any other power of entry to a council controlled area that a member of the police force has under any other law.

S. 90G
inserted by
No. 25/1996
s. 4.

90H. *Wheel clamping agreements*

- (1) An agreement, whether entered into before or after the commencement of section 4 of the **Road Safety (Wheel Clamping) Act 1996**, is void to the extent to which it authorises, or purports to authorise, a person to do an act in contravention of section 90C or to remove from any land a motor vehicle detained or immobilised in contravention of section 90C.
- (2) A party to an agreement that is void wholly or partly by reason of sub-section (1) is not entitled to recover from the owner or occupier of any land to which the agreement relates or purports to

S. 90H
inserted by
No. 25/1996
s. 4.

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relate or any other person any amount in respect of the provision of services under the void agreement or part agreement and must repay to the person from whom it was received—

- (a) any amount received before the commencement of section 4 of the **Road Safety (Wheel Clamping) Act 1996** in respect of those services, being services that were to be provided after that commencement; and
 - (b) any amount received after the commencement of section 4 of the **Road Safety (Wheel Clamping) Act 1996** in respect of those services.
- (3) If a party does not repay an amount required by sub-section (2) to be repaid, the person entitled to be repaid may recover the amount from the party as a debt in a court of competent jurisdiction.
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PART 8—GENERAL

91. *Delegation*

S. 91
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

- (1) The Corporation may, by instrument under its official seal, delegate to a person by name or to the holder of an office or position (including a person who is an officer of the Transport Accident Commission) any power of the Corporation under this Act or the regulations, other than this power of delegation.
- (2) Nothing in sub-section (1) limits the operation of section 32 of the **Transport Act 1983**.

S. 91(1)
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.3),
84/1994 s. 59.

92. *Disclosure of information*

- (1) In this section—

"confidentiality agreement" means an agreement referred to in sub-section (4);

"relevant person" means a person who is or has been a delegate of or employed by or engaged to provide services for—

- (a) the Corporation; or
- (b) another person or body engaged to provide services for the Corporation;

"Victorian law enforcement agency" means—

- (a) the police force of Victoria; or
- (b) any other authority or person responsible for the investigation or prosecution of offences against the laws of Victoria or the delegates or employees of, or persons engaged to provide services for, such authority or person; or

S. 92
amended by
Nos 44/1989
s. 41(Sch. 2
item 34.4),
120/1993
s. 60, 84/1994
s. 60(1)(2),
substituted by
No. 30/1997
s. 4.

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- (c) a person authorised by the laws of Victoria to execute a warrant.
- (2) Subject to this section, the Corporation or a relevant person must not—
- (a) disclose information gained by the Corporation or in the course of the delegation, employment or engagement of the relevant person that is information of a personal nature or that has commercial sensitivity for the person about whom it is kept; or
 - (b) use the person's knowledge of any such information.

Penalty: 100 penalty units.

S. 92(2A)
inserted by
No. 92/2001
s. 26.

- (2A) Sub-section (2) does not prevent the disclosure or use of the following information—
- (a) the fact that a vehicle is or has been entered on the register of written-off vehicles;
 - (b) the date on which, or the period during which, a vehicle was entered on the register of written-off vehicles;
 - (c) any information entered in, or derived from, the register of written-off vehicles that relates to the nature or extent of damage to any vehicle;
 - (d) any other information entered in, or derived from, the register of written-off vehicles that is of a kind prescribed by the regulations.
- (3) Sub-section (2) does not prevent the disclosure or use of information in accordance with the regulations, if any—
- (a) in connection with the administration of this Act or the regulations; or

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- (b) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of such proceedings; or
- (c) to the Transport Accident Commission; or
- (d) for the purposes of the investigation or prosecution by a Victorian law enforcement agency of offences of any kind; or
- (e) for the purposes of the enforcement by a Victorian law enforcement agency of—
 - (i) judgments and orders of courts in their criminal jurisdiction; or
 - (ii) infringement penalties by the procedure set out in Schedule 7 to the **Magistrates' Court Act 1989**; or
- (f) for the purposes of the enforcement by the sheriff of judgments and orders of courts in their civil jurisdiction; or
- (g) for the purposes of the **Crimes (Confiscation of Profits) Act 1986** or the **Confiscation Act 1997**; or
- (h) in accordance with an arrangement between a Minister of the Crown in right of Victoria and a Minister of the Crown in right of the Commonwealth or another State or a Territory, for the purposes of the investigation or prosecution of an offence against the laws of the Commonwealth or that other State or Territory or the enforcement of a judgment or order of a court in such a prosecution; or

S. 92(3)(g)
amended by
No. 108/1997
s. 155 (as
amended by
No. 43/1998
s. 35).

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S. 92(3)(ha)
inserted by
No. 73/1998
s. 5(1)(a).

- (ha) for the purposes of the project known as NEVDIS which establishes a national exchange of vehicle and driver information system; or
- (i) about a person if the Corporation believes on reasonable grounds that the disclosure or use is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or another person; or

S. 92(3)(ia)
inserted by
No. 73/1998
s. 5(1)(b).

- (ia) to the manufacturer or supplier of a motor vehicle or trailer of the name and address of the registered operator of the vehicle or trailer in connection with a recall procedure being conducted by the manufacturer or supplier for the rectification of a possible safety-related defect in the vehicle or trailer; or

S. 92(3)(ib)
inserted by
No. 46/2002
s. 12.

- (ib) for the purposes of the police force of Victoria or the Corporation notifying a person about the possible consequences of incurring further demerit points; or
- (j) to or by a court in compliance with a witness summons or a subpoena issued by it or an order made by it; or
- (k) to or by the person to whom the information relates; or
- (l) to or by a person who is expressly authorised in writing by the person to whom the information relates to obtain it; or
- (m) the disclosure or use of which is required or authorised by law for another purpose.

- (4) Subject to sub-section (5), if—
- (a) a person (other than a relevant person or a person referred to in sub-section (3)(j), (k) or (l)) or an authority requests information from the Corporation; and
 - (b) the information may be disclosed or used under this section—

the Corporation must first enter into a confidentiality agreement with the person or authority—

- (c) specifying the purposes for which the information is required; and
 - (d) specifying the means by which the information will be provided by the Corporation; and
 - (e) specifying the means by which the confidentiality of the information will be protected; and
 - (f) including an undertaking by the person or authority that the information will only be used for the purposes specified in the agreement.
- (5) Sub-section (4) does not apply if —
- (a) the Corporation has entered into a confidentiality agreement, which is in operation, with the delegator, employer, contractor or principal of the person or authority making the request; and
 - (b) the person or authority making the request is acting within the scope of their actual or apparent authority under the delegation, employment, contractual relationship or agency.

- (6) A person who obtains information under a confidentiality agreement must not disclose or use the information other than for a purpose specified in the agreement (whether or not the person is a party to the agreement).

Penalty: 100 penalty units.

- (7) A person must not use information knowing it to be disclosed or used in contravention of this section or a confidentiality agreement.

Penalty: 100 penalty units.

93. *Service of notices*

If under this Act or the regulations a notice is required or permitted to be served on any person, the notice may, unless the contrary intention appears, be served in or out of Victoria—

- (a) by delivering it personally to the person; or
- (b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of sixteen years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or
- (c) by sending it by post addressed to the person at the usual or last known place of residence or business of that person; or
- (d) if the person has given to the Corporation as his or her address an address that is not his or her place of residence or business, by sending it addressed to the person at that address.

S. 93(c)
amended by
No. 14/2000
s. 23.

S. 93(d)
inserted by
No. 14/2000
s. 23.

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94. Approvals by Chief Commissioner or Corporation

Subject to this Act, if it is provided by or under this Act that the Chief Commissioner of Police or the Corporation may approve of any type or kind of equipment—

- (a) the approval must be given by notice published in the Government Gazette; and
- (b) any withdrawal of approval must be made by notice published in the Government Gazette.

S. 94
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

94A. Supreme Court—limitation of jurisdiction

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 55(9E).
- (2) It is the intention of sections 55(9E) and 57(8), as amended by section 17 of the **Road Safety (Amendment) Act 2000**, to alter or vary section 85 of the **Constitution Act 1975**.
- (3) It is the intention of section 55(9E), to the extent that that section applies in respect of anything done under section 55(9A) as amended by section 10 of the **Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001**, to alter or vary section 85 of the **Constitution Act 1975**.

S. 94A
inserted by
No. 17/1994
s. 21,
amended by
No. 14/2000
s. 17(6) (ILA
s. 39B(1)).

S. 94A(2)
inserted by
No. 14/2000
s. 17(6).

S. 94A(3)
inserted by
No. 23/2001
s. 15.

94B. Supreme Court—limitation of jurisdiction

It is the intention of section 55B(4) to alter or vary section 85 of the **Constitution Act 1975**.

S. 94B
inserted by
No. 14/2000
s. 13.

95. Regulations

- (1) Subject to sub-section (8), the Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be

S. 95
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

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prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 2.

- (2) A power conferred by this Act to make regulations may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or
 - (iii) as specified in both sub-paragraphs (i) and (ii); and
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or

S. 95(2)(b)(i)
amended by
No. 78/1987
s. 18(1).

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- (ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or
- (iii) as specified in both sub-paragraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
- (ca) so as to provide for the recognition by the Corporation of things done or omitted to be done under a law of the Commonwealth or another State or a Territory under which authority is given to drive motor vehicles on roads or road related areas; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

S. 95(3)(ca)
inserted by
No. 57/1998
s. 19(1)(a).

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S. 95(3)(f)
substituted by
Nos 78/1987
s. 18(2),
57/1998
s. 19(1)(b).

- (f) so as to impose a penalty not exceeding 20 penalty units for individuals or 100 penalty units for bodies corporate for a contravention of the regulations.

S. 95(3A)
inserted by
No. 78/1987
s. 18(3),
substituted by
No. 57/1998
s. 19(2).

- (3A) The regulations may provide that this Act does not, or specified provisions of this Act do not, apply to a vehicle, or vehicles of a class, identified in the regulations.

S. 95(3B)
inserted by
No. 57/1998
s. 19(2).

- (3B) The regulations may allow the Corporation—
- (a) to exempt a vehicle or class of vehicles from the requirement to be registered; or
 - (b) to exempt a vehicle or class of vehicles from a requirement of the regulations relating to the construction, efficiency, performance, safety, roadworthiness or design of vehicles or the equipment to be carried on vehicles; or
 - (c) to exempt a motor vehicle or trailer or class of motor vehicles or trailers from a requirement of the regulations relating to the carrying of loads; or

S. 95(3B)(ca)
inserted by
No. 73/1998
s. 6.

- (ca) to exempt a vehicle or a group of vehicles, or the driver or registered operator of a vehicle or a group of vehicles, from a requirement of the regulations relating to mass and dimension limits; or
- (d) to exempt a person or class of persons from a requirement of the regulations to be complied with before a driver licence or learner permit may be granted, varied or renewed; or

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- (e) to exempt a person or class of persons from a requirement of the regulations relating to the hours of driving of motor vehicles or the keeping of records relating to those hours of driving or the carrying of log books on motor vehicles—

subject to compliance with any conditions specified in the regulations or determined by the Corporation and specified in the instrument of exemption (if any).

- (4) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
 - (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) ad valorem fees;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (5) If under sub-section (4)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
 - (a) in respect of certain matters or transactions or classes of matters or transactions;
 - (b) in respect of certain documents or classes of documents;
 - (c) when an event happens;

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- (d) in respect of certain persons or classes of persons; or
- (e) in respect of any combination of such matters, transactions, documents, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

- (6) A fee that may be imposed by regulation in relation to licences or permits under Part 3 or the registration of motor vehicles or trailers is not limited to an amount that is related to the cost of providing a service.
- (7) If under sub-section (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Corporation causes notice to be published in the Government Gazette of that amendment the document, code, standard, rule, specification or method is to be taken to have not been so amended.
- (8) Regulations made under this Act must not—
 - (a) prohibit the fitting of bull-bars to motor vehicles; or
 - (b) require annual tests of roadworthiness of registered motor vehicles or trailers.

S. 95A
inserted by
No. 57/1998
s. 20.

95A. Application of A.C.T. charges

- (1) In this section, "**the Commonwealth Act**" means the Road Transport Charges (Australian Capital Territory) Act 1993 of the Commonwealth.

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(2) Regulations under section 95 may not prescribe as a fee payable in respect of—

(a) registration or renewal of registration of a vehicle of a kind referred to in Part 2 of the Schedule to the Commonwealth Act; or

S. 95A(2)(a)
amended by
No. 92/2001
s. 27(a).

* * * * *

S. 95A(2)(b)
repealed by
No. 92/2001
s. 27(b).

(c) the grant of a permit to operate a vehicle, or a combination of vehicles, to which section 2(2) of the Commonwealth Act applies—

S. 95A(2)(c)
amended by
No. 92/2001
s. 27(c).

an amount other than an amount equal to the amount payable as a charge under the Commonwealth Act, or regulations under that Act, in respect of the registration in the Australian Capital Territory for the corresponding period of a vehicle or prime mover of that kind or the grant of a permit to operate in the Australian Capital Territory for the corresponding period a vehicle or a combination of vehicles of that kind, as the case requires.

(3) If regulations for the time being in force under section 95 prescribe, or purport to prescribe, an amount as a fee in contravention of sub-section (2), the regulations have effect as if the prescribed fee were the fee authorised to be prescribed by sub-section (2).

(4) This section does not affect—

(a) any power conferred by or under this Act to—

(i) charge pro-rata amounts for registrations that are for less than a whole year; or

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(ii) charge fees in respect of the inspection of vehicles for the purpose of registration; or

(iii) charge other administrative fees in respect of matters relating to vehicles; or

(b) any power conferred by section 95(4)(f).

S. 95B
inserted by
No. 57/1998
s. 20.

95B. Exemption of certain statutory rules from RIS

Section 7 of the **Subordinate Legislation Act 1994** does not apply to—

(a) a statutory rule that includes a provision revoking the Road Safety (Traffic) Regulations 1988; or

(b) any statutory rule amending, revoking or re-making (with or without modification) the first-mentioned statutory rule in paragraph (a); or

(c) any statutory rule amending or revoking the re-made statutory rule.

S. 95C
inserted by
No. 73/1998
s. 7 (as
amended by
No. 14/2000
s. 35).

95C. Extension of operation of Regulations

(1) Unless sooner revoked, the Road Safety (Procedures) Regulations 1988³¹, the Road Safety (Traffic) Regulations 1988³² and the Road Safety (Vehicles) Regulations 1988³³ are revoked on 1 March 2000.

(2) Section 5 of the **Subordinate Legislation Act 1994** does not apply to the Road Safety (Procedures) Regulations 1988, the Road Safety (Traffic) Regulations 1988 or the Road Safety (Vehicles) Regulations 1988.

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96. Disallowance of regulations, notices and orders

(1) This section applies to the following instruments—

(a) an Order in Council under section 3(2);

(ab) an Order under section 3(3);

S. 96(1)(ab)
inserted by
No. 14/2000
s. 14(a).

(b) a notice under section 10;

(c) a notice under section 38;

(ca) a notice under section 55A(5);

S. 96(1)(ca)
inserted by
No. 14/2000
s. 14(b).

(d) an Order in Council under section 56;

(e) a notice under section 94.

(2) A power that is conferred by this Act to make regulations or an instrument to which this section applies is subject to the regulations or instrument being disallowed by Parliament.

(3) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply to an instrument to which this section applies as if the instrument were a statutory rule within the meaning of that Act, notice of the making of which had been published in the Government Gazette on the day on which the instrument was so published.

S. 96(3)
substituted by
No. 73/1998
s. 8.

* * * * *

S. 96(4)
repealed by
No. 73/1998
s. 8.

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S. 96A
inserted by
No. 57/1998
s. 21.

96A. *Application orders and emergency orders*

- (1) The Minister may declare, by notice published in the Government Gazette, that the operation of the regulations, or of specified parts of the regulations—
 - (a) is suspended for a specified period; or
 - (b) is varied in a manner specified by the Minister.
- (2) A declaration must be consistent with the provisions relating to application orders and emergency orders in the agreements scheduled to the National Road Transport Commission Act 1991 of the Commonwealth.
- (3) A declaration may have effect in relation to the whole of Victoria or to a specified area.
- (4) If an emergency order is terminated in accordance with an agreement scheduled to the National Road Transport Commission Act 1991 of the Commonwealth, the Minister must publish notice of the termination in the Government Gazette.

S. 97
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

97. *Application of fees*

Notwithstanding anything to the contrary in this or any other Act—

- (a) except where the Treasurer otherwise directs or the regulations made under this Act otherwise provide, all fees received by the Corporation (otherwise than as the agent of any other person or body) under this or any other Act must be paid by the Corporation into the Consolidated Fund; and
 - (b) all fees received by the Corporation (otherwise than as the agent of any other person or body) under this or any other Act which by virtue of paragraph (a) are not required to be paid into the Consolidated
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Fund must be paid by the Corporation into its general fund.

97A. *Administrative fees*

**S. 97A
inserted by
No. 57/1998
s. 22.**

- (1) The Corporation may charge a fee for any service it provides in connection with the registration of vehicles or the licensing of drivers or a recall procedure being conducted by the manufacturer or supplier of a vehicle.
- (2) The fee charged for a service under sub-section (1) must not exceed the cost to the Corporation of providing that service.

**S. 97A(1)
amended by
No. 73/1998
s. 5(2).**

98. *Minister may extend application of Act*

- (1) The Minister may by Order at the request of any public authority or other person prescribed for the purposes of this section extend the application of any provisions of this Act, or of the regulations, that are specified in the Order to any land or premises vested in, or under the control of, that authority or person, and those provisions then extend and apply to the land or premises, so far as applicable and with any modifications that are necessary, in all respects as if the land or premises were a highway and, in particular, with the modification that in those provisions any reference to a highway authority is to be taken to include the relevant public authority or other person.
- (2) The Minister may by Order at the request of the Minister administering Part 7B of the **Financial Management Act 1994** extend the application of any provisions of this Act, or of the regulations, that are specified in the Order to any land or premises used for or in connection with any public offices of the Crown, and those provisions then

**S. 98(2)
amended by
No. 101/1994
s. 68.**

extend and apply to the land or premises, so far as applicable and with any modifications that are necessary, in all respects as if the land or premises were a highway and, in particular, with the modification that in those provisions any reference to a highway authority is to be taken to include that Minister.

99. *Warning signs and other installations*

- (1) Any person or body corporate having authority pursuant to the regulations to do so may, without unduly obstructing the thoroughfare, install and maintain in or on any highway any standard warning or operative sign or safety device or mark, parking area, traffic island or other device or thing that is prescribed or authorised by the regulations for the regulation and control of vehicular, animal or pedestrian traffic.
- (2) The presence on any highway, or the operation or use by a person on any highway, of any installation referred to in sub-section (1) or of any pole, barrier, flag, stand or other device used in connection with it, or for the support of it, does not of itself make the installation or the pole, barrier, flag, stand or other device, or its operation or use in accordance with the regulations, an unlawful obstruction of, or interference with, the highway or the use of the highway.

S. 100
amended by
Nos 12/1989
s. 4(1)(Sch. 2
item 105.12),
19/1991 s. 18.

100. *Inconsistent regulations or by-laws*

If by a regulation made under any Act or by a local law made by a municipal council under any Act a provision is made that is inconsistent with a provision of this Act or the regulations made under this Act, the provision made by the regulation or local law is, to the extent of the inconsistency, of no force or effect.

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Ss 101, 102
repealed by
No. 57/1998
s. 25(2).

103. Transitional provisions

(1) If immediately before the commencement of this sub-section a person holds a licence or permit issued under the **Motor Car Act 1958** and that licence or permit expires on or after that commencement, the Corporation may, in accordance with this Act and the regulations, grant a licence or permit to that person which, in the opinion of the Corporation, corresponds to the licence or permit previously held by that person.

S. 103(1)
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4).

(1A) A driver's licence that was issued under the **Motor Car Act 1958** and was valid immediately before 1 May 1987 must, on and after that date, be taken to be a driver licence granted under Part 3 of this Act despite the definition of "driver licence" in section 3(1) of this Act.

S. 103(1A)
inserted by
No. 53/1989
s. 19.

(2) A motor car driver's licence which was issued, but not indorsed, under the **Motor Car Act 1958** and which was valid immediately before the commencement of this sub-section—

S. 103(2)
amended by
No. 53/1989
s. 21(6).

(a) authorises the holder to drive a motor vehicle of 3 tonnes tare or less, until 3 years after that commencement; and

(b) does not authorise the holder to drive a motor vehicle of more than 4.5 tonnes GVM, after the 3 years, and the holder is not authorised to drive such a vehicle after that time unless he or she obtains an appropriate authorisation under this Act.

S. 103(2)(b)
amended by
No. 57/1998
s. 5(2)(c).

(3) If immediately before the commencement of this sub-section a police station was a registration office within the meaning of the **Motor Car Act**

1958 then, on and from that commencement, the member of the police force for the time being in charge of that police station is to be taken to be, by force of this sub-section, a delegate of the Authority in relation to the registration of motor vehicles and trailers until the Authority by instrument under its common seal otherwise provides.

- (4) If immediately before the commencement of this sub-section an articulated motor car within the meaning of the **Motor Car Act 1958** is registered under that Act and on that commencement the semi-trailer component of the articulated motor car is exempt from registration, the registration of the articulated motor car is, on that commencement, to be taken to be the registration of the prime-mover component of the articulated motor car.
- (5) If immediately before the commencement of this sub-section an articulated motor car within the meaning of the **Motor Car Act 1958** is registered under that Act and on that commencement the semi-trailer component of the articulated motor car is not exempt from registration, the registration of the articulated motor car is, on that commencement, to be taken to be the separate registration of the prime-mover and the semi-trailer components of the articulated motor car.
- (6) If immediately before the commencement of this sub-section demerit points are recorded against the holder of a licence under the **Motor Car Act 1958** in the Demerits Register kept under that Act, the Authority must, subject to this Act, on that commencement record those points against that person in the Demerits Register kept under this Act.

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- (7) For the purposes of section 52, a person who is the holder of a probationary driver licence which was issued at least 12 months before the commencement of that section must be taken to be the holder of a full driver licence.
- (8) All fees which were received by the Authority under the **Motor Car Act 1958** or the **Transport Act 1983** or any other Act before the commencement of section 97 of this Act and which were paid by the Authority before that commencement into its general fund are, despite anything to the contrary in any Act, to be taken to have been properly paid by the Authority into that fund and not to have been required to be paid into the Consolidated Fund.
- (9) On and from the commencement of this sub-section until all the provisions of this Act have come into operation a reference in any Act or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a motor vehicle within the meaning of this Act includes a reference to a motor car within the meaning of the **Motor Car Act 1958** and to a recreation vehicle within the meaning of this Act includes a reference to a recreation vehicle within the meaning of Part VI of the **Transport Act 1983**.
- (10) A driver licence that was issued under the **Motor Car Act 1958** and that was in force on probation immediately before the commencement of this sub-section is to be taken, during the prescribed period only, to be a probationary driver licence for the purposes of this Act.

S. 103(7)
substituted by
No. 78/1987
s. 19.

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(11) In sub-section (10) "**prescribed period**" means—

- (a) if the period for which the licence was issued on probation is 2 years or less, that period plus any extension of the probationary period under section 21; or
- (b) if the period for which the licence was issued on probation is more than 2 years, the first 2 years of that period plus any extension of the probationary period under section 21.

S. 103(12)
inserted by
No. 57/1998
s. 24.

(12) A person who, immediately before the commencement of section 5(5) of the **Road Safety (Amendment) Act 1998**, was the registered owner of a vehicle under this Act is on that commencement deemed to be the registered operator of that vehicle.

S. 103(13)
inserted by
No. 73/1998
s. 10.

(13) The amendments of section 25 made by section 4 of the **Road Safety (Further Amendment) Act 1998** apply only with respect to notices issued under that section, and suspensions of driver licences or learner permits that take effect under that section, after the commencement of section 4 of that Act.

S. 103(14)
inserted by
No. 73/1998
s. 10.

(14) The amendments of section 26 made by section 4 of the **Road Safety (Further Amendment) Act 1998** apply only with respect to appeals made after the commencement of section 4 of that Act.

S. 103A
inserted by
No. 92/2001
s. 28.

103A. Transitional provisions—Road Safety (Further Amendment) Act 2001

- (1) The amendment of section 22(2)(a) made by section 11 of the **Road Safety (Further Amendment) Act 2001** has effect only with respect to learner permits granted after the commencement of that section of that Act.
 - (2) The amendment of section 50(1AB)(b) made by section 14 of the **Road Safety (Further Amendment) Act 2001** applies only to offences
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alleged to have been committed on or after the commencement of that section of that Act.

- (3) For the purposes of sub-section (2), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 14 of the **Road Safety (Further Amendment) Act 2001**, the offence is alleged to have been committed before the commencement of that section.
- (4) The amendment of section 89C(1) made by section 25 of the **Road Safety (Further Amendment) Act 2001** applies to any traffic infringement notice issued in respect of a drink-driving infringement on or after the commencement of that section of that Act, irrespective of when the infringement was committed.

103B. Application of amendment made by the Road Safety (Alcohol Interlocks) Act 2002

S. 103B
inserted by
No. 1/2002
s. 10.

- (1) Section 50AAA only applies to offences alleged to have been committed on or after the commencement of section 10 of the **Road Safety (Alcohol Interlocks) Act 2002**.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement, the offence is alleged to have been committed before that commencement.

103C. Application of amendments made by the Road Safety (Responsible Driving) Act 2002

S. 103C
inserted by
No. 46/2002
s. 13.

- (1) Despite the amendments made by section 4 of the **Road Safety (Responsible Driving) Act 2002**, sub-sections (3), (4) and (5) of section 21 of this Act, as in force immediately before the commencement of those amendments, continue to

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apply to offences alleged to have been committed before that commencement.

- (2) The amendments to section 25(3), (3B) and (3D) of this Act made by section 5 of the **Road Safety (Responsible Driving) Act 2002** only apply to a person who held a learner permit or probationary driver licence before the amendments commence if the person incurs one or more demerit points after that commencement.
- (3) If the amendments referred to in sub-section (2) apply to a person, a reference in section 25 of this Act to demerit points incurred by the person includes a reference to demerit points incurred by the person before the commencement of those amendments.
- (4) The amendments to this Act made by sections 7 and 14 of the **Road Safety (Responsible Driving) Act 2002** only apply to offences alleged to have been committed after the commencement of those amendments.
- (5) The amendment to section 49(1)(f) of this Act made by section 8 of the **Road Safety (Responsible Driving) Act 2002** only applies to offences alleged to have been committed after the commencement of that amendment.
- (6) The amendments to section 51 of this Act made by section 9(1)(b) and section 9(2) to (7) of the **Road Safety (Responsible Driving) Act 2002** only apply to offences alleged to have been committed after the commencement of those amendments.
- (7) The amendments to section 51 of this Act made by section 9(1)(a), (c) and (d) of the **Road Safety (Responsible Driving) Act 2002** apply to offences alleged to have been committed before,

on or after the commencement of those amendments.

- (8) Despite the amendments made by section 10 of the **Road Safety (Responsible Driving) Act 2002**, sub-sections (2), (3), (4) and (5) of section 89C of this Act, as in force immediately before the commencement of those amendments, continue to apply to offences alleged to have been committed before that commencement.
- (9) The amendment to section 89C(8) of this Act made by section 10 of the **Road Safety (Responsible Driving) Act 2002** applies to any traffic infringement notice issued on or after 21 December 2001 for a drink-driving infringement irrespective of when the infringement was committed.
- (10) For the purposes of sub-sections (1), (4), (5), (6) and (8), if an offence is alleged to have been committed between two dates, one before and one after the commencement referred to in the particular sub-section, the offence is alleged to have been committed—
 - (a) in the case of sub-sections (1) and (8), before the commencement referred to in sub-section (1) or (8) (as the case may be); or
 - (b) in the case of sub-sections (4), (5) and (6), after the commencement referred to in that sub-section.

104. *Validation of certain resolutions fixing higher penalties for parking infringements*

- (1) A resolution purported to be made by a municipal council under section 87(4) on or after 1 October 1992, but before the commencement of section 22 of the **Road Safety (Amendment) Act 2000**, fixing a penalty of an amount not greater than \$50 for a parking infringement in contravention of the

S. 104
inserted by
No. 14/2000
s. 24.

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Road Safety (Traffic) Regulations 1988 that would have validly fixed the amount had section 22 of that Act been in operation at the time the resolution was purportedly made is, on that commencement, deemed to have, and always to have had, the same force and effect as it would have had if section 22 of that Act had been in operation at the time the resolution was purportedly made.

- (2) A resolution purported to be made by a municipal council under section 87(4) on or after 1 December 1999, but before the commencement of section 22 of the **Road Safety (Amendment) Act 2000**, fixing a penalty of an amount not greater than \$50 for a parking infringement in contravention of the Road Safety (Road Rules) Regulations 1999 that would have validly fixed the amount had section 22 of that Act been in operation at the time the resolution was purportedly made is, on that commencement, deemed to have, and always to have had, the same force and effect as it would have had if section 22 of that Act had been in operation at the time the resolution was purportedly made.

S. 105
inserted by
No. 14/2000
s. 24.

105. *Certain local laws to have force and effect despite inconsistency with regulations*

- (1) This section applies to a local law with respect to the parking or leaving standing of a vehicle on a highway—
- (a) made by a municipal council before the commencement of section 24 of the **Road Safety (Amendment) Act 2000**; and
 - (b) that was in force on 1 October 1992 or at any time after 1 October 1992, (whether or not in force immediately before that commencement); and

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(c) for which the municipal council has passed before that commencement a resolution under section 87(4) fixing a penalty of an amount not greater than \$50 for a parking infringement under that local law—

to the extent that the local law relates to the parking or leaving standing of a vehicle on a highway at any time before that commencement.

(2) Section 100 of this Act, or section 111(2) and (3) of the **Local Government Act 1989**, is deemed not to cause, and never to have caused, a provision made by a local law to be of no force and effect only because the provision is inconsistent with the Road Safety (Traffic) Regulations 1988 or the Road Safety (Road Rules) Regulations 1999.

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SCHEDULES

SCHEDULE 1

Sch. 1
substituted by
No. 78/1987
s. 20.

Section 50

MINIMUM DISQUALIFICATION PERIODS

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Concentration of alcohol in blood in grams per 100 millilitres of blood</i>	<i>First offence</i>	<i>Subsequent offence</i>
less than ·07	6 months	12 months
·07 or more but less than ·08	6 months	14 months
·08 or more but less than ·09	6 months	16 months
·09 or more but less than ·10	6 months	18 months
·10 or more but less than ·11	10 months	20 months
·11 or more but less than ·12	11 months	22 months
·12 or more but less than ·13	12 months	24 months
·13 or more but less than ·14	13 months	26 months
·14 or more but less than ·15	14 months	28 months
·15 or more but less than ·16	15 months	30 months
·16 or more but less than ·17	16 months	32 months
·17 or more but less than ·18	17 months	34 months
·18 or more but less than ·19	18 months	36 months
·19 or more but less than ·20	19 months	38 months
·20 or more but less than ·21	20 months	40 months
·21 or more but less than ·22	21 months	42 months
·22 or more but less than ·23	22 months	44 months
·23 or more but less than ·24	23 months	46 months
·24 or more	24 months	48 months

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SCHEDULE 2

Section 95(1)

SUBJECT-MATTER FOR REGULATIONS

Registration

1. The categories of motor vehicles and trailers for registration purposes.
2. The exemption of classes of motor vehicles from the requirement to be registered.
3. Applications for registration, renewal of registration or transfer of registration; the dates by which applications must be made and the information and evidence to accompany applications.
- 3A. Names in which motor vehicles or trailers must not be registered.
4. Requirements to be complied with before registration may be granted, renewed or transferred.
5. The conditions on which registration may be granted or renewed.
6. The date on which registration commences and the period for which it remains in force, including making special provision for shortening the period of registration without any reduction in fees where application for it is made outside the prescribed time.
7. Procedures for achieving a common registration expiry date for 2 or more motor vehicles or trailers registered in the same name.
8. The grounds on which registration may be cancelled or suspended and the procedures to be followed in those cases.
9. The circumstances in which a person is required to obtain or display a certificate that a motor vehicle or trailer is roadworthy; the authorisation of suitable people to issue that certificate; the fees payable to those people; the conditions on which those authorisations may be granted³⁴.
10. The inspection, testing and weighing of motor vehicles and trailers.
11. The grounds on which, and the procedure by which, the use of a motor vehicle or trailer on a highway may be prohibited and the conditions on which a prohibition may be made or revoked.

Sch. 2 item 3A
inserted by
No. 57/1998
s. 12(2).

Sch. 2 item 9
amended by
Nos 120/1993
s. 61(1),
57/1998
s. 4(3)(c)(i)(ii).

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- Sch. 2 item 12 amended by Nos 44/1989 s. 41(Sch. 2 item 34.5), 92/2001 s. 29(1)(a).
12. Requiring the Corporation to be notified of alterations or damage to registered motor vehicles or trailers and requiring the Corporation to be notified of written-off vehicles.
- Sch. 2 item 13 amended by Nos 44/1989 s. 41(Sch. 2 item 34.5), 57/1998 s. 5(5)(g), 92/2001 s. 29(1)(b).
13. Requiring the Corporation to be notified of changes in the ownership, person responsible or description of registered motor vehicles or trailers or of written-off vehicles.
14. Applications for registration permits; the information and evidence to accompany applications; the grounds on which applications may be refused and the procedure to be followed where an application is refused; prescribing conditions on which registration permits may be granted.
15. The issue of identification numbers, number plates, registration labels and certificates of registration, including the issue of duplicates; the circumstances in which number plates must be returned and the procedures for doing this.
16. The issue of special plates or marks, the circumstances in which they may be issued and the conditions on which they may be used.
- Sch. 2 item 16A inserted by No. 58/1995 s. 17, amended by No. 37/1996 s. 8(1).
- 16A. The issue (which may include at auction or by inviting tenders) of number plates for the purposes of collection, the circumstances in which they may be issued, the manner in which they may be used and any conditions as to their use.
- Sch. 2 item 16B inserted by No. 37/1996 s. 8(2).
- 16B. The manner in which registration numbers may be assigned to motor vehicles and trailers and number plates bearing registration numbers issued, which may include at auction or by inviting tenders.
- Sch. 2 item 16C inserted by No. 92/2001 s. 29(2).
- 16C. Requirements to be complied with before a vehicle may be entered on the register of written-off vehicles and procedures for making or refusing to make entries on that register.
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| 16D. Requirements to be complied with before an amendment may be made to the register of written-off vehicles and procedures for amending or refusing to amend that register. | Sch. 2
item 16D
inserted by
No. 92/2001
s. 29(2). |
| 16E. Requirements to be complied with before an entry may be removed from the register of written-off vehicles and procedures for removing or refusing to remove an entry from that register. | Sch. 2
item 16E
inserted by
No. 92/2001
s. 29(2). |
| 16F. The placing or affixing of labels, notices or other marks on written-off vehicles, the requirements to be complied with in relation to displaying or affixing those labels, notices or marks and their removal. | Sch. 2
item 16F
inserted by
No. 92/2001
s. 29(2). |

Licensing of drivers

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| 17. The categories of motor vehicles and trailers for licensing purposes. | |
| 18. Applications for a driver licence or permit or for the variation, renewal or extension of a driver licence or permit; the dates by which applications must be made and the information and evidence to accompany applications. | |
| 19. Requirements to be complied with before a driver licence or permit may be granted, varied or renewed. | |
| 20. The conditions on which a driver licence or permit may be granted, varied or renewed. | |
| 21. The date on which a driver licence or permit commences, the period for which it remains in force and the probationary period of a driver licence. | |
| 22. The taking of photographs or making of digitised images for inclusion in driver licence documents. | Sch. 2 item 22
amended by
Nos 120/1993
s. 61(2),
78/1994 s. 6. |
| 23. Prohibiting the use of magnetic tape in driver licence documents. | |
| 24. The issue of duplicate driver licence documents and permit documents. | |
| 25. The exemption of persons or classes of persons from the requirement to obtain a driver licence or permit. | |
| 26. Tests and driver training. | |

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Sch. 2 item 27
amended by
No. 44/1989
s. 41(Sch. 2
item 34.5).

27. The grounds on which a driver licence or permit may be cancelled, suspended or varied by the Corporation and the procedures to be followed in such cases.

Sch. 2 item 28
amended by
No. 44/1989
s. 41(Sch. 2
item 34.5).

28. The circumstances in which the Corporation is required to cancel, suspend or vary a driver licence or permit or refuse an application for a driver licence, driver licence variation or permit and the procedures to be followed in those cases.

Sch. 2
item 28A
inserted by
No. 78/1987
s. 18(4),
amended by
No. 44/1989
s. 41(Sch. 2
item 34.5).

28A. The surrender of licence or permit documents if the licence or permit has been cancelled or suspended by the Corporation or by a court.

29. The refund of fees paid in respect of driver licences issued under the **Motor Car Act 1958**.

Regulation of the use of vehicles

30. The carrying of lights on vehicles and trailers.
 31. The affixing and use of horns, bells or other similar devices on vehicles and trailers.
 32. The affixing of brakes on vehicles and trailers.
 33. The carrying of fire extinguishers on specified classes of vehicles and trailers.
 34. Requirements relating to the construction, efficiency, performance, safety, roadworthiness, design of and the equipment to be carried on and the identification of vehicles and trailers.
 35. The obtaining of a special permit before a motor vehicle or trailer of a specified mass and dimension may be used on highways and the conditions on which those permits may be granted.
 36. The number of hours during which a person may drive motor vehicles or a class or classes of motor vehicles.
 37. The carrying of a log book on specified classes of motor vehicles and trailers and the evidence that is sufficient to prove its existence.
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- 37A. Prohibiting employers of drivers, other employees of those employers, consignors of goods and other persons from requiring, requesting or permitting drivers to drive motor vehicles, or a class or classes of motor vehicles, in contravention of regulations relating to—
- (a) the number of hours during which the motor vehicle may be driven; or
- (b) the carrying of a log book on the motor vehicle and trailer; or
- (c) the maximum speed for the motor vehicle.
38. The carrying of loads on motor vehicles and trailers.
39. The use of devices for determining the speed of motor vehicles.
- 39A. The manner in which images or messages produced by devices referred to in item 39 are to be processed, stored, transferred, produced, re-configured or used to produce other forms of images or messages.
- 39B. Requiring the fitting and use of devices to limit the speed of a specified class of heavy vehicles.
- 39C. Requiring an owner of a heavy vehicle required to be fitted with a speed limiting device to demonstrate that the device is operating properly.
40. The keeping of records of specified matters and their production for inspection.
41. Prohibiting the sale of equipment designed or intended to be used in, or in connection with, vehicles if the equipment has not been approved by the Corporation.
- Traffic regulation***
42. The regulation and control of vehicular, animal or pedestrian traffic on highways.
43. Rules to be observed by drivers, people in charge of animals, vehicles or trailers, and pedestrians.
44. Maximum speeds for vehicles.

Sch. 2
item 37A
inserted by
No. 14/2000
s. 25(a).

Sch. 2
item 39A
inserted by
No. 14/2000
s. 25(b).

Sch. 2
item 39B
inserted by
No. 92/2001
s. 29(3).

Sch. 2
item 39C
inserted by
No. 92/2001
s. 29(3).

Sch. 2 item 41
amended by
No. 44/1989
s. 41(Sch. 2
item 34.5).

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45. Signs and safety devices, and their siting, installation and maintenance.
46. Marks to be used on the surface of highways.
47. The legal effects of signs, devices and marks, and the evidence that is sufficient to prove their existence.
48. The control and reduction of causes of danger or of traffic congestion.
49. Regulating racing (including footracing), speed trials and other competitive events on highways (including highways that are temporarily closed-off).
- Sch. 2
item 49A
inserted by
No. 78/1994
s. 7.
- 49A. Applications for approvals referred to in section 49A(1) and the period during which they continue in force.
- Sch. 2
item 49B
inserted by
No. 14/2000
s. 25(c).
- 49B. The use of detection devices to detect offences committed against the Act, or regulations made with respect to the regulation and control of vehicular traffic on highways.
- Sch. 2
item 49C
inserted by
No. 14/2000
s. 25(c).
- 49C. The manner in which images or messages produced by detection devices referred to in item 49B are to be processed, stored, transferred, produced, re-configured or used to produce other forms of images or messages.

Alcohol

50. Devices for the purposes of section 53; the handling, storage, use and maintenance of those devices; the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results.
51. The handling, storage, use and maintenance of breath analysing instruments used for the purposes of section 55 and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results.
- Sch. 2 item 52
amended by
Nos 23/1994
s. 118(Sch. 1
item 50.7),
14/2000
ss 15(1), 17(7).
52. The methods and conditions to be observed by registered medical practitioners and approved health professionals in collecting blood samples or urine samples.

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53. The persons responsible for the safe-keeping of samples of blood taken under section 56 and the methods of storage to be used by them.
54. The delivering of portions of samples of blood taken under section 56 to the people from whom they are taken and to members of the police force.
55. The methods to be used by analysts in determining the concentration of alcohol in a blood sample.
- 55A. The methods to be used by analysts in determining the presence of a substance in a blood or urine sample. **Sch. 2 item 55A inserted by No. 14/2000 s. 15(2).**
56. The procedures to be adopted in transmitting samples of blood or urine to an analyst for analysis. **Sch. 2 item 56 amended by No. 14/2000 s. 15(3).**
57. The regulation and control of people concerned in the taking, safe-keeping, delivering and analysis of blood or urine samples. **Sch. 2 item 57 amended by No. 14/2000 s. 15(3).**

Fees

58. The matters for which fees are payable, the amount of those fees and the people by whom those fees are payable.
59. Prescribing the fee payable in respect of the performance of a function of a Regulatory Authority in respect of Victoria under the Interstate Road Transport Act 1985 of the Commonwealth (as amended and in force for the time being) by reference to the maximum fee specified in the regulations made under that Act (as amended and in force for the time being) in respect of the performance of that function.

Right of Appeal or Review

60. Conferring a right of appeal or review to a specified court or tribunal against any decision of the Corporation and prescribing the procedures to be followed in those cases. **Sch. 2 item 60 amended by Nos 44/1989 s. 41(Sch. 2 item 34.5), 57/1998 s. 23.**

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Forms

61. Forms.

Hazardous areas

Sch. 2 item 62
inserted by
No. 58/1995
s. 18.

62. The declaration of areas as hazardous areas.

Sch. 2 item 63
inserted by
No. 58/1995
s. 18.

63. The approval of persons to drive vehicles seating more than 12 people (driver included) in hazardous areas.

Sch. 2 item 64
inserted by
No. 58/1995
s. 18.

64. The approval of vehicles seating more than 12 people (driver included) for use in hazardous areas.

Sch. 2 item 65
inserted by
No. 58/1995
s. 18.

65. Otherwise prohibiting or regulating the use of vehicles seating more than 12 people (driver included) in hazardous areas.

Driving instructor authorities

Sch. 2
Heading
preceding
item 66
inserted by
No. 63/1998
s. 6.

Sch. 2 item 66
inserted by
No. 63/1998
s. 6.

66. Applications for driving instructor authorities and the revocation or suspension thereof.

Sch. 2 item 67
inserted by
No. 63/1998
s. 6.

67. Procedures and requirements to be complied with before a driving instructor authority may be issued.

Sch. 2 item 68
inserted by
No. 63/1998
s. 6.

68. Prescribing and regulating the conduct of holders of driving instructor authorities in respect of the teaching of persons to drive motor vehicles.

Sch. 2 item 69
inserted by
No. 63/1998
s. 6.

69. The format of identity photographs of holders of driving instructor authorities.
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| 70. The location of identity photographs of holders of driving instructor authorities in motor vehicles that are used for teaching persons to drive. | Sch. 2 item 70
inserted by
No. 63/1998
s. 6. |
| 71. The conditions to which driving instructor authorities are subject. | Sch. 2 item 71
inserted by
No. 63/1998
s. 6. |
| 72. The date on which a driving instructor authority commences and the period for which it remains in force. | Sch. 2 item 72
inserted by
No. 63/1998
s. 6. |
| 73. Generally, all such matters as are authorised or permitted to be prescribed or are necessary or expedient to be prescribed for carrying section 33 into effect. | Sch. 2 item 73
inserted by
No. 63/1998
s. 6. |

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**Sch. 3
repealed by
No. 13/1992
s. 6.**

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**Sch. 4
amended by
Nos 54/1987
s. 16(4)(b),
65/1987
s. 25(1)(2),
78/1987
s. 21(a)–(e),
53/1989
s. 21(7)(a)–(c),
1/1993 s. 3(2),
84/1994 s. 61,
repealed by
No. 57/1998
s. 25(3).**

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Sch. 5
inserted by
No. 53/1989
s. 20,
substituted by
No. 46/2002
s. 14.

SCHEDULE 5

Section 28
Section 89D

MINIMUM SUSPENSION PERIODS FOR EXCESSIVE SPEED

<i>Column 1</i>	<i>Column 2</i>
<i>Speed of vehicle</i>	<i>Minimum period</i>
1. Exceed speed limit by 25 kilometres per hour or more, but less than 35 kilometres per hour.	1 month
2. Exceed speed limit by 35 kilometres per hour or more, but less than 45 kilometres per hour.	6 months
3. Exceed speed limit by 45 kilometres per hour or more.	12 months
4. Any speed of 130 kilometres per hour or more that is not covered by item 1, 2 or 3.	1 month

Sch. 6
inserted by
No. 19/1991
s. 22(3),
amended by
No. 89/1991
s. 17(2),
repealed by
No. 17/1994
s. 14.

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Road Safety Act 1986

Act No. 127/1986

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 11 September 1986

Legislative Council: 18 November 1986

The long title for the Bill for this Act was "A Bill to re-enact, with amendments, the law relating to motor vehicles, to repeal the **Motor Car Act 1958**, to make consequential amendments to various Acts and for other purposes."

The **Road Safety Act 1986** was assented to on 23 December 1986 and came into operation as follows:

Sections 1–4, 101, Schedule 3 item 3 on 1 January 1987: Government Gazette 23 December 1986 page 4775.

Part 5, sections 59(1) (*except* paragraphs (a)(c)(d)), 59(2) (*except* paragraphs (b)(c)), 59(5), 62–73, 75, 76(2), 77–84, 91–96, 100, 102, 103(7)(9), Schedules 1, 2, 3 item 10, Schedule 4 items 9, 12, 18.8, 29.1 (*except* paragraphs (a)(c)(d)–(f)), 29.2 (in its application to sections 39(2)(3), 40, 41(1) of the **Transport Accident Act 1986**), 29.3, 29.5, 29.6 (*except* paragraph (b)), 29.8–29.13, 29.17 on 1.3.87: Government Gazette 25 February 1987 page 445.

Part 3, sections 59(1)(a)(2)(b)(c)(3)(4)(9), 103(1)(2)(6)(10)(11), Schedule 3 item 7, Schedule 4 items 10, 18.3–18.5, 29.2 (in its application to section 39(4)(5) of the **Transport Accident Act 1986**), 29.6(b), 29.7 on 1 May 1987: Government Gazette 25 February 1987 page 445.

Section 74 on 9 March 1987: Government Gazette 4 March 1987 page 463.

Sections 60, 61, Schedule 3 item 9 on 1 April 1987: Government Gazette 1 April 1987 page 778.

Sections 97, 103(8) on 1 July 1987: Government Gazette 25 February 1987 page 445.

Sections 5–14, 16, 103(3), Schedule 3 items 5, 6, Schedule 4 items 1–8, 11, 13–17, 18.1, 18.2, 18.6, 18.7, 18.9, 20.1, 21.1, 21.2, 21.4, 22.1, 23–25, 27.1, 27.2, 28.2, 28.3, 28.5–28.12, 28.13 (*except* paragraphs (a)(d)), 28.17, 28.18, 29.1(f), 29.2 (in its application to sections 35(1)(b), 36, 39(1), 64(1), 65(1), 94(1)(a)(2)(a)(13), 95, 96(1)(2)(a), 97(1)(3), 98, 99(1)(3), 100(1), 101(1), 102(1)(2), 108(1), 109(1)(3)–(5), 110(1)(5), 111(1)(2), 112(1)(2) of the **Transport Accident Act 1986**), 29.4, 29.14–29.16, 29.18, 30) on 1 July 1987: Special Gazette (No. 27) 25 June 1987 page 1.

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Sections 34–46, 59(1)(c)(d)(6)–(8), 76(1), 85–90, 98, 99, 103(4)(5),
Schedule 3 item 12, Schedule 4 items 20.2, 20.3, 28.1, 28.4, 28.13(a)(d),
28.13A, 28.14, 28.15, 28.15A, 28.16(a)(b), 28.19, 28.20, 29.1(a)(c)–(e),
29.19, 29.20 on 1 March 1988: Government Gazette 30 December 1987
page 3540.

Section 15 was never proclaimed, repealed by No. 57/1998 section 4(3)(b).

Schedule 4 items 19, 21.3 were never proclaimed, repealed by No. 57/1998
section 25(3).

Schedule 4 item 22.2 was never proclaimed, repealed by No. 78/1987
section 21(a).

Schedule 4 items 26.1–26.11 were never proclaimed, repealed by
No. 65/1987 section 25(2).

Schedule 4 item 28.16(c) was never proclaimed, repealed by No. 57/1998
section 25(3).

Schedule 4 item 29.21 was never proclaimed, repealed by No. 84/1994
section 61.

Road Safety Act 1986

Act No. 127/1986

2. Table of Amendments

This Version incorporates amendments made to the **Road Safety Act 1986** by Acts and subordinate instruments.

Litter Act 1987, No. 54/1987

Assent Date: 20.10.87
Commencement Date: 19.11.87: Government Gazette 18.11.87 p. 3084
Current State: All of Act in operation

Taxation Acts Amendment Act 1987, No. 65/1987

Assent Date: 12.11.87
Commencement Date: S. 25 on 23.12.86: s. 2(7); s. 26 on 12.11.87: s. 2(8)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Amendment) Act 1987, No. 78/1987

Assent Date: 24.11.87
Commencement Date: S. 10 on 1.3.87: s. 2(2); rest of Act on 9.12.87: Government Gazette 9.12.87 p. 3328
Current State: All of Act in operation

Road Safety (Photographic Detection Devices) Act 1988, No. 58/1988

Assent Date: 29.11.88
Commencement Date: 29.11.88
Current State: All of Act in operation

Local Government (Consequential Provisions) Act 1989, No. 12/1989 (as amended by No. 13/1990)

Assent Date: 9.5.89
Commencement Date: Sch. 2 items 105.1–105.12 (*except* item 105.10) on 1.11.89: Government Gazette 1.11.89 p. 2798; Sch. 2 item 105.10 on 1.10.92: Government Gazette 23.9.92 p. 2789
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Transport (Amendment) Act 1989, No. 44/1989

Assent Date: 6.6.89
Commencement Date: S. 41(Sch. 2 items 34.1–34.5) on 1.7.89: s. 2(1); s. 42(3) on 11.11.89: s. 2(6)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Miscellaneous Amendments) Act 1989, No. 53/1989

Assent Date: 14.6.89
Commencement Date: S. 19 on 1.5.87: s. 2(2); s. 21(6) on 1.5.88: s. 2(3); ss 1–3, 6–8(1), 9, 10, 12, 13, 16, 20, 21(1)–(5)(7), 22 on 19.6.89: Special Gazette (No. 32) 15.6.89 p. 1; ss 4, 5, 8(2), 14, 15, 17, 18 on 11.11.89: Special Gazette (No. 61) 9.11.89 p. 1; s. 11 on 1.5.91: Government Gazette 1.5.91 p. 1130
Current State: All of Act in operation

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Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: Ss 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Road Safety (Amendment) Act 1990, No. 5/1990 (as amended by No. 19/1991)

Assent Date: 3.4.90
Commencement Date: Ss 3, 11–13, 15(4)(5)(7)–(10) on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1; s. 6 on 1.7.90: Government Gazette 27.6.90 p. 1926; ss 5, 10 on 1.8.90: Government Gazette 25.7.90 p. 2218; ss 4, 7–9 on 1.10.90: Government Gazette 26.9.90 p. 2872
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Certificates) Act 1990, No. 66/1990

Assent Date: 30.11.90
Commencement Date: S. 3 on 1.3.87: s. 2(2); rest of Act on 30.11.90: s. 2(1)
Current State: All of Act in operation

Road Safety (Drivers) Act 1991, No. 19/1991

Assent Date: 30.4.91
Commencement Date: S. 22 on 23.12.86: s. 2(3); s. 20(3) on 3.4.90: s. 2(2); ss 3, 5–10, 13–16, 18, 20(1)(2), 21 on 12.6.91: Government Gazette 5.6.91 p. 1450; ss 11, 12 on 1.9.91: Government Gazette 28.8.91 p. 2368
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Sentencing Act 1991, No. 49/1991

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation

Road Safety (Further Amendment) Act 1991, No. 89/1991 (as amended by Nos 23/2001, 92/2001)

Assent Date: 10.12.91
Commencement Date: S. 17(2) on 23.12.86: s. 2(3); s. 17(3) on 30.4.91: s. 2(4); ss 5, 12, 14 on 1.1.92: s. 2(2); ss 1–4, 6–11, 13, 15, 17(1), 18 on 1.1.92: Government Gazette 18.12.91 p. 3489
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Crimes (Culpable Driving) Act 1992, No. 13/1992

Assent Date: 2.6.92
Commencement Date: 13.6.92: Government Gazette 10.6.92 p. 1418
Current State: All of Act in operation

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Road Safety (Licence Cancellation) Act 1992, No. 41/1992

Assent Date: 23.6.92
Commencement Date: 23.6.92
Current State: All of Act in operation

Sheep Owners Protection (Repeal) Act 1993, No. 1/1993

Assent Date: 6.4.93
Commencement Date: 6.4.93
Current State: All of Act in operation

Transport (Amendment) Act 1993, No. 120/1993

Assent Date: 7.12.93
Commencement Date: Pt 1 (ss 1–3), ss 56, 58, 60, 61(2), 65–71, 73–79 on 7.12.93: s. 2(1); Pt 2 (ss 4–55), ss 57, 59, 61(1), 62, 63 on 19.12.93: s. 2(2); rest of Act on 30.5.94: s. 2(4)
Current State: All of Act in operation

Road Safety (Amendment) Act 1994, No. 17/1994

Assent Date: 10.5.94
Commencement Date: Ss 1, 2, 8 on 10.5.94: s. 2(1); rest of Act on 1.8.94: s. 2(3)
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Magistrates' Court (Amendment) Act 1994, No. 33/1994

Assent Date: 31.5.94
Commencement Date: Ss 1, 2 on 31.5.94: s. 2(1); s. 27(5) on 14.12.93: s. 2(2); rest of Act on 24.10.94: Government Gazette 20.10.94 p. 2789
Current State: All of Act in operation

Transport (Further Amendment) Act 1994, No. 60/1994

Assent Date: 15.6.94
Commencement Date: S. 29 on 15.6.94: s. 2(1)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Further Amendment) Act 1994, No. 78/1994

Assent Date: 22.11.94
Commencement Date: Ss 1, 2 on 22.11.94: s. 2(1); rest of Act on 22.5.95: s. 2(3)
Current State: All of Act in operation

Transport Accident (General Amendment) Act 1994, No. 84/1994

Assent Date: 29.11.94
Commencement Date: Ss 60(2), 61 on 18.12.94: Special Gazette (No. 96) 13.2.94 pp 1, 2; ss 56–59, 60(1) on 29.5.95: s. 2(6)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

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Project Development and Construction Management Act 1994, No. 101/1994

Assent Date: 13.12.94
Commencement Date: S. 68 on 22.5.95: Government Gazette 18.5.95 p. 1180
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Amendment) Act 1995, No. 7/1995

Assent Date: 19.4.95
Commencement Date: 19.4.95
Current State: All of Act in operation

Road Safety (Miscellaneous Amendments) Act 1995, No. 58/1995

Assent Date: 20.6.95
Commencement Date: Ss 14, 28 on 1.8.94: s. 2(2); s. 20 on 1.1.95: s. 2(3); ss 1, 2 on 20.6.95: s. 2(1); ss 3–9, 11–13, 15–17, 19, 21–25, 27 on 6.7.95; ss 18, 26 on 1.11.95: Government Gazette 6.7.95 p. 1698; s. 10 on 1.2.96: Government Gazette 25.1.96 p. 147
Current State: All of Act in operation

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: S. 51 on 1.8.94: s. 2(2); s. 52 on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Wheel Clamping) Act 1996, No. 25/1996

Assent Date: 2.7.96
Commencement Date: Ss 1, 2 on 2.7.96: s. 2(1); rest of Act on 1.8.96: Government Gazette 1.8.96 p. 1954
Current State: All of Act in operation

Road Safety (Amendment) Act 1996, No. 37/1996

Assent Date: 6.11.96
Commencement Date: Ss 3, 5–8 on 21.11.96: Government Gazette 21.11.96 p. 2971; s. 4 on 1.7.97: s. 2(4)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Disclosure of Information) Act 1997, No. 30/1997

Assent Date: 27.5.97
Commencement Date: S. 7 on 27.5.97: s. 2(1); ss 4, 5 on 1.9.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Law and Justice Legislation Amendment Act 1997, No. 44/1997

Assent Date: 11.6.97
Commencement Date: S. 34 on 11.6.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

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Confiscation Act 1997, No. 108/1997 (as amended by No. 43/1998)

Assent Date: 23.12.97
Commencement Date: S. 155 on 1.7.98: Government Gazette 25.6.98 p. 1561
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

(as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Amendment) Act 1998, No. 57/1998 (as amended by No. 73/1998)

Assent Date: 13.10.98
Commencement Date: Ss 4–25 on 1.5.99: Government Gazette 18.3.99 p. 665
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Driving Instructors) Act 1998, No. 63/1998

Assent Date: 27.10.98
Commencement Date: Ss 1, 2 on 27.10.98: s. 2(1); ss 3–6 on 1.3.99: s. 2(3)
Current State: All of Act in operation

Road Safety (Further Amendment) Act 1998, No. 73/1998 (as amended by No. 14/2000)

Assent Date: 4.11.98
Commencement Date: S. 7 on 4.11.98: s. 2(1); s. 9 on 1.3.99: s. 2(4); ss 5(1), 8 on 1.5.99: Government Gazette 18.3.99 p. 665; s. 5(2) on 1.5.99: s. 2(2); s. 6 on 1.5.99: s. 2(3); ss 4, 10 on 1.6.99: s. 2(6)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Amendment) Act 2000, No. 14/2000

Assent Date: 18.4.00
Commencement Date: Ss 16, 19–26 on 18.4.00: s. 2(1); ss 4–15, 17, 18 on 1.12.00: s. 2(4)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 110) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Duties Act 2000, No. 79/2000 (as amended by No. 46/2001)

Assent Date: 28.11.00
Commencement Date: S. 285(Sch. 1 item 5A) on 1.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

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Parliamentary Precincts Act 2001, No. 4/2001

Assent Date: 10.4.01
Commencement Date: S. 29 on 11.4.01: s. 2
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001, No. 23/2001 (as amended by No. 92/2001)

Assent Date: 29.5.01
Commencement Date: Ss 3–8, 9(2)–15 on 28.6.01: Government Gazette 21.6.01 p. 1339; s. 9(1) on 21.12.01: Government Gazette 13.12.01 p. 3061
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Further Amendment) Act 2001, No. 92/2001

Assent Date: 11.12.01
Commencement Date: Ss 27, 34(2) on 12.12.01: s. 2(1); ss 5(1)(2), 6, 9, 11–13(3), 14–25, 28 on 21.12.01: Government Gazette 13.12.01 p. 3061; ss 4, 5(3), 7, 8, 10, 26, 29 on 1.5.02: Government Gazette 18.4.02 p. 708
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Alcohol Interlocks) Act 2002, No. 1/2002

Assent Date: 26.3.02
Commencement Date: Ss 3–10 on 13.5.02: Government Gazette 2.5.02 p. 789
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 57) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Environment Protection (Resource Efficiency) Act 2002, No. 37/2002

Assent Date: 18.6.02
Commencement Date: S. 51(1) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

Road Safety (Responsible Driving) Act 2002, No. 46/2002

Assent Date: 22.10.02
Commencement Date: S. 8 on 23.10.02: s. 2(1); ss 7, 9, 10(a), 11–14 on 15.12.02: Government Gazette 31.10.02 p. 2906
Current State: This information relates only to the provision/s amending the **Road Safety Act 1986**

3. Explanatory Details

¹ S. 3(1) def. of "drink-driving infringement": Section 23(1) of the **Road Safety (Amendment) Act 1994**, No. 17/1994 reads as follows:

23. Transitional provisions

- (1) The amendment of the Principal Act made by section 4(2) applies to any traffic infringement notice issued in respect of a drink-driving infringement after the commencement of that section, irrespective of when the infringement was committed.

² S. 15A: Section 63(1)–(3) of the **Transport (Amendment) Act 1993**, No. 120/1993 reads as follows:

63. Transitional provisions (Part 3)

- (1) The amendments of the **Road Safety Act 1986** made by sections 57 and 61(1) apply to an authorisation referred to in item 9 of Schedule 2 to that Act that was in force immediately before the commencement of those sections and any such authorisation may be cancelled or suspended in accordance with that Act as amended by those sections.
- (2) Any proceedings before the Road Transport Licensing Tribunal under that **Road Safety Act 1986** in relation to an authorisation referred to in item 9 of Schedule 2 to that Act that had not been finally determined by the Tribunal immediately before the commencement of sections 57 and 61(1) shall be determined by the Roads Corporation in accordance with that Act as amended by those sections.
- (3) If under sub-section (2) the Roads Corporation determines any proceedings, any thing done or any requirement complied with in relation to the proceedings before the commencement of sections 57 and 61(1) must, so far as consistent

with the provisions of the **Road Safety Act 1986** as amended by those sections and the regulations made under that Act, be taken to have been done or complied with for the purposes of the determination by the Roads Corporation and the Roads Corporation may have regard to any record of the Road Transport Licensing Tribunal in relation to the proceedings.

³ S. 19(7): Section 23(2) of the **Road Safety (Amendment) Act 1994**, No. 17/1994 reads as follows:

23. Transitional provisions

- (2) The amendments of the Principal Act made by sections 5 and 9 have effect only with respect to full driver licences issued after the commencement of those sections and probationary driver licences converted after that commencement into full driver licences under section 21(7) of the Principal Act.

⁴ S. 48(2): Section 18(1) of the **Road Safety (Further Amendment) Act 1991**, No. 89/1991 reads as follows:

18. Transitional

- (1) The Principal Act as amended by section 9 of this Act applies only to offences committed on or after the commencement of section 9.

⁵ S. 50(4B): Section 7(4) of the **Road Safety (Amendment) Act 1990**, No. 5/1990 reads as follows:

7. Licence restoration reports

- (4) Section 50(4B)(a) of the Principal Act does not apply to a person who applies for an order within 18 months after the commencement of this subsection.

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⁶ S. 50AA: Section 23(3) of the **Road Safety (Amendment) Act 1994**, No. 17/1994 reads as follows:

23. Transitional provisions

- (3) The amendment of the Principal Act made by section 8 applies to any sentence imposed or application determined after the commencement of that section, irrespective of when the offence was committed.

⁷ S. 52(1B): See note 3.

⁸ S. 52(3)–52(7):

S. 52(3) repealed by No. 5/1990 s. 9(b).

S. 52(4)(5) amended by No. 78/1987 s. 9(2), repealed by No. 5/1990 s. 9(b).

S. 52(6) amended by Nos 78/1987 s. 9(2), 57/1989 s. 3(Sch. item 173.12), repealed by No. 5/1990 s. 9(b).

S. 52(7) repealed by No. 5/1990 s. 9(b).

⁹ S. 55(4): Section 52 of the **Miscellaneous Acts (Omnibus Amendments) Act 1995**, No. 100/1995 reads as follows:

52. Savings

The amendments made to the **Road Safety Act 1986** by section 51 do not affect the rights of the parties—

- (a) in the proceeding known as *Hill v Baird* heard and determined in the Magistrates' Court at Geelong on 31 May 1995; or
- (b) in the proceeding known as *Jones v Purcell* (Nos 4975 and 4978 of 1995) in the Supreme Court of Victoria.

¹⁰ S. 55(9A): See note 9.

¹¹ S. 55(9A): The amendments proposed by section 118(Sch. 1 item 50.4) of the **Medical Practice Act 1994**, No. 23/1994 are not included in this publication because the sub-sections inserted by section 10(6) of the **Road Safety (Amendment) Act 1994**, No. 17/1994 were proclaimed later.

¹² S. 55(9B): See note 9.

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¹³ S. 55(9B): See note 11.

¹⁴ S. 55(9D): See note 9.

¹⁵ S. 55(9D): See note 11.

¹⁶ S. 55(9E): See note 9.

¹⁷ S. 55(9E): See note 11.

¹⁸ S. 55(14)(b): See note 9.

¹⁹ S. 56: Sections 6, 7 of the **Road Safety (Amendment) Act 1995**, No. 7/1995 read as follows:

6. Designated places

For the purposes of section 56 of the **Road Safety Act 1986**, a place is deemed to have been specified as a designated place at a particular time (whether before or after the commencement of this Act) if at that time—

- (a) it was a public hospital within the meaning of the **Health Services Act 1988** as then in force; or
- (b) an Order made by the Governor in Council and published in the Government Gazette for the purposes of that section reasonably identified that place as the location of a hospital, clinic or other facility bearing a specified name, despite any inaccuracy in the name, spelling or description of that place or of the hospital, clinic or other facility and despite any change of name or relocation of the hospital, clinic or other facility since the making of the Order.

7. Saving

Section 6 does not affect the rights of the parties in the proceeding known as *Coleman v Hannigan* heard and determined in the Magistrates' Court at Frankston on 19 September 1994.

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²⁰ S. 57(2): Section 4 of the **Road Safety (Certificates) Act 1990**, No. 66/1990 reads as follows:

4. Saving

The amendments made to the **Road Safety Act 1986** by section 3 do not affect the rights of the parties in the proceeding known as *Bracken v O'Sullivan* (No. 8248 of 1990) in the Supreme Court of Victoria.

²¹ S. 57(6): See note 9.

²² S. 58(1): See note 20.

²³ S. 58(2): See note 9.

²⁴ S. 58(2)(f): See note 9.

²⁵ S. 58(2): Section 18(2) of the **Road Safety (Further Amendment) Act 1991**, No. 89/1991 reads as follows:

18. Transitional

(2) The Principal Act as amended by section 13 of this Act applies only to a hearing commencing more than 28 days after the commencement of section 13.

²⁶ S. 58(2E): See note 9.

²⁷ S. 66(3)(c) (*repealed*): Section 11(4) of the **Road Safety (Amendment) Act 1990**, No. 5/1990 reads as follows:

11. Infringements

(4) The amendment made by sub-section (3) applies only in relation to offences committed after the commencement of sub-section (3).

²⁸ S. 66(3A): Section 28(10) of the **Magistrates' Court (Amendment) Act 1994**, No. 33/1994 reads as follows:

28. Transitional provisions

(10) The amendments made by section 25 (extension of time for commencing certain proceedings) apply only to offences alleged to have been

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committed after the commencement of that section.

²⁹ S. 86(4A): See note 28.

³⁰ S. 89A(2): Section 21 of the **Road Safety (Drivers) Act 1991**, No. 19/1991 reads as follows:

21. Transitional

The amendment made to the Principal Act by section 15(4) of the **Road Safety (Amendment) Act 1990** applies only with respect to infringement notices issued on or after 8 May 1990.

³¹ S. 95C(1): S.R. No. 28/1988.

³² S. 95C(1): S.R. No. 30/1988.

³³ S. 95C(1): S.R. No. 29/1988.

³⁴ Sch. 2 item 9: See note 2.