

Road Safety (Miscellaneous Amendments) Bill

EXPLANATORY MEMORANDUM

Clause 1 sets out the purposes of the Act.

Clause 2 provides for the Act to come into operation on a day or days to be proclaimed, other than Clauses 19 and 21 (6). Clause 19 operates from 1 May 1987 when the driver licence provisions of the Principal Act commenced. Clause 21 (6) operates from 1 May 1988 as it extends a period which expired on that date.

Clause 3 refers to the *Road Safety Act 1986* as the Principal Act.

Clause 4 defines the terms “drink-driving infringement” and “excessive speed infringement” and includes such infringements in the definition of “traffic infringement” in section 3 of the Principal Act.

Clause 5 amends section 25 of the Principal Act to introduce changes in the Driver Licence Demerit Points System to—

allow demerit points to be recorded against any person and not just the holder of a driver licence;

introduce new licence suspension procedures with respect to demerit points.

Clause 6 amends section 28 of the Principal Act to require the courts to impose a minimum of 1 month’s suspension of all driver licences and permits if the licence holder is found guilty of an offence of driving a motor vehicle at a speed of 130 km/h or more. This is in addition to the existing requirement which applies to speeds of 30 km/h or more in excess of permitted speed. The minimum licence suspension periods are increased in accordance with Schedule 5 in the case of speeds which are 40 km/h or more in excess of the limit.

Clause 7 amends sections 48 and 49 of the Principal Act to ensure that a person who has a blood alcohol reading solely as a result of drinking after driving is able to lead evidence of that fact when charged with failing a breath or blood test within 3 hours after an accident.

Clause 8

Sub-clause (1) restructures the existing section 50 (1) of the Principal Act into three new sub-sections (1), (1A) and (1B). Substantive changes affect drivers who are subject to zero BAC and do not exceed 0.05 BAC. For first offences committed by such drivers licence disqualification on conviction is discretionary up to a maximum of 6 months. For subsequent offences licence disqualification on conviction is mandatory for at least 6 months.

Sub-clause (2) amends section 50 (3) of the Principal Act to take account of the restructuring and to insert a reference to the new section 89C.

Clause 9 inserts new sub-sections (10A) and (10B) in section 51 of the Principal Act to ensure that, where a person with a BAC reading of 0.15 or above appeals against immediate licence suspension, notice of the appeal is given to the Chief Commissioner of Police, that the notice specifies the exceptional circumstances alleged and that the court must hear relevant evidence.

Clause 10 amends section 56 of the Principal Act to ensure that a hospital blood sample is validly taken and can be used in evidence notwithstanding that the person has only been brought to the hospital and has not been admitted into it.

Clause 11 amends section 57 of the Principal Act to enable blood samples to be tested for other drugs as well as alcohol and to enable evidence of the analysis to be given in various legal proceedings including those conducted by a Coroner.

Clause 12 amends section 59 of the Principal Act by omitting from sub-section (6) provisions which protect the Crown and other persons against liability for moving overloaded vehicles and re-enacting them in a new sub-section (10) so that they apply to any action taken under the section.

Clause 13 inserts a new section 60A into the Principal Act. This section requires trailer owners to give information to the Police similar to the information required to be given by a motor vehicle owner under section 60.

Clause 14 ensures that demerit points can be incurred by the owner of the vehicle in the case of owner onus offences detected by photographic detection device.

Clause 15 ensures that the regulations can specify appropriate infringement penalties for offences detected by photographic detection devices which now extend to speeds of more than 50 km/h over the limit.

Clause 16 amends section 71 of the Principal Act to make it an offence to obtain a log book, licence, permit or registration by false statements, misrepresentation or other dishonest means.

Clause 17 amends section 88 of the Principal Act to provide for drink-driving infringements and excessive speed infringements to be dealt with as kinds of traffic infringements. The clause makes it clear that drink-driving infringement notices can only be issued by members of the police force and must contain particulars of the alleged concentration of alcohol in the blood of the person to whom the notice is issued. An excessive speed infringement notice must contain particulars of the alleged speed and the permitted speed.

Clause 18 inserts new sections 89A, 89B, 89C, 89D and 89E into the Principal Act.

Under section 89A a drink-driving infringement notice or excessive speed infringement notice operates as a conviction 28 days after the service of the notice unless an objection notice is lodged within that period.

Section 89B empowers the Magistrates' Courts to extend the time for objection to a traffic infringement notice issued in respect of a drink driving infringement or an excessive speed infringement in cases where the infringement notice has not been delivered personally to the person to whom it was issued and the person is not in fact aware before the notice takes effect as a conviction that the notice has been issued. If an extension is granted and notice of objection is given within the extended period it has the effect of setting aside the conviction and subsequent enforcement processes.

Section 89C sets out the licence cancellation or suspension consequences of a drink-driving infringement notice.

Section 89D sets out the licence suspension consequences of an excessive speed infringement notice.

Section 89E modifies provisions of the *Magistrates (Summary Proceedings) Act 1975* with regard to the recovery of penalties for these infringements.

Clause 19 makes it clear that a driver licence issued under the *Motor Car Act 1958* and in force when the relevant provisions of that Act were replaced by provisions of the *Road Safety Act 1986* is subject to the provisions of the new Act.

Clause 20 inserts a new Schedule 5 into the Principal Act. The Schedule specifies minimum periods for which licences must be suspended by the courts in excessive speeding cases under section 28. These periods are also fixed as actual periods of suspension under the new section 89D where the offence is dealt with by infringement notice.

Clause 21 makes a number of miscellaneous amendments to various sections of the Principal Act.

Sub-clause (1) amends section 52 (2) of the Principal Act in consequence of a change to section 52 (1) which took effect in December 1987.

Sub-clause (2) amends section 55 of the Principal Act to take account of the fact that breathalysers are not used solely in police stations or the grounds or precincts of a police station.

Sub-clause (3) makes it clear that compulsory blood samples are required to be taken of motor accident victims in Victorian hospitals even if the accident occurred outside Victoria.

Sub-clause (4) clarifies a reference to the commencement of a provision of the *Road Safety (Amendment) Act 1987* by substituting the actual date of commencement namely 9 December 1987.

Sub-clause (5) amends section 59 of the Principal Act to allow an impounded vehicle to be taken to a place other than a police station.

Sub-clause (6) amends section 103 (2) of the Principal Act by extending to three years the period during which a person holding an unendorsed car licence issued under the *Motor Car Act 1958* may drive trucks that do not exceed 3 tonnes tare but are more than 4.5 tonnes GVM.

Sub-clause (7) amends two items in Schedule 4 to the Principal Act. The amendment to item 28.16 (c) omits section 213 (5) of the *Transport Act 1983* which has become redundant. The amendment to item 29.21 brings up to date the list of offences for which one third of the penalties must be paid to the Transport Accident Commission by adding the relevant Road Safety Act references in Schedule 1 to the *Transport Accident Act 1986*.

Clause 22

Sub-clause (1) amends the definition of "infringement notice" in section 89A of the *Magistrates (Summary Proceedings) Act 1975* as a result of the commencement of the Principal Act.

Sub-clause (2) amends section 94 of the *Conservation, Forests and Lands Act 1987* in consequence of the commencement of the Principal Act.

