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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

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

(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 50, 50AAB(5) and 50A by the Secretary to the Department of Human Services within the meaning of the Health Act 1958;
accredited driver education program means a program that is run by an accredited agency and that is approved for the purposes of section 50A by the Secretary to the Department of Human Services within the meaning of the Health Act 1958;

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 imposed on a driver licence or permit in accordance with a direction under section 50AAA;

approved alcohol interlock means an alcohol interlock of a type approved by the Corporation under section 50AAE(3);
**approved alcohol interlock supplier** means a person or body approved by the Corporation under section 50AAE(5);

**approved health professional** means—

(a) a nurse registered under the Health Professions Registration Act 2005 in division 1 of the register kept under that Act;

(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 or for a system involving the use of an intelligent transport system.
**associate**, of another person, means any of the following persons—

(a) a spouse, parent, brother, sister or child of the other person;

(b) a member of the other person's household;

(c) a partner of the other person;

(d) a trustee or beneficiary of the same trust as the other person;

(e) a trustee of a trust of which the other person is a beneficiary;

(f) a beneficiary of a trust of which the other person is a trustee;

(g) a body corporate if the other person is a director or member of the governing body of the body corporate;

(h) a director or member of the governing body of a body corporate if the other person is the body corporate;

(i) a body corporate (other than a public company whose shares are listed on a stock exchange) of which the other person is a shareholder;

(j) a shareholder of the other person if the other person is a body corporate (other than a public company whose shares are listed on a stock exchange);

(k) a related body corporate of the other person within the meaning of the Corporations Act;

(l) a person with whom a chain of relationships with the other person can be traced under any one or more of the above paragraphs;
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;

beneficiary, of a trust, includes an object of a discretionary trust;

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) 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;

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

bus company has the same meaning as in the Transport Act 1983;
Part 1—Preliminary

**Business 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;

---

**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 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;

*container weight declaration* has the meaning set out in section 183, and includes a copy of such a declaration;

*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;
dentist means a dentist registered under the Health Professions Registration Act 2005;

Director of the Victorian Institute of Forensic Medicine means the Director within the meaning of the Coroners 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—

(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 (1), (1A), (1AB), (1B) or (1E) of section 50;
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 (1), (1A), (1AB), (1B) or (1E) of section 50;

**engage in conduct** means—

(a) do an act; or
(b) omit to do an act;

**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);

**fatigue regulated heavy vehicle** has the meaning given by section 191B;

**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;

**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;

\[ \textit{GVM} \] (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;

\* \* \* \* \* \* \*

\textit{heavy vehicle} means a motor vehicle or trailer that has a GVM greater than 4.5 tonnes, and includes—

(a) any other vehicle that is physically connected to the heavy vehicle (even if that other vehicle is not a heavy vehicle); and

(b) a bus that is used, or that is intended to be used, to carry passengers for reward or in the course of a business;
highway means road or road related area;

hire-purchase agreement means hire-purchase agreement within the meaning of the Fair Trading Act 1999;

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 member of the police force;

intelligent transport system means a system involving the use of electronic or other technology (whether located in or on a vehicle or elsewhere) that has the capacity to monitor, collect, store, display, analyse or transmit information relating—
(a) to a vehicle or its equipment or load, the driver of a vehicle, the operator of a fleet of vehicles or another person involved in road transport; and

(b) without limiting paragraph (a), to the operation of a vehicle in relation to its legal entitlements;

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

**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);

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;

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

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

(a) a vehicle intended to be used on a railway or tramway; or

(b) a motorised wheel-chair capable of a speed of not more than 10 kilometres per hour which is used solely for the conveyance of an injured or disabled person; or

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

**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
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—

(a) section 90E; or 

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

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

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

*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 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 pharmacist registered under the Health Professions Registration Act 2005;

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 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;

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;

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
(c) a person who is referred to in paragraph (c) or (e) of section 77(2);

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

Rail Track means Victorian Rail Track established by Division 2 of Part 2 of the Rail Corporations Act 1996;

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 medical practitioner registered under the Health Professions Registration Act 2005;

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;
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 subcontractor 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;

(b) the Transport Act 1983;
(c) any regulation made under this Act or the *Transport Act 1983*;

*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);

*Secretary* means the Secretary to the Department of Infrastructure;

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

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

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

*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 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 or the regulations which is a prescribed offence for the purposes of Part 7; or

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

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

(d) a drink-driving infringement; or

(e) an excessive speed infringement; or

(f) a drug-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 receival 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;

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 8 to the Road Safety (Vehicles) Regulations 1999 or in accordance with a law of another State or a Territory that corresponds with that clause;

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

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

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

(b) the parking of vehicles; and

(c) any other prescribed offence; and

(d) any other prescribed matter—

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

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

(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.

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 or fatigue regulated heavy vehicle that is physically connected to one or more other vehicles (even if those other vehicles are not heavy vehicles or fatigue regulated 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.

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
(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.

S. 5AB(1)(g) amended by No. 92/2001 s. 7(c).

S. 5AB(1)(ga) inserted by No. 49/2004 s. 25.

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

S. 5AB(1)(k) substituted by No. 92/2001 s. 7(d).
(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 or, with the consent of that person, to any other vehicle registered by the Corporation; 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 any 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; and

(f) are, by force of this paragraph, 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 has before
that expiry notified the Corporation of their
wish to retain the registration number that is
the subject of those rights.

(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.

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

#### 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.
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.

(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 member of the police force may at any reasonable time inspect a motor vehicle or trailer which is being used on a highway if the
officer or member 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 member of the police force 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 officer or member has reasonable grounds for suspecting has within the preceding 30 days been used or will be used on a highway if the officer or member 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 member of the police force decides to be appropriate.

(5) A person who refuses or fails—

(a) to allow a motor vehicle or trailer to be inspected when required under this section; or
Part 2—Registration

(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 person employed under Part 3 of the Public Administration Act 2004 in the police force of Victoria 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 Infrastructure authorised in writing by the Secretary to the Department of Infrastructure for the purposes of this section.

14 Defective vehicles

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

(a) issue a warning or a vehicle defect notice; or

(b) impose conditions on the use of the vehicle; or

(c) prohibit the use of the vehicle.
Part 2—Registration

Road Safety Act 1986
No. 127 of 1986

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.
(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.

(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 or cancellation; and

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

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

(9) On an appeal against a decision of the Corporation made under 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 member of the police force may take possession of any number plate which the officer or member has reasonable grounds for suspecting—

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

(b) was not issued in accordance with this Act and the regulations—

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

(1A) A member of the police force, 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 member has reasonable grounds for suspecting—

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

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

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

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

and may return it to the Corporation or retain it until the member is satisfied that circumstances exist that allow it to be used without being subject to being taken possession of under this subsection.
(2) In this section *authorised officer for the purposes of this section* means—

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

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

**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—

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

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

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

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

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

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

repairable write-off means a written-off vehicle that—

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

(b) 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 that is written off and is—

(a) a motor vehicle (other than a motor cycle) that has been damaged by at least 3 of the following impact damage indicators—

   (i) damage to an area of the roof equal to or exceeding 300 millimetres by 300 millimetres; or

   (ii) damage to an area of the cabin floor pan equal to or exceeding 300 millimetres by 300 millimetres; or

   (iii) damage to an area of the firewall equal to or exceeding 300 millimetres by 300 millimetres; or

   (iv) any damage to the suspension; or

   (v) damage (cracked or broken) to major mechanical components such as the engine block and transmission casings; or
(b) a motor cycle that has impact damage (excluding scratching) to the suspension and at least 2 areas of structural frame damage; or

(c) a motor vehicle (other than a motor cycle) that has been—
   (i) immersed in salt water above the doorsill level for any period; or
   (ii) immersed in fresh water up to the dashboard or steering wheel for more than 48 hours; or

(d) a motor cycle that has been—
   (i) fully immersed in salt water for any period; or
   (ii) fully immersed in fresh water for more than 48 hours; or

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

(f) a motor vehicle that has been stripped of all, or a combination of most, interior and exterior body parts, panels and components; or

Examples

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

(g) entered on an interstate written-off vehicles register in a corresponding category to statutory write-off under this Division;
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 member or members of the police force.

(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.
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 in accordance with the regulations.

(2) Entries on the register of written-off vehicles may be made, amended and removed only in accordance with the regulations.

(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.

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

(4) If—

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

(b) a member of the police force 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.
(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.

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

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

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

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

      except as permitted by the regulations.
PART 3—LICENSING OF DRIVERS

17 Purposes of licensing

The purposes of licensing are—

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

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), that the person may have been subject to a direction under section 50AAA(1A) or 50AAA(3A) or would have been subject to a direction under section 50AAA(2), 50AAA(2A) or 50AAA(3)(b) had the person applied under section 50(4) for an order as to the issue of a driver licence or permit...
or, having applied under that section, had the court not refused to make the order sought, that person is liable to a fine of not more than 30 penalty units or to imprisonment for a term of 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.

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.
Part 3—Licensing of Drivers

Road Safety Act 1986
No. 127 of 1986

(7) A person who holds a full driver licence issued only because of the order of the Magistrates' Court made on an application under section 50(4) of this Act or section 89(2) of the 
Sentencing Act 1991
must have the licence in his or her possession while driving or in charge of a motor vehicle at any time during the period of 3 years (or any longer period during which an alcohol interlock condition as defined in section 3(1) of this Act or section 87P(1) of the 
Sentencing Act 1991, as the case requires, applies to the licence) from the first issue of a licence on that order.3

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: 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

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S. 19(8) inserted by No. 81/2006 s. 16.

S. 19A inserted by No. 12/2006 s. 182 (as amended by No. 32/2006 s. 53(6)).
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 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), vary that licence to convert it into a full 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.
23A Information to be given to applicants for licences or permits

The Corporation must ensure that an applicant for a driver licence or a learner permit is informed at the time of making the application that any information given or document submitted in connection with the application, or a copy of such a document, may be disclosed or used for investigation, law enforcement and other purposes in accordance with section 92.

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;

(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;

(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.
25 Demerits Register

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

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

(3) The Corporation must serve a notice (a demerit point option notice) containing the prescribed particulars on—

(a) the holder of 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 if he or she incurs—

(i) 5 or more demerit points within any 1 year period; or

(ii) 12 or more demerit points within any 3 year period.
(3A) A person on whom a demerit point option notice is served may, within 21 days after service of the notice, notify the Corporation that he or she elects to extend the demerit point period.

(3B) If a person notifies the Corporation under subsection (3A) that he or she elects to extend the demerit point period, the Corporation must, if the person incurs 1 or more additional demerit points in relation to any offence committed within the 12 month period commencing on the date determined by the Corporation and specified in the demerit point option notice as the commencement date of the 12 month period—

(a) in the case of a person who holds a full driver licence or who holds a learner permit or probationary driver licence and also holds, or has held, a full driver licence, suspend the licence or permit for 6 months and an additional 2 months for each 4 demerit points in excess of 12 recorded against the person as at the date of issue of the demerit point option notice; and

(b) in the case of a person who holds a learner permit or probationary driver licence and who does not hold, and has never held, a full driver licence, suspend the permit or licence for—

(i) 6 months in respect of the first 5 demerit points recorded against the person as at the date of issue of the demerit point option notice; and
(ii) an additional 2 months for each
4 demerit points in excess of 5 recorded
against the person as at that date; and

(b) when calculating demerit points recorded
against the person referred to in
paragraph (a) or (ab) at any time after the
end of the period of suspension, disregard all
demerit points recorded against the person as
at the date of issue of the demerit point
option notice; and

(c) serve on the person referred to in
paragraph (a) or (ab) a notice containing
the prescribed particulars.

(3C) If a person notifies the Corporation under
subsection (3A) that he or she elects to extend the
demerit point period, the Corporation must, if the
person incurs no additional demerit points in
relation to any offence committed within the
12 month period commencing on the date
determined by the Corporation and specified in
the demerit point option notice as the
commencement date of the 12 month period,
when calculating demerit points recorded against
that person at any time after the end of that
12 month period, disregard all demerit points
recorded against that person as at the date of issue
of the demerit point option notice.
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(3D) If a person on whom a demerit point option notice is served does not, in accordance with subsection (3A), notify the Corporation that the person elects to extend the demerit point period, the Corporation must—

(a) for a demerit point option notice returned to the Corporation as undelivered to the person—

(i) decide to serve another demerit point option notice on the person under subsection (3) as soon as practicable after the person—

(A) next applies for or renews the person's driver licence or learner permit; or

(B) next applies to register, or renew the registration of, a motor vehicle for which the person is the registered operator; or

(C) otherwise advises the Corporation of the person's current address; or

(ii) take action under paragraph (b); or

(b) otherwise—suspend the person's driver licence (whether or not a probationary driver licence) or learner permit for the period calculated in accordance with subsection (3E).

(3E) For the purposes of subsection (3D)(b), the period for which a person's driver licence or learner permit must be suspended is—

(a) 3 months, and an additional 1 month for each 4 demerit points in excess of 12 recorded against the person as at the date the demerit point option notice was issued—

(i) for a full driver licence; or
(ii) for a learner permit or probationary driver licence if the person also holds, or has held, a full driver licence; or

(iii) for a learner permit or probationary driver licence if the person incurred 12 or more demerit points within any 3 year period but not 5 or more within any 12 month period; or

(b) 3 months, and an additional 1 month for each 4 demerit points in excess of 5 recorded against the person as at the date the demerit point option notice was issued—

(i) for a learner permit or probationary driver licence; and

(ii) if the person does not hold, and has never held, a full driver licence; and

(iii) if the person incurred 5 or more demerit points within any 12 month period.

(3F) If the Corporation suspends a person's driver licence or learner permit under subsection (3D)(b), the Corporation must, when calculating demerit points recorded against the person at any time after the end of the period of suspension, disregard all demerit points recorded against the person as at the date of issue of the demerit point option notice.

(4) The suspension of a driver licence or learner permit under this section takes effect on and from the date determined by the Corporation and specified in the demerit point option notice or a notice under subsection (3B)(c).
(4AA) For the purposes of subsection (4), if a demerit point option notice is returned to the Corporation as undelivered to the person and the Corporation decides, under subsection (3D)(a)(i), to serve another demerit point option notice on the person, the suspension takes effect on and from the date specified in the later notice.

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

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

(4BA) Subsection (4B) does not apply if—

(a) a person is prosecuted under section 30 for driving while a suspension under this section is in force; 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).

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

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

(5) The circumstances in which demerit points are cancelled are as prescribed.
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(6) The fact that demerit points are recorded against the holder of a driver licence or learner permit is not admissible in evidence except—

(a) in proceedings on an appeal under section 26AA(1); or

(b) if it is necessary to give evidence of that fact in order to establish—

(i) that the holder of the licence or permit had been sent a notice advising him or her that he or she had incurred demerit points; or

(ii) that the licence or permit had been suspended under this Act; or

(iii) that the holder of the licence or permit had been served with a notice advising him or her of such a suspension.

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—

the applicant or holder 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 or variation; and

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

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

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

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

(b) was required by the regulations—

the court must confirm the decision of the Corporation.

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

26AA Appeal to Magistrates' Court—demerit points

(1) If the Corporation suspends a driver licence or learner permit in accordance with section 25(3B)(a), (3B)(ab) or (3D), the holder of the driver licence or learner permit may, in accordance with the regulations and subject to subsection (2), appeal against that suspension to the Magistrates' Court.

(2) An appeal under subsection (1) against a suspension may only be made on either or both of the following grounds—

(a) that the Corporation recorded certain demerit points other than as required by the regulations;
(b) 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).

(3) The giving, in accordance with the regulations, of a notice of appeal under subsection (1) stays the suspension of the licence or learner permit 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) If the court is satisfied that the suspension was required by the regulations or section 25, the court must confirm the suspension.

(5) On an appeal under subsection (1) the court may—

(a) in allowing the appeal, direct the Corporation—

(i) to record the demerit points as required by the regulations; or

(ii) to correct the error made in the addition of the number of demerit points incurred by the appellant in a relevant period; or

(b) in dismissing the appeal, order that the suspension take effect from a date specified in the order.
(6) Every decision of the Magistrates' Court on an appeal under this section must be given effect to by the Corporation.

### 26A Appeal to Magistrates' Court against police decision

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

(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 member of the police force; and

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

### 27 Power of Corporation to require tests to be undergone

(1) The Corporation may require the holder of a driver licence or a permit or an applicant for a driver licence, a driver licence variation or a permit to undergo a test or tests to find out if that person is unfit to drive, or if it is dangerous for that person to drive, motor vehicles or a category or categories of motor vehicles.

(2) A person may be required under subsection (1) to undergo a test of health or competence or any other appropriate test to be carried out by a person specified by the Corporation.
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(3) A test must be carried out by a person of the class prescribed in relation to that class of test.

(4) No action may be taken against a person who carries out a test under this section and who expresses to the Corporation an opinion formed by that person as a result of the test.

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

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

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

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 load restraint limit or requirement; 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.

(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 be limited in its application to a category or categories of motor vehicles and such an order has effect according to its terms and this section applies to such an order with such modifications as are necessary.

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

(6) Subsection (1) does not apply to an offence to which section 66 applies unless the court is satisfied that the person convicted or found guilty of the offence was the actual driver of the motor vehicle at the time of the offence.

(7) A driver licence or permit cancelled by a court is of no effect and a person whose licence or permit is cancelled is (without affecting the power of the court to impose a longer period) disqualified from obtaining a further licence or permit for the period specified by the court or, if no period is specified, for 3 months.

* * * * *

Note

A period during which a licence or permit is cancelled or suspended under this section is in addition to, and does not count as part of, a period of suspension under section 25 (see section 25(4C) and (4D)).
s. 28A
28A Effect of suspension of licence or permit

A driver licence or permit suspended by a court or by the Corporation or by operation of this Act 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.

s. 28B
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 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.

s. 29
29 Appeal to County Court

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

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

Penalty: For a first offence, 30 penalty units or imprisonment for 4 months;
For a subsequent offence, imprisonment for not less than 1 month and not more than 2 years.

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

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.

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.
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(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 Infrastructure may, on the application of the holder of a full driver licence, grant a driving instructor authority if the Secretary is satisfied that the applicant is qualified to hold such an authority.

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

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

(b) to pass a training course approved by the Secretary or otherwise demonstrate to the Secretary's satisfaction that he or she is competent to hold an authority; and

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

(3) An authority authorises the holder to teach other persons to drive a motor vehicle, other than a motor cycle, with a GVM of not more than 4.5 tonnes and with a seating capacity of not more than 12 adults including the driver, for the term, and subject to any conditions, specified in the authority.
(4) The Secretary may, by notice in writing to the applicant, refuse to grant an authority.

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

(6) On an appeal under 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 (14) the court must—

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

(b) hear any relevant evidence tendered by the appellant or the Secretary; and
(c) without limiting its discretion, take into consideration anything that the Secretary ought to have considered.

(16) Every decision of the Magistrates' Court on an appeal under 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.
s. 34

Pt 4 (Heading and ss 34–46) amended by Nos 12/1989 s. 4(1)(Sch. 2 items 105.2, 105.3), 44/1989 s. 41(Sch. 2 item 34.4), 13/1992 s. 4, repealed by No. 57/1998 s. 4(4)(e).
PART 5—OFFENCES INVOLVING ALCOHOL OR OTHER DRUGS

47 Purposes of this Part

The purposes of this Part are to—

(a) reduce the number of motor vehicle collisions of which alcohol or other drugs are a cause; and

(b) reduce the number of drivers whose driving is impaired by alcohol or other drugs; and

(c) provide a simple and effective means of establishing that there is present in the blood 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 under section 318(1) of the Crimes Act 1958 where the culpable driving is constituted by behaviour referred to in paragraph (c) or (d) of section 318(2) of the Act—

(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 member of the police force or an officer of the Corporation to enter that dwelling without a warrant.
49 Offences involving alcohol or other drugs

(1) A person is guilty of an offence if he or she—

(a) drives a motor vehicle or is in charge of a motor vehicle while under the influence of intoxicating liquor or of any drug to such an extent as to be incapable of having proper control of the motor vehicle; or

(b) drives a motor vehicle or is in charge of a motor vehicle while the prescribed concentration of alcohol or more than the prescribed concentration of alcohol is present in his or her blood or 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

(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
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(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 member of the police force 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(1A) inserted by No. 111/2003 s. 7(4A)(a) (as amended by No. 49/2004 s. 41(1)).
(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 member of the police force requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(ii) the member of the police force 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
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(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 12 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
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(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 defendant 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 defendant 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 defendant 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 defendant is guilty of that offence but is satisfied that the defendant is guilty of an offence under paragraph (ba) of that subsection, the court may find the defendant guilty of an offence under paragraph (ba) and punish the defendant accordingly.

(9) If on a prosecution for an offence under paragraph (ba) of subsection (1), the court is not satisfied that the defendant is guilty of that offence but is satisfied that the defendant is guilty of an offence under paragraph (bb) of that subsection, the court may find the defendant
guilty of an offence under paragraph (bb) and punish the defendant accordingly.

49A Accredited agencies

(1) A person or body may apply to the Secretary to the Department of Human Services for—

(a) approval for itself for the purposes of sections 50, 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 Human Services, as required by the regulations, the fee prescribed in respect of—

(a) the making of the application;

(b) the processing of the application, including any visits made to the applicant;

(c) the granting, renewal or variation of an approval.

(3) The Secretary to the Department of Human Services may grant an approval subject to any conditions, limitations or restrictions specified in the approval.

(4) The regulations may specify the period during which an approval continues in force.
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50 Provisions about cancellation and disqualification

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

(a) the concentration of alcohol—
   (i) in the blood of that person was less than 0.05 grams per 100 millilitres of blood; or
   (ii) in the breath of that person was less than 0.05 grams per 210 litres of exhaled air—
   as the case requires; and

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

(1A) Subject to subsection (1AB), on convicting a person, or finding a person guilty, of an offence under section 49(1)(b), (f) or (g) in circumstances in which subsection (1) does not apply, the court must, if the offender holds a driver licence or permit, cancel that licence or permit and, whether or not the offender holds a driver licence or permit, disqualify the offender from obtaining one for such time as the court thinks fit, not being less than—
(a) in the case of a first offence, the period specified in Column 2 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule; and

(b) in the case of a subsequent offence, the period specified in Column 3 of Schedule 1 ascertained by reference to the concentration of alcohol in the blood or breath of the offender as specified in Column 1 of that Schedule.

(1AB) If a court finds a person guilty of an offence under section 49(1)(b), (f) or (g) but does not record a conviction, the court is not required to cancel a driver licence or permit or disqualify the offender from obtaining one in accordance with subsection (1A) if it appears to the court that at the relevant time the concentration of alcohol in the blood or breath of the offender—

(a) in the case of a person previously found guilty of an offence against any one of the paragraphs of section 49(1) or any previous enactment corresponding to any of those paragraphs or any corresponding law, was less than 0.05 grams per 100 millilitres of blood or 210 litres of exhaled air (as the case requires); or

(b) in any other case, was less than 0.07 grams per 100 millilitres of blood or 210 litres of exhaled air (as the case requires).

(1AC) Subsection (1AB)(b) does not apply to a person who, at the time the offence was committed, was under the age of 26 years.
(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.
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(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 may, 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 more than—

(a) in the case of a first offence, 6 months; and

(b) in the case of a subsequent offence, 12 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.
(3) Except on the order of the Magistrates' Court made on an application under subsection (4), a driver licence or permit must not be issued to a person who has been disqualified from obtaining one under this section or section 89C unless—

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

(b) the concentration of alcohol—

(i) in the blood of that person was less than 0.07 grams per 100 millilitres of blood; or

(ii) in the breath of that person was less than 0.07 grams per 210 litres of exhaled air—

as the case requires; and

(c) it was that person's first such offence.

(4) A person to whom subsection (3) applies may, at the end of the period of disqualification and on giving 28 days written notice of the application and of the venue of the Court at which it is to be made to the Chief Commissioner of Police and the appropriate registrar of the Court, apply to the Magistrates' Court for an order as to the issue of a driver licence or permit.

(4A) If a person applies under subsection (4) for an order and the offence in respect of which the person was disqualified was—
(a) an offence under section 49(1)(b), (f), or (g) which was—

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

(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; or

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

the court must have regard to the reports referred to in subsection (4B).

Note

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

(4B) A person who applies for an order under subsection (4) and to whom subsection (4A)(a) or (4A)(b) applies must obtain from an accredited agency—
(a) at least 12 months (or, if the offence in respect of which the person was disqualified was an offence under section 49(1)(ba), (ca) or (ea), at least 6 months) before applying for the order, an assessment report about the person's usage of alcohol or drugs, as the case requires; and

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

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

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

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

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

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

Note to s. 50(4B)
inserted by No. 12/2002 s. 6(b), amended by No. 81/2006 s. 4(4)(d).

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

Note to s. 50(4D)
inserted by No. 89/1991 s. 11, amended by No. 14/2000 s. 7(4).
(b) without limiting the generality of its discretion, the court must have regard to—

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

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

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

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

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

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

50AAA Direction to impose alcohol interlock condition

(1) This section applies if—

(a) a person was disqualified under section 50 from obtaining a driver licence or permit because he or she was convicted or found guilty of an offence under section 49(1)(a) (other than an offence involving only drugs) or under section 49(1)(b), (c), (d), (e), (f) or (g); and

(b) the offence was not an accompanying driver offence; and
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(c) the person makes an application
under section 50(4) for an order as to the
issue of a driver licence or permit; and

(d) the court considers it appropriate to make the
order.

(1A) If—

(a) the offence was a first offence; and

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

(c) the concentration of alcohol—

(i) in the person's blood at the relevant
time was 0·07 grams or more per
100 millilitres of blood but less than
0·15 grams per 100 millilitres of blood;
or

(ii) in the person's breath at the relevant
time was 0·07 grams or more per
210 litres of exhaled air but less than
0·15 grams per 210 litres of exhaled
air—

as the case requires—

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

Note

For approved alcohol interlock and approved alcohol
interlock supplier, see section 3(1).
(2) If—

(a) the offence was a first offence; and

(b) either—

(i) the offence was under section 49(1)(a) (other than an offence involving only drugs) or section 49(1)(c), (d) or (e); or

(ii) in the case of an offence under section 49(1)(b), (f) or (g), the concentration of alcohol—

(A) in the person's blood at the relevant time was 0.15 grams or more per 100 millilitres of blood; or

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

as the case requires—

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

(2A) Despite subsection (1A), if—

(a) the offence was a first offence; and

(b) either—

(i) the offence was under section 49(1)(a) (other than an offence involving only drugs) or section 49(1)(c), (d) or (e); or

(ii) in the case of an offence under section 49(1)(b), (f) or (g), the concentration of alcohol—

(A) in the person's blood at the relevant time was 0.15 grams or more per 100 millilitres of blood; or

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

as the case requires—

on making the order, the court must direct the Corporation that it can only grant the person a driver licence or permit that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by such a supplier.
(ii) in the case of an offence under section 49(1)(b), (f) or (g), the concentration of alcohol—

(A) in the person's blood at the relevant time was 0.07 grams or more per 100 millilitres of blood;
or

(B) in the person's breath at the relevant time was 0.07 grams or more per 210 litres of exhaled air—
as the case requires; and

(c) at the time of the offence the person was—

(i) under the age of 26 years; or

(ii) the holder of a probationary driver licence—

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

(3) Subject to subsection (3A), if the offence was not a first offence—

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

(3AA) If the offence was an offence referred to in subsection (2), (2A) or (3), then, despite section 50(4A) and (4B), the person is not required to obtain, and the court is not required to have regard to, a report referred to in section 50(4B)(a).

(3A) Despite subsection (3) or (3AA), if—

(a) the offence was not a first offence; and

(b) the person was disqualified under section 50 from obtaining a driver licence or permit on or before the commencement of section 10 of the Road Safety (Alcohol Interlocks) Act 2002—

subsection (3AA) has no application to the offence and, on making the order, the court may direct the Corporation that it can only grant the person a driver licence or permit that is subject to a condition that the person must only drive a motor vehicle with an approved alcohol interlock installed and maintained by an approved alcohol interlock supplier or a person or body authorised by such a supplier.
(4) For the purposes of this section, in determining whether an offence referred to in subsection (1)(a) 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 drugs) or of an offence under section 49(1)(ba), (bb), (h) or (i) is to be disregarded, despite section 48(2).

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

(1) If the court gives a direction under section 50AAA(1A), 50AAA(2), 50AAA(2A), 50AAA(3)(b) or 50AAA(3A), it must specify in the direction a period during which the person concerned cannot apply to the court for the removal of an alcohol interlock condition imposed on his or her driver licence or permit.

(2) If the direction is given under section 50AAA(1A), 50AAA(2) or 50AAA(2A), the specified period must be at least 6 months after the condition is imposed.

(3) If the direction is given under section 50AAA(3)(b) or 50AAA(3A), the specified period must be—

(a) at least 12 months after the condition is imposed in the case of a second offence under section 49(1)(b), (f) or (g) where the concentration of alcohol—

(i) in the person's blood at the relevant time was less than 0.15 grams per 100 millilitres of blood; or
(ii) in the person's breath at the relevant time was less than $0.15$ grams per 210 litres of exhaled air—
as the case requires; or

(b) in any other case, at least 4 years after the condition is imposed.

(4) The Corporation must not remove an alcohol interlock condition imposed on a person's driver licence or permit unless the court orders, on the application of the person made at the end of the specified period and on giving 28 days written notice of the application and of the venue of the Court at which it is to be made to the Chief Commissioner of Police, that the condition be removed.

(5) Within 28 days before applying for the removal of an alcohol interlock condition imposed on a person's driver licence or permit, the person must obtain from an accredited agency a report that—

(a) covers all of the period, but at least 6 months, since an approved alcohol interlock was installed by an approved alcohol interlock supplier, or a person or body authorised by such a supplier, in a motor vehicle driven by the person during that period; and

(b) includes—

(i) an assessment by each approved alcohol interlock supplier who maintained or authorised a person or body to maintain the approved alcohol interlock during that period on the extent to which the person complied with the manufacturer's instructions for
using the approved alcohol interlock; and

(ii) an assessment of the person's use of alcohol during that period; and

(iii) the last licence restoration report obtained by the person.

(6) In determining whether to make an order to remove an alcohol interlock condition imposed on a person's driver licence or permit—

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

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

(i) the person's use of alcohol in the period since the condition was imposed; and

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

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

(iv) any report obtained under subsection (5).
50AAC Appeals against direction or period specified in direction

(1) If the court gives a direction under section 50AAA(1A), 50AAA(2), 50AAA(2A), 50AAA(3)(b) or 50AAA(3A), the person in respect of whom the direction is given may appeal to the County Court under section 83 of the Magistrates' Court Act 1989 against—

(a) in the case of a direction under section 50AAA(1A)—

(i) the giving of the direction; or

(ii) the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock condition if that period is more than 6 months; or

(ab) in the case of a direction under section 50AAA(2) or 50AAA(2A)—the period specified in the direction during which the person cannot apply for the removal of an alcohol interlock condition if that period is more than 6 months; or

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

(c) in the case of a direction under section 50AAA(3A)—

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

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

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

50AAD Offences and immobilisation orders

(1) A person whose driver licence or permit is subject to an alcohol interlock condition is guilty of an offence if—

(a) the person breaches that condition; or

(b) the person drives a motor vehicle with an approved alcohol interlock in accordance with that condition but the motor vehicle has been started—

(i) with the approved alcohol interlock disengaged; or

(ii) in a way that does not comply with the manufacturer's instructions for the use of the approved alcohol interlock; or

(iii) in a way other than by the person blowing directly into the appropriate part of the approved alcohol interlock.

Note

Sections 50AAH and 50AAI may affect whether a person has breached the condition.
(2) A person who is guilty of an offence against subsection (1) is liable to a fine of not more than 30 penalty units or to imprisonment for a term of not more than 4 months.

(3) If—

(a) a person breaches an alcohol interlock condition by driving a motor vehicle with a type of alcohol interlock—

(i) the approval of which is cancelled under section 50AAH; or

(ii) that is installed or maintained by a person or body whose approval as an alcohol interlock supplier is cancelled under section 50AAI; or

(iii) that is installed or maintained by a person or body who would be authorised by an approved alcohol interlock supplier except that the supplier's approval is cancelled under section 50AAI; and

(b) the person is charged with an offence against 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 or authorised by such a supplier, as the case may be.

(4) A court finding a person guilty, or convicting a person, of an offence against 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.

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

(1) A person or body may apply to the Corporation for—

   (a) approval of a type of alcohol interlock; or
   
   (b) approval as an alcohol interlock supplier—
   
   for the purposes of this Act.

(2) An application must be made in the manner and form determined in writing by the Corporation and must be accompanied by—

   (a) the prescribed application fee (if any); and
   
   (b) any other things that are prescribed.

(3) The Corporation may approve, in writing, a type of alcohol interlock if it is satisfied that—

   (a) the person or body applying for the approval has a right to sell or lease the type of alcohol interlock; and
(b) the type of alcohol interlock is suitable to be approved for the purposes of this Act having regard to—

(i) its effectiveness in preventing a motor vehicle from being started if it detects more than a certain concentration of alcohol; and

(ii) the extent to which it is resistant to tampering; and

(iii) its capacity to record information about its use; and

(iv) any other matter the Corporation considers relevant.

(4) In considering whether to approve a type of alcohol interlock, the Corporation must apply the guidelines for the approval of types of alcohol interlocks made by the Corporation under section 50AAG.

(5) The Corporation may approve, in writing, a person or body as an alcohol interlock supplier if it considers it appropriate to do so having regard to—

(a) whether—

(i) the person or body; and

(ii) the employees or agents (if any) of the person or body who install or maintain approved alcohol interlocks—

are fit and proper persons to install and maintain approved alcohol interlocks; and

(b) the relevant qualifications and experience of the person or body and of those employees and agents (if any) of the person or body; and
(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).

(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.

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) under sections 50AAG(1)(b)(ii) and (c); and

(b) ensure that each of the following persons or bodies comply with those guidelines—

(i) the supplier's employees and agents (if any) who install or maintain approved alcohol interlocks; and

(ii) the persons or bodies (if any) authorised by the supplier to install or maintain approved alcohol interlocks.

(3) The Corporation may at any time—

(a) vary or revoke a condition on an approval; or

(b) impose a new condition on an approval—

by giving written notice to the person or body concerned, allowing the person or body at least 10 working days to make written representations about the proposed action.

50AAG Guidelines

(1) The Corporation may make guidelines for any of the following matters—

(a) the approval of types of alcohol interlocks, including the way in which the Corporation has regard to the matters in section 50AAE(3)(b);

(b) the approval of persons or bodies as alcohol interlock suppliers, including—

(i) the way in which the Corporation has regard to the matters in section 50AAE(5); and

(ii) the type of concessions that must be provided for the purposes of section 50AAE(6);
(c) the installation or maintenance of approved alcohol interlocks, including the terms and conditions on which approved alcohol interlocks are supplied to customers or a particular class of customer.

(2) The guidelines—

(a) must be in writing and be published in the Government Gazette; and

(b) must be laid before each House of Parliament within 6 sitting days of that House after the guidelines are published in the Government Gazette; and

(c) may apply, adopt or incorporate any matter contained in another document, whether as—

(i) amended by the guidelines; or

(ii) contained in that document at a particular time or from time to time.

**50AAH Cancellation of approval of types of alcohol interlocks**

(1) The Corporation may cancel the approval of a type of alcohol interlock under section 50AAE if the Corporation is satisfied that it is appropriate to do so because—

(a) the type of alcohol interlock is defective to the extent that it is no longer suitable to be approved for the purposes of this Act (whether because the information it records about its use is misleading or for any other reason); or

(b) since the type of alcohol interlock was approved, the Corporation has approved one or more other types of alcohol interlocks that the Corporation considers are more suitable to be approved for the purposes of this Act.
(2) If the Corporation cancels the approval of a type of alcohol interlock under 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 is cancelled with effect from a specified day (which must be after both of those notices are published); and

(b) must send a notice to each approved alcohol interlock supplier stating that the approval of the type of alcohol interlock is cancelled with effect from that specified day; and

(c) may send a notice to a person whose driver licence or permit is subject to an alcohol interlock condition, at the latest address the person has notified to the Corporation, stating that the person breaches the condition if he or she drives a motor vehicle with that type of alcohol interlock after the day specified in the notice (which must be at least one month after the notice is sent).

(3) If the Corporation cancels the approval of a type of alcohol interlock under 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 after the later of the following—

(a) the day specified in the notice published under subsection (2)(a); and

(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 under subsection (1)(b)—

(a) the Corporation must send a notice to each approved alcohol interlock supplier stating that the approval is cancelled with effect from a specified day; and

(b) an alcohol interlock of that type that was installed in a motor vehicle before the specified day is taken to continue to be approved, despite the cancellation, for the purposes of this Act and the Sentencing Act 1991.

(5) In subsections (2)(c) and (3), alcohol interlock condition includes an alcohol interlock condition imposed in accordance with a direction under section 89A of the Sentencing Act 1991.

Note

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

50AAI Cancellation of approval of alcohol interlock supplier

(1) The Corporation may, by giving written notice to an approved alcohol interlock supplier, cancel the supplier's approval under section 50AAE if the Corporation is satisfied that it is appropriate to do so because the supplier—

(a) has failed to comply with one or more conditions of the approval; or

(b) is no longer supplying, installing or maintaining alcohol interlocks.
(2) If the Corporation cancels the approval of an alcohol interlock supplier, the Corporation—

(a) must ensure that a notice is published in the Government Gazette, and a newspaper circulating generally throughout Victoria, stating that the approval of the alcohol interlock supplier is cancelled with effect from a specified day (which must be after both of those notices are published); and

(b) may send a notice to a person whose driver licence or permit is subject to an alcohol interlock condition, at the latest address that the person has notified to the Corporation, stating that the person breaches the condition if—

(i) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle; and

(ii) the person drives the motor vehicle with that approved alcohol interlock—after the day specified in the notice (which must be at least one month after the notice is sent).

(3) If the Corporation cancels the approval of an alcohol interlock supplier, a person whose driver licence or permit is subject to an alcohol interlock condition breaches the condition if—

(a) the supplier, or a person or body authorised by the supplier, installs or maintains an approved alcohol interlock in a motor vehicle after the later of the following—

(i) the day specified in the notice published under 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.

(4) In subsections (2)(b) and (3), alcohol interlock condition includes an alcohol interlock condition imposed in accordance with a direction under section 89A of the Sentencing Act 1991.

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

50AAJ Review by Tribunal

(1) A person or body whose interests are affected by a decision of the Corporation—

(a) under section 50AAE to refuse to give an approval; or

(b) under section 50AAH or 50AAI to cancel an approval—

may apply for review of the decision to the Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administrative Tribunal Act 1998.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made; or

(b) if notice of the decision is published under section 50AAH(2)(a) or 50AAI(2)(a) in both the Government Gazette and a newspaper, the day on which the later notice is published; or
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(c) if notice of the decision is given or sent to the person or body under section 50AAE(7), 50AAH(2), 50AAH(4), 50AAI(1) or 50AAI(2), the day on which the notice is given or sent to the person or body; or

(d) if the person or body requests a statement of reasons for the decision under the Victorian Civil and Administrative Tribunal Act 1998, the day on which—

(i) the statement is given to the person or body; or

(ii) the person or body is informed under section 46(5) of that Act that the statement will not be given.

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), (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.

(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 member of the police force 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—
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(i) if the person holds a full driver licence—

(A) 0.15 grams or more per 100 millilitres of blood; or

(B) 0.15 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 member of the police force or, if the accused had been driving or in charge of a commercial motor vehicle, any officer of the Corporation may, at any time after the making of the charge until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her driver licence or permit is immediately suspended until the charge has been determined and requiring the accused to surrender immediately to the person who gave the notice the licence document or permit document.
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(1A) If a person is charged by a member of the police force with an offence under paragraph (ba), (ca) or (ea) of section 49(1), any member of the police force may, at any time after the making of the charge until the charge has been determined, give to the accused a notice containing the prescribed particulars informing the accused that his or her driver licence or permit is immediately suspended until the charge has been determined and requiring the accused to surrender immediately to the person who gave the notice the licence document or permit document.

(1B) Any member of the police force may give a person a notice (containing the prescribed particulars) informing the person that his or her driver licence or permit is immediately suspended and requiring the person to surrender the licence or permit document to the member of the police force if—

(a) paragraph (f) or (g) of section 49(1) applies to the person; and

(b) a certificate is issued under section 55(4) or 57 stating the concentration of alcohol present in the person's 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—0·15 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
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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
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 that is signed by the member of the police
force or the officer of the Corporation is given to
the person.

(3) Immediately on the giving of a notice under
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).
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(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)).

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

(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 1 year from the issue of a driver licence which authorises the holder to drive a motor cycle, while the holder is driving or in charge of a motor cycle, whether or not the holder also holds a driver licence which authorises him or her to drive another kind of motor vehicle.
(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 1 year 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 1 year 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.

53 Preliminary breath tests

(1) A member of the police force may at any time require—

(a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or

(b) the driver of a motor vehicle that has been required to stop, and remain stopped at a preliminary testing station under section 54(3); or
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(c) any person who he or she believes on reasonable grounds has within the last 3 preceding hours driven or been in charge of a motor vehicle when it was involved in an accident; or

(d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident—

to undergo a preliminary breath test by a prescribed device.

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

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

(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 member of the police force 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 member of the police force 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 member of the police force on duty at the station indicates that the driver may proceed.

(4) Members of the police force 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 member of the police force or an officer of the Corporation or of the Department of Infrastructure under section 53 to do so and—

(a) the test in the opinion of the member or officer in whose presence it is made indicates that the person's breath contains alcohol; or

(b) the person, in the opinion of the member or officer, refuses or fails to carry out the test in the manner specified in section 53(3)—

any member of the police force or, if the requirement for the preliminary breath test was made by an officer of the Corporation or of the Department of Infrastructure, any member of the police force or any officer of the Corporation or of the Department of Infrastructure may require the person to furnish a sample of breath for analysis by a breath analysing instrument and for that purpose may further require the person to accompany a member of the police force or an officer of the Corporation or of the Department of Infrastructure authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, for the
purposes of section 53 to a place or vehicle where
the sample of breath is to be furnished and to
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 member of the police force may require any
person whom that member reasonably believes to
have offended against section 49(1)(a) or (b) to
furnish a sample of breath for analysis by a breath
analysing instrument (instead of undergoing a
preliminary breath test in accordance with
section 53) and for that purpose may further
require the person to accompany a member of the
police force to a place or vehicle where the sample
of breath is to be furnished and to remain there
until the person has furnished the sample of breath
and 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 member of the police force may require any person who is required to undergo a drug assessment under section 55A to furnish a sample of breath for analysis by a breath analysing instrument and may, for that purpose, require the person to remain at the place at which the person is required to remain for the purposes of the drug assessment until—

(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—

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

(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 member of the police force of a sample of that person's blood for analysis at that person's own expense by a registered medical practitioner or an approved health professional nominated by the member of the police force.

(11) A part of a sample of blood taken under 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 member of the police force may at any time require—

(a) any person he or she finds driving a motor vehicle or in charge of a motor vehicle; or

(b) the driver of a motor vehicle that has been required to stop at a preliminary 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
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(d) any person who he or she believes on reasonable grounds was, within the last 3 preceding hours, an occupant of a motor vehicle when it was involved in an accident, if it has not been established to the satisfaction of the member of the police force which of the occupants was driving or in charge of the motor vehicle when it was involved in the accident; or

(e) any person whom he or she has required under section 53 to undergo a preliminary breath test; or

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

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

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

(3) An assessment of drug impairment must be carried out by a member of the police force authorised to do so by the Chief Commissioner of Police.
(4) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice under 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 making of the charge.

(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 member of the police force 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 member of the police force named in it is authorised by the Chief 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 member.

55B Blood and urine samples

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

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

(b) furnish to a registered medical practitioner or an approved health professional nominated by that member a sample of that person's urine for analysis—

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

(1A) A member of the police force must not require a person to allow a sample of his or her blood to be taken for analysis under 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 member of the police force 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 member of the police force who carried it out and containing the prescribed particulars must be served with the summons or, if a summons is not issued, within 7 days after the making of the charge.

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

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 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 chewing or sucking on it until the member of the police force or the officer of the Corporation or of the Department of Infrastructure (as the case requires) is satisfied that a sufficient sample of oral fluid has been captured by the device or unit.

(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 member of the police force or an officer of the Corporation or of the Department of 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 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 member of the police force or an enforcement officer and—

(a) the test, in the opinion of the member 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 member or enforcement officer, refuses or fails to carry out the test in the manner specified in section 55D(6)—

any member of the police force or, if the requirement for the preliminary oral fluid test was made by an enforcement officer, any member of the police force 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 member of the police force or, if the requirement for the preliminary oral fluid test was made by an enforcement officer, any member of the police force 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 member of the police force 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 member of the police force or an officer of the Corporation or of the Department of 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 member of the police force, and the Corporation or the Secretary may only authorise an enforcement officer, for the purposes of this section if satisfied that the member or 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 chewing or sucking on it until the authorised officer is
satisfied that a sufficient sample of oral fluid has been captured by the device or unit.

(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 member of the police force 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 member of the police force 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 member of the police force (or, if the requirement for the provision of the sample was made by an enforcement officer, any member of the police force 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 member of the police force 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—

(a) the statement of any officer of the Corporation or of the Department of Infrastructure that on a particular date he or she was authorised under section 55D(2) for the purposes of section 55D; or
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(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 Infrastructure named in it is authorised under section 55D(2) for the purposes of section 55D; or

(c) the statement of any member of the police force or officer of the Corporation or of the Department of 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 member of the police force or officer of the Corporation or of the Department of 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 officer or member.

56 Blood samples to be taken in certain cases

(1) In this section—

S. 56
amended by
No. 44/1989
s. 41(Sch. 2
item 34.4),
amended by
No. 19/1991
s. 11(1).

S. 56(1) def. of
designated
place
repealed by
No. 7/1995
s. 3(1).
doctor means a registered medical practitioner and includes a police surgeon.

(2) If a person of or over the age of 15 years enters or is brought to a place for examination or treatment in consequence of an accident (whether within Victoria or not) involving a motor vehicle, the person must allow a doctor to take from that person at that place a sample of that person's blood for analysis.

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 first responsible for the examination or treatment of the person the taking of a blood sample from that person would be prejudicial to his or her proper care and treatment; or
(b) a member of the police force has notified the doctor first responsible for the examination or treatment of the person, in writing, that the person has undergone a preliminary breath test which did not indicate that the prescribed concentration of alcohol was exceeded; or

(c) a member of the police force or a member of an ambulance service has notified the doctor first responsible for the examination or treatment of the person, in writing, that the person was an occupant of and was not driving or in charge of any vehicle involved in the accident; or

(d) a member of the police force or a doctor has notified the doctor first responsible for the examination or treatment of the person, in writing, that a sample of the person's blood was taken by a doctor before the person entered or was brought to the place for examination or treatment.

(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 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 attempting to take a sample of the blood of any other person in accordance with this section.

Penalty: 12 penalty units.

(8) No action lies against a doctor in respect of anything properly and necessarily done by the doctor in the course of taking any sample of blood which the doctor believes on reasonable grounds was required or allowed to be taken from any person under this section.

(9) A blood sample that is, after 9 December 1987, taken from a person by a doctor who honestly and reasonably believes that he or she is required to take the sample, whether or not the person consents to the taking, is deemed to have been taken by the doctor who was first responsible for the examination or treatment of that person.
57 Evidentiary provisions—blood tests

(1) In this section—

(a) properly qualified analyst means—

(i) an approved analyst; or

(ii) a person who is considered by the presiding judge, a coroner, or the Magistrates' Court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (4) or (4A), as the case requires; and

(ab) properly qualified expert means—

(i) an approved expert; or

(ii) a person who is considered by the court hearing the charge for the offence to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under subsection (4B); and

(b) approved analyst means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified analyst for the purposes of this section; and

(c) approved expert means a person who has been approved by Order of the Governor in Council published in the Government Gazette as a properly qualified expert for the purposes of this section.
(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; 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 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 deposed 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.

S. 57(7A)(b)(iii) substituted by No. 7/1995 s. 3(5).

S. 57(7A)(b)(iiia) inserted by No. 23/2001 s. 12(2).

S. 57(7B) inserted by No. 17/1994 s. 11(4).

S. 57(8) amended by Nos 23/1994 s. 118(Sch. 1 item 50.6), 14/2000 s. 17(5)(a)(b).
(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 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; or

(d) a hearing for an offence against section 49(1) of this Act; or

(e) any proceedings conducted by a coroner;
Part 5—Offences Involving Alcohol or Other Drugs

Road Safety Act 1986
No. 127 of 1986

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);

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
(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; 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; 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 member of the police force or is out of Victoria and it is not reasonably practicable to secure his or her attendance; or

(d) cannot with reasonable diligence be found—the court must order that 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 "Alcotest 7110" and "3530791" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the
numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument within the meaning of this Act.

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 \(0.05\) 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
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(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

(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 permit document and state his or her name and address if requested or signalled to do so by—

(i) a member of the police force or an officer of the Corporation or of the Department of Infrastructure (being an officer authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, in that behalf); or

(ii) an officer of or person authorised in writing in that behalf by any municipal council who has reasonable grounds for believing that any provision of the regulations relating to the mass or dimensions of a motor vehicle or trailer or to the number of hours during which a person may drive a motor vehicle or to the carrying of a log book on a motor vehicle is being contravened; and

(b) to obey any lawful direction given to him or her by a member of the police force under subsection (5); and
(c) if requested or signalled to do so by a member of the police force or an officer of the Corporation (being an officer authorised in writing by the Corporation in that behalf), to stop the motor vehicle, produce for inspection his or her log book, permit any entry in the log book to be copied and permit the person inspecting it to make any entry in it and to search the motor vehicle if that person has reasonable grounds for suspecting that more than one log book is carried on the vehicle; and

(d) if requested or signalled to do so by a member of the police force or an officer of the Corporation (being an officer authorised in writing by the Corporation in that behalf) or by an officer of or person authorised in writing in that behalf by any municipal council, to stop the motor vehicle and allow it together with its load and any trailer attached to the motor vehicle and the load of the trailer (whether those loads are goods or passengers or both) to be weighed or to be taken to be weighed at a weighbridge or weighing machine that is agreed on by the driver or person in charge of the motor vehicle and the person making the request or, if there is no agreement, at the weighbridge or weighing machine that is nominated by the person making the request.

(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 who when required to state his or her name and address states a false name or address, is guilty of an offence and liable—

S. 59(1)(d) amended by Nos 12/1989 s. 4(1)(Sch. 2 item 105.5), 92/2001 s. 17(2).
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(a) if the offence consists of failing to obey any lawful direction given by a member of the police force or failing to produce for inspection his or her driver licence document or 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 has been issued with a driver licence under an order of the Magistrates' Court made on an application under section 50(4), who fails to produce for inspection his or her driver licence document or permit document is not guilty of an offence if that person—

(a) gives a reasonable excuse for the failure; and

(b) provides a specimen of his or her signature; and

S. 59(2)(a) amended by No. 5/1990 s. 10(1)(a).
S. 59(2)(b) amended by No. 5/1990 s. 10(1)(b).
S. 59(3) amended by Nos 5/1990 s. 10(2), 89/1991 s. 5(2), 58/1995 s. 15.
(c) within 7 days produces his or her driver licence document or permit document at the police station (if any) specified by the member of the police force or other person who requested its production.

(4) A driver or person in charge of a motor vehicle who fails to stop when required to do so in accordance with subsection (1)(a) is not guilty of an offence if—

(a) the person making the request or signal is not in uniform; and

(b) the driver or person in charge believed that that person was not—

(i) a member of the police force or an authorised officer of the Corporation or of the Department of Infrastructure, as the case requires; or

(ii) an officer of or person authorised in writing in that behalf by a municipal council.

(5) A member of the police force may give such reasonable directions to a person driving or in charge of a motor vehicle on a highway as are, in the opinion of that member, necessary—

(a) for carrying into execution the provisions of this Act or the regulations; or

(b) for the purposes of any traffic survey being carried out in the vicinity of the highway.
(6) If a driver or person in charge of a motor vehicle who is requested under 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 member of the police force or an officer of the Corporation (being an officer authorised in writing by the Corporation in that behalf) may require the driver or person in charge of the motor vehicle to unload any part of the load that is necessary to bring the motor vehicle, trailer or load within the prescribed maximum weight or dimension.

(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 member of the police force.

(9) A reference in this section to a driver licence document or permit document includes a reference to any other document which evidences 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 member of the police force 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 member of the police force who is acting in the execution of duty may require any person whom the member 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 member of the police force who is investigating an accident involving a motor vehicle that resulted in a person being killed or suffering serious injury—to a penalty of not more than 20 penalty units or to imprisonment for a term of not more than 4 months or to both;

(b) in any other case—to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than 2 months or to both—

and on conviction the court must cancel all driver licences and permits held by that person and, whether or not that person holds a driver licence, 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 member of the police force 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 member of the police force who is acting in the execution of duty may require any person whom the member 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 member of the police force who is investigating an accident involving a motor vehicle or trailer that resulted in a person being killed or suffering serious injury—to a penalty of not more than 20 penalty units or to
imprisonment for a term of not more than 4 months or to both;

(b) in any other case—to a penalty of not more than 10 penalty units or to imprisonment for a term of not more than 2 months or to both.

(3) For the purposes of this section owner means—

(a) the owner or the person in whose name the trailer was registered at the time when the trailer was attached to the motor vehicle that was being driven by the person about whom the information is sought or at the time when the requirement is made; or

(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. 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 member of the police force who is present; and

(e) if any person is injured and no member of the police force is present at the scene of the accident, must as soon as possible report in person full particulars of the accident at the police station that is most accessible from the scene of the accident if that station is open and, if it is not open, at the next most accessible station; and

(f) if any property is damaged or destroyed and neither the owner of the property nor any person representing the owner nor any member of the police force is present at the scene of the accident, must as soon as possible report in person full particulars of the accident at the police station that is most accessible from the scene of the accident if that station is open and, if it is not open, at the next most accessible station.

(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.
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(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.

62 Power to prevent driving by incapable persons

(1) A member of the police force who is of the opinion on reasonable grounds that a person, driving or about to drive a motor vehicle, is by reason of his or her physical or mental condition incapable of having proper control of the motor vehicle may do all or any of the following things, namely—

(a) forbid that person to drive the motor vehicle while so incapable;

(b) require that person to deliver up forthwith all ignition or other keys of the motor vehicle in his or her actual possession;

(c) take such other steps as may in the opinion of the member of the police force be necessary to render the motor vehicle immobile or to remove it to a place of safety.

(1A) Without limiting the grounds on which a member of the police force 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

S. 61(8) inserted by No. 24/2005 s. 5(6).

S. 62(1A) inserted by No. 111/2003 s. 19.
(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 member of the police force under subsection (1) or in any manner attempts to obstruct any member of the police force in the exercise of any power conferred on that member by this section is guilty of an offence and liable for a first offence to a penalty of not more than 5 penalty units and for any subsequent offence to a penalty of not more than 8 penalty units or to imprisonment for a term of not more than 1 month.

(4) A court may only find a person guilty of an offence under subsection (3) if the court is satisfied that the member of the police force had reasonable grounds for believing that in all the circumstances of the case the action taken by him or her under 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 member of the police force may, for the purpose of establishing the identity of the driver of a motor vehicle or arresting a person or carrying out the provisions of section 53, 54, 55 or 55A, enter the motor vehicle using, if necessary, reasonable force, if the driver refuses or fails to obey any lawful direction given to him or her by the member of the police force.

63A Removal of vehicles obstructing driveways etc.

(1) A member of the police force may move or cause to be moved a vehicle which is parked or left standing in front of a—
   (a) right-of-way; or
   (b) passage; or
   (c) private drive—
or so close to a right-of-way, passage or private drive as to obstruct access to, or egress from, it by vehicles or pedestrians.

(2) A member of the police force may move or cause to be moved a vehicle which—
   (a) is parked or left standing contrary to the regulations; and
   (b) in the opinion of the member of the police force, is—
      (i) a danger to other road users; or
      (ii) causing or likely to cause traffic congestion.

(3) A member of the police force acting in accordance with 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 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 members of the police force of a device (a tyre deflation device) that causes the deflation of the tyres of a vehicle, for use by police to stop or assist in the stopping of a vehicle in connection with the pursuit of the vehicle by police.

(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 member of the police force 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
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Section 64A

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 member of the police force 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 member of the police force;

(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 member of the police force in the course of his or her duties as a member of the police force.

65 Careless driving

A person who drives a motor vehicle on a highway carelessly is guilty of an offence and liable for a first offence to a penalty of not more than 12 penalty units and for a subsequent offence to a penalty of not more than 25 penalty units.
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.

66 Certain prescribed offences to be operator onus offences

A prescribed offence that is detected by a prescribed detection device or by a prescribed process or the detection of which involves the use of a prescribed detection device is an operator onus offence for the purposes of Part 6AA.

s. 65A inserted by No. 93/2005 s. 3.

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.
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(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

S. 67(3) amended by No. 32/2006 s. 61(2)(b).

S. 67(4) amended by Nos 21/2005 s. 57(1)(d) (as amended by No. 24/2005 s. 31(1)), 48/2006 s. 42(Sch. item 31.1).

S. 67(5)(a) amended by Nos 21/2005 s. 57(1)(e) (as amended by No. 24/2005 s. 31(1)), 32/2006 s. 61(2)(c)(i), 48/2006 s. 42(Sch. item 31.1).
(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 \textit{Infringements Act 2006} or Schedule 3 to the \textit{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

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\begin{tabular}{cccccc}
\textbf{S. 67(5)(g)} \text{amended by} & \text{Nos }21/2005 \\
\text{s. 57(1)(e)} \text{(as} & \text{amended by} \text{No. }24/2005 \\
\text{amended by} & \text{s. 31(1))}, \\
32/2006 & \text{s. 61(2)(c)(vii) (viii), 48/2006} \\
& \text{s. 42(Sch. item 31.1).} \\
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\textbf{S. 67(5)(i)} \text{amended by} & \text{Nos }21/2005 \\
\text{s. 57(1)(e)} \text{(as} & \text{amended by} \text{No. }24/2005 \\
\text{amended by} & \text{s. 31(1)),} \\
32/2006 & \text{s. 61(2)(c)(x),} \\
& \text{48/2006} \\
& \text{s. 42(Sch. item 31.1),} \\
& \text{repealed by} \text{No. }81/2006 \\
& \text{s. 30(3).} \\
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(j) any period of cancellation, disqualification or suspension, and any extension of probation, of a driver licence or permit that—

(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
(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 a charge filed for the alleged offence and, for this purpose, a charge 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; or
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(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 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 member of the police force believes, on reasonable grounds, that a person is committing an offence against this section, the member of the police force 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 member of the police force 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 section 92 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.

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 to prevent the effective use of a prescribed speed measuring device or to detect when a prescribed speed measuring device is being used.

Penalty: 20 penalty units.

(2) A person must, if required to do so by a member of the police force or an officer of the Corporation or an employee in the Department of Infrastructure (being an officer or employee authorised in writing by the Corporation or the Secretary of the Department of Infrastructure, as the case requires, in that behalf), surrender to that member or officer or employee any device referred to in 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 member of the police force 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 member of the police force reasonably suspects to be false.
(2) If a person who is arrested for an offence under this Act was in charge of a motor vehicle, any member of the police force may drive or convey the motor vehicle to a police station and keep it there pending the admission of the arrested person to bail or, if that person is not the owner of the motor vehicle, pending a demand for the vehicle by its owner.

77 Power to prosecute

(2) The following people may prosecute for any offence against this Act or the regulations—

(a) any member of the police force;

(ab) a protective services officer appointed under Part VIA of the Police Regulation Act 1958, if the offence occurs on land or premises that are, or are in the vicinity of—

(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;
(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 Infrastructure who is authorised in writing to do so either generally or in any particular case by the Secretary to the Department of 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 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
(3) If proceedings are taken by a member of the police force or an officer of the Corporation or an employee in the Department of Infrastructure or a protective services officer the proceedings may be conducted before the court by any other member of the police force or officer of the Corporation or employee in that Department 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 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 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 prosecutor authorised under subsection (2A) 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 26(4) of the Magistrates' Court Act 1989, a proceeding for an offence under Division 4 or 6 of Part 10 or under Part 10A 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.

77B Special defence for drivers of heavy vehicles

(1) This section applies to an offence involving deficiencies concerning a heavy vehicle if the offence is alleged to have been committed by a person as the driver of the vehicle.

(2) It is a defence to a charge for the offence if the person establishes that he or she (whether as driver or otherwise)—

(a) did not cause, or contribute to, the deficiencies and had no responsibility for, or control over, the maintenance of the vehicle or its equipment at any relevant time; and

(b) did not know, and could not reasonably be expected to have known, of the deficiencies; and

(c) could not reasonably be expected to have sought to ascertain whether there were, or were likely to be, deficiencies concerning the vehicle.
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, that has elapsed between the motor vehicle or trailer passing the first and second points.

(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 speed measuring device when tested, sealed and used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the motor vehicle 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 camera devices are sufficient 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 control 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 detection device prescribed for the purposes of section 66; or

(b) an image or message produced by a detection device prescribed for the purposes of section 66 or by a prescribed process—

when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the fact that the driver of the motor vehicle or trailer disobeyed a traffic control 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 control 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 control 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 camera devices are sufficient 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 detection device prescribed for the purposes of section 66, or by a prescribed process, when used in the prescribed manner is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the fact that an unregistered vehicle was being driven at a particular time and place or that number plates were or were not being displayed at a particular time.

81 Certain matters indicated by speed cameras are sufficient evidence

(1) If in proceedings for an offence to which section 66 applies the speed at which a motor vehicle 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 detection device prescribed for the purposes of section 66 when tested, sealed and used in the prescribed manner; or

(b) an image or message produced by a detection device prescribed for the purposes of section 66 when tested, sealed and used in the prescribed manner; or

(c) an image or message produced by a prescribed process when used in the prescribed manner—

is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof of the speed of the motor vehicle 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 device referred to in section 79 or 82 has been tested or sealed in the prescribed manner, signed or purporting to be signed by a person authorised to do so by the regulations is, without prejudice to any other mode of proof and in the absence of evidence to the contrary, proof that the device has been so tested or sealed.

83A Evidence relating to prescribed detection devices

(1) A certificate in the prescribed form purporting to be issued by an authorised person certifying—

(a) that a prescribed detection device for the purposes of section 66 was tested, sealed or used in the prescribed manner; or

(b) that an image or message described in the certificate was produced by a detection device prescribed for the purposes of section 66 or by a prescribed process; or
(c) as to any other matter that appears in, or that can be determined from, the records kept in relation to the detection device or the prescribed process by the police force of Victoria—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

(2) In this section authorised person means a person authorised for the purposes of this section by the Chief Commissioner of Police.

84 General evidentiary provisions

(1) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Infrastructure or an authorised person certifying as to any matter which appears in or can be calculated from the records kept by the Corporation or the Department of Infrastructure or a delegate of the Corporation or the Department of Infrastructure is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate.

(2) Without affecting the generality of any provision of the Evidence Act 1958, a certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act and which purports to relate in any way to—

(a) the registration or non-registration of a motor vehicle or trailer; or
(ab) the registration number assigned to a motor vehicle or trailer; or

(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 Infrastructure certifying that on a particular date a motor vehicle or trailer was registered in the name of a particular person is admissible in evidence in any proceedings and, in
the absence of evidence to the contrary, is proof that on that date that person was, if that date is before 1 May 1999, the owner and in any other case the registered operator of that motor vehicle or trailer.

(4) A certificate or document which purports to have been issued under any Act of the Commonwealth or of another State or Territory of the Commonwealth corresponding to this Act certifying that on a particular date a motor vehicle or trailer was registered under the corresponding Act in the name of a particular person is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that person was the owner of that motor vehicle or trailer.

(4A) A certificate containing the prescribed particulars purporting to be issued by the Corporation or the Department of Infrastructure or an authorised person certifying that on a particular date—

(a) a particular registration number was assigned to a particular motor vehicle or trailer; or

(b) a particular person was entitled to use or possess a number plate bearing a particular registration number—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof that on that date that registration number was assigned to that motor vehicle or trailer or that person was entitled to use or possess that number plate, as the case requires.

(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 member of the police force or an officer of the Corporation or of the Department of Infrastructure—
(a) that writing or markings on a motor vehicle or trailer indicates or indicate the tare mass of the vehicle or trailer is admissible in evidence and, in the absence of evidence to the contrary, is proof of the unladen mass of the vehicle or trailer;

(b) as to the mass of a motor vehicle or trailer which he or she has examined is admissible in evidence and, in the absence of evidence to the contrary, is proof of the mass of the vehicle or trailer;

(c) that a name written on a motor vehicle or trailer indicates that the named person owns the vehicle or trailer is admissible in evidence and, in the absence of evidence to the contrary, is proof that the named person owns the vehicle or trailer;

(d) that an address written on a motor vehicle or trailer indicates that the address is the place of business from which the vehicle or trailer normally operates is admissible in evidence and, in the absence of evidence to the contrary, is proof that the specified address is the place of business from which the vehicle or trailer normally operates.

(7) In any proceedings for an offence described in section 66(1)—

(a) an image or message produced by a detection device prescribed for the purposes of section 66 used to detect speeding offences when tested, sealed and used in the prescribed manner; or

(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 detection device prescribed for the purposes of section 66 used to detect traffic control signal offences when used in the prescribed manner—

showing or indicating—

(c) the date, time or location of the alleged offence or the registration number or general 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

The purpose of this Part is to establish an "operator onus" system for certain offences arising out of the operation of motor vehicles or trailers based on the principle that, if the identity of the driver or person in charge is not established at the time the offence is detected, the person last known to have possession or control of the vehicle or trailer should generally be liable for the offence unless that person can establish that they were not responsible for the vehicle or trailer at the time of the offence and provide information sufficient to identify and locate who was.

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 law of the Commonwealth or of another State or of a Territory that corresponds to Division 2 of Part 2;

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
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(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 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), 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 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.
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.

(2) 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—

(a) may be recorded for the purposes of a heavy vehicle registration suspension scheme within the meaning of section 89(7); and

(b) does not prevent the suspension of the registration of a heavy vehicle under that scheme.

(3) 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—
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(i) an illegal user statement; or
(ii) a known user statement; or
(iii) a sold vehicle statement; or
(iv) subject to subsection (1A), 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.

(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, his or her full name and current home address and either his or her date of birth or the number of the licence or permit authorising him or her to drive and, if that licence or permit is issued by a corresponding Authority, the name of that Authority; and
(b) in the case of a person other than an individual, its full name and current address and (where applicable) its Australian Business Number or 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.

(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.

(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.

### 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 defendant to prove any of the following—

(a) that the defendant 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 defendant 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 defendant is based on a nomination made in a known user statement, sold vehicle statement or tolling nomination statement, that the defendant 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

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: 60 penalty units.
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 a person authorised by a member of the police force under section 84J;

*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;

**designated period**, in relation to a motor vehicle, means the period of 48 hours 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**;

**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;

**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) subject to subsection (2), an offence against section 30(1);

(b) an offence against section 64(1) in circumstances involving improper use of a motor vehicle;

(ba) an offence against section 64A(1);

(c) an offence against section 65 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);

(ea) an offence against section 68B;
(f) an offence against 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;

(g) an offence against rule 291 of the Road Rules in circumstances involving improper use of a motor vehicle;

(h) an offence against rule 297 of the Road Rules in circumstances involving improper use of a motor vehicle;

Road Rules means the Road Rules as defined in regulation 105(1) of the Road Safety (Road Rules) Regulations 1999;

search and seizure warrant means a warrant issued under section 84ZH(1);

senior police officer means a member of the police force of or above the rank of Inspector;

substituted motor vehicle means a motor vehicle subject to an order for substitution made under section 84V(3);

tow truck has the same meaning as in the Accident Towing Services Act 2007.

(2) An offence against section 30(1) is only a relevant offence in relation to a person if that person had at any other time since the commencement of Part 2 of the Road Safety and Other Acts (Vehicle
Impoundment and Other Amendments) Act 2005 been convicted of an offence against that section committed on or after that commencement.

(3) For the purposes of an application for an impoundment or immobilisation order or a forfeiture order, a charge of more than one relevant offence arising out of the same single set of circumstances is to be treated as a charge of one 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 Part has prospective application

(1) This Part applies only to offences committed on or after the commencement of Part 2 of the Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005.

(2) For the purposes of Division 3, a second or third offence is only a second or third offence if the first offence was, or the first and second offences were (as the case requires) committed on or after the commencement of Part 2 of the Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005.
Division 2—Impoundment or immobilisation by Victoria Police

84F Powers of Victoria Police

(1) If a member of the police force 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—

(a) seize the motor vehicle or require it to be surrendered; and

(b) impound or immobilise the motor vehicle for the designated period; and

(c) authorise any person under section 84J to assist in seizing, impounding or immobilising the motor vehicle.

(2) If a member of the police force 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 impounding or immobilising a motor vehicle under this Part, a member of the police force 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
(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.

(3) In order to seize a motor vehicle a member of the police force 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;

(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 member of the police force 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.

84H Surrender of motor vehicle

(1) If, more than 48 hours after the commission of a relevant offence, a member of the police force 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 detection device for the purposes of section 66 and the detection device is used in the prescribed manner, within 28 days of 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.

(3) A notice under subsection (1) must include—

(a) a statement by a member of the police force that the motor vehicle is liable to impoundment or immobilisation because that member 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 detection device, within the preceding 28 days; or

(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 the police force; and

(e) a statement that if the motor vehicle is not surrendered at the date, time and place specified in the notice a member of the police force may seize the motor vehicle in accordance with section 84G; and

(f) the prescribed particulars (if any).

(4) If the motor vehicle is not surrendered to a member of the police force at the date, time and place specified in a notice served under subsection (1), a member of the police force may, within 10 days after the period specified in the notice expires, exercise any power under section 84F or 84G 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 member of the police force 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 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

In exercising powers under this Part a member of the police force may authorise any person to assist him or her to—

(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 or any other means);

(e) store a motor vehicle in a holding yard;

(f) release a motor vehicle when authorised by a member of the police force to do so.
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 member of the police force 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

(g) that if the driver has committed a previous relevant offence since the commencement of Part 2 of the Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005 the Chief Commissioner of Police may apply to the relevant court for an order that—

(i) if the driver has been found guilty of one relevant offence within the 3 years immediately preceding the date of the relevant offence to which the notice relates, the motor vehicle be impounded or immobilised for a period of up to 3 months; or

(ii) if the driver has been found guilty of 2 or more relevant offences within the 3 years immediately preceding the date of the relevant offence to which the notice relates, the motor vehicle be forfeited to the Crown; and

(h) any other prescribed particulars.
84M Review by a senior police officer

(1) A member of the police force 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 member of the police force 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.

840 Appeal rights

(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) 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.

(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) 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 in the valid exercise of a power under this Part.

Penalty: 60 penalty units.

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).

(2) If no decision or order to release the motor vehicle has been made under section 84N or 84O, a member of the police force 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.
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

(b) no charge for a relevant offence is laid or such a charge is laid but 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 relevant offence the relevant court may order that the motor vehicle used in the commission of the relevant offence or a substituted motor vehicle be impounded or immobilised for a period of up to 3 months.
(2) An order under subsection (1) may only be made if the relevant court is satisfied—

(a) that the defendant has been found guilty of one previous relevant offence committed in the period of 3 years before the commission of the relevant offence; and

(b) that, if the application is in respect of the motor vehicle used in the commission of the relevant offence, at the time the relevant offence was committed that motor vehicle was not—

(i) a stolen motor vehicle; or

(ii) a hired motor vehicle; or

(iii) 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 the police force.

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 relevant offence the relevant court may order that the motor vehicle used in the commission of the relevant offence or a substituted motor vehicle be forfeited to the Crown.

(2) An order under subsection (1) may only be made if the relevant court is satisfied—

(a) that the defendant has been found guilty of 2 or more previous relevant offences committed in the period of 3 years before the commission of the relevant offence; and
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(b) that, if the application is in respect of the motor vehicle used in the commission of the relevant offence, at the time the relevant offence was committed that motor vehicle was not—

(i) a stolen motor vehicle; or

(ii) a hired motor vehicle; or

(iii) being used in any prescribed circumstances.

(3) A forfeiture order 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 the police force.

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) the driver has been found guilty of a previous relevant offence or offences (as the case requires) committed within the period of 3 years before the commission of the relevant offence.
(2) An application under subsection (1) may be made at any time after a charge is laid in relation to a relevant offence, 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.

(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
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(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.

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 is laid for any other relevant offence arising out of the same single set of circumstances.

84Y Notice where 2 or more charges laid

(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 make an application for an impoundment or immobilisation order or a forfeiture order in relation to a specified motor vehicle if the driver is convicted of 2 or more previous relevant offences; 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 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 second or third relevant offence; 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 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 is laid for 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 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 second or third relevant offence;

(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 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;

(g) a forfeiture order becomes effective and a member of the police force 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

(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) 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.

(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

(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.

(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) The court may make an order varying an impoundment or immobilisation order or a forfeiture order in any way, including—
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(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.

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 defendant's conviction of the relevant offence; or

(b) the expiration of the appeal period for—

(i) a sentencing order under the Magistrates' Court Act 1989; or

(ii) a sentencing order under the Children and Young Persons Act 1989 or the Children, Youth and Families Act 2005; or

(iii) a sentence under Part VI of the Crimes Act 1989—

made 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 Police powers

A member of the police force or an authorised person acting under an impoundment or immobilisation order or a forfeiture order made under this Division has, and may exercise, the same powers to seize the motor vehicle and impound or immobilise it as are specified in sections 84G(1) and (3) and 84I.
84ZD Liability for costs of impoundment or immobilisation

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.

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 owners' 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

(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 member of the police force 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 member of the police force; or

(b) the motor vehicle is subject to a forfeiture order and has not been surrendered to a member of the police force; or

(c) a member of the police force 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 member of the police force is empowered under section 84H(4) 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—

(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
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(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

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 member of the police force 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.

(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) all proceedings in relation to the relevant offence that led to the impoundment or immobilisation have been finalised and any appeal period has expired; and
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(b) the Chief Commissioner of Police, at least 14 days before attempting to sell or dispose of the motor vehicle or item or thing, serves notice on the registered operator and the driver that he or she intends to sell or otherwise dispose of the motor vehicle and any item or thing left in or on the motor vehicle unless steps are taken to collect or release the motor vehicle or item or thing; and

(c) the Chief Commissioner of Police notifies the public, at least 14 days before an intended sale or disposal, of his or her intention to sell or otherwise dispose of the motor vehicle and, if applicable, any item or thing left in or on the motor vehicle, through publication in a newspaper circulating generally in the State; and

(d) if the Chief Commissioner of Police intends to sell or dispose of an item or thing left in or on a motor vehicle, all reasonable efforts have been made to return the item or thing to its owner.

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).

(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.
84ZS Application of proceeds of sale

Where a motor vehicle or item or thing is sold under section 84ZQ or 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;

(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.
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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) If an authorised officer within the meaning of section 208 of the Transport 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.

(1A) Without limiting subsection (1), if a person, not being a member of staff of the municipal council, who is authorised in writing to do so either generally or in any particular case by a municipal council has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of the
municipal council, he or she may serve or cause to be served, in accordance with the regulations, a parking infringement notice.

(1B) If—

(a) a member of the police force; or

(b) a member of staff of the municipal council; or

(c) a person, not being a member of staff of the municipal council, who is authorised in writing to do so either generally or in any particular case by the municipal council—

has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of a municipal council, being land that is a council controlled area within the meaning of Part 7A, he or she may 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 may only authorise under subsection (1A) or (1B)(c) a person whom it is satisfied—

(a) is competent to exercise the functions conferred on an authorised person by or under this Part; and
(b) is of good repute, having regard to character, honesty and integrity; and

(c) has agreed in writing to exercise the functions conferred on an authorised person by or under this Part according to performance criteria established from time to time by the municipal council.

(1D) A municipal council must issue an identity card to any person authorised by it under subsection (1A) or (1B)(c).

(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 authorised by the municipal council 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 a person authorised under subsection (1A) or (1B)(c) 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 a person authorised under subsection (1A) or (1B)(c).

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 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 municipal council may by resolution fix a penalty of an amount not greater than 0.5 penalty unit for a parking infringement in contravention of a regulation under this Act in respect of which regulations under this Act prescribe a penalty of an amount not greater than the penalty to be fixed, and the penalty so fixed is the penalty prescribed for the purposes of this section in respect of such a parking infringement occurring within the municipal district of that municipal council.

(5) If a municipal council fixes a penalty under subsection (4) in relation to a parking infringement, a member of the police force 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 as the penalty; or

(b) the amount specified by the regulations as the penalty in respect of the infringement.

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 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 detection device prescribed for the purposes of section 66, may only be issued or caused to be issued by a member of the police force.
(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 member of the police force.

(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 is the amount prescribed in respect of that infringement.

(6) A person referred to in section 77(2)(a), (c) or (d) who has reason to believe that a person (other than the driver of a motor vehicle) has committed a traffic infringement may require that person to state his or her name and address.

(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 (whether pursuant to Schedule 3 to the Magistrates' Court Act 1989 or otherwise) but in any case, where the court is satisfied that an infringement notice was served in respect of the infringement and has not been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose (including, without limiting the generality of the foregoing, the purposes of any enactment imposing,
authorising or requiring the imposition of any
disqualification, disability or higher penalty on
convicted people or people convicted on more
than one occasion) except in relation to—

(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 section 25 in respect of a traffic
infringement by a person.

(6) Despite anything to the contrary in this section or
Division 5 of Part 2 of the Infringements Act
2006, the fact that payment of a penalty was made
or a conviction was imposed by the court in
respect of an infringement for which an
infringement notice was served—

(a) may be recorded for the purposes of a heavy
vehicle registration suspension scheme; and

(b) does not prevent the suspension of the
registration of a heavy vehicle under that
scheme.

(7) In subsection (6) a heavy vehicle registration
suspension scheme is a scheme established under
the regulations permitting the suspension of the
registration of heavy vehicles for speeding
offences and includes any corresponding scheme
established under the Interstate Road Transport
Act 1985 of the Commonwealth or under an Act
of another State or Territory.
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(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 the person to whom the notice was issued objects, within that time and in accordance with this section, to the infringement notice\textsuperscript{11}.

(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 a charge filed for 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 member of the police force may, during the period of cancellation, disqualification or suspension, withdraw the infringement notice by serving on the alleged offender, in accordance with the regulations, a withdrawal notice which contains the prescribed particulars and is signed by a prosecution officer; and

(d) the person may be proceeded against by a charge filed for the alleged offence.

(8) A court which convicts a person or finds a person guilty after an infringement notice has been withdrawn in accordance with 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 a charge filed for 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

(b) occurred after the person became aware that the infringement notice had been issued—

must be taken into account by any court which subsequently convicts the person, or finds the person guilty, of the offence in respect of which the infringement notice was issued.

(4) Despite anything to the contrary in any other Act, a charge referred to in 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.

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)).

(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.
(4) Any cancellation and disqualification under subsection (1) 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—

(a) 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
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(b) 0·07 grams or more per 100 millilitres of blood or 210 litres of exhaled air (as the case requires), in any other case.

89D Suspension of licence or permit for excessive speed infringements

(1) Any driver licence or permit held by a person to whom a traffic infringement notice has been issued in respect of an excessive speed infringement is suspended for a period ascertained in accordance with Column 2 of Schedule 5 by reference to the speed specified in the notice and the person is disqualified from obtaining a further licence or permit for that period if no notice of objection to the infringement notice has been given and the 28 day period has expired.

(1A) If a person to whom a traffic infringement notice has been issued in respect of an excessive speed infringement—

(a) is exempted under the regulations from the requirements of section 18(1)(a) because he or she holds an appropriate licence or permit 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 may be made in accordance with the regulations.

(7) A person, other than a person referred to in subsection (1A), who pays a penalty in respect of an excessive speed infringement must, on or before the expiry of the 28 day period, surrender his or 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 section 25 (see section 25(4C) and (4D)).
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 defendant if the defendant is present at the hearing of the information.

(5) Without limiting the generality of the provisions of Division 5 of Part 4 of the **Magistrates' Court Act 1989**, where any evidence of prior convictions or findings of guilt has been tendered pursuant to the provisions of this section, the court may set aside, on any terms as to costs or otherwise that the court decides, any conviction, finding or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted, or found guilty, of the offences as alleged in the document.

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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 member of the police force; 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 Chattel Securities Act 1987) 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 member of the police force may, in accordance with this section, remove, or cause to be removed, from a council controlled area a motor vehicle that has been parked or left standing in that area and in respect of which a parking infringement has been committed.

(2) A member of the police force may only act under subsection (1) if a parking infringement notice has been served in respect of the parking infringement and—

(a) the member of the police force is satisfied that the owner or occupier of the council controlled area has requested the owner or driver of the vehicle to remove it and that person has refused to do so; or

(b) in the opinion of the member of the police force, the vehicle—

(i) is obstructing access to, or egress from, the council controlled area by vehicles or pedestrians; or

(ii) is obstructing the free passage of vehicles or pedestrians within the council controlled area; or

(iii) has been left unattended for more than 48 hours; or

(iv) is endangering life or property or otherwise causing concern about safety.
(3) A vehicle removed in accordance with this section from a council controlled area must be towed from the area by a tow truck, within the meaning of 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 member of the police force and released to its owner or the owner's agent on payment by that person of a release fee.

(6) The amount of a release fee must not exceed the prescribed amount or, if there is no prescribed amount, an amount that reasonably represents the cost of towing, storing and releasing the vehicle (including any relevant overhead and other indirect costs).

**90G Entry by police to council controlled areas**

(1) A member of the police force may, for the purpose only of issuing parking infringement notices or authorising the towing of motor vehicles, enter any place that is a council controlled area.

(2) Nothing in this section limits any other power of entry to a council controlled area that a member of the police force has under any other law.

**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 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 32 of the Transport Act 1983.

92 Disclosure of information

(1) In this section—

confidentiality agreement means an agreement referred to in subsection (4);

relevant person means a person who is or has been a delegate of or employed by or engaged to provide services for—

(a) the Corporation; or

(b) another person or body engaged to provide services for the Corporation;

Victorian law enforcement agency means—

(a) the police force of Victoria; or

(b) any other authority or person responsible for the investigation or prosecution of offences against the laws of Victoria or the delegates or employees of, or persons engaged to provide services for, such authority or person; or

(c) a person authorised by the laws of Victoria to execute a warrant.

(2) Subject to this section, the Corporation or a relevant person must not—

(a) disclose information gained by the Corporation or in the course of the delegation, employment or engagement of the relevant person that is information of a personal nature or that has commercial sensitivity for the person about whom it is kept; or
(b) use the person's knowledge of any such information.

Penalty: 100 penalty units.

(2A) Subsection (2) does not prevent the disclosure or use of the following information—

(a) the fact that a vehicle is or has been entered on the register of written-off vehicles;

(b) the date on which, or the period during which, a vehicle was entered on the register of written-off vehicles;

(c) any information entered in, or derived from, the register of written-off vehicles that relates to the nature or extent of damage to any vehicle;

(d) any other information entered in, or derived from, the register of written-off vehicles that is of a kind prescribed by the regulations.

(3) Subsection (2) does not prevent the disclosure or use of information in accordance with the regulations, if any—

(a) in connection with the administration of this Act or the regulations; or

(b) for the purposes of any legal proceedings arising out of this Act or the regulations, or of any report of such proceedings; or

(c) to the Transport Accident Commission; or

(d) for the purposes of the investigation or prosecution by a Victorian law enforcement agency of offences of any kind; or

(da) in connection with an authorisation of the towing of a vehicle given by a member of the police force or the Corporation; or

S. 92(2A) inserted by No. 92/2001 s. 26.

S. 92(3)(da) inserted by No. 24/2005 s. 11.
(e) for the purposes of the enforcement by a Victorian law enforcement agency of—

(i) judgments and orders of courts in their criminal jurisdiction; or

(ii) infringement penalties by the procedure set out in the *Infringements Act 2006* or in Schedule 3 to the *Children, Youth and Families Act 2005*; or

(f) for the purposes of the enforcement by the sheriff of judgments and orders of courts in their civil jurisdiction; or

(g) for the purposes of the *Crimes (Confiscation of Profits) Act 1986* or the *Confiscation Act 1997*; or

(ga) for the purposes of the *Accident Towing Services Act 2007*;

(h) in accordance with an arrangement between a Minister of the Crown in right of Victoria and a Minister of the Crown in right of the Commonwealth or another State or a Territory, for the purposes of—

(i) the investigation or prosecution of an offence against the laws of the Commonwealth or that other State or Territory; or

(ii) the enforcement of a judgment or order of a court in such a prosecution; or
(iii) the enforcement of an infringement penalty (by whatever name it is known in the relevant jurisdiction) by the Commonwealth or that other State or Territory; or

(ha) for the purposes of the project known as NEVDIS which establishes a national exchange of vehicle and driver information system; or

(i) about a person if the Corporation believes on reasonable grounds that the disclosure or use is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or another person; or

(ia) to the manufacturer or supplier of a motor vehicle or trailer of the name and address of the registered operator of the vehicle or trailer in connection with a recall procedure being conducted by the manufacturer or supplier for the rectification of a possible safety-related defect in the vehicle or trailer; or

(ib) for the purposes of the police force of Victoria or the Corporation notifying a person about the possible consequences of incurring further demerit points; or

(ic) to or by a person or body, approved by the Minister by notice in the Government Gazette for the purposes of this paragraph, to enable the person or body to locate and contact individuals—

(i) for the purpose of locating missing persons for non-commercial, humanitarian purposes; or
(ii) for facilitating the reunion of families and friends for non-commercial, humanitarian purposes; or

Example
The use of driver licence and vehicle registration records by a welfare agency for the purpose of reuniting members of refugee communities with families and friends within Victoria or in other parts of the world.

(id) for the purposes of the Corporation conducting road safety research or disseminating information or advice on road safety to road users generally or a particular class of road users; or

Example
Using driver licence and vehicle registration records for the purposes of conducting a survey of licence holders to gather data for use in developing road safety policies and programs.

(ie) to or by a provider of public transport, road authority or utility (within the meaning of the Road Management Act 2004) for the purposes of issuing or defending civil proceedings relating to—

(i) the provider of public transport's, road authority's or utility's road management functions within the meaning of the Road Management Act 2004; or

(ii) damage to infrastructure, within the meaning of the Road Management Act 2004, resulting from road accidents; or

(j) to or by a court in compliance with a witness summons or a subpoena issued by it or an order made by it; or

S. 92(3)(ie) inserted by No. 74/2007 s. 16.
S. 92(3)(ie) inserted by No. 74/2007 s. 16, amended by No. 17/2009 s. 32(1)(a).
S. 92(3)(ie)(i) amended by No. 17/2009 s. 32(1)(b).
(k) to or by the person to whom the information relates; or

(l) to or by a person who is expressly authorised in writing by the person to whom the information relates to obtain it; or

(m) the disclosure or use of which is required or authorised by law for another purpose.

(3A) Subsection (3)(d) does not apply to any IAP information obtained by the Corporation or a relevant person—

(a) from an IAP service provider under section 235; or

(b) from TCA under section 246.

Note
Sections 235 and 246 contain provisions regarding the disclosure and use of IAP information.

(4) Subject to subsection (5), if—

(a) a person (other than a relevant person or a person referred to in subsection (3)(j), (k) or (l)) or an authority requests information from the Corporation; and

(b) the information may be disclosed or used under this section—

the Corporation must first enter into a confidentiality agreement with the person or authority—

(c) specifying the purposes for which the information is required; and

(d) specifying the means by which the information will be provided by the Corporation; and
(e) specifying the means by which the confidentiality of the information will be protected; and

(f) including an undertaking by the person or authority that the information will only be used for the purposes specified in the agreement.

(5) Subsection (4) does not apply if —

(a) the Corporation has entered into a confidentiality agreement, which is in operation, with the delegator, employer, contractor or principal of the person or authority making the request; and

(b) the person or authority making the request is acting within the scope of their actual or apparent authority under the delegation, employment, contractual relationship or agency.

(6) A person who obtains information under a confidentiality agreement must not disclose or use the information other than for a purpose specified in the agreement (whether or not the person is a party to the agreement).

Penalty: 100 penalty units.

(7) A person must not use information knowing it to be disclosed or used in contravention of this section or a confidentiality agreement.

Penalty: 100 penalty units.

93 Service of notices

If under this Act or the regulations a notice is required or permitted to be served on any person, the notice may, unless the contrary intention appears, be served in or out of Victoria—

(a) by delivering it personally to the person; or
(b) by leaving it at the usual or last known place of residence or business of the person with a person apparently over the age of sixteen years and apparently residing at that place or (in the case of a place of business) apparently in charge of or employed at that place; or

(c) by sending it by post addressed to the person at the usual or last known place of residence or business of that person; or

(d) if the person has given to the Corporation as his or her address an address that is not his or her place of residence or business, by sending it addressed to the person at that address.

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

(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 100 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.

(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.

(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.

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\(^{12}\), the Road Safety (Traffic) Regulations 1988\(^{13}\) and the Road Safety (Vehicles) Regulations 1988\(^{14}\) 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.

96 Disallowance of regulations, notices and orders

(1) This section applies to the following instruments—

(a) an Order in Council under section 3(2);

(ab) an Order under section 3(3);

(b) a notice under section 10;

(c) a notice under section 55A(5);

(e) a notice under section 94.

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\(^12\) S. 96(1)(ab) inserted by No. 14/2000 s. 14(a).

\(^13\) S. 96(1)(c) repealed by No. 110/2004 s. 42(b).

\(^14\) S. 96(1)(c) inserted by No. 14/2000 s. 14(b).
(2) A power that is conferred by this Act to make regulations or an instrument to which this section applies is subject to the regulations or instrument being disallowed by Parliament.

(3) Section 15 and Part 5 of the Subordinate Legislation Act 1994 apply to an instrument to which this section applies as if the instrument were a statutory rule within the meaning of that Act, notice of the making of which had been published in the Government Gazette on the day on which the instrument was so published.

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.
97 Application of fees

Notwithstanding anything to the contrary in this or any other Act—

(a) except where the Treasurer otherwise directs or the regulations made under this Act otherwise provide, all fees received by the Corporation (otherwise than as the agent of any other person or body) under this or any other Act must be paid by the Corporation into the Consolidated Fund; and

(b) all fees received by the Corporation (otherwise than as the agent of any other person or body) under this or any other Act which by virtue of paragraph (a) are not required to be paid into the Consolidated Fund must be paid by the Corporation into its general fund.

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.

(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 member of the police force or of any emergency services agency arising out of the performance of a function or exercise of a power of that 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, 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.
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(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—
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(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 Persons Act 1989.

(2) Without limiting section 14 of the Interpretation of Legislation Act 1984, nothing in subsection (1) affects 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.
103R Transitional provisions for certain drivers of fatigue regulated heavy vehicles—Road Legislation Further Amendment Act 2007

(1) Despite anything to the contrary in this Act but subject to subsection (6), until the expiry of 6 months after the commencement of Part 10A, as inserted by section 20 of the Road Legislation Further Amendment Act 2007—

(a) a driver may drive at BFM hours if, immediately before that commencement, the driver—

(i) was exempt under the regulations from complying with the requirements in the regulations relating to maximum working times and minimum rest times for drivers because the driver was a participant in a fatigue management program approved under the regulations and known as a transitional fatigue management program; or

(ii) was exempt under a law of another State or of a Territory from complying with the requirements relating to maximum working times and minimum rest times for drivers applying under the law in that State or Territory because the driver was a participant in a fatigue management program corresponding to the program referred to in subparagraph (i); and

(b) a driver who, immediately before that commencement, was exempt under a law of another State or of a Territory from the requirements relating to maximum working times and minimum rest times for drivers applying under the law in that State or Territory because the driver was a participant
in a fatigue management program known as a fatigue management pilot, may drive at the hours approved in the exemption.

(2) Subsection (1)(a) does not apply—

(a) at any time that the driver is in breach of any condition or requirement of the fatigue management program in which the driver is a participant; or

(b) if the fatigue management program is cancelled.

(3) Subsection (1)(b) does not apply—

(a) at any time that the driver is in breach of any condition or requirement of the exemption under the fatigue management program; or

(b) if the exemption is cancelled.

(4) For the purposes of this section, a driver is not in breach of any condition or requirement referred to in subsection (2) or (3) if, instead of recording any entry the driver was required to record in a log book, the driver records the entry in a work diary issued under Part 10A.

(5) For the purposes of this section, if a driver's employer has yet to obtain BFM accreditation, it is sufficient compliance with any requirement of this Act to record a BFM accreditation number if the employer's TFMS or FMS exemption registration number is recorded instead.

(6) The Corporation may withdraw approval of a fatigue management program given under the regulations.
103S Transitional provisions for existing exemptions for drivers of fatigue regulated heavy vehicles—Road Legislation Further Amendment Act 2007

(1) This section applies if, immediately before the commencement of Part 10A, as inserted by section 20 of the Road Legislation Further Amendment Act 2007, a driver was exempted under the regulations from the requirement to make records in the driver's log book.

(2) The exemption is taken to be a work diary exemption made under Part 10A.

(3) Unless cancelled sooner under Part 10A, the exemption continues to apply—

(a) for the period stated in the exemption; or

(b) if the exemption does not state a period, for 3 years after the exemption took effect.

103T Transitional provisions for existing log books—Road Legislation Further Amendment Act 2007

(1) A driver working under standard hours may continue to use a log book issued under the regulations for 90 days after the commencement of Part 10A, as inserted by section 20 of the Road Legislation Further Amendment Act 2007, as if the regulations providing for driving hours for drivers continued to apply.

(2) A driver cannot work under BFM hours or AFM hours unless the driver has surrendered the driver's log book and has obtained a work diary.

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.
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;

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Part 9—Inspections and Searches Concerning Heavy Vehicles

Pt 9 (Heading and ss 106–149) inserted by No. 44/2003 s. 3.

S. 106 inserted by No. 44/2003 s. 3.

S. 106 def. of approved road transport compliance scheme repealed by No. 110/2004 s. 40.

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S. 106 def. of authorised officer repealed by No. 110/2004 s. 40.

S. 106 def. of driver base repealed by No. 110/2004 s. 40.

S. 106 def. of garage address repealed by No. 110/2004 s. 40.
### Part 9—Inspections and Searches Concerning Heavy Vehicles

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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;

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;
Part 9—Inspections and Searches Concerning Heavy Vehicles

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 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.
Part 9—Inspections and Searches Concerning Heavy Vehicles

(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—
\hspace{1cm} (i) any transport documentation or journey documentation located in or on the vehicle;
\hspace{1cm} (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 member of the police force may use reasonable force in the exercise of a power under this section.
Part 9—Inspections and Searches Concerning Heavy Vehicles

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 member of the police force—

(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 member of the police force, 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 member of the police force.

(4) In the case of an inspector who is a member of the police force 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.
Part 9—Inspections and Searches Concerning Heavy Vehicles

(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.

(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 member of the police force who is not in uniform, his or her identification as a member of the police force.

(2) An inspector must comply with subsection (1) even if he or she has complied with section 116.
(3) An inspector who is a member of the police force 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 or her 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 member of the police force 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 member of the police force 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—
(a) a responsible person; or
(b) 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) If an authorised inspector enters a premises that the inspector believes is attended, but then discovers that the premises is unattended, the inspector—
(a) must place in a prominent position in the premises a notice stating—

(i) the inspector's name and contact details; and
(ii) that the inspector entered the premises for the purposes of this Act; and
(iii) that the inspector left the premises after finding them unattended within the meaning of this Act; and
(b) must then immediately leave the premises.

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 member of the police force who is not in uniform, his or her identification as a member of the police force; 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

s. 125
(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

(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 member of the police force and who is in uniform to produce his or her identification as a member of the police force.

(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

(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 member of the police force 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 member of the police force, 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 member of the police force.
(5) In the case of an inspector who is a member of the police force 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 member of the police force who is not in uniform, his or her identification as a member of the police force.

(2) An inspector must comply with subsection (1) even if he or she has complied with section 126.

(3) An inspector who is a member of the police force 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 inspector who is a member of the police force 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 member of the police force may be executed by any member of the police force.

(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

(b) authorise any other person to do so.

(3) A member of the police force or a person authorised by a member of the police force 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;
Part 9—Inspections and Searches Concerning Heavy Vehicles

(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 member of the police force 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.

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456
PART 10—PROVISIONS CONCERNING BREACHES OF MASS, DIMENSION AND LOAD RESTRAINT LIMITS AND REQUIREMENTS

Division 1—Preliminary matters

149A 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.

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.
Part 10—Provisions Concerning Breaches of Mass, Dimension and Load Restraint Limits and Requirements

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—

(a) if the vehicle is a heavy vehicle and is at its garage address, or at a depot, direct the operator of the vehicle to rectify the breach before the operator permits the vehicle to start a journey; or

(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

(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—

(a) if the vehicle is a heavy vehicle and is at its garage address, or at a depot, direct the operator of the vehicle to rectify the breach before the operator permits the vehicle to start a journey; or
chapter 10—provisions concerning breaches of mass, dimension and load restraint limits and requirements

road safety act 1986
no. 127 of 1986

(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.

167 Operation of directions in relation to a group of vehicles

(1) This section applies if a direction is given under this Division in relation to one or more vehicles that are in a group of vehicles that are physically connected.

(2) Nothing in this Division prevents a vehicle that forms part of the group from being separately driven or moved if—

(a) the vehicle is not itself in breach of a mass, dimension or load restraint limit or requirement; and

(b) it is not otherwise unlawful for the vehicle to be driven or moved.

(3) Subsection (2) does not apply if a condition of the direction prevents the vehicle from being separately driven or moved.

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 member of the police force may amend or revoke a direction given, or conditions imposed, by a member of the police force under this Part.

Division 4—Responsibility for breaches of mass, dimension and load restraint limits and requirements

171 Liability of consignor

(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.

(3) A person is guilty of an offence if—

(a) the weight of a freight container containing goods consigned for road transport and its contents exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and

(b) the person is the consignor of any of the goods contained in the container; and

(c) the container is placed on a 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.

(3) A person is guilty of an offence if—

(a) the weight of a freight container containing goods consigned for road transport and its contents exceeds the maximum gross weight as marked on the container or on the container's safety approval plate; and

(b) the person is the packer of any of the goods contained in the container; and

(c) the container is placed on a 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.
Part 10—Provisions Concerning Breaches of Mass, Dimension and Load Restraint Limits and Requirements

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.

(3) If the vehicle is in breach of a mass limit, the person charged with the offence has the benefit of the reasonable steps defence so far as it relates to reliance on the weight stated in a container weight declaration.

Note
Section 180 sets out how this defence 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.

(3) If the vehicle is in breach of a mass limit, the person charged with the offence has the benefit of the reasonable steps defence so far as it relates to reliance on the weight stated in a container weight declaration.

Note
Section 180 sets out how this defence 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.

Note

Section 187 provides that a consignee is taken to have intended the result referred to in subsection (1) if the consignee knew or ought reasonably to have known that a container weight declaration was not provided as required or that a container weight declaration contained false or misleading information about the weight of a freight container.

(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(3) or 176(4)) 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.

180 Reasonable steps defence—reliance on container weight declaration

(1) This section applies if the operator or driver of a vehicle charged with an offence under section 174 or 175 has the benefit, under section 174(3) or 175(3), of the reasonable steps defence so far as it relates to reliance on the weight stated in a container weight declaration.

(2) To the extent that the weight of a freight container and its contents is relevant to the offence, the person charged may rely on the weight stated in the relevant container weight declaration, unless it is established that the person knew, or ought reasonably to have known, that—
(a) the stated weight was lower than the actual weight; or

(b) the distributed weight of the container and its contents, together with—

(i) the mass or location of any other load; or

(ii) the mass of the vehicle or any part of it—

would result in the breach of a mass limit.

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 6—Container weight declarations

182 Consignor for the purposes of this Division

For the purposes of this Division, if the consignor of a freight container was not in Australia at the time the container was consigned for transport by road in Victoria, a reference to the consignor in this Division is to be read as a reference—

(a) to the person who, in Australia, on behalf of the consignor, arranged for the transport of the container by road in Victoria; or

(b) if there is no such person, the person who, in Australia, physically offered the container for transport by road in Victoria.

S. 181 inserted by No. 110/2004 s. 41.

S. 182 inserted by No. 110/2004 s. 41.
183 Container weight declarations

(1) A container weight declaration for a freight container is a declaration that states, or that purports to state, the weight of the container and its contents.

(2) A complying container weight declaration for a freight container is a container weight declaration—

(a) that contains the following details—
   (i) the number and other details of the container necessary to identify the container;
   (ii) the name, home address or business address in Australia of the consignor;
   (iii) the date of the declaration;
   (iv) any other details required by the regulations for the purposes of this section; and

(b) that is in a form—
   (i) that can be readily read by a person inspecting it; and
   (ii) that can be used or adapted for evidentiary purposes; and
   (iii) that satisfies any requirement specified by the regulations for the purposes of this section.

(3) Subject to the regulations, a container weight declaration—

(a) may consist of one or more documents; or

(b) without limiting paragraph (a), may consist wholly or partly of a placard attached or affixed to the freight container.
184 Duty of consignor

(1) This section applies if a consignor offers a freight container to an operator for transport in Victoria by a vehicle.

(2) The consignor must ensure that the operator or driver of the vehicle is provided, before the start of the transport of the container in Victoria, with a complying container weight declaration relating to the container.

Penalty: 240 penalty units, in the case of a corporation;
60 penalty units, in any other case.

(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 out how subsection (3) operates.

(4) A person charged with an offence under this section has the benefit of the reasonable steps defence.

185 Duty of operator

(1) This section applies if an operator arranges for a freight container to be transported in Victoria by a vehicle.

(2) The operator must ensure that the driver of the vehicle is provided, before the driver starts to transport the container in Victoria, with a complying container weight declaration relating to the container.

Penalty: 300 penalty units, in the case of a corporation;
60 penalty units, in any other case.
(3) If the container is to be transported by another road or rail carrier, the operator must ensure that the other carrier is provided with a complying container weight declaration relating to the container by the time the other carrier receives the container.

Penalty: 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.

(4) If the driver transporting a freight container does not have a complying container weight declaration relating to the container, the operator is deemed to have contravened subsection (2) unless the operator establishes that the driver was provided with the declaration.

(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.

(7) Any or all of subsections (2), (3) and (4) do not apply in circumstances specified by the regulations for the purposes of this section.

186 Duty of driver

(1) A person must not drive a vehicle loaded with a freight container on a road in Victoria unless he or she has been provided with a container weight declaration relating to the container.

Penalty: 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.
(2) If a container weight declaration relating to a freight container is provided to a driver of a vehicle with the container, the driver must, while transporting the container in Victoria, keep the declaration in or about the vehicle or in a manner that enables it to be readily accessed from the vehicle.

Penalty: 300 penalty units, in the case of a corporation;
60 penalty units, in any other case.

(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 out how subsection (3) operates.

(4) A person charged with an offence under this section has the benefit of the reasonable steps defence.

187 Liability of consignee—knowledge of matters relating to container weight declaration

Without limiting section 176 (Liability of consignee), a consignee of goods is taken to have intended the result referred to in section 176(2)(b) if—

(a) the conduct concerned related to a freight container; and

(b) the person knew, or ought reasonably to have known, that—

(i) a complying container weight declaration for the container was not provided as required by this Act; or
(ii) a container weight declaration provided for the container contained information about the weight of the container and its contents that was false or misleading in a material detail.

Note

Section 176(2) provides that a person who is a consignee of goods consigned for road transport is guilty of an offence if the person engages in conduct that results or is likely to result in inducing or rewarding the breach of a relevant mass, dimension or load limit or requirement and the person intends that result.

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 member of the police force 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 REQUIREMENTS

Division 1—Interpretation

191A Definitions

In this Part—

100+ km work, for the driver of a fatigue regulated heavy vehicle, means the driver is driving in an area that has a radius of more than 100 km from the vehicle's driver base;

accreditation means—

(a) AFM accreditation; or
(b) BFM accreditation;

ADR 42 means the national standard described as ADR 42 as in force from time to time under the Motor Vehicle Standards Act 1989 of the Commonwealth;

AFM accreditation means accreditation granted under section 191ZS, or a corresponding fatigue law, that is in force;

AFM proposal has the meaning given by section 191ZP;

AFM hours means the work times and rest times set out in an AFM accreditation for a driver working under the accreditation;

AFM outer limits are the limits set in Schedule 4A;
**AFM standards and business rules** means the standards and business rules for AFM accreditation approved by the Australian Transport Council;

**AFM system** has the meaning given by section 191ZQ;

**approved sleeper berth** means—

(a) for a vehicle other than a bus—a driver's sleeper berth that complies with ADR 42 or with a prescribed standard for sleeper berths and is able to be used by the driver when taking rest; or

(b) for a bus—a driver's sleeper berth that complies with a standard for sleeper berths that is approved by the Australian Transport Council and is able to be used by the driver when taking rest;

**Australian Transport Council** means the council of Commonwealth, New Zealand, State and Territory Ministers established on 11 June 1993 and known as the Australian Transport Council, but constituted so that it consists of only one Minister representing each of the Commonwealth, the States and the Territories when dealing with matters with which this Part is concerned;

**BFM accreditation** means accreditation granted under section 191ZJ, or a corresponding fatigue law, that is in force;

**BFM hours** means the work times and rest times set out in Schedule 4 for a driver working under BFM accreditation;
**BFM standards and business rules** means the standards and business rules for BFM accreditation approved by the Australian Transport Council;

**BFM system** has the meaning given by section 191ZH;

**corresponding fatigue law** means—

(a) a law in force in another jurisdiction corresponding to this Part; or

(b) a law of another jurisdiction that is declared under the regulations to be a corresponding fatigue law, whether or not the law corresponds, or substantially corresponds, to this Part;

**critical risk offence** means an offence that is specified in this Part or Schedule 3 or 4 as a critical risk offence;

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

**electronic work diary** means a device that—

(a) is approved by the Corporation in accordance with the regulations; and

(b) is fitted to a fatigue regulated heavy vehicle to monitor the work and rest times of the vehicle’s driver;

**employed driver** means a driver who is employed by someone else to drive a fatigue regulated heavy vehicle;
employer means a person who engages someone else to drive a fatigue regulated heavy vehicle under a contract of employment, apprenticeship or training;

Example
A labour hire company.

entry, in a work record, includes an annotation made in the record by an inspector;

Fatigue Authorities Panel means the panel established by the Fatigue Authorities Panel Rules made by the National Transport Commission and approved by the Australian Transport Council on 11 July 2008;

fatigue impairment requirement means a requirement under this Part relating to a requirement that a person must not drive a fatigue regulated heavy vehicle while impaired by fatigue;

fatigue management requirement means—

(a) a fatigue impairment requirement; or
(b) a maximum work requirement; or
(c) a minimum rest requirement; or
(d) a work diary requirement;

impaired by fatigue, for a driver, means the driver is fatigued to the extent that the driver is incapable of driving a vehicle safely;

loading manager means—

(a) a person who manages, or is responsible for the operation of, premises at which usually on a business day at least 5 fatigue regulated heavy vehicles are loaded with goods for transport, or have goods that the vehicles have transported unloaded; or
(b) a person who directly or indirectly supervises, manages or controls the loading or unloading of fatigue regulated heavy vehicles at premises referred to in paragraph (a);

**long/night work time** means—

(a) any work time of more than 12 hours in a 24 hour period; or

(b) any work time between midnight and 6 a.m. (or the equivalent hours in the time zone of the driver base of the vehicle if it is on a journey);

**maximum work requirement** means a requirement under this Part or Schedule 3 or 4 relating to the maximum period a driver, or two-up driver, of a fatigue regulated heavy vehicle may drive a fatigue regulated heavy vehicle, or otherwise work, without taking a rest;

**minimum rest requirement** means a requirement under this Part or Schedule 3 or 4 relating to the minimum period a driver, or two-up driver, of a fatigue regulated heavy vehicle must rest to break up the period of time the driver, or two-up driver, drives a fatigue regulated heavy vehicle or otherwise works;

**minor risk offence** means an offence that is specified in this Part or Schedule 3 or 4 as a minor risk offence;

**motor home**—

(a) means a rigid or articulated motor vehicle or combination that is built, or has been modified, primarily for residential purposes; and
(b) does not include a motor vehicle that is merely a motor vehicle constructed with a sleeper berth;

*night rest break* means—

(a) 7 hours of continuous and stationary rest time taken between 10 p.m. on a day and 8 a.m. on the next day, using the time zone of the driver base of the vehicle; or

(b) 24 hours of continuous and stationary rest time;

*participating jurisdiction* means—

(a) this jurisdiction; or

(b) another jurisdiction, if that jurisdiction has a corresponding fatigue law;

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

(a) the employer of the driver of the vehicle;

(b) the prime contractor of the driver;

(c) the operator of the vehicle;

(d) the scheduler of goods or passengers for transport by the vehicle, and the scheduler of its driver;

(e) the consignor of goods for transport by the vehicle;

(f) the consignee of goods for transport by the vehicle;

(g) the loading manager of goods for transport by the vehicle;
(h) the loader of goods on to the vehicle;

(i) the unloader of goods from the vehicle;

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

**Example**

A logistics business that engages a subcontractor to transport goods.

*record keeper*, for a driver, means—

(a) for an employed driver working under standard hours—the employer; or

(b) for a self-employed driver working under standard hours—the self-employed driver; or

(c) for an employed or self-employed driver working under an operator's accreditation—the operator;

*record location*, for a driver, means—

(a) the place which the record keeper has told the driver is the driver's record location; or

(b) if the record keeper has not told the driver a place under paragraph (a), the driver base of the fatigue regulated heavy vehicle;

*rest time*, for a driver, means the time that is not work time for the driver;

*scheduler* means a person who—

(a) schedules a driver's work time or rest time; or

(b) schedules the transport of passengers or goods by road;
severe risk offence means an offence that is specified in this Part or Schedule 3 or 4 as a severe risk offence;

solo driver means a driver who is not a party to a two-up driving arrangement;

specified, in relation to an offence, means the offence is specified as a particular type of offence either—

(a) directly by a statement or other indication in the provision creating the offence that the offence is an offence of that particular type; or

(b) by a statement that the penalty for the offence is the penalty for that type of offence;

standard hours means the work times and rest times applying under this Part to a driver if the driver is not working under an accreditation;

stationary rest time means rest time that a driver spends—

(a) out of a fatigue regulated heavy vehicle; or

(b) in an approved sleeper berth of a stationary fatigue regulated heavy vehicle;

substantial risk offence means an offence that is specified in this Part or Schedule 3 or 4 as a substantial risk offence;

suitable rest place, for fatigue regulated heavy vehicles, means—

(a) a rest area that is designated by the Corporation for use by fatigue regulated heavy vehicles and able to be
used by fatigue regulated heavy vehicles; or

(b) a place at which fatigue regulated heavy vehicles may be safely parked; or

(c) another place prescribed under the regulations to be a suitable rest place for fatigue regulated heavy vehicles;

**supplementary record** means a record that—

(a) is not made in a written or electronic work diary; and

(b) is at least as accurate and understandable as, and is made in a similar form to, a record made in a written or electronic work diary;

**unloader** means—

(a) a person who unloads from a fatigue regulated heavy vehicle goods that have been transported by road; or

(b) a person who unloads from a bulk container or freight container on a fatigue regulated heavy vehicle, or a tank that is part of a fatigue regulated heavy vehicle, goods that have been transported by road; or

(c) a person who unloads from a fatigue regulated heavy vehicle a freight container, whether or not it contains goods, that have been transported by road; or

(d) a person who supervises, manages or controls an activity set out in paragraph (a), (b) or (c);
work diary requirement means a requirement under this Part relating to a driver keeping a work diary or another record;

work record means a work diary or a record required to be kept under section 191Y;

work/rest change, for a driver, means—
(a) a change for the driver from work time to rest time; or
(b) a change for the driver from rest time to work time; or
(c) a change for the driver from being a solo driver to being a two-up driver; or
(d) a change for the driver from being a two-up driver to being a solo driver;

work/rest hours option sets out the maximum work time and minimum rest time that a driver must have and includes—
(a) standard hours; and
(b) BFM hours; and
(c) AFM hours;

work time, for a driver, means—
(a) the time the driver spends driving a fatigue regulated heavy vehicle, whether or not it is on a road and includes—
(i) being in the driver's seat of the vehicle while its engine is running; and
(ii) being in the vehicle for the purpose of instructing or supervising another person driving the vehicle; and
(b) any other time the driver spends doing tasks that are related to the operation of a fatigue regulated heavy vehicle, including for example—

(i) loading or unloading the vehicle; and

(ii) inspecting, servicing or repairing the vehicle; and

(iii) inspecting or attending to the load on the vehicle; and

(iv) attending to the passengers of a bus; and

(v) cleaning or refuelling the vehicle; and

(vi) performing marketing tasks in relation to the operation of the vehicle, including arranging, or canvassing, for the transport of passengers or goods; and

(vii) helping with, or supervising, an activity mentioned in subparagraph (i), (ii), (iii), (iv), (v) or (vi); and

(viii) recording information, or completing a document, in accordance with this Act or otherwise, in relation to the operation of the vehicle.

191B Meaning of fatigue regulated heavy vehicle

(1) A heavy vehicle is a fatigue regulated heavy vehicle if it is any of the following—

(a) a motor vehicle with a GVM of more than 12 tonnes;
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(b) a combination with a GVM of more than 12 tonnes;

(c) a bus.

(2) However, a heavy vehicle is not a fatigue regulated heavy vehicle if it is any of the following—

(a) a tram;

(b) a motor vehicle that—
   
   (i) is built, or has been modified, primarily to operate as a machine or implement off-road, on a road-related area, or on an area of road that is under construction; and
   
   (ii) is not capable of carrying goods or passengers by road;

Examples

The following are examples of vehicles of a type referred to in paragraph (b)—

agricultural machine, backhoe, bulldozer, excavator, forklift, front-end loader, grader, tractor, motor vehicle registered as a special purpose vehicle.

The following are examples of vehicles not of a type referred to in paragraph (b)—

truck-mounted crane, truck-mounted drilling rig.

(c) a motor home.

191C Application of Commonwealth Interpretation Act

(1) The Acts Interpretation Act 1901 of the Commonwealth applies to the interpretation of this Part, except that, in relation to Victoria, "Ministerial Order" refers to an order made by the responsible Minister of Victoria.
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(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.

Division 2—Duties to avoid and prevent fatigue

191D Driver's duty to avoid driver fatigue

(1) A person must not drive a fatigue regulated heavy vehicle on a road while the person is impaired by fatigue.

Penalty: the penalty for a severe risk offence.

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

Note
Section 191ZZT sets out how subsection (2) operates.

191E Duty on parties in the chain of responsibility to prevent driver fatigue

(1) A party in the chain of responsibility in relation to a fatigue regulated heavy vehicle must take all reasonable steps to ensure that a person does not drive the vehicle on a road while the person is impaired by fatigue.

Penalty: the penalty for a critical risk offence.

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

Note
Section 191ZZT sets out how subsection (2) operates.
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(3) For the purposes of subsection (1), evidence—

(a) that a party complied with a relevant prescribed fatigue duty under another law is evidence that the party took all the reasonable steps required by that subsection; and

(b) that an operator complied with the requirement of the operator's accreditation is evidence that the operator took all the reasonable steps required by that subsection.

(4) In a prosecution for an offence under subsection (1), it is not necessary to prove that any particular person drove, or would or may have driven, the vehicle on a road while impaired by fatigue.

(5) In this section—

*prescribed fatigue duty under another law* means a duty under another law of this jurisdiction, or of another participating jurisdiction, prescribed by the regulations for the purposes of this section.

191F Duties on employers, prime contractors and operators

(1) This section applies to—

(a) the employer of an employed driver; and

(b) the prime contractor of a self-employed driver; and

(c) the operator of the fatigue regulated heavy vehicle if the driver is to make a journey for the operator.
(2) The employer, prime contractor and operator must take all reasonable steps to ensure that the employer's, prime contractor's or operator's business practices will not cause or permit the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a severe risk offence.

(3) The employer must not cause or permit the driver to drive the vehicle unless—

(a) the employer has complied with subsection (2); and

(b) the employer, after making reasonable inquiries, is satisfied that the scheduler has complied with section 191G.

Penalty: the penalty for a substantial risk offence.

(4) The prime contractor or operator must not cause or permit the driver to drive the vehicle, or enter into a contract with the driver to that effect, unless—

(a) the prime contractor or operator has complied with subsection (2); and

(b) the prime contractor or operator, after making reasonable inquiries, is satisfied that the scheduler has complied with section 191G.

Penalty: the penalty for a substantial risk offence.
(5) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) In this section—

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

(a) the operating policies and procedures of the business; and

(b) the human resource and contract management arrangements of the business; and

(c) arrangements for managing safety.

191G Duties on schedulers

(1) This section applies to the scheduler of—

(a) a fatigue regulated heavy vehicle; or

(b) a driver.

(2) The scheduler must take all reasonable steps to ensure that a driver's schedule for driving the vehicle will not cause or permit the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a severe risk offence.
(3) The scheduler must not cause or permit the driver to drive the vehicle unless—

(a) the scheduler has complied with subsection (2); and

(b) the driver's schedule for driving the vehicle allows for—

(i) the driver to take rest breaks in accordance with the driver's work/rest hours option; and

Examples

- Ensuring that a driver is able to take a short rest break at a suitable location.
- Ensuring that a driver is able to take a long rest break at a location where facilities that enable adequate rest to be taken are available.

(ii) traffic conditions and other delays that could reasonably be expected.

Examples

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

Penalty: the penalty for a substantial risk offence.

(4) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note

Section 191ZZT sets out how subsection (4) operates.
191H Duties on consignors and consignees

(1) This section applies to—

(a) the consignor of goods for transport by a fatigue regulated heavy vehicle; and

(b) the consignee of goods for transport by a fatigue regulated heavy vehicle.

(2) The consignor and consignee must take all reasonable steps to ensure that the terms of consignment including, for example, the delivery time, will not result in, encourage or provide an incentive to the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a severe risk offence.

(3) The consignor and consignee must take all reasonable steps to ensure that the terms of consignment, including, for example, the delivery time, will not result in, encourage or provide an incentive to the employer of an employed driver, prime contractor of a self-employed driver or operator of the fatigue regulated heavy vehicle to cause or permit the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a severe risk offence.
(4) The consignor or consignee must not cause or permit the driver to drive the vehicle, or enter into a contract to that effect, unless—

(a) the consignor or consignee has complied with subsections (2) and (3); and

(b) for an employed driver—the consignor or consignee, after making reasonable inquiries, is satisfied that—

(i) the driver's employer and the operator of the driver's vehicle have complied with section 191F; and

(ii) the scheduler has complied with section 191G; and

(c) for a self-employed driver—the consignor or consignee, after making reasonable inquiries, is satisfied that—

(i) if the driver has a prime contractor—

the prime contractor of the driver has complied with section 191F; and

(ii) the scheduler has complied with section 191G.

Penalty: the penalty for a substantial risk offence.

(5) The consignor or consignee must not make a demand that affects, or that may affect, a time in a schedule for the transport of the consigned goods and that may cause or permit the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or
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(c) drive while in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a severe risk offence.

(6) Subsection (5) does not apply if the consignor or consignee, before making the demand—

(a) complies with subsections (2) and (3); and

(b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause or permit a person to contravene section 191D.

(7) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note
Section 191ZZT sets out how subsection (7) operates.

191I Duties on loading managers

(1) A loading manager must take all reasonable steps to ensure that the arrangements for loading and unloading fatigue regulated heavy vehicles at the premises at which he or she is the loading manager will not cause or permit a driver to—

(a) drive while impaired; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a severe risk offence.

Examples

- Providing for rest to be taken with adequate facilities.
- Providing for the reporting of travel delays and providing a mechanism for managing late arrivals.
• Allowing loading and unloading to occur at an agreed time.
• Having a system of setting and allocating loading and unloading times that a driver can reasonably rely on to comply with the driver's work/rest hours option.

(2) The loading manager must take all reasonable steps to ensure that the driver is able to take rest while waiting for the vehicle to be loaded or unloaded if the loading manager, or a person acting under the loading manager's supervision or control—

(a) has advised the driver, either directly or indirectly, of when the loading or unloading of the vehicle is to start, and the loading manager or person becomes aware that the loading or unloading will, or is likely to, start more than 30 minutes late; or

(b) has advised the driver, either directly or indirectly, of when the loading or unloading of the vehicle is to finish, and the loading manager or person becomes aware that the loading or unloading will, or is likely to, finish more than 30 minutes late; or

(c) is unable to advise the driver of when the loading or unloading of the vehicle is to start; or

(d) is unable to advise the driver of when the loading or unloading of the vehicle is to finish.

Penalty: the penalty for a substantial risk offence.

Example
Providing a system of notifying the driver when the driver's vehicle can be loaded or unloaded that does not require the driver to be awake.
(3) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

**Note**

Section 191ZZT sets out how subsection (3) operates.

**191J  Certain requests etc. prohibited**

A person must not ask, direct or require (directly or indirectly) a driver or a party in the chain of responsibility to do something the person knows, or reasonably ought to know, would have the effect of causing or permitting the driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

**Example**

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

**Penalty:** the penalty for a critical risk offence.

**191K  Certain contracts prohibited**

(1) A person must not enter into a contract with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would have the effect of causing or permitting a driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or
(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a critical risk offence.

(2) A person must not enter into a contract with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or provide an incentive for a party in the chain of responsibility to cause or permit a driver to—

(a) drive while impaired by fatigue; or

(b) drive while in breach of the driver's work/rest hours option; or

(c) drive in breach of another law to avoid driving while impaired by fatigue or while in breach of the driver's work/rest hours option.

Penalty: the penalty for a critical risk offence.

Division 3—Duties relating to work and rest times

Subdivision 1—Work and rest times applying to drivers not working under accreditation

191L Standard hours—solo drivers

(1) This section applies to a solo driver, including a solo driver of a bus, who is not working under an accreditation.

(2) In any period mentioned in column 1 of Table 1 in Schedule 3, the solo driver—

(a) must not work for more than the time set out opposite in column 2 of that Table; and

(b) must have the rest of that period off work, with at least the rest time set out opposite in column 3 of that Table.
(3) A party in the chain of responsibility for the fatigue regulated heavy vehicle must ensure the driver does not contravene subsection (2).

(4) A person who contravenes subsection (2) or (3)—
   (a) is guilty of an offence; and
   (b) is liable to the penalty for the category of offence set out in column 4 of the Table, opposite the relevant period.

(5) A person charged with an offence under subsection (4) does not have the benefit of the mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) However, a person, other than the solo driver or the operator of the vehicle, charged with an offence under subsection (4) has the benefit of the reasonable steps defence.

(7) This section does not apply to the solo driver of a bus if the solo driver complies with section 191M.

191M Standard hours—solo drivers of buses

(1) This section applies to a solo driver of a bus who is not working under an accreditation.

(2) In any period mentioned in column 1 of Table 2 in Schedule 3, the solo driver—
   (a) must not work for more than the time set out opposite in column 2 of that Table; and
   (b) must have the rest of that period off work, with at least the rest time set out opposite in column 3 of that Table.

(3) A party in the chain of responsibility for the bus must ensure the driver does not contravene subsection (2).
(4) A person who contravenes subsection (2) or (3)—
   (a) is guilty of an offence; and
   (b) is liable to the penalty for the category of
       offence set out in column 4 of the Table,
       opposite the relevant period.

(5) A person charged with an offence under
    subsection (4) does not have the benefit of the
    mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) However, a person, other than the solo driver or
    the operator of the bus, charged with an offence
    under subsection (4) has the benefit of the
    reasonable steps defence.

(7) This section does not apply to the solo driver of a
    bus if the solo driver complies with section 191L.

191N Standard hours—two-up drivers

(1) This section applies to a two-up driver who is not
    working under an accreditation.

(2) In any period mentioned in column 1 of Table 3 in
    Schedule 3, the two-up driver—
    (a) must not work for more than the time set out
        opposite in column 2 of that Table; and
    (b) must have the rest of that period off work,
        with at least the rest time set out opposite in
        column 3 of that Table.

(3) A party in the chain of responsibility for the
    fatigue regulated heavy vehicle must ensure the
    driver does not contravene subsection (2).
(4) A person who contravenes subsection (2) or (3)—
    (a) is guilty of an offence; and
    (b) is liable to the penalty for the category of
    offence set out in column 4 of the Table,
    opposite the relevant period.

(5) A person charged with an offence under
subsection (4) does not have the benefit of the
mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) However, a person, other than the two-up driver
or the operator of the vehicle, charged with an
offence under subsection (4) has the benefit of the
reasonable steps defence.

Subdivision 2—Work and rest times applying to drivers
working under BFM accreditation

191O BFM hours—solo drivers

(1) This section applies to a solo driver, including a
solo driver of a bus, who is working under BFM
accreditation.

(2) In any period mentioned in column 1 of Table 1 in
Schedule 4, the solo driver—
    (a) must not work for more than the time set out
    opposite in column 2 of that Table; and
    (b) must have the rest of that period off work,
    with at least the rest time set out opposite in
    column 3 of that Table.

(3) A party in the chain of responsibility for the
fatigue regulated heavy vehicle must ensure the
driver does not contravene subsection (2).
(4) A person who contravenes subsection (2) or (3)—
   (a) is guilty of an offence; and
   (b) is liable to the penalty for the category of
       offence set out in column 4 of the Table,
       opposite the relevant period.

(5) A person charged with an offence under
    subsection (4) does not have the benefit of the
    mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) However, a person, other than the solo driver or
    the operator of the vehicle, charged with an
    offence under subsection (4) has the benefit of the
    reasonable steps defence.

191P BFM hours—two-up drivers

(1) This section applies to a two-up driver who is
    working under BFM accreditation.

(2) In any period mentioned in column 1 of Table 2 in
    Schedule 4, the two-up driver—
   (a) must not work for more than the time set out
       opposite in column 2 of that Table; and
   (b) must have the rest of that period off work,
       with at least the rest time set out opposite in
       column 3 of that Table.

(3) A party in the chain of responsibility for the
    fatigue regulated heavy vehicle must ensure the
    driver does not contravene subsection (2).

(4) A person who contravenes subsection (2) or (3)—
   (a) is guilty of an offence; and
   (b) is liable to the penalty for the category of
       offence set out in column 4 of the Table,
       opposite the relevant period.
(5) A person charged with an offence under subsection (4) does not have the benefit of the mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) A person, other than the two-up driver or the operator of the vehicle, charged with an offence under subsection (4) has the benefit of the reasonable steps defence.

Subdivision 3—Work and rest hours under AFM accreditation

191Q Drivers working under AFM accreditation

(1) This section applies to a driver who is working under AFM accreditation.

(2) In any period specified in the certificate for the AFM accreditation under which the driver is working, the driver—

(a) must not work for more than the maximum work time specified in that certificate; and

(b) must have at least the minimum rest time specified in that certificate.

(2A) In any period mentioned in Column 1 in Schedule 4A, the driver—

(a) must not work for more than the maximum work time specified in Column 2 of that Schedule for that period; and

(b) must have at least the minimum rest time specified in Column 3 of that Schedule for that period.

(3) A party in the chain of responsibility for the fatigue regulated heavy vehicle must ensure the driver does not contravene subsection (2) or (2A).
(4) A person who contravenes subsection (2), (2A) or (3)—

(a) is guilty of an offence; and

(b) is liable to the penalty for the relevant category of offence referred to in section 191QA(1), (2), (3) or (4) (as the case requires).

(5) A person charged with an offence under subsection (4) does not have the benefit of the mistake of fact defence.

Note
Section 191ZZT sets out how subsection (5) operates.

(6) A person, other than the driver or the operator of the vehicle, charged with an offence under subsection (4) has the benefit of the reasonable steps defence.

191QA Offences for breaching limits set out in AFM accreditation or AFM outer limits

(1) A contravention of section 191Q(2) or (3) is a minor risk offence if—

(a) the driver's work time—

(i) in any period of less than 7 days, exceeds the maximum time specified in the AFM accreditation certificate by 45 minutes or less; or

(ii) in any period of 7 days or more, exceeds the maximum time specified in the AFM accreditation certificate by 1½ hours or less; or

(b) in any period of less than 7 days, the driver has a rest time that is not more than 45 minutes less than the minimum time specified in the AFM accreditation certificate.
(2) A contravention of section 191Q(2), (2A) or (3) is a substantial risk offence if—

(a) the driver's work time—

(i) in any period of less than 7 days, exceeds the maximum time specified in the AFM accreditation certificate by more than 45 minutes but not more than 75 minutes; or

(ii) in any period of less than 7 days, exceeds the AFM outer limits by 15 minutes or less; or

(iii) in any period of 7 days or more, exceeds the maximum time specified in the AFM accreditation certificate by more than 1½ hours but not more than 2½ hours; or

(iv) in any period of 7 days or more, exceeds the AFM outer limits by 30 minutes or less; or

(b) in any period of less than 7 days, the driver has a rest time that—

(i) is less than the minimum time specified in the AFM accreditation certificate by more than 45 minutes but not more than 75 minutes; or

(ii) is less than the minimum AFM outer limits by 15 minutes or less.

(3) A contravention of section 191Q(2), (2A) or (3) is a severe risk offence if—

(a) the driver's work time—

(i) in any period of less than 7 days, exceeds the maximum time specified in the AFM accreditation certificate by
more than 75 minutes but not more than 90 minutes; or

(ii) in any period of less than 7 days,
    exceeds the AFM outer limits by more than 15 minutes but not more than 30 minutes; or

(iii) in any period of 7 days or more,
    exceeds the maximum time specified in the AFM accreditation certificate by more than 2½ hours but not more than 3 hours; or

(iv) in any period of 7 days or more,
    exceeds the AFM outer limits by more than 30 minutes but not more than 1 hour; or

(b) in any period of less than 7 days, the driver has a rest time that—

(i) is less than the minimum time specified in the AFM accreditation certificate by more than 75 minutes but not more than 90 minutes; or

(ii) is less than the minimum AFM outer limits by more than 15 minutes but not more than 30 minutes.

(4) A contravention of section 191Q(2), (2A) or (3) is a critical risk offence if—

(a) the driver's work time—

(i) in any period of less than 7 days,
    exceeds the maximum time specified in the AFM accreditation certificate by more than 90 minutes; or

(ii) in any period of less than 7 days,
    exceeds the AFM outer limits by more than 30 minutes; or
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(iii) in any period of 7 days or more, exceeds the maximum time specified in the AFM accreditation certificate by more than 3 hours; or

(iv) in any period of 7 days or more, exceeds the AFM outer limits by more than 1 hour; or

(b) in any period of less than 7 days, the driver has a rest time that—

(i) is less than the minimum time specified in the AFM accreditation certificate by more than 90 minutes; or

(ii) is less than the minimum AFM outer limits by more than 30 minutes.

191R Changing work/rest hours option

(1) A driver may drive under only one work/rest hours option at any one time.

(2) However, a driver may change from one work/rest hours option to a different work/rest hours option.

(3) A driver must not drive a fatigue regulated heavy vehicle after changing from one work/rest hours option to a different work/rest hours option unless—

(a) if the change is from standard hours or BFM hours—either—

(i) the driver is in compliance with all the work and rest time requirements of the work/rest hours option to which the driver has changed; or

(ii) the driver has had a reset rest break; and

S. 191R inserted by No. 74/2007 s. 20 (as amended by No. 56/2008 s. 6).
(b) if the change is from AFM hours—the driver has had a reset rest break; and

Example

- If the driver is changing from BFM hours to standard hours, the driver may need to take a longer rest break before starting driving under the different work/rest hours option, or may need to take earlier rest breaks before working under the different work/rest hours option, or may choose to have a reset rest break instead.

- If the driver is changing from AFM hours, the driver must take a reset rest break before driving a fatigue regulated heavy vehicle under the different work/rest hours option.

(c) the driver complies with all other requirements of the work/rest hours option to which the driver has changed.

Example

If the driver is changing to BFM or AFM hours, the driver should be inducted into the operator's BFM or AFM system.

Penalty: the penalty for a substantial risk offence.

(4) If a driver has had a reset rest break between changing from one work/rest hours option to a different work/rest hours option, the operator of any fatigue regulated heavy vehicle driven by the driver, and the driver's scheduler, must—

(a) ensure that the driver does not drive a fatigue regulated heavy vehicle after making the change unless the driver has complied with subsection (3); and

(b) take whatever action is necessary to ensure the driver can comply with the driver's obligations in relation to the change.

Penalty: the penalty for a severe risk offence.
(5) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note

Section 191ZZT sets out how subsection (5) operates.

(6) However, a scheduler charged with an offence under subsection (4) has the benefit of the reasonable steps defence.

(7) In this section—

reset rest break means a rest break of at least the prescribed length of time.

Division 4—Duties relating to record keeping

191S Driver must carry work diary

(1) This section applies to a driver if the driver—

(a) is engaged in 100+ km work; or

(b) was engaged in 100+ km work in the last 28 days; or

(c) is driving under an accreditation; or

(d) was driving under an accreditation in the last 28 days.

(2) While driving a fatigue regulated heavy vehicle, the driver must keep in the vehicle a work diary that contains, for the last 28 days, the information required by section 191T to be recorded in the diary.

Penalty: 60 penalty units.

(3) Subsection (2) does not apply if a driver is recording information in a supplementary record in accordance with section 191V.
191T Information that driver must record in work diary

(1) This section applies to a driver on a day (a relevant day) on which the driver—
   (a) engages in 100+ km work; or
   (b) is working under an accreditation.

(2) Immediately after starting work on the relevant day, the driver must record—
   (a) the day of the week and date; and
   (b) the driver's name; and
   (c) the driver's current driver licence number, and the jurisdiction in which the licence was issued; and
   (d) whether the driver is working under standard hours (including whether the driver is working under standard hours for solo drivers of a bus) or under an accreditation; and
   (e) if the driver is working under an accreditation—the number of the operator's accreditation; and
   (f) details of the vehicle's driver base, unless the driver has previously recorded the details and the details are still current; and
   (g) details of the driver's record location, unless the driver has previously recorded the details and the details are still current; and
   (h) details of the time zone of the driver base of the vehicle.

Penalty: 20 penalty units.

(3) Immediately before or after a work/rest change on a relevant day, the driver must record—
   (a) the nature of the work/rest change; and
(b) the work time or rest time spent anywhere by the driver since the last work/rest change; and
(c) the time and place of the work/rest change; and
(d) the odometer reading at that time; and
(e) the registration number shown on—
   (i) the number plate of the fatigue regulated heavy vehicle that the driver drives; or
   (ii) if the driver drives a fatigue regulated heavy vehicle that is a motor vehicle being used in combination with one or more trailers—the number plate of the motor vehicle; and
(f) if the driver is or becomes a two-up driver—the following information about the other driver in the two-up driving arrangement—
   (i) the other driver's name;
   (ii) the other driver's driver licence number;
   (iii) except in the case of a shared electronic work diary, the security or other identifying number of the other driver's work diary and the name of the participating jurisdiction that issued that diary.

Penalty: 20 penalty units.

(4) Immediately before finishing work on a relevant day, the driver must record the total of the work time and the total of the rest time the driver has had that day.

Penalty: 20 penalty units.
(5) If this section requires a driver to record information before beginning to engage in 100+ km work on a day, it is a defence for the driver to prove that, at the time of the offence—

(a) the driver was unaware the driver would be engaging in 100+ km work on the day; and

(b) the driver recorded the information in the driver’s work diary as soon as practicable after becoming aware the driver would be engaging in 100+ km work on the day.

(6) A two-up driver must, at the request of the other two-up driver, provide the other driver with any details the other driver needs to be able to comply with subsection (3)(f).

Penalty: 20 penalty units.

191U How driver must record information in work diary

(1) A driver must record information in a written work diary in the following way—

(a) the written work diary must be a diary that has not been cancelled by the Corporation;

(b) the information for each day must be written on a separate daily sheet in the work diary;

(c) if the driver changes from one work/rest hours option to another work/rest hours option during a day, any information for that day that relates to the period after the change occurs must be recorded on a separate daily sheet;

(d) information must be written on a daily sheet as required by the instructions in the work diary for recording information on daily sheets;

(e) the daily sheets in the work diary must be used in turn from the front of the work diary;
(f) each daily sheet must—

(i) be signed and dated by the driver; and

(ii) if the driver is driving under a two-up arrangement—signed by the other two-up driver;

(g) information must be written on a daily sheet with enough pressure to ensure that a readable record of the information appears on a duplicate of the daily sheet;

(h) other information must be written in the work diary as required by the instructions in the work diary for the recording of the information.

Penalty: 20 penalty units.

(2) A driver must record information in an electronic work diary in the way required by—

(a) the Corporation; or

(b) if the Corporation does not make a requirement—the manufacturer's instructions for recording information in the work diary.

Penalty: 20 penalty units.

(3) A driver must record time in a work diary according to the time zone in the place where the driver base of the vehicle is, rather than the time zone in the place where the driver is.

Penalty: 20 penalty units.

191V Destroyed, lost, stolen or malfunctioning work diaries

(1) This section applies if a driver's work diary has become filled up, destroyed, lost or stolen or, in the case of an electronic work diary, is malfunctioning.
(2) As soon as practicable, and within 2 business days after the driver becomes aware that the work diary has become filled up, destroyed, lost, stolen, or is malfunctioning, the driver must—

(a) give the Corporation written notice of that happening, in the prescribed form; or

(b) apply for a replacement work diary.

Penalty: 40 penalty units.

(2A) During any period in which the driver is unable to use the work diary, any information that is required to be recorded under section 191T must be recorded in a supplementary record.

(2B) If a driver keeps a supplementary record under this section, the driver must keep the supplementary record in the relevant fatigue regulated heavy vehicle for 28 days.

(2C) Subsection (2A) ceases to apply when the first of the following events occurs—

(a) the driver is issued with a replacement work diary;

(b) in the case of a malfunctioning electronic work diary—the electronic work diary is brought into working order;

(c) the expiry of 7 business days after the day on which the period in which the driver is unable to use the work diary started.

(3) If a lost or stolen written work diary (the old work diary) is found by, or returned to, the driver after a replacement work diary has been issued to the driver, the driver must—

(a) immediately cancel any unused daily sheets in the old work diary by writing "cancelled" in large letters across each unused sheet; and
(b) if the old work diary was found or returned—

(i) within 28 days after it was lost or stolen—

(A) immediately notify the Corporation in writing that it has been found or returned; and

(B) give it to the Corporation as soon as is practicable after the 28 day period ends; or

(ii) more than 28 days after it was lost or stolen, give it to the Corporation as soon as is practicable after it is found or returned.

Penalty: 40 penalty units.

(3A) If a driver gives a work diary to the Corporation under subsection (3), the Corporation must—

(a) cancel any unused daily sheets in the diary; and

(b) return the diary to the driver.

(4) If a driver becomes aware or reasonably suspects that an electronic work diary fitted to the driver's fatigue regulated heavy vehicle is malfunctioning, the driver must inform the driver's record keeper of that as soon as practicable, and within 2 business days.

Penalty: 40 penalty units.

(5) Also, in the case of an electronic work diary that includes or forms part of an intelligent transport system approved under Part 12, if a person on whom an obligation to report a malfunction of or tampering with a system under that Part becomes aware or reasonably suspects that the electronic work diary is malfunctioning, the person must
inform the record keeper of that as soon as practicable, and within 2 business days.

Penalty: 40 penalty units.

(6) As soon as is practicable after being informed under subsection (4) or (5), the record keeper must ensure that the electronic work diary is examined and brought into working order.

Penalty: 40 penalty units.

(7) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

(8) However, a person charged with an offence under subsection (5) or (6) has the benefit of the reasonable steps defence.

191W Malfunctioning odometers

(1) It is a defence for an offence against section 191T(3)(d) for the driver to prove that—

(a) at the time of the offence, the odometer was malfunctioning; and

(b) the driver complied with subsection (3).

(2) The owner of a fatigue regulated heavy vehicle must ensure that an odometer that is fitted to the vehicle is maintained to the standard approved by the Australian Transport Council.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

(3) If a driver becomes aware or reasonably suspects that an odometer fitted to the vehicle is malfunctioning, the driver must inform the following persons of that as soon as practicable, and within 2 business days—

(a) the owner of the vehicle;
(b) if the driver is an employed driver—the driver's employer;

(c) the operator of the vehicle.

Penalty: 40 penalty units.

(4) As soon as is practicable after being informed under subsection (3), the owner of the fatigue regulated heavy vehicle must ensure that the odometer is examined and brought into working order.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

(5) The driver's employer and the operator of the vehicle must ensure that the owner complies with subsection (4).

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

(6) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note

Section 191ZZT sets out how subsection (6) operates.

(7) However, if the driver's employer or the owner of the vehicle is charged with an offence under this section the employer or owner has the benefit of the reasonable steps defence.

191X Duty on employers, prime contractors, operators and schedulers to ensure driver compliance

(1) The following persons must ensure that a driver complies with the requirements of this Division—

(a) the driver's employer if the driver is an employed driver;
(b) the driver's prime contractor if the driver is a self-employed driver;

(c) the operator of the fatigue regulated heavy vehicle that is being, or to be, driven by the driver;

(d) the scheduler of the driver of, or of the goods or passengers being or to be transported on, the fatigue regulated heavy vehicle that is being, or to be, driven by the driver.

Penalty: 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.

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

Note

Section 191ZZT sets out how subsection (2) operates.

(3) However, a person, other than the operator of the vehicle, charged with an offence under subsection (1) has the benefit of the reasonable steps defence.

Division 5—Records relating to drivers

191Y Information that record keeper must record

(1) If a driver is driving in an area that has a radius of 100 km or less from the vehicle's driver base and is under standard hours, the driver's record keeper—

   (a) must record as soon as practicable after receiving it, information about—

      (i) the driver's name, driver licence number and contact details; and
(ii) the dates on which the driver drives a fatigue regulated heavy vehicle on a road; and

(iii) the registration number shown on—

(A) the number plate of the fatigue regulated heavy vehicle that the driver drives; or

(B) if the driver drives a fatigue regulated heavy vehicle that is a motor vehicle being used in combination with one or more trailers—the number plate of the motor vehicle; and

(iv) the total of the driver's work and rest times on each day when the driver drives a fatigue regulated heavy vehicle on a road; and

(v) the total of the driver's work and rest times for each week when the driver drives a fatigue regulated heavy vehicle on a road; and

(vi) the driver's rosters and trip schedules, including details of driver changeovers; and

(b) must keep a copy of payment records relating to the driver, including timesheet records if the driver is paid according to time at work.

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

(2) If a driver is engaging in 100+ km work, or is working under an accreditation, the driver's record keeper—
(a) must record—

(i) the driver's name, driver licence number and contact details; and

(ii) the driver's rosters and trip schedules, including details of driver changeovers; and

(b) must keep a copy of all duplicate pages and other copies of work diary entries given to him or her under subsection (7); and

(c) must keep a copy of payment records relating to the driver, including timesheet records if the driver is paid according to time at work.

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

(2A) A record keeper may engage the services of another person to carry out some or all of the record keeper's functions as a record keeper under this Act.

(2B) If an engagement under subsection (2A) occurs—

(a) the record keeper remains liable for all obligations imposed on the record keeper under this Act; and

(b) the other person is also liable under this Act, in respect of any obligation imposed on the record keeper as a record keeper that is covered by the terms of the engagement as if the other person were the record keeper.

(3) If a driver is working under an accreditation, the record keeper must also record—

(a) any information required to be kept as a condition of the accreditation; and
(b) any information required to be kept under the BFM or AFM standards and business rules.

Penalty: 100 penalty units, in the case of a corporation;
          20 penalty units, in any other case.

(4) The record keeper must keep a record that is required to be kept under this section for 3 years after it is created.

Penalty: 300 penalty units, in the case of a corporation;
          60 penalty units, in any other case.

(5) The record keeper must keep the records at the record location so that the records are reasonably accessible to an inspector.

Penalty: 100 penalty units, in the case of a corporation;
          20 penalty units, in any other case.

(6) The record keeper must keep the records in a way that ensures the records—

(a) are readable and reasonably capable of being understood; and

(b) are capable of being used as evidence.

Penalty: 100 penalty units, in the case of a corporation;
          20 penalty units, in any other case.

Example
A record keeper should keep copies of records in storage facilities that will ensure the records do not degrade or could become unreadable. This could include scanning relevant hard copy records and retaining them in electronic format so they remain clearly readable.
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(7) Within 21 days after a day on which the driver drove a fatigue regulated heavy vehicle, the driver must give a copy of the driver's diary entries (including any entries made in any supplementary record) for that day to each person who was a record keeper for the driver on that day.

Penalty: 20 penalty units.

(7A) A driver does not have to comply with subsection (7) for a specific day if the driver uses an electronic work diary and if the information recorded in that diary for that day has been transferred from the diary to the record keeper within 21 days after that day.

(8) The record keeper must ensure the driver complies with subsection (7).

Penalty: 100 penalty units, in the case of a corporation;
20 penalty units, in any other case.

(8A) A record keeper does not have to comply with subsection (8) for a specific day if the driver uses an electronic work diary and if the information recorded in that diary for that day has been transferred from the diary to the record keeper within 21 days after that day.

(8B) If a driver uses an electronic work diary, the record keeper must ensure that the information recorded in the diary on a specific day is transferred, or otherwise given, to the record keeper within 21 days after that day.

Penalty: 60 penalty units
(9) If a driver changes record keepers, the driver must, before driving a fatigue regulated heavy vehicle for the new record keeper, give the new record keeper a copy of the information recorded in any work diary that the driver was required to keep in the 28 days before the change occurred that relates to that 28 day period.

Penalty: 20 penalty units.

(10) If subsection (9) imposes a duty on a driver, the new record keeper must not require or allow the driver to drive a fatigue regulated heavy vehicle for the new record keeper unless the driver has complied with subsection (9).

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

(11) If the driver's work diary is an electronic work diary, the record keeper must give the driver a printout of the information recorded in the work diary for any relevant day on which the driver was using the electronic work diary before the driver stops using the electronic work diary.

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

(12) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

Note
Section 191ZZT sets out how subsection (12) operates.

(13) However, a record keeper charged with an offence under this section has the benefit of the reasonable steps defence.
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191Z False entries

A person must not record an entry in a work record or a supplementary record that the person knows, or reasonably ought to know, is false or misleading in any significant respect.

Penalty: 100 penalty units.

191ZA Keeping 2 work diaries simultaneously prohibited

(1) A driver must not have in the driver's possession more than one written work diary in which information can be recorded on a daily sheet.

Penalty: 60 penalty units.

(2) A driver must not record information for the same period in more than one work diary.

Penalty: 100 penalty units.

Example

The driver must not record information for the same period in a written work record as well as in an electronic work diary.

However, it is not an offence for the driver to record in a written diary information about the work done in the morning for Mrs A, and to record in an electronic work diary information about the work done in the afternoon for Mr B.

191ZB Possession of purported work records etc. prohibited

A driver or record keeper must not have in the driver's or record keeper's possession something purporting to be a work record if the driver or record keeper knows, or reasonably ought to know, that it is not a work record.

Penalty: 500 penalty units, in the case of a corporation;

100 penalty units, in any other case.
191ZC  Defacing or changing work records etc. prohibited

A person must not deface or change an entry in a work record that the person knows, or reasonably ought to know, is correct.

Penalty: 100 penalty units.

191ZD  False representation of work records prohibited

A person must not falsely represent that a work record, or an entry in a work record, was made by the person.

Penalty: 100 penalty units.

191ZE  Making entries in someone else's work records prohibited

(1) A person must not make an entry in someone else's work record.

Penalty: 100 penalty units.

(2) Subsection (1) does not apply to—

(a) a person who is the nominee of a driver and makes the entry in the driver's work diary as required by a work diary exemption applying to the driver; or

(b) an inspector; or

(c) a person who enters any of the information required by section 191T(3)(f) in the person's fellow two-up driver's work record, or who signs that work record.

191ZF  Destruction of certain work records prohibited

If a work record is required under this Part to be kept for a particular period by a person, the person or someone else must not destroy the record before the end of the period.

Penalty: 100 penalty units.
191ZG Tampering with electronic work diaries prohibited

(1) A person must not tamper with the operation of an electronic work diary.

Penalty: 100 penalty units.

(2) A record keeper and a driver must ensure that a person does not tamper with the operation of an electronic work diary.

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

(3) If an electronic work diary being used by a driver includes or forms part of an intelligent transport system approved under Part 12, a person on whom an obligation to report a malfunction of or tampering with the system under that Part must ensure that a person does not tamper with the operation of an electronic work diary under this Part.

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

(4) Subsection (1) does not apply to—

(a) a person who is repairing a malfunctioning electronic work diary or servicing the diary; or

(b) a person who is authorised by the Corporation; or

(c) an inspector.
(4A) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.

(5) A record keeper charged with an offence under subsection (2) has the benefit of the reasonable steps defence.

(5A) Despite subsection (4A), if a person (other than a driver or a driver's record keeper) is charged with an offence under subsection (1) and the alleged offence involves tampering with any electronic signal that is sent to, or from, an electronic work diary, it is a defence to a charge for the offence if the person proves that the person was not aware, and could not reasonably be expected to have been aware, that the activity that constituted the alleged tampering would interfere with the electronic signal.

(6) In this section—

**tamper** with an electronic work diary means engage in conduct that—

(a) results, or may result, in the diary malfunctioning; or

(b) alters, or may alter, any of the data recorded by the diary; or

(c) results, or may result, in inaccurate data being recorded by the diary; or

(d) otherwise interferes with any electronic signal that is sent to, or from, the work diary and that conduct has any of the effects listed in this subsection.
Divison 6—Accreditation and exemptions

Subdivision 1—BFM accreditation

191ZH Meaning of BFM system

(1) A **BFM system**, for the operator of a fatigue regulated heavy vehicle, means the operator's management system for ensuring compliance with the BFM standards and business rules.

(2) An operator's BFM system must include—

(a) recording the name, driver licence number and contact details of each driver who is currently under the operator's BFM accreditation; and

(b) ensuring that each of the drivers is in a fit state—

(i) to safely perform required duties; and

(ii) to meet any specified medical requirements; and

(c) ensuring that each of the drivers—

(i) has been inducted into the operator's BFM system; and

(ii) has been informed of the BFM hours; and

(d) ensuring that anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of the drivers—

(i) has been inducted into the operator's BFM system; and

(ii) has been informed of the BFM hours.
**191ZI Application for BFM accreditation**

(1) The operator of a fatigue regulated heavy vehicle may apply to the Corporation for BFM accreditation.

(2) The application must—

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

(b) be accompanied by a statement from an auditor of a class approved by the Australian Transport Council that the auditor considers the operator's BFM system will ensure compliance with the BFM standards and business rules; and

(c) include or be accompanied by any other information or documents required by the regulations; and

(d) be accompanied by the prescribed application fee.

(3) The Corporation may, by written notice to the operator, require the operator to give the Corporation any necessary additional information.

**191ZJ Granting BFM accreditation**

(1) The Corporation must decide an application for BFM accreditation as soon as practicable after the Corporation receives the application.

(2) The Corporation may grant BFM accreditation to the operator of a fatigue regulated heavy vehicle if it is satisfied that—

(a) the operator is able to comply with this Act and the regulations; and

(b) the operator is a suitable person to be granted BFM accreditation.
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(3) For the purposes of subsection (2), the Corporation may take into account anything it considers relevant, including any matter prescribed by the regulations.

(4) In granting BFM accreditation to the operator of a fatigue regulated heavy vehicle, the Corporation must have regard to—

(a) any relevant advice given to it by the Fatigue Authorities Panel; and

(b) any guidelines in relation to BFM accreditation issued by the Fatigue Authorities Panel and published in the Commonwealth Government Gazette.

191ZK BFM accreditation certificate and period of accreditation

(1) If the Corporation grants the BFM accreditation, it must give the operator an accreditation certificate in the form approved by the Australian Transport Council that certifies that the operator has been granted BFM accreditation and sets out the details of that accreditation.

(2) The accreditation takes effect—

(a) when the accreditation certificate is given to the operator; or

(b) if a later time is stated in the certificate, at that time.

(3) The BFM accreditation applies for the period, not more than 3 years, stated in the BFM accreditation certificate.

191ZL Refusal to grant BFM accreditation

If the Corporation decides not to grant BFM accreditation to the operator of a fatigue regulated heavy vehicle, the Corporation must give the operator a written notice that—
(a) states the reasons for the refusal; and
(b) tells the operator that the operator may apply to have the decision reconsidered.

191ZM Conditions of BFM accreditation

(1) BFM accreditation is subject to the condition that the operator to whom the accreditation is granted must comply with the BFM standards and business rules.

(2) BFM accreditation is also subject to any other conditions stated in the accreditation certificate or prescribed by the regulations.

Example

• A condition that a named driver cannot drive under the operator's BFM accreditation for a specified period.

• A condition that a named employee of the operator cannot be involved in the BFM operation system ever, or for a specified period.

(3) An operator to whom BFM accreditation is granted must not contravene a condition of the BFM accreditation.

Penalty: 300 penalty units, in the case of a corporation;
60 penalty units, in any other case.

191ZN Obligations of operator under BFM accreditation

(1) An operator to whom BFM accreditation is granted must ensure that each driver who is to work under the BFM accreditation is—

(a) inducted into the operator's BFM system; and
(b) meets the requirements relating to drivers under the operator's BFM accreditation.

Penalty: 300 penalty units, in the case of a corporation;
60 penalty units, in any other case.

(2) An operator to whom BFM accreditation is granted must keep, in accordance with the regulations, the following records—

(a) a current list of the drivers under the operator's BFM accreditation;

(b) records demonstrating that each driver—
   (i) has been inducted into the operator's BFM system; and
   (ii) meets requirements relating to drivers under the operator's BFM accreditation;

(c) any other records prescribed by the regulations.

Penalty: 300 penalty units, in the case of a corporation;
60 penalty units, in any other case.

(3) If required to do so in writing by the Corporation, the operator must give to the Corporation, in the form and within the time specified by the Corporation—

(a) a copy of the list of drivers kept under subsection (2)(a); and

(b) details of any changes to that list.

Penalty: 20 penalty units.
191ZO  Operator must advise of change or end of accreditation

(1) If an operator to whom BFM accreditation has been granted changes or ceases to hold that accreditation, the operator must inform any driver or scheduler who may be affected by that change or cessation of the fact that the change or cessation has happened, as soon as practicable after the change or cessation happens.

Penalty: the penalty for a substantial risk offence.

(2) If a driver is informed under subsection (1) that an operator's BFM accreditation has changed or ceased, the driver must immediately return to the operator any document given to the driver for the purposes of section 191ZOA.

Penalty: 20 penalty units.

191ZOA  Driver must carry BFM accreditation details

(1) At all times while working under an operator's BFM accreditation, a driver must have in the driver's possession—

(a) a copy of the operator's accreditation certificate; and

(b) a document signed by the operator stating that the driver is working under the operator's accreditation, and stating that the driver has been inducted into the operator's BFM system and meets the requirements relating to drivers under the accreditation.

Penalty: 20 penalty units.

Notes

1 A driver is already required to record the driver's operator's BFM accreditation number under section 191T(2)(e).
An inspector may direct a driver to produce a record required to be kept by the driver—see section 132.

(2) An operator must ensure that each driver driving under the operator's BFM accreditation does not contravene subsection (1).

Penalty: 20 penalty units.

(3) A driver must immediately return to an operator any document given to the driver by the operator for the purposes of subsection (1)(a) or (1)(b) if the driver—

(a) ceases to work under the operator's BFM accreditation; or

(b) ceases to meet the requirements relating to drivers under that accreditation.

Penalty: 20 penalty units.

Subdivision 2—AFM accreditation

191ZP Meaning of AFM proposal

An AFM proposal, for the operator of a fatigue regulated heavy vehicle, is a proposal by the operator that sets out—

(a) the proposed work and rest hour limits for drivers of the vehicle; and

(b) the risks involved with working under the proposed work and rest hour limits and the proposed countermeasures that are designed to manage the risks; and

(c) the other details required under the AFM standards and business rules.
191ZQ Meaning of AFM system

(1) An *AFM system*, for the operator of a fatigue regulated heavy vehicle, is the operator's management system for ensuring compliance with the AFM standards and business rules.

(2) An operator's AFM system must include—

(a) recording the name, driver licence number and contact details of each driver who is currently under the operator's AFM accreditation; and

(b) ensuring that each of the drivers is in a fit state—

(i) to safely perform required duties; and

(ii) to meet any specified medical requirements; and

(c) ensuring that each of the drivers—

(i) has been inducted into the operator's AFM system; and

(ii) has been informed of the AFM hours under the operator's AFM accreditation; and

(d) ensuring that anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of the drivers—

(i) has been inducted into the operator's AFM system; and

(ii) has been informed of the AFM hours under the operator's AFM accreditation.

191ZR Application for AFM accreditation

(1) The operator of a fatigue regulated heavy vehicle may apply to the Corporation for AFM accreditation.
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(2) The application must—
   (a) be made in the form approved by the Corporation; and
   (b) include the operator's AFM proposal; and
   (c) be accompanied by a statement from an auditor of a class approved by the Australian Transport Council that the auditor considers the operator's AFM system will ensure compliance with the AFM standards and business rules; and
   (d) include or be accompanied by any other information or documents required by the regulations; and
   (e) be accompanied by the prescribed application fee.

(3) The Corporation may, by written notice to the operator, require the operator to give the Corporation any necessary additional information.

191ZS Granting AFM accreditation

(1) The Corporation must decide an application for AFM accreditation as soon as practicable after the Corporation receives the application.

(2) The Corporation may grant AFM accreditation to the operator of a fatigue regulated heavy vehicle if the Corporation is satisfied that—
   (a) the operator is able to comply with this Act and the regulations; and
   (b) the operator is a suitable person to be granted AFM accreditation; and
   (c) the driver fatigue management practices (including proposed work and rest hours) stated in the operator's AFM proposal would, if followed, safely manage the risk of driver fatigue; and

S. 191ZS inserted by No. 74/2007 s. 20 (as amended by No. 56/2008 s. 25).
(d) the operator and drivers are likely to follow the practices consistently and effectively.

(3) For the purposes of subsection (2), the Corporation may take into account anything it considers relevant, including any matter prescribed by the regulations.

(4) In granting AFM accreditation to the operator of a fatigue regulated heavy vehicle, the Corporation must have regard to—

(a) any relevant advice given to it by the Fatigue Authorities Panel; and

(b) any guidelines in relation to AFM accreditation issued by the Fatigue Authorities Panel and published in the Commonwealth Government Gazette.

(5) In approving the work and rest hours limits that are applicable to a particular AFM accreditation, the Corporation—

(a) must be satisfied that the limits appear to provide a safe balance between work, rest, risk management and fatigue countermeasures; and

(b) must not set limits that—

(i) allow a driver to work more than the work time allowed, or to have less than the rest time required, in the AFM outer limits; or

(ii) the Corporation considers would be unsafe, having regard to the operator's AFM proposal and any relevant scientific knowledge, expert opinion, guidelines, standards or other knowledge in relation to preventing or managing the exposure to risk of fatigue.
191ZT  AFM accreditation certificate and period of accreditation

(1) If the Corporation grants AFM accreditation, the Corporation must give the operator an accreditation certificate in the form approved by the Australian Transport Council that—

(a) certifies that the operator has been granted AFM accreditation; and

(b) sets out the details of the accreditation, including the work and rest hours limits that apply to the accreditation.

(2) AFM accreditation takes effect—

(a) when the accreditation certificate is given to the operator; or

(b) if a later time is stated in the certificate, at that later time.

(3) AFM accreditation applies for the period, not more than 3 years, stated in the AFM accreditation certificate.

191ZU  Refusal to grant AFM accreditation

If the Corporation refuses to grant AFM accreditation to the operator of a fatigue regulated heavy vehicle, the Corporation must give the operator a written notice that—

(a) states the reasons for the refusal; and

(b) tells the operator that the operator may apply to have the decision reconsidered.

191ZV  Conditions of AFM accreditation

(1) AFM accreditation is subject to the condition that the operator to whom the accreditation is granted must comply with the AFM standards and business rules.
(2) AFM accreditation is also subject to any other conditions stated in the accreditation certificate or prescribed by the regulations.

**Examples**

- A condition that a named driver cannot drive under an operator's AFM accreditation for a specified period.

- A condition that a named employee of an operator cannot be involved in the AFM operation system under the operator's AFM accreditation ever, or for a specified period.

- A condition that requires additional records to be kept, and audits to be performed, to ensure that the driver fatigue management practices (including work and rest hours) stated in the AFM operations manual under the operator's AFM accreditation are followed consistently and effectively.

(3) An operator to whom AFM accreditation is granted must not contravene a condition of the AFM accreditation.

**Penalty:** 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.

**191ZW Driver must carry AFM accreditation details**

(1) At all times while working under an operator's AFM accreditation, a driver must have in the driver's possession—

(a) a copy of the operator's accreditation certificate; and

(b) a document signed by the operator stating that the driver is working under the operator's accreditation, and stating that the driver has been inducted into the operator's AFM system and meets the requirements relating to drivers under the accreditation; and
(c) a document that sets out the AFM hours allowed under the accreditation.

Penalty: 20 penalty units.

Example

A record of the AFM hours allowed under the accreditation stored in the driver's electronic work diary.

Notes

1 A driver is already required to record the driver's operator's AFM accreditation number under section 191T(2)(e).

2 An inspector may direct a driver to produce a record required to be kept by the driver—see section 132.

(2) The operator must ensure each of the drivers driving under the operator's AFM accreditation does not contravene subsection (1).

Penalty: 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.

(3) A driver must immediately return to an operator any document given to the driver by the operator for the purposes of subsection (1)(a) or (1)(b) if the driver—

(a) ceases to work under the operator's AFM accreditation; or

(b) ceases to meet the requirements relating to drivers under that accreditation.

Penalty: 20 penalty units.

191ZX Obligations of operator under AFM accreditation

(1) An operator to whom AFM accreditation has been granted must ensure that each driver who is currently under the AFM accreditation—

(a) is inducted into the operator's AFM system and informed of the AFM hours under the operator's AFM accreditation; and
(b) meets the requirements relating to drivers under the operator's AFM accreditation.

Penalty: 300 penalty units, in the case of a corporation;
         60 penalty units, in any other case.

(2) An operator to whom AFM accreditation has been granted must keep, in accordance with the regulations, the following records—

(a) a current list of the drivers under the operator's AFM accreditation;

(b) records that demonstrate each driver under the operator's AFM accreditation—
    (i) has been inducted into the operator's AFM system and informed of the AFM hours under the operator's AFM accreditation; and
    (ii) meets requirements relating to drivers under the operator's AFM accreditation;

(c) any other records prescribed by the regulations.

Penalty: 300 penalty units, in the case of a corporation;
         60 penalty units, in any other case.

(3) If required to do so in writing by the Corporation, the operator must give to the Corporation, in the form and within the time specified by the Corporation—

(a) a copy of the list of drivers kept by the operator under subsection (2)(a); and

(b) details of any changes to that list.

Penalty: 20 penalty units.
Part 10A—Fatigue Management Requirements

Road Safety Act 1986
No. 127 of 1986

191ZXA How electronic work diary to be operated

(1) A driver using an electronic work diary must ensure that the driver operates and maintains the diary—

(a) in accordance with the manufacturer's specifications; and

(b) in compliance with any conditions that apply to the operation of the diary that the Corporation has imposed in writing.

Penalty: 60 penalty units.

(2) The record keeper of a driver using an electronic work diary must ensure that the driver complies with subsection (1).

Penalty: 60 penalty units.

(3) It is a defence to a charge of failing to operate or maintain an electronic work diary in accordance with a particular specification of the manufacturer if the person charged proves—

(a) that the specification was not integral to the effective operation of the diary; or

(b) that the failure to operate or maintain the diary in accordance with the specification was in accordance with industry practice in relation to the operation or maintenance of a diary of that type from that manufacturer.

191ZXB Admissibility of documents produced by an electronic work diary

(1) A document produced by an electronic work diary is evidence of the matters contained in the document.
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(2) A statement as to the operation of an electronic work diary made in a document signed by a person purporting to be involved with the operation of the diary is evidence of any fact contained in that statement.

191ZY Operator must advise of change or end of accreditation

(1) If an operator to whom AFM accreditation has been granted changes or ceases to hold the accreditation, the operator must inform any driver or scheduler who may be affected by that change or cessation of the fact that the change or cessation has happened, as soon as practicable after the change or cessation happens.

Penalty: the penalty for a substantial risk offence.

(2) If a driver is informed that an operator's AFM accreditation has changed or ceased, the driver must immediately return to the operator any document given to the driver by the operator for the purposes of section 191ZW(1)(a) or (b).

Subdivision 3—Exemptions

191ZZ Exemptions for emergency services

(1) A person who is acting for an emergency service and who has time-critical duties on the way to, or during, an emergency is exempted in the course of carrying out those duties from the prescribed provisions of this Act or the regulations.

(2) A person who is returning from attending an emergency is not exempted from the prescribed provisions.
(3) In this section—

emergency means an event, or an anticipated event, that—

(a) endangers, or may endanger, life, property or the environment; or

(b) has disrupted, or may disrupt, communications, energy, water supply or sewerage services; or

(c) is declared to be an emergency or disaster by—

(i) the Commonwealth or a State or Territory; or

(ii) a Commonwealth, State or Territory authority responsible for managing responses to emergencies or disasters;

emergency service is an organisation that has a statutory responsibility to respond to an emergency and includes—

(a) an ambulance service; and

(b) an emergency auxiliary; and

(c) a fire brigade, including a volunteer fire brigade; and

(d) a police service or force; and

(e) a disaster or emergency organisation of the Commonwealth or a State or Territory; and

(f) an organisation prescribed for the purposes of this section to be an emergency service.
191ZZA Work diary exemption

(1) The Corporation may grant an exemption (a work diary exemption) exempting a driver from complying with the work diary requirements.

(2) An application for a work diary exemption may be made by a driver or driver's employer only if the driver is working under standard hours.

(3) The application—
   (a) must be made in writing and include the prescribed information; and
   (b) must nominate a person (the nominee) to make written records for the driver; and
   (c) must be accompanied by the nominee's written agreement to the nomination.

(4) The Corporation may, by written notice to the applicant, require the applicant to give the Corporation any additional information necessary to decide the application.

(5) The Corporation must decide an application as soon as practicable after receiving the application.

(6) The Corporation may grant a work diary exemption if the Corporation is satisfied—
   (a) the driver cannot make records in the driver's work diary because of inadequate English literacy; and
   (b) the nominee will be able to make records that are no less complete or accurate than records made in accordance with the work diary requirements.

(7) If the Corporation decides to grant the exemption, the Corporation must give the applicant a written exemption.
(8) An exemption takes effect—
   (a) when the exemption is given to the applicant; or
   (b) if a later time is stated in the exemption, at that time.

(9) The exemption applies for the period, not more than 3 years, stated in the exemption.

(10) An exemption may be given subject to a condition stated in the exemption.

(11) A person to whom an exemption is granted and, if the person is not the driver to whom the exemption relates, the driver, must not contravene a condition of the exemption.

Penalty: 300 penalty units, in the case of a corporation;
         60 penalty units, in any other case.

(12) If the Corporation decides not to grant the exemption, the Corporation must give the applicant a written notice that states—

(a) the Corporation's decision; and
(b) the reasons for the decision; and
(c) that the applicant may apply to have the decision reconsidered.

Subdivision 4—Variation, suspension or cancellation of accreditation or exemption

191ZZB Variation or cancellation of accreditation or exemption—on application

(1) A person may make written application to the Corporation for the variation or cancellation of the person's accreditation or exemption.
(2) The application must—
   (a) if the application is for a variation—state clearly what variation is sought and outline the reasons for the application; and
   (b) be accompanied by the accreditation certificate or exemption.

(3) The Corporation may, by written notice given to the applicant, require the applicant to give the Corporation any necessary additional information.

(4) The Corporation must decide the application as soon as practicable after the Corporation receives it.

(5) If the Corporation decides to grant the application, the Corporation must give the applicant written notice of the decision.

(6) The variation or cancellation takes effect—
   (a) when written notice of the decision is given to the applicant; or
   (b) if a later time is stated in the written notice of the decision, at that time.

(7) If the Corporation does not vary or cancel the accreditation or exemption as requested by the applicant, the Corporation must also give the applicant a written notice that states—
   (a) the Corporation's decision; and
   (b) the reasons for the decision; and
   (c) that the applicant may apply to have the decision reconsidered.
191ZZC Grounds for variation—without application

The Corporation may vary an accreditation or exemption granted to a person, without receiving an application under section 191ZZB, if the Corporation is satisfied on reasonable grounds that—

(a) the application for the accreditation or exemption was false or misleading in a material respect, but the circumstances do not require its cancellation; or

(b) a person to whom the accreditation or exemption applies is not suitable to be a person to whom the accreditation or exemption applies without variation; or

(c) the person has contravened this Act, a corresponding fatigue law or any regulations made under this Act or a corresponding fatigue law, but the contravention does not warrant the cancellation of the accreditation or exemption.

191ZZD Grounds for cancellation—without application

The Corporation may cancel an accreditation or exemption granted to a person, without receiving an application under section 191ZZB, if the Corporation is satisfied on reasonable grounds that—

(a) the application for the accreditation or exemption was false or misleading in a material respect; or

(b) a person to whom the accreditation or exemption applies is not suitable to be a person to whom the accreditation or exemption applies; or
(c) the person has contravened this Act, a corresponding fatigue law or any regulations made under this Act or a corresponding fatigue law.

191ZZE Variation or cancellation of accreditation—without application

(1) This section applies if the Corporation is satisfied that a ground exists to vary or cancel an accreditation or exemption under section 191ZZC or 191ZZD.

Note
See section 191ZZF which provides for immediate suspension in the interest of public safety.

(2) The Corporation must give the person to whom the accreditation or exemption has been granted a written notice that—

(a) states the proposed variation or cancellation; and

(b) states the ground for the proposed variation or cancellation; and

(c) outlines the facts and other circumstances forming the basis for the ground; and

(d) invites the person to state in writing, within a specified time of at least 14 days after the notice is given to the person, why the accreditation or exemption should not be varied or cancelled.

(3) If, after considering any written statement made within the specified time, the Corporation is satisfied that a ground exists to take the proposed action, the Corporation may—

(a) if the proposed action is to vary the accreditation or exemption in a stated way—vary the accreditation or exemption in the stated way; and
(b) if the proposed action is to cancel the accreditation or exemption—cancel the accreditation or exemption or vary the accreditation or exemption in any way.

(4) The Corporation must give the person written notice of the Corporation's decision.

(5) If the Corporation decides to vary or cancel the accreditation or exemption, the Corporation must also give the person a written notice that states—

(a) the reasons for the decision; and

(b) that the person may apply to have the decision reconsidered.

(6) The variation or cancellation takes effect—

(a) when written notice of the decision, and the reasons for the decision, is given to the person; or

(b) if a later time is stated in the notice, that time.

191ZZF Immediate suspension of accreditation in interest of public safety

(1) The Corporation may immediately suspend a person's accreditation, by giving a written notice to the person, if the Corporation considers it necessary in the interest of public safety.

Example

There is evidence that an operator is failing to comply with this Part on a systemic basis, or in such a severe way that the operator's continued operation under the accreditation would pose a risk to the safety of the public.

(2) If the Corporation immediately suspends a person's accreditation under subsection (1), the accreditation is suspended until the earlier of the following—
(a) the end of 60 days after the day the notice is given to the person under subsection (1);

(b) the Corporation gives the person a written notice under section 191ZZE(2).

191ZZG Return of accreditation certificate or exemption

(1) If a person's accreditation or exemption is varied or cancelled, the Corporation may, by written notice, require the person to return the accreditation certificate or exemption to the Corporation.

(2) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Penalty: 300 penalty units, in the case of a corporation;

60 penalty units, in any other case.

(3) If a person's accreditation certificate or exemption has been varied, the Corporation must give the person a replacement accreditation certificate or exemption.

Subdivision 5—Miscellaneous provisions relating to accreditation and exemptions

191ZZH Replacement of lost etc. accreditation certificates and exemptions

(1) If an accreditation certificate or an exemption is defaced, destroyed, lost or stolen, the person who is the holder of the certificate or exemption must apply to the Corporation for a replacement accreditation certificate or exemption.
(2) If the Corporation is satisfied that the accreditation certificate or exemption given to the person has been defaced, destroyed, lost or stolen, the Corporation must give the person a replacement accreditation certificate or exemption as soon as practicable.

(3) If the Corporation decides not to give a replacement accreditation certificate or exemption to the person, the Corporation must give the person a written notice that states—

(a) the reasons for the decision; and

(b) that the person may apply to have the decision reconsidered.

191ZZI Offence to falsely represent that accreditation held

(1) A person must not falsely represent—

(a) that the person holds an accreditation or exemption that the person does not hold; or

(b) that the person is working under an accreditation or exemption that the person is not entitled to work under.

Penalty: 500 penalty units, in the case of a corporation;

100 penalty units, in any other case.

(2) A person must not possess a document that falsely purports to be—

(a) an accreditation certificate or exemption under this Act; or

(b) a copy of an accreditation certificate or exemption under this Act; or

(c) a document referred to in section 191ZOA(1)(b) or 191ZW(1)(b).

Penalty: 60 penalty units.
(3) A person must not represent that the person is working under an accreditation or exemption if that accreditation or exemption is no longer in force.

Penalty: 100 penalty units.

Division 7—Compliance and enforcement

Subdivision 1—Enforcement powers

191ZZJ Requiring rest for contravention of maximum work requirement

(1) This section applies if an inspector reasonably believes a driver has worked for a period in excess of the maximum period allowed under a maximum work requirement.

(2) If the excess period worked will result, or has resulted, in the driver committing a critical risk offence or severe risk offence, the inspector must, by written notice, require the driver—

(a) to immediately take a stated period of rest in accordance with a minimum rest requirement applying to the driver; and

(b) to work for a stated shorter period in the driver's next work period to compensate for the excess period worked.

(3) If the excess period worked will result, or has resulted, in the driver committing a substantial risk offence or minor risk offence, the inspector may, by written notice, require the driver—

(a) to immediately take a stated period of rest in accordance with a minimum rest requirement applying to the driver; and
(b) to work for a stated shorter period in the driver's next work period to compensate for the excess period worked.

191ZZK Requiring rest for contravention of minimum rest requirement

(1) This section applies if an inspector reasonably believes a driver has taken a rest period that is shorter than the minimum rest period required under a minimum rest requirement.

(2) If the shortfall between the rest period taken by the person and the minimum rest period required under the minimum rest requirement will result, or has resulted, in the driver committing a critical risk offence or severe risk offence, the inspector must, by written notice, require the driver—

(a) to immediately take a stated period of rest to compensate for the shortfall between the rest period taken by the driver and the minimum rest period required under the minimum rest requirement; or

(b) if the shortfall relates to a period of night-time rest required under a minimum rest requirement—to take a stated period of night-time rest at the next available night period to compensate for the shortfall between the period of night-time rest required under the minimum rest requirement.

(3) If the shortfall between the rest period taken by the driver and the minimum rest period required under the minimum rest requirement will result, or has resulted, in the driver committing a substantial risk offence or minor risk offence, the inspector may, by written notice, require the driver—
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(a) to immediately take a stated period of rest to compensate for the shortfall between the rest period taken by the driver and the minimum rest requirement; or

(b) to take a stated period of additional rest, at the next rest break the driver is required to take under this Part, to compensate for the shortfall between the period of rest taken by the driver and the minimum rest period required under the minimum rest requirement; or

(c) if the shortfall relates to a period of night-time rest required under a minimum rest requirement—to take a stated period of night-time rest at the next available night period to compensate for the shortfall between the period of night-time rest taken by the person and the minimum period of night-time rest required under the minimum rest requirement.

191ZZL Requiring driver to stop working if impaired by fatigue

(1) This section applies if an inspector reasonably believes a driver is impaired by fatigue.

(2) The inspector may, by written notice—

(a) require the driver to immediately stop work and not work again for a stated period; and

(b) if the inspector has observed the driver driving in a way the inspector considers on reasonable grounds to be dangerous—require the driver to stop driving the vehicle immediately.
(3) The stated period in subsection (2)(a) must be a reasonable period having regard to the following—

(a) the rest periods the driver has taken during the 24 hours leading up to the notice being given;

(b) the rest periods the driver was required to take under the minimum rest requirements applying to the driver during the 24 hours leading up to the notice being given;

(c) the periods the driver has worked during the 24 hours leading up to the notice being given;

(d) the periods the driver was allowed to work under the maximum work requirements applying to the person during the 24 hours leading up to the notice being given;

(e) the degree to which the driver appears to be fatigued to the inspector;

(f) any other relevant matters.

(3A) If an inspector has required a driver not to work under subsection (2)(a), the inspector must record details of the requirement in the driver's work diary.

(4) If the inspector gives a notice under subsection (2)(b), the inspector may authorise a person who is qualified to drive the vehicle to a suitable rest place for fatigue regulated heavy vehicles.
(5) The regulations may prescribe the matters to which the inspector, or a court, may or must have regard when deciding whether or not a driver was impaired by fatigue for the purposes of this section.

(6) In this section—

*qualified*, to drive a fatigue regulated heavy vehicle, for a person means the person—

(a) holds a driver licence that is of the appropriate class to drive the vehicle and is not suspended; and

(b) is not prevented under a law, including, for example, by the conditions of the driver licence, from driving the vehicle at the relevant time.

191ZZM Requiring driver to stop working if work diary not produced or unreliable

(1) This section applies if—

(a) an inspector has, under section 132, asked the driver of a fatigue regulated heavy vehicle to produce a work diary the driver is required to keep under this Part; and

(b) either—

(i) the driver has failed to produce the diary without a reasonable excuse; or

(ii) the driver produces a document that the inspector reasonably believes is not a work diary; or
(iii) the inspector reasonably believes the work diary, or purported work diary, produced by the driver can not be relied on as an accurate record of the time the driver spent working or resting.

Example

- Information in the work diary appears to be incorrect.
- Particular information appears to be missing from the work diary.
- The work diary appears to have been tampered with.

(2) The inspector may, by written notice, require the driver to immediately stop work and not to work again for a stated period of up to 24 hours.

191ZZN Compliance with requirement under this Division

(1) A driver given a notice under this Division must comply with the notice unless the driver has a reasonable excuse.

Penalty: 120 penalty units.

(2) An inspector who gives a driver a notice under section 191ZZK, 191ZZL or 191ZZM may, by stating it in the notice, allow the driver to delay complying with the notice if the inspector reasonably believes—

(a) the delay is necessary to allow the driver time to drive to the nearest suitable rest place for fatigue regulated heavy vehicles and it is reasonably safe to allow the driver to continue driving to that place; or

(b) the delay is necessary to allow the driver time to attend to, or to secure, the load on the vehicle before taking rest.
Subdivision 2—Reasonable steps and provisions concerning defences

191ZZO What constitutes reasonable steps

(1) This section applies if—

(a) a provision of this Part requires a person to take all reasonable steps to ensure a driver does not contravene a fatigue management requirement; or

(b) a person intends to rely on the reasonable steps defence.

(2) The person must be regarded as having taken all reasonable steps to prevent the act or omission that led to the contravention if the person proves the person did all of the following to prevent the act or omission—

(a) identified and assessed the aspects of the activities of the person, and the driver, that may lead to a contravention of a fatigue management requirement by the driver;

(b) for each aspect identified and assessed under paragraph (a), identified and assessed—

(i) the risk of the aspect leading to a contravention of a fatigue management requirement by the driver; and

(ii) if there is a substantial risk of the aspect leading to a contravention of a fatigue management requirement by the driver—the measures the person may take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk;

(c) carried out the identification and assessment referred to in paragraphs (a) and (b)—

(i) at least annually; and
(ii) after each event that indicated the way the activities of the person or driver were being carried out have led, or may lead, to a contravention of a fatigue management requirement by the driver;

(d) took the measures identified and assessed under paragraph (b)(ii);

(e) documented the actions the person took under paragraphs (a), (b), (c) and (d) to prevent the act or omission that led to the contravention.

(3) The regulations may provide for—

(a) the ways, or examples of ways, persons can identify and assess the aspects of activities of the persons, or drivers, that may lead to a contravention of a fatigue management requirement by a driver; and

(b) the measures, or examples of measures, persons may take to eliminate or minimise risks of aspects of activities of the persons, or drivers, leading to a contravention of a fatigue management requirement by a driver.

(4) This section does not limit the circumstances in which the court may consider the person to have taken reasonable steps to prevent the act or omission that led to the contravention.

(5) A person is not required to keep a document under subsection (2)(e) for longer than 3 years.

191ZZP Reasonable steps defence

If a provision of this Part states that a person has the benefit of the reasonable steps defence, it is a defence to a charge for an offence against that provision if the person charged proves that—
(a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and

(b) either—

(i) the person took all reasonable steps to prevent the contravention; or

(ii) there were no steps the person could reasonably be expected to have taken to prevent the contravention.

191ZZQ Matters relevant to deciding whether acts or omissions constitute all reasonable steps

(1) Without limiting section 191ZZO or 191ZZP, in deciding whether things done or omitted to be done by a person constitute all reasonable steps, regard may be had to the following—

(a) the circumstances of the alleged offence, including any risk category for the contravention constituting the offence;

(b) the measures available and the measures taken for any or all of the following—

(i) to exercise supervision or control over others involved in activities leading to the contravention;

(ii) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons for fatigue regulated heavy vehicles;

(iii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
(iv) to maintain equipment and work systems to enable compliance with relevant laws;

(v) to address and remedy similar compliance problems that may have happened in the past;

(c) whether the person charged had, either personally or through an agent or employee, custody or control of the fatigue regulated heavy vehicle, its load, or any goods included or to be included in the load;

(d) 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;

(e) the nature of the activity to which the contravention relates;

(f) the risks to safety associated with the nature of the activity;

(g) the likelihood of the risks to safety referred to in paragraph (f);

(h) the degree of harm likely to result from the risks to safety referred to in paragraph (f) arising;

(i) the measures available and measures taken—
   (i) to prevent, eliminate or minimise the likelihood of a potential contravention happening; or
   (ii) to eliminate or minimise the likelihood of a risk to safety arising from a potential contravention; or
   (iii) to manage, minimise or eliminate a risk to safety arising from a potential contravention;
(j) the costs of measures referred to in paragraph (i);

(k) any accreditation scheme, scientific knowledge, expert opinion, guidelines, standards or other knowledge about preventing or managing exposure to risks to safety arising from fatigue;

(l) any other matter the court may or must consider when deciding whether or not a person has contravened the fatigue management requirement.

(2) In this section—

*risk category*, for a contravention of a fatigue management requirement, means one of the following categories of offences—

(a) minor risk offence;

(b) substantial risk offence;

(c) severe risk offence;

(d) critical risk offence.

191ZZR Inclusion of reasonable diligence

If a person intends to rely on the reasonable steps defence the taking of all reasonable steps includes the exercise of reasonable diligence.

191ZZS Compliance with industry code of practice

(1) This section applies for deciding whether a person charged with an offence in relation to a fatigue management requirement took all reasonable steps to prevent the contravention.
(2) If the person proves that the person complied with all relevant standards and procedures, including, for example, a registered industry code of practice and the spirit of the code, in relation to matters to which the offence relates, that is evidence that the person took all reasonable steps to prevent the contravention.

(3) Subsection (2) does not apply unless the person charged has given written notice of the intention to prove the matters referred to in that subsection to the prosecution.

(4) The notice must be—

(a) signed by the person; and

(b) given at least 28 days before the day fixed for the hearing of the charge.

**S. 191ZZT** 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.

**Subdivision 3—Penalties**

**S. 191ZZU** Penalties

The maximum penalty for an offence of a type set out in column 1 of the following Table is the penalty set out opposite—

(a) for a first offence—in column 2 of that Table; or
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(b) for a second or subsequent offence—in column 3 of that Table.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offence</td>
<td>1st offence</td>
<td>2nd or subsequent offence</td>
</tr>
<tr>
<td>minor risk</td>
<td>50 penalty units, in the case of a corporation;</td>
<td>50 penalty units, in the case of a corporation;</td>
</tr>
<tr>
<td></td>
<td>10 penalty units, in any other case.</td>
<td>10 penalty units, in any other case.</td>
</tr>
<tr>
<td>substantial risk</td>
<td>100 penalty units, in the case of a corporation;</td>
<td>250 penalty units, in the case of a corporation;</td>
</tr>
<tr>
<td></td>
<td>20 penalty units, in any other case.</td>
<td>50 penalty units, in any other case.</td>
</tr>
<tr>
<td>severe risk</td>
<td>250 penalty units, in the case of a corporation;</td>
<td>500 penalty units, in the case of a corporation;</td>
</tr>
<tr>
<td></td>
<td>50 penalty units, in any other case.</td>
<td>100 penalty units, in any other case.</td>
</tr>
<tr>
<td>critical risk offence</td>
<td>500 penalty units, in the case of a corporation;</td>
<td>500 penalty units, in the case of a corporation;</td>
</tr>
<tr>
<td></td>
<td>100 penalty units, in any other case.</td>
<td>100 penalty units, in any other case.</td>
</tr>
</tbody>
</table>

191ZZV Proceedings for offences

(1) This section applies in relation to proceedings for an offence that may be committed—

(a) by a person driving a fatigue regulated heavy vehicle while impaired by fatigue; or

(b) by a person failing to take all reasonable steps to ensure that another person does not drive a fatigue regulated heavy vehicle while impaired by fatigue.
(2) In relation to proof of whether a person driving a fatigue regulated heavy vehicle was impaired by fatigue, a sworn statement by an inspector stating that at a specified time or during a specified period the inspector observed the person exhibiting specified behaviour, including, for example, signs of fatigue, is—

(a) admissible in proceedings; and

(b) evidence that the person exhibited the specified behaviour.

(3) In relation to proof of whether a person took all reasonable steps to ensure that another person did not drive a fatigue regulated heavy vehicle while impaired by fatigue—

(a) evidence that at the relevant time the person complied with a prescribed corresponding obligation is evidence that the person took the reasonable steps; and

(b) evidence that at the relevant time the person complied with the conditions of an accreditation granted to the person is evidence that the person took the reasonable steps; and

(c) it is not necessary to prove that the other person drove, or would or may have driven, the vehicle while impaired by fatigue.

(4) In this section—

prescribed corresponding obligation means a duty or obligation under a corresponding fatigue law that is prescribed under the regulations for the purposes of subsection (3)(a).
191ZZW Deciding whether a person knew or ought reasonably to have known something

(1) This section applies in relation to proceedings for an offence relating to a fatigue management requirement if it is relevant to prove that someone ought reasonably to have known something.

(2) A court must consider the following when deciding whether the person ought reasonably to have known the thing—

(a) the person's abilities, experience, expertise, knowledge, qualifications and training;

(b) the circumstances of the offence;

(c) any other matter prescribed under the regulations.

191ZZX Multiple offenders

(1) This section applies if more than one person is liable to be found guilty of an offence in relation to a fatigue management requirement.

(2) Proceedings may be taken against all or any of those liable in relation to the contravention.

(3) Proceedings may be taken against any of those liable in relation to the contravention—

(a) regardless of whether or not proceedings have been started 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.
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 inspector 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.

Contracting out prohibited

(1) A term of any contract that purports to exclude, limit or modify the operation 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.

Division 8—Australian Transport Council

Australian Transport Council may approve standards and other matters

(1) For the purposes of this Act, the Australian Transport Council may, by notice published in the Commonwealth Government Gazette, approve the following—

(a) standards for a driver's sleeper berth for a bus;

(b) AFM standards and business rules;

(c) BFM standards and business rules;
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(d) standards for the maintenance of odometers fitted to fatigue regulated heavy vehicles;

(e) types of electronic work diary that may be used;

(f) classes of auditors who may issue statements about whether an operator's AFM system will ensure compliance with AFM standards and business rules;

(g) classes of auditors who may issue statements about whether an operator's BFM system will ensure compliance with BFM standards and business rules;

(h) the form for AFM accreditation certificates;

(i) the form for BFM accreditation certificates;

(j) any other matter that the regulations prescribe for approval under this section.

(2) The Australian Transport Council may, by written instrument, delegate a power of the Australian Transport Council under this Act to the Corporation.

(3) The Corporation may delegate any power delegated to the Corporation under subsection (2), other than this power of delegation, to—

(a) an officer of the Corporation either by name or by reference to the officer's office only (and where the reference is to the office, the holder for the time being of the office is the delegate); or

(b) an employee in the Department of Transport either by name or by reference to the employee's position only.
### Division 9—Reconsideration and review of decisions

**191ZZZC Decisions that may be reconsidered and reviewed**

The following decisions of the Corporation are decisions to which this Division applies—

<table>
<thead>
<tr>
<th>Item</th>
<th>Section under which decision made</th>
<th>Brief description of decision</th>
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<tbody>
<tr>
<td>1</td>
<td>191ZL</td>
<td>decision not to grant BFM accreditation</td>
</tr>
<tr>
<td>2</td>
<td>191ZK, 191ZT or 191ZZA</td>
<td>decision to give an accreditation or exemption for less than 3 years or the period sought by the applicant</td>
</tr>
<tr>
<td>3</td>
<td>191ZM</td>
<td>decision to give a BFM accreditation subject to a condition (other than a statutory condition) not sought by the applicant</td>
</tr>
<tr>
<td>4</td>
<td>191ZU</td>
<td>decision not to grant AFM accreditation</td>
</tr>
<tr>
<td>5</td>
<td>191ZV</td>
<td>decision to give an AFM accreditation subject to a condition (other than a statutory condition) not sought by the applicant</td>
</tr>
<tr>
<td>6</td>
<td>191ZZA</td>
<td>decision not to give a work diary exemption</td>
</tr>
<tr>
<td>7</td>
<td>191ZZA</td>
<td>decision to give an exemption subject to a condition not sought by the applicant</td>
</tr>
</tbody>
</table>
### 191ZZZD Reconsideration of decisions

1. A person affected by a decision to which this Division applies (an *initial decision*) may ask the Corporation in writing to reconsider the decision.

2. The request must be made within—
   - (a) 28 days after the person, or someone else affected by the decision, was told of the initial decision, and given reasons for the decision, by the Corporation; or
   - (b) any longer period allowed by the Corporation.

3. The request must state the decision sought by the person and outline why the decision should be made.

4. The Corporation must reconsider the initial decision and—
   - (a) confirm the decision; or
   - (b) vary the decision; or
   - (c) set the decision aside and substitute a new decision.

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<table>
<thead>
<tr>
<th>Item</th>
<th>Section under which decision made</th>
<th>Brief description of decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>191ZZB</td>
<td>decision not to vary or cancel an accreditation or exemption on application</td>
</tr>
<tr>
<td>9</td>
<td>191ZZC and 191ZZD</td>
<td>decision to vary or cancel an accreditation or exemption except on application</td>
</tr>
<tr>
<td>10</td>
<td>191ZZH</td>
<td>decision not to give a replacement accreditation certificate or exemption</td>
</tr>
</tbody>
</table>
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(5) If the decision was made in accordance with a recommendation of the Panel or a corresponding Authority, the Corporation must inform the Panel or corresponding Authority of the decision that the Corporation proposes to make.

(6) The Panel or corresponding Authority may make a recommendation to the Corporation about the proposed decision, and the reasons for the recommendation, within 21 days after being informed of the proposed decision.

(7) The Corporation must have regard to the recommendations of the Panel or corresponding Authority when making the decision.

(8) Within 28 days after receiving the request, the Corporation must give the person a written notice that states—

(a) the result of the reconsideration; and

(b) if the Authority does not make the decision sought by the person—the reasons for the reconsidered decision.

191ZZZE Duty on officers to annotate driver's work diary

(1) This section applies if an inspector stops a driver for compliance purposes using a power conferred on the inspector by this Act.

(2) If the inspector detains the driver for a period of 5 minutes or longer, the driver may ask the inspector to record the following details in the driver's work diary—

(a) the inspector’s identifying details;

(b) the time, date and place at which the inspector stopped the driver;

(c) the period of time for which the inspector has detained the driver.
(3) An inspector must comply with a request made under subsection (2).

(4) An inspector may comply with subsection (2)(a) by recording either the inspector's name or identification number.

(5) If more than one driver has been stopped at a place, and the drivers are spoken to by an inspector in the order in which they were stopped, the calculation of time for the purposes of subsection (2) only starts once the inspector begins to speak to the driver for the purpose for which the driver was stopped.

(6) In this section, compliance purposes has the same meaning as in section 110.
PART 11—ADDITIONAL PROVISIONS CONCERNING RELEVANT HEAVY VEHICLE OFFENCES

Division 1—Preliminary matters

192 This Part only applies to relevant heavy vehicle offences

(1) This Part only applies to relevant heavy vehicle offences.

(2) For the purposes of this Part a relevant heavy vehicle offence is an offence—

(a) that is constituted by, or that has a necessary element—

(i) the contravention of a mass, dimension or load restraint limit or requirement; or

(ii) the contravention of a fatigue management requirement under Part 10A; and

(b) where the breach is committed in respect of a heavy vehicle.
193 Interpretation

(1) In this Part—

registered operator of a vehicle also includes a person who is recorded on the register of a corresponding authority as the person responsible for the vehicle.

(2) 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.

(3) 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.
Division 2—Additional offences

196 Victimisation of employee or contractor assisting with, or reporting, offences

(1) An employer must not dismiss an employee or contractor, injure an employee or contractor in his or her employment, or alter an employee's or contractor's position to his or her detriment, by reason only that the employee or contractor—

(a) has assisted, or has given any information to, a public agency in respect of a relevant heavy vehicle offence, or alleged offence; or

(b) has made a complaint about a relevant heavy vehicle offence, or alleged offence, to the employer, a fellow employee or fellow contractor, a trade union or a public agency.

(2) An employer or prospective employer must not refuse, or deliberately omit to offer, employment to a prospective employee or prospective contractor, or treat a prospective employee or prospective contractor less favourably than another prospective employee or prospective contractor would be treated in relation to the terms on which employment or a contract is offered, by reason only that the first-mentioned prospective employee or contractor—

(a) has assisted, or has given any information to, a public agency in respect of a relevant heavy vehicle offence, or alleged offence; or

(b) has made a complaint about a relevant heavy vehicle offence, or alleged offence, to a former employer, a former fellow employee or a former fellow contractor, a trade union or a public agency.
(3) A person who is guilty of an offence against subsection (1) or (2) is liable to a maximum penalty of—

   (a) if the person is a corporation, 600 penalty units;

   (b) in any other case, 120 penalty units.

(4) In proceedings for an offence under this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the defendant's action was not actuated by the reason alleged in the charge lies on the defendant.

(5) If a person is found guilty of an offence under this section, the court may, in addition to imposing a penalty on the person, make either or both of the following orders—

   (a) an order that the person pay within a specified period to the employee or contractor or to the prospective employee or prospective contractor any damages that it considers appropriate by way of compensation;

   (b) an order that—

      (i) the employee or contractor be reinstated or re-employed in the employee's or contractor's former position or (if that position is not available) in a similar position; or

      (ii) the prospective employee or prospective contractor be employed in the position for which the prospective employee or prospective contractor had applied or (if that position is not available) in a similar position.
(6) The maximum amount of damages that the court may order cannot exceed the monetary jurisdictional limit of the court in civil proceedings.

(7) An order for the payment of damages is enforceable as if it were a judgment of the court sitting in civil proceedings.

(8) A person must comply with an order for employment, reinstatement or re-employment.

Penalty: 600 penalty units, in the case of a corporation;

120 penalty units, in any other case.

(9) In this section—

contractor means an individual who works under a contract for services;

public agency means—

(a) the Crown in any capacity;

(b) the Corporation, or any corresponding Authority;

(c) a person who is an authorised officer (however described) under any Australian road or transport law;

(d) a member (however described) of the police force or police service of any Australian jurisdiction;

(e) any other body established by or under law, or the holder of an office established by or under law, in Australia for a public purpose.
197 Other false or misleading statements

(1) A person must not make a statement to the Corporation or to an official who is exercising a power under this Act in relation to any investigation concerning a relevant heavy vehicle offence that the person knows is false or misleading in a material detail.

Penalty: 600 penalty units, in the case of a corporation;
120 penalty units, in any other case.

(2) A person must not make a statement to the Corporation or to an official who is exercising a power under this Act if—

(a) the statement is false or misleading in a material detail; and

(b) the person is reckless as to whether the statement is false or misleading in a material detail.

Penalty: 240 penalty units, in the case of a corporation;
60 penalty units, in any other case.

(3) A person must not give a record to the Corporation or to an official who is exercising a power under a road or transport law that the person knows contains any material detail that is false or misleading.

Penalty: 600 penalty units, in the case of a corporation;
120 penalty units, in any other case.

(4) Subsection (3) does not apply if, at the time the person gave the record to the Corporation or official, the person informed the Corporation or official that the record contained a material detail.
that was false or misleading and specified in what respect it was false or misleading.

(5) A person must not give a record to the Corporation or to an official who is exercising a power under a road or transport law if—

(a) the record contains any material detail that is false or misleading; and

(b) the person is reckless as to whether the record contains any material detail that is false or misleading.

Penalty: 240 penalty units, in the case of a corporation;

60 penalty units, in any other case.

(6) This section does not apply to any conduct that is an offence under section 71.

(7) In this section, an official is an authorised officer, a member of the police force or a person who is assisting an authorised officer or a member of the police force.

198 False or misleading information provided to a responsible person

(1) In this section relevant detail means any information that would result in the commission of a relevant heavy vehicle offence were it to be relied on by a responsible person.

(2) A responsible person must not provide a relevant detail to another responsible person that the person knows is false or misleading.

Penalty: 600 penalty units, in the case of a corporation;

120 penalty units, in any other case.
(3) A responsible person must not provide a relevant detail to another responsible person if—
   (a) the relevant detail is false or misleading; and
   (b) the person is reckless as to whether the relevant detail is false or misleading.

Penalty: 240 penalty units, in the case of a corporation;
          60 penalty units, in any other case.

(4) Subsection (2) does not apply if, at the time the person gave the relevant detail to the other responsible person, the person informed the other responsible person that the relevant detail was false or misleading and specified in what respect it was false or misleading.

(5) For the purposes of this section, it is not necessary that the responsible person who would be liable to commit an offence by relying on the relevant detail be the person to whom the detail was provided.

Division 3—Vicarious responsibility for offences

199 Vicarious responsibility for officers and employees

(1) This section applies to conduct that constitutes a relevant heavy vehicle offence.

(2) If the conduct was engaged in on behalf of a body corporate by a director, employee or agent of the body corporate while acting within the scope of his or her actual or apparent authority, it is deemed to have been engaged in also by the body corporate, unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
(3) If the conduct was engaged in on behalf of a person other than a body corporate by an employee or agent of the person while acting within the scope of his or her actual or apparent authority, it is deemed to have been engaged in also by the person, unless the person establishes that he, she or it took reasonable precautions and exercised due diligence to avoid the conduct.

(4) In this section the director of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction.

200 Liability of directors, partners, employers and others

(1) If a body corporate commits a relevant heavy vehicle offence, each director of the body corporate, and each person concerned in the management of the body corporate, is deemed to have also committed the offence.

(2) If a person who is a partner in a partnership commits a relevant heavy vehicle offence in the course of the activities of the partnership, each other person who is a partner in the partnership, and each other person concerned in the management of the partnership, is deemed to have also committed the offence.

(3) If a person who is concerned in the management of an unincorporated association commits a relevant heavy vehicle offence in the course of the activities of the unincorporated association, each other person concerned in the management of the unincorporated association is deemed to have also committed the offence.

(4) If an employee commits a relevant heavy vehicle offence, the employer is deemed to have also committed the offence.
(5) It is a defence to a charge for an offence arising under subsection (4) if the person charged establishes that he, she or it—
   (a) had no knowledge of the actual offence; and
   (b) took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

(6) It is a defence to a charge for an offence arising under subsection (1), (2) or (3) if the person charged establishes that—
   (a) he or she was not in a position to influence the conduct of the person who actually committed the offence in relation to the commission of the offence; or
   (b) he or she, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

(7) A person may be proceeded against in relation to, and be found guilty of, an offence arising under this section whether or not the person who actually committed the offence has been proceeded against in relation to, or been found guilty of, the offence.

(8) However, if at the time that a charge for an offence arising under this section is heard no person has been found guilty of the offence which gave rise to the charge, in determining the charge regard must be had to any defences available to any relevant person with respect to the offence which gave rise to the charge.

(9) A person who is found guilty of an offence arising under this section is liable to the penalty for that offence.
201 Liability of registered operators

(1) This section applies to a relevant heavy vehicle offence, if the offence is expressed to be committed by an operator of a vehicle (whether or not any other person can also commit the offence).

(2) If an offence to which this section applies is committed and at the time of the offence the vehicle was not physically connected to any other vehicle, the registered operator of the vehicle is deemed to have also committed the offence.

(3) If an offence to which this section applies is committed and at the time of the offence the vehicle was part of a group of vehicles that were physically connected—

(a) with respect to the whole group or with respect to the towing vehicle of the group—the registered operator of the towing vehicle of the group is deemed to have also committed the offence;

(b) with respect to a trailer forming part of the group at the relevant time—the registered operator of the towing vehicle and the registered operator (if any) of the trailer are each deemed to have also committed the offence.

(4) The registered operator has the benefit of any defences available to the operator.

(5) Subsections (2) and (3) do not apply if the registered operator gives the Corporation a statutory declaration containing the information required by the regulations for the purposes of this section, including the name and address of the operator of the vehicle at the time of the offence, and does so within the time, and in the manner, specified in those regulations.
(6) This section does not affect the liability of the actual operator of the vehicle.

(7) A person who is found guilty of an offence arising under this section is liable to the penalty for that offence.

202 Double jeopardy not to occur

Nothing in this Division is intended to have the effect of making a person liable to conviction more than once in relation to particular conduct that constitutes a relevant heavy vehicle offence.

Division 4—Additional powers of courts

203 Court may impose period of disqualification from registration

(1) This section applies if a court convicts, or finds guilty, a person who is a registered operator of a heavy vehicle of a relevant heavy vehicle offence involving the vehicle, and cancels or suspends the registration of the vehicle.

(2) The court may also disqualify the person, or an associate of the person, from registering the vehicle for a specified period.

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

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

(a) take no further action; or

(b) order the Corporation not to register the vehicle again for the period specified by the court.
(5) A court must cause a copy of any order made under subsection (4)(b) to be sent immediately to the Corporation.

204 Commercial benefits penalty orders

(1) This section applies if a court finds a person guilty of a relevant heavy vehicle offence.

(2) On the application of the prosecutor or the Corporation, the court may order the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that—

(a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and

(b) in the case of a journey that was interrupted or not commenced because of action taken by an inspector in connection with the commission of the offence—would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.

(3) In estimating the gross commercial benefit that was, or that would have been, received or receivable from the commission of the offence, the court may take into account—

(a) benefits of any kind, whether monetary or otherwise, that were received, to be received or likely to be received, for transporting the goods; and

(b) any other matters that it considers relevant, including (for example)—

(i) the value of any goods involved in the offence; and
(ii) the distance over which any such goods were, or were to be, carried; and

(iii) the value per tonne per kilometre of transporting the goods.

(4) However, in estimating the gross commercial benefit that was, or that would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.

(5) Nothing in this section prevents the court from ordering payment of an amount that is—

(a) less than 3 times the estimated gross commercial benefit; or

(b) less than the estimated gross commercial benefit.

(6) The court may make an order under this section in addition to, or instead of, any other penalty it may impose on the person in respect of the offence.

205 Supervisory intervention orders

(1) This section applies if—

(a) a court finds a person guilty of a relevant heavy vehicle offence; and

(b) the court considers the person to be a person who systematically or persistently commits relevant heavy vehicle offences.

(2) On the application of the prosecutor or the Corporation, the court may order the person (at the person's own expense and for a specified period not exceeding one year) to do any or all of the following—
(a) to do specified things that the court considers will reduce the number of relevant heavy vehicle offences the person commits, including (for example)—

(i) appointing or removing staff to or from particular activities or positions;

(ii) training and supervising staff;

(iii) obtaining expert advice as to how to avoid committing the offences;

(iv) installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment);

(v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;

(b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Corporation or a person nominated by the Corporation;

(c) to furnish compliance reports to the Corporation;

(d) to appoint a person to have responsibility for—

(i) assisting the person to avoid committing relevant heavy vehicle offences; and

(ii) monitoring the person's performance in not committing relevant heavy vehicle offences and in complying with the requirements of the order; and

(iii) furnishing compliance reports to the Corporation.
(3) The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.

(4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.

(5) The court may only make an order if it is satisfied that the order is capable of reducing the number of relevant heavy vehicle offences the person commits, having regard to—

(a) the person's ability or willingness to comply with the relevant laws; and

(b) the relevant heavy vehicle offences of which the person has been previously found guilty; and

(c) the relevant heavy vehicle offences for which the person has been proceeded against by way of unwithdrawn infringement notices; and

(d) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with road transport.

(6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.

(7) The court may revoke or amend an order made under this section on the application of—

(a) the Corporation; or
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(b) the person in respect of whom the order was made—

but only if the court is satisfied that there has been a change of circumstance warranting the revocation or amendment.

(8) In this section, a compliance report, in relation to a person in respect of whom an order is made, is a report on—

(a) the performance of the person in complying with—

(i) the laws specified in the order (being laws that create relevant heavy vehicle offences); and

(ii) the requirements of the order; and

(b) without limiting paragraph (a)—

(i) things done by the person to ensure that the person does not continue to commit relevant heavy vehicle offences; and

(ii) the results of those things having been done.

206 Contravention of supervisory intervention order

A person who is subject to an order made under section 205 must comply with the order.

Penalty: 600 penalty units, in the case of a corporation;

120 penalty units, in any other case.

207 Prohibition orders

(1) This section applies if—

(a) a court finds a person guilty of a relevant heavy vehicle offence; and

S. 206 inserted by No. 110/2004 s. 41.

S. 207 inserted by No. 110/2004 s. 41.
(b) the court considers the person to be a person who systematically or persistently commits relevant heavy vehicle offences; and

(c) the court does not consider it appropriate to make an order under section 205 in respect of the person.

(2) On the application of the prosecutor or the Corporation, the court may make an order prohibiting the person, for a specified period, from having a specified role or responsibilities associated with road transport.

(3) The purpose of the order is to restrict opportunities for the person to commit, or be involved in the commission of, further relevant heavy vehicle offences.

(4) The court may only make the order if it is satisfied that the person should not continue the things that are the subject of the proposed order.

(5) The court cannot make an order under this section that prohibits the person from driving or registering a vehicle.

(6) The court may revoke or amend an order made under this section on the application of—

(a) the Corporation; or

(b) the person in respect of whom the order was made—

but only if the court is satisfied that there has been a change of circumstance warranting the revocation or amendment.
208 Contravention of prohibition order

A person who is subject to an order made under section 207 must comply with the order.

Penalty: 600 penalty units, in the case of a corporation;
120 penalty units, in any other case.

Division 5—Improvement notices

209 Improvement notices

(1) This section applies if an inspector is of the opinion that a person—

(a) is committing a relevant heavy vehicle offence; or

(b) has committed a relevant heavy vehicle offence in circumstances that make it likely that the offence will continue or be repeated.

(2) The inspector may issue to the person an improvement notice requiring the person to take specified action within a specified period to stop the offence from continuing or occurring again.

(3) The person must comply with the notice within the period specified in the notice, unless the person has a reasonable excuse for not doing so.

Penalty: 600 penalty units, in the case of a corporation;
120 penalty units, in any other case.

(4) The period specified for the purposes of subsection (2) must not be less than 7 days, unless it would be reasonably practicable for the person to comply with the notice within a shorter period.

(5) Before issuing an improvement notice, the inspector must consult with the person to whom the notice is to be issued.
(6) In addition to specifying the action to be taken and the period within which it is to be taken, an improvement notice must—

(a) specify the grounds on which it is issued (including an identification of the relevant heavy vehicle offence that, in the opinion of the inspector, is being or has been committed); and

(b) set out the rights of the person to appeal against the notice.

(7) In specifying the action that is to be taken under an improvement notice, the inspector—

(a) may refer to any applicable code of practice; and

(b) may offer the person to whom the notice is issued a choice of ways in which to stop the offence, or to avoid future offences.

210 Amendment of improvement notices

(1) An improvement notice may be amended by the person who issued it.

(2) An improvement notice may also be amended—

(a) in the case of a notice issued by an inspector who is an authorised officer, by any other authorised officer;

(b) in the case of a notice issued by an inspector who is a member of the police force, by any other member of the police force.

(3) The person amending an improvement notice must serve details of the amendment on the person to whom the notice was issued as soon as is practicable after making the amendment.
(4) An amendment of an improvement notice is ineffective if it purports to deal with an offence that is different to the offence in respect of which the improvement notice was issued.

(5) A notice of an amendment of an improvement notice must—

(a) state the reasons for the amendment; and

(b) include information about how to appeal against the notice; and

(c) state that it is issued under this section.

### 211 Cancellation of improvement notices

(1) An improvement notice may be cancelled—

(a) in the case of a notice issued by an inspector who is an authorised officer, by the Corporation;

(b) in the case of a notice issued by an inspector who is a member of the police force—

(i) by the Chief Commissioner of Police; or

(ii) by a member of the police force who is senior in rank to the member who served the notice.

(2) The person cancelling an improvement notice must serve, or cause to be served, notice of the cancellation on the person to whom the notice was issued as soon as is practicable after cancelling the notice.

### 212 Appeals against notices

(1) A person to whom an improvement notice is issued may, within 7 days after the notice is issued, appeal in writing against the notice to the Magistrates' Court.
(2) If an improvement notice is amended, the person to whom the notice was issued may, within 7 days after receiving written notice of the amendment, appeal in writing against the amendment to the Magistrates' Court.

(3) After inquiring into the circumstances relating to the notice or amendment, the Court may—

(a) in the case of an appeal under subsection (1)—

(i) affirm the notice; or

(ii) affirm the notice with any changes it considers appropriate; or

(iii) cancel the notice;

(b) in the case of an appeal under subsection (2)—

(i) affirm the amendment; or

(ii) affirm the amendment with any changes it considers appropriate; or

(iii) cancel the amendment.

(4) On the lodging of an appeal under subsection (1), the operation of the notice is suspended.

(5) On the lodging of an appeal under subsection (2), the operation of the amendment is suspended.

(6) Section 209(3) applies with respect to any improvement notice affirmed by the Court (whether with or without changes).
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Division 6—Recognition of certain non-Victorian matters

213 Effect of administrative actions of authorities of other jurisdictions

(1) In this section—

*administrative action* means an action of an administrative nature, as in force from time to time, that is specified by the regulations for the purposes of this section;

*administrative authority* means—

(a) any corresponding Authority; or

(b) a person holding an office constituted by or under the law of another jurisdiction that is specified by the regulations for the purposes of this paragraph; or

(c) a body constituted by or under the law of another jurisdiction that is specified by the regulations for the purposes of this paragraph;

*corresponding law* means a law of another jurisdiction that creates offences in that jurisdiction that correspond to relevant heavy vehicle offences, and includes any other parts of that law that relate to the offences created.

(2) An administrative action of an administrative authority under or in connection with a corresponding law has the same effect in Victoria as it has in the jurisdiction of the administrative authority.
(3) Nothing in this section gives an administrative action effect in Victoria or in a particular place in Victoria—

(a) in so far as the action is incapable of having effect in or in relation to Victoria or that place; or

(b) if any terms of the action expressly provide that the action does not extend or apply to, or in relation to, Victoria or that place; or

(c) if any terms of the action expressly provide that the action has effect only in the jurisdiction of the administrative authority or in a specified place in that jurisdiction.

214 Effect of court orders of other jurisdictions

(1) In this section—

*corresponding law* has the same meaning as it has in section 213;

*order* means an order in any judicial or other proceedings, civil or criminal, as in force from time to time, that is specified by the regulations for the purposes of this section.

(2) An order of a court or tribunal of another jurisdiction under or in connection with a corresponding law has the same effect in Victoria as it has in the jurisdiction of the court or tribunal.

(3) Nothing in this section gives an order effect in Victoria or in a particular place in Victoria—

(a) in so far as the order is incapable of having effect in or in relation to Victoria or that place; or

(b) if any terms of the order expressly provide that the order does not extend or apply to, or in relation to, Victoria or that place; or
(c) if any terms of the order expressly provide that the order has effect only in the jurisdiction of the court or tribunal or a specified place in that jurisdiction.

Division 7—Defences

215 Sudden or extraordinary emergency

It is a defence to a charge for a relevant heavy vehicle offence if the person charged had a reasonable belief at the time the conduct constituting the offence occurred—

(a) that circumstances of sudden or extraordinary emergency existed; and

(b) that the conduct was the only reasonable way to deal with the emergency; and

(c) that the conduct was a reasonable response to the emergency.

216 Lawful authority

It is a defence to a charge for a relevant heavy vehicle offence if the person charged establishes that the conduct constituting the offence is authorised or excused by or under a law.

217 Special defence for owners or operators

It is a defence to a charge for a relevant heavy vehicle offence alleged to have been committed by a person as an owner or operator of a vehicle if the person charged establishes that the vehicle was being used at the relevant time by—

(a) an employee of the person charged who was acting at the relevant time outside the scope of the employment; or

(b) an agent (in any capacity) of the person charged who was acting at the relevant time outside the scope of the agency; or
(c) any other person who was not entitled (whether by express or implied authority or otherwise) to use it.

218 Other defences

The specification of a defence in this Part does not affect the availability of any other defence to a charge that is available to the person charged.

Division 8—Evidentiary matters

219 Imputation of state of mind of consignee body corporate, employer etc.

(1) This section only applies to proceedings for an offence against section 176 involving a breach of a mass, dimension or load restraint limit or requirement by a heavy vehicle.

(2) If it is necessary in the proceedings to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

(a) that the conduct was engaged in by a director, employee or agent of the body corporate while acting within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the relevant state of mind.

(3) If it is necessary in the proceedings to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show—

(a) that the conduct was engaged in by an employee or agent of the person while acting within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the relevant state of mind.
(4) In this section—

**director** of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction;

**state of mind** of a person includes—

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

220 Evidence regarding manufacturer's ratings

(1) This section applies to proceedings in relation to a relevant heavy vehicle offence.

(2) A statement in writing purporting to be made by the manufacturer of a vehicle, or a component of a vehicle, regarding the mass rating of the vehicle or component determined by the manufacturer is admissible in any proceedings and, in the absence of evidence to the contrary, is proof—

(a) of the mass rating; and

(b) of any conditions to which the rating is subject that are included in the statement; and

(c) that the statement was made by the manufacturer of the vehicle or component.

(3) A statement in writing purporting to be made by the manufacturer of load restraint equipment designed for use on a vehicle (or a component of a vehicle) regarding the strength or performance rating of the equipment determined by the manufacturer is admissible in any proceedings and, in the absence of evidence to the contrary, is proof—

(a) of the strength or performance rating of the equipment; and
(b) that the equipment was designed for that use; and

(c) of any conditions to which the rating is subject that are included in the statement; and

(d) that the statement was made by the manufacturer of the equipment.

221 Transport documentation and journey documentation

(1) Transport documentation or journey documentation is admissible in any proceedings in relation to the commission of a relevant heavy vehicle offence and, in the absence of evidence to the contrary, is proof—

(a) of the identity and status of the parties to the transaction to which it relates; and

(b) of the destination or intended destination of the load to which it relates.

(2) For the purposes of subsection (1), the status of a party includes a reference to the party's status as a responsible person in relation to the transaction.

222 Evidence of facts relevant to prosecutions

(1) The statement in writing of a fact that relates to any matter that is relevant to a prosecution for a relevant heavy vehicle offence and that is made by any of the following is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the fact—

(a) the Corporation, or any corresponding Authority;

(b) a person who is an authorised officer (however described) under any Australian road or transport law;
(c) a member (however described) of the police force or police service of any Australian jurisdiction.

(2) In a prosecution for a relevant heavy vehicle offence, a statement or allegation in a complaint or charge made by the person bringing the proceedings that specified conduct occurred in a specified place, at a specified time, on a specified date or during a specified period is admissible in evidence in the proceedings and, in the absence of evidence to the contrary, is proof of the facts set out in the statement or allegation.

(3) This section is intended to supplement, rather than to limit, section 84.
PART 12—INTELLIGENT ACCESS PROGRAM FOR HEAVY VEHICLES

Division 1—Preliminary

223 What the Intelligent Access Program is

The Intelligent Access Program is a program to allow heavy vehicles to have access, or improved access, to the road network in return for monitoring, by an intelligent transport system, of their compliance with specified access conditions.

224 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.
225 Definitions

(1) In this Part—

approved intelligent transport system means an intelligent transport system approved for the purposes of the IAP by TCA;

Note
intelligent transport system is defined in section 3;

compliance purposes has the same meaning as in Part 9;

Note
See section 110;

IAP means Intelligent Access Program;

IAP agreement means an agreement between the operator of a vehicle and an IAP service provider under which the IAP service provider agrees to provide IAP monitoring services to the operator;

IAP auditor means a person appointed as an IAP auditor under section 254(2);

IAP condition means a requirement relating to the use of an approved intelligent transport system specified in respect of an IAP vehicle, or class of IAP vehicle, under which that vehicle is, or vehicles of that class are, allowed to be used on an IAP road;
**IAP identifier** means a unique number or code that is to be transmitted from a device on a vehicle to a remote receiving device for the purpose of enabling the location of the vehicle at any time to be ascertained;

**IAP information** means information that has been generated or collected for any purpose relating to the IAP;

**IAP participant** means an operator of a vehicle or vehicles that has entered into an IAP agreement, and operates at least one IAP vehicle;

**IAP road** means a road or road-related area specified in an IAP condition for use by IAP vehicles;

**IAP service provider** means a person that is certified as an IAP service provider by TCA;

**IAP vehicle** means a vehicle that is subject to an IAP condition, is equipped for monitoring under the IAP, and is covered by an IAP agreement;

**intelligent access map** means the spatial data set, issued by TCA from time to time, that defines the national public road system;

**Note**
The intelligent access map may not include some private roads;

**Intelligent Access Program** has the meaning given in section 223;

**law-enforcement purposes** means the purposes of investigating or prosecuting an offence (whether summary or indictable and whether against the law of Victoria or of another jurisdiction);
malfunction of an approved intelligent transport system has the meaning given in subsection (2);

mass, dimension or load restraint concession means an exemption granted by the Corporation (whether in the form of a permit, notice or other exemption) under which a vehicle is permitted to be used on a highway—

(a) at a mass, or with a dimension, that is greater than the mass or dimension limit imposed by or under this Act; or

(b) with the load restrained in a manner other than the manner that is required by or under this Act;

non-compliance means contravention by an IAP vehicle of an IAP condition;

non-compliance report means a report, generated by an approved intelligent transport system, of non-compliance;

personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

tampering with an approved intelligent transport system, means conduct prohibited by section 264;

tampering report means a report under section 241;

TCA means Transport Certification Australia Ltd ACN 113 379 936.
(2) An approved intelligent transport system *malfunctions* if—

(a) it ceases to work at all, or works only intermittently; or

(b) it does not perform one or more functions required under the IAP, or performs any such function only intermittently; or

(c) it performs such a function in such a way that the results of its doing so are inaccurate or unreliable (including intermittently inaccurate or unreliable).

(3) A reference in a provision of this Part to an approved form is a reference to the form approved by the Corporation for the purposes of the provision.

### 226 Other means of enforcement not excluded

Nothing in this Part has the effect of preventing or excluding any other method of enforcement of a road or transport law.

#### Division 2—Powers and duties of corporation in relation to IAP

### 227 What IAP conditions do

(1) An IAP condition—

(a) must specify at least one IAP road (*spatial data*); and

(b) may specify—

(i) periods during which IAP vehicles are permitted to use the specified IAP road (*temporal data*); and

(ii) maximum speeds at which IAP vehicles may travel during that use (*speed data*); and
(iii) any other condition of access to the IAP road (for example, a condition about mass limits); and

c) may specify a period within which an approved intelligent transport system must generate, and send to the Corporation, a non-compliance report after the system detects a non-compliance with the condition by an IAP vehicle.

(2) If an IAP condition does not specify speed data, it is taken to authorise the use of IAP vehicles on the IAP road at any speed at which a non-IAP vehicle of the same class could be used on the IAP road.

(3) An IAP condition that specifies speed data does not authorise an IAP vehicle to travel at a speed in excess of a speed limit that applies to vehicles generally.

(4) If an IAP condition does not specify temporal data, it is taken to authorise the use of IAP vehicles on the IAP road at any time at which a non-IAP vehicle of the same class could be used on the IAP road.

(5) An IAP condition may require an IAP vehicle to be monitored whether or not it uses an IAP road.

228 Corporation may specify IAP conditions

(1) The Corporation may, on its own initiative or on the application of an operator, specify one or more IAP conditions with respect to a vehicle or class of vehicles in respect of which a mass, dimension or load restraint concession applies.
(2) The Corporation must publish notice in the Gazette of—

(a) an IAP condition specified on the Corporation's own initiative; and

(b) an IAP condition specified with respect to a class of vehicles.

(3) An IAP condition may be specified at the time the mass, dimension or load restraint concession is given or subsequently.

229 Issue of IAP identifiers

The Corporation may issue an IAP identifier for an IAP vehicle.

Division 3—Duties and obligations of operators of vehicles

230 Offence—providing false or misleading information to IAP service provider

(1) The operator of an IAP vehicle is guilty of an offence if—

(a) the operator gives information to an IAP service provider with which the operator has entered into an IAP agreement; and

(b) the information is relevant to the operation of the vehicle; and

(c) the information is false or misleading in a material respect.

Penalty: 100 penalty units, in the case of a corporation;
20 penalty units, in any other case.

(2) Without limiting subsection (1)(b), information about an IAP condition that applies, or is capable of applying, to a vehicle is relevant to the operation of the vehicle.
(3) The operator of a vehicle is guilty of an offence if—

(a) the operator gives information to an IAP service provider; and

(b) the operator intends that the IAP service provider will enter into an IAP agreement with the operator in reliance on the information; and

(c) the information is false or misleading in a material respect.

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

231 Operators' obligation to tell drivers about collection of personal information and other matters

(1) The operator of an IAP vehicle must take reasonable steps to tell the vehicle's driver, before the vehicle begins a journey—

(a) that the vehicle will be monitored by an IAP service provider; and

(b) what information will be collected by the IAP service provider; and

(c) the purposes for which that information is collected; and

(d) the persons and authorities to which information so collected may be disclosed; and

(e) the fact that the collection of the information is authorised by this Act; and
(f) the fact that the driver has the rights of reasonable access to, and of correction of, the information; and

(g) what he or she needs to do to exercise those rights; and

(h) the name and address of any IAP service provider that may collect the information.

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

(2) The operator of an IAP vehicle must take reasonable steps to tell the vehicle's driver, before the vehicle begins a journey—

(a) about the driver's obligation under section 233; and

(b) how the driver can make the reports required by that obligation.

Penalty: 100 penalty units, in the case of a corporation;

20 penalty units, in any other case.

(3) An operator may comply with subsections (1) and (2) by—

(a) placing a notice that gives the required information in a place in the vehicle's driving cab where it is clearly visible; or

(b) giving the required information to the driver in writing as part of a written contract of employment between the driver and the operator.
(4) The regulations may prescribe—

(a) a form of notice that may be used for the purposes of subsection (3)(a); and

(b) for subsection (3)(b), a standard form of words that may be used as part of a written contract of employment.

232 System malfunctions—duties of operators of IAP vehicles

(1) If the operator of an IAP vehicle becomes aware that an approved intelligent transport system fitted to the vehicle is malfunctioning, the operator must tell the Corporation about the malfunction immediately, in person or by radio, telephone, fax or email.

Penalty: 60 penalty units, in the case of a corporation;
12 penalty units, in any other case.

(2) The operator must keep a written record of each report of a malfunction, including—

(a) the date, time and type of the malfunction, the date and time the operator became aware of the malfunction and the location of the vehicle concerned at the time of the malfunction; and

(b) the date and time of the report, the location of the vehicle at that time, the type of report and the name of the individual who made the report.

Penalty: 60 penalty units, in the case of a corporation;
12 penalty units, in any other case.
Division 4—Duties of vehicle drivers

233 System malfunctions—drivers' duties

(1) If the driver of an IAP vehicle becomes aware that an approved intelligent transport system fitted to the vehicle is malfunctioning, the driver must tell the vehicle's operator about the malfunction immediately, in person or by radio, telephone, fax or email.

Penalty: 12 penalty units.

(2) The driver must keep a written record of each report of a malfunction, including—

(a) the date, time and type of the malfunction, the date and time the driver became aware of the malfunction and the location of the vehicle concerned at the time of the malfunction; and

(b) the date and time of the report, the location of the vehicle at that time and the type of report.

Penalty: 12 penalty units.

Division 5—Duties, powers and obligations of IAP service providers

234 IAP service providers' duties in regard to use and disclosure of information

An IAP service provider must not use or disclose IAP information otherwise than as required or authorised by or under this Act or any other law.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.
235 IAP service providers’ powers to collect, store, use and disclose IAP information

(1) An IAP service provider may collect, store and use IAP information (including personal information) for compliance purposes.

(2) An IAP service provider may disclose IAP information (including personal information) to the Corporation, or to TCA, for compliance purposes.

(3) An IAP service provider may disclose to an inspector for law-enforcement purposes—

(a) a non-compliance report or a tampering report; or

(b) any other IAP information (including personal information), if so authorised by a warrant issued by a court.

Note

An IAP service provider has a separate obligation to make non-compliance reports and tampering reports to the Corporation—see sections 240 and 241.

(4) If an IAP service provider discloses IAP information to an inspector under subsection (3)(b), the inspector must not disclose the information to any other person or use the information, unless—

(a) the inspector believes the disclosure or use is reasonably necessary for law-enforcement purposes; or

(b) the disclosure or use is otherwise authorised by or under this Act or any other law.

(5) With the consent of an IAP participant, an IAP service provider may disclose IAP information about the participant to a person other than the participant, or use IAP information about the participant, for any purpose if the information—
(a) does not identify any individual; and
(b) contains nothing by which the identity of any individual can reasonably be ascertained.

(6) An IAP service provider may disclose IAP information (except a non-compliance report or a tampering report) about an IAP participant to the participant.

(7) In addition, an IAP service provider may disclose or use IAP information (including personal information)—

(a) in the case of personal information, with the consent of the person to whom the personal information relates; or

(b) as otherwise authorised by or under this Act or any other law.

(8) An IAP service provider must give an IAP auditor access to any record kept by the IAP service provider for the purposes of this Act.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

236 IAP service providers' duties in regard to recording, disclosure and use of information

(1) If an IAP service provider discloses or uses IAP information, the IAP service provider must make a record of the disclosure or use containing the following information—

(a) the name of the person who disclosed or used the IAP information;

(b) the date of the disclosure or use;

(c) in the case of a disclosure of IAP information, the person or body to whom or to which that information was disclosed;
(d) in the case of the use of IAP information by the IAP service provider, a brief description of how the information was used;

(e) the provision of this Act or another law that authorised the disclosure or use;

(f) if the authority for the disclosure or use also required a document (for example, a warrant, a certificate or a consent), a copy of the document.

(2) The IAP service provider must make the record within 5 business days after the relevant disclosure or use.

(3) The IAP service provider must make the record in a form that allows the record to be readily inspected.

(4) The IAP service provider must retain the record for 2 years.

(5) An IAP service provider is guilty of an offence if the IAP service provider does not comply with a requirement of any of subsections (1) to (4).

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

237 IAP service providers' obligations in regard to quality and security of IAP information

(1) An IAP service provider must take reasonable steps to ensure that the IAP information the IAP service provider collects—

(a) is necessary for, or is directly related to, the purpose for which it is collected, or a directly related purpose; and

(b) is not excessive for that purpose; and

(c) is accurate, up-to-date and complete.
(2) An IAP service provider must take reasonable steps to ensure that the collection of IAP information does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

(3) If an individual (including an individual who is an IAP participant) about whom an IAP service provider holds personal information so requests, the IAP service provider must make appropriate alterations to the personal information to ensure that the information is accurate, complete, up-to-date and not misleading.

(4) If the IAP service provider considers that the personal information the subject of such a request is not inaccurate, incomplete, out-of-date or misleading, the IAP service provider may refuse to comply with the request, but must then—

(a) give the individual a statement in writing of the IAP service provider's reasons for refusing; and

(b) if the individual so requests, attach to, or include with, the information a statement by the individual concerning his or her views as to the accuracy, completeness, currency or effect of the personal information.

(5) An IAP service provider is guilty of an offence if the IAP service provider does not comply with a requirement of any of subsections (1) to (4).

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.
238 IAP service providers' obligations to keep records of monitoring

(1) An IAP service provider must keep a record of the IAP information that the IAP service provider collects that is organised in a way that allows the record to be conveniently and properly audited.

(2) An IAP service provider must keep—
   (a) a copy of a non-compliance report; and
   (b) the data relied on to generate the report—
       for at least 4 years after the report is made by the IAP service provider.

(3) An IAP service provider must take reasonable steps to protect IAP information collected by the IAP service provider against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

(4) An IAP service provider must take reasonable steps to destroy IAP information (including personal information), other than information required by subsection (2) to be kept, one year after the information is collected.

(5) An IAP service provider is guilty of an offence if the IAP service provider does not comply with a requirement of any of subsections (1) to (4).

Penalty: 100 penalty units, in the case of a corporation;
          20 penalty units, in any other case.

239 IAP service providers' obligation to make individuals aware of personal information held

(1) An IAP service provider must prepare, and make publicly available, a document that sets out the IAP service provider's policies on the management of information.
(2) If an individual about whom an IAP service provider holds personal information so requests, the IAP service provider must, subject to subsection (4), take reasonable steps to inform the individual of—

(a) the kinds of information the IAP service provider holds about him or her; and

(b) the purpose for which the information is held; and

(c) the fact that the holding of the information is authorised by this Act; and

(d) the way in which the IAP service provider collects, holds, uses and discloses the information; and

(e) the persons and authorities to whom or to which the information may be disclosed; and

(f) the fact that he or she has the rights of reasonable access to, and of correction of, the information; and

(g) what he or she needs to do to exercise those rights.

(3) Subject to subsection (4), an IAP service provider must, on request by an individual about whom the IAP service provider holds personal information, give the individual access to the information as soon as practicable after receiving the request.

(4) Nothing in subsection (2) or (3) requires an IAP service provider—

(a) to inform an individual that a non-compliance report or a tampering report exists or has been made; or

(b) to give an individual access to such a report.
(5) An IAP service provider must not charge an individual for access to information under subsection (3) except for any costs reasonably incurred by the IAP service provider in giving access to the information.

(6) An IAP service provider is guilty of an offence if the IAP service provider does not comply with a requirement of any of subsections (1), (2) or (3).

Penalty: 100 penalty units, in the case of a corporation;
          20 penalty units, in any other case.

240 IAP service providers' obligation to make non-compliance reports

(1) An IAP service provider is guilty of an offence if the IAP service provider—

   (a) knows of—
       (i) a breach by an IAP participant of an IAP condition; or
       (ii) anything that indicates that an IAP participant may have breached such a condition; and

   (b) does not make a non-compliance report that complies with subsection (2) to the Corporation within the time allowed, in the circumstances, under subsection (3).

Penalty: 200 penalty units, in the case of a corporation;
          40 penalty units, in any other case.

(2) A non-compliance report—

   (a) must be in the form approved for the purpose by TCA; and

   (b) must contain any information required by the IAP service provider's certification; and
(c) may include information, about apparent tampering with an approved intelligent transport system, electronically generated by the system itself.

(3) The IAP service provider must make the report—

(a) within any time specified in the relevant IAP condition; or

(b) within any time specified by the Corporation (by written direction) for the purpose.

(4) For the purposes of this section, an IAP service provider is taken to know of a breach of an IAP condition if the IAP service provider's monitoring equipment has detected the breach.

241 IAP service providers' obligation to report tampering

(1) If an IAP service provider knows, or has reasonable grounds to suspect, that intelligent transport system equipment has been tampered with, the IAP service provider must report that fact, in accordance with subsection (2), to the Corporation within 5 business days.

(2) A tampering report—

(a) must be in the form approved for the purpose by TCA; and

(b) must contain any information required by the IAP service provider's certification.

(3) If an IAP service provider knows, or has reasonable grounds to suspect, that approved intelligent transport system equipment has been tampered with, the IAP service provider must not disclose to any person other than the Corporation—
(a) that the IAP service provider has that knowledge or suspicion; or

(b) any information from which the person to whom the disclosure is made could reasonably infer that the IAP service provider has that knowledge or suspicion.

(4) If an IAP service provider has made a tampering report to the Corporation, the IAP service provider must not disclose to any person other than the Corporation—

(a) that the report has been made; or

(b) any information from which the person to whom the disclosure is made could reasonably infer that the IAP service provider has made such a report.

(5) An IAP service provider is guilty of an offence if the IAP service provider does not comply with a requirement of any of subsections (1) to (4).

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

(6) In this section, a reference to knowledge or suspicion does not include knowledge or suspicion resulting only from—

(a) a report, contained in a non-compliance report or otherwise made by an approved intelligent transport system, of the electronic detection of apparent tampering with that system; or

(b) the analysis of data produced by such a system.
242 Offence—IAP service provider providing false or misleading information to Corporation or TCA

An IAP service provider is guilty of an offence if—

(a) the IAP service provider gives information to the Corporation or TCA; and

(b) the information is relevant to the operation of an IAP vehicle; and

(c) the information is false or misleading in a material respect.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

Division 6—Functions, duties, powers and obligations of TCA

243 Functions of TCA

For the purposes of this Act, the functions of TCA are—

(a) to manage the certification and audit regime for the IAP; and

(b) to certify and audit, and cancel the certification of, IAP service providers; and

(c) to appoint and co-ordinate IAP auditors.

244 TCA's duties in regard to disclosure and use of information

(1) TCA must not disclose or use IAP information unless it first takes reasonable steps to ensure that, having regard to the purpose for which the information is to be disclosed or used, the information is accurate, complete, up-to-date and not misleading.
(2) Subject to sections 245, 246 and 247, TCA must not disclose or use information for a purpose other than the purpose for which it collected the information.

(3) TCA must not use information relating to a particular IAP participant, or disclose that information other than to—

(a) the participant; or
(b) an IAP auditor; or
(c) the Corporation—

unless the use or disclosure is authorised by or under this Act or any other law.

(4) TCA must not disclose information relating to a breach of an IAP service provider's obligations except to—

(a) the Corporation; or
(b) an IAP auditor.

(5) If TCA discloses or uses IAP information (other than disclosure or use for law enforcement purposes), TCA must make a record of the disclosure or use containing the following information—

(a) the name of the person who disclosed or used the IAP information;
(b) the date of the disclosure or use;
(c) in the case of a disclosure of IAP information, the person or body to whom or to which the information was disclosed;
(d) in the case of the use of IAP information by TCA, a brief description of how the information was used;
(e) the provision of this Act or another law that authorised the disclosure or use;

(f) if the authority for the disclosure or use also required a document (for example, a warrant, a certificate or a consent), a copy of the document.

(6) TCA must make the record within 5 business days after the relevant disclosure or use.

(7) TCA must make the record in a form that allows the record to be readily inspected.

(8) TCA must retain the record for 2 years.

245 TCA’s powers to collect, store, use and disclose IAP information

(1) TCA may collect, store, use and disclose IAP information (including personal information) for the performance of its functions and for law-enforcement purposes.

(2) With the consent of an IAP participant, TCA may disclose or use IAP information about the participant for any purpose if the information—

(a) does not identify any individual; and

(b) contains nothing by which the identity of any individual can reasonably be ascertained.

(3) TCA may disclose or use IAP information (including personal information)—

(a) in the case of personal information, with the consent of the person to whom the personal information relates; or

(b) as otherwise authorised by or under this Act or any other law.
246 Disclosure of information for law-enforcement purposes etc.

(1) TCA may disclose to an inspector for law-enforcement purposes—

(a) a non-compliance report or a tampering report; or

(b) any other IAP information (including personal information), if so authorised by a warrant issued by a court.

(2) If TCA discloses information to an inspector under subsection (1)(b), the inspector must not disclose the information to any other person or use the information, unless—

(a) the inspector believes the disclosure or use is reasonably necessary for law-enforcement purposes; or

(b) the disclosure or use is otherwise authorised by or under this Act or any other law.

247 Use of information for research

TCA may use or disclose information for research purposes, but only if the information contains no personal information.

248 TCA's obligations in regard to collecting IAP information

(1) TCA must take reasonable steps to ensure that IAP information that it collects—

(a) is necessary for, or is directly related to, the purpose for which it is collected, or a directly related purpose; and

(b) is not excessive for that purpose; and

(c) is accurate, up-to-date and complete.
(2) TCA must take reasonable steps to ensure that the collection of IAP information does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

249 TCA's obligation to keep information secure

(1) TCA must take reasonable steps to protect IAP information collected by it against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

(2) Subject to sections 244 and 251, after IAP information (including personal information) collected by TCA has been held for one year, TCA must take reasonable steps to—

(a) destroy the information; or

(b) permanently remove anything from the information by which an individual can be identified.

(3) Subsection (2) does not apply for so long as the IAP information is required as evidence.

250 TCA's obligation to make individuals aware of personal information held

(1) TCA must prepare, and make publicly available, a document that sets out its policies on the management of information.

(2) If an individual so requests, TCA must, subject to subsection (4), take reasonable steps to inform the individual of—

(a) the kinds of information it holds about him or her; and

(b) the purpose for which the information is held; and

(c) the way in which it collects, holds, uses and discloses the information; and
(d) the persons and authorities to whom or to which the information may be disclosed; and
(e) the fact that the collection of the information is authorised by this Act; and
(f) the fact that he or she has the rights of reasonable access to, and of correction of, the information; and
(g) what he or she needs to do to exercise those rights.

(3) Subject to subsection (4), TCA must, on request by an individual about whom TCA holds personal information, give the individual access to the information as soon as practicable after receiving the request.

(4) Nothing in subsection (2) or (3) requires TCA—
(a) to inform an individual that a non-compliance report or a tampering report exists or has been made; or
(b) to give an individual access to such a report.

(5) TCA must not charge an individual for access to information under subsection (3) except for any costs reasonably incurred by TCA in giving access to the information.

251 TCA's obligation to keep records of transactions

(1) TCA must keep and retain records, in accordance with this section, of its transactions with the Corporation, IAP service providers and IAP auditors.

(2) The records must be organised in such a way as will enable them to be conveniently and properly audited.

(3) TCA must keep a non-compliance report for at least 4 years after its receipt.
(4) TCA must retain any other record referred to in subsection (1) for at least one year after the record is made.

252 TCA's obligation to correct errors etc.

(1) TCA must take reasonable steps to ensure that personal information that it collects is accurate, complete, up-to-date and not misleading.

(2) If so requested by an IAP participant or an IAP service provider, TCA must make appropriate alterations to any personal information it holds to ensure that the information is accurate, complete, up-to-date and not misleading.

(3) If TCA considers that personal information the subject of a request under subsection (2) is not inaccurate, incomplete, out-of-date or misleading, it may refuse to comply with the request, but must then—

(a) give the IAP participant or IAP service provider a written statement of its reasons for refusing; and

(b) if the IAP participant or IAP service provider so requests, attach to, or include with, the information a statement by the participant or provider concerning their views as to the accuracy, completeness, currency or effect of the personal information.

253 TCA's obligation to report tampering

(1) If TCA knows, or has reasonable grounds to suspect, that intelligent transport system equipment has been tampered with, TCA must report that fact to the Corporation within 5 business days.
(2) If TCA knows, or has reasonable grounds to suspect, that approved intelligent transport system equipment has been tampered with, TCA must not disclose to any person other than the Corporation—

(a) that TCA has that knowledge or suspicion; or

(b) any information from which the person to whom the disclosure is made could reasonably infer that TCA has that knowledge or suspicion.

(3) If TCA has made a report to the Corporation of apparent tampering or suspicion of tampering, TCA must not disclose to any person other than the Corporation—

(a) that the report has been made; or

(b) any information from which the person to whom the disclosure is made could reasonably infer that TCA has made such a report.

(4) In this section, a reference to knowledge or suspicion does not include knowledge or suspicion resulting only from—

(a) electronic detection, by an approved intelligent transport system, of apparent tampering with that system; or

(b) the analysis of data produced by such a system.

Division 7—Duties, powers and obligations of IAP auditors

254 IAP audit and IAP auditors

(1) IAP audit is the process of—

(a) reviewing IAP information held by an IAP service provider to determine its completeness and reliability; and
(b) reviewing the processes by which that information was collected; and
(c) examining how it is stored, used and disclosed; and
(d) examining IAP equipment installed in a vehicle or used by an IAP service provider.

(2) TCA may appoint as many persons as are necessary as IAP auditors for the purposes of this Part.

255 IAP auditors’ duties in regard to disclosure and use of information

(1) An IAP auditor must not disclose or use IAP information unless the auditor first takes reasonable steps to ensure that, having regard to the purpose for which the information is to be disclosed or used, the information is accurate, complete, up-to-date and not misleading.

(2) An IAP auditor must not disclose or use information for a purpose other than the purpose for which the auditor collected the information.

(3) An IAP auditor must not use information relating to a particular IAP participant, or disclose that information other than to—
   (a) the participant; or
   (b) TCA; or
   (c) the Corporation—
   unless the use or disclosure is authorised by or under this Act or any other law.

(4) An IAP auditor must not disclose information relating to non-compliance or tampering except to—
   (a) the Corporation; or
   (b) TCA.
(5) If an IAP auditor discloses or uses IAP information (other than disclosure or use for law-enforcement purposes), the IAP auditor must make a record of the disclosure or use containing the following information—

(a) the name of the person who disclosed or used the IAP information;
(b) the date of the disclosure or use;
(c) in the case of a disclosure of IAP information, the person or body to whom or to which the information was disclosed;
(d) in the case of the use of IAP information by the IAP auditor, a brief description of how the information was used;
(e) the provision of this Act or another law that authorised the disclosure or use;
(f) if the authority for the disclosure or use also required a document (for example, a warrant, a certificate or a consent), a copy of the document.

(6) The IAP auditor must make the record within 5 business days after the relevant disclosure or use.

(7) The IAP auditor must make the record in a form that allows the record to be readily inspected.

(8) The IAP auditor must retain the record for 2 years.

(9) An IAP auditor is guilty of an offence if the IAP auditor does not comply with a requirement of any of subsections (1) to (8).

Penalty: 200 penalty units, in the case of a corporation;
          40 penalty units, in any other case.
256 IAP auditors' powers to collect, store, use and disclose IAP information

(1) An IAP auditor may collect, store, use and disclose IAP information (including personal information) for—
   (a) the performance of the IAP auditor's functions; or
   (b) to report, to TCA, non-compliance or tampering by an IAP participant; or
   (c) to report, to TCA, tampering by an IAP service provider, or a failure by an IAP service provider to comply with the provider's obligations.

(2) An IAP auditor may use or disclose IAP information (including personal information)—
   (a) in the case of personal information, with the consent of the person to whom the personal information relates; or
   (b) as otherwise authorised by or under this Act or any other law.

257 IAP auditors' obligations in regard to collecting IAP information

(1) An IAP auditor may collect IAP information that is reasonably necessary to enable the auditor to prepare an audit report on an IAP service provider.

(2) An IAP auditor must take reasonable steps to ensure that IAP information that the IAP auditor collects—
   (a) is necessary for, or is directly related to, the purpose for which it is collected, or a directly related purpose; and
(b) is not excessive for that purpose; and
(c) is accurate, up-to-date and complete.

(3) An IAP auditor must take reasonable steps to ensure that the collection of IAP information does not intrude to an unreasonable extent on the personal privacy of any individual to whom the information relates.

(4) An IAP auditor is guilty of an offence if the IAP auditor does not comply with a requirement of any of subsections (1), (2) or (3).

Penalty: 200 penalty units, in the case of a corporation;
40 penalty units, in any other case.

258 IAP auditors' obligation to keep information secure

(1) An IAP auditor must take reasonable steps to protect IAP information collected by the IAP auditor against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.

(2) An IAP auditor must take reasonable steps to destroy personal information no longer needed for IAP purposes, or remove permanently from such information anything by which an individual can be identified.

(3) An IAP auditor is guilty of an offence if the IAP auditor does not comply with a requirement of subsection (1) or (2).

Penalty: 200 penalty units, in the case of a corporation;
40 penalty units, in any other case.
IAP auditors' obligation to make individuals aware of personal information held

(1) If an individual so requests, an IAP auditor must take reasonable steps to inform the individual of—
   (a) the kinds of information the IAP auditor holds about him or her; and
   (b) the purpose for which the information is held; and
   (c) the way in which the IAP auditor collects, holds, uses and discloses the information; and
   (d) the persons and authorities to whom or to which the information may be disclosed; and
   (e) the fact that the collection of the information is authorised by this Act; and
   (f) the fact that he or she has the rights of reasonable access to, and of correction of, the information; and
   (g) what he or she needs to do to exercise those rights.

(2) An IAP auditor must, on request by an individual about whom the IAP auditor holds personal information, give the individual access to the information as soon as practicable after receiving the request.

(3) An IAP auditor must not charge an individual for access to information under subsection (2) except for any costs reasonably incurred by the auditor in giving access to the information.
(4) An IAP auditor is guilty of an offence if the IAP auditor does not comply with a requirement of subsection (1) or (2).

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

260 IAP auditors' obligation to keep records of transactions

(1) An IAP auditor must keep and retain records, in accordance with this section, of the IAP auditor's transactions with IAP service providers and TCA.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

(2) The records must be organised in such a way as will enable them to be conveniently and properly audited.

261 IAP auditors' obligation to correct errors etc.

(1) An IAP auditor must take reasonable steps to ensure that information that the IAP auditor collects is accurate, complete, up-to-date and not misleading.

(2) If so requested by an IAP participant or an IAP service provider, an IAP auditor must make appropriate alterations to any information the IAP auditor holds to ensure that the information is accurate, complete, up-to-date and not misleading.

(3) If the IAP auditor considers that the information the subject of such a request is not inaccurate, incomplete, out-of-date or misleading, the IAP auditor may refuse to comply with the request, but must then—
(a) give the IAP participant or IAP service provider a statement in writing of the IAP auditor's reasons for refusing; and

(b) if the IAP participant or IAP service provider so requests, attach to, or include with, the information a statement by the participant or provider concerning their views as to the accuracy, completeness, currency or effect of the personal information.

(4) An IAP auditor is guilty of an offence if the IAP auditor does not comply with a requirement of any of subsections (1), (2) or (3).

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

262 IAP auditors' obligation to report breaches by IAP service providers

If an IAP auditor knows of a breach by an IAP service provider of the provider's obligations under this Act, or of anything that indicates that an IAP service provider may have breached such an obligation, the IAP auditor must, as soon as practicable, report that fact to TCA.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

263 IAP auditors' obligation to report tampering

If an IAP auditor knows, or has reasonable grounds to suspect, that intelligent transport system equipment has been tampered with, the IAP auditor must, as soon as practicable, report that fact to—
(a) in the case of tampering or suspected tampering by an IAP participant—the Corporation; or

(b) in the case of tampering or suspected tampering by an IAP service provider—TCA.

Penalty: 200 penalty units, in the case of a corporation;

40 penalty units, in any other case.

Division 8—Tampering with approved intelligent transport system

264 Offence—tampering with approved intelligent transport system

1 A person is guilty of an offence if—

(a) the person engages in conduct that has the result that—

(i) the system is altered; or

(ii) the system is installed or used in a way that is not in accordance with the conditions of its certification by TCA; or

(iii) any data instruction that the system uses internally is altered; and

(b) the person does so with the intention of causing the system to—

(i) fail to collect IAP information, or fail to collect that information correctly; or

(ii) fail to store IAP information, or fail to store that information correctly; or
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(iii) fail to report IAP information, or fail to report that information correctly.

Penalty: 1000 penalty units, in the case of a corporation;

200 penalty units, in any other case.

(2) A person is guilty of an offence if the person—

(a) engages in conduct; and

(b) is reckless as to whether, or negligently fails to consider whether, as a result of the conduct, the system may—

(i) fail to collect IAP information, or fail to collect that information correctly; or

(ii) fail to store IAP information, or fail to store that information correctly; or

(iii) fail to report IAP information, or fail to report that information correctly.

Penalty: 500 penalty units, in the case of a corporation;

100 penalty units, in any other case.

(3) For the purposes of this section—

(a) a system fails if it does not perform as intended in terms of accuracy, timeliness, reliability, verifiability or any other performance parameter; and

(b) fail includes fail permanently, fail temporarily, fail on a particular occasion or occasions, and fail in particular circumstances.
Division 9—Evidence

265 Definition and application

(1) In this Division—

*at a specified time* includes on a specified date and during a specified period.

(2) This Division is intended to supplement, rather than to limit, section 84.

266 Certificates by the Corporation

A certificate purporting to be issued by the Corporation stating any of the following—

(a) that a specified IAP condition was in effect for a specified IAP participant at a specified time;

(b) that a specified person is, or was at a specified time, an IAP participant;

(c) that a specified IAP condition applied to a specified IAP vehicle at a specified time;

(d) that a specified vehicle is, or was at a specified time, an IAP vehicle;

(e) that a specified IAP participant is, or was at a specified time, the operator of a specified IAP vehicle;

(f) that a specified non-compliance report, tampering report or IAP auditor's report was received at a specified time, or has not been received;

(g) that no report of a malfunction has been received, or had been received at a specified time, by the Corporation in relation to an approved intelligent transport system fitted to a specified IAP vehicle;
(h) that a report of a specified malfunction was received at a specified time, or has not been received;

(i) that a specified form is an approved form for a specified purpose—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in it.

267 Certificate as to intelligent access map

(1) TCA may certify in writing that a particular map is the intelligent access map as issued by TCA at a specified time.

(2) The map may be in the form of an electronic data file.

(3) A certificate under subsection (1) is admissible in evidence in any proceedings and is conclusive evidence of the matters stated in it.

(4) The intelligent access map, as issued by TCA at a particular time, is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct representation of the national road network at the time of its issue.

(5) A document purporting to be a certificate under subsection (1) is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be what it purports to be.

(6) The person who signed such a document is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to have been authorised by TCA to do so.
268 Other certificates by TCA

A certificate purporting to be issued by TCA stating any of the following—

(a) that a particular intelligent transport system is, or was at a specified time, an approved intelligent transport system;

(b) that on a specified date a specified person was or was not an IAP service provider or an IAP auditor—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in it.

269 Presumption of correct operation

The equipment and software that make up an approved intelligent transport system are presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to have operated correctly on any particular occasion.

270 Evidence as to vehicle's position

A statement of a vehicle's position on the surface of the earth at a particular time, in a non-compliance report or otherwise generated or produced by means of an approved intelligent transport system, is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct statement of the vehicle's position at the time.

271 IAP information generated etc. by approved intelligent transport system

(1) IAP information generated by an approved intelligent transport system is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to have been correctly generated.
(2) IAP information recorded by an approved intelligent transport system is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to have been correctly recorded.

(3) IAP information stored by an approved intelligent transport system is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) not to be changed by that storage.

(4) If it is established that some of such IAP information has been changed by being so stored, the presumption in subsection (3) continues to apply to any other IAP information so stored.

272 Reports by approved intelligent transport system

(1) A document purporting to be a non-compliance report, or a report under section 241, made by an approved intelligent transport system—

(a) is admissible in evidence in any proceedings; and

(b) in the absence of evidence to the contrary, is proof of the matters stated in it; and

(c) is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct report of information generated and recorded by the system.

(2) A document purporting to be a report made by an approved intelligent transport system setting out IAP information—

(a) is admissible in evidence in any proceedings; and

(b) in the absence of evidence to the contrary, is proof of the matters stated in it; and
(c) is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) to be a correct report of information generated and recorded by the system.

(3) If it is established that a part of a document referred to in subsection (1) or (2) is not a correct report of the relevant part of the IAP information as so recorded, the presumption in subsection (1)(c) or (2)(c) continues to apply to the remainder of the report.

273 Results of mathematical procedures

(1) A certificate purporting to be issued by the Corporation—

(a) stating that a specified mathematical (including statistical) procedure was carried out in relation to IAP information specified or referred to in the certificate; and

(b) setting out the results of doing so—

is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in it.

(2) The specified procedure is presumed (unless evidence sufficient to raise doubt about the presumption is adduced)—

(a) to be valid and reliable for the purpose for which it was used; and

(b) to have been carried out correctly
### SCHEDULES

#### SCHEDULE 1

Sections 50 and 89C

**MINIMUM DISQUALIFICATION PERIODS**

<table>
<thead>
<tr>
<th>Concentration of alcohol in blood in grams per 100 millilitres of blood or in breath in grams per 210 litres of exhaled air</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>First offence</td>
<td>Subsequent offence</td>
<td></td>
</tr>
<tr>
<td>less than 0.07</td>
<td>6 months</td>
<td>12 months</td>
</tr>
<tr>
<td>0.07 or more but less than 0.08</td>
<td>6 months</td>
<td>14 months</td>
</tr>
<tr>
<td>0.08 or more but less than 0.09</td>
<td>6 months</td>
<td>16 months</td>
</tr>
<tr>
<td>0.09 or more but less than 0.10</td>
<td>6 months</td>
<td>18 months</td>
</tr>
<tr>
<td>0.10 or more but less than 0.11</td>
<td>10 months</td>
<td>20 months</td>
</tr>
<tr>
<td>0.11 or more but less than 0.12</td>
<td>11 months</td>
<td>22 months</td>
</tr>
<tr>
<td>0.12 or more but less than 0.13</td>
<td>12 months</td>
<td>24 months</td>
</tr>
<tr>
<td>0.13 or more but less than 0.14</td>
<td>13 months</td>
<td>26 months</td>
</tr>
<tr>
<td>0.14 or more but less than 0.15</td>
<td>14 months</td>
<td>28 months</td>
</tr>
<tr>
<td>0.15 or more but less than 0.16</td>
<td>15 months</td>
<td>30 months</td>
</tr>
<tr>
<td>0.16 or more but less than 0.17</td>
<td>16 months</td>
<td>32 months</td>
</tr>
<tr>
<td>0.17 or more but less than 0.18</td>
<td>17 months</td>
<td>34 months</td>
</tr>
<tr>
<td>0.18 or more but less than 0.19</td>
<td>18 months</td>
<td>36 months</td>
</tr>
<tr>
<td>0.19 or more but less than 0.20</td>
<td>19 months</td>
<td>38 months</td>
</tr>
<tr>
<td>0.20 or more but less than 0.21</td>
<td>20 months</td>
<td>40 months</td>
</tr>
<tr>
<td>0.21 or more but less than 0.22</td>
<td>21 months</td>
<td>42 months</td>
</tr>
<tr>
<td>0.22 or more but less than 0.23</td>
<td>22 months</td>
<td>44 months</td>
</tr>
<tr>
<td>0.23 or more but less than 0.24</td>
<td>23 months</td>
<td>46 months</td>
</tr>
<tr>
<td>0.24 or more</td>
<td>24 months</td>
<td>48 months</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.

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.


Road Safety Act 1986
No. 127 of 1986

Sch. 2

**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.

Sch. 2 item 22 amended by Nos 120/1993 s. 61(2), 78/1994 s. 6.

Sch. 2 item 27 amended by No. 44/1989 s. 41(Sch. 2 item 34.5).
28. The circumstances in which the Corporation is required to cancel, suspend or vary a driver licence or permit or refuse an application for a driver licence, driver licence variation or permit and the procedures to be followed in those cases.

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 detection devices 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 detection devices 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.
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 members of the police force.

55. The methods to be used by analysts in determining the concentration of alcohol in a blood sample.

55A. The methods to be used by analysts in determining the presence of a substance in a blood, 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.

**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.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>63.</td>
<td>The approval of persons to drive vehicles seating more than 12 people (driver included) in hazardous areas.</td>
</tr>
<tr>
<td>64.</td>
<td>The approval of vehicles seating more than 12 people (driver included) for use in hazardous areas.</td>
</tr>
<tr>
<td>65.</td>
<td>Otherwise prohibiting or regulating the use of vehicles seating more than 12 people (driver included) in hazardous areas.</td>
</tr>
<tr>
<td><strong>Driving instructor authorities</strong></td>
<td></td>
</tr>
<tr>
<td>66.</td>
<td>Applications for driving instructor authorities and the revocation or suspension thereof.</td>
</tr>
<tr>
<td>67.</td>
<td>Procedures and requirements to be complied with before a driving instructor authority may be issued.</td>
</tr>
<tr>
<td>68.</td>
<td>Prescribing and regulating the conduct of holders of driving instructor authorities in respect of the teaching of persons to drive motor vehicles.</td>
</tr>
<tr>
<td>69.</td>
<td>The format of identity photographs of holders of driving instructor authorities.</td>
</tr>
<tr>
<td>70.</td>
<td>The location of identity photographs of holders of driving instructor authorities in motor vehicles that are used for teaching persons to drive.</td>
</tr>
<tr>
<td>71.</td>
<td>The conditions to which driving instructor authorities are subject.</td>
</tr>
</tbody>
</table>
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.
SCHEDULE 3

WORK AND REST HOURS FOR DRIVERS NOT WORKING UNDER ACCREDITATION

TABLE 1

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>In any period of...</td>
<td>... a driver must not work for more than...</td>
<td>... and must have the rest of that period off work, with at least...</td>
<td>If in that period a driver has...</td>
</tr>
<tr>
<td>5½ hrs work time</td>
<td>15 continuous mins rest time</td>
<td>&gt; 5¼ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td>8 hrs work time</td>
<td>30 mins rest time, in blocks of 15 continuous mins</td>
<td>&gt; 7½ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td>11 hrs work time</td>
<td>60 mins rest time, in blocks of 15 continuous mins</td>
<td>≤ 10¾ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 10¾ hrs work time</td>
<td>substantial risk</td>
</tr>
</tbody>
</table>

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).
### Sch. 3

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total period</strong></td>
<td><strong>Maximum work time</strong></td>
<td><strong>Minimum rest time</strong></td>
<td><strong>Offence category</strong></td>
</tr>
<tr>
<td>24 hrs</td>
<td>12 hrs work time</td>
<td>≤ 12¾ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 12¼ but not 13¾ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 13¾ hrs work time</td>
<td></td>
</tr>
<tr>
<td>7 continuous hrs stationary rest time</td>
<td>&lt; 7 but not 6¼ continuous hrs stationary rest time</td>
<td>&lt; 6¼ but not &lt; 5¾ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td>7 days (168 hrs)</td>
<td>72 hrs work time</td>
<td>≤ 73½ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 73½ but not &gt; 74½ hrs work time</td>
<td>substantial risk</td>
</tr>
</tbody>
</table>
### Road Safety Act 1986
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<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&gt; 74½ but not &gt; 75 hrs work time</td>
<td>&gt; 75 hrs work time</td>
<td>24 continuous hrs stationary rest time</td>
<td>minor risk</td>
<td></td>
</tr>
<tr>
<td>&gt; 75 hrs work time</td>
<td>&lt; 24 but not &lt; 23½ continuous hrs stationary rest time</td>
<td>&lt; 23¼ but not &lt; 22½ continuous hrs stationary rest time</td>
<td>substantial risk</td>
<td></td>
</tr>
<tr>
<td>&lt; 23¼ but not &lt; 22½ continuous hrs stationary rest time</td>
<td>&lt; 22½ but not &lt; 22½ continuous hrs stationary rest time</td>
<td>&lt; 22½ continuous hrs stationary rest time</td>
<td>severe risk</td>
<td></td>
</tr>
<tr>
<td>14 days (336 hrs) work time</td>
<td>≤ 145½ hrs work time</td>
<td>&gt; 145½ but not &gt; 146½ hrs work time</td>
<td>critical risk</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&gt; 146½ but not &gt; 147 hrs work time</td>
<td>&gt; 147 hrs work time</td>
<td></td>
<td></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>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
<td></td>
</tr>
<tr>
<td>2 × night rest breaks, and</td>
<td>&lt; 7 but not &lt; 6¼ continuous hrs stationary rest time per block</td>
<td>&lt; 6¼ but not &lt; 5¾ continuous hrs stationary rest time per block</td>
<td>minor risk</td>
<td></td>
</tr>
<tr>
<td>2 × night rest breaks taken on consecutive days</td>
<td>&lt; 7 but not &lt; 6¼ continuous hrs stationary rest time per block</td>
<td>&lt; 6¼ but not &lt; 5¾ continuous hrs stationary rest time per block</td>
<td>substantial risk</td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 5¾ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>minor risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sch. 3
### TABLE 2

**Standard hours—Solo drivers of buses**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>In any period of...</td>
<td>... a driver must not work for more than...</td>
<td>... and must have the rest of that period off work, with at least...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td>5½ hrs work time</td>
<td>5½ hrs work time</td>
<td>15 continuous mins rest time</td>
<td>&gt; 5½ hrs work time</td>
</tr>
<tr>
<td>8 hrs work time</td>
<td>7½ hrs work time</td>
<td>30 mins rest time, in blocks of 15 continuous mins</td>
<td>&gt; 7½ hrs work time</td>
</tr>
</tbody>
</table>
### Sch. 3

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total period</strong></td>
<td><strong>Maximum work time</strong></td>
<td><strong>Minimum rest time</strong></td>
<td><strong>Offence category</strong></td>
</tr>
<tr>
<td>11 hrs</td>
<td>10 hrs work time</td>
<td>60 mins rest time, in blocks of 15 continuous mins</td>
<td>≤ 10¾ hrs work time</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 10¾ hrs work time</td>
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</tr>
<tr>
<td>24 hrs</td>
<td>12 hrs work time</td>
<td>≤ 12¾ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 12¾ but not &gt; 13¾ hrs work time</td>
<td>substantial risk</td>
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<tr>
<td></td>
<td></td>
<td>&gt; 13¾ but not &gt; 13½ hrs work time</td>
<td>severe risk</td>
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<tr>
<td></td>
<td></td>
<td>&gt; 13½ hrs work time</td>
<td>critical risk</td>
</tr>
<tr>
<td>7 continuous hrs stationary rest time</td>
<td>&lt; 7 but not &lt; 6¼ continuous hrs stationary rest time</td>
<td>≤ 6¼ but not &lt; 5¼ continuous hrs stationary rest time</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 5¼ but not &lt; 5½ continuous hrs stationary rest time</td>
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<tr>
<td></td>
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<td>severe risk</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>critical risk</td>
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### Schedule 3

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<th>Column 4</th>
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<tbody>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>7 days (168 hrs)</td>
<td>6 × night rest breaks</td>
<td>&lt; 7 but not &lt; 6(\frac{1}{4}) continuous hrs stationary rest time per block</td>
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</tr>
<tr>
<td>28 days (672 hrs)</td>
<td>288 hrs work time</td>
<td>≤ 289(\frac{1}{2}) hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td>28 days (672 hrs)</td>
<td>288 hrs work time</td>
<td>&gt; 289(\frac{1}{2}) but not &gt; 290(\frac{1}{2}) hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td>28 days (672 hrs)</td>
<td>288 hrs work time</td>
<td>&gt; 290(\frac{1}{2}) but not &gt; 291 hrs work time</td>
<td>severe risk</td>
</tr>
<tr>
<td>28 days (672 hrs)</td>
<td>288 hrs work time</td>
<td>&gt; 291 hrs work time</td>
<td>critical risk</td>
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### Sch. 3

<table>
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<th>Column 4</th>
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<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
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<td>4 × 24 continuous hrs stationary rest time</td>
<td>&lt; 24 but not &lt; 23¾ continuous hrs stationary rest time per block</td>
<td>&lt; 22½ continuous hrs stationary rest time per block</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td>&lt; 24 but not &lt; 23¾ continuous hrs stationary rest time per block</td>
<td>&lt; 22½ continuous hrs stationary rest time per block</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td>&lt; 23¼ but not &lt; 22¾ continuous hrs stationary rest time per block</td>
<td>&lt; 22½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td>&lt; 23¼ but not &lt; 22¾ continuous hrs stationary rest time per block</td>
<td>&lt; 22½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
</tr>
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### TABLE 3

**Standard hours—Two-up drivers of a fatigue regulated heavy vehicle**

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Column 1 Total period</th>
<th>Column 2 Maximum work time</th>
<th>Column 3 Minimum rest time</th>
<th>Column 4 Offence category</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>In any period of ...</td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>If in that period a driver has ...</td>
<td>... the following category of offence is committed ...</td>
</tr>
<tr>
<td>1</td>
<td>5½ hrs</td>
<td>5¼ hrs work time</td>
<td>15 continuous mins rest time</td>
<td>&gt; 5¼ hrs work time</td>
</tr>
<tr>
<td>2</td>
<td>8 hrs</td>
<td>7½ hrs work time</td>
<td>30 mins rest time, in blocks of 15 continuous mins</td>
<td>&gt; 7½ hrs work time</td>
</tr>
<tr>
<td>3</td>
<td>11 hrs</td>
<td>10 hrs work time</td>
<td>60 mins rest time, in blocks of 15 continuous mins</td>
<td>≤ 10¾ hrs work time</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>&gt; 10¾ hrs work time</td>
</tr>
<tr>
<td>4</td>
<td>24 hrs</td>
<td>12 hrs work time</td>
<td>≤ 12¾ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 12¾ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 13¼ hrs work time</td>
<td>severe risk</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 13½ hrs work time</td>
<td>critical risk</td>
</tr>
<tr>
<td>Item No.</td>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>---------</td>
<td>--------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td></td>
<td>In any period of ...</td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td>5</td>
<td>52 hrs</td>
<td>10 continuous hrs stationary rest time</td>
<td>&lt; 10 but not &lt; 9½ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5 continuous hrs stationary rest time, or 5 continuous hrs rest time in an approved sleeper berth while the vehicle is moving</td>
<td>&lt; 4½ but not &lt; 3½ continuous hrs of that rest time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 3½ continuous hrs of that rest time</td>
<td>&lt; 3¼ but not &lt; 3⅓ continuous hrs of that rest time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 3½ continuous hrs of that rest time</td>
<td>&lt; 3½ continuous hrs of that rest time</td>
<td>critical risk</td>
</tr>
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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
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<th>Minimum rest time</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 8¾ but not &lt; 8½ continuous hrs stationary rest time</td>
<td>&lt; 8½ continuous hrs stationary rest time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 8½ continuous hrs stationary rest time</td>
<td>&lt; 8½ continuous hrs stationary rest time</td>
<td>critical risk</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>7 days (168 hrs)</td>
<td>60 hrs work time</td>
<td>&gt;60 hrs but not &gt;61½ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 61½ but not &gt; 62½ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 62½ but not &gt; 63 hrs work time</td>
<td>severe risk</td>
</tr>
<tr>
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<td></td>
<td></td>
<td>&gt; 63 hrs work time</td>
<td>critical risk</td>
</tr>
<tr>
<td>24 continuous hrs stationary rest time, and</td>
<td></td>
<td></td>
<td>&lt; 24 but not &lt; 23¾ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&lt; 23¾ but not &lt; 22¾ continuous hrs stationary rest time</td>
<td>substantial risk</td>
</tr>
</tbody>
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#### Sch. 3

<table>
<thead>
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<th>Item No.</th>
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<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>In any period of ...</td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>If in that period a driver has ...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- `< 22½ hr` continuous hrs stationary rest time
- `< 22½ hr` continuous hrs stationary rest time
- `< 24 hr` stationary rest time in blocks of at least 7 continuous hrs stationary
- `< 7 hr` stationary rest time in total
- `< 6½ hr` stationary rest time per block
- `< 23½ hr` continuous hrs stationary rest time in total
- `< 6½ hr` continuous hrs stationary rest time per block

- Severe risk
- Critical risk
- Minor risk
- Substantial risk
<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>If in that period a driver has ... the following category of offence is committed...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22½ hrs stationary rest time in total</td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22½ hrs stationary rest time in total</td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
</tr>
<tr>
<td>7</td>
<td>14 days (336 hrs)</td>
<td>120 hrs work time</td>
<td>&gt;120 but not &gt;121½ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 121½ but not &gt; 122½ hrs work time</td>
<td>substantial risk</td>
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<tr>
<td></td>
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<td></td>
<td>&gt; 122½ but not &gt; 123 hrs work time</td>
<td>severe risk</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 123 hrs work time</td>
<td>critical risk</td>
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<td>Total period</td>
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<td>Minimum rest time</td>
<td>If in that period a driver has</td>
<td>Offence category</td>
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<td>In any period of</td>
<td>... a driver must not work for more than</td>
<td>... and must have the rest of that period off work, with at least</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 x night rest breaks, and</td>
<td></td>
<td></td>
<td></td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 7 but not &lt; 6¾ continuous hrs stationary rest time per block</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 6¼ but not &lt; 5¾ continuous hrs stationary rest time per block</td>
<td>substantial risk</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 5¾ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
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</tr>
<tr>
<td></td>
<td></td>
<td>2 x night rest breaks taken on consecutive days</td>
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<td>minor risk</td>
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<td>In any period of ...</td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>If in that period a driver has ...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td>&lt; 6¼ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>substantial risk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 5½ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
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SCHEDULE 4

WORK AND REST HOURS FOR DRIVERS WORKING UNDER BFM ACCREDITATION

TABLE 1

<table>
<thead>
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<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Offence category</th>
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<tbody>
<tr>
<td>In any period of...</td>
<td>... a driver must not have the rest of that period off work, with at least...</td>
<td>If in that period a driver has...</td>
<td>... the following category of offence is committed...</td>
</tr>
</tbody>
</table>

| 6¼ hrs work time | 6 hrs work time | 15 continuous mins rest time | > 6 hrs work time | minor risk |
| 9 hrs work time | 8½ hrs work time | 30 mins rest time, in blocks of 15 continuous mins | > 8½ hrs work time | minor risk |
| 12 hrs work time | 11 hrs work time | 60 mins rest time, in blocks of 15 continuous mins | ≤ 11¼ hrs work time | minor risk |
| 24 hrs work time | 14 hrs work time | ≤ 14¼ hrs work time | minor risk |

| > 14¼ but not > 15½ hrs work time | substantial risk |
| > 15½ hrs work time | substantial risk |

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).
## Sch. 4

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<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>&gt; 15¼ but not &gt; 15½ hrs work time</td>
<td>&gt; 15½ hrs work time</td>
<td>minor risk</td>
<td></td>
</tr>
<tr>
<td>&lt; 7 but not &lt; 6¼ continuous hrs stationary rest time</td>
<td>&lt; 6¼ but not &lt; 5¼ continuous hrs stationary rest time</td>
<td>substantial risk</td>
<td></td>
</tr>
<tr>
<td>&lt; 5¼ but not &lt; 5½ continuous hrs stationary rest time</td>
<td>&lt; 5½ continuous hrs stationary rest time</td>
<td>severe risk</td>
<td></td>
</tr>
<tr>
<td>7 days (168 hrs)</td>
<td>36 hrs long/night work time</td>
<td>≤ 36¾ hrs long/night work time</td>
<td>minor risk</td>
</tr>
<tr>
<td>&gt; 36¾ but not &gt; 37¼ hrs long/night work time</td>
<td>&gt; 37¼ hrs long/night work time</td>
<td>substantial risk</td>
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<td>Minimum rest time</td>
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</tr>
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</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 145½ but not &gt; 146½ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 146½ but not &gt; 147 hrs work time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&gt; 147 hrs work time</td>
<td>critical risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 24 but not &lt; 23½ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 23½ but not &lt; 22½ continuous hrs stationary rest time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22½ but not &lt; 22¾ continuous hrs stationary rest time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>24 continuous hrs stationary rest time taken after no more than 84 hrs work time, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 24 but not &lt; 23½ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 23½ but not &lt; 22½ continuous hrs stationary rest time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22½ but not &lt; 22¾ continuous hrs stationary rest time</td>
<td>severe risk</td>
</tr>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>&lt; 22½ hrs continuous stationary rest time</td>
<td>&lt; 24 but not &lt; 23½ hrs stationary rest time</td>
<td>&lt; 23¼ but not &lt; 22¾ hrs stationary rest time</td>
<td>critical risk</td>
</tr>
<tr>
<td>24 continuous hrs stationary rest time, and</td>
<td>&lt; 24 but not &lt; 23⅞ hrs stationary rest time</td>
<td>&lt; 23¼ but not &lt; 22¾ hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td>24 continuous hrs stationary rest time, and</td>
<td>&lt; 24 but not &lt; 23⅞ hrs stationary rest time</td>
<td>&lt; 22¼ but not &lt; 22⅜ hrs stationary rest time</td>
<td>substantial risk</td>
</tr>
<tr>
<td>24 continuous hrs stationary rest time, and</td>
<td>&lt; 24 but not &lt; 23⅞ hrs stationary rest time</td>
<td>&lt; 22¼ but not &lt; 22⅜ hrs stationary rest time</td>
<td>severe risk</td>
</tr>
<tr>
<td>24 continuous hrs stationary rest time, and</td>
<td>&lt; 24 but not &lt; 23⅞ hrs stationary rest time</td>
<td>&lt; 22½ hrs stationary rest time</td>
<td>critical risk</td>
</tr>
<tr>
<td>2 × night rest breaks, and</td>
<td>&lt; 7 but not &lt; 6¼ hrs stationary rest time per block</td>
<td>&lt; 22½ hrs stationary rest time</td>
<td>minor risk</td>
</tr>
</tbody>
</table>
### Sch. 4

<table>
<thead>
<tr>
<th>Total period</th>
<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Offence category</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 6¼ but not &lt; 5¾ continuous hrs stationary rest time per block</td>
<td>substantial risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 5¾ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 × night rest breaks taken on consecutive days</td>
<td>&lt; 7 but not &lt; 6¼ continuous hrs stationary rest time per block</td>
<td>minor risk</td>
<td></td>
</tr>
<tr>
<td>&lt; 6¼ but not &lt; 5¾ continuous hrs stationary rest time per block</td>
<td>substantial risk</td>
<td></td>
<td></td>
</tr>
<tr>
<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>
</tr>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
<td>Offence category</td>
</tr>
<tr>
<td>&lt; 5¾ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td></td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>critical risk</td>
</tr>
</tbody>
</table>

Sch. 4
TABLE 2

BFM hours—Two-up drivers of a fatigue regulated heavy vehicle

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td>In any period of...</td>
<td>... a driver must not work for more than...</td>
<td>... and must have the rest of that period off work, with at least...</td>
<td>If in that period a driver has...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td>1</td>
<td>24 hrs</td>
<td>14 hrs work time</td>
<td>≤ 14¾ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 14¾ but not &gt; 15¾ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 15¾ but not &gt; 15½ hrs work time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 15½ hrs work time</td>
<td>critical risk</td>
</tr>
<tr>
<td>2</td>
<td>82 hrs</td>
<td>10 continuous hrs stationary rest time</td>
<td>&lt; 10 but not &lt; 9¼ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&lt; 9¼ but not &lt; 8¾ continuous hrs stationary rest time</td>
<td>substantial risk</td>
</tr>
</tbody>
</table>
### Table

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In any period of ...</td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>If in that period a driver has ...</td>
</tr>
<tr>
<td>3</td>
<td>7 days (168 hrs)</td>
<td>70 hrs work time</td>
<td>&gt; 70 but not &gt;71½ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 71½ but not &gt;72½ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 72½ but not &gt; 73 hrs work time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 73 hrs work time</td>
<td>critical risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&lt; 24 but not &lt; 23¾ continuous hrs stationary rest time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&lt; 23¾ but not &lt; 22¼ continuous hrs stationary rest time</td>
<td>substantial risk</td>
</tr>
</tbody>
</table>

---

**Road Safety Act 1986**

No. 127 of 1986

Sch. 4
### Sch. 4

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Maximum work time</th>
<th>Minimum rest time</th>
<th>Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td>In any period of ...</td>
<td>In any period of ...</td>
<td>In any period of ...</td>
<td>In any period of ...</td>
<td>In any period of ...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22½ but not &lt; 22½ continuous hrs stationary rest time</td>
<td>&lt; 22½ continuous hrs stationary rest time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 24 but not &lt; 23½ hrs stationary rest time in total</td>
<td>&lt; 24 but not &lt; 23½ hrs stationary rest time in total</td>
<td>critical risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 7 but not &lt; 6½ continuous hrs stationary rest time per block</td>
<td>&lt; 7 but not &lt; 6½ continuous hrs stationary rest time per block</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 23¾ but not &lt; 22¾ hrs stationary rest time in total</td>
<td>&lt; 23¾ but not &lt; 22¾ hrs stationary rest time in total</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 6½ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>&lt; 6½ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>24 hrs stationary rest time in blocks of at least 7 continuous hrs</td>
<td>24 hrs stationary rest time in blocks of at least 7 continuous hrs</td>
<td></td>
</tr>
</tbody>
</table>

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### Sch. 4

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Column 2 Max. work time</th>
<th>Column 3 Min. rest time</th>
<th>Column 4 Offence category</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>... the following category of offence is committed ...</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22¼ but not &lt; 22½ hrs stationary rest time in total</td>
<td>&lt; 5¼ but not &lt; 5½ continuous hrs stationary rest time per block</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt; 22½ hrs stationary rest time in total</td>
<td>&lt; 5½ continuous hrs stationary rest time per block</td>
<td>critical risk</td>
</tr>
<tr>
<td>4</td>
<td>14 days (336 hrs)</td>
<td>140 hrs work time</td>
<td>≤ 141½ hrs work time</td>
<td>minor risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 141½ but not &gt; 142½ hrs work time</td>
<td>substantial risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 142½ but not &gt; 143 hrs work time</td>
<td>severe risk</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>&gt; 143 hrs work time</td>
<td>critical risk</td>
</tr>
</tbody>
</table>
### Sch. 4

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Total period</th>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
<th>Column 4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>... a driver must not work for more than ...</td>
<td>... and must have the rest of that period off work, with at least ...</td>
<td>If in that period a driver has ...</td>
<td>... the following category of offence is committed...</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>In any period of ...</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **4 × 7 continuous hrs stationary rest time between 10 p.m. on a day and 8 a.m. on the next day, using the time zone of the vehicle's driver base**
- **< 7 but not < 6¼ continuous hrs stationary rest time per block**
  - **minor risk**

- **< 6¼ but not < 5¾ continuous hrs stationary rest time per block**
  - **substantial risk**

- **< 5¾ but not < 5½ continuous hrs stationary rest time per block**
  - **severe risk**

- **< 5½ continuous hrs stationary rest time per block**
  - **critical risk**
### SCHEDULE 4A

**AFM OUTER LIMITS**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total period</td>
<td>Maximum work time</td>
<td>Minimum rest time</td>
</tr>
<tr>
<td>In any period of</td>
<td>... a driver must not</td>
<td>... and must have the rest of that period off work, with at least ...</td>
</tr>
<tr>
<td>...</td>
<td>work for more than ...</td>
<td></td>
</tr>
<tr>
<td>24 hrs</td>
<td>15 hrs work time</td>
<td>6 continuous hrs stationary rest time (or in the case of a two-up driver, rest in an approved sleeper berth), or 8 hrs stationary rest time (or in the case of a two-up driver, rest in an approved sleeper berth) taken in no more than 2 blocks</td>
</tr>
<tr>
<td>14 days (336 hrs)</td>
<td>154 hrs work time</td>
<td>2 × 7 continuous hrs stationary rest time between 10 pm on a day and 8 am on the next day, using the time zone of the vehicle's driver base</td>
</tr>
<tr>
<td>28 days (672 hrs)</td>
<td>288 hrs work time</td>
<td>4 × 24 continuous hrs stationary rest time</td>
</tr>
</tbody>
</table>
### SCHEDULE 5

Section 28

Section 89D

**MINIMUM SUSPENSION PERIODS FOR EXCESSIVE SPEED**

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speed of vehicle</td>
<td>Minimum period</td>
</tr>
<tr>
<td>1. 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>2. 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>3. Exceed speed limit by 45 kilometres per hour or more.</td>
<td>12 months</td>
</tr>
<tr>
<td>4. 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>

---

Sch. 5
inserted by No. 53/1989 s. 20,
substituted by No. 46/2002 s. 14.

Sch. 6
inserted by No. 19/1991 s. 22(3),
amended by No. 89/1991 s. 17(2),
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:


Part 5, sections 59(1) (except paragraphs (a)(c)(d)), 59(2) (except paragraphs (b)(c)), 59(5), 62–73, 75, 76(2), 77–84, 91–96, 100, 102, 103(7)(9), Schedules 1, 2, 3 item 10, Schedule 4 items 9, 12, 18.8, 29.1 (except paragraphs (a)(c)(d)–(f), 29.2 (in its application to sections 39(2)(3), 40, 41(1) of the Transport Accident Act 1986), 29.3, 29.5, 29.6 (except paragraph (b)), 29.8–29.13, 29.17 on 1.3.87: Government Gazette 25 February 1987 page 445.


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 Version incorporates amendments made to the Road Safety Act 1986 by Acts and subordinate instruments.

Litter Act 1987, No. 54/1987
- Assent Date: 20.10.87
- Commencement Date: 19.11.87: Government Gazette 18.11.87 p. 3084
- Current State: All of Act in operation

- Assent Date: 12.11.87
- Commencement Date: S. 25 on 23.12.86: s. 2(7); s. 26 on 12.11.87: s. 2(8)
- Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety (Amendment) Act 1987, No. 78/1987
- Assent Date: 24.11.87
- Commencement Date: S. 10 on 1.3.87: s. 2(2); rest of Act on 9.12.87: Government Gazette 9.12.87 p. 3328
- Current State: All of Act in operation

Road Safety (Photographic Detection Devices) Act 1988, No. 58/1988
- Assent Date: 29.11.88
- Commencement Date: 29.11.88
- Current State: All of Act in operation

- Assent Date: 9.5.89
- Commencement Date: Sch. 2 items 105.1–105.12 (except item 105.10) on 1.11.89: Government Gazette 1.11.89 p. 2798; Sch. 2 item 105.10 on 1.10.92: Government Gazette 23.9.92 p. 2789
- Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Transport (Amendment) Act 1989, No. 44/1989
- Assent Date: 6.6.89
- Commencement Date: S. 41(Sch. 2 items 34.1–34.5) on 1.7.89: s. 2(1); s. 42(3) on 11.11.89: s. 2(6)
- Current State: This information relates only to the provision/s amending the Road Safety Act 1986
Road Safety Act 1986
No. 127 of 1986

Endnotes

Road Safety (Miscellaneous Amendments) Act 1989, No. 53/1989
Assent Date: 14.6.89
Commencement Date: S. 19 on 1.5.87; ss 2(2); 21(6) on 1.5.88; ss 2(3); 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)–(7)–(10) on 8.5.90; Special Gazette (No. 20) 8.5.90 p. 1; ss 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; ss 2(3); s. 20(3) on 3.4.90; ss 2(2); ss 3, 5–10, 13–16, 18, 20(1)(k), 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
Road Safety Act 1986
No. 127 of 1986

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
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
### Road Safety Act 1986

**No. 127 of 1986**

<table>
<thead>
<tr>
<th>Act Name</th>
<th>Assent Date</th>
<th>Commencement Date</th>
<th>Current State</th>
</tr>
</thead>
<tbody>
<tr>
<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>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</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>
</tr>
<tr>
<td>Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998</td>
<td>26.5.98</td>
<td>S. 7(Sch. 1) on 1.7.98: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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<tr>
<td>(as amended by No. 12/1999)</td>
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<tr>
<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>
</tr>
<tr>
<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>
<td>This information relates only to the provision/s amending the Road Safety Act 1986</td>
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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: s. 2(1); ss 4–15, 17, 18 on 1.12.00: s. 2(4)
Current State: This information relates only to the provision's amending the Road Safety Act 1986

Statute Law Revision Act 2000, No. 74/2000
Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 110) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision's amending the Road Safety Act 1986

Duties Act 2000, No. 79/2000 (as amended by No. 46/2001)
Assent Date: 28.11.00
Commencement Date: S. 285(Sch. 1 item 5A) on 1.7.01: s. 2
Current State: This information relates only to the provision's amending the Road Safety Act 1986

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**  
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 1.1.04: s. 2(3)  
Current State: This information relates only to the provision's amending the Road Safety Act 1986

**Transport (Rights and Responsibilities) Act 2003, No. 101/2003**  
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

**Road Safety (Drug Driving) Act 2003, No. 111/2003**  
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
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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
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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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Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 53) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Legislation Reform (Repeals No. 3) Act 2008, No. 53/2008

Assent Date: 23.9.08
Commencement Date: S. 4(Sch. 2) on 24.9.08: s. 2
Current State: This information relates only to the provision/s amending the Road Safety Act 1986

Road Safety Amendment (Fatigue Management) Act 2008, No. 56/2008

Assent Date: 23.9.08
Commencement Date: Ss 45, 46 on 24.9.08: s. 2
Current State: This information relates only to the provision/s amending the Road Safety Act 1986


Assent Date: 12.5.09
Commencement Date: S. 32 on 13.5.09: s. 2(1)
Current State: This information relates only to the provision/s amending the Road Safety Act 1986
3. Explanatory Details

1 S. 3(1) def. of *drink-driving infringement*: Section 23(1) of the Road Safety (Amendment) Act 1994, No. 17/1994 reads as follows:

**23 Transitional provisions**

(1) The amendment of the Principal Act made by section 4(2) applies to any traffic infringement notice issued in respect of a drink-driving infringement after the commencement of that section, irrespective of when the infringement was committed.

2 S. 15A: Section 63(1)–(3) of the Transport (Amendment) Act 1993, No. 120/1993 reads as follows:

**63 Transitional provisions (Part 3)**

(1) The amendments of the Road Safety Act 1986 made by sections 57 and 61(1) apply to an authorisation referred to in item 9 of Schedule 2 to that Act that was in force immediately before the commencement of those sections and any such authorisation may be cancelled or suspended in accordance with that Act as amended by those sections.

(2) Any proceedings before the Road Transport Licensing Tribunal under that Road Safety Act 1986 in relation to an authorisation referred to in item 9 of Schedule 2 to that Act that had not been finally determined by the Tribunal immediately before the commencement of sections 57 and 61(1) shall be determined by the Roads Corporation in accordance with that Act as amended by those sections.

(3) If under 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 Transition 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 Transition 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(1B): See note 3.

6 S. 52(3)–52(7):

S. 52(3) repealed by No. 5/1990 s. 9(b).

S. 52(4)(5) amended by No. 78/1987 s. 9(2), repealed by No. 5/1990 s. 9(b).

S. 52(6) amended by Nos. 78/1987 s. 9(2), 57/1989 s. 3(Sch. item 173.12), repealed by No. 5/1990 s. 9(b).

S. 52(7) repealed by No. 5/1990 s. 9(b).
7 S. 55(9A): The amendments proposed by section 118(Sch. 1 item 50.4) of the Medical Practice Act 1994, No. 23/1994 are not included in this publication because the subsections inserted by section 10(6) of the Road Safety (Amendment) Act 1994, No. 17/1994 were proclaimed later.

8 S. 55(9B): See note 7.


11 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.


15 Sch. 2 item 9: See note 2.