

Road Legislation Amendment Act 2009

No. 28 of 2009

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Victoria

Road Legislation Amendment Act 2009[†]

No. 28 of 2009

[Assented to 17 June 2009]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are to—

- (a) amend the **Road Safety Act 1986** to further provide for the use of cameras and other devices, the disposal of uncollected motor vehicles and items, heavy vehicle speed enforcement and other matters; and

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- (b) amend the **Road Management Act 2004** to further provide for discontinuance of roads, fencing matters, infringements and other matters; and
 - (c) amend the **Accident Towing Services Act 2007** to provide for tow truck trainee permits and to further provide for tow truck licences, offences, demerit points and other matters; and
 - (d) make minor amendments to the **Transport Act 1983** and the **Melbourne City Link Act 1995**.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act comes into operation on the day after the day on which it receives the Royal Assent.
 - (2) Sections 4(2), 10, 19, 24, 25, 26(2), 27, 28, 29, 30, 31, 34(1) and (2), 42 and 53 come into operation on a day or days to be proclaimed.
 - (3) If a provision referred to in subsection (2) does not come into operation before 1 October 2010, it comes into operation on that day.
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PART 2—AMENDMENT OF ROAD SAFETY ACT 1986

3 Principal Act

In this Part, the **Road Safety Act 1986** is called the Principal Act.

See:
Act No.
127/1986.
Reprint No. 11
as at
29 September
2008
and
amending
Act Nos
19/1991,
30/2007,
2/2008,
12/2008,
46/2008 and
77/2008.
LawToday:
www.
legislation.
vic.gov.au

4 Definitions

(1) **Insert** the following definitions in section 3(1) of the Principal Act—

"Chief Commissioner of Police has the same meaning as Chief Commissioner has in the **Police Regulation Act 1958**;

member of police personnel has the same meaning as in the **Police Regulation Act 1958**;

member of the police force has the same meaning as *member of the force* has in the **Police Regulation Act 1958**;

municipal council has the same meaning as *Council* has in the **Local Government Act 1989**;

relevant law or scheme means—

- (a) a road or transport law; or
- (b) a non-Victorian road or transport law;
or
- (c) an approved road transport compliance
scheme;

rules means rules made under section 95D;".

- (2) **Insert** the following definitions in section 3(1) of the Principal Act—

"prescribed road safety camera means a type or class of road safety camera that is prescribed by regulations for the purposes of this Act;

prescribed speed detector means a type or class of speed detector that is prescribed by regulations for the purposes of this Act;

road safety camera means a system consisting of a camera and associated equipment that is used or intended to be used for the purpose of detecting the commission of offences against this Act or regulations made under this Act;

speed detector means a device that is used or intended to be used for the purpose of detecting the commission of offences against this Act or regulations made under this Act;".

- (3) In paragraph (a) of the definition of **parking infringement** in section 3(1) of the Principal Act after "regulations" **insert** "or rules".

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- (4) In the definition of *road or transport law* in section 3(1) of the Principal Act, after paragraph (c) **insert**—
"(d) any rule;"
- (5) In paragraph (a) of the definition of *traffic infringement* in section 3(1) of the Principal Act, for "or the regulations" **substitute** ", the regulations or the rules".
- (6) In section 3(1A) of the Principal Act, for "and the regulations" **substitute** ", the regulations and the rules".
- (7) After section 3(4) of the Principal Act **insert**—
"(5) In this Act, unless the context otherwise requires, a reference to the regulations includes a reference to the rules.
(6) For the avoidance of doubt, in this Act—
(a) a reference to a traffic signal includes a reference to a warning light, bell, gate, boom or barrier at a level crossing;
(b) a reference to a level crossing includes a reference to any area adjacent to the crossing that is denoted by painted cross-hatched road markings."

5 Probationary driver licences

In section 21(2) of the Principal Act, for "or is cancelled by a court or the Corporation" **substitute** ", or is cancelled by a court or the Corporation or by operation of this Act,".

6 Power of Corporation to require tests to be undergone

(1) For sections 27(1), 27(2) and 27(3) of the Principal Act **substitute**—

"(1) The Corporation may require a relevant person to undergo a test to determine—

- (a) if the person is unfit to drive motor vehicles or a category of motor vehicles; or
- (b) if it is dangerous for the person to drive motor vehicles or a category of motor vehicles; or
- (c) whether any driver licence or permit held by the person should be subject to conditions and, if conditions are to be imposed, the type of conditions to be imposed.

(2) For the purposes of subsection (1), the person may be required to undergo—

- (a) a test in relation to the person's fitness, including a test in relation to the person's health or medication the person is taking and its effect on the person's ability to drive; or
- (b) a test in relation to the person's competence; or
- (c) any other test the Corporation considers necessary and appropriate in the circumstances.

(3) If the Corporation requires a relevant person to undergo a test—

- (a) the test must be carried out—
 - (i) by a person of the class prescribed in relation to that class of test; and

-
- (ii) in accordance with any relevant guidelines; and
- (b) the use of the results of the test by the Corporation to determine a matter referred to in subsection (1) must be in accordance with any relevant guidelines."
- (2) After section 27(5) of the Principal Act **insert**—

"(6) In this section—

relevant guidelines, in relation to a test undergone by a person, means guidelines issued by the Minister under section 96B that are relevant to the test;

relevant person means a person who is—

- (a) the holder of a driver licence or a permit; or
- (b) an applicant for a driver licence or a permit; or
- (c) an applicant for the variation of a driver licence."

7 Cancellation, suspension or variation of licences or permits

Section 28(6) of the Principal Act is **repealed**.

8 Increase in penalty for certain offences involving alcohol

In section 49(2A)(a) of the Principal Act, for "more than 12 penalty units" **substitute** "more than 20 penalty units".

9 New section 50AAK inserted

After section 50AAJ of the Principal Act **insert—**

**"50AAK Offence for person to assist with
contravention of alcohol interlock
condition**

- (1) A person must not, without reasonable excuse, by-pass or disengage an approved alcohol interlock installed in a motor vehicle being, or to be, driven by another person (a *relevant person*) if the relevant person's driver licence or permit is subject to an alcohol interlock condition.

Penalty: 25 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person in the course of servicing or repairing the vehicle in which the interlock is installed—
- (a) for the purpose of so servicing or repairing the vehicle, by-passes or disengages the alcohol interlock in accordance with the supplier's instructions; and
 - (b) removes the by-pass or re-engages the interlock—
 - (i) at any time when the person is aware that the relevant person intends to drive the vehicle; and
 - (ii) on completion of the work done by the person in servicing or repairing the vehicle; and
 - (iii) at any time when the vehicle is taken to another person for servicing or repair work.

- (3) A person must not, without reasonable excuse, blow into an approved alcohol interlock, or procure a person to blow into an approved alcohol interlock, installed in a motor vehicle for the purpose of enabling another person (the *other person*) to drive the motor vehicle if the other person's driver licence or permit is subject to an alcohol interlock condition.

Penalty: 10 penalty units.

- (4) For the purposes of subsections (1) and (3), the accused has the burden of proving reasonable excuse."

10 Immediate suspension of driver licence or permit

In section 51 of the Principal Act—

- (a) in subsection (1)(a)(i)(A) and (1)(a)(i)(B), for "0.15 grams" **substitute** "0.10 grams"; and
(b) in subsection (1B)(c)(i) of the Principal Act, for "0.15 grams" **substitute** "0.10 grams".

11 Collection of oral fluid samples in preliminary testing

For section 55D(6) of the Principal Act **substitute**—

- "(6) A person required to undergo a preliminary oral fluid test must do so by placing the prescribed device, or the collection unit of the device, into his or her mouth and carrying out the physical actions that are necessary to ensure that, in the opinion of the person who, under this section, is requiring the test to be undergone, a sufficient sample of oral fluid has been captured by the device or unit.

- (6A) A person who, under this section, is requiring another person to undergo a preliminary oral fluid test may give any reasonable direction as to the physical actions that are necessary for the person to undergo the test."

12 Collection of oral fluid samples for testing or analysis

For section 55E(9) of the Principal Act **substitute**—

- "(9) A person required to provide a sample of oral fluid under this section must do so by placing the prescribed device, or the collection unit of the device, into his or her mouth and carrying out the physical actions that are necessary to ensure that, in the opinion of the authorised officer, a sufficient sample of oral fluid has been captured by the device or unit.
- (9A) An authorised officer who, under this section, is requiring another person to provide a sample of oral fluid may give any reasonable direction as to the physical actions that are necessary for the person to provide the sample."

13 Blood samples to be taken in certain cases

In sections 56(2), 56(4), 56(5), 56(7), 56(8) and 56(9) of the Principal Act, after "doctor" (wherever occurring) **insert** "or approved health professional".

14 Increase in penalty for failure to give information in certain circumstances

In section 60(2)(b) of the Principal Act, for "not more than 10 penalty units" **substitute** "not more than 20 penalty units".

15 Duty of driver etc. if accident occurs

Insert the following heading to section 61 of the Principal Act—

"Duty of driver etc. of motor vehicle if accident occurs".

16 Insertion of new section 61A

After section 61 of the Principal Act **insert**—

"61A Duty of driver etc. of vehicle that is not a motor vehicle if accident occurs

- (1) If owing to the presence of a specified vehicle an accident occurs whereby any person is injured or any property (including any animal) is damaged or destroyed, the driver of the vehicle—
- (a) must immediately stop the vehicle; and
 - (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 vehicle and the identifying number of the vehicle (if any)—
 - (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
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- (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.
- (2) If a specified 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 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 subsection (1).
- (3) If—
- (a) as a result of an accident involving a specified vehicle a person is killed or suffers serious injury; and
-

- (b) the driver of the vehicle knows or ought reasonably to have known that the accident had occurred and had resulted in a person being killed or suffering serious injury; and
- (c) the driver of the vehicle does not comply with the requirements of subsection (1)(a) or (1)(b) in relation to the accident—

the driver is guilty of an indictable offence and liable to level 6 imprisonment (5 years maximum) or a level 6 fine (600 penalty units maximum).

(4) If—

- (a) as a result of the accident a person is killed or suffers serious injury then a person who contravenes subsection (1)(c), (1)(d) or (1)(e) 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 40 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 120 penalty units or to imprisonment for a term of not less than 2 months and not more than 1 year.

- (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 more than 2.5 penalty units or to imprisonment for a

term of not more than 7 days and for a subsequent offence to a penalty of not more than 5 penalty units or to imprisonment for a term of not less than 7 days and not more than 14 days.

- (6) If a person who is convicted or found guilty of an offence against any provision of this section has at any time been convicted or found guilty of an offence against another provision of this section or any previous enactment corresponding to any of those provisions, the conviction for, or finding of guilt of, the offence against that provision is to be taken to be a conviction for, or finding of guilt of, a subsequent offence.
- (7) The specifying by subsection (3) of fault elements for an offence against that subsection is not intended to affect the question of whether fault elements are required for any other offence against this section or any other provision of this Act.
- (8) In this section, *specified vehicle* means a vehicle that is not—
 - (a) a motor vehicle; or
 - (b) a non-motorised wheel-chair; or
 - (c) a motorised wheel-chair that is not capable of a speed of more than 10km per hour."

17 Use of tyre deflation devices by members of the police force

For section 63B(1) of the Principal Act
substitute—

- "(1) The Chief Commissioner of Police may authorise the use by members of the police force of a device (a *tyre deflation device*)

that causes the deflation of the tyres of a vehicle—

- (a) to prevent the use of the vehicle by a person for the purpose of escaping from lawful custody or avoiding arrest; or
- (b) to stop or assist in stopping a vehicle in connection with the pursuit of the vehicle by members of the police force."

18 Dangerous driving

(1) After section 64(2) of the Principal Act **insert—**

"(2A) A person must not drive a vehicle, other than a motor vehicle, at a speed or in a manner that is dangerous to the public, having regard to all the circumstances of the case.

Penalty: 120 penalty units or imprisonment for 12 months or both."

(2) After section 64(3) of the Principal Act **insert—**

"(4) In this section—

vehicle does not include—

- (a) a non-motorised wheel-chair; or
- (b) a motorised wheel-chair that is not capable of a speed of more than 10km per hour."

19 Careless driving

At the end of section 65 of the Principal Act **insert—**

"(2) A person must not drive a vehicle, other than a motor vehicle, on a highway carelessly.

Penalty: For a first offence, 6 penalty units;
For a subsequent offence,
12 penalty units.

(3) In this section—

vehicle does not include—

- (a) a non-motorised wheel-chair; or
- (b) a motorised wheel-chair that is not capable of a speed of more than 10km per hour."

20 Improper use of motor vehicle

After section 65A(2) of the Principal Act **insert**—

- "(3) The Minister may, by notice published in the Government Gazette, declare that the provisions of subsections (1) and (2) and of any regulations (except as specified in the declaration) do not apply to persons—
- (a) while the persons are participating in a function or event, or a type of function or event, specified in the declaration and conducted on land specified in the declaration; or
 - (b) while the persons are participating in an event or function at a motor sport venue specified in the declaration.
- (4) A declaration under subsection (3)(a) may be made on the application of the owner or occupier of the land on which the function or event is to be conducted.
- (5) Subsection (1) does not apply to a person while the person is participating in—
- (a) a race or speed trial specified in a notice published under section 68(3); or
 - (b) a function or event organised and conducted by a motoring organisation the subject of a notice published under section 68(4)."

21 Insertion of new section 65B

After section 65A of the Principal Act **insert—**

"65B Prohibition on drivers of heavy vehicles exceeding speed limit by 35km/h or more

A driver of a heavy vehicle must not drive the heavy vehicle at a speed that exceeds the speed limit for the length of road where the driver is driving by 35 km per hour or more.

Penalty: 30 penalty units."

22 Certain prescribed offences to be operator onus offences

In section 66 of the Principal Act, for "prescribed detection device" (wherever occurring) **substitute** "prescribed road safety camera".

23 Insertion of new section 73A

After section 73 of the Principal Act **insert—**

"73A Offence to obstruct etc. person operating road safety camera or speed detector

A person must not obstruct, hinder, threaten, abuse or intimidate a person who is operating a road safety camera or a speed detector.

Penalty: 60 penalty units."

24 Offence to sell, use or possess anti-speed measuring devices

For section 74(1) of the Principal Act **substitute—**

"(1) A person must not own, sell, use or possess a device the sole or principal purpose of which is—

- (a) to prevent the effective use of a prescribed road safety camera or a prescribed speed detector; or

(b) to detect when a prescribed speed detector is being used.

Penalty: 20 penalty units."

25 Evidence of speed

In section 79(1) of the Principal Act, for "prescribed speed measuring device" **substitute** "prescribed road safety camera or prescribed speed detector".

26 Certain matters indicated by prescribed road safety cameras are evidence

(1) Insert the following heading to section 80 of the Principal Act—

"Certain matters indicated by prescribed road safety cameras are evidence".

(2) In section 80(1) of the Principal Act, for "traffic control signal" (wherever occurring) **substitute** "traffic signal".

(3) In sections 80(1)(a) and 80(1)(b) of the Principal Act, for "a detection device prescribed for the purposes of section 66" **substitute** "a prescribed road safety camera".

27 Certain matters indicated by prescribed road safety cameras are evidence

(1) Insert the following heading to section 80A of the Principal Act—

"Certain matters indicated by prescribed road safety cameras are evidence".

(2) In sections 80A of the Principal Act, for "a detection device prescribed for the purposes of section 66" **substitute** "a prescribed road safety camera".

28 Certain matters indicated by prescribed road safety cameras are evidence

- (1) For the heading to section 81 of the Principal Act **substitute**—

"Certain matters indicated by prescribed road safety cameras are evidence".

- (2) In sections 81(1)(a) and 81(1)(b) of the Principal Act, for "a detection device prescribed for the purposes of section 66" **substitute** "a prescribed road safety camera".

29 Evidence of testing and sealing

In section 83 of the Principal Act, before "device" (wherever occurring) **insert** "prescribed speed detector or".

30 Evidence relating to prescribed road safety cameras

- (1) For the heading to section 83A of the Principal Act **substitute**—

"Evidence relating to prescribed road safety cameras".

- (2) In section 83A(1) of the Principal Act—
- (a) in paragraph (a), for "a prescribed detection device for the purposes of section 66" **substitute** "a prescribed road safety camera";
 - (b) in paragraph (b), for "a detection device prescribed for the purposes of section 66" **substitute** "a prescribed road safety camera".
- (3) In section 83A(1)(c) of the Principal Act, for "detection device" **substitute** "prescribed road safety camera".
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31 General evidentiary provisions

- (1) In section 84(7)(a) of the Principal Act, for "a detection device prescribed for the purposes of section 66" **substitute** "a prescribed road safety camera".
- (2) For section 84(7)(b) of the Principal Act **substitute**—
 - "(b) an image or message produced by a prescribed road safety camera used to detect traffic signal offences, when used in the prescribed manner—".

32 Repeal of reference to heavy vehicle registration suspension scheme

Section 84BD(2) of the Principal Act is **repealed**.

33 Definitions for Part 6A

- (1) **Insert** the following definition in section 84C(1) of the Principal Act—

"*disposal order* means an order made under section 84ZW;"
- (2) For paragraph (b) of the definition of *relevant offence* in section 84C(1) of the Principal Act **substitute**—
 - "(b) an offence against section 64(1)—
 - (i) in circumstances involving improper use of a motor vehicle; or
 - (ii) in circumstances in which a motor vehicle is driven at 45 km per hour or more over the applicable speed limit; or
 - (iii) in circumstances in which a motor vehicle is driven, if the applicable speed limit is 110 km per hour, at a speed of 145 km per hour or more;"

34 Surrender of motor vehicle

- (1) In section 84H(2)(a)(i) of the Principal Act, for "a prescribed detection device for the purposes of section 66 and the detection device is" **substitute** "a prescribed road safety camera".
- (2) In section 84H(3)(a)(i) of the Principal Act, for "a prescribed detection device" **substitute** "a prescribed road safety camera".
- (3) In section 84H(3)(d) of the Principal Act, for "the police force" **substitute** "police personnel".
- (4) After section 84H(3) of the Principal Act **insert**—
"(3A) A registered operator served with a notice under subsection (1) must comply with the notice, unless the registered operator has a reasonable excuse.
Penalty: 60 penalty units."
(5) In section 84H(4) of the Principal Act, for "the police force" (where first occurring) **substitute** "police personnel".

35 Impoundment or immobilisation order

- (1) In section 84S(3) of the Principal Act, for "the police force" **substitute** "police personnel".
- (2) After section 84S(3) of the Principal Act **insert**—
"(4) The registered operator of the motor vehicle must not, without reasonable excuse, fail to surrender the motor vehicle at the time and place specified in the order made under subsection (1).
Penalty: 60 penalty units."

36 Forfeiture order

- (1) In section 84T(3) of the Principal Act—
- (a) for "A forfeiture order under subsection (1)" **substitute** "An order made under subsection (1)";
 - (b) for "the police force" **substitute** "police personnel".
- (2) After section 84T(3) of the Principal Act **insert**—
- "(4) The registered operator of the motor vehicle must not, without reasonable excuse, fail to surrender the motor vehicle at the time and place specified in the order made under subsection (1).
Penalty: 60 penalty units."

37 New Subdivision heading inserted

Before section 84ZQ of the Principal Act **insert**—

**"Subdivision 1—Disposal of motor vehicles,
items and things".**

38 Sale or disposal of uncollected motor vehicles and items

For section 84ZQ(2) of the Principal Act **substitute**—

- "(2) The Chief Commissioner of Police must not sell or otherwise dispose of a motor vehicle or an item or thing left in or on a motor vehicle under subsection (1) unless—
- (a) the matters referred to in subsection (3) are satisfied; or
 - (b) a disposal order has been made for the motor vehicle.

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- (3) For the purposes of subsection (2)(a), the matters that must be satisfied before the Chief Commissioner may sell or otherwise dispose of the motor vehicle or item or thing are—
- (a) all proceedings in relation to the relevant offence that led to the impoundment or immobilisation of the motor vehicle have been finalised and any appeal period has expired; and
 - (b) at least 14 days before attempting to sell or otherwise dispose of the motor vehicle, item or thing, the Chief Commissioner serves notice on the registered operator and driver of the motor vehicle that the Chief Commissioner intends to sell or otherwise dispose of the motor vehicle, item or thing unless steps are taken to collect or release the motor vehicle, item or thing; and
 - (c) at least 14 days before attempting to sell or otherwise dispose of the motor vehicle, item or thing, the Chief Commissioner, by publishing a notice in a newspaper circulating generally in the State, notifies the public that the Chief Commissioner intends to sell or otherwise dispose of the motor vehicle and any item or thing left in or on the motor vehicle; and
 - (d) if the Chief Commissioner intends to sell or otherwise dispose of an item or thing left in or on the motor vehicle, all reasonable efforts have been made to return the item or thing to its owner."
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39 Insertion of new Subdivision heading

Before section 84ZR of the Principal Act **insert—**

**"Subdivision 2—Disposal of motor vehicles,
items or things if forfeiture order has taken
effect".**

**40 Insertion of new Subdivision 3 of Division 5 of
Part 6A**

After section 84ZS of the Principal Act **insert—**

**"Subdivision 3—Disposal of motor vehicles,
items or things subject to disposal order**

**84ZT Disposal of motor vehicle, item or thing
subject to disposal order**

- (1) The Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a motor vehicle that is the subject of a disposal order and any item or thing left in or on the motor vehicle.
- (2) The Chief Commissioner must not sell or dispose of an item or thing left in or on a motor vehicle that is the subject of a disposal order unless all reasonable efforts have been made to return the item or thing to its owner.

**84ZU Notice to be given of intention to apply for
disposal order**

- (1) The Chief Commissioner of Police may give notice of an application for a disposal order for a motor vehicle if—
 - (a) a decision is made by a member of the police force to impound or immobilise the motor vehicle under section 84F or an impoundment or immobilisation order is made against the vehicle; and

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- (b) the relevant court adjourns proceedings in relation to a relevant offence, other than to a fixed date, because the defendant fails to appear; and
 - (c) a warrant is issued for the arrest of the defendant; and
 - (d) the motor vehicle has not been collected, and the designated costs are not paid, within 2 months after the day the proceedings are adjourned.
- (2) At least 28 days before making an application under subsection (1) the Chief Commissioner of Police must—
- (a) serve notice of the intention to make the application on—
 - (i) the driver of the motor vehicle; and
 - (ii) if the driver of the motor vehicle is not the registered operator of the motor vehicle, the registered operator; and
 - (iii) any person who the Chief Commissioner is aware has an interest in the motor vehicle; and
 - (iv) the Corporation; and
 - (b) publish a notice in a newspaper circulating generally in the State, of the Chief Commissioner's intention to make the application.
- (3) A notice under subsection (2) must state—
- (a) that the Chief Commissioner intends to apply for an order to dispose of the motor vehicle unless the motor vehicle is collected, and the designated costs
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paid, within 28 days of the date the notice is served; and

- (b) information that identifies the motor vehicle, including the motor vehicle's registration number (if applicable); and
- (c) that a person named in the notice may appear before the relevant court at the hearing of the application and show cause why the order should not be made; and
- (d) any person on whom the notice is served must not sell or otherwise dispose of the person's interest in the motor vehicle without the approval of the relevant court.

84ZV Application for disposal order

The Chief Commissioner of Police may apply to the court for an order to dispose of a motor vehicle if—

- (a) the Chief Commissioner has served notice in respect of the motor vehicle in accordance with section 84ZU(2)(a); and
- (b) within 28 days after the date the notice is served, the motor vehicle is not collected or the designated costs have not been paid.

84ZW Hearing of application for and making of disposal order

- (1) The relevant court hearing an application for a disposal order—
 - (a) must allow a person served with a notice under section 84ZU to be heard at the hearing of the application and to

show cause why the disposal order should not be made; and

- (b) may allow any other person to be heard if the court is satisfied the disposal order may substantially affect the person's interests.
- (2) After hearing the application, the court may—
- (a) make the disposal order; or
 - (b) decline to make the disposal order if the court is satisfied the order would cause exceptional hardship to a person.
- (3) If the court makes the disposal order, the Crown becomes the owner of the motor vehicle.

84ZX Application of proceeds of sale

- (1) If a motor vehicle, item or thing is sold under a disposal order, the proceeds of the sale are to be applied in the following order of priority—
- (a) to pay the costs of the disposal;
 - (b) to pay any costs of impoundment or immobilisation;
 - (c) to discharge any security interest over the motor vehicle, including a bank loan or lease arrangement.
- (2) Any sum remaining after the proceeds of the sale are applied in accordance with subsection (1) is taken to be unclaimed money under the **Unclaimed Money Act 2008** as if it were a sum of money legally payable to the person who was the owner of the vehicle immediately before the disposal

order was made and as if the sum has remained unpaid for more than 12 months."

41 Service of parking infringement notices

(1) For section 87(1A) of the Principal Act **substitute—**

"(1A) Without limiting subsection (1), an authorised person for a municipal council or a relevant public authority may serve or cause to be served, in accordance with the regulations, a parking infringement notice if the authorised person has reason to believe—

- (a) in the case of an authorised person for a municipal council, that a parking infringement has been committed in respect of a vehicle on land within the council's municipal district; or
- (b) in the case of an authorised person for a relevant public authority, that a parking infringement has been committed in respect of a vehicle on a relevant place in relation to the relevant public authority."

(2) For section 87(1B)(c) of the Principal Act **substitute—**

"(c) an authorised person for a municipal council—".

(3) In section 87(1C) of the Principal Act, for "only authorise under subsection (1A) or (1B)(c) a person whom it is satisfied" **substitute** "authorise a person under this section only if it is satisfied the person".

(4) In sections 87(1C), 87(1D), 87(1E)(c), 87(3) and 87(5) of the Principal Act, after "municipal council" (wherever occurring) **insert** "or relevant public authority".

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- (5) In section 87(1D) of the Principal Act, for "any person authorised by it under subsection (1A) or (1B)(c)" **substitute** "an authorised person it appoints".
- (6) In section 87(1G) of the Principal Act, for "a person authorised under subsection (1A) or (1B)(c)" **substitute** "an authorised person".
- (7) In section 87(1H) of the Principal Act, for "a person authorised under subsection (1A) or (1B)(c)" **substitute** "an authorised person".
- (8) For section 87(4) of the Principal Act **substitute**—
- "(4) Despite subsection (3)—
- (a) a municipal council may, by resolution; or
- (b) a relevant public authority may, with the approval of the Minister—
- fix a penalty for a parking infringement in contravention of a regulation under this Act, that is a regulation in respect of which regulations under this Act prescribe a penalty, if the penalty to be fixed is not more than 0.5 penalty unit and is not more than the penalty prescribed by the regulations.
- (4A) A penalty so fixed under subsection (4) is the penalty prescribed for the purposes of this section in respect of such a parking infringement occurring—
- (a) in the case of the municipal council, within the municipal district of that municipal council; or
- (b) in the case of the relevant public authority, on land or premises that are vested in or under the control of that authority."
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- (9) In section 87(5)(a) of the Principal Act, after "council" **insert** "or relevant public authority".
- (10) After section 87(5) of the Principal Act **insert**—
- "(6) The Minister may, by notice published in the Government Gazette—
- (a) declare a public authority to be a relevant public authority for the purposes of this section; and
 - (b) declare land or premises that are vested in, or under the control of, the public authority to be a relevant place for the purposes of this section.
- (7) The Minister responsible for a relevant public authority may, by notice published in the Government Gazette, give an approval for the public authority to fix a penalty under subsection (4).
- (8) In this section—
- authorised person***, for a municipal council or relevant public authority, means—
- (a) in the case of a municipal council, a person, other than a member of the council's staff, who is given an authority in writing by the council, either generally or in a particular case, to serve parking infringement notices; or
 - (b) in the case of a relevant public authority, a person, other than a member of the authority's staff, who is given an authority in writing by the public authority, either generally or in a particular case, to serve parking infringement notices;
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Ministerial approval, in relation to a relevant public authority, means an approval given under subsection (7) by the Minister responsible for the public authority;

relevant place, for a relevant public authority, means land or premises declared under subsection (6)(b) by the Minister to be a relevant place for the relevant public authority;

relevant public authority means a public authority declared under subsection (6)(a) by the Minister to be a relevant public authority."

42 Traffic infringements

In section 88(1A) of the Principal Act, for "a detection device prescribed for the purposes of section 66" **substitute** "a prescribed road safety camera".

43 Repeal of references to heavy vehicle registration suspension scheme

Sections 89(6) and 89(7) of the Principal Act are **repealed**.

44 Regulations

(1) After section 95(3A) of the Principal Act **insert**—

"(3AB) The regulations may—

- (a) provide that a traffic infringement applies, or does not apply, at times, on days, in circumstances or at places identified in the regulations; and
- (b) provide that a traffic infringement applies, or does not apply, to a person or a class of person, or a vehicle or a

class of vehicle, specified in the regulations; or

- (c) allow for a different amount of penalty for a traffic infringement according to the circumstances in which the offence is committed or the extent of the contravention constituting the offence."

(2) After section 95(10) of the Principal Act **insert**—

"(11) Regulations made under this Act may provide for matters of a transitional or savings nature relating to the making, amendment or repeal of such regulations."

45 Insertion of new section 95D

After section 95C of the Principal Act **insert**—

'95D Rules

- (1) The Governor in Council may make rules for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 2.
- (2) Sections 95(2) to 95(10) apply to rules made under this section as if a reference in those subsections to "regulations" included a reference to "rules".
- (3) Rules made under this section are statutory rules.'

46 Disallowance of regulations, notices and orders

(1) **Insert** the following heading to section 96 of the Principal Act—

"Disallowance of instruments".

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- (2) In section 96(1)(e) of the Principal Act, for "section 94." **substitute** "section 94;"
 - (3) After section 96(1)(e) of the Principal Act **insert**—
"(f) guidelines issued under section 96B."
 - (4) In section 96(2) of the Principal Act, after "regulations" (where twice occurring), **insert** ", rules".

47 Insertion of new section 96B

After section 96A of the Principal Act **insert**—

"96B Minister may issue guidelines about testing of persons under section 27

- (1) The Minister may, from time to time, issue guidelines about testing a person under section 27 to determine whether—
 - (a) the person is unfit to drive motor vehicles or a category of motor vehicles; or
 - (b) it is dangerous for the person to drive motor vehicles or a category of motor vehicles; or
 - (c) the person's driver licence or permit should be subject to conditions and, if conditions are to be imposed, the type of conditions to be imposed.
- (2) Without limiting subsection (1), the guidelines may provide for—
 - (a) the way in which tests carried out under section 27 are to be carried out; and
 - (b) the use of the results of the tests by the Corporation to determine a matter referred to in subsection (1).

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- (3) The Minister must ensure the guidelines are published in the Government Gazette.
- (4) The guidelines may incorporate any matter contained in an external document whether—
- (a) wholly or partially as amended by the guidelines; or
 - (b) as issued at the time the guidelines are made or at any time before then; or
 - (c) as issued from time to time.
- (5) If guidelines have incorporated any matter contained in an external document as issued from time to time and the external document is amended, for the purpose of applying the guidelines the external document is taken not to have been amended until the Minister publishes notice of the amendment in the Government Gazette.
- (6) In this section—
- external document* means a document, code, guidelines, rule, specification or method formulated, issued, prescribed or published by any authority, person or body;
- incorporate* includes apply or adopt;
- issued*, in relation to an external document, includes formulated, prescribed or published."

48 Insertion of reference to rules in section 100

In section 100 of the Principal Act for "under this Act," **substitute** "under this Act or the rules,".

49 Consequential repeal of definition of *relevant law or scheme*

The definition of *relevant law or scheme* in section 106 of the Principal Act is **repealed**.

50 Application of penalties for breaches of mass, dimension and load restraint limits and requirements

In section 178(1) of the Principal Act, for "section 176(3) or 176(4)" **substitute** "section 176".

51 Driver must advise of change or end of accreditation

Insert the following penalty at the foot of section 191ZY(2) of the Principal Act—

"Penalty: 20 penalty units."

52 Relevant heavy vehicle offences

(1) In section 192(2)(a)(ii) of the Principal Act, for "Part 10A; and" **substitute** "Part 10A; or".

(2) After section 192(2)(a)(ii) of the Principal Act **insert**—

"(iii) the contravention of a requirement under Part 13; and".

53 Insertion of new Part 13

After section 273 of the Principal Act **insert**—

"

PART 13—HEAVY VEHICLE SPEED ENFORCEMENT

Division 1—Preliminary

274 Definitions for Part 13

In this Part—

corresponding law means—

- (a) a law in force in another State or a Territory of the Commonwealth that corresponds to this Part; or
- (b) a law of another State or a Territory of the Commonwealth that is prescribed by the regulations to be a corresponding law to this Part;

driver means the driver of a heavy vehicle and includes an employed driver and a self-employed driver;

employed driver means a driver who is employed by someone else to drive a heavy vehicle;

employer means a person who employs someone else to drive a heavy vehicle under a contract of employment, apprenticeship or training;

Example

A labour hire company.

loading manager means—

- (a) a person who manages, or is responsible for the operation of, premises at which usually on a business day at least 5 heavy vehicles—
 - (i) are loaded with goods for transport; or
 - (ii) have goods that the vehicles have transported unloaded; or

- (b) a person who directly or indirectly supervises, manages or controls the loading or unloading of heavy vehicles at premises referred to in paragraph (a);

Example

A company that runs a distribution centre or a site manager for a distribution centre.

party in the chain of responsibility, in relation to a heavy vehicle, means any one of the following persons—

- (a) the employer of the driver of the vehicle;
- (b) the prime contractor of the driver of the vehicle;
- (c) the operator of the vehicle;
- (d) each scheduler of goods or passengers for transport by the vehicle, and each scheduler of the driver of the vehicle;
- (e) each loading manager of goods for transport by the vehicle;
- (f) each consignor of goods for transport by the vehicle to whom Division 4 applies;
- (g) each consignee of goods for transport by the vehicle to whom Division 4 applies;

prime contractor means a person who engages someone else to drive a heavy vehicle under a contract for services;

Example

A logistics business that engages a subcontractor to transport goods.

rest time, for a driver, has the same meaning as in Part 10A;

scheduler means a person who—

- (a) schedules a driver's work time or rest time; or
- (b) schedules the transport of passengers or goods, by heavy vehicle, by road;

speed limit includes—

- (a) a sign-posted speed limit that applies to a driver of a heavy vehicle for a length of road where the driver is driving the vehicle; or
- (b) a speed limit specified by legislation that applies to a driver of a heavy vehicle for a length of road where the driver is driving the vehicle; or
- (c) a speed limit that applies to a driver of a particular heavy vehicle for a length of road where the driver of the vehicle is driving the vehicle; or
- (d) a prohibition on travelling between two places in less than a specified time that applies to a driver of a heavy vehicle for a length of road where the driver is driving the vehicle;

work time, for a driver, has the same meaning as in Part 10A, with the modification that a reference to "fatigue regulated heavy vehicle" is to be taken to be a reference to "heavy vehicle".

275 Application of Commonwealth Acts Interpretation Act 1901

- (1) The Acts Interpretation Act 1901 of the Commonwealth applies to the interpretation of this Part.
- (2) This section does not prevent the **Interpretation of Legislation Act 1984** from applying to this Part to the extent it can do so consistently with the application of the Acts Interpretation Act 1901 of the Commonwealth.

Division 2—Duties on employers, prime contractors and operators

276 Duty concerning business practices

- (1) A person who is—
 - (a) an employer or prime contractor of a driver of a heavy vehicle; or
 - (b) an operator of a heavy vehicle in which a driver is to make a journey for the operator—

must take all reasonable steps to ensure the person's business practices will not cause the driver, while driving the heavy vehicle, to exceed a speed limit.

Penalty: For a first offence 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case;

For a subsequent offence 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.

Examples

- Regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues.
- Reviewing driving, work and trip records.
- A program to report and monitor (for instance, by GPS tracking) incidents of speeding, and related risks and hazards.
- Training and information for drivers, staff and parties in the chain of responsibility about speeding.
- Regular maintenance of vehicle components that relate to complying with speed limits (for instance, speedometer, engine management system and speed limiters).

Note

Section 285 sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 284 sets out a method by which an employer, prime contractor and operator can take all reasonable steps for the purposes of this subsection.

- (2) An employer must not cause a driver to drive a heavy vehicle unless—
- (a) the employer has complied with subsection (1); and
 - (b) the employer, after making reasonable inquiries, is satisfied the scheduler has complied with section 278.

Penalty: For a first offence 100 penalty units, in the case of a corporation, or 20 penalty units, in any other case;

For a subsequent offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case.

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- (3) A prime contractor or operator must not cause a driver to drive a heavy vehicle unless—
- (a) the prime contractor or operator has complied with subsection (1); and
 - (b) the prime contractor or operator, after making reasonable inquiries, is satisfied the scheduler has complied with section 278.

Penalty: For a first offence 100 penalty units, in the case of a corporation, or 20 penalty units, in any other case;

For a subsequent offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case.

- (4) A person charged with an offence under subsection (1), (2) or (3) does not have the benefit of the mistake of fact defence.

Note

Section 287 sets out how subsection (4) operates.

- (5) In this section—

business practices, in relation to an employer, prime contractor or operator, means the practices of the employer, prime contractor or operator in running the business, and includes—

- (a) the operating policies and procedures of the business; and
 - (b) the human resource and contract management arrangements of the business; and
 - (c) arrangements for managing safety.
-

277 Duty to ensure offences are not committed

(1) In this section—

level 1 prohibited conduct means—

- (a) the commission of an offence of a type specified in Column 1 of item 1 of the Table (whether the speed limit is exceeded by less than 15 km per hour or by 15 km per hour or more); or
- (b) the commission of an offence of a type specified in Column 1 of item 2 of the Table (by exceeding the speed limit by less than 15 km per hour);

level 2 prohibited conduct means—

- (a) the commission of an offence of a type specified in Column 1 of item 2 of the Table (by exceeding the speed limit by 15 km per hour or more); or
- (b) the commission of an offence of a type specified in Column 1 of item 3 of the Table (by exceeding the speed limit by less than 15 km per hour);
- (c) the commission of an offence of a type specified in Column 1 of item 4 of the Table (by exceeding the speed limit by less than 15 km per hour);

level 3 prohibited conduct means—

- (a) the commission of an offence of a type specified in Column 1 of item 3 of the Table (by exceeding

the speed limit by 15 km per hour or more); or

- (b) the commission of an offence of a type specified in Column 1 of item 4 of the Table (by exceeding the speed limit by 15 km per hour or more);

Table means the Table at the end of this section.

(2) If—

- (a) a driver of a heavy vehicle commits level 1 prohibited conduct; and
- (b) the vehicle, or the driver of the vehicle, at the time the prohibited conduct is committed, is subject to the control of an employer, prime contractor or operator—

the employer, prime contractor or operator is guilty of an offence and liable to a penalty of 50 penalty units, in the case of a corporation or 10 penalty units, in any other case.

(3) If—

- (a) a driver of a heavy vehicle commits level 2 prohibited conduct; and
- (b) the vehicle, or the driver of the vehicle, at the time the prohibited conduct is committed, is subject to the control of an employer, prime contractor or operator—

the employer, prime contractor or operator is guilty of an offence and liable to a penalty of—

-
- (c) for a first offence, 100 penalty units, in the case of a corporation, or 20 penalty units, in any other case;
- (d) for a subsequent offence under this section, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case.
- (4) If—
- (a) a driver of a heavy vehicle commits level 3 prohibited conduct; and
- (b) the vehicle, or the driver of the vehicle, at the time the prohibited conduct is committed, is subject to the control of an employer, prime contractor or operator—
- the employer, prime contractor or operator is guilty of an offence and liable to a penalty of—
- (c) for a first offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case;
- (d) for a subsequent offence under this section, 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.
- (5) A person does not commit an offence under subsection (2), (3) or (4) if the person controls a vehicle that is one of a group of vehicles that is being towed, but the person does not control—
- (a) the driver; or
- (b) the vehicle that is towing the group of vehicles.
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- (6) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note

Section 287 sets out how subsection (6) operates.

- (7) It is a defence to a charge for an offence under this section if—
- (a) the person charged with the offence did not know and could not reasonably be expected to know of the conduct of the driver; and
 - (b) either—
 - (i) the person charged took all reasonable steps to prevent the driver's conduct; or
 - (ii) there were no steps the person charged could reasonably be expected to have taken to prevent the driver's conduct.
- (8) In any proceeding for an offence under this section—
- (a) it is irrelevant whether the driver has been, or will be, charged with the offence, or has been, or will be, found guilty of the offence; and
 - (b) evidence that the driver has been found guilty of the offence is evidence that the offence occurred at the time and place, and in the circumstances, specified in the charge that resulted in the finding of guilt; and

- (c) evidence that the driver has paid the infringement penalty payable under an infringement notice for an offence is evidence that the offence occurred at the time and place, and in the circumstances, specified in the infringement notice.

Table

<i>Item number</i>	<i>Column 1 Offence</i>	<i>Column 2 Type of heavy vehicle</i>
1	An offence of driving a vehicle of a type specified in Column 2 of this item at a speed in excess of a speed limit that is 60 km per hour or less.	All
2	An offence of driving a vehicle of a type specified in Column 2 of this item at a speed in excess of a speed limit that is more than 60 km per hour but less than 100 km per hour.	All (except road trains that are speed limited to less than 100 km per hour)

<i>Item number</i>	<i>Column 1 Offence</i>	<i>Column 2 Type of heavy vehicle</i>
3	An offence of driving a vehicle of a type specified in Column 2 of this item at a speed in excess of a speed limit that is more than 60 km per hour but less than 100 km per hour.	Road trains that are speed limited to less than 100 km per hour
4	An offence of driving a vehicle of a type specified in Column 2 of this item at a speed in excess of a speed limit that is 100 km per hour or more.	All

Division 3—Duties on schedulers

278 Duty concerning driver's schedule

- (1) A person who is a scheduler must take all reasonable steps to ensure a driver's schedule for driving a heavy vehicle will not cause the driver to exceed a speed limit.

Penalty: For a first offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case;

For a subsequent offence,
500 penalty units, in the case of a
corporation, or 100 penalty units,
in any other case.

Examples

- Consulting drivers about their schedules and work requirements.
- Taking account of the average speed that can be lawfully travelled on scheduled routes.
- Allowing for traffic conditions or other delays in schedules.
- Contingency planning in relation to schedules.

Note

Section 285 sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 284 sets out a method by which a scheduler can take all reasonable steps for the purposes of this subsection.

- (2) A person who is the scheduler of a heavy vehicle or of the driver of a heavy vehicle must—
- (a) comply with subsection (1); and
 - (b) cause the schedule for driving to be such that it allows for—
 - (i) compliance with all speed limits applying to the driver of the vehicle; and
 - (ii) the driver to take all required rest breaks (in accordance with all laws regulating the work and rest times of the driver); and
 - (iii) traffic conditions and other delays that could reasonably be expected.
-

Examples

- The actual average speed able to be travelled lawfully and safely by the driver on the route in question.
- Known traffic conditions such as road works or traffic congestion on the route in question.
- Delays caused by loading, unloading or queuing.

Penalty: For a first offence, 100 penalty units, in the case of a corporation, or 20 penalty units, in any other case;

For a subsequent offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case.

- (3) A person charged with an offence under subsection (1) or (2) does not have the benefit of the mistake of fact defence.

Note

Section 287 sets out how subsection (3) operates.

Division 4—Duties on loading managers

279 Duty on loading managers

- (1) A loading manager must take all reasonable steps to ensure the arrangements for loading and unloading heavy vehicles at the premises at which he or she is the loading manager will not cause the driver of a heavy vehicle to exceed a speed limit.

Penalty: For a first offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case;

For a subsequent offence,
500 penalty units, in the case of
a corporation, or 100 penalty
units, in any other case.

Examples

- Reviewing loading and unloading times and delays at loading and unloading places.
- Identifying potential loading and unloading bottlenecks in consultation with drivers and other parties in the chain of responsibility.
- Ensuring timeslots for loading or unloading can be relied upon.

Note

Section 285 sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 284 sets out a method by which a loading manager can take all reasonable steps for the purposes of this subsection.

- (2) A person charged with an offence under subsection (1) does not have the benefit of the mistake of fact defence.

Note

Section 287 sets out how subsection (2) operates.

Division 5—Duties on certain consignors and consignees

280 Definition

In this Division—

consignee means a person who—

- (a) with the person's authority, is named or otherwise identified in the relevant transport documentation as the intended consignee of goods that are transported by road by a particular operator of a heavy vehicle; and
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(b) knows, or who ought reasonably to have known, the goods were to be transported by road.

consignor means a person who engages a particular operator of a heavy vehicle, either directly or indirectly or through an agent or other intermediary, to transport goods on the person's behalf by road for commercial purposes;

281 Duties on consignors and consignees

(1) A person who is a consignor or consignee must take all reasonable steps to ensure the terms of consignment, including the delivery time, will not cause the driver of a heavy vehicle that is to transport the consigned goods to exceed a speed limit.

Penalty: For a first offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case;

For a subsequent offence, 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.

Examples

- Ensuring contractual arrangements and documentation relating to the consignment and delivery of consigned goods enable speeding compliance.
- Contingency planning in relation to consignments and delivery times.
- Regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues.

Note

Section 285 sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 284 sets out a method by which a consignor or consignee can take all reasonable steps for the purposes of this subsection.

- (2) A person who is a consignor or consignee must take all reasonable steps to ensure the terms of the consignment, including the delivery times—
- (a) will not cause the employer or the prime contractor of the driver of the heavy vehicle that is to transport the consigned goods to cause the driver to exceed a speed limit; and
 - (b) will not cause the operator of a heavy vehicle that is to transport the consigned goods to cause the driver to exceed a speed limit.
- Penalty: For a first offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case;
- For a subsequent offence, 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.
- (3) A person who is a consignor or consignee must not make a demand that affects, or that may affect, a time in a schedule for the transport of the consigned goods by heavy vehicle unless the person—
- (a) has complied with subsections (1) and (2); and

(b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause the scheduler of the driver or of the vehicle to contravene section 278.

Penalty: For a first offence, 100 penalty units, in the case of a corporation, or 20 penalty units, in any other case;

For a subsequent offence, 250 penalty units, in the case of a corporation, or 50 penalty units, in any other case.

(4) A person charged with an offence under subsection (1), (2) or (3) does not have the benefit of the mistake of fact defence.

Note

Section 287 sets out how subsection (4) operates.

Division 6—Certain requests, contracts etc. prohibited

282 Certain requests etc. prohibited

A person must not ask, direct or require (directly or indirectly) a driver or a party in the chain of responsibility to do something the person knows, or reasonably ought to know, would have the effect of causing the driver, while driving a heavy vehicle, to exceed a speed limit.

Penalty: 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.

Note

Section 274 sets out who are the parties in the chain of responsibility.

Example

A requirement that the driver complete a journey in a time the person knows or reasonably ought to know cannot be complied with unless the driver commits a speeding offence or does not take all the rest breaks the driver is required to take.

283 Certain contracts prohibited

- (1) A person must not enter into a contract with a driver or with a party in the chain of responsibility if the person knows, or reasonably ought to know, that the contract would have the effect of causing a driver, while driving a heavy vehicle, to exceed a speed limit.

Penalty: 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.

Note

Section 274 sets out who are the parties in the chain of responsibility.

- (2) A person must not enter into a contract with a driver or with a party in the chain of responsibility if the person knows, or reasonably ought to know, that the contract would encourage or provide an incentive for a party in the chain of responsibility to cause a driver, while driving a heavy vehicle, to exceed a speed limit.

Penalty: 500 penalty units, in the case of a corporation, or 100 penalty units, in any other case.

**Division 7—Reasonable steps and provisions
concerning defences**

284 What constitutes reasonable steps

Without limiting the ways in which a person may be regarded as having taken all reasonable steps, for the purposes of this Part, a person must be regarded as having taken all reasonable steps to prevent an act or omission that might cause a driver, while driving a heavy vehicle, to exceed a speed limit, if the person—

- (a) has identified and assessed the aspects of any act or omission of the person, that might cause the driver to exceed a speed limit; and
- (b) for each aspect the person has identified and assessed under paragraph (a), has identified and assessed—
 - (i) the risk that the aspect might cause the driver to exceed a speed limit; and
 - (ii) if there is a substantial risk that the aspect might cause the driver to exceed a speed limit—the measures the person can reasonably take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk; and
- (c) carried out the identification and assessment referred to in paragraphs (a) and (b)—
 - (i) at least annually; and

- (ii) after anything occurs that may adversely affect the act or omission or that indicates that there may be a problem with the act or omission; and
- (d) has taken the measures identified and assessed under paragraph (b)(ii); and
- (e) has documented the actions the person has taken under paragraphs (a), (b), (c) and (d), and retains that documentation for at least 3 years.

285 Matters relevant to deciding whether acts or omissions constitute all reasonable steps

Without limiting section 284, in deciding whether the actions of a person constitute all reasonable steps, a court may have regard to anything that it considers relevant including the following—

- (a) the actions or failures to act that the person was attempting to, or should have been attempting to address;
- (b) the likelihood that harm would eventuate;
- (c) the degree of harm that would result from any failure to comply with speed limits;
- (d) if a driver has been speeding, the circumstances and nature of the alleged offence;
- (e) the degree to which the person (either personally or through an agent or employee) had the ability to eliminate, prevent or reduce any failure to comply with speed limits or to eliminate or

minimise a risk of harm eventuating from any failure to comply with speed limits;

- (f) the availability and suitability of measures to eliminate failures to comply with speed limits or to eliminate or minimise a risk of harm eventuating from any failure to comply with speed limits;
- (g) the costs of acting under paragraphs (e) and (f);
- (h) the experience, expertise and knowledge that the person, or the person's agent or employee had, or ought reasonably to have had.

286 Compliance with industry code of practice

- (1) In any proceeding for an offence against this Part, proof that the person complied with all relevant standards and procedures, including a registered industry code of practice and the spirit of the code, in relation to matters to which the offence relates, is evidence that the person took all reasonable steps to prevent the contravention.
- (2) Subsection (1) is not available to a person charged with an offence unless the person has given written notice of the intention to prove the matters referred to in that subsection to the prosecution.
- (3) The notice under subsection (2) must be—
 - (a) signed by the person; and
 - (b) given at least 28 days before the day fixed for the hearing of the charge.

287 Exclusion of mistake of fact defence

If a provision of this Part states that a person does not have the benefit of the mistake of fact defence, it is not a defence to a charge for an offence against that provision if, at or before the time of the conduct constituting the offence, the person was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant the conduct would not have constituted an offence.

Division 8—Evidence and legal proceedings

288 Deciding whether a person knew or ought reasonably to have known something

In a proceeding for an offence against this Part, if it is relevant to prove that someone ought reasonably to have known something, the court must consider the following when deciding whether the person ought reasonably to have known the thing—

- (a) the person's abilities, experience, expertise, knowledge, qualifications and training;
- (b) the circumstances of the offence;
- (c) any other matters prescribed under the regulations.

289 Commission of speeding offence is irrelevant to prosecutions

In a proceeding for an offence under this Part, other than an offence under section 277, it is not necessary to prove that a driver, while driving a heavy vehicle, exceeded a speed limit.

290 General enforcement powers

Nothing in this Part has the effect of preventing or excluding the use of any other powers of enforcement available to an inspector in relation to a relevant law or scheme.

291 Provisions relating to first offences and second or subsequent offences

- (1) For the purposes of this Part, the penalty applying to a subsequent offence applies if the offence of which the person is found guilty and in respect of which the penalty is to be imposed (*subsequent offence*) occurs—
- (a) at a different time from another occasion when the person has committed the offence, if the person has been previously found guilty of the offence committed on the other occasion (*first offence*); and
 - (b) the commission of the subsequent offence was within 3 years, or another period specified by the regulations, of the commission of the first offence.
- (2) In determining the penalty that applies under subsection (1)—
- (a) the order in which the offences were committed is irrelevant; and
 - (b) whether or not the offences are subject to the same penalties is irrelevant.
- (3) If the court is satisfied that a person is guilty of an offence but cannot determine (from the information available to the court) whether the offence is a first offence for which the person was found guilty, the court may only
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impose a penalty for the offence as if it were a first offence.

- (4) When determining whether a person has previously been found guilty of an offence under this Part, the court must have regard to a finding of guilt for an offence committed under corresponding provisions of a corresponding law.

292 Multiple offenders

- (1) If more than one person is liable to be found guilty of an offence in respect of a provision of this Part, proceedings may be taken against any one or more of such persons in relation to the offence.
- (2) Proceedings may be taken against any person liable to be found guilty of an offence in respect of a provision of this Part—
 - (a) regardless of whether or not proceedings have been commenced against any other person; and
 - (b) if proceedings have started against any other person, regardless of whether or not those proceedings have finished; and
 - (c) if proceedings have finished against any other person, regardless of the outcome of those proceedings.

293 Other powers not affected

- (1) Except where expressly provided in this Part, nothing in this Part affects any power that a court, a tribunal, the Corporation or an authorised officer or member of the police force has apart from this Part.
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- (2) Without limiting subsection (1), nothing in this Part affects a power or obligation under this Act or another law to vary, suspend, cancel or otherwise deal with any licence or registration.

294 Contracting out prohibited

- (1) A term of a contract that purports to exclude, limit or modify the operation of this Part or of any provision of this Part is void to the extent that it would otherwise have that effect.
- (2) Subsection (1) does not apply to a term of a contract to the extent that it purports to impose a requirement on a person that is more onerous than the relevant requirement imposed by this Part.

295 Extension of time limit for certain prosecutions

Despite anything to the contrary in section 26(4) of the **Magistrates' Court Act 1989**, a proceeding for an offence under this Part may be commenced within 2 years after the commission of the alleged offence."

54 Subject matter for regulations

In items 49B and 49C of Schedule 2 to the Principal Act, for "detection devices" **substitute** "devices, systems".

**PART 3—AMENDMENT OF ROAD MANAGEMENT
ACT 2004**

55 Notification of discontinuance of roads

See:
Act No.
12/2004.
Reprint No. 2
as at
11 October
2006
and
amending
Act Nos
61/2005,
74/2006,
85/2006,
69/2007 and
74/2007.
LawToday:
www.
legislation.
vic.gov.au

(1) In section 11(10) of the **Road Management Act 2004**, for "If" **substitute** "Subject to subsection (10A), if".

(2) After section 11(10) of the **Road Management Act 2004 insert—**

"(10A) If a road is discontinued by VicRoads under section 12 and VicRoads is not the coordinating road authority for the road, the relevant coordinating road authority must, on receiving notice from VicRoads of the discontinuance under section 12, inform the Secretary to the Department of Sustainability and Environment or a person nominated in a notice published in the Government Gazette for the purposes of this section by the Secretary to the Department of Sustainability and Environment."

56 Discontinuance of roads

(1) For section 12(2) of the **Road Management Act 2004 substitute—**

"(2) The following persons may, by notice published in the Government Gazette, discontinue a road or part of a road—

(a) the coordinating road authority for the road or part of the road;

(b) if VicRoads is not the coordinating road authority for the road or part of the road, VicRoads with the consent, in writing, of the relevant coordinating road authority."

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- (2) In section 12(3) of the **Road Management Act 2004**, for "coordinating road authority" **substitute** "discontinuing body".
 - (3) In section 12(4) of the **Road Management Act 2004**, for "coordinating road authority" (wherever occurring) **substitute** "discontinuing body".
 - (4) In section 12(5) of the **Road Management Act 2004**, for "coordinating road authority" (wherever occurring) **substitute** "discontinuing body".
 - (5) In section 12(6) of the **Road Management Act 2004**, for "coordinating road authority" (wherever occurring) **substitute** "discontinuing body".
 - (6) In section 12(7) of the **Road Management Act 2004**, for "coordinating road authority" **substitute** "discontinuing body".
 - (7) In section 12(8) of the **Road Management Act 2004**, for "coordinating road authority" **substitute** "discontinuing body".
 - (8) In section 12(9) of the **Road Management Act 2004**, for "coordinating road authority" **substitute** "discontinuing body".
 - (9) In section 12(10) of the **Road Management Act 2004**—
 - (a) for "coordinating road authority" (wherever occurring) **substitute** "discontinuing body";
 - (b) in paragraph (b), for "given—" **substitute** "given; and";
 - (c) after paragraph (b) **insert**—

"(c) if the decision to discontinue is made by VicRoads under a consent under subsection (2)(b), the coordinating authority for the road—".
 - (10) After section 12(11) of the **Road Management Act 2004**, **insert**—
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- "(12) In this section, *discontinuing body* means—
- (a) if a consent under subsection (2)(b) has not been given, the relevant coordinating road authority for the road; or
 - (b) if consent has been given under subsection (2)(b), VicRoads."

57 Register of public roads

For section 19(4) of the **Road Management Act 2004 substitute—**

- "(4) If—
- (a) a public road or part of a public road is discontinued under section 12 by the road authority, the road authority must specify the details in the register of public roads; or
 - (b) a public road or part of a public road is discontinued under section 12 by VicRoads (where VicRoads is not the coordinating road authority), the coordinating road authority must, on receiving notice from VicRoads of the discontinuance under section 12, specify the details in the register of public roads."

58 Distributor must disclose name of depositor

For section 68(2) of the **Road Management Act 2004 substitute—**

- "(2) A person must comply with subsection (1) within 7 days after receiving a written request for the information from the relevant coordinating road authority.
- Penalty: 10 penalty units."

59 Liability in relation to fencing

In section 109 of the **Road Management Act 2004**, for "public highway" substitute "road".

60 Obligation in relation to fencing

In clause 4 of Schedule 5 to the **Road Management Act 2004**, for "public highway" substitute "road".

61 Road management infringements

- (1) In Schedule 8 to the **Road Management Act 2004**, for "Conducting works in, on, under or over a public road without written consent" substitute "Conducting works in, on, under or over a road without written consent".
 - (2) In Schedule 8 to the **Road Management Act 2004**, for "section 67(2)" substitute "section 67(3)".
 - (3) In Schedule 8 to the **Road Management Act 2004**, for "section 68(1)" substitute "section 68(2)".
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**PART 4—AMENDMENT OF ACCIDENT TOWING SERVICES
ACT 2007**

62 Amendment of definitions

See:
Act No.
30/2007.
LawToday:
www.
legislation.
vic.gov.au

- (1) For the definition of *accident damaged motor vehicle* in section 3(1) of the **Accident Towing Services Act 2007**, substitute—

"accident damaged motor vehicle means a motor vehicle that has been damaged as the result of a road accident;"

- (2) The definitions of *heavy tow truck, licensed (heavy) tow truck, licensed (regular) tow truck* and *regular tow truck* in section 3(1) of the **Accident Towing Services Act 2007** are repealed.

- (3) For the definition of *licensed tow truck* in section 3(1) of the **Accident Towing Services Act 2007** substitute—

"licensed tow truck means a tow truck that is specified in a tow truck licence;"

- (4) For the definition of *road accident scene roster* in section 3(1) of the **Accident Towing Services Act 2007** substitute—

"road accident scene roster, in relation to a controlled area, means the roster, that is kept by the allocation body for the area, of allocations of tow trucks to do the following—

- (a) to attend road accident scenes in the controlled area;

- (b) to be used to tow accident damaged motor vehicles, with a gross vehicle mass of less than 4 tonnes, from road accident scenes in the controlled area;"
- (5) In section 3(1) of the **Accident Towing Services Act 2007**, insert the following definitions—
- "mass, dimension or load restraint limit or requirement* has the same meaning as in section 3(1) of the **Road Safety Act 1986**;
- tow truck trainee permit* means a permit issued under section 140A(1);"
- (6) After section 3(5) of the **Accident Towing Services Act 2007** insert—
- "(6) For the purposes of this Act, a tow truck is to be regarded as capable of towing a vehicle, if the towing of the vehicle would not contravene a mass, dimension or load restraint limit or requirement that applies to the tow truck under the **Road Safety Act 1986**."

63 Substitution of sections 6 to 11

- (1) For sections 6, 7, 8 and 9 of the **Accident Towing Services Act 2007** substitute—
- "6 Requirement to hold tow truck licence**
- A person must not operate a tow truck in the course of conducting an accident towing service business to provide accident towing services unless—
- (a) if the person provides the service to vehicles of any gross vehicle mass, the person holds a regular tow truck licence; or

- (b) if the person provides the service only to vehicles that have a gross vehicle mass of 4 tonnes or more, the person holds a heavy tow truck licence.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

7 Further requirements for operating tow trucks

A person who is operating a tow truck in the course of conducting an accident towing service business—

- (a) must do so from the depot specified in the tow truck licence; and
(b) must hold a towing operator accreditation; and
(c) must be the registered operator of the tow truck (within the meaning of the **Road Safety Act 1986**); and
(d) must not provide an accident towing service to a vehicle that the tow truck is not capable of towing.

Penalty: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
300 penalty units.

8 Requirement for tow truck being driven to be licensed

- (1) A person must not drive a tow truck that is being operated in the course of conducting an accident towing service business unless there is in force a regular tow truck licence

or a heavy tow truck licence that authorises the operation of the tow truck.

Penalty: 60 penalty units.

- (2) A person who is driving a tow truck that is being operated in the course of conducting an accident towing service business under a regular tow truck licence must ensure that the tow truck does not tow a vehicle that the tow truck is not capable of towing.

Penalty: 60 penalty units.

- (3) A person who is driving a tow truck that is being operated in the course of conducting an accident towing service business under a heavy tow truck licence must ensure that the tow truck does not tow—

- (a) a vehicle of a gross vehicle mass of less than 4 tonnes; or
- (b) a vehicle that the tow truck is not capable of towing.

Penalty: 60 penalty units.

9 Offences as to unlicensed tow trucks at road accident scenes

- (1) A person who is driving a tow truck that is normally used to provide towing services for hire or reward must not attend a road accident scene unless the tow truck is being operated under a tow truck licence.

Penalty: 60 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person is driving a tow truck for the purpose of salvaging an accident damaged motor vehicle, if—

- (a) the attendance of the tow truck is necessary for the salvage of the motor vehicle; and
 - (b) the tow truck does not tow any accident damaged motor vehicle from the road accident scene at which the salvaging takes place."
- (2) For sections 10 and 11 of the **Accident Towing Services Act 2007** substitute—
- "10 Power to issue regular tow truck licences**
- (1) Subject to subsections (2) and (3), VicRoads may license a person to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—
 - (a) to provide accident towing services to vehicles of any gross vehicle mass that the tow truck is capable of towing; and
 - (b) from the depot specified in the licence.
 - (2) In the case of a licence authorised by the Minister to be issued under section 14(2)(d), VicRoads may license the relevant agency or contractor (as the case requires) to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—
 - (a) to provide accident towing services to vehicles of any gross vehicle mass that the tow truck is capable of towing; and
 - (b) from the depot specified in the licence; and
 - (c) on the whole or any part of the Link road or Extension road, as specified in the licence, or on any other designated road that is specified in the licence.
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- (3) In the case of a licence authorised by the Minister to be issued under section 14(2)(e), VicRoads may license the Freeway Corporation or contractor (as the case requires) to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—
- (a) to provide accident towing services to vehicles of any gross vehicle mass that the tow truck is capable of towing; and
 - (b) from the depot specified in the licence; and
 - (c) on the whole or any part of EastLink, as specified in the licence, or on any other designated road that is specified in the licence.

11 Power to issue heavy tow truck licences

- (1) Subject to subsections (2) and (3), VicRoads may license a person to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—
- (a) to provide accident towing services to vehicles that the tow truck is capable of towing that have a gross vehicle mass of 4 tonnes or more; and
 - (b) from the depot specified in the licence.
- (2) In the case of a licence authorised by the Minister to be issued under section 15(2)(d), VicRoads may license the relevant agency or contractor (as the case requires) to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—

- (a) to provide accident towing services to vehicles that the tow truck is capable of towing that have a gross vehicle mass of 4 tonnes or more; and
 - (b) from the depot specified in the licence; and
 - (c) on the whole or any part of the Link road or Extension road, as specified in the licence, or on any other designated road that is specified in the licence.
- (3) In the case of a licence authorised by the Minister to be issued under section 15(2)(e), VicRoads may license the Freeway Corporation or contractor (as the case requires) to operate a tow truck that is specified in the licence in the course of conducting an accident towing service business—
- (a) to provide accident towing services to vehicles that the tow truck is capable of towing that have a gross vehicle mass of 4 tonnes or more; and
 - (b) from the depot specified in the licence; and
 - (c) on the whole or any part of EastLink, as specified in the licence, or on any other designated road that is specified in the licence."

64 Authorisation for the issue of regular tow truck licences

- (1) In section 14(2)(a) of the **Accident Towing Services Act 2007**, for "increase in the need for regular tow trucks in the area" **substitute** "increase in the need for tow trucks operating under regular tow truck licences in the area".

- (2) In section 14(3)(a) of the **Accident Towing Services Act 2007**, for "need for regular tow trucks in the area" **substitute** "need for tow trucks operating under regular tow truck licences in the area".

65 Authorisation for issue of heavy tow truck licences

In section 15(2)(a) of the **Accident Towing Services Act 2007**, for "increase in the need for heavy tow trucks in the area" **substitute** "increase in the need for tow trucks operating under heavy tow truck licences in the area".

66 Amendment of Division heading

In the heading to Division 8 of Part 2 of the **Accident Towing Services Act 2007**, omit "regular and heavy".

67 Penalty for failing to comply with directions

For the penalty at the foot of section 41(3) of the **Accident Towing Services Act 2007** **substitute—**

"Penalty: 50 penalty units."

68 Offences as to towing certain vehicles in controlled areas without allocation

- (1) For the heading to section 42 of the **Accident Towing Services Act 2007** **substitute—**
"Allocation offences in controlled areas".
- (2) In section 42(1)(b) of the **Accident Towing Services Act 2007**, after "accident damaged motor vehicle" **insert** ", with a gross vehicle mass of less than 4 tonnes,".

(3) In section 42(2) of the **Accident Towing Services Act 2007**—

- (a) for "The driver of a regular tow truck" **substitute** "The driver of a tow truck operating under a regular tow truck licence";
- (b) in paragraph (b), after "accident damaged motor vehicle" **insert** ", with a gross vehicle mass of less than 4 tonnes,".

(4) In section 42(3) of the **Accident Towing Services Act 2007**, for "regular tow truck" **substitute** "tow truck".

69 Prohibition on towing vehicles removed from designated roads without allocation

(1) In section 44(1) of the **Accident Towing Services Act 2007**, after "If an accident damaged motor vehicle" **insert** ", with a gross vehicle mass of less than 4 tonnes,".

(2) In section 44(2) of the **Accident Towing Services Act 2007**—

- (a) after "If an accident damaged motor vehicle" **insert** ", with a gross vehicle mass of less than 4 tonnes,";
- (b) for "the driver of a regular tow truck" **substitute** "the driver of a tow truck operating under a regular tow truck licence".

70 Further allocation offences

For section 45(2) of the **Accident Towing Services Act 2007 substitute**—

"(2) The driver of a tow truck operating under a regular tow truck licence must not tow more than one accident damaged motor vehicle under a job number.

Penalty: 50 penalty units."

71 Offences in self-management areas

- (1) In section 51(1)(b) of the **Accident Towing Services Act 2007**, after "an accident damaged motor vehicle" insert ", with a gross vehicle mass of less than 4 tonnes,".
- (2) In section 51(2)(b) of the **Accident Towing Services Act 2007**, after "an accident damaged motor vehicle" insert ", with a gross vehicle mass of less than 4 tonnes,".

72 Offence to drive tow truck without accreditation

For section 98(3) of the **Accident Towing Services Act 2007** substitute—

- "(3) A person does not commit an offence under subsection (1) or (2) if—
- (a) the person was the driver of, or a passenger in, the motor vehicle that is being towed by the tow truck and the person accompanies the driver of the tow truck—
 - (i) while the vehicle is being towed; or
 - (ii) after the vehicle has been towed, for the purpose of being driven to the person's home or other convenient place; or
 - (b) the person was the driver of or a passenger in a motor vehicle at the time the motor vehicle was damaged in a road accident outside a controlled area and the person accompanies the driver of the tow truck while the tow truck is travelling to the motor vehicle for the purpose of towing it; or

- (c) the person is repairing, maintaining or testing a tow truck, as long as the person is not driving the tow truck to or from a road accident scene; or
- (d) the person is acting under and in accordance with a tow truck trainee permit."

73 Offence not to carry certificate of accreditation when accompanying driver

At the end of section 120 of the **Accident Towing Services Act 2007** insert—

- "(2) If a person is accompanying the driver of a tow truck in circumstances in which he or she is required under this Part to hold a tow truck driver accreditation, he or she must carry his or her certificate of accreditation.

Penalty: 15 penalty units."

74 Offence for accompanying person not to produce certificate when asked

- (1) In section 121(b) of the **Accident Towing Services Act 2007**, for "the holder of accreditation" substitute "he or she".
- (2) At the end of section 121 of the **Accident Towing Services Act 2007** insert—

"(2) The holder of a tow truck driver accreditation must produce his or her certificate of accreditation if—

 - (a) he or she is accompanying the driver of a tow truck in circumstances in which he or she is required under this Part to be accredited; and

- (b) he or she is asked to produce the certificate by—
- (i) an authorised officer; or
 - (ii) a member of the force; or
 - (iii) the owner or driver of an accident damaged motor vehicle that is being, or is about to be, towed by the driver of the tow truck.

Penalty: 15 penalty units."

75 Insertion of new Division 8 of Part 4

After Division 7 of Part 4 of the **Accident Towing Services Act 2007** insert—

"Division 8—Tow truck trainee permit

140A Power to issue permit

- (1) VicRoads may issue a permit to a person authorising the person to drive a tow truck or accompany the driver of a tow truck for the purpose of being trained in the driving of tow trucks and matters relating to the driving or functioning of tow trucks.
- (2) In making a decision to issue a tow truck trainee permit VicRoads must have regard to the driver accreditation objective.

140B Period for which a permit remains in force

A tow truck trainee permit remains in force for the period specified in the permit, which must not be more than 60 days.

140C Conditions on permit

- (1) VicRoads may impose conditions on a tow truck trainee permit either—
 - (a) on issuing the permit; or
 - (b) from time to time during the course of the permit.
- (2) If VicRoads imposes a condition on a permit during the course of the permit, VicRoads must give notice of the condition to the holder of the permit and the condition has effect on the giving of the notice.
- (3) It is a condition of each tow truck trainee permit that whenever the holder of the permit is acting under the permit the holder must be supervised and accompanied by a person who holds a tow truck driver accreditation.
- (4) The holder of a tow truck trainee permit must comply with the conditions of the permit.

Penalty: 20 penalty units.

140D Application for permit

A person may apply to VicRoads for the issue of a tow truck trainee permit.

140E Making of application

- (1) An application for a tow truck trainee permit must—
 - (a) be made in the manner and form determined by VicRoads; and
 - (b) include the name and address of the applicant; and

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- (c) be accompanied by—
- (i) the fee (if any) for the application determined in accordance with section 213; and
 - (ii) any information or thing required by VicRoads.
- (2) For the purposes of subsection (1), any information or thing that VicRoads requires to accompany an application or to be included in an application must be limited to any information or thing VicRoads reasonably requires in order to assess the application.

140F VicRoads may require further information

VicRoads may require an applicant for a tow truck trainee permit to—

- (a) supply further information or things, as specified by VicRoads, that VicRoads reasonably requires in order to assess the application;
- (b) verify, in the manner and form determined by VicRoads, the information or thing supplied for the purpose of the application;
- (c) sign the application or provide a signature to VicRoads that can be digitised;
- (d) supply a photograph or digitised image of the applicant to VicRoads or submit to be photographed by VicRoads.

140G Chief Commissioner of Police may supply information to VicRoads

The Chief Commissioner of Police may, in accordance with the processes agreed on with VicRoads, notify VicRoads of any relevant findings of guilt in relation to an applicant for a tow truck trainee permit.

140H Cancellation of permit

- (1) VicRoads may, at any time, cancel a tow truck trainee permit.
- (2) In making a decision to cancel a tow truck trainee permit under subsection (1), VicRoads must have regard to the driver accreditation objective.
- (3) Cancellation of a permit under this section has effect on VicRoads giving notice of the cancellation to the permit holder."

76 Power to sign authority to tow

- (1) In section 142(3) of the **Accident Towing Services Act 2007**, after "member of the force" insert "or an authorised officer".
- (2) In section 142(6) of the **Accident Towing Services Act 2007**, after "member of the force" insert "or an authorised officer".
- (3) For section 142(7) of the **Accident Towing Services Act 2007** substitute—
 - "(7) A member of the force or an authorised officer who gives an authorisation in accordance with subsection (3) is not to be taken to have entered into any contract, whether as a member of the force or authorised officer, or on his or her own behalf or otherwise, with the tow truck driver or the tow truck licence holder for the tow truck, to pay any fees or expenses incurred as

a result of the towing of the accident damaged motor vehicle, merely because the member of the force or authorised officer has given the authorisation."

77 Sections 147 to 149 substituted

For sections 147, 148 and 149 of the **Accident Towing Services Act 2007** substitute—

"147 Offence as to seeking repair work

A person must not—

- (a) in relation to an accident damaged motor vehicle at a road accident scene; or
- (b) at any time between the time when an accident damaged motor vehicle is towed from a road accident scene and the time when the vehicle is first stored at the address specified in the authority to tow—

do any of the following—

- (c) tout or solicit for the business of repairing the vehicle;
- (d) offer, obtain or attempt to obtain from any person any form of authority or agreement (whether written or not) in relation to the preparation of a quotation in relation to the vehicle, or the repairing of the vehicle.

Penalty: 60 penalty units.

148 Offence as to seeking towing work and storage

- (1) A person must not, in relation to an accident damaged motor vehicle at a road accident scene do any of the following—
- (a) tout or solicit for the business of—
 - (i) towing the vehicle; or
 - (ii) storing the vehicle;
 - (b) offer or obtain or attempt to obtain from any other person any form of authority or agreement (whether written or not) in relation to—
 - (i) towing the vehicle; or
 - (ii) storing the vehicle.

Penalty: 60 penalty units.

- (2) A person does not commit an offence under subsection (1) if the person is—
- (a) in relation to a road accident inside a controlled area—
 - (i) the driver of a tow truck that is being operated under a regular tow truck licence and that has been authorised by the allocation body, in compliance with Division 9 of Part 2, to attend the road accident scene and to be used to tow or attempt to tow the vehicle, if the vehicle is of a gross vehicle mass of less than 4 tonnes; or

- (ii) the driver of a tow truck that is being operated under a tow truck licence, if the vehicle is of a gross vehicle mass of 4 tonnes or more; or
- (b) in relation to a road accident outside the controlled area, the driver of a tow truck that is being operated under a tow truck licence."

78 Offence to fail to release towed vehicle

- (1) In section 156(2) of the **Accident Towing Services Act 2007**, for "must ensure that" **substitute** "must take all reasonable steps to ensure that".
- (2) Section 156(3) of the **Accident Towing Services Act 2007** is **repealed**.

79 Substitution of definition

For the definition of *relevant accident damaged motor vehicle* in section 157(1) of the **Accident Towing Services Act 2007** **substitute—**

"relevant accident damaged motor vehicle means an accident damaged motor vehicle—

- (a) that is towed from a road accident scene in a controlled area under an allocation from the allocation body for that area; or
- (b) in the case of a road accident scene on a designated road, that is towed from a safe or convenient place in a controlled area under an allocation from the allocation body for that area."

80 Demerits Register

In section 164 of the **Accident Towing Services Act 2007**, for "that an accredited person incurs" substitute "that a person incurs".

81 Insertion of new section 164A

After section 164 of the **Accident Towing Services Act 2007** insert—

"164A Who may incur accident towing demerit points?

Accident towing demerit points may be incurred by the following—

- (a) an accredited person;
- (b) a tow truck trainee permit holder;
- (c) a person whose accreditation is suspended under this Act;
- (d) a person who, at any time within the 5 years immediately preceding the commission of the offence for which the demerit points are to be incurred, was an accredited person;
- (e) a person who, at any time within the 5 years immediately preceding the commission of the offence for which the demerit points are to be incurred, was a tow truck trainee permit holder."

82 Period of suspension of accreditation

In section 166(3) of the **Accident Towing Services Act 2007**, for "2 years" substitute "1 year".

83 Notice of suspension of accreditation

In section 167(1)(c) of the **Accident Towing Services Act 2007**, for "2 years" substitute "1 year".

84 Expiry of accident towing demerit points

- (1) For the heading to section 168 of the **Accident Towing Services Act 2007** substitute—
"**Expiry of accident towing demerit points**".
- (2) In section 168 of the **Accident Towing Services Act 2007**—
 - (a) for "the accident towing demerit points that were used to calculate the period of suspension" substitute "if 18 or more accident towing demerit points were used to calculate the period of suspension, the points";
 - (b) for "further" substitute "other".

85 Evidence of accident towing demerit points

In section 171 of the **Accident Towing Services Act 2007**—

- (a) for "recorded against an accredited person" substitute "recorded against a person";
 - (b) in paragraph (b)(i), for "the accredited person" substitute "the person";
 - (c) for paragraphs (b)(ii) and (iii) substitute—
 - (ii) where the person is an accredited person, that the accreditation of the person has been suspended under this Act; or
 - (iii) where the person is an accredited person, that the person has been served with a notice advising the person of suspension of accreditation."
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86 Bringing proceedings

For section 204(4) of the **Accident Towing Services Act 2007** substitute—

"(4) An authorised officer may conduct before a court any proceedings for an offence against this Act or regulations made under this Act."

PART 5—AMENDMENT OF OTHER ACTS

87 Amendment to the Transport Act 1983—Reference by Minister

In section 186(1)(c) of the **Transport Act 1983**, for "section 213" substitute "section 211".

88 Revocation of reservations

In section 56ZK(1) of the **Melbourne City Link Act 1995**, for "Division 2" substitute "Division 3".

PART 6—REPEAL OF AMENDING ACT

89 Repeal of amending Act

This Act is repealed on 1 October 2011.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 2 April 2009

Legislative Council: 7 May 2009

The long title for the Bill for this Act was "A Bill for an Act to amend the **Road Safety Act 1986**, the **Road Management Act 2004**, the **Accident Towing Services Act 2007**, the **Transport Act 1983** and the **Melbourne City Link Act 1995** and for other purposes."