

Transport (Further Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 sets out the purpose of the Bill.

Clause 2 provides for the commencement of the Bill.

Clause 3 identifies the **Transport Act 1983** as the Principal Act.

Clause 4 amends section 2 (1) of the Principal Act to insert a definition of “Secretary”. The Secretary is the Secretary of the Department of Transport.

Clause 5 amends the objects and functions of the Department of Transport (“the Department”) provided in section 4 (1) and (2) of the Principal Act. The clause adds a new object relating to the Department’s public transport system responsibilities and includes a new function recognising the Department’s responsibility in properly administering contracts for transport services entered into by the Secretary on behalf of the Crown or contracts assigned to the Secretary from the Public Transport Corporation (“PTC”). The clause also makes consequential amendments to section 4 (2) to (4) of the Principal Act.

Clause 6 inserts new sections 5 to 6c in the Principal Act.

New section 5 provides that the Secretary has authority on behalf of the Crown to enter into a contract with any person or body for the provision by that person or body of any transport services. The section also ensures that the Secretary has authority on behalf of the Crown to take an assignment of the rights and liabilities of the PTC under a contract that PTC entered into for provision of transport services. The new provision also gives the Secretary authority on behalf of the Crown to enter into a service agreement with the PTC as to the provision by the PTC of any transport services.

New section 6 (1) provides that the Secretary has power, on behalf of the Crown, to do all things necessary, convenient or incidental to the performance of the functions of the Department and the achievement of its objects. Sub-section (2) ensures that the general nature of sub-section (1) does not limit other provisions of the Act which confer power on the Secretary.

New section 6A provides the Secretary with power on behalf of the Crown, to acquire, hold or dispose of any property, real or personal, in connection with the objects and functions of the Department. All property acquired under the provision is to be vested in the Secretary and his or her successors. The new section also enables the Secretary to enter into agreements with the PTC in relation to the PTC performing Department functions or doing anything necessary, convenient or incidental to achievement of the objects of the Department.

New section 6B provides that the Secretary may with Ministerial approval, delegate the Secretary’s powers under new sections 5, 6 and 6A.

New section 6c provides that the Minister may direct the PTC to transfer or convey to the Secretary on any terms and conditions specified, any land vested in the PTC required by the Secretary for or in connection with the objects and functions of the Department. Section 47 or any other provision of the Principal Act does not operate to limit the operation of the new section.

Clause 7 amends the function of the PTC set out in section 14 of the Principal Act consequent on the changes to the Department's objects and functions.

Clause 8 amends section 32 of the Principal Act to enable the Secretary to delegate powers of the Secretary under new sections 5, 6 or 6A.

Clause 9 amends section 40 of the Principal Act to provide that the PTC has and must always be taken to have had power to assign to the Secretary rights and liabilities under a contract for the provision of transport services.

Clause 10 amends section 50 (1) of the Principal Act to enable the PTC, in accordance with the section, to give permission for rolling stock of other operators to be operated on railway line vested in it, subject to such terms and conditions that may be agreed between it and the relevant person or body.

Clause 11 amends section 89 (2) of the Principal Act to enable the Minister to serve determinations of policy on the Secretary in relation to Part VI of the Act.

Clause 12 inserts a new Division 2 in Part VI of the Principal Act. The new Division concerns railway and tramway safety and specifically, the introduction of alcohol controls for that purpose. Many of the new provisions draw heavily on the relevant provisions of the **Road Safety Act 1986**.

New section 92 sets out the purpose of the new Division which is to promote the safe operation of the railway and tramway systems in Victoria through the introduction of blood alcohol controls for workers engaged in carrying out safety work on those systems.

New section 93 (1) sets out definitions and interpretative provisions for the purposes of the new Division. It defines "accident", "authorised officer", "breath analysing instrument", "corresponding law", "excluded system", "irregular incident", "prescribed concentration of alcohol", "railway track", "railway or tramway system", "rolling stock", "safety work", and "worker". Sub-sections (2) and (3) further assist in determining the meaning of "maintenance capacity" and "construction capacity" for the purposes of the definition of "safety work". Sub-section (4) defines when a worker is to be regarded as about to carry out safety work. Sub-sections (5) and (6) are presumptive provisions to do with blood alcohol concentration. Sub-section (7) relates to the interpretation of a subsequent offence. Sub-section (8) confirms the need for an authorised officer or police to have a warrant to enter a dwelling in relation to the provisions in the Division.

New section 94 sets out offences and penalties for the purposes of the Division. It also lists defences able to put to a court and evidence in relation to presumptions. The section also specifies what is to be entered in the records of the court if a worker is convicted or found guilty of an offence.

New section 95 provides for the preliminary breath tests to be required to be undergone by workers, by authorised officers or police, in the circumstances and subject to the procedures set out in the section.

New section 96 provides for matters to do with breath analysis including the circumstances in which a worker may be required to furnish breath for analysis, procedures relating to the analysis process and so on. The provision also provides for

blood samples to be required to be taken from a worker for analysis and sets out procedural and other matters in relation to those blood samples.

New section 97 provides for blood samples to be required to be taken from a worker if the worker is brought to a designated place for examination or treatment due to an accident. The section sets out procedures, immunities from civil action and offences in relation to the taking of samples.

New section 98 sets out matters primarily relating to the giving of certificate evidence about blood samples taken from workers and procedures relating to such evidence.

New section 99 provides for evidentiary matters relating to breath tests and primarily concerns certificate evidence and procedures relating to such evidence.

New section 100 provides for the appointment and identification of authorised officers. It also makes it mandatory for officers to produce identification on demand and for certificates of identification to be admissible in evidence.

New section 101 provides for revocation of an authority given by the Chief Commissioner of Police for the purposes of new section 96 and for matters to do with approvals of apparatus or equipment.

New section 102 provides for the Governor in Council to make regulations for the purposes of the new Division.

Clause 13 inserts a new Division 4 in Part VI in the Principal Act. The Division relates to the Victorian Taxi Directorate.

New section 130 establishes the Directorate, states which officers form the Directorate and provides that one of those officers is to be the Director of the Directorate.

New section 131 sets out the function of the Directorate.

Clause 14 inserts new section 138A in the Principal Act to include a definition of "licensing authority". The definition is required to assist in the delineation of responsibility for taxi-cabs and responsibility for other vehicles licensed under Part VI of the Principal Act.

Clause 15 makes consequential amendments to various provisions of the Principal Act and to Schedule 7 to that Act arising out of the new delineation of responsibilities for vehicles licensed under Part VI of the Principal Act.

Clause 16 makes consequential amendments to provisions of the Principal Act arising out of the changed responsibilities of the Secretary and the PTC.

Clause 17 (1) amends section 147A (1) and (3) of the Principal Act so that the licence fee requirement and the ability of the Roads Corporation to suspend or cancel licences for failure to pay fees extends to private omnibuses and tow trucks as well as commercial passenger vehicles. Sub-clause (2) amends section 147B (1) of the Principal Act to provide that the Roads Corporation may set fees for tow truck licences under that section, that fees may be determined under the section for inspections of private omnibuses and tow trucks and that fees may be set under that provision for any other thing done by the Roads Corporation in relation to a private omnibus or tow truck or a licence for such a vehicle.

Clause 18 amends section 157 of the Principal Act to provide a right of review by the Administrative Appeals Tribunal of a decision to suspend or revoke a licence or permit granted under Division 5 of Part VI of the Act.

Clause 19 adds new regulation-making powers concerning commercial passenger vehicles to section 162 of the Principal Act.

Clause 20 amends sections 164 (1A), 165 and 166 and substitutes section 164 (2) of the Principal Act which relate to matters to do with private omnibuses.

Clause 21 repeals sections 174 (3) and (4) and 183A of the Principal Act which relate to tow trucks.

Clause 22 amends section 208 of the Principal Act as a consequence of the amendment made by clause 23. The clause inserts a definition of “safety work infringement”. The definition and clause 23 have been drafted so that the definition and the new Division are largely consistent with the drink driving infringement provisions in the **Road Safety Act 1986**.

Clause 23 provides for matters to do with safety work infringements and for this purpose inserts new Division 2A in Part VII of the Principal Act.

New section 215A provides that expressions used in the Division have the same meaning as they have in Division 2 of Part VI.

New section 215B provides for members of the police force to serve safety work infringement notices and also provides for the withdrawal of notices and other matters.

New section 215C provides for infringements to take effect as a conviction unless objected to by notice.

New section 215D provides for the Magistrates’ Court to extend the time for an objection in certain circumstances. Related procedural matters are also provided in the new section.

New section 215E makes consequential amendments to the **Magistrates’ Court Act 1989**.

New section 215F provides for service of a summons setting out particulars of any alleged prior convictions or findings of guilt.

New section 215G gives the Governor in Council power to make regulations for matters relating to safety work infringements.

Clause 24 amends sections 216, 217 and 218B of the Principal Act largely to provide authorised officers of the Department of Transport with the same enforcement powers able to be exercised by authorised officers of the Roads Corporation given the transfer of responsibility for taxi-cabs from the Corporation to the Department.

Clause 25 amends the Principal Act to extend ticket offences to passenger vehicles under contract to the Department of Transport. It also amends the Principal Act to ensure offences concerning hindrance of officers, etc. and making false reports to officers extend to relevant officers of the Department and the Roads Corporation. Offences prohibiting impersonation and bribery will now also apply to officers of the Department of Transport.

Clause 26 amends section 229 of the Principal Act and, in particular, enables proceedings for offences to be brought by a person authorised by the Secretary. Also, a person bringing a proceeding on the authority of the Secretary may appear by another person authorised by the Secretary.

Clause 27 amends the evidentiary provisions contained in section 230 (4) of the Principal Act.

Clause 28 inserts new section 255A in the Principal Act to specify that it is the intention of that new 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 new sections 96 (12), 97 (7) or 98 (10).

Clause 29 amends various provisions of the **Road Safety Act 1986** primarily to ensure relevant officers of the Department of Transport have the same enforcement powers under that Act as authorised officers of the Roads Corporation consequent upon the transfer of matters to do with taxi-cabs from the Roads Corporation to the Department.

Clause 30 amends section 55 of the **Transport (Amendment) Act 1993** to ensure tow truck licences issued before 19 December 1993 remain in force unless suspended or cancelled under the relevant provisions of the **Transport Act 1983**.

Clause 31 provides for transitional provisions in respect of matters provided by the Bill.

