

# Road Safety Bill

## EXPLANATORY MEMORANDUM

### PART 1—PRELIMINARY

*Clause 1* sets out the purposes of the Act.

*Clause 2* provides for the Act to come into operation on a day or days fixed by proclamation.

*Clause 3* sets out definitions of a number of terms used in the Act.

*Clause 4* provides for the Act to bind the Crown.

### PART 2—REGISTRATION

*Clause 5* sets out the purposes of registration.

*Clause 6* provides for the Part only to apply to motor vehicles and trailers which are used or intended for use on a highway.

*Clause 7*

*Sub-clause (1)* prohibits the use on a highway of a motor vehicle or trailer unless registered or exempted from registration.

*Sub-clause (2)* prohibits the use of a motor vehicle or trailer in breach of any condition of its registration.

*Sub-clauses (3), (4), (5) and (6)* provide for contraventions of sub-clauses (1) and (2) to be an offence and set out the penalties.

*Sub-clause (7)* sets out definitions of the terms “prime mover” and “semi-trailer”.

*Clause 8*

*Sub-clause (1)* prohibits registration of a motor vehicle or trailer in the name of a person under 17 and registration of a motor cycle in the name of a person under 17 years 9 months.

*Sub-clause (2)* prohibits registration of a motor vehicle or a trailer in a business name or in the names of more than one person or in the name of an unincorporated group.

*Clause 9* provides for registration, renewal and transfer of registration to be in accordance with the regulations, for registration by the Road Traffic Authority where a motor vehicle or trailer meets the relevant standards and for conditional registration.

*Clause 10* provides for compliance with standards for registration with regard to construction, efficiency, performance, safety, design and equipment of motor cars and trailers, for the giving of notice of standards and for the non-application of the standards to a motor vehicle or trailer manufactured at any time up to 12 months after the date of the notice.

*Clause 11* provides for the Authority to be able to cancel or suspend the registration of a motor vehicle or trailer in accordance with the regulations.

*Clause 12* provides for appeal to a Magistrates' Court in the event that the Authority refuses to register or suspend the registration of a motor vehicle or trailer.

*Sub-clause (3)* makes the decision of the Magistrates' Court final and conclusive.

*Clause 13* provides for inspection of registered motor vehicles or trailers and empowers an officer of the Authority or a member of the police force to enter premises at any reasonable time for the purposes of inspection. Refusal or failure to allow entry to premises is an offence.

*Clause 14* empowers the Authority or a member of the police force to prohibit the use on a highway of a particular motor vehicle or trailer, either absolutely or on specified conditions and either indefinitely or for a specified period.

*Clause 15* prohibits the sale of a motor vehicle or trailer which has not been previously registered in Victoria without a pre-registration certificate being delivered to the purchaser or to the Authority.

*Clause 16* empowers the Authority or a member of the police force to take possession of any number plate in specific circumstances.

### **PART 3—LICENSING OF DRIVERS**

*Clause 17* sets out the purposes of licensing.

*Clause 18* prohibits driving a motor vehicle on a highway without a licence or permit or in breach of the conditions of a licence or permit and sets out the penalties.

*Clause 19* provides for the procedures for granting a driver licence to a person over the age of 18.

*Clause 20* provides for the variation of a driver licence to enable the holder to drive a category of motor vehicle in addition to the category indicated in the licence on the Authority being satisfied that the holder is qualified to drive that category of motor vehicle.

*Clause 21* provides for a driver licence to be granted on probation where the licence holder has not previously held a licence or the previous licence has been cancelled. Conviction of a probationary licence holder for a prescribed offence results in mandatory suspension of the licence for at least one month and the probationary period of the licence being extended by six months.

*Clause 22* sets out the procedures for granting a learner permit to a person over 17 years 9 months in the case of a motor cycle and to a person over 17 years in any other case.

*Clause 23* sets out the procedures for granting a tractor permit to a person over the age of 16.

*Clause 24* requires the Authority to suspend, cancel or vary a driver licence or permit in accordance with the regulations.

*Clause 25* provides for the Authority to keep a Demerits Register.

*Clause 26* provides for appeal to a Magistrates' Court from a decision of the Authority to refuse, suspend, cancel or vary a driver licence or permit.

*Clause 27* empowers the Authority to require the holder of or applicant for a driver licence or permit to undergo appropriate tests to determine whether that person is unfit to drive or if it is dangerous for that person to drive motor vehicles or a category of motor vehicles.

*Clause 28* empowers a court to cancel, suspend or vary licences and permits and to impose a period of disqualification following conviction of an offence against the Bill. For prescribed offences, the court will be required to exercise this power.

*Clause 29* provides for a right of appeal to the County Court against licence cancellation or suspension or against disqualification from obtaining a licence.

*Clause 30* makes it an offence to drive a motor vehicle on a highway whilst a licence or permit is suspended or after a licence or permit has been cancelled or during a period of disqualification.

*Clause 31* enables a court convicting a person of a particular offence to order the cancellation of the registration of the motor vehicle in respect of which the offence was committed or of any motor vehicle owned by that person.

*Clause 32* makes it an offence to employ, permit or allow an unlicensed driver to drive a motor vehicle on a highway.

*Clause 33* provides for the grant by the Authority of a motor driving instructor's licence to the holder of a driver licence over the age of 21 years. An appeal against refusal to grant a licence may be made to a Magistrates' Court. The Authority may apply to the Road Transport Licensing Tribunal to have the licence cancelled or suspended where it is of the opinion that the holder is unfit to hold the licence.

#### **PART 4—RECREATION VEHICLES**

*Clause 34* sets out the purposes of the Part.

*Clause 35* makes it an offence for a recreation vehicle to be used in a public place unless the recreation vehicle is registered or exempted from registration.

*Clause 36* provides that a recreation vehicle must not be registered in a business name or in the names of more than one person or in the name of an unincorporated group.

*Clause 37* provides for registration, renewal and transfer of registration to be in accordance with the regulations, for registration by the Authority where a recreation vehicle meets the relevant standards and for conditional registration.

*Clause 38* provides for compliance with standards of registration with regard to construction, efficiency, performance, safety, design and equipment of recreation vehicles, for the giving of notice of standards and for the non-application of the standards to a recreation vehicle manufactured at any time up to 12 months after the date of the notice.

*Clause 39* provides for the Authority to be able to cancel or suspend the registration of a recreation vehicle.

*Clause 40* provides for inspection of recreation vehicles and empowers an officer of the Authority or a member of the police force to enter premises at any reasonable time for the purposes of inspection. Refusal or failure to allow entry to premises is an offence.

*Clause 41* empowers the Authority or a member of the police force to prohibit the use in a public place of a particular recreation vehicle, either absolutely or on specified conditions and either indefinitely or for a specified period.

*Clause 42* provides that the owner of a recreation vehicle driven in a public place by a person under the age of 8 years commits an offence unless the vehicle is driven without the knowledge or consent of the owner.

*Clause 43* provides that the driver of certain recreation vehicles being driven in a public place must be at least 15 years old.

*Clause 44* makes it an offence for a recreation vehicle to be driven in a public place recklessly or at a speed or in a manner which is dangerous to the public.

*Clause 45* enables a member of the police force or an authorised officer of a municipality to require the owner of a recreation vehicle to give information about the driver and makes it an offence to fail to give information when required.

*Clause 46* enables a member of the police force or an authorised officer of a municipality to request or signal the driver of a recreation vehicle in a public place to stop the vehicle and state his or her name and address. Failure to stop when requested or to state name and address or stating a false name and address is an offence.

## **PART 5—OFFENCES INVOLVING ALCOHOL OR OTHER DRUGS**

*Clause 47* sets out the purposes of this Part.

*Clause 48* makes provision for the operation of various provisions in the Part.

*Clause 49* provides for the following offences:

Driving or being 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 vehicle.

Driving with a blood alcohol content of more than .05%.

A person to whom *Clause 49* applies driving while alcohol is present in blood.

Refusing or failing to undergo a preliminary breath test when required.

Refusing or failing to comply with a request or signal to stop.

Refusing to comply with a requirement made under *clause 52* (1) or (2).

Furnishing a sample of breath which shows a blood alcohol content of more than .05%.

Furnishing a sample of blood which shows a blood alcohol content of more than 0.05 grams per 100 millilitres of blood.

*Clause 50* provides for mandatory licence cancellation and subsequent disqualification on conviction for the offences referred to in *clause 47* other than failing to comply with the zero blood alcohol provisions where licence cancellation is at the discretion of the court.

*Clause 51* provides for the immediate suspension of a driver licence or permit for certain offences.

*Clause 52* designates the following persons as persons who are prohibited from driving while alcohol is present in their blood:

Learner drivers or the holders of interstate learner permits.

Probationary drivers and interstate probationary and provisional licence holders.

Persons who do not hold a driver licence (other than a person who has failed to renew his or her driver licence).

The clause also makes provision for driver education following conviction, persons on bond to be required to undertake driver education and for a driver licence to be cancelled on failure of the holder to undertake a course of driver education.

*Clause 53* empowers a member of the police force to require persons to undergo a preliminary breath test where—

the person is driving or in charge of a motor vehicle;

the driver has been required to stop at a preliminary breath testing station;

the person is believed within the last 3 hours to have driven or been in charge of a motor vehicle when it was involved in an accident on a highway.

Similar power is given to an officer of the Authority who finds a person driving or in charge of a commercial motor vehicle.

*Clause 54* provides for a member of the police force to be able to set up a preliminary breath testing station on or in the vicinity of any highway and to require persons driving a motor vehicle to stop.

*Clause 55* provides for a person who has had a positive reading on a preliminary breath test or who fails to carry out the test properly to provide a sample of breath for analysis by a breathalyser and for that purpose to accompany a member of the police force or an officer of the Authority to a police station.

*Clause 56* provides for the taking of blood samples from persons 15 years or over who are brought to a hospital or other designated place for examination or treatment in consequence of an accident involving a motor vehicle.

It is an offence for the medical practitioner treating the person to fail to take a blood sample unless the practitioner can bring him or herself within the defences provided for. A blood sample taken under this clause must not be used in evidence in any legal proceedings except for the purposes of clause 57. It is an offence to refuse to provide a sample of blood or to obstruct or hinder a medical practitioner in obtaining a blood sample.

*Clause 57* provides for a blood sample taken under clause 56 to be evidence as to whether a person was under the influence of intoxicating liquor or of the presence or concentration of alcohol in the blood of a person for the purposes of—

a trial for manslaughter or for negligently causing serious injury arising out of the driving of a motor vehicle;

a trial or hearing for an offence against section 318 (1) of the *Crimes Act* 1958; or

a hearing for an offence against clause 49 (1) of the Bill.

The clause also provides for certificates by a medical practitioner, a person responsible for the safekeeping of samples of blood or an approved analyst to be *prima facie* proof of the facts and matters in the certificate. A person served with a copy of the certificate may require the person who has given the certificate to attend at a court for the purposes of cross-examination.

*Clause 58* contains corresponding provisions to clause 57 in relation to breath tests except that a certificate as to the result of a breath test is conclusive evidence of the facts and matters stated in it unless the accused can establish that the machine was improperly operated. An accused may require the person giving the certificate to be called as a witness on giving 7 days prior notice.

## **PART 6—OFFENCES AND LEGAL PROCEEDINGS**

*Clause 59* sets out the obligations of the driver of a motor vehicle on a highway to stop the vehicle, produce his or her licence or permit for inspection, state his or her name and address and to obey the lawful directions of a member of the police force or officer of the Authority and to offload goods from the vehicle if it is overweight.

*Clause 60* sets out the obligations of an owner of a motor vehicle to give information about the driver.

*Clause 61* sets out the obligations of the driver of a motor vehicle if owing to the presence of a motor vehicle on a highway an accident occurs whereby any person is injured or killed or any property is damaged or destroyed.

*Clause 62* sets out the powers of a member of the police force who is of the opinion 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, to—

forbid the person to drive;

require the person to give up the keys of the vehicle;

take steps to immobilize the vehicle or to remove it to a safe place.

*Clause 63* empowers a member of the police force to enter a vehicle to establish the identity of a driver or motor vehicle or effect an arrest.

*Clause 64* makes it an offence to drive a motor vehicle on a highway recklessly or at a speed or in a manner which is dangerous to the public in all the relevant circumstances.

*Clause 65* makes it an offence to drive a motor vehicle on a highway carelessly.

*Clause 66* provides for certain offences detected by a photographic detection device.

*Sub-clause (1)* provides for the owner of the motor vehicle involved in the offence to be guilty of the offence as if that person were the driver unless the court is satisfied that the motor vehicle was a stolen motor vehicle.

*Sub-clause (2)* provides that nothing in sub-clause (1) affects the liability of the actual driver but if the full amount of the penalty is paid by the actual owner or driver, no further penalty need be paid.

*Sub-clause (3)* provides that the owner is not guilty of an offence if the owner can satisfy the informant that he or she was not driving the vehicle at the relevant time or that the owner did not know and could not with reasonable diligence have ascertained the name and address of the driver.

*Sub-clause (4)* is an evidentiary provision.

*Sub-clause (5)* sets out the meaning to be given to the term “owner”.

*Sub-clause (6)* provides for the clause to expire on 14 March 1988.

*Clause 67* provides for the service and form of infringement notices for offences to which clause 66 applies. This clause also expires on 14 March 1988.

*Clause 68*

*Sub-clause (1)* makes it an offence to drive or be in charge of a motor vehicle used on a highway in a race or speed trial.

*Sub-clause (2)* makes it an offence to organize or manage a race or speed trial and to carry out or cause to be carried out preparations for the conduct of a race or speed trial.

*Sub-clause (3)* provides for the Minister to declare that the clause and any of the regulations made under the Act, do not apply to a particular race or speed trial.

*Sub-clause (4)* empowers the Minister to delegate his power under sub-clause (3).

*Sub-clause (5)* defines “speed trial” for the purposes of the section.

*Clause 69* makes it an offence to procure the use or hire of a motor vehicle by fraud or misrepresentation.

*Clause 70* makes it an offence to tamper or interfere with a motor vehicle without just cause or excuse.

*Clause 71* makes it an offence to obtain a licence or permit by false statement or misrepresentation.

*Clause 72* makes it an offence to forge or fraudulently alter or use documents and identification marks authorized or required by the Bill or to sell or utter any documents or marks.

*Clause 73* makes it an offence to alter or deface any number on the engine of a motor vehicle without the permission in writing of the Authority or to place a number on an engine without giving prior notice to the Authority.

*Clause 74* makes it an offence to own, sell, use or possess anti-speed measuring devices.

*Clause 75* provides that where no other penalty is prescribed in the Bill the general penalty for offences under the Bill is not more than 3 penalty units or imprisonment for a term of not more than 1 month for a second conviction and in any other case not more than 1 penalty unit.

*Clause 76* empowers a member of the police force to arrest without warrant persons believed to have committed certain offences. It confers power to take an arrested person's car to the police station.

*Clause 77* sets out the persons who may prosecute for offences against the Bill or the regulations.

*Clause 78* provides that the procedure of adjourning an information without conviction is not to apply to certain offences under clause 49 (1).

*Clause 79* provides for the speed of motor vehicles determined by any prescribed speed measuring device to be *prima facie* evidence of the speed of the vehicle.

*Clause 80* provides that for the purpose of prosecutions under clause 66, disobedience of a traffic control signal as indicated by a prescribed photographic detection device or a photograph produced by such a device is *prima facie* evidence that the driver of a motor vehicle disobeyed the traffic control signal. The clause expires on 14 March 1988.

*Clause 81* provides that for the purposes of prosecutions under clause 66, the speed of a vehicle as determined by a prescribed photographic detection device or a photograph produced by such a device is *prima facie* evidence of the speed of the vehicle. The clause expires on 14 March 1988.

*Clause 82* provides that for the purpose of any prosecutions under the Bill, the weight carried on any axle of a motor vehicle or trailer as determined by a prescribed device is *prima facie* evidence of the weight.

*Clause 83* provides for evidence of testing and sealing of devices referred to in clauses 79, 81 or 82 to be provided by certificate.

*Clause 84* contains a number of general evidentiary provisions.

## PART 7—INFRINGEMENTS

*Clause 85* sets out definitions of terms used in the Part.

*Clause 86* sets out the liability of an owner of a vehicle for parking infringements.

*Clause 87* provides for the service, form and content of parking infringement notices and for penalties.

*Clause 88*

*Sub-clauses (1) and (2)* provide for members of the police force, authorized Authority officers and municipal officers (if the offence involves a recreation vehicle) to serve traffic infringement notices on persons who are believed to have committed traffic infringements.

*Sub-clause (3)* empowers service of traffic infringement notices.

*Sub-clause (4)* provides for the form and content of traffic infringement notices.

*Sub-clauses (5) and (6)* provide a procedure for withdrawal of notices within 28 days of service and for the refund of any penalty paid.

*Sub-clause (7)* provides for the amount of penalties.

*Clause 89* sets out the procedure for the payment of penalties for traffic infringements and for the institution of proceedings where the penalty is not paid.

*Clause 90* provides a procedure in relation to proof of prior convictions for infringements.

## PART 8—GENERAL

*Clause 91* empowers the Authority to delegate its powers under the Bill without limiting the operation of section 32 of the *Transport Act 1983*.

*Clause 92* makes it an offence for delegates to divulge information acquired as a delegate other than for the purpose of the Bill.

*Clause 93* provides for the manner of service of notices required under the Bill or the regulations.

*Clause 94* provides for approvals by the Chief Commissioner of Police or the Authority given under the Bill to be published by notice in the *Government Gazette*.

*Clause 95* provides for the matters in respect to which regulations may be made by the Government in Council.

*Clause 96* provides for the indexation of fees to be paid under the Bill.

*Clause 97* provides for all fees received by the Authority to be paid by the Authority into the Consolidated Fund, or if the Treasurer so directs or the regulations so provide, to be paid by the Authority into its general fund.

*Clause 98* empowers the Minister to extend the application of the Bill or the regulations to certain land or premises.

*Clause 99* deals with warning signs and other installations in or on highways.

*Clause 100* provides for regulations or by-laws which are inconsistent with a provision of the Bill or the regulations made under this Bill to be of no force or effect.

*Clause 101* provides for the repeal of provisions of the *Motor Car Act 1958*.

*Clause 102* provides for consequential amendments to other Acts.

*Clause 103* contains transitional provisions. Licences or permits issued under the *Motor Car Act 1958* and registrations made under that Act are to continue to have force under the Bill. Existing probationary licences are to be converted to 2-year probationary licences subject to the Act.

Schedule 1 sets minimum disqualification periods for certain offences.

Schedule 2 sets the subject-matter for regulations.

Schedule 3 complements clause 101 in relation to repeal of the *Motor Car Act 1958*.

Schedule 4 makes consequential amendments.