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Authorised Version No. 163
Road Safety Act 1986
No. 127 of 1986

Authorised Version incorporating amendments as at 7 July 2015

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

(a) to provide for safe, efficient and equitable road use; and

(ab) to set out the general obligations of road users in relation to responsible road use; and

(b) to improve and simplify procedures for the registration of motor vehicles and the licensing of drivers; and

(c) to prevent the rebirthing of stolen vehicles; and

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

2 Commencement

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

(1) In this Act—

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

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

**accredited agency** means a person or body approved for the purposes of sections 31C, 31E, 31G, 50AAB(5) and 50A by the Secretary to the Department of Health;
**accredited driver education program** means a program that is run by an accredited agency and that is approved for the purposes of section 50A by the Secretary to the Department of Health;

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

(a) analysing a breath sample for the presence of alcohol; and

(b) if it detects more than a certain concentration of alcohol, preventing the motor vehicle from being started;

**alcohol interlock condition** means a condition on a driver licence or learner permit under which the holder is only permitted to drive a motor vehicle in which an approved alcohol interlock has been installed, and maintained, by an approved alcohol interlock supplier or a person or body authorised by such a supplier;
alcohol interlock condition direction means a direction given under section 50AAA(2) or (3) to the Corporation that it can only grant a person a driver licence or learner permit that is subject to an alcohol interlock condition;

alcohol interlock condition removal order means an order made under section 50AAB(4) that an alcohol interlock condition imposed on a person's driver licence or learner permit be removed;

approved alcohol interlock means an alcohol interlock of a type approved by the Corporation under section 50AAE(3) and, if that approval is varied under section 50AAH(1A), as so varied;

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

approved health professional means—
(a) a person registered under the Health Practitioner Regulation National Law—
(1) to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student); and
(ii) in the registered nurses division of that profession;
(b) a person approved under subsection (4) to take a blood sample for the purposes of Part 5;

**approved road transport compliance scheme** means a scheme, agreement or arrangement that—

(a) is prescribed by the regulations; or

(b) is identified by, or is of a class identified by, the regulations—

and that makes provision for compliance with a road or transport law or a non-Victorian road or transport law;

**Example**

A scheme, agreement or arrangement that provides for a system of accreditation-based compliance.

**assessment report** means a report about a person's usage of alcohol or drugs obtained from an accredited agency in accordance with section 31C;
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**Australian road or transport law** means a road or transport law or a non-Victorian road or transport law;

**Australian road or transport law offence** means an offence against an Australian road or transport law;

**authorised officer** means a person authorised in writing by the Corporation or the Secretary under section 112;

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

**base registration fee** means the fee specified in section 9(2);
bill of sale means bill of sale within the meaning of Part VI of the Instruments Act 1958;

body corporate includes the Crown in any capacity and any body or entity that is not an individual;

breath analysing instrument means—

(a) the apparatus known as the Alcotest 7110 to which a plate is attached on which there is written, inscribed or impressed the numbers "3530791" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in; or

(b) the apparatus known as the Alcotest 9510 AUS to which a plate is attached on which there is written, inscribed or impressed the numbers "8320869" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in; or
(b) apparatus of a type approved for the purposes of section 55 by the Minister by notice published in the Government Gazette or for the purposes of any corresponding previous enactment by the Governor in Council by notice published in the Government Gazette for ascertainment by analysis of a person's breath what concentration of alcohol is present in his or her breath;

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

*buss company* has the same meaning as in the Transport (Compliance and Miscellaneous) Act 1983;

*buss day* means a day other than a Saturday, a Sunday or a public holiday appointed under the Public Holidays Act 1993;

*chassis number*, in relation to a motor vehicle, means the identification number—

(a) permanently marked on the chassis or other part of the vehicle by the vehicle manufacturer at the time of manufacture; or

(b) specified by the Corporation in accordance with the regulations;
Chief Commissioner of Police has the same meaning as Chief Commissioner has in the Victoria Police Act 2013;

commercial driving instructor means a person who, for financial gain or in the course of any trade or business, is teaching a person, who is driving a motor vehicle of a kind described in section 33(3), for which that person does not hold an appropriate driver licence, to drive that motor vehicle on a highway;

commercial motor vehicle means—

(a) a commercial goods vehicle or a commercial passenger vehicle within the meaning of Part VI of the Transport (Compliance and Miscellaneous) Act 1983; or

(b) a tow truck within the meaning of the Accident Towing Services Act 2007;
consignee, in relation to goods transported or to be transported by a heavy vehicle or a fatigue regulated heavy vehicle—

(a) means the person who—

(i) with that person's authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation for the consignment; or

(ii) actually receives the goods after the goods are transported by road; but

(b) does not include a person who merely unloads or unpacks the goods;

consignor of goods is a person who—

(a) with the person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road; or

(b) engages an operator of a vehicle, either directly or indirectly or through an agent or other intermediary, to transport the goods by road; or

(c) has possession of, or control over, the goods immediately before the goods are transported by road; or

(d) loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is usually unattended (except by a driver of the vehicle, a trainee driver or any person necessary
for the normal operation of the vehicle) during loading; or

(e) if the goods are imported into Australia, imports the goods;

* * * * *

**Contracting State** means a foreign country that is a signatory to the United Nations Convention on Road Traffic, Geneva, 1949;

**Corporation** means the Roads Corporation;

**corresponding Authority** means any body outside Victoria that has any functions in relation to roads, vehicles or transport that correspond with any of the functions of the Corporation;

* * * * *

**cost recovery fee** means a fee referred to in section 50AAKA;
dentist means a person registered under the Health Practitioner Regulation National Law—

(a) to practise in the dental profession (other than as a student); and

(b) in the dentists division of that profession;

designated place has the same meaning as in the Victoria Police Act 2013;

Director of the Victorian Institute of Forensic Medicine means the Director within the meaning of the Victorian Institute of Forensic Medicine Act 1985;
drink-driving infringement means an offence under section 49(1)(b), (f) or (g), other than an accompanying driver offence, in circumstances where 1—

(a) the concentration of alcohol—

(i) in the blood of the person is less than 0.15 grams per 100 millilitres of blood; or

(ii) in the breath of the person is less than 0.15 grams per 210 litres of exhaled air—

as the case requires; and

(b) the offence is a first offence having regard to the provisions of section 48(2) or would, because of section 50AA, be treated as a first offence for the purposes of subsection (1A), (1AB) or (1AC) of section 50;

drinking while driving infringement means an offence under section 49B or 49C;

drive includes to be in control of a vehicle;

driver of a vehicle includes—

(a) a two-up driver of the vehicle who is present in or near the vehicle; and

(b) a person who is driving the vehicle as a driver under instruction or under an appropriate learner permit;


driver base, in relation to a heavy vehicle or a fatigue regulated heavy vehicle, means—

(a) in the case of a vehicle that is not part of a group of vehicles—

(i) the place recorded for the time being as the driver base in the log book or work diary kept by the driver of the vehicle; or

(ii) if no place is recorded as specified in subparagraph (i)—the garage address of the vehicle, as recorded—

(A) by the Corporation; or

(B) if the vehicle is registered in another State or Territory, by the registration authority of that State or Territory; or

(iii) if no place is recorded as specified in subparagraph (i) or (ii)—the place from which the driver normally works and receives instructions; or

(b) in the case of a group of vehicles—

(i) the place recorded for the time being as the driver base in the log book or work diary kept by the driver of the group; or

(ii) if no place is recorded as specified in subparagraph (i)—the garage address of each vehicle in the group, as recorded—
(A) by the Corporation; or

(B) if a vehicle is registered in another State or Territory, by the registration authority of that State or Territory; or

(iii) if no place is recorded as specified in subparagraph (i) or (ii)—the place from which the driver normally works and receives instructions;

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

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

**drug-driving infringement** means an offence under section 49(1)(bb), (h) or (i), other than an accompanying driver offence, in circumstances where the offence is a first offence having regard to the provisions of section 48(2) or would, because of section 50AA, be treated as a first offence for the purposes of subsection (1E) of section 50;

* * * * *
engine identification number, in relation to a motor vehicle, means the individual number clearly stamped, embossed or otherwise permanently marked on the engine block or main component of the engine;

equipment, in relation to a vehicle or combination, includes tools, devices and accessories in or on the vehicle or combination;

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

film friendly principles has the same meaning as in the Filming Approval Act 2014;

film permit has the same meaning as in the Filming Approval Act 2014;
freight container means—

(a) a re-usable container of the kind mentioned in Australian/New Zealand Standard AS/NZS 3711.1:2000, Freight containers—Classification, dimensions and ratings, that is designed for repeated use for the transport of goods by one or more modes of transport; or

(b) a re-usable container of the same or a similar design and construction to a container referred to in paragraph (a) though of different dimensions; or

(c) a container of a kind specified by the regulations for the purposes of this definition—

but does not include anything declared by the regulations to be excluded from this definition;

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

garage address, of a vehicle, means—

(a) in the case of a heavy vehicle that is normally kept at a depot or base of operations when not in use, the principal depot or base of operations of the vehicle; or

(b) in the case of a heavy vehicle that is normally kept on a highway when not in use—
(i) if the vehicle has only one registered operator, the home address of the registered operator; or

(ii) if the vehicle has more than one registered operator, the home address of the registered operator whose home address is nearest to the highway where it is kept; or

(c) in any other case, the place nominated by the applicant for registration as the place where the vehicle is normally kept;

* * * * *

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

(a) as specified by the motor vehicle's manufacturer; or

(b) as specified by the Corporation if—

(i) the manufacturer has not specified the sum of the maximum loaded mass; or

(ii) the manufacturer cannot be identified; or
(iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

* * * * *

**S. 3(1) def. of goods**
inserted by No. 110/2004 s. 22(1).

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

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

**goods** includes animals (whether dead or alive) and containers (whether empty or not), but does not include people or fuel, water, lubricants, tools and other equipment or accessories that are necessary for the normal operation of the vehicle in which they are carried and that are not carried as cargo;

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

(a) as specified by the vehicle's manufacturer; or

(b) as specified by the Corporation if—

(i) the manufacturer has not specified a maximum loaded mass; or

(ii) the manufacturer cannot be identified; or

(iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;
heavy vehicle has the same meaning as in the Heavy Vehicle National Law (Victoria);

highway means road or road related area;

hire-purchase agreement means hire-purchase agreement within the meaning of the Australian Consumer Law and Fair Trading Act 2012;

home address of a person means—

(a) in the case of an individual—the person's residential address or place of abode in Australia; or

(b) in the case of a body corporate that has a registered office in Australia—the address of the registered office; or

(c) in any other case—the address of the person's principal or only place of business in Australia;

identification plate, in relation to a motor vehicle, has the same meaning as in the Motor Vehicle Standards Act 1989 of the Commonwealth;

infringement means a parking infringement or a traffic infringement;
inspector means an authorised officer or a police officer;

* * * * *

international driving permit means a permit issued by—

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

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

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

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

journey documentation means any documentation (other than transport documentation) directly or indirectly associated with—

(a) the actual or proposed physical transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or
(b) goods or passengers themselves so far as the documentation is relevant to their actual or proposed physical transport—whether or not the documentation has been transmitted physically, electronically or in any other manner and whether or not the documentation relates to a particular journey or to journeys generally;

Example

The following are examples of journey documentation—

(a) documents kept or used or obtained by a responsible person in connection with the transport of goods or passengers;

(b) workshop, maintenance and repair records relating to a vehicle used, or claimed to be used, for the transport of goods or passengers;

(c) a subcontractor's payment advice relating to goods or passengers or the transport of goods or passengers;

(d) documents kept or used or obtained by the driver of the vehicle used, or claimed to be used, for the transport of goods or passengers, such as a driver's run sheet, a log book entry, a work diary, a fuel docket or receipt, a food receipt, a tollway receipt, pay records and mobile or other phone records;

(e) information reported through the use of an intelligent transport system;

(f) driver manuals and instruction sheets;

(g) advice in any form from check weighing carried out before, during or after a journey.

**large vehicle** means—

(a) a bus; or

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

**Legal entitlements** of a vehicle means the details of the authority, conferred by or under a relevant law or scheme, that entitles it to be operated for the transport of goods or passengers by road, and includes any entitlements arising under or affected—

(a) by a permit, authorisation, approval, exemption, notice or anything else given or issued under that law or scheme; or

(b) by restrictions, or by the application of restrictions, under a relevant law or scheme or other laws;

**Example**

Examples of restrictions in paragraph (b) include sign-posted mass limits for bridges and hazardous weather condition permits.

**Licence eligibility order** means an order made by the Magistrates' Court under section 31H declaring that a person is eligible to apply to the Corporation for the grant of a driver licence or learner permit;

**Licence eligibility report** means a report about a person's suitability for a licence eligibility order obtained from an accredited agency in accordance with section 31E or 31G;
load, in relation to a vehicle, means—

(a) all the goods, passengers and drivers in or on the vehicle; and

(b) all fuel, water, lubricants and readily removable tools and equipment carried in or on the vehicle and required for its normal operation; and

(c) anything that is used to enable goods or passengers to be carried in or on the vehicle and that is not part of the vehicle; and

(d) personal items used by a driver of the vehicle; and

(e) anything that is normally removed from the vehicle when not in use—

and includes a part of a load;

loader means—

(a) a person who loads a vehicle or combination with goods for transport by road; or

(b) a person who loads a vehicle or combination with a freight container (whether or not containing goods) for transport by road; or

(c) without limiting paragraph (a) or (b), a person who loads a freight container already in or on a vehicle or
combination with goods for transport by road; or
(d) a person who supervises an activity mentioned in paragraph (a), (b) or (c); or
(e) a person who manages or controls an activity mentioned in paragraph (a), (b), (c) or (d);

* * * * *

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manufacturer's build plate, in relation to a motor vehicle, means a plate which describes the build specification of the vehicle and which was placed on the vehicle by the manufacturer at the time of its manufacture;

mass, dimension or load restraint limit or requirement is any of the following as defined in Division 2 of Part 10: a mass limit, a width limit, a length limit, a height limit or a load restraint requirement;

mass limit has the meaning set out in section 153;
member of Victoria Police personnel has the same meaning as in the Victoria Police Act 2013;

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

motor trike means a 3-wheeled motor vehicle but does not include—
(a) a motor cycle with a sidecar attached; or
(b) a motor vehicle with 3 wheels that has a body type similar to that commonly found on a motor vehicle with 4 wheels;

motor vehicle means a vehicle that is used or intended to be used on a highway and that is built to be propelled by a motor that forms part of the vehicle but does not include—
(a) a vehicle intended to be used on a railway or tramway; or
(b) a motorised wheel-chair capable of a speed of not more than 10 kilometres per hour which is used solely for the
conveyance of an injured or disabled person; or

(c) a vehicle that is not a motor vehicle by virtue of a declaration under subsection (2)(b);

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

night means the period between sunset on one day and sunrise on the next day;

non-standard number plate means a number plate that, at the time of issue, is not of the design, size, colour or material of number plates then generally issued on payment of the basic fee prescribed for the issue of number plates;

non-Victorian road or transport law means a law of an Australian jurisdiction other than Victoria—

(a) that regulates, in that jurisdiction, the same conduct that a road or transport law regulates in Victoria; or

(b) that is specified as a law for the purposes of this definition by the regulations;

operator means—

(a) in the case of a vehicle (including a vehicle in a group of vehicles that are physically connected)—the person responsible for controlling or directing the operations of the vehicle; or
(b) in the case of a group of vehicles that are physically connected—the person responsible for controlling or directing the operations of the towing vehicle in the group; but does not include a person merely because the person owns a vehicle or does any or all of the following—

(c) drives a vehicle;

(d) maintains or arranges for the maintenance of a vehicle;

(e) arranges for the registration of a vehicle;

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

(a) includes a person who has the possession and use of it under or subject to a hire-purchase agreement or a bill of sale or like instrument or under or subject to a written hiring agreement (not being a hire-purchase agreement) which requires that person to register the motor vehicle or trailer in that person's name; but

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

**package** of goods means the complete product of the packing of the goods for transport by road, consisting of the goods and their packaging;

**packaging** of goods means the container (including a freight container) in which the goods are received or held for transport by road, and includes anything that enables the container to receive or hold the goods or to be closed;

**packer** has the meaning set out in section 172;

**park and ride facility** means land or premises—

(a) vested in or under the control of a rail or bus operator; and

(b) to which specified provisions of this Act and the regulations relating to the regulation or control of the parking of a vehicle, or the leaving standing of a vehicle, apply under an Order under section 98 (whether or not other provisions of this Act or the regulations also apply under that Order);

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

(aa) section 90E; or

(a) the regulations or rules; or

(b) a local law made by a municipal council; or

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S. 3(1) def. of package inserted by No. 110/2004 s. 22(1).

S. 3(1) def. of packaging inserted by No. 110/2004 s. 22(1).

S. 3(1) def. of packer inserted by No. 110/2004 s. 22(1).

S. 3(1) def. of park and ride facility inserted by No. 69/2007 s. 72.

S. 3(1) def. of parking infringement amended by Nos 12/1989 s. 4(1)(Sch. 2 item 105.1), 25/1996 s. 7, 14/2000 s. 16, 94/2003 s. 27(2), 28/2009 s. 4(3).
(c) any other Act, rule, regulation or by-law;

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

*passenger*, in relation to a vehicle, does not include the driver of the vehicle, a two-up driver of the vehicle or any person necessary for the normal operation of the vehicle;

*passenger transport company* has the same meaning as in the *Transport (Compliance and Miscellaneous) Act 1983*;

*permissible non-prescription drug* means—

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

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

* * * *
pharmacist means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student);

police officer has the same meaning as in the Victoria Police Act 2013;

premises includes any structure, building, vessel or place (whether built on or not), and any part of any such structure, building, vessel or place;

prescribed alcohol interlock usage data requirements means requirements specified by regulations made under item 57AA of Schedule 2;
prescribed concentration of alcohol means—

(a) in the case of a person to whom section 52 applies, the concentration of alcohol specified in that section; and

(b) in the case of any other person—

(i) a concentration of alcohol present in the blood of that person of 0.05 grams per 100 millilitres of blood; or

(ii) a concentration of alcohol present in the breath of that person of 0.05 grams per 210 litres of exhaled air;

prescribed concentration of drugs means, in the case of a prescribed illicit drug, any concentration of the drug present in the blood or oral fluid of that person;

prescribed illicit drug means—

(a) methylamphetamine; or

(ab) 3, 4-Methylenedioxy-N-Methylamphetamine (MDMA);

(b) delta-9-tetrahydrocannabinol;

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

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

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

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

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

prosecution officer means—

(a) a person who is appointed by the Chief Commissioner of Police for the purposes of Part 7; or

(b) an officer of the Corporation who is authorised in writing to take proceedings either generally or in any particular case by the Corporation; or

Authorised by the Chief Parliamentary Counsel
(c) a person who is referred to in paragraph (c) or (e) of section 77(2);

* protective services officer has the same meaning as in the Victoria Police Act 2013;

* rail or bus operator means a bus company, a passenger transport company or Rail Track;

* Rail Track means Victorian Rail Track within the meaning of section 3 of the Transport Integration Act 2010;

* reasonable steps defence has the meaning set out in section 179;
**register of written-off vehicles** means the register of written-off vehicles required by section 16D;

**registered industry code of practice** means an industry code of practice for which registration is in force under section 93B;

* * * * *

**registered medical practitioner** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

**registered operator** of a vehicle means the person recorded on the register as the person responsible for the vehicle;
registration number rights means the rights set out in section 5AD;

Regulator has the same meaning as in the Heavy Vehicle National Law (Victoria);

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;

responsible person means any person having, at a relevant time, a role or responsibilities associated with road transport, and includes any of the following—

(a) an owner of a heavy vehicle;
(b) a driver, including a two-up driver, of a heavy vehicle;
(c) an operator or registered operator of a heavy vehicle;
(d) a person in charge, or apparently in charge, of a heavy vehicle;
(e) a person in charge, or apparently in charge, of the garage address of a heavy vehicle or the driver base of a heavy vehicle;
(f) a person appointed under an approved road transport compliance scheme to have monitoring or other
responsibilities under the scheme, such as responsibilities for certifying, monitoring or approving heavy vehicles under the scheme;

(g) an operator of an intelligent transport system;

(h) a person who consigns goods for transport by road;

(i) a person who packs goods in a freight container or other container or in a package or on a pallet for transport by road;

(j) a person who loads goods or a container on a heavy vehicle for transport by road;

(k) a person who unloads goods, or a container containing goods, consigned for transport by road;

(l) a person to whom goods are consigned for transport by road;

(m) a person who receives goods packed outside Australia in a freight container or other container or on a pallet for transport by road in Australia;

(n) an owner or operator of a weighbridge or other weighing facility used to weigh heavy vehicles or an occupier of premises where such a weighbridge or weighing facility is located;

(o) a person who consigned, or arranged for, or offered, a freight container to be transported by road;

(p) a person who controls, or directly influences, the loading or operation of a heavy vehicle;
(q) an agent, employer, employee or sub-contractor of any person referred to in the preceding paragraphs of this definition;

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

*road* means—

(a) an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles; or

(b) a place that is a road by virtue of a declaration under subsection (2)(a)—but does not include a place that is not a road by virtue of a declaration under subsection (2)(a);  

*road infrastructure* includes—

(a) a road, including its surface or pavement; and

(b) anything under or supporting a road or its surface or pavement and maintained by a road authority; and

(c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system or supporting a road; and

(d) any bridge or other work or structure located above, in or on a road and maintained by a road authority; and
(e) any traffic control devices, railway or tramway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything referred to in paragraphs (a)–(d); and

(f) anything declared by the regulations to be included in this definition;

but does not include anything declared by the regulations to be excluded from this definition;

road or transport law means—

(a) this Act;

(aa) the Bus Safety Act 2009;

(b) the Transport (Compliance and Miscellaneous) Act 1983;

(c) any regulation made under this Act or the Transport (Compliance and Miscellaneous) Act 1983;

(d) any rule;

road or transport law offence means an offence against a road or transport law;

road related area means—

(a) an area that divides a road; or

(b) a footpath or nature strip adjacent to a road; or

(c) an area that is open to the public and is designated for use by cyclists or animals; or
(d) an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles; or

(e) a place that is a road related area by virtue of a declaration under subsection (2)(a)—

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

*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;

*rules* means rules made under section 95D;

*Secretary* means the Secretary to the Department of Transport, Planning and Local Infrastructure;

*Secretary to the Department of Health* means the Department Head (within the meaning of the *Public Administration Act 2004*) of the Department of Health;
semi-trailer means a trailer that has—

(a) one axle group or a single axle towards the rear; and

(b) a means of attachment to a prime mover that results in some of the mass of the trailer's load being imposed on the prime mover;

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

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;

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

tare mass, in relation to a trailer, means its unladen mass when it is in ordinary running condition and not carrying persons or goods;
**taxi-cab** has the same meaning as in Part VI of the *Transport (Compliance and Miscellaneous) Act 1983*;

**the register** means the register of vehicles maintained in accordance with the regulations;

**tractor** means a motor vehicle that is a tractor by virtue of a declaration under subsection (2)(c);

**traffic infringement** means—

(a) an offence, other than a parking infringement, against this Act, the regulations or the rules which is a prescribed offence for the purposes of Part 7; or

(b) an offence against section 45E or 45F of the *Environment Protection Act 1970* relating to the deposit of litter on, from or towards any vehicle; or

(c) an offence against the *Transport (Compliance and Miscellaneous) Act 1983* or the regulations made under that Act which is a prescribed offence for the purposes of Part 7; or

(d) a drink-driving infringement; or
(e) an excessive speed infringement; or
(f) a drug-driving infringement; or
(g) a drinking while driving infringement; or
(h) an offence against section 109 of the Transport Accident Act 1986 which is a prescribed offence for the purposes of Part 7;

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

*transport documentation* means—

(a) any contractual documentation directly or indirectly associated with—

(i) a transaction for, or relating to, the actual or proposed transport of goods or passengers by road or any previous transport of the goods or passengers by any mode; or

(ii) goods or passengers themselves so far as the documentation is relevant to their actual or proposed transport; or

(b) any associated documentation—

(i) contemplated in the contractual documentation; or
(ii) required by law, or customarily provided, in connection with the contractual documentation or with the transaction—

whether or not the documentation has been transmitted physically, electronically or in any other manner;

Example

Examples of transport documentation include an invoice, delivery order, consignment note, load manifest, vendor declaration, export receipt advice, bill of lading, contract of carriage, sea carriage document, and container weight declaration, relating to goods or passengers.

* * * * *

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

**TSC** means the Taxi Services Commission established by section 115B of the **Transport Integration Act 2010**;

**two-up driver** means a person who—

(a) shares with another person the driving of a heavy vehicle; and

(b) travels as a passenger on the vehicle whilst the other person is driving the vehicle;
use of a vehicle includes standing the vehicle on a road or road related area;

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

vehicle identification number, in relation to a motor vehicle, means the 17 character alphanumeric identifier—

(a) placed on the vehicle in accordance with Australian Design Rule 61; or

(b) specified by the Corporation in accordance with the regulations—that uniquely identifies the vehicle and sets it apart from similar vehicles;

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

(a) in the case of a motor vehicle manufactured on or after 1 January 1989, the vehicle identification number permanently recorded on the vehicle; or

(b) in any other case, the chassis number marked on the vehicle in accordance with clause 58 of Schedule 2 to the Road Safety (Vehicles) Regulations 2009 or in accordance with a law of another State or a Territory that corresponds with that clause;
written-off vehicle has the meaning given in section 16B.

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

(a) parking infringements (other than parking infringements involving a contravention of section 90E); and

(b) the parking of vehicles; and

(c) any other prescribed offence; and

(d) any other prescribed matter—

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

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

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

(b) declare any motor vehicle or class of motor vehicles not to be a motor vehicle or motor vehicles for the purposes of this Act; and

(c) declare any motor vehicle or class of motor vehicles to be a tractor or tractors for the purposes of this Act; and

(d) declare any vehicle, implement, machine or other structure or class of vehicles, implements, machines or other structures to be a trailer or trailers for the purposes of this Act.
(3) The Minister may, by Order published in the Government Gazette, declare any substance to be a drug for the purposes of this Act.

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

(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.

3AAA Definition of driver base

For the purposes of the definition of driver base in section 3(1)—

(a) a group of vehicles means a heavy vehicle that is physically connected to one or more other vehicles (even if those other vehicles are not heavy vehicles); and

(b) if a driver is a self-employed driver and an employed driver at different times, the driver may have one driver base as a self-employed
driver and another driver base as an employed driver; and

(c) if a driver has 2 or more employers, the driver may have a different driver base in relation to each employer.

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

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

(a) a person who is attempting to start or drive the motor vehicle;

(b) a person with respect to whom there are reasonable grounds for the belief that he or she intends to start or drive the motor vehicle;

(c) a commercial driving instructor while the person whom he or she is teaching to drive is driving or in charge of the vehicle;

(d) an accompanying licensed driver while the person whom he or she is sitting beside is driving or in charge of the vehicle.

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

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

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

3AC Circumstances in which person is taken to be driving a trailer

Without limiting the circumstances in which a person is driving a trailer, a person who is driving a motor vehicle to which a trailer is attached is to be taken to be driving the trailer for the purposes of this Act.

3AD Circumstances in which person is to be taken to be disqualified from obtaining a driver licence or learner permit

Without limiting the circumstances in which a person is disqualified from obtaining a driver licence or learner permit, a person who is disqualified from driving a motor vehicle on a road in Victoria under—

(a) section 89C(3A) of this Act; or
(b) section 89D(1A) of this Act; or
(c) section 89(1)(b), (3)(b) or (4)(b) or 89A(1)(b) of the Sentencing Act 1991—

is to be taken to be also disqualified under that section from obtaining a driver licence or learner permit under this Act for the period for which he or she is so disqualified from driving.

3AE Circumstances in which person is to be taken to be disqualified from driving a motor vehicle on a road in Victoria

Without limiting the circumstances in which a person is disqualified from driving a motor vehicle on a road in Victoria, a person who (whether under this or any other Act, other than by force of section 3AD of this Act) is
disqualified from obtaining a driver licence or learner permit under this Act is to be taken to be disqualified from driving a motor vehicle on a road in Victoria for the period for which he or she is so disqualified from obtaining a driver licence or learner permit.

* * * * *

3B Transport Integration Act 2010

This Act is transport legislation within the meaning of the Transport Integration Act 2010.

3C Filming Approval Act 2014

This Act is filming approval legislation within the meaning of the Filming Approval Act 2014.

4 Act to bind Crown

This Act binds the Crown in right of Victoria and also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.
PART 2—REGISTRATION

Division 1—Corporation as registration authority

5AA Functions of Corporation

The functions of the Corporation under this Part are—

(a) to administer the registration system established by the regulations; and

(b) to maintain a register of motor vehicles and trailers in accordance with the regulations; and

(ba) to maintain a register of written-off vehicles in accordance with the regulations; and

(c) to collect registration and permit fees determined in accordance with this Act; and

(ca) to sell registration number rights, and issue non-standard number plates and replacement number plates, in accordance with section 5AC or 5AE (as the case requires) and the regulations; and

(d) to provide information about motor vehicles, trailers and registered operators in accordance with this Act.
5AB Powers of Corporation

(1) For the purpose of carrying out its functions under this Part and Part 6A, the Corporation may, in accordance with the regulations or the Infringements Act 2006 (as the case requires)—

(a) register or refuse to register a motor vehicle or a trailer; and

(b) renew or refuse to renew the registration of a motor vehicle or a trailer; and

(c) transfer or refuse to transfer the registration of a motor vehicle or a trailer from one person to another; and

(d) permit or refuse to permit the use of an unregistered motor vehicle or trailer; and

(e) impose conditions on the registration of a motor vehicle or a trailer or on a permit to use an unregistered motor vehicle or trailer; and

(f) cancel or suspend the registration of a motor vehicle or a trailer; and

(fa) enter or refuse to enter a vehicle on the register of written-off vehicles; and

(fb) amend or refuse to amend an entry on the register of written-off vehicles; and

(fc) remove or refuse to remove an entry from the register of written-off vehicles; and

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

S. 5AB(1)
amended by
Nos 12/2006
s. 179, 81/2006
s. 34.

S. 5AB(1)(fa)
inserted by
No. 92/2001
s. 7(b).

S. 5AB(1)(fb)
inserted by
No. 92/2001
s. 7(b).

S. 5AB(1)(fc)
inserted by
No. 92/2001
s. 7(b).
(g) collect registration and permit fees (including fees in relation to the register of written-off vehicles) determined in accordance with this Act; and

(ga) collect money received on the sale of registration number rights and the issue of non-standard number plates and replacement number plates; and

(h) specify a GCM for a motor vehicle in the circumstances envisaged in paragraph (b) of the definition of GCM in section 3(1); and

(i) specify a GVM for a motor vehicle or trailer in the circumstances envisaged in paragraph (b) of the definition of GVM in section 3(1); and

(j) require proof of compliance with the Transport Accident Act 1986 and the Duties Act 2000; and

(k) fix fees for services provided by the Corporation in connection with—

(i) the registration, or the late renewal of registration, of motor vehicles or trailers;

(ii) the issue of number plates, permits, tester’s licences and certificates of roadworthiness;

(iii) the entry of vehicles on the register of written-off vehicles, the amendment, removal and inspection of entries and the issuing of certificates in relation to information from the register; and

(l) exercise other powers conferred by the regulations.
(2) The Corporation must cause details of fees fixed under subsection (1)(k) to be published in the Government Gazette.

5AC Sale of registration number rights

(1) The Corporation may, in accordance with the regulations, sell (including at auction or by inviting tenders) registration number rights.

(2) Subject to subsection (3), registration number rights may be sold to any person, whether or not eligible to be the registered operator of a vehicle.

(3) Registration number rights to a registration number assigned to a vehicle may only be sold—

(a) to the registered operator of the vehicle; or

(b) to another person, with the consent of that registered operator.

(4) The price at which registration number rights may be sold may vary according to the particular registration number or class of registration number and is not required to be related in any way to the cost to the Corporation of providing any service.

5AD What are registration number rights?

(1) The person who owns registration number rights in respect of a particular registration number has—

(a) the right to have that registration number assigned to a vehicle registered by the Corporation of which that person is the registered operator; and

(b) the right to be issued with 2 number plates (of a type that, in the opinion of the Corporation, is appropriate to that registration number) bearing that registration number; and
(c) the right to display number plates bearing that registration number on the vehicle to which that number is assigned by the Corporation.

(2) The rights referred to in subsection (1)—

(a) are exclusive to the owner of those rights; and

(b) may be exercised at any time, whether at the time of purchase of the registration number rights or at any later time; and

(c) may only be exercised subject to, and in accordance with, this Act and the regulations; and

(d) may be transferred to any other person, or otherwise dealt with, by the owner of those rights; and

(e) form part of the property of the estate of the owner on his or her death.

(3) Subject to this Act and the regulations, the Corporation must take all necessary steps to give effect to the exercise of any right referred to in subsection (1).

(4) If—

(a) a vehicle is sold (whether before, on or after the commencement of Division 1 of Part 6 of the Transport Legislation (Miscellaneous Amendments) Act 2004) together with a number plate issued by the Corporation displayed on it; and
(b) that number plate bears the registration number assigned to the vehicle at the time of the sale; and

(c) that registration number is at the time of the sale the subject of registration number rights—

it must be presumed for all purposes, in the absence of evidence to the contrary, that the person who acquires the vehicle also acquires the registration number rights in respect of that registration number.

(5) The Corporation must not assign to a vehicle, or issue a number plate bearing, a registration number that is the subject of registration number rights except on an application made by, or with the consent of, the owner of those rights.

(6) A number plate issued by the Corporation bearing a registration number that is the subject of registration number rights owned by a person remains the property of the State despite the separate ownership of the registration number rights.

5AE Non-standard number plates and replacement number plates

(1) The Corporation may, in accordance with the regulations, issue non-standard number plates or replacement number plates for a fee fixed by the Corporation or determined at auction or by inviting tenders.

(2) Despite anything to the contrary in this Act, a fee fixed for the issue of a non-standard number plate or a replacement number plate may vary according to the design, size, colour or material of the particular number plate or class of number plate and is not required to be related in any way
to the cost to the Corporation of providing any service.

Division 2—Registration

5 Purposes of registration

The purposes of registration are—

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

(b) to enable the use of motor vehicles and trailers on highways to be regulated for reasons of safety, protection of the environment and law enforcement; and

(c) to provide a method of establishing the identity of each motor vehicle or trailer which is used on a highway and of the person who is responsible for it.

6 Application of Part

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

6A Corporation not to register vehicles based outside Victoria

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

7 Offence if vehicle or trailer not registered

(1) A person must not—

(a) use on a highway a motor vehicle or a trailer; or
(b) own a motor vehicle or a trailer which is used on a highway—

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

(2) A person must not—

(a) use a motor vehicle or trailer in breach of any condition of its registration; or

(b) being the registered operator of a motor vehicle or a trailer, permit or allow it to be so used or employ a person to so use it.

(3) A person who contravenes subsection (1) or (2) is guilty of an offence and liable to a penalty not exceeding—

(a) in the case of an individual—

(i) 25 penalty units for a first offence;

(ii) 50 penalty units for a second or subsequent offence;

(b) in the case of a body corporate—

(i) 125 penalty units for a first offence;

(ii) 250 penalty units for a second or subsequent offence.

(5) A person may not be convicted of more than one offence under subsection (1) or subsection (2) in respect of the same circumstances.
9 Effecting registration, renewal or transfer

(1) Registration, renewal of registration and transfer of registration may be applied for and granted or refused only in accordance with the regulations and Division 3 of Part 6A.

Note
Section 16F contains prohibitions on registration and renewal of registration in respect of written-off vehicles.
(2) Subject to the regulations, the fee payable for registration or renewal of registration of a motor vehicle or trailer is 20.42 fee units.

(3) The regulations may provide that a fee other than the base registration fee, or that no fee, is payable for registration or renewal of registration of any category of motor vehicle or trailer.

9AA Suspension of motor vehicle or trailer registration

(1) Despite section 9(1), if directed by the sheriff under section 112 of the Infringements Act 2006, the Corporation must suspend any registration of a motor vehicle or trailer in the name of the registered operator of that vehicle or trailer until notified by the sheriff that the suspension has ceased because one of the matters referred to in section 113 of that Act has occurred.

(2) While the registration of a motor vehicle or trailer is suspended under subsection (1), the vehicle is unregistered for the purposes of this Part.

(3) Despite subsection (2) it is not an offence against this Act to leave a vehicle whose registration has been suspended under this section standing on a highway.

(4) Suspension under this section does not alter the expiry date for the registration of a motor vehicle or trailer under this Act.
9AB Cessation of suspension

The suspension of a registration of a motor vehicle or trailer suspended under section 9AA ceases when the Corporation receives notification from the sheriff in accordance with section 113 of the Infringements Act 2006.

9AC Direction not to renew registration

(1) Despite section 9(1), if directed by the sheriff under section 114(2) of the Infringements Act 2006, the Corporation must not renew any registration of a motor vehicle or trailer in the name of the registered operator of that vehicle or trailer or transfer to any other person any registration of that motor vehicle or trailer in respect of that registered operator until notified by the sheriff that the direction not to renew has ceased because one of the matters referred to in section 115 of that Act has occurred.

(2) When sending a notice of renewal of a motor vehicle or trailer registration in accordance with this Act to a registered operator of a vehicle or trailer in respect of whom a direction has been given under section 114(2) of Infringements Act 2006, the Corporation must include in the notice of renewal a notice advising that renewal will not be granted or registration transferred until one of the matters referred to in section 115 of that Act occurs because of a direction of the sheriff under section 114(2) of that Act.

9AD Renewal of registration

The Corporation may renew a motor vehicle or trailer registration which was not renewed by virtue of section 9AC when the Corporation receives notification from the sheriff in accordance with section 115 of the Infringements Act 2006.
9AE Non-transfer of registration

(1) Despite section 9(1), if directed by the sheriff under section 116 of the Infringements Act 2006, or if a deemed direction under section 114(4) of that Act is in force, the Corporation must not transfer to any other person any registration of a motor vehicle or trailer if the registered operator of that vehicle or trailer is a person in respect of whom a direction under section 116 of that Act or a deemed direction under section 114(4) of that Act applies until notified by the sheriff that the direction not to transfer has ceased because one of the matters referred to in section 115 or 117 of that Act has occurred, as the case requires.

(2) When directed by the sheriff under section 116 of the Infringements Act 2006, or if a deemed direction under section 114(4) of that Act is in force, the Corporation must send to the registered operator of the motor vehicle or trailer in respect of whom the direction applies a notice advising that no transfer of registration will occur in relation to that vehicle or trailer until one of the matters referred to in section 115 or 117 of that Act occurs, as the case requires because of a direction of the sheriff under section 116 of that Act or a deemed direction under section 114(4) of that Act.

9AF Transfer of registration

The Corporation may transfer a motor vehicle or trailer registration which was directed not to be transferred by virtue of section 9AE when the Corporation receives notification from the sheriff in accordance with section 115 or 117 of the Infringements Act 2006 as the case requires.
9A Obligations of registered operator

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

(2) The registered operator of a vehicle must, in accordance with the regulations—

(a) ensure that any devices, plates and documents issued by the Corporation are installed or displayed on the vehicle; and

(b) ensure that documents prescribed by the regulations are carried in the vehicle when the vehicle is in use; and

(c) when required to do so by the Corporation, produce documents prescribed by the regulations; and

(d) comply with any directions given by, and conditions imposed by, the Corporation about the registration of the vehicle; and

(e) keep records required to be kept by the regulations about the registration of the vehicle.

9B Register does not provide evidence of title

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

10 Power to require compliance with standards

(1) The Minister may, by notice in the Government Gazette, require compliance with standards for registration relating to the construction, efficiency,
performance, safety, design and equipment of, and the method of identifying, motor vehicles and trailers.

(2) A standard may include a code of practice.

(3) A notice under subsection (1) must specify the class or classes of motor vehicles and trailers to which the standards apply.

(4) The standards must be available for inspection on request at a place which is open to the public and is specified in the notice.

(5) Unless the Minister otherwise specifies in the notice relating to a particular standard, a standard applies only to motor vehicles or trailers manufactured 12 months or more after the date of the notice.

* * * * *

12 Appeal to Magistrates' Court

(1) If the Corporation decides to—

(a) refuse an application for registration of a motor vehicle or trailer; or

(b) refuse to register a motor vehicle or trailer unconditionally under this Part; or

(c) cancel or suspend, other than a suspension in accordance with Part 8 of the Infringements Act 2006 under section 9AA, the registration of a motor vehicle or trailer—
the applicant or owner may, in accordance with the regulations, appeal against that decision to the Magistrates' Court.

(2) On an appeal under subsection (1) the court must—

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

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

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

(2A) Nothing in subsection (2) prevents the application of Part 3.10 of the Evidence Act 2008 to an appeal under subsection (1).

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

13 Power to inspect motor vehicles and trailers

(1) An authorised officer for the purposes of this section or a police officer may at any reasonable time inspect a motor vehicle or trailer which is being used on a highway if the authorised officer or police officer believes on reasonable grounds that—

(a) the driver of the motor vehicle is not complying with this Act or the regulations in driving a motor vehicle of that kind; or

(b) the motor vehicle or trailer does not comply with this Act or the regulations.
(2) An authorised officer for the purposes of this section or a police officer may, by notice in accordance with subsection (3), require to be produced for inspection at a place specified in the notice, a motor vehicle or trailer which the authorised officer or police officer has reasonable grounds for suspecting has within the preceding 30 days been used or will be used on a highway if the authorised officer or police officer believes on reasonable grounds that—

(a) the driver of the motor vehicle has not complied with this Act or the regulations in driving a motor vehicle of that kind; or

(b) the motor vehicle or trailer does not comply with this Act or the regulations.

(3) A notice must be in writing and must be served on the registered operator or, if the motor vehicle or trailer is not registered, on the owner.

(4) An inspection may include any tests which the inspecting officer or police officer decides to be appropriate.

(5) A person who refuses or fails—

(a) to allow a motor vehicle or trailer to be inspected when required under this section; or

(b) to produce a motor vehicle or trailer for inspection at the place specified in a notice within 7 days after service of the notice on that person—

is guilty of an offence.

Penalty: 5 penalty units.
(6) In this section **authorised officer for the purposes of this section** means—

(a) an officer of the Corporation authorised in writing by the Corporation for the purposes of this section; or

(ab) a Victoria Police employee within the meaning of the **Victoria Police Act 2013**, who is authorised in writing by the Chief Commissioner of Police for the purposes of this section; or

(b) an employee in the Department of Transport, Planning and Local Infrastructure authorised in writing by the Secretary to the Department of Transport, Planning and Local Infrastructure for the purposes of this section.

14 Defective vehicles

(1) A police officer or a person referred to in section 13(6) may, in accordance with the regulations, on discovering a vehicle that does not comply with this Act or the regulations—

(a) issue a warning or a vehicle defect notice; or
(b) impose conditions on the use of the vehicle; or

(c) prohibit the use of the vehicle.

(1A) A police officer or a person referred to in section 13(6) may, in accordance with the regulations, also take any of the actions listed in subsection (1) if he or she reasonably suspects, on the basis of any information derived from a vehicle's engine management system using, in accordance with the regulations, an engine management system reading device specified by the regulations, that the vehicle does not comply with this Act or the regulations.

(2) A vehicle defect notice may be withdrawn or cleared in accordance with the regulations.

* * * * *

15A Suspension or cancellation of vehicle tester authorisations

(1) The Corporation may, in accordance with the regulations, suspend for 30 days or more or cancel an authorisation granted to a person under regulations made under item 9 of Schedule 2 if it is of the opinion that—

(a) the person has ceased to be a fit and proper person to hold the authorisation; or

(b) the person's premises are no longer suitably equipped to carry out examinations and tests; or

(c) none of the person's employees is qualified to carry out examinations and tests; or

* * * * *
(d) any provision of the regulations which applies in respect of authorised persons and the testing of vehicles has not been complied with.

(1A) If the authorisation of a person is cancelled under subsection (1), the Corporation may, in accordance with the regulations, disqualify the person from applying for a further authorisation under regulations made under item 9 of Schedule 2 until such time that the person demonstrates to the satisfaction of the Corporation that the matters leading to the cancellation of the authorisation have been addressed.

(2) The Corporation may, in accordance with the regulations, immediately suspend until the charge has been determined an authorisation granted to a person under regulations made under item 9 of Schedule 2 if the person is charged with—

(a) an offence involving violence or the threat of violence; or
(b) theft or an offence involving deception or fraud; or
(c) an offence against paragraph (e) or (f) of section 61(1); or
(d) an offence involving the risk of injury to the public—

and may, in accordance with the regulations, cancel the authorisation if the person is convicted of any such offence.

(3) The Corporation may, in accordance with the regulations, suspend for 3 months an authorisation granted to a person under regulations made under item 9 of Schedule 2 if the person incurs 12 or more demerit points within any 3 year period.
(4) The circumstances in which demerit points are incurred or cancelled and the number of points incurred are as prescribed.

(5) The holder of an authorisation granted under regulations made under item 9 of Schedule 2 may appeal to the Magistrates' Court against a decision of the Corporation to suspend or cancel that authorisation or to disqualify the holder of the authorisation from applying for a further authorisation.

(6) An appeal against a decision of the Corporation made under subsection (3) may only be made on either or both of the following grounds:
   (a) That demerit points have been recorded against the appellant in error or because of wrongful or mistaken identity;
   (b) That a miscalculation has been made in assessing the total number of demerit points incurred by the appellant.

(7) The giving, in accordance with the regulations, of a notice of appeal against a decision of the Corporation made under subsection (3) stays the suspension of the authorisation pending the determination of the appeal.

(8) On an appeal under this section the Magistrates' Court must—
   (a) re-determine the matter of the suspension, cancellation or disqualification; and
   (b) hear any relevant evidence tendered by the appellant or the Corporation; and
   (c) without limiting its discretion, take into consideration anything that the Corporation ought to have considered.
(8A) Nothing in subsection (8) prevents the application of Part 3.10 of the Evidence Act 2008 to an appeal under this section.

(9) On an appeal against a decision of the Corporation made under subsection (3) the Magistrates' Court may—

(a) in allowing the appeal, give to the Corporation any directions it thinks proper for the amendment of any demerits register kept by the Corporation; or

(b) in dismissing the appeal, order that the suspension take effect from a date specified in the order.

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

16 Seizure of number plates

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

(a) is being used other than in accordance with this Act and the regulations; or

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

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

(a) does not bear the registration number last assigned to that motor vehicle or trailer by the Corporation; or

(b) is displayed on a motor vehicle or trailer—

(i) that is not registered under Part 2 or exempted from registration under the regulations; and

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

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

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

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

Division 3—Written-off vehicles

16A Purposes of Division

The purposes of this Division are—

(a) to curtail trade in stolen motor vehicles by preventing vehicle information about written-off vehicles, particularly vehicle identifiers, being used to register stolen motor vehicles;

(b) to facilitate inspections of written-off vehicles that have been repaired;

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

16B Definitions

(1) In this Division—

*ATM* means aggregate trailer mass;
corresponding category means a specified category of written-off vehicle on an interstate written-off vehicles register that the Governor in Council by Order published in the Government Gazette declares to be a category that corresponds to a specified category of written-off vehicle under this Division;

domestic partner of a person means—

(a) a person who is in a registered relationship with the person; or

(b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—

(i) for fee or reward; or

(ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

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

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

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

light motor vehicle means a motor vehicle with an MRC not exceeding 4·5 tonnes but does not include a motor cycle;

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

(a) demolishing or dismantling motor vehicles or parts of, or accessories for, motor vehicles; or

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

MRC (mass rating for charging) in relation to a light motor vehicle, means—

(a) the maximum mass of the vehicle, including any load, recorded on the compliance plate as the GVM, GTMR or ATM of the vehicle; or
(b) if the vehicle has no compliance plate—its operating mass;

repairable write-off means a motor vehicle that—

(a) is written off but is not a statutory write-off; or

(b) is written off and is entered on an interstate written-off vehicles register in a corresponding category to repairable write-off under this Division;

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

(a) that are registered under Division 2 for use on a highway or registered for use on a highway by a registration authority in another State or a Territory; and

(b) in respect of which there is no insurance policy with an insurer covering loss or damage of each vehicle;

statutory write-off means a motor vehicle to which section 16BA applies;

* * * * *

written-off vehicle means—

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

(2) The Governor in Council may, by Order published in the Government Gazette, declare that a specified category of written-off vehicle on an interstate written-off vehicles register corresponds to a specified category of written-off vehicle under this Division.

(3) The Chief Commissioner of Police may authorise in writing for the purposes of section 16D(4) a specified police officer or police officers.

(4) For the purposes of the definition of domestic partner in subsection (1)—
   (a) registered relationship has the same meaning as in the Relationships Act 2008; and
   (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the Relationships Act 2008 as may be relevant in a particular case; and
   (c) a person is not a domestic partner of another person only because they are co-tenants.

16BA Statutory write-offs

(1) A light motor vehicle is a statutory write-off if the light motor vehicle meets one or more of the criteria specified in clause 4 of Schedule 6.

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

(b) has been—
   (i) immersed in salt water above the doorsill level for any period; or
   (ii) immersed in fresh water up to the dashboard or steering wheel for more than 48 hours.

(3) A motor cycle is a statutory write-off if the motor cycle is written off and—
   (a) has impact damage (excluding scratching) to the suspension and at least 2 areas of structural frame damage; or

   (b) has been—
      (i) fully immersed in salt water for any period; or
      (ii) fully immersed in fresh water for more than 48 hours.
(4) A motor vehicle (other than a light motor vehicle) is a statutory write-off if the motor vehicle is written off and—

(a) has been burnt to such an extent that it is only fit for wrecking or scrap; or

(b) has been stripped of all, or a combination of most, interior and exterior body parts, panels and components.

(5) A motor vehicle is a statutory write-off if the motor vehicle is written off and is entered on an interstate written-off vehicles register in a corresponding category to statutory write-off under this Division.

16C When is a vehicle written off?

(1) For the purposes of this Division, a motor vehicle is written off if—

(a) the vehicle has been damaged by collision, fire, flood, accident, trespass or other event or circumstances; and

(b) an insurer (whether or not the insurer of the vehicle) or the self-insurer of the vehicle or, if there is no insurer or self-insurer of the vehicle, the registered operator of the vehicle or, if the registration of the vehicle has been cancelled, the person who was the registered operator of the vehicle immediately before that cancellation makes a determination that the extent of the damage is such that the vehicle's fair salvage value plus the cost of repairing it for use on a road or road related area would be more than its fair market value immediately before the event or circumstances that caused the damage.

(1A) For the purposes of this Division, a motor vehicle is also written off if it is entered on an interstate written-off vehicles register.
(2) An insurer of a vehicle referred to in subsection (1)(a) is taken to have made a determination under subsection (1)(b) if the insurer—
   (a) allows a claim for the full insured value of the vehicle; or
   (b) disposes of the vehicle to a third party.

(3) A self-insurer of a vehicle referred to in subsection (1)(a) is taken to have made a determination under subsection (1)(b) if the self-insurer disposes of the vehicle to a third party.

(4) A registered operator of a vehicle referred to in subsection (1)(a) is taken to have made a determination under subsection (1)(b) if the registered operator disposes of the vehicle to a motor wrecker.

(5) Nothing in subsection (2), (3) or (4) limits the circumstances in which an insurer, self-insurer or registered operator may be taken to have made a determination referred to in subsection (1)(b).

(6) An insurer or self-insurer, in making a determination under subsection (1)(b), may determine that the vehicle is a statutory write-off or a repairable write-off.

16D Register of written-off vehicles

(1) The Corporation must maintain a register of written-off vehicles that—
   (a) includes vehicles of the class or classes prescribed by the regulations; and
   (b) is kept in the manner prescribed by the regulations.
(2) Entries on the register of written-off vehicles may be made, amended and removed only in accordance with the regulations.

(2A) In entering a vehicle on the register of written-off vehicles, the Corporation is entitled to rely on a determination made by an insurer or self-insurer under section 16C(1)(b) that a written-off vehicle is a statutory write-off or a repairable write-off and is not required to make any enquiries of its own in relation to the matter before entering the vehicle on the register as such.

* * * * *

(4) If—

(a) a vehicle is entered on the register of written-off vehicles as a repairable write-off; and

(b) a police officer authorised by the Chief Commissioner of Police for the purposes of this subsection notifies the Corporation in writing that the entry of the vehicle on the register should be as a statutory write-off—

the Corporation must amend the entry accordingly.

16E  Appeals regarding written-off vehicle registration

(1) If the Corporation decides to—

(a) refuse to enter a vehicle on the register of written-off vehicles; or

(b) amend, or refuse to amend, an entry on the register of written-off vehicles; or

(c) refuse to remove an entry from the register of written-off vehicles—
a person referred to in subsection (2) may appeal against that decision to the Magistrates’ Court in accordance with the regulations.

(2) An appeal may be made under subsection (1) by—

(a) a person who notified the Corporation that the vehicle was a written-off vehicle; or

(b) the person who was the registered operator of the vehicle when it became a written-off vehicle or, if the registration of the vehicle was then cancelled, immediately before that cancellation; or

(c) a person who was the spouse or a domestic partner of a person referred to in paragraph (a) or (b) when the notification was made or the vehicle became a written-off vehicle (as the case requires).

(2A) A person may only appeal on one or more of the following grounds—

(a) in the case of an appeal against an amendment of an entry made under section 16D(4), that the vehicle was not a statutory write-off when the amendment was made;

(b) in the case of an appeal against any other amendment of, or against a refusal to amend, an entry, that the vehicle did not satisfy the criteria for the category of written-off vehicle under which it was registered when it was entered on the register;

(c) in the case of an appeal against a refusal to remove an entry, that the vehicle was not a written-off vehicle when it was entered on the register.
(3) On an appeal under subsection (1), the court must—

(a) re-determine the matter of the decision; and

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

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

(3A) Nothing in subsection (3) prevents the application of Part 3.10 of the Evidence Act 2008 to an appeal under subsection (1).

(4) The Corporation must give effect to the decision of the Magistrates' Court on an appeal.

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

(1) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on the register of written-off vehicles as a statutory write-off.

(2) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if—

(a) its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on an interstate written-off vehicles register as a statutory write-off; and

(b) the Corporation knows of the entry on the interstate register.

S. 16E(3)(a) amended by No. 94/2003 s. 7(3).

S. 16E(3A) inserted by No. 69/2009 s. 54(Sch. Pt 1 item 50.3).

S. 16F inserted by No. 92/2001 s. 10.
(3) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on the register of written-off vehicles as a repairable write-off except as permitted by the regulations.

(4) The Corporation must not register, or renew the registration of, a vehicle under Division 2 if—

(a) its vehicle identifier is the same as the vehicle identifier of a vehicle that is entered on an interstate written-off vehicles register as a repairable write-off; and

(b) the Corporation knows of the entry on the interstate register—

except as permitted by the regulations.
PART 2A—RECORDS OF PERSONS DRIVING MOTOR VEHICLES

16G Corporation may maintain records of persons driving motor vehicles

(1) The Corporation may create and maintain a record in relation to any person who drives, or intends to drive, a motor vehicle on a highway.

(2) The Corporation may create a record in relation to a person—

(a) when the person first applies for a driver licence or learner permit under this Act; or

(b) if the person does not hold a driver licence or learner permit granted under this Act—when the person comes to the attention of the Corporation or Victoria Police in relation to the use of a motor vehicle by the person; or

(c) in any other prescribed circumstances.

(3) The information that may be recorded against a person in the record is as prescribed.

Note
See also section 35 which requires the Corporation to record demerit points against persons driving a motor vehicle on a highway.
PART 3—LICENSING OF DRIVERS

17 Purposes of licensing

The purposes of licensing are—

(a) to ensure that people who drive motor vehicles on highways are competent drivers; and

(b) to ensure that drivers are aware of safe driving practices and road law; and

(c) to ensure that people who are, or who become, unsuited to drive are not permitted to drive on highways; and

(d) to enable the identification of drivers for the purposes of law enforcement and accident investigation.

17A Obligations of road users

(1) A person who drives a motor vehicle on a highway must drive in a safe manner having regard to all the relevant factors, including (without limiting the generality) the—

(a) physical characteristics of the road;

(b) prevailing weather conditions;

(c) level of visibility;

(d) condition of the motor vehicle;

(e) prevailing traffic conditions;

(f) relevant road laws and advisory signs;

(g) physical and mental condition of the driver.
(2) A road user other than a person driving a motor vehicle must use a highway in a safe manner having regard to all the relevant factors.

(3) A road user must—

(a) have regard to the rights of other road users and take reasonable care to avoid any conduct that may endanger the safety or welfare of other road users;

(b) have regard to the rights of the community and infrastructure managers in relation to road infrastructure and non-road infrastructure on the road reserve and take reasonable care to avoid any conduct that may damage road infrastructure and non-road infrastructure on the road reserve;

(c) have regard to the rights of the community in relation to the road reserve and take reasonable care to avoid conduct that may harm the environment of the road reserve.

(4) In subsection (3), infrastructure manager, non-road infrastructure, road infrastructure and road reserve have the same meanings as in section 3(1) of the Road Management Act 2004.

18 Offence if driver not licensed

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

(a) without holding a driver licence or permit which authorises the holder to drive such a motor vehicle (unless exempted under the regulations); or
(b) in breach of any condition of a driver licence or permit; or

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

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

(2) If the court is satisfied—

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

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

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

(3) If the court is satisfied in the case of a person who drove a motor vehicle on a highway in the circumstances referred to in subsection (1)(a)—

(a) that the person was disqualified under this Act or the Sentencing Act 1991 from obtaining a driver licence or learner permit; and
(b) that—

(i) the Magistrates' Court would have had power to give an alcohol interlock condition direction had the person applied for a licence eligibility order or, having applied for such an order, had the Court not refused to make it; or

(ii) the Corporation would have had power to grant a driver licence or learner permit under section 31KA that is subject to an alcohol interlock condition had the person applied for a licence or permit under that section or, having applied under that section, had the Corporation not refused to grant it—

that person is liable to a penalty not exceeding 30 penalty units or to imprisonment for not more than 4 months.

(4) If subsection (3) applies, the court may, if it considers it appropriate to do so, order that the motor vehicle concerned be immobilised (whether by wheel clamps or any other means) for a period specified in the order of up to 12 months.

(5) An order under subsection (4) may be made subject to specified conditions.

(6) The court may make an order under subsection (4) whether the motor vehicle is owned by the offender or another person.

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

18A Issue of driver licence or learner permit to holder of licence or permit issued outside Victoria

(1) If a person is granted a driver licence or learner permit under this Act (a Victorian licence or permit), any driver licence or learner permit held by the person issued in another State or a Territory or an overseas jurisdiction (a non-Victorian licence or permit) ceases to authorise the person to drive a motor vehicle on a highway unless—

(a) the Victorian licence or permit expires; or

(b) the Corporation agrees to cancel the Victorian licence or permit at the request of the person.

Note
Consequently, the person has no authority to drive a motor vehicle on a highway if, as a result of an offence committed by the person—

(a) the person's Victorian licence or permit is suspended; or

(b) the person's Victorian licence or permit is cancelled (whether or not the person is also disqualified from obtaining a driver licence or learner permit).

(2) A person who is requested to produce for inspection his or her driver licence document or permit document by anyone referred to in section 59(1)(a) must not produce a non-Victorian licence or permit held by the person that does not authorise the person to drive a motor vehicle on a highway.

Penalty: 10 penalty units.
19 Driver licences

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

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

(a) to pass any appropriate tests; and
(b) to comply with any prescribed procedures and requirements; and
(c) to have any prescribed qualification.

(2A) Without limiting subsection (2)(b), a regulation for the purposes of that paragraph may provide for different procedures or requirements depending on a person's age, experience or any other factor.

(3) A licence authorises a person to drive on a highway any categories of motor vehicle indicated in the licence for the term, and subject to any conditions, specified in the licence.

(3A) Without limiting the generality of subsections (1) and (3), in exercising its discretion under this section, the Corporation may grant people of or over 75 years of age driver licences for shorter terms than the terms that usually apply to people who are less than 75 years of age.

(4) A licence may be applied for, granted, renewed or refused only in accordance with the regulations.

(5) Subject to subsection (6), a person who holds a driver licence must have the licence in his or her possession at all times while driving or in charge of a large vehicle.

Penalty applying to this subsection: 5 penalty units.
(6) Subsection (5) does not apply in respect of a large vehicle being used on a journey wholly within a radius of 80 kilometres from the place of business from which the large vehicle normally operates.

(7) A person who, having been disqualified from obtaining a driver licence or learner permit under section 50 or 89C of this Act or section 89 of the Sentencing Act 1991 or by force of section 3AD (other than paragraph (b) of that section) of this Act, holds a driver licence or learner permit issued only because of the making by the Magistrates' Court of a licence eligibility order must have the licence or permit in his or her possession while driving or in charge of a motor vehicle at any time during the period of 3 years (or any longer period during which an alcohol interlock condition applies to the licence or permit) from the first issue of a licence or permit on that order.

Penalty applying to this subsection: 5 penalty units.

Note

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

S. 19(7) inserted by No. 17/1994 s. 5, amended by Nos 1/2002 s. 9(1)(a)(b), 56/2013 s. 17(1).

Note to s. 19(7) inserted by No. 56/2013 s. 17(2).

S. 19(7AA) inserted by No. 49/2014 s. 37(5).

(7AA) A person who, having been disqualified from obtaining a driver licence or learner permit under section 50 or 89C in respect of an offence covered by section 31KA(2)(a) and (b), holds a driver licence or learner permit granted by the Corporation under section 31KA must have the licence or permit in his or her possession while driving or in charge of a motor vehicle at any time while an alcohol interlock condition applies to the licence or permit.

Penalty applying to this subsection: 5 penalty units.
(7A) A person who, having been disqualified from obtaining a driver licence or learner permit under section 89A(1) of the **Sentencing Act 1991**, holds a driver licence or learner permit issued only because of the making by the Magistrates' Court of a licence eligibility order and to which an alcohol interlock condition applies must have the licence or permit in his or her possession while driving or in charge of a motor vehicle at any time while an alcohol interlock condition applies to the licence or permit.

Penalty applying to this subsection: 5 penalty units.

**Note**

Section 28A(2) provides that a person whose driver licence or learner permit is suspended by force of section 89(4) or 89A(1) of the **Sentencing Act 1991** is not disqualified for the purposes of this subsection.

(7B) A person who, having been issued with a driver licence which authorises him or her to drive a motor cycle must, during the period of 3 years from that issue (or if that licence is suspended, whether by a court or the Corporation, during that 3 year period, during an additional period equal to the period of the suspension) have the licence in his or her possession at all times while driving or in charge of a motor cycle.

Penalty applying to this subsection: 5 penalty units.

(8) A person under the age of 26 years who holds a driver licence must have the licence in his or her possession at all times while driving or in charge of a motor vehicle.

Penalty applying to this subsection: 5 penalty units.
19A **Direction not to renew licence**

(1) Despite section 19(4), if directed by the sheriff under section 114 of the *Infringements Act 2006*, the Corporation must not renew a driver licence or permit of a person in respect of whom that direction applies until notified by the sheriff that the non-renewal direction has ceased because one of the matters referred to in section 115 of that Act has occurred.

(2) When sending a notice of renewal of a driver licence or permit in accordance with this Act to a licence or permit holder in respect of whom a direction has been given under section 114 of the *Infringements Act 2006*, the Corporation must include in the notice of renewal a notice advising that renewal will not be granted until one of the matters referred to in section 115 of that Act occurs because of a direction of the sheriff under section 114 of that Act.

19B **Renewal of licence or permit**

The Corporation may renew a driver licence or permit which was not renewed by virtue of section 19A when the Corporation receives notification from the sheriff in accordance with section 115 of the *Infringements Act 2006*.

20 **Variation of driver licences**

(1) The holder of a driver licence who satisfies the Corporation that he or she is qualified to drive a category of motor vehicle in addition to any category indicated in his or her licence may on application to the Corporation have that licence varied to include that additional category.

(2) An application for a licence variation may be made, granted or refused only in accordance with the regulations.
(3) The Corporation may, before granting a licence variation, require the applicant—

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

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

(c) to satisfy it that he or she—

(i) has held a driver licence for the period determined by the Corporation; and

(ii) has had adequate driving experience; and

(iii) has attained the age specified by the Corporation.

21 Probationary driver licences

(1) If a driver licence is granted to a person who has not previously held one, that licence must, unless the regulations otherwise provide, be granted on probation in accordance with the regulations, until the latest of—

(a) the date specified in the licence, or that date as extended in accordance with the regulations; or

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

(c) the date on which the person complies with any prescribed procedures and requirements.
(1A) A person who holds a probationary driver licence must have the licence in his or her possession at all times while driving or in charge of a motor vehicle.

Penalty: 5 penalty units.

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

(a) the date specified in the licence, or that date as extended in accordance with the regulations; or

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

(c) the date on which the person complies with any prescribed procedures and requirements.

(3) Regulations for the purpose of this section may—

(a) provide for different classes of probationary driver licences depending on a person's age, experience or any other factor;

(b) provide for the period of probation in respect of each class of probationary driver licence;

(c) provide that a person who holds a probationary driver licence of one class must, after completing that period of probation, hold a probationary driver licence.
of another class before being granted a full driver licence;

(d) provide for the extension of a probationary period in the case of a person who commits a specified offence or who has his or her licence suspended;

(e) require a person who holds a probationary driver licence of one class to pass any appropriate tests that the Corporation requires, and to comply with any other procedures or requirements, before being granted a probationary driver licence of another class.

(4) Without limiting subsection (3), regulations for the purpose of this section may provide that probationary driver licences granted to persons under the age of 21 may have longer terms than the terms that usually apply to probationary drivers licences granted to persons who are 21 years of age or more.

* * * * *

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

(a) the date specified in the licence, or that date as extended in accordance with the regulations; or

(b) the date on which the person passes any appropriate tests that the Corporation requires him or her to pass to obtain a full driver licence; or
(c) the date on which the person complies with any prescribed procedures and requirements.

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

21A Fee for driver licence

(1) Subject to the regulations, the fees payable for the grant or renewal of a driver licence are as follows—

(a) in the case of a 3 year licence—5·59 fee units;

(b) in the case of a 4 year licence—7·45 fee units;

(c) in the case of a 10 year licence—19·15 fee units.

(2) The regulations may provide that a fee other than the fee specified in subsection (1), or that no fee, is payable for the grant or renewal of a driver licence.

22 Learner permits

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

(2) In subsection (1), prescribed age means—

(a) in the case of a learner permit to drive a motor cycle, 18 years; and
(b) in any other case, 16 years.

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

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

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

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

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

(6) A person who holds a learner permit must have the permit in his or her possession at all times while driving or in charge of a motor vehicle.

Penalty: 5 penalty units.
24 Cancellation, suspension or variation of licences and permits by Corporation

(1) The Corporation must, if required by the regulations to do so—

(a) suspend for the prescribed time the driver licence or permit of any person;

(b) cancel the driver licence or permit of any person;

(ba) disqualify a person whose driver licence or permit has been cancelled under paragraph (b) from obtaining a driver licence or permit for the period determined in accordance with the regulations;

(c) vary the driver licence or permit of any person by excluding or including a category of motor vehicle;

(d) vary the conditions to which the driver licence or permit of any person is subject by imposing, removing or amending a condition.

(1A) If directed to do so by the sheriff under section 110 of the Infringements Act 2006, the Corporation must suspend a driver licence or permit of a person in respect of whom the
direction applies until the sheriff notifies the Corporation that one of the matters referred to in section 111 of that Act has occurred.

(1B) The suspension of a driver licence or permit suspended under subsection (1A) ceases when the Corporation receives notification from the sheriff in accordance with section 111 of the Infringements Act 2006.

(2) The Corporation may, in accordance with the regulations—

(a) suspend for any time that it thinks fit the driver licence or permit of any person;

(b) cancel the driver licence or permit of any person;

(ba) disqualify a person whose driver licence or permit has been cancelled under this section from obtaining a driver licence or permit for the period determined in accordance with the regulations;

(c) vary the driver licence or permit of any person by excluding or including a category of motor vehicle;

(d) vary the conditions to which the driver licence or permit of any person is subject by imposing, removing or amending a condition.

(3) In suspending, in accordance with the regulations, a driver licence or permit on the ground that it would be dangerous for the person to drive a motor vehicle because of illness or bodily infirmity, defect or incapacity or because of the effects of treatment for any of those things, the Corporation may do so on the basis of a report given by a registered medical practitioner and without conducting any other hearing or
investigation into the matter before the suspension is imposed.

26 Appeal to Magistrates' Court
(1) If the Corporation decides to—

(a) refuse an application for a driver licence, a driver licence variation or a permit; or

(b) in accordance with section 24(2), suspend, cancel or vary in any way a driver licence or permit or disqualify a person from obtaining a driver licence or permit—

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

(2) On an appeal under subsection (1) the court must—

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

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

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

(2A) Nothing in subsection (2) prevents the application of Part 3.10 of the Evidence Act 2008 to an appeal under subsection (1).

(3) If the court is satisfied that the refusal, suspension, cancellation, variation or disqualification—

(a) results from a driving disqualification of the appellant in another State or Territory of the Commonwealth; or

(b) was required by the regulations—

the court must confirm the decision of the Corporation.
(3A) The Magistrates' Court must cause particulars of any decision made by it on an appeal under this section to be sent immediately to the Corporation.

(4) Every decision of the Magistrates' Court on an appeal under this section must be given effect to by the Corporation.

(5) An appeal does not lie to the Magistrates' Court under this section against a decision of the Corporation—

(a) under section 31KA to grant a person to whom that section applies a driver licence or learner permit subject to an alcohol interlock condition; or

(b) under section 50AAAB not to remove an alcohol interlock condition imposed by it on a driver licence or learner permit.

S. 26(3A) inserted by No. 49/2014 s. 15(1).

S. 26(5) inserted by No. 49/2014 s. 15(2).

26A Appeal to Magistrates' Court against police decision

(1) If a police officer decides to forbid a person to drive a motor vehicle under section 62 or take any other action under that section, the person in respect of whom the action has been taken may, in accordance with the regulations, appeal against that decision to the Magistrates' Court.
(2) On an appeal under subsection (1) the court must—

(a) re-determine the matter of the action taken; and

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

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

(3) Nothing in subsection (2) prevents the application of Part 3.10 of the Evidence Act 2008 to an appeal under subsection (1).

27 Power of Corporation to require tests to be undergone

(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.
(1A) The Corporation may require a person who is exempted under the regulations from the requirement under section 18(1)(a) to hold a driver licence or learner permit 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.

(2) For the purposes of subsections (1) and (1A), 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 person to undergo a test under this section—

(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 subsections (1) and (1A) must be in accordance with any relevant guidelines.
(4) No action may be taken against a person who carries out a test under this section and who expresses to the Corporation an opinion formed by that person as a result of the test.

(5) No action may be taken against a person who, in good faith, reports to the Corporation any information which discloses or suggests that a person is unfit to drive or that it may be dangerous to allow that person to hold or be granted a driver licence, a driver licence variation or a permit.

(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.

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

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

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

(i) of 130 kilometres per hour or more; or
must suspend for such time as the court thinks fit (not being less than the period specified in Column 2 of Schedule 5 ascertained by reference to the speed at which the vehicle was driven as specified in Column 1 of that Schedule), all driver licences and permits held by that person; and

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

(1A) Subsection (1) does not affect the obligation of a court to cancel a licence or permit and disqualify the offender in any case in which cancellation and disqualification are mandatory under this Act.

(1B) If a court convicts a person of, or is satisfied that a person is guilty of, an offence—

(a) that is constituted by, or that has as a necessary element, the breach of a mass, dimension or loading requirement within the meaning of the Heavy Vehicle National Law (Victoria); and

(b) where the breach is committed in respect of a heavy vehicle—
in addition to anything the court may do under subsection (1)(b), the court may vary any driver licence or permit held by the person.

(1C) Unless a category of motor vehicles is explicitly excluded under subsection (2), an order under subsection (1)(b) suspending or cancelling a person's driver licence or learner permit applies in relation to all categories of motor vehicle.

(2) If the court is satisfied that the circumstances of the case are so unusual as to warrant it, an order made under subsection (1)(b) may specify a category or categories of motor vehicles to which the order does not apply and such an order has effect according to its terms and this section applies to such an order with such modifications as are necessary.

(3) A court must cause particulars of an order made under subsection (1) to be sent immediately to the Corporation.

(3A) If under subsection (1) a court disqualifies a person from obtaining a driver licence the court must specify the period of disqualification.

(4) If under subsection (1) a court disqualifies a person from obtaining a driver licence for any time without expressly cancelling any driver licence or permit held by that person, any driver licence or permit held by that person is, unless the order specifies otherwise, to be taken to have been cancelled by that order.

(5) Subsection (1) does not apply to an offence under section 56(7) unless the court is satisfied that the person convicted or found guilty of the offence had less than 3 hours before the time of the offence driven or been in charge (within the meaning of Part 5) of a motor vehicle.
(7) A driver licence or permit cancelled by a court is of no effect and a person whose licence or permit is cancelled is disqualified from obtaining a further licence or permit for the period specified by the court.

Note

A period during which a licence or permit is cancelled or suspended under this section is in addition to, and does not count as part of, a period of suspension under Part 4 (see section 44).

28A Effect of suspension of licence or permit

(1) A driver licence or permit suspended by a court or by the Corporation or by operation of this Act, the Sentencing Act 1991 or the Infringements Act 2006 is, during the suspension, of no effect and a person whose licence or permit is suspended is, during the suspension, disqualified from obtaining a further licence or permit.

(2) A person whose driver licence or learner permit is suspended by force of section 89(4) or 89A(1) of the Sentencing Act 1991 is not, only because of that suspension, a person who has been disqualified under that section for the purposes of section 19(7) or (7A), 31A, 31C, 31E, 50AAA or 52.
28B Disqualified person must not apply for licence or permit

(1) A person who is disqualified from obtaining a driver licence or permit under this Act, the Sentencing Act 1991 or the Infringements Act 2006 must not apply for or obtain a licence or permit.

Penalty: 5 penalty units.

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

29 Appeal against disqualification, cancellation, suspension or variation by order of Magistrates' Court or Children's Court

(1) A person who is disqualified from obtaining a licence or permit by order of the Magistrates' Court or whose licence is cancelled or suspended or varied by order of the Magistrates' Court may, under Part 6.1 of Chapter 6 of the Criminal Procedure Act 2009, appeal to the County Court against the order in the same manner as a person may appeal from summary conviction by the Magistrates' Court.

(1A) A child who is disqualified from obtaining a licence or permit by order of the Children's Court or whose licence is cancelled or suspended or varied by order of the Children's Court may, under Division 1 of Part 5.4 of Chapter 5 of the Children, Youth and Families Act 2005, appeal to the County Court or, if the Children's Court was constituted by the President, the Trial Division of the Supreme Court, against the order in the same manner as a child may appeal from summary conviction by the Children's Court.
(2) The filing of notice of appeal to the County Court or the Trial Division of the Supreme Court (as the case requires) does not stay the operation of the order but the court making the order may, in its discretion, stay the operation of the order pending the decision of the appeal.

(2A) To avoid doubt, this section applies irrespective of whether the order of the Magistrates' Court or of the Children's Court is made under this Act or the Sentencing Act 1991.

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

30 Offence to drive while disqualified etc.

(1) Subject to section 30AA, a person must not drive a motor vehicle on a highway while the authorisation granted to him or her to do so under this Part is suspended or during a period of disqualification from obtaining such an authorisation imposed by a court or by the Corporation or by force of this Act or the Sentencing Act 1991.

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

For a subsequent offence, 240 penalty units or imprisonment for 2 years.
30AA Offence to drive while licence suspended under Infringements Act 2006

A person must not drive a motor vehicle on a highway while that person's driver licence or permit is suspended in accordance with Part 8 of the Infringements Act 2006.

Penalty: 10 penalty units.

30A Court may extend suspension or disqualification period even if offence not committed

(1) This section applies if a person is found not guilty of an offence against section 30 on the grounds that he or she was not aware at the relevant time—

(a) that his or her authorisation had been suspended; or

(b) that he or she was disqualified from obtaining an authorisation.

(2) The court hearing the matter may order that the person serve a period of suspension or disqualification that is in substitution for any of the period of suspension or disqualification that applied to the person at the relevant time during which the person was not aware of the suspension or disqualification.

(3) The maximum period that the court may impose under subsection (2) is a period equal to the period between—

(a) when the person's authorisation was suspended, or when the period of disqualification started; and

(b) when the person was made aware of the suspension or disqualification, or the period of suspension or disqualification ended, whichever is the earlier.
(4) For the purposes of appeal or review, any period of suspension or disqualification imposed under subsection (2) is to be treated as if it had been imposed for the same reason that the original period of suspension or disqualification was imposed.

31 Cancellation of registration by court

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

(2) If the court considers that another person who is not present in court may be substantially affected by such an order, the court must issue a summons to that other person to show cause why the order should not be made.

(3) On the return of the summons, the court may, after hearing the evidence brought before it—

(a) refuse to order that the registration be cancelled; or

(b) order that the registration be cancelled, and order the Corporation not to register that vehicle again during such time (if any) as the court specifies.

(4) A court must cause particulars of an order made under this section to be sent immediately to the Corporation and the Corporation must give effect to the order as soon as possible.
31A Certain disqualified persons require licence eligibility order before applying for licence or permit

(1) A person to whom this section applies may only make an application to the Corporation for the grant of a driver licence or learner permit if the Magistrates' Court has made a licence eligibility order in respect of him or her.

Note
Under section 28B it is an offence for a person disqualified from obtaining a driver licence or learner permit to apply for, or obtain, one.

(2) Subject to subsection (3), this section applies to a person who has been disqualified under section 50 or 89C of this Act or section 89 or 89A(1) of the Sentencing Act 1991 from obtaining a driver licence or learner permit or who, by force of section 3AD (other than paragraph (b) of that section) of this Act, is to be taken to have been so disqualified.

Note
Section 28A(2) provides that a person whose driver licence or learner permit is suspended by force of section 89(4) or 89A(1) of the Sentencing Act 1991 is not disqualified for the purposes of this section.

(3) This section does not apply to a person to whom section 31KA applies.

31B Application for licence eligibility order

(1) An application to the Magistrates' Court for a licence eligibility order may be made on giving 28 days written notice of the application and of the venue of the Court at which it is to be heard to—

(a) the Chief Commissioner of Police; and
(b) the registrar at that venue of the Court.

(2) The Magistrates' Court must not deal with, or determine, an application for a licence eligibility order unless it is satisfied that the applicant has—

(a) ceased to be disqualified from obtaining a driver licence or learner permit; and

(b) complied with the requirements of subsection (1) and of sections 31C to 31G.

31C Who must obtain an assessment report?

(1) A person to whom this section applies must, within the timeframe provided by section 31D, obtain from an accredited agency an assessment report about his or her usage of alcohol or drugs, as the case requires, before applying for a licence eligibility order.

(2) This section applies to a person who was disqualified under a section specified in column 1 of the Table in Schedule 1A in respect of an offence specified in column 2 of that Table committed on a date specified in column 3 of that Table.

Note

Section 28A(2) provides that a person whose driver licence or learner permit is suspended by force of section 89(4) or 89A(1) of the Sentencing Act 1991 is not disqualified for the purposes of this section.

31D When assessment report must be obtained

(1) A person who under section 31C is required to obtain an assessment report from an accredited agency must obtain it at least the specified number of months before applying for a licence eligibility order.

(2) The Magistrates' Court may, in exceptional circumstances, reduce the specified number of months.
(3) In subsections (1) and (2) the specified number of months is the number of months specified in column 4 of the Table in Schedule 1A in relation to the relevant item in that Table.

(4) If a person is subject to more than one requirement to obtain an assessment report and to different periods for obtaining it, he or she must obtain the report by the earliest required date.

31E Who must obtain a licence eligibility report?

(1) A person to whom this section applies must, within the timeframe provided by section 31F, obtain from an accredited agency a report about his or her suitability for a licence eligibility order before applying for such an order.

(2) This section applies to a person who has been disqualified under section 50 in respect of—

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

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

(i) a first offence and the level of concentration of alcohol—

(A) in that person's blood was 0.15 grams or more per 100 millilitres of blood; or

(B) in that person's breath was 0.15 grams or more per 210 litres of exhaled air—

as the case requires; or

(ii) a subsequent offence.

(3) This section also applies to a person who has been disqualified under section 89 or 89A(1) of the Sentencing Act 1991 if the court on convicting or finding the person guilty of the
offence made a finding under that Act that the
offence was committed while the person was
under the influence of alcohol or a drug, or both
alcohol and a drug, which contributed to the
offence.

Note
Section 28A(2) provides that a person whose driver licence
or learner permit is suspended by force of section 89(4)
or 89A(1) of the Sentencing Act 1991 is not disqualified for
the purposes of this section.

31F When licence eligibility report must be obtained

A person who under section 31E is required to
obtain a licence eligibility report from an
accredited agency must obtain it within 28 days
before applying for a licence eligibility order.

31G Obtaining by Magistrates' Court of licence
elegibility report when not otherwise required

The Magistrates' Court may request, or require an
applicant for a licence eligibility order to request,
an accredited agency to provide a licence
eligibility report in circumstances in which such
a report is not required to be obtained under
section 31E.

31H Procedure on hearing of application for licence
elegibility order

On hearing an application for a licence eligibility
order the Magistrates' Court may make or refuse
to make the order, and for the purpose of
determining whether or not the order should be
made—

(a) the Court must hear any relevant evidence
tendered either by the applicant or by the
Chief Commissioner of Police and any
evidence of a registered medical practitioner
required by the Court; and
(b) without limiting its discretion, the Court must have regard to—

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

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

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

(iv) any report that was required to be obtained under section 31C or 31E or that was obtained under section 31G.

Note

Under section 31B(2) an application for a licence eligibility order cannot be dealt with or determined while any disqualification from obtaining a driver licence or learner permit remains in force.

On making a licence eligibility order the Magistrates' Court may give an alcohol interlock condition direction: see section 50AAA.

31I Effect of licence eligibility order

(1) A licence eligibility order has effect with respect to all relevant disqualifications the period of which has ended before the making of the order and with respect to which no previous licence eligibility order has had effect.

(2) In subsection (1)—

relevant disqualification means a disqualification following the ending of which a person may only be granted a driver licence or learner permit by obtaining a licence eligibility order including a disqualification following the ending of which an application could have been made to the Corporation under
section 31KA had the person not been otherwise required to obtain a licence eligibility order.

Note
See section 31KA(2)(c).

(3) A licence eligibility order must include a statement to the same effect as subsection (1).

31J Court must notify the Corporation of the making of a licence eligibility order
The Magistrates' Court must cause particulars of a licence eligibility order to be sent immediately to the Corporation.

31K Application of Evidence Act 2008
To avoid doubt, the proceeding on an application for the making of a licence eligibility order is a proceeding that relates to sentencing for the purposes of section 4(2) of the Evidence Act 2008.

31KA Administrative scheme for imposing alcohol interlock condition
(1) A person to whom this section applies may make an application to the Corporation for the grant of a driver licence or learner permit without having had a licence eligibility order made in respect of him or her by the Magistrates' Court.

(2) This section applies to a person who has been convicted or found guilty, or who by force of section 89A(2) is taken to have been convicted, of an offence under section 49(1)(b), (f) or (g) where—
(a) the concentration of alcohol—
(i) in the blood of that person was less than 0·10 grams per 100 millilitres of blood; or
(ii) in the breath of that person was less than 0.10 grams per 210 litres of exhaled air—

as the case requires; and

(b) it was that person's first offence; and

(c) the person has been disqualified under section 50 or 89C from obtaining a driver licence or learner permit in respect of the offence; and

(d) the person has ceased to be so disqualified; and

(e) the person is not otherwise required to apply to the Magistrates' Court for a licence eligibility order before applying to the Corporation for the grant of a driver licence or learner permit.

Example

A is convicted of an offence under section 49(1)(b) of this Act involving a blood alcohol concentration of 0.08 grams per 100 millilitres of blood. A's licence is cancelled and A is disqualified from obtaining a further one for 6 months.

After 4 months A is convicted under section 16(b) of the Summary Offences Act 1966 of, while drunk, being in charge of a horse in a public place. The Magistrates' Court, on convicting A of this subsequent offence, makes an order under section 89A of the Sentencing Act 1991 disqualifying A from obtaining a driver licence for 3 months.

After ceasing to be disqualified A can only apply to the Corporation for the grant of a driver licence after obtaining a licence eligibility order from the Magistrates' Court. This is because the Summary Offences Act conviction means that an application under section 31KA directly to the Corporation is precluded. This is because A is "otherwise required" to apply for a licence eligibility order as the Summary Offences Act conviction is not covered by the administrative scheme.
(3) An application must—

(a) be in the form approved by the Corporation; and

(b) be accompanied by the relevant fee prescribed by the regulations for the grant of a driver licence or learner permit.

(4) The Corporation, if satisfied that the applicant is otherwise qualified to hold the licence or permit, may decide to grant a person to whom this section applies a driver licence or learner permit on the basis of the application made by him or her and any matters that appear in records kept by the Corporation without conducting any hearing or investigation into the matter.

(5) The Corporation may only grant under this section a driver licence or learner permit that is subject to an alcohol interlock condition.

(6) A person to whom a driver licence or learner permit is granted under this section cannot apply under section 50AAAB for the removal of the alcohol interlock condition imposed on his or her licence or permit during the period of 6 months beginning on the first granting of the licence or permit.

(7) If the Corporation decides not to grant a driver licence or learner permit to an applicant under this section, it must give the applicant a written notice that states—

(a) the Corporation's decision; and

(b) the reasons for the decision; and

(c) any action that the applicant may consider taking.
(8) Action referred to in subsection (7)(c) includes—

(a) that the applicant may apply to the Magistrates' Court for a licence eligibility order if he or she is entitled to then so apply; and

(b) if the only reason for the refusal is that the applicant had not ceased to be disqualified from obtaining a driver licence or learner permit, that the applicant may re-apply to the Corporation when he or she has so ceased; and

(c) that the applicant may apply to the Corporation under the regulations for an internal review of the decision.

(9) Section 50AAA(9) applies for the purposes of this section in the same way and to the same extent as it applies for the purposes of section 50AAA and Schedule 1B.

31L Accompanying driver offences

Sections 31A to 31KA do not apply to a person who is convicted or found guilty of an accompanying driver offence.

32 Offence to employ unlicensed driver

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

Penalty: 15 penalty units or imprisonment for 3 months.

(2) It is a defence to a charge under subsection (1) for the person charged to prove that the person charged believed, after making all reasonable
enquiries, that the driver held a permit or licence which authorised him or her to drive the motor vehicle concerned.

(3) A person who is employed to drive a motor vehicle on a highway is guilty of an offence if he or she does not notify his or her employer if he or she does not hold or continue to hold a permit or licence which authorises him or her to drive such a motor vehicle.

33 Driving instructor authorities

(1) The Secretary to the Department of Transport, Planning and Local Infrastructure may, on the application of the holder of a full driver licence, grant a driving instructor authority if the Secretary is satisfied that the applicant is qualified to hold such an authority.

(2) The Secretary may, before granting an authority, require the applicant—

(a) to demonstrate that he or she is a fit and proper person to hold an authority; and

(b) to pass a training course approved by the Secretary or otherwise demonstrate to the Secretary's satisfaction that he or she is competent to hold an authority; and
(3) An authority authorises the holder to teach other persons to drive a motor vehicle, other than a motor cycle, with a GVM of not more than 4.5 tonnes and with a seating capacity of not more than 12 adults including the driver, for the term, and subject to any conditions, specified in the authority.

(4) The Secretary may, by notice in writing to the applicant, refuse to grant an authority.

(5) If the Secretary decides to refuse to grant an authority, the applicant may appeal against the refusal to the Magistrates’ Court.

(6) On an appeal under subsection (5) the applicant must—

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

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

within 28 days after the date of the notice of refusal to grant the authority.

(7) On an appeal under subsection (5) the court must—

(a) re-determine the matter of the refusal; and

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

(c) without limiting its discretion, take into consideration anything that the Secretary ought to have considered.
(8) If the driver licence of the holder of an authority is cancelled or otherwise ceases to be held by that person, the authority of that person thereupon automatically ceases to have any effect.

(9) If the driver licence of the holder of an authority is suspended for any time, the authority of that person is, unless cancelled or suspended under subsection (10), thereupon automatically suspended for the same time.

(10) The Secretary may, if of the opinion that the holder of an authority is unfit to hold the authority, by notice in writing to the holder of the authority, cancel the authority or suspend or vary the authority for such period as the Secretary determines.

(11) The Secretary must not suspend, cancel or vary an authority unless the holder of the authority has been given a reasonable opportunity to show cause why the authority should not be cancelled, suspended or varied.

(12) An authority is of no effect while suspended.

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

(14) On an appeal under subsection (13) the applicant must—

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

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

within 28 days after the date of the notice of cancellation, suspension or variation of the authority.
(15) On an appeal under subsection (13) the court must—

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

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

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

(15A) Nothing in subsection (15) prevents the application of Part 3.10 of the Evidence Act 2008 to an appeal under subsection (13).

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

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

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

(a) without holding a driving instructor authority; or

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

is guilty of an offence.

Penalty: 8 penalty units.

(2) It is a defence to a charge under subsection (1) for the person charged to prove that the person being taught to drive held a driver licence at the time of being taught.
33B Requirement to display photograph

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

Penalty: 5 penalty units.
PART 4—DEMERIT POINTS

Division 1—Interpretation

34 Interpretation

In this Part—

demerit point option notice means a notice served by the Corporation on the holder of a driver licence or learner permit under section 36(1);

disqualification notice means a notice served by the Corporation on the holder of an overseas licence or an unlicensed driver under section 46A(1);

extended demerit point period means a period of 12 months commencing on the date specified in a demerit point option notice in relation to which the person on whom the notice is served has made an election in accordance with section 38(1);

holder of an overseas licence means a person who holds a driver licence or learner permit issued in an overseas jurisdiction and who is exempt under this Act or regulations made under this Act from holding a Victorian driver licence or learner permit;
unlicensed driver means a person who—

(a) holds neither a Victorian driver licence or a learner permit; and

(b) does not hold a licence or permit issued in another State, Territory or country that exempts the person under the regulations from the requirements of section 18(1)(a);

Victorian driver licence or learner permit means a driver licence or learner permit granted to a person under this Act.

Division 2—Demerits Register

35 Demerits Register

(1) The Corporation must keep a Demerits Register.

(2) In the Demerits Register, the Corporation must record against any of the following persons any demerit points that are incurred by that person—

(a) the holder of a Victorian driver licence or learner permit;

(b) the holder of an overseas licence;

(c) an unlicensed driver.

(3) The regulations may prescribe the following—

(a) the circumstances in which demerit points are incurred and the number of points incurred in those circumstances;

(b) the determination of the date on which demerit points are to be recorded as incurred;

(c) the circumstances in which demerit points may be cancelled.
Division 3—Holders of Victorian driver licence or learner permit

36 Demerit point option notice

(1) The Corporation must serve a notice (a demerit point option notice) on—

(a) the holder of a full driver licence or the holder of a learner permit or probationary drive licence who also holds, or has held, a full driver licence if he or she incurs 12 or more demerit points within any 3 year period; and

(b) the holder of a learner permit or probationary driver licence who does not hold, and has never held, a full driver licence if he or she incurs—

(i) 5 or more demerit points within any 12 month period; or

(ii) 12 or more demerit points within any 3 year period.

(2) In addition to containing the prescribed particulars, the notice must—

(a) state that the person may elect to extend the demerit point period; and

(b) specify the date on which the extended demerit point period will commence if the person elects to extend the demerit point period; and

(c) state that if, within 21 days after the date of the service of the notice, the person does not elect to extend the demerit point period, the Corporation may suspend the person's driver licence or learner permit in accordance with section 41; and
(d) specify the date from which the suspension under section 41 will take effect if the person does not elect to extend the demerit point period.

(3) The Corporation may specify a date as the date on which an extended demerit point period commences even if the driver licence or learner permit is due to expire before that date.

(4) If the Corporation is aware that—

(a) a person is subject to an extended demerit point period in relation to another demerit point option notice; or

(b) a person's driver licence or learner permit is suspended; or

(c) a person's driver licence or learner permit is cancelled with a period of disqualification imposed—

the Corporation may postpone sending the demerit point option notice to the person until after the extended demerit point period or the period of suspension or disqualification (as the case may be) has ended.

37 Further demerit point option notice

(1) This section applies if a person on whom a demerit point option notice (the earlier notice) has been served incurs further demerit points—

(a) after the earlier notice is issued; and

(b) before the date specified in the earlier notice as the date on which the extended demerit point period commences.

(2) The Corporation may serve, in accordance with section 36, a further demerit point option notice on the person in relation to the further demerit points.
(3) The date specified in the further demerit point option notice as the date on which the extended demerit point period commences must not be earlier than—

(a) the date on which the extended demerit point period specified in the earlier notice is due to expire; or

(b) if the person's driver licence or learner permit is suspended under section 40 or 41—the date on which the suspension expires.

38 Extended demerit point period

(1) A person on whom a demerit point option notice is served may elect to extend the demerit point period by notifying the Corporation of that election within 21 days after service of the notice.

(2) If, during the extended demerit point period, the driver licence or learner permit of the person is—

(a) suspended; or

(b) cancelled, with a period of disqualification imposed—

for a driving offence that does not attract demerit points (whether the suspension or cancellation is imposed under this Act or otherwise), the extended demerit point period is suspended until the period of suspension or disqualification has ended.

Example

A person has elected to extend the demerit point period for the 12 month period commencing on 1 January 2015. If during that period the person's driver licence is suspended for 6 months, the extended demerit point period resumes at the end of the suspension and continues up to and including 30 June 2016 (that is, 12 plus 6 months after the commencement of the extended demerit point period).
(3) For the purposes of subsection (2), an extended demerit point period resumes immediately after the end of a period of disqualification regardless of when or whether the person applies for a new licence following that period.

(4) The expiry of a driver licence or learner permit while an extended demerit point period is in force does not affect the extended demerit point period.

Example

A person's driver licence expires 6 months after a 12 month extended demerit point period has commenced. The person does not renew the licence until 2 months after it has expired. On the renewal of the licence, 4 months of the extended demerit point period remain.

39 Person elects to extend demerit point period and incurs no additional demerit points

(1) This section applies if a person on whom a demerit point option notice is served—

(a) notifies the Corporation in accordance with section 38(1) that he or she elects to extend the demerit point period; and

(b) incurs no additional demerit points in relation to any offence committed within the extended demerit point period.

(2) When calculating demerit points recorded against the person at any time after the extended demerit point period, the Corporation must disregard all the demerit points recorded against the person as at the date of issue of the demerit point option notice.

40 Person elects to extend demerit point period and incurs additional demerit points

(1) This section applies if a person on whom a demerit point option notice is served—
(a) notifies the Corporation in accordance with section 38(1) that he or she elects to extend the demerit point period; and

(b) incurs one or more additional demerit points in relation to any offence committed within the extended demerit point period.

(2) If the person holds a full driver licence or holds a learner permit or probationary driver licence and also holds, or has held, a full driver licence, the Corporation must—

(a) suspend the licence or permit for—

(i) 6 months; and

(ii) an additional 2 months for each 4 demerit points in excess of the 12 recorded against the person as at the date of issue of the demerit point option notice; and

Example

A person who is issued with a demerit point option notice for having incurred 17 demerit points elects to extend the demerit point period. During the extended demerit point period, the person incurs a further 3 demerit points. The Corporation must suspend the person's driver licence for 8 months. There are 5 demerit points in excess of 12 demerit points, therefore in addition to 6 months suspension, the person incurs 2 months suspension for 4 of those and the remaining one demerit point is uncounted. The further 3 demerit points incurred during the extended demerit point period are not included in the calculation but they are not to be disregarded at the completion of the period of suspension and may count towards subsequent demerit point option notices.

(b) serve on the person a notice containing the prescribed particulars and specifying the date on which the suspension takes effect.
(3) If the person holds a learner permit or probationary driver licence and does not hold, and has never held, a full driver licence, the Corporation must—

(a) suspend the permit or licence for—

(i) 6 months; and

(ii) an additional 2 months for each 4 demerit points in excess of the 5 recorded against the person as at the date of issue of the demerit point option notice; and

(b) serve on the person a notice containing the prescribed particulars and specifying the date on which the suspension takes effect.

(4) When calculating demerit points recorded against the person at any time after the end of the period of suspension, the Corporation must disregard all the demerit points recorded against the person as at the date of issue of the demerit point option notice.

41 Person fails to elect to extend demerit point period

(1) This section applies if a person on whom a demerit point option notice is served does not notify the Corporation in accordance with section 38(1) that he or she elects to extend the demerit point period.

(2) Subject to subsection (3), the Corporation must suspend the person's driver licence (whether or not a probationary driver licence) or learner permit for the period calculated in accordance with subsection (4).

(3) If the demerit point option notice is returned to the Corporation as undelivered to the person, the Corporation must—

(a) take action under subsection (2); or

(b) serve on the person a notice containing the prescribed particulars and specifying the date on which the suspension takes effect.
(b) decide to serve another demerit point option notice on the person under section 36 as soon as practicable after the person—

(i) next applies for, or renews, the person's driver licence or learner permit; or

(ii) next applies to register a motor vehicle, or renew the registration of, a motor vehicle for which the person is the registered operator; or

(iii) otherwise advises the Corporation of the person's current address.

(4) For the purposes of subsection (2), the period for which a person's driver licence or learner permit must be suspended is as follows—

(a) if the person holds a full driver licence or holds a learner permit or probationary driver licence and also holds, or has held, a full driver licence—

(i) 3 months; and

(ii) an additional one month for each 4 demerit points in excess of the 12 recorded against the person as at the date of issue of the demerit point option notice; or

(b) if the person holds a learner permit or probationary driver licence and does not hold, and has never held, a full driver licence and the demerit point option notice was issued because the person incurred 12 or more demerit points within a 3 year period but not 5 or more within a 12 month period—

(i) 3 months; and
(ii) an additional one month for each 4 demerit points in excess of the 12 recorded against the person as at the date of issue of the demerit point option notice; or

(c) if the person holds a learner permit or probationary driver licence and does not hold, and has never held, a full driver licence and the demerit point option notice was issued because the person incurred 5 or more demerit points within a 12 month period—

(i) 3 months; and

(ii) an additional one month for each 4 demerit points in excess of the 5 recorded against the person as at the date of issue of the demerit point option notice.

(5) When calculating demerit points recorded against the person at any time after the end of the period of suspension, the Corporation must disregard all the demerit points recorded against the person as at the date of issue of the demerit point option notice.

42 Suspension of driver licence or learner permit under this Division

(1) The suspension of a driver licence or learner permit under section 40(2) or (3) takes effect on and from the date determined by the Corporation and specified in the notice served under that section.

Note

The determination of the date by the Corporation is subject to section 44(2).
(2) The suspension of a driver licence or learner permit under section 41(2) takes effect on and from the date determined by the Corporation and specified in—

(a) the demerit point option notice served under section 36(1); or

(b) if a demerit point option notice is returned to the Corporation as undelivered to the person and the Corporation decides under section 41(3)(b) to serve another demerit point option notice on the person—the later notice.

Note
The determination of the date by the Corporation is subject to section 44(2).

(3) The Corporation may determine a date as the date on which a suspension under this Division takes effect even if the driver licence or learner permit is due to expire before that date.

(4) The expiry of a driver licence or learner permit suspended under this Division does not affect the period of suspension.

43 Cancellation of suspension if service ineffective

(1) The service of a demerit point option notice or a notice under section 40(2)(b) or (3)(b) is not a condition precedent to a suspension under this Division taking effect.

(2) Despite subsection (1), if at any time after the period of 7 days after the date of issue of the notice the Corporation is satisfied that the holder of the licence or permit has not been served with the notice, it must—

(a) cancel the suspension with effect from the date on which it took effect; and

(b) determine another effective date; and

New s. 43 inserted by No. 74/2013 s. 4.
(c) serve on the person another demerit point option notice or a notice under section 40(2)(b) or (3)(b) (as the case requires) specifying the date determined under paragraph (b).

(3) Subsection (2) does not apply if—

(a) a person is charged with an offence against section 30 for driving while a suspension under this Division is in effect; and

(b) he or she is found not guilty on the grounds that he or she was not aware at the relevant time that his or her licence or permit had been suspended.

**Note**

In the circumstances set out in this subsection, it is still open to a court under section 30A to order that the person serve an additional period of suspension of up to the period specified in section 30A(3).

### 44 Effect of cancellation or suspension under other provision of this Act

(1) If a driver licence or permit suspended under this Division is cancelled or suspended by the Corporation under another provision of this Act or by a court or by operation of this Act—

(a) the period from that cancellation or other suspension taking effect until a new licence or permit is issued or the other suspension is completed (as the case requires) does not count in calculating the period of suspension under this Division; and

(b) the suspension under this Division is stayed during that period.

(2) If the Corporation is required by section 40 or 41 to suspend a driver licence or permit that has been cancelled or suspended by the Corporation under
another provision of this Act or by a court or by operation of this Act, the date determined by the Corporation under section 42 must not be earlier than the date on which a new licence or permit is issued or the other suspension is completed, as the case requires.

45 Cancellation of demerit point option notice

(1) This section applies if—

(a) some or all of the demerit points recorded against a person as at the date of issue of the demerit point option notice are cancelled; and

(b) without those demerit points the conditions specified in section 36(1) for the issuing of the notice do not exist.

(2) If the person has elected to extend the demerit point period in response to the notice—

(a) the extended demerit point period is cancelled; and

(b) the Corporation must cancel any suspension of the person's driver licence or learner permit under section 40(2) or (3).

(3) If the person has not made an election to extend the demerit point period in response to the notice, the Corporation must cancel any suspension under section 41.

(4) Any demerit points recorded against the person as at the date of issue of the demerit point option notice that are not cancelled may continue to be regarded for the purposes of this Part.

Note

In certain circumstances, the demerit points that are not cancelled may contribute to a subsequent demerit point option notice being issued.
46  Effect of cancellation of demerit points on suspension under section 40

(1) The Corporation must cancel the suspension of a person's driver licence or learner permit under section 40(2) or (3) if all the demerit points incurred during the extended demerit point period that gave rise to the suspension are cancelled.

(2) If the suspension of a person's driver licence or learner permit is cancelled under subsection (1), the extended demerit point period continues as if the suspension had not occurred.

(3) The Corporation must recalculate and, if necessary, adjust a period of suspension imposed on a person under section 40(2) or (3) if—

(a) any of the demerit points recorded against the person as at the date of issue of the demerit point option notice are cancelled; and

(b) without those points, the conditions specified in section 36(1) for the issuing of the notice continue to exist.

Division 4—Holders of overseas licences and unlicensed drivers

46A  Driving disqualification notice

(1) If the holder of an overseas licence or an unlicensed driver incurs the number of demerit points specified in subsection (2), the Corporation must—

(a) serve a notice (a disqualification notice) containing the prescribed particulars on the person; and
(b) in accordance with section 46B, disqualify the person from driving a motor vehicle in Victoria and from obtaining a Victorian driver licence or learner permit.

(2) For the purposes of subsection (1), the number of demerit points are—

(a) in the case of the holder of an overseas licence or an unlicensed driver who is 22 years of age or older—12 or more demerit points within any 3 year period; and

(b) in the case of the holder of an overseas licence or an unlicensed driver who is under 22 years of age—

(i) 5 or more demerit points within any 12 month period; or

(ii) 12 or more demerit points within any 3 year period.

46B Period of disqualification

(1) For the purposes of section 46A(1)(b), the period for which the holder of an overseas licence or an unlicensed driver must be disqualified from driving and from obtaining a driver licence or learner permit is—

(a) if the person is 22 years of age or older—

(i) 3 months; and

(ii) an additional one month for each 4 demerit points in excess of the 12 recorded against the person as at the date of issue of the disqualification notice; or

(b) if the person is under 22 years of age and the disqualification notice was issued because the person incurred 12 or more demerit
points within a 3 year period but not 5 or more within a 12 month period—

(i) 3 months; and

(ii) an additional one month for each 4 demerit points in excess of the 12 recorded against the person as at the date of issue of the disqualification notice; or

(c) if the person is under 22 years of age and the disqualification notice was issued because the person incurred 5 or more demerit points within a 12 month period—

(i) 3 months; and

(ii) an additional one month for each 4 demerit points in excess of the 5 recorded against the person as at the date of issue of the disqualification notice.

(2) The period of disqualification takes effect from the date determined by the Corporation and specified in the disqualification notice.

(3) When calculating demerit points recorded against the person at any time after the end of the period of disqualification, the Corporation must disregard all the demerit points recorded against the person as at the date of issue of the disqualification notice.

46C Cancellation of disqualification if service ineffective

(1) The service of a disqualification notice is not a condition precedent to a disqualification under this Division taking effect.

(2) Despite subsection (1), if at any time after the period of 7 days after the date of issue of the notice the Corporation is satisfied that the holder
of the overseas licence or the unlicensed driver has not been served with the notice, it must—

(a) cancel the disqualification with effect from the date on which it took effect; and

(b) determine another effective date; and

(c) serve on the person another disqualification notice specifying the date determined under paragraph (b).

(3) Subsection (2) does not apply if—

(a) a person is charged with an offence against section 30 for driving during a period of disqualification from obtaining a driver licence or learner permit imposed under this Division; and

(b) he or she is found not guilty on the grounds that he or she was not aware at the relevant time that he or she was disqualified from obtaining a driver licence or learner permit.

Note
In the circumstances set out in this subsection, it is still open to a court under section 30A to order that the person serve an additional period of disqualification of up to the period specified in section 30A(3).

46D Effect of cancellation of notified demerit points

(1) This section applies if—

(a) some or all of the demerit points recorded against a person as at the date of issue of the disqualification notice are subsequently cancelled; and

(b) without those demerit points the conditions specified in section 46A(1) for the issuing of the notice do not exist.

(2) The period of disqualification under section 46B is cancelled.
Part 4—Demerit points

(3) Any demerit points recorded against the person as at the date of issue of the disqualification notice that are not cancelled may continue to be regarded for the purposes of this Part.

Note
In certain circumstances, the demerit points that are not cancelled may contribute to a subsequent disqualification notice being issued.

Division 5—General

46E Service of notices
A notice under this Part posted to a person at his or her current address as shown in any record maintained under this Act is taken to have been served on that person 7 days after the date of issue of the notice.

46F Cancelled demerit points to be disregarded
When calculating demerit points recorded against a person, the Corporation must disregard any demerit points that are cancelled.

46G Admissibility of demerit points
The fact that demerit points are recorded against a person is not admissible in evidence except—

(a) in proceedings on an appeal under section 46H(1) or (2); or

(b) if it is necessary to give evidence of that fact in order to establish—

(i) that the person had been sent a notice advising him or her that he or she had incurred demerit points; or

(ii) that the person's driver licence or learner permit had been suspended under this Part or that the person had been disqualified under this Part from
driving and from obtaining a driver licence or learner permit; or

(iii) that the person had been served with a notice advising him or her of that suspension or disqualification.

46H Appeal to Magistrates' Court

(1) Subject to subsection (3), the holder of a driver licence or learner permit may appeal to the Magistrates' Court against the suspension of his or her driver licence or learner permit by the Corporation under section 40(2)(a) or (3)(a) or 41.

(2) Subject to subsection (3), the holder of an overseas licence or an unlicensed driver may appeal to the Magistrates' Court against his or her disqualification from driving and from obtaining a driver licence or learner permit by the Corporation under section 46A(1)(b).

(3) An appeal under subsection (1) or (2)—

(a) must be made in accordance with the regulations; and

(b) may only be made on either or both of the following grounds—

(i) that the Corporation recorded certain demerit points other than as required by the regulations;

(ii) that an error has been made in the addition of the number of demerit points incurred by the appellant in a relevant period.

Note

In certain circumstances the Corporation is required to record demerit points against the responsible person in relation to the motor vehicle—see section 84BC(4).
(4) If the Magistrates' Court is satisfied that the suspension or disqualification was required by the regulations or this Part, the Court must confirm the suspension or disqualification.

(5) In allowing an appeal under subsection (1) or (2), the Court may direct the Corporation—

(a) to record the demerit points as required by the regulations; or

(b) to correct the error made in the addition of the number of demerit points incurred by the appellant in a relevant period.

(6) In dismissing an appeal under subsection (1) or (2), the Magistrates' Court may, if the suspension or disqualification has been stayed under section 46I, order that the suspension or disqualification take effect from a date specified in the order.

(7) The Corporation must give effect to every decision of the Magistrates' Court on an appeal under this section.

46I Stay of suspension or disqualification

(1) The giving of a notice of appeal under section 46H against a suspension or disqualification does not stay the suspension or disqualification.

(2) A person, other than an unlicensed driver, who appeals under section 46H against a suspension or disqualification may apply to the Magistrates' Court for a stay of the suspension or disqualification until the appeal is determined.

(3) On an application under subsection (2), the Magistrates' Court may order that the suspension or disqualification is stayed until—

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

(4) The Magistrates' Court may only make an order under subsection (3), if—

(a) the Court is satisfied that the applicant has a reasonable prospect of success with the appeal; and

(b) in the 3 years preceding the application under subsection (2), the applicant has not had his or her driver licence or learner permit suspended or cancelled.

(5) The Corporation must give effect to a decision of the Magistrates' Court on an application under this section.
PART 5—OFFENCES INVOLVING ALCOHOL OR OTHER DRUGS

47 Purposes of this Part

The purposes of this Part are to—

(a) reduce the number of motor vehicle collisions of which alcohol or other drugs are a cause; and

(b) reduce the number of drivers whose driving is impaired by alcohol or other drugs; and

(c) provide a simple and effective means of establishing that there is present in the blood or breath of a driver more than the legal limit of alcohol; and

(d) provide a simple and effective means of establishing the presence of a drug in the blood, urine or oral fluid of a driver.

47A Definition

(1) In this Part—

*corresponding law* means a law of another State or a Territory that is declared to be a corresponding law under subsection (2).

(2) The Minister may, by Order published in the Government Gazette, declare a law of another State or Territory, including a law that has been repealed or has expired, to be a corresponding law for the purposes of this Part.
48 Interpretative provisions

(1) For the purposes of this Part—

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

(ab) if it is established that at any time within 3 hours after an alleged offence against paragraph (ba) of section 49(1), a certain drug was present in the body of the person charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the person's body at the time at which the offence is alleged to have been committed; and

(ac) if it is established that at any time within 3 hours after an alleged offence against paragraph (bb) of section 49(1), a certain drug was present in the blood or oral fluid of the person charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the person's blood or oral fluid at the time at which the offence is alleged to have been committed; and
(b) a person is not to be taken to be in charge of a motor vehicle unless that person is a person to whom section 3AA(1)(a), (b), (c) or (d) applies.

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

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

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

(1AD) For the purposes of sections 55A and 55B, a driver is not to be taken to be impaired unless his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to drive properly.

(1A) For the purposes of an alleged offence against paragraph (f) or (g) of section 49(1) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the person charged or found by an analyst to be present in the sample of blood taken from the person charged (as the case requires) was not due solely to the consumption of alcohol after driving or being in charge of a motor vehicle unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

(1B) For the purposes of an alleged offence against paragraph (h) or (i) of section 49(1) it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid provided by, or taken from, the person charged was not due solely to the consumption or use of that drug after driving or being in charge of a motor vehicle unless the contrary is proved by the person charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.
(2) If a person who is convicted, or found guilty, of an offence against—

(a) any one of the paragraphs of section 49(1); or

(b) section 56(2) as in force from time to time after the commencement of section 11 of the Road Safety (Drivers) Act 1991; or

(c) section 56(7) as in force immediately prior to the commencement of section 11 of the Road Safety (Drivers) Act 1991—

 the new offence has at any time been convicted, or found guilty, of—

(d) an offence, other than an accompanying driver offence, against the same or any other of those paragraphs or that section; or

(e) an offence against any previous enactment corresponding to any of those paragraphs or that section or any corresponding law; or

(f) an offence referred to in section 89 of the Sentencing Act 1991 where the court on convicting or finding the person guilty of the offence made a finding that it was committed while the person was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence or such a finding is taken to have been made by force of section 89C(3) of that Act—

 an old offence, the new offence is to be taken to be a subsequent offence for the purposes of this Act and, if relevant for those purposes, also to be a second offence if the person has only ever been convicted, or found guilty, of one old offence.
(3) An approval or authority given under or for the purposes of section 55 or 55A(3) by the Chief Commissioner of Police may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.

(4) For the avoidance of doubt it is declared that nothing in this Part requires a person who is in a dwelling to allow a police officer or an officer of the Corporation to enter that dwelling without a warrant.

(5) Subject to subsection (6), if a person who is convicted, or found guilty, of an offence referred to in section 89 of the Sentencing Act 1991 (the new offence) has at any time been convicted, or found guilty, of—

(a) the same or any other offence referred to in subsection (2)(a) to (e) (other than an offence against paragraph (a) involving only a drug, or against paragraph (ba), (bb), (h) or (i), of section 49(1)) or in that section 89; or

(b) an offence against any previous enactment corresponding to any section an offence against which is referred to in that section 89; or

(c) any other offence, whether committed in Victoria or elsewhere, the necessary elements of which consist of elements that constitute any of the offences covered by paragraph (a) or (b)—

(an old offence), the new offence is to be taken to be a subsequent offence for the purposes of this Act and, if relevant for those purposes, also to be a second offence if the person has only ever been convicted, or found guilty, of one old offence.
(6) Subsection (5) only applies to an offence referred to in section 89 of the Sentencing Act 1991 (irrespective of whether it is a new or old offence within the meaning of that subsection) where the court on convicting or finding the person guilty of the offence made a finding that it was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence or such a finding is taken to have been made by force of section 89C(3) of that Act.

49 Offences involving alcohol or other drugs

(1) A person is guilty of an offence if he or she—

(a) drives a motor vehicle or is in charge of a motor vehicle while under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the motor vehicle; or

(b) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or breath; or

(ba) drives a motor vehicle or is in charge of a motor vehicle while impaired by a drug; or

(bb) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of drugs or more than the prescribed concentration of drugs is present in his or her blood or oral fluid; or

(c) refuses to undergo a preliminary breath test in accordance with section 53 when required under that section to do so; or
(ca) refuses to undergo an assessment of drug impairment in accordance with section 55A when required under that section to do so or refuses to comply with any other requirement made under section 55A(1); or

(d) refuses or fails to comply with a request or signal to stop a motor vehicle, and remain stopped, given under section 54(3); or

(e) refuses to comply with a requirement made under section 55(1), (2), (2AA), (2A) or (9A); or

(ea) refuses to comply with a requirement made under section 55B(1); or

(eb) refuses to provide a sample of oral fluid in accordance with section 55D or 55E when required under that section to do so or refuses to comply with any other requirement made under that section; or

(f) within 3 hours after driving or being in charge of a motor vehicle furnishes a sample of breath for analysis by a breath analysing instrument under section 55 and—

(i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her breath; and
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(ii) the concentration of alcohol indicated by the analysis to be present in his or her breath was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle; or

(g) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and—

(i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis the prescribed concentration of alcohol or more than the prescribed concentration of alcohol was present in that sample; and

(ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after driving or being in charge of the motor vehicle; or

(h) within 3 hours after driving or being in charge of a motor vehicle provides a sample of oral fluid in accordance with section 55E and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57B and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and
(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle; or

(i) has had a sample of blood taken from him or her in accordance with section 55, 55B, 55E or 56 within 3 hours after driving or being in charge of a motor vehicle and—

(i) the sample has been analysed by a properly qualified analyst within the meaning of section 57 and the analyst has found that at the time of analysis a prescribed illicit drug was present in that sample in any concentration; and

(ii) the presence of the drug in that sample was not due solely to the consumption or use of that drug after driving or being in charge of the motor vehicle.

(1A) A person may be convicted or found guilty of an offence under paragraph (c), (ca), (e), (ea) or (eb) of subsection (1) even if—

(a) in the case of an offence under paragraph (c), a prescribed device was not presented to the person at the time of the making of the requirement; and

(b) in the case of an offence under paragraph (ca)—

(i) a requirement to undergo an assessment of drug impairment was not made at a place where such an assessment could have been carried out; and

(ii) a police officer authorised to carry out an assessment of drug impairment was not present at the place where the requirement was made at the time it was made; and

S. 49(1)(i) inserted by No. 111/2003 s. 7(4).

S. 49(1)(i)(i) inserted by No. 111/2003 s. 7(4).

S. 49(1A) inserted by No. 49/2004 s. 34, amended by No. 111/2003 s. 7(4A)(a) (as amended by No. 49/2004 s. 41(1)).

S. 49(1A)(b)(ii) amended by No. 37/2014 s. 10(Sch. item 147.8).
(c) in the case of an offence under paragraph (e)—

(i) a breath analysing instrument was not available at the place or vehicle where the requirement was made at the time it was made; and

(ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made; and

(iii) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(iv) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made; and

(d) in the case of an offence under paragraph (ea)—

(i) the police officer requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(ii) the police officer requiring a sample of urine had not nominated a registered medical practitioner or approved health professional to whom the sample was to be furnished for analysis; and

(iii) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made; and
(e) in the case of an offence under paragraph (eb)—

(i) a prescribed device was not presented to the person at the time of the making of the requirement; and

(ii) a prescribed device was not available at the place or vehicle where the requirement was made at the time it was made; and

(iii) a person authorised to carry out the prescribed procedure for the provision of a sample of oral fluid was not present at the place where the requirement was made at the time it was made; and

(iv) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(v) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made.

(1B) To avoid doubt, in proceedings for an offence under paragraph (e) of subsection (1) a state of affairs or circumstance referred to in subsection (1A)(c)(i) or (ii) is not a reason of a substantial character for a refusal for the purposes of section 55(9).

(1C) To avoid doubt, in proceedings for an offence under paragraph (eb) of subsection (1) a state of affairs or circumstance referred to in subsection (1A)(e)(i), (ii) or (iii) is not a reason of a substantial character for a refusal for the purposes of section 55E(12).
(2) A person who is guilty of an offence under paragraph (a) of subsection (1), other than an accompanying driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 25 penalty units or to imprisonment for a term of not more than 3 months; and

(b) in the case of a second offence, to a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months; and

(c) in the case of any other subsequent offence, to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months.

(2A) A person who is guilty of an offence under paragraph (b), (f) or (g) of subsection (1), other than an accompanying driver offence, is liable—

(a) in the case of a first offence, to a fine of not more than 20 penalty units; and

(b) in the case of a second offence—

(i) to a fine of not more than 60 penalty units or to imprisonment for a term of not more than 6 months if the concentration of alcohol—

(A) in the person's blood was less than 0.15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0.15 grams per 210 litres of exhaled air—

as the case requires; or
(ii) to a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was 0.15 grams or more per 100 millilitres of blood; or

(B) in the person's breath was 0.15 grams or more per 210 litres of exhaled air— as the case requires; and

(c) in the case of any other subsequent offence—

(i) to a fine of not more than 120 penalty units or imprisonment for a term of not more than 12 months if the concentration of alcohol—

(A) in the person's blood was less than 0.15 grams per 100 millilitres of blood; or

(B) in the person's breath was less than 0.15 grams per 210 litres of exhaled air— as the case requires; or

(ii) to a fine of not more than 180 penalty units or to imprisonment for a term of not more than 18 months if the concentration of alcohol—

(A) in the person's blood was 0.15 grams or more per 100 millilitres of blood; or
(B) in the person's breath was
0.15 grams or more per 210 litres
of exhaled air—as the case requires.

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

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

(b) in the case of a second offence, to a fine of
not more than 120 penalty units or to
imprisonment for a term of not more than
12 months; and

(c) in the case of any other subsequent offence,
to a fine of not more than 180 penalty units
or to imprisonment for a term of not more
than 18 months.

(3AAA) A person who is guilty of an offence under
paragraph (bb), (eb), (h) or (i) of subsection (1),
other than an accompanying driver offence, is
liable—

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

(b) in the case of a second offence, to a fine of
not more than 60 penalty units; and

(c) in the case of any other subsequent offence,
to a fine of not more than 120 penalty units.
(3AA) A person who is guilty of an accompanying driver offence is liable to a fine of not more than 5 penalty units.

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

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

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

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

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

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

(3B) If on an analysis carried out in accordance with this Part, no drug other than a permissible non-prescription drug or a prescription drug was found present in the person's body, it is a defence to a charge under paragraph (ba) of subsection (1) for the person charged to prove that—

(a) he or she did not know and could not reasonably have known that the permissible non-prescription drug or the prescription...
drug, or the combination of those drugs, so found would impair driving if consumed or used in accordance with advice given to him or her by a registered medical practitioner, a dentist or a pharmacist in relation to the drug or combination of drugs; and

(b) he or she consumed or used that drug or combination of drugs in accordance with that advice.

(3C) In subsection (3B), advice means written or oral advice and includes anything written on a label accompanying the drug.

(4) It is a defence to a charge under paragraph (f) of subsection (1) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.

(5) It is a defence to a charge under paragraph (g), (h) or (i) of subsection (1) for the person charged to prove that the result of the analysis was not a correct result.

(6) In any proceedings for an offence under paragraph (f) or (g) of subsection (1) evidence as to the effect of the consumption of alcohol on the accused is admissible for the purpose of rebutting the presumption created by section 48(1A) but is otherwise inadmissible.

(6A) In any proceedings for an offence under paragraph (h) or (i) of subsection (1) evidence as to the effect of the consumption or use of a drug on the accused is admissible for the purpose of rebutting the presumption created by section 48(1B) but is otherwise inadmissible.
(7) On convicting a person, or finding a person guilty, of an offence under subsection (1) the court must cause to be entered in the records of the court—

(a) in the case of an offence under paragraph (b) of subsection (1), the level of concentration of alcohol found to be present in that person's blood or breath; and

(b) in the case of an offence under paragraph (f) of subsection (1), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and

(c) in the case of an offence under paragraph (g) of subsection (1), the level of concentration of alcohol found to be present in the sample of blood.

(8) If on a prosecution for an offence under paragraph (a) of subsection (1), the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under paragraph (ba) of that subsection, the court may find the accused guilty of an offence under paragraph (ba) and punish the accused accordingly.

(9) If on a prosecution for an offence under paragraph (ba) of subsection (1), the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under paragraph (bb) of that subsection, the court may find the accused guilty of an offence under paragraph (bb) and punish the accused accordingly.
49A Accredited agencies

(1) A person or body may apply to the Secretary to the Department of Health for—

(a) approval for itself for the purposes of sections 31C, 31E, 31G, 50AAB(5) and 50A;

(b) approval for a program for the purposes of section 50A.

(2) A person or body applying under subsection (1) must pay to the Secretary to the Department of Health, as required by the regulations, the fee prescribed in respect of—

(a) the making of the application;

(b) the processing of the application, including any visits made to the applicant;

(c) the granting, renewal or variation of an approval.

(3) The Secretary to the Department of Health may grant an approval subject to any conditions, limitations or restrictions specified in the approval.

(4) The regulations may specify the period during which an approval continues in force.
49B Offence to consume intoxicating liquor while driving

(1) A person must not consume intoxicating liquor while the person is driving a motor vehicle or is in charge of a motor vehicle.

Penalty: 10 penalty units.

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

49C Offence to consume intoxicating liquor while accompanying a learner driver

A person must not consume intoxicating liquor while the person is an accompanying licensed driver.

Penalty: 10 penalty units.

50 Provisions about cancellation and disqualification

(1) In this section—

sub 05 offence means an offence under section 49(1)(b), (f) or (g) by a person where the concentration of alcohol—

(a) in his or her blood was less than 0·05 grams per 100 millilitres of blood; or

(b) in his or her breath was less than 0·05 grams per 210 litres of exhaled air;

sub 07 offence means an offence under section 49(1)(b), (f) or (g) by a person where the concentration of alcohol—

(a) in his or her blood was 0·05 or more, but less than 0·07, grams per 100 millilitres of blood; or

S. 50(1) amended by No. 78/1987 s. 7(1)(a)(b), substituted by No. 53/1989 s. 8(1), amended by Nos 41/1992 s. 4(b), 23/2001 s. 7(1), 94/2003 s. 8(6), substituted by No. 49/2014 s. 19(1).
(b) in his or her breath was 0·05 or more, but less than 0·07, grams per 210 litres of exhaled air.

(1A) Subject to subsections (1AB) and (1AC), on convicting or finding a person guilty of an offence under section 49(1)(b), (f) or (g), the court must, if the offender holds a driver licence or learner permit, cancel that licence or permit and, whether or not the offender holds a driver licence or learner permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than—

(a) for a first offence—

(i) in the case of a sub 05 offence by a person who does not hold a full driver licence or a corresponding licence issued in another State or a Territory of the Commonwealth or another country, 3 months; and

(ii) in any other case, the period specified in Column 2 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule; and

(b) for a subsequent offence by any person, the period specified in Column 3 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule.
(1AB) A court that convicts or finds a person guilty of a sub 05 offence may, if the offender holds a driver licence or learner permit, cancel that licence or permit and, whether or not the offender holds a driver licence or learner permit, may disqualify him or her from obtaining one for such time as the court thinks fit, not being more than 6 months, if—

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

(b) at the time the offence was committed the person was the holder of a full driver licence or a corresponding driver licence issued in another State or a Territory of the Commonwealth or another country.

(1AC) A court that finds a person guilty of a sub 07 offence but does not record a conviction may, if the offender holds a driver licence or learner permit, cancel that licence or permit and, whether or not the offender holds a driver licence or learner permit, may disqualify him or her from obtaining one for such time as the court thinks fit, not being less than 6 months, if—

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

(b) at the time the offence was committed, the person—

(i) was the holder of a full driver licence or a corresponding driver licence issued in another State or a Territory of the Commonwealth or another country; and

(ii) was not under the age of 26 years; and
(iii) was not a person to whom section 52 applied or was a person to whom section 52 applied but only because of subsection (1A), (1C), (1D) or (1E) of that section.

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

(a) in the case of a first offence, 2 years; and
(b) in the case of a subsequent offence, 4 years.

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

(a) in the case of a first offence, 12 months; and
(b) in the case of a subsequent offence, 2 years.

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

(a) in the case of a first offence, 2 years; and
(b) in the case of a subsequent offence, 4 years.
(1DA) On convicting a person, or finding a person guilty of an offence under section 49(1)(eb), the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such period as the court thinks fit, not being less than—

(a) in the case of a first offence, 6 months; and

(b) in the case of a subsequent offence, 12 months.

(1E) On convicting a person, or finding a person guilty of an offence under section 49(1)(bb), (h) or (i), the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for—

(a) in the case of a first offence, a period not less than 3 months; and

(b) in the case of a subsequent offence, a period not less than 6 months.

(2) Any period of suspension imposed on a person under section 51 must be deducted from the period of disqualification imposed on that person under this section.
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<td>S. 50(4)</td>
<td>amended by Nos 78/1987 s. (3), 57/1989 s. 3(Sch. item 173.8(a)(b)), 5/1990  s. 7(1), 92/2001 s. 15(1)(a)(b), repealed by No. 56/2013 s. 24(1).</td>
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<td>S. 50(4A)</td>
<td>inserted by No. 5/1990 s. 7(2), 19/1991 s. 7(1), 14/2000 s. 7(6)–(9), 1/2002 s. 6(a), 94/2003 s. 8(12), 81/2006 s. 4(4)(d), repealed by No. 56/2013 s. 24(1).</td>
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**Authorised by the Chief Parliamentary Counsel**

174
Road Safety Act 1986  
No. 127 of 1986  
Part 5—Offences involving alcohol or other drugs

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<td>S. 50(4B) inserted by No. 5/1990 s. 7(2), amended by Nos 59/1995 s. 12, 14/2000 s. 7(3), 1/2002 s. 6(b), 81/2006 s. 4(4)(d), repealed by No. 56/2013 s. 24(1).</td>
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<td>S. 50(5) amended by Nos 5/1990 s. 7(3), 23/1994 s. 118(Sch. 1 item 50.2), 1/2002 s. 6(c), repealed by No. 56/2013 s. 24(1).</td>
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(6) This section does not apply to a person who is convicted or found guilty of an accompanying driver offence.

Notes

1 Unless section 31KA applies to him or her, a person disqualified under this section needs to obtain a licence eligibility order from the Magistrates' Court before he or she can apply to the Corporation for the grant of a driver licence or learner permit: see section 31A.

2 See section 50AAA and Schedule 1B in relation to the giving of an alcohol interlock condition direction when a person disqualified under this section from obtaining a driver licence or learner permit applies to the Magistrates' Court for a licence eligibility order.
50AAA Direction to impose alcohol interlock condition

(1) This section applies if—

(a) a person has been disqualified under section 50 or 89C of this Act or section 89 or 89A(1) of the Sentencing Act 1991 from obtaining a driver licence or learner permit or who, by force of section 3AD (other than paragraph (b) of that section) of this Act, is to be taken to be so disqualified; and

(b) the disqualification is covered by the Table in Schedule 1B; and

(c) the person has applied to the Magistrates' Court for a licence eligibility order; and

(d) the Magistrates' Court considers it appropriate to make the order.

Note

Section 28A(2) provides that a person whose driver licence or learner permit is suspended by force of section 89(4) or 89A(1) of the Sentencing Act 1991 is not disqualified for the purposes of this section.

(2) If column 3 of the Table in Schedule 1B specifies that it is mandatory to give an alcohol interlock condition direction for the relevant offence, the Magistrates' Court must, on making a licence eligibility order in respect of a person, direct the Corporation that it can only grant the person a driver licence or learner permit that is subject to an alcohol interlock condition.

(3) If column 3 of the Table in Schedule 1B specifies that it is discretionary to give an alcohol interlock condition direction for the relevant offence, the Magistrates' Court may, on making a licence eligibility order in respect of a person, direct the Corporation that it can only grant the person a driver licence or learner permit that is subject to an alcohol interlock condition.
(4) If the Magistrates' Court, on making a licence eligibility order, gives an alcohol interlock condition direction to the Corporation, it must specify in the direction a period (the specified period) during which the person concerned cannot apply to the Court for the removal of an alcohol interlock condition imposed on his or her driver licence or learner permit.

(5) The specified period must not be less than the period (if any) specified in column 4 of the Table in Schedule 1B in relation to the relevant offence.

(6) If a licence eligibility order has effect with respect to a disqualification in respect of more than one offence and different periods are specified in column 4 of the Table in Schedule 1B in relation to those offences, the longest period so specified is the relevant period for the purpose of calculating the specified period under subsection (4).

(7) The specified period must be taken to begin on the first granting of a driver licence or learner permit that is subject to the alcohol interlock condition.

(8) If more than one alcohol interlock condition direction has been given in respect of a person, the periods specified in those directions under subsection (4) operate concurrently.

(9) For the purposes of this section and Schedule 1B—

(a) in determining whether an offence under any paragraph of section 49(1) was or was not a first offence, any previous conviction or finding of guilt of the person of an offence under section 49(1)(a) (involving only a drug) or of an offence under section 49(1)(ba), (bb), (h) or (i) or of an offence referred to in section 89(1), (3) or (4)
of the Sentencing Act 1991 (involving only a drug) is to be disregarded, despite section 48(2); and

(b) in determining whether an offence in respect of which a person has been disqualified under section 89 of the Sentencing Act 1991 (other than one involving only a drug) was or was not a first offence, section 48(5) and (6) have effect.

50AAAB Administrative scheme for removal of alcohol interlock condition

(1) A person to whom this section applies may make an application to the Corporation for the removal of an alcohol interlock condition imposed on his or her driver licence or learner permit by the Corporation under section 31KA.

(2) This section applies to a person who—

(a) holds a driver licence or learner permit granted under section 31KA that—

(i) is subject to an alcohol interlock condition imposed under that section; and

(ii) is not subject to an alcohol interlock condition imposed because of an alcohol interlock condition direction given to the Corporation by the Magistrates' Court; and

(b) is not prevented from applying under this section by section 31KA(6); and

(c) can supply, or cause to be supplied, a report that complies with subsection (3).
(3) A report referred to in subsection (2)(c) must—

(a) contain data that indicates compliance with any prescribed alcohol interlock usage data requirements (other than any specified under item 57AA(f) of Schedule 2) during a period that ends with the most recent data and extends back long enough to show at least 6 months' data collected over a continuous period or, if the regulations so permit, a non-continuous period of a kind specified in the regulations; and

(b) be prepared by each approved alcohol interlock supplier who maintained, or authorised a person or body to maintain, the approved alcohol interlock during the period covered by the report; and

(c) be prepared in accordance with the regulations.

(4) An application must—

(a) be in the form approved by the Corporation; and

(b) be accompanied by—

(i) the prescribed application fee (if any); and

(ii) the report referred to in subsection (2)(c) or a statement that the report is to be sent directly to the Corporation by the approved alcohol interlock supplier; and

(iii) any other things that are prescribed.

(5) The Corporation may decide to remove an alcohol interlock condition on the basis of the report that accompanied, or is referred to in, the application and any matters that appear in records kept by the
Corporation without conducting any hearing or investigation into the matter.

(6) In calculating for the purposes of subsection (2)(b) whether the 6 month period referred to in section 31KA(6) has elapsed, the Corporation must not count—

(a) any period during which the driver licence or learner permit is suspended; or

(b) any period during which the applicant did not hold a driver licence or learner permit.

(7) If the Corporation decides not to remove an alcohol interlock condition on an application under this section, it must give the applicant a written notice that states—

(a) the Corporation's decision; and

(b) the reasons for the decision; and

(c) any action that the applicant may consider taking.

(8) Action referred to in subsection (7)(c) includes—

(a) that the applicant may apply to the Magistrates' Court for an alcohol interlock condition removal order if he or she is entitled to then so apply; and

(b) if the only reason for the refusal is that the period referred to in section 31KA(6), when calculated in accordance with subsection (6) of this section, has not elapsed or that the application does not show at least 6 months' data on the usage by the applicant of the approved alcohol interlock, that the applicant may re-apply to the Corporation when that period has elapsed or at least 6 months' data can be shown, as the case requires; and
(c) that if a reason for the refusal is the one specified in section 50AAAC(2), that the applicant may apply to the Magistrates’ Court under section 50AAAC for a direction under that section; and

(d) that the applicant may apply to the Corporation under the regulations for an internal review of the decision.

**50AAAC Application to Magistrates’ Court for direction**

(1) This section applies to a person in respect of whom the Corporation has decided not to remove an alcohol interlock condition on an application made by him or her under section 50AAAB for the reason specified in subsection (2), irrespective of whether there was any other reason.

(2) The reason is that—

(a) data on the usage of an approved alcohol interlock indicates an attempt to start a motor vehicle that failed because the alcohol interlock prevented the motor vehicle from being started as a result of it detecting alcohol; and

(b) under the regulations the person is taken to have been responsible for that attempt; and

(c) accordingly that attempt itself was sufficient for there not to be compliance with any prescribed alcohol interlock usage data requirements.

(3) Subject to subsection (4), the person may apply to the Magistrates' Court for a direction to the Corporation that the applicant was not responsible for the failed attempt referred to in subsection (2).
(4) An application to the Magistrates' Court under this section—

(a) may be made on giving 28 days written notice of the application and of the venue of the Court at which it is to be heard to—

(i) the Chief Commissioner of Police; and

(ii) the registrar at that venue of the Court; and

(b) must be accompanied by data obtained from the approved alcohol interlock relating to the failed attempt that provides evidence (whether photographic or otherwise) as to the identity of the person who made the attempt.

(5) The Magistrates' Court must not deal with, or determine, an application under this section unless it is satisfied that the period referred to in section 31KA(6), when calculated in accordance with section 50AAAB(6), has elapsed.

(6) On an application under this section the Magistrates' Court—

(a) must hear any relevant evidence tendered by the applicant or the Chief Commissioner of Police; and

(b) may direct the Corporation to treat the applicant as not having been responsible for the failed attempt or refuse to give such a direction.

(7) The Magistrates' Court must cause particulars of any decision made by it on an application under this section to be sent immediately to the Corporation.
(8) The decision of the Magistrates' Court on an application under this section is final and conclusive and must be given effect to by the Corporation.

(9) Neither an application under this section nor the decision of the Magistrates' Court on the application operates as a stay of the alcohol interlock condition.

50AAAD Exemption from, or removal of, alcohol interlock condition on medical grounds

(1) In this section—

recognised speciality has the same meaning as in the Health Practitioner Regulation National Law (Victoria);

specialist health practitioner has the same meaning as in the Health Practitioner Regulation National Law (Victoria).

(2) The Corporation, in the circumstances set out in subsection (3), may—

(a) exempt a person from any requirement imposed by a court or this Act that a driver licence or learner permit may only be granted by it to that person subject to an alcohol interlock condition; or

(b) at any time remove an alcohol interlock condition imposed by it on a person's driver licence or learner permit, whether under section 31KA or because of an alcohol interlock condition direction given by the Magistrates' Court.

(3) The circumstances are that the holder of the licence or permit has made an application to the Corporation—

(a) in the form approved by the Corporation; and
(b) accompanied by a report from a specialist health practitioner in an appropriate recognised speciality setting out details of any medical condition of the applicant relevant to the use of an approved alcohol interlock together with particulars of the applicant's lung capacity; and

(c) accompanied by any other things that are prescribed; and

(d) that otherwise complies with the regulations.

(4) The Corporation may only act under subsection (2) if satisfied, on the basis of a report referred to in subsection (3)(b), that the person's medical condition is such as to prevent him or her being able to use an alcohol interlock.

(5) Despite an exemption from, or removal of, an alcohol interlock condition granted by the Corporation under this section, section 52 continues to apply to the person during the minimum period during which that section otherwise would have applied had the exemption or removal not been granted.

(6) Nothing in this section prevents the Corporation from requiring the applicant to undergo a test under section 27 to determine whether he or she is unfit to drive motor vehicles or a category of motor vehicles.

(7) This section has effect despite anything to the contrary in this Part.
50AAB  Alcohol interlock condition removal order

(1) This section does not apply to a person to whom section 50AAAB applies.

(4) The Corporation must not remove an alcohol interlock condition imposed on a person's driver licence or permit unless the court orders, on the application of the person, that the condition be removed.
(4A) An application to the Magistrates’ Court for an order referred to in subsection (4) may be made on giving 28 days written notice of the application and of the venue of the Court at which it is to be heard to—

(a) the Chief Commissioner of Police; and

(b) the registrar at that venue of the Court.

(4B) The Magistrates’ Court must not—

(a) deal with or determine an application for an alcohol interlock condition removal order unless it is satisfied that the applicant has complied with the requirements of subsections (4A) and (5); or

(b) grant such an application unless it is satisfied that the specified period of each and every alcohol interlock condition direction given in respect of the person (including, in the case of an alcohol interlock condition imposed by the Corporation under section 31KA, the period referred to in section 31KA(6)) has elapsed.

(4C) In calculating whether the specified period of an alcohol interlock condition direction, or (in the case of an alcohol interlock condition imposed by the Corporation under section 31KA) the period referred to in section 31KA(6), has elapsed, the Magistrates’ Court must not count—

(a) any period during which a driver licence or learner permit that is subject to the alcohol interlock condition is suspended; or
(b) any period during which the person did not hold a driver licence or learner permit.

Example

A person has his or her licence cancelled during the specified period on account of being found guilty of another offence. The Magistrates’ Court must not count the period during which it is cancelled when calculating whether the specified period has elapsed. Therefore the period during which the person cannot apply for an alcohol interlock condition removal order is extended by the length of the period during which the licence was cancelled. Accordingly, the application for an alcohol interlock condition removal order must be refused as the extended period has not elapsed.

(5) Within 28 days before applying for an alcohol interlock condition removal order, the person must obtain from an accredited agency a report that—

(a) covers all of the period since an approved alcohol interlock was installed by an approved alcohol interlock supplier, or a person or body authorised by such a supplier, in a motor vehicle driven by the person during that period; and

(ab) contains data that indicates compliance with any prescribed alcohol interlock usage data requirements (other than any specified under item 57AA(f) of Schedule 2) during a period that ends with the most recent data and extends back long enough to show at least 6 months’ data collected over a continuous period or, if the regulations so permit, a non-continuous period of a kind specified in the regulations; and

(b) includes—

(i) an assessment by each approved alcohol interlock supplier who maintained or authorised a person or body to maintain the approved alcohol
interlock during the period referred to in paragraph (a) on the extent to which the person complied with the manufacturer's instructions for using the approved alcohol interlock; and

(ii) an assessment of the person's use of alcohol during that period; and

(iii) the last licence eligibility report obtained by the person.

(5A) If the specified period of an alcohol interlock condition direction given on the making of a licence eligibility order in respect of a disqualification under section 89A(1) of the Sentencing Act 1991 is less than 6 months, the report under subsection (5) must cover all of that period.

(6) In determining whether to make an alcohol interlock condition removal order—

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

(ab) the court must consider whether any prescribed alcohol interlock usage data requirements are satisfied and for that purpose may give a direction under section 50AAAC on an application made under that section or, if one has previously been given, must take that direction into account; and
(b) without limiting its discretion, the court must have regard to—

(i) the person's use of alcohol in the period since the condition was imposed; and

(ia) whether the person was responsible for any attempt in the whole period since the condition was imposed to start a motor vehicle that failed because an alcohol interlock prevented the motor vehicle from being started as a result of it detecting alcohol and, if so, the number of such attempts; and

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

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

(iv) any report obtained under subsection (5).
50AAC Appeals against alcohol interlock condition direction or period specified in direction

(1) If the Magistrates' Court, on making a licence eligibility order, gives an alcohol interlock condition direction to the Corporation, the person in respect of whom the direction is given may appeal to the County Court under section 254 of the Criminal Procedure Act 2009 against—

(a) in the case of a direction given under section 50AAA(3), the giving of the direction; or

(b) in any case, the specified period of the direction if that period is more than the minimum period required to be specified under section 50AAA(5) or (6) in relation to the relevant offence—as if the direction were a sentence of a kind referred to in section 254 of the Criminal Procedure Act 2009.

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

(3) The making of an appeal to the County Court under subsection (1) does not stay the operation of the direction but the Magistrates' Court may stay its operation pending the decision of the appeal.
50AACA Effect of alcohol interlock condition removal order

(1) An alcohol interlock condition removal order has effect with respect to all alcohol interlock conditions imposed before the making of the order on any driver licence or learner permit held by the person (including any imposed by the Corporation under section 31KA) and with respect to which no previous alcohol interlock condition removal order, or decision by the Corporation under section 50AAAB to remove it, has had effect.

(2) An alcohol interlock condition removal order must include a statement to the same effect as subsection (1).

50AACB Court must notify the Corporation of certain matters

The Magistrates' Court must cause particulars of the following to be sent immediately to the Corporation—

(a) an alcohol interlock condition direction given by it;

(b) an alcohol interlock condition removal order made by it;

(c) a stay granted by it under section 50AAC(3).

50AACC Application of Evidence Act 2008

To avoid doubt, the proceeding on an application for the making of an alcohol interlock condition removal order is a proceeding that relates to sentencing for the purposes of section 4(2) of the Evidence Act 2008.
50AAD Offences and immobilisation orders

(1) A person whose driver licence or permit is subject to an alcohol interlock condition is guilty of an offence if—

(a) the person breaches that condition; or

(b) the person drives a motor vehicle with an approved alcohol interlock in accordance with that condition but the motor vehicle has been started—

(i) with the approved alcohol interlock disengaged; or

(ii) in a way that does not comply with the manufacturer's instructions for the use of the approved alcohol interlock; or

(iii) in a way other than by the person blowing directly into the appropriate part of the approved alcohol interlock.

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

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

(3) If—

(a) a person breaches an alcohol interlock condition by driving a motor vehicle with a type of alcohol interlock—

(i) the approval of which is cancelled under section 50AAH; or

(ia) that ceased to be approved before it was installed because of a variation under section 50AAH of the approval of that type of alcohol interlock; or
(ii) that is installed or maintained by a person or body whose approval as an alcohol interlock supplier is cancelled or suspended under section 50AAI; or

(iii) that is installed or maintained by a person or body who would be authorised by an approved alcohol interlock supplier except that the supplier's approval is cancelled or suspended under section 50AAI; and

(b) the person is charged with an offence against subsection (1)(a) in respect of that breach—

it is a defence if the person proves that he or she reasonably believed at the time of the breach that the type of alcohol interlock was an approved alcohol interlock, or the person or body was an approved alcohol interlock supplier whose approval was in force or authorised by such a supplier, as the case may be.

(3A) To avoid doubt, a type of alcohol interlock, or a version of a type of alcohol interlock, the approval of which is limited to a specified type of motor vehicle is not an approved alcohol interlock in relation to any other type of motor vehicle.

(4) A court finding a person guilty, or convicting a person, of an offence against subsection (1)(b) may, if the court considers it appropriate to do so, order that the motor vehicle concerned be immobilised (whether by wheel clamps or any other means) for a period specified in the order of up to 12 months.

(5) An order under subsection (4) may be made subject to specified conditions.

(6) The court may make an order under subsection (4) whether the motor vehicle is owned by the offender or another person.
(7) If the court considers that another person, who is not present at the hearing concerning the making of an order under subsection (4), may be substantially affected by such an order, the court must issue a summons to that other person to show cause why the order should not be made.

(8) On the return of the summons, the court may, after hearing the evidence brought before it, make or refuse to make the order.

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

(1) A person or body may apply to the Corporation for—

(a) approval of a type of alcohol interlock; or

(b) approval as an alcohol interlock supplier—

for the purposes of this Act.

(2) An application must be made in the manner and form determined in writing by the Corporation and must be accompanied by—

(a) the prescribed application fee (if any); and

(b) any other things that are prescribed.

(2A) To avoid doubt, the Corporation may refuse to consider an application that does not comply with subsection (2).

(3) The Corporation may approve, in writing, a type of alcohol interlock if it is satisfied that—

(a) the person or body applying for the approval has a right to sell or lease the type of alcohol interlock; and

(b) the type of alcohol interlock is suitable to be approved for the purposes of this Act having regard to—
(i) its effectiveness in preventing a motor vehicle from being started if it detects more than a certain concentration of alcohol; and

(ii) the extent to which it is resistant to tampering; and

(iii) its capacity to record information about its use; and

(iiiia) its capacity, when installed in a motor vehicle other than a motor cycle or motor trike, to record information about the identity of a person starting or attempting to start the motor vehicle, whether that information is obtained by the use of a camera or other means; and

(iv) any other matter the Corporation considers relevant.

(3A) The approval of a type of alcohol interlock may be given in relation to all motor vehicles or only in relation to a specified type of motor vehicle.

(3B) If the application for approval relates to more than one version of the same type of alcohol interlock—

(a) the Corporation may approve all the versions or only a specified version or specified versions; and

(b) the approval of any specified version may be given in relation to all motor vehicles or only in relation to a specified type of motor vehicle.

(4) In considering whether to approve a type of alcohol interlock, the Corporation must apply the guidelines for the approval of types of alcohol interlocks made by the Corporation under section 50AAG.
(5) The Corporation may approve, in writing, a person or body as an alcohol interlock supplier if it considers it appropriate to do so having regard to—

(a) whether—

(i) the person or body; and

(ii) the employees or agents (if any) of the person or body who install or maintain approved alcohol interlocks—

are fit and proper persons to install and maintain approved alcohol interlocks; and

(b) the relevant qualifications and experience of the person or body and of those employees and agents (if any) of the person or body; and

(c) the arrangements and standards put in place by the person or body for—

(i) installing approved alcohol interlocks; and

(ii) maintaining approved alcohol interlocks including regular inspections, re-calibration and the recording of information about its use; and

(d) the arrangements put in place by the person or body for installing and maintaining approved alcohol interlocks in rural areas; and

(e) the adequacy for the purposes of this Act of—

(i) the premises, equipment and resources of the person or body; and

(ii) the record-keeping and reporting arrangements of the person or body; and
(iii) the arrangements of the person or body for handling complaints; and

(f) the ability of the person or body to comply, and record its compliance, with the guidelines for the installation or maintenance of approved alcohol interlocks made by the Corporation under section 50AAG; and

(g) the terms and conditions on which the person or body supplies, or intends to supply, approved alcohol interlocks to customers, or a particular class of customer, including the cost of the approved alcohol interlock, its installation and regular maintenance; and

(h) any other matter the Corporation considers relevant.

(6) The Corporation must not approve a person or body as an alcohol interlock supplier unless it is satisfied that the person or body will provide concessions to assist with the cost of installation and regular maintenance of an approved alcohol interlock to—

(a) classes of persons specified by the regulations for the purposes of this subsection; or

(b) if the regulations do not specify classes of persons for the purposes of this subsection, persons who hold a health care card (within the meaning of the Social Security Act 1991 of the Commonwealth).

(6A) Concessions to be provided in accordance with subsection (6) may vary depending on the class of person eligible for the concession.

(7) In considering whether to approve a person or body as an alcohol interlock supplier, the Corporation must apply the guidelines for the approval of persons or bodies as alcohol interlock...
suppliers made by the Corporation under section 50AAG.

(8) If the Corporation refuses to give an approval under subsection (3) or (5), it must give written notice of the refusal and the reasons for it to the person or body who applied for the approval.

(9) Subject to sections 50AAH and 50AAI, an approval under this section remains in force for the period specified by the Corporation when the approval is given.

50AAEA Refusal of approved alcohol interlock supplier to supply

(1) An approved alcohol interlock supplier may, with the prior approval of the Corporation, refuse to supply approved alcohol interlocks to a specified person or a specified class of person.

(2) The Corporation may only grant an approval under subsection (1) if—

(a) the approved alcohol interlock supplier has submitted to it in writing a statement of the grounds for wishing to refuse to supply approved alcohol interlocks to the specified person or specified class of person; and

(b) the Corporation is satisfied that, having regard to those grounds, it is reasonable to approve the refusal to supply.

50AAEB Change of terms and conditions

(1) This section applies if an approved alcohol interlock supplier wishes to vary, whether with respect to all customers or a particular class of customer—

(a) the terms and conditions covered by section 50AAE(5)(g) on which it then operates; or
(b) the concessions covered by section 50AAE(6) that it then provides.

(2) The approved alcohol interlock supplier may only make the variation if—

(a) it submits to the Corporation in writing particulars of the proposed variation and the grounds for wishing to make it; and

(b) the Corporation approves the proposed variation.

50AAF Conditions on approvals

(1) An approval under section 50AAE may be given subject to specified conditions.

(2) The Corporation must specify in the approval of an alcohol interlock supplier that it is a condition of the approval that the supplier must—

(a) comply with the guidelines (if any) as in force from time to time under sections 50AAG(1)(b)(ii), (ba) and (c); and

(b) ensure that each of the following persons or bodies comply with those guidelines—

(i) the supplier's employees and agents (if any) who install or maintain approved alcohol interlocks; and

(ii) the persons or bodies (if any) authorised by the supplier to install or maintain approved alcohol interlocks.
(2A) Without limiting subsection (1) or (3), a condition on an approval may require an alcohol interlock supplier—

(aa) to explain the following to any person to whom an approved alcohol interlock is supplied—

(i) how to operate the alcohol interlock;
(ii) the terms and conditions on which the alcohol interlock is supplied;
(iii) any prescribed alcohol interlock usage data requirements;
(iv) the consequences of the alcohol interlock not being maintained;
(v) the consequences of the person failing to pay a cost recovery fee payable under section 50AAKA; or

(a) not to install approved alcohol interlocks for a specified period not exceeding 3 months; or

(ab) not to maintain, or engage or allow a person or body authorised by the supplier to maintain, an approved alcohol interlock in specified circumstances where a person subject to an alcohol interlock condition has failed to pay a cost recovery fee payable under section 50AAKA; or

(b) not to engage a specified person or body to install or maintain approved alcohol interlocks for a specified or an unlimited period or until the happening of a specified event; or

S. 50AAF (2A)(ab) inserted by No. 49/2014 s. 24(3).
(c) to issue a receipt in a form approved by the Corporation for any payment made to the supplier of a cost recovery fee payable under section 50AAKA; or

(d) to keep records of a specified kind for a specified period; or

(e) to report to the Corporation matters of a specified kind in a specified manner and within a specified time; or

(f) to comply with specified information privacy or access requirements; or

(g) to permit a person authorised in writing by the Corporation—

(i) to enter and inspect any premises at which—

(A) the supplier carries on the business of supplying, installing or maintaining approved alcohol interlocks; or

(B) a person or body authorised by the supplier to install or maintain approved alcohol interlocks carries on the business of installing or maintaining them; or

(ii) to examine any equipment found there that is used in connection with that business; or

(iii) to monitor any work or other activities being carried out there, including any training or explanation given to any
person to whom an approved alcohol interlock is supplied; or

(iv) to inspect or copy any document located there that relates to that business; or

(h) to provide approved alcohol interlocks to the Corporation for validation and testing, as required by the Corporation; or

(i) to obtain insurance of a specified kind; or

(j) to make any records referred to in section 50AAG(1)(ba) (whether held by the supplier or a person or body authorised by the supplier to install or maintain approved alcohol interlocks) available for inspection by the Corporation at the premises of the supplier or the authorised person or body, or provide copies of them (including in electronic format) to the Corporation, as required by the Corporation by a notice sent to the supplier; or

(k) to avoid conflicts of interest in the conduct of the business of supplying, installing or maintaining approved alcohol interlocks.

(3) The Corporation may at any time—

(a) vary or revoke a condition on an approval; or

(b) impose a new condition on an approval—

by giving written notice to the person or body concerned, allowing the person or body at least 10 working days to make written representations about the proposed action.
(4) Despite subsection (3), the Corporation may immediately vary or revoke a condition on an approval or impose a new condition on an approval if the Corporation considers it necessary to do so in the interests of public safety.

(5) A person or body whose approval is affected by a decision of the Corporation under subsection (4) may require the Corporation, by notice served on the Corporation, to hold an inquiry under section 50AAIB into the decision.

(6) The Corporation must commence an inquiry under section 50AAIB within 7 days after service on the Corporation of a notice under subsection (5).

50AAG Guidelines

(1) The Corporation may make guidelines for any of the following matters—

(a) the approval of types of alcohol interlocks, including the way in which the Corporation has regard to the matters in section 50AAE(3)(b);

(b) the approval of persons or bodies as alcohol interlock suppliers, including—

(i) the way in which the Corporation has regard to the matters in section 50AAE(5); and

(ii) the type of concessions that must be provided for the purposes of section 50AAE(6);

(ba) the records to be kept by alcohol interlock suppliers relating to the collection of cost recovery fees payable under section 50AAKA and their payment to the Corporation;
(c) the installation or maintenance of approved alcohol interlocks, including the terms and conditions on which approved alcohol interlocks are supplied to customers or a particular class of customer.

(2) The guidelines—

(a) must be in writing and be published in the Government Gazette; and

(b) must be laid before each House of Parliament within 6 sitting days of that House after the guidelines are published in the Government Gazette; and

(c) may apply, adopt or incorporate any matter contained in another document, whether as—

(i) amended by the guidelines; or

(ii) contained in that document at a particular time or from time to time.

50AAH Cancellation or variation of approval of types of alcohol interlocks

(1) The Corporation may cancel the approval of a type of alcohol interlock, or of a version of a type of alcohol interlock, under section 50AAE if the Corporation is satisfied that it is appropriate to do so because—

(a) the type of alcohol interlock, or the version of the type of alcohol interlock, is defective to the extent that it is no longer suitable to be approved for the purposes of this Act (whether because the information it records about its use is misleading or for any other reason); or
(ab) the type of alcohol interlock, or the version of the type of alcohol interlock, cannot be modified so as to render it capable of recording, in a way that is satisfactory to the Corporation, the identity of a person starting or attempting to start the motor vehicle, whether by the use of a camera or other means; or

(b) since the type of alcohol interlock, or the version of the type of alcohol interlock, was approved, the Corporation has approved one or more other types of alcohol interlocks or one or more other versions of that type of alcohol interlock or one or more versions of other types of alcohol interlocks that the Corporation considers are more suitable to be approved for the purposes of this Act.

(1A) The Corporation may vary the approval under section 50AAE of a type of alcohol interlock, or a version of a type of alcohol interlock, by providing that, on and from a specified date, the approval has effect—

(a) only in relation to a specified type of motor vehicle; or

(b) in relation to a specified type of motor vehicle only if the alcohol interlock is modified, in a manner specified by the Corporation, so as to render it capable of recording, in a way that is satisfactory to the Corporation, the identity of a person starting or attempting to start the motor vehicle, whether by the use of a camera or other means; or

(c) in relation to all motor vehicles only if modified as set out in paragraph (b).
(1B) To avoid doubt, the Corporation may act under both paragraphs (a) and (b) of subsection (1A) in respect of the same type of alcohol interlock or the same version of a type of alcohol interlock.

(2) If the Corporation cancels the approval of a type of alcohol interlock, or of a version of a type of alcohol interlock, under subsection (1)(a), the Corporation—

(a) must ensure that a notice is published in the Government Gazette, and a newspaper circulating generally throughout Victoria, stating that the approval of the type of alcohol interlock or the version of the type of alcohol interlock is cancelled with effect from a specified day (which must be after both of those notices are published); and

(b) must send a notice to each approved alcohol interlock supplier stating that the approval of the type of alcohol interlock or the version of the type of alcohol interlock is cancelled with effect from that specified day; and

(c) may send a notice to a person whose driver licence or permit is subject to an alcohol interlock condition, at the latest address the person has notified to the Corporation, stating that the person breaches the condition if he or she drives a motor vehicle with that type of alcohol interlock or that version of that type of alcohol interlock after the day specified in the notice (which must be at least one month after the notice is sent).
(3) If the Corporation cancels the approval of a type of alcohol interlock, or of a version of a type of alcohol interlock, under subsection (1)(a), a person whose driver licence or permit is subject to an alcohol interlock condition breaches the condition if he or she drives a motor vehicle with that alcohol interlock or that version of that alcohol interlock after the later of the following—

(a) the day specified in the notice published under subsection (2)(a);

(b) if the person is sent a notice under subsection (2)(c), the day specified in that notice.

(4) If the Corporation cancels the approval of a type of alcohol interlock or of a version of a type of alcohol interlock under subsection (1)(ab) or (b)—

(a) the Corporation must send a notice to each approved alcohol interlock supplier stating that the approval is cancelled with effect from a specified day; and

(b) an alcohol interlock of that type or version that was installed in a motor vehicle before the specified day is taken to continue to be approved, despite the cancellation, for the purposes of this Act.

(5) If the Corporation varies the approval of a type of alcohol interlock or of a version of a type of alcohol interlock under subsection (1A)—

(a) the Corporation must send a notice to each approved alcohol interlock supplier stating that the approval is varied with effect from a specified day; and

(b) an alcohol interlock of that type or version that was installed in a motor vehicle before the specified day is taken to continue to be
approved, despite the variation, for the purposes of this Act.

Note

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

50AAI  Cancellation or suspension of approval of alcohol interlock supplier

(1) The Corporation may, by giving written notice to an approved alcohol interlock supplier, cancel or suspend the supplier’s approval under section 50AAE if the Corporation is satisfied that it is appropriate to do so because the supplier—

(a) has failed to comply with one or more conditions of the approval; or

(ab) has failed to collect, or pay to the Corporation, a cost recovery fee as required by section 50AAKA or the regulations made for the purposes of that section; or

(b) is no longer supplying, installing or maintaining alcohol interlocks.

(2) If the Corporation cancels or suspends the approval of an alcohol interlock supplier, the Corporation—

(a) must ensure that a notice is published in the Government Gazette, and a newspaper circulating generally throughout Victoria, stating that the approval of the alcohol interlock supplier is cancelled or suspended (as the case requires) with effect from a
specified day (which must be after both of those notices are published); and

(b) may send a notice to a person whose driver licence or permit is subject to an alcohol interlock condition, at the latest address that the person has notified to the Corporation, stating that the person breaches the condition if—

(i) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle; and

(ii) the person drives the motor vehicle with that approved alcohol interlock—

after the day specified in the notice (which must be at least one month after the notice is sent).

(3) If the Corporation cancels the approval of an alcohol interlock supplier, a person whose driver licence or permit is subject to an alcohol interlock condition breaches the condition if—

(a) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle after the later of the following—

(i) the day specified in the notice published under subsection (2)(a); or

(ii) if the person is sent a notice under subsection (2)(b), the day specified in the notice; and

(b) the person drives the motor vehicle with that approved alcohol interlock after the later of those days.
(3A) If the Corporation suspends the approval of an alcohol interlock supplier, a person whose driver licence or permit is subject to an alcohol interlock condition breaches the condition if—

(a) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle after the later of the following and before the end of the period of suspension—

(i) the day specified in the notice published under subsection (2)(a); or

(ii) if the person is sent a notice under subsection (2)(b), the day specified in the notice; and

(b) the person drives the motor vehicle with that approved alcohol interlock after the later of those days and before the end of the period of suspension.

* * * * *

Note

Under section 50AAD(3), a person who breaches an alcohol interlock condition because the approval of an alcohol interlock supplier has been cancelled or suspended has a defence if the person proves that he or she reasonably believed that the supplier was approved or that the supplier's approval was in force (as the case requires).

50AAIA Power of immediate suspension

(1) The Corporation may immediately suspend an approval under section 50AAE if the Corporation considers it necessary to do so in the interests of public safety.
(2) A suspension under this section may be for a specified period or until a specified event or until a further determination made by the Corporation.

(3) A person or body whose approval under section 50AAE has been suspended under this section may require the Corporation, by notice served on the Corporation, to hold an inquiry under section 50AAIB into the suspension.

(4) The Corporation must commence an inquiry under section 50AAIB within 7 days after service on the Corporation of a notice under subsection (3).

(5) If an inquiry is held under section 50AAIB, a suspension under this section, if then still in effect, ceases to have effect on the completion of that inquiry.

50AAIB Inquiry

(1) The Corporation may hold an inquiry for the purpose of determining whether proper cause exists for taking action under section 50AAF(4) or 50AAIA against an approved alcohol interlock supplier.

(2) Following an inquiry, if the Corporation is satisfied that proper cause for taking action under section 50AAF(4) or 50AAIA against the alcohol interlock supplier exists, the Corporation may—

(a) reprimand the supplier;

(b) warn the supplier that should further proper cause for taking action be found to exist, the supplier's approval may be cancelled;

(c) impose one or more new conditions on the approval;

(d) shorten the period for which the approval is to remain in force;
(e) suspend the approval for a specified period or until a specified event or until a further determination made by the Corporation;

(f) cancel the approval immediately or with effect from a specified later date.

(3) In exercising its powers under this section, the Corporation—

(a) must act fairly and according to equity and good conscience without regard to technicalities or legal forms; and

(b) is not bound by rules or practice as to evidence but may inform itself in relation to any matter in any manner that it thinks fit.

(4) Subject to this section, the procedure of the Corporation on any inquiry under this section is in the discretion of the Corporation.

50AAIC **Effect of suspension**

An alcohol interlock supplier whose approval under section 50AAE is suspended is not approved during the period of the suspension.

50AAJ **Review by Tribunal**

(1) A person or body whose interests are affected by a decision of the Corporation—

(a) under section 50AAE to refuse to give an approval; or

(b) under section 50AAH, 50AAI or 50AAIB to cancel, vary or suspend an approval—

may apply for review of the decision to the Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**.

(1A) A decision of the Corporation under section 50AAE to refuse to consider an
application that does not comply with subsection (2) of that section is not a decision to refuse to give an approval for the purposes of this section.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made; or

(b) if notice of the decision is published under section 50AAH(2)(a) or 50AAI(2)(a) in both the Government Gazette and a newspaper, the day on which the later notice is published; or

(c) if notice of the decision is given or sent to the person or body under section 50AAE(8), 50AAH(2), 50AAH(4), 50AAH(5) or 50AAI(1), the day on which the notice is given or sent to the person or body; or

(d) if the person or body requests a statement of reasons for the decision under the Victorian Civil and Administrative Tribunal Act 1998, the day on which—

(i) the statement is given to the person or body; or

(ii) the person or body is informed under section 46(5) of that Act that the statement will not be given.

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.

50AAKA Cost recovery fees

(1) The regulations may provide for the payment of cost recovery fees by persons who have an approved alcohol interlock installed in a motor vehicle.
vehicle because their driver licence or learner permit is subject to an alcohol interlock condition.

(2) The purpose of imposing cost recovery fees is to recoup the overall costs incurred by the Corporation in—

(a) establishing a process within the alcohol interlock scheme established by this Part for the exercise by it of the functions conferred on it by the Road Safety Amendment Act 2014 of—

(i) imposing and removing alcohol interlock conditions; and

(ii) exempting persons on medical grounds from a requirement that any driver licence or learner permit granted to them must be subject to an alcohol interlock condition; and

(b) generally managing and operating the scheme as a whole.

(3) The regulations may prescribe—

(a) when a cost recovery fee is payable; and

(b) the amount of that fee or how it may be calculated; and

(c) how a cost recovery fee may be paid to the Corporation; and

(d) a procedure for the payment of cost recovery fees to, or their collection by, approved alcohol interlock suppliers or other persons and requirements as to when and how those fees are to be paid to the Corporation by such suppliers or other persons; and

(e) concessional rates of a cost recovery fee for specified classes of persons liable to pay a cost recovery fee.
(4) Without limiting subsection (3)(a), the regulations may provide that a cost recovery fee is payable—

(a) on an approved alcohol interlock being installed in a motor vehicle; or

(b) in respect of any month or other period during which an approved alcohol interlock is installed in a motor vehicle; or

(c) on an approved alcohol interlock being removed from a motor vehicle; or

(d) in more than one, or in all, of those circumstances.

(5) Unless the regulations otherwise provide, a cost recovery fee is to be collected on behalf of the Corporation by the approved alcohol interlock supplier who maintains, or authorises a person or body to maintain, the alcohol interlock.

(6) A cost recovery fee is payable irrespective of—

(a) when the alcohol interlock condition was imposed on the driver licence or learner permit of the person, including whether it was imposed or directed to be imposed before, on or after the commencement of section 29 of the *Road Safety Amendment Act 2014*; and

(b) whether it was imposed under section 31KA or because of an alcohol interlock condition direction given by the Magistrates' Court.

(7) Nothing in subsection (5) prevents an approved alcohol interlock supplier collecting a cost recovery fee by their agent or other person specified by the Corporation.
(8) Despite anything in section 97, all cost recovery fees received by the Corporation must be paid by the Corporation into its general fund.

(9) Nothing in this section limits section 97A.

50AA Previous convictions

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

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50A Driver education programs

(1) The Corporation must not issue a driver licence or permit to a person whose driver licence or permit is cancelled, or who is disqualified from obtaining a driver licence or permit, on conviction, or on being found guilty, of an offence under section 49(1)(b), (f) or (g) and who, at the time of the offence, was under 25 years old unless it is satisfied that the person has, if the offence is a first offence and the level of concentration of alcohol in that person's blood or breath (as the case requires) was less than 0.15 grams per 100 millilitres of blood or 210 litres of exhaled air (as the case requires), completed an accredited driver education program.

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

(2) The Corporation must cancel the driver licence or permit of a person who was convicted, or found guilty, of an offence under section 49(1)(b), (bb), (f), (g), (h) or (i) and whose driver licence or permit was not cancelled on the conviction or finding of guilt, unless it is satisfied that the person has completed an accredited driver education program within 3 months after being required by the Corporation by notice in writing to do so.

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

S. 50A(1)
amended by
Nos 19/1991
s. 7(2),
41/1992 s. 4(f),
14/2000
s. 7(5),
94/2003
s. 8(19)(a)(b).

S. 50A(1A)
inserted by
No. 14/2000
s. 7(6),
amended by
No. 111/2003
s. 10(1)(a)(b).

S. 50A(2)
amended by
Nos 19/1991
s. 7(3),
41/1992
s. 4(g)(i)(ii),
14/2000
s. 7(7),
111/2003
s. 10(2)(a)(b).
(3) If a person is charged with an offence under section 49(1), and on the hearing the court releases the person on him or her giving an undertaking under section 75(1) of the Sentencing Act 1991, the court must attach to the undertaking a condition that the person completes an accredited driver education program.

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

51 Immediate suspension of driver licence or permit in certain circumstances

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

(a) an offence under paragraph (b), (f) or (g) of section 49(1) where it is alleged that the concentration of alcohol in the person's blood or breath (as the case requires) was—

(i) if the person holds a full driver licence—

(A) 0·10 grams or more per 100 millilitres of blood; or
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(B) 0·10 grams or more per 210 litres of exhaled air; or

(ii) if the person holds a learner permit or probationary driver licence—

(A) 0·07 grams or more per 100 millilitres of blood; or

(B) 0·07 grams or more per 210 litres of exhaled air; or

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

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

any police officer or, if the accused had been driving or in charge of a commercial motor vehicle, any officer of the Corporation may, at any time after the filing of the charge-sheet charging the offence until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her driver licence or permit is immediately suspended until the charge has been determined and requiring the accused to surrender immediately to the person who gave the notice the licence document or permit document.
(1A) If a person is charged by a police officer with an 
offence under paragraph (ba), (ca), (ea) or (eb) of 
section 49(1), any police officer may, at any time 
after the filing of the charge-sheet charging the 
offence until the charge has been determined, give 
to the accused a notice containing the prescribed 
particulars informing the accused that his or her 
driver licence or permit is immediately suspended 
until the charge has been determined and requiring 
the accused to surrender immediately to the 
person who gave the notice the licence document 
or permit document.

(1B) Any police officer may give a person a notice 
(containing the prescribed particulars) informing 
the person that his or her driver licence or permit 
is immediately suspended and requiring the 
person to surrender the licence or permit 
document to the police officer if—

(a) paragraph (f) or (g) of section 49(1) applies 
to the person; and

(b) a certificate is issued under section 55(4) 
or 57 stating the concentration of alcohol 
present in the person's breath or blood as 
indicated by the analysis of the person's 
breath or blood sample; and

(c) that concentration is—

(i) if the person holds a full driver 
licence—0·10 grams or more per 
210 litres of exhaled air or 
100 millilitres of blood (as the case 
requires); or

(ii) if the person holds a learner permit or 
probationary driver licence— 
0·07 grams or more per 210 litres of 
exhaled air or 100 millilitres of blood 
(as the case requires); or
(iii) if the person has, within 10 years before the commission of the alleged offence, been found guilty or convicted of an offence (other than an accompanying driver offence) referred to in section 48(2)(a), (b), (c), (e) or (f)—the prescribed concentration of alcohol or more than the prescribed concentration of alcohol.

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

(2) For the purposes of this section a person is charged with an offence when a copy of the charge-sheet that is signed by the police officer or the officer of the Corporation is given to the person.

(3) Immediately on the giving of a notice under subsection (1), (1A) or (1B) the person's driver licence or permit is suspended—

(a) if the notice is given under subsection (1) or (1A), until the charge has been determined by a court; or

(b) subject to subsection (3A), if the notice is given under subsection (1B), until the lesser of—

(i) 12 months after the notice is given; or

(ii) the period, after the notice is given, set out in Column 2 of Schedule 1 that corresponds to the breath or blood alcohol concentration in Column 1 of that Schedule that is stated in the certificate.
(3A) If—

(a) a person's driver licence or permit is suspended in accordance with a notice under subsection (1B); and

(b) less than 28 days before the end of the period of suspension, a traffic infringement notice is issued against the person in respect of the alleged offence—

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

(3B) If—

(a) a person's driver licence or permit is suspended in accordance with a notice under subsection (1B); and

(b) 28 days or more before the end of the period of suspension, a traffic infringement notice is issued against the person in respect of the alleged offence—

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

Note

If the person does not give a notice of objection within the 28 day period for doing so the person's driver licence or permit may be cancelled under section 89C(1).
(3C) If—

(a) subsection (3A) or (3B) applies to a person; and

(b) the person does not give a notice of objection to the traffic infringement notice within the 28 day period for doing so; and

(c) the person's driver licence or permit is cancelled under section 89C(1)—

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

(3CA) If—

(a) a person's driver licence or permit is suspended in accordance with a notice under subsection (1B); and

(b) after the period of suspension a traffic infringement notice is issued against the person in respect of the alleged offence; and

(c) the person does not give a notice of objection to the traffic infringement notice within the 28 day period for doing so; and

(d) the person's driver licence or permit is cancelled under section 89C(1)—

the period for which the person is disqualified under section 89C(1) from obtaining a driver licence or permit is reduced by the period of the suspension.
(3D) If a person who is given a notice under subsection (1B) is charged with the alleged offence during the period of suspension (as extended, if applicable, by subsection (3A)), from the time the charge-sheet is filed the notice is taken to be instead a notice under subsection (1) or (1A) (whichever is applicable).

Note

The period of suspension therefore continues until the charge is determined by a court (see subsection (3)(a)).

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

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

Penalty: 5 penalty units.

(6) The accused has the burden of proving just cause or excuse.

(7) A licence or permit suspended under this section is, during the suspension, of no effect and a person whose licence or permit is so suspended is, during the suspension, disqualified from obtaining a further licence or permit.

(8) A person must not while he or she is disqualified from obtaining a licence or permit apply for or obtain a licence or permit.

Penalty: 5 penalty units.

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

(9A) The Chief Commissioner of Police may cancel a notice under subsection (1), (1A) or (1B) by notifying (in writing) the person to whom the

S. 51(3D) inserted by No. 46/2002 s. 9(3), amended by No. 68/2009 s. 97(Sch. item 106.7).

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

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

S. 51(9A) inserted by No. 46/2002 s. 9(5).
notice was given and must cause a copy of the cancellation to be sent immediately to the Corporation.

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

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

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

(10C) Nothing in subsection (10B) prevents the application of Part 3.10 of the Evidence Act 2008 to determining the appeal.

(11) On an appeal under subsection (10) the court may make an order—

(a) confirming the notice; or

(b) cancelling the notice.

(12) The Magistrates' Court must not make an order under subsection (11) cancelling a notice unless it is satisfied that exceptional circumstances exist which justify the making of such an order.
(12A) If a person whose driver licence or permit is suspended in accordance with a notice under subsection (1), (1A) or (1B) is before a court for any reason in relation to the alleged offence, the court may make an order cancelling the notice if it is satisfied that exceptional circumstances exist which justify making the order.

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

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

52 Zero blood or breath alcohol

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

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

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

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

(B) a law of another country—

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

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

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

(1B) This section also applies to a person who is driving or in charge of a motor vehicle, while holding a driver licence or learner permit which authorises the holder to drive such a motor vehicle, during the period of 3 years (or any longer period during which an alcohol interlock condition applies to the licence or permit) from the first issue of the licence or permit if—

(a) the person had been disqualified from obtaining a driver licence or learner permit under section 50 or 89C or, by force of section 3AD, was taken to be so disqualified under section 89C and the licence or permit was issued to the person following the disqualification; or

(b) the person had been disqualified from obtaining a driver licence or learner permit under section 89 of the Sentencing Act 1991 or, by force of section 3AD of this Act, was
taken to be so disqualified under that section 89 and the licence or permit had been issued only because of the making by the Magistrates' Court of a licence eligibility order.

(1BA) This section also applies to a person who is driving or in charge of a motor vehicle, while holding a driver licence or learner permit which authorises the holder to drive such a motor vehicle and to which an alcohol interlock condition applies if—

(a) the person had been disqualified from obtaining a driver licence or learner permit under section 89A(1) of the Sentencing Act 1991 or, by force of section 3AD of this Act, is to be taken to be so disqualified under that section 89A(1); and

(b) the licence or permit has been issued only because of the making by the Magistrates' Court of a licence eligibility order.

Note

Section 28A(2) provides that a person whose driver licence or learner permit is suspended by force of section 89(4) or 89A(1) of the Sentencing Act 1991 is not disqualified for the purposes of this section.

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

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

(1E) Subject to subsections (1F) and (1G), this section also applies during the period of 3 years from the issue of a driver licence which authorises the holder to drive a motor cycle, while the holder is driving or in charge of a motor cycle, whether or not the holder also holds a driver licence which authorises him or her to drive another kind of motor vehicle.

(1F) If the Corporation is satisfied that a person has appropriate licensed motor cycle driving experience (wherever obtained), it may—

(a) waive the application to the person of subsection (1E); or

(b) specify a shorter period than 3 years for the purposes of that subsection.

(1G) If a driver licence referred to in subsection (1E) is suspended (whether by a court or the Corporation) during the period of 3 years referred to in that subsection (or the shorter period applying under subsection (1F)), the period applying to the person for the purposes of subsection (1E) is extended by a period equal to the period of the suspension.

(2) The prescribed concentration of alcohol in the case of a person to whom this section applies is any concentration of alcohol present in the blood or breath of that person.
(3) If this section applies to a person by force of the operation of more than one subsection, the periods provided by those subsections operate concurrently.

(4) If—

(a) during any period during which this section applies to a person (the application period), the driver licence or learner permit held by the person is suspended or he or she does not hold a driver licence or learner permit; and

(b) before the end of the application period the suspension ends or a new or renewed driver licence or learner permit is granted to the person—

the part of the application period then remaining continues or, in the case of a new or renewed driver licence or learner permit, is carried over to that licence or permit.

Example

Under this section a person is subject to zero blood or breath alcohol for a 3 year period and this requirement is due to expire on 1 January 2017. 18 months into that 3 year period the person's driver licence is cancelled and the person is disqualified from obtaining a further driver licence or learner permit for 6 months. The person is granted a new driver licence within the original 3 year period. He or she will then be subject to zero blood or breath alcohol for the remainder of that original 3 year period, that is, from when the new driver licence is granted until 1 January 2017.
53 Preliminary breath tests

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

   to undergo a preliminary breath test by a prescribed device.

(2) An officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure who is authorised in writing by the Corporation or the Secretary to the Department of Transport, Planning and Local Infrastructure, as the case requires, for the purposes of this section may at any time require any person he or she finds driving a commercial motor vehicle or in charge

S. 53 amended by No. 44/1989 s. 41(Sch. 2 item 34.4).
S. 53(1) amended by No. 37/2014 s. 10(Sch. item 147.8).
S. 53(1)(b) amended by Nos 94/2003 s. 11(2), 111/2003 s. 11(1).
S. 53(1)(c) amended by No. 19/1991 s. 9(1).
S. 53(1)(d) inserted by No. 19/1991 s. 9(1), amended by No. 37/2014 s. 10(Sch. item 147.8).
S. 53(2) amended by Nos 60/1994 s. 29(1)(a)(b), 46/1998 s. 7(Sch. 1), 50/2012 s. 29(4), 70/2013 s. 4(Sch. 2 item 44.5 (a)(b)).
of a commercial motor vehicle to undergo a preliminary breath test by a prescribed device.

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

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

54 Preliminary testing stations

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

(2) A preliminary testing station—

(a) consists of such facilities as are necessary to enable the making of preliminary breath tests or preliminary oral fluid tests; and

(b) must be identified by suitable signs, lights or other devices.
(3) A police officer who is on duty and wearing uniform at a preliminary testing station may request or signal any person driving a motor vehicle to stop the motor vehicle and remain stopped until a police officer on duty at the station indicates that the driver may proceed.

(4) Police officers who are on duty at a preliminary testing station must ensure that no person is detained there any longer than is necessary.

55 Breath analysis

(1) If a person undergoes a preliminary breath test when required by a police officer or an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure under section 53 to do so and—
(a) the test in the opinion of the police officer or officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure in whose presence it is made indicates that the person's breath contains alcohol; or

(b) the person, in the opinion of the police officer or officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure, refuses or fails to carry out the test in the manner specified in section 53(3)—

any police officer or, if the requirement for the preliminary breath test was made by an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure, any police officer or any officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure may require the person to furnish a sample of breath for analysis by a breath analysing instrument and for that purpose may further require the person to accompany a police officer or an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure authorised in writing by the Corporation or the Secretary to the Department of Transport, Planning and Local Infrastructure as the case requires, for the purposes of section 53 to a place or vehicle where the sample of breath is to be furnished and to remain there until the person has furnished the sample of breath and any further sample required to be furnished under subsection (2A) and been given the certificate referred to in subsection (4) or until 3 hours after
the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

**Example**

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

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

**Example**

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

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

(a) the person has furnished the sample of breath and any further sample required to be furnished under subsection (2A) and been
given the certificate referred to in subsection (4) and the drug assessment has been carried out; or

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

(2A) The person who required a sample of breath under subsection (1), (2) or (2AA) may require the person who furnished it to furnish one or more further samples if it appears to him or her that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 210 litres of exhaled air because the amount of sample furnished was insufficient or because of a power failure or malfunctioning of the instrument or for any other reason whatsoever.

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

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

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

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

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

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

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

(b) the breath analysing instrument is incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by that person for any reason whatsoever—

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

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

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

S. 55(9A) inserted by No. 17/1994 s. 10(6), amended by Nos 100/1995 s. 51(2), 14/2000 ss 17(1), 18, 23/2001 s. 10(3), 94/2003 s. 12, 37/2014 s. 10(Sch. item 147.10(c)).

S. 55(9A)(b) amended by No. 94/2003 ss 8(24), 10(7).
and for that purpose may further require that person to accompany a police officer to a place where the sample is to be taken and to remain there until the sample has been taken or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.

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

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

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

Penalty applying to this subsection: 12 penalty units.

(9E) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under subsection (9A).
(10) A person who is required under this section to furnish a sample of breath for analysis may, immediately after being given the certificate referred to in subsection (4), request the person making the requirement to arrange for the taking in the presence of a police officer of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the police officer.

(11) A part of a sample of blood taken under subsection (10) must be delivered to the person who required the sample of breath under this section.

(12) Nothing in subsection (10) relieves a person from any penalty under section 49(1)(e) for refusing to furnish a sample of breath.

(13) Evidence derived from a sample of breath furnished in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under subsection (10) if reasonable efforts were made to comply with the request.

(14) If the question whether a breath analysing instrument was incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by a person is relevant on a hearing for an offence against section 49(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this subsection, a document—

(a) purporting to be a print-out produced by that instrument in respect of that sample; and
(b) purporting to be signed by the person who operated the instrument—

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

55A  Drug assessment

(1) A police officer may at any time require—

(a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or

(b) the driver of a motor vehicle that has been required to stop at a preliminary testing station under section 54(3); or

(c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours driven or been in charge of a motor vehicle when it was involved in an accident; or

(d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the police officer which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident; or

(e) any person whom he or she has required under section 53 to undergo a preliminary breath test; or
(f) any person required under section 55 to furnish a sample of breath or from whom a sample of blood was required to be taken under section 55(9A)—

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

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

(3) An assessment of drug impairment must be carried out by a police officer authorised to do so by the Chief Commissioner of Police.

(4) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice under subsection (5).

(5) The Corporation may, by notice published in the Government Gazette, specify the procedure to be followed in assessing drug impairment.

(6) The carrying out of an assessment of drug impairment must be video-recorded unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances.
(7) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under paragraph (ba) of section 49(1), a copy of the video-recording, if any, must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

(8) Subject to subsection (9), the video-recording of the carrying out of an assessment of drug impairment on a person is only admissible in a proceeding against that person for an offence against this Act for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the procedure specified in a notice under subsection (5).

(9) Evidence obtained as a result of an assessment of drug impairment carried out on a person is inadmissible as part of the prosecution case in proceedings against that person for any offence if the video-recording of the assessment and any related material and information should have been but has not been destroyed as required by section 55C.

(10) In any proceeding under this Act—

(a) the statement of any police officer that on a particular date he or she was authorised by the Chief Commissioner of Police under subsection (3) to carry out an assessment of drug impairment; or

(b) a certificate purporting to be signed by the Chief Commissioner of Police that a police officer named in it is authorised by the Chief Commissioner.
Commissioner under subsection (3) to carry out an assessment of drug impairment—
is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that police officer.

55B  Blood and urine samples

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

(a) allow a registered medical practitioner or an approved health professional nominated by that police officer to take from the person a sample of that person's blood for analysis;

(b) furnish to a registered medical practitioner or an approved health professional nominated by that police officer a sample of that person's urine for analysis—

and for that purpose may further require the person to accompany a police officer to a place where the sample is to be taken or furnished and to remain there until the sample has been taken or furnished or until 3 hours after the driving, being an occupant of or being in charge of the motor vehicle, whichever is sooner.
(1A) A police officer must not require a person to allow a sample of his or her blood to be taken for analysis under subsection (1)(a) if that person has already had a sample of blood taken from him or her under section 55 after the driving, being an occupant of or being in charge of the motor vehicle.

(2) The registered medical practitioner or approved health professional who takes a sample of blood or is furnished with a sample of urine under this section must deliver a part of the sample to the police officer who required it to be taken or furnished and another part to the person from whom it was taken or by whom it was furnished.

(3) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood, or be furnished with a sample of the urine, of any other person in accordance with this section.

Penalty: 12 penalty units.

(4) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood, or being furnished with any sample of urine, which the practitioner or approved health professional believed on reasonable grounds was required to be taken from, or be furnished by, any person under this section.

(5) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under paragraph (ba) of section 49(1), a copy of a written report on that assessment prepared by the police officer who carried it out and containing the prescribed...
particulars must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

55C Destruction of identifying information

(1) In this section, relevant offence means—

(a) an offence under section 49(1)(ba) or (ea); or
(b) any other offence arising out of the same circumstances; or
(c) any other offence in respect of which the evidence obtained as a result of the assessment of drug impairment has probative value.

(2) If an assessment of drug impairment has been carried out on a person under section 55A and—

(a) the person has not been charged with a relevant offence at the end of the period of 12 months after the assessment; or
(b) the person has been so charged but the charge is not proceeded with or the person is not found guilty of the offence, whether on appeal or otherwise, before the end of that period—

the Chief Commissioner of Police must, subject to subsection (4), destroy, or cause to be destroyed, at the time specified in subsection (3) any video-recording made of the assessment and any related material and information.

(3) A video-recording and any related material and information referred to in subsection (2) must be destroyed—

(a) in a case to which subsection (2)(a) applies, immediately after that period of 12 months; or
(b) in a case to which subsection (2)(b) applies—

(i) within 1 month after the conclusion of the proceeding and the end of any appeal period; or

(ii) if the proceeding has been adjourned under section 75 of the Sentencing Act 1991, within 1 month after dismissal under that section.

(4) A police officer may, before the end of a period referred to in subsection (3)(b), apply without notice to the Magistrates' Court for an order extending that period and, if the Court makes such an order, the reference to the period in subsection (3) is a reference to that period as so extended.

(5) If the Magistrates' Court makes an order under subsection (4), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the assessment of drug impairment was carried out.

(6) If a video-recording or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the person on whom the assessment was carried out so requests, within 14 days after receiving the request, notify that person in writing whether the destruction has occurred.

(7) A person who knowingly—

(a) fails to destroy; or

(b) uses, or causes or permits to be used—a video-recording or related material and information required by this section to be destroyed is guilty of an offence punishable by a
fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

(8) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any video-recording or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

55D Preliminary oral fluid tests

(1) A police officer may at any time require—

(a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or

(b) the driver of a motor vehicle that has been required to stop at a preliminary testing station under section 54(3); or

(c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours driven or been in charge of a motor vehicle when it was involved in an accident; or

(d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the police officer which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident—
to undergo a preliminary oral fluid test by a
prescribed device and, for that purpose, may
further require the person, if inside a motor
vehicle, to leave the motor vehicle for the purpose
of undergoing the test.

(2) An officer of the Corporation or of the
Department of Transport, Planning and Local
Infrastructure who is authorised in writing by the
Corporation or the Secretary, as the case requires,
for the purposes of this section may at any time
require any person he or she finds driving a
commercial motor vehicle or in charge of a
commercial motor vehicle to undergo a
preliminary oral fluid test by a prescribed device
and, for that purpose, may further require the
person, if inside a motor vehicle, to leave the
motor vehicle for the purpose of undergoing the
test.

(3) A preliminary oral fluid test must be carried out in
accordance with the prescribed procedure.

(4) The Corporation or the Secretary may only
authorise an officer for the purposes of this
section if satisfied that the officer has the
appropriate training to carry out a preliminary oral
fluid test in accordance with the prescribed
procedure.

(5) A prescribed device may be comprised of a
collection unit and a testing unit and one or more
other parts.

(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.

(7) Without limiting section 54(3), a person required to undergo a preliminary oral fluid test is required to remain at the place at which the test is being carried out until the sample of oral fluid provided has been tested by a prescribed device.

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

55E Oral fluid testing and analysis

(1) In this section—

- **authorised officer** means a police officer or an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure authorised in writing under subsection (6) by the Chief Commissioner of Police, the Corporation or the Secretary, as the case requires, for the purposes of this section;

- **enforcement officer** means an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure authorised under section 55D(2) for the purposes of section 55D.
(2) If a person undergoes a preliminary oral fluid test when required to do so under section 55D by a police officer or an enforcement officer and—

(a) the test, in the opinion of the police officer or enforcement officer in whose presence it is made, indicates that the person's oral fluid contains a prescribed illicit drug; or

(b) the person, in the opinion of the police officer or enforcement officer, refuses or fails to carry out the test in the manner specified in section 55D(6)—

any police officer or, if the requirement for the preliminary oral fluid test was made by an enforcement officer, any police officer or any enforcement officer may require the person to provide a sample of oral fluid for testing by a prescribed device and, if necessary, analysis by a properly qualified analyst within the meaning of section 57B and for that purpose may further require the person to accompany any police officer or, if the requirement for the preliminary oral fluid test was made by an enforcement officer, any police officer or any enforcement officer to a place or vehicle where the sample is to be provided and to remain there until—

(c) the person has provided the sample and any further sample required to be provided under subsection (5), the sample has been tested by a prescribed device and the person has been given (if necessary) a part of the sample under subsection (11) and complied with any requirement made of him or her under section 59; or
(d) 3 hours after the driving, being an occupant of or being in charge of the motor vehicle—whichever is the sooner.

**Example**

A person may be required to go to a police station, a public building, a booze bus or a police car to provide a sample of oral fluid under this section.

(3) A police officer may require any person who is required to undergo an assessment of drug impairment under section 55A or to furnish a sample of breath for analysis by a breath analysing instrument under section 55 to provide a sample of oral fluid for testing by a prescribed device and, if necessary, analysis by a properly qualified analyst within the meaning of section 57B and may, for that purpose, require the person to remain at the place at which the person is required to remain for the purposes of the assessment or furnishing the sample of breath until—

(a) the person has provided the sample of oral fluid and any further sample required to be provided under subsection (5), the sample has been tested by a prescribed device and the person has been given (if necessary) a part of the sample under subsection (11) and complied with any requirement made of him or her under section 59 and the assessment has been carried out or the sample of breath has been furnished (as the case requires); or

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

(4) The provision of a sample of oral fluid under this section must be carried out in accordance with the prescribed procedure.
(5) The person who required a sample of oral fluid to be provided under subsection (2) or (3) may require the person who provided it to provide one or more further samples if it appears to him or her that the prescribed device is incapable of testing for the presence in the sample, or each of the samples, previously provided of a prescribed illicit drug because the amount of sample provided was insufficient or because of a power failure or malfunctioning of the device or for any other reason whatsoever.

(6) Only a police officer or an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure authorised in writing by the Chief Commissioner of Police, the Corporation or the Secretary, as the case requires, for the purposes of this section may carry out the procedure for the provision of a sample of oral fluid under this section.

(7) The Chief Commissioner of Police may only authorise a police officer, and the Corporation or the Secretary may only authorise an enforcement officer, for the purposes of this section if satisfied that the police officer or enforcement officer (as the case requires) has the appropriate training to carry out the prescribed procedure for the provision of a sample of oral fluid under this section.

(8) A prescribed device may be comprised of a collection unit and a testing unit and one or more other parts.

(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.

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

(11) If a test by a prescribed device of a sample of oral fluid provided under this section indicates, in the opinion of the authorised officer who carried out the procedure in the course of which the sample was provided, that the person's oral fluid contains a prescribed illicit drug, the authorised officer must deliver a part of the sample to the police officer or the enforcement officer who required the sample to be provided and another part to the person by whom the sample was provided.

(12) A person must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with this section if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.

(13) The person who required a sample of oral fluid to be provided under subsection (2) or (3) may require that person to allow a registered medical practitioner or an approved health professional nominated by the person who required the sample to take from him or her a sample of that person's blood for analysis if it appears to him or her that—
(a) that person is unable to furnish the required sample of oral fluid on medical grounds or because of some physical disability or condition; or

(b) the prescribed device is incapable of testing for the presence in the sample of a prescribed illicit drug for any reason whatsoever—

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

(14) The registered medical practitioner or approved health professional who takes a sample of blood under subsection (13) must deliver a part of the sample to the person who required it to be taken and another part to the person from whom it was taken.

(15) A person who allows the taking of a sample of his or her blood in accordance with subsection (13) must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with this section.

(16) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with subsection (13).

Penalty: Penalty applying to this subsection: 12 penalty units.

(17) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional
in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under subsection (13).

(18) A person who is required under this section to provide a sample of oral fluid may, immediately after being given a part of the sample under subsection (11), request the person making the requirement to arrange for the taking in the presence of any police officer (or, if the requirement for the provision of the sample was made by an enforcement officer, any police officer or any enforcement officer) of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the police officer or the enforcement officer in whose presence the sample is taken.

(19) A part of a sample of blood taken under subsection (18) must be delivered to the person who required the oral fluid sample to be provided under this section.

(20) Nothing in subsection (18) relieves a person from any penalty under section 49(1)(eb) for refusing to provide a sample of oral fluid.

(21) Evidence derived from a sample of oral fluid provided in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under subsection (18) if reasonable efforts were made to comply with the request.

(22) In any proceeding under this Act—

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S. 55E(18) amended by No. 37/2014 s. 10(Sch. item 147.14(e)).

S. 55E(22) amended by No. 37/2014 s. 10(Sch. item 147.14(f)(i)).
(a) the statement of any officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure that on a particular date he or she was authorised under section 55D(2) for the purposes of section 55D; or

(b) a certificate purporting to be issued by the Corporation or signed by the Secretary, as the case requires, certifying that a particular officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure named in it is authorised under section 55D(2) for the purposes of section 55D; or

(c) the statement of any police officer or officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure that on a particular date he or she was authorised under subsection (6) for the purposes of this section; or

(d) a certificate purporting to be signed by the Chief Commissioner of Police, issued by the Corporation or signed by the Secretary, as the case requires, certifying that a particular police officer or officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure named in it is authorised under subsection (6) for the purposes of this section—
is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that police officer or officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure.
56 Blood samples to be taken in certain cases

(1) In this section—

* * * * *

doctor means a registered medical practitioner and includes a police surgeon.

(2) If a person of or over the age of 15 years enters or is brought to a place for examination or treatment in consequence of an accident (whether within Victoria or not) involving a motor vehicle, the person must allow a doctor or approved health professional to take from that person at that place a sample of that person's blood for analysis.

Penalty: For a first offence, 12 penalty units; For a second offence, 120 penalty units or imprisonment for 12 months; For any other subsequent offence, 180 penalty units or imprisonment for 18 months.

(3) On convicting a person, or finding a person guilty, of an offence under subsection (2) the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for the time that the court thinks fit, being not less than—
(a) for a first offence, 2 years; and

(b) for a subsequent offence, 4 years.

(4) Subsection (2) does not apply if—

(a) in the opinion of the doctor or approved health professional first responsible for the examination or treatment of the person the taking of a blood sample from that person would be prejudicial to his or her proper care and treatment; or

(b) a police officer has notified the doctor or approved health professional first responsible for the examination or treatment of the person, in writing, that the person has undergone a preliminary breath test which did not indicate that the prescribed concentration of alcohol was exceeded; or

(c) a police officer or a member of an ambulance service has notified the doctor or approved health professional first responsible for the examination or treatment of the person, in writing, that the person was an occupant of and was not driving or in charge of any vehicle involved in the accident; or

(d) a police officer or a doctor or approved health professional has notified the doctor or approved health professional first responsible for the examination or treatment of the person, in writing, that a sample of the person's blood was taken by a doctor or approved health professional before the
person entered or was brought to the place for examination or treatment.

(5) A person to whom subsection (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of his or her blood by a doctor or approved health professional at a place which he or she enters or to which he or she is brought for examination or treatment.

(6) If a sample of a person's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceedings except—

(a) for the purposes of section 57; or

(b) for the purposes of the **Transport Accident Act 1986**—

but may be given—

(c) to the Transport Accident Commission under the **Transport Accident Act 1986** and, for the purposes of applications relating to that Act, to the Victorian Civil and Administrative Tribunal; and

(d) to the Corporation for the purposes of accident research.
(7) A person must not hinder or obstruct a doctor or approved health professional attempting to take a sample of the blood of any other person in accordance with this section.

Penalty: 12 penalty units.

(8) No action lies against a doctor or approved health professional in respect of anything properly and necessarily done by the doctor or approved health professional in the course of taking any sample of blood which the doctor or approved health professional believes on reasonable grounds was required or allowed to be taken from any person under this section.

(9) A blood sample that is, after 9 December 1987, taken from a person by a doctor or approved health professional who honestly and reasonably believes that he or she is required to take the sample, whether or not the person consents to the taking, is deemed to have been taken by the doctor or approved health professional who was first responsible for the examination or treatment of that person.

57 Evidentiary provisions—blood tests

(1) In this section—

(a) properly qualified analyst means—

(i) an approved analyst; or

(ii) a person who is considered by the presiding judge, a coroner, or the Magistrates' Court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (4) or (4A), as the case requires; and
Part 5—Offences involving alcohol or other drugs

Road Safety Act 1986
No. 127 of 1986

(2) If the question whether any person was or was not at any time under the influence of intoxicating liquor or any other drug or if the question as to the presence of alcohol or any other drug or the concentration of alcohol in the blood of any person at any time or if a finding on the analysis of a blood sample is relevant—

(a) on a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

(ab) on a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the Crimes Act 1958 arising out of the driving of a motor vehicle; or
(b) on a trial or hearing for an offence against section 318(1) or 319(1) of the Crimes Act 1958 arising out of the driving of a motor vehicle but not the operating of a vessel; or

(c) on a hearing for an offence against section 49(1) of this Act; or

(d) in any inquest or investigation held by a coroner—

then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the taking, after that person drove or was in charge of a motor vehicle, of a sample of blood from that person by a registered medical practitioner or an approved health professional, of the analysis of that sample of blood by a properly qualified analyst within twelve months after it was taken, of the presence of alcohol or any other drug and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis and, if a drug is present, evidence may be given by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to drive properly).
(3) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any proceedings referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood analysed by the analyst is admissible in evidence in any proceedings referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4A) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of blood analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Act is admissible in evidence in any proceedings referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4B) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a person's ability to drive properly) is admissible in evidence in any proceedings referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
(5) A certificate given under this section must not be tendered in evidence at a trial or hearing referred to in subsection (2)(a), (ab), (b) or (c) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(5A) A copy of a certificate given under this section may be served on the accused by—

(a) delivering it to the accused personally; or

(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(6) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a trial or hearing referred to in subsection (2)(a), (ab), (b) or (c) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters depoosed to in the affidavit or stated in the statutory declaration.

(7) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.
(7A) The court must not grant leave under subsection (7) unless it is satisfied—

(a) that the informant has been given at least 7 day's notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the blood referred to in a certificate given by an analyst under subsection (4) was not that of the accused; or

(ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or

(iia) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the blood not been contaminated in that way; or

(iii) there is a reasonable possibility that the sample was not taken in accordance with the Code of Practice for Taking Blood Samples from Road Accident Victims; or
(iiiia) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample drove or was in charge of the vehicle; or

(iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(7B) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under subsection (7).

(8) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the person to be examined or from whom a sample of blood is to be collected has expressed consent to that examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the person was in fact incapable by reason of his or her mental condition from effectively giving consent to the examination or collection.

(9) Except as provided in sections 55(9A), 55B, 55E(13) and 56, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the person from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.
(9A) Without limiting section 56(6), evidence of a kind permitted to be given by subsection (2) in legal proceedings of a kind referred to in subsection (2)(a), (ab), (b), (c) or (d) is inadmissible as evidence in any other legal proceedings except proceedings for the purposes of the Accident Compensation Act 1985, the Workplace Injury Rehabilitation and Compensation Act 2013 or the Transport Accident Act 1986.

(10) The mere failure or refusal of a person to express consent must not be used in evidence against that person or referred to in any way against that person's interests in any proceedings.

(11) A certificate purporting to be signed by a person—

(a) who took a blood sample; or

(b) who analysed a blood sample—

in accordance with provisions of an Act of another State or a Territory that substantially corresponds to section 56 of this Act and in accordance with any regulations made under the corresponding Act is admissible in evidence in any proceeding referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(12) Subsections (5), (5A), (6), and (7) apply in respect of a certificate referred to in subsection (11) as if the certificate was given under this section.
57A  Evidentiary provisions—urine tests

(1) In this section—

approved analyst means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section;

approved expert means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified expert for the purposes of this section;

prescribed legal proceeding means—

(a) a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

(b) a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the Crimes Act 1958 arising out of the driving of a motor vehicle; or

(c) a trial or hearing for an offence against section 318(1) or 319(1) of the Crimes Act 1958 arising out of the driving of a motor vehicle but not the operating of a vessel; or

(d) a hearing for an offence against section 49(1) of this Act; or

(e) in any inquest or investigation held by a coroner;

properly qualified analyst means—

(a) an approved analyst; or

properly qualified expert means—

(a) an approved expert; or
(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (4);

properly qualified expert means—

(a) an approved expert; or

(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under subsection (5).

(2) If a question as to the presence of a drug in the body of a person at any time is relevant in a prescribed legal proceeding then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

(a) of the furnishing by that person, after that person drove or was in charge of a motor vehicle, of a sample of urine to a registered medical practitioner or an approved health professional;

(b) of the analysis of that sample of urine by a properly qualified analyst within twelve months after it was taken;

(c) of the presence of a drug in that sample of urine at the time of analysis;
(d) by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to drive properly).

(3) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of urine analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Act is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(5) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a person's ability to drive properly) is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(6) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (2) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.
(6A) A copy of a certificate given under this section may be served on the accused by—
   (a) delivering it to the accused personally; or
   (b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(7) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.

(8) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.

(9) The court must not grant leave under subsection (8) unless it is satisfied—
   (a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and
   (b) that—
      (i) there is a reasonable possibility that the urine referred to in a certificate given by an analyst under subsection (4) was not that of the accused; or
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(ii) there is a reasonable possibility that the urine referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the urine not been contaminated in that way; or

(iia) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample drove or was in charge of the vehicle; or

(iii) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(10) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend the court on the hearing of an application for leave under subsection (8).

(11) Evidence of a kind permitted to be given by subsection (2) in a prescribed legal proceeding is inadmissible as evidence in any other legal proceedings.

57B Evidentiary provisions—oral fluid tests

(1) In this section—

approved analyst means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section;
properly qualified analyst means—

(a) an approved analyst; or

(b) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (4).

(2) If a question as to the presence of a prescribed illicit drug in the body of a person at any time is relevant—

(a) on a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

(b) on a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the Crimes Act 1958 arising out of the driving of a motor vehicle; or

(c) on a trial or hearing for an offence against section 318(1) or 319(1) of the Crimes Act 1958 arising out of the driving of a motor vehicle but not the operating of a vessel; or

(d) on a hearing for an offence against section 49(1) of this Act; or

(e) in any proceedings conducted by a coroner—then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—

(f) of the providing by that person, after that person drove or was in charge of a motor vehicle, of a sample of oral fluid under section 55E;
(g) of the analysis of that sample of oral fluid by a properly qualified analyst within twelve months after it was taken;

(h) of the presence of a prescribed illicit drug in that sample of oral fluid at the time of analysis.

(3) A certificate containing the prescribed particulars purporting to be signed by the person who carried out the procedure in the course of which the sample of oral fluid was provided is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(4) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of oral fluid analysed by the analyst of a substance that is a prescribed illicit drug is admissible in evidence in any hearing referred to in subsection (2) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(5) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (2) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(6) A copy of a certificate given under this section may be served on the accused by—

(a) delivering it to the accused personally; or
(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(7) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (2) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.

(8) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was provided, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.

(9) The court must not grant leave under subsection (8) unless it is satisfied—

(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the oral fluid referred to in a certificate given by an analyst under subsection (4) was not that of the accused; or
(ii) there is a reasonable possibility that the oral fluid referred to in a certificate given under subsection (3) had become contaminated in such a way that a drug found on analysis would not have been found had the oral fluid not been contaminated in that way; or

(iii) there is a reasonable possibility that the sample was not taken within 3 hours after the person who provided the sample drove or was in charge of the vehicle; or

(iv) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(10) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was provided, to attend the court on the hearing of an application for leave under subsection (8).

(11) Evidence of a kind permitted to be given by subsection (2) in legal proceedings of a kind referred to in subsection (2)(a), (b), (c), (d) or (e) is inadmissible as evidence in any other legal proceedings.

58 Evidentiary provisions—breath tests

(1) If the question whether any person was or was not at any time under the influence of intoxicating liquor or if the question as to the presence or the concentration of alcohol in the breath of any person at any time or if a result of a breath analysis is relevant—
(a) on a trial for murder or manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle; or

(ab) on a trial or hearing for an offence against Subdivision (4) of Division 1 of Part I of the **Crimes Act 1958** arising out of the driving of a motor vehicle; or

(b) on a trial or hearing for an offence against section 318(1) or 319(1) of the **Crimes Act 1958** arising out of the driving of a motor vehicle but not the operating of a vessel; or

(c) on a hearing for an offence against section 49(1) of this Act; or

(d) in any proceedings conducted by a coroner—

then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the concentration of alcohol indicated to be present in the breath of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 55 and the concentration of alcohol so indicated is, subject to compliance with section 55(4), evidence of the concentration of alcohol present in the breath of that person at the time his or her breath is analysed by the instrument.
(2) A document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the breath of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in any proceedings referred to in subsection (1) and, subject to subsection (2E), is conclusive proof of—

(a) the facts and matters contained in it; and

(b) the fact that the instrument used was a breath analysing instrument within the meaning of this Act; and

(c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 55; and

(d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and

(e) the fact that the instrument was in proper working order and properly operated; and

(f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the instrument and given to the accused person as soon as practicable after the sample of breath was analysed—
unless the accused person gives notice in writing
to the informant not less than 28 days before the
hearing, or any shorter period ordered by the court
or agreed to by the informant, that he or she
requires the person giving the certificate to be
called as a witness or that he or she intends to
adduce evidence in rebuttal of any such fact or
matter.

(2A) A notice under subsection (2) must specify any
fact or matter with which issue is taken and
indicate the nature of any expert evidence which
the accused person intends to have adduced at the
hearing.

(2B) The accused person may not, except with the
leave of the court, introduce expert evidence at the
hearing if the nature of that evidence was not
indicated in a notice under subsection (2).

(2C) If an accused person gives notice to the informant
in accordance with subsection (2) that he or she
requires the person giving a certificate to be called
as a witness and the court is satisfied that that
person—

(a) is dead; or

(b) is unfit by reason of his or her bodily or
mental condition to testify as a witness; or

(c) has ceased to be a police officer or is out of
Victoria and it is not reasonably practicable
to secure his or her attendance; or

(d) cannot with reasonable diligence be found—
the court must order that subsection (2) has effect
as if the notice had not been given.
(2D) A certificate referred to in subsection (2) remains admissible in evidence even if the accused person gives a notice under that subsection but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that subsection.

(2E) Nothing in subsection (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in subsection (2) and, if the informant does so, the certificate remains admissible in evidence but ceases to be conclusive proof of that fact or matter only.

(3) In any proceeding under this Act—

(a) the statement of any person that on a particular date he or she was authorised by the Chief Commissioner of Police under section 55 to operate breath analysing instruments; or

(b) a certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner under section 55 to operate breath analysing instruments—is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that person.

(4) Evidence by a person authorised to operate a breath analysing instrument under section 55—

(a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument within the meaning of this Part;

(b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her;
(c) that, in relation to the breath analysing instrument, all regulations made under this Part with respect to breath analysing instruments were complied with—

is, in the absence of evidence to the contrary, proof of those facts.

(5) The statement on oath of a person authorised to operate a breath analysing instrument under section 55 when called as a witness that any apparatus used by him or her on any occasion under section 55 had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions—

(a) "Alcotest 7110" and "3530791"; or

(b) "Alcotest 9510 AUS" and "8320869"—

whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument within the meaning of this Act.

58A Avoidance of certain provisions in contracts of insurance

(1) Any covenant, term, condition, or other provision of a contract or other agreement is void to the extent that it purports to exclude or limit the liability of an insurer under a contract of insurance in the event of the driver or person in charge of a large vehicle having a concentration of alcohol present in his or her breath or blood as indicated by an analysis of his or her breath or blood of not more than -05 grams per 210 litres of exhaled air or 100 millilitres of blood (as the case requires).
(2) Subsection (1) applies to a contract of insurance whether entered into before or after the commencement of section 14 of the Road Safety (Further Amendment) Act 1991.

58B Prohibited analysis

(1) In this section—

DNA database has the meaning given by section 464(2) of the Crimes Act 1958;

Part 5 sample means a sample of blood, urine or oral fluid taken from, or furnished or provided by, a person under this Part;

permitted purpose, in relation to an analysis of a Part 5 sample, means the purpose of determining—

(a) whether alcohol or any other drug is present in the sample; or

(b) the level of concentration in which alcohol or any other drug is present in the sample;

prohibited analysis, in relation to a Part 5 sample, means analysis of the sample for a purpose other than the permitted purpose.

Example

Deriving a DNA profile from the sample is a purpose for which analysis is prohibited.

(2) A person who intentionally or recklessly—

(a) supplies a Part 5 sample, or causes a Part 5 sample to be supplied, to a person for prohibited analysis; or

(b) carries out a prohibited analysis of a Part 5 sample; or
Road Safety Act 1986
No. 127 of 1986
Part 5—Offences involving alcohol or other drugs

(c) includes, or causes the inclusion of, information derived from a prohibited analysis on a DNA database kept under a law of this State or the Commonwealth or of another State or a Territory—

is guilty of an offence and liable to imprisonment for a term of not more than 12 months or to a fine of not more than 120 penalty units.
PART 6—OFFENCES AND LEGAL PROCEEDINGS

59 General duty of driver or person in charge of motor vehicle

(1) The driver or person in charge of a motor vehicle on a highway has the following duties—

(a) to stop the motor vehicle, produce for inspection his or her driver licence document or learner permit document and state his or her name and address if requested or signalled to do so by—

(i) a police officer or an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure (being an officer of the Corporation or Department of Transport, Planning and Local Infrastructure authorised in writing by the Corporation or the Secretary to the Department of Transport, Planning and Local Infrastructure, as the case requires, in that behalf); or

(ii) an officer of or person authorised in writing in that behalf by any municipal council who has reasonable grounds for believing that any provision of the regulations relating to the mass or dimensions of a motor vehicle or trailer or to the number of hours during which a person may drive a motor vehicle or to the carrying of a log book on a motor vehicle is being contravened; and
(b) to obey any lawful direction given to him or her by a police officer under subsection (5); and

(c) if requested or signalled to do so by a police officer or an officer of the Corporation (being an officer of the Corporation authorised in writing by the Corporation in that behalf), to stop the motor vehicle, produce for inspection his or her log book, permit any entry in the log book to be copied and permit the person inspecting it to make any entry in it and to search the motor vehicle if that person has reasonable grounds for suspecting that more than one log book is carried on the vehicle; and

(d) if requested or signalled to do so by a police officer or an officer of the Corporation (being an officer of the Corporation authorised in writing by the Corporation in that behalf) or by an officer of or person authorised in writing in that behalf by any municipal council, to stop the motor vehicle and allow it together with its load and any trailer attached to the motor vehicle and the load of the trailer (whether those loads are goods or passengers or both) to be weighed or to be taken to be weighed at a weighbridge or weighing machine that is agreed on by the driver or person in charge of the motor vehicle and the person making the request or, if there is no agreement, at the weighbridge or weighing machine that is nominated by the person making the request.
(1A) The driver or person in charge of a motor vehicle that is in, or being driven from or into, a railway car park or municipal council controlled car park at or in the vicinity of a designated place has the following duties—

(a) to stop the motor vehicle, produce for inspection his or her driver licence document or learner permit document and state his or her name and address if requested or signalled to do so by a protective services officer; and

(b) to obey any lawful direction given to him or her by a protective services officer under subsection (5A).

(2) Subject to subsections (3) and (4), a person who fails to do anything that he or she is required to do under subsection (1) or (1A), or who when required to state his or her name and address states a false name or address, is guilty of an offence and liable—

(a) if the offence consists of failing to obey any lawful direction given by a police officer or a protective services officer or failing to produce for inspection his or her driver licence document or learner permit document, to a penalty of not more than 5 penalty units;

(b) if the offence consists of failing to produce for inspection his or her log book or failing to state his or her name or address or stating a false name or address or failing to permit an entry in his or her log book to be copied or failing to permit an entry to be made in his or her log book or failing to permit his or her vehicle to be searched for another log book,
to a penalty of not more than 5 penalty units 
or imprisonment for a term of not more than 
1 month;

(c) if the offence consists of failing to stop the 
motor vehicle or failing to allow it together 
with its load to be weighed, to a penalty, in 
the case of a first offence, of not more than 
10 penalty units or, in the case of a 
subsequent offence, of not more than 
20 penalty units or imprisonment for a term 
of not more than 4 months.

(3) A person, other than a person who holds a 
probationary driver licence or who is driving or in 
charge of a large vehicle in respect of which 
section 19(5) applies or who is driving or in 
charge of a motor cycle during the period of 
3 years from the issue of a driver licence which 
authorises him or her to drive a motor cycle (or if 
that licence is suspended, whether by a court or 
the Corporation, during that 3 year period, during 
an additional period equal to the period of the 
suspension) or who has been issued with a driver 
licence or learner permit under an order of the 
Magistrates' Court made on an application for a 
licence eligibility order or by the Corporation 
under section 31KA, who fails to produce for 
inspection his or her driver licence document or 
learner permit document is not guilty of an 
offence if that person—

(a) gives a reasonable excuse for the failure; and 
(b) provides a specimen of his or her signature; and
(c) within 7 days produces his or her driver licence document or learner permit document at the police station (if any) specified by the police officer or other person who requested its production.

(4) A driver or person in charge of a motor vehicle who fails to stop when required to do so in accordance with subsection (1)(a) or (1A)(a) is not guilty of an offence if—

(a) the person making the request or signal is not in uniform; and

(b) the driver or person in charge believed that that person was not—

(i) a police officer, a protective services officer or an authorised officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure, as the case requires; or

(ii) an officer of or person authorised in writing in that behalf by a municipal council.
(5) A police officer may give such reasonable directions to a person driving or in charge of a motor vehicle on a highway as are, in the opinion of that police officer, necessary—

(a) for carrying into execution the provisions of this Act or the regulations; or

(b) for the purposes of any traffic survey being carried out in the vicinity of the highway.

(5A) A protective services officer may give to a person driving or in charge of a motor vehicle that is in, or being driven from or into, a railway car park or municipal council controlled car park at or in the vicinity of a designated place such reasonable directions as are, in the opinion of the officer, necessary for carrying into execution the provisions of this Act or the regulations.

(6) If a driver or person in charge of a motor vehicle who is requested under subsection (1)(d) to allow his or her motor vehicle together with its load to be weighed fails to allow it to be so weighed, the person making the request may impound the vehicle and its load, together with any trailer attached to the vehicle and the load of the trailer, and may cause the vehicle to be driven or towed onto a weighing device or to a weighbridge or weighing machine that is agreed on by the driver or person in charge and the person making the request or, if there is no agreement, to the weighbridge or weighing machine that is nominated by the person making the request, to be weighed.

(7) If a motor vehicle that is used on a highway and its load, together with any trailer attached to the motor vehicle and the load of the trailer, exceeds the prescribed maximum weight or any prescribed maximum dimension, a police officer or an officer of the Corporation (being an officer of the
Corporation authorised in writing by the Corporation in that behalf may require the driver or person in charge of the motor vehicle to unload any part of the load that is necessary to bring the motor vehicle, trailer or load within the prescribed maximum weight or dimension.

(8) If a driver or person in charge of a motor vehicle fails to comply with a requirement under subsection (7) to unload—

(a) the driver or person in charge is guilty of an offence and is liable for a first offence to a penalty of not more than 5 penalty units and for a subsequent offence to a penalty of not more than 10 penalty units; and

(b) the person making the requirement may drive the motor vehicle and the trailer, if any, to a police station or other convenient place and the vehicle, trailer and load may be impounded there by any police officer.

(9) A reference in this section to a driver licence document or learner permit document includes a reference to any other document which evidences the authorisation of the driver to drive the motor vehicle.

(10) Neither the Crown nor the person making a request under subsection (1)(d) or a requirement under subsection (7) nor any other person is liable for any loss or damage occasioned by or arising out of anything done in the exercise or purported exercise in good faith of the powers conferred by this section.
60 Duty of owner of motor vehicle to give information about driver

(1) An owner of a motor vehicle, or a relevant nominated person in relation to a motor vehicle, is guilty of an offence if, when required to do so by a police officer who is acting in the execution of duty, the person fails to give any information which it is within the power of the person to give and which may lead to the identification of any person who was the driver of the motor vehicle on any occasion or had possession or control of the motor vehicle on any occasion or fails to make all reasonable enquiries in order to obtain that information.

(1A) For the purposes of subsection (1) a relevant nominated person means a person nominated in an effective known user statement (within the meaning of Part 6AA) or sold vehicle statement (within the meaning of that Part) as being the responsible person (within the meaning of that Part) in relation to a motor vehicle at the time when the motor vehicle was involved in an offence that is an operator onus offence for the purposes of that Part.

(1B) A police officer who is acting in the execution of duty may require any person whom the police officer believes on reasonable grounds to have had possession or control of a motor vehicle on a particular occasion to give any information which it is within the power of the person to give and which may lead to the identification of any person who was the driver of the motor vehicle on that occasion or had possession or control of the motor vehicle on that occasion.

(1C) A person who, without reasonable excuse, refuses or fails to comply with a requirement made under subsection (1B) is guilty of an offence.
(2) A person guilty of an offence under this section is liable—

(a) if the requirement is made by a police officer who is investigating an accident involving a motor vehicle that resulted in a person being killed or suffering serious injury—to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than 4 months or to both;

(b) in any other case—to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than 2 months or to both—

and on conviction the court must cancel all driver licences and permits held by that person and, whether or not that person holds a driver licence, disqualify him or her from obtaining one for, in the case of a first offence, at least 2 years and, in the case of a subsequent offence, at least 4 years.

(3) For the purposes of this section owner means—

(a) the owner or the person in whose name the motor vehicle was registered at the time when the vehicle was being driven by the person about whom the information is sought or at the time when the requirement is made; or

(b) any person who had possession or control of the vehicle at either of those times; or

(c) if the motor vehicle displayed a number plate at either of those times—

(i) the person who, at the time at which the registration number borne by that number plate was last assigned by the Corporation or the corresponding body
under a corresponding Act, was the person in whose name the motor vehicle, to which that registration number was assigned, was registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, whether or not that motor vehicle is the same as the motor vehicle about which information is sought; or

(ii) the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being entitled, or last entitled, to use or possess that number plate at the time when the vehicle was being driven by the person about whom the information is sought or at the time when the requirement is made.

(4) A requirement under this section may be made orally or in writing.

(5) A written requirement may be sent by post addressed to the person to whom it is made at the person’s home address or at an authorised address (within the meaning of section 163A of the Infringements Act 2006).

(6) A written requirement sent by post to a person at an authorised address (within the meaning of section 163A of the Infringements Act 2006) and returned undelivered to its sender is deemed to be served 14 days after the date specified in the requirement as the date of the requirement, despite it being returned to its sender as undelivered.
(7) Subsection (6) has effect despite anything to the contrary in section 49(1) of the Interpretation of Legislation Act 1984.

60A Duty of owner of trailer to give information

(1) An owner of a trailer, or a relevant nominated person in relation to a trailer or a motor vehicle to which a trailer was attached on any occasion, is guilty of an offence if, when required to do so by a police officer who is acting in the execution of duty, the person fails to give any information which it is within the power of the person to give and which may lead to the identification of any person who was the driver of the motor vehicle to which the trailer was attached on any occasion or had possession or control of the trailer on any occasion or fails to make all reasonable enquiries in order to obtain that information.

(1A) For the purposes of subsection (1) a relevant nominated person means a person nominated in an effective known user statement (within the meaning of Part 6AA) or sold vehicle statement (within the meaning of that Part) as being the responsible person (within the meaning of that Part) in relation to a trailer or a motor vehicle to which a trailer was attached at the time when the trailer was involved in an offence that is an operator onus offence for the purposes of that Part.
(1B) A police officer who is acting in the execution of
duty may require any person whom the police
officer believes on reasonable grounds to have had
possession or control of a trailer or a motor
vehicle on a particular occasion to give any
information which it is within the power of the
person to give and which may lead to the
identification of any person who was the driver of
the trailer or of a motor vehicle to which the
trailer was attached on that occasion or had
possession or control of the trailer or motor
vehicle on that occasion.

(1C) A person who, without reasonable excuse, refuses
or fails to comply with a requirement made under
subsection (1B) is guilty of an offence.

(2) A person guilty of an offence under this section is
liable—

(a) if the requirement is made by a police officer
who is investigating an accident involving a
motor vehicle or trailer that resulted in a
person being killed or suffering serious
injury—to a penalty of not more than
20 penalty units or to imprisonment for a
term of not more than 4 months or to both;

(b) in any other case—to a penalty of not more
than 10 penalty units or to imprisonment for
a term of not more than 2 months or to both.

(3) For the purposes of this section owner means—

(a) the owner or the person in whose name the
trailer was registered at the time when the
trailer was attached to the motor vehicle that
was being driven by the person about whom
the information is sought or at the time when
the requirement is made; or

(b) any person who had possession or control of
the trailer at either of those times; or
(c) if the trailer displayed a number plate at either of those times—

(i) the person who, at the time at which the registration number borne by that number plate was last assigned by the Corporation or the corresponding body under a corresponding Act, was the person in whose name the trailer, to which that registration number was assigned, was registered under this Act or a corresponding Act of the Commonwealth or of another State or Territory of the Commonwealth, whether or not that trailer is the same as the trailer about which information is sought; or

(ii) the person whose name is disclosed in the records kept by the Corporation or the corresponding body under a corresponding Act as being entitled, or last entitled, to use or possess that number plate at the time when the trailer was attached to the motor vehicle that was being driven by the person about whom the information is sought or at the time when the requirement is made.

(4) A requirement under this section may be made orally or in writing.

(5) A written requirement may be sent by post addressed to the person to whom it is made at the person's home address or at an authorised address (within the meaning of section 163A of the Infringements Act 2006).
(6) A written requirement sent by post to a person at an authorised address (within the meaning of section 163A of the Infringements Act 2006) and returned undelivered to its sender is deemed to be served 14 days after the date specified in the requirement as the date of the requirement, despite it being returned to its sender as undelivered.

(7) Subsection (6) has effect despite anything to the contrary in section 49(1) of the Interpretation of Legislation Act 1984.

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

(1) If owing to the presence of a motor vehicle an accident occurs whereby any person is injured or any property (including any animal) is damaged or destroyed, the driver of the motor vehicle—

(a) must immediately stop the motor vehicle; and

(b) must immediately render such assistance as he or she can; and

(c) must at the scene of the accident as soon as possible give his or her name and address and also the name and address of the owner of the motor vehicle and the identifying number of the motor vehicle—

(i) to any person who has been injured or to the owner of any property which has been damaged or destroyed; or

(ii) to a person representing the injured person or the owner of the property; and

(d) must at the scene of the accident as soon as possible give those names and addresses to any police officer who is present; and
(e) if any person is injured and no police officer 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 police officer 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 motor vehicle which has been left standing on a highway moves of its own accord from the position in which it was left and is involved in an accident whereby any person is injured or any property (including any animal) is damaged or destroyed, the person who left the motor vehicle so standing must as soon as possible after becoming aware of the accident comply as far as the circumstances permit with the requirements of subsection (1).

(3) If—

(a) as a result of an accident involving a motor vehicle a person is killed or suffers serious injury; and

(b) the driver of the motor 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 motor vehicle does not comply with the requirements of paragraph (a) or (b) of subsection (1) in relation to the accident—

the driver is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum) or a level 5 fine (1200 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 paragraph (c), (d) or (e) of subsection (1) is guilty of an offence; or

(b) as a result of the accident a person is otherwise injured then a person who contravenes any provision of this section is guilty of an offence—

and liable for a first offence to a penalty of not more than 80 penalty units or to imprisonment for a term of not more than 8 months and for a subsequent offence to a penalty of not more than 240 penalty units or to imprisonment for a term of not less than 4 months and not more than 2 years.

(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 5 penalty units or to imprisonment for a term of not more than 14 days and for a subsequent offence to a penalty of not more than 10 penalty units or to imprisonment for a term of not less than 14 days and not more than 1 month.
(6) On conviction of a person for, or finding a person guilty of, an offence against this section, if a person is killed or suffers serious injury as a result of the accident, the court must cancel all driver licences and permits held by the convicted person and, whether or not that person holds a driver licence, disqualify him or her from obtaining one for—

(a) in the case of a first offence, at least 4 years if a conviction is recorded and at least 2 years in any other case; and

(b) in the case of a subsequent offence, at least 8 years if a conviction is recorded and at least 4 years in any other case.

(7) 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.

(8) 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.

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 police officer who is present; and

(e) if any person is injured and no police officer 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 police officer 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.

### 62 Power to prevent driving by incapable persons

(1) A police officer, or a protective services officer on duty at a designated place, who is of the opinion on reasonable grounds that a person, driving or about to drive a motor vehicle, is by reason of his or her physical or mental condition incapable of having proper control of the motor vehicle may do all or any of the following things, namely—

(a) forbid that person to drive the motor vehicle while so incapable;

(b) require that person to deliver up forthwith all ignition or other keys of the motor vehicle in his or her actual possession;

(c) take such other steps as may in the opinion of the police officer or protective services officer be necessary to render the motor vehicle immobile or to remove it to a place of safety.

(1A) Without limiting the grounds on which a police officer or a protective services officer may form the opinion that a person is, by reason of his or her physical or mental condition, incapable of having proper control of a motor vehicle, the fact that—

(a) the person has furnished a sample of breath for analysis by a breath analysing instrument under section 55 and the result of the analysis as recorded or shown by the breath
analysing instrument indicates that the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her breath; or

(b) a test by a prescribed device under section 55E of a sample of oral fluid provided under that section indicates, in the opinion of the person who carried out the test, that the person's oral fluid contains a prescribed illicit drug—

is of itself a sufficient ground for forming that opinion.

(2) Nothing in subsection (1) authorises the detention of any keys or the immobilization or detention of any motor vehicle for any longer period than is necessary in all the circumstances of the case in the interest of the person driving or about to drive it or of any other person or of the public.

(3) Subject to subsection (4), a person who contravenes any prohibition or requirement made by a police officer or a protective services officer under subsection (1) or in any manner attempts to obstruct any police officer or any protective services officer in the exercise of any power conferred on that police officer or protective services officer by this section is guilty of an offence and liable for a first offence to a penalty of not more than 5 penalty units and for any subsequent offence to a penalty of not more than 8 penalty units or to imprisonment for a term of not more than 1 month.

(4) A court may only find a person guilty of an offence under subsection (3) if the court is satisfied that the police officer or the protective services officer had reasonable grounds for believing that in all the circumstances of the case the action taken by him or her under

S. 62(3) amended by Nos 43/2011 s. 41(4), 37/2014 s. 10(Sch. item 147.20(c)).

S. 62(4) amended by Nos 43/2011 s. 41(5), 37/2014 s. 10(Sch. item 147.20(d)).
subsection (1) was necessary in the interest of that person or of any other person or of the public.

63 Power to enter motor vehicles

A police officer, or a protective services officer on duty at a designated place, may, for the purpose of establishing the identity of the driver of a motor vehicle or arresting a person or carrying out the provisions of section 53, 54, 55 or 55A, enter the motor vehicle using, if necessary, reasonable force, if the driver refuses or fails to obey any lawful direction given to him or her by the police officer or the protective services officer.

63A Removal of vehicles obstructing driveways etc.

(1) A police officer may move or cause to be moved a vehicle which is parked or left standing in front of a—

(a) right-of-way; or

(b) passage; or

(c) private drive—

or so close to a right-of-way, passage or private drive as to obstruct access to, or egress from, it by vehicles or pedestrians.

(2) A police officer may move or cause to be moved a vehicle which—

(a) is parked or left standing contrary to the regulations; and

(b) in the opinion of the police officer, is—

(i) a danger to other road users; or

(ii) causing or likely to cause traffic congestion.
(3) A police officer acting in accordance with subsection (1) or (2) may—

(a) enter a vehicle using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving it; and

(b) move the vehicle to the nearest convenient place.

(4) The Chief Commissioner of Police may recover from the registered operator, or an owner, of a vehicle moved under subsection (3) any reasonable costs incurred in moving it.

63B Use of tyre deflation devices in police pursuits

(1) The Chief Commissioner of Police may authorise the use by police officers 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 police officers.

(2) A provision made by or under this or any other Act that would operate to prohibit or restrict the placement or deployment on or near a road or road related area of a tyre deflation device does not apply to the placing or deploying of a tyre.
deflation device by a police officer acting in the exercise of his or her duties.

64 Dangerous driving

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

(2) A person who contravenes subsection (1) is guilty of an offence and is liable to a fine of not more than 240 penalty units or to imprisonment for a term of not more than 2 years or both and on finding a person guilty of the offence the court must, if the offender holds a driver licence or permit, cancel that licence or permit and must, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time (not being less than 6 months or, if the vehicle was driven at a speed of 45 kilometres per hour or more in excess of that permitted, 12 months) as the court thinks fit.

(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.

(3) If on a prosecution for an offence under this section the court is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against section 65, the court may convict the accused of an offence against section 65 and punish the accused accordingly.
(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

64A Driving a motor vehicle when directed to stop

(1) A person must not drive a motor vehicle if—

(a) he or she knows that he or she has been given a direction to stop; or

(b) he or she ought reasonably to know that he or she has been given a direction to stop.

Penalty: For a first offence, 60 penalty units or imprisonment for 6 months or both;

For a subsequent offence, 120 penalty units or imprisonment for 12 months or both.

(2) Subsection (1) does not apply to a person who is driving a motor vehicle who stops the motor vehicle as soon as practicable after being given a direction to stop.

(3) On a person being found guilty of a first offence under subsection (1), the court must—

(a) if the offender holds a driver licence or permit, cancel the licence or permit; and

(b) whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than 6 months.
(4) On a person being found guilty of a subsequent offence under subsection (1), the court must—

(a) if the offender holds a driver licence or permit, cancel the licence or permit; and

(b) whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than 12 months.

(5) In this section direction to stop means any action taken by a police officer, or a protective services officer on duty at a designated place, to indicate to a driver of a motor vehicle that he or she must stop the motor vehicle, including but not limited to the following—

(a) the giving of hand signals or the display of signs by the police officer or protective services officer;

(b) the—

(i) flashing of headlights of; or

(ii) use of red and blue flashing lights on;

or

(iii) sounding of an alarm, siren or other warning device from—

a motor vehicle that is being driven by a police officer in the course of his or her duties as a police officer.
Part 6—Offences and legal proceedings

65 Careless driving

(1) A person who drives a motor vehicle on a highway carelessly is guilty of an offence and liable for a first offence to a penalty of not more than 12 penalty units and for a subsequent offence to a penalty of not more than 25 penalty units.

(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.

65A Improper use of motor vehicle

(1) A person must not drive a motor vehicle in a manner which causes the motor vehicle to undergo loss of traction by one or more of the motor vehicle's wheels.

Penalty: 5 penalty units.

(2) In a proceeding for an offence against subsection (1) it is a defence to the charge for the accused to prove that he or she had not intentionally caused the alleged loss of traction.

(2A) Subsection (1) does not apply to a person who drives a motor vehicle in the manner described in subsection (1) on land other than a highway in the course of—
(a) an event or function that—
   (i) is conducted at a motor sport venue; and
   (ii) is authorised by the operator of the venue; or

(b) an event or function that—
   (i) is organised, conducted or sanctioned by a motoring organisation; and
   (ii) is conducted in accordance with the rules of conduct of the motoring organisation; or

(c) driver training that—
   (i) is supervised by a person for financial gain or in the course of any trade or business; and
   (ii) is conducted at a venue designed, or primarily used, for driver training or at a motor sport venue; or

(d) vehicle testing by, or authorised by, a manufacturer of vehicles or vehicle components; or

(e) training activities of Victoria Police.

(2B) In subsection (2A)—

   motor sport venue means a permanent venue for motor sports that—
   (a) has a permanent track; and
   (b) is used for 2 or more motor sport events or functions each year; and

S. 65A(2B) inserted by No. 32/2011 s. 9(1).
(c) is on land the use of which for motor sports and any development associated with that use is lawful.

Examples
1 Calder Park Raceway.
2 Sandown Motor Raceway.
3 Winton Motor Raceway.

(2C) Subsection (2A) does not affect any requirement made by or under any other Act.

(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; or

(c) while the persons are participating in an activity, event or function, or a class of activities, events or functions, 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 sanctioned, or organised and conducted, by a motoring organisation the subject of a notice published under section 68(4).

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: In the case of a natural person, 30 penalty units;

In the case of a body corporate, 120 penalty units.

Note

A body corporate may be guilty of the offence by force of section 84BC.
66 Certain prescribed offences to be operator onus offences

A prescribed offence that is detected by a prescribed road safety camera or by a prescribed process or the detection of which involves the use of a prescribed road safety camera is an operator onus offence for the purposes of Part 6AA.
67 Extension of time if no actual notice for certain traffic infringements

(1) If a traffic infringement notice (other than a notice to which section 89A applies) is not served by delivering it personally to the person to whom it was issued, and that person is not in fact aware that it has been issued, the person may apply to an infringements registrar (within the meaning of the Infringements Act 2006) or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, to have an extension of time of 28 days to deal with the notice in accordance with this Act.

(2) An application under subsection (1) must—

(a) be made within 14 days of the applicant becoming aware of the notice; and

(b) be filed with the registrar; and

(c) be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds on which the extension is sought.
(3) If an application is made under subsection (1) to an infringements registrar within the meaning of the Infringements Act 2006, the registrar must—

(a) refer the application to the Magistrates' Court constituted by a magistrate; and

(b) cause a notice of the time and place of the hearing of the application to be given or sent to—

(i) the person who served the traffic infringement notice on the applicant or caused it to be served; and

(ii) the applicant.

(4) The Magistrates' Court or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, may only grant an extension of time if satisfied that the person was not in fact aware, more than 14 days before making an application under subsection (1), that the traffic infringement notice had been issued.

(5) On the granting of the extension of time—

(a) the traffic infringement notice continues to have effect, unless withdrawn at any time under section 88(3), despite the doing of any thing or the taking of any step in relation to it under the Infringements Act 2006 or Schedule 3 to the Children, Youth and Families Act 2005 before the extension of time was granted, but if an enforcement order had been made in relation to it before the extension of time was granted and the person does not take a relevant action in relation to the notice within the extended period, the notice ceases to have effect at the end of that period; and
(b) any reference in section 88(3) or section 18 of the *Infringements Act 2006* to a 28 day period must be read as a reference to the extended period; and

(c) the reference in section 32 of the *Infringements Act 2006* to the period specified in the infringement notice for the payment of the penalty must be read as a reference to the extended period; and

(d) any cancellation, disqualification or suspension, and any extension of probation, that resulted from the infringement notice is set aside if the person takes a relevant action referred to in subsection (6)(b), (c) or (e) in relation to the notice within the extended period; and

(e) any fine or part of a fine within the meaning of the *Infringements Act 2006* or infringement penalty or part of an infringement penalty and prescribed costs within the meaning of Schedule 3 to the *Children, Youth and Families Act 2005* that has been paid in relation to the infringement notice must be refunded (and the Consolidated Fund is, to the necessary extent, appropriated accordingly) if the person takes a relevant action in relation to the notice within the extended period; and

(f) any demerit points recorded as a result of the infringement notice are cancelled if the person takes a relevant action referred to in subsection (6)(b), (c) or (e) in relation to the notice within the extended period; and
(g) any of the procedures set out in the Infringements Act 2006 or Schedule 3 to the Children, Youth and Families Act 2005 that are being used for the enforcement of the infringement penalty within the meaning of that Act or that Schedule, as the case requires, must be discontinued and any enforcement order made, or warrant issued, under that Act or that Schedule, as the case requires, ceases to have effect if the person takes a relevant action in relation to the notice within the extended period; and

(h) anything done by the person before he or she became aware that the infringement notice had been issued that constituted an offence only because of any cancellation, disqualification or suspension, or any extension of probation, that resulted from the infringement notice must be taken not to constitute that offence if the person takes a relevant action in relation to the notice within the extended period; and

(j) any period of cancellation, disqualification or suspension, and any extension of probation, of a driver licence or permit that—

S. 67(5)(g) amended by Nos 21/2005 s. 57(1)(e) (as amended by No. 24/2005 s. 31(1)), 32/2006 s. 61(2)(c)(vii) (viii), 48/2006 s. 42(Sch. item 31.1).

S. 67(5)(i) amended by Nos 21/2005 s. 57(1)(e) (as amended by No. 24/2005 s. 31(1)), 32/2006 s. 61(2)(c)(ix), 48/2006 s. 42(Sch. item 31.1), repealed by No. 81/2006 s. 30(3).
(i) resulted from the traffic infringement notice; and

(ii) occurred after the person became aware that the traffic infringement notice had been issued—

must be taken into account by any court which subsequently finds the person guilty of the offence in respect of which the traffic infringement notice was issued; and

(k) a reference in section 89(4) to the expiration of the period specified in the notice must be read as a reference to the expiration of the extended period.

(6) For the purposes of subsection (5) a person who is granted an extension of time as referred to in subsection (1) only takes a relevant action in relation to a traffic infringement notice if the person—

(a) pays the whole of the amount specified in the notice as payable in respect of the offence for which the notice was issued; or

(b) gives a statement under section 84BE to an enforcement official within the meaning of Part 6AA; or

S. 67(6)(b) amended by No. 14/2007 s. 3(6), substituted by No. 81/2006 s. 30(4).
(c) serves a written statement on an enforcement official within the meaning of Part 6AA to the effect that the person declines to be dealt with under the Infringements Act 2006 or under Schedule 3 to the Children, Youth and Families Act 2005, as the case requires; or

(d) is offered a payment plan in accordance with the Infringements Act 2006 and the enforcement agency under that Act or the Secretary (as the case may be) receives the first payment under that plan from the person; or

(e) in the case of a person who applies under section 22 of the Infringements Act 2006 for an internal review, is notified of a decision in accordance with section 25(1)(b), (c) or (d) of that Act or section 25(2) of that Act.

(7) Despite anything to the contrary in section 88(3AA), if the Magistrates' Court or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, grants an extension of time as referred to in subsection (1), a traffic infringement notice may be withdrawn under section 88(3) even though the infringement penalty has been lodged with an infringements registrar under Part 4 of the Infringements Act 2006 or registered under Schedule 3 to the Children, Youth and Families Act 2005, as the case requires.
(8) The taking of a relevant action referred to in subsection (6)(c) has the effect that the person may only be proceeded against by the filing of a charge-sheet charging the alleged offence and, for this purpose, a charge-sheet may be filed not later than 12 months after the date of the service of the statement under that subsection despite anything to the contrary in any other Act.

(9) Despite anything to the contrary in this section or the Infringements Act 2006, the 28 day extension period under this section is suspended and no step may be taken in the enforcement of an infringement notice to which this section applies if a person has—

(a) applied for an internal review under section 22 of that Act which has not been determined, until the application is determined and the applicant notified of the outcome; or

(b) applied for a payment plan under section 46 of that Act, until—

(i) the person is notified that his or her application for a payment plan has been refused; or

(ii) in the case of a payment plan that has been offered, the payment plan is cancelled under section 48(2) of that Act; or

(iii) in the case of a payment plan that has commenced—

(A) the payment plan is cancelled under section 49(2)(b) of that Act;
(B) the infringement penalty in respect of that infringement notice is removed from the payment plan under section 49(2)(a) of that Act; or

(C) the person receives written notice under section 52(2) of that Act advising the person that he or she is in default.

68 Speed trials

(1) A person who on a highway drives or is in charge of a motor vehicle which is being used in a race or speed trial is guilty of an offence.

Penalty: For a first offence, 8 penalty units.

For a subsequent offence, 15 penalty units.

(2) A person who, alone or with any other person, organizes or manages a race or speed trial held or to be held on a highway and carries out or causes to be carried out any preparations for the conduct of that race or speed trial is guilty of an offence.

Penalty: For a first offence, 8 penalty units.

For a subsequent offence, 15 penalty units.

(3) The Minister may by notice published in the Government Gazette declare that the provisions of subsections (1) and (2) and of any regulations (except as specified in the notice) do not apply with respect to a race or speed trial held or to be held on a highway or part of a highway specified in the notice on a day and between the hours so specified.
(4) The Minister may, on the application of a motoring organisation, by notice published in the Government Gazette declare that the provisions of subsections (1) and (2) and of any regulations (except as specified in the notice) do not apply with respect to any function or event that is sanctioned, or organised and conducted, by that motoring organisation.

(5) The Minister may, by instrument, delegate to any person the power of the Minister under subsection (3) or (4) to issue notices.

(6) In this section, *speed trial* means an organised motor vehicle event, or any part of such an event, that is a competitive test of speed an object of which is, or requires for its attainment, the travelling over a distance in the shortest possible time, but does not include an event, or any part of an event, in which it is a condition of participation that participants comply with all applicable road laws.

### 68A Unauthorised use of freeway

(1) A pedestrian must not without a reasonable excuse use any part of a freeway other than—

(a) a pathway on the road reserve of the freeway; or

(b) in accordance with a sign erected on the freeway by the Corporation; or

(c) while engaged in the conduct of works to which the Corporation has consented; or

(d) as authorised in writing by the Corporation.

Penalty: 5 penalty units.
(1A) A rider of a bicycle or other pedal-powered vehicle must not, without a reasonable excuse, ride on any part of a freeway other than—

(a) a pathway on the road reserve of the freeway; or

(b) in accordance with a sign erected on the freeway by the Corporation; or

(c) as authorised in writing by the Corporation.

Penalty: 5 penalty units.

(2) Unless authorised in writing by the Corporation, a person must not cause or permit an animal to be on any part of a freeway other than a pathway on the road reserve of the freeway.

Penalty: 5 penalty units.

(3) Unless authorised in writing by the Corporation, a person must not cause or permit agricultural machinery to be on any part of a freeway.

Penalty: 5 penalty units.

(4) Unless authorised in writing by the Corporation, a person must not cause or permit—

(a) any road construction or maintenance machinery; or

(b) any machinery related to the maintenance of non-road infrastructure—

to be on any part of a freeway.

Penalty: 5 penalty units.

(5) In subsection (4), non-road infrastructure has the same meaning as in section 3(1) of the Road Management Act 2004.
(6) If a police officer believes, on reasonable grounds, that a person is committing an offence against this section, the police officer may remove from the freeway or the part of the freeway, as the case requires, that person or any bicycle or other pedal-powered vehicle, animal or machinery connected with the commission of the offence or any other property belonging to or in the possession of, or apparently belonging to or in the possession of, that person.

(7) A police officer may, in order to remove a person or thing under subsection (6), use such force as is reasonable in the circumstances.

(8) The exercise of a power under subsection (6) does not prevent the commencing of a proceeding in respect of the offence.

(9) In this section freeway, pathway and road reserve have the same meanings as in the Road Management Act 2004.

68B Deliberately or recklessly entering a level crossing when a train or tram is approaching etc.

(1) A driver of a vehicle must not, deliberately or recklessly, enter a level crossing if—

(a) warning lights (for example, twin red lights or rotating red lights) are operating or warning bells are ringing; or

(b) a gate, boom or barrier at the crossing is closed or is opening or closing; or

(c) a train or tram is on or entering the crossing; or
(d) a train or tram approaching the crossing can be seen from the crossing, or is sounding a warning, and there would be a danger of a collision with the train or tram if the driver entered the crossing; or

(e) the driver cannot drive through the crossing because the crossing, or a road beyond the crossing, is blocked.

Penalty: 30 penalty units.

(2) On convicting a person, or finding a person guilty, of an offence under subsection (1), the court must—

(a) if the offender holds a driver licence or permit, suspend the licence or permit for a period of not less than 3 months; or

(b) if the offender does not hold a driver licence or permit, disqualify the offender from obtaining one for a period of not less than 3 months.

69 Offence to procure use of motor vehicle by fraud

A person is guilty of an offence if that person—

(a) procures the use or hire of a motor vehicle by fraud or misrepresentation; or

(b) aids or abets a person in procuring the use or hire of a motor vehicle by fraud or misrepresentation.

Penalty: 10 penalty units or imprisonment for 2 months.
70 Tampering or interfering with motor vehicle without just cause or excuse

(1) A person who, without just cause or excuse, tampers or interferes with a motor vehicle owned by any other person is guilty of an offence.

Penalty: 2 penalty units or imprisonment for 14 days.

(1A) A person must not, without just cause or excuse, tamper or interfere with specified equipment fitted or attached to a motor vehicle.

Penalty: 25 penalty units.

(1B) In subsection (1A), specified equipment means equipment of a type specified for the purposes of this section by the Minister in a notice published in the Government Gazette.

(1C) On convicting a person, or finding a person guilty, of an offence against subsection (1A) the court may, if the person holds a driver licence or permit, cancel that licence or permit and, whether or not the person holds a driver licence or permit, disqualify the person from obtaining one for a period the court thinks fit, not exceeding 4 years.

(2) The accused has the burden of proving just cause or excuse.

71 Obtaining licence etc. by false statements

A person who—

(a) by any false statement or any misrepresentation or other dishonest means obtains or attempts to obtain any licence, permit, log book or registration, or the renewal of any licence, permit or registration, or any certificate under this Act
or any information to which Part 7B applies; or

(b) without lawful authority or excuse possesses any licence, permit, log book or certificate so obtained—

is guilty of an offence and liable to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than 2 months, and any licence, permit, log book or registration, or any certificate so obtained is void and of no effect.

72 Forgery etc. of documents and identification marks

(1) A person is guilty of an offence if that person—

(a) forges; or

(b) fraudulently alters or uses; or

(c) fraudulently lends or allows to be used by any other person—

any notice, registration label, certificate, licence, permit or other document or any identifying number or general identification mark that is authorised by or required by or under this Act.

Penalty: 10 penalty units or imprisonment for 2 months.

(1A) A person is guilty of an offence if that person—

(a) forges; or

(b) fraudulently alters or uses; or
(c) fraudulently lends or allows to be used by any other person—

any vehicle identifier, engine identification number, identification plate, manufacturer's build plate or any other plate, label or mark that uniquely identifies a vehicle and sets it apart from similar vehicles.

Penalty: 60 penalty units or imprisonment for 6 months.

(2) A person is guilty of an offence if that person makes, uses, knowingly has custody or possession of, sells or utters any paper or other material purporting to be a notice, registration label, certificate, licence, permit or other document or any identifying number or general identification mark that is authorised or required by or under this Act.

Penalty: 10 penalty units or imprisonment for 2 months.

(3) A person is not guilty of an offence under this section by reason only that the person makes or uses an identifying number in such circumstances as are prescribed.

73 Offence to alter, deface or place number on engine of motor vehicle

A person is guilty of an offence if that person—

(a) without the permission in writing of the Corporation alters or defaces any number on the engine of a motor vehicle purporting to be the number of that engine; or

(b) places on the engine of a motor vehicle any number purporting to be the number of that engine without previously forwarding to the Corporation a notice in writing stating that a number is to be placed on that engine and
containing particulars of the number and the registered number of the motor vehicle.

Penalty: 10 penalty units or imprisonment for 2 months.

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.

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

(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.

(2) A person must, if required to do so by a police officer or an officer of the Corporation or an employee in the Department of Transport, Planning and Local Infrastructure (being an officer of the Corporation or employee of the Department of Transport, Planning and Local Infrastructure authorised in writing by the Corporation or the Secretary to the Department of Transport, Planning and Local Infrastructure, as the case requires, in that behalf), surrender to that police officer or officer of the Corporation or employee any device referred to in subsection (1).

Penalty: 5 penalty units.
(3) A court that convicts a person of an offence against subsection (1) or before which a person is charged with an offence against subsection (1) of which the person is found guilty or to which the person pleads guilty and in respect of which a conviction is not recorded may order that the device by means of which the offence was committed be forfeited to the Government of Victoria.

(4) All devices forfeited under subsection (3) must be destroyed or otherwise disposed of as the Chief Commissioner of Police directs.

74A Offence to sell certain breath analysing instruments

A person must not sell a breath analysing instrument of a type which is specified in Australian Standard 3547—Breath Alcohol Testing Devices for Personal Use, published by the Standards Association of Australia, as amended from time to time, unless the instrument complies with that Standard.

Penalty: 20 penalty units.

75 General penalty

A person who is guilty of an offence against this Act for which a specific penalty is not prescribed by another provision of this Act is liable—

(a) in the case of a person previously convicted of the offence, to a penalty of not more than 3 penalty units or to imprisonment for a term of not more than 1 month; and

(b) in any other case, to a penalty of not more than 1 penalty unit.
76 Arrest without warrant

(1) A police officer may arrest without warrant any person who within his or her view commits an offence against any regulation made under clauses 42 to 49 in Schedule 2 and who on being requested to give his or her name and address refuses or fails to do so or gives a name or address which the police officer reasonably suspects to be false.

(2) If a person who is arrested for an offence under this Act was in charge of a motor vehicle, any police officer may drive or convey the motor vehicle to a police station and keep it there pending the admission of the arrested person to bail or, if that person is not the owner of the motor vehicle, pending a demand for the vehicle by its owner.

77 Power to prosecute

(2) The following people may prosecute for any offence against this Act or the regulations—

(a) any police officer;
(ab) a protective services officer, if the offence occurs on land or premises that are, or are in the vicinity of—
   (i) a place of public importance that the officer has been directed to protect; or
   (ii) a place where there is present a person holding an official or public office, whom the officer has been directed to protect;

(ac) a protective services officer on duty at a designated place if the offence occurs at or in the vicinity of the designated place;

(b) a municipal council or any member of staff of a municipal council who is authorised in writing to do so either generally or in any particular case by the municipal council;

(c) any employee in the Department of Transport, Planning and Local Infrastructure, or person employed in the TSC, who is authorised in writing to do so either generally or in any particular case by the Secretary to the Department of Transport, Planning and Local Infrastructure;
(d) any officer of the Corporation who is authorised in writing to do so either generally or in any particular case by the Corporation;

(da) the presiding officers of the Legislative Council and the Legislative Assembly, if the offence occurs on the Parliamentary reserve;

(db) a person authorised under section 229(1AA) of the Transport (Compliance and Miscellaneous) Act 1983 to bring a proceeding for a ticket offence (within the meaning of section 208 of that Act), if the offence against this Act or the regulations occurs on or in a park and ride facility;

(e) any officer who is authorised in writing to do so either generally or in any particular case by a public authority or other person prescribed for the purposes of this subsection, if the offence occurs on land or premises which are vested in, or under the control of, that public authority or person.
(3) If proceedings are taken by a police officer or an officer of the Corporation or an employee in the Department of Transport, Planning and Local Infrastructure or a person employed in the TSC or a protective services officer the proceedings may be conducted before the court by any other police officer or officer of the Corporation or employee in that Department or person employed in the TSC or protective services officer, as the case requires.

(3A) If proceedings are taken by a person referred to in subsection (2)(db), the proceedings may be conducted before the court by any employee in the Department of Transport, Planning and Local Infrastructure.

(4) Proceedings for any offence which relates to the parking or leaving standing of a vehicle may be taken by any officer appointed either generally or in any particular case by a public authority or other person prescribed for the purposes of this subsection, if the offence occurs on land or premises which are vested in, or under the control of, that public authority or person.
(5) Any money that is recovered by way of fine for a prescribed offence must be paid into the Consolidated Fund, unless the charge-sheet charging the offence is filed by an officer who is appointed by a public authority or by any other person who is prescribed for the purposes of this subsection, in which case the money that is recovered by way of fine must be paid into the prescribed fund in respect of that public authority or person.

(5A) Despite subsection (5), any money that is recovered by way of fine by a person referred to in subsection (2)(db) must be paid into the Consolidated Fund.

(6) If a parking infringement (other than a parking infringement involving a contravention of section 90E) or other offence prescribed for the purposes of section 3(1A) occurs on land which is part of the Parliamentary reserve, no prosecution may be taken in respect of it except on the written direction of a presiding officer authorising the prosecution either generally or in a particular case.

(7) In a prosecution for an offence in relation to a parking infringement (other than a parking infringement involving a contravention of section 90E) or other offence prescribed for the purposes of section 3(1A) occurring on the Parliamentary reserve, a certificate which purports to be signed by a presiding officer stating that a person is authorised to take proceedings in respect of that parking infringement or offence is evidence, and, in the absence of evidence to the contrary, is proof, that the person is so authorised.

(8) All courts must take judicial notice of the signature of a presiding officer on a certificate referred to in subsection (7).
77A  Extension of time limit for certain prosecutions

Despite anything to the contrary in section 7(1) of the Criminal Procedure Act 2009, a proceeding for an offence under Division 4 of Part 10 against a person in any capacity other than as a driver or operator of a vehicle may be commenced within 2 years after the commission of the alleged offence.

78  Average speed evidence of actual speed in certain circumstances

(1) If, in any proceedings for an offence against this Act or the regulations—

(a) the speed at which a motor vehicle or trailer travelled is relevant; and
(b) the prosecution relies on the average speed of the motor vehicle or trailer between 2 points on a road as determined in accordance with subsection (2)—

the average speed so determined is evidence, and in the absence of evidence of the actual speed of the motor vehicle or trailer to the contrary is proof, of the speed of the motor vehicle or trailer.

(2) For the purposes of subsection (1), the average speed of a motor vehicle or trailer between 2 points on a road expressed in kilometres per hour is calculated in accordance with the following formula and rounded down to the next whole number—

\[
\frac{D \times 3.6}{T}
\]

where—

D is the shortest distance, expressed in metres, that would be travelled by a motor vehicle or trailer on the road between the 2 points;

T is the time, expressed in seconds (including any part of a second), that has elapsed between the motor vehicle or trailer passing the first and second points.

Example

In 16.2 seconds a motor vehicle travels between two points that are 400 metres apart. 400 × 3.6 divided by 16.2 equals 88.9 or, when rounded down to the next whole number, gives a result of 88. Therefore, for the purpose of subsection (1), the average speed of the motor vehicle is 88 kilometres per hour.

(3) This section does not derogate from any other mode of proof of the speed of the motor vehicle or trailer.
(4) For the purpose of any proceedings for an offence against this Act or the regulations in which the speed at which a motor vehicle or trailer travelled is relevant, if a trailer or a motor vehicle that is being towed is attached to a motor vehicle, the trailer or towed motor vehicle and the towing motor vehicle are to be taken to be travelling at the same speed.

**Note**

See section 84BAA.

### 78A Evidence of road distance

(1) A certificate in the prescribed form purporting to be issued by an approved surveyor certifying as to the shortest distance, expressed in metres, that would be travelled by a motor vehicle or trailer on a road between 2 points is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of that distance.

(2) In this section, **approved surveyor** means a licensed surveyor within the meaning of the Surveying Act 2004 who is approved for the purposes of this section by the Surveyor-General or by the Corporation.

### 79 Evidence of speed

(1) If in any criminal proceedings the speed at which a motor vehicle or trailer travelled on any occasion is relevant, evidence of the speed of the motor vehicle or trailer as indicated or determined on that occasion by a prescribed road safety camera or prescribed speed detector when tested, sealed and used in the prescribed manner is,
without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the motor vehicle or trailer on that occasion.

(2) For the purpose of any criminal proceedings in which the speed at which a motor vehicle or trailer travelled on any occasion is relevant, if a trailer or a motor vehicle that is being towed is attached to a motor vehicle, the trailer or towed motor vehicle and the towing motor vehicle are to be taken to be travelling at the same speed.

Note
See section 84BAA.

79A Evidence of engine management system data
If in any criminal proceedings, or for any purpose under this Act, any information held in a vehicle's engine management system is relevant, any representation of that information derived from an engine management system reading device specified by the regulations is to be presumed, in the absence of evidence to the contrary, to be an accurate record of that information if the device is operated in the manner specified for that device in the regulations and the information is derived in accordance with the regulations.
80 Certain matters indicated by prescribed road safety cameras are evidence

(1) If in proceedings for an offence to which section 66 applies the fact that the driver of the motor vehicle or trailer disobeyed a traffic signal or drove the motor vehicle or trailer in a particular portion of a highway on any occasion is relevant, evidence of that fact as indicated or determined on that occasion by—

(a) a prescribed road safety camera; or

(b) an image or message produced by a prescribed road safety camera or by a prescribed process—

when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the fact that the driver of the motor vehicle or trailer disobeyed a traffic signal or drove the motor vehicle or trailer in that portion of the highway on that occasion.
(2) For the purpose of any proceedings for an offence to which section 66 applies in which the question whether the driver of a motor vehicle or trailer disobeyed a traffic signal or drove the motor vehicle or trailer in a particular portion of a highway on any occasion is relevant, if a trailer or a motor vehicle that is being towed is attached to a motor vehicle, proof that the driver of one of those vehicles disobeyed a traffic signal or drove the vehicle in a particular portion of the highway on that occasion is proof that the driver of the other vehicle did so.

Note
See section 84BAA.

80A Certain matters indicated by prescribed road safety cameras are evidence

If in proceedings for an offence to which section 66 applies the fact that the unregistered vehicle was being driven at a particular time and place or that number plates were or were not being displayed at a particular time is relevant, evidence of that fact as indicated or determined at that particular time by an image or message produced by a prescribed road safety camera, or by a prescribed process, when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the fact that an unregistered vehicle was being driven at a particular time and place or that number plates were or were not being displayed at a particular time.
81 Certain matters indicated by prescribed road safety cameras are evidence

(1) If in proceedings for an offence to which section 66 applies the speed at which a motor vehicle or trailer travelled on any occasion is relevant, evidence of the speed of the motor vehicle or trailer as indicated or determined on that occasion by—

(a) a prescribed road safety camera when tested, sealed and used in the prescribed manner; or

(b) an image or message produced by a prescribed road safety camera when tested, sealed and used in the prescribed manner; or

(c) an image or message produced by a prescribed process when used in the prescribed manner—is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the motor vehicle or trailer on that occasion.

(1A) For the purpose of any proceedings for an offence to which section 66 applies in which the speed at which a motor vehicle or trailer travelled on any occasion is relevant, if a trailer or a motor vehicle
that is being towed is attached to a motor vehicle, the trailer or towed motor vehicle and the towing motor vehicle are to be taken to be travelling at the same speed.

Note
See section 84BAA.

(2) If in proceedings for an offence to which section 66 applies the speed limit at the time and place at which a motor vehicle or trailer travelled on any occasion is relevant, evidence of the speed limit at that time and place as indicated or determined on that occasion by an image or message produced by a prescribed process when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed limit on that occasion.

82 Evidence of mass

(1) For the purposes of any prosecution under this Act or the regulations the mass carried on any axle of a motor vehicle or trailer as determined by a prescribed device when tested, sealed and used in the prescribed manner is, after due allowance of the prescribed limits of error, proof, in the absence of evidence to the contrary, of the mass.

(2) Without prejudice to any other method of determining the mass of a motor vehicle or of its load or of both, the mass of the load of any motor vehicle carrying passengers may, for the purposes of this Act or the regulations, be calculated on the basis that the mass of 16 adult passengers is 1 tonne.
83 Evidence of testing and sealing

A certificate in the prescribed form to the effect that any prescribed speed detector or device referred to in section 79 or 82 has been tested or sealed in the prescribed manner, signed or purporting to be signed by a person authorised to do so by the regulations is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof that the prescribed speed detector or device has been so tested or sealed.

83A Evidence relating to prescribed road safety cameras

(1) A certificate containing the prescribed information purporting to be issued by an authorised person certifying—

(a) that a prescribed road safety camera was tested, sealed or used in the prescribed manner; or

(b) that an image or message described in the certificate was produced by a prescribed road safety camera or by a prescribed process; or

(c) as to any other matter that appears in, or that can be determined from, the records kept in relation to the prescribed road safety camera or the prescribed process by Victoria Police—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.
(2) In this section **authorised person** means a person authorised for the purposes of this section by the Chief Commissioner of Police.

**84 General evidentiary provisions**

(1) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Transport, Planning and Local Infrastructure or the TSC or an authorised person certifying as to any matter which appears in or can be calculated from the records kept by the Corporation or the Department of Transport, Planning and Local Infrastructure or the TSC or a delegate of the Corporation or the Department of Transport, Planning and Local Infrastructure or the TSC is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

(2) Without affecting the generality of any provision of the **Evidence (Miscellaneous Provisions) Act 1958** or the **Evidence Act 2008**, a certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act and which purports to relate in any way to—

(a) the registration or non-registration of a motor vehicle or trailer; or

(ab) the registration number assigned to a motor vehicle or trailer; or

S. 84 amended by No. 44/1989 s. 41(Sch. 2 item 34.4).

S. 84(1) amended by Nos 60/1994 s. 29(10), 46/1998 s. 7(Sch. 1), 57/1998 s. 4(5)(a), 92/2001 s. 23(1), 50/2012 s. 29(12), 43/2013 s. 53(4), 70/2013 s. 4(Sch. 2 item 44.12).

S. 84(2) amended by No. 55/2013 s. 18.

S. 84(2)(ab) inserted by No. 92/2001 s. 22(2).
(ac) the person who is entitled to use or possess a number plate bearing a particular registration number; or

(b) the person who is the owner of a motor vehicle or trailer or in whose name a motor vehicle or trailer is registered; or

(c) the fact that any person is or is not or was or was not permitted under a learner permit or licensed to drive a motor vehicle or a motor vehicle of any particular class; or

(d) the suspension or cancellation of any registration or driver licence; or

(e) the GVM, load capacity or identification of any motor vehicle or trailer; or

(ea) the fact that a person is, or is not, or was, or was not, a member of, or a participant in, an approved road transport compliance scheme (as defined in section 106); or

(f) any other matter relating to the use of motor vehicles or trailers on highways—

is, for the purposes of this Act, admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in it.
(3) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Transport, Planning and Local Infrastructure or the TSC certifying that on a particular date a motor vehicle or trailer was registered in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was, if that date is before 1 May 1999, the owner and in any other case the registered operator of that motor vehicle or trailer.

(4) A certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act certifying that on a particular date a motor vehicle or trailer was registered under the corresponding Act in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was the owner of that motor vehicle or trailer.

(4A) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Transport, Planning and Local Infrastructure or the TSC or an authorised person certifying that on a particular date—

(a) a particular registration number was assigned to a particular motor vehicle or trailer; or

(b) a particular person was entitled to use or possess a number plate bearing a particular registration number—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that motor vehicle or trailer or that...
person was entitled to use or possess that number plate, as the case requires.

(4B) A certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act certifying that on a particular date—

(a) a particular registration number was assigned under the corresponding Act to a particular motor vehicle or trailer; or

(b) a particular person was entitled under the corresponding Act to use or possess a number plate bearing a particular registration number—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that motor vehicle or trailer or that person was entitled to use or possess that number plate, as the case requires.

(4C) A certificate purporting to be issued by the Corporation certifying that on a particular date—

(a) a particular registration number was the subject of registration number rights; or

(b) a particular person was the owner of registration number rights in respect of a particular registration number—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in it.

(5) In any proceedings for a contravention of section 7(1) proof that a motor vehicle or a trailer attached to a motor vehicle was used on a highway without having affixed to it both the identifying number plates and the appropriate
registration label (if any) required by or under this Act is, in the absence of evidence to the contrary, proof that the motor vehicle or trailer was used in contravention of section 7(1).

(6) In any proceedings for an offence against this Act or the regulations the statement of a police officer or an officer of the Corporation or of the Department of Transport, Planning and Local Infrastructure—

(a) that writing or markings on a motor vehicle or trailer indicates or indicate the tare mass of the vehicle or trailer is admissible in evidence and, in the absence of evidence to the contrary, is proof of the unladen mass of the vehicle or trailer;

(b) as to the mass of a motor vehicle or trailer which he or she has examined is admissible in evidence and, in the absence of evidence to the contrary, is proof of the mass of the vehicle or trailer;

(c) that a name written on a motor vehicle or trailer indicates that the named person owns the vehicle or trailer is admissible in evidence and, in the absence of evidence to the contrary, is proof that the named person owns the vehicle or trailer;

(d) that an address written on a motor vehicle or trailer indicates that the address is the place of business from which the vehicle or trailer normally operates is admissible in evidence and, in the absence of evidence to the contrary, is proof that the specified address is the place of business from which the vehicle or trailer normally operates.
(7) In any proceedings for an offence described in section 66—

(a) an image or message produced by a prescribed road safety camera used to detect speeding offences when tested, sealed and used in the prescribed manner; or

(ab) an image or message produced by a prescribed process when used in the prescribed manner; or

(b) an image or message produced by a prescribed road safety camera used to detect traffic signal offences, when used in the prescribed manner—

showing or indicating—

(c) the date, time or location of the alleged offence or the registration number or general identification mark of a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the offence took place on that date or at that time or at that location or in respect of the motor vehicle with that registration number or general identification mark (as the case may be); or

(ca) a number plate bearing a registration number displayed on a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the motor vehicle involved in the offence was the motor vehicle to which that registration number was assigned at the date and time of the offence; or
(d) that a plate marked with the letter P was displayed on a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the motor vehicle was being driven by the holder of a licence issued on probation under this Act during the prescribed period after the date of the issue of the licence; or

(e) that a plate marked with the letter L was displayed on a motor vehicle involved in the offence is, in the absence of evidence to the contrary, proof that the motor vehicle was being driven by the holder of a learner permit.

(8) In this section—

authorised person means a person who is authorised or who is the holder of a position authorised for the purposes of this section by the Corporation.

84A Unofficial breath analysing instruments

Evidence of the taking of a test indicating the presence or concentration of alcohol in the blood or breath of a person by a breath analysing instrument installed in any licensed premises under the Liquor Control Reform Act 1998, or of the results of that test, is inadmissible in any court or tribunal in any proceedings, whether civil or criminal.

84B Surveillance Devices Act 1999

A prescribed process is not a surveillance device within the meaning of the Surveillance Devices Act 1999.
84BAA Double jeopardy

Nothing in section 78(4), 79(2), 80(2) or 81(1A) is intended to have the effect of making a person who at a particular time is both the driver of a towing motor vehicle and of a trailer or motor vehicle that is being towed attached to the towing motor vehicle liable to be prosecuted or punished more than once for the same act or omission connected with the driving of a vehicle at that time.
PART 6AA—OPERATOR ONUS

84BA Purpose of this Part

(1) The purpose of this Part is to establish an "operator onus" system for certain offences involving motor vehicles or trailers.

(2) The "operator onus" system applies to offences where the identity of the person driving, or in charge of, the motor vehicle or trailer is not established at the time the offence is committed.

(3) The system is based on the principle that, in the circumstances referred to in subsection (2), the person who was the operator of the motor vehicle or trailer at the time of the offence should be held responsible for the motor vehicle or trailer and should be liable for the offence.

(4) However, a person will not be held liable for an offence if the person, where permitted, establishes that, at the time of the offence, the person was not responsible for the motor vehicle or trailer and either—

(a) provides information sufficient to identify and locate the person driving or in charge of the motor vehicle or trailer at the time of the offence; or

(b) explains why the person cannot with reasonable diligence ascertain the identity of the person who was driving or in charge of the motor vehicle or trailer at the time of the offence.
84BB Definitions

In this Part—

authorised tolling person means—

(a) a person authorised in writing under section 69B of the Melbourne City Link Act 1995 to carry out functions under Part 4 of that Act; or

(b) a person authorised in writing under section 197AA of the EastLink Project Act 2004 to carry out functions under Part 9 of that Act;

corresponding body means a body outside Victoria that has functions under a corresponding law that correspond with any of the functions of the Corporation under Division 2 of Part 2;

corresponding law means—

(a) a law of the Commonwealth or of another State or of a Territory that corresponds to Division 2 of Part 2; or

(b) the Heavy Vehicle National Law (Victoria) or a law of another State or of a Territory that corresponds to that law;

effective, in relation to an illegal user statement, a known user statement, a sold vehicle statement, a tolling nomination statement or an unknown user statement, means a statement that is, or is accepted by an enforcement official under section 84BE as, and has not ceased to be, an effective statement for the purposes of this Part;
enforcement official means—

(a) the informant in any proceeding commenced against the operator of a motor vehicle or trailer; or

(b) the issuing officer (within the meaning of the Infringements Act 2006) in relation to an infringement notice served on the operator of a motor vehicle or trailer; or

(c) the enforcement agency (within the meaning of the Infringements Act 2006) in relation to a penalty reminder notice served on the operator of a motor vehicle or trailer under Part 2 of that Act—

in relation to the driving, or being in charge, of the motor vehicle or trailer at the relevant time;

illegal user statement, in relation to an offence involving a motor vehicle or trailer, means a statement in writing made by a person to the effect that the person believes that at the time of the offence the motor vehicle or trailer was a stolen motor vehicle or trailer or that the number plates displayed on the motor vehicle or trailer were stolen;

known user statement, in relation to an offence involving a motor vehicle or trailer, means a statement in writing made by a person—

(a) to the effect that the person was not at the time of the offence driving, or had not at that time possession or control of, the motor vehicle or trailer or the motor vehicle to which the trailer was attached; and
(b) containing sufficient information to identify and locate the person who the person making the statement last knew to have, before the offence, possession or control of the motor vehicle or trailer or of the motor vehicle to which the trailer was attached;

* * * * *

nomination rejection statement means a statement in writing made by a person nominated in a known user statement, a sold vehicle statement or a tolling nomination statement as being the responsible person in relation to a motor vehicle or trailer to the effect—

(a) if nominated in a known user statement, that the person had not had possession or control of the motor vehicle or trailer, as the case requires, before the offence, as stated in the known user statement, and did not have possession or control of it at the time of the offence; and

(b) if nominated in a sold vehicle statement, that the motor vehicle or trailer, as the case requires, had not been sold or disposed of to the person, and that no interest in it had otherwise vested in the person, as stated in the sold vehicle statement; and

(c) if nominated in a tolling nomination statement, that the person was not the responsible person in relation to the motor vehicle at the time of the tolling offence as stated in the tolling nomination statement;
operator, in relation to a motor vehicle or trailer at the time of an offence, means each of the following—

(a) the registered operator of the motor vehicle or trailer at that time or the person recorded at that time on a register of vehicles maintained under a corresponding law as the person responsible for the motor vehicle or trailer;

(b) if the Corporation under the regulations, or a corresponding body under a corresponding law, has received notice of transfer of registration of the motor vehicle or trailer, the person whose name is disclosed in the records kept by the Corporation or the corresponding body (as the case requires) as being responsible for the motor vehicle or trailer at that time;

(c) if the motor vehicle or trailer is not registered under this Act or a corresponding law, the person whose name is disclosed in the records kept by the Corporation or the corresponding body as being responsible for the motor vehicle or trailer at that time;

(d) if the motor vehicle or trailer displays a number plate—

(i) the person who, at the time at which the registration number borne by that number plate was last assigned by the Corporation or a corresponding body, was the registered operator of, or (if assigned by a corresponding
body) the person recorded on a register of vehicles maintained under the corresponding law as the person responsible for, the motor vehicle or trailer to which that registration number was assigned, whether or not that motor vehicle or trailer is the same as the motor vehicle or trailer involved in the offence; or

(ii) the person whose name is disclosed in the records kept by the Corporation or a corresponding body as being entitled, or last entitled, at that time to use or possess that number plate;

(e) if the motor vehicle or trailer displays a general identification mark by means of a special identification plate issued by the Corporation under the regulations or by a corresponding body under a corresponding law, the person to whom the mark is assigned at that time;

responsible person, in relation to a motor vehicle or trailer at the time of an offence, means each of the following—

(a) the operator of the motor vehicle or trailer;

(b) in the case of a trailer, the operator of the motor vehicle to which the trailer was attached at that time;

(c) the person nominated in an effective known user statement or an effective sold vehicle statement;
(d) in the case of a tolling offence, without limiting paragraphs (a), (b) and (c), the person nominated in an effective tolling nomination statement;

**sold vehicle statement,** in relation to an offence involving a motor vehicle or trailer, means a statement in writing made by a person—

(a) to the effect that—

(i) the person had sold or otherwise disposed of the motor vehicle or trailer before the time of the offence or that any interest in the motor vehicle or trailer had otherwise ceased to be vested in the person before that time; and

(ii) the person was not at that time driving, or had not at that time possession or control of, the motor vehicle or trailer or the motor vehicle to which the trailer was attached; and

(b) containing sufficient information to identify and locate the person to whom the motor vehicle or trailer was sold or disposed of, or in whom an interest in the motor vehicle or trailer was otherwise vested, and the date and, if relevant, the time of the sale, disposal or vesting;

**tolling nomination statement,** in relation to a tolling offence, means a statement in writing made by an authorised tolling person to the effect that the authorised tolling person believes that the person nominated in the statement is the responsible person in

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Part 6AA—Operator onus

relation to a motor vehicle at the time of the tolling offence;

**tolling offence** means an offence involving a motor vehicle against section 73(1) of the Melbourne City Link Act 1995 or section 204(1) of the EastLink Project Act 2004;

**unknown user statement**, in relation to an offence involving a motor vehicle or trailer (other than a tolling offence or an offence involving a taxi-cab), means a statement in writing made by a person to the effect that the person—

(a) was not at the time of the offence driving, or had not at that time possession or control of, the motor vehicle or trailer or the motor vehicle to which the trailer was attached; and

(b) does not know and could not with reasonable diligence ascertain the identity of the person who was at that time driving or, had at that time possession or control of, the motor vehicle or trailer or the motor vehicle to which the trailer was attached.

**84BC Operator onus offences**

(1) If the Act or legislative instrument that creates an offence that may be committed by the driver or person in charge of a motor vehicle or trailer, or any other Act or legislative instrument, expressly states that the offence is an operator onus offence for the purposes of this Part, then (except as otherwise provided by this Part) the person who at the time of the offence is the responsible person in relation to the motor vehicle or trailer is guilty of the offence as if that person were the driver or
person in charge (as the case requires) of the motor vehicle or trailer at that time.

(2) Nothing in subsection (1) affects the liability of the person actually driving, or in charge of, as the case requires, the motor vehicle or trailer at the time of the offence.

(3) The operator of a motor vehicle or trailer only ceases to be the responsible person in relation to the motor vehicle or trailer if another person is the responsible person in relation to that vehicle or trailer by force of section 84BE or 84BF.

(4) A natural person who by force of this section is guilty of an offence is liable to the same penalties and subject to the same consequences to which the person would have been liable and subject had the person been the driver, or in charge, as the case requires, of the motor vehicle or trailer at the time of the offence.

(5) A body corporate that is guilty of an offence by force of this section is liable to—

(a) if the provision of the Act or legislative instrument creating the offence applies a higher penalty to a body corporate found guilty of the offence—that higher penalty; or

(b) in any other case—the same penalty as that to which the person who was the driver, or in charge, as the case requires, of the motor vehicle or trailer at the time of the offence would be liable.

84BD Effect of payment of penalty, etc.

(1) If by force of section 84BC more than one person may be guilty of an offence involving a motor vehicle or trailer and the full amount of any monetary penalty is paid (and not refunded under section 88(4)) and any other necessary consequence (including the recording of demerit
points against the person) is suffered by any one of them in relation to the offence, no further penalty or consequence may be imposed on or recovered from that person or any other person in relation to the offence.

* * * * *

(3) Despite subsection (1), the payment of a monetary penalty or the recording of demerit points in relation to an offence that is an operator onus offence by force of section 66 may be recorded and used for the purposes of determining the period or periods for which a person may be required to hold a driver licence on probation.

84BE Use of effective statement to avoid liability

(1) A person is not guilty of an offence by force of section 84BC if—

(a) within the prescribed period the person, or an authorised tolling person, gives to an enforcement official—

(i) an illegal user statement; or

(ii) subject to subsection (1C), a known user statement; or

(iii) a sold vehicle statement; or

(iv) subject to subsection (1A) or (1B), an unknown user statement; or
(v) a tolling nomination statement; and

(b) the statement is an effective statement for the purposes of this Part.

Notes

1 A statement may cease to be an effective statement under section 84BF.

2 It is an offence to provide false or misleading information in a statement: see section 84BI.

(1A) A person nominated in a tolling nomination statement may not make, or give to an enforcement official, an unknown user statement in relation to a tolling offence.

(1B) A person may not make, or give to an enforcement official, an unknown user statement in relation to an offence involving a taxi-cab.

(1C) A person who is nominated in a known user statement made in relation to an offence involving a taxi-cab may not make, or give to an enforcement official, a known user statement in relation to the offence if the person is recorded in the records of the taxi-cab operator as the driver of the taxi-cab at the time of the offence.

Note

If a person is incorrectly recorded as the driver of the taxi-cab at the time of the offence, the person would need to have the records rectified before being able to make, or give to an enforcement official, a known user statement.

(1D) For the purposes of subsection (1C), the taxi-cab operator, in relation to a taxi-cab, means—

(a) unless paragraph (b) applies, the holder of the licence issued under the Transport (Compliance and Miscellaneous) Act 1983 under which the taxi-cab is operated; or
(b) if the right to operate the taxi-cab has been assigned to a person under section 150 of the Transport (Compliance and Miscellaneous) Act 1983, that person while the assignment remains in force.

(2) Information contained in a known user statement, a sold vehicle statement or a tolling nomination statement identifying a person is sufficient for the purposes of this Part if it contains—

(a) in the case of an individual—

(i) the individual's full name and current home address; and

(ii) either the individual's date of birth or the number of the licence or permit authorising the individual to drive; and

(iii) if the statement contains the number of a licence or permit issued by a corresponding Authority, the name of the Authority and the jurisdiction in which the licence or permit is issued; and

(iv) if the statement is given in relation to an operator onus offence involving a taxi-cab and the individual is accredited under the Transport (Compliance and Miscellaneous) Act 1983 to drive a taxi-cab, the number of the certificate of accreditation issued to the individual under that Act; and

(b) in the case of a person other than an individual, its full name and current address and (where applicable) its Australian Company Number; and

(ba) reasons for nominating the individual under paragraph (a) or person under paragraph (b); and
(c) in any case, any other prescribed information.

(3) A statement containing all the information required by subsection (2) is an effective statement for the purposes of this Part.

(4) In addition, an enforcement official may decide to accept a known user statement, a sold vehicle statement or a tolling nomination statement as an effective statement for the purposes of this Part even if it does not contain all the information required by subsection (2) if the enforcement official is satisfied that it contains sufficient information to identify and locate the nominated person.

(4A) If an authorised tolling person gives an enforcement official a tolling nomination statement, and the nomination made in the statement is based on a belief formed after receiving a statement or statements made under Part 4 of the Melbourne City Link Act 1995 or Part 9 of the EastLink Project Act 2004—

(a) an enforcement official may request the statement or statements be given to the official; and

(b) the authorised tolling person must give a copy or copies of the statement or statements made under the Melbourne City Link Act 1995 or the EastLink Project Act 2004 to the official as soon as practicable after the official makes the request.

(5) An enforcement official may decide to accept an illegal user statement as an effective statement for the purposes of this Part if satisfied as to the matters, and any reasons set out in support of those matters, stated in the statement.

S. 84BE(4) amended by No. 74/2007 s. 11(4).

S. 84BE(4A) inserted by No. 74/2007 s. 11(5).

S. 84BE(5) substituted by No. 74/2007 s. 11(6).
(5A) An enforcement official may decide to accept an unknown user statement as an effective statement if the enforcement official is satisfied that it states—

(a) that, at the time of the offence, the person was not driving, or had not at that time possession or control of the motor vehicle or trailer or the motor vehicle to which the trailer was attached; and

(b) reasons in support of the matters raised under paragraph (a) that—

(i) are adequate and reasonable in the circumstances; and

(ii) explain why the person could not, with reasonable diligence, ascertain the identity of the person who was at that time driving or at that time was last known to have had possession or control of the motor vehicle or trailer, or the motor vehicle to which the trailer was attached.

(5B) For the purposes of subsection (5A)(b)(i), a failure to keep a record of who had possession or control of the motor vehicle or trailer, or of the motor vehicle to which the trailer was attached, at the time of the offence is not a reason that is adequate and reasonable unless the failure to do so was due to exceptional circumstances.

(6) An enforcement official to whom a known user statement, sold vehicle statement or tolling nomination statement (not containing all the information required by subsection (2)) or an illegal user statement or an unknown user statement is given under subsection (1) must, within the prescribed period, cause a notice to be served on the person who gave the statement.
stating whether or not the enforcement official has decided under subsection (4), (5) or (5A) (as the case requires) to accept the statement as an effective statement for the purposes of this Part.

(7) If subsection (6) is not complied with in respect of a statement, the enforcement official must be taken to have decided to accept the statement as an effective statement for the purposes of this Part.

(8) A notice under subsection (6) may be served by post addressed to the person at an authorised address (within the meaning of section 163A of the Infringements Act 2006).

(9) A notice under subsection (6) served in accordance with subsection (8) and returned undelivered to its sender is deemed to be served 14 days after the date specified in the notice as the date of the notice, despite it being returned to its sender as undelivered.

(10) Subsection (9) has effect despite anything to the contrary in section 49(1) of the Interpretation of Legislation Act 1984.

84BEA Failure to give effective statement

(1) A body corporate must not fail to give an effective statement for the purposes of this Part in relation to 3 or more relevant infringement notices served on the body corporate within a 12 month period.

Penalty: 120 penalty units.

(2) For the purposes of subsection (1), a relevant infringement notice is an infringement notice (other than an infringement notice specified in subsection (4)) served on the body corporate in respect of an operator onus offence—
(a) committed by a person driving or in charge of a motor vehicle or trailer of which, at the time of the offence, the body corporate was the responsible person; and

(b) for which demerit points may be incurred.

(3) For the purposes of subsection (1), if the acceptance of a statement made by the body corporate in relation to the infringement notice is cancelled under section 84BF, the body corporate has failed to give an effective statement for the purposes of this Part.

(4) For the purposes of subsection (2), an infringement notice is not a relevant infringement notice if—

(a) the operator onus offence in respect of which the infringement notice is issued is heard in court and no finding of guilt is recorded against the person defending the charge; or

(b) the infringement notice is withdrawn or cancelled; or

(c) a charge-sheet charging the operator onus offence in respect of which the infringement notice is issued is filed but the charge is withdrawn or not proceeded with within 12 months after the charge-sheet is filed.

(5) In a proceeding for an offence against subsection (1), it is a defence if—

(a) in relation to one or more of the infringement notices that are the subject of the offence, the body corporate proves that—

(i) it had taken all reasonable steps to ensure it could identify the person who had possession or control of the motor vehicle or trailer, or of the motor vehicle to which the trailer was
attached, in the event the motor vehicle or trailer was involved in an operator onus offence; and

(ii) its failure to give an effective statement in the relevant instance was due to exceptional circumstances; and

(b) without the inclusion of that infringement notice, or those infringement notices, the number of infringement notices for which the body corporate has failed to give an effective statement within the relevant 12 month period is 2 or less.

84BEB Date of failure to give effective statement and time for commencement of proceeding

(1) The date on which a body corporate fails to give an effective statement for the purposes of this Part in relation to an infringement notice is—

(a) if the body corporate does not make a statement, the earlier of—

(i) the date on which the infringement penalty is paid;

(ii) the expiry of the period prescribed under section 84BE(1)(a) for making a statement; or

(b) if the body corporate makes a statement that is not accepted by an enforcement official as an effective statement, the date on which the enforcement official decides not to accept the statement; or

(c) if the body corporate makes a statement the acceptance of which is cancelled under section 84BF, the date on which the statement ceases to be an effective statement for the purposes of this Part.
(2) A proceeding against a body corporate for an offence against section 84BEA(1) may be commenced not later than 12 months after the latest of the dates determined under subsection (1) for the infringement notices that are the subject of the offence.

84BF Cancellation of acceptance of statement

(1) An enforcement official may cancel the acceptance of a statement as an effective statement for the purposes of this Part (including a statement taken to have been accepted by force of section 84BE(7))—

(a) if in the case of a known user statement, a sold vehicle statement or a tolling nomination statement, the person nominated in the statement as being the responsible person gives to an enforcement official within the prescribed period a nomination rejection statement and the enforcement official is satisfied, having regard to the matters stated in the nomination rejection statement, that the nomination was incorrect; or

Note
It is an offence to provide false or misleading information in a statement: see section 84BI.

(b) if in the case of a statement not containing all the information required by section 84BE(2), the information contained in the statement proves not to be sufficient to identify or locate the nominated person; or

(c) in prescribed circumstances.
(2) If the acceptance of a statement as an effective statement is cancelled under subsection (1), on that cancellation—

(a) the statement ceases to be an effective statement for the purposes of this Part; and

(b) the person who would, but for the statement, have continued to be the responsible person in relation to the motor vehicle or trailer (as the case requires) becomes again the responsible person.

84BG Proceedings against nominated persons

(1) A proceeding against a person nominated in an effective known user statement, sold vehicle statement or tolling nomination statement for an offence to which this Part applies may be commenced not later than 12 months after—

(a) the day on which the statement was given to the enforcement official; or

(b) if the statement again becomes an effective statement because of the cancellation under section 84BF(1) of the acceptance of a subsequent statement, the day on which the subsequent statement is cancelled.

(2) In a proceeding referred to in subsection (1) the known user statement, sold vehicle statement or tolling nomination statement is evidence and, in the absence of evidence to the contrary, proof of the matters stated in it.
(3) A proceeding against a person (other than a person nominated in an effective known user statement or sold vehicle statement) who, by force of section 84BF(2), becomes again the responsible person in relation to the motor vehicle or trailer at the time of an offence to which this Part applies may be commenced not later than 12 months after the day on which that person again became the responsible person.

84BH Defences to operator onus offences

In a proceeding for an operator onus offence it is a defence to the charge for the accused to prove any of the following—

(a) that the accused had made an illegal user statement, a known user statement, a sold vehicle statement or an unknown user statement within the prescribed period and that the statement is, or ought to have been accepted by an enforcement official as, an effective statement for the purposes of this Part;

(b) that the acceptance as an effective statement for the purposes of this Part of an illegal user statement, known user statement, sold vehicle statement or unknown user statement made by the accused ought not to have been cancelled under section 84BF(1);

(ba) that the acceptance as an effective statement for the purposes of this Part of a tolling nomination statement made by an authorised tolling person ought not to have been cancelled under section 84BF(1);
(c) if the proceeding against the accused is based on a nomination made in a known user statement, sold vehicle statement or tolling nomination statement, that the accused had made a nomination rejection statement and that an enforcement official ought to have been satisfied, having regard to the matters stated in the nomination rejection statement, that the nomination was incorrect.

* * * * *

84BI  Offence to provide false or misleading information

(1) A person must not in a statement given under section 84BE(1) or 84BF(1)(a) to an enforcement official provide information that the person knows to be false or misleading.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 120 penalty units.

(2) A proceeding for an offence against subsection (1) may be commenced not later than 24 months after the date on which the offence is alleged to have been committed.

84BIA  Cancellation of licence and disqualification

If a person is convicted or found guilty of an offence against section 84BI, the court may, in addition to imposing a penalty—

(a) if the person holds a driver licence or permit—cancel that licence or permit and disqualify the person from driving a motor vehicle on a road in Victoria and disqualify the person from obtaining a driver licence or
permit for a period not exceeding 24 months; or

(b) if the person does not hold a driver licence or permit—disqualify the person from driving a motor vehicle on a road in Victoria and disqualify the person from obtaining a driver licence or permit for a period not exceeding 24 months.
PART 6AB—SAFE DRIVING PROGRAMS

Division 1—Preliminary

84BJ Definitions

(1) In this Part—

*applicable offence* means—

(a) an offence against section 64(1)—

(i) in circumstances involving improper use of a motor vehicle; or

(ii) in circumstances where a motor vehicle is driven at 45 kilometres per hour or more over the applicable speed limit; or

(iii) in circumstances where a motor vehicle is driven, if the applicable speed limit is 110 kilometres per hour, at a speed of 145 kilometres per hour or more;

(b) an offence against section 65(1) in circumstances involving improper use of a motor vehicle;

(c) an offence against section 65A(1);

(d) an offence against section 68(1) or (2);

(e) an offence against section 65B or rule 20 of the Road Rules in circumstances where the motor vehicle is driven—

(i) at 45 kilometres per hour or more over the applicable speed limit; or
(ii) if the applicable speed limit is 110 kilometres per hour, at a speed of 145 kilometres per hour or more;

(f) an offence against rule 291 of the Road Rules in circumstances involving improper use of a motor vehicle;

(g) an offence against rule 297 of the Road Rules in circumstances involving improper use of a motor vehicle;

approved provider means a person or body approved under section 84BP;

approved safe driving program means a program approved under section 84BO;

court, in relation to an applicable offence, means—

(a) the court hearing and determining the charge for the applicable offence; or

(b) if an application for an exemption under section 84BL(3) is made on a day after the determination of the charge for the applicable offence—the court hearing the application;

improper use of a motor vehicle, in relation to an applicable offence, means the driving of a motor vehicle in a manner that intentionally causes the motor vehicle to undergo loss of traction by one or more of its wheels;

Road Rules means the Road Safety Road Rules 2009.

(2) For the purposes of this Part, more than one applicable offence arising out of the same set of circumstances are to be treated as a single applicable offence.
(3) For the purposes of subsection (2), the same set of circumstances is constituted by one continuous period during which a person continues to drive or be in charge of a motor vehicle.

84BK Part does not affect other penalty

An order under this Part for completion of an approved safe driving program is in addition to, and does not limit or otherwise affect, any other penalty that may be imposed in respect of an applicable offence.

Division 2—Requirement to complete approved safe driving program

84BL Court order for completion of approved safe driving program

(1) Subject to subsections (2) and (3), the court must order that a person complete an approved safe driving program if—

(a) the person is found guilty of an applicable offence; and

(b) in relation to the offence—

(i) a motor vehicle has been impounded or immobilised by a police officer under Division 2 of Part 6A; or

(ii) a motor vehicle has been impounded, immobilised or forfeited under a court order made under Division 3 of Part 6A.

(2) The court must not order that a person complete an approved safe driving program if the person provides to the court written evidence of having already completed an approved safe driving program provided by an approved provider.
(3) In exceptional circumstances, the court may exempt a person from completing an approved safe driving program.

(4) A person may apply to the court for an exemption under subsection (3)—

(a) at the hearing of the charge for the applicable offence; or

(b) at any time after the court has made an order under subsection (1).

(5) The court must notify the Corporation of—

(a) the making of an order under subsection (1); or

(b) the granting of an exemption under subsection (3).

S. 84BM Corporation to notify person of program and period for completion

If the court orders a person to complete an approved safe driving program under section 84BL(1), the Corporation must give notice to the person of—

(a) the approved safe driving program that the person is required to complete; and

(b) the date (being not less than 1 month after the date of the notice) by which the person must—

(i) complete the program; and

(ii) provide to the Corporation written evidence of having completed the program.
84BN  Failure to complete approved safe driving program

(1) If, by the date specified in a notice given by the Corporation under section 84BM—

(a) the person to whom the notice is given has failed to provide to the Corporation written evidence that he or she has completed the approved safe driving program specified in the notice; and

(b) the court has not notified the Corporation of the granting of an exemption under section 84BL(3)—

the Corporation must take the appropriate action under subsection (2).

(2) The Corporation must—

(a) suspend any driver licence or permit held by the person; or

(b) if the driver licence or permit is already suspended—further suspend the driver licence or permit from the date of expiry of the existing suspension; or

(c) if the person does not hold a driver licence or permit—disqualify the person from driving a motor vehicle on a road in Victoria and disqualify the person from obtaining a driver licence or permit.

(3) A suspension, further suspension or disqualification under subsection (2) remains in effect until the Corporation is satisfied that—

(a) the person has completed the approved safe driving program specified in the notice; or

(b) the person has been exempted by the court from completing the approved safe driving program.
(4) If—

(a) the Corporation has accepted written evidence of a person having completed an approved safe driving program; and

(b) the Corporation becomes aware that the evidence is invalid, false or issued in error—

the Corporation must take the appropriate action under subsection (2).

Division 3—Approval of safe driving programs and providers of safe driving programs

84BO Corporation may approve safe driving programs

(1) The Corporation may approve, in writing, safe driving programs to be provided by approved providers to persons, or a specified class of persons, who are the subject of a court order under section 84BL(1).

(2) The Corporation may, in writing—

(a) cancel or suspend the approval of a safe driving program; or

(b) vary the class of persons to whom an approved safe driving program is to be provided.

(3) The Corporation must not take action under subsection (2) unless it has allowed each approved provider that is approved to provide the approved safe driving program at least 10 working days to make written representations about the proposed action.
84BP  Corporation may approve providers of safe driving programs

(1) The Corporation may approve, in writing, a person or body to be a provider of safe driving programs for the purposes of this Part.

(2) The Corporation may determine the process for approving providers and the requirements an applicant must meet to be considered for approval.

(3) An approval under subsection (1) must be in writing and state which approved safe driving programs the person or body is approved to provide.

84BQ  Conditions etc. on approval of providers

(1) An approval under section 84BP may be given subject to any specified condition, limitation or restriction that the Corporation considers appropriate.

(2) At any time, the Corporation may, by giving written notice to the person or body concerned—

(a) vary or revoke a condition, limitation or restriction to which the approval is subject; or

(b) make the approval subject to a new condition, limitation or restriction.

(3) The Corporation must not take action under subsection (2) unless it has allowed the person or body at least 10 working days to make written representations about the proposed action.

84BR  Cancellation or suspension of approval of provider

(1) The Corporation may, by giving written notice to an approved provider, cancel or suspend the provider's approval under section 84BP if the Corporation is satisfied that the provider—
(a) has failed to comply with any condition, limitation or restriction to which the approval is subject; or

(b) has failed to provide a safe driving program to the satisfaction of the Corporation.

(2) The Corporation must not take action under subsection (1) unless it has allowed the approved provider at least 10 working days to make written representations about the proposed action.

**84BS Review by Tribunal**

(1) A person or body whose interests are affected by a decision of the Corporation under section 84BR to cancel or suspend an approval may apply for review of the decision to VCAT.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made; or

(b) if the person or body requests a statement of reasons for the decision under section 45 of the *Victorian Civil and Administrative Tribunal Act 1998*, the day on which—

(i) the statement is given to the person or body; or

(ii) the person or body is informed under section 46(5) of that Act that the statement will not be given.

**Division 4—Fee relating to approved safe driving program**

**84BT Payment of fee**

(1) A person participating in an approved safe driving program must pay to the approved provider who is providing the program the fee determined by the Corporation under section 84BV(1).
(2) The fee payable under subsection (1) is in addition to any commercial charge set by the approved provider for participation in the approved safe driving program.

(3) The approved provider must refund the fee to the person if the approved provider—

(a) fails to provide the approved safe driving program at the time agreed with the person; and

(b) either—

(i) is unable to reach agreement with the person as to an alternative time at which to provide the program; or

(ii) fails to provide the approved safe driving program at an alternative time agreed with the person.

84BU  **Approved provider to send fees to Corporation**

(1) An approved provider must send to the Corporation the fees paid to the approved provider under section 84BT(1) in the manner and within the time determined by the Corporation.

(2) The fees sent to the Corporation under subsection (1) must be accompanied by the information required by the Corporation relating to the approved safe driving programs to which the fees relate.

(3) The information required by the Corporation under subsection (2) may include the names of the participants of the approved safe driving programs.
84BV Corporation may determine fee

(1) The Corporation may determine from time to time the fee to be imposed on persons for participating in an approved safe driving program conducted by an approved provider.

(2) A determination under subsection (1) must be made by notice published in the Government Gazette.

(3) In determining the amount of the fee, the Corporation must ensure that the total fees collected do not exceed the costs of the implementation and administration of the safe driving program scheme established under this Part.
PART 6A—IMPOUNDMENT, IMMOBILISATION AND FORFEITURE OF MOTOR VEHICLES

Division 1—Preliminary

84C Definitions

(1) In this Part—

*appeal period*, in relation to a conviction or an impoundment or immobilisation order or a forfeiture order, means the period ending—

(a) if the period provided for the lodging of an appeal against the conviction or order has ended without such an appeal having been lodged, at the end of that period; or

(b) if an appeal against the conviction or order has been lodged, when the appeal is abandoned or finally determined;

*authorised person* means, in relation to a function or power under this Part, a person authorised by a police officer under section 84J to perform that function or exercise that power;

*Commonwealth Act* means the Personal Property Securities Act 2009 of the Commonwealth;
**Commonwealth Registrar** means the Registrar of Personal Property Securities appointed under the Commonwealth Act;

**conviction**, in relation to a relevant offence, includes a finding of guilt of the relevant offence without the recording of a conviction;

**designated costs** means the cost of impounding or immobilising a motor vehicle under this Part including, where relevant, the cost of—

(a) driving or moving the motor vehicle to a holding yard or place where the motor vehicle is to be immobilised; and

(b) storing the motor vehicle at the holding yard or place where the motor vehicle is immobilised; and

(c) releasing the motor vehicle from the holding yard or from immobilisation—

and includes any additional costs incurred if the motor vehicle is impounded or immobilised for longer than the designated period or the period specified under an impoundment or immobilisation order and any additional costs incurred if the motor vehicle is relocated by a police officer or an authorised person under section 84PB(1)(b) or (3);
designated period, in relation to a motor vehicle, means the period of 30 days beginning with the seizure or surrender of the motor vehicle under section 84G or 84H, but if the period expires outside of normal business hours, the period extends to 9.00 a.m. on the next business day, being a day other than a Saturday, a Sunday or a public holiday appointed under the Public Holidays Act 1993;

disposal order means an order made under section 84ZW;

driver, in relation to a motor vehicle, means the person who was driving or in charge of the motor vehicle at the time when it was involved in the commission of a relevant offence;

financing change statement has the same meaning as in the Commonwealth Act;

financing statement has the same meaning as in the Commonwealth Act;

forfeiture order means an order made by a court under section 84T;
hired, in relation to a motor vehicle, means a motor vehicle that—

(a) is owned by a person whose business is the short term hire of motor vehicles; and

(b) is part of the business's fleet; and

(c) under a written agreement, is hired for the hirer's short term use;

holding yard means a place used for the storage of motor vehicles impounded under this Part;

impoundment or immobilisation order means an order made by a court under section 84S;

improper use of a motor vehicle, in relation to a relevant offence, means the driving of a motor vehicle in a manner which intentionally causes the motor vehicle to undergo loss of traction by one or more of the wheels of the motor vehicle;

public place has the same meaning as in the Summary Offences Act 1966;

relevant court, in relation to an application made under this Part, means—

(a) the court with jurisdiction to hear and determine the relevant offence to which the application relates; or

(b) if an application is made after the sentencing of the driver for a relevant offence, the Magistrates' Court;
relevant offence means—

(a) a tier 1 relevant offence; or

(b) a tier 2 relevant offence;

Road Rules means the Road Safety Road Rules 2009;

search and seizure warrant means a warrant issued under section 84ZH(1);

second or subsequent offence has the meaning given in section 84E;

senior police officer means a police officer—

(a) of or above the rank of Inspector; or

(b) in the position of Officer in Charge, Vehicle Impoundment Unit;
substituted motor vehicle means a motor vehicle subject to an order for substitution made under section 84V(3);

tier 1 relevant offence means—

(a) a second or subsequent offence against section 18(1) other than an offence to which section 18(2) applies;

(b) a second or subsequent offence against section 30(1);

(c) a second or subsequent offence against section 49(1)(b), (f) or (g) in circumstances where the concentration of alcohol—

(i) present in the blood of the person was 0·10 grams or more per 100 millilitres of blood; or

(ii) present in the breath of the person was 0·10 grams or more per 210 litres of exhaled air;

(d) a second or subsequent offence against section 49(1)(bb), (h) or (i);

(e) an offence against section 65B or rule 20 of the Road Rules in circumstances where the motor vehicle is driven—

(i) at 70 kilometres per hour or more over the applicable speed limit; or

(ii) if the applicable speed limit is 110 kilometres per hour, at a speed of 170 kilometres per hour or more;
(f) an offence against section 64(1) in circumstances where the motor vehicle is driven—

(i) at 70 kilometres per hour or more over the applicable speed limit; or

(ii) if the applicable speed limit is 110 kilometres per hour, at a speed of 170 kilometres per hour or more;

(g) an offence against section 319AA(1) of the *Crimes Act 1958*;

tier 2 relevant offence means—

(a) an offence against section 64(1)—

(i) in circumstances involving improper use of a motor vehicle; or

(ii) in circumstances where a motor vehicle is driven at 45 kilometres per hour or more over the applicable speed limit but under 70 kilometres per hour over that limit; or

(iii) in circumstances where a motor vehicle is driven, if the applicable speed limit is 110 kilometres per hour, at a speed of 145 kilometres per hour or more but under 170 kilometres per hour;

(b) an offence against section 64A(1);

(c) an offence against section 65(1) in circumstances involving improper use of a motor vehicle;

(d) an offence against section 65A(1);

(e) an offence against section 68(1) or (2);
(f) an offence against section 68B;

(g) an offence against section 65B or rule 20 of the Road Rules in circumstances where the motor vehicle is driven—

(i) at 45 kilometres per hour or more over the applicable speed limit but under 70 kilometres per hour over that limit; or

(ii) if the applicable speed limit is 110 kilometres per hour, at a speed of 145 kilometres per hour or more but under 170 kilometres per hour;

(h) an offence against rule 291 of the Road Rules in circumstances involving improper use of a motor vehicle;

(i) an offence against rule 297 of the Road Rules in circumstances involving improper use of a motor vehicle;

(j) an offence against rule 265(3), 266(1), 268(4A) or 268(4B) of the Road Rules in circumstances where the number of passengers in the motor vehicle exceeds the number of seats available to them in the motor vehicle;

tow truck has the same meaning as in the Accident Towing Services Act 2007.
(3) For the purposes of an application for an impoundment or immobilisation order or a forfeiture order, charges for more than one relevant offence arising out of the same single set of circumstances are to be treated as one charge for a relevant offence.

(3A) For the purposes of subsection (3), if one of the charges is for a tier 1 relevant offence, all of the charges are to be treated as one charge for a tier 1 relevant offence.

(4) For the purposes of subsection (3), a single set of circumstances is constituted by one continuous period during which a person continues to drive or be in charge of a motor vehicle.

84D This Part does not affect other penalties

The impoundment, immobilisation or forfeiture of a motor vehicle under this Part arising out of the commission of a relevant offence is in addition to, and does not limit or otherwise affect, any penalty that may be imposed on the person for the relevant offence other than under this Part.

84E Meaning of second or subsequent offence

(1) In this section—

commencement day means—

(a) in relation to a tier 1 relevant offence (other than an offence referred to in paragraph (b)), the commencement of Part 2 of the Road Safety Amendment (Hoon Driving) Act 2010;

(b) in relation to an offence against section 30(1), the commencement of Part 2 of the Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005.
(2) For the purposes of the definition of tier 1 relevant offence, an offence is a second or subsequent offence only if the first offence was committed on or after the commencement day.

Division 2—Impoundment or immobilisation by Victoria Police

84F Powers of Victoria Police

(1) If a police officer believes on reasonable grounds that a motor vehicle is being, or has been used in the commission of a relevant offence, he or she may—

(aa) search for, or gain access to, the motor vehicle; and

(ab) direct a person of or over the age of 18 years at the premises being searched to provide information concerning the location of the motor vehicle; and

(a) seize the motor vehicle or require it to be surrendered; and

(b) impound or immobilise the motor vehicle for the designated period.

(2) If a police officer has exercised a power to seize and impound or immobilise a motor vehicle under this Division and that motor vehicle has since been released, the power to seize, impound or
immobilise a motor vehicle under this Division for the same relevant offence is exhausted.

84G Seizure of motor vehicle

(1) For the purposes of impoundment, immobilisation or forfeiture of a motor vehicle under this Part, a police officer may seize the motor vehicle—

(a) from a public place; or

(b) from a place that is not a public place with the consent of the owner or occupier of that place; or

(ba) from a place that is not a public place without the consent of the owner or occupier of that place following a search of that place in accordance with section 84GA; or

(c) from a place that is not a public place with a search and seizure warrant issued under Division 4.

(2) The period within which a motor vehicle may be seized under subsection (1) is—

(a) in the case of seizure from a public place or a place that is not a public place with the consent of the owner or occupier of that place—

(i) 48 hours after the alleged commission of the relevant offence; or

(ii) if a notice is served under section 84H(1), 10 days after the expiry of the period specified in that notice; or
(b) in the case of seizure from a place that is not a public place under a search and seizure warrant issued under Division 4, the period specified in that warrant; or

(c) in the case of seizure following a search conducted in accordance with section 84GA—

(i) if the motor vehicle is subject to an impoundment or immobilisation order or a forfeiture order, 10 days after the date on which the surrender of the vehicle was required by that order; or

(ii) in any other case, the period referred to in paragraph (a).

(3) In order to seize a motor vehicle a police officer may—

(a) require the driver of the motor vehicle to stop the motor vehicle and cause it to remain stopped;

(b) enter the motor vehicle, using reasonable force if necessary, for the purpose of moving the motor vehicle or immobilising the motor vehicle (whether by use of a steering wheel lock or otherwise);

(c) direct the driver, or any person in possession of the ignition keys or other keys to the motor vehicle, to give the keys to a police officer or an authorised person;

(d) if, after having taken reasonable steps to obtain the keys, the keys are not available, cause any locking device or other feature of the motor vehicle that is impeding the exercise of the power to seize the motor vehicle to be removed, dismantled or neutralised, and start the motor vehicle by other means.
84GA Search for motor vehicle

(1) Subject to subsection (3), for the purpose of seizing a motor vehicle under this Part, a police officer may, without consent and without warrant, enter and search—

(a) the garage address for that motor vehicle; or

(b) any land or premises, or any part of land or premises, where the police officer reasonably believes that the motor vehicle is present (either at that time or from time to time).

(2) For the purpose of searching for, or gaining access to, a motor vehicle under this Part, a police officer may—

(a) open unlocked doors, panels, objects or other things, or open unlocked places; and

(b) move, but not take away, anything that is not locked or sealed.

(3) This section does not authorise a police officer who is searching for a motor vehicle under this Part—

(a) to use force; or

(b) if the police officer is searching business premises, to enter those premises outside normal business hours; or

(c) to enter any part of a building if that part is used for residential purposes; or

(d) to enter any part of land or premises if the entrance to that part is locked; or
Road Safety Act 1986
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(e) to open any locked door to any building on the land.

84GB  Direction to provide location of motor vehicle

(1) For the sole purpose of locating a motor vehicle to be seized under this Part, a police officer may direct a person to provide information concerning the location of that motor vehicle if—

(a) the person is of or over the age of 18 years; and

(b) both the person and the police officer are present at the garage address of the motor vehicle or at premises where the police officer reasonably believes that the motor vehicle is present (either at that time or from time to time).

(2) A person of or over the age of 18 years must not—

(a) knowing the location of the motor vehicle referred to in a direction under subsection (1), fail to comply with the direction; or

(b) in purported compliance with a direction under subsection (1), give information that the person knows to be false or misleading in a material particular.

Penalty: 5 penalty units.

(3) A person is not excused from complying with a direction given under subsection (1) on the ground that complying with the direction may result in information being provided that—

(a) might incriminate the person; or
(b) may make the person liable to a penalty.

(4) Any information, document or other thing obtained as a direct or indirect consequence of a person complying with a direction given under subsection (1) is admissible in evidence against the person in—

(a) a proceeding for making a false or misleading statement; or

(b) any proceeding under this section—

but is not otherwise admissible in evidence against that person.

84H Surrender of motor vehicle

(1) If a police officer believes on reasonable grounds that a motor vehicle has been used in the commission of a relevant offence, he or she may serve a notice on the registered operator of the motor vehicle requiring the surrender of the motor vehicle.

Note

See section 93 for how a notice may be served.

(2) A notice served under subsection (1) must—

(a) be served—

(i) if the relevant offence is a prescribed offence detected by a prescribed road safety camera used in the prescribed manner, within 42 days of the commission of the relevant offence; or
(ia) if the relevant offence is—

(A) an offence under section 49(1)(b), (bb), (g) or (i) in relation to which the offender was required to give a sample of blood under section 55(9A), 55B(1)(a), 55E(13) or 56(2); or

(B) an offence under section 49(1)(bb) or (h) in relation to which the offender was required to give a sample of oral fluid under section 55E(2) or (3)—

at any time after the charge-sheet is filed but not later than 3 months after the commission of the relevant offence; or

(ii) in any other case, within 10 days of the commission of the relevant offence; and

(b) allow at least 7 days after the notice is served for the surrender of the motor vehicle unless an earlier time is consented to by the registered operator of the motor vehicle and that consent is endorsed in writing on the notice.

(3) A notice under subsection (1) must include—

(a) a statement by a police officer that the motor vehicle is liable to impoundment or immobilisation because that police officer believes on reasonable grounds that the motor vehicle was used in the commission of a relevant offence—
(i) if the relevant offence was detected by a prescribed road safety camera, within the preceding 42 days; or

S. 84H(3)(a)(i) inserted by No. 52/2007 s. 12(3), amended by Nos 28/2009 s. 34(2), 50/2012 s. 8(5).

(ii) in any other case, within the preceding 10 days; and

(b) a statement of the nature of the relevant offence and the date and time when the relevant offence is alleged to have been committed; and

(c) the name of the driver of the motor vehicle who is alleged to have committed the relevant offence; and

(d) the date, time and place at which the motor vehicle is required to be surrendered to a member of Victoria Police personnel or an authorised person; and

(e) a statement that if the motor vehicle is not surrendered at the date, time and place specified in the notice a police officer may seize the motor vehicle in accordance with section 84G; and

(f) the prescribed particulars (if any).

S. 84H(3)(d) amended by Nos 28/2009 s. 34(3), 50/2012 s. 8(7), 37/2014 s. 10(Sch. item 147.34(b)(ii)).

S. 84H(3)(e) amended by No. 37/2014 s. 10(Sch. item 147.34(b)(iii)).
(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.

(4) If the motor vehicle is not surrendered to a member of Victoria Police personnel or an authorised person at the date, time and place specified in a notice served under subsection (1), a police officer may, within 10 days after the period specified in the notice expires, exercise any power under sections 84F to 84GB to seize the motor vehicle.

84I Impoundment or immobilisation of a motor vehicle

If a motor vehicle is seized or surrendered in accordance with section 84G or 84H, a police officer may—

(a) move, or cause to be moved, the motor vehicle to a holding yard by any reasonable and appropriate means and impound it there for the balance of the designated period; or

(b) cause the motor vehicle to be immobilised (whether by wheel clamps, a steering wheel lock or any other means) for the balance of the designated period—

and may do anything else reasonably necessary to impound or immobilise the motor vehicle.

84J Powers of persons authorised by Victoria Police

A person authorised by a police officer to do so may—

(a) enter a motor vehicle;

(b) remove, dismantle or neutralise any locking device or other relevant feature of a motor vehicle;
(c) drive or move a motor vehicle to a holding yard by any reasonable means, including by the use of a tow truck;

(d) cause a motor vehicle to be immobilised (whether by wheel clamps, a steering wheel lock or any other means);

(e) store a motor vehicle in a holding yard;

(f) assist a police officer to seize or impound a motor vehicle under this Division;

(g) release an impounded motor vehicle at a time directed by a police officer;

(h) take possession of a motor vehicle surrendered in accordance with a notice under section 84H or an order under section 84S or 84T;

(i) drive or move a motor vehicle referred to in paragraph (h) as directed by a police officer;

(j) for the purposes of section 84PB or 84ZC, exercise the same powers to search for and seize a motor vehicle and other powers as are specified in sections 84G(1), (3)(b) and (3)(d) and 84I;
(k) relocate a vehicle seized under section 84PB;

(l) take possession of the keys to a motor vehicle as directed by a police officer under section 84G(3)(c).

84K Notice to driver and registered operator

(1) As soon as is reasonably practicable after a motor vehicle is impounded or immobilised under this Division, a police officer must serve written notice of the impoundment or immobilisation on—

(a) the driver of the motor vehicle; and

(b) if the driver is not the registered operator, the registered operator of the motor vehicle.

(2) If the registered operator of the motor vehicle is not the owner or sole owner of the motor vehicle, the registered operator must, as soon as is reasonably practicable, take reasonable steps to serve a copy of the notice served under subsection (1) on any owner of the motor vehicle.

Note

See section 93 for how a notice may be served.

84L Content of notice

A notice under section 84K must be in a form approved by the Chief Commissioner of Police and must state—

(a) the driver’s name; and
(b) the motor vehicle registration number and the make and model of the motor vehicle; and

(c) the date and time when the motor vehicle was impounded or immobilised; and

(d) the relevant offence in respect of which the motor vehicle has been impounded or immobilised; and

(e) the date and time when the motor vehicle is eligible for release; and

(f) the process by which the impounded or immobilised motor vehicle may be released, including—

(i) the location of the motor vehicle; and

(ii) the designated costs payable; and

(iii) if relevant, the contact details of the person who can release an immobilised motor vehicle; and

(iv) that satisfactory evidence of the entitlement of a person seeking to have the motor vehicle released may be required before the motor vehicle will be released; and

(v) if the motor vehicle has been immobilised by use of a steering wheel lock—the name of the unit within Victoria Police that arranges for the release of keys for steering wheel locks and the address and telephone number of that unit; and

(g) that the Chief Commissioner of Police may apply to the relevant court for an impoundment or immobilisation order or a
forfeiture order in accordance with this Part if the requirements of this Part relating to previous relevant offences (if any) are satisfied; and

(h) any other prescribed particulars.

**84M Review by a senior police officer**

(1) A police officer who impounds or immobilises a motor vehicle, or who authorises another person to do so, must, as soon as is practicable and in any event within 48 hours after the motor vehicle is impounded or immobilised, notify a senior police officer of the grounds on which he or she relied in forming the belief that the motor vehicle was used in the commission of a relevant offence.

(2) A senior police officer who is notified in accordance with subsection (1) must make inquiries into the circumstances of the impoundment or immobilisation and if, after making those inquiries, he or she is not satisfied that there were reasonable grounds to impound or immobilise the motor vehicle, must ensure that the motor vehicle is returned to the registered operator as soon as is practicable.

**84N Release of motor vehicle by Victoria Police**

(1) A motor vehicle must be released to the registered operator or any other person entitled to possession as soon as is practicable if—

(a) a police officer is satisfied that, at the time the relevant offence was committed, the motor vehicle used in the commission of the relevant offence was stolen or hired; or
(b) under section 84M a senior police officer is not satisfied that there were reasonable grounds to impound or immobilise the motor vehicle; or

(c) a senior police officer considers it reasonable or necessary to release the motor vehicle; or

(d) the Magistrates’ Court has made an order under section 84O(3).

(2) If a motor vehicle is released in accordance with subsection (1)(a) or (b) the Crown is liable to pay the designated costs.

(3) A senior police officer may, at his or her discretion, waive the designated costs if a motor vehicle is released in accordance with subsection (1)(c).

(4) If—

(a) a motor vehicle is released without any designated costs payable by a person seeking the release of the motor vehicle in accordance with this section; and

(b) the driver is subsequently found guilty of the relevant offence for which the motor vehicle was impounded or immobilised—

the Chief Commissioner of Police may apply to the relevant court for an order that the driver pay to the Chief Commissioner of Police the designated costs.
84O Appeal rights

(1AA) In this section—

*offender* means a person believed to have committed the relevant offence in relation to which the motor vehicle was impounded or immobilised.

(1) If a motor vehicle is impounded or immobilised under this Division, a person whose interests are substantially affected by the impoundment or immobilisation of the motor vehicle may apply to the Magistrates' Court for an order that the motor vehicle be released on the ground that the impoundment or immobilisation is causing, or will cause, exceptional hardship to the applicant or any other person.

(2) An application under subsection (1) may be made at any time while the motor vehicle remains impounded or immobilised, including where the impoundment or immobilisation continues for longer than the designated period as a result of non-payment of the designated costs.

(3) Subject to subsections (3A), (3B) and (3C), on an application made under subsection (1), the Magistrates' Court may make an order that a motor vehicle impounded or immobilised under this Division be released to a specified person if the Court is satisfied that the impoundment or immobilisation is causing, or will cause, exceptional hardship to the applicant or any other person.

(3A) If—

(a) the offender is disqualified from obtaining a driver licence or permit; or
(b) the offender's driver licence or permit is suspended—

for a period longer than the period of impoundment or immobilisation, the Magistrates' Court must not consider any exceptional hardship caused to the offender.

(3B) The Magistrates' Court must not make an order under subsection (3) on the grounds of exceptional hardship relating to the offender's employment unless the applicant satisfies the Court that—

(a) driving the impounded or immobilised motor vehicle is essential (not merely convenient) for the offender's employment; and

(b) no other transport to his or her place of employment is available to the offender; and

(c) the offender, after making reasonable enquiries, is unable to arrange for another person to drive the offender to his or her place of employment.

(3C) In determining whether to make an order under subsection (3), the Magistrates' Court must have regard to the safety of the public and the public interest in preventing the use of a motor vehicle that the Court considers is reasonably likely in all the circumstances to be used for further driving offences.

(4) If the Magistrates' Court makes an order under subsection (3) it may order that the applicant is not liable to pay all or part of the designated costs.

84P Offences

(1) A person must not, except in accordance with this Part or section 63A, move an impounded or immobilised motor vehicle or tamper with any of the equipment used to immobilise a motor vehicle.

Penalty: 60 penalty units.
(2) It is not an offence under subsection (1) to move an impounded or immobilised motor vehicle or disable any of the equipment used to immobilise a motor vehicle—

(a) if the impounded or immobilised motor vehicle is obstructing access to any property and it is necessary to move the motor vehicle to protect any person or property from a risk of imminent harm; or

(b) if the motor vehicle is immobilised by use of a steering wheel lock and the person who moved the vehicle or arranged for it to be moved has done so in accordance with an authorisation given under section 84PA; or

(b) to protect the motor vehicle from a risk of imminent harm.

Example

If an immobilised motor vehicle is located outside a burning house, emergency service personnel may move the motor vehicle if it is necessary to do so in order to gain access to the property or to ensure the safety of the motor vehicle.

(3) A person must not obstruct or hinder an authorised person or a member of Victoria Police personnel in the valid exercise of a power under this Part.

Penalty: 60 penalty units.

84PA Authorisation to move motor vehicle

(1) On the written application of a person, the Chief Commissioner of Police may authorise the person to move a motor vehicle that has been immobilised under this Part by use of a steering wheel lock or to arrange for the motor vehicle to be moved.
(2) An authorisation under subsection (1) must specify the location to which the motor vehicle may be moved and state that the motor vehicle must be moved within 14 days after the date of the authorisation.

(3) A person who is authorised under subsection (1) to move a motor vehicle, or to arrange for the motor vehicle to be moved, must do so at his or her own cost.

84PB Relocation of immobilised motor vehicle by Victoria Police

(1) A police officer or an authorised person may enter and move an immobilised motor vehicle to another location and immobilise the motor vehicle at the new location if—

(a) the motor vehicle has been left in a location where—

(i) it is detracting from public amenity; or

(ii) it is posing a safety risk; or

(iii) it is interfering with traffic flow; or

(b) since being immobilised, the motor vehicle has been moved by a person other than a police officer or an authorised person without the authorisation of the Chief Commissioner of Police.

(2) As soon as practicable after a motor vehicle has been moved under subsection (1), the police officer or authorised person who moved the motor vehicle must notify the registered operator in writing of the location to which it has been moved.
(3) A police officer or an authorised person may enter and move an immobilised motor vehicle, or arrange for the motor vehicle to be moved, to another location for the purpose of the sale or disposal of the motor vehicle under section 84ZQAB.

(4) For the purpose of entering and moving a motor vehicle under this section—

(a) a police officer has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1) and (3), 84GA, 84GB and 84I; and

(b) an authorised person has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1), (3)(b) and (3)(d) and 84I.

(5) For the purposes of subsection (4), the exercise of a power that is the same as a power under section 84G(1) is not subject to the time limits applied by section 84G(2).

84Q Recovery of motor vehicle

(1) An impounded or immobilised motor vehicle must be released to the registered operator or any other person entitled to possession of it—

(a) on the expiration of the designated period; and

(b) on the payment of the designated costs; and

(c) on provision of satisfactory evidence, as prescribed, of that person's identity and his or her entitlement to recover the motor vehicle; and

(d) subject to satisfactory compliance with the prescribed particulars (if any).
If no decision or order to release the motor vehicle has been made under section 84N or 84O, a police officer or an authorised person may—

(a) retain possession of an impounded motor vehicle; or

(b) continue to immobilise a motor vehicle—
in accordance with this Division until the designated costs are paid, even if the period during which the motor vehicle is impounded or immobilised is longer than the designated period.

**84QA How motor vehicle immobilised by steering wheel lock may be recovered**

(1) This section applies if a motor vehicle has been immobilised under this Part by use of a steering wheel lock and—

(a) under section 84Q(1), that motor vehicle must be released; or

(b) a decision under section 84N, or an order under section 84O, has been made to release that motor vehicle.

(2) The Chief Commissioner of Police must make the key to that steering wheel lock available at the address of the unit of Victoria Police referred to in section 84L(f)(v) for collection by—

(a) if the motor vehicle is to be released to a specified person in accordance with an order under section 84O, that person; or

(b) in any other case, the registered operator or any other person entitled to possession of the motor vehicle.
(2A) A member of the unit of Victoria Police referred to in section 84L(f)(v) may, by arrangement with the person to whom the key is to be made available, post the key to the person if the member is satisfied that it is impracticable for the person to collect the key.

(2B) A member of the unit of Victoria Police referred to in section 84L(f)(v) must provide to the person who collects a key to a steering wheel lock, or to whom the key is posted, written instructions stating—

(a) the location, or choice of locations, to which the key and the steering wheel lock must be returned; and

(b) the period, being a period of not less than 24 hours after the key is collected by the person or the key is delivered by post to the person, within which the key and the steering wheel lock must be returned.

(3) A person who collects a key to a steering wheel lock, or to whom a key to a steering wheel lock is delivered, must return the key and the steering wheel lock to the location, or one of the locations, and within the period specified in the instructions provided under subsection (2B).

Penalty: 60 penalty units.

(4) A person must not copy, or attempt to copy, a key to a steering wheel lock.

Penalty: 60 penalty units.
(5) It is not an offence against subsection (4) for any of the following persons to copy, or attempt to copy, a key to a steering wheel lock—
   (a) a police officer;
   (b) a person engaged or employed by a police officer for the purpose of copying the key.

(6) A person (other than a police officer or an authorised person) must not unlock, or attempt to unlock, a steering wheel lock fitted under this Division with any thing other than a key made available under subsection (2).

Penalty: 60 penalty units.

84R Crown to pay costs if driver found not guilty or charges not proceeded with

If—
   (a) the driver of a motor vehicle is subsequently found not guilty of the relevant offence in respect of which the motor vehicle was impounded or immobilised and is not found guilty of any other relevant offence arising out of the same single set of circumstances; or

S. 84QA(5)(a) amended by No. 37/2014 s. 10(Sch. item 147.40(c)).
S. 84QA(5)(b) amended by No. 37/2014 s. 10(Sch. item 147.40(c)).
S. 84QA(6) amended by No. 37/2014 s. 10(Sch. item 147.40(c)).
S. 84R inserted by No. 93/2005 s. 4.
(b) no charge-sheet charging a relevant offence is filed or such a charge-sheet is filed but the charge is not proceeded with within 12 months after the motor vehicle was impounded or immobilised—

then—

(c) the Crown is liable to refund any designated costs paid by any person; or

(d) the motor vehicle, if not already recovered by the registered operator or any other person entitled to possession of it, must be immediately released without any designated costs payable by the person seeking recovery of the motor vehicle.

**Division 3—Impoundment, immobilisation or forfeiture by court order**

**84S Impoundment or immobilisation order**

(1) On the application of the Chief Commissioner of Police under section 84U(1), if a driver is found guilty of—

(a) a tier 1 relevant offence; or

(b) a tier 2 relevant offence and within the period of 6 years immediately preceding the commission of that offence the driver has committed one or more relevant offences (whether a tier 1 relevant offence or a tier 2 relevant offence)—

the relevant court must order, subject to section 84Z, that the motor vehicle used in the commission of the relevant offence before the court or a substituted motor vehicle—
(c) be impounded or immobilised for a period of 45 days or, on the application of the Chief Commissioner of Police, any longer period not exceeding 3 months in total (including any period of impoundment or immobilisation during the designated period); or

(d) be forfeited to the Crown by order under section 84T(1).

Notes

1 Section 84Z allows a court to decline to make an impoundment or immobilisation order in certain circumstances.

2 An application under section 84ZG for a search and seizure warrant may be heard and determined immediately after an application under section 84U(1) if an impoundment or immobilisation order is made.

(2) An order under subsection (1) may only be made if the relevant court is satisfied that, if the application is in respect of the motor vehicle used in the commission of the relevant offence, at the time that offence was committed that motor vehicle was not—

(a) a stolen motor vehicle; or

(b) a hired motor vehicle; or

(c) being used in any prescribed circumstances.

(3) An order made under subsection (1) must specify the time and place at which the registered operator of the motor vehicle is required to surrender the motor vehicle to a member of Victoria Police personnel or an authorised person.
(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.

84T Forfeiture order

(1) On the application of the Chief Commissioner of Police under section 84U(1), if a driver is found guilty of—

(a) a tier 1 relevant offence and within the period of 6 years immediately preceding the commission of that offence the driver has committed one or more tier 1 relevant offences or two or more tier 2 relevant offences; or

(b) a tier 2 relevant offence and within the period of 6 years immediately preceding the commission of that offence the driver has committed two or more relevant offences (whether tier 1 relevant offences or tier 2 relevant offences or a combination of both)—

the relevant court may order, subject to section 84Z, that the motor vehicle used in the commission of the relevant offence before the court or a substituted motor vehicle be forfeited to the Crown.

(1A) If the relevant court is satisfied of the matters referred to in subsection (1) but declines to make an order under that subsection, the court must order, subject to section 84Z, that the motor vehicle used in the commission of the relevant offence or a substituted motor vehicle be
impounded or immobilised by order under section 84S(1).

Notes

1 Section 84Z allows a court to decline to make an impoundment or immobilisation order or a forfeiture order in certain circumstances.

2 An application under section 84ZG for a search and seizure warrant may be heard and determined immediately after an application under section 84U(1) if a forfeiture order or impoundment or immobilisation order is made.

(2) An order under subsection (1) or in accordance with (1A) may only be made if the relevant court is satisfied that, if the application is in respect of the motor vehicle used in the commission of the relevant offence, at the time that offence was committed that motor vehicle was not—

(a) a stolen motor vehicle; or

(b) a hired motor vehicle; or

(c) being used in any prescribed circumstances.

(3) An order made under subsection (1) must specify the time and place at which the registered operator of the motor vehicle is required to surrender the motor vehicle to a member of Victoria Police personnel or an authorised person.

(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.
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84TA Application to register financing statement after impoundment or immobilisation order or forfeiture order

(1) As soon as practicable after an impoundment or immobilisation order under section 84S or a forfeiture order under section 84T is made, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle that is the subject of the order.

Note
A financing statement includes a statement of the reason why the property is registered.

(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.

84U Application for an impoundment or immobilisation order or a forfeiture order

(1) An application for an impoundment or immobilisation order or a forfeiture order may be made by the Chief Commissioner of Police to the relevant court if the Chief Commissioner believes on reasonable grounds that—

(a) if the motor vehicle is not a substituted motor vehicle, it was—

(i) used in the commission of the relevant offence; and

(ii) at the time the relevant offence was committed the motor vehicle was not stolen, hired or used in prescribed circumstances; and
(b) unless subsection (1A) applies, the driver has been found guilty of a previous relevant offence or offences (as the case requires) committed within the period of 6 years before the commission of the relevant offence.

(1A) Subsection (1)(b) does not apply to an application for an impoundment or immobilisation order in relation to a tier 1 relevant offence.

(2) An application under subsection (1) may be made at any time after a charge-sheet charging a relevant offence is filed, but may not be made later than 28 days after the driver is sentenced for a relevant offence.

84V Substitution of motor vehicle

(1) If the driver of a motor vehicle used in the commission of a relevant offence is not the registered operator of that motor vehicle, the Chief Commissioner of Police may apply to the relevant court for an order that another motor vehicle, for which the driver is the registered operator, be subject to an impoundment or immobilisation order or a forfeiture order.

(2) An application made under subsection (1) must—

(a) be made in conjunction with an application under section 84U(1); and

(b) specify the motor vehicle that was used in the commission of the relevant offence; and

(c) specify the motor vehicle that is sought to be substituted for the motor vehicle used in the commission of the relevant offence.
Part 6A—Impoundment, immobilisation and forfeiture of motor vehicles

(3) The relevant court may make an order for the substitution of a motor vehicle if the court is satisfied that—

(a) the driver is not the registered operator of the motor vehicle used in the commission of the relevant offence; and

(b) the driver is the registered operator of the motor vehicle sought to be substituted; and

(c) a substitution order would not cause undue hardship to any person.

84W Notice of application

(1) If the Chief Commissioner of Police intends to make an application under section 84U(1), or under both sections 84U(1) and 84V(1), he or she must, at least 28 days before making the application, serve notice of the intended application on—

(a) the driver; and

(b) the registered operator of the motor vehicle in respect of which an order is to be sought, if he or she is not the driver referred to in paragraph (a); and

(c) any person who the Chief Commissioner of Police is aware has an interest in the motor vehicle in respect of which an order is to be sought; and

(d) the Corporation.

Note

See section 93 for how a notice may be served.

(2) A notice under subsection (1) must specify the motor vehicle in respect of which an order is to be sought.
(3) A notice served under subsection (1) must state—

(a) that if the driver is found guilty of a relevant offence, an application for an impoundment or immobilisation order or a forfeiture order will be made by the Chief Commissioner of Police in respect of the motor vehicle specified in the notice; and

(b) the registration number of that motor vehicle; 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) that the person on whom the notice is served must not sell or otherwise dispose of his or her interest in the relevant motor vehicle without the approval of the relevant court.

(4) If a notice has been served under subsection (1) in respect of the motor vehicle used in the commission of the relevant offence, a notice in respect of a substituted motor vehicle may only be served under this section if the original notice has been withdrawn.

84WA Application to register financing statement after serving notice of application

(1) As soon as practicable after serving notice under section 84W(1) of an intended application, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle that is the subject of the intended application.

Note

A financing statement includes a statement of the reason why the property is registered.
(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.

84X Interest in motor vehicle not to be transferred

(1) A person on whom a notice is served under section 84W(1) must not, before the application referred to in the notice is made and determined, or if an impoundment or immobilisation order or a forfeiture order is made, before the motor vehicle is seized under this Division, without the approval of the relevant court, sell or otherwise dispose of any interest in the motor vehicle that is the subject of the notice.

Penalty: 60 penalty units.

(2) Subsection (1) ceases to apply if—

(a) the driver is found not guilty of the relevant offence for which the application is made and is not found guilty of any other relevant offence arising out of the same single set of circumstances; or

(b) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the driver is sentenced for a relevant offence; or

(c) the charge for that relevant offence is withdrawn and no other charge-sheet is filed charging any other relevant offence arising out of the same single set of circumstances.
Notice where 2 or more offences charged

(1) If a driver has been charged with 2 or more relevant offences, the Chief Commissioner of Police may, before the charges are heard or determined, serve a notice on—

(a) the driver; and

(b) the registered operator of the motor vehicle in respect of which an order is to be sought, if he or she is not the driver referred to in paragraph (a); and

(c) any person who the Chief Commissioner of Police is aware has an interest in the motor vehicle in respect of which an order is to be sought; and

(d) the Corporation.

(2) A notice under subsection (1) must specify the motor vehicle in respect of which an order is to be sought.

(3) A notice served under subsection (1) must state—

(a) that the Chief Commissioner of Police intends to apply to the relevant court for an impoundment or immobilisation order or a forfeiture order in accordance with this Part if the requirements of this Part relating to previous relevant offences (if any) are satisfied; and

(b) the registration number of the motor vehicle that is the subject of the notice; and

(c) that a person named in the notice may, if the Chief Commissioner makes the application, appear before the relevant court at the
hearing of the application and show cause why the order should not be made; and

(d) that the person on whom the notice is served must not sell or otherwise dispose of his or her interest in the relevant motor vehicle without the approval of the relevant court.

(4) A person on whom a notice is served under subsection (1) must not, before the application referred to in the notice is made and determined, or if an impoundment or immobilisation order or a forfeiture order is made, before the motor vehicle is seized under this Division, without the approval of the relevant court, sell or otherwise dispose of any interest in the motor vehicle that is the subject of the notice.

Penalty: 60 penalty units.

(5) Subsection (4) ceases to apply if—

(a) the driver is found not guilty of one or more relevant offences which results in the driver being subject to only one remaining charge for a tier 2 relevant offence; or

(b) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the driver is sentenced for the relevant offences in relation to which the notice is served; or

(c) the charges for one or more of the relevant offences specified in the notice are withdrawn which results in the driver being subject to only one remaining charge for a tier 2 relevant offence.
84YA Direction not to transfer registration or register motor vehicle

(1) Within 7 days after service of a notice under section 84W(1) or 84Y(1), the Chief Commissioner of Police must direct the Corporation—

(a) not to transfer the registration of the motor vehicle that is the subject of the notice from the registered operator to another person; or

(b) not to register (other than by way of renewal) the motor vehicle that is the subject of the notice, unless the applicant for registration was the most recent registered operator of that motor vehicle—

until the Chief Commissioner notifies the Corporation that the direction has ceased in accordance with subsection (3).

(2) Subsection (1) applies whether or not an actual application for transfer of registration or registration has been made.

(3) The Chief Commissioner of Police must notify the Corporation that the direction not to transfer registration or register under subsection (1) has ceased when any of the following occurs—

(a) if a notice is served under section 84W(1)—

(i) the driver is found not guilty of the relevant offence for which the application specified in the notice is made and the driver is not found guilty of any other relevant offence arising out of the same single set of circumstances;

(ii) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the
driver is sentenced for a relevant offence;

(iii) the charge for the relevant offence specified in the notice is withdrawn and no other charge-sheet is filed charging any other relevant offence arising out of the same single set of circumstances;

(b) if a notice is served under section 84Y(1)—

(i) the driver is found not guilty of one or more relevant offences which results in the driver being subject to only one remaining charge for a tier 2 relevant offence;

(ii) the Chief Commissioner of Police does not make the application referred to in the notice within 28 days after the driver is sentenced for the relevant offences in relation to which the notice is served;

(iii) the charges for one or more of the relevant offences specified in the notice are withdrawn which results in the driver being subject to only one remaining charge for a tier 2 relevant offence;

(c) the court hearing the application declines to make an impoundment or immobilisation order or a forfeiture order;

(d) the court sets aside an impoundment or immobilisation order or a forfeiture order under section 84ZA;

(e) an impoundment or immobilisation order or a forfeiture order is set aside on appeal or, as a result of a conviction for a relevant offence being set aside on appeal, the order ceases to have effect;
(f) the period of impoundment or immobilisation specified in an impoundment or immobilisation order ends;

(fa) the motor vehicle vests in the Crown under section 84ZQ(4), 84ZQAB(3) or 84ZW(5);

(g) a forfeiture order becomes effective and a police officer or an authorised person takes possession of the motor vehicle that is the subject of the forfeiture order.

Note
Section 84ZB sets out when an order takes effect.

84YB Corporation not to transfer registration or register motor vehicle

(1) If directed by the Chief Commissioner of Police under section 84YA, and until notified by the Chief Commissioner under that section that the direction has ceased, the Corporation must not—

(a) transfer the registration of the motor vehicle that is the subject of a notice served under section 84W(1) or 84Y(1) from the registered operator to another person; or

(b) register (other than by way of renewal) the motor vehicle that is the subject of a notice served under section 84W(1) or 84Y(1), unless the applicant for registration was the most recent registered operator of that motor vehicle.

(2) If the Chief Commissioner of Police gives a direction under section 84YA(1) in respect of a motor vehicle, the Corporation must send to the registered operator of the motor vehicle a notice advising that no transfer of registration will occur in relation to that motor vehicle until the Chief
Commissioner gives notification under section 84YA(3).

84YC  Cessation of direction under this Act does not affect any suspension

The cessation of a direction not to transfer the registration of, or register, a motor vehicle under this Division does not affect the suspension of that registration under any other Act or law.

84Z  Hearing of application

(1AA) In this section—

offender means a person believed to have committed the relevant offence in relation to which the motor vehicle is to be impounded, immobilised or forfeited.

(1) The relevant court hearing an application for an impoundment or immobilisation order or a forfeiture order—

(a) must allow any person served with a notice under section 84W(1) or 84Y(1) to be heard at the hearing of the application and to show cause why an impoundment or immobilisation order or a forfeiture order should not be made; and

(b) may allow any other person to be heard if the court is satisfied that an impoundment or immobilisation order or a forfeiture order may substantially affect that person's interests.

(2) The court must not make an impoundment or immobilisation order or a forfeiture order if the registered operator of the motor vehicle that was used in the commission of the relevant offence
can prove to the court's satisfaction that the relevant offence was committed without the knowledge or consent of the registered operator.

(3) Subject to subsections (3A), (3B) and (3C), the court may decline to make an impoundment or immobilisation order or a forfeiture order if the court is satisfied that such an order would cause exceptional hardship to any person.

(3A) The court must not decline to make an impoundment or immobilisation order or a forfeiture order on the grounds of exceptional hardship caused to the offender if—

(a) either—

(i) the offender is disqualified from obtaining a driver licence or permit; or

(ii) the offender's driver licence or permit is suspended; and

(b) in the case of an application relating to an impoundment or immobilisation order, the suspension or disqualification is for a period longer than 3 months.

(3B) The court must not decline to make an impoundment or immobilisation order or a forfeiture order on the grounds of exceptional hardship relating to the offender's employment unless the offender, or another person appearing before the court, satisfies the court that—

(a) driving the impounded or immobilised motor vehicle is essential (not merely convenient) for the offender's employment; and

(b) no other transport to his or her place of employment is available to the offender; and
(c) the offender, after making reasonable enquiries, is unable to arrange for another person to drive the offender to his or her place of employment.

(3C) In determining whether to decline to make an impoundment or immobilisation order or a forfeiture order on the ground of exceptional hardship, the court must have regard to the safety of the public and the public interest in preventing the use of a motor vehicle that the court considers is reasonably likely in all the circumstances to be used for further driving offences.

(3D) If the court declines to make an impoundment or immobilisation order or a forfeiture order on the ground of exceptional hardship, it may require the applicant (other than the offender) to give an undertaking that the motor vehicle will not be made available to be driven by the offender during a period not exceeding—

(a) 3 months if the application is for an impoundment or immobilisation order and—

(i) the offender is disqualified from obtaining a driver licence or permit for a period not exceeding 3 months; or

(ii) the offender's driver licence or permit is suspended for a period not exceeding 3 months; or

(b) 12 months in any other case.

Note

Section 84ZAC provides for the impoundment, immobilisation or forfeiture of the motor vehicle on breach of an undertaking.
(3E) A person is deemed to be released from an undertaking under subsection (3D) if, on appeal—

(a) the driver is found not guilty of the relevant offence in relation to which the motor vehicle was impounded, immobilised or forfeited and is not found guilty of any other relevant offence arising out of the same single set of circumstances; or

(b) the conviction for that relevant offence is set aside.

(4) If the court makes an impoundment or immobilisation order the Chief Commissioner of Police must notify the driver and the registered operator that if the motor vehicle is not collected or released within two months after the motor vehicle was impounded or immobilised the Chief Commissioner of Police may sell or otherwise dispose of the motor vehicle and any item or thing left in or on the motor vehicle.

Note
Section 84ZQ provides that the Chief Commissioner of Police must give 14 days notice of any intention to sell or dispose of a motor vehicle or item or thing left in or on the motor vehicle.

84ZA Application for variation of order

(1AA) In this section—

offender means a person believed to have committed the relevant offence in relation to which the motor vehicle was impounded, immobilised or forfeited.
(1) A person whose interests are substantially affected by an impoundment or immobilisation order or a forfeiture order may apply to the court that made the order for variation of the order if the applicant can demonstrate—

(a) that since the impoundment or immobilisation order or forfeiture order was made the applicant's circumstances have changed; and

(b) that the impoundment or immobilisation order or forfeiture order is causing, or will cause, exceptional hardship to the applicant or any other person.

(2) An application under subsection (1) to vary an impoundment or immobilisation order may be made at any time while the motor vehicle is impounded or immobilised.

(2A) An application under subsection (1) cannot be made on the grounds of exceptional hardship caused to the offender if—

(a) either—

(i) the offender is disqualified from obtaining a driver licence or permit; or

(ii) the offender's driver licence or permit is suspended; and

(b) in the case of an application relating to an impoundment or immobilisation order, the suspension or disqualification is for a period longer than the period of impoundment or immobilisation.

(2B) An application under subsection (1) cannot be made on the grounds of exceptional hardship if the impoundment or immobilisation order or forfeiture order was made in accordance with section 84ZAC.
(3) An application under subsection (1) to vary a
forfeiture order may be made at any time while
the motor vehicle is vested in the Crown.

(4) Subject to subsections (5), (6) and (7), the court
may make an order varying an impoundment or
immobilisation order or a forfeiture order in any
way, including—

(a) setting aside the impoundment or
immobilisation order or forfeiture order; or

(b) reducing the amount of time that the motor
vehicle is subject to impoundment or
immobilisation.

(5) The court must not make an order under
subsection (4) on the grounds of exceptional
hardship relating to the offender's employment
unless the applicant satisfies the court that—

(a) driving the impounded or immobilised motor
vehicle is essential (not merely convenient)
for the offender's employment; and

(b) no other transport to his or her place of
employment is available to the offender; and

(c) the offender, after making reasonable
enquiries, is unable to arrange for another
person to drive the offender to his or her
place of employment.

(6) In determining whether to make an order under
subsection (4), the court must have regard to the
safety of the public and the public interest in
preventing the use of a motor vehicle that the
court considers is reasonably likely in all the
circumstances to be used for further driving
offences.
(7) If the court makes an order under subsection (4) setting aside the impoundment or immobilisation order or forfeiture order, it may require the applicant (other than the offender) to give an undertaking that the motor vehicle will not be made available to be driven by the offender during a period not exceeding—

(a) 3 months if the application is for an impoundment or immobilisation order and—

(i) the offender is disqualified from obtaining a driver licence or permit for a period not exceeding 3 months; or

(ii) the offender’s driver licence or permit is suspended for a period not exceeding 3 months; or

(b) 12 months in any other case.

Note
Section 84ZAC provides for the impoundment, immobilisation or forfeiture of the motor vehicle on breach of the undertaking.

(8) A person is deemed to be released from an undertaking given under subsection (7) if, on appeal—

(a) the driver is found not guilty of the relevant offence in relation to which the motor vehicle was impounded, immobilised or forfeited and is not found guilty of any other relevant offence arising out of the same single set of circumstances; or

(b) the conviction for that relevant offence is set aside.

84ZAB Interest in motor vehicle not to be transferred

If a person is bound by an undertaking under section 84Z(3D) or 84ZA(7), the person must not, before the expiry of the period of the undertaking,
without the approval of the relevant court, sell or otherwise dispose of any interest in the motor vehicle in relation to which the undertaking was given.

Penalty: 60 penalty units.

84ZAC Breach of undertaking

(1) In this section—

relevant motor vehicle means the motor vehicle in relation to which an undertaking was given;

undertaking means an undertaking under section 84Z(3D) or 84ZA(7).

(2) If—

(a) a person has given an undertaking to a relevant court; and

(b) it appears to the court that the person has failed to comply with the undertaking—

the court must direct that the person and the registered operator for the relevant motor vehicle (if not the person who has given the undertaking) be served with a notice stating the matters referred to in subsection (3).

Note

See section 93 for how a notice may be served.

(3) A notice served under subsection (2) must state that—

(a) the relevant court intends to deal with an apparent breach of the undertaking at the specified time on a specified date; and

(b) the person who gave the undertaking is required to attend before the relevant court at that time and date; and
(c) if the person who gave the undertaking is not the registered operator for the relevant motor vehicle, the registered operator may attend before the relevant court at that time and date.

(4) If a notice is served under subsection (2) on a person and he or she fails to attend before the relevant court at the time and date specified, the relevant court may deal with the apparent breach of the undertaking in the absence of the person.

(5) If the relevant court is satisfied that a person has failed to comply with an undertaking, the court may—

(a) make an impoundment or immobilisation order in accordance with section 84S in relation to the relevant motor vehicle; or

(b) make a forfeiture order in accordance with section 84T in relation to the relevant motor vehicle—

as the case requires.

(6) In considering whether to make an impoundment or immobilisation order or a forfeiture order under subsection (5), the relevant court must not consider whether making that order will cause exceptional hardship to any person.

84ZB When order takes effect

(1) An impoundment or immobilisation order or a forfeiture order becomes effective on—

(a) the expiration of the appeal period for the conviction of the accused of the relevant offence; or
(b) the expiration of the appeal period for—

(i) a sentence under Chapter 6 of the **Criminal Procedure Act 2009**; or

(ii) a sentence under the **Children, Youth and Families Act 2005**—

imposed following that conviction—whichever is the later.

(2) If a conviction for a relevant offence is set aside on appeal, an impoundment or immobilisation order or a forfeiture order is of no effect.
(3) If a person convicted of a relevant offence applied for leave to appeal against the conviction for the relevant offence or the making of an impoundment or immobilisation order or a forfeiture order after the end of the relevant appeal period and such leave is granted, the appeal operates as a stay of the impoundment or immobilisation order or forfeiture order and any motor vehicle impounded or immobilised or otherwise in the possession of the Crown must be released to the registered operator.

(4) If a motor vehicle subject to a forfeiture order is no longer in the possession of the Crown and the conviction for the relevant offence, or the forfeiture order, is set aside on appeal, the Crown must pay to the appellant and any other person with an interest in the motor vehicle an amount commensurate with the value of the appellant's or other person's interest in the motor vehicle.

(5) Any amount to be paid under subsection (4) is to be paid out of the proceeds (if any) of the sale of the motor vehicle.

(6) A person with an interest in the motor vehicle may make an application to the Magistrates' Court for an order that compensation be paid in accordance with subsection (4) and the Court may make either or both of the following orders—

(a) an order that compensation be paid to that person commensurate with the value of the person's interest in the motor vehicle;

(b) an order that the costs incurred by the Crown in executing the forfeiture order may be retained by the Crown out of the proceeds of the sale of the motor vehicle.
84ZC  Powers of police and authorised officers to enforce orders

(1) When acting under an impoundment or immobilisation order or a forfeiture order made under this Division—

(a) a police officer has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1) and (3), 84GA, 84GB and 84I; and

(b) an authorised person has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1), (3)(b) and (3)(d) and 84I.

(2) For the purposes of subsection (1), the exercise of a power that is the same as a power under section 84G(1) is not subject to the time limits applied by section 84G(2).

84ZD  Liability for costs of impoundment or immobilisation

(1) If a court makes an impoundment or immobilisation order, the motor vehicle must not be released from impoundment or immobilisation until the designated costs are paid by the person seeking to collect or release the motor vehicle.

(2) Despite subsection (1), a motor vehicle may be released from immobilisation without the payment of the designated costs if the Chief Commissioner of Police has accepted a signed undertaking given by the registered operator of the motor vehicle in accordance with subsection (3).
(3) For the purposes of subsection (2), the undertaking must provide that, in return for the release of the motor vehicle without payment of the designated costs, the registered operator undertakes by the date specified by the Chief Commissioner of Police—

(a) to remove the registration plates of the motor vehicle and return them to the Corporation; and

(b) to have the motor vehicle destroyed by a recycler approved by the Chief Commissioner; and

(c) to give to the Chief Commissioner a certificate issued by the recycler confirming the destruction of the motor vehicle.

(4) If the registered operator complies with the undertaking, the Chief Commissioner of Police must waive the designated costs.

(5) If the registered operator fails to comply with the undertaking—

(a) the amount of the designated costs becomes a debt due to the Crown recoverable in a court of competent jurisdiction; and

(b) the motor vehicle may be seized by a police officer and immobilised or impounded until—

(i) the designated costs (including any further costs associated with the subsequent immobilisation or impoundment under this paragraph) are paid; or

(ii) the vehicle is sold or disposed of under Division 5.
84ZE Rights of owners

If a person is not the registered operator of a motor vehicle, but can prove ownership of the motor vehicle to a court exercising powers under this Part, that person may make any application or exercise any right that a registered operator may make or exercise under this Part.

84ZF Third party protection from forfeiture order

(1) A person, other than the driver, who did not appear at the hearing of an application for a forfeiture order and has an interest in the motor vehicle subject to a forfeiture order may apply to the court that made the forfeiture order for an order that—

(a) if ownership of the motor vehicle is vested in the Crown—

(i) ownership of the motor vehicle be transferred to the applicant, if the applicant had, immediately before the forfeiture order was made, full ownership of the motor vehicle; or

(ii) where the applicant had part ownership of the motor vehicle, the motor vehicle be sold and the Crown pay to the applicant and any other owner of the motor vehicle an amount commensurate with the value of each owner's interest in the motor vehicle; or

(b) if the motor vehicle has been sold or otherwise disposed of, the Crown pay to the applicant an amount commensurate with the value of the applicant's interest in the motor vehicle.
(2) Leave of the court that made the forfeiture order is required to bring an application if—

(a) the person was served with a notice of the application for a forfeiture order under section 84W(1) or 84Y(1); or

(b) six months or more have elapsed since the date the forfeiture order was made.

(3) The court may only grant leave under subsection (2)(b) if it is satisfied that the delay in making the application was not due to the applicant's neglect.

(4) On an application the court may make an order—

(a) declaring the nature, extent and, if necessary for the order, the value (at the time the declaration is made) of the applicant's interest in the motor vehicle; and

(b) directing the Crown—

(i) if the motor vehicle is vested in the Crown and the applicant has full ownership of the motor vehicle, to transfer ownership of the motor vehicle to the applicant; or

(ii) if the motor vehicle is no longer vested in the Crown, or if the applicant does not have full ownership of the motor vehicle, to pay to the applicant the value of the applicant's interest in the motor vehicle.

(5) The court may only make an order under subsection (4) if it is satisfied that—

(a) the applicant would have, apart from the forfeiture order, a relevant interest in the motor vehicle; and
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(b) the relevant offence occurred without the knowledge or consent of the applicant.

(6) Any amount to be paid under this section is to be paid out of the proceeds (if any) of the sale of the motor vehicle.

Division 4—Search and seizure warrants

84ZG Application for search and seizure warrant

(1) A police officer may apply to a magistrate for a search and seizure warrant to be issued under this Division in respect of a motor vehicle if—

(a) the motor vehicle is subject to an impoundment or immobilisation order and has not been surrendered to a police officer; or

(b) the motor vehicle is subject to a forfeiture order and has not been surrendered to a police officer; or

(c) a police officer under section 84F believes on reasonable grounds that the motor vehicle has been used in the commission of a relevant offence and the application is made within 48 hours after the alleged commission of the relevant offence; or

(d) a police officer is empowered under section 84H(4) to seize the motor vehicle; or
(e) a police officer is empowered under section 84PB(4)(a) to seize the motor vehicle.

(2) An application under this section may only be made if the applicant believes on reasonable grounds that the motor vehicle is, or may be within the next 72 hours, in or on specified premises.

(3) An application for a search and seizure warrant must be made in writing.

(4) A magistrate must not issue a search and seizure warrant unless—

(a) the application for the warrant sets out the grounds on which the warrant is sought; and

(b) the applicant has given the magistrate, either orally or in writing, any further information that the magistrate requires concerning the grounds on which the warrant is sought; and

(c) the information given by the applicant is verified before the magistrate on oath or affirmation or by affidavit.

84ZH Search and seizure warrant

(1) A magistrate to whom an application is made under section 84ZG, if satisfied that there are reasonable grounds for believing the matters set out in the application, may issue a search and seizure warrant to the person or persons named in the warrant to enter the specified premises and search for and seize the specified motor vehicle.
(2) A search and seizure warrant issued under subsection (1) may authorise the person or persons named in the warrant to—

(aa) direct a person to provide information concerning the location of the motor vehicle specified in the warrant in accordance with section 84GB;

(a) enter the premises specified in the warrant; and

(b) search for the motor vehicle specified in the warrant; and

(c) use reasonable force to break into or open any structure on the premises specified in the warrant that may store the motor vehicle specified in the warrant; and

(d) seize and impound or immobilise the motor vehicle specified in the warrant, using any or all of the powers specified in sections 84G(3) and 84I.

(3) A search and seizure warrant must—

(a) state the purpose for which the warrant is issued; and

(b) give a description of the motor vehicle authorised for seizure; and

(c) give the address or other description of the premises in respect of which the warrant is issued.

(4) Every search and seizure warrant issued under this section must be in the prescribed form.
84ZI Record of proceedings for search and seizure warrant

(1) A magistrate who issues a search and seizure warrant must cause a record to be made of all relevant particulars of the grounds he or she has relied on to justify the issue of the warrant.

(2) The magistrate may decline to record any matter that might disclose the identity of a person if the magistrate believes on reasonable grounds that to do so might jeopardise the safety of any person.

84ZJ Announcement before entry

On executing a search and seizure warrant, the person executing the warrant must—

(a) announce that he or she is authorised by the warrant to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises before force is used to enter the premises.

84ZK Copy of search and seizure warrant to be given to occupier

A person executing a search and seizure warrant must—

(a) if the occupier is present at the premises where the warrant is being executed, identify himself or herself to the occupier and give the occupier a copy of the warrant; or

(b) if the occupier is not present at the premises where the warrant is being executed, identify himself or herself to any other person at the premises and give that person a copy of the warrant.
84ZL Use of assistants to execute search and seizure warrant

A person executing a search and seizure warrant may do so with the aid of any assistants that the person considers reasonably necessary to achieve the purpose for which the warrant was issued.

84ZM Application of Magistrates' Court Act 1989

Except to the extent that a contrary intention appears in this Division, the rules to be observed with respect to search warrants mentioned in the Magistrates' Court Act 1989 extend and apply to search and seizure warrants under this Division.

84ZN Expiry of search and seizure warrant

(1) A search and seizure warrant ceases to have effect if it is recalled and cancelled by the magistrate who issued it.

(2) If subsection (1) does not apply, a search and seizure warrant ceases to have effect—

(a) at the end of the period of one month after its issue; or

(b) when it is executed—

whichever occurs first.

84ZO Report on execution of search and seizure warrant

(1) The person to whom a search and seizure warrant is issued must give a report to the registrar of the Magistrates' Court—

(a) stating whether or not the warrant was executed; and
(b) if the warrant was executed, setting out briefly the result of the execution of the warrant; and

(c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed; and

(d) stating whether or not a copy of the warrant was given to the occupier or another person at the premises.

(2) A report must be—

(a) in the prescribed form; and

(b) made within 10 days after the expiry of the warrant.

(3) A person may apply to the Magistrates' Court for an order authorising the person to inspect the report given under subsection (1) if the person satisfies the Court that the person is—

(a) the owner or occupier of premises on which the warrant was executed; or

(b) a person who has an interest in the motor vehicle seized in the execution of the warrant.

84ZP Obstruction or hindrance of person executing search and seizure warrant

A person must not, without reasonable excuse, obstruct or hinder a person executing a search and seizure warrant.

Penalty: 60 penalty units.
Division 5—Disposal of motor vehicles

Subdivision 1—Disposal of motor vehicles, items and things

84ZQ Sale or disposal of uncollected motor vehicles and items

(1) Subject to subsection (2), the Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a motor vehicle and any item or thing left in or on the motor vehicle, if—

(a) a decision is made by a police officer to impound or immobilise a motor vehicle under section 84F or an impoundment or immobilisation order is made against that motor vehicle; and

(b) the motor vehicle is not collected or released 2 months or more after the date on which the motor vehicle first became available for collection or release.

(1A) A purchaser of a motor vehicle, item or thing sold in accordance with subsection (1) acquires good title to that vehicle, item or thing.

(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.

S. 84ZQ(1)(a) amended by No. 37/2014 s. 10(Sch. item 147.44).

S. 84ZQ(2) substituted by No. 28/2009 s. 38.
(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) the Chief Commissioner has given notice in accordance with section 84ZQA at least 14 days before that sale or disposal; 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.

(4) Subject to subsection (5), if notice is given under section 84ZQA of an intention to sell or otherwise dispose of a motor vehicle and any uncollected item or thing left in or on it, 14 days after that notice is given the motor vehicle and any items or things left in or on it vest absolutely in the Crown, free from all other interests, rights, titles or claims in or to ownership or possession.

(5) Subsection (4) does not apply to a motor vehicle, item or thing if, within 14 days after notice is given under section 84ZQA, the Chief Commissioner of Police determines that the motor vehicle, item or thing should not be sold or otherwise disposed of.
Road Safety Act 1986
No. 127 of 1986
Part 6A—Impoundment, immobilisation and forfeiture of motor vehicles

(6) Subsection (4) has effect despite any other Act (other than the Charter of Human Rights and Responsibilities) or law to the contrary.

84ZQA Notice to be given of intention to sell or dispose

(1) The Chief Commissioner of Police must give notice of intention to sell or otherwise dispose of a motor vehicle, and any uncollected item or thing left in or on the motor vehicle, under section 84ZQ by—

(a) serving notice of the intention 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.

(2) A notice under subsection (1) must state—

(a) that the Chief Commissioner of Police intends to sell or otherwise dispose of the motor vehicle, and any uncollected item or thing left in or on the motor vehicle, not less than 14 days after the notice is given; and
(b) information that identifies the motor vehicle, including the motor vehicle's registration number (if applicable); and

(c) that 14 days after the notice has been given, the motor vehicle and any uncollected item or thing left in or on it will vest absolutely in the Crown, free from all other interests, rights, titles or claims in or to ownership or possession.

(3) The Chief Commissioner of Police must not give notice under this section unless all proceedings in relation to the relevant offence that led to the impoundment or immobilisation of the relevant motor vehicle have been finalised and any appeal period has expired.

84ZQAB Sale or disposal of motor vehicles and items deemed to be abandoned

(1) The Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a motor vehicle and any item left in or on the motor vehicle, if—

(a) a decision is made by a police officer to impound or immobilise the motor vehicle under section 84F or an impoundment or immobilisation order is made against the motor vehicle; and

(b) the motor vehicle is not collected or released after the motor vehicle becomes available for collection or release; and

(c) the motor vehicle is deemed under subsection (2) to be abandoned.

(2) A motor vehicle is deemed to be abandoned if—

(a) the Chief Commissioner has given notice in accordance with section 84ZQAC; and
(b) either—

(i) 30 days have elapsed since the giving of the notice and none of the events referred to in section 84ZQAC(4)(a) to (f) have occurred; or

(ii) the court has made an order under section 84ZQAD that the motor vehicle is abandoned.

(3) If a motor vehicle is deemed to be abandoned under subsection (2), the motor vehicle and any item or thing left in or on it vest absolutely in the Crown free from all other interests, rights, titles or claims in or to ownership or possession.

(4) Subsection (3) has effect despite any other Act (other than the Charter of Human Rights and Responsibilities Act 2006) or law to the contrary.

(5) A purchaser of a motor vehicle, item or thing sold in accordance with subsection (1) acquires good title to that vehicle, item or thing.

(6) A person with an interest in a motor vehicle sold or disposed of under subsection (1) must be compensated in accordance with subsection (7) if, after the sale or disposal of the motor vehicle—

(a) in the case where the motor vehicle was impounded or immobilised by a police officer under Division 2—

(i) the person accused of the relevant offence in relation to which the vehicle was impounded or immobilised is found not guilty of that offence and is not found guilty of any other relevant offence arising out of the same set of circumstances; or
(ii) no charge-sheet charging a relevant 
offence is filed in relation to the 
impoundment or immobilisation of the 
motor vehicle or a charge-sheet is filed 
but the charge is not proceeded with 
within 12 months after the motor 
vehicle was impounded or immobilised; 
or 
(b) in any case—a conviction for the relevant 
offence in relation to which the vehicle was 
impounded or immobilised is set aside. 

(7) Compensation paid to a person under 
subsection (6) must—

(a) be based on the market valuation of the 
motor vehicle obtained by the Chief 
Commissioner of Police; and 

(b) be proportionate to the person's interest in 
the motor vehicle; and 

(c) have deducted any money already paid to the 
person under section 84ZQD(1)(c) and (d) in 
respect of the motor vehicle. 

84ZQAC  Notice to be given of intention to deem motor 
vehicle abandoned 

(1) The Chief Commissioner of Police must give 
notice of intention to deem a motor vehicle to be 
abandoned under section 84ZQAB and then to sell 
or otherwise dispose of the motor vehicle and any 
uncollected item or thing left in or on the motor 
vehicle by serving a notice that complies with 
subsections (3) and (4) on—

(a) the driver of the motor vehicle; and 

(b) if the driver of the motor vehicle is not the 
registered operator of the motor vehicle— 
the registered operator; and
(c) any person who the Chief Commissioner is aware has an interest in the motor vehicle; and

(d) the Corporation.

(2) If the registered operator of the motor vehicle is not the owner or sole owner of the motor vehicle, the registered operator must, as soon as is reasonably practicable, take reasonable steps to serve a copy of the notice served under subsection (1) on any owner of the motor vehicle.

Note
See section 93 for how a notice may be served.

(3) A notice under subsection (1) must include information that identifies the motor vehicle, including the motor vehicle's registration number (if applicable).

(4) A notice under subsection (1) must state that the motor vehicle will be deemed to be abandoned and that the motor vehicle and any item left in or on the motor vehicle will be sold or disposed of unless, within 30 days after the date of the notice—

(a) the designated costs in respect of the impoundment or immobilisation of the motor vehicle are paid and the motor vehicle is collected or released; or

(b) the designated costs are not required to be paid because—

(i) the motor vehicle is released from impoundment or immobilisation in accordance with section 84N(1)(a) or (b); or
(ii) the motor vehicle is released from impoundment or immobilisation in accordance with section 84N(1)(c) and a senior police officer has waived the designated costs under section 84N(3); or

(c) a conviction for the relevant offence is set aside; or

(d) the court makes an order under section 84O or 84ZA that the motor vehicle be released; or

(e) the Chief Commissioner of Police accepts under section 84ZD(2) an undertaking by the registered operator to have the motor vehicle destroyed by a recycler approved by the Chief Commissioner; or

(f) a person substantially affected by the proposed sale or disposal of the motor vehicle has applied to the Magistrates' Court under section 84ZQAD for an order declaring that the motor vehicle is not abandoned.

(5) Subject to subsection (6), the Chief Commissioner of Police may give notice under subsection (1) if—

(a) in the case of a motor vehicle that has been impounded—more than 7 days have elapsed since the motor vehicle became available for collection; or

(b) in the case of a motor vehicle that has been immobilised—more than 3 months have elapsed since the motor vehicle became available for release.
(6) The Chief Commissioner of Police must not give notice under subsection (1) if the Chief Commissioner is aware that any of the following are yet to be determined—

(a) an application under section 84O(1);

(b) an application under section 84U(1) for an impoundment or immobilisation order or for a forfeiture order;

(c) an application under section 84ZA(1) for variation of an impoundment or immobilisation order or forfeiture order.

84ZQAD Application for order that motor vehicle is not abandoned

(1) If the Chief Commissioner of Police gives notice of an intention to deem a motor vehicle to be abandoned, a person substantially affected by the proposed sale or disposal of the motor vehicle may apply to the Magistrates' Court for an order that the motor vehicle is not abandoned.

(2) An application under subsection (1) may be made in conjunction with an application under section 84O(1) or 84ZA(1).

(3) The court hearing an application under subsection (1)—

(a) must not make an order under this section unless satisfied that the applicant has notified the Chief Commissioner of Police of the application; and

(b) must allow the Chief Commissioner of Police to be heard at the hearing.

(4) On application under subsection (1), the court may—

(a) make an order that the motor vehicle is not abandoned; or
(b) make an order that the motor vehicle is abandoned.

(5) The court may make an order that the motor vehicle is not abandoned only if satisfied that—

(a) the applicant has not, in fact, abandoned the motor vehicle; and

(b) the applicant has a genuine intention to collect or arrange for the release of the motor vehicle at some time in the future.

(6) An order by the court that a motor vehicle is not abandoned does not prevent the Chief Commissioner of Police from—

(a) applying under section 84ZV for a disposal order; or

(b) selling or disposing of the motor vehicle in accordance with section 84ZQ.

84ZQB Application to register financing statement after giving notice of intention to sell etc.

(1) As soon as practicable after giving notice under section 84ZQA(1) or 84ZQAC(1) of an intention to sell or otherwise dispose of a motor vehicle, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle.

Note
A financing statement includes a statement of the reason why the property is registered.

(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.
84ZQC Application to register financing statement if motor vehicle vests in Crown

(1) Within 7 days after a motor vehicle vests in the Crown under section 84ZQ(4) or 84ZQAB(3), the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires), in respect of the motor vehicle.

Note
A financing statement includes a statement of the reason why the property is registered.

(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.

84ZQD Application of proceeds of sale

(1) Where a motor vehicle or item or thing is sold under section 84ZQ or 84ZQAB the proceeds of sale are to be applied in the following order of priority—

(a) to pay the costs of the sale;
(b) to pay any costs of impoundment or immobilisation;
(c) to discharge any security interest over the motor vehicle, such as a bank loan or a lease arrangement, that existed immediately before the motor vehicle vested in the Crown;
(d) to pay the registered operator of the motor vehicle or, if the registered operator cannot be reasonably located, for payment into the Consolidated Fund.
(2) Section 73(2) of the Personal Property Securities Act 2009 of the Commonwealth applies to an interest arising out of the operation of this Division.

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

84ZR Sale or disposal of motor vehicle subject to forfeiture 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 forfeiture order, and any uncollected item or thing left in or on the motor vehicle, once the forfeiture order takes effect in accordance with section 84ZB(1).

(1A) A purchaser of a motor vehicle, item or thing sold in accordance with subsection (1) acquires good title to that vehicle, item or thing.

(2) The Chief Commissioner of Police must not sell or dispose of an item or thing left in or on a motor vehicle that is the subject of a forfeiture order unless all reasonable efforts have been made to return the item or thing to its owner.

(3) The Chief Commissioner of Police must not sell or otherwise dispose of a motor vehicle that is the subject of a forfeiture order unless 14 days have elapsed since notice was given under section 84ZRA.
84ZRA Notice to be given of intention to sell or dispose

(1) The Chief Commissioner of Police must give notice of intention to sell or otherwise dispose of a motor vehicle that is the subject of a forfeiture order, and any uncollected item or thing left in or on the motor vehicle, by—

(a) serving notice of the intention 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.

(2) A notice under subsection (1) must state—

(a) that the Chief Commissioner of Police intends to sell or otherwise dispose of the motor vehicle, and any uncollected item or thing left in or on the motor vehicle, no earlier than 14 days after the notice is served; and

(b) information that identifies the motor vehicle, including the motor vehicle's registration number (if applicable).
84ZRB Application to register financing statement after giving notice of intention to sell motor vehicle subject to forfeiture order

(1) As soon as practicable after giving notice under section 84ZRA(1) of an intention to sell or otherwise dispose of a motor vehicle that is the subject of a forfeiture order, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle.

Note
A financing statement includes a statement of the reason why the property is registered.

(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.

84ZS Application of proceeds of sale

(1) Where a motor vehicle or item or thing is sold under section 84ZR the proceeds of sale are to be applied in the following order of priority—

(a) to pay the costs of the sale;

(b) to pay any costs of impoundment or immobilisation;

(c) to discharge any security interest over the motor vehicle, such as a bank loan or a lease arrangement, that existed immediately before the motor vehicle vested in the Crown or the
forfeiture order took effect (as the case requires);

(d) to pay the registered operator of the motor vehicle if the motor vehicle was uncollected, or if the registered operator cannot be reasonably located, for payment into the Consolidated Fund;

(e) for payment into the Consolidated Fund if the motor vehicle was the subject of a forfeiture order.

(2) Section 73(2) of the Personal Property Securities Act 2009 of the Commonwealth applies to an interest arising out of the operation of this Division.

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.

(1A) A purchaser of a motor vehicle, item or thing sold in accordance with subsection (1) acquires good title to that vehicle, item or thing.

(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 police officer to impound or immobilise the motor vehicle under section 84F or an impoundment or immobilisation order is made against the vehicle; and

(b) the relevant court adjourns proceedings in relation to a relevant offence, other than to a fixed date, because the accused fails to appear; and

(c) a warrant is issued for the arrest of the accused; 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.

(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 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
(ba) that on the making of the disposal order, the motor vehicle, and all items or things left in or on the motor vehicle, will vest absolutely in the Crown, free from all other interests, rights, titles or claims in or to ownership or possession; 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.
84ZUA Application to register financing statement after giving notice of application for disposal order

(1) As soon as practicable after giving notice under section 84ZU(1) of an intention to make application for a disposal order for a motor vehicle, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle.

Note
A financing statement includes a statement of the reason why the property is registered.

(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.

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) The court must not decline to make a disposal order on the grounds of exceptional hardship relating to the accused if—

(a) the accused is disqualified from obtaining a driver licence or permit; or

(b) the driver licence or permit held by the accused is suspended.

(4) The court must not decline to make a disposal order on the grounds of exceptional hardship relating to the employment of the accused unless the accused, or another person appearing before the court, satisfies the court that—

(a) driving the impounded or immobilised vehicle is essential (not merely convenient) for the employment of the accused; and

(b) no other transport to his or her place of employment is available to the accused; and

(c) the accused, after making reasonable enquiries, is unable to arrange for another person to drive the accused to his or her place of employment.
(5) If the court makes the disposal order, the motor vehicle vests absolutely in the Crown, free from all other interests, rights, titles or claims in or to ownership or possession.

(6) Subsection (5) has effect despite any other Act (other than the Charter of Human Rights and Responsibilities) or law to the contrary.

84ZWA Application to register financing statement after making of disposal order

(1) Within 7 days after the making of a disposal order under section 84ZW, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle that is the subject of the order.

Note
A financing statement includes a statement of the reason why the property is registered.

(2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.

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, that existed immediately before the disposal order was made.
(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.

(3) Section 73(2) of the Personal Property Securities Act 2009 of the Commonwealth applies to an interest arising out of the operation of this Subdivision.

**Division 6—Inspection of impounded, immobilised or forfeited motor vehicles**

**84ZY  Power to inspect motor vehicles**

(1) A police officer or a person referred to in section 13(6) may inspect at any reasonable time a motor vehicle that has been impounded, immobilised or forfeited under this Part if the police officer or person believes on reasonable grounds that the motor vehicle does not comply with this Act or the regulations.

(2) An inspection may include any tests which the inspecting police officer or person considers appropriate.
(3) If, on inspecting a motor vehicle, a police officer or a person referred to in section 13(6) discovers that the motor vehicle does not comply with this Act or the regulations, the police officer or person may take any action under section 14.
PART 7—INFRINGEMENTS

86 Parking infringements to be operator onus offences

A parking infringement is an operator onus offence for the purposes of Part 6AA.

87 Service of parking infringement notices

(1) If a person who is referred to in section 77(2) (other than a person referred to in paragraph (db) of that subsection) or an officer who is referred to in section 77(4) has reason to believe that a parking infringement has been committed in respect of any vehicle on land or premises other than a council controlled area within the meaning of Part 7A, he or she may serve or cause to be served, in accordance with the regulations, a parking infringement notice.
(1AA) Despite subsection (1), if a parking infringement (other than a parking infringement involving a contravention of section 90E) occurs on land which is part of the Parliamentary reserve, no parking infringement notice in respect of it may be served except on the written direction of a presiding officer authorising the serving of a parking infringement notice either generally or in a particular case.

(1AB) In a prosecution in relation to a parking infringement notice served in accordance with this section occurring on the Parliamentary reserve, a certificate which purports to be signed by a presiding officer, stating that a person is authorised to serve that parking infringement notice or take proceedings in respect of that parking infringement notice is evidence, and, in the absence of evidence to the contrary, is proof, that the person is so authorised.

(1AC) All courts must take judicial notice of the signature of a presiding officer on a certificate referred to in subsection (1AB).

(1AD) Subject to subsections (1AE) to (1AG), if an authorised officer within the meaning of section 208 of the Transport (Compliance and Miscellaneous) Act 1983 (as authorised under section 221AB of that Act) has reason to believe that a parking infringement has been committed in respect of any vehicle that is on or in a park and ride facility, the person may serve or cause to be served, in accordance with the regulations, a parking infringement notice.
(1AE) Before serving or causing to be served a parking infringement notice, an authorised officer within the meaning of section 208 of the **Transport Act 1983** (as authorised under section 221AB of that Act) may serve a parking infringement advisory notice.

(1AF) A parking infringement advisory notice must state that a parking infringement has been reported to the Department of Transport, Planning and Local Infrastructure by the authorised officer.

(1AG) A parking infringement advisory notice must be served by affixing or placing the notice on the relevant vehicle in a conspicuous manner.

(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.
(1B) If—

(a) a police officer; or

(ab) a protective services officer; or

(b) a member of staff of the municipal council; or

(c) an authorised person for a municipal council—

has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of a municipal council, being land that is a council controlled area within the meaning of Part 7A, he or she may serve or cause to be served, in accordance with the regulations, a parking infringement notice.

(1BA) An offence referred to in subsection (1), (1AD), (1A) or (1B) for which a parking infringement notice may be served is an infringement offence within the meaning of the Infringements Act 2006.

(1BB) Regulations about service referred to in subsections (1), (1AD), (1A) or (1B) must not be inconsistent with the Infringements Act 2006.
(1C) A municipal council or relevant public authority may authorise a person under this section only if it is satisfied the person—

(a) is competent to exercise the functions conferred on an authorised person by or under this Part; and

(b) is of good repute, having regard to character, honesty and integrity; and

(c) has agreed in writing to exercise the functions conferred on an authorised person by or under this Part according to performance criteria established from time to time by the municipal council or relevant public authority.

(1D) A municipal council or relevant public authority must issue an identity card to an authorised person it appoints.

(1E) An identity card under subsection (1D) must—

(a) contain a photograph of the authorised person; and

(b) contain the signature of the authorised person; and

(c) be signed by a member of staff of the municipal council or relevant public authority authorised by the municipal council or relevant public authority to do so either generally or in any particular case.

(1F) A person issued with an identity card under subsection (1D) must produce it on being requested to do so.

Penalty: 5 penalty units.
(1G) Any action taken or thing done by an authorised person is not invalidated by his or her failure to produce his or her identity card.

(1H) A person must not falsely represent himself or herself to be an authorised person.

Penalty: 10 penalty units.

* * * * *

(3) The penalty prescribed for the purposes of this section for any parking infringement, other than a penalty for a parking infringement referred to in subsection (3A) or a penalty fixed by any municipal council or relevant public authority pursuant to subsection (4), is the amount prescribed by the regulations in respect of infringements of the kind in question.

(3A) The penalty for a parking infringement constituted by a contravention of section 90E is 1 penalty unit or the higher amount prescribed by the regulations in respect of infringements of that kind.
(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.

(5) If a municipal council or relevant public authority fixes a penalty under subsection (4) in relation to a parking infringement, a police officer or a protective services officer issuing a parking infringement notice in respect of the infringement may specify in the notice one or other of the following as the penalty payable under the notice—

(a) the amount fixed by the council or relevant public authority as the penalty; or

S. 87(4) amended by No. 78/1987 s. 17, substituted by Nos 12/1989 s. 4(1) (Sch. 2 Item 105.10) (as amended by No. 13/1990 s. 38(2)(q)), 14/2000 s. 22, amended by No. 81/2006 s. 47, substituted by No. 28/2009 s. 41(8).

S. 87(4A) inserted by No. 28/2009 s. 41(8).


S. 87(5)(a) amended by No. 28/2009 s. 41(9).
(b) the amount specified by the regulations as the penalty in respect of the infringement.

(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;
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.

88 Traffic infringements

(1) A person who is referred to in section 77(2)(a), (c) or (d) who has reason to believe that a person has committed a traffic infringement of a kind that is prescribed for the purposes of this Part, or that is a drinking while driving infringement, may issue or cause to be issued and serve or cause to be served on that person a traffic infringement notice.

(1AA) Subject to this Act, an offence referred to in subsection (1) for which a traffic infringement notice may be served is an infringement offence within the meaning of the Infringements Act 2006.
(1A) Despite subsection (1), a traffic infringement notice in respect of a drink-driving infringement, a drug-driving infringement or of an infringement detected by a prescribed road safety camera, may only be issued or caused to be issued by a police officer.

(2) For the purposes of subsection (1), a traffic infringement notice—

(a) must be in the form required by section 13 of the Infringements Act 2006; and

(b) must also state—

(i) in the case of a traffic infringement notice in respect of a drink-driving infringement, the concentration of alcohol alleged to have been present in the person's blood or breath; and

(ii) in the case of a traffic infringement notice in respect of an excessive speed infringement, the speed at which the motor vehicle is alleged to have been driven and the permitted speed; and

(c) may contain any additional prescribed details.

(2A) Regulations made for the purposes of subsection (2) must not be inconsistent with the Infringements Act 2006.
(3) Despite anything to the contrary in the Infringements Act 2006, a traffic infringement notice of a kind referred to in section 89A may be withdrawn, whether the appropriate penalty has been paid or not, at any time within 28 days of the service of the notice, by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which contains the prescribed particulars and is signed by a prosecution officer.

(3AA) Despite subsection (3) of this Act or section 18 of the Infringements Act 2006, a traffic infringement notice cannot be withdrawn under those provisions—

(a) where the infringement penalty is lodged with an infringements registrar under Part 4 of that Act; or

(b) where the infringement penalty is registered under Schedule 3 to the Children, Youth and Families Act 2005.

(3A) Despite subsection (3) or section 18 or 19 of the Infringements Act 2006, a withdrawal notice in relation to a traffic infringement notice of a kind referred to in subsection (1A) must be signed by a police officer.

(4) If, in relation to a traffic infringement of a kind referred to in section 89A, the amount specified in the infringement notice as the penalty for the infringement has been paid before the notice is withdrawn the amount so paid must be refunded upon the notice of withdrawal being given.
(5) The penalty for the purposes of this section in respect of any traffic infringement (other than a drinking while driving infringement) is the amount prescribed in respect of that infringement.

(5A) The penalty for the purposes of this section for a drinking while driving infringement is 2 penalty units.

(6) A person referred to in section 77(2)(a), (c) or (d) who has reason to believe that a person (other than the driver of a motor vehicle) has committed a traffic infringement may require that person to state his or her name and address.

(7) A person must not refuse or fail to state his or her name and address, or state a false name or address.

Penalty: 2 penalty units.

89 Effect of payment of penalty
(4) Subject to Division 5 of Part 2 of the Infringements Act 2006, if an infringement notice has been served and the amount of the penalty is not paid before the expiration of the period specified in the notice as the time for payment or where, in the case of a traffic infringement notice, the notice has been withdrawn, nothing in this section in any way prejudices the institution or prosecution of proceedings for the infringement in question but in any case, where the court is satisfied that an infringement notice was served in respect of the infringement and has not been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose (including, without limiting the generality of the foregoing, the purposes of any enactment imposing, authorising or requiring the imposition of any disqualification, disability or higher penalty on convicted people or people convicted on more than one occasion) except in relation to—

(a) the making of the conviction itself; and

(b) any subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal or order to review.

(5) Despite anything to the contrary in Division 5 of Part 2 of the Infringements Act 2006, the regulations may provide that demerit points are incurred under Part 4 in respect of a traffic infringement by a person.

* * * * *
(8) Despite anything to the contrary in this section or Division 5 of Part 2 of the **Infringements Act 2006**, the fact that a person paid a penalty, was found guilty, participated in a diversion program or had a conviction imposed by the court, in respect of an infringement for which an infringement notice was served—

(a) may be recorded for the purposes of any scheme to provide discounted fees to good drivers; and

(b) may be used to wholly or partly exclude the person from the scheme.

(9) Despite anything to the contrary in this section, the fact that a person paid a penalty, was found guilty, participated in a diversion program or had a conviction imposed by the court, in respect of an infringement for which an infringement notice was served may be recorded and used for the purposes of determining the period or periods for which a person may be required to hold a driver licence on probation.

89A  **Effect of drink-driving infringements, drug-driving infringements and excessive speed infringements**

(1) Section 89 does not apply to drink-driving infringements, drug-driving infringements or excessive speed infringements.
(2) Subject to section 89B and despite Division 5 of Part 2 of the Infringements Act 2006, a traffic infringement notice that is issued in respect of a drink-driving infringement, drug-driving infringement or excessive speed infringement takes effect, 28 days after the date of the notice, as a conviction for the offence specified in the notice, unless within that time the person to whom the notice was issued—

(a) objects, in accordance with this section, to the infringement notice; or

(b) in the case of a traffic infringement notice issued in respect of an excessive speed infringement, gives a statement under section 84BE to an enforcement official within the meaning of Part 6AA.

(3) Despite subsection (2), if an infringement notice is withdrawn under subsection (7)(c) the person to whom the notice was issued must for all purposes be taken not to have been convicted of the offence specified in the notice.

(4) A person may object to the infringement notice by giving notice in writing of the objection to the person specified for that purpose in the infringement notice.

(5) A notice of objection must state—

(a) that the person to whom the infringement notice was issued refuses to pay the penalty; and

(b) that the person requests that the matter be dealt with by a court; and

(c) whether or not the person intends to defend any charge arising out of the facts specified in the infringement notice.
(6) The giving of notice of objection to the infringement notice has the effect that—

(a) the infringement notice is cancelled; and

(b) the person to whom the infringement notice was issued may only be proceeded against by the filing of a charge-sheet charging the alleged offence.

(7) If an infringement notice is issued in respect of a drink-driving infringement or a drug-driving infringement and it subsequently appears that the offence in respect of which the notice was issued is not a traffic infringement of a kind that is prescribed for the purposes of this Part—

(a) the infringement notice operates as if the infringement were so prescribed; and

(b) any cancellation, disqualification or suspension, and any extension of probation, that results from the operation of the notice is valid; and

(c) any police officer may, during the period of cancellation, disqualification or suspension, withdraw the infringement notice by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which contains the prescribed particulars and is signed by a prosecution officer; and

(d) the person may be proceeded against by the filing of a charge-sheet charging the alleged offence.
(8) A court which convicts a person or finds a person guilty after an infringement notice has been withdrawn in accordance with subsection (7)(c) must take into account any period of cancellation, disqualification or suspension, and any extension of probation, of a driver licence or permit that resulted from the operation of the notice that had passed before the date of the conviction or finding.

89B Extension of time to object if no actual notice

(1) If a traffic infringement notice that is issued in respect of a drink-driving infringement, a drug-driving infringement or an excessive speed infringement is not delivered personally to the person to whom it was issued, and that person is not in fact aware, before the notice takes effect as a conviction, that it had been issued, the person may apply to an infringements registrar within the meaning of the Infringements Act 2006 or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, to have the time for objecting to the notice extended.

(1A) An application under subsection (1) must—
(a) be made within 14 days of the applicant becoming aware of the notice; and
(b) be filed with the registrar; and
(c) be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds on which the extension is sought.
(1B) If an application is made under subsection (1) to an infringements registrar within the meaning of the Infringements Act 2006, the registrar must—

(a) refer the application to the Magistrates' Court constituted by a magistrate; and

(b) cause a notice of the time and place of the hearing of the application to be given or sent to—

(i) the person who issued the infringement notice; and

(ii) the applicant.

(2) The Magistrates' Court or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, must not grant an extension of time unless satisfied that the person was not in fact aware, before the infringement notice took effect as a conviction, that it had been issued.

(3) If the Magistrates' Court or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, grants an extension of time, and if a notice of objection is given, in accordance with section 89A(4) or with any order made by the Court or the registrar, as the case may be, before the expiry of the extended time, the giving of the notice has the effect that—

(a) the conviction is set aside; and

(b) any cancellation, disqualification or suspension, and any extension of probation, that resulted from the conviction is set aside; and
(ba) any demerit points recorded as a result of the conviction are cancelled; and

(c) anything done by the person before he or she became aware that the infringement notice had been issued that constituted an offence only because of any cancellation, disqualification or suspension, or any extension of probation, that resulted from the conviction must be taken not to constitute that offence; and

(d) any of the procedures set out in the Infringements Act 2006 or in Schedule 3 to the Children, Youth and Families Act 2005 that are being used for the enforcement of the amount specified in the infringement notice as payable in respect of the offence for which the notice was issued must be discontinued and any warrant issued under that Act or that Schedule, as the case requires, ceases to have effect; and

(e) the infringement notice is cancelled; and

(f) the person may only be proceeded against by the filing of a charge-sheet charging the alleged offence; and

(g) any period of cancellation, disqualification or suspension, and any extension of probation, of a driver licence or permit that—

(a) resulted from the conviction; and

S. 89B(3)(ba) inserted by No. 73/1998 s. 4(8).


S. 89B(3)(f) amended by Nos 57/1989 s. 5(5)(c)(iii), 68/2009 s. 97(Sch. item 106.26).

S. 89B(3)(g) amended by No. 41/1992 s. 6(2).
(b) occurred after the person became aware that the infringement notice had been issued—

must be taken into account by any court which subsequently convicts the person, or finds the person guilty, of the offence in respect of which the infringement notice was issued.

(4) Despite anything to the contrary in any other Act, a charge-sheet referred to in subsection (3)(f) may be filed not later than 12 months after the date of the notice of objection.

(5) Any reference in sections 89C or 89D to the 28 day period must, if a court has granted an extension of that period in a particular case, be read as a reference to the extended period.

89BA  Extension of time to lodge statement under section 84BE

(1) If—

(a) a person is issued with a traffic infringement notice in respect of an excessive speed infringement; and

(b) the infringement notice is not delivered personally to the person and the person is not in fact aware, before the notice takes effect as a conviction, that it had been issued—

the person may apply to an infringements registrar within the meaning of the Infringements Act 2006 or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, to have the time for giving a statement under section 84BE(1) extended.
(2) An application under subsection (1) must—
   
   (a) be made within 14 days of the applicant becoming aware of the notice; and
   
   (b) be filed with the registrar; and
   
   (c) be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds for the application.

(3) If an application is made under subsection (1) to an infringements registrar within the meaning of the Infringements Act 2006, the registrar must—

   (a) refer the application to the Magistrates' Court; and
   
   (b) cause a notice of the time and place of the hearing of the application to be given or sent to—

      (i) the person who issued the infringement notice; and
      
      (ii) the applicant.

(4) The Magistrates' Court or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, must not grant an extension of time unless satisfied that the person was not in fact aware, before the infringement notice took effect as a conviction, that it had been issued.

(5) If the Magistrates' Court or a registrar (within the meaning of Schedule 3 to the Children, Youth and Families Act 2005) of the Children's Court, as the case may be, grants an extension of time and if an enforcement official accepts a statement given by the person before the expiry of the extended time as an effective statement for the purposes of Part 6AA, the giving of the statement has the effect that—
(a) the conviction is set aside; and
(b) any cancellation, disqualification or suspension, and any extension of probation, that resulted from the conviction is set aside; and
(c) any demerit points recorded as a result of the conviction are cancelled; and
(d) anything done by the person before he or she became aware that the infringement notice had been issued that constituted an offence only because of any cancellation, disqualification or suspension, or any extension of probation, that resulted from the conviction must be taken not to constitute that offence; and
(e) any of the procedures set out in the Infringements Act 2006 or in Schedule 3 to the Children, Youth and Families Act 2005 that are being used for the enforcement of the amount specified in the infringement notice as payable in respect of the offence for which the notice was issued must be discontinued and any warrant issued under that Act or that Schedule, as the case requires, ceases to have effect; and
(f) the infringement notice is cancelled.

89C Cancellation of licence or permit for drink-driving infringements

(1) Any driver licence or permit held by a person to whom a traffic infringement notice has been issued in respect of a drink-driving infringement is cancelled, and the person is disqualified from obtaining one, for a period ascertained in accordance with Column 2 of Schedule 1 by
reference to the blood or breath alcohol concentration specified in the notice if—

(a) the blood or breath alcohol concentration specified in the notice is—

(i) 0.05 grams or more per 100 millilitres of blood or 210 litres of exhaled air (as the case requires), if section 52 applies to the person or the person was under the age of 26 years at the time of the infringement; or

(ii) 0.07 grams or more per 100 millilitres of blood or 210 litres of exhaled air (as the case requires), in any other case; and

(b) no notice of objection to the infringement notice has been given and the 28 day period has expired.

Note

The period for which the person is disqualified from obtaining a driver licence or permit is reduced if the person's licence was already suspended in accordance with a notice under section 51(1B) (see section 51(3C)).

(1A) Subsection (2) applies if a traffic infringement notice is issued in respect of a drink-driving infringement to a person who does not hold a full driver licence or a corresponding licence issued in another State or a Territory of the Commonwealth or another country and—

(a) the blood or breath alcohol concentration specified in the notice is less than 0.05 grams per 100 millilitres of blood or
210 litres of exhaled air (as the case requires); and

(b) no notice of objection to the infringement notice has been given and the 28 day period has expired.

(2) Any probationary driver licence or learner permit held by the person is cancelled and, whether or not the person holds such a licence or permit, he or she is disqualified for 3 months from obtaining a driver licence or learner permit under this Act.

(3A) If a person to whom a traffic infringement notice has been issued in respect of a drink-driving infringement—

(a) is exempted under the regulations from the requirements of section 18(1)(a) because he or she holds an appropriate licence or permit issued in another State, Territory or country; and

(b) does not give notice of objection to the infringement notice and the 28 day period has expired—

the person is disqualified from driving a motor vehicle on a road in Victoria for the period for which he or she would have been disqualified under this section had the person held a licence or permit under this Act of a kind corresponding to the licence or permit held by him or her.
(4) Any cancellation and disqualification under subsection (1) or (2) or disqualification under subsection (3A) takes effect on the expiry of the 28 day period.

(5) When any cancellation has taken effect, the Corporation may, by notice in writing served on the person whose licence or permit is cancelled, require that person to surrender any licence or permit document to the Corporation.

(6) A person on whom a notice is served under subsection (5) must comply with the notice within the time specified in it.

Penalty: 5 penalty units.

(7) Payment of a penalty in respect of a drink-driving infringement may be made in accordance with the regulations.

(8) A person, other than a person referred to in subsection (3A), who pays a penalty in respect of a drink-driving infringement must, on or before the expiry of the 28 day period, surrender his or her licence or permit document in accordance with the regulations, if the concentration of alcohol specified in the notice to have been present in the person's blood or breath is—

(aa) less than 0·05 grams per 100 millilitres of blood or 210 litres of exhaled air (as the case requires), if subsection (2) applies to the person; or
89D Suspension of licence or permit for excessive speed infringement or drug-driving infringement

(1) This section applies if—

(a) a person is issued with a traffic infringement notice in respect of—

(i) an excessive speed infringement; or

(ii) a drug-driving infringement; and

(b) no notice of objection to the infringement notice has been given and the 28 day period has expired.

(1AA) Any driver licence or permit held by the person is suspended—

(a) in the case of a traffic infringement notice issued in respect of an excessive speed infringement—for a period ascertained in accordance with Column 2 of Schedule 5 by reference to the speed specified in the notice;
(b) in the case of a traffic infringement notice issued in respect of a drug-driving infringement—for a period of 3 months.

(1AB) In addition, the person is disqualified from obtaining a further licence or permit for the period determined under subsection (1AA).

(1A) If a person to whom a traffic infringement notice has been issued in respect of an excessive speed infringement or a drug-driving infringement—

(a) is exempted under the regulations from the requirements of section 18(1)(a) because he or she holds an appropriate licence or permit issued in another State, Territory or country; and

(b) does not give notice of objection to the infringement notice and the 28 day period has expired—

the person is disqualified from driving a motor vehicle on a road in Victoria for the period for which he or she would have been suspended and disqualified under this section had the person held a licence or permit under this Act.

(3) Any suspension or disqualification under this section takes effect on the expiry of the 28 day period.

(4) When any suspension has taken effect, the Corporation may, by notice in writing served on the person whose licence or permit is suspended,
require that person to surrender any licence or permit document to the Corporation.

(5) A person on whom a notice is served under subsection (4) must comply with the notice within the time specified in it.

Penalty: 5 penalty units.

(6) Payment of a penalty in respect of an excessive speed infringement or drug-driving infringement may be made in accordance with the regulations.

(7) A person, other than a person referred to in subsection (1A), who pays a penalty in respect of an excessive speed infringement or drug-driving infringement must, on or before the expiry of the 28 day period, surrender his or her licence or permit document in accordance with the regulations.

Note
A period during which a licence or permit is suspended under this section is in addition to, and does not count as part of, a period of suspension under Part 4 (see section 44).

89E Application of the Infringements Act 2006 to certain offences
Subject to sections 89A to 89D, the procedures set out in the Infringements Act 2006 may be used for the enforcement of the amount specified in a traffic infringement notice issued in respect of a drink-driving infringement, a drug-driving infringement or an excessive speed infringement as payable in respect of the offence for which the notice was issued.
89F  Application and modification of Schedule 3 to the Children, Youth and Families Act 2005

(1) The following provisions of Schedule 3 to the Children, Youth and Families Act 2005 do not apply to or in relation to a traffic infringement notice in respect of a drink-driving infringement, a drug-driving infringement or an excessive speed infringement—

(a) clauses 3(2)(g) and 3(2)(i);

(b) clauses 12(1)(a) and 12(1)(b).

(2) Subject to subsection (1), and sections 89A to 89D of this Act, the procedures set out in Schedule 3 to the Children, Youth and Families Act 2005 may be used for the enforcement of the amount specified in a traffic infringement notice issued in respect of a drink-driving infringement, a drug-driving infringement or an excessive speed infringement as payable in respect of the offence for which the notice was issued.
90 Proof of prior convictions

(1) If a person is served with a summons for any infringement and it is alleged that he or she has been previously convicted or found guilty of any infringement or infringements there may be served with the summons a separate document containing the prescribed particulars signed by the informant setting out particulars of the alleged prior convictions or findings of guilt.

(2) The document setting out the alleged prior convictions or findings of guilt—

(a) must be endorsed with a notice containing the prescribed particulars; and

(b) may be served in any manner in which the summons for the infringement may be served.

(3) If the court by whom any person has been convicted or found guilty is satisfied that a copy of any such document was served on that person at least 14 days before the hearing of the information the document is admissible and is evidence—

(a) that the person was convicted or found guilty of the offences alleged in the document; and

(b) of the particulars relating to the convictions or findings of guilt set out in the document.

(4) Any such document may not be tendered in evidence without the consent of the accused if the accused is present at the hearing of the information.
(5) Without limiting the generality of the provisions of Part 3.4 of Chapter 3 of the *Criminal Procedure Act 2009*, where any evidence of prior convictions or findings of guilt has been tendered pursuant to the provisions of this section, the court may set aside, on any terms as to costs or otherwise that the court decides, any conviction, finding or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the accused or that the accused was not in fact convicted, or found guilty, of the offences as alleged in the document.

S. 90(5) amended by Nos 57/1989 s. 3(Sch. item 173.23), 41/1992 s. 6(6)(a)–(c), 68/2009 s. 97(Sch. item 106.29).
PART 7A—PRIVATE PARKING AREAS

90A Definitions

In this Part—

council controlled area means an area in respect of which there is in force an agreement under section 90D;

driver, in relation to a motor vehicle that has been parked or left standing, means the person who was driving the motor vehicle when it was parked or left standing;

owner, in relation to a motor vehicle, has the same meaning as in Part 7;

parking services, in relation to land, means services in relation to the regulation or control of the parking of motor vehicles on the land including the issue of parking infringement notices;

public parking area means—

(a) an area provided on land for the parking of motor vehicles by members of the public on payment of a charge; or

(b) any area that is prescribed to be a public parking area, or is included in a class of areas that is prescribed to be public parking areas, for the purposes of this Part.
90B Abolition of distress damage feasant in relation to motor vehicles

(1) The common law remedy of distress damage feasant is abolished to the extent to which it applies in relation to trespass on land by motor vehicles.

(2) Nothing in this Part affects any right that a person may have, apart from this Part, to remove or cause to be removed from land a motor vehicle that has been parked or left standing on that land.

(3) Subsection (2) does not apply to a motor vehicle that has been detained or immobilised in contravention of section 90C.

90C Detention or immobilisation of motor vehicles

(1) A person, not being—

(a) a police officer; or

(ab) an authorised person under Part 6A; or

(b) the sheriff or any other person authorised by law to execute a warrant against the motor vehicle; or

(c) a person authorised to do so by or on behalf of the owner or driver of the motor vehicle—

must not detain or immobilise (whether by wheel clamps or any other means) a motor vehicle that has been parked or left standing (whether attended or not) on land to which this section applies.

Penalty: 20 penalty units.
(2) This section applies to land other than land that is—

(a) a public highway within the meaning of the Local Government Act 1989; or

(b) a freeway or an arterial road within the meaning of the Road Management Act 2004; or

(c) a public parking area.

(3) Nothing in this section affects the exercise of any power over a motor vehicle that a person may have as the holder of a security interest (within the meaning of the Personal Property Securities Act 2009 of the Commonwealth) in the motor vehicle or under a possessory lien or pledge over the motor vehicle.

90D Agreements

(1) The owner or occupier of any land (other than land on which, apart from section 90E, a parking infringement could be committed in respect of a vehicle) may enter into an agreement with the municipal council in whose municipal district the land is situated for the provision by that council of parking services.

(2) The agreement must provide for—

(a) compliance by the owner or occupier with specified requirements in relation to—

(i) restricting access to the land by motor vehicles;

(ii) signs to be placed, or markings to be made, on the land;

(iii) the siting, installation and maintenance of signs and markings;
(b) the kind of parking services to be provided by the municipal council and the times at which, or circumstances in which, those parking services are to be provided;

(c) the fees, costs and charges (if any) to be paid to the municipal council by the owner or occupier;

(d) rights of access to the land by persons authorised by the municipal council in connection with the provision of parking services and the duties and obligations to be complied with by those persons while exercising those rights;

(e) any other matter that may be prescribed.

(3) The agreement may contain—

(a) a provision leaving any matter to be determined, approved or dispensed with by a specified person or body;

(b) a provision providing for the suspension of obligations under the agreement in specified circumstances;

(c) any other provisions that are not inconsistent with this Part or the regulations.

(4) A provision of an agreement under this section that specifies requirements in relation to signs or their siting must—

(a) where appropriate and subject to any standards notified under subsection (5), provide for signs of the kind used for the regulation and control of vehicular traffic on highways;

(b) require signs installed on the land to be prominently displayed and clearly visible to users of the land;
(c) require the installation of a sign indicating the place to which a vehicle towed from the land under section 90F is to be taken and stored pending payment of the release fee or giving a telephone number from which information about that place may be obtained at any time of the day or night;

(d) comply with standards notified under subsection (5).

(5) The Minister may, by notice in the Government Gazette, require compliance with standards for signs in council controlled areas.

(6) A standard may apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—

(a) wholly or partially or as amended by the standard; or

(b) as issued or published at the time the notice is published or at any time before then; or

(c) as issued or published from time to time.

(7) The standards must be available for inspection on request at a place which is open to the public and is specified in the notice.

90E Parking in council controlled areas

A person must not park a motor vehicle, or leave a motor vehicle standing, in a council controlled area or part of a council controlled area—

(a) contrary to the inscription on any sign associated with the area or part; or

(b) except in the manner indicated by the inscription on any sign associated with the area or part; or
(c) contrary to any limitation in respect of days, periods of the day, classes of persons or classes of vehicles indicated by the inscription on any sign associated with the area or part.

Penalty: 3 penalty units.

90F Removal of vehicles from council controlled areas

(1) A police officer may, in accordance with this section, remove, or cause to be removed, from a council controlled area a motor vehicle that has been parked or left standing in that area and in respect of which a parking infringement has been committed.

(2) A police officer may only act under subsection (1) if a parking infringement notice has been served in respect of the parking infringement and—

(a) the police officer is satisfied that the owner or occupier of the council controlled area has requested the owner or driver of the vehicle to remove it and that person has refused to do so; or

(b) in the opinion of the police officer, the vehicle—

(i) is obstructing access to, or egress from, the council controlled area by vehicles or pedestrians; or

(ii) is obstructing the free passage of vehicles or pedestrians within the council controlled area; or

(iii) has been left unattended for more than 48 hours; or
(iv) is endangering life or property or otherwise causing concern about safety.

(3) A vehicle removed in accordance with this section from a council controlled area must be towed from the area by a tow truck, within the meaning of the Accident Towing Services Act 2007.

(5) A vehicle that has been towed under this section must be taken to, and stored at, the place specified by the police officer and released to its owner or the owner's agent on payment by that person of a release fee.

(6) The amount of a release fee must not exceed the prescribed amount or, if there is no prescribed amount, an amount that reasonably represents the cost of towing, storing and releasing the vehicle (including any relevant overhead and other indirect costs).

90G  Entry to council controlled areas

(1) A police officer may, for the purpose only of issuing parking infringement notices or authorising the towing of motor vehicles, enter any place that is a council controlled area.
(1A) A protective services officer on duty at a designated place may, for the purposes only of issuing parking infringement notices, enter any place that is a council controlled area.

(2) Nothing in this section limits any other power of entry to a council controlled area that a police officer or a protective services officer has under any other law.

90H Wheel clamping agreements

(1) An agreement, whether entered into before or after the commencement of section 4 of the Road Safety (Wheel Clamping) Act 1996, is void to the extent to which it authorises, or purports to authorise, a person to do an act in contravention of section 90C or to remove from any land a motor vehicle detained or immobilised in contravention of section 90C.

(2) A party to an agreement that is void wholly or partly by reason of subsection (1) is not entitled to recover from the owner or occupier of any land to which the agreement relates or purports to relate or any other person any amount in respect of the provision of services under the void agreement or part agreement and must repay to the person from whom it was received—

(a) any amount received before the commencement of section 4 of the Road Safety (Wheel Clamping) Act 1996 in respect of those services, being services that were to be provided after that commencement; and

(b) any amount received after the commencement of section 4 of the Road Safety (Wheel Clamping) Act 1996 in respect of those services.
(3) If a party does not repay an amount required by subsection (2) to be repaid, the person entitled to be repaid may recover the amount from the party as a debt in a court of competent jurisdiction.
PART 7B—USE AND DISCLOSURE OF INFORMATION

90I Interpretation

In this Part—

authorised representative, in relation to an individual, means a person who is—

(a) a guardian of the individual; or

(b) an attorney for the individual under an enduring power of attorney; or

(c) an agent for the individual within the meaning of the Medical Treatment Act 1988; or

(d) an administrator or a person responsible within the meaning of the Guardianship and Administration Act 1986; or

(e) a parent of an individual, if the individual is a child; or

(f) otherwise empowered under law to perform any functions or duties or exercise powers as an agent of or in the best interests of the individual—

except to the extent that acting as an authorised representative of the individual is inconsistent with an order made by a court or tribunal;

consent means express consent or implied consent;

individual includes a deceased individual;
**information protection agreement** means an agreement between a person or body and the Corporation in relation to relevant information that complies with section 90N(2);

**intergovernmental agreement** means a written agreement—
(a) between—
   (i) the Corporation and a corresponding Authority; or
   (ii) the Corporation and a Minister of another Australian jurisdiction; or
   (iii) a Victorian Minister and a Minister of another Australian jurisdiction; or
(b) between the Corporation and another public sector body or other public sector bodies, whether in Victoria or another jurisdiction, made for the purposes of a national exchange of information relating to vehicles or drivers or to both;

**law enforcement agency** means—
(a) Victoria Police or the police force or police service of the Commonwealth or of any other State or Territory;
(b) any other body or person responsible for the performance of functions or activities directed to—
   (i) the prevention, detection, investigation, prosecution or punishment of offences against the laws of Victoria, the Commonwealth or any other State or Territory; or
(ii) the enforcement of infringement penalties (by whatever name they are known in the relevant jurisdiction) issued under a law of Victoria, the Commonwealth or any other State or Territory; or

(iii) the enforcement of the orders of a court;

(c) a body or person authorised by a law of Victoria, the Commonwealth or any other State or Territory to enforce a warrant;

**Minister of another Australian jurisdiction** means a Minister of the Crown in right of the Commonwealth or another State or a Territory;

**relevant information** means information that, under section 90J, is information to which this Part applies;

**relevant person** means a person who is a delegate of or employed by or engaged to provide services for—

(a) the Corporation; or

(b) another person or body engaged to provide services for the Corporation;

**Safety Director** has the same meaning as it has in section 3(1) of the **Marine Safety Act 2010**;

**transport legislation** has the same meaning as it has in section 3 of the **Transport Integration Act 2010**;

**Victorian Minister** means a Minister of the Crown in right of the State.
Part 7B—Use and disclosure of information

90J Information to which this Part applies

(1) This Part applies to information—

(a) that is collected or received by the Corporation in relation to its registration or licensing functions and activities; and

(b) that identifies an individual or from which an individual's identity can be reasonably ascertained.

(2) For the purposes of subsection (1), the facial image of an individual is information that identifies the individual or from which the individual's identity can be reasonably ascertained.

(3) For the purposes of subsection (1), information collected or received by the Corporation in relation to its registration or licensing functions and activities includes, but is not limited to, information relating to—

(a) granting, renewing, suspending or cancelling registration of vehicles;

(b) entering or removing vehicles from the written-off vehicles register;

(c) exempting vehicles from registration;

(d) granting, renewing, suspending or cancelling driver licences or learner permits and recording demerit points—whether that information relates to a registered or unregistered vehicle or a licensed or unlicensed driver.

90K Authorised use or disclosure

Subject to section 90N, the Corporation or a relevant person may use or disclose relevant information—
Part 7B—Use and disclosure of information

(a) for the purpose of—

(i) the following functions and activities when performed by the Corporation or a relevant person—

(A) the administration of this Act or the regulations; or

(B) responding to correspondence or other communications; or

(C) providing information of community interest or benefit; or

(ii) a vehicle recall procedure being conducted in relation to a possible safety-related defect in a vehicle or a class of vehicles; or

(iii) research, or the compilation or analysis of statistics, conducted in the public interest, other than for publication in a form that identifies an individual or from which an individual's identity can be reasonably ascertained; or

(iv) the exercise of a power or the performance of a function under transport legislation; or

(v) any legal proceeding arising out of transport legislation or any report of such a proceeding; or

(vi) giving effect to an intergovernmental agreement; or

(b) if the use or disclosure is reasonably necessary to lessen or prevent a serious threat to—

(i) an individual's life, health, safety or welfare; or

(ii) public health, safety or welfare; or
(iii) the environment—
whether in or outside Victoria; or

c) for the purpose of dealing with exceptional circumstances in accordance with section 90L; or

d) with the consent of—

(i) the individual to whom the information relates; or

(ii) the authorised representative of that individual; or

e) to a not-for-profit organisation to assist the organisation—

(i) to locate a missing person; or

(ii) to facilitate the reunion of members of a family or friends—

for non-commercial, humanitarian purposes; or

f) to a police officer to assist Victoria Police—

(i) to locate a missing person; or

(ii) to locate the next of kin of an individual who has suffered injury or death; or

(iii) to conduct a check on the wellbeing of an individual; or

g) for the purposes of one or more of the following functions and activities when undertaken by or on behalf of a law enforcement agency—

(i) the prevention, detection, investigation, prosecution or punishment of offences of any kind;

(ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
(iii) the preparation for, or conduct of, proceedings before any court or enforcement of the orders of a court;

(iv) the protection of public revenue;

(v) the enforcement of infringement penalties (by whatever name they are known in the relevant jurisdiction); or

(h) if the relevant information is used or disclosed in the course of using or disclosing information as authorised by section 306(2) of the Marine Safety Act 2010; or

(i) if the use or disclosure is otherwise required or authorised by law.

90L Exceptional circumstances

(1) This section applies if the Minister is satisfied that—

(a) exceptional circumstances exist or have occurred, whether in or outside Victoria; and

(b) it is appropriate to use or disclose relevant information in accordance with this section during or in the aftermath of those exceptional circumstances.

(2) On being notified that the Minister is satisfied of the matters referred to in subsection (1), the Corporation must publish a notice on its website stating that—

(a) the Minister is satisfied as to the matters referred to in subsection (1); and

(b) accordingly, the Corporation or a relevant person may use or disclose relevant information for the purpose of dealing with the exceptional circumstances.
(3) While a notice under subsection (2) remains published on its website, but not later than 12 months after the date on which the notice is first published, the Corporation or a relevant person may use or disclose relevant information if—

(a) the Corporation or the relevant person reasonably believes that the individual to whom the relevant information relates may be or may have been involved in, or affected by, the exceptional circumstances; and

(b) the use or disclosure is for a permitted purpose in relation to the exceptional circumstances; and

(c) the disclosure is to an agency or organisation that—

(i) is, or is likely to be, involved in managing, or assisting in the management of, the exceptional circumstances; or

(ii) is directly involved in providing government services, medical or other treatment, health services or financial or other humanitarian assistance to individuals involved in the exceptional circumstances; and

(d) the disclosure is not to a media organisation.

(4) For the purposes of this section—

*exceptional circumstances* are circumstances which—

(a) endanger, or threaten to endanger, the life, health or safety of any individual; or
(b) destroy or damage, or threaten to
destroy or damage, any property, the
environment or part of the
environment;

Examples
Events such as natural disasters, fires, explosions,
accidents, unlawful acts (whether actual or
threatened) and disruptions to essential services may
constitute exceptional circumstances.

permitted purpose means a purpose that directly
relates to the State's response to the
exceptional circumstances in respect of
which the notice under subsection (2) has
been published including any of the
following purposes—

(a) identifying individuals who—

(i) are, or may be, injured, missing or
dead as a result of the exceptional
circumstances; or

(ii) are, or may be, otherwise involved
in the exceptional circumstances;

(b) assisting individuals involved in the
exceptional circumstances to obtain
services such as government services,
medical or other treatment, health
services or financial or other
humanitarian assistance;

(c) assisting with law enforcement in
relation to the exceptional
circumstances;

(d) coordination or management of the
exceptional circumstances.
90M Verification of information

(1) The Corporation or a relevant person may verify relevant information contained in a driver licence or learner permit if that information is provided to a public sector body or private sector body as evidence of an individual's identity.

(2) The Corporation or a relevant person may verify relevant information contained in a driver licence or learner permit if—

(a) the information is provided for verification by or on behalf of a person or body who has entered into a service agreement with the Corporation for the verification of information of that kind; and

(b) the person or body either—

(i) employs or has engaged, or proposes to employ or engage, the holder of the driver licence or learner permit to drive a motor vehicle on a highway; or

(ii) proposes to offer a vehicle for hire to the holder of the driver licence or learner permit.

(3) The Corporation or a relevant person may verify the identity of the registered operator of a vehicle on the provision by any person or body of—

(a) the registration number of the vehicle; and

(b) the name of the purported operator of the vehicle; and

(c) any other information that the Corporation or the relevant person requires.

(4) The Corporation or a relevant person may verify the identity of the owner of registration number rights on the provision by any person or body of—

(a) the registration number; and
(b) the name of the purported owner of the rights; and
(c) any other information that the Corporation or the relevant person requires.

90N Information protection agreements

(1) The Corporation or a relevant person must not disclose relevant information to a person or body under section 90K(a)(iii), (a)(iv), (e), (f) or (g), unless the person or body has first entered into an information protection agreement with the Corporation.

(2) An information protection agreement must—

(a) specify—

(i) the purpose for which the information is proposed to be disclosed to the person or body; and
(ii) the provision of this Act under which the Corporation is authorised to disclose the information; and
(iii) the means by which the information will be provided by the Corporation; and
(iv) the means by which the information will be protected by the person or body; and
(v) how compliance with the terms of the agreement will be monitored and enforced by each party to the agreement; and
(vi) the auditing arrangements; and
(vii) the procedures for managing any breach of privacy; and
(b) include an undertaking by the person or body that the information will be used or disclosed only for the purpose specified in the agreement.

(3) An information protection agreement may include any other requirements, qualifications or conditions specified by the Corporation.

(4) Subsection (1) does not apply if—

(a) an information protection agreement is currently in force between the Corporation and the delegator, employer, contractor or principal of the person or body who has requested the relevant information; and

(b) in making the request for the relevant information, the person or body is acting within the scope of their actual or apparent authority under the delegation, employment, contractual relationship or agency.

(5) If a person or body requests relevant information other than for a purpose specified in subsection (1), the Corporation or a relevant person may require the person or body to first enter into an information protection agreement with the Corporation.

(6) A person or body is not required to enter into an information protection agreement with the Corporation in relation to the use or disclosure of relevant information if—

(a) the person or body is a relevant person; and

(b) the relevant information is disclosed to the person or body in their capacity as a relevant person.
90O Disclosure not mandatory

Nothing in this Part requires the Corporation or a relevant person to disclose relevant information.

Note

The Corporation or a relevant person is entitled not to disclose relevant information in the absence of a legal obligation to disclose it.

90P Freedom of Information Act 1982

(1) A document which contains relevant information is an exempt document within the meaning of section 38 of the Freedom of Information Act 1982.

(2) Subsection (1) does not limit the operation of section 38 of the Freedom of Information Act 1982.

90Q Offences

(1) The Corporation or a relevant person or a person who has been a relevant person must not use or disclose relevant information other than as authorised by this Part—

(a) knowing that the use or disclosure is not so authorised; or

(b) being reckless as to whether the use or disclosure is so authorised.

Penalty: 120 penalty units or imprisonment for 12 months.

(2) A person who obtains relevant information under an information protection agreement must not use or disclose that information other than in accordance with the information protection agreement—

(a) knowing that the use or disclosure is not in accordance with the agreement; or

S. 90O inserted by No. 55/2013 s. 7.

S. 90P inserted by No. 55/2013 s. 7.

S. 90Q inserted by No. 55/2013 s. 7.
(b) being reckless as to whether the use or disclosure is in accordance with the agreement.

Penalty: 120 penalty units or imprisonment for 12 months.

(3) A person, other than a person referred to in subsection (1) or (2), to whom relevant information has been disclosed as authorised by a provision under section 90K, must not use or disclose that information other than in accordance with that provision—

(a) knowing that the use or disclosure is not in accordance with that provision; or

(b) being reckless as to whether the use or disclosure is in accordance with that provision.

Penalty: 120 penalty units or imprisonment for 12 months.

(4) A person who obtains relevant information other than as authorised under this Act must not use or disclose that information—

(a) knowing that the information was obtained other than as authorised under this Act; or

(b) being reckless as to whether the information was obtained as authorised under this Act.

Penalty: 120 penalty units or imprisonment for 12 months.
PART 8—GENERAL

91 Delegation

(1) The Corporation may by instrument under its official seal—

(a) delegate to an officer of the Corporation any power of the Corporation under this Act or the regulations, including this power of delegation;

(b) delegate to any other person by name or to the holder of any other office or position (including a person who is an officer of the Transport Accident Commission) any power of the Corporation under this Act or the regulations, other than this power of delegation.

(1A) If—

(a) a power is delegated under subsection (1)(a) to an officer of the Corporation; and

(b) the instrument of delegation authorises the sub-delegation of the power—

then, subject to any conditions to which the delegation is subject, the delegate may sub-delegate the power to any other person or to the holder of any other office or position but may not sub-delegate a power of delegation.

(1B) Sections 42 and 42A of the Interpretation of Legislation Act 1984 apply to a sub-delegation authorised by this section in the same way as they apply to a delegation.
(2) Nothing in this section limits the operation of section 115 of the Transport Integration Act 2010.
S. 92 amended by Nos 44/1989 s. 41(Sch. 2 item 34.4), 120/1993 s. 60, 84/1994 s. 60(1)(2), substituted by No. 30/1997 s. 4, amended by Nos 108/1997 s. 155 (as amended by No. 43/1998 s. 35), 73/1998 s. 5(1), 92/2001 s. 26, 46/2002 s. 12, 21/2005 s. 57(1)(b), 24/2005 s. 11, 95/2005 s. 18, 32/2006 s. 68, 48/2006 s. 42(Sch. item 31.1), 81/2006 s. 11, 14/2007 s. 19(1)(b), 30/2007 s. 235, 74/2007 s. 16, 17/2009 s. 32(1)(a)(b), 93/2009 s. 20, 6/2010 s. 203(1) (Sch. 6 item 42.5) (as amended by No. 45/2010 s. 22), 9/2010 s. 18, 45/2010 s. 54, 75/2010 s. 22, 34/2011 ss 103, 126, 38/2011 s. 42, 47/2011 s. 25, 61/2011 s. 25(Sch. 1 item 11), 21/2012 s. 239(Sch. 6 item 39.2), repealed by No. 55/2013 s. 8.
93 **Service of notices**

If under this Act or the regulations a notice is required or permitted to be served on any person, the notice may, unless the contrary intention appears, be served in or out of Victoria—

(a) by delivering it personally to the person; or

(b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of sixteen years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or

(c) by sending it by post addressed to the person at the usual or last known place of residence or business of that person; or

(d) if the person has given to the Corporation as his or her address an address that is not his or her place of residence or business, by sending it addressed to the person at that address.

93A **Guidelines for industry codes of practice**

1) The Corporation may issue guidelines with respect to the preparation and contents of industry codes of practice, and may from time to time cancel, amend or replace the guidelines.
(2) The guidelines may make provision for or with respect to—

(a) the review of registered industry codes of practice; and

(b) the period for which registration under section 93B of an industry code of practice remains in force (unless sooner revoked).

93B Registration of industry codes of practice

(1) The Corporation may register industry codes of practice prepared in accordance with the guidelines in force under section 93A.

(2) The Corporation may revoke the registration of an industry code of practice.

(3) The Corporation may register an industry code of practice unconditionally or subject to conditions specified in the instrument of registration.

(4) The Corporation may attach new conditions to an existing registration, and may revoke or amend any conditions attached to a registration.

(5) Registration of an industry code of practice remains in force (unless sooner revoked) until the earlier of the following—

(a) the end of the period of currency (if any) specified in the instrument of registration; or

(b) the end of the period specified in the guidelines.

94 Approvals by Chief Commissioner or Corporation

Subject to this Act, if it is provided by or under this Act that the Chief Commissioner of Police or the Corporation may approve of any type or kind of equipment—
(a) the approval must be given by notice published in the Government Gazette; and
(b) any withdrawal of approval must be made by notice published in the Government Gazette.

94A Supreme Court—limitation of jurisdiction

(1) It is the intention of this section to alter or vary section 85 of the Constitution Act 1975 to the extent necessary to prevent the bringing before the Supreme Court of an action of a kind referred to in section 55(9E).

(2) It is the intention of sections 55(9E) and 57(8), as amended by section 17 of the Road Safety (Amendment) Act 2000, to alter or vary section 85 of the Constitution Act 1975.

(3) It is the intention of section 55(9E), to the extent that that section applies in respect of anything done under section 55(9A) as amended by section 10 of the Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001, to alter or vary section 85 of the Constitution Act 1975.

94B Supreme Court—limitation of jurisdiction

(1) It is the intention of section 55B(4) to alter or vary section 85 of the Constitution Act 1975.

(2) It is the intention of section 55E(17) to alter or vary section 85 of the Constitution Act 1975.
95 Regulations

(1) Subject to subsections (8) and (9), the Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act including, but not limited to, the matters and things specified in Schedule 2.

(2) A power conferred by this Act to make regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or

(ii) any such provision either unconditionally or subject to any specified condition.

(3) Regulations made under this Act may be made—

(a) so as to apply—

(i) at all times or at a specified time; or

(ii) throughout the whole of the State or in a specified part of the State; or
(iii) as specified in both subparagraphs (i) and (ii); and

(b) so as to require a matter affected by the regulations to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or body or a specified class of persons or bodies; or

(iii) as specified in both subparagraphs (i) and (ii); and

(c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(ca) so as to provide for the recognition by the Corporation of things done or omitted to be done under a law of the Commonwealth or another State or a Territory under which authority is given to drive motor vehicles on roads or road related areas; and

(d) so as to confer a discretionary authority or impose a duty on a specified person or body or a specified class of persons or bodies; and

S. 95(3)(ca) inserted by No. 57/1998 s. 19(1)(a).
(e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

(f) so as to impose a penalty not exceeding 20 penalty units for individuals or 120 penalty units for bodies corporate for a contravention of the regulations.

(3A) The regulations may provide that this Act does not, or specified provisions of this Act do not, apply to a vehicle, or vehicles of a class, identified in the regulations.

(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.
(3B) The regulations may allow the Corporation—

(a) to exempt a vehicle or class of vehicles from the requirement to be registered; or

(b) to exempt a vehicle or class of vehicles from a requirement of the regulations relating to the construction, efficiency, performance, safety, roadworthiness or design of vehicles or the equipment to be carried on vehicles; or

(c) to exempt a motor vehicle or trailer or class of motor vehicles or trailers from a requirement of the regulations relating to the carrying of loads; or

(ca) to exempt a vehicle or a group of vehicles, or the driver or registered operator of a vehicle or a group of vehicles, from a requirement of the regulations relating to mass and dimension limits; or

(d) to exempt a person or class of persons from a requirement of the regulations to be complied with before a driver licence or learner permit may be granted, varied or renewed; or

(e) to exempt a person or class of persons from a requirement of the regulations relating to the hours of driving of motor vehicles or the keeping of records relating to those hours of driving or the carrying of log books on motor vehicles—

subject to compliance with any conditions specified in the regulations or determined by the Corporation and specified in the instrument of exemption (if any).

(3C) The regulations may provide for a Commonwealth interpretation enactment to apply to the interpretation of any of the provisions of the regulations—
(a) either wholly or to the extent specified by the regulations; and
(b) to so apply without modifications or with the modifications specified by the regulations.

(3D) In subsection (3C) **Commonwealth interpretation enactment** means—

(a) the Acts Interpretation Act 1901 of the Commonwealth; or

(b) the Legislative Instruments Act 2003 of the Commonwealth; or

(c) the Acts Interpretation Act 1901 of the Commonwealth as applied by the Legislative Instruments Act 2003 of the Commonwealth to legislative instruments within the meaning of that Act.

(3E) This section does not prevent the **Interpretation of Legislation Act 1984** from applying to the regulations to the extent that it can do so consistently with the application to those regulations of any Commonwealth interpretation enactment within the meaning of subsection (3C).

(4) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) ad valorem fees;

(e) the payment of fees either generally or under specified conditions or in specified circumstances;
(f) the reduction, waiver or refund, in whole or in part, of the fees.

(5) If under subsection (4)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—

(a) in respect of certain matters or transactions or classes of matters or transactions;

(b) in respect of certain documents or classes of documents;

(c) when an event happens;

(d) in respect of certain persons or classes of persons; or

(e) in respect of any combination of such matters, transactions, documents, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

(6) A fee that may be imposed by regulation in relation to licences or permits under Part 3 or the registration of motor vehicles or trailers is not limited to an amount that is related to the cost of providing a service.

(7) If under subsection (3)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, until the Corporation causes notice to be published in the Government Gazette of that amendment the document, code, standard, rule, specification or
method is to be taken to have not been so amended.

(8) Regulations made under this Act must not—

(a) prohibit the fitting of bull-bars to motor vehicles; or

(b) require annual tests of roadworthiness of registered motor vehicles or trailers.

(9) The Minister must ensure that there is consultation with the Infrastructure Reference Panel established under the Road Management Act 2004 before regulations are made under this Act for the purposes of items 74 to 77 of Schedule 2.

(9A) Any regulations made under this Act for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles.

(10) Without limiting the generality of subsection (2)(b)(i), in relation to driver licensing, the regulations may make different provision for people of or over 75 years of age.

(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.

* * * * *

S. 95(9) inserted by No. 12/2004 s. 142(2), amended by No. 17/2009 s. 32(2).

S. 95(9A) inserted by No. 51/2014 s. 9(Sch. 2 item 16.3).

S. 95(10) inserted by No. 110/2004 s. 23(2).

S. 95(11) inserted by No. 28/2009 s. 44(2).

S. 95A inserted by No. 57/1998 s. 20, amended by No. 92/2001 s. 27, repealed by No. 20/2006 s. 4.
95B Exemption of certain statutory rules from RIS

Section 7 of the Subordinate Legislation Act 1994 does not apply to—

(a) a statutory rule that includes a provision revoking the Road Safety (Traffic) Regulations 1988; or

(b) any statutory rule amending, revoking or re-making (with or without modification) the first-mentioned statutory rule in paragraph (a); or

(c) any statutory rule amending or revoking the re-made statutory rule.

95C Extension of operation of Regulations

(1) Unless sooner revoked, the Road Safety (Procedures) Regulations 1988, the Road Safety (Traffic) Regulations 1988 and the Road Safety (Vehicles) Regulations 1988 are revoked on 1 March 2000.

(2) Section 5 of the Subordinate Legislation Act 1994 does not apply to the Road Safety (Procedures) Regulations 1988, the Road Safety (Traffic) Regulations 1988 or the Road Safety (Vehicles) Regulations 1988.

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.

95E Gazette notices may incorporate document etc.

A notice published in the Government Gazette to give effect to a provision of the rules referred to in section 95D may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

(a) wholly or partially or as amended by the notice; or

(b) as formulated, issued, prescribed or published at the time the notice is published in the Government Gazette or at any time before then; or

(c) as formulated, issued, prescribed or published from time to time.

96 Disallowance of instruments

(1) This section applies to the following instruments—

(a) an Order in Council under section 3(2);

(ab) an Order under section 3(3);

(b) a notice under section 10;

* * * * *

(ca) a notice under section 55A(5);
(e) a notice under section 94;

(f) guidelines issued under section 96B.

(2) A power that is conferred by this Act to make regulations, rules or an instrument to which this section applies is subject to the regulations, rules or instrument being disallowed by Parliament.

(3) Section 15 and Part 5 of the Subordinate Legislation Act 1994 apply to an instrument to which this section applies as if the instrument were a statutory rule within the meaning of that Act, notice of the making of which had been published in the Government Gazette on the day on which the instrument was so published.

96A Application orders and emergency orders

(1) The Minister may declare, by notice published in the Government Gazette, that the operation of the regulations, or of specified parts of the regulations—

(a) is suspended for a specified period; or

(b) is varied in a manner specified by the Minister.
(3) A declaration may have effect in relation to the whole of Victoria or to a specified area.

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).

(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.

97 Application of fees

Notwithstanding anything to the contrary in this or any other Act—

(a) except where the Treasurer otherwise directs or the regulations made under this Act otherwise provide, all fees received by the Corporation (otherwise than as the agent of any other person or body) under this or any other Act must be paid by the Corporation into the Consolidated Fund; and
97A Administrative fees

(1) The Corporation may charge a fee for any service it provides in connection with the registration of vehicles or the licensing of drivers or a recall procedure being conducted by the manufacturer or supplier of a vehicle.

(2) The fee charged for a service under subsection (1) (other than a service provided in connection with the assignment of registration numbers) must not exceed the cost to the Corporation of providing that service.

(3) Nothing in this section limits section 5AC(4) or 5AE(2).

98 Minister may extend application of Act

(1) The Minister may by Order at the request of any public authority or other person prescribed for the purposes of this section extend the application of any provisions of this Act, or of the regulations, that are specified in the Order to any land or premises vested in, or under the control of, that authority or person, and those provisions then extend and apply to the land or premises, so far as applicable and with any modifications that are necessary, in all respects as if the land or premises were a highway and, in particular, with the
modification that in those provisions any reference to a highway authority is to be taken to include the relevant public authority or other person.

(2) The Minister may by Order at the request of the Minister administering Part 7B of the Financial Management Act 1994 extend the application of any provisions of this Act, or of the regulations, that are specified in the Order to any land or premises used for or in connection with any public offices of the Crown, and those provisions then extend and apply to the land or premises, so far as applicable and with any modifications that are necessary, in all respects as if the land or premises were a highway and, in particular, with the modification that in those provisions any reference to a highway authority is to be taken to include that Minister.

99 Warning signs and other installations

(1) Any person or body corporate having authority pursuant to the regulations to do so may, without unduly obstructing the thoroughfare, install and maintain in or on any highway any standard warning or operative sign or safety device or mark, parking area, traffic island or other device or thing that is prescribed or authorised by the regulations for the regulation and control of vehicular, animal or pedestrian traffic.

(2) The presence on any highway, or the operation or use by a person on any highway, of any installation referred to in subsection (1) or of any pole, barrier, flag, stand or other device used in connection with it, or for the support of it, does not of itself make the installation or the pole, barrier, flag, stand or other device, or its operation or use in accordance with the regulations, an
unlawful obstruction of, or interference with, the highway or the use of the highway.

99A Conduct of works or activities on a highway

(1) This section applies to any person conducting, or proposing to conduct on a highway—

(a) any works within the meaning of section 3(1) of the Road Management Act 2004; or

(b) any non-road activity within the meaning of section 99B.

(2) A person to whom this section applies must ensure that the works or non-road activities are conducted in a manner that is safe for road users and persons engaged in carrying out the works or non-road activities.

Penalty: 60 penalty units.

(3) Without limiting subsection (2), a person to whom this section applies contravenes that subsection if the person fails to do any of the following—

(a) have in operation a traffic management plan;

(b) give appropriate warnings to road users;

(c) engage appropriately trained and qualified persons to carry out the works or manage the non-road activities or direct traffic;

(d) give appropriate directions to the persons engaged in carrying out the works or non-road activities.

(4) A traffic management plan must—

(a) comply with the prescribed requirements; and

(b) be prepared in accordance with any requirements of the coordinating road authority under the Road Management Act 2004.
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(5) The Minister administering the **Road Management Act 2004** may issue a Code of Practice in accordance with that Act for the purposes of this section.

99B Non-road activities on highways

(1) Subject to this Act and the regulations, the coordinating road authority within the meaning of the **Road Management Act 2004** may issue a permit to a person to conduct a non-road activity on a highway.

(2) For the purpose of conducting the non-road activity authorised by a permit, the coordinating road authority may authorise the closure of the highway to all traffic or to particular types of traffic for the period specified in the permit.

(3) A permit may be issued subject to—

(a) any terms, conditions or limitations which the coordinating road authority considers appropriate; and

(b) the payment of a fee fixed in accordance with this Act.

(4) The Minister may, on the application of a person proposing to conduct a non-road activity on a highway, by notice published in the Government Gazette declare that specified provisions of the Act and of the regulations do not apply with respect to the non-road activity specified in the notice to be conducted on a highway or part of a highway specified in the notice during the period specified.
(5) A notice under subsection (4) may declare that the highway or part of the highway specified in the notice is not a highway under this Act for all purposes or specified purposes during the specified period.

(6) A person to whom a permit is issued is responsible for the use of the highway for the non-road activity.

(7) The Minister may by instrument of delegation delegate to any person any of the powers of the Minister under this section.

(8) In this section, *non-road activity* means an activity to be conducted on a road which will significantly interfere with the normal use of a road by road users in accordance with this Act and the regulations but does not include any activity to be conducted on a road by a police officer or a member of any emergency services agency arising out of the performance of a function or exercise of a power of that police officer or member.

**Example**

A non-road activity would include the use of a road for the shooting of a film, a bicycle event, a street festival or a street market.

### 100 Inconsistent regulations or by-laws

If by a regulation made under any Act or by a local law made by a municipal council under any Act a provision is made that is inconsistent with a provision of this Act or the regulations made under this Act or the rules, the provision made by the regulation or local law is, to the extent of the inconsistency, of no force or effect.

* * * * *
103 Transitional provisions

(1) If immediately before the commencement of this subsection a person holds a licence or permit issued under the Motor Car Act 1958 and that licence or permit expires on or after that commencement, the Corporation may, in accordance with this Act and the regulations, grant a licence or permit to that person which, in the opinion of the Corporation, corresponds to the licence or permit previously held by that person.

(1A) A driver's licence that was issued under the Motor Car Act 1958 and was valid immediately before 1 May 1987 must, on and after that date, be taken to be a driver licence granted under Part 3 of this Act despite the definition of driver licence in section 3(1) of this Act.

(2) A motor car driver's licence which was issued, but not indorsed, under the Motor Car Act 1958 and which was valid immediately before the commencement of this subsection—

(a) authorises the holder to drive a motor vehicle of 3 tonnes tare or less, until 3 years after that commencement; and

(b) does not authorise the holder to drive a motor vehicle of more than 4.5 tonnes GVM, after the 3 years, and the holder is not authorised to drive such a vehicle after that time unless he or she obtains an appropriate authorisation under this Act.

(3) If immediately before the commencement of this subsection a police station was a registration office within the meaning of the Motor Car Act 1958 then, on and from that commencement, the member of the police force for the time being in charge of that police station is to be taken to be, by force of this subsection, a delegate of the
Authority in relation to the registration of motor vehicles and trailers until the Authority by instrument under its common seal otherwise provides.

(4) If immediately before the commencement of this subsection an articulated motor car within the meaning of the Motor Car Act 1958 is registered under that Act and on that commencement the semi-trailer component of the articulated motor car is exempt from registration, the registration of the articulated motor car is, on that commencement, to be taken to be the registration of the prime-mover component of the articulated motor car.

(5) If immediately before the commencement of this subsection an articulated motor car within the meaning of the Motor Car Act 1958 is registered under that Act and on that commencement the semi-trailer component of the articulated motor car is not exempt from registration, the registration of the articulated motor car is, on that commencement, to be taken to be the separate registration of the prime-mover and the semi-trailer components of the articulated motor car.

(6) If immediately before the commencement of this subsection demerit points are recorded against the holder of a licence under the Motor Car Act 1958 in the Demerits Register kept under that Act, the Authority must, subject to this Act, on that commencement record those points against that person in the Demerits Register kept under this Act.

(7) For the purposes of section 52, a person who is the holder of a probationary driver licence which was issued at least 12 months before the commencement of that section must be taken to be the holder of a full driver licence.
(8) All fees which were received by the Authority under the **Motor Car Act 1958** or the **Transport Act 1983** or any other Act before the commencement of section 97 of this Act and which were paid by the Authority before that commencement into its general fund are, despite anything to the contrary in any Act, to be taken to have been properly paid by the Authority into that fund and not to have been required to be paid into the Consolidated Fund.

(9) On and from the commencement of this subsection until all the provisions of this Act have come into operation a reference in any Act or in any subordinate instrument within the meaning of the **Interpretation of Legislation Act 1984** to a motor vehicle within the meaning of this Act includes a reference to a motor car within the meaning of the **Motor Car Act 1958** and to a recreation vehicle within the meaning of this Act includes a reference to a recreation vehicle within the meaning of Part VI of the **Transport Act 1983**.

(10) A driver licence that was issued under the **Motor Car Act 1958** and that was in force on probation immediately before the commencement of this subsection is to be taken, during the prescribed period only, to be a probationary driver licence for the purposes of this Act.

(11) In subsection (10) **prescribed period** means—

(a) if the period for which the licence was issued on probation is 2 years or less, that period plus any extension of the probationary period under section 21; or

(b) if the period for which the licence was issued on probation is more than 2 years, the first 2 years of that period plus any extension of the probationary period under section 21.
(11A) This Act as amended by section 9 of the Road Safety (Further Amendment) Act 1991 applies only to offences committed on or after the commencement of section 9.

(11B) The re-enactment by subsection (11A) of section 18(1) of the Road Safety (Further Amendment) Act 1991 does not affect the operation of any Act enacted after the Road Safety (Further Amendment) Act 1991.

(12) A person who, immediately before the commencement of section 5(5) of the Road Safety (Amendment) Act 1998, was the registered owner of a vehicle under this Act is on that commencement deemed to be the registered operator of that vehicle.

(13) The amendments of section 25 made by section 4 of the Road Safety (Further Amendment) Act 1998 apply only with respect to notices issued under that section, and suspensions of driver licences or learner permits that take effect under that section, after the commencement of section 4 of that Act.

(14) The amendments of section 26 made by section 4 of the Road Safety (Further Amendment) Act 1998 apply only with respect to appeals made after the commencement of section 4 of that Act.

103A Transitional provisions—Road Safety (Further Amendment) Act 2001

(1) The amendment of section 22(2)(a) made by section 11 of the Road Safety (Further Amendment) Act 2001 has effect only with respect to learner permits granted after the commencement of that section of that Act.
(2) The amendment of section 50(1AB)(b) made by section 14 of the Road Safety (Further Amendment) Act 2001 applies only to offences alleged to have been committed on or after the commencement of that section of that Act.

(3) For the purposes of subsection (2), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 14 of the Road Safety (Further Amendment) Act 2001, the offence is alleged to have been committed before the commencement of that section.

(4) The amendment of section 89C(1) made by section 25 of the Road Safety (Further Amendment) Act 2001 applies to any traffic infringement notice issued in respect of a drink-driving infringement on or after the commencement of that section of that Act, irrespective of when the infringement was committed.

103B Application of amendment made by the Road Safety (Alcohol Interlocks) Act 2002

(1) Subject to subsection (1A), on and from the commencement of Division 2 of Part 6 of the Transport Legislation (Miscellaneous Amendments) Act 2004, section 50AAA applies to offences, irrespective of when they were committed including (for the avoidance of doubt) whether they were committed before, on or after the commencement of section 10 of the Road Safety (Alcohol Interlocks) Act 2002.

(1A) The application of section 50AAA to an offence continues as provided by subsection (1), as in force immediately before the commencement of Division 2 of Part 6 of the Transport Legislation
(Miscellaneous Amendments) Act 2004 for the purposes of any application under section 50(4) for an order as to the issue of a driver licence or permit made before that commencement.

(1B) The amendment of section 50AAB(4) made by section 32 of the Transport Legislation (Miscellaneous Amendments) Act 2004 has effect only with respect to applications made for the removal of an alcohol interlock condition more than 28 days after the commencement of Division 2 of Part 6 of that Act.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement, the offence is alleged to have been committed before that commencement.

103C Application of amendments made by the Road Safety (Responsible Driving) Act 2002

(1) Despite the amendments made by section 4 of the Road Safety (Responsible Driving) Act 2002, subsections (3), (4) and (5) of section 21 of this Act, as in force immediately before the commencement of those amendments, continue to apply to offences alleged to have been committed before that commencement.

(2) The amendments to section 25(3), (3B) and (3D) of this Act made by section 5 of the Road Safety (Responsible Driving) Act 2002 only apply to a person who held a learner permit or probationary driver licence before the amendments commence if the person incurs one or more demerit points after that commencement.

(3) If the amendments referred to in subsection (2) apply to a person, a reference in section 25 of this Act to demerit points incurred by the person includes a reference to demerit points incurred by
the person before the commencement of those amendments.

(4) The amendments to this Act made by sections 7 and 14 of the Road Safety (Responsible Driving) Act 2002 only apply to offences alleged to have been committed after the commencement of those amendments.

(5) The amendment to section 49(1)(f) of this Act made by section 8 of the Road Safety (Responsible Driving) Act 2002 only applies to offences alleged to have been committed after the commencement of that amendment.

(6) The amendments to section 51 of this Act made by section 9(1)(b) and section 9(2) to (7) of the Road Safety (Responsible Driving) Act 2002 only apply to offences alleged to have been committed after the commencement of those amendments.

(7) The amendments to section 51 of this Act made by section 9(1)(a), (c) and (d) of the Road Safety (Responsible Driving) Act 2002 apply to offences alleged to have been committed before, on or after the commencement of those amendments.

(8) Despite the amendments made by section 10 of the Road Safety (Responsible Driving) Act 2002, subsections (2), (3), (4) and (5) of section 89C of this Act, as in force immediately before the commencement of those amendments, continue to apply to offences alleged to have been committed before that commencement.

(9) The amendment to section 89C(8) of this Act made by section 10 of the Road Safety (Responsible Driving) Act 2002 applies to any traffic infringement notice issued on or after 21 December 2001 for a drink-driving
infringement irrespective of when the infringement was committed.

(10) For the purposes of subsections (1), (4), (5), (6) and (8), if an offence is alleged to have been committed between two dates, one before and one after the commencement referred to in the particular subsection, the offence is alleged to have been committed—

(a) in the case of subsections (1) and (8), before the commencement referred to in subsection (1) or (8) (as the case may be); or

(b) in the case of subsections (4), (5) and (6), after the commencement referred to in that subsection.

103D Application of amendments made by the Road Safety (Amendment) Act 2003

(1) The amendments to section 16E of this Act made by section 7 of the Road Safety (Amendment) Act 2003 apply to an entry on the register of written-off vehicles, whether the entry was made before, on or after the commencement of that section 7 but section 16E (as in force immediately before that commencement) continues to apply with respect to any appeal made under that section before that commencement.

(2) The amendments to sections 66 and 86 of this Act made by Division 3 of Part 2 of the Road Safety (Amendment) Act 2003 apply to offences alleged to have been committed before, on or after the commencement of that Division and irrespective of whether or not a charge was filed or a courtesy letter, traffic infringement notice or parking infringement notice was served before that commencement.
103E  Validation of sale of registration number rights and collection of certain amounts

(1) In this section *commencement day* means the day on which Division 1 of Part 6 of the *Transport Legislation (Miscellaneous Amendments) Act 2004* comes into operation.

(2) The sale before the commencement day of registration number rights in respect of a registration number that would have been valid and lawful had it occurred after that day—

(a) is taken to be, and to have always been, valid and lawful; and

(b) is taken to have conferred on the person to whom the registration number rights were sold the same rights that the person would have had if they had been sold after that day.

(3) It must be presumed for all purposes that registration number rights sold before the commencement day were cancelled on the expiry of the period of 12 months of the vehicle to which they were last assigned continuing to be not registered under Part 2, unless the owner of those rights had before that expiry notified the Corporation of their wish to retain the registration number that was the subject of those rights.

(4) It must be presumed for all purposes, in the absence of evidence to the contrary, that the person to whom a number plate was issued by the Corporation before 1 September 2002, being a number plate bearing a registration number in respect of which registration number rights were sold by the Corporation before that date, was the person to whom those registration number rights were sold by the Corporation.
(5) The transfer to a person, before the commencement day, of registration number rights that would have been valid and lawful had the transfer occurred after that day—

   (a) is taken to be, and to have always been, valid and lawful; and

   (b) is taken to have conferred on the person the same rights that the person would have had if the transfer had occurred after that day.

(6) The payment before the commencement day of a fee, or an amount at auction or by tender, for the purchase of registration number rights that would have been valid and lawful had the payment been made after that day is taken to be, and to have always been, valid and lawful.

(7) A fee or amount charged and collected before the commencement day for the assignment to a vehicle of a registration number that at the time of the sale formed part of a general issue series (being a particular registration number requested by, or on behalf of, the payer of that fee or amount) must be taken to be, and to have always been, validly and lawfully charged and collected even if it exceeded the cost to the Corporation of assigning that registration number.

(8) It must be presumed for all purposes, in the absence of evidence to the contrary, that the assignment of a registration number to a vehicle before the commencement day in the circumstances described in subsection (7) did not result in the sale of registration number rights in respect of that registration number or confer on any person any such rights.
(9) A fee or amount charged and collected before the commencement day for the assignment to a vehicle of a registration number that then was or had been the registration number of another vehicle that would have been validly and lawfully charged and collected had the other vehicle been then or at some earlier time registered in the name of the payer of that fee or amount must be taken to be, and to have always been, validly and lawfully charged and collected.

(10) A fee or amount charged and collected before the commencement day for the issue of non-standard number plates or replacement non-standard number plates must be taken to be, and to have always been, validly and lawfully charged and collected even if it exceeded the cost to the Corporation of issuing those number plates.

103F Regulations may take effect on commencement

Regulations made under section 95 for or in respect of the matters in items 15A to 15G of Schedule 2 may take effect from the day on which Division 1 of Part 6 of the Transport Legislation (Miscellaneous Amendments) Act 2004 commences (whether or not the regulations are made after that day).

103G Transitional provision—Transport Legislation (Miscellaneous Amendments) Act 2004

(1) The amendments of section 49 of this Act made by section 34 of the Transport Legislation (Miscellaneous Amendments) Act 2004 do not affect the rights of the parties in the proceeding known as Halepovic v Sangston (No. 6401 of 2003) in the Supreme Court of Victoria.
(2) The amendments of sections 66 and 86 of this Act made by section 35 of the *Transport Legislation (Miscellaneous Amendments) Act 2004* apply to offences alleged to have been committed before, on or after the commencement of that section of that Act and irrespective of whether or not a charge was filed or a traffic infringement notice, parking infringement notice or courtesy letter was served before that commencement.

(3) The amendments of section 88 made by section 36 of the *Transport Legislation (Miscellaneous Amendments) Act 2004* applies to any traffic infringement notice issued on or after the commencement of that section of that Act, irrespective of when the infringement was committed.

103H Transitional provision—sections 27 and 33 of the *Transport Legislation (Amendment) Act 2004*

(1) Section 26, as in force immediately before the commencement of section 27 of the *Transport Legislation (Amendment) Act 2004*, applies, despite its repeal, to any appeal made under section 26 before the commencement of that section 27.

(2) Section 67 inserted by section 33 of the *Transport Legislation (Amendment) Act 2004* applies to any traffic infringement notice irrespective of whether or not it was issued before on or after the commencement of that section 33.

103I Application of amendments made by section 41 of the *Transport Legislation (Amendment) Act 2004*

Parts 10 and 11, as inserted by section 41 of the *Transport Legislation (Amendment) Act 2004*, only apply to offences that occur on or after the date of commencement of that section.
103J Transitional provisions—Road Safety (Further Amendment) Act 2005

(1) Unless a contrary intention appears in this Act, on and after the commencement of section 3 of the Road Safety (Further Amendment) Act 2005, the Interpretation of Legislation Act 1984 applies to the interpretation of all of the provisions of this Act (including provisions inserted in this Act, or amended, by an Act passed while section 3A of this Act was in operation) whether or not the effect of that application is consistent with the effect that there would be if the Acts Interpretation Act 1901 of the Commonwealth applied to the interpretation of those provisions.

(2) The amendments of section 61 of this Act made by section 5 of the Road Safety (Further Amendment) Act 2005 apply only to offences against section 61 alleged to have been committed on or after the commencement of section 5 of that Act.

(3) The amendments of section 64(2) of this Act made by section 7 of the Road Safety (Further Amendment) Act 2005 apply only to offences alleged to have been committed on or after the commencement of section 7 of that Act.

(4) For the purposes of subsections (2) and (3), if an offence is alleged to have been committed between two dates, one before and one after the commencement of section 5 or 7 (as the case requires) of the Road Safety (Further Amendment) Act 2005, the offence is alleged to have been committed before the commencement of that section.
103K Transitional provision—Road Safety (Drugs) Act 2006

Despite the repeal of section 95A by section 4 of the Road Safety (Drugs) Act 2006, the prescribed fee in force immediately before that repeal in respect of any matter covered by the following paragraphs—

(a) the registration or renewal of registration of a vehicle referred to in section 95A(2)(a);

(b) the grant of a permit to operate a vehicle, or a combination of vehicles, referred to in section 95A(2)(c)—

continues in force in respect of that matter until the commencement of regulations made on or after the commencement of that section 4 prescribing an amount as a fee in respect of that matter.

103L Transitional provisions—Road Legislation (Projects and Road Safety) Act 2006

(1) The amendments to a section of this Act made by Part 2 of the Road Legislation (Projects and Road Safety) Act 2006 only apply to offences alleged to have been committed on or after the commencement of that Part.

(2) Sections 50(1AC) and 50AAA(2A) of this Act, as inserted by section 19 of the Road Legislation (Projects and Road Safety) Act 2006, and sections 50AAB, 50AAC, 50AA and 89C of this Act, as amended by that section 19, only apply to offences or infringements alleged to have been committed on or after the commencement of that section 19.
(3) Section 70(1C) of this Act, as substituted by section 10 of the Road Legislation (Projects and Road Safety) Act 2006 only applies to offences against section 70(1A) alleged to have been committed on or after the commencement of that section 10.

(4) The amendments made to a section of this Act by any of the following provisions of the Road Legislation (Projects and Road Safety) Act 2006 only apply to offences alleged to have been committed on or after the commencement of that provision—

   (a) section 21(1)(a);

   (b) section 21(2);

   (c) section 22(1)(a);

   (d) section 22(2).

(5) Part 6AA of this Act, as inserted by section 24 of the Road Legislation (Projects and Road Safety) Act 2006, and sections 66 and 86 of this Act, as substituted by sections 23 and 26 respectively of that Act, only apply to offences alleged to have been committed on or after the commencement of that section 24, 23 or 26 (as the case requires).

(6) For the purposes of subsections (1) to (5), if an offence is alleged to have been committed between two dates, one before and one after the commencement of a provision of the Road Legislation (Projects and Road Safety) Act 2006, the offence is alleged to have been committed before the commencement of that provision.
(7) The amendment of section 158 of this Act by
section 14 of the Road Legislation (Projects and
Road Safety) Act 2006 applies to a breach that
occurred before, on or after the commencement of
that amendment.

103M Transitional provisions—Road Legislation
Amendment Act 2007

(1) The amendments of sections 66 and 86 of this Act
made by sections 3 and 4 of the Road Legislation
Amendment Act 2007 apply to offences alleged
to have been committed before, on or after the
commencement of those sections of that Act and
so apply irrespective of whether or not before that
commencement—

(a) a charge was filed; or

(b) a summons, traffic infringement notice or
parking infringement notice was served; or

(c) any step was taken in respect of the offence
under the Infringements Act 2006 or a
corresponding previous enactment or under
Schedule 2A to the Children and Young

(2) Without limiting section 14 of the Interpretation
of Legislation Act 1984, nothing in subsection (1)
ffects any sworn statement or statutory
declaration supplied (whether before, on or after
the commencement of sections 3 and 4 of the
Road Legislation Amendment Act 2007) for the
purpose of section 66 or 86 of this Act in relation
to an offence alleged to have been committed
before that commencement and such a statement
or declaration has the same effect for that purpose
as a statement made under that section as
amended by section 3 or 4 (as the case requires) of the Road Legislation Amendment Act 2007.

(3) Nothing in subsection (2) affects any liability for the making of a sworn statement or statutory declaration that is false.

103N Transitional provisions for operator onus—Road Legislation Further Amendment Act 2007

(1) The amendments made to a section of this Act by any of the following provisions of the Road Legislation Further Amendment Act 2007 only apply to offences alleged to have been committed on or after the commencement of that provision—

(a) section 10;
(b) section 11;
(c) section 12;
(d) section 13;
(e) section 14.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of a provision of the Road Legislation Further Amendment Act 2007 referred to in subsections (1)(a) to (1)(e), the offence is alleged to have been committed before the commencement of that provision.

103O Transitional provisions for Demerits Register—Road Legislation Further Amendment Act 2007

The amendments made to section 25 of this Act by section 7 of the Road Legislation Further Amendment Act 2007 apply to a demerit point option notice served on a person after the commencement of that section 7, whether the demerit points to which the notice relates were incurred before or after that commencement.
103P Transitional provisions for level crossings—Road Legislation Further Amendment Act 2007

(1) Section 68B of this Act, as inserted by section 9 of the Road Legislation Further Amendment Act 2007, and paragraph (ea) of the definition of relevant offence in section 84C(1) of this Act, as inserted by section 15 of that Act, apply only to offences alleged to have been committed on or after the commencement of sections 9 or 15.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of sections 9 and 15 of the Road Legislation Further Amendment Act 2007, the offence is alleged to have been committed before the commencement of those provisions.

103Q Transitional provisions for fatigue regulated heavy vehicles—Road Legislation Further Amendment Act 2007

(1) Part 10A of this Act, as inserted by section 20 of the Road Legislation Further Amendment Act 2007, applies only to offences alleged to have been committed on or after the commencement of that section 20.

(2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 20 of the Road Legislation Further Amendment Act 2007, the offence is alleged to have been committed before the commencement of that provision.
103U Definition

In sections 103V, 103W, 103X, 103Y and 103Z 2009 Act means the Road Legislation Amendment Act 2009.

103V Transitional provision 2009 Act—Section 79 evidence

Despite the commencement of section 25 of the 2009 Act, section 79 of this Act, as in force before that commencement, continues to apply to evidence of the speed of a motor vehicle or trailer that was indicated or determined before that commencement by a then prescribed speed measuring device.

103W Transitional provision 2009 Act—Section 80A evidence

Despite the commencement of section 27 of the 2009 Act, section 80A of this Act, as in force before that commencement, continues to apply to evidence of the fact that an unregistered vehicle was being driven at a particular time and place or that number plates were not being displayed at a particular time, being evidence that was indicated or determined before that commencement by a
detection device then prescribed for the purposes of section 66.

103X   Transitional provision 2009 Act—Section 81 evidence

Despite the commencement of section 28 of the 2009 Act, section 81 of this Act, as in force before that commencement, continues to apply to evidence of the speed at which a motor vehicle or trailer travelled, being evidence that was indicated or determined before that commencement by—

(a) a detection device then prescribed for the purposes of section 66; or

(b) an image or message produced by a detection device then prescribed for the purposes of section 66; or

(c) an image or message produced by a then prescribed process.

103Y   Transitional provision 2009 Act—Section 83 certificates

(1) In relation to a certificate issued under section 83 before the commencement of section 29 of the 2009 Act in respect of a device referred to in section 79, the following provisions apply—

(a) in respect of any criminal proceeding relating to an indication or determination by the device that occurred before that commencement, section 83, as in force before that commencement is taken to continue to apply;

(b) in respect of any criminal proceeding relating to an indication or determination by the device that occurred on or after that commencement, a reference in the certificate to a device referred to in section 79 (or to
that effect) is to be taken to be a reference to—

(i) a prescribed road safety camera; or

(ii) a prescribed speed detector—

as the case so requires.

(2) In relation to any certificate issued under section 83 of the Act on or after the commencement of section 29 of the 2009 Act in respect of a device described in the certificate as—

(a) a road safety camera; or

(b) a speed detector—

if the device was tested and sealed before that commencement—

(c) the certificate has effect as if it were issued in respect of the device as a speed measuring device, within the meaning of the Act as in force before that commencement; and

(d) where the case so requires, a reference to the device for the purposes of any proceeding as—

(i) a road safety camera; or

(ii) a speed detector—

is taken to be a reference to the device as a speed measuring device within the meaning of the Act as in force before that commencement.

103Z Transitional provision 2009 Act—Section 83A certificates

(1) In relation to a certificate issued under section 83A before the commencement of section 30 of the 2009 Act—
(a) in respect of a detection device then prescribed for the purposes of section 66; and

(b) in respect of any proceeding under this Act to which subsection (2) does not apply—

section 83A, as in force before that commencement is taken to continue to apply.

(2) In relation to a certificate issued under section 83A before the commencement of section 30 of the 2009 Act—

(a) in respect of a detection device then prescribed for the purposes of section 66; and

(b) in respect of any proceeding under this Act in which evidence is being adduced under section 80; and

(c) where the proceeding relates to any indication or determination by the device—

where the case so requires, a reference in the certificate to a device prescribed for the purposes of section 66 (or to that effect) is taken to be a reference to a prescribed road safety camera.

(3) In relation to a certificate issued under section 83A on or after the commencement of section 30 of the 2009 Act—

(a) in respect of a device described in the certificate as a prescribed road safety camera; and

(b) in respect of an indication or determination by the device that occurred before that commencement—

where the case so requires, the certificate has effect as if it were issued in respect of the device as a device prescribed for the purposes of

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section 66, within the meaning of the Act as in force before that commencement.

103ZA Transitional provision—Justice Legislation Amendment Act 2010

The amendments to section 29 of this Act made by section 91 of the Justice Legislation Amendment Act 2010 apply to orders of disqualification, cancellation, suspension or variation made on or after the commencement of section 91 of that Act.

103ZB Transitional provision—Health and Human Services Legislation Amendment Act 2010

An approval granted by the Secretary to the Department of Human Services under section 49A and existing immediately before the commencement of section 69 of the Health and Human Services Legislation Amendment Act 2010 is taken in respect of any period after that commencement to have been granted by the Secretary to the Department of Health.

103ZC Transitional provision—Road Safety Amendment (Hoon Driving) Act 2010

(1) Part 6A as amended by Part 2 of the Road Safety Amendment (Hoon Driving) Act 2010 applies to relevant offences alleged to have been committed on or after the commencement of Part 2 of that Act.

(2) Subject to subsection (3), Part 6A as in force immediately before the commencement of Part 2 of the Road Safety Amendment (Hoon Driving) Act 2010 continues to apply to a relevant offence alleged to have been committed before the commencement of Part 2 of that Act.
(3) For the purposes of sections 84S(1) and 84T(1), in determining whether a driver has committed previous relevant offences, a relevant offence committed before the commencement of Part 2 of the Road Safety Amendment (Hoon Driving) Act 2010 is to be taken to be a tier 2 relevant offence.

(4) For the purposes of subsections (1), (2) and (3), if a relevant offence is alleged to have been committed between two dates, one before and one after the commencement of Part 2 of the Road Safety Amendment (Hoon Driving) Act 2010, the offence is alleged to have been committed before the commencement of Part 2 of that Act.

103ZD Transitional provision—Road Safety Amendment (Hoon Driving and Other Matters) Act 2011

(1) Sections 84S, 84T and 84U as amended by section 12 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 apply to—

(a) previous relevant offences committed on or after the commencement of section 12 of that Act; and

(b) previous relevant offences committed before the commencement of section 12 of that Act if the most recent relevant offence is alleged to have been committed on or after the commencement of section 12 of that Act.

(2) For the purposes of subsection (1), if a relevant offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 12 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011, the relevant offence is alleged to have been committed before the commencement of section 12 of that Act.
(3) Section 84TA as inserted by section 13 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to an impoundment or immobilisation order or a forfeiture order made on or after the commencement of section 13 of that Act, irrespective of when the offence is alleged to have been committed.

(4) Section 84WA as inserted by section 14 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to a notice under section 84W(1) served on or after the commencement of section 14 of that Act, irrespective of when the offence is alleged to have been committed.

(5) Section 84ZQB as inserted by section 15 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to a notice under section 84ZQA(1) given on or after the commencement of section 15 of that Act, irrespective of when the offence is alleged to have been committed.

(6) Section 84ZQC as inserted by section 15 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to the vesting of a motor vehicle under section 84ZQ(4) on or after the commencement of section 15 of that Act, irrespective of when the offence is alleged to have been committed.

(7) Section 84ZUA as inserted by section 16 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to a notice under section 84ZU(1) given on or after the commencement of section 16 of that Act, irrespective of when the offence is alleged to have been committed.
(8) Section 84ZWA as inserted by section 17 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to a disposal order made on or after the commencement of section 17 of that Act, irrespective of when the offence is alleged to have been committed.

(9) Section 84ZY as inserted by section 18 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to any motor vehicle that is subject to impoundment, immobilisation or forfeiture on or after the commencement of section 18 of that Act, irrespective of when impoundment, immobilisation or forfeiture occurred.

(10) Section 89D(1A) as amended by section 19 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011 applies to a drug-driving infringement alleged to have been committed on or after the commencement of section 19 of that Act.

(11) For the purposes of subsection (10), if a drug-driving infringement is alleged to have been committed between 2 dates, one before and one after the commencement of section 19 of the Road Safety Amendment (Hoon Driving and Other Matters) Act 2011, the drug-driving infringement is alleged to have been committed before the commencement of section 19 of that Act.

103ZE  Transitional provision—Road Safety Amendment Act 2012

(1) Part 6AB as inserted by section 5 of the Road Safety Amendment Act 2012 applies only to applicable offences alleged to have been committed on or after the commencement of section 5 of that Act.
(2) For the purposes of subsection (1), if an applicable offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 5 of the Road Safety Amendment Act 2012, the applicable offence is alleged to have been committed before the commencement of section 5 of that Act.

(3) Section 84ZQAB as inserted by section 20 of the Road Safety Amendment Act 2012 applies only to motor vehicles that have been impounded or immobilised in relation to an applicable offence alleged to have been committed on or after the commencement of section 20 of that Act.

(4) For the purposes of subsection (3), if an applicable offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 20 of the Road Safety Amendment Act 2012, the applicable offence is alleged to have been committed before the commencement of section 20 of that Act.

103ZF Transitional provision—Road Safety and Sentencing Acts Amendment Act 2012

Section 50AAA as amended by section 3 of the Road Safety and Sentencing Acts Amendment Act 2012 applies to a direction to the Corporation given on or after the commencement of section 3 of that Act, irrespective of when the conviction, finding of guilt or taking effect as a conviction occurred.

103ZG Transitional provisions—Road Safety and Sentencing Acts Amendment Act 2013

(1) This Act as in force immediately before 30 September 2013 continues to apply with respect to applications made before that date—
(a) under section 50(4) for an order as to the issue of a driver licence or learner permit; or
(b) under section 50AAB(4) for an order to remove an alcohol interlock condition.

(2) A person who—

(a) has been disqualified under section 50 or 89C before 30 September 2013; and
(b) under this Act as in force immediately before that date may only be granted a driver licence or learner permit on an order made by the Magistrates' Court on an application under section 50(4); and
(c) wishes to apply for such an order on or after that date—

may only do so by applying for a licence eligibility order in accordance with this Act as amended by the Road Safety and Sentencing Acts Amendment Act 2013.

(3) Despite anything to the contrary in this Act, on an application for a licence eligibility order made by a person covered by subsection (2) the Magistrates' Court—

(a) is not required to give an alcohol interlock condition direction if it would not have been required to give a direction before 30 September 2013 under section 50AAA as in force immediately before that date; and
(b) does not have power to give such a direction if it would not have had power to give it before that date under that section 50AAA; and
(c) may not specify in such a direction under section 50AAA a period longer than it could have specified before that date under section 50AAB as in force immediately before that date—

had the application been made under section 50(4) before that date.

(4) A person who—

(a) has had an alcohol interlock condition imposed on his or her driver licence or learner permit in accordance with a direction under section 50AAA before 30 September 2013; and

(b) under this Act as in force immediately before that date can only have that condition removed by the Corporation on an order made by the Magistrates' Court on an application under section 50AAB(4); and

(c) wishes to apply for such an order on or after that date—

may only do so by applying for an alcohol interlock condition removal order in accordance with this Act as amended by the Road Safety and Sentencing Acts Amendment Act 2013.

(5) For the purposes of an application covered by subsection (4) the reference in section 50AAB(5)(b)(iii) to a licence eligibility report includes a reference to a licence restoration report within the meaning of this Act as in force immediately before 30 September 2013 if such a report was obtained before that date.
(6) Section 50AAC, as in force immediately before 30 September 2013, continues to apply with respect to appeals made to the County Court in respect of a direction given under section 50AAA before that date, irrespective of whether the appeal is made before, on or after that date.

(7) Section 48(2)(f), as substituted by section 5(1) of the Road Safety and Sentencing Acts Amendment Act 2013 applies only in respect of an offence that is alleged to have been committed on or after 30 September 2013.

(8) In section 50AAA(8), as inserted by section 6 of the Road Safety and Sentencing Acts Amendment Act 2013—

(a) the reference to an alcohol interlock condition direction includes a reference to a direction given under section 50AAA(1A), (2), (2A), (3)(b) or (3A) of this Act, or section 89A(2), 89A(3)(b) or 89A(4) of the Sentencing Act 1991, as in force immediately before 30 September 2013; and

(b) the reference to the periods specified in directions includes, in relation to a direction referred to in paragraph (a), the period specified under section 50AAB(1) of this Act, or section 89B(1) of the Sentencing Act 1991, as in force immediately before 30 September 2013.

(9) Section 50AACA, as inserted by section 9 of the Road Safety and Sentencing Acts Amendment Act 2013, only applies with respect to an alcohol interlock condition removal order made on or after 30 September 2013.

(10) A person or body approved under section 49A for the purposes of section 50 immediately before 30 September 2013 must be taken to be approved
under section 49A for the purposes of sections 31C, 31E and 31G on and after that date subject to the same conditions, limitations or restrictions as are specified in the approval and for the same period as that during which the approval continues in force.

(11) The amendment of this Act by section 16 of the Road Safety and Sentencing Acts Amendment Act 2013 applies only in respect of an offence under section 18(1) of this Act that is alleged to have been committed on or after 30 September 2013.

(12) For the purposes of subsections (7) and (11), if an offence is alleged to have been committed between two dates, one before and one on or after 30 September 2013, the offence is alleged to have been committed before that date.

(13) In section 52(1B), as substituted by section 27(1) of the Road Safety and Sentencing Acts Amendment Act 2013—

(a) the reference to an alcohol interlock condition includes a reference to an alcohol interlock condition imposed under section 89A of the Sentencing Act 1991 before 30 September 2013; and

(b) the reference to a licence eligibility order includes a reference to an order of the Magistrates' Court made on an application under section 50(4) of this Act or section 89(2) of the Sentencing Act 1991 before 30 September 2013.

Note
30 September 2013 is the date on which the Road Safety and Sentencing Acts Amendment Act 2013 (other than Part 1, sections 19(1), 20, 21, 22, 33 and 38 and Divisions 3, 5 and 6 of Part 4) came into operation.
103ZH Transitional provision Heavy Vehicle National Law Application Act 2013

Part 11 as in force immediately before its repeal by item 8.35 of the Schedule to the Heavy Vehicle National Law Application Act 2013, continues to apply to offences alleged to have been committed before that commencement.

103ZHA Transitional provisions—Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013

(1) Part 7B as inserted by section 7 of the Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013 applies only to the use or disclosure of relevant information, within the meaning of section 90I, that occurs after the commencement of section 7 of that Act, irrespective of when the relevant information is collected or received.

(2) Section 92, as in force immediately before the commencement of section 8 of the Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, continues to apply to the use and disclosure of information referred to in section 92(2)(a), as so in force, that occurred before the commencement of section 8 of that Act.

(3) A confidentiality agreement entered into under section 92(4) before the commencement of section 8 of the Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013 that is in force on that commencement is taken to be an information protection agreement under section 90N.
103ZHB  Transitional provision—Road Legislation Amendment Act 2013

(1) In this section, *commencement day* means the day on which section 4 of the Road Legislation Amendment Act 2013 comes into operation.

(2) Part 4 of this Act applies to demerit points whether the demerit points are incurred before or after the commencement day.

(3) Without limiting the generality of subsection (2)—

(a) in sections 36(1) and 46A, a reference to demerit points that a person incurs includes any demerit points incurred by the person before the commencement day; and

(b) in section 37(1), a reference to further demerit points that a person incurs includes any demerit points incurred by the person after the earlier notice is issued but before the commencement day; and

(c) in sections 39(1) and 40(1), a reference to additional demerit points that a person incurs includes any demerit points incurred by the person within the extended demerit point period but before the commencement day.

103ZI  Transitional provisions—Road Safety Amendment Act 2014

(1) In this section, the Road Safety Amendment Act 2014 is called the amending Act.

(2) Section 26(3A), as inserted by section 15(1) of the amending Act, applies only with respect to decisions made by the Magistrates' Court on or after the commencement of that section 15(1).

(3) Section 31KA, as inserted by section 17 of the amending Act, applies only with respect to an offence under section 49(1)(b), (f) or (g) that is
alleged to have been committed on or after the commencement of that section 17.

(4) The amendments of section 50 made by section 18(1) of the amending Act apply only with respect to an offence under section 49(1)(b), (f) or (g) that is alleged to have been committed on or after the commencement of that section 18(1).

(5) Sections 50AAAB and 50AAAC, as inserted by section 19 of the amending Act, apply only with respect to an alcohol interlock condition imposed for an offence that is alleged to have been committed on or after the commencement of that section 19.

(6) Section 50AAAD, as inserted by section 19 of the amending Act, applies with respect to requirements and conditions of a kind referred to in section 50AAAD(2), whether imposed before, on or after the commencement of that section 19.

(7) An amendment of section 50AAB made by a provision of section 20 of the amending Act applies only with respect to an application made under section 50AAB(4) in relation to an alcohol interlock condition imposed for an offence that is alleged to have been committed on or after the commencement of that provision.

(8) An amendment of section 50AAD, 50AAE, 50AAF, 50AAG, 50AAH, 50AAI or 50AAJ made by a provision of sections 22 to 28 of the amending Act, applies with respect to approvals under section 50AAE, whether given before, on or after the commencement of that provision.

(9) The amendment of section 52(1B) made by section 31 of the amending Act applies only with respect to a disqualification from obtaining a driver licence or learner permit imposed on or after the commencement of that section 31 in
respect of an offence that is alleged to have been committed on or after that commencement.

(10) Section 89C(1A) and (2), as inserted by section 32(1) of the amending Act, applies only with respect to a drink-driving infringement alleged to have been committed on or after the commencement of that section 32(1).

(11) The amendments of section 52(1E), (1F)(b) and (1G) made by section 45 of the amending Act apply only with respect to a driver licence which authorises the holder to drive a motor cycle granted on or after the commencement of that section 45.

(12) For the purposes of any provision of this section, if an offence is alleged to have been committed between 2 dates, one before and one on or after the commencement of a section of the amending Act specified by the provision, the offence is alleged to have been committed before that commencement.

(13) A provision of this Act, as amended by a provision of the amending Act, that applies to an offence that is a second or subsequent offence of a person applies to an offence that is alleged to have been committed by the person on or after the commencement of that provision of the amending Act if that offence is a second or subsequent offence of the person under section 48(2), 50AAA(9) or 50AA (as the case requires) when regard is had to a previous offence committed before, on or after that commencement.

(14) The operation of subsection (13) is not affected by subsection (4) or any other provision of this section.
104 Validation of certain resolutions fixing higher penalties for parking infringements

(1) A resolution purported to be made by a municipal council under section 87(4) on or after 1 October 1992, but before the commencement of section 22 of the Road Safety (Amendment) Act 2000, fixing a penalty of an amount not greater than $50 for a parking infringement in contravention of the Road Safety (Traffic) Regulations 1988 that would have validly fixed the amount had section 22 of that Act been in operation at the time the resolution was purportedly made is, on that commencement, deemed to have, and always to have had, the same force and effect as it would have had if section 22 of that Act had been in operation at the time the resolution was purportedly made.

(2) A resolution purported to be made by a municipal council under section 87(4) on or after 1 December 1999, but before the commencement of section 22 of the Road Safety (Amendment) Act 2000, fixing a penalty of an amount not greater than $50 for a parking infringement in contravention of the Road Safety (Road Rules) Regulations 1999 that would have validly fixed the amount had section 22 of that Act been in operation at the time the resolution was purportedly made is, on that commencement, deemed to have, and always to have had, the same force and effect as it would have had if section 22 of that Act had been in operation at the time the resolution was purportedly made.

105 Certain local laws to have force and effect despite inconsistency with regulations

(1) This section applies to a local law with respect to the parking or leaving standing of a vehicle on a highway—
(a) made by a municipal council before the commencement of section 24 of the Road Safety (Amendment) Act 2000; and

(b) that was in force on 1 October 1992 or at any time after 1 October 1992, (whether or not in force immediately before that commencement); and

(c) for which the municipal council has passed before that commencement a resolution under section 87(4) fixing a penalty of an amount not greater than $50 for a parking infringement under that local law—

to the extent that the local law relates to the parking or leaving standing of a vehicle on a highway at any time before that commencement.

(2) Section 100 of this Act, or section 111(2) and (3) of the Local Government Act 1989, is deemed not to cause, and never to have caused, a provision made by a local law to be of no force and effect only because the provision is inconsistent with the Road Safety (Traffic) Regulations 1988 or the Road Safety (Road Rules) Regulations 1999.

105A Validation concerning certain alcohol interlock conditions

(1) If, on or after 11 October 2006 and before the day on which the Road Safety and Sentencing Acts Amendment Act 2012 receives the Royal Assent, a court gave or purported to give a direction to the Corporation under section 50AAA (as then in force) in relation to a person disqualified under section 89C from obtaining a driver licence or permit, each of the following has, and is taken always to have had, the same force and effect as it would have had if section 3 of that Act had been in operation when the direction was given or purported to be given—
(a) the direction under section 50AAA;

(b) any order made or purported to have been made by a court (whether on appeal or otherwise), including any penalty imposed, in relation to—

(i) the direction under section 50AAA; or

(ii) compliance with an alcohol interlock condition imposed on a driver licence or permit as a result of the direction; or

(iii) an offence in relation to an alcohol interlock condition imposed on a driver licence or permit as a result of the direction;

(c) any act performed or decision made, whether under this or any other Act or otherwise, in reliance on or in relation to—

(i) the direction under section 50AAA; or

(ii) an alcohol interlock condition imposed on a driver licence or permit as a result of the direction; or

(iii) any order referred to in paragraph (b).

(2) Any act or thing done or omitted to be done, whether under a power conferred by or under an enactment or otherwise, before or after the commencement of section 5 of the Road Safety and Sentencing Acts Amendment Act 2012 in reliance on or in relation to a matter referred to in subsection (1)(a), (b) or (c) has the same effect, and gives rise to the same consequences, and is to be regarded as always having had the same effect and having given rise to the same consequences, as if section 3 of the Road Safety and Sentencing Acts Amendment Act 2012 had been in operation when the direction was given or purported to be given under section 50AAA.
(3) A right or liability conferred or imposed in relation to, or affected by a matter referred to in subsection (1)(a), (b) or (c) is exercisable or enforceable, and is to be regarded as always having been exercisable or enforceable, as if section 3 of the Road Safety and Sentencing Acts Amendment Act 2012 had been in operation when the direction was given or purported to be given under section 50AAA.

(4) Without limiting subsection (3), the rights and liabilities conferred or imposed in relation to a matter referred to in subsection (1)(a), (b) or (c) include rights of appeal.

(5) This section does not affect the right of any person to appeal against a matter referred to in subsection (1)(a), (b) or (c) on any other ground.
PART 9—INSPECTIONS AND SEARCHES CONCERNING HEAVY VEHICLES

Division 1—Preliminary matters

106 Definitions

In this Part—

*accident* means an incident that involves a heavy vehicle and that results—

(a) in a person being killed or injured; or

(b) in damage being caused to a vehicle, or to other property;

*compliance purposes* has the meaning set out in section 110;
S. 106 def. of goods repealed by No. 110/2004 s. 40.

S. 106 def. of heavy vehicle repealed by No. 110/2004 s. 40.

S. 106 def. of inspector repealed by No. 110/2004 s. 40.

S. 106 def. of intelligent transport system repealed by No. 110/2004 s. 40.

S. 106 def. of journey documentation repealed by No. 110/2004 s. 40.

S. 106 def. of legal entitlements repealed by No. 110/2004 s. 40.

S. 106 def. of load repealed by No. 110/2004 s. 40.

S. 106 def. of non-Victorian road or transport law repealed by No. 110/2004 s. 40.
operator, in relation to a vehicle, means a person who is responsible for controlling or directing the operations of the vehicle in connection with a business for, or involving, the transport of goods or passengers by road, but does not include a person who merely—

(a) arranges for the registration of the vehicle; or

(b) maintains, or arranges for the maintenance of, the vehicle;

S. 106 def. of passenger repealed by No. 110/2004 s. 40.

S. 106 def. of premises repealed by No. 110/2004 s. 40.

S. 106 def. of relevant law or scheme repealed by No. 28/2009 s. 49.

S. 106 def. of responsible person repealed by No. 110/2004 s. 40.

S. 106 def. of road or transport law repealed by No. 110/2004 s. 40.
106A Application of Commonwealth Acts Interpretation Act 1901

(1) The Acts Interpretation Act 1901 of the Commonwealth applies to the interpretation of this Part, except that, in relation to Victoria—

(a) "Gazette" refers to the Victorian Government Gazette; and

(b) "Minister" refers to the responsible Minister of Victoria.

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

107 Residential purposes

For the purposes of this Part, a premises, or a part of a premises, that is used for business purposes is not to be taken to be used for residential purposes merely because sleeping or other accommodation is provided there for the drivers of heavy vehicles.
109 Copying of documents

If this Part confers on a person the power to copy a document, the person—

(a) may copy all, or part of, the document or the contents of the document; and

(b) may access any device or thing in which the document exists or is stored to enable that copying.

110 Compliance purposes

In this Part compliance purposes are purposes related to ascertaining whether or not a relevant law or scheme has been contravened or is being complied with.

111 Other reference provisions

(1) A reference in this Part to the owner, operator or registered operator of a vehicle includes, in the case of a group of vehicles that are physically connected, a reference to the owner, operator or registered operator of each of the vehicles in the group.

(2) A reference to a contravention of a relevant law or scheme is a reference—

(a) in the case of a road or transport law or a non-Victorian road or transport law, to the commission of an offence against that law;

(b) in the case of an approved road transport compliance scheme, to a failure to comply with, or to a breach of, that scheme.

(3) A reference to a requirement imposed by a law or scheme includes a reference to a requirement imposed under a law or scheme.
112 Authorisation of authorised officers

(1) The Corporation may authorise an officer of the Corporation, and the Secretary may authorise an officer of the Department of Transport, Planning and Local Infrastructure, to carry out—

(a) any inspections and searches of heavy vehicles and premises that are permitted by this Part; or

(b) any inspections and searches of heavy vehicles that are permitted by this Part; or

(c) the inspection of a particular heavy vehicle or premises, or class of heavy vehicle or premises, that is permitted by this Part; or

(d) the inspection and search of a particular heavy vehicle or premises, or class of heavy vehicle or premises, that is permitted by this Part.

(2) In authorising a person under this section, the Corporation or Secretary must give the person an identity card—

(a) that identifies the person by name as an inspector under this Part; and

(b) that specifies, in the case of a person who is authorised to carry out inspections under subsections (1)(a) and (1)(b), what inspections and searches the person has been authorised to conduct; and

(c) that contains a photograph of the person.

(3) In the case of a person who is authorised to carry out inspections under subsection (1)(c) or inspections and searches under subsection (1)(d), the Corporation or Secretary must also give the
person a paper document that specifies the inspections or searches that the person has been authorised to conduct.

(4) If a person's authorisation under this section is revoked, expires or otherwise ceases to have effect, he or she must return his or her identity card and any document he or she was given under subsection (3) to the Corporation or Secretary as soon as is practicable.

Penalty: 60 penalty units.

Division 2—Inspections and searches of vehicles on highways or public places

113 Vehicles to which this Division applies

This Division applies to a heavy vehicle that is—

(a) on any highway; or

(b) in or on any public place; or

(c) in or on any premises occupied or owned by the Corporation or by any other public authority; or

(d) in or on any premises that an inspector is authorised to enter under Division 3 or 4; or

(e) in or on any other place, but only if the vehicle has entered that place as the immediate result of it being involved in an accident on or near a highway.

114 Power to inspect vehicle

(1) An inspector may inspect a vehicle to which this Division applies for compliance purposes.

(2) Without limiting subsection (1), in conducting an inspection of the vehicle, the inspector may—

(a) enter the vehicle;
(b) weigh the vehicle or any part of the vehicle or its equipment or load;

(c) otherwise measure, or test, or take photographs of, the vehicle or any part of the vehicle or its equipment or load (other than a passenger);

(d) check the existence or details of, or take photographs of, placards or other information required by a relevant law or scheme to be displayed in or on the vehicle, including placards or other information relating to its specifications, capabilities or legal entitlements;

(e) copy—
   (i) any documents located in or on the vehicle that are required to be carried in or on the vehicle by a relevant law or scheme;
   (ii) any documents relating to the vehicle, or the use of the vehicle, that are accessible electronically from equipment located in or on the vehicle;

(f) examine any goods found in or on the vehicle that the inspector believes, on reasonable grounds, provide, or may on further examination provide, evidence of a contravention of a relevant law or scheme.

(3) This section does not authorise the use of force, but the inspector may do any or all of the following—

(a) open unlocked doors, panels, objects or other things, or open unlocked places;

(b) move, but not take away, anything that is not locked up or sealed.
(4) In the case of a vehicle to which this Division applies as a result of section 113(e), the inspector may, for the purpose of inspecting the vehicle, enter the place that the vehicle is in or on without the consent of the owner or occupier of the place.

(5) A photograph taken under subsection (2)(c) of a vehicle, or of any part of a vehicle or its equipment or load, is not inadmissible as evidence by reason only of the fact that it includes the likeness of one or more of the vehicle's passengers if the capturing of that likeness does not appear to have been the main reason for the taking of the photograph.

115 Power to search vehicle

(1) An inspector may search a vehicle to which this Division applies if the inspector believes on reasonable grounds—

(a) that the vehicle has been used, or is being used, in contravention of a relevant law or scheme; or

(b) that the vehicle has been, or may have been, involved in an accident.

(2) The inspector may form the necessary belief during or after an inspection, or independently of an inspection.

(3) Without limiting subsection (1), in searching the vehicle, the inspector may—

(a) do anything that he or she may do in inspecting a vehicle under section 114;

(b) search for evidence of a contravention of a relevant law or scheme;

(c) search for any documents, devices or other things that relate to the vehicle or any part of its equipment or load and that are located in or on the vehicle;
(d) copy any or all of the following—

(i) any transport documentation or journey documentation located in or on the vehicle;

(ii) any other documents located in or on the vehicle that the inspector believes on reasonable grounds provide, or may on further inspection provide, evidence of a contravention of a relevant law or scheme.

(4) The inspector may seize and remove any documents, devices or other things from the vehicle that the inspector believes on reasonable grounds provide, or may on further inspection provide, evidence of a contravention of a relevant law or scheme.

(5) This section does not authorise an inspector to search a person, even if the person is part of a vehicle's load.

(6) A police officer may use reasonable force in the exercise of a power under this section.

116 Production of identification by inspectors before vehicle inspections or searches

(1) This section applies if—

(a) an inspector wishes to inspect or search a vehicle under this Division; and

(b) the driver, or another person apparently in charge of the vehicle, is present in, on or near the vehicle.
(2) Before starting to inspect or search the vehicle, an inspector who is not a police officer—

(a) must identify himself or herself to the driver or person by producing his or her identity card for inspection by the driver or person; and

(b) if the inspector is acting under an authorisation issued under section 112(1)(c) or 112(1)(d), must also produce the document given to him or her under section 112(3) for inspection by the driver or person.

(3) In the case of an inspector who is a police officer, but who is not in uniform, before starting to inspect or search the vehicle he or she must identify himself or herself to the driver or person by producing his or her identification as a police officer.

(4) In the case of an inspector who is a police officer and who is in uniform, before starting to inspect or search the vehicle he or she must, if requested to do so by the driver or person, state orally his or her name, rank and place of duty.

(5) Despite subsection (2), it is not necessary for an inspector who is an authorised officer to identify himself or herself before starting to inspect or search the vehicle if—

(a) he or she is in uniform; and

(b) the inspection or search is to be conducted at a weighbridge or other place on or next to a highway as part of a program of inspections or searches of heavy vehicles.
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(6) If an inspector decides to start a search while in the process of conducting an inspection, it is not necessary for the inspector to comply with subsection (2), (3) or (4) again if the inspector starts the search during, or immediately after, the inspection.

117 Production of identification during inspection or search

(1) An inspector conducting an inspection or a search of a heavy vehicle under this Division must, if asked to do so, produce for inspection—

(a) if the inspector is an authorised officer—

(i) his or her identity card; and

(ii) if the inspector is acting under an authorisation issued under section 112(1)(c) or 112(1)(d), the document given to him or her under section 112(3); or

(b) if the inspector is a police officer who is not in uniform, his or her identification as a police officer.

(2) An inspector must comply with subsection (1) even if he or she has complied with section 116.

(3) An inspector who is a police officer and who is in uniform conducting an inspection or a search of a heavy vehicle under this Division must, if requested to do so by the driver or other person apparently in charge of the vehicle, state orally his name, rank and place of duty unless he or she has already done so to that driver or other person in compliance with section 116 or this subsection.

(4) It is not necessary for an inspector to comply with a request to produce identification that is made by a person to whom the inspector has already
produced that identification before or during an inspection or search.

118 Consent not needed for inspections or searches

An inspector may exercise a power under this Division at any time, and without the consent of the driver, or other person apparently in charge of the vehicle, or any other person.

Division 3—Inspections and searches of premises

119 Definition

In this Division—

*authorised inspector* means—

(a) an authorised officer who has been authorised by the Corporation or the Secretary to inspect and search premises under section 112(1)(a), 112(1)(c) or 112(1)(d);

(b) a police officer who has been authorised by the Chief Commissioner of Police to inspect and search premises.

120 Premises to which this Division applies

This Division applies to the following premises—

(a) any premises at or from which a responsible person carries on business, or that is occupied by a responsible person in connection with such a business, or that is a registered office of a responsible person under the Corporations Act;

(b) the garage address of a heavy vehicle;

(c) the driver base of a heavy vehicle;
(d) any premises where documents are kept for the purposes of, or are required to be kept by, a relevant law or scheme;

(e) any premises where transport or journey documentation relating to heavy vehicles is kept by a responsible person.

121 Power to inspect premises

(1) An authorised inspector may inspect a premises to which this Division applies for compliance purposes.

(2) Without limiting subsection (1), in conducting an inspection of a premises, the authorised inspector may—

(a) enter the premises;

(b) inspect, or enter and inspect, any heavy vehicle in or on the premises;

(c) inspect and copy any documents located at the premises that are required to be kept by a relevant law or scheme;

(d) check the existence of and inspect any devices (including weighing, measuring, recording or monitoring devices) that are required to be installed, used or maintained by a relevant law or scheme, and to inspect and copy any document obtained from any such device;

(e) examine any goods found on or in the premises that the inspector believes, on reasonable grounds, provide, or may on further examination provide, evidence of a contravention of a relevant law or scheme;

(f) exercise with respect to a heavy vehicle located at the premises any power that may be exercised during an inspection of a heavy vehicle under section 114(2).
(3) This section does not authorise the use of force, but the authorised inspector may under this section do any or all of the following—

(a) open unlocked doors, panels, objects or other things, or open unlocked places;

(b) move, but not take away, anything that is not locked up or sealed.

122 Power to search premises

(1) This section applies to the following premises—

(a) any premises to which this Division applies;

(b) any premises where an authorised inspector believes on reasonable grounds that a heavy vehicle is located.

(2) An authorised inspector may search a premises to which this section applies if the inspector believes on reasonable grounds that—

(a) there may be, at the premises, evidence of a contravention of a relevant law or scheme; or

(b) a heavy vehicle has been, or may have been, involved in an accident and—

(i) the premises are the garage address of the vehicle; or

(ii) the premises are or may be otherwise connected (directly or indirectly) with the vehicle or any part of its equipment or load, and the vehicle is, or has been, at the premises.

(3) The authorised inspector may form the necessary belief during or after an inspection, or independently of an inspection.
(4) Without limiting subsection (2), in searching a premises, the authorised inspector may—

(a) do anything that he or she may do in inspecting a premises under section 121;

(b) search for evidence of a contravention of a relevant law or scheme;

(c) search for and inspect any documents, devices or other things that relate to a heavy vehicle or any part of its equipment or load and that are located at the premises;

(d) copy any or all of the following—

(i) any transport documentation or journey documentation located at the premises;

(ii) any documents that are required to be kept by a relevant law or scheme that are located at the premises;

(iii) any other documents located at the premises that the inspector believes on reasonable grounds provide, or may on further inspection provide, evidence of a contravention of a relevant law or scheme;

(e) exercise with respect to a heavy vehicle located at the premises any powers that may be exercised during a search of a heavy vehicle under section 115(3).

(5) The authorised inspector may seize and remove any documents, devices or other things from the premises that the inspector believes on reasonable grounds provide, or may on further inspection provide, evidence of a contravention of a relevant law or scheme.
(6) A police officer may use reasonable force in the exercise of a power under this section.

123 When inspection or search may be conducted

(1) An inspection or search under this Division may be conducted—

(a) at any time, if the authorised inspector has obtained a consent to the inspection or search in accordance with section 125; or

(b) if a business is carried on at the premises—at any time during the usual business operating hours applicable at the premises, and without the consent of the occupier or other person apparently in charge of the premises, or any other person (subject to section 124(1)(a)).

(2) For the purposes of this section, a premises that is used for predominantly residential purposes is not a business premises, even if, for instance, it is the registered business address of a responsible person.

124 Unattended or residential premises not to be searched

(1) This Division does not authorise, without a consent obtained in accordance with section 125, the inspection or search of—

(a) a premises that is unattended at the time of proposed entry; or

(b) a premises that is used for predominantly residential purposes.

(2) For the purposes of subsection (1)(a), a premises is unattended unless one or other of the following is present on the premises—
S. 125
inserted by
No. 44/2003
s. 3.

125 Procedure for obtaining informed consent

(1) Consent to an inspection or search may only be obtained in accordance with this section from—

(a) in the case of a premises that is used for predominantly residential purposes, a person who the authorised inspector reasonably believes to be the occupier or owner of the premises;

(b) in any other case, a person who is, or who appears to be, of or over the age of 16 years and who is, or who appears to be, in charge of the premises.
(2) An authorised inspector obtains a person's consent in accordance with this section if the inspector—

(a) produces for inspection by the person—

(i) if the inspector is an authorised officer—

(A) his or her identity card; and

(B) if the inspector is acting under an authorisation issued under section 112(1)(c) or 112(1)(d), the document given to him or her under section 112(3); or

(ii) if the inspector is a police officer who is not in uniform, his or her identification as a police officer; and

(b) informs the person—

(i) of the purpose of the inspection or search; and

(ii) that the person may refuse to give consent to the inspection or search; and

(iii) that the inspector is entitled to copy most documents found on the premises during the inspection or search; and

(iv) in the case of an inspection—

(A) that the inspector may only take a thing from the premises with the consent of the person; and

(B) that the inspector may begin to search the premises if he or she finds anything that gives him or her the authority to do so; and

S. 125(2)(a)(ii) amended by No. 37/2014 s. 10(Sch. item 147.52).
(v) that in conducting a search the inspector is entitled to seize anything that might be evidence of a contravention of a relevant law or scheme; and

(vi) that anything seized, taken or copied during the inspection or search may be used in evidence in proceedings; and

(c) obtains the person's signature to an acknowledgment that states—

(i) that the person has been given the information listed in paragraph (b); and

(ii) that the person consents to the inspection or search; and

(iii) the date and time that the person consented; and

(d) gives the person a copy of the acknowledgment.

(3) For the purposes of subsection (2), it is not necessary for an inspector who is a police officer and who is in uniform to produce his or her identification as a police officer.

(4) If, in any proceeding, an acknowledgment is not produced to the court or tribunal, it must be presumed, until the contrary is proved, that the inspection or search occurred without consent.

(5) For the purposes of this Act, a person does not obstruct an inspector by refusing to consent to an inspection or search.

126 Production of identification by inspectors before inspections or searches of premises

(1) This section applies if—

(a) an authorised inspector wishes to inspect or search a premises under this Division; and

S. 125(3) amended by No. 37/2014 s. 10(Sch. item 147.52).

S. 126 inserted by No. 44/2003 s. 3.
(b) the inspector has not obtained a consent to the inspection or search in accordance with section 125.

(2) In this section, *occupier* means, in relation to a premises that is to be inspected or searched—

(a) the occupier or owner of the premises; or

(b) a responsible person on the premises; or

(c) a person who is, or who appears to be, of or over the age of 16 years and who is, or who appears to be, in charge of the premises.

(3) Before starting to inspect or search the premises, an inspector who is not a police officer must, if it is practicable to do so—

(a) identify himself or herself to an occupier of the premises by producing his or her identity card for inspection by the occupier; and

(b) if the inspector is acting under an authorisation issued under section 112(1)(c) or 112(1)(d), also produce the document given to him or her under section 112(3) for inspection by the occupier.

(4) In the case of an inspector who is a police officer, but who is not in uniform, before starting to inspect or search the premises he or she must, if it is practicable to do so, identify himself or herself to an occupier by producing his or her identification as a police officer.

(5) In the case of an inspector who is a police officer and who is in uniform, before starting to inspect or search the premises he or she must, if requested to do so by an occupier, state orally his or her name, rank and place of duty.
(6) If an inspector decides to start a search while in the process of conducting an inspection, it is not necessary for the inspector to comply with subsection (3), (4) or (5) again if the inspector starts the search during, or immediately after, the inspection.

127 Production of identification during inspection or search

(1) An inspector conducting an inspection or a search of a premises under this Division must, if asked to do so, produce for inspection—

(a) if the inspector is an authorised officer—

(i) his or her identity card; and

(ii) if the inspector is acting under an authorisation issued under section 112(1)(c) or 112(1)(d), the document given to him or her under section 112(3); 

(b) if the inspector is a police officer who is not in uniform, his or her identification as a police officer.

(2) An inspector must comply with subsection (1) even if he or she has complied with section 126.

(3) An inspector who is a police officer and who is in uniform conducting an inspection or a search of premises under this Division must, if requested to do so by an occupier (within the meaning of section 126) of the premises, state orally his or her name, rank and place of duty unless he or she has already done so to that occupier in compliance with section 126 or this subsection.
(4) It is not necessary for an inspector to comply with a request to produce identification that is made by a person to whom the inspector has already produced that identification before or during an inspection or search.

**Division 4—Search warrants**

128 Search warrants

(1) An inspector may apply to a magistrate for the issue of a search warrant in relation to a premises, if the inspector believes on reasonable grounds that there is on the premises evidence of a contravention of a road or transport law.

(2) The magistrate may issue a search warrant if he or she is satisfied, by evidence provided by the inspector on oath or by affidavit, that there are reasonable grounds to believe that there is on a premises a thing or things of a particular kind that may be evidence of the contravention of a road or transport law.

(3) The warrant is to be issued in accordance with the *Magistrates' Court Act 1989*.

(4) In the warrant, the magistrate may authorise the inspector, or another inspector named in the warrant, together with any other person or people named or otherwise identified in the warrant, and with any necessary equipment—

(a) to enter the premises; and

(b) to do all or any of the following—

(i) to search for;

(ii) to seize;

(iii) to secure against interference;

(iv) to examine and inspect;
(v) to inspect and copy—
the thing or things.

(5) In the warrant, the magistrate may authorise an
ingpector who is a police officer to use force, if
necessary, to enter the premises.

(6) The warrant must state—

(a) the purpose for which the search is required
and the nature of the alleged contravention; and

(b) the identity of the premises to be searched
and the thing or things in respect of which it
is issued; and

(c) any conditions to which it is subject; and

(d) whether entry is authorised to be made at any
time of the day or night or during stated
hours of the day or night; and

(e) a day, not later than 28 days after the issue of
the warrant, on which it ceases to have
effect.

(7) A warrant directed to a named police officer may
be executed by any police officer.

(8) Except as provided by this Act, the rules to be
observed with respect to search warrants under the
Magistrates' Court Act 1989 extend and apply to
warrants issued under this section.

129 Announcement before entry

(1) Before executing a search warrant, the inspector
named in the warrant or any other person
authorised under section 128(4)—

(a) must announce that he or she is authorised
by the warrant to enter the premises; and
(b) must give any person at the premises an opportunity to allow entry to the premises.

(2) An inspector or authorised person need not comply with subsection (1) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

130 **Details of warrant to be given to occupier**

(1) If the occupier is present at the premises where a search warrant is being executed, the inspector must—

(a) identify himself or herself to the occupier; and

(b) give to the occupier a copy of the warrant.

(2) If the occupier is not present at the premises where a search warrant is being executed but another person is present, the inspector must—

(a) identify himself or herself to that person; and

(b) give the person a copy of the warrant.

131 **Seizure of things not mentioned in the warrant**

A search warrant authorises the inspector executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

(a) the inspector believes, on reasonable grounds, that the thing—

(i) is of a kind which could have been included in a warrant issued under this Division; or
(ii) will afford evidence about the contravention of a road or transport law; and

(b) in the case of seizure, the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in contravention of a road or transport law.

Division 5—Inspectors may give directions

132 Power to require production of documents and related items

(1) An inspector may, for compliance purposes, direct a responsible person to provide to the inspector—

(a) any transport or journey documentation relating to the use of a heavy vehicle; and

(b) any document required to be kept under a relevant law or scheme in relation to heavy vehicles; and

(c) any documents, devices or other things in his, her or its possession or control relating to or indicating—

(i) the use, performance or condition of a heavy vehicle; or

(ii) the ownership, insurance or registration of a heavy vehicle; or

(iii) any load or equipment carried or intended to be carried by a heavy vehicle (including insurance of any such load or equipment); or

(d) any documents, devices or other things in his, her or its possession or control demonstrating that an alleged garage address of a heavy vehicle is the actual garage address of the vehicle.
(2) The direction must state where and to whom the documents, devices or other things are to be produced.

(3) In giving a direction, the inspector may specify particular documents, devices or other things, or particular classes of documents, devices or other things.

(4) The inspector may do any or all of the following—
   (a) inspect any documents, devices or other things that are produced;
   (b) copy any documents, devices or other things that are produced;
   (c) seize and remove any documents, devices or other things that are produced that the inspector believes on reasonable grounds provide, or may on further inspection provide, evidence of a contravention of a relevant law or scheme.

(5) A responsible person must not, without reasonable excuse, refuse or fail to comply with a direction made under subsection (1).

Penalty: applying to this subsection: 60 penalty units.

133 Direction to provide reasonable assistance

(1) An inspector may direct a responsible person to provide assistance to the inspector to enable the inspector effectively to exercise a power under this Part.

(2) Without limiting subsection (1), the inspector may direct the person to do any or all of the following—
   (a) to find and gain access to electronically stored information;
(b) to find and gain access to any information required to be on a vehicle to indicate its specifications, capabilities or legal entitlements;

(c) to find and gain access to any information relating to a heavy vehicle (including the performance, specifications, capabilities, use and legal entitlements of the vehicle) in a useable form for the purpose of ascertaining its compliance with requirements imposed by a relevant law or scheme;

(d) to weigh or measure the whole or any part of a heavy vehicle or its load;

(e) to run the engine of a heavy vehicle.

(3) A responsible person must not, without reasonable excuse, refuse or fail to comply with a direction made under subsection (1).

Penalty: 60 penalty units.

(4) In proceedings for an offence against subsection (3), it is a defence if the person charged establishes that—

(a) the direction was unreasonable; or

(b) without limiting paragraph (a), the direction or its subject-matter was outside the scope of the business or other activities of the person.

134 Authority to run vehicle's engine

(1) Section 133 does not authorise an inspector to direct a person to drive a vehicle.

(2) If a person fails to comply with a direction under section 133 to run the engine of a heavy vehicle, or no responsible person is available to do so, an inspector may—

(a) enter the vehicle and run its engine; or
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(b) authorise any other person to do so.

(3) A police officer or a person authorised by a police
officer may use reasonable force in the exercise of
a power under subsection (2).

135 Direction to state name and address

(1) An inspector may, for compliance purposes, direct
an individual whom the inspector believes on
reasonable grounds is, or may be, a responsible
person to state his or her name, home address and
business address.

(2) A person must comply immediately with a
direction.
Penalty: 5 penalty units.

(3) A person must not, in purported compliance with
a direction, knowingly provide a false name or
address.
Penalty: 5 penalty units.

(4) In proceedings against a person for an offence of
failing to state the person's business address, it is a
defence if the person charged establishes that the
person did not have a business address or that the
person's business address was not connected
(directly or indirectly) with road transport
involving heavy vehicles.

(5) This section does not affect any other law that
requires a person to state the person's name or
address.

136 Direction to provide certain information

(1) An inspector may direct, for compliance purposes,
a responsible person who is associated with a
particular heavy vehicle—
(a) to state the name, home address and business address of—

(i) any other responsible person who is associated with the vehicle or any load that is being carried by the vehicle; and

(ii) if so directed, in the case of a group of vehicles to which the heavy vehicle is physically connected, the registered operator of each vehicle in the group;

(ab) to provide information about the current or intended trip of the vehicle, including—

(i) the location of the start or intended start of the trip; and

(ii) the route or intended route of the trip; and

(iii) the location of the destination or intended destination of the trip;

(b) to give any information that it is within the power of the person to give that may lead to the identification of the driver of the vehicle on any occasion.

(2) A person must comply with a direction.
Penalty: 5 penalty units.

(3) A person must not, in purported compliance with a direction, knowingly provide information that is false or misleading in a material respect.
Penalty: 5 penalty units.

(4) In proceedings against a person for an offence of failing to comply with a direction, it is a defence if the person charged establishes that the person did not know, and could not be reasonably expected to know or ascertain, the required information.
(5) In proceedings against a person for an offence of failing to state another person's business address, it is a defence if the person charged establishes that the other person did not have a business address or that the other person's business address was not connected (directly or indirectly) with road transport involving heavy vehicles.

137 Manner of giving directions under this Division

(1) A direction under this Division may be given orally or in writing.

(2) If giving a direction orally, the inspector giving the direction—

   (a) must state whether it is to be complied with immediately or within a specified period; and

   (b) must warn the person to whom the direction is given that it is an offence under this Act to fail to comply with a direction.

(3) If giving a direction in writing, the inspector must ensure that the direction—

   (a) states the period within which it is to be complied with; and

   (b) states that it is an offence under this Act to fail to comply with a direction.

(4) A written direction may be given to, or sent by post to, the person to whom it is directed.

138 Self-incrimination not an excuse

(1) A person is not excused from complying with a direction made under this Division on the ground that complying with the direction may result in information being provided that might incriminate the person.
(2) Any information obtained from a natural person under this Division is not admissible in evidence against the person in criminal proceedings other than in proceedings in respect of the provision of false information.

(3) Despite subsection (2), any information obtained from a person under section 135(1) is admissible in evidence against the person in criminal proceedings.

(4) Despite subsection (2), any information obtained from a person under this Division that is contained in any document or item—

(a) that the person is required to keep by any law or approved road transport compliance scheme; or

(b) that was obtained without the direct assistance of the person—

is admissible in evidence against the person in criminal proceedings.

(5) For the purposes of subsection (4), a person provides direct assistance in the obtaining of a document or item if the person is required to identify, to reveal the location of, or to explain the contents of, the document or item.

Division 6—Seizure

139 Copies of certain seized things to be given

(1) If, in exercising a power under this Part, an inspector seizes—

(a) a document; or

(b) a thing that can be readily copied; or
(c) a storage device that contains information
that can be readily copied—

the inspector must give a copy of the document,
thing or information to the owner or custodian of
the document, thing or device as soon as is
practicable after the seizure.

(2) Subsection (1) does not apply—

(a) to any document, thing or device moved
under section 146(2); or

(b) if the inspector is unable to discover the
identity of the owner or custodian of the
document, thing or device.

(3) If it is not practicable to comply with
subsection (1) in respect of a thing before the
inspector finishes the search, the inspector must
give a receipt for it to the person from whom it is
seized and removed.

(4) In the case of a paper document, the inspector
must certify on any copy of the document given to
a person under this section that the copy is an
accurate copy of the document.

(5) A copy of a document certified under
subsection (4) is to be received in all courts and
tribunals as evidence of equal validity to the
original.

140 Access to seized things

(1) If a thing is seized under this Part, the inspector
who seized the thing must, if practicable, allow
the person who would normally be entitled to
possession of it reasonable access to it while it
remains in the possession, or under the control, of
the inspector.

(2) This section does not apply if the inspector has
given the person an accurate copy of the thing.
141 Journey may be completed despite seizure of required thing

(1) This section applies if, during a search, an inspector seizes from a vehicle in transit any thing that is required by law to be carried in or on the vehicle while the vehicle is being driven.

(2) At the conclusion of the search the driver, or two-up driver, of the vehicle may complete the journey that he or she was undertaking at the time the search was conducted despite the seizure of the thing, and he or she does not commit any offence by doing so.

(3) For the purposes of this section, a journey is completed at any time a vehicle reaches its driver base, even if it was intended that the original journey would take it beyond that base.

(4) This section does not apply if the driver of the vehicle is asked to produce the thing that was seized and he or she fails to produce in response to that request the copy of the thing, or the receipt for the thing, that was given under section 139.

(5) This section does not apply at any time after the further use of the vehicle has been lawfully prohibited.

(6) If the thing seized is evidence that a person is authorised to carry out an activity under a law, this section also does not apply at any time after the authority to carry out that activity is suspended or cancelled.

142 Embargo notice

(1) This section applies if—

(a) an inspector is authorised to seize any thing under this Part; and

(b) the thing cannot, or cannot readily, be physically seized and removed; and
(c) the inspector—

(i) is a police officer who has been authorised under section 119(b) to inspect and search premises; or

(ii) has been authorised by the Corporation or the Secretary to issue embargo notices under this section.

(2) The inspector may issue an embargo notice in relation to the thing.

(3) An embargo notice is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the thing, or any part of the thing, without the written consent of the inspector, the Secretary, the Corporation or the Chief Commissioner of Police.

(4) The embargo notice—

(a) must be in the form, or contain the details, required by the regulations; and

(b) must list the activities that it forbids; and

(c) must set out a copy of subsection (8).

(5) The inspector may issue the notice—

(a) by causing a copy of the notice to be served on the occupier; or

(b) if that person cannot be located after all reasonable steps have been taken to do so, by affixing a copy of the notice to the thing in a prominent position.

(6) A person who knows that an embargo notice relates to a thing must not—

(a) do anything that is forbidden by the notice under this section; or
(b) instruct any other person to do anything that is forbidden by the notice under this section or to do anything that the person is forbidden to do by the notice.

Penalty: 60 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (6) to prove that the person charged—

(a) moved the thing, or part of the thing, for the purpose of protecting or preserving it; and

(b) notified the inspector who issued the notice of the move, and of the new location of the thing or part, within 48 hours after the move.

(8) A person on whom an embargo notice is served must take reasonable steps to prevent any other person from doing anything prohibited by the notice.

Penalty: 20 penalty units.

(9) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.

(10) Sections 143 and 144 apply to an embargo notice as if—

(a) a reference to the seizing of a thing was a reference to the issuing of the notice; and

(b) a reference to taking reasonable steps to return a thing in that section was a reference to the withdrawing of the notice; and

(c) a reference to the retaining of the thing was a reference to the continuation of the notice.
143 Retention and return of seized documents or things

(1) If an inspector seizes a document or other thing under this Part, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

(2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—

(a) proceedings for the purpose for which the document or thing was seized or retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) the Magistrates' Court makes an order under section 144 extending the period during which the document or thing may be retained.

144 Magistrates' Court may extend 3 month period

(1) An inspector may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the inspector may retain the document or thing.

(2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—

(a) for the purposes of an investigation into whether a contravention of a relevant law or scheme has occurred; or

(b) to enable evidence of a contravention of a relevant law or scheme to be obtained for the purposes of a proceeding under this Act.
(3) The Magistrates’ Court may adjourn an application to enable notice of the application to be given to any person.

Division 7—Other matters concerning inspections and searches

145 Use of assistants and equipment

(1) An inspector may exercise a power under this Part with the aid of any assistants and equipment that the inspector considers necessary.

(2) A power that may be exercised by an inspector under this Part may be exercised by an assistant authorised by the inspector.

(3) This section does not apply to a search under a search warrant.

146 Use of equipment to examine or process things

(1) Without limiting section 145, an inspector exercising a power under this Part may bring to, or on to, a vehicle or premises any equipment reasonably necessary for the examination or processing of things found in, on or at the vehicle or premises in order to determine whether they are things that may be seized.

(2) If—

(a) it is not practicable to examine or process the things at the vehicle or premises; or

(b) the occupier of the vehicle or premises consents in writing—

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized.
(3) The inspector, or a person assisting the inspector, may operate equipment already in, on or at the vehicle or premises to carry out the examination or processing of a thing found in, on or at the vehicle or premises in order to determine whether it is a thing that may be seized, if the inspector or person assisting believes on reasonable grounds that—

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

147 Use or seizure of electronic equipment

(1) If—

(a) a thing found in, on or at a vehicle or premises is, or includes, a disk, tape or other device for the storage of information; and

(b) equipment in, on or at the vehicle or premises may be used with the disk, tape or other storage device; and

(c) the inspector believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to determine whether a relevant law or scheme has been contravened—

the inspector or a person assisting the inspector may operate the equipment to access the information.

(2) If the inspector or a person assisting the inspector finds that a disk, tape or other storage device in, on or at a vehicle or premises contains information of the kind referred to in subsection (1)(c), he or she may—
(a) put the information in documentary form and seize the documents so produced; or

(b) copy the information to another disk, tape or other storage device and remove that storage device from the vehicle or premises; or

(c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.

(3) An inspector or a person assisting an inspector must not operate or seize equipment for the purpose mentioned in this section unless the inspector or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

148 Obstructing or hindering inspectors

A person must not obstruct or hinder an inspector who is exercising a power or function under this Part.

Penalty: 60 penalty units.

149 Impersonating authorised officers

A person must not impersonate an authorised officer.

Penalty: 60 penalty units.
Division 8—Interstate provisions

149AA Reciprocal powers of officers

(1) This section has effect in relation to another jurisdiction while the corresponding law of the other jurisdiction contains provisions corresponding to this section.

(2) The Minister may enter into agreements with a Minister of the other jurisdiction for the purposes of this section, and to amend or revoke any such agreement.

(3) To the extent envisaged by such an agreement—

(a) an inspector of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers conferred on an authorised officer or police officer of the other jurisdiction by or under the corresponding law of the other jurisdiction; and

(b) an authorised officer or police officer of the other jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers conferred respectively on an inspector by or under this Act.

(4) Anything done or omitted to be done by an inspector of this jurisdiction under subsection (3) is taken to have been done under this Act as well as under the corresponding law.

(5) The regulations may make provision for or with respect to the exercise of powers under this section.
(6) In this section—

*corresponding law* means a law of another jurisdiction that is declared to be a corresponding law under subsection (7);

*jurisdiction* means a State or Territory of the Commonwealth.

(7) The Minister may, by Order published in the Government Gazette, declare a law of another jurisdiction to be a corresponding law for the purposes of this section.
PART 10—PROVISIONS CONCERNING BREACHES OF MASS, DIMENSION AND LOAD RESTRAINT LIMITS AND REQUIREMENTS

Division 1—Preliminary matters

149A  Part does not apply to a heavy vehicle

This Part does not apply to a heavy vehicle.

Note
Chapter 4 of the Heavy Vehicle National Law (Victoria) sets out the mass, dimension and loading requirements for heavy vehicles.

150  Reference to vehicle includes loads and attached vehicles

A reference in this Part to a vehicle is to be read as including a reference—

(a) to anything on or in the vehicle; and

(b) in a case where a group of vehicles are physically connected, to each vehicle in the group—

unless the contrary intention appears.

151  Statement that mistake of fact defence does not apply not to affect other offences

The statement in this Part that a person does not have the benefit of the mistake of fact defence is solely intended for the purposes of this Part, and it is not intended to affect the question of whether that defence is, or is not, available to a person in relation to any offence outside this Part.
Division 2—Categorisation of breaches

152 Purpose of this Division

The purpose of this Division is to classify certain breaches of mass, dimension and load restraint limits and requirements into one of the following categories—

(a) minor risk breaches;
(b) substantial risk breaches;
(c) severe risk breaches.

Note

Different enforcement powers and penalties apply in this Part in relation to different breaches of mass, dimension and load restraint limits and requirements depending on the categorisations ascribed to the breaches by this Division.

153 Mass limits

(1) A mass limit is a limit specified under this Act concerning the mass of—

(a) a vehicle; or

(b) any component of a vehicle.

(2) Without limiting subsection (1), the following are mass limits—

(a) a limit concerning—

(i) the gross mass of a vehicle (that is, the unladen mass of the vehicle together with any load in or on the vehicle); or

(ii) the mass on a tyre, an axle or an axle group of the vehicle;

(b) a limit concerning axle spacing;

(c) mass limits set out on signs erected or displayed under this Act (for example, a sign-posted bridge limit).
(3) A breach of a mass limit is a minor risk breach if—

(a) in the case of a mass limit that relates to the gross mass of a vehicle, the amount by which the limit is exceeded is less than either or both of the following—

(i) 5% of the maximum permissible mass; or

(ii) 0.5 tonnes; or

(b) in any other case, the amount by which the limit is exceeded is less than 5% of the maximum permissible mass.

(4) Subject to subsection (3)(a)(ii), a breach of a mass limit is a substantial risk breach if the amount by which the limit is exceeded is 5% or more of the maximum permissible mass, but less than 20% of the maximum permissible mass.

(5) A breach of a mass limit is a severe risk breach if the amount by which the limit is exceeded is 20% or more of the maximum permissible mass.

(6) For the purposes of this section, all relevant measurements are to be rounded up to the nearest 0.1 tonnes.

154 Width limit

(1) For the purposes of this section, a width limit is a limit specified under this Act concerning—

(a) the maximum width of a vehicle; or

(b) the maximum distance that the load of a vehicle may project from the side of the vehicle.

(2) A breach of a width limit is a minor risk breach if the amount by which the permitted width or distance is exceeded is less than 40 mm.
(3) A breach of a width limit is a substantial risk breach if the amount by which the permitted width or distance is exceeded is 40 mm or more but less than 80 mm.

(4) A breach of a width limit is a severe risk breach if the amount by which the permitted width or distance is exceeded is 80 mm or more.

155 **Length limit**

(1) For the purposes of this section, a *length limit* is a limit specified under this Act concerning the maximum length of a vehicle.

(2) A breach of a length limit is a minor risk breach if the amount by which the permitted length is exceeded is less than 350 mm.

(3) A breach of a length limit is a substantial risk breach if the amount by which the permitted length is exceeded is 350 mm or more but less than 600 mm.

(4) A breach of a length limit is a severe risk breach if the amount by which the permitted length is exceeded is 600 mm or more.

156 **Height limit**

(1) For the purposes of this section, a *height limit* is a limit specified under this Act concerning the maximum height of a vehicle.

(2) A breach of a height limit is a minor risk breach if the amount by which the permitted height is exceeded is less than 150 mm.

(3) A breach of a height limit is a substantial risk breach if the amount by which the permitted height is exceeded is 150 mm or more but less than 300 mm.
(4) A breach of a height limit is a severe risk breach if the amount by which the permitted height is exceeded is 300 mm or more.

157 Load restraint requirement

(1) For the purposes of this section, a load restraint requirement is a requirement imposed under this Act concerning the securing or restraining of a load (other than people) carried by a vehicle.

(2) A breach of a load restraint requirement is a minor risk breach if the breach occurs in circumstances that do not involve any danger to any person or the risk of any damage to any property or to the environment.

(3) A breach of a load restraint requirement is a substantial risk breach if the breach occurs in circumstances that pose a danger to any person or the risk of damage to any property or to the environment.

(4) A breach of a load restraint requirement is a severe risk breach if the breach occurs in circumstances in which harm occurs to one or more people or in which any property is damaged or damage occurs to the environment.

158 Upgrading of categorisation in certain circumstances

(1) In this section, a relevant circumstance is any of the following circumstances—

(a) at night; or

(b) in hazardous weather conditions causing reduced visibility; or

(c) on a declared route; or

(d) in a declared zone.
(2) If a breach of a width limit or length limit that would otherwise be a minor risk breach occurs in any relevant circumstance, then the breach becomes, by virtue of occurring in that circumstance, a substantial risk breach.

(3) If a breach of a width limit or length limit that would otherwise be a substantial risk breach occurs in any relevant circumstance, then the breach becomes, by virtue of occurring in that circumstance, a severe risk breach.

(4) Subsection (3) does not apply to a breach that is a substantial risk breach as a result of subsection (2).

(5) In this section—

*declared route* means a road, or a part of a road, declared by the Minister, by notice published in the Government Gazette, to be a declared route for the purposes of this section;

*declared zone* means a zone declared by the Minister, by notice published in the Government Gazette, to be a declared zone for the purposes of this section.

### Division 3—Enforcement powers concerning mass, dimension or load restraint breaches

#### 159 Application of this Division

(1) This Division applies if an inspector believes on reasonable grounds that a vehicle is in breach of a mass, dimension or load restraint limit or requirement, and the vehicle is on or in any of the following places—

(a) any highway; or

(b) any public place; or
(c) any premises occupied or owned by the Corporation or by any other public authority; or

(d) any premises that an inspector is authorised to enter under this Act; or

(e) any other place, but only if the vehicle has entered that place as the immediate result of it being involved in an accident on or near a highway.

(2) For the purposes of this section, an accident is an incident that involves a vehicle and that results—

(a) in a person being killed or injured; or

(b) in damage being caused to a vehicle, or to other property.

160 Meaning of rectify a breach

In this Division, rectify a breach, in respect of a vehicle that is in breach of a mass, dimension or load restraint limit or requirement, means to do anything that is necessary to ensure that the breach ceases, or will not occur when the vehicle is driven on a highway, regardless of whether or not that requires that any action be taken in relation to the vehicle itself.

161 Reference to single offence includes multiple offences

For the purposes of this Division, if a vehicle is in breach of more than one mass, dimension or load restraint limit or requirement at the time that it is inspected by an inspector, all references to "breach" in this Division in relation to the vehicle are to be read as a reference to those breaches.
162 Rectification of minor risk breaches

(1) This section applies if the inspector believes on reasonable grounds that a vehicle is the subject of a minor risk breach of a mass, dimension or load restraint limit or requirement, and that the vehicle is not the subject of any substantial or severe risk breach of such a limit or requirement.

(2) The inspector may—

(b) if the vehicle is in transit and the breach can be easily rectified on the spot, direct the driver of the vehicle to rectify the breach before continuing his or her journey; or

(c) if the vehicle is in transit and the breach cannot easily be rectified on the spot, but having regard to all the relevant circumstances the inspector considers it appropriate to do so, authorise the driver of the vehicle to continue his or her journey subject to any conditions imposed by the inspector; or

(d) in any other case, direct the driver of the vehicle to move the vehicle to a place specified by the inspector and to keep the vehicle at that place until the breach has been rectified.

(3) With respect to subsection (2)(d), the inspector may only specify a place—

(a) that the inspector believes, on reasonable grounds, is a place where it will be possible to rectify the breach; and

S. 162 inserted by No. 110/2004 s. 41.

S. 162(2)(a) repealed by No. 30/2013 s. 60(Sch. item 8.22).
(b) that is within a 30 kilometre radius of the place where the vehicle is stopped.

(4) Despite subsection (3)(b), if there is no suitable place within a 30 kilometre radius, the inspector must specify the first suitable place that is on the proposed forward route of the journey that was being undertaken at the time the breach was detected.

163 Rectification of substantial or severe risk breaches

(1) This section applies if the inspector believes on reasonable grounds that a vehicle is in breach of a mass, dimension or load restraint limit or requirement and that the breach is a substantial or severe risk breach.

(2) The inspector must—

(b) if the vehicle is in transit and the breach can be easily rectified on the spot and it is safe for the vehicle to remain where it is while the breach is rectified, direct the driver of the vehicle to rectify the breach before continuing his or her journey; or

(c) in any other case, direct the driver of the vehicle—

(i) to move the vehicle, or to cause it to be moved, to a place specified by the inspector that is the nearest suitable place at which it will be possible to rectify the breach; and

(ii) to keep the vehicle at that place until the breach has been rectified.
(3) For the purposes of subsection (2)(b), it is safe to leave a vehicle at a place if it does not pose an immediate potential risk of harm to public safety, the environment, road infrastructure, public amenity or the safety of any person or animal in or on the vehicle.

(4) Despite subsection (2), if, in the opinion of the inspector, a vehicle is not safe where it is, but it is also not safe to allow it to immediately travel on a highway to a place where the breach can best be rectified, the inspector must direct the driver to move the vehicle, or to cause it to be moved, to the nearest suitable place at which any threat to public safety posed by the vehicle is minimised to the maximum extent that is practicable in the circumstances.

164 Further provision concerning rectification places

If—

(a) the intended destination of a vehicle that is in transit at the time it is stopped; or

(b) the depot of the vehicle, or, in the case of a group of vehicles that are physically connected, of a vehicle in the group—is the most suitable or appropriate place for a breach to be rectified and that place otherwise complies with any requirements imposed by this Division, the inspector must direct the driver of the vehicle to move the vehicle to that place.

165 General provisions concerning directions and authorisations

(1) An inspector must give any direction or authorisation he or she gives under this Division in writing unless—
(a) in the case of a direction to move a vehicle, the moving is carried out in his or her presence, or under his or her supervision (or in the presence, or under the supervision, of another inspector); or

(b) regulations made for the purposes of this section state that it is not necessary to do so in particular circumstances, and those circumstances exist.

(2) If an inspector is authorised under this Division to give a direction to the driver of a vehicle, the inspector may also give the direction to the operator of the vehicle.

(3) If an inspector is authorised under this Division to give a direction to the operator of a vehicle, the inspector may also give the direction to the driver of the vehicle.

166 Conditions

In giving a direction or authorisation under this Division, an inspector may impose conditions in relation to the direction or authorisation.

168 Person must comply with a direction and conditions

(1) A person must not refuse or fail to comply with a direction made under this Division.

Penalty: 300 penalty units, in the case of a corporation;
          60 penalty units, in any other case.
(2) A person must not refuse or fail to comply with any condition imposed by an inspector in relation to a direction or authorisation given under this Division.

Penalty: 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.

169 Application of Division in relation to other directions

This Division applies to a vehicle regardless of whether or not the vehicle is, has been or becomes the subject of a direction under Part 9.

170 Amendment or revocation of directions or conditions

(1) An authorised officer may amend or revoke a direction given, or conditions imposed, by an authorised officer under this Part.

(2) The Chief Commissioner of Police or a police officer may amend or revoke a direction given, or conditions imposed, by a police officer under this Part.
(2) A person is guilty of an offence if—
(a) a vehicle is in breach of a mass, dimension or load restraint limit or requirement; and
(b) the person is the consignor of any goods that are in or on the vehicle.

Note
The penalties that apply in respect of the offences created by this section are set out in section 178.

* * * * *

(4) This section does not apply to the consignment by a person of goods by mail or by means of a parcel service.

(5) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note
Section 181 sets out how subsection (5) operates.

(6) A person charged with an offence under this section has the benefit of the reasonable steps defence.

172 Liability of packer

(1) A packer of goods is a person who—
(a) puts the goods in a packaging for transport by road; or
(b) assembles the goods as packaged goods in an outer packaging or unit load for transport by road; or
(c) supervises an activity mentioned in paragraph (a) or (b); or
(d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

(2) A person is guilty of an offence if—
(a) a vehicle is in breach of a mass, dimension or load restraint limit or requirement; and
(b) the person is the packer of any goods that are in or on the vehicle.

Note
The penalties that apply in respect of the offences created by this section are set out in section 178.

(4) This section does not apply to the putting by a person of goods in a packaging for consignment of those goods by mail or by means of a parcel service.

(5) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note
Section 181 sets out how subsection (5) operates.

(6) A person charged with an offence under this section has the benefit of the reasonable steps defence.
173 Liability of loader

(2) A person is guilty of an offence if—

(a) a vehicle is in breach of a mass, dimension or load restraint limit or requirement; and

(b) the person is the loader of any goods that are in or on the vehicle.

Note

The penalties that apply in respect of the offence created by this section are set out in section 178.

(3) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note

Section 181 sets how subsection (3) operates.

(4) A person charged with an offence under this section has the benefit of the reasonable steps defence.

174 Liability of operator

(1) A person is guilty of an offence if—

(a) the person is the operator of a vehicle; and

(b) the vehicle is in breach of a mass, dimension or load restraint limit or requirement.

Note

The penalties that apply in respect of the offence created by this section are set out in section 178.
(2) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note
Section 181 sets out how subsection (2) operates.

* * * * * *

175 Liability of driver

(1) A person is guilty of an offence if—

(a) the person is the driver of a vehicle; and

(b) the vehicle is in breach of a mass, dimension or load restraint limit or requirement.

Note
The penalties that apply in respect of the offence created by this section are set out in section 178.

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

Note
Section 181 sets out how subsection (2) operates.

* * * * * *

176 Liability of consignee

* * * * * *
(2) A person who is a consignee of goods consigned for road transport is guilty of an offence if—

(a) the person engages in conduct that results, or that is likely to result, in inducing or rewarding the breach of a mass, dimension or load restraint limit or requirement; and

(b) the person intends that result.

Penalty: 600 penalty units, in the case of a corporation;

120 penalty units, in any other case.

(3) A person who is a consignee of goods consigned for road transport is guilty of an offence if—

(a) the person engages in conduct that results, or that is likely to result, in inducing or rewarding the breach of a mass, dimension or load restraint limit or requirement; and

(b) the person consciously and unjustifiably disregards a substantial risk that that result would occur, or would be likely to occur.

Penalty: 250 penalty units in the case of a corporation;

50 penalty units in any other case.

(4) A person who is a consignee of goods consigned for road transport is guilty of an offence if—

(a) the person engages in conduct that results, or that is likely to result, in inducing or rewarding the breach of a mass, dimension or load restraint limit or requirement; and
(b) the person fails unjustifiably and to a gross degree to observe the standard of care that a reasonable person would have observed in all of the circumstances of the case to prevent that result from occurring.

Penalty: 100 penalty units in the case of a corporation;

20 penalty units in any other case.

(5) This section does not apply to the receipt by a person of goods by mail or by means of a parcel service.

177 Multiple offenders

(1) This section applies if more than one person is liable to be found guilty of an offence in respect of the breach of a mass, dimension or load restraint limit or requirement in relation to a vehicle.

(2) Proceedings may be taken against all or any of those liable in relation to the breach.

(3) Proceedings may be taken against any of those liable in relation to the breach—

(a) regardless of whether or not proceedings have been commenced against anyone else; and

(b) if proceedings have started against anyone else, regardless of whether or not those proceedings have finished; and

(c) if proceedings have finished against anyone else, regardless of the outcome of those proceedings.
178 Penalties applying to offences under this Division and exclusion of double jeopardy

(1) A person who commits an offence under this Division (other than an offence under section 176) is liable to the following maximum penalties—

(a) in the case of an offence that involves a breach of a mass limit—

(i) if the breach is a severe risk breach—

(A) 600 penalty units, if the person is a corporation; or

(B) 120 penalty units, in any other case;

(ii) if the breach is a substantial risk breach—

(A) 300 penalty units, if the person is a corporation; or

(B) 60 penalty units, in any other case;

(iii) if the breach is a minor risk breach—

(A) 100 penalty units, if the person is a corporation; or

(B) 20 penalty units, in any other case;

(b) in the case of an offence that involves a breach of a mass, dimension or load restraint limit or requirement other than a mass limit—

(i) if the breach is a severe risk breach—

(A) 500 penalty units, if the person is a corporation; or

(B) 100 penalty units, in any other case;
(ii) if the breach is a substantial risk breach—

(A) 100 penalty units, if the person is a corporation; or

(B) 20 penalty units, in any other case;

(iii) if the breach is a minor risk breach—

(A) 50 penalty units, if the person is a corporation; or

(B) 10 penalty units, in any other case.

(2) A person may be punished only once in relation to each breach of a mass, dimension or load restraint limit or requirement in relation to a vehicle.

Division 5—Provisions concerning defences

179 Reasonable steps defence

(1) If a provision of this Part states that a person has the benefit of the reasonable steps defence for an offence, it is a defence to a charge for the offence if the person charged establishes that—

(a) the person did not know, and could not reasonably be expected to have known, of the conduct that constituted the commission of the offence; and

(b) either—

(i) the person had taken all reasonable steps to prevent that conduct from occurring; or

(ii) there were no steps that the person could reasonably be expected to have taken to prevent the conduct from occurring.
(2) Without limiting subsection (1), in determining whether things done or omitted to be done by the person charged constitute reasonable steps, a court may have regard to—

(a) the circumstances of the alleged offence, including (where relevant) the risk category to which any breach of a mass, dimension or load restraint limit or requirement involved in the relevant offence belongs; and

(b) without limiting paragraph (a), the measures available and measures taken for any or all of the following—

(i) to accurately and safely weigh or measure the vehicle or its load or to safely restrain the load in or on the vehicle;

(ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or its load might be calculated;

(iii) to manage, reduce or eliminate a potential offence arising from the location of the vehicle, or from the location of the load in or on the vehicle, or from the location of goods in the load;

(iv) to manage, reduce or eliminate a potential offence arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
(v) to exercise supervision or control over others involved in activities leading to the offence; and

(c) the measures available and measures taken for any or all of the following—

(i) to include compliance assurance conditions in relevant commercial arrangements with other responsible people;

(ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;

(iii) to maintain equipment and work systems to enable compliance with relevant laws;

(iv) to address and remedy similar compliance problems that may have occurred in the past; and

(d) whether the person charged had, either personally or through an agent or employee, custody or control of the vehicle, or of its load, or of any of the goods included or to be included in the load; and

(e) the personal expertise and experience that the person charged had, or ought to have had, or that an agent or employee of the person charged had, or ought to have had.

(3) If the person charged establishes that the person complied with all relevant standards and procedures under a registered industry code of practice, and with the spirit of the code, with respect to matters to which the offence relates, that is evidence that the person charged took reasonable steps to prevent the offence from occurring.
(4) Subsection (3) does not apply unless the person charged served notice of intention to establish the matters referred to in that subsection on the prosecution at least 28 working days before the day on which the matter is set down for hearing.

181 Exclusion of mistake of fact defence

(1) This section applies if a provision of this Part states that a person does not have the benefit of the mistake of fact defence for an offence.

(2) It is not a defence to a charge for the offence for the person to prove that, 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 that the conduct would not have constituted an offence.

Division 7—Sentencing considerations for mass, dimension or load restraint breaches

188 Matters to be taken into consideration by courts

(1) The purpose of this section is to bring to the attention of courts the general implications and consequences of breaches of mass, dimension or load restraint limits or requirements when
determining the kinds and levels of sanctions to be imposed.

(2) In determining the sanctions (including the level of fine) that are to be imposed in respect of an offence involving a breach of a mass, dimension or load restraint limit or requirement, the court is to take into consideration the classification of the breach under Division 4 and, having regard to that classification, the following matters—

(a) minor risk breaches involve either or both of the following—

(i) an appreciable risk of accelerated road wear;

(ii) an appreciable risk of unfair commercial advantage;

(b) substantial risk breaches involve one or more of the following—

(i) a substantial risk of accelerated road wear;

(ii) an appreciable risk of damage to road infrastructure;

(iii) an appreciable risk of increased traffic congestion;

(iv) an appreciable risk of diminished public amenity;

(v) a substantial risk of unfair commercial advantage;

(c) severe risk breaches involve one or more of the following—

(i) an appreciable risk of harm to public safety or the environment;

(ii) a serious risk of accelerated road wear;
(iii) a serious risk of harm to road infrastructure;

(iv) a serious risk of increased traffic congestion;

(v) a serious risk of diminished public amenity;

(vi) a serious risk of unfair commercial advantage.

(3) Nothing in this section affects any other matters that may or must be taken into consideration by the court.

(4) Nothing in this section authorises or requires the court to assign the breach to a different category of breach.

(5) Nothing in this section requires evidence to be adduced in relation to the matters that are to be taken into consideration by the court under this section.

Division 8—Other matters

189 Offence to provide false or misleading transport or journey documentation

(1) This section applies if—

(a) goods are consigned for transport by road, or for transport partly by road and partly by some other means; and

(b) all or any part of the transport by road occurs or is to occur in Victoria.

(2) A person must not provide to another person any transport documentation or journey documentation in relation to the goods that is false or misleading with respect to any matter that it is relevant to know to ensure that a breach of a mass, dimension or load restraint limit or requirement
does not occur during the transport of the goods by road.

Penalty: 600 penalty units, in the case of a corporation;
          120 penalty units, in any other case.

(3) Information concerning a matter is not false or misleading for the purposes of this section merely because it overstates or understates an amount if that overstatement or understatement would not, at the time it is made, be likely to result in a breach of a mass, dimension or load restraint limit or requirement.

(4) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note

Section 181 sets out how subsection (4) operates.

(5) The person charged with an offence under this section has the benefit of the reasonable steps defence.

190 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 police officer has apart from this Part.

(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.
191 Contracting out prohibited

(1) A term of any contract or agreement 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.
PART 10A—FATIGUE MANAGEMENT LIGHT BUSES

Division 1—Application of Heavy Vehicle National Law (Victoria)

191A Definition

In this Part—

light bus means a bus with a GVM of 4.5 tonnes or less.

191B Application of the Heavy Vehicle National Law (Victoria)—fatigue management of light buses

For the purposes of this Act the following provisions of the Heavy Vehicle National Law (Victoria) apply to a light bus—

(a) Chapter 6; and

(b) sections 622, 623, 653(g) and (h), 654, 725, 726 and 740.
Division 2—Meaning of terms for Heavy Vehicle National Law (Victoria)

191C Meaning of fatigue-regulated heavy vehicle

The provisions of the Heavy Vehicle National Law (Victoria) applied under section 191B, apply as if a reference to a fatigue-regulated heavy vehicle under that Law were a reference to a light bus.

191D Meaning of fatigue-regulated bus

The provisions of the Heavy Vehicle National Law (Victoria) applied under section 191B, apply as if a reference to a fatigue-regulated bus under that Law were a reference to a light bus.

191E Meaning of Regulator

The provisions of the Heavy Vehicle National Law (Victoria) applied under section 191B, apply as if a reference to the Regulator under that Law were a reference to the Corporation.

191F Meaning of responsible Ministers

The provisions of the Heavy Vehicle National Law (Victoria) applied under section 191B, apply as if a reference to the responsible Ministers under that Law were a reference to the Minister.
Pt 11
(Heading and
ss 191A–222)
inserted by
No. 110/2004
s. 41 (as
amended by
No. 24/2005
s. 28),
amended by
Nos 74/2007
ss 21–26,
56/2008 s. 46,
28/2009 s. 52,
68/2009
s. 97(Sch.
item 106.30),
repealed by
No. 30/2013
s. 60(Sch.
item 8.35).

Pt 12
(Heading and
ss 223–273)
inserted by
No. 81/2006
s. 9 (as
amended by
No. 14/2007
s. 19(2)),
amended by
No. 74/2007
s. 27,
repealed by
No. 30/2013
s. 60(Sch.
item 8.36).

Pt 13
(Headings
and ss 274–
296)
inserted by
No. 28/2009
s. 53,
amended by
No. 68/2009
s. 97(Sch.
item 106.31),
repealed by
No. 30/2013
s. 60(Sch.
item 8.37).
### MINIMUM DISQUALIFICATION PERIODS

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Concentration of alcohol in blood in grams per 100 millilitres of blood or in breath in grams per 210 litres of exhaled air</td>
<td>First offence</td>
<td>Subsequent offence</td>
</tr>
<tr>
<td>less than ·07</td>
<td>6 months</td>
<td>12 months</td>
</tr>
<tr>
<td>·07 or more but less than ·08</td>
<td>6 months</td>
<td>14 months</td>
</tr>
<tr>
<td>·08 or more but less than ·09</td>
<td>6 months</td>
<td>16 months</td>
</tr>
<tr>
<td>·09 or more but less than ·10</td>
<td>6 months</td>
<td>18 months</td>
</tr>
<tr>
<td>·10 or more but less than ·11</td>
<td>10 months</td>
<td>20 months</td>
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<tr>
<td>·11 or more but less than ·12</td>
<td>11 months</td>
<td>22 months</td>
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<td>·12 or more but less than ·13</td>
<td>12 months</td>
<td>24 months</td>
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<tr>
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<td>14 months</td>
<td>28 months</td>
</tr>
<tr>
<td>·15 or more but less than ·16</td>
<td>15 months</td>
<td>30 months</td>
</tr>
<tr>
<td>·16 or more but less than ·17</td>
<td>16 months</td>
<td>32 months</td>
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<tr>
<td>·17 or more but less than ·18</td>
<td>17 months</td>
<td>34 months</td>
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<td>18 months</td>
<td>36 months</td>
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<td>19 months</td>
<td>38 months</td>
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<td>·20 or more but less than ·21</td>
<td>20 months</td>
<td>40 months</td>
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<tr>
<td>·21 or more but less than ·22</td>
<td>21 months</td>
<td>42 months</td>
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<tr>
<td>·22 or more but less than ·23</td>
<td>22 months</td>
<td>44 months</td>
</tr>
<tr>
<td>·23 or more but less than ·24</td>
<td>23 months</td>
<td>46 months</td>
</tr>
<tr>
<td>·24 or more</td>
<td>24 months</td>
<td>48 months</td>
</tr>
</tbody>
</table>
**SCHEDULE 1A**

**ASSESSMENT REPORT REQUIREMENT**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Section under which disqualified</th>
<th>Offence for which disqualified</th>
<th>Date of offence for which disqualified</th>
<th>Minimum period before application by which report must be obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Section 50</td>
<td>Offence under section 49(1)(a)</td>
<td>Before 13 May 2002</td>
<td>12 months</td>
</tr>
<tr>
<td>2</td>
<td>Section 50</td>
<td>Offence under section 49(1)(a) involving only a drug</td>
<td>On or after 13 May 2002</td>
<td>12 months</td>
</tr>
<tr>
<td>3</td>
<td>Section 50</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug) which was a first offence</td>
<td>On or after 13 May 2002 but before 11 October 2006</td>
<td>12 months</td>
</tr>
</tbody>
</table>
## Schedules

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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Section under which disqualified</th>
<th>Offence for which disqualified</th>
<th>Date of offence for which disqualified</th>
<th>Minimum period before application by which report must be obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Section 50</td>
<td>Offence under section 49(1)(b), (f) or (g) where the level of concentration of alcohol in the blood was 0.15 grams or more per 100 millilitres of blood or in the breath was 0.15 grams or more per 210 litres of exhaled air</td>
<td>Before 13 May 2002</td>
<td>12 months</td>
</tr>
<tr>
<td>5</td>
<td>Section 50</td>
<td>First offence under section 49(1)(b), (f) or (g) where the level of concentration of alcohol in the blood was 0.15 grams or more per 100 millilitres of blood or in the breath was 0.15 grams or more per 210 litres of exhaled air</td>
<td>On or after 13 May 2002 but before 11 October 2006</td>
<td>12 months</td>
</tr>
<tr>
<td>6</td>
<td>Section 50</td>
<td>Offence under section 49(1)(ba), (ca) or (ea)</td>
<td>Before, on or after 13 May 2002</td>
<td>6 months</td>
</tr>
<tr>
<td>Item No.</td>
<td>Section under which disqualified</td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Minimum period before application by which report must be obtained</td>
</tr>
<tr>
<td>---------</td>
<td>---------------------------------</td>
<td>---------------------------------</td>
<td>----------------------------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>7</td>
<td>Section 50</td>
<td>Offence under section 49(1)(c), (d) or (e)</td>
<td>Before 13 May 2002</td>
<td>12 months</td>
</tr>
<tr>
<td>8</td>
<td>Section 50</td>
<td>Offence under section 49(1)(c), (d) or (e) which was a first offence</td>
<td>On or after 13 May 2002 but before 11 October 2006</td>
<td>12 months</td>
</tr>
<tr>
<td>9</td>
<td>Section 89(1) of the Sentencing Act 1991</td>
<td>First serious motor vehicle offence (as defined by paragraph (a), (b) or (c) of the definition of that term in section 87P of the Sentencing Act 1991) if the court made a finding that the offence was committed while the person was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 1 November 2001 but before 1 October 2014</td>
<td>12 months</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Section under which disqualified</th>
<th>Offence for which disqualified</th>
<th>Date of offence for which disqualified</th>
<th>Minimum period before application by which report must be obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Section 89(1) of the Sentencing Act 1991</td>
<td>First serious motor vehicle offence (as defined by paragraph (d) of the definition of that term in section 87P of the Sentencing Act 1991) if the court made a finding that the offence was committed while the person was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 13 October 2004 but before 1 October 2014</td>
<td>12 months</td>
</tr>
<tr>
<td>11</td>
<td>Section 89(3) of the Sentencing Act 1991</td>
<td>First offence under section 319AA of the Crimes Act 1958 if the court made a finding that the offence was committed while the person was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 30 September 2013</td>
<td>12 months</td>
</tr>
</tbody>
</table>
### Road Safety Act 1986
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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Section under which disqualified</th>
<th>Offence for which disqualified</th>
<th>Date of offence for which disqualified</th>
<th>Minimum period before application by which report must be obtained</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Section 89(4) of the <strong>Sentencing Act 1991</strong></td>
<td>First offence of stealing or attempting to steal a motor vehicle if the court made a finding that the offence was committed while the person was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 30 September 2013</td>
<td>3 months</td>
</tr>
<tr>
<td>13</td>
<td>Section 89A(1) of the <strong>Sentencing Act 1991</strong></td>
<td>Any offence if the court made a finding that the offence was committed while the person was under the influence of alcohol or a drug, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 30 September 2013</td>
<td>3 months</td>
</tr>
</tbody>
</table>

**Note**
Under section 31D(2) the Magistrates' Court may, in exceptional circumstances, reduce the number of months specified in column 4 in relation to any item in the Table.
### SCHEDULE 1B

**ALCOHOL INTERLOCK REQUIREMENT**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Offence for which disqualified</strong></td>
<td><strong>Date of offence for which disqualified</strong></td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>1</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e)</td>
<td>Before 13 May 2002</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
<tr>
<td>2</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e) which was a first or second offence</td>
<td>On or after 13 May 2002 but before 22 December 2004</td>
<td>Discretionary for a first offence and mandatory for a second offence</td>
<td>6 months</td>
</tr>
<tr>
<td>3</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e) which was a third or subsequent offence</td>
<td>On or after 13 May 2002 but before 22 December 2004</td>
<td>Mandatory</td>
<td>3 years</td>
</tr>
</tbody>
</table>
### Schedules

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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Offence for which disqualified</th>
<th>Date of offence for which disqualified</th>
<th>Whether giving of alcohol interlock condition direction mandatory or discretionary</th>
<th>Minimum period</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e) which was a first offence</td>
<td>On or after 22 December 2004 but before 11 October 2006</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
<tr>
<td>5</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e) which was not a first offence</td>
<td>On or after 22 December 2004 but before 11 October 2006</td>
<td>Mandatory</td>
<td>3 years</td>
</tr>
<tr>
<td>6</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e) which was a first offence</td>
<td>On or after 11 October 2006</td>
<td>Mandatory</td>
<td>6 months</td>
</tr>
<tr>
<td>7</td>
<td>Offence under section 49(1)(a) (other than one involving only a drug), (c), (d) or (e) which was not a first offence</td>
<td>On or after 11 October 2006</td>
<td>Mandatory</td>
<td>4 years</td>
</tr>
<tr>
<td>Item No.</td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>----------</td>
<td>-------------------------------</td>
<td>---------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>8</td>
<td>Offence under section 49(1)(b), (f) or (g) where the level of concentration of alcohol in the blood was 0.15 grams or more per 100 millilitres of blood or in the breath was 0.15 grams or more per 210 litres of exhaled air</td>
<td>Before 13 May 2002</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
<tr>
<td>9</td>
<td>Offence under section 49(1)(b), (f) or (g) which was a first offence and the level of concentration of alcohol in the blood was 0.15 grams or more per 100 millilitres of blood or in the breath was 0.15 grams or more per 210 litres of exhaled air</td>
<td>On or after 13 May 2002 but before 11 October 2006</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>10</td>
<td>Offence under section 49(1)(b), (f) or (g) which was not a first offence</td>
<td>On or after 13 May 2002 but before 11 October 2006</td>
<td>Mandatory</td>
<td>6 months in the case of a second offence if the level of concentration of alcohol in the blood was less than 0·15 grams per 100 millilitres of blood or in the breath was less than 0·15 grams per 210 litres of exhaled air; 3 years in any other case</td>
</tr>
<tr>
<td>11</td>
<td>Offence under section 49(1)(b), (f) or (g) which was a first offence and the level of concentration of alcohol in the blood was 0·15 grams or more per 100 millilitres of blood or in the breath was 0·15 grams or more per 210 litres of exhaled air</td>
<td>On or after 11 October 2006</td>
<td>Mandatory</td>
<td>6 months</td>
</tr>
<tr>
<td>Item No.</td>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td>Column 4</td>
</tr>
<tr>
<td>---------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
</tr>
<tr>
<td></td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>12</td>
<td>Offence under section 49(1)(b), (f) or (g) which was not a first offence</td>
<td>On or after 11 October 2006</td>
<td>Mandatory</td>
<td>12 months in the case of a second offence if the level of concentration of alcohol in the blood was less than 0.15 grams per 100 millilitres of blood or in the breath was less than 0.15 grams per 210 litres of exhaled air; 4 years in any other case</td>
</tr>
<tr>
<td>13</td>
<td>Offence under section 49(1)(b), (f) or (g) which was a first offence and the level of concentration of alcohol in the blood was 0.07 grams or more per 100 millilitres of blood but less than 0.15 grams per 100 millilitres of blood or in the breath was</td>
<td>On or after 11 October 2006 but before 1 January 2007</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
<tr>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td>Column 4</td>
<td></td>
</tr>
<tr>
<td>----------</td>
<td>----------</td>
<td>----------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
<td></td>
</tr>
<tr>
<td>0·07 grams or more per 210 litres of exhaled air but less than 0·15 grams per 210 litres of exhaled air</td>
<td>On or after 1 January 2007 but before 1 October 2014</td>
<td>Mandatory if at the time of the offence the person was under the age of 26 years or the holder of a probationary driver licence; Discretionary in any other case</td>
<td>6 months</td>
<td></td>
</tr>
<tr>
<td>14 Offence under section 49(1)(b), (f) or (g) which was a first offence and the level of concentration of alcohol in the blood was 0·07 grams or more per 100 millilitres of blood but less than 0·15 grams per 100 millilitres of blood or in the breath was 0·07 grams or more per 210 litres of exhaled air but less than 0·15 grams per 210 litres of exhaled air</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Schedules

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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>14A</td>
<td>Offence under section 49(1)(b), (f) or (g) which was a first offence and the level of concentration of alcohol in the blood was less than 0·15 grams per 100 millilitres of blood or in the breath was less than 0·15 grams per 210 litres of exhaled air</td>
<td>On or after 1 October 2014</td>
<td>Mandatory</td>
<td>6 months</td>
</tr>
</tbody>
</table>
### Schedules

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#### Column 1: Offence for which disqualified

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Offence for which disqualified</th>
<th>Column 2: Date of offence for which disqualified</th>
<th>Column 3: Whether giving of alcohol interlock condition direction mandatory or discretionary</th>
<th>Column 4: Minimum period</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>An offence referred to in section 89(1) of the <strong>Sentencing Act 1991</strong> if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>Before 13 May 2002</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
<tr>
<td>Item No.</td>
<td>Column 1</td>
<td>Column 2</td>
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<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>16</td>
<td>An offence referred to in section 89(1) of the Sentencing Act 1991 which was a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 13 May 2002 but before 1 October 2014</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
<tr>
<td>Item No.</td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
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</tr>
<tr>
<td>16A</td>
<td>An offence referred to in section 89(1) of the <a href="#">Sentencing Act 1991</a> which was a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 1 October 2014</td>
<td>Mandatory</td>
<td>6 months</td>
</tr>
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</table>
### Road Safety Act 1986
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Schedules

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Offence for which disqualified</th>
<th>Date of offence for which disqualified</th>
<th>Whether giving of alcohol interlock condition direction mandatory or discretionary</th>
<th>Minimum period</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>An offence referred to in section 89(1) of the <strong>Sentencing Act 1991</strong> which was not a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 13 May 2002 but before 22 December 2004</td>
<td>Mandatory</td>
<td>6 months in the case of a second offence; 3 years in any other case</td>
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<tr>
<td>Item No.</td>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td>Column 4</td>
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<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>18</td>
<td>An offence referred to in section 89(1) of the <strong>Sentencing Act 1991</strong> which was not a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 22 December 2004 but before 11 October 2006</td>
<td>Mandatory</td>
<td>3 years</td>
</tr>
<tr>
<td>Item No.</td>
<td>Offence for which disqualified</td>
<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
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</tr>
<tr>
<td>19</td>
<td>An offence referred to in section 89(1) of the <strong>Sentencing Act 1991</strong> which was not a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 11 October 2006</td>
<td>Mandatory</td>
<td>4 years</td>
</tr>
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</table>
Road Safety Act 1986  
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Schedules

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Column 1</th>
<th>Column 2</th>
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<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
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<tr>
<td>20</td>
<td>An offence referred to in section 89(3) or (4) of the Sentencing Act 1991 which was a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 30 September 2013</td>
<td>Discretionary</td>
<td>6 months</td>
</tr>
</tbody>
</table>
### Road Safety Act 1986
No. 127 of 1986
Schedules

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Column 1</th>
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<tbody>
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<td>Offence for which disqualified</td>
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<td>Minimum period</td>
</tr>
<tr>
<td>21</td>
<td>An offence referred to in section 89(3) or (4) of the <strong>Sentencing Act 1991</strong> which was not a first offence if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 30 September 2013</td>
<td>Mandatory</td>
<td>4 years</td>
</tr>
<tr>
<td>Item No.</td>
<td>Column 1</td>
<td>Column 2</td>
<td>Column 3</td>
<td>Column 4</td>
</tr>
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<td>Date of offence for which disqualified</td>
<td>Whether giving of alcohol interlock condition direction mandatory or discretionary</td>
<td>Minimum period</td>
</tr>
<tr>
<td>22</td>
<td>An offence referred to in section 89A(1) of the Sentencing Act 1991 if the court made a finding that the offence was committed while the person was under the influence of alcohol, or both alcohol and a drug, which contributed to the offence</td>
<td>On or after 30 September 2013</td>
<td>Discretionary</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>
SCHEDULE 2

Section 95(1)

SUBJECT-MATTER FOR REGULATIONS

Registration

1. The categories of motor vehicles and trailers for registration purposes.

2. The exemption of classes of motor vehicles from the requirement to be registered.

3. Applications for registration, renewal of registration or transfer of registration; the dates by which applications must be made and the information and evidence to accompany applications.

3A. Names in which motor vehicles or trailers must not be registered.

4. Requirements to be complied with before registration may be granted, renewed or transferred.

5. The conditions on which registration may be granted or renewed.

6. The date on which registration commences and the period for which it remains in force, including making special provision for shortening the period of registration without any reduction in fees where application for it is made outside the prescribed time.

7. Procedures for achieving a common registration expiry date for 2 or more motor vehicles or trailers registered in the same name.

8. The grounds on which registration may be cancelled or suspended (including, in the case of a heavy vehicle to which a requirement referred to in item 39B or 39C applies, where the Corporation is notified of the vehicle being detected exceeding a specified speed in another
State or a Territory) and the procedures to be followed in those cases.

9. The circumstances in which a person is required to obtain or display a certificate that a motor vehicle or trailer is roadworthy; the authorisation of suitable people to issue that certificate; the fees payable to those people; the conditions on which those authorisations may be granted.\(^\text{11}\)

10. The inspection, testing and weighing of motor vehicles and trailers.

11. The grounds on which, and the procedure by which, the use of a motor vehicle or trailer on a highway may be prohibited and the conditions on which a prohibition may be made or revoked.

12. Requiring the Corporation to be notified of alterations or damage to registered motor vehicles or trailers and requiring the Corporation to be notified of written-off vehicles.

13. Requiring the Corporation to be notified of changes in the ownership, person responsible or description of registered motor vehicles or trailers or of written-off vehicles.

14. Applications for registration permits; the information and evidence to accompany applications; the grounds on which applications may be refused and the procedure to be followed where an application is refused; prescribing conditions on which registration permits may be granted.

15. The issue of identification numbers, registration labels and certificates of registration, including the issue of duplicates.
15A. The issue of number plates; the circumstances in which they may be issued; the authorising of agents to issue them on behalf of the Corporation and the issue of replacement number plates.

15B. The conditions on which number plates may be used or possessed and the circumstances in which, and conditions on which, the right to use or possess them may be transferred to another person.

15C. Requirements to notify the Corporation about the use or possession of number plates or the transfer of the right to use or possess those number plates (such as when they are installed or displayed on a motor vehicle or transferred to another motor vehicle or person) and requirements to return other number plates that are removed from a motor vehicle.

15D. The circumstances in which number plates must be returned to the Corporation, the procedures for doing so and the compensation (if any) payable on their return.

15E. The sale of registration number rights; the circumstances in which, and conditions subject to which, they may be sold; the authorising of agents to sell them on behalf of the Corporation.

15F. The circumstances in which, and conditions subject to which, the ownership of registration number rights may be transferred to another person and requirements to notify the Corporation about such a transfer of ownership.

15G. The circumstances in which registration number rights may be cancelled, the procedures for doing so and the compensation (if any) payable on that cancellation.

16. The issue of special plates or marks, the circumstances in which they may be issued and the conditions on which they may be used.
16A. The issue (which may include at auction or by inviting tenders) of number plates for the purposes of collection, the circumstances in which they may be issued, the manner in which they may be used and any conditions as to their use.

16B. The manner in which registration numbers may be assigned to motor vehicles and trailers and number plates bearing registration numbers issued, which may include at auction or by inviting tenders.

16C. Requirements to be complied with before a vehicle may be entered on the register of written-off vehicles and procedures for making or refusing to make entries on that register.

16D. Requirements to be complied with before an amendment may be made to the register of written-off vehicles and procedures for amending or refusing to amend that register.

16E. Requirements to be complied with before an entry may be removed from the register of written-off vehicles and procedures for removing or refusing to remove an entry from that register.

16F. The placing or affixing of labels, notices or other marks on written-off vehicles, the requirements to be complied with in relation to displaying or affixing those labels, notices or marks and their removal.

**Licensing of drivers**

17. The categories of motor vehicles and trailers for licensing purposes.

18. Applications for a driver licence or permit or for the variation, renewal or extension of a driver licence or permit; the dates by which applications must be made and the information and evidence to accompany applications.
19. Requirements to be complied with before a driver licence or permit may be granted, varied or renewed.

20. The conditions on which a driver licence or permit may be granted, varied or renewed.

21. The date on which a driver licence or permit commences, the period for which it remains in force and the probationary period of a driver licence.

22. The taking of photographs or making of digitised images for inclusion in driver licence documents.

23. Prohibiting the use of magnetic tape in driver licence documents.

24. The issue of duplicate driver licence documents and permit documents.

25. The exemption of persons or classes of persons from the requirement to obtain a driver licence or permit.

26. Tests and driver training.

27. The grounds on which a driver licence or permit may be cancelled, suspended or varied by the Corporation and the procedures to be followed in such cases.

28. The circumstances in which the Corporation is required to cancel, suspend or vary a driver licence or permit or refuse an application for a driver licence, driver licence variation or permit and the procedures to be followed in those cases.

28A. The surrender of licence or permit documents if the licence or permit has been cancelled or suspended by the Corporation or by a court.
29. The refund of fees paid in respect of driver licences issued under the **Motor Car Act 1958**.

**Regulation of the use of vehicles**

30. The carrying of lights on vehicles and trailers.

31. The affixing and use of horns, bells or other similar devices on vehicles and trailers.

32. The affixing of brakes on vehicles and trailers.

33. The carrying of fire extinguishers on specified classes of vehicles and trailers.

34. Requirements relating to the construction, efficiency, performance, safety, roadworthiness, design of and the equipment to be carried on and the identification of vehicles and trailers.

35. The obtaining of a special permit before a motor vehicle or trailer of a specified mass and dimension may be used on highways and the conditions on which those permits may be granted.

36. The number of hours during which a person may drive motor vehicles or a class or classes of motor vehicles.

37. The carrying of a log book on specified classes of motor vehicles and trailers and the evidence that is sufficient to prove its existence.

37A. The management of fatigue of drivers of fatigue regulated heavy vehicles, including—

(a) requirements relating to records and other documents to be kept in relation to the management of fatigue of drivers of fatigue regulated heavy vehicles; and

(b) matters relating to work diaries including the approval of work diaries by the Corporation and the use and operation of work diaries;
(c) matters relevant to work time and rest time for drivers of fatigue regulated heavy vehicles, including how time is counted for the purposes of calculating work time and rest time;

(d) matters relating to the Fatigue Authorities Panel; and

(e) the mutual recognition of decisions made by the Corporation, corresponding Authorities and the Fatigue Authorities Panel about the management of fatigue of drivers of fatigue regulated heavy vehicles and records relating to those decisions;

(f) matters relevant to the reconsideration of a decision made under Part 10A.

38. The carrying of loads on motor vehicles and trailers.

38A. Devices for the purposes of reading information held in the engine management systems of vehicles; the handling, storage, use and maintenance of those devices; and the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results.

38B. The manner in which images or messages produced by devices referred to in item 38A are to be processed, stored, transferred, produced, re-configured or used to produce other forms of images or messages.

39. The use of devices or processes for determining the speed of motor vehicles.

39A. The manner in which images or messages produced by devices or processes referred to in item 39 are to be processed, stored, transferred, produced, re-configured or used to produce other forms of images or messages.
39B. Requiring in specified circumstances (including where the Corporation is notified of the vehicle being detected exceeding a specified speed in another State or a Territory) the fitting and use of devices to limit the speed of a specified class of heavy vehicles.

39C. Requiring in specified circumstances (including where the Corporation is notified of the vehicle being detected exceeding a specified speed in another State or a Territory) an owner of a heavy vehicle required to be fitted with a speed limiting device to demonstrate that the device is operating properly.

39D. The circumstances in which a requirement referred to in item 39B or 39C applying to a heavy vehicle or to an owner of a heavy vehicle continues to apply to the vehicle or to an owner of the vehicle despite any transfer of registration since the imposing of the requirement.

40. The keeping of records of specified matters and their production for inspection.

41. Prohibiting the sale of equipment designed or intended to be used in, or in connection with, vehicles if the equipment has not been approved by the Corporation.

Traffic regulation

42. The regulation and control of vehicular, animal or pedestrian traffic on highways.

43. Rules to be observed by drivers, people in charge of animals, vehicles or trailers, and pedestrians.

44. Maximum speeds for vehicles.

45. Signs and safety devices, and their siting, installation and maintenance.

46. Marks to be used on the surface of highways.
47. The legal effects of signs, devices and marks, and the evidence that is sufficient to prove their existence.

48. The control and reduction of causes of danger or of traffic congestion.

49. Regulating racing (including footracing), speed trials and other competitive events on highways (including highways that are temporarily closed-off).

49A. Applications for approvals referred to in section 49A(1) and the period during which they continue in force.

49B. The use of devices, systems or processes to detect offences committed against the Act, or regulations made with respect to the regulation and control of vehicular traffic on highways.

49C. The manner in which images or messages produced by devices, systems or processes referred to in item 49B are to be processed, stored, transferred, produced, re-configured or used to produce other forms of images or messages.

**Alcohol or Other Drugs**

50. Devices for the purposes of section 53; the handling, storage, use and maintenance of those devices; the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results.
51. The handling, storage, use and maintenance of breath analysing instruments used for the purposes of section 55 and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results.

51A. Devices for the purposes of sections 55D and 55E and the procedures to be employed in obtaining samples of oral fluid or carrying out tests under those sections.

51B. The methods and conditions to be observed by persons carrying out procedures under section 55E for collecting oral fluid samples.

51C. The delivering of portions of samples of oral fluid to the people who provided them and to the persons who required them to be provided.

52. The methods and conditions to be observed by registered medical practitioners and approved health professionals in collecting blood samples or urine samples.

53. The persons responsible for the safe-keeping of samples of blood taken under section 56 and the methods of storage to be used by them.

54. The delivering of portions of samples of blood taken under section 56 to the people from whom they are taken and to police officers.

55. The methods to be used by analysts in determining the concentration of alcohol in a blood sample.
55A. The methods to be used by analysts in determining the presence of a substance in a blood, urine or oral fluid sample.

56. The procedures to be adopted in transmitting samples of blood, urine or oral fluid to an analyst for analysis.

57. The regulation and control of people concerned in the taking, safe-keeping, delivering and analysis of blood, urine or oral fluid samples.

Alcohol interlock usage data requirements

57AA. Requirements to be complied with in relation to an approved alcohol interlock including requirements—

(a) as to the period during which the alcohol interlock is to be installed in a motor vehicle; and

(b) as to the extent to which the alcohol interlock is to be used; and

(c) relating to attempts to start a motor vehicle in which the alcohol interlock is installed that fail because the alcohol interlock detects alcohol; and

(d) as to the alcohol interlock not being tampered with; and

(e) as to the payment of cost recovery fees when due for payment; and
(f) as to the alcohol interlock only being used by a person holding a driver licence or learner permit.

**Impoundment, immobilisation or forfeiture**

57A. The manner and circumstances in which a motor vehicle may be immobilised.

57B. The matters that must be included in a notice issued under section 84K.

57C. Procedures and requirements to be complied with before a motor vehicle or an item or thing left in or on a motor vehicle may be recovered.

57D. The circumstances in which a motor vehicle is not eligible for an impoundment or immobilisation order or a forfeiture order under section 84S or 84T.

**Fees**

58. The matters for which fees are payable, the amount of those fees and the people by whom those fees are payable.

59. Prescribing the fee payable in respect of the performance of a function of a Regulatory Authority in respect of Victoria under the Interstate Road Transport Act 1985 of the Commonwealth (as amended and in force for the time being) by reference to the maximum fee specified in the regulations made under that Act (as amended and in force for the time being) in respect of the performance of that function.
Right of Appeal or Review

60. Conferring a right of appeal or review to a specified court or tribunal against any decision of the Corporation and prescribing the procedures to be followed in those cases.

Forms

61. Forms.

Hazardous areas

62. The declaration of areas as hazardous areas.

63. The approval of persons to drive vehicles seating more than 12 people (driver included) in hazardous areas.

64. The approval of vehicles seating more than 12 people (driver included) for use in hazardous areas.

65. Otherwise prohibiting or regulating the use of vehicles seating more than 12 people (driver included) in hazardous areas.

Driving instructor authorities

66. Applications for driving instructor authorities and the revocation or suspension thereof.

67. Procedures and requirements to be complied with before a driving instructor authority may be issued.
68. Prescribing and regulating the conduct of holders of driving instructor authorities in respect of the teaching of persons to drive motor vehicles.

69. The format of identity photographs of holders of driving instructor authorities.

70. The location of identity photographs of holders of driving instructor authorities in motor vehicles that are used for teaching persons to drive.

71. The conditions to which driving instructor authorities are subject.

72. The date on which a driving instructor authority commences and the period for which it remains in force.

73. Generally, all such matters as are authorised or permitted to be prescribed or are necessary or expedient to be prescribed for carrying section 33 into effect.

Traffic management plans

74. The making and contents of traffic management plans.

75. The circumstances in which traffic management plans must be made.

76. The types of warnings to be given for the purposes of section 99A(3)(b).
77. The training and qualifications of persons for the purposes of section 99A(3)(c).

Certification of pilot vehicle drivers

78. Regulating the operation of pilot vehicles.

79. Requiring the drivers of pilot vehicles to be certified.

80. Applications for a pilot vehicle driver certificate, or for the variation, renewal or extension of such a certificate; the dates by which applications must be made; and the information and evidence to accompany applications.

81. Requirements to be complied with before a pilot vehicle driver certificate may be granted, varied or renewed, including requirements concerning the driving records of applicants.

82. The conditions on which a pilot vehicle driver certificate may be granted, varied or renewed.

83. Authorising the Corporation to issue directions to the holders of pilot vehicle driver certificates.

84. Recognising pilot vehicle driver certificates issued by other jurisdictions.
85. The grounds on which a pilot vehicle driver certificate may be cancelled, suspended or varied by the Corporation; the procedures to be followed in such cases; and rights of review in such cases.

86. Doing anything else in relation to a pilot vehicle driver certificate that can be done in relation to a driver licence or permit.
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* * * * *  
Sch. 3 repealed by No. 13/1992 s. 6, new Sch. 3 inserted by No. 74/2007 s. 29 (as amended by No. 56/2008 s. 43), repealed by No. 30/2013 s. 60(Sch. item 8.38).

* * * * *  
Sch. 4 amended by Nos 54/1987 s. 16(4)(b), 65/1987 s. 25(1)(2), 78/1987 s. 21(a)–(e), 53/1989 s. 21(7)(a)–(c), 1/1993 s. 3(2), 84/1994 s. 61, repealed by No. 57/1998 s. 25(3), new Sch. 4 inserted by No. 74/2007 s. 29 (as amended by No. 56/2008 s. 44), repealed by No. 30/2013 s. 60(Sch. item 8.39).

* * * * *  
Sch. 4A inserted by No. 74/2007 s. 29, repealed by No. 30/2013 s. 60(Sch. item 8.40).
## SCHEDULE 5

### MINIMUM SUSPENSION PERIODS FOR EXCESSIVE SPEED

<table>
<thead>
<tr>
<th>Column 1 Speed of vehicle</th>
<th>Column 2 Minimum period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exceed speed limit by 25 kilometres per hour or more, but less than 35 kilometres per hour.</td>
<td>1 month</td>
</tr>
<tr>
<td>Exceed speed limit by 35 kilometres per hour or more, but less than 45 kilometres per hour.</td>
<td>6 months</td>
</tr>
<tr>
<td>Exceed speed limit by 45 kilometres per hour or more.</td>
<td>12 months</td>
</tr>
<tr>
<td>Any speed of 130 kilometres per hour or more that is not covered by item 1, 2 or 3.</td>
<td>1 month</td>
</tr>
</tbody>
</table>
SCHEDULE 6

CRITERIA FOR CLASSIFICATION OF STATUTORY WRITE-OFF—LIGHT MOTOR VEHICLES

1 Definitions

In this Schedule—

*excessive fire damage* has the meaning given in clause 14;

*excessive stripping damage* has the meaning given in clause 16;

*excessive structural damage* has the meaning given in clause 5;

*excessive water damage* has the meaning given in clause 15;

*statutory write-off* means a vehicle that is a statutory write-off within the meaning of clause 4.

2 Application of Technical Guide

(1) A person who, in accordance with this Schedule, is assessing whether an area of a vehicle has been fractured, cut, cracked or buckled or is folded over onto itself must make that assessment based on the relevant diagrams contained in the Technical Guide.

(2) In this clause, *Technical Guide* means the "Damage Assessment Criteria for the Classification of Statutory Write-Offs" approved by Austroads Ltd ABN 16 245 787 323 from time to time.
3 Prescribed structural areas

For the purposes of this Schedule, the structural areas of a vehicle are—

(a) the roof;
(b) each of the pillars;
(c) the floor pan;
(d) the firewall;
(e) as applicable—
   (i) each of the the longitudinal structural rails; or
   (ii) the chassis;
(f) the vehicle suspension;
(g) mechanical components;
(h) the supplementary restraint systems.

4 Statutory write-off

A light motor vehicle is a statutory write-off if it is written off and has been assessed, in accordance with this Schedule, as having—

(a) excessive structural damage; or
(b) excessive fire damage; or
(c) excessive water damage; or
(d) excessive stripping damage.

5 Excessive structural damage

(1) A vehicle has excessive structural damage if three indicators are found in the vehicle.

(2) In this Schedule, indicator means—

(a) excessive damage in a structural area, determined in accordance with this Schedule;
(b) deployment or activation of a supplementary restraint, determined in accordance with clause 13.

(3) For the purpose of calculating the number of structural areas which have been damaged—

(a) excessive damage to separate pillars or to separate longitudinal structural rail or chassis is to be counted as a separate indicator;

(b) each different and separate area of excessive damage to the floor pan or firewall is to be counted as a separate indicator;

(c) each incidence of excessive damage to a suspension station is to be counted as a separate indicator if clause 11(2)(a) applies;

(d) excessive damage to any part of the roof is to be counted as a single indicator;

(e) excessive damage to any or all of the mechanical components specified in clause 12 is to be counted as a single indicator;

(f) deployment or activation of any or all of the supplementary restraints specified in clause 13 is to be counted as a single indicator.

**Examples**

A vehicle has excessive damage in two pillars and in the roof. The vehicle is a statutory write-off.

A vehicle has excessive damage in two longitudinal structural rails and the front right suspension mount is damaged. The vehicle is a statutory write-off.

**6 Damage to the roof**

The roof of a vehicle has excessive damage if it has been loaded so that an individual structural element or member—
(a) has been structurally—
   (i) fractured; or
   (ii) cut; or
   (iii) cracked; or
   (iv) buckled; or
(b) is folded over onto itself.

Note
A cut includes the situation where the roof has been cut by emergency services to permit occupant extraction.

7 Damage to the pillars
A pillar of a vehicle has excessive damage if it has been loaded so that an individual structural element or member—
(a) has been structurally—
   (i) fractured; or
   (ii) cut; or
   (iii) cracked; or
   (iv) buckled; or
(b) is folded over onto itself.

8 Damage to the floor pan
(1) For the purposes of this Schedule, the floor pan of a vehicle—
   (a) includes the inner sill panel where the panel attaches to the floor pan;
   (b) does not include—
      (i) the outer sill rocker (rocker panel); or
      (ii) the internal stiffener; or
      (iii) the braces between the inner and outer panels.
(2) The floor pan of a vehicle has excessive damage if it has been loaded so that an individual structural element or member—

(a) has been structurally—

(i) fractured; or

(ii) cut; or

(iii) cracked; or

(iv) buckled; or

(b) is folded over onto itself.

9 Damage to the firewall

(1) A vehicle has excessive damage to its firewall if the firewall has been loaded so that an individual structural or member element—

(a) has been structurally—

(i) fractured; or

(ii) cut; or

(iii) cracked; or

(iv) buckled; or

(b) is folded over onto itself.

10 Damage to the longitudinal structural rails or chassis

(1) For the purposes of this Schedule, the longitudinal structural rails or chassis do not include a deformable end plate that has been designed to be removed and replaced.

(2) A longitudinal structural rail or chassis of a vehicle has excessive damage if it has been loaded so that an individual structural or member element—
(a) has been structurally—
   (i) fractured; or
   (ii) cut; or
   (iii) cracked; or
   (iv) buckled; or
(b) is folded over onto itself.

(3) If both longitudinal rails of a vehicle are damaged to the extent that they both require Original Equipment Manufacture replacement, that damage must be counted as excessive damage to three areas.

11 Damage to the suspension

(1) The suspension of a vehicle has excessive damage if there is collision-induced damage to a suspension mount to the chassis or body.

(2) In assessing damage to the suspension—
   (a) if an independent suspension unit is damaged, so that its mount to the chassis or body is damaged, each station is one area of excessive damage;
   (b) if a live axle is damaged, so that a mount to the chassis or body is damaged, the suspension of the vehicle must be counted as one area of excessive damage for each axle.

12 Damage to mechanical components

The mechanical components of a vehicle have excessive damage if collision-induced damage has caused one or more of the following to be cracked, deformed or broken—

(a) the engine block;
(b) the transmission case;
(c) the differential case;
(d) the axle housing.

13 Deployment or activation of supplementary restraints

For the purpose of this Schedule, there has been deployment or activation of a supplementary restraint if—

(a) there has been deployment of an airbag (whether frontal, side or curtain) within the vehicle occupant cabin; or

(b) there has been activation of a seatbelt pre-tensioner.

14 Excessive fire damage

A vehicle has excessive fire damage if—

(a) as a result of fire, paint on the vehicle (whether internal or external) has blistered on any three of—
   (i) the roof;
   (ii) a pillar;
   (iii) the floor pan;
   (iv) the firewall;
   (v) longitudinal structural rails or chassis;
   or

(b) as a result of fire—
   (i) the vehicle has sustained a combination of exterior and interior fire damage; and
   (ii) the vehicle has suffered damage to the extent that it is written off.
15 **Excessive water damage**

A vehicle has excessive water damage if the internal cabin of the vehicle has been inundated with water (irrespective of whether the water is fresh, brackish or salt water) to a level above the level of the inner door sill.

16 **Excessive vehicle stripping damage**

A vehicle has excessive stripping damage if—

(a) it has been stripped of interior or exterior parts, panels and components such as wheels, bonnet, guards, doors, boot lid or interior parts; or

(b) by reason of that stripping it is written off.
Endnotes

1 General information


Minister's second reading speech—

Legislative Assembly: 11 September 1986
Legislative Council: 18 November 1986

The long title for the Bill for this Act was "A Bill to re-enact, with amendments, the law relating to motor vehicles, to repeal the Motor Car Act 1958, to make consequential amendments to various Acts and for other purposes.".

The Road Safety Act 1986 was assented to on 23 December 1986 and came into operation as follows:


Sections 60, 61, Schedule 3 item 9 on 1 April 1987: Government Gazette 1 April 1987 page 778.


Section 15 was never proclaimed, repealed by No. 57/1998 section 4(3)(b).

Schedule 4 items 19, 21.3 were never proclaimed, repealed by No. 57/1998 section 25(3).

Schedule 4 item 22.2 was never proclaimed, repealed by No. 78/1987 section 21(a).

Schedule 4 items 26.1–26.11 were never proclaimed, repealed by No. 65/1987 section 25(2).

Schedule 4 item 28.16(c) was never proclaimed, repealed by No. 57/1998 section 25(3).

Schedule 4 item 29.21 was never proclaimed, repealed by No. 84/1994 section 61.
### 2 Table of Amendments

This publication incorporates amendments made to the *Road Safety Act 1986* by Acts and subordinate instruments.

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<tr>
<td><strong>Litter Act 1987, No. 54/1987</strong></td>
<td>20.10.87</td>
<td>19.11.87: Government Gazette 18.11.87 p. 3084</td>
<td>All of Act in operation</td>
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<td><strong>Taxation Acts Amendment Act 1987, No. 65/1987</strong></td>
<td>12.11.87</td>
<td>S. 25 on 23.12.86: s. 2(7); s. 26 on 12.11.87: s. 2(8)</td>
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<tr>
<td><strong>Road Safety (Amendment) Act 1987, No. 78/1987</strong></td>
<td>24.11.87</td>
<td>S. 10 on 1.3.87: s. 2(2); rest of Act on 9.12.87: Government Gazette 9.12.87 p. 3328</td>
<td>All of Act in operation</td>
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<tr>
<td><strong>Road Safety (Photographic Detection Devices) Act 1988, No. 58/1988</strong></td>
<td>29.11.88</td>
<td>29.11.88</td>
<td>All of Act in operation</td>
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<tr>
<td><strong>Local Government (Consequential Provisions) Act 1989, No. 12/1989</strong> (as amended by No. 13/1990)</td>
<td>9.5.89</td>
<td>Sch. 2 items 105.1–105.12 <em>(except</em> item 105.10) on 1.11.89: Government Gazette 1.11.89 p. 2798; Sch. 2 item 105.10 on 1.10.92: Government Gazette 23.9.92 p. 2789</td>
<td>This information relates only to the provision/s amending the <em>Road Safety Act 1986</em></td>
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<td><strong>Transport (Amendment) Act 1989, No. 44/1989</strong></td>
<td>6.6.89</td>
<td>S. 41(Sch. 2 items 34.1–34.5) on 1.7.89: s. 2(1); s. 42(3) on 11.11.89: s. 2(6)</td>
<td>This information relates only to the provision/s amending the <em>Road Safety Act 1986</em></td>
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Road Safety (Miscellaneous Amendments) Act 1989, No. 53/1989

Assent Date: 14.6.89
Commencement Date: S. 19 on 1.5.87; s. 2(2); s. 21(6) on 1.5.88; s. 2(3); ss 1–3, 6–8(1), 9, 10, 12, 13, 16, 20, 21(1)–(5)(7), 22 on 19.6.89; Special Gazette (No. 32) 15.6.89 p. 1; ss 4, 5, 8(2), 14, 15, 17, 18 on 11.11.89; Special Gazette (No. 61) 9.11.89 p. 1; s. 11 on 1.5.91; Government Gazette 1.5.91 p. 1130
Current State: All of Act in operation

Magistrates’ Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: Ss 4(1)(a)–(c)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Road Safety (Amendment) Act 1990, No. 5/1990 (as amended by No. 19/1991)

Assent Date: 3.4.90
Commencement Date: Ss 3, 11–13, 15(4)(5)(7)–(10) on 8.5.90: Special Gazette (No. 20) 8.5.90 p. 1; s. 6 on 1.7.90: Government Gazette 27.6.90 p. 1926; ss 5, 10 on 1.8.90: Government Gazette 25.7.90 p. 2218; ss 4, 7–9 on 1.10.90: Government Gazette 26.9.90 p. 2872
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Certificates) Act 1990, No. 66/1990

Assent Date: 30.11.90
Commencement Date: S. 3 on 1.3.87: s. 2(2); rest of Act on 30.11.90: s. 2(1)
Current State: All of Act in operation

Road Safety (Drivers) Act 1991, No. 19/1991

Assent Date: 30.4.91
Commencement Date: S. 22 on 23.12.86; s. 2(3); s. 20(3) on 3.4.90: s. 2(2); ss 3, 5–10, 13–16, 18, 20(1)(c), 21 on 12.6.91: Government Gazette 5.6.91 p. 1450; ss 11, 12 on 1.9.91: Government Gazette 28.8.91 p. 2368
Current State: This information relates only to the provision/s amending the Road Safety Act 1986


Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation
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- **Assent Date:** 10.12.91
- **Commencement Date:** S. 17(2) on 23.12.86: s. 2(3); s. 17(3) on 30.4.91: s. 2(4); ss 5, 12, 14 on 1.1.92: s. 2(2); ss 1–4, 6–11, 13, 15, 17(1), 18 on 1.1.92: Government Gazette 18.12.91 p. 3489; s. 16 never proclaimed, repealed by No. 44/2003
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986


- **Assent Date:** 2.6.92
- **Commencement Date:** 13.6.92: Government Gazette 10.6.92 p. 1418
- **Current State:** All of Act in operation

#### Road Safety (Licence Cancellation) Act 1992, No. 41/1992

- **Assent Date:** 23.6.92
- **Commencement Date:** 23.6.92
- **Current State:** All of Act in operation

#### Sheep Owners Protection (Repeal) Act 1993, No. 1/1993

- **Assent Date:** 6.4.93
- **Commencement Date:** 6.4.93
- **Current State:** All of Act in operation

#### Transport (Amendment) Act 1993, No. 120/1993

- **Assent Date:** 7.12.93
- **Commencement Date:** Pt 1 (ss 1–3), ss 56, 58, 60, 61(2), 65–71, 73–79 on 7.12.93: s. 2(1); Pt 2 (ss 4–55), ss 57, 59, 61(1), 62, 63 on 19.12.93: s. 2(2); rest of Act on 30.5.94: s. 2(4)
- **Current State:** All of Act in operation


- **Assent Date:** 10.5.94
- **Commencement Date:** Ss 1, 2, 8 on 10.5.94: s. 2(1); rest of Act on 1.8.94: s. 2(3)
- **Current State:** All of Act in operation


- **Assent Date:** 17.5.94
- **Commencement Date:** Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
- **Current State:** All of Act in operation

#### Magistrates' Court (Amendment) Act 1994, No. 33/1994

- **Assent Date:** 31.5.94
- **Commencement Date:** Ss 1, 2 on 31.5.94: s. 2(1); s. 27(5) on 14.12.93: s. 2(2); rest of Act on 24.10.94: Government Gazette 20.10.94 p. 2789
- **Current State:** All of Act in operation
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Transport (Further Amendment) Act 1994, No. 60/1994
Assent Date: 15.6.94
Commencement Date: S. 29 on 15.6.94: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Further Amendment) Act 1994, No. 78/1994
Assent Date: 22.11.94
Commencement Date: Ss 1, 2 on 22.11.94: s. 2(1); rest of Act on 22.5.95: s. 2(3)
Current State: All of Act in operation

Transport Accident (General Amendment) Act 1994, No. 84/1994
Assent Date: 29.11.94
Commencement Date: Ss 60(2), 61 on 18.12.94: Special Gazette (No. 96)
13.2.94 pp 1, 2; ss 56–59, 60(1) on 29.5.95: s. 2(6)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 13.12.94
Commencement Date: S. 68 on 22.5.95: Government Gazette 18.5.95 p. 1180
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Amendment) Act 1995, No. 7/1995
Assent Date: 19.4.95
Commencement Date: 19.4.95
Current State: All of Act in operation

Road Safety (Miscellaneous Amendments) Act 1995, No. 58/1995
Assent Date: 20.6.95
Commencement Date: Ss 14, 28 on 1.8.94: s. 2(2); s. 20 on 1.1.95: s. 2(3); ss 1, 2 on 20.6.95: s. 2(1); ss 3–9, 11–13, 15–17, 19, 21–25, 27 on 6.7.95; ss 18, 26 on 1.11.95:
Government Gazette 6.7.95 p. 1698; s. 10 on 1.2.96: Government Gazette 25.1.96 p. 147
Current State: All of Act in operation

Assent Date: 5.12.95
Commencement Date: S. 51 on 1.8.94: s. 2(2); s. 52 on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 2.7.96
Commencement Date: Ss 1, 2 on 2.7.96: s. 2(1); rest of Act on 1.8.96:
Government Gazette 1.8.96 p. 1954
Current State: All of Act in operation
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<td>Road Safety (Amendment) Act 1996, No. 37/1996</td>
<td>6.11.96</td>
<td>Ss 3, 5–8 on 21.11.96; Government Gazette 21.11.96 p. 2971; s. 4 on 1.7.97: s. 2(4)</td>
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<td>Road Safety (Disclosure of Information) Act 1997, No. 30/1997</td>
<td>27.5.97</td>
<td>S. 7 on 27.5.97: s. 2(1); ss 4, 5 on 1.9.97: s. 2(3)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Law and Justice Legislation Amendment Act 1997, No. 44/1997</td>
<td>11.6.97</td>
<td>S. 34 on 11.6.97: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998 (as amended by No. 12/1999)</td>
<td>26.5.98</td>
<td>S. 7(Sch. 1) on 1.7.98: s. 2(2)</td>
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<td>Road Safety (Driving Instructors) Act 1998, No. 63/1998</td>
<td>27.10.98</td>
<td>Ss 1, 2 on 27.10.98: s. 2(1); ss 3–6 on 1.3.99: s. 2(3)</td>
<td>All of Act in operation</td>
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<td>Road Safety (Further Amendment) Act 1998, No. 73/1998 (as amended by No. 14/2000)</td>
<td>4.11.98</td>
<td>S. 7 on 4.11.98: s. 2(1); s. 9 on 1.3.99: s. 2(4); ss 5(1), 8 on 1.5.99: Government Gazette 18.3.99 p. 665; s. 5(2) on 1.5.99: s. 2(2); s. 6 on 1.5.99: s. 2(3); ss 4, 10 on 1.6.99: s. 2(6)</td>
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**Authorised by the Chief Parliamentary Counsel**

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**Road Safety (Amendment) Act 2000, No. 14/2000**
- **Assent Date:** 18.4.00
- **Commencement Date:** Ss 16, 19–26 on 18.4.00; ss 4–15, 17, 18 on 1.12.00; s. 2(4)
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

**Statute Law Revision Act 2000, No. 74/2000**
- **Assent Date:** 21.11.00
- **Commencement Date:** S. 3(Sch. 1 item 110) on 22.11.00: s. 2(1)
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

**Duties Act 2000, No. 79/2000** (as amended by No. 46/2001)
- **Assent Date:** 28.11.00
- **Commencement Date:** S. 285(Sch. 1 item 5A) on 1.7.01: s. 2
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

**Parliamentary Precincts Act 2001, No. 4/2001**
- **Assent Date:** 10.4.01
- **Commencement Date:** S. 29 on 11.4.01: s. 2
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

**Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001, No. 23/2001**
(as amended by No. 92/2001)
- **Assent Date:** 29.5.01
- **Commencement Date:** Ss 3–8, 9(2)–15 on 28.6.01: Government Gazette 21.6.01 p. 1339; s. 9(1) on 21.12.01: Government Gazette 13.12.01 p. 3061
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

**Transport (Further Amendment) Act 2001, No. 54/2001**
- **Assent Date:** 2.10.01
- **Commencement Date:** S. 2(Sch. item 2) on 30.6.03: s. 2(5)
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

**Road Safety (Further Amendment) Act 2001, No. 92/2001**
- **Assent Date:** 11.12.01
- **Commencement Date:** Ss 27, 34(2) on 12.12.01: s. 2(1); ss 5(1)(2), 6, 9, 11–13(3), 14–25, 28 on 21.12.01: Government Gazette 13.12.01 p. 3061; ss 4, 5(3), 7, 8, 10, 26, 29 on 1.5.02: Government Gazette 18.4.02 p. 708
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986
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Road Safety (Alcohol Interlocks) Act 2002, No. 1/2002
Assent Date: 26.3.02
Commencement Date: Ss 3–10 on 13.5.02: Government Gazette 2.5.02 p. 789
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Statute Law (Further Revision) Act 2002, No. 11/2002
Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 57) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 18.6.02
Commencement Date: S. 51(1) on 19.6.02: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Responsible Driving) Act 2002, No. 46/2002 (as amended by No. 94/2003)
Assent Date: 22.10.02
Commencement Date: S. 8 on 23.10.02: s. 2(1); ss 7, 9, 10(a), 11–14 on 15.12.02: Government Gazette 31.10.02 p. 2906; ss 3–6, 10(b)–(f) on 1.12.03: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Heavy Vehicle Safety) Act 2003, No. 44/2003
Assent Date: 11.6.03
Commencement Date: Ss 3–5 on 1.7.03: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Amendment) Act 2003, No. 94/2003
Assent Date: 25.11.03
Commencement Date: Ss 4–6, 8, 11–24, 26, 27 on 26.11.03: s. 2(1); ss 7, 10 on 1.1.05: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 2.12.03
Commencement Date: Ss 24, 25 on 3.12.03: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 9.12.03
Commencement Date: Ss 4–22 on 1.12.04: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986
Monetary Units Act 2004, No. 10/2004
Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 25) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Management Act 2004, No. 12/2004
Assent Date: 11.5.04
Commencement Date: Ss 138–140 on 1.7.04: s. 2(2); ss 141, 142 on 1.1.05: s. 2(4)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 16.6.04
Commencement Date: S. 71(Sch. item 3) on 1.1.05: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 16.6.04
Commencement Date: Ss 23–39 on 17.6.04: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Pharmacy Practice Act 2004, No. 80/2004
Assent Date: 16.11.04
Commencement Date: S. 150(Sch. 2 item 5) on 1.7.05: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 176) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 21.12.04
Commencement Date: Ss 22, 23, 25, 28, 30, 31, 34, 35, 37, 40, 42, 43 on 22.12.04: s. 2(1); ss 24, 26, 27, 29, 32, 33, 36, 38 on 1.2.05: s. 2(4); ss 39, 41 on 30.9.05: s. 2(6)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Children and Young Persons (Miscellaneous Amendments) Act 2005, No. 21/2005 (as amended by No. 24/2005)
Assent Date: 31.5.05
Commencement Date: Ss 56, 57(1) on 1.7.05: s. 2(6)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986
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Road Safety (Further Amendment) Act 2005, No. 24/2005
Assent Date: 31.5.05
Commencement Date: Ss 3–12, 14–16 on 1.6.05: s. 2(1); s. 13 on 1.1.06: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005, No. 93/2005
Assent Date: 29.11.05
Commencement Date: Ss 3–6 on 1.7.06: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Transport Legislation (Further Miscellaneous Amendments) Act 2005, No. 95/2005
Assent Date: 29.11.05
Commencement Date: Ss 15–19 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Health Professions Registration Act 2005, No. 97/2005
Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 44) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 11.4.06
Commencement Date: Ss 179–185 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Drugs) Act 2006, No. 20/2006
Assent Date: 9.5.06
Commencement Date: Ss 4, 5 on 1.7.06: s. 2(2); s. 3 on 1.9.06: s. 2(4)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006
Assent Date: 13.6.06
Commencement Date: Ss 61–68 on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006
Assent Date: 15.8.06
Commencement Date: S. 39 on 1.9.06: s. 2(2); s. 42(Sch. item 31) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 10.10.06
Commencement Date: Ss 3–6, 10, 12–15, 34–50 on 11.10.06: s. 2(1); ss 16, 19 on 1.1.07; s. 2(3); ss 9, 11, 18, 21–26, 30 on 1.7.07: s. 2(4); ss 17, 20 on 1.7.08; s. 2(5)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986


Assent Date: 8.5.07
Commencement Date: Ss 3–5, 13, 14(2), 19(1) on 9.5.07: s. 2(1); ss 11, 12 on 1.7.07: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Accident Towing Services Act 2007, No. 30/2007

Assent Date: 24.7.07
Commencement Date: Ss 233–235 on 1.1.09: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Justice and Road Legislation Amendment (Law Enforcement) Act 2007, No. 52/2007

Assent Date: 17.10.07
Commencement Date: Ss 9, 10 on 8.11.07: Government Gazette 8.11.07 p. 2579; ss 11, 12 on 28.2.08: Government Gazette 31.1.08 p. 196
Current State: This information relates only to the provision/s amending the Road Safety Act 1986


Assent Date: 11.12.07
Commencement Date: Ss 72–74 on 1.7.08: s. 2(11)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Legislation Further Amendment Act 2007, No. 74/2007 (as amended by No. 56/2008)

Assent Date: 18.12.07
Commencement Date: Ss 5, 7–9, 15–17 on 19.12.07: s. 2(1); s. 6 on 1.7.08: s. 2(4); ss 10–14 on 1.9.08: s. 2(5); ss 3, 4, 18–29 on 29.9.08: Government Gazette 25.9.08 p. 2218
Current State: This information relates only to the provision/s amending the Road Safety Act 1986


Assent Date: 11.2.08
Commencement Date: S. 59 on 1.12.08: s. 2(4)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

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<td><strong>Relationships Act 2008, No. 12/2008</strong></td>
<td>15.4.08</td>
<td>S. 73(1)(Sch. 1 item 53) on 1.12.08: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Public Health and Wellbeing Act 2008, No. 46/2008</strong></td>
<td>2.9.08</td>
<td>S. 284 on 1.1.10: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Legislation Reform (Repeals No. 3) Act 2008, No. 53/2008</strong></td>
<td>23.9.08</td>
<td>S. 4(Sch. 2) on 24.9.08: s. 2</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Road Safety Amendment (Fatigue Management) Act 2008, No. 56/2008</strong></td>
<td>23.9.08</td>
<td>Ss 45, 46 on 24.9.08: s. 2</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Coroners Act 2008, No. 77/2008</strong></td>
<td>11.12.08</td>
<td>S. 129(Sch. 2 item 24) on 1.11.09: s. 2</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Bus Safety Act 2009, No. 13/2009</strong> (as amended by No. 19/2010)</td>
<td>7.4.09</td>
<td>Ss 87–89 on 31.12.10: s. 2(3)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Transport Legislation Miscellaneous Amendments Act 2009, No. 17/2009</strong></td>
<td>12.5.09</td>
<td>S. 32 on 13.5.09: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td><strong>Road Legislation Amendment Act 2009, No. 28/2009</strong></td>
<td>17.6.09</td>
<td>Ss 4(1)(3)–(7), 5–9, 11–18, 20–23, 26(1)(3), 32, 33, 34(3)–(5), 35–41, 43–52, 54 on 18.6.09: s. 2(1); s. 19 on 27.8.09: Special Gazette (No. 289) 26.8.09 p. 1; s. 10 on 1.10.09: Special Gazette (No. 332) 22.9.09 p. 1; ss 4(2), 24, 25, 26(2), 27–31, 34(1)(2), 42, 53 on 9.11.09: Special Gazette (No. 390) 4.11.09 p. 1</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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Assent Date: 22.9.09
Commencement Date: S. 60 on 9.11.09: Government Gazette 29.10.09 p. 2729; s. 61 on 9.11.09: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 106) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 50) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009 (as amended by No. 29/2011)
Assent Date: 15.12.09
Commencement Date: S. 23(3) on 9.11.09: s. 2(2); ss 19, 20(1)–(4), 21, 22(1)–(3), 23(1), 49(2) on 17.12.09: Government Gazette 17.12.09 p. 3339; s. 23(2) on 1.1.10: Government Gazette 17.12.09 p. 3339; ss 20(5), 22(4) on 31.12.10: Government Gazette 21.10.10 p. 2531; ss 16–18 on 1.9.11: s. 2(4)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)
Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 15), 203(1)(Sch. 6 item 42) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Accident Compensation Amendment Act 2010, No. 9/2010
Assent Date: 23.3.10
Commencement Date: S. 18 on 5.4.10: s. 2(7)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010
Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 48) on 1.7.10: s. 2(2)
Current State: The information relates only to the provision/s amending the Road Safety Act 1986
### Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010, No. 19/2010

- **Assent Date:** 18.5.10  
- **Commencement Date:** S. 83 on 22.5.10: Government Gazette 20.5.10 p. 988  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Health and Human Services Legislation Amendment Act 2010, No. 29/2010

- **Assent Date:** 8.6.10  
- **Commencement Date:** Ss 68, 69 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Justice Legislation Amendment Act 2010, No. 30/2010

- **Assent Date:** 8.6.10  
- **Commencement Date:** Ss 91, 92 on 26.6.10: Government Gazette 24.6.10 p. 1274  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Transport Legislation Amendment (Ports Integration) Act 2010, No. 45/2010

- **Assent Date:** 17.8.10  
- **Commencement Date:** S. 54 on 1.9.10: Special Gazette (No. 337) 24.8.10 p. 1  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Personal Property Securities (Statute Law Revision and Implementation) Act 2010, No. 74/2010

- **Assent Date:** 19.10.10  
- **Commencement Date:** Ss 36, 37(Sch. item 4) on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Road Legislation Miscellaneous Amendments Act 2010, No. 75/2010

- **Assent Date:** 19.10.10  
- **Commencement Date:** Ss 12, 13, 15–20, 22 on 1.11.10: Government Gazette 21.10.10 p. 2531; ss 14, 21 on 12.12.10: Government Gazette 21.10.10 p. 2531  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Road Safety Amendment (Hoon Driving) Act 2010, No. 76/2010 (as amended by No. 32/2011)

- **Assent Date:** 19.10.10  
- **Commencement Date:** Ss 18, 20 repealed on 30.6.11 by No. 32/2011 s. 4; ss 35, 37 repealed on 30.6.11 by No. 32/2011 s. 7; ss 4–17, 19, 21–34, 36, 38–40 on 1.7.11: s. 2(2)  
- **Current State:** This information relates only to the provision/s amending the Road Safety Act 1986
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### Sentencing Amendment Act 2010, No. 77/2010
  
**Assent Date:** 19.10.10  
**Commencement Date:** S. 28 on 1.5.11: Special Gazette (No. 125) 19.4.11 p. 1  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Road Safety Amendment (Hoon Driving and Other Matters) Act 2011, No. 32/2011 (as amended by No. 43/2012)
  
**Assent Date:** 29.6.11  
**Commencement Date:** Ss 9, 10, 18–21(1) on 30.6.11: s. 2(8); s. 8 on 1.7.11: s. 2(3); ss 11, 13–17 on 30.1.12: Special Gazette (No. 423) 21.12.11 p. 3; s. 12 on 1.7.12: s. 2(7)  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011, No. 34/2011
  
**Assent Date:** 5.7.11  
**Commencement Date:** S. 103 on 1.8.11: Special Gazette (No. 236) 19.7.11 p. 1; s. 126 on 1.7.13: s. 2(3)  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Transport Legislation Amendment (Port of Hastings Development Authority) Act 2011, No. 38/2011
  
**Assent Date:** 23.8.11  
**Commencement Date:** S. 42 on 1.1.12: s. 2(2)  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Justice Legislation Amendment (Protective Services Officers) Act 2011, No. 43/2011
  
**Assent Date:** 6.9.11  
**Commencement Date:** Ss 39–46 on 28.11.11: Special Gazette (No. 379) 22.11.11 p. 1  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Road Safety Camera Commissioner Act 2011, No. 47/2011
  
**Assent Date:** 22.9.11  
**Commencement Date:** S. 25 on 12.10.11: Special Gazette (No. 313) 4.10.11 p. 1 (see Erratum: Special Gazette (No. 315) 4.10.11 p. 1)  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986

### Transport Legislation Amendment (Public Transport Development Authority) Act 2011, No. 61/2011
  
**Assent Date:** 15.11.11  
**Commencement Date:** S. 25 on 15.12.11: Special Gazette (No. 407) 13.12.11 p. 1; Sch. 1 item 11 on 2.4.12: Special Gazette (No. 101) 27.3.12 p. 1  
**Current State:** This information relates only to the provision/s amending the Road Safety Act 1986
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<td>Sentencing Amendment (Community Correction Reform) Act 2011, No. 65/2011 (as amended by No. 56/2013)</td>
<td>22.11.11</td>
<td>Ss 101–106 never proclaimed, repealed by No. 56/2013 s. 35(2)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Road Safety Amendment (Drinking while Driving) Act 2011, No. 77/2011</td>
<td>13.12.11</td>
<td>Ss 3–5 on 14.12.11: s. 2</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Australian Consumer Law and Fair Trading Act 2012, No. 21/2012</td>
<td>8.5.12</td>
<td>S. 239(Sch. 6 item 39) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1</td>
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<td>Statute Law Revision Act 2012, No. 43/2012</td>
<td>27.6.12</td>
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<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Road Safety and Sentencing Acts Amendment Act 2012, No. 45/2012</td>
<td>17.8.12</td>
<td>Ss 3–5 on 17.8.12: s. 2(1)</td>
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<td>Road Safety Act 2012, No. 50/2012</td>
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<td>Ss 6–27, 29 on 1.10.12: Special Gazette (No. 324) 26.9.12 p. 2; ss 3, 4, 28 on 1.11.12: Special Gazette (No. 324) 26.9.12 p. 2; s. 5 on 20.2.13: Special Gazette (No. 54) 19.2.13 p. 1</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Evidence Amendment (Journalist Privilege) Act 2012, No. 52/2012</td>
<td>18.9.12</td>
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<td>Road Safety Amendment (Operator Onus) Act 2012, No. 75/2012 (as amended by No. 35/2014)</td>
<td>4.12.12</td>
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<td>State Taxation and Other Acts Amendment Act 2012, No. 76/2012</td>
<td>4.12.12</td>
<td>Ss 19, 20 on 30.3.13: s. 2(3)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Justice Legislation Amendment (Family Violence and Other Matters) Act 2012, No. 83/2012</td>
<td>18.12.12</td>
<td>S. 33(4) on 20.12.12: Special Gazette (No. 444)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Heavy Vehicle National Law Application Act 2013, No. 30/2013</td>
<td>4.6.13</td>
<td>S. 60(Sch. item 8) on 10.2.14: Special Gazette (No. 28) 4.2.14 p. 1</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013, No. 43/2013</td>
<td>28.6.13</td>
<td>S. 53 on 1.7.13: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013</td>
<td>24.9.13</td>
<td>Ss 3–9, 17–19 on 1.1.14: s. 2(3)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Road Safety and Sentencing Acts Amendment Act 2013, No. 56/2013</td>
<td>24.9.13</td>
<td>Ss 19(1), 20–22 on 25.9.13: s. 2(1); ss 3–18, 19(2), 23–28, 36 on 30.9.13: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013</td>
<td>12.11.13</td>
<td>S. 649(Sch. 9 item 31) on 1.7.14: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<td>Statute Law Revision Act 2013, No. 70/2013</td>
<td>19.11.13</td>
<td>S. 4(Sch. 2 item 44) on 1.12.13: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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Road Legislation Amendment Act 2013, No. 74/2013 (as amended by No. 20/2015 s. 41)
Assent Date: 3.12.13
Commencement Date: S. 33 on 4.12.13: s. 2(1); s. 14 on 17.12.13: Special Gazette (No. 449) 17.12.13 p. 1; s. 34 on 10.2.14: Special Gazette (No. 28) 4.2.14 p. 1; ss 10, 12, 18(1)(2), 19 on 1.11.14: Special Gazette (No. 400) 29.10.14 p. 3; s. 13 on 1.3.15: Special Gazette (No. 400) 29.10.14 p. 3; ss 3–7A, 11, 15–17, 18(3)(4) on 1.7.15: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014
Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 147) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Building a Better Victoria (State Tax and Other Legislation Amendment) Act 2014, No. 40/2014
Assent Date: 17.6.14
Commencement Date: S. 38 on 1.7.14: s. 2(3)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety Amendment Act 2014, No. 49/2014
Assent Date: 1.7.14
Commencement Date: S. 62 on 2.7.14: s. 2(1); ss 33, 34, 44–46 on 1.10.14: s. 2(2); ss 15–32, 35–37, 47, 60 on 1.10.14: s. 2(6)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Filming Approval Act 2014, No. 51/2014
Assent Date: 12.8.14
Commencement Date: S. 9(Sch. 2 item 16) on 1.3.15: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Authorised by the Chief Parliamentary Counsel
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3 Amendments Not in Operation

Not updated for this publication.
4 Explanatory details

1 S. 3(1) def. of drink-driving infringement: Section 23(1) of the Road Safety (Amendment) Act 1994, No. 17/1994 reads as follows:

23 Transitional provisions

(1) The amendment of the Principal Act made by section 4(2) applies to any traffic infringement notice issued in respect of a drink-driving infringement after the commencement of that section, irrespective of when the infringement was committed.

2 S. 15A: Section 63(1)–(3) of the Transport (Amendment) Act 1993, No. 120/1993 reads as follows:

63 Transitional provisions (Part 3)

(1) The amendments of the Road Safety Act 1986 made by sections 57 and 61(1) apply to an authorisation referred to in item 9 of Schedule 2 to that Act that was in force immediately before the commencement of those sections and any such authorisation may be cancelled or suspended in accordance with that Act as amended by those sections.

(2) Any proceedings before the Road Transport Licensing Tribunal under that Road Safety Act 1986 in relation to an authorisation referred to in item 9 of Schedule 2 to that Act that had not been finally determined by the Tribunal immediately before the commencement of sections 57 and 61(1) shall be determined by the Roads Corporation in accordance with that Act as amended by those sections.

(3) If under subsection (2) the Roads Corporation determines any proceedings, any thing done or any requirement complied with in relation to the proceedings before the commencement of sections 57 and 61(1) must, so far as consistent
with the provisions of the **Road Safety Act 1986** as amended by those sections and the regulations made under that Act, be taken to have been done or complied with for the purposes of the determination by the Roads Corporation and the Roads Corporation may have regard to any record of the Road Transport Licensing Tribunal in relation to the proceedings.

3 S. 19(7): Section 23(2) of the **Road Safety (Amendment) Act 1994**, No. 17/1994 reads as follows:

**23 Transitional provisions**

(2) The amendments of the Principal Act made by sections 5 and 9 have effect only with respect to full driver licences issued after the commencement of those sections and probationary driver licences converted after that commencement into full driver licences under section 21(7) of the Principal Act.

4 S. 50AA: Section 23(3) of the **Road Safety (Amendment) Act 1994**, No. 17/1994 reads as follows:

**23 Transitional provisions**

(3) The amendment of the Principal Act made by section 8 applies to any sentence imposed or application determined after the commencement of that section, irrespective of when the offence was committed.

5 S. 52(5)--(7):

S. 52(5) amended by No. 78/1987 s. 9(2), repealed by No. 5/1990 s. 9(b).

S. 52(6) amended by Nos 78/1987 s. 9(2), 57/1989 s. 3(Sch. item 173.12), repealed by No. 5/1990 s. 9(b).

S. 52(7) repealed by No. 5/1990 s. 9(b).
6 S. 89A(2): Section 21 of the Road Safety (Drivers) Act 1991, No. 19/1991 reads as follows:

21 Transitional

The amendment made to the Principal Act by section 15(4) of the Road Safety (Amendment) Act 1990 applies only with respect to infringement notices issued on or after 8 May 1990.

7 S. 92(3)(ca) (repealed): The amendment proposed by section 74 of the Rail Safety National Law Application Act 2013, No. 22/2013 is not included in this publication due to the earlier repeal of section 92 by section 8 of the Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013.

Section 74 reads as follows:

74 Disclosure of information

For section 92(3)(ca) of the Road Safety Act 1986 substitute—

"(ca) to or by a public transport regulator for the purposes of performing a function or exercising a power of the public transport regulator under the Transport Integration Act 2010, the Transport (Compliance and Miscellaneous) Act 1983, the Bus Services Act 1995, the Rail Safety (Local Operations) Act 2006, the Bus Safety Act 2009 or the regulations made under any of those Acts; or

(cab) the Rail Safety National Regulator for the purposes of performing a function or exercising a power under the Rail Safety National Law (Victoria); or".
S. 92(3)(cc) (repealed): The amendment proposed by section 649(Schedule 9 item 31(2)) of the Workplace Injury Rehabilitation and Compensation Act 2013, No. 67/2013 is not included in this publication due to the earlier repeal of section 92 by section 8 of the Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013.

Schedule 9 item 31(2) reads as follows:

31 Road Safety Act 1986

(2) In section 92(3)(cc)—

(a) for "Accident Compensation Act 1985" substitute "Workplace Injury Rehabilitation and Compensation Act 2013";

(b) for "239AAC" substitute "557".

S. 92(3)(fa) (repealed): The amendment proposed by section 12 of the Road Safety Amendment (Operator Onus) Act 2012, No. 75/2012 is not included in this publication due to the earlier repeal of section 92 by section 8 of the Road Legislation Amendment (Use and Disclosure of Information and Other Matters) Act 2013, No. 55/2013.

Section 12 reads as follows:

12 Statute law revision

In section 92(3)(fa) of the Road Safety Act 1986, after "2012," insert "or".

11 Sch. 2 item 9: See note 2.
12 Table of Amendments (Transport Integration Act 2010):
The amendment proposed by section 203(1)(Schedule 6 item 42.6) of the Transport Integration Act 2010, No. 6/2010 is not included in this publication because section 191BA is not part of this Act.

Schedule 6 item 42.6 reads as follows:

42.6 In section 191BA for "Transport Act 1983" substitute "Transport (Compliance and Miscellaneous) Act 1983".