

Road Safety (Amendment) Bill

As Sent Print

EXPLANATORY MEMORANDUM

- Clause 1 sets out the main purposes of the Bill.
- Clause 2 is the commencement provision.
- Clause 3 states that in this Act the **Road Safety Act 1986** is called the Principal Act.
- Clause 4 makes a number of amendments to the definitions and inserts new sub-sections.
- Sub-clause (1) amends the definition of "accredited drink-driving education program".
- Sub-clause (2) substitutes a new definition of "drug" in section 3(1) of the **Road Safety Act 1986**.
- Sub-clause (3) inserts definitions of "approved health professional", "dentist", "Director of the Victorian Institute of Forensic Medicine", "permissible drug", "pharmacist", "prescription drug" and "substance" in section 3(1) of the **Road Safety Act 1986**.
- Sub-clause (4) inserts new sub-sections (3) and (4) into section 3 of the **Road Safety Act 1986**. New sub-section (3) enables the Minister to publish an order in the Government Gazette declaring any substance to be a drug. New sub-section (4) enables the Director of the Victorian Institute of Forensic Medicine to approve certain specific persons to take blood samples.
- Clause 5 makes a number of amendments to section 48 of the **Road Safety Act 1986** and inserts new sub-sections (1AC) and (1AD) to provide for presumptions to be made in relation to the presence of a drug in the body of a person charged with impaired driving and the ability of the person to drive properly.

Clause 6 introduces a new offence of driving while impaired by a drug and related refusal offences.

Sub-clauses (1) and (2) amend section 49 of the **Road Safety Act 1986** to include offences relating to driving while impaired by a drug, and to provide maximum fines for failure to comply.

Sub-clause (3) inserts new sub-sections (3A) to (3C) into section 49 of the **Road Safety Act 1986**.

New sub-section (3A) establishes the elements of proof in proceedings for an offence of driving or being in charge of a motor vehicle while impaired by a drug.

New sub-section (3B) provides a defence where the only drug or drugs found are permissible non-prescription drugs and permissible drugs (as defined) and the person could not reasonably have known that the drug or drugs consumed in accordance with the advice of a medical practitioner, dentist or pharmacist would impair driving.

New sub-section (3C) defines "advice" for the purposes of the defence set out in new sub-section (3B).

Sub-clause (4) inserts new sub-section (8) into section 49 of the **Road Safety Act 1986** which provides that if a prosecution for the offence of driving under the influence of a drug fails, the court can find the defendant guilty of the lesser offence of driving while impaired by a drug.

Clause 7 inserts new sub-sections (1C) and (1D) in section 50 and new sub-section (1A) in section 50A of the **Road Safety Act 1986** to provide requirements for driver licence and permit cancellation and disqualification, and assessments and education programs, prior to driver licence restoration in the case of persons found guilty of the new offence. These requirements are similar to those that apply already in the case of certain drink driving offences. The clause also makes a number of consequential amendments.

Clause 8 inserts new sub-section (1A) in section 51 of the **Road Safety Act 1986** to provide for the person's driver licence to be suspended until the charge has been heard, similar to provisions which apply for certain drink driving offences. The clause then makes a number of consequential amendments.

Clause 9 inserts the procedures for identifying drug impairment into the **Road Safety Act 1986**.

New section 55A provides for a member of the police force to, under certain circumstances, require a driver to undergo an assessment of drug impairment. The assessment of drug impairment must be carried out by a member of the police force authorised by the Chief Commissioner of Police and in accordance with the procedure specified in the Victoria Government Gazette. Provision is made for the assessment of drug impairment to be video-recorded unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances. If the person is subsequently charged a copy of any video-recording must be served on the defendant. A video-recording can only be used for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the specified procedures.

New section 55B provides for a person who has undergone an assessment of drug impairment and who, in the opinion of a member of the police force, may be impaired by a drug or drugs, to be required to provide a sample of blood and/or urine to a registered medical practitioner or approved health professional. If the person is subsequently charged, a copy of the written report on the assessment of drug impairment must be served with the summons or within 7 days after charging if a summons is not issued.

New section 55C provides for the destruction of video-recordings and any related material and information when they are no longer required for prosecution purposes.

Clause 10 amends section 57(1) to provide evidentiary provisions in relation to the testing of blood for the presence of drugs.

Clause 11 inserts new section 57A to provide evidentiary provisions in relation to the testing of urine for the presence of drugs similar to those provided in clause 10.

Clause 12 amends section 63 of the **Road Safety Act 1986** to extend the power of the police to enter a motor vehicle for the purpose of carrying out the provisions of new section 55A, inserted by clause 9, if the driver refuses or fails to obey lawful directions.

- Clause 13 inserts new section 94B into the **Road Safety Act 1986** to declare that it is the intention of section 55B(4) to alter or vary section 85 of the **Constitution Act 1975** so as to prevent legal action being taken against a registered medical practitioner or approved health professional as a result of the taking of a sample of blood or being furnished with a sample of urine.
- Clause 14 amends section 96 of the **Road Safety Act 1986** to provide for disallowance of Orders declaring substances to be drugs and notices specifying impairment assessment procedures.
- Clause 15 amends Schedule 2 to the **Road Safety Act 1986** to provide for the making of regulations on procedures relating to the taking and analysis of blood and urine samples.
- Clause 16 amends section 3(1) of the **Road Safety Act 1986** to remove references to contraventions of local laws from the definition of "parking infringement".
- Clause 17 makes a number of amendments to the **Road Safety Act 1986** to provide for approved health professionals to take blood samples in circumstances where registered medical practitioners are at present authorised to take them. It also amends section 94A to declare that it is the intention of sections 55(9E) and 57(8), as amended by clause 16 of the Bill, to alter or vary section 85 of the **Constitution Act 1975** so as to prevent legal action being taken against an approved health professional as a result of an examination or the taking of a sample of blood.
- Clause 18 amends section 55(9A) of the **Road Safety Act 1986** to ensure that a person who cannot provide a sample of breath can be required to accompany police to a place where a sample of blood may be taken.
- Clause 19 amends sections 77(2) and (3) of the **Road Safety Act 1986** to enable protective services officers appointed under Part VIA of the **Police Regulation Act 1958** to prosecute certain offences and carry out related functions such as the issue of parking infringement notices.
- Clause 20 amends sections 80, 81 and 80A of the **Road Safety Act 1986** to allow for changes in technology in the area of traffic camera devices.

- Clause 21 amends section 84(3) of the **Road Safety Act 1986** to take account of changes in terminology from "registered owner" to "registered operator".
- Clause 22 amends section 87(4) of the **Road Safety Act 1986** to enable municipal councils to change the parking infringement penalty amounts for minor parking infringements within the municipality. The infringements in question are those for which the regulations specify a penalty not exceeding \$50.
- Clause 23 amends section 93 of the **Road Safety Act 1986** to enable service of a notice to an address given to the Corporation by the person concerned that is not their residential or business address.
- Clause 24 inserts new sections 104 and 105 into the **Road Safety Act 1986**.
- Section 104 provides that a resolution of a municipal council made since 1 October 1992 and fixing a parking infringement penalty not greater than \$50 for an offence against the regulations is to have the same effect as if the present clause 22 had been in force.
- Section 105 deems certain local laws in relation to parking as having never been inconsistent (and of no force and effect) with regulations made under the **Road Safety Act 1986**.
- Clause 25 amends schedule 2 to the **Road Safety Act 1986** to provide for the making of regulations concerning the obligations of persons other than drivers, namely, employers and consignors of goods and other persons to refrain from requesting, requiring or permitting drivers to drive vehicles in contravention of regulations concerning driving hours, carrying of log books and speed limits.
- The clause also inserts additional provisions for the making of regulations concerning traffic camera processes and other detection devices.
- Clause 26 contains two statute law revision items.
- Clause 27 amends provisions of the **Marine Act 1988** to enable approved health professionals to take blood samples for the purposes of that Act.

- Clause 28 amends section 31(9A) of the **Marine Act 1988** to enable a member of the police force to require a person to accompany a member to a place where a blood sample is to be taken and to remain there for the required time.
- Clause 29 inserts a new section 107C into the **Marine Act 1988** to declare that it is the intention of sections 31(9E) and 32(9) of the **Marine Act 1988**, as amended by the Bill, to alter or vary section 85 of the **Constitution Act 1975** so as to prevent legal action being taken against an approved health professional as a result of the taking of a blood sample.
- Clause 30 amends the regulation-making power in Schedule 5 to the **Marine Act 1988** to provide for approved health professionals to take blood samples for the purposes of that Act.
- Clause 31 amends the **Transport Act 1983** to provide for approved health professionals to take blood samples for the purposes of that Act.
- Clause 32 amends section 96(8) of the **Transport Act 1983** to enable a member of the police force to require a person to accompany a member to a place where a blood sample is to be taken and to remain there for the required time.
- Clause 33 amends the regulation-making power in section 102 of the **Transport Act 1983** to provide for approved health professionals to take blood samples for the purposes of that Act.
- Clause 34 inserts a new section 255C into the **Transport Act 1983** to declare that it is the intention of sections 96(12) and 98(10), as amended by the Bill, to alter or vary section 85 of the **Constitution Act 1975** so as to prevent legal action being taken against an approved health professional as a result of the taking of a blood sample.
- Clause 35 makes a correction to section 7 of the **Road Safety (Further Amendment) Act 1998**.
- Clause 36 repeals certain unproclaimed amendments of the **Road Safety Act 1986** enacted in 1990 and 1991.