EXPLANATORY MEMORANDUM

General
The main purposes of this Bill are to amend the Road Safety Act 1986 to—

- enable Victoria Police to seize and impound or immobilise motor vehicles in certain circumstances;
- allow a court to order the impoundment, immobilisation or forfeiture of motor vehicles in certain circumstances;
- create a new offence relating to the improper use of a motor vehicle;
- consequentially amend the Children and Young Persons Act 1989, the Children, Youth and Families Act 2005, the Magistrates' Court Act 1989 and the Crimes Act 1958 to expand the definitions of "sentencing order" and "sentence" contained therein;
- amend the Commonwealth Games Arrangements Act 2001 to enable authorised officers to remove vehicles obstructing a Games management area, and to expand the range of offences enforceable by infringement notice; and
- consequentially amend various other Acts to make reference to, and otherwise provide for, new Commonwealth drug offences.

Clause Notes

PART 1—PRELIMINARY

Clause 1 sets out the main purposes of the Bill.

Clause 2 is the commencement provision and provides that—

- Part 1, which is the preliminary Part of the Bill, comes into operation on the day after the Bill receives the Royal Assent;
• Part 2, which amends the Road Safety Act 1986 to provide for the impoundment, immobilisation and forfeiture of motor vehicles in certain circumstances, commences on a day to be proclaimed, or on 1 July 2006, whichever comes first;
• Part 3 (except for section 8), which consequentially amends the Magistrates' Court Act 1989, commences on a day to be proclaimed, or on 1 July 2006, whichever comes first;
• Part 4, which amends the Commonwealth Games Arrangements Act 2001, commences on the day after the Bill receives Royal Assent;
• Part 5, which amends various Acts in response to new Commonwealth drug offences, commences on the day after the Bill receives Royal Assent;
• section 8 comes operation on the day on which section 3 of the Children, Youth and Families Act 2005 comes into operation.

PART 2—AMENDMENT OF ROAD SAFETY ACT 1986

Clause 3 inserts a new offence of "improper use of a motor vehicle" into the Road Safety Act 1986.

This offence targets persons who drive in a manner that causes loss of traction by one or more of the motor vehicle's wheels. It is a defence to a charge for this new offence to prove that the loss of traction was not intentional. A 5 penalty unit penalty applies.

Behaviour targeted by the new offence includes the performance of "burnouts" and "donuts", as they are commonly known, and the practice of applying the handbrake so as to cause the motor vehicle to skid or spin. As such, the offence directly targets behaviour associated with those commonly referred to in the community as "hoon" drivers.

Clause 4 inserts a new Part 6A into the Road Safety Act 1986, covering new sections 84C to 84ZS, which establishes a motor vehicle impoundment, immobilisation and forfeiture regime in Victoria.
New Part 6A contains a number of provisions that deal in detail with the circumstances in which, and the procedures by which, motor vehicles may be impounded, immobilised or forfeited to the Crown, as follows.

**Division 1—Preliminary**

New sub-section 84C(1) inserts a range of defined terms that are used throughout Part 6A.

A definition of "relevant offence" is included to specify what offences are covered by the impoundment, immobilisation and forfeiture regime. The following are "relevant offences":

- Driving whilst disqualified (section 30(1) of the *Road Safety Act 1986*), but only where the person has a prior conviction for an offence against section 30(1) committed after the commencement of this Act; and

- Dangerous driving (section 64 of the *Road Safety Act 1986*), careless driving (section 65 of the *Road Safety Act 1986*), causing a motor vehicle to make unnecessary noise or smoke (Road Rule 291) and failure to have proper control of a motor vehicle (Road Rule 297) but only in circumstances involving improper use of a motor vehicle, which means the driving of a motor vehicle so as to cause intentional loss of traction. This qualification has been included to focus the regime on a particular subset of offending encompassed within these broader road safety offences; and

- Improper use of a motor vehicle (new section 65A of the *Road Safety Act 1986*); and

- Organising or managing a race or speed trial without authorisation or engaging in a race or speed trial without authorisation (section 68 of the *Road Safety Act 1986*); and

- Exceeding the speed limit (Road Rule 20) but only in circumstances where the motor vehicle is being driven 45 kilometres per hour or more above the speed-limit, or 145 kilometres per hour or above if the applicable speed limit is 110 kilometres per hour.
A definition of "designated period" is included to specify the length of time for which a seized motor vehicle may be impounded or immobilised. "Designated period" means 48 hours beginning from the seizure or surrender of a motor vehicle, but if this period expires outside normal business hours, the period extends to 9.00 a.m. on the next business day. This takes into account the fact that motor vehicles may be eligible for release late at night or on weekends or public holidays.

A definition of "designated costs" is included to specify the costs that must be paid to secure the release of an impounded or immobilised motor vehicle. "Designated costs" means the costs of impounding or immobilising a motor vehicle, including the costs of moving the motor vehicle to, and storing it at, the place where it is to be immobilised or impounded, and subsequently releasing it. It also includes additional costs incurred if the motor vehicle is impounded or immobilised for longer than the designated period. This may include additional storage costs if the motor vehicle remains unrecovered after the "designated period" expires.

A definition of "holding yard" is included as the place where a motor vehicle is impounded.

A definition of "relevant court" is included which means the court with jurisdiction to hear and determine the relevant offence which the application relates to, or, if the application is made after the sentencing of the driver for the relevant offence, the Magistrates' Court.

New sections 84C(3) and (4) provide that, for the purposes of an application for an impoundment, immobilisation or forfeiture order, a charge of more than one relevant offence arising out of the same single set of circumstances is treated as a charge for one relevant offence. This prevents a person being treated as a repeat offender merely on the basis of one instance of offending for which multiple charges are laid. For example, if an offender performs a "donut" in a crowded carpark, and is subsequently charged and convicted of two relevant offences (eg: dangerous driving and improper use of a motor vehicle) this will nevertheless count as only one offence for the purposes of determining whether the offender is a repeat offender under the impoundment, immobilisation and forfeiture regime.
New section 84D provides that any period of impoundment, immobilisation or forfeiture of a motor vehicle is additional to, and does not limit or otherwise affect, the penalty that may be imposed for the relevant offence that gave rise to the impoundment, immobilisation or forfeiture. For example, a police member observes a driver performing a “burnout” in a crowded street. The police member believes on reasonable grounds that the driver has committed the offence of dangerous driving in circumstances involving improper use of a motor vehicle. The police member seizes and impounds the motor vehicle for the designated period. The police member also charges the driver with dangerous driving. Should a finding of guilt be returned on this charge, the fact that the impoundment has occurred will not in any way limit the sentencing options open to the court for the offence of dangerous driving.

New section 84E ensures that police may only impound or immobilise a motor vehicle for offences committed on or after the day on which Part 2 of this Bill commences. Furthermore, only offences committed after the commencement of this Bill are relevant in determining whether a person is a repeat offender and thus susceptible to an impoundment, immobilisation or forfeiture order imposed by a court.

**Division 2—Impoundment or Immobilisation by Victoria Police**

Division 2 provides for the administrative imposition of a period of impoundment or immobilisation by Victoria Police.

New section 84F accords Victoria Police members new powers to take certain actions in relation to motor vehicles under the motor vehicle impoundment, immobilisation and forfeiture regime.

New sub-section 84F(1) allows a member of the police force to seize or require the surrender of a motor vehicle, and to impound or immobilise it if he or she believes on reasonable grounds that the motor vehicle is being or, within the preceding 10 days, has been used in the commission of a relevant offence. Victoria Police members may also authorise other persons to assist them in seizing, impounding or immobilising a motor vehicle. For example, police may seize a motor vehicle and engage a contractor to tow the motor vehicle to a holding yard and store it there until it is recovered upon the expiration of the designated period.
New sub-section 84F(2) ensures that a motor vehicle may only be impounded or immobilised on one occasion for any given offence. This prevents police impounding a motor vehicle allegedly used in the commission of a relevant offence more than once for the same offence.

New section 84G sets out how the power to seize a motor vehicle under new section 84F can be exercised.

New sub-section 84G(1) sets parameters around when, and from where, a motor vehicle may be seized. A motor vehicle may be seized from a public place or from a private place with the owner or occupier's consent or with a warrant issued under Division 4.

A motor vehicle may be seized up to 48 hours after the alleged commission of the relevant offence or within 10 days after a notice served under section 84H expires or in accordance with a warrant issued under Division 4.

New sub-section 84G(3) confers powers on police members to physically effect the seizure of a motor vehicle. Such powers include requiring the driver to stop the motor vehicle, entering the motor vehicle using reasonable force if necessary, directing the driver or person in possession of keys to the motor vehicle to provide such keys, dismantling or neutralising anything that is impeding the exercise of the seizure power, or starting the motor vehicle by other means.

New section 84H sets out a process by which Victoria Police may demand the surrender of a motor vehicle so that it may be impounded or immobilised. Police must use this process if more than 48 hours have elapsed since the commission of the relevant offence.

If more than 48 hours have elapsed since the commission of the relevant offence, a police member may serve a notice on the registered operator requiring the surrender of the motor vehicle. The notice must be served within 10 days of the commission of the relevant offence, and the time specified for surrender of the motor vehicle must be at least 7 days after service.

If the motor vehicle is not surrendered as per the notice, police may exercise any power under section 84F or 84G to seize the motor vehicle, within 10 days after the period specified in the notice expires.
The process in new section 84H averts the serious inconvenience that could arise if a motor vehicle were to be seized up to 10 days after the alleged offence without any forewarning (and at which time a different person, unaware of the offending, may be in charge of the motor vehicle).

New section 84I confers powers on police members to physically effect the impoundment or immobilisation of seized or surrendered motor vehicles. Police members may do anything reasonably necessary to impound or immobilise the motor vehicle, including moving it to a holding yard and impounding it or immobilising it for the balance of the designated period.

New section 84J outlines what a police member can authorise a person to do to assist the police member in exercising his or her powers under this Part. It essentially outlines the powers that authorised persons may exercise in physically effecting the seizure, impoundment or immobilisation and release of motor vehicles.

New section 84K requires a police member to serve a notice on the driver and registered operator of an impounded or immobilised motor vehicle as soon as reasonably practicable. The registered operator, if not the sole owner of the motor vehicle, must take reasonable steps to provide a copy of such a notice to any owner of the motor vehicle.

This section is designed to ensure that relevant parties are promptly made aware of both the basis for any action by Victoria Police and of their rights and liabilities under the impoundment, immobilisation and forfeiture regime.

New section 84L outlines the information that must be included in a notice under new section 84K. This includes the driver's name and motor vehicle registration number; the date and time when the motor vehicle was impounded or immobilised and the relevant offence in respect of which this action was taken; the date and time when the motor vehicle will be eligible for release and the process by which this may occur; that if the driver is a repeat offender, the Chief Commissioner of Police may apply for an impoundment, immobilisation or forfeiture order; and any other prescribed particulars.

New section 84M provides for the prompt and automatic review of any decision to impound or immobilise a motor vehicle by a senior police officer (who must be of the rank of Inspector or above). This adds a layer of accountability to the exercise by police members of the significant powers conferred by new section 84F.
A police member who impounds or immobilises a motor vehicle, or who authorises the same, must, as soon as reasonably practicable, notify a senior police officer of the grounds for this action (and in any case within 48 hours of seizure). After making inquiries, if the senior police officer is not satisfied that the police member had reasonable grounds to impound or immobilise the motor vehicle it must be returned to the registered operator as soon as possible.

New section 84N provides for the release of impounded or immobilised motor vehicles in certain circumstances. A motor vehicle must be released as soon as reasonably practicable, and the Crown may be liable to pay any designated costs, if—

- it is a stolen or hired motor vehicle; or
- a senior police officer is not satisfied that there were reasonable grounds to impound or immobilise the motor vehicle; or
- the Magistrates' Court has made an order to release it on the ground of undue hardship.

New section 84N also accords senior police officers a broad discretion to release an impounded or immobilised motor vehicle if he or she considers it reasonable or necessary, and to waive the designated costs. This flexibility allows undesirable outcomes to be avoided without compromising the integrity of the impoundment, immobilisation and forfeiture regime. For example, a parent may seek the release of his or her motor vehicle which has been impounded or immobilised after his or her son or daughter was detected committing a relevant offence without the parent's consent or knowledge, actual or constructive.

If a motor vehicle is released under new section 84N without the payment of designated costs, the Chief Commissioner of Police may seek to recover the relevant amount from a person who is subsequently found guilty of a relevant offence.

New section 84O allows an application to be made to the Magistrates' Court for an order that an impounded or immobilised motor vehicle be released.
A person whose interests are substantially affected by the impoundment or immobilisation of a motor vehicle may, at any time while the motor vehicle is so impounded or immobilised, apply to the Magistrates' Court for an order that the motor vehicle be released on the grounds that the impoundment or immobilisation is causing, or will cause, exceptional hardship to any person. In addition to ordering the motor vehicle's release the Court may order that the applicant is not liable to pay all or part of the designated costs.

New section 84P makes it an offence to unlawfully move an impounded or immobilised motor vehicle or to tamper with any equipment used to immobilise it without reasonable excuse. It is also an offence to obstruct or hinder an authorised person exercising powers under the regime.

These offences which deter and punish non-compliance, are critical to the integrity of the impoundment, immobilisation and forfeiture regime.

An exception to the offence of moving an impounded or immobilised motor vehicle is provided for where there is a risk of imminent harm to the motor vehicle or to any person or property if the motor vehicle is obstructing access to any property.

New section 84Q provides for the recovery of impounded or immobilised motor vehicles upon the expiry of the designated period. It also provides for the continuing impoundment or immobilisation of a motor vehicle where these preconditions are not met.

Section 84Q provides that an impounded or immobilised motor vehicle must be released to the registered operator or any other person entitled to possession on—

- the expiration of the designated period;
- the payment of the designated costs;
- the provision of satisfactory evidence of his or her identity and entitlement to recover the motor vehicle; and
- compliance with any other prescribed particulars.
New section 84R provides that where the driver is found not guilty of the relevant offence that precipitated the impoundment or immobilisation and is not found guilty of any other relevant offence, or charges are withdrawn or never laid, the Crown must refund any designated costs paid to recover the motor vehicle and, if the motor vehicle has not been recovered, it must be immediately released without any designated costs payable.

**Division 3—Impoundment, Immobilisation or Forfeiture by Court Order**

Division 3 sets out the courts' powers to deal with repeat offenders by ordering motor vehicle impoundment or immobilisation for up to three months or ordering motor vehicle forfeiture. Any such order is in addition to the impoundment or immobilisation imposed by Victoria Police "on-the-spot" (or shortly thereafter) upon the detection of the relevant offence under Division 2.

New section 84S empowers the relevant court to deal with second time offenders by ordering motor vehicle impoundment or immobilisation for a period of up to three months.

Specifically, and upon application by the Chief Commissioner of Police, the relevant court may order that the motor vehicle used in the commission of a relevant offence, or a substituted motor vehicle, be impounded or immobilised for up to three months. The court may only make an impoundment or immobilisation order if satisfied that the defendant has been found guilty of one previous relevant offence in the three years prior to the commission of the relevant offence and since the commencement of this Bill. The court may not make a forfeiture order if the motor vehicle was stolen, hired or being used in any circumstances prescribed in the Regulations.

An order under this section is required to stipulate the time and place at which the registered operator of the motor vehicle is required to surrender it to a police member.

New section 84T empowers the relevant court to order that a motor vehicle used in the commission of a third or subsequent offence be forfeited to the Crown.
Specifically, and upon application by the Chief Commissioner of Police, the relevant court may order that the motor vehicle used, or a substituted motor vehicle, be forfeited to the Crown if the defendant has been found guilty of a relevant offence and two or more previous relevant offences within three years. The court may not make a forfeiture order if the motor vehicle was stolen, hired or being used in any circumstances prescribed in the Regulations.

An order under this section must stipulate the time and place at which the registered operator of the motor vehicle is required to surrender it to a police member.

New section 84U outlines the circumstances in which the Chief Commissioner of Police may apply for an impoundment or immobilisation order under new section 84S or a forfeiture order under new section 84T.

The Chief Commissioner of Police may make an application under new sections 84S or 84T if he or she believes on reasonable grounds that—

- the motor vehicle was used in the commission of the relevant offence, and was not at that time stolen or hired (these requirements do not apply to substituted motor vehicles); and
- the driver has, within three years of the commission of the relevant offence, been found guilty of a previous relevant offence or offences.

An application under new section 84U must be made within 28 days of sentencing.

New section 84V creates a substitution process whereby the Chief Commissioner of Police may seek an impoundment, immobilisation or forfeiture order against a motor vehicle registered in the offender’s name, rather than that used in the commission of the relevant offence. This substitution process ensures that the offender may be held to account as directly as possible in cases where the offender was not the registered operator of the motor vehicle that was used to commit the relevant offence.

A substitution application must be made in conjunction with an application for an impoundment or immobilisation order or a forfeiture order, and must specify the motor vehicle used in the relevant offence as well as the intended substitute. The court may make a substitution order if it is satisfied that it would not cause undue hardship to any person.
New section 84W requires the Chief Commissioner of Police to notify certain persons of his or her intention to seek an impoundment, immobilisation or forfeiture order and substitution order if the driver is subsequently found guilty of a relevant offence. Service of a notice under new section 84W both informs relevant persons of the possibility of an application and, in conjunction with section 84X, prevents the sale or disposal of the motor vehicle without the approval of the relevant court. This ensures that a person facing an impoundment, immobilisation or forfeiture order cannot merely sell the motor vehicle to subvert the operation of the legislation.

The Chief Commissioner of Police must give at least 28 days written notice of his or her intention to apply for an impoundment, immobilisation or forfeiture order or substitution order to the driver, the registered operator and any person whom the Chief Commissioner of Police is aware has an interest in the motor vehicle.

New sub-sections 84W(2) and (3) provide that a notice must state that an application for an impoundment, immobilisation or forfeiture order will be made if the driver is found guilty of a relevant offence; specify the motor vehicle in respect of which the application is sought; that a person named in the notice may appear at the hearing of the application and show cause as to why the order sought should not be made; and that a person on whom a notice is served must not sell or otherwise dispose of his or her interest in the motor vehicle without the relevant court's approval.

New sub-section 84W(4) prevents the serving of notices against both a motor vehicle used in the commission of the offence and a substituted motor vehicle at the same time.

New section 84X provides that a person on whom a notice is served under new section 84W must not, without the approval of the relevant court, sell or otherwise dispose of any interest in the motor vehicle referred to in the notice until such time as—

- the application referred to in the notice is made and determined; or
- the driver is found not guilty of a relevant offence; or
- the Chief Commissioner does not make the application referred to in the notice within 28 days of sentencing; or
- charges for the relevant offence are withdrawn and no other charges for a relevant offence arising out of the same single set of circumstances are laid.
The maximum penalty for a failure to comply with this provision is a 60 penalty unit fine.

New section 84Y allows the Chief Commissioner of Police to serve a notice on a person who has been charged with two or more relevant offences that have not been determined, advising that person of his or her intention to seek an impoundment, immobilisation or forfeiture order if the driver is convicted of two or more relevant offences. The notice must also be served on the registered operator of the motor vehicle and any known owner of the motor vehicle. A person upon whom a notice is served under new section 84Y must not sell or otherwise dispose of any interest in the motor vehicle until such time as—

- the application referred to in the notice is made and determined;
- the driver is found not guilty of one or more relevant offence which results in the driver being subject to only one remaining undetermined charge for a relevant offence;
- the Chief Commissioner of Police does not make an application for an impoundment, immobilisation or forfeiture order within 28 days of the driver being sentenced for the second or third relevant offence; or
- charges for one or more of the relevant offences specified in the notice are withdrawn leaving only one (or no) charges for a relevant offence outstanding.

This provision ensures that an offender does not benefit from the close proximity of his or her offending (ie: where a second or third relevant offence is committed before charges for the first relevant offence can be determined). This involves treating persons charged as provisional repeat offenders, pending the outcome of their charges. If findings of guilt are subsequently returned, a motor vehicle will be available for an impoundment, immobilisation or forfeiture order application as this section imposes a 60 penalty unit penalty if the motor vehicle in the notice is sold before any of the above events occur.

New section 84Z provides for the hearing of an application for an impoundment, immobilisation or forfeiture order.
New sub-section 84Z(1) provides that anyone served with a notice under new sections 84W or 84Y has a right to be heard at the hearing of an application to show cause why an order should not be made. Further, the relevant court may at its discretion allow any person to be heard if satisfied that the order may substantially affect that person's interests.

New sub-section 84Z(2) provides that the court must not make an impoundment, immobilisation or forfeiture order in relation to a motor vehicle if its registered operator proves to the court's satisfaction that the offence was committed without the knowledge or consent of the registered operator. For example, a parent may be the registered operator of a motor vehicle used by his or her child in the commission of a relevant offence. The parent may seek to prove to the court that he or she neither consented to, nor knew of, the offending behaviour.

New sub-section 84Z(3) provides that the court may decline to make an impoundment, immobilisation or forfeiture order if it is satisfied that to do so would cause exceptional hardship to any person.

New sub-section 84Z(4) requires the Chief Commissioner of Police to serve a notice on the driver and registered operator of a motor vehicle subject to an impoundment or immobilisation order that the motor vehicle and any item in it may be sold or otherwise disposed of if uncollected or unreleased within 2 months after being impounded or immobilised.

New section 84ZA allows a person whose interests are substantially affected by an impoundment, immobilisation or forfeiture order to apply to a court for the variation of such order. Such an application may only be made if the applicant can show his or her circumstances have changed since the order was made, and that the order is causing, or will cause, exceptional hardship to any person. The court may vary the order in any way, including setting it aside or reducing its duration.

New section 84ZB specifies when an impoundment, immobilisation or forfeiture order takes effect or ceases to have effect.
New sub-section 84ZB(1) provides that an impoundment, immobilisation or forfeiture order becomes effective on the expiration of the appeal period of either the conviction or the order, whichever is the later. Various Acts have been amended to provide that an impoundment, immobilisation or forfeiture order is a "sentencing order" or a "sentence" for the purposes of those Acts, allowing for the appeal of such an order.

However, new sub-section 84ZB(2) provides that an order has no effect if the conviction for a relevant offence is set aside on appeal. Furthermore, new sub-section 84ZB(3) provides that an order ceases to have effect if leave to appeal is successfully sought outside the relevant appeal period.

New sub-sections 84ZB(4), (5) and (6) provide a mechanism whereby compensation may be sought if a motor vehicle is forfeited on the basis of a conviction for a relevant offence which is subsequently overturned on appeal.

New section 84ZC accords police members and authorised persons acting under an impoundment, immobilisation or forfeiture order the same powers to seize and impound or immobilise the motor vehicle as are available under new sections 84G and 84I.

New section 84ZD provides that a motor vehicle may not be released following the expiry of an impoundment or immobilisation order until the designated costs are paid.

New section 84ZE provides that if a person can prove ownership of a motor vehicle to a court exercising powers under the impoundment, immobilisation or forfeiture regime, that person can make any application or exercise any right that a registered operator may make or exercise. This ensures fairness, cognisant that the ownership and registration of motor vehicles may not always coincide.

New section 84ZF provides a mechanism by which a person, other than the driver, who has an interest in a motor vehicle in respect of which a forfeiture order has been made, may apply to a court for an order that ownership of the motor vehicle be transferred to them (if they are the sole owner), or that they be paid out of the proceeds of sale an amount commensurate with the extent of their interest in the motor vehicle (if they are not the sole owner of the motor vehicle or if the motor vehicle has already been sold).
Such an application may only be made with the leave of the court if the person was served with a notice of the application for a forfeiture order under sub-section 84W(1) or if 6 months or more have elapsed since the forfeiture was made. Leave may only be granted if more than 6 months have elapsed if the court is satisfied that the delay in bringing the application is not due to the applicant's neglect. The court may only make an order under this section if the relevant offence occurred without the knowledge or consent of the applicant.

**Division 4—Search and Seizure Warrants**

New section 84ZG provides that a police member can apply in writing to a magistrate for a search and seizure warrant in respect of a motor vehicle that—

- is the subject of an impoundment, immobilisation or forfeiture order and has not been surrendered to the police;
- police suspect, on reasonable grounds, has been used within the last 48 hours in the commission of a relevant offence;
- is the subject of a notice served by police under new sub-section 84H(4) (where more than 48 hours have elapsed since the commission of a relevant offence) and the motor vehicle has not been surrendered.

An application 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 particular premises. The application must be supported by an affidavit, and the magistrate may request further information in support.

New section 84ZH provides that on an application under new section 84ZG the magistrate may issue a search and seizure warrant authorising the person(s) named in the warrant to enter the premises specified in the warrant, search for the specified motor vehicle (including using reasonable force to break open any structure that may house the motor vehicle) and seize the motor vehicle. The warrant must be in the prescribed form and state the purpose for which it has been issued, describe the motor vehicle authorised for seizure and give the address or a description of the premises to which it relates.
New section 84ZI requires the magistrate issuing a warrant to record a full description of the particulars of the grounds he or she has relied on to issue the warrant. The magistrate may, however, decline to record any matter that might identify a person if the magistrate believes that this might jeopardise that person's safety.

New section 84ZJ requires a person exercising a warrant to announce that he or she is entering the premises under a warrant and give any person at the premises the opportunity to allow entry.

New section 84ZK requires a person exercising a search and seizure warrant to give a copy of the warrant to the occupier of the premises, or any other person if the occupier is not present.

New section 84ZL provides that the person executing the warrant may use assistants in executing the warrant.

New section 84ZM extends the application of the Magistrates' Court Rules with respect to search warrants to those issued under this Division, unless this Division otherwise specifies.

New section 84ZN provides that a warrant under this Division expires after one month or when it has been executed, whichever occurs first.

New section 84ZO provides that the person to whom a warrant is issued under this Division must report back to the court on the results of the warrant's execution or the reasons why the warrant was not executed. The report must be in the prescribed form, and made within ten days after the warrant's expiry. The owner or occupier of the premises, or a person who has an interest in the motor vehicle that was the subject of the warrant, may apply to the court for an order authorising inspection of the warrant.

New section 84ZP makes it an offence to hinder or obstruct a person executing a warrant. The offence carries a maximum penalty of 60 penalty units.

Division 5—Disposal of Motor Vehicles

New section 84ZQ allows the Chief Commissioner of Police to sell or otherwise dispose of a motor vehicle or any item left in a motor vehicle which has not been collected within two months of the motor vehicle becoming available for collection or release from impoundment or immobilisation. However, this power may not be exercised unless all proceedings relating to the relevant offence that led to the impoundment or immobilisation have been finalised and any appeal period has expired; and the Chief Commissioner has served written notice on the registered owner
and operator at least 14 days before the intended sale or disposal; and has publicly advertised the intended sale or disposal at least 14 days before it is to occur. In addition, if the Chief Commissioner intends to dispose of an item or thing left in a motor vehicle, he or she must take all reasonable efforts to return the item or thing to its owner.

New section 84ZR allows the Chief Commissioner to sell or otherwise dispose of a motor vehicle or an item or thing left in a motor vehicle where the motor vehicle in question is the subject of a forfeiture order and the appeal period in respect of the order has expired.

New section 84ZS specifies the priority in which the proceeds of a sale under section 84ZQ or 84ZR are to be applied, as follows—

- to pay the costs of the sale;
- to pay any costs of impoundment or immobilisation;
- to discharge any security interest over the motor vehicle, such as a bank loan or a lease arrangement;
- to pay the registered operator of the motor vehicle if it was uncollected, or if the registered operator cannot be reasonably located for payment into the Consolidated Fund;
- to the Consolidated Fund if the motor vehicle was the subject of a forfeiture order.

Clause 5 amends sub-section 90C(1)(a) of the Road Safety Act 1986 to ensure that an authorised person under the new Part 6A is able to immobilise a motor vehicle without committing an offence under section 90C.

Clause 6 amends Schedule 2 to the Road Safety Act 1986 to provide the type of Regulations that may be made with respect to various matters in relation to impoundment, immobilisation or forfeiture.
PART 3—AMENDMENT TO VARIOUS ACTS—SENTENCING ORDERS

Clause 7 amends the Children and Young Persons Act 1989 to clarify that an impoundment, immobilisation or forfeiture order is a sentencing order under that Act.

Clause 8 amends the Children, Youth and Families Act 2005 to clarify that an impoundment, immobilisation or forfeiture order is a sentencing order under that Act.

Clause 9 amends the Crimes Act 1958 to clarify that an impoundment, immobilisation or forfeiture order is a sentence under that Act.

Clause 10 amends the Magistrates Court Act 1989 to clarify that an impoundment, immobilisation or forfeiture order is a sentencing order under that Act.

PART 4—AMENDMENT OF COMMONWEALTH GAMES ARRANGEMENTS ACT 2001

Clause 11 amends section 56AF of the Commonwealth Games Arrangements Act 2001 to provide that an authorised officer may remove a vehicle from a Games management area and the Secretary may also recover the costs of doing so. However, the authorised officer may not use force to enter the vehicle.

Clause 12 amends Schedule 5 of the Commonwealth Games Arrangement Act 2001 by extending the list of offences under that Act that are enforceable by infringement notice.

PART 5—AMENDMENT OF VARIOUS ACTS—DRUG OFFENCES

The Commonwealth Parliament has recently enacted the Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005. Among other things, that Act repeals certain existing drug offences under the Commonwealth Customs Act 1901 and amends the Commonwealth Criminal Code by inserting new drug offences including offences dealing with the importation and exportation of illicit drugs. Part 5 of this Bill amends various Victorian Acts which refer to the former drug offences in the Customs Act 1901 (Cth) to reflect these changes to Commonwealth laws.
Clause 13 amends section 4 of the **Bail Act 1977**, which sets out the circumstances in which a presumption against bail applies or in which the defendant must show cause as to why bail should not be denied.

Sub-clauses (1) and (2) amends section 4(2) which sets out the offences for which a presumption against bail applies, and which currently includes drug offences under the Commonwealth Customs Act 1901 in relation to a "commercial quantity" of a drug of dependence within the meaning of the Victorian **Drugs Poisons and Controlled Substances Act 1981**. This sub-clause amends sub-section 4(2)(aa) to make a savings provision for the old offences and to include similar provisions in relation to specified new drug importation and exportation offences under Division 307 of the Commonwealth Criminal Code amounting to a commercial quantity as defined under the Victorian Act.

Sub-clauses (3) and (4) amends sub-section 4(4) which sets out the offences for which the defendant must show cause why bail should not be denied, and includes relevant drug offences under the Customs Act 1901. This sub-clause amends sub-section 4(4)(cb) to make a savings provision for the old offences and adds a new paragraph to require that a defendant charged with a specified new Commonwealth drug importation or exportation offence must show cause as to why bail should not be denied. This new paragraph differs from the amendments to section 4(2)(aa) as the quantity of drugs may be less than a commercial quantity under the Victorian Act.

Clause 14 amends section 76 of the **Drugs Poisons and Controlled Substances Act 1981**, which provides that in certain circumstances where a defendant has been charged with specified minor drug offences, the court may allow a person with no relevant prior convictions to be released upon an undertaking and not convicted. Section 76(1)(b) sets out the relevant offences and paragraph (v) specifically refers to offences under Division 2 of Part XIII of the Customs Act 1901. This clause has the effect of incorporating references in section 76(1)(b) to specified new drug importation and exportation offences set out in Division 307 of the Criminal Code.

Clause 15 amends Schedule 1 to the **Sentencing Act 1991**, which lists the offences for which an offender may be classed as a "serious offender" under Part 2A of the **Sentencing Act 1991**. Schedule 1 includes drug offences previously contained in the Customs Act 1901. This clause inserts the relevant new offences now provided in Division 307 of the Criminal Code.
Under the new drug importation and exportation offences inserted in Division 307 of the Criminal Code, prior findings of guilt or convictions for marketable quantities of drugs will no longer directly affect the sentence imposed, and defendants committing trafficking offences in relation to cannabis will not enjoy the lesser penalty previously available under the Customs Act 1901. This approach is consistent with the provisions applicable to defendants charged with comparable offences under the Victorian Drugs Poisons and Controlled Substances Act 1981.

Clause 16 makes a consequential amendment to section 50 of the Working with Children Act 2005 which, when that Act commences, will amend Schedule 1 to the Sentencing Act 1991 to ensure that any drug offence committed in Victoria or elsewhere, that is the equivalent of one of the offences specified in the Sentencing Act 1991, will be treated as if it were included in the Schedule. The effect of this clause is to incorporate in the Working with Children Act 2005 the amendments made in Clause 15.