

Authorised Version No. 004
Commercial Passenger Vehicle Industry
Act 2017

No. 35 of 2017

Authorised Version incorporating amendments as at
2 June 2018

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The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to impose a levy on the carrying out of commercial passenger vehicle service transactions—
 - (i) to recover the cost of transitional assistance provided to certain participants in the commercial passenger vehicle industry; and
 - (ii) to partly fund the regulation of the commercial passenger vehicle industry; and
- (b) to amend the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (i) to implement reforms to the taxi-cab and hire car industry by removing the requirement for the payment of licence fees, abolishing restricted hire vehicle licences and special purpose vehicle licences, and streamlining the application process for taxi-cab licences; and

- (ii) to require persons who provide a booking service for the use of a commercial passenger vehicle to be accredited; and
 - (iii) to make it an offence to accept a request from a provider of a booking service when the person knows or ought reasonably to know that the provider is unaccredited and to provide for the granting of injunctions restraining offending conduct; and
 - (iv) to repeal redundant provisions relating to the establishment of trading arrangements for the transfer and trading of taxi-cab licences; and
 - (v) to enable the Taxi Services Commission to exempt persons from specified requirements under Part VI (Commercial passenger vehicles) for the purpose of reducing the regulatory burden on that person; and
 - (vi) to make further provision in relation to the sharing of information between Victoria Police and the Taxi Services Commission about certain offences in order to assist the Commission in carrying out its functions; and
 - (vii) to improve the operation of that Act; and
- (c) to amend the **Transport Integration Act 2010** to reduce the regulatory burden on transport bodies when issuing, granting, giving or renewing certain specified transport authorisations under transport legislation; and

- (d) to amend the **Bus Safety Act 2009** to ensure taxi-cabs that are physically similar to buses are regulated as taxi-cabs; and
- (e) to amend the **Road Safety Act 1986** to empower employees of the Taxi Services Commission to stop and check for defective and unroadworthy commercial passenger vehicles; and
- (f) to amend the **Taxation Administration Act 1997** to make Part 2 of this Act a taxation law for the purposes of that Act.

2 Commencement

- (1) This Act (except Part 2, Divisions 1, 2 and 3 of Part 3 and Division 4 of Part 4) comes into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), Part 2, Divisions 1, 2 and 3 of Part 3 and Division 4 of Part 4 come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 2018, it comes into operation on that day.

S. 2(3)
amended by
No. 63/2017
s. 6(1).

3 Definitions

- (1) In this Act—

affiliated service means a service of any kind (other than a service constituted by the performance of an act referred to in section 5(1)(a) or (b)) provided under an affiliation agreement;

affiliated trip provider means a provider of an unbooked commercial passenger vehicle service who, for the purpose of facilitating the provision of services of that kind, obtains one or more affiliated services under an

affiliation agreement with a provider of a booking service;

affiliation agreement—see section 4;

booked commercial passenger vehicle service means a commercial passenger vehicle service that is provided as a result of the provision of a booking service;

booking service—see section 5;

bus has the meaning given by section 3(1) of the **Bus Safety Act 2009**;

bus service has the meaning given by section 3(1) of the **Bus Safety Act 2009**;

commercial passenger vehicle has the same meaning as it has in Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**;

commercial passenger vehicle service means the carriage of one or more passengers, in a motor vehicle operating (within the meaning of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**) as a commercial passenger vehicle, on a journey that begins in Victoria and ends at one or more destinations whether in or outside Victoria;

commercial passenger vehicle service transaction means the provision for a single fare of—

- (a) a booked commercial passenger vehicle service; or
- (b) an unbooked commercial passenger vehicle service;

Commissioner means Commissioner of State Revenue referred to in section 62 of the **Taxation Administration Act 1997**;

ESC means the Essential Services Commission established by section 7 of the **Essential Services Commission Act 2001**;

levy means the levy imposed by section 9;

motor vehicle means a motor vehicle within the meaning of the **Road Safety Act 1986** and includes a trailer attached to the vehicle;

registered levy payer means a person who is registered by the Commissioner under section 14(4);

return period—see section 13;

TSC means the Taxi Services Commission established by section 115B of the **Transport Integration Act 2010**;

unbooked commercial passenger vehicle service means a commercial passenger vehicle service that is provided other than as a result of the provision of a booking service.

- (2) For the purposes of this Act, the provider of an unbooked commercial passenger vehicle service is—
- (a) if the driver of the commercial passenger vehicle used in the provision of the service is an employee of the owner of that vehicle, that owner; or
 - (b) in any other case, the driver of the commercial passenger vehicle used in the provision of the service.

4 Meaning of *affiliation agreement*

An *affiliation agreement* is an agreement between a person who provides a booking service (*service provider*) and a person who provides unbooked commercial passenger vehicle services (*trip provider*) that—

- (a) whether or not it imposes any other obligation on the service provider, imposes an obligation on the service provider to maintain, on behalf of the trip provider, trip records of a kind suitable for the purposes of the returns required to be lodged under section 15(1) or 17(1); and
- (b) specifies the amount the service provider will be paid for the provision by the service provider of each kind of service to be provided to the trip provider under the agreement; and
- (c) contains an acknowledgement by the service provider that the service provider is responsible for lodging returns, being a registered levy payer and paying levies in respect of unbooked commercial passenger vehicle services provided by the trip provider while the agreement is in effect.

5 Meaning of *booking service*

- (1) For the purposes of this Act, a person provides a *booking service* if the person carries on the business of—
 - (a) receiving requests for persons to be provided with commercial passenger vehicle services; and
 - (b) arranging or facilitating the acceptance of those requests by or on behalf of drivers of commercial passenger vehicles.

- (2) In determining whether a person (the *service provider*) provides a *booking service*, it does not matter—
- (a) whether or not the commercial passenger vehicle service is provided by the driver as an agent or employee of the service provider; or
 - (b) whether the agreement or arrangement in accordance with which the commercial passenger vehicle service is provided is between—
 - (i) the driver and the passenger; or
 - (ii) the service provider and either the driver or the passenger; or
 - (iii) any other persons; or
 - (c) whether the reward or hiring fee for the commercial passenger vehicle service is paid to the driver by—
 - (i) the service provider; or
 - (ii) the passenger; or
 - (iii) any other person; or
 - (d) whether or not an act referred to in subsection (1)(a) or (b) involves the use of a wholly or partly automated electronic system; or
 - (e) whether or not the service provider is located outside Victoria; or
 - (f) whether or not the service provider also receives requests for persons to be carried as passengers outside Victoria.

- (3) A person who owns, operates or controls a wholly or partly automated electronic system that performs the acts referred to in subsection (1)(a) and (b) is taken to provide a *booking service*.
- (4) A person prescribed for the purposes of this subsection is taken to provide a *booking service*.
- (5) A person prescribed for the purposes of this subsection is taken not to provide a *booking service* despite anything to the contrary in the other provisions of this section.

6 Taxation Administration Act 1997

Part 2 is to be read together with the **Taxation Administration Act 1997** which provides for the administration and enforcement of that Part and other taxation laws.

Note

Part 2 and any regulations made under this Act for the purposes of Part 2 are a taxation law under the **Taxation Administration Act 1997**.

7 Act binds the Crown

This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

8 Extraterritorial operation

- (1) This Act applies in relation to—
 - (a) a commercial passenger vehicle service even if part of that service is provided outside Victoria; and
 - (b) a booking service provided wholly or partly outside Victoria, whether in or outside Australia.
- (2) For the purpose of subsection (1), this Act applies outside Victoria to the full extent of the extraterritorial legislative power of the Parliament.

Part 2—Commercial passenger vehicle service levy

9 Levy imposed

This Part imposes a levy in respect of each commercial passenger vehicle service transaction carried out during a return period.

10 Who is liable for the levy?

The levy in respect of a commercial passenger vehicle service transaction is payable—

- (a) for a booked commercial passenger vehicle service, by the provider of the booking service; or
- (b) for an unbooked commercial passenger vehicle service the provision of which is facilitated by an affiliated service, by the provider of the affiliated service and the affiliated trip provider jointly and severally; or
- (c) for any other unbooked commercial passenger vehicle service, by the provider of that service.

11 Who collects the levy?

The Commissioner is to collect any levies payable under this Part.

12 Amount of levy

- (1) The amount of the levy for a commercial passenger vehicle service transaction is—
 - (a) until the commencement of regulations made under subsection (2), \$1; and
 - (b) on and from the commencement of regulations made under subsection (2), the prescribed amount.

- (2) The regulations, in accordance with section 20(2), may specify an amount less than \$2 as the amount of the levy.
- (3) The amount of the levy in respect of the financial year beginning on 1 July 2019 and each subsequent financial year is to be varied in accordance with the following formula—

$$\frac{A \times B}{C}$$

where—

A is \$1 or the prescribed amount; and

B is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year published by the Australian Statistician in respect of the December quarter immediately preceding that 15 June; and

C is the all groups consumer price index for Melbourne as at 15 June 2018 published by the Australian Statistician in respect of the quarter ending on 31 December 2017.

- (4) If an amount calculated in accordance with subsection (3) is not a multiple of 5 cents, the amount must be rounded down to the nearest multiple of 5 cents.
- (5) The Minister must, before 30 June in 2019 and each subsequent year, cause a notice to be published in the Government Gazette specifying the amount of the levy payable in the financial year beginning on 1 July in that year.

13 Return period

- (1) The return period is—
 - (a) until the commencement of regulations made under subsection (2), each quarter of each financial year; and
 - (b) on and from the commencement of regulations made under subsection (2), the prescribed period.
- (2) The regulations may specify a period not exceeding 12 months as the return period.

14 Persons liable for levy must be registered

- (1) Subject to subsections (2) and (3), a person who becomes liable to pay a levy must apply to the Commissioner, in the form approved by the Commissioner, for registration under this Part before the end of the first return period in which they became liable.

Penalty: 500 penalty units in the case of a body corporate;
100 penalty units in any other case.
- (2) A person does not commit an offence against subsection (1) if the person has a reasonable excuse for not applying for registration.
- (3) Subsection (1) does not apply to the provider of an unbooked commercial passenger vehicle service in respect of the provision of such a service that is facilitated by an affiliated service.
- (4) The Commissioner must register a person who applies under subsection (1).

- (5) To avoid doubt, for the purposes of section 157(2AB) of the **Transport (Compliance and Miscellaneous) Act 1983**, subsection (1) imposes a requirement on an authority holder (within the meaning of that section) who is liable to pay a levy to be registered under this Part.

Note

Under section 157(2AB) of the **Transport (Compliance and Miscellaneous) Act 1983** the licensing authority may suspend or revoke the authority of an authority holder who contravenes a requirement applying to the authority holder under this Part.

15 Returns

- (1) Subject to subsection (2), a person who is liable to pay one or more levies for a return period must lodge a return in respect of that period with the Commissioner within 30 days after the end of that period.
- (2) Subsection (1) does not apply to the provider of an unbooked commercial passenger vehicle service in respect of any commercial passenger vehicle service transactions carried out by the provider in a return period that were facilitated by an affiliated service.
- (3) A return is to be in the form, and contain the information, determined by the Commissioner.

16 Cancellation of registration by Commissioner

- (1) The Commissioner, by written notice given to a person who is a registered levy payer, may cancel the person's registration under this Part for any reason the Commissioner thinks sufficient.
- (2) A cancellation of registration has effect from the date specified for the purpose by the Commissioner in the notice of cancellation.

17 Cancellation of registration by registered levy payer

- (1) A person who ceases to incur any liability to pay levies and does not anticipate again incurring any such liability must, within 14 days after so ceasing—
 - (a) give written notice of that fact to the Commissioner; and
 - (b) unless previously lodged, lodge a return for the final return period in respect of which they are liable to pay one or more levies.
- (2) The notice cancels the person's registration under this Part on the day on which it is received by the Commissioner.

18 When is a levy due for payment?

A levy is due for payment at the end of the period within which the return that relates to it is required to be lodged under section 15(1) or 17(1).

19 Recovery of levy by provider of affiliated service

- (1) A provider of an affiliated service who is liable to pay a levy under an affiliation agreement may require the affiliated trip provider to pay the provider of the affiliated service an amount equal to the levy payable.
- (2) The requirement is duly made if it is contained in a written request given to the affiliated trip provider that specifies the amount of the levy.
- (3) If the amount is not paid, the provider of the affiliated service may recover it from the affiliated trip provider in a court of competent jurisdiction as a debt due to the provider of the affiliated service.

20 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing persons for the purposes of section 5(4) or (5);
 - (b) subject to subsection (2), specifying an amount less than \$2 as the amount of the levy;
 - (c) specifying a period not exceeding 12 months as the return period;
 - (d) generally any other matter or thing that is authorised or required to be prescribed or necessary to be prescribed to carry out this Part.
- (2) The Minister must not recommend the making of regulations specifying an amount of \$1 or more as the amount of the levy unless the ESC recommends the specification of that amount in accordance with subsection (3).
- (3) The ESC must not recommend the specification of an amount unless the ESC is satisfied that it is the lowest amount that is reasonably likely to result in the total amount of the levy collected within 8 years of the commencement of this Part being equal to the money spent on transitional assistance.
- (4) For the purposes of subsection (3), the *money spent on transitional assistance* is the total amount paid by the State (whether as compensation or otherwise) to participants in the commercial passenger vehicle industry to assist those participants in relation to changes to the law that applies to that industry as compared with that law as in force immediately before the commencement of this Act.

- (5) Regulations made under this Part may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (c) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time.

Part 3—Amendment of Transport (Compliance and Miscellaneous) Act 1983

Division 1—Taxi-cab and hire car industry reform amendments

21 Definitions

In section 86(1) of the **Transport (Compliance and Miscellaneous) Act 1983** the definitions of *Country Hire Car Zone*, *Metropolitan Hire Car Zone*, *restricted hire vehicle*, *restricted hire vehicle licence*, *special purpose vehicle*, *special purpose vehicle licence* and *tour package* are repealed.

22 Application for licence

Section 140(1B) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

23 Section 141B repealed

Section 141B of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

24 New heading to section 142 substituted

For the heading to section 142 of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"Hire cars".

25 Hire cars and special purpose vehicles

(1) In section 142(1AA) of the **Transport (Compliance and Miscellaneous) Act 1983** omit—

- (a) "and that under section 140(1B) nominates the Metropolitan Hire Car Zone,"; and
- (b) "if satisfied that the applicant is a fit and proper person to hold such a licence".

- (2) Sections 142(1AB) to (1A) of the **Transport (Compliance and Miscellaneous) Act 1983** are **repealed**.
- (3) In section 142(2) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "or a special purpose vehicle licence".
- (4) Sections 142(2A) to (6) of the **Transport (Compliance and Miscellaneous) Act 1983** are **repealed**.
- (5) In section 142(7) and (8) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "or a special purpose vehicle licence".
- (6) Section 142(10) of the **Transport (Compliance and Miscellaneous) Act 1983** is **repealed**.

26 Section 142A repealed

Section 142A of the **Transport (Compliance and Miscellaneous) Act 1983** is **repealed**.

27 Taxi-cab licences

- (1) In section 143(1A) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "and that under section 140(1A) nominates the Melbourne Metropolitan Zone or the Urban and Large Regional Zone,".
- (2) Sections 143(1B) and (1C) of the **Transport (Compliance and Miscellaneous) Act 1983** are **repealed**.
- (3) In section 143(2A) of the **Transport (Compliance and Miscellaneous) Act 1983**, after "operator" **insert** "or under Division 6 as a driver".

28 New section 143AAA inserted

After section 143 of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"143AAA Accredited drivers granted new taxi-cab licences taken to be accredited taxi-cab operators

A driver who is accredited under Division 6 and who is granted a new taxi-cab licence is taken to be an accredited taxi-cab operator while the licence they hold is in force."

29 Conditions

- (1) In section 144(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Subject to subsection (1AA), the" substitute "The".
- (2) Sections 144(1)(be) to (d) of the **Transport (Compliance and Miscellaneous) Act 1983** are repealed.
- (3) Section 144(1AA) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (4) Section 144(1B) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

30 Review by Tribunal of licence cancellation etc.

- (1) Section 146C(1)(ac) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (2) In section 146C(1)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "144(1B),".

31 Annual licence fees

Sections 147A(2A) to (2E) and (4) to (8) of the **Transport (Compliance and Miscellaneous) Act 1983** are repealed.

32 Transfer of licences

Section 149(1AA)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

33 Register of taxi industry participants

- (1) In section 169ZA(2)(d) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "licence; or" substitute "licence."
- (2) Section 169ZA(2)(e) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (3) For section 169ZA(3)(c) of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"(c) the number of commercial passenger vehicles licensed in the name of the person."

34 New Division 13 of Part VIII inserted

After Division 12 of Part VIII of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

**"Division 13—Transitional provisions—
Commercial Passenger Vehicle Industry
Act 2017**

358 Restricted hire vehicle licences taken to be hire car licences

A restricted hire vehicle licence that is in force immediately before the commencement of section 22 of the **Commercial Passenger Vehicle Industry Act 2017** is taken on that commencement to be a hire car licence.

359 Special purpose vehicle licences taken to be hire car licences

A special purpose vehicle licence that is in force immediately before the commencement of section 25 of the **Commercial Passenger Vehicle Industry Act 2017** is taken on that commencement to be a hire car licence.

360 Taxi-cab licences

- (1) On the commencement of section 27 of the **Commercial Passenger Vehicle Industry Act 2017**—
 - (a) every licence to operate a taxi-cab assigned under section 150 to an assignee within the meaning of section 150 and in force immediately before that commencement is revoked and the assignee is taken to be granted a new taxi-cab licence; and
 - (b) every taxi-cab licence granted under section 143 or 143A that is in force immediately before that commencement, and that has not been assigned under section 150, is revoked and the holder of that licence is taken to be granted a new taxi-cab licence.
- (2) In this section—

new taxi-cab licence has the same meaning as in Part VI;

taxi-cab has the same meaning as in Part VI;

taxi-cab licence has the same meaning as in Part VI.

361 Accredited providers of taxi-cab network services

- (1) A person accredited under Division 4 of Part VI as a provider of taxi-cab network services whose accreditation under that Division (a *taxi-cab network services accreditation*) is in force immediately before the commencement of section 35 of the **Commercial Passenger Vehicle Industry Act 2017** is taken, on that commencement, to be accredited under that Division as a provider of a booking service.
- (2) In addition, the taxi-cab network services accreditation that person holds is taken, on the commencement of section 35 of the **Commercial Passenger Vehicle Industry Act 2017**, to be an accreditation accrediting that person to be a provider of a booking service."

Division 2—Commercial passenger vehicle booking service amendments

35 Definitions and amendment of Division heading

- (1) In section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983** insert the following definition—

"booking service has same meaning as in the **Commercial Passenger Vehicle Industry Act 2017**;"
- (2) In section 130A(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, the definition of *taxi-cab network service* is **repealed**.
- (3) In the heading to Division 4 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**, for "**taxi-cab**" substitute "**commercial passenger vehicle**".

36 Purpose of accreditation

In section 130 of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab" substitute "commercial passenger vehicle".

37 Section 131A substituted and new sections 131B and 131C inserted

For section 131A of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"131A Offence for provider of booking service not to be accredited

- (1) A person must not provide a booking service unless the person is accredited under this Division to provide that service.

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

- (2) A person must not advertise or in any way hold themselves out as able or willing to provide a booking service unless the person is accredited under this Division to provide that service.

Penalty: In the case of a natural person,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

- (3) Subsections (1) and (2) do not apply in relation to—

- (a) the driver of a commercial passenger vehicle receiving or accepting a request for persons to be provided with a commercial passenger vehicle service;
or

- (b) the holder of a commercial passenger vehicle licence—
 - (i) receiving a request for a person to be provided with a commercial passenger vehicle service; and
 - (ii) arranging or facilitating the acceptance of the request by the driver of the licensed vehicle; or
- (c) the driver of a commercial passenger vehicle providing a booking service as a member of an unincorporated body or association that is accredited under this Division to provide that service; or
- (d) the owner or operator of a commercial passenger vehicle—
 - (i) receiving a request for a person to be provided with a commercial passenger vehicle service; and
 - (ii) arranging or facilitating the acceptance of the request by the driver of the vehicle.

131B Offence to accept request from booking service that is not accredited

- (1) A person who accepts a request from a provider of a booking service for a person to be provided with a commercial passenger vehicle service commits an offence if the person knows, or ought reasonably to know, that the provider of the booking service is not accredited under this Division to provide that service.

- (2) A person who commits an offence against subsection (1) is liable to—
- (a) in the case of a person who is a provider of a booking service, a penalty not exceeding 240 penalty units for a natural person or 1200 penalty units for a body corporate; and
 - (b) in the case of a person who is the operator of a taxi-cab, a penalty not exceeding 60 penalty units for a natural person or 300 penalty units for a body corporate; and
 - (c) in the case of a person who holds a driver accreditation, a penalty not exceeding 60 penalty units; and
 - (d) in any other case, a penalty not exceeding 50 penalty units.

131C Injunctions

- (1) The Supreme Court may grant an injunction, in any terms that it considers appropriate, if satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
- (a) a contravention of section 131A(1) or (2) or 131B(1); or
 - (b) attempting to contravene section 131A(1) or (2) or 131B(1); or
 - (c) aiding, abetting, counselling or procuring a person to contravene section 131A(1) or (2) or 131B(1); or
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene section 131A(1) or (2) or 131B(1); or

- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 131A(1) or (2) or 131B(1); or
 - (f) conspiring with others to contravene section 131A(1) or (2) or 131B(1).
- (2) Without limiting subsection (1), the Supreme Court may grant an injunction under that subsection restraining a person from receiving or accepting, or facilitating the receiving or acceptance of, requests for a person to be provided with a commercial passenger vehicle service (whether or not as part of, or incidental to, the carrying on of another business)—
 - (a) for a specified period; or
 - (b) except on specified terms and conditions.
- (3) The Supreme Court may only grant an injunction under subsection (1) on an application by the TSC.
- (4) The power of the Supreme Court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and

- (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (5) The power of the Supreme Court to grant an injunction under subsection (1) requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (6) On an application under subsection (1) the Supreme Court may grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied as required by that subsection.
- (7) If in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending the determination of an application under subsection (1) but must not require the applicant or any other person to give any undertakings as to damages as a condition of doing so.
- (8) The Supreme Court may rescind or vary an injunction granted under this section."

38 Making of application

In section 132(1)(c) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" substitute "a booking service".

39 Mandatory refusal of accreditation

In section 132D(1)(ab) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" substitute "a booking service".

40 Presumption in favour of refusal of accreditation

In section 132E(c) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" substitute "a booking service".

41 Offence to fail to comply with conditions etc.

In the penalty at the foot of section 133B of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" substitute "a booking service".

42 Holder of accreditation to notify of relevant change in circumstances

In section 137A(4)(b) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" substitute "a booking service".

43 Regulations

In section 137E(2)(h) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" (where twice occurring) substitute "a booking service".

44 Offence to enter into certain contracts etc.

In section 144D of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" **substitute** "a booking service".

45 Licensing authority to be notified of maximum taxi fares and hiring rates in Regional and Country Zones

- (1) In section 162EA(3) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" **substitute** "a booking service".
- (2) In section 162EA(6) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" **substitute** "a booking service".

46 Register of commercial passenger vehicle industry participants

- (1) In the heading to Division 6A of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi" **substitute** "commercial passenger vehicle".
- (2) In the heading to section 169ZA of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi" **substitute** "commercial passenger vehicle".
- (3) In section 169ZA(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi" **substitute** "commercial passenger vehicle".
- (4) In section 169ZA(2)(b) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" **substitute** "a booking service".

- (5) In section 169ZA(3)(b) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network service" **substitute** "booking service".
- (6) In section 169ZB(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi" **substitute** "commercial passenger vehicle".
- (7) In section 169ZC(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi" **substitute** "commercial passenger vehicle".

47 Definitions

In section 228RA of the **Transport (Compliance and Miscellaneous) Act 1983**—

- (a) in the definition of *accredited person*, in the example at the foot of paragraph (a), for "taxi-cab network service" **substitute** "booking service";
- (b) in the definition of *commercial passenger vehicle premises*, for "taxi-cab network services" **substitute** "booking services";
- (c) the definitions of *taxi-cab network service* and *taxi-cab network service provider* are **repealed**;
- (d) **insert** the following definition—

"booking service provider means a person who provides a booking service;"

48 Power to require production of information or documents and related items

In section 228RY(1)(b)(ii) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services" **substitute** "a booking service".

49 Supervisory intervention order

In section 230C(5)(c)(iv) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "taxi-cab network services (within the meaning of section 130A(1))" **substitute** "a booking service".

50 Exclusion orders

In section 230DA(2)(d) of the **Transport (Compliance and Miscellaneous) Act 1983**—

- (a) for "taxi-cab network service (within the meaning of section 130A(1))" **substitute** "booking service";
- (b) for "taxi-cab network service" (where secondly occurring) **substitute** "booking service".

Division 3—Commercial passenger vehicle service levy related amendments

51 Revocation or suspension of licence, permit or accreditation

- (1) After section 157(2A) of the **Transport (Compliance and Miscellaneous) Act 1983** **insert—**

"(2AB) Subject to subsection (3), the licensing authority, by notice in writing to an authority holder, may suspend or revoke the authority if satisfied, on the balance of probabilities, that the authority holder has contravened a requirement applying to the authority holder under—

- (a) Part 2 of the **Commercial Passenger Vehicle Industry Act 2017** or any regulations made under that Act for the purposes of that Part; or

(b) the **Taxation Administration Act 1997** as it applies to Part 2 of the **Commercial Passenger Vehicle Industry Act 2017** and any regulations made under the **Commercial Passenger Vehicle Industry Act 2017** for the purposes of that Part.

(2AC) In subsection (2AB)—

authority means licence, accreditation or permit mentioned in the definition of *authority holder*;

authority holder means the holder of a taxi-cab licence, hire car licence, taxi-cab operator accreditation, booking service provider accreditation, driver accreditation or a permit relating to a taxi-cab."

(2) In section 157(2B) of the **Transport (Compliance and Miscellaneous) Act 1983**, after "(2A)" **insert** "or (2AB)".

52 Definitions

In section 228RA of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definition of *commercial passenger vehicle law*—

(a) in paragraph (d)(iv), for "surcharge;" **substitute** "surcharge; or";

(b) after paragraph (d) **insert**—

"(e) section 324 of the **Crimes Act 1958** to the extent that it relates to an offence against a provision mentioned in paragraph (a), (b) or (c);".

Division 4—Other amendments

53 Transfer of licences

Section 149(3A) and (3B) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

54 Repeal of section 150A

Section 150A of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

55 Repeal of certain regulation making powers

Section 162(1)(ma) to (me) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

56 Repeal of provisions relating to working with children checks

Sections 169DA to 169DC of the **Transport (Compliance and Miscellaneous) Act 1983** are repealed.

57 Notice to holder of accreditation

(1) For section 169G(c) of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

- "(c) specifying that the holder may make a written submission under section 169H; and
- (d) specifying the date by which the submission must be received by the licensing authority."

(2) At the end of section 169G of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"(2) For the purposes of subsection (1)(d), the date by which the licensing authority must receive the submission is the date required under section 169H(3)(a)(i).

Note

Under section 169HA, the licensing authority may, by written notice, extend the period of time within which it must receive a submission. It can do so by choosing a date later than is specified in the notice."

58 Section 169H substituted and new section 169HA inserted

For section 169H of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"169H Submissions to licensing authority

- (1) This section applies if a person receives from the licensing authority—
 - (a) a notice under section 169G; or
 - (b) a notice under section 169K(3).
- (2) The person may make a written submission to the licensing authority as to the matters set out in the notice.
- (3) A submission under subsection (2) must be received by the licensing authority—
 - (a) in the case where the person has received a notice under section 169G—
 - (i) no later than 28 days after the day on which the person receives the notice (if no date is specified by the licensing authority in the notice); or

- (ii) if the licensing authority specifies a date in the notice (which must be later than the date referred to in subparagraph (i)), no later than that date; or
 - (iii) if the licensing authority has extended the time within which the submission must be received under section 169HA, no later than the date specified in the notice under that section; and
- (b) in the case where the person has received a notice under section 169K(3), no later than 14 days after the day on which the person received the notice or if a later date has been specified by the licensing authority in that notice, that date.

169HA Licensing authority may extend time for making submissions

- (1) A person given a notice under section 169G may request the licensing authority to extend the time within which the licensing authority must receive a submission under section 169H to a date that is after the date specified under—
 - (a) section 169H(3)(a)(i); or
 - (b) the notice under section 169G.
- (2) An application must be in writing and set out the reasons for the request.
- (3) On receiving a request, the licensing authority, by written notice given to the person, may extend the time within which the licensing authority must receive the submission.

- (4) A notice under subsection (3) must specify the relevant date."

59 Interim suspension of accreditation

For section 169K(4) of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

- "(4) A notice under subsection (3) must—
- (a) set out the reasons for the suspension; and
 - (b) specify—
 - (i) that the holder of the driver accreditation may make a written submission under section 169H; and
 - (ii) the date by which the submission must be made under section 169H(3)."

60 Effect of decision on application

In section 169MB(2) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "24 hours" substitute "2 business days".

61 New Subdivision 2 of Division 9A of Part VI inserted

After Subdivision 1 of Division 9A of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"Subdivision 2—Regulatory exemptions

191B Exemptions

- (1) The TSC, by written notice, may exempt a person from a requirement under this Part or regulations made for the purposes of this Part if the TSC is satisfied that—

- (a) the person is substantially complying with the requirement; or
 - (b) the person has adequately achieved the purpose of the requirement; or
 - (c) the person's compliance with the requirement would, in the particular circumstances, be impracticable, unnecessary, or inappropriate.
- (2) An exemption may be either indefinite or for a specified period and either absolute or on specified conditions.
 - (3) An exemption must not be inconsistent with any notice published in the Government Gazette under section 144(1BA) that is in effect.
 - (4) The TSC may at any time suspend or cancel an exemption, or alter its period or its terms and conditions, by written notice given to the person given the exemption."

62 New note inserted into section 191YA

Insert the following note at the foot of section 191YA(1) of the **Transport (Compliance and Miscellaneous) Act 1983**—

"Note

A notice under subsection (1) may be given to a person accredited under Division 4 by serving it in accordance with section 250 or 251."

63 Repeal of section 191YC—service of documents

Section 191YC of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

64 Information sharing

- (1) After section 191YD(2)(c) of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"(ca) information relating to the administration and enforcement of Part 2 of the **Commercial Passenger Vehicle Industry Act 2017**";

- (2) After section 191YD(5)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"(ab) the operation of section 191YDA; or"

- (3) In section 191YD(6) of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definition of *relevant agency*, after paragraph (c) insert—

"(ca) the Commissioner of State Revenue; or"

65 New section 191YDA inserted

After section 191YD of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"191YDA Duty on Chief Commissioner of Police to notify TSC of certain matters relating to offences

- (1) The Chief Commissioner of Police must take all reasonable steps to ensure that the TSC—
- (a) is notified as soon as practicable after the Chief Commissioner becomes aware that a notifiable person has been charged with—
 - (i) a category 1 offence, category 2 offence or category 3 offence; or

- (ii) a tier 1 offence, tier 2 offence or tier 3 offence (within the meaning of Division 4); and
 - (b) is given the details in respect of the charge requested by the TSC.
- (2) The TSC may only request details of a charge referred to in subsection (1) that it reasonably requires to exercise its functions under this Part.
- (3) The Chief Commissioner of Police must take all reasonable steps to ensure that the TSC is notified as soon as practicable of how a charge for an offence referred to in subsection (1) has been finally dealt with.
- (4) In this section—

notifiable person means—

 - (a) a person accredited under Division 4; or
 - (b) a person who has applied for accreditation under Division 4; or
 - (c) a person who holds a driver accreditation; or
 - (d) a person who has applied for a driver accreditation."

66 Offence to assault or obstruct officers etc.

In section 225(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definition of *officer*, in paragraph (a), after "Corporation" **insert** ", the Taxi Services Commission".

67 Evidentiary provision amendments

In section 230(4) of the **Transport (Compliance and Miscellaneous) Act 1983**—

- (a) after "Roads Corporation" (where twice occurring) **insert** "or the chief executive officer of the Taxi Services Commission";
- (b) after "that Corporation" **insert** "or an employee of that Commission".

68 Insertion of notes relating to electronic service

- (1) **Insert** the following note at the foot of section 250 of the **Transport (Compliance and Miscellaneous) Act 1983**—

"Note

Service may also be effected electronically—see the **Electronic Transactions (Victoria) Act 2000**".

- (2) **Insert** the following note at the foot of section 251 of the **Transport (Compliance and Miscellaneous) Act 1983**—

"Note

Service may also be effected electronically—see the **Electronic Transactions (Victoria) Act 2000**".

Division 5—Repeal of this Part

69 Repeal of this Part

This Part is **repealed** on 30 June 2019.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Part 4—Amendment of other Acts

Division 1—Transport Integration Act 2010

70 Application to a transport body

(1) After section 24(2) of the **Transport Integration Act 2010** insert—

"(2A) Subsections (1) and (2) do not apply to a transport body when it is exercising a power or performing a function for or in relation to—

- (a) the grant, issue or giving of a transport authorisation; or
- (b) the renewal of a transport authorisation; or
- (c) the amendment or variation of, or change to, a transport authorisation or any conditions to which a transport authorisation is subject; or
- (d) the suspension of a transport authorisation; or
- (e) the cancellation of a transport authorisation; or
- (f) the revocation of a transport authorisation or any condition to which a transport authorisation is subject."

(2) After section 24(5) of the **Transport Integration Act 2010** insert—

"(6) In this section—

transport authorisation means a licence, an accreditation, a permit, a permission, an exemption or a registration under transport legislation."

71 Constitution of Taxi Services Commission

In section 115H(2) of the **Transport Integration Act 2010**, for "2" substitute "3".

Division 2—Bus Safety Act 2009

72 Definitions

In section 3(1) of the **Bus Safety Act 2009**, in the definition of *bus*, in paragraph (d) omit "subject to section 23,".

73 Repeal of section 23

Section 23 of the **Bus Safety Act 2009** is repealed.

Division 3—Road Safety Act 1986

74 Power to inspect motor vehicles and trailers

(1) In section 13(6)(b) of the **Road Safety Act 1986**, for "section." substitute "section; or".

(2) After section 13(6)(b) of the **Road Safety Act 1986** insert—

"(c) if the motor vehicle is, or the trailer is attached to a motor vehicle that is, a commercial passenger vehicle (within the meaning of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**), an employee of the Taxi Services Commission authorised in writing by the Commission for the purposes of this section."

Division 4—Taxation Administration Act 1997

75 Meaning of taxation laws

After section 4(1)(a) of the **Taxation Administration Act 1997** insert—

"(aba) Part 2 of the **Commercial Passenger Vehicle Industry Act 2017** and any regulations made under that Act for the purposes of that Part;"

76 Offset of refund against other liability

After section 20A(6) of the **Taxation Administration Act 1997** insert—

"(7) This section does not apply in respect of a liability arising under Part 2 of the **Commercial Passenger Vehicle Industry Act 2017**."

77 Permitted disclosures to particular persons or for particular purposes

After section 92(1)(e)(iib) of the **Taxation Administration Act 1997** insert—

"(iic) the Taxi Services Commission (established by section 115B of the **Transport Integration Act 2010**) for the purpose of administering Part 2 of the **Commercial Passenger Vehicle Industry Act 2017** and any regulations made under that Act for the purposes of that Part; or"

78 Criminal liability of officers of bodies corporate—failure to exercise due diligence

After section 130B(2)(a) of the **Taxation Administration Act 1997** insert—

"(ab) section 14(1) of the **Commercial Passenger Vehicle Industry Act 2017** is specified;"

79 Supreme Court—limitation of jurisdiction

After section 135(5) of the **Taxation Administration Act 1997** insert—

"(6) It is the intention of sections 5, 12(4), 18(1), 96(2) and 100(4), as they apply on and after the commencement of section 79 of the **Commercial Passenger Vehicle Industry Act 2017**, to alter or vary section 85 of the **Constitution Act 1975**."

Division 5—Repeal of this Part

80 Repeal of this Part

This Part is **repealed** on 30 June 2019.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 23 February 2017

Legislative Council: 9 March 2017

The long title for the Bill for this Act was "A Bill for an Act to impose a levy on the provision of commercial passenger vehicle services, to amend the **Transport (Compliance and Miscellaneous) Act 1983**, the **Transport Integration Act 2010**, the **Bus Safety Act 2009**, the **Road Safety Act 1986** and the **Taxation Administration Act 1997** and for other purposes."

The **Commercial Passenger Vehicle Industry Act 2017** was assented to on 22 August 2017 and came into operation as follows:

Sections 1–8, 53–74, 80 on 23 August 2017: section 2(1); Part 3 Division 1 (sections 21–34) on 9 October 2017: Special Gazette (No. 331) 3 October 2017 page 1; Part 3 Division 2 (sections 35–50) on 2 November 2017: Special Gazette (No. 351) 17 October 2017 page 1; sections 9–20, 51, 52, 75–79 not yet proclaimed.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms

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part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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2 Table of Amendments

This publication incorporates made to the **Commercial Passenger Vehicle Industry Act 2017** by Acts and subordinate instruments.

Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017, No. 63/2017

<i>Assent Date:</i>	19.12.17
<i>Commencement Date:</i>	S. 6(1) on 2.6.18: Special Gazette (No. 248) 29.5.18 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Commercial Passenger Vehicle Industry Act 2017

3 Amendments Not in Operation

This publication does not include amendments made to the **Commercial Passenger Vehicle Industry Act 2017** by the following Act/s.

Commercial Passenger Vehicle Industry Act 2017, No. 35/2017

<i>Assent Date:</i>	22.8.17
<i>Commencement Date:</i>	Ss 69, 80 on 23.8.17: s. 2(1)
<i>Note:</i>	S. 69 repeals Pt 3 (ss 21–69) on 30.6.19; s. 80 repeals Pt 4 (ss 70–80) on 30.6.19
<i>Current State:</i>	This information relates only to the provision/s amending the Commercial Passenger Vehicle Industry Act 2017

Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017, No. 63/2017

<i>Assent Date:</i>	19.12.17
<i>Commencement Date:</i>	Ss 4, 5, 6(2)–20 on 2.7.18: Special Gazette (No. 248) 29.5.18 p. 1
<i>Note:</i>	S. 20 inserts Sch. 3 cl. 56(6) which provides that Sch. 3 cl. 56 expires on 7.7.20
<i>Current State:</i>	This information relates only to the provision/s amending the Commercial Passenger Vehicle Industry Act 2017

At the date of this publication, the following provisions amending the **Commercial Passenger Vehicle Industry Act 2017** were Not in Operation:

Amending Act/s:

Commercial Passenger Vehicle Industry Act 2017, No. 35/2017

69 Repeal of this Part

This Part is **repealed** on 30 June 2019.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

80 Repeal of this Part

This Part is **repealed** on 30 June 2019.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017, No. 63/2017

4 Original Parts 3 and 4 repealed

Parts 3 and 4 of the Principal Act are **repealed**.

5 Purposes of Act substituted

For section 1 of the Principal Act **substitute**—

"1 Purposes

The main purposes of this Act are—

- (a) to provide for a new regulatory framework for the regulation of the commercial passenger vehicle industry in Victoria, including—
 - (i) new safety duties for commercial passenger vehicle industry participants; and
 - (ii) registration schemes for commercial passenger vehicles and booking service providers; and
 - (iii) an accreditation scheme for drivers of commercial passenger vehicles; and

- (iv) certain protections for—
 - (A) consumers of commercial passenger vehicle services; and
 - (B) drivers of commercial passenger vehicles; and
- (b) to impose a levy on the carrying out of commercial passenger vehicle service transactions—
 - (i) to recover the cost of transitional assistance provided to certain participants in the commercial passenger vehicle industry; and
 - (ii) to partly fund the regulation of the commercial passenger vehicle industry."

6 Commencement

- (2) **Insert** the following note at the foot of section 2 of the Principal Act—

"Note

This section reflects the commencement arrangements for the Act as originally enacted. Parts 3 and 4 were repealed by the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017** after they came into operation. Section 20, as enacted, was repealed and re-enacted by that Act as part of section 289."

7 Definitions

- (1) In section 3(1) of the Principal Act **insert** the following definitions—

"*accredited driver* means a person who holds a driver accreditation;

authorised officer means a person appointed under section 125;

booking service provider means a person who provides a booking service;

business day means a day other than—

- (a) a Saturday or Sunday; or
- (b) a day appointed under the **Public Holidays Act 1993** as a public holiday or public half-holiday throughout the whole of Victoria;

category 1 offence means an offence listed in Part 1 of Schedule 1;

category 2 offence means an offence listed in Part 2 of Schedule 1;

category 3 offence means an offence listed in Part 3 of Schedule 1;

certificate of accreditation means a certificate issued under section 78;

charitable passenger service means the carriage of one or more passengers on a journey to which each of the following applies—

- (a) the main purpose of the journey is to carry the passengers;
- (b) the journey is made for or on behalf of—
 - (i) a Council; or
 - (ii) a prescribed body, as part of its charitable or benevolent work or its work for the relief or welfare of members of the public;
- (c) the driver receives no remuneration for the journey, except as provided by paragraph (d);

(d) the consideration for the carriage is merely the payment by a passenger, or the Council or prescribed body, of all or part of the costs incurred in making the journey with neither the driver nor any other person making a profit from the carriage;

commercial passenger vehicle safety means safety associated with the provision of commercial passenger vehicle services;

company has the meaning given by section 9 of the Corporations Act;

compliance and investigative purposes means purposes related to ascertaining whether an industry law has been or is being complied with;

co-operative has the same meaning as in the Co-operatives National Law (Victoria);

costs incurred in making the journey includes—

- (a) fuel costs; and
- (b) maintenance costs; and
- (c) parking costs; and
- (d) insurance costs; and
- (e) vehicle depreciation;

Council has the meaning given by section 3(1) of the **Local Government Act 1989**;

Department means the Department of Economic Development, Jobs, Transport and Resources;

director has the meaning given by section 9 of the Corporations Act;

disciplinary action—see section 215;

disciplinary notice—see section 216(2);

disqualifying offence means a category 1 offence, a category 2 offence or a category 3 offence;

drive, in relation to a motor vehicle, includes being in control of the vehicle;

driver accreditation means an accreditation under Part 5;

driver agreement means an agreement made between the owner of a commercial passenger vehicle and another person (the *driver*) under which the driver is permitted to have possession of the commercial passenger vehicle for the purpose of driving it but does not include an agreement for the purchase of the vehicle or a contract of employment or of service;

FOI exempt document means a document that—

- (a) is given to the regulator by an agency (as defined in the **Freedom of Information Act 1982**) or a Minister; and
- (b) is an exempt document under the **Freedom of Information Act 1982** in the hands of the agency or Minister;

exclusion order means an order of a court under section 209;

highway has the meaning given by section 3(1) of the **Road Safety Act 1986**;

hiring, in relation to a commercial passenger vehicle, includes hiring the vehicle through the use of a booking service;

improvement notice means a notice served under section 171;

incorporated association has the meaning given by section 3 of the **Associations Incorporation Reform Act 2012**;

industry law means—

- (a) this Act; or
- (b) the regulations; or
- (c) section 81, 82, 83 or 83A of the **Crimes Act 1958** but only in respect of conduct that constitutes or could constitute a contravention of any of those sections that arises out of—
 - (i) arranging, procuring or providing a commercial passenger vehicle service; or
 - (ii) processing or failing to process a payment for a commercial passenger vehicle service; or
 - (iii) making or failing to make a payment under a driver agreement; or
 - (iv) imposing a non-cash payment surcharge; or
- (d) section 324 of the **Crimes Act 1958** to the extent that it relates to—
 - (i) an offence against this Act or the regulations; or
 - (ii) an offence against a provision referred to in paragraph (c) constituted by conduct referred to in that paragraph; or
- (e) the rules made under section 95D of the **Road Safety Act 1986** as applying in relation to commercial passenger vehicle services; or

- (f) regulations made under the **Road Safety Act 1986** for the purposes of item 34 of Schedule 2 to that Act as those regulations apply in relation to commercial passenger vehicle services;

industry premises—see section 3B;

information has the meaning given by section 3(1) of the **Electronic Transactions (Victoria) Act 2000**;

legal practitioner means an Australian legal practitioner;

manager, in relation to an applicant for registration under Part 4 or a registered booking service provider, means a person who is concerned, or takes part, in the management of the activities to which the application or the registration relates, whether as an employee of the applicant or provider or otherwise;

monitoring, compliance and enforcement policy means the policy referred to in section 275;

non-cash payment processing device means a device—

- (a) used, or intended to be used, to process a non-cash payment transaction; or
- (b) that enables a non-cash payment transaction to be processed;

Examples

EFTPOS machine, smartphone, computer tablet.

non-cash payment processing service means a service that facilitates the processing of a non-cash payment transaction but does not include a service relating to a fee or charge imposed in respect of the use of a credit card, charge card or debit card levied—

- (a) by a participant in a designated payment system within the meaning of the Payment Systems (Regulation) Act 1998 of the Commonwealth and is of a kind covered by a standard in force under section 18 of that Act; or
- (b) by a person who acts consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia;

non-cash payment surcharge—see section 112;

non-cash payment transaction means the payment, other than by cash, of any amount due in respect of the hiring of a commercial passenger vehicle;

officer, in relation to a body corporate other than a company, co-operative or incorporated association, means a member of the committee of management of the body corporate;

officer, in relation to a company, means—

- (a) a director or secretary of the company; or
- (b) a person—
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the company; or
 - (ii) who has the capacity to affect significantly the company's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the company are accustomed to act (excluding

advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors of the company);

officer, in relation to a co-operative, means—

- (a) a director or secretary of the co-operative; or
- (b) a person who is concerned, or takes part, in the management of the co-operative, whether or not as a director;

officer, in relation to an incorporated association, means—

- (a) the secretary (as defined by section 3 of the **Associations Incorporation Reform Act 2012**) of the incorporated association; or
- (b) a member of the committee (as defined by section 3 of the **Associations Incorporation Reform Act 2012**) of the incorporated association; or
- (c) a person who is concerned, or takes part, in the management of the incorporated association;

owner of a commercial passenger vehicle—

- (a) includes—
 - (i) a joint owner of the vehicle; and
 - (ii) any person who has the use of the vehicle under a hiring or hire-purchase agreement; and

- (iii) any person in whose name the vehicle is registered under the **Road Safety Act 1986** or a corresponding law of another State or a Territory; but
- (b) does not include an unpaid vendor of the vehicle under a hire-purchase agreement;

permission means—

- (a) a commercial passenger vehicle registration under Part 3; or
- (b) a booking service provider registration under Part 4; or
- (c) a driver accreditation;

permission holder means—

- (a) a person in whose name a motor vehicle is registered under Part 3; or
- (b) a registered booking service provider; or
- (c) an accredited driver;

person includes a body corporate, an unincorporated body or association and a partnership;

prescribed amount of a non-cash payment surcharge is—

- (a) the maximum amount of the surcharge as determined by the ESC under Division 3 of Part 6; or
- (b) until the first such determination, 5% of the amount that would be payable in respect of the hiring to which the surcharge relates if that amount were paid in cash;

prohibition notice means a notice served under section 180;

provider, of an unbooked commercial passenger vehicle service, means—

- (a) the owner of the commercial passenger vehicle used in the provision of the service (***relevant vehicle***) if the driver of the relevant vehicle is an employee of the owner; or
- (b) in any other case, the driver of the relevant vehicle;

prescribed amount of a non-cash payment surcharge is—

- (a) the maximum amount of the surcharge as determined by the ESC under Division 3 of Part 6; or
- (b) until the first such determination, 5% of the amount that would be payable in respect of the hiring to which the surcharge relates if that amount were paid in cash;

public care objective—see section 69;

register of permission holders means the register kept by the regulator under section 227;

registered booking service provider means a person registered under Part 4;

regulator means the Commercial Passenger Vehicle Commission established by section 115B of the **Transport Integration Act 2010**;

relevant person, in relation to an applicant for registration under Part 4 or a registered booking service provider, means—

- (a) if the applicant or provider is an individual, each manager of the applicant or provider; or
- (b) if the applicant or provider is a partnership, each partner and each manager of the applicant or provider; or
- (c) if the applicant or provider is an unincorporated body or association other than a partnership, each member of the committee of management, and each manager, of the body or association; or
- (d) if the applicant or provider is a company, a co-operative or an incorporated association, each officer and each manager of the company, co-operative or incorporated association; or
- (e) if the applicant or provider is a body corporate other than a company, co-operative or incorporated association, each officer and each manager of the body corporate;

responsible person, in relation to an applicant for registration under Part 4 or a registered booking service provider, means—

- (a) if the applicant or provider is an individual, the applicant or provider; or
- (b) in any other case, a relevant person nominated by the applicant or provider as the responsible person;

retention period, in relation to a thing seized under Part 7, means a period of 90 days after the seizure of the thing;

Roads Corporation has the meaning given by section 3 of the **Transport Integration Act 2010**;

Secretary means the Secretary to the Department;

supervisory intervention order means an order of a court under section 207;

traffic infringement has the meaning given by section 3(1) of the **Road Safety Act 1986**;

vehicle pooling service means the carriage of one or more passengers on a journey to which each of the following applies—

- (a) the carriage of the passengers is incidental to the main purpose of the journey;
- (b) the carriage is not the result of touting for passengers by the driver or any other person on any highway;
- (c) no more than 7 passengers are being carried;
- (d) the consideration for the carriage is merely—
 - (i) an undertaking by a passenger to carry the driver, or a family member of the driver, on a similar journey on the same basis; or
 - (ii) the payment by a passenger of a share of the costs incurred in making the journey with neither the driver nor any other person making a profit from the carriage."

- (2) In section 3(1) of the Principal Act—
- (a) for the definition of *commercial passenger vehicle substitute*—
"*commercial passenger vehicle* means a motor vehicle registered under Part 3;";
 - (b) for the definition of *commercial passenger vehicle service substitute*—
"*commercial passenger vehicle service*—see section 3A;";
 - (c) in the definition of *motor vehicle*, after "vehicle" (where last occurring) **insert** "but does not include a bus used to provide a bus service";
 - (d) the definition of *TSC* is **repealed**;
 - (e) in the definition of *unbooked commercial passenger vehicle service*, for "service." **substitute** "service;".
- (3) Section 3(2) of the **Commercial Passenger Vehicle Industry Act 2017** is **repealed**.
- (4) In section 5(2)(c) of the **Commercial Passenger Vehicle Industry Act 2017**, for "reward or hiring fee" **substitute** "fare or other consideration".

8 New sections 3A and 3B inserted

After section 3 of the **Commercial Passenger Vehicle Industry Act 2017** insert—

"3A Meaning of *commercial passenger vehicle service*

- (1) A *commercial passenger vehicle service* is the carriage, for a fare or other consideration, of one or more passengers in a motor vehicle on a journey that begins in Victoria and ends at one or more destinations (whether in or outside Victoria).

- (2) Each of the following activities is also a *commercial passenger vehicle service*—
- (a) doing either of the following things while being available to provide the service referred to in subsection (1)—
 - (i) driving a motor vehicle;
 - (ii) being in charge of a motor vehicle;
 - (b) driving a motor vehicle to collect a passenger referred to in subsection (1).
- (3) None of the following things is a *commercial passenger vehicle service*—
- (a) a charitable passenger service;
 - (b) a vehicle pooling service;
 - (c) driving a motor vehicle while being available to provide a charitable passenger service or a vehicle pooling service;
 - (d) driving a motor vehicle to collect a passenger for a charitable passenger service or a vehicle pooling service;
 - (e) the driving of a vehicle operated by or on behalf of and under the control of—
 - (i) an ambulance service created under section 23 of the **Ambulance Services Act 1986** or listed in Schedule 1 to that Act; or
 - (ii) an ambulance service created under a law in force in another State or in a Territory of the Commonwealth;

- (f) the driving of a motor vehicle for the purposes of a non-emergency patient transport service (within the meaning of the **Non-Emergency Patient Transport Act 2003**).

3B Meaning of *industry premises*

- (1) ***Industry premises*** are a building or facility used in connection with the provision of—
- (a) a commercial passenger vehicle service; or
 - (b) a booking service; or
 - (c) a non-cash payment processing service.
- (2) Residential premises are not ***industry premises***."

9 New sections 5A to 5C inserted

After section 5 of the Principal Act **insert**—

"5A References in this Act to persons charged with an offence

In this Act, a reference to a person who has been charged with an offence is a reference to a person—

- (a) against whom an indictment has been filed for the offence; or
- (b) against whom a charge-sheet charging the offence has been filed, whether or not either of the following has been issued or served—
 - (i) a summons to answer to the charge; or
 - (ii) a warrant to arrest the person.

5B References in this Act to charges not finally disposed of

In this Act, a reference to a charge that has not been finally disposed of is a reference to a charge that has not been finally dealt with by—

- (a) being withdrawn or by the discontinuance of the prosecution; or
- (b) being dismissed by a court; or
- (c) the person charged being discharged by a court following a committal proceeding; or
- (d) the person charged being acquitted or found guilty of the offence that was the subject of the charge by a court; or
- (e) any other prescribed means.

5C Objectives

The objectives of this Act are to promote—

- (a) competition in the market for commercial passenger vehicle services; and
- (b) commercial passenger vehicle safety; and
- (c) the effective management of safety risks arising out of the provision of commercial passenger vehicle services; and
- (d) continuous improvement in the management of commercial passenger vehicle safety; and
- (e) public confidence in the safety of commercial passenger vehicle services; and

- (f) the involvement of relevant stakeholders in commercial passenger vehicle safety; and
- (g) a safety culture among persons who participate in the provision of commercial passenger vehicle services; and
- (h) protections for users of commercial passenger vehicle services; and
- (i) transparency in transactions for the provision of commercial passenger vehicle services."

10 New sections 6A and 6B inserted

After section 6 of the Principal Act **insert**—

"6A Transport Integration Act 2010

This Act is transport legislation within the meaning of the **Transport Integration Act 2010**.

6B Interaction with the Occupational Health and Safety Act 2004

- (1) If an OHS provision applies to an activity in respect of which a duty is imposed under Division 3 of Part 2, the OHS provision continues to apply and must be observed in addition to that Division and any regulations made under this Act for the purposes of that Division.

Note

See also section 51 of the **Interpretation of Legislation Act 1984**.

- (2) If a provision of this Act or the regulations made under this Act is inconsistent with an OHS provision, the OHS provision prevails to the extent of the inconsistency.

- (3) Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against an OHS provision.
- (4) Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against an OHS provision.
- (5) In this section—

OHS provision means a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act."

11 Persons liable for levy must be registered

- (1) For the penalty at the foot of section 14(1) of the Principal Act **substitute**—

"Penalty: In the case of an individual, 100 penalty units;
In the case of a body corporate,
500 penalty units."
- (2) For section 14(5) of the Principal Act and the note at the foot of that subsection **substitute**—

"(5) To avoid doubt, for the purposes of section 215, subsection (1) imposes a requirement on a permission holder who is liable to pay a levy to be registered under this Part.

Note

Under section 215 the regulator may suspend or cancel the permission of a permission holder who contravenes a requirement applying to the permission holder under this Part."

12 New section 15A inserted

After section 15 of the Principal Act **insert**—

"15A Additional information to be provided to the Commissioner

- (1) A person to whom section 15(1) applies must give to the Commissioner information on the number of times commercial passenger vehicle services were provided during a return period in a geographic area or areas determined by the Commissioner.
- (2) The person must give the information to the Commissioner—
 - (a) in a manner and form determined by the Commissioner; and
 - (2) at the same time as the person lodges a return for that return period under section 15(1)."

13 Section 20 repealed

Section 20 of the Principal Act is **repealed**.

14 Renumbering of certain sections of Part 1 of Principal Act

The sections of the Principal Act set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

Table

<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
3A	4
3B	5
4	6
5	7

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5A	8
5B	9
5C	10
6	11
6A	12
6B	13
7	14
8	15

15 Renumbering of certain sections of original Part 2 of Principal Act

The sections of the Principal Act set out in column 1 of the Table to this section are renumbered as set out opposite those sections in column 2 of the Table.

Table

<i>Column 1</i>	<i>Column 2</i>
<i>Section number</i>	<i>Renumbered section number</i>
9	235
10	236
11	237
12	238
13	239
14	240
15	241
15A	242
16	243
17	244
18	245
19	246

16 Renumbering of original Part 2 as Part 11

- (1) In section 6 of the Principal Act, for "2" **substitute** "11".
- (2) In the Note at the foot of section 6 of the Principal Act, for "2" (where twice occurring) **substitute** "11".
- (3) In the heading to Part 2 of the Principal Act, for "2" **substitute** "11".

17 Consequential renumbering

- (1) In section 3 of the Principal Act **omit** "(1)" appearing before "In".
- (2) In section 3 of the Principal Act—
 - (a) in the definition of *affiliated service*, for "5(1)(a) or (b)" **substitute** "7(1)(a) or (b)";
 - (b) in the definition of *affiliation agreement*, for "4" **substitute** "6";
 - (c) in the definition of *booking service*, for "5" **substitute** "7";
 - (d) in the definition of *commercial passenger vehicle service*, for "3A" **substitute** "4";
 - (e) in the definition of *industry premises*, for "3B" **substitute** "5";
 - (f) in the definition of *levy*, for "9" **substitute** "235";
 - (g) in the definition of *registered levy payer*, for "14(4)" **substitute** "240(4)";
 - (h) in the definition of *return period*, for "13" **substitute** "239".
- (3) In sections 4(a) and 18 of the Principal Act, for "15(1) or 17(1)" **substitute** "241(1) or 244(1)".

18 New Parts 2 to 10 inserted

After Part 1 of the Principal Act insert—

**"Part 2—Safety principles
and duties**

**Division 1—Principles of commercial
passenger vehicle safety**

16 Principle of shared responsibility

- (1) Commercial passenger vehicle safety is the shared responsibility of—
- (a) owners of motor vehicles used to provide commercial passenger vehicle services; and
 - (b) drivers of motor vehicles used to provide commercial passenger vehicle services; and
 - (c) booking service providers; and
 - (d) persons who have control over the provision of commercial passenger vehicle services; and
 - (e) suppliers of services and equipment to the commercial passenger vehicle industry; and
 - (f) the regulator; and
 - (g) members of the public.
- (2) The level and nature of responsibility that a person referred to in subsection (1), or a person within a class of persons referred to in subsection (1), has for commercial passenger vehicle safety is dependent on—

- (a) the nature of the risk to commercial passenger vehicle safety that the person creates from the carrying out of an activity or the making of a decision; and
- (b) the capacity that that person has to control, eliminate or mitigate that risk or any other risk to commercial passenger vehicle safety.

17 Principle of accountability for managing safety risks

Managing risks associated with the provision of commercial passenger vehicle services is the responsibility of the person best able to control the risk.

18 Principle of enforcement

Enforcement of this Act and the regulations should be undertaken for the purpose of—

- (a) protecting public safety; and
- (b) promoting improvement in commercial passenger vehicle safety; and
- (c) removing any incentive for unfair commercial advantage that might be derived from contravening the safety requirements under this Act or the regulations; and
- (d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on commercial passenger vehicle safety.

19 Principle of timeliness and transparency

Regulatory decision-making processes for the commercial passenger vehicle industry should be timely and transparent.

20 Principle of participation, consultation and involvement of all affected persons

The persons and classes of persons referred to in section 16(1) should—

- (a) participate in or be able to participate in; and
- (b) be consulted on; and
- (c) be involved in—

the formulation and implementation of measures to manage risks to commercial passenger vehicle safety.

21 Effect of principles under this Division

The Parliament does not intend by this Division to create in any person any legal right or give rise to any civil cause of action.

Division 2—The concept of ensuring safety

22 The concept of ensuring safety

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety, requires the person to—
 - (a) eliminate risks to safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of this Part or regulations made for the purposes of this Part regard must be had to the following matters in determining what is (or was at a

particular time) reasonably practicable in relation to ensuring safety—

- (a) the likelihood of the hazard or risk concerned eventuating;
- (b) the degree of harm that would result if the hazard or risk eventuated;
- (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
- (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
- (e) the cost of eliminating or reducing the hazard or risk.

Division 3—Safety duties

23 Duties of owners of motor vehicles used to provide commercial passenger vehicle services

- (1) An owner of a motor vehicle who knows, or ought reasonably to know, that the vehicle is being used, or is to be used, to provide commercial passenger vehicle services must, so far as is reasonably practicable, ensure those services are provided safely.

Penalty: In the case of an individual,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (2) Without limiting subsection (1), an owner contravenes that subsection if the owner fails to do any of the following—
- (a) maintain the vehicle in a fit, serviceable and safe condition;
 - (b) provide or maintain any equipment or systems used in the vehicle in accordance with the regulations;
 - (c) provide sufficient information or instruction to the driver of the vehicle who is using it to provide commercial passenger vehicle services to enable that driver to provide those services safely.
- (3) An offence against subsection (1) is an indictable offence.

24 Duties of booking service providers

- (1) A booking service provider must, so far as is reasonably practicable, ensure commercial passenger vehicle services provided by an associated driver are provided safely.

Penalty: In the case of an individual,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (2) Without limiting subsection (1), a booking service provider contravenes that subsection if the booking service provider fails to do any of the following—

- (a) identify and manage risks to safety associated with commercial passenger vehicle services provided by an associated driver;
- (b) acquire and maintain a database of the hazards or risks relating to the provision of commercial passenger vehicle services by associated drivers and the measures taken to eliminate or reduce the hazards or risks;
- (c) provide information, instruction, training or supervision to associated drivers to enable those drivers to provide commercial passenger vehicle services safely, including implementing systems or processes for—
 - (i) the management of driver fatigue; and
 - (ii) drug and alcohol testing of drivers; and
 - (iii) the maintenance of commercial passenger vehicles; and
 - (iv) emergency management; and
 - (v) driver behaviour, competency and medical fitness.
- (3) An offence against subsection (1) is an indictable offence.
- (4) In this section—

associated driver, in relation to a booking service provider, means a driver of a motor vehicle who provides commercial passenger vehicle services through booking services provided by the provider.

25 Duties of persons who have control over the provision of commercial passenger vehicle services

- (1) A person who has control over the provision of commercial passenger vehicle services, must, so far as is reasonably practicable, ensure those services are provided safely.

Penalty: In the case of an individual,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (2) An offence against subsection (1) is an indictable offence.
- (3) For the purposes of this section—
- (a) a reference to a person who has control over the provision of commercial passenger vehicle services includes a person who would have control if not for any agreement purporting to limit or remove that control; and
 - (b) a passenger of a motor vehicle who is being provided commercial passenger vehicle services does not have control over the provision of those services.

26 Duties of suppliers of services or equipment

- (1) A person who supplies, installs, maintains, repairs or modifies any thing and knows, or ought reasonably to know, that the thing is used, or is to be used, in the provision of commercial passenger vehicle services must—
- (a) ensure, so far as is reasonably practicable, that the thing is safe when used for a purpose for which it was supplied, installed, maintained, repaired or modified; and
 - (b) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section; and
 - (c) in the case of a thing to which paragraph (a) applies, take such action as is necessary to ensure that there will be available in connection with the use of the thing adequate information about—
 - (i) the use for which the thing was supplied, installed, maintained, repaired or modified; and
 - (ii) the results of any testing or examination referred to in paragraph (b); and

- (iii) any conditions necessary to ensure the thing is safe when used for a purpose for which it was supplied, installed, maintained, repaired or modified.

Penalty: In the case of an individual,
1800 penalty units;

In the case of a body corporate,
9000 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (2) An offence against subsection (1) is an indictable offence.
- (3) For the purposes of subsection (1), if the person who supplies the thing—
 - (a) carries on the business of financing the acquisition of the thing by customers; and
 - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
 - (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer—

the reference in that subsection to the person who supplies that thing is instead taken to be a reference to the third person.

(4) This section does not apply to a person who designs, commissions, constructs or manufactures a motor vehicle.

(5) In this section—
supplies includes designs, commissions, constructs or manufactures.

27 Duties of drivers providing commercial passenger vehicle services

(1) A driver of a motor vehicle who provides or will be providing commercial passenger vehicle services by means of the vehicle must—

- (a) take reasonable care for the driver's own health and safety; and
- (b) take reasonable care for the health and safety of persons who may be affected by the driver's acts or omissions; and
- (c) co-operate with a booking service provider with respect to any action taken by the booking service provider to comply with a requirement imposed by or under this Act or the regulations.

Penalty: 1800 penalty units.

(2) An offence against subsection (1) is an indictable offence.

Division 4—Codes of practice

28 Codes of practice

(1) For the purposes of providing practical guidance to persons who may be placed under a duty by or under Division 3, the Minister may, subject to section 32, approve one or more codes of practice.

- (2) A code of practice—
- (a) may consist of any code, standard, rule, specification or provision relating to any aspect of commercial passenger vehicle service safety; and
 - (b) may apply, incorporate or adopt any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.
- (3) The approval of a code of practice takes effect on the day on which notice of the approval is published in the Government Gazette, or any later day specified in the notice.

Note

A code of practice approved under this section is disallowable by either House of Parliament (see section 35).

29 Revisions to approved codes of practice

- (1) Subject to section 32, the Minister may—
- (a) approve any revision of the whole, or any part, of an approved code of practice; or
 - (b) revoke the approval of a code of practice.
- (2) The approval of a revision to an approved code of practice takes effect on the day on which notice of the approval of the revision is published in the Government Gazette, or on any later day specified in the notice.

30 Revocation of approvals of codes of practice

The approval of a code of practice ceases to have effect at the end of the day on which notice of the revocation of the approval is published in the Government Gazette, or on any later day specified in the notice.

31 Availability of approved codes of practice

- (1) The Minister must give to the regulator—
 - (a) a current copy of every approved code of practice; and
 - (b) a copy of every document applied, incorporated or adopted by an approved code of practice (in the form in which that document has effect in the approved code of practice).
- (2) On receiving the documents under subsection (1), the regulator must—
 - (a) make them available for inspection by members of the public without charge at the regulator's office during normal office hours; and
 - (b) publish them on the regulator's internet site.

32 Minister must consult before approving code of practice or revision to code of practice

Before the Minister approves a code of practice or any revision of the whole, or any part, of an approved code of practice under section 28 or 29, the Minister must consult with persons or bodies that the Minister considers may be affected by the code of practice, or revision of an approved code of practice, to be approved.

33 Effect of approved code of practice

A person is not civilly or criminally liable by reason only that the person has failed to observe any provision of an approved code of practice.

Note

A person who complies with an approved code of practice may however be taken to have complied with this Act (see section 34).

34 Effect of compliance with regulations or approved codes of practice

- (1) This section applies if—
 - (a) the regulations or an approved code of practice make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
 - (b) a person complies with the regulations or the approved code of practice to the extent that it makes that provision.
- (2) The person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

35 Tabling and disallowance of approved codes of practice

- (1) On or before the 6th sitting day after an approved code of practice is published in the Government Gazette, the Minister must ensure that a copy of that code is laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the code of practice but the Scrutiny of Acts and Regulations Committee of the Parliament

- may report the failure to each House of the Parliament.
- (3) A code of practice may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies to a code of practice as if—
- (a) a reference in that Part to statutory rule were a reference to a code of practice; and
 - (b) a reference in section 23(1)(c) of that Act to section 15(1) were a reference to subsection (1).
- (5) A reference to a code of practice in this section includes a reference to any amendment to, or revision of the whole or any part of, a code of practice.

Part 3—Registration of commercial passenger vehicles

Division 1—Preliminary

36 Purpose of registration

The purpose of registering motor vehicles as commercial passenger vehicles is to provide a method of establishing the identity of those vehicles and of who is using them to provide commercial passenger vehicle services.

Division 2—Commercial passenger vehicle registration offences

37 Offence to drive unregistered vehicle for commercial passenger vehicle service

- (1) A person must not drive a motor vehicle for the purpose of providing a commercial passenger vehicle service if the vehicle is not registered under this Part.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the person driving the motor vehicle is an employee of the owner of the vehicle.

Note

Section 38 provides that in those circumstances it is the owner who commits the offence.

38 Offence to drive unregistered vehicle for commercial passenger vehicle service as employee

- (1) The owner of a motor vehicle commits an offence if—
- (a) a person drives the motor vehicle for the purpose of providing a commercial passenger vehicle service; and
 - (b) that person is an employee of the owner; and
 - (c) the vehicle is not registered under this Part.
- (2) A person who commits an offence against subsection (1) is liable to a penalty not exceeding 60 penalty units for an individual or 300 penalty units for a body corporate.

39 Offence to provide booking service involving unregistered vehicle

- (1) A person who provides a booking service commits an offence if—
 - (a) a commercial passenger vehicle service is provided as a result of the provision of the booking service; and
 - (b) the motor vehicle used for the purpose of providing the commercial passenger vehicle service is not registered under this Part.
- (2) A person who commits an offence against subsection (1) is liable to a penalty not exceeding 60 penalty units for an individual or 300 penalty units for a body corporate.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this section.

Division 3—Commercial passenger vehicle registration

40 Application for registration

- (1) The owner of a motor vehicle or a person who has the owner's permission may apply to the regulator for the registration of the vehicle under this Part.
- (2) An application under subsection (1) must—
 - (a) be made in the manner and form approved by the regulator; and
 - (b) be accompanied by—
 - (i) any information or thing required by the regulator; and

(ii) the fee (if any) for the application determined by the regulator under section 282.

(3) If the applicant is not the owner of the motor vehicle, an application under subsection (1) must also include the name of the owner of the vehicle.

41 Regulator may require further things or information

(1) The regulator may require any one or more of the following in relation to an application under section 40—

(a) the applicant do a thing specified by the regulator that the regulator reasonably requires in order to assess the application;

(b) verification, by a statutory declaration, of any statement made or information given for the purposes of the application;

(c) the applicant give further information for the purposes of the application.

(2) Any further information given by the applicant under subsection (1)(c) must be—

(a) if the regulations so provide, signed in accordance with the regulations; and

(b) declared by each signatory to be true and correct.

42 Decision on application for registration

The regulator must register a motor vehicle under this Part if the regulator is satisfied that all requirements in relation to the application and applicant under this Part have been complied with.

43 Conditions on registration

- (1) In registering a motor vehicle under this Part, the regulator may impose any conditions on the registration that the regulator considers appropriate.
- (2) If the regulator decides to impose conditions on the registration, the regulator must give the person in whose name the vehicle is registered under this Part written notice of the decision.
- (3) A notice under subsection (2) must inform the person that they have a right to seek review of the decision under Part 12.
- (4) A registration is also subject to any prescribed condition.

44 Registration as a commercial passenger vehicle lasts until cancelled or surrendered

Registration as a commercial passenger vehicle remains in effect until it is cancelled or surrendered.

45 Annual registration fees

- (1) A person in whose name a motor vehicle is registered under this Part must pay to the regulator the appropriate annual registration fee by the date specified by written notice given to the person by the regulator.

Note

For the annual registration fee, see section 282.

- (2) The date specified in a notice under subsection (1) must not be less than 10 business days after the date the notice is given to the person.

- (3) The regulator may suspend or cancel the registration of a motor vehicle under this Part if the person in whose name the motor vehicle is registered fails to pay a registration fee by the date specified by the regulator.

46 Regulator may vary or revoke conditions or impose new conditions

- (1) The regulator may at any time (on the regulator's own initiative or on the written application of the person in whose name a motor vehicle is registered under this Part)—
- (a) vary or revoke a condition imposed by the regulator on a registration; or
 - (b) impose a new condition on a registration.
- (2) Before taking action under subsection (1), the regulator must—
- (a) give the person written notice of the action that the regulator proposes to take and of the reasons for taking it; and
 - (b) allow the person to make written representations about the proposed action within 10 business days after being notified of it (or any other period that the regulator and the person agree).
- (3) Subsection (2) does not apply if the regulator considers it necessary to take immediate action in the interests of public safety.
- (4) The regulator must give the person written notice of the action taken under subsection (1) as soon as practicable after taking the action.

- (5) A notice under subsection (4) must—
- (a) include a statement of reasons for the action taken; and
 - (b) inform the person that they have a right to seek review of the regulator's decision to take the action under Part 12.

47 Offence to fail to comply with conditions of registration

A person in whose name a motor vehicle is registered under this Part must comply with—

- (a) any condition imposed on the registration of that vehicle; and
- (b) any prescribed condition to which that registration is subject.

Penalty: In the case of an individual,
120 penalty units;

In the case of a body corporate,
600 penalty units.

48 Cancellation of registration

- (1) The regulator, by written notice given to the person in whose name a motor vehicle is registered under this Part, may cancel the registration of that vehicle—
- (a) if the regulator believes, on reasonable grounds, that the vehicle is no longer being used to provide commercial passenger vehicle services; or
 - (b) for any prescribed reason.
- (2) A notice under subsection (1) must—
- (a) include a statement of reasons for the cancellation; and

- (b) inform the person that they have a right to seek review of the regulator's decision under Part 12.
- (3) A cancellation of registration has effect from the date specified for the purpose by the regulator in the notice of cancellation.

Note

Registration of a motor vehicle may also be cancelled under Part 9.

49 Surrender of registration

- (1) The person in whose name a commercial passenger vehicle is registered under this Part may apply in writing to the regulator for consent to surrender the registration of that vehicle.
- (2) Subject to subsection (3), on receiving an application under subsection (1), the regulator must consent to the surrender.
- (3) The regulator may impose any condition on the grant of the consent that the regulator considers necessary to protect the interests of a third party.
- (4) A person commits an offence if—
 - (a) the regulator imposes a condition on a consent to surrender the registration of a commercial passenger vehicle; and
 - (b) the condition applies to the person; and
 - (c) the person does not comply with the condition.
- (5) A person who commits an offence against subsection (3) is liable to a penalty not exceeding 20 penalty units.

Division 4—Miscellaneous

50 False representation in relation to registration

A person must not falsely represent that a motor vehicle is registered under this Part.

Penalty: In the case of an individual,
30 penalty units;

In the case of a body corporate,
150 penalty units.

51 Indication that a vehicle is a commercial passenger vehicle

- (1) A person commits an offence if the person drives a commercial passenger vehicle for the purpose of providing a commercial passenger vehicle service and—
 - (a) there is not prominently displayed on the vehicle, and clearly visible to persons approaching it, any thing that the regulations require to be so displayed to visually indicate that the vehicle is being used to provide a commercial passenger vehicle service;
or
 - (b) a thing that the regulations require to be installed and operating in or on the vehicle to indicate that the vehicle is being used to provide a commercial passenger vehicle service is not installed and operating in accordance with the regulations.
- (2) A person who commits an offence against subsection (1) is liable to a penalty not exceeding 60 penalty units.

Part 4—Registration of booking service providers

Division 1—Preliminary

52 Purpose of registration

The purpose of registration under this Part is to—

- (a) provide a method of establishing the identity of—
 - (i) the providers of booking services; and
 - (ii) the persons responsible for managing activities relating to the provision by those providers of those services; and
- (b) enable booking service providers to be regulated for reasons of public safety; and
- (c) ensure that booking service providers meet prescribed safety standards.

Division 2—Booking service offences

53 Offence if provider of booking service is not registered

A person must not provide a booking service unless the person—

- (a) is registered under this Part to provide that service; or

(b) is exempted under the regulations from the requirement to be registered under this Part to provide that service.

Penalty: In the case of an individual,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this section.

54 Offence to advertise booking services unless registered

A person must not advertise or in any way hold themselves out as able or willing to provide a booking service unless the person—

(a) is registered under this Part to provide that service; or

(b) is exempted under the regulations from the requirement to be registered under this Part to provide that service.

Penalty: In the case of an individual,
240 penalty units;

In the case of a body corporate,
1200 penalty units.

55 Offence to accept request from unregistered booking service provider

(1) A person commits an offence if—

(a) the person accepts a request from a booking service provider for a person to be provided with a commercial passenger vehicle service; and

- (b) the person knows, or ought reasonably to know, that the provider—
 - (i) is not registered under this Part;
and
 - (ii) is not exempted under the regulations from the requirement to be registered under this Part.
- (2) A person who commits an offence against subsection (1) is liable to—
 - (a) for a person who is a booking service provider, a penalty not exceeding 240 penalty units for an individual or 1200 penalty units for a body corporate;
and
 - (b) for a person who is an accredited driver, a penalty not exceeding 60 penalty units; and
 - (c) in any other case, a penalty not exceeding 50 penalty units.

56 False representation in relation to registration

A person must not falsely represent that the person—

- (a) is registered under this Part; or
- (b) is exempted under the regulations from the requirement to be registered under this Part.

Penalty: In the case of an individual,
30 penalty units;
In the case of a body corporate,
150 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this section.

Division 3—Booking service provider registration

57 Application for registration

- (1) A person may apply to the regulator for registration under this Part as a booking service provider.
- (2) An application must—
 - (a) be made in the manner and form determined by the regulator; and
 - (b) be accompanied by—
 - (i) the fee (if any) for the application determined by the regulator under section 282; and
 - (ii) evidence, as required by the regulations, that each relevant person in relation to the applicant satisfies the requirements for registration; and
 - (iii) any other thing that is required by the regulations; and
 - (c) in the case of an application by a person that is not an individual, nominate a relevant person as the responsible person in relation to the applicant.
- (3) The regulator may require any one or more of the following in relation to an application—

- (a) the applicant do a thing specified by the regulator that the regulator reasonably requires in order to assess the application;
 - (b) verification, by a statutory declaration, of any statement made or information given for the purposes of the application;
 - (c) the applicant give further information for the purposes of the application.
- (4) Any further information given by the applicant under subsection (3)(c) must be—
- (a) if the regulations so provide, signed in accordance with the regulations; and
 - (b) declared by each signatory to be true and correct.
- (5) In the case of an application by a person that is not an individual, the regulator is entitled to communicate with the relevant person nominated by the applicant under subsection (2)(c).

58 Decision on application for registration

- (1) The regulator must register an applicant under this Part if satisfied that—
- (a) the applicant is a fit and proper person to be registered; and
 - (b) all requirements in relation to the application and applicant under this Part have been complied with.
- (2) The regulator must refuse to register an applicant under this Part if the regulator is not satisfied about the matters set out in subsection (1)(a) and (b).

59 Notification and reasons to be given if application refused

- (1) If the regulator decides to refuse to register an applicant, the regulator must give the applicant written notice of the decision as soon as practicable after making the decision.
- (2) A notice under subsection (2) must—
 - (a) include a statement of reasons for the decision; and
 - (b) inform the applicant that they have a right to seek review of the regulator's decision under Part 12.

60 Conditions on registration

- (1) In registering an applicant, the regulator may impose any conditions on the registration that the regulator considers appropriate.
- (2) If the regulator decides to impose conditions on the registration, the regulator must give the registered booking service provider written notice of the decision.
- (3) A notice under subsection (2) must inform the registered booking service provider that they have a right to seek review of the decision under Part 12.
- (4) A registration is also subject to any prescribed condition.

61 Registration lasts until cancelled or surrendered

A registration remains in effect until it is cancelled or surrendered.

62 Annual registration fees

- (1) A registered booking service provider must pay to the regulator the appropriate annual registration fee by the date specified by written notice given to the provider by the regulator.

Note

For the annual registration fee, see section 282.

- (2) The date specified in a notice under subsection (1) must not be less than 10 business days after the date the notice is given to the registered booking service provider.
- (3) The regulator may suspend or cancel the registration of a registered booking service provider if the provider fails to pay a registration fee by the date specified by the regulator.

63 Regulator may vary or revoke conditions or impose new conditions

- (1) The regulator may at any time (on the regulator's own initiative or on the written application of a registered booking service provider)—
 - (a) vary or revoke a condition imposed by the regulator on a registration; or
 - (b) impose a new condition on a registration.
- (2) Before taking action under subsection (1), the regulator must—
 - (a) give the registered booking service provider written notice of the action that the regulator proposes to take and of the reasons for taking it; and

- (b) allow the registered booking service provider to make written representations about the proposed action within 10 business days after being notified of it (or any other period that the regulator and the provider agree).
- (3) Subsection (2) does not apply if the regulator considers it necessary to take immediate action in the interests of public safety.
- (4) The regulator must give the registered booking service provider written notice of the action taken under subsection (1) as soon as practicable after taking the action.
- (5) A notice under subsection (4) must—
 - (a) include a statement of reasons for the action taken; and
 - (b) inform the registered booking service provider that they have a right to seek review of the regulator's decision to take the action under Part 12.

64 Offence to fail to comply with conditions of registration

A registered booking service provider must comply with—

- (a) any condition imposed on the registration; and
- (b) any prescribed condition to which that registration is subject.

Penalty: In the case of an individual,
120 penalty units;
In the case of a body corporate,
600 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this section.

65 Registered booking service provider must notify change to information

- (1) A registered booking service provider commits an offence if—
 - (a) a change occurs to information relating to that provider's registration that is prescribed; and
 - (b) the provider does not notify the regulator of the change in writing within 10 business days after becoming aware of it.
- (2) A person who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

66 Surrender of registration

- (1) A registered booking service provider may apply in writing to the regulator for consent to surrender the registration.
- (2) Subject to subsection (3), on receiving an application under subsection (1), the regulator must consent to the surrender.
- (3) The regulator may impose any condition on the grant of the consent that the regulator considers necessary to protect the interests of a third party.
- (4) A person commits an offence if—
 - (a) the regulator imposes a condition on a consent to surrender the registration of a booking service provider; and
 - (b) the condition applies to the person; and

- (c) the person does not comply with the condition.
- (5) A person who commits an offence against subsection (3) is liable to a penalty not exceeding 20 penalty units.

Division 4—Miscellaneous

67 Offence to provide booking service that results in commercial passenger vehicle service being provided by non-accredited drivers

- (1) A person who provides a booking service commits an offence if—
 - (a) a commercial passenger vehicle service is provided as a result of the provision of the booking service; and
 - (b) the commercial passenger vehicle service is being provided by a driver of the commercial passenger vehicle service who is not an accredited driver.
- (2) A person who commits an offence against subsection (1) is liable to a penalty not exceeding 60 penalty units for an individual or 300 penalty units for a body corporate.

Part 5—Commercial passenger vehicle driver accreditation

Division 1—Preliminary

68 References in this Part to persons found guilty of an offence

In this Part, a reference to a person who has been found guilty of an offence is a reference to a person—

- (a) against whom a court has made a formal finding that the person is guilty of the offence that has not been subsequently quashed or set aside by a court; or
- (b) from whom a court has accepted a plea that the person is guilty of the offence that has not been subsequently quashed or set aside by a court; or
- (c) from whom a court has accepted an admission under section 100 of the **Sentencing Act 1991** that the person has committed the offence, or from whom a similar admission has been accepted under a provision of a law of a jurisdiction other than Victoria that substantially corresponds to that section, that has not been subsequently quashed or set aside by a court; or
- (d) in relation to whom any of the following infringement notices has taken effect as a conviction for the offence specified in the notice—
 - (i) a safety work infringement notice to which section 95(1) of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** applies;
 - (ii) an infringement notice to which section 61A(2) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** applies;
 - (iii) a traffic infringement notice to which section 89A(2) of the **Road Safety Act 1986** applies; or

- (e) against whom a finding has been made under—
 - (i) section 17(1)(b) or 38X(1)(b) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that the person was not guilty of the offence because of mental impairment; or
 - (ii) section 17(1)(c) or 38X(1)(c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that the person committed the offence or an offence available as an alternative; or
 - (iii) the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** of not guilty because of mental impairment; or
- (f) against whom a finding similar to a finding referred to in paragraph (e) has been made under a provision of a law of a jurisdiction other than Victoria that substantially corresponds to the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** or to a provision of that Act referred to in paragraph (e).

69 Public care objective

The public care objective is the objective that the services provided by drivers of commercial passenger vehicles—

- (a) be provided to persons using those services and to other persons, particularly children and other vulnerable persons—
 - (i) with safety; and

- (ii) with comfort, amenity and convenience; and
- (b) be provided in a manner that is not fraudulent or dishonest.

Division 2—Non-accreditation offence

70 Offence for driver to provide services without accreditation

A person must not, as the driver of a commercial passenger vehicle, provide a commercial passenger vehicle service if the person is not accredited under this Part.

Penalty: 60 penalty units.

Division 3—Driver accreditations

71 Application for driver accreditation

- (1) A person may apply to the regulator for the issue of a driver accreditation.
- (2) An application under subsection (1) must—
 - (a) be made in the manner and form approved by the regulator; and
 - (b) be accompanied by—
 - (i) the information and things required by the regulator (if any); and
 - (ii) the fee (if any) for the application determined by the regulator under section 282.
- (3) The regulator may require any one or more of the following in relation to an application—

- (a) an applicant do a thing specified by the regulator that the regulator reasonably requires in order to assess the application;
 - (b) verification, by a statutory declaration, of any statement made or information given for the purposes of the application;
 - (c) an applicant give further information for the purposes of the application.
- (4) Any further information given by the applicant under subsection (3)(c) must be—
- (a) if the regulations so provide, signed in accordance with the regulations; and
 - (b) declared by each signatory to be true and correct.
- (5) The regulator may require an applicant to—
- (a) be photographed at a place and in a manner specified by the regulator; and
 - (b) give the regulator a specimen signature at a place and in a manner specified by the regulator.

72 Tests, qualifications and other requirements

- (1) The regulator may require an applicant for driver accreditation to do all or any of the following—
- (a) undertake a specified prescribed course of training;
 - (b) obtain a specified prescribed qualification;

- (c) pass specified prescribed tests including tests relating to—
 - (i) the applicant's fitness to drive a vehicle; and
 - (ii) the applicant's medical condition.
- (2) The regulator may specify courses of training by reference to either or both of the following—
 - (a) the name of the course;
 - (b) the provider of the course.
- (3) In specifying a course of training, the regulator must—
 - (a) be satisfied about—
 - (i) its content and nature; and
 - (ii) the materials, resources and equipment required to provide it; and
 - (b) have regard to the public care objective.
- (4) The regulator must publish the name and provider of any course of training specified under this section on the regulator's internet site.

73 Matters to which regulator may have regard in considering application

- (1) In considering an application for the issue of a driver accreditation, the regulator may have regard to any of the following—
 - (a) whether the applicant has at any time (whether before, on or after the commencement of this section) been subject to a finding referred to in section 14(1)(a) of the **Working with Children Act 2005**;

- (b) any infringement notice served on the applicant for a transport offence—
 - (i) that has not been withdrawn or cancelled; and
 - (ii) in relation to which information lodged under section 40(1)(a) of the **Infringements Act 2006** is not deemed to be a charge-sheet charging the offence by operation of section 40(1)(b) of that Act;
 - (c) any infringement notice served on the applicant for a transport offence in relation to which information lodged under section 71(1)(a) of the **Infringements Act 2006** is not deemed to be a charge-sheet charging the offence by operation of section 71(1)(b) of that Act.
- (2) In relation to an infringement notice referred to in subsection (1)(b) or (c), the regulator may have regard to the following—
- (a) the nature and gravity of the transport offence and its relevance to the purpose for which the applicant seeks to be accredited;
 - (b) when the transport offence is alleged to have been committed;
 - (c) whether the transport offence still exists;
 - (d) the age of the applicant at the time of the alleged commission of the transport offence;
 - (e) the applicant's behaviour since the alleged commission of the transport offence;

- (f) the likelihood of the applicant committing another transport offence of the same kind;
- (g) whether the transport offence has been expiated;
- (h) whether the decision to serve the infringement notice has been subject to internal review under Division 3 of Part 2 of the **Infringements Act 2006**;
- (i) if the infringement notice was served for a traffic infringement for which demerit points were incurred under Part 4 of the **Road Safety Act 1986**, the effect on the applicant of the operation of that Part including the incurring of the demerit points;
- (j) if the infringement notice was served for a traffic infringement, whether the applicant made any of the following statements under Part 6AA of the **Road Safety Act 1986** in relation to the traffic infringement—
 - (i) an illegal user statement;
 - (ii) a known user statement;
 - (iii) a sold vehicle statement;
 - (iv) an unknown user statement;
- (k) if the infringement notice was served for a traffic infringement and the applicant made a statement mentioned in paragraph (j)(ii) or (iii) in relation to the traffic infringement, whether a person made a nomination rejection statement under Part 6AA of the **Road Safety Act 1986** in response to that statement;

- (1) any information that the applicant has given the regulator in relation to the infringement notice, including reasons why the infringement penalty stated in it was paid.
- (3) In this section—
transport offence means—
 - (a) an offence under this Act or the regulations; or
 - (b) an offence under Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** or regulations made for the purposes of that Part; or
 - (c) a traffic infringement.

74 Time within which regulator must deal with application

- (1) Subject to this Division, the regulator must decide whether to approve or refuse an application for accreditation within 20 business days after receiving the application.
- (2) The regulator, before the expiry of the period specified in subsection (1) or that period as extended under this subsection, may decide to extend the period within which it may decide whether to approve or refuse an application.
- (3) If the regulator decides to extend the period, the regulator must give the applicant written notice of—
 - (a) that decision; and

- (b) the new period within which the regulator intends to make the decision whether to approve or refuse an application.

75 Decision on application for driver accreditation

- (1) The regulator, having considered the matters referred to in section 73, may issue a driver accreditation if satisfied—
 - (a) that it is appropriate to do so having regard to the public care objective; and
 - (b) that the applicant—
 - (i) is technically competent and sufficiently fit and healthy to drive a motor vehicle for the purpose of providing commercial passenger vehicle services; and
 - (ii) is a fit and proper person to provide a commercial passenger vehicle service; and
 - (c) that the applicant has complied with the requirements under this Part in relation to the application, including paying the application fee (if any) determined by the regulator under section 282.
- (2) However, the regulator must refuse to issue a driver accreditation if aware that the applicant—
 - (a) does not hold a driver licence, or probationary driver licence, under the **Road Safety Act 1986**; or
 - (b) has been found guilty of a category 1 offence; or

- (c) is a person who is subject to—
 - (i) reporting obligations imposed under Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (ii) an extended supervision order or interim extended supervision order made under the **Serious Sex Offenders Monitoring Act 2005**; or
 - (iii) a supervision order or interim supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**.
- (3) Unless satisfied that the applicant has shown that the issue of a driver accreditation is appropriate in the circumstances, the regulator must also refuse to issue a driver accreditation if aware that the applicant—
 - (a) has been found guilty of a category 2 offence; or
 - (b) is the subject of a charge for a category 1 offence that has not been finally disposed of at the time of considering the application.
- (4) Without limiting the discretion of the regulator, the regulator may refuse to issue a driver accreditation if aware that the applicant—
 - (a) has been found guilty of a category 3 offence; or
 - (b) is subject to a charge for a category 2 offence or category 3 offence that has not been finally disposed of at the time of considering the application.

- (5) The regulator must not refuse to issue a driver accreditation on a ground referred to in subsection (2) if a decision to refuse to issue an accreditation or cancel an accreditation in respect of the person on that ground has previously been set aside (without being remitted) by VCAT.
- (6) In making a decision under subsection (3) or (4), the regulator may have regard to the following matters in relation to the category 2 offence or category 3 offence—
- (a) the nature and gravity of the offence and its relevance to the commercial passenger vehicle service to be provided by the applicant;
 - (b) the period of time since the applicant committed the offence;
 - (c) whether a finding of guilt or conviction was recorded;
 - (d) the sentence imposed for the offence;
 - (e) the age of the applicant when the offence was committed;
 - (f) in relation to any sexual offence, the age of any victim;
 - (g) whether or not the conduct that constituted the offence has been decriminalised since the offence was committed;
 - (h) the applicant's behaviour since committing the offence;
 - (i) the likelihood of the applicant committing another such offence in the future, in particular, any future threat to a child or other vulnerable person;

(j) any information given by the applicant.

76 Regulator must notify applicant of decision

- (1) As soon as practicable after making a decision to approve or refuse an application for the issue of a driver accreditation, the regulator must give to the applicant written notice of the decision.
- (2) If the decision is to refuse the application, the notice must—
 - (a) include a statement of reasons for the decision; and
 - (b) inform the person that they have a right to seek review of the regulator's decision under Part 12.

77 Conditions on driver accreditation

- (1) The regulator may impose conditions on a driver accreditation on issuing the accreditation.
- (2) In considering whether or not to impose conditions on a driver accreditation, the regulator must have regard to the public care objective.
- (3) Without limiting subsection (1), the regulator may impose on a driver accreditation a condition requiring the accredited driver to undertake a course of training or to pass a test specified under section 72.
- (4) If the regulator decides to impose conditions on a driver accreditation, the regulator must give the accredited driver—
 - (a) written notice of the decision; and
 - (b) a written copy of the conditions to which the accreditation is subject.

- (5) A notice under subsection (4)(a) must inform the accredited driver that they have a right to seek review of the decision under Part 12.
- (6) A driver accreditation is also subject to any prescribed condition.

78 Certificate of accreditation

On issuing a driver accreditation the regulator must issue a certificate of accreditation that—

- (a) is in the form approved by the regulator; and
- (b) sets out the name of the accredited driver.

79 Driver accreditation lasts until cancelled or surrendered

A driver accreditation remains in effect until it is cancelled or surrendered.

80 Annual accreditation fees

- (1) An accredited driver must pay to the regulator the appropriate annual accreditation fee by the date specified by written notice given to the driver by the regulator.

Note

For the annual accreditation fee, see section 282.

- (2) The date specified in a notice under subsection (1) must not be less than 10 business days after the date the notice is given to the accredited driver.
- (3) The regulator may suspend or cancel an accredited driver's driver accreditation if the driver fails to pay an annual accreditation fee by the date specified by the regulator.

81 Regulator may vary or revoke conditions or impose new conditions

- (1) The regulator may at any time (on the regulator's own initiative or on the written application of an accredited driver)—
 - (a) vary or revoke a condition imposed by the regulator on a driver accreditation; or
 - (b) impose a new condition on a driver accreditation.
- (2) In considering whether or not to vary or revoke a condition, or impose a new condition, on a driver accreditation, the regulator must have regard to the public care objective.
- (3) Without limiting subsection (1)(b), the regulator may impose on a driver accreditation a condition requiring the accredited driver to undertake a course of training or to pass a test specified under section 72.
- (4) The regulator must give the accredited driver written notice of the action taken under subsection (1) as soon as practicable after taking the action.
- (5) A notice under subsection (4) must—
 - (a) include a statement of reasons for the action taken; and
 - (b) inform the accredited driver that they have a right to seek review of the regulator's decision to take the action under Part 12.

82 Offence to fail to comply with conditions of driver accreditation

An accredited driver must comply with—

- (a) any condition imposed on the driver accreditation; and
- (b) any prescribed condition to which that accreditation is subject.

Penalty: 30 penalty units.

83 Driver accreditation cannot be transferred

- (1) A driver accreditation—
 - (a) is personal to the person who holds it; and
 - (b) is not capable of being transferred or assigned to any other person or of being otherwise dealt with by the person who holds it; and
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of a driver accreditation and any other purported dealing with a driver accreditation by the person who holds it is of no effect.
- (3) An accredited driver must not purport to transfer or assign their driver accreditation to any other person or otherwise purport to deal with it.

Penalty: 60 penalty units.

- (4) This section does not apply to the surrender of an accreditation in accordance with this Part.

84 Surrender of driver accreditation

- (1) An accredited driver may apply in writing to the regulator for consent to surrender their driver accreditation.
- (2) An application under subsection (1) must be accompanied by the certificate of accreditation unless—
 - (a) the certificate has already been returned to the regulator; or
 - (b) the certificate has been lost, stolen or destroyed.
- (3) If subsection (2)(b) applies, the application must be accompanied by a statement, verified by a statutory declaration signed by or on behalf of the accredited driver, that the certificate has been lost, stolen or destroyed.
- (4) Subject to subsection (5), on receiving an application under subsection (1), the regulator must consent to the surrender.
- (5) The regulator may impose any condition on the consent to surrender that the regulator considers necessary to protect the interests of a third party.
- (6) A person commits an offence if—
 - (a) the regulator imposes a condition on a consent to surrender a driver accreditation; and
 - (b) the condition applies to the person; and
 - (c) the person does not comply with the condition.
- (7) A person who commits an offence against subsection (6) is liable to a penalty not exceeding 20 penalty units.

Division 4—Disqualification from holding driver accreditation

85 Disqualification from applying for driver accreditation

- (1) If the regulator refuses an application for the issue of a driver accreditation under this Part, the regulator may determine that the applicant is disqualified from applying for the issue of a driver accreditation for a period determined by the regulator.
- (2) A period determined by the regulator under subsection (1) must not exceed 5 years.
- (3) In making a determination under subsection (1), the regulator must have regard to—
 - (a) the public care objective; and
 - (b) if the person has been found guilty of a category 2 offence or category 3 offence, the matters set out in section 75(6).
- (4) The regulator must give the applicant written notice of the disqualification as soon as practicable after the determination to disqualify the applicant.
- (5) A notice under subsection (4) must—
 - (a) specify the period of disqualification; and
 - (b) include a statement of reasons for the action taken; and
 - (c) inform the applicant that they have a right to seek review of the regulator's determination to take the action under Part 12.

86 Disqualification ceases if there has been a relevant change of circumstances

- (1) A person who has been disqualified under section 85 is not entitled to make a further application for the issue of a driver accreditation under this Part—
 - (a) until the period determined by the regulator has elapsed; or
 - (b) unless the regulator declares that the disqualification ceases to have effect.
- (2) The person may apply in writing to the regulator for a declaration that the disqualification ceases to have effect.
- (3) On receiving an application under subsection (2), the regulator must declare that the disqualification ceases to have effect if satisfied that there has been a relevant change in circumstances in relation to the person.
- (4) In this section—

relevant change in circumstances, in relation to a person, includes where—

 - (a) a charge that the person was subject to, that was pending at the date of the disqualification, is finally dealt with, without the person being found guilty of the offence; or
 - (b) a finding of guilt of the person is quashed or set aside by a court after the date of the disqualification; or
 - (c) a finding on which the decision to disqualify the person under section 85 was based is quashed or

set aside after the date of the disqualification.

Division 5—Driver accreditation offences

87 Offence not to sign certificate of accreditation on receipt

- (1) A person commits an offence if—
 - (a) the regulator issues a driver accreditation to the person; and
 - (b) the person receives a certificate of accreditation in paper form; and
 - (c) the person fails to sign the certificate on receiving it.
- (2) A person who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

88 Offence not to notify change of address and return certificate of accreditation

- (1) An accredited driver commits an offence if the driver—
 - (a) changes their residential address; and
 - (b) does not within 5 business days after that change occurring—
 - (i) notify the regulator of it; and
 - (ii) return the certificate of accreditation to the regulator.
- (2) An accredited driver who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

89 Offence not to notify of suspension or cancellation of driver accreditation

- (1) An accredited driver commits an offence if the driver—
- (a) is employed or engaged by—
 - (i) the owner of a commercial passenger vehicle; or
 - (ii) the person in whose name a commercial passenger vehicle is registered under Part 3; or
 - (iii) a booking service provider; and
 - (b) receives notice of the suspension or cancellation of their driver accreditation; and
 - (c) does not notify the owner or provider of the suspension or cancellation within 5 business days after receiving that notice.
- (2) An accredited driver who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

90 Offence not to notify of being charged with, or found guilty of, a disqualifying offence

- (1) An accredited driver commits an offence if the driver—
- (a) is charged with, or found guilty of, a disqualifying offence; and
 - (b) does not notify the regulator of the charge or the finding of guilt within 20 business days after being so charged or found guilty.

- (2) An accredited driver commits an offence if the driver—
 - (a) becomes subject to reporting obligations or an order of a kind referred to in section 75(2)(c); and
 - (b) does not notify the regulator of the obligations or order within 20 business days after becoming subject to them.
- (3) An accredited driver who commits an offence against subsection (1) or (2) is liable to a penalty not exceeding 5 penalty units.

91 Offence to retain illegible certificate of accreditation

- (1) An accredited driver commits an offence if—
 - (a) the driver's certificate of accreditation becomes illegible or is altered or defaced; and
 - (b) the driver does not return the certificate to the regulator and apply for the issue of a replacement certificate within 5 business days after becoming aware that the certificate has become illegible or is altered or defaced.
- (2) An accredited driver who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

92 Offence to retain certificate if accreditation suspended or cancelled

- (1) An accredited driver commits an offence if the driver—
 - (a) receives notice of the suspension or cancellation of their driver accreditation; and

- (b) does not return their certificate of accreditation to the regulator within 20 business days after receiving notice of the suspension or cancellation.
- (2) An accredited driver who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

93 Offence not to carry certificate of accreditation when driving

- (1) An accredited driver commits an offence if the driver does not carry their certificate of accreditation while driving a commercial passenger vehicle for the purpose of providing a commercial passenger vehicle service.
- (2) An accredited driver who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

94 Offence not to produce certificate of accreditation when asked

- (1) An accredited driver commits an offence if the driver—
 - (a) drives a commercial passenger vehicle for the purpose of providing a commercial passenger vehicle service; and
 - (b) is asked by an authorised officer or a police officer to produce their certificate of accreditation; and
 - (c) refuses or fails to do so.
- (2) An accredited driver who commits an offence against subsection (1) is liable to a penalty not exceeding 5 penalty units.

Part 6—Consumer and driver protections

Division 1—Driver agreements

Subdivision 1—Preliminary

95 Definition

In this Division—

Small Business Commission means the Small Business Commission established under section 4 of the **Small Business Commission Act 2017**.

96 Application of Division

This Division applies to a driver agreement whether made before or after the commencement of section 18 of the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017**.

Subdivision 2—Implied conditions

97 Implied conditions of driver agreement

- (1) The regulator, by notice published in the Government Gazette, may specify conditions to be implied in every driver agreement.
- (2) Without limiting subsection (1), it is an implied condition of every driver agreement that at least the specified percentage of the gross fares that accrue when a commercial passenger vehicle is in the possession of a driver under the agreement are to be retained by, or paid to, the driver.
- (3) An implied condition specified under section 162L(1) of the **Transport (Compliance and Miscellaneous) Act 1983**

and in force immediately before the commencement of this section is to be taken to have been specified by the regulator under subsection (1).

(4) In subsection (2)—

specified percentage means—

- (a) the percentage specified for the purpose of subsection (2) in a notice published under subsection (1); or
- (b) 55%, if a percentage is not so specified.

98 Offence if implied condition breached

A party to a driver agreement must not breach a condition of the agreement implied under section 97.

Penalty: In the case of an individual,
120 penalty units;
In the case of a body corporate,
600 penalty units.

Subdivision 3—Preliminary assistance in dispute resolution

99 Referral of disputes to the regulator

- (1) Either party, or both parties, to a driver agreement, or a person proposing to enter into a driver agreement, may refer to the regulator a dispute concerning a condition of the agreement or proposed agreement.
- (2) As soon as practicable after a dispute is referred to the regulator under subsection (1), the regulator must make an assessment of the nature of the dispute.

- (3) After having made an assessment, the regulator must decide whether—
 - (a) to provide preliminary assistance in resolving the dispute; or
 - (b) for a dispute concerning a condition of an agreement, to take action to enforce compliance with the agreement; or
 - (c) if there are different aspects to the dispute, to act under both paragraphs (a) and (b).
- (4) The regulator must notify the Minister in writing about the dispute if the regulator—
 - (a) considers that the dispute may raise an issue of important public policy; and
 - (b) has decided not to take action to enforce compliance with the agreement under subsection (3).
- (5) Preliminary assistance that may be provided by the regulator includes the giving of advice to ensure that—
 - (a) the parties are fully aware of their rights and obligations; and
 - (b) there is full and open communication between the parties concerning the matter.
- (6) A statement or admission made in the course of the provision by the regulator of preliminary assistance is not admissible in proceedings before VCAT under Subdivision 5 or in any other legal proceedings.

100 Minister may refer dispute directly to VCAT

- (1) Subsection (2) applies if the Minister considers that the subject matter of a dispute notified under section 99(4) raises an issue of important public policy.
- (2) The Minister may refer the dispute directly to VCAT for hearing under Subdivision 5, even if the regulator is in the process of providing preliminary assistance.

101 Unresolved disputes may be referred to Small Business Commission or VCAT

- (1) The regulator may certify in writing that—
 - (a) preliminary assistance under this Subdivision has failed to resolve the dispute; or
 - (b) preliminary assistance under this Subdivision has failed to resolve the dispute and, in the regulator's opinion, the dispute is unlikely to be resolved with the assistance of the Small Business Commission.
- (2) A certificate issued under subsection (1) must state that a party or both parties may refer the dispute—
 - (a) to the Small Business Commission if the certificate certifies a failure described in subsection (1)(a); or
 - (b) to VCAT if the certificate certifies a failure described in subsection (1)(b).
- (3) As soon as practicable after issuing a certificate under subsection (1), the regulator must provide a copy of it to the parties to the dispute.

- (4) Within 30 days after receiving a copy of a certificate under subsection (1), a party or both parties to the dispute may refer the dispute to the Small Business Commission or VCAT, as the case requires.
- (5) This section does not apply, or ceases to apply, if the Minister refers the dispute directly to VCAT under section 100(2).

Subdivision 4—Alternative dispute resolution

102 Function of Small Business Commission

- (1) This section applies if a dispute is referred to the Small Business Commission under Subdivision 3.
- (2) The Commission must make arrangements to facilitate the resolution of the dispute by—
 - (a) mediation by a mediator; or
 - (b) another appropriate form of alternative dispute resolution by a suitably qualified person.
- (3) The Commission may join any person that it considers appropriate to join as a party to the dispute.
- (4) The Commission is not subject to the Minister's control or direction in exercising functions under this Subdivision.

103 Mediation or other alternative dispute resolution

- (1) A party to a mediation or other form of alternative dispute resolution may be represented by a legal practitioner.

- (2) However, the mediator or person conducting the other form of alternative dispute resolution (the *ADR official*) may meet with a party (alone or together with any other party) without the party's legal representative being present.
- (3) The mediator or ADR official may act under subsection (2) only if they consider it appropriate to do so.
- (4) The mediator or ADR official must determine the costs of, and associated with, the mediation or other form of alternative dispute resolution (including their own fees and expenses).
- (5) The parties must pay the costs determined under subsection (4) in the proportions that they agree or, if they cannot agree, in equal shares.
- (6) The Small Business Commissioner appointed under section 18 of the **Small Business Commission Act 2017** may personally act as a mediator or ADR official and is entitled to be paid their fees and expenses for doing so.
- (7) The Small Business Commissioner's fees and expenses referred to in subsection (6) must not exceed the maximum amount (if any) that is prescribed.
- (8) A mediator or ADR official (including the Small Business Commissioner) is not civilly or criminally liable in respect of the performance, in good faith, of their functions under this section.

104 Small Business Commission may issue certificates

- (1) The Small Business Commission may certify in writing that alternative dispute resolution under this Subdivision has failed, or is unlikely, to resolve a dispute referred under Subdivision 3.
- (2) A certificate under subsection (1) must include details of the parties to the dispute.
- (3) The Commission may certify that a party to the dispute has unreasonably refused to participate in alternative dispute resolution under this Subdivision.
- (4) A certificate issued under subsection (1) may be admitted in evidence in proceedings before VCAT or a court.
- (5) The Commission is not required to give a party to the dispute an opportunity to be heard by, or make submissions to, the Commission before issuing a certificate under subsection (1).

105 Parties may apply to VCAT

If the Small Business Commission issues a certificate under section 104(1), a party or both parties to the dispute may apply to VCAT for one or more orders under section 108.

Subdivision 5—VCAT proceedings

106 Jurisdiction of VCAT

- (1) VCAT has jurisdiction to hear and determine—
 - (a) the matter of a dispute referred to it—
 - (i) by the Minister under section 100(2); or
 - (ii) by a party or both parties to the dispute in accordance with this Division; or
 - (b) an application by a party, or both parties, to a dispute under section 105.
- (2) The Minister or the regulator is not a party to a proceeding in respect of a dispute referred by the Minister under section 100(2), unless joined by VCAT under section 60 of the **Victorian Civil and Administrative Tribunal Act 1998**.

107 Time limits for certain complaints

- (1) VCAT must commence hearing a dispute referred by the Minister under section 100(2) within 30 days after its referral.
- (2) VCAT, constituted by a presidential member within the meaning of the **Victorian Civil and Administrative Tribunal Act 1998**, may extend the period of 30 days under subsection (1) by one further period of not more than 30 days.

108 Orders VCAT can make

- (1) VCAT, in a proceeding under this Subdivision, may by order do one or more of the following—

- (a) determine the terms of any condition of a driver agreement;
 - (b) require a party to pay money, by way of restitution or compensation or otherwise, to a specified person;
 - (c) vary any condition of a driver agreement, other than one implied under section 97;
 - (d) declare that a condition of a driver agreement (other than one implied under section 97) is of effect or is of no effect;
 - (e) require the refund of any money paid under a driver agreement or under a driver agreement condition that is of no effect;
 - (i) require anything else to be done that it is empowered to require to be done under this Subdivision or the **Victorian Civil and Administrative Tribunal Act 1998**.
- (2) In addition, VCAT may—
- (a) make an order in the nature of an order for specific performance of a driver agreement; or
 - (b) order rescission of a driver agreement; or
 - (c) order rectification of a driver agreement.
- (3) In ordering the payment of a sum of money by a party, VCAT may order the payment of interest on that sum by the party—

(a) at the rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983**; or

(b) at any lesser rate it thinks appropriate.

109 Each party to pay own costs

(1) This section applies despite anything to the contrary in Division 8 of Part 4 of the **Victorian Civil and Administrative Tribunal Act 1998**.

(2) Each party to a proceeding before VCAT under this Subdivision is to pay their own costs in the proceeding.

(3) However, at any time VCAT may make an order that a party pay all or a specified part of the costs of another party to the proceeding but only if VCAT is satisfied that it is fair to do so—

(a) because the party refused to take part in, or withdrew from, mediation or other form of alternative dispute resolution under Subdivision 4; or

(b) having regard to the matters referred to in paragraphs (a) to (e) of section 109(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

(4) In this section—

costs includes fees, charges and disbursements.

Subdivision 6—Miscellaneous

110 Statements made during alternative dispute resolution not admissible

A statement or admission made in the course of a mediation or other form of alternative dispute resolution under Subdivision 4 is not admissible in proceedings before VCAT under Subdivision 5 or in any other legal proceedings.

Division 1A—Protections for unbooked commercial passenger vehicle services

110A Definitions

In this Division—

applicable unbooked service means an unbooked commercial passenger vehicle service in respect of carriage on a journey that begins in—

- (a) the Melbourne Metropolitan Zone;
or
- (b) the Urban and Large Regional Zone;

Melbourne Metropolitan Zone means the Melbourne Metropolitan Zone established under section 143B(1)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** (as in force immediately before the commencement of item 10.7 of Schedule 1 to the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017**;

Urban and Large Regional Zone means the Urban and Large Regional Zone established under section 143B(1)(b)

of the **Transport (Compliance and Miscellaneous) Act 1983** (as in force immediately before the commencement of item 10.7 of Schedule 1 to the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017**).

110B Application of Essential Services Commission Act 2001

- (1) For the purposes of the **Essential Services Commission Act 2001**—
 - (a) this Division is relevant legislation; and
 - (b) the commercial passenger vehicle industry is a regulated industry in relation to applicable unbooked services.
- (2) If there is any inconsistency between this Division and a provision of the **Essential Services Commission Act 2001**, the provision of this Division prevails.

110C Objective of the ESC

The objective of the ESC in relation to the commercial passenger vehicle industry is to promote the efficient provision and use of applicable unbooked services.

110D Powers in relation to fares regulation

For the purposes of Part 3 of the **Essential Services Commission Act 2001**—

- (a) applicable unbooked services are prescribed services; and
- (b) the maximum charges for the services covered by paragraph (a) are prescribed prices.

110E Price determinations

Without limiting section 33(5) of the **Essential Services Commission Act 2001**, the manner in which the ESC may regulate prescribed prices includes determining different prices according to—

- (a) the time of day at which, or day of the week or kind of day on which, an applicable unbooked service is provided;
- (b) the speed at which the commercial passenger vehicle used in the provision of the applicable unbooked service is travelling;
- (c) the distance travelled by the commercial passenger vehicle used in the provision of the applicable unbooked service;
- (d) the type of commercial passenger vehicle used in the provision of the applicable unbooked service;
- (e) the occupancy of the commercial passenger vehicle used in the provision of the applicable unbooked service, including where there is more than one passenger;
- (f) where a journey in respect of which the applicable unbooked service is provided begins or ends;
- (g) the prevailing economic conditions, including the price of fuel and the consumer price index;
- (h) any other matter the ESC considers to be relevant.

110F Exercise of regulatory functions

- (1) The ESC must make a determination under this Division of the maximum charges for applicable unbooked services before the first anniversary of the day on which this section comes into operation.
- (2) The ESC must complete a review of a price determination no later than 2 years after it is made.

110G Offence to charge or ask for a fare for an unbooked service in excess of the maximum fare

A person who drives a commercial passenger vehicle for the purpose of providing an applicable unbooked service must not charge or ask for a fare for the service that is in excess of the fare or hiring rates permitted by a determination of the ESC under this Division.

Penalty: 60 penalty units.

Division 2—Fare monitoring

111 Regulator to monitor fares for commercial passenger vehicle services

- (1) This section applies during the 5 year period beginning on the commencement of item 10.6 of Schedule 1 to the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017**.
- (2) The regulator must monitor fares for commercial passenger vehicle services with a view to—
 - (a) keeping Victorian consumers and the Government informed about the economic performance of the

commercial passenger vehicle industry;
and

- (b) supporting the efficient operation of the industry by—
 - (i) monitoring, describing and analysing trends in fares for commercial passenger vehicle services; and
 - (ii) identifying and highlighting potential areas of misuse of market power that warrant further investigation.

Note

The regulator has power under section 264 to require the provision of any information, or the production of any documents, that may assist it in performing its functions.

- (3) The regulator must prepare an annual report on the conduct of its activities under this section.
- (4) In addition, the regulator may at any time, on its own initiative, prepare a special report on the conduct of its activities under this section.
- (5) In preparing a report, the regulator must have regard to the need to ensure that the report does not disclose information that is of a commercially sensitive nature.
- (6) The regulator must submit a copy of any report prepared by the regulator under this section to the Minister administering this Division.
- (7) The regulator must ensure that a copy of any report submitted under subsection (6) is published on the regulator's internet site.

Division 3—Non-cash payment surcharge

112 Meaning of *non-cash payment surcharge*

- (1) Subject to subsection (2), a ***non-cash payment surcharge*** is a fee or charge—
 - (a) added to the amount otherwise payable by the hirer in respect of the hiring of a commercial passenger vehicle because the payment of the amount otherwise payable is made wholly or partly by means of a non-cash payment transaction; or
 - (b) payable by the owner or driver of a commercial passenger vehicle or by all or any of them because the payment of an amount payable in respect of the hiring of the vehicle is made wholly or partly by means of a non-cash payment transaction.
- (2) A ***non-cash payment surcharge*** does not include a fee or charge that is imposed in respect of the use of a credit card, charge card or debit card—
 - (a) by a participant in a designated payment system within the meaning of the Payment Systems (Regulation) Act 1998 of the Commonwealth and is of a kind covered by a standard in force under section 18 of that Act; or
 - (b) by a person consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia.

- (3) A fee or charge may be a *non-cash payment surcharge* irrespective of whether it is—
- (a) payable for accepting or processing, or both accepting and processing, payment made by means of a non-cash payment transaction or for any other reason; or
 - (b) set as a percentage of the amount otherwise payable in respect of the hiring of the commercial passenger vehicle or as a fixed amount or as an amount fixed on a sliding scale of any kind or on any other basis.

113 Cap on non-cash payment surcharges

- (1) This section applies to a non-cash payment surcharge that—
- (a) exceeds the prescribed amount; or
 - (b) results in the prescribed amount being exceeded in the circumstances set out in subsection (2).
- (2) The circumstances are that the surcharge is added to any other such surcharge charged or collected, or to be charged or collected, by the same or any other person in respect of the same hiring of a commercial passenger vehicle, irrespective of whether the surcharges are payable by the same person or by 2 or more persons.
- (3) A person must not—
- (a) impose, whether directly or indirectly, a non-cash payment surcharge to which this section applies; or
 - (b) directly initiate the collection in the commercial passenger vehicle of a non-cash payment surcharge to which

this section applies or of an amount that includes such a surcharge.

Penalty: In the case of an individual,
240 penalty units;
In the case of a body corporate,
1200 penalty units.

Notes

Section 285 (criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)) applies to an offence against this subsection.

- (4) A person does not commit an offence against subsection (3) because of a non-cash payment surcharge charged or collected, or to be charged or collected, by another person in respect of the hiring of a commercial passenger vehicle if—
- (a) the person presents or points to evidence that suggests a reasonable possibility that the person did not know, and could not reasonably be expected to have known, that the other person had charged or collected, or was to charge or collect, a non-cash payment surcharge in respect of that hiring; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (5) The reference in subsection (3) to a person includes—
- (a) any person who provided or maintains any equipment (whether or not installed in the commercial passenger vehicle) or any application or software that enabled the non-cash payment transaction to be made; and

- (b) any person who manages or administers the whole or any part of a system under which non-cash payment transactions may be made; and
- (c) the owner and driver of the commercial passenger vehicle.

114 Offence to enter into certain contracts etc.

- (1) A person, including the owner or driver of the commercial passenger vehicle or a booking service provider, must not—
 - (a) enter into a contract, arrangement or understanding with any person that has the purpose or effect specified in subsection (2); or
 - (b) agree to give effect to a contract, arrangement or understanding entered into by any other persons that has that purpose or effect.

Penalty: In the case of an individual,
60 penalty units;
In the case of a body corporate,
300 penalty units.

Note

Section 285 (criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)) applies to an offence against this section.

- (2) The purpose or effect is directly or indirectly causing a non-cash payment surcharge to which section 113 applies to be paid in respect of a hiring of a commercial passenger vehicle.

115 Civil penalties

- (1) The Supreme Court may order that a person pay, as a debt due to the State, a civil penalty of an amount not exceeding \$1 000 000 for an individual or \$5 000 000 for a body corporate.
- (2) The Supreme Court may make an order under subsection (1) if satisfied, on an application made by the regulator, that the person has—
 - (a) contravened section 113(3); or
 - (b) attempted to contravene section 113(3); or
 - (c) aided, abetted, counselled or procured a person to contravene section 113(3); or
 - (d) induced, or attempted to induce, whether by threats, promises or otherwise, a person to contravene section 113(3); or
 - (e) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 113(3); or
 - (f) conspired with others to contravene section 113(3).
- (3) The regulator may make an application under this section at any time within 6 years after the contravention or other conduct covered by subsection (2).
- (4) The Supreme Court may relieve a person, other than a body corporate, from liability to a civil penalty in a proceeding under this section if it appears to it that—

- (a) the person has, or may have, engaged in conduct in contravention of section 113(3) or conduct referred to in subsection (2)(b), (c), (d), (e) or (f) that relates to a contravention of section 113(3); but
- (b) the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly to be excused.

116 Preference must be given to compensation

The Supreme Court must give preference to making an order for compensation if it considers that—

- (a) it is appropriate to order a person (the *defendant*) to pay a civil penalty under section 115(1) in relation to—
 - (i) a contravention of section 113(3);
or
 - (ii) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) that relates to a contravention of section 113(3);
and
- (b) it is appropriate to order the defendant to pay compensation under section 120 to a person who has suffered loss or damage because of that contravention or conduct; and
- (c) the defendant does not have sufficient financial resources to pay both the civil penalty and the compensation.

117 Interplay between civil penalties and criminal proceedings

- (1) An application cannot be made to the Supreme Court under section 115 in relation to a contravention of section 113(3) if the person has been convicted or acquitted of an offence constituted by conduct that is substantially the same as the conduct to which the application relates.
- (2) The Supreme Court must stay a proceeding under section 115 against a person if a criminal proceeding is or has been commenced against the person for an offence constituted by conduct that is substantially the same as the conduct to which the application under that section relates.
- (3) A proceeding stayed in accordance with subsection (2) must be dismissed by the Supreme Court if the person is convicted or acquitted of the offence but otherwise may be resumed by it.
- (4) A criminal proceeding may be commenced against a person for conduct that is substantially the same as conduct to which an application under section 115 relates or in respect of which an order has been made under that section.
- (5) Evidence of information given, or evidence of the production of documents, by a person is not admissible in a proceeding against the person for an offence if—
 - (a) the person previously gave the evidence or produced the documents in a proceeding against the person under section 115; and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct to which the proceeding under that section related.
- (6) Subsection (5) does not apply to a criminal proceeding in respect of the falsity of evidence given in a proceeding under section 115.

118 Non-cash payment surcharge may be recovered as a debt

A person who has paid a non-cash payment surcharge to which section 113 applies may recover, as a debt in any court of competent jurisdiction, the amount of the excess over the prescribed amount from the person to whom the surcharge was payable.

119 Proceeding for damages

- (1) This section applies if a person suffers loss or damage because of—
 - (a) conduct engaged in by another person in contravention of section 113(3); or
 - (b) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) engaged in by another person that relates to a contravention of section 113(3).
- (2) The person may recover the amount of the loss or damage in a proceeding commenced against that other person in any court of competent jurisdiction.
- (3) A proceeding under subsection (2) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.

120 Compensation orders

- (1) This section applies if a person (the *injured person*) suffers, or is likely to suffer, loss or damage because of—
 - (a) conduct engaged in by another person in contravention of section 113(3); or
 - (b) conduct referred to in section 115(2)(b), (c), (d), (e) or (f) engaged in by another person that relates to a contravention of section 113(3).
- (2) The Supreme Court may make any other order or orders that it thinks appropriate against the person who engaged in the conduct on an application made by—
 - (a) the injured person; or
 - (b) the regulator on behalf of one or more injured persons.
- (3) An order must be an order that the Supreme Court considers will—
 - (a) compensate the injured person, or any injured person, in whole or in part for the loss or damage; or
 - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or any injured person.
- (4) An application may be made under subsection (2) at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (5) An application may be made under subsection (2) even if no other proceeding (whether criminal or civil) has been commenced under this Division in relation to the relevant conduct.

- (6) The regulator must not make an application under subsection (2)(b) on behalf of an injured person who has not consented in writing to the making of the application on their behalf.

121 Application of Essential Services Commission Act 2001

- (1) For the purposes of the **Essential Services Commission Act 2001**—
- (a) this Division is relevant legislation; and
 - (b) the non-cash payment transaction industry is a regulated industry.
- (2) If there is any inconsistency between a provision of this Division and a provision of the **Essential Services Commission Act 2001**, the provision of this Division prevails.

122 Objective of the ESC

- (1) The objective of the ESC in relation to the non-cash payment transaction industry is to promote efficiency by regulating the amount that may be imposed by way of a non-cash payment surcharge.
- (2) In seeking to achieve the objective specified in subsection (1), the ESC must ensure that persons facilitating the making of non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.
- (3) In this section—
- reasonable cost* includes any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards.

123 Powers in relation to non-cash payment service regulation

For the purposes of Part 3 of the **Essential Services Commission Act 2001**—

- (a) non-cash payment transactions are prescribed services; and
- (b) the maximum amounts of non-cash payment surcharges are prescribed prices.

124 Exercise of regulatory functions

- (1) The ESC may regulate prescribed prices by determining different prices according to circumstances specified in the determination if it considers it necessary to do so in order for it to comply with section 122(2).
- (2) Subsection (1) does not limit section 33(5) of the **Essential Services Commission Act 2001**.
- (3) The ESC must make a price determination no later than 12 months after the day on which section 18 of the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017** comes into operation.
- (4) The ESC must complete a review of a price determination no later than 2 years after it is made.

Part 7—Investigation powers

Division 1—Authorised officers

125 Appointment

- (1) The regulator may appoint as an authorised officer any person who the regulator considers is suitably qualified or trained to exercise the powers of an authorised officer under this Act and the regulations.
- (2) An appointment under this section is for a term, and subject to the conditions, specified in the instrument of appointment.
- (3) Without limiting the conditions to which the appointment may be subject, a condition may specify—
 - (a) the functions and powers under this Act or the regulations that the authorised officer may not perform and exercise; or
 - (b) the only functions and powers under this Act or the regulations that the authorised officer may perform or exercise; or
 - (c) the circumstances or manner in which the authorised officer must perform or exercise a function or power under this Act or the regulations.

126 Identity card

- (1) The regulator must issue an identity card to an authorised officer.
- (2) An identity card must—
 - (a) state the name of the person to whom the card is issued; and

- (b) indicate that the person is an authorised officer; and
- (c) include—
 - (i) a photograph of the person; and
 - (ii) the prescribed matters.

127 Authorised officer must produce identity card

- (1) An authorised officer must produce their identity card for inspection—
 - (a) before exercising a power under—
 - (i) an industry law; or
 - (ii) section 13 or 84ZY of the **Road Safety Act 1986**; or
 - (b) if asked to do so by any person at any time during the exercise of a power referred to in paragraph (a).
- (2) However, an authorised officer is not required to produce their identity card when asked to do so if—
 - (a) the officer reasonably believes that this would—
 - (i) affect the safety or welfare of any person; or
 - (ii) frustrate the effective exercise of a power referred to in subsection (1)(a); or
 - (b) the request to produce the card is made by a person to whom the officer has already produced the card on the same day before exercising a power referred to in subsection (1)(a).

- (3) A failure to produce an identity card does not invalidate anything done by an authorised officer.

128 Regulator may direct authorised officer

- (1) The regulator may give a direction to an authorised officer in relation to that officer's performance or exercise of a function or power under—
- (a) an industry law; or
 - (b) section 13, 14(1), 84ZY, 77 and 88 of the **Road Safety Act 1986**.
- (2) The direction may be of a general nature or may relate to a specified matter or class of matter.

129 Person must return identity card on ceasing to be an authorised officer

A person who ceases to be an authorised officer must return their identity card to the regulator as soon as practicable.

Penalty: 10 penalty units.

130 Person must not impersonate authorised officer

A person who is not an authorised officer must not, in any way, hold themselves out to be an authorised officer.

Penalty: 60 penalty units.

Division 2—Power of entry without consent or search warrant

131 Limited power for authorised officer to enter premises or vehicle without consent or search warrant

An authorised officer may enter industry premises or a commercial passenger vehicle without consent and without a search warrant—

- (a) only for a purpose specified in section 132; and
- (b) only in the circumstances specified in section 133.

132 Purposes for which authorised officer may enter without consent or search warrant

- (1) An authorised officer may enter premises or a vehicle under section 131 for a purpose relating to ascertaining whether an industry law has been or is being complied with in relation to—
 - (a) commercial passenger vehicle services; or
 - (b) a commercial passenger vehicle; or
 - (c) equipment in or on, or that is ordinarily in or on, a commercial passenger vehicle; or

Examples

A security camera, an emergency warning device, a driver protection screen or a taximeter.

- (d) subject to subsection (2), payments made or due under a driver agreement; or

- (e) subject to subsection (3), payments made or due in respect of the hiring of a commercial passenger vehicle.
- (2) Entry is only permitted in relation to the matter set out in subsection (1)(d) if the authorised officer believes on reasonable grounds that the entry is necessary to prevent the concealment, loss or destruction of evidence of a breach of the conditions of a driver agreement.
- (3) Entry is only permitted in relation to the matter set out in subsection (1)(e) if the authorised officer believes on reasonable grounds that the entry is necessary to prevent the concealment, loss or destruction of evidence of non-compliance with an industry law.

133 Circumstances in which authorised officer may enter without consent or search warrant

- (1) The circumstances in which an authorised officer may, under section 131, enter industry premises, or a commercial passenger vehicle at industry premises, are that the entry is at a time when the premises are being used, or are usually being used, in connection with the provision of—
 - (a) a commercial passenger vehicle service; or
 - (b) a booking service; or
 - (c) a non-cash payment processing service.
- (2) The circumstances in which an authorised officer may, under section 131, enter a commercial passenger vehicle at a place that is not industry premises are that—

- (a) the vehicle is not being used for private purposes; and
 - (b) the vehicle is not located on residential premises; and
 - (c) either of the following persons is present—
 - (i) the driver of the vehicle;
 - (ii) the person in whose name the vehicle is registered under Part 3.
- (3) For the purposes of subsection (2)(a), a commercial passenger vehicle that is being driven for the purposes of providing a commercial passenger vehicle service is not being used for private purposes.

134 Power to enter includes power to search and inspect

- (1) An authorised officer who enters or proposes to enter industry premises or a commercial passenger vehicle under section 131 may search and inspect the premises or vehicle for compliance and investigative purposes.
- (2) In searching and inspecting the premises or vehicle, the authorised officer may be assisted by any person.

Note

Division 5 confers further powers on the authorised officer.

135 Notice of entry if prior notice not given—commercial passenger vehicle not on industry premises

- (1) This section applies if an authorised officer, under section 131—
 - (a) enters a commercial passenger vehicle at a place that is not industry premises; and

- (b) does so without giving prior notice to either—
 - (i) the driver of the vehicle; or
 - (ii) the person in whose name the vehicle is registered under Part 3.
- (2) As soon as practicable after entering the vehicle, the authorised officer must take all reasonable steps to notify the following persons of the entry—
 - (a) the driver of the vehicle;
 - (b) if the vehicle is not registered under Part 3 in the driver's name, the person in whose name it is registered under that Part.

136 Notice of entry to be left if certain persons not present

- (1) This section applies if—
 - (a) an authorised officer enters industry premises, or a commercial passenger vehicle at industry premises, under section 131; and
 - (b) neither the person with control or management of the premises, nor the occupier of the premises, is present.
- (2) On leaving the premises or vehicle, the authorised officer must leave a notice setting out—
 - (a) the time of the entry; and
 - (b) the purpose of the entry; and
 - (c) a description of things done while on the premises or in the vehicle; and
 - (d) the time of departure; and

- (e) the procedure for contacting the regulator for further details of the entry.

**137 Notice of entry if prior notice not given—
industry premises**

- (1) This section applies if an authorised officer, under section 131—
 - (a) enters industry premises or a commercial passenger vehicle at industry premises; and
 - (b) does so without giving prior notice to either—
 - (i) the person with control or management of the premises; or
 - (ii) the occupier of the premises.
- (2) As soon as practicable after entering the premises, the authorised officer must take all reasonable steps to notify a person referred to in subsection (1)(b).

**Division 3—Power of entry without
warrant but with consent**

**138 Authorised officer may enter premises or
vehicle for compliance and investigative
purposes with consent**

An authorised officer may do either of the following things for compliance and investigative purposes—

- (a) enter any industry premises at any time if the person with control or management of the premises, or the occupier of the premises, consents to the entry;

- (b) enter any commercial passenger vehicle at any time if the driver of the vehicle, or the person in whose name the vehicle is registered under Part 3, consents to the entry.

139 Procedure for entry with consent

- (1) Before an authorised officer asks a person for consent to enter under section 138, the officer must inform the person—
 - (a) of the purpose of the entry; and
 - (b) that the person is not required to consent.
- (2) If the consent is given, the authorised officer may ask the person to sign an acknowledgment of the consent.
- (3) The acknowledgment must state—
 - (a) that the person has been informed—
 - (i) of the purpose of the entry; and
 - (ii) that the person is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) that the person gives the authorised officer consent to enter the premises or vehicle and exercise powers under this Part; and
 - (d) the time and date the consent was given.
- (4) If the person signs the acknowledgment, the authorised officer must immediately give a copy to the person.
- (5) If, in any proceeding, an acknowledgment of consent is not produced to the court, it must be presumed, unless the contrary is proved,

that no person consented to the entry by an authorised officer and the exercise of powers by that officer under this Part.

140 Power to enter includes power to search and inspect

- (1) An authorised officer who enters or proposes to enter industry premises or a commercial passenger vehicle under section 138 may search and inspect the premises or vehicle for compliance and investigative purposes.
- (2) In searching and inspecting the premises or vehicle, the authorised officer may be assisted by any person.

Note

Division 5 confers further powers on the authorised officer.

Division 4—Search warrants

141 Issue of search warrant

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant for a place, a motor vehicle or a non-cash payment processing device if the officer believes on reasonable grounds that there is, or may be within the next 72 hours, in the place or in or on the vehicle or device, evidence of the commission of an offence against an industry law.
- (2) If a magistrate is satisfied that there are reasonable grounds for the belief referred to in subsection (1), the magistrate may issue a search warrant authorising an authorised officer named in the warrant, and any assistants the officer considers necessary—
 - (a) to enter the place named or described in the warrant (if any); or

- (b) to enter a motor vehicle—
 - (i) named or described in the warrant;
or
 - (ii) at the place named or described in the warrant (if any); or
- (c) to inspect a motor vehicle or non-cash payment processing device—
 - (i) named or described in the warrant;
or
 - (ii) at the place named or described in the warrant (if any); or
- (d) to search a place or vehicle referred to in this subsection for any thing named or described in the warrant and to seize any such thing.

Notes

- 1 Division 5 confers further powers on the authorised officer.
 - 2 A thing would include a document which is defined in section 38 of the **Interpretation of Legislation Act 1984**.
- (3) In addition to any other requirement, a search warrant issued under this section must—
- (a) state the offence suspected; and
 - (b) state the name of, or describe—
 - (i) the place or motor vehicle to be searched; or
 - (ii) the motor vehicle or non-cash payment processing device to be inspected; and

- (c) include a description of the thing or information for which the search is to be made; and
 - (d) state the conditions to which the warrant is subject (if any); and
 - (e) state whether entry is authorised to be made at any time or during stated hours; and
 - (f) state a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form set out in the regulations under that Act.
- (5) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise an authorised officer to arrest a person.
- (6) Subject to any provision to the contrary in this Part, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

142 Seizure of things not mentioned in search warrant

A search warrant also authorises the authorised officer 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 the authorised officer believes on reasonable grounds that—

- (a) the thing will afford evidence about the commission of an offence against an industry law; and
- (b) it is necessary to seize that thing to prevent—
 - (i) its concealment, loss or destruction; or
 - (ii) its use in the commission of an offence against an industry law.

143 Announcement before entry under search warrant

- (1) Before executing a search warrant, the authorised officer named in the warrant or a person assisting the officer must—
 - (a) announce that the officer or other person is authorised by the warrant to enter the place or motor vehicle named or described in the warrant; and
 - (b) give any person at the place or in control of the vehicle an opportunity to allow entry to the place or into the vehicle.
- (2) The authorised officer or person assisting the officer is not required to comply with subsection (1) if the officer or other person believes on reasonable grounds that immediate entry to the place or into the vehicle is required to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.

144 Copy of search warrant to be given

- (1) This section applies if any of the following persons is present at the execution of a search warrant—
 - (a) if the warrant is for the search of a place—
 - (i) the occupier of that place; or
 - (ii) a person who appears to represent the occupier;
 - (b) if the warrant is for the search of a motor vehicle—
 - (i) the driver of the vehicle; or
 - (ii) if the vehicle is a commercial passenger vehicle, the person in whose name it is registered under Part 3.
- (2) The authorised officer must—
 - (a) identify themselves to that person by producing their identity card for inspection by that person; and
 - (b) give that person a copy of the execution copy of the warrant.

145 Use of evidence obtained under search warrant in civil penalty proceedings

A thing obtained under a search warrant is not inadmissible as evidence in a proceeding for a civil penalty under section 115 by reason only of the fact that the search warrant was issued in respect of the commission of an offence.

Division 5—Additional powers relating to search and entry

146 Definitions

(1) In this Division—

assistant means a person assisting an authorised officer in relation to the entry of the location being investigated as described in section 134(2), 140(2), 141(2), 148(3) or 149(3);

location being investigated means the industry premises, motor vehicle, or other place that the authorised officer enters;

purpose of the investigation means—

- (a) in the case of entry effected under a search warrant, the purpose of obtaining evidence about the commission of an offence against an industry law; and
- (b) in the case of entry effected under section 131 or 138, compliance and investigative purposes.

(2) In this Division, a reference to something at a location being investigated means, if that location is a motor vehicle, something in or on the vehicle.

147 Application of Division

This Division applies in relation to an authorised officer who—

- (a) enters industry premises under section 131 or 138 or under a search warrant; or

- (b) enters a commercial passenger vehicle under section 131 or 138; or
- (c) enters a motor vehicle under a search warrant; or
- (d) enters any other place under a search warrant.

148 General investigation powers relating to entry of industry premises or other place

- (1) This section applies if the location being investigated is industry premises or any other place.
- (2) The authorised officer may do any of the following things for the purpose of the investigation—
 - (a) inspect a non-cash payment processing device at the premises or place;
 - (b) make a sketch of the premises or place or of a thing found there;
 - (c) perform tests;
 - (d) record images or sound;

Note

See section 153 in relation to the admissibility of these recordings.

- (e) search for, inspect or copy relevant documents that are at the premises or place;
- (f) direct a person at the premises or place to give the officer reasonable help to—
 - (i) search or inspect the premises or place; or
 - (ii) exercise the officer's powers under this subsection;

- (g) exercise any other power conferred on the officer by or under this Act.
- (3) In doing anything referred to in subsection (2), the authorised officer may be assisted by any person.
- (4) In this section—
reasonable help includes helping the authorised officer to find and gain access to a thing at the premises or place (including electronically stored material and information).

149 General investigation powers relating to entry of motor vehicle

- (1) This section applies if the location being investigated is a motor vehicle.
 - (2) The authorised officer may search and inspect the motor vehicle and do any of the following things for the purpose of the investigation—
 - (a) inspect a non-cash payment processing device in or on the vehicle;
 - (b) make a sketch of the vehicle or anything in or on it;
 - (c) perform tests;
 - (d) record images or sound;
- Note**
See section 153 in relation to the admissibility of these recordings.
- (e) search for, inspect or copy relevant documents that are in or on the vehicle;
 - (f) extract or copy any information that is held in any engine management system or related system of the vehicle;

- (g) direct any of the following persons to give the officer reasonable help to search or inspect the vehicle or exercise the officer's powers under this subsection—
 - (i) the driver of the vehicle;
 - (ii) if the vehicle is a commercial passenger vehicle, the person in whose name the vehicle is registered under Part 3;
 - (iii) if the vehicle is at industry premises, a person at those premises;
 - (h) exercise any other power conferred on the officer by or under this Act.
- (3) In doing anything referred to in subsection (2), the authorised officer may be assisted by any person.
- (4) In this section—
reasonable help includes—
- (a) helping the authorised officer to find and gain access to a thing in or on the motor vehicle (including electronically stored material and information); and
 - (b) running the engine of a motor vehicle; and
 - (c) operating equipment in or on a motor vehicle; and
 - (d) operating a non-cash payment processing device.

150 Use or seizure of electronic equipment

- (1) This section applies if—
- (a) the authorised officer or an assistant finds at the location being investigated a device—
 - (i) that is a non-cash payment processing device; or
 - (ii) that is or includes a disk, tape or other device for the storage, receipt, generation, transmission or retrieval of information; and
 - (b) the authorised officer believes on reasonable grounds that the device sent, transmitted or generated information that is relevant to—
 - (i) the purpose of the investigation; or
 - (ii) if the entry is effected under section 131 or 138, whether a condition of a driver accreditation has been or is being breached; and
 - (c) the authorised officer believes on reasonable grounds that the information is accessible from the device.
- (2) The authorised officer or assistant may—
- (a) access the information by—
 - (i) operating the device; or
 - (ii) using equipment that is at the location being investigated; or
 - (b) direct a person who is referred to in subsection (5), and who is present at the location being investigated, to do a thing referred to in paragraph (a).

- (3) If the authorised officer or assistant accesses information of a kind referred to in subsection (1)(b), the officer or assistant may—
- (a) put the information in documentary form and seize those documents; or
 - (b) copy the information to a disk, tape or storage device and remove that disk, tape or storage device from the location being investigated; or
 - (c) subject to subsection (4), seize either or both of the following—
 - (i) the device;
 - (ii) the equipment (if any) that enables that access; or
 - (d) direct a person who is referred to in subsection (5), and who is present at the location being investigated, to do a thing referred to in paragraph (a) or (b).
- (4) An authorised officer or assistant must not seize a device, or equipment that enables access to information on the device, under subsection (3)(c) unless—
- (a) it is not practicable to retrieve the information from the device as described in subsection (3)(a) or (b); and
 - (b) if the device is a mobile phone—
 - (i) the phone is found during the execution of a search warrant; and
 - (ii) the phone is named or described in the warrant as a thing that may be seized.

- (5) The authorised officer or assistant may give a direction under subsection (2)(b) or (3)(d) to—
- (a) if the location being searched is a motor vehicle—
 - (i) the driver of the vehicle; or
 - (ii) the person in whose name the vehicle is registered under Part 3; and
 - (b) otherwise—
 - (i) the occupier of that place; or
 - (ii) a person who appears to represent the occupier.
- (6) An authorised officer or assistant must not operate or seize equipment for a purpose referred to in this section unless the officer or assistant believes on reasonable grounds that the operation or seizure can be carried out without damage to the equipment.

151 Equipment for examining or processing

The authorised officer or an assistant may bring to the location being investigated any equipment that is reasonably necessary for the examination or processing of a thing found at the location to determine whether the thing may be seized.

152 Use of equipment already at premises, place or vehicle

- (1) Subject to subsection (2), the authorised officer or an assistant may operate any equipment that is already at the location being investigated for the purpose of carrying out an examination or processing of

a thing found at the location to determine whether the thing may be seized.

- (2) The authorised officer or assistant must not operate the equipment unless the officer or assistant believes on reasonable grounds that—
- (a) the equipment is suitable for the examination or the processing; and
 - (b) the examination or processing can be carried out without damage to the equipment.

153 Admissibility of recording

- (1) This section applies if—
- (a) under section 148(2)(d) or 149(2)(d), the authorised officer or assistant records—
 - (i) images of any part of a motor vehicle; or
 - (ii) sound audible from or in a motor vehicle; and
 - (b) the recording includes the image or voice of a passenger of the motor vehicle.
- (2) The recording is not inadmissible as evidence by reason only of the fact that it includes the image or voice of the passenger if capturing that image or voice does not appear to have been the main reason for making the recording.

Division 6—Additional power to remove material from motor vehicle

154 Removal of material from motor vehicle

- (1) If an authorised officer believes on reasonable grounds that a motor vehicle is being used for the purpose of providing a commercial passenger vehicle service but is not registered under Part 3, the officer may remove from the vehicle and seize any of the following material in or on the vehicle—
 - (a) a thing referred to in section 51(1)(b) or (c);
 - (b) any other thing that indicates that the vehicle is being used to provide a commercial passenger vehicle service;
 - (c) prescribed material.
- (2) Subsection (1) applies whether the authorised officer—
 - (a) has entered the motor vehicle under section 131 or 138 or under a search warrant; or
 - (b) is inspecting the motor vehicle in accordance with Division 8.

Division 7—Seized things

155 Receipt for seized thing

- (1) An authorised officer who seizes a thing under a search warrant, or under section 150 or 154, must give a receipt for the thing to—
 - (a) if the thing was seized at industry premises or any other place, either of the following persons who is present at the premises or place—

- (i) the occupier of the premises or place;
 - (ii) a person who appears to represent the occupier; or
- (b) if the thing was seized from a motor vehicle, either—
 - (i) the driver of the vehicle; or
 - (ii) if the vehicle is a commercial passenger vehicle, the person in whose name the vehicle is registered under Part 3.
- (2) The receipt must—
 - (a) identify the thing seized; and
 - (b) state the name of the authorised officer who seized the thing; and
 - (c) state the reason why the thing was seized.
- (3) If for any reason it is not practicable for an authorised officer to comply with subsection (1), the officer may—
 - (a) send the receipt, by post, to a person referred to in subsection (1)(a) or (b) (as the case requires); or
 - (b) if the thing was seized at industry premises or any other place, leave the receipt at the premises or place in a conspicuous position and in a reasonably secure way; or
 - (c) if the thing was seized from a motor vehicle, affix the receipt to the vehicle in a conspicuous position and in a reasonably secure way.

156 Copies of certain seized things to be given

- (1) This section applies if an authorised officer seizes under this Part—
 - (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device containing information that can be readily copied.
- (2) The authorised officer must give a copy of the document, thing or information to the owner or custodian of the document, thing or device as soon as practicable after the seizure.
- (3) Subsection (2) does not apply if the authorised officer is unable to identify the owner or custodian of the document, thing or device.

157 Return of seized things

- (1) If an authorised officer seizes a thing under this Part, the officer must take reasonable steps to return the thing to the person from whom it was seized if the reason for its seizure no longer exists.
- (2) If the thing has not been returned before the end of the retention period, the authorised officer must take reasonable steps to return it unless—
 - (a) proceedings have commenced within the retention period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 158 extending the retention period; or

- (c) the thing has been forfeited to the State under section 159.

158 Magistrates' Court may extend retention period

- (1) An authorised officer may apply to the Magistrates' Court for an extension of the retention period in respect of a thing seized under this Part.
- (2) The application must be made within—
- (a) the retention period; or
 - (b) if the Magistrates' Court extends the period within which the application must be made, that extended period.
- (3) On an application under subsection (1), the Magistrates' Court may order the extension applied for if satisfied that the extension is necessary—
- (a) for the purposes of an investigation into whether an offence has been committed against an industry law; or
 - (b) to enable evidence of an offence against an industry law to be obtained for the purposes of a prosecution; or
 - (c) to enable evidence of a contravention of section 113(3) to be obtained for the purposes of an application for an order under section 115(2).
- (4) The Magistrates' Court may adjourn an application under subsection (1) to enable notice of the application to be given to any person.

159 Forfeiture of seized thing

- (1) The regulator may declare by instrument that a thing that has been seized and retained under this Part is forfeited to the State if the regulator—
 - (a) cannot find the thing's owner despite making reasonable enquiries; or
 - (b) cannot return the thing to the owner despite making reasonable efforts; or
 - (c) considers it necessary to retain the thing to prevent the commission of an offence against an industry law.
- (2) If a thing is forfeited to the State under subsection (1)(c), the regulator must give the previous owner written notice of the forfeiture as soon as practicable after making the declaration unless the regulator cannot find the previous owner despite making reasonable enquiries.
- (3) A notice under subsection (2) must—
 - (a) include a statement of reasons for the action taken; and
 - (b) inform the previous owner that they have a right to seek review of the regulator's decision to make the declaration under Part 12.
- (4) Material seized under section 154 may, on the owner or driver of the vehicle being found guilty of an offence against section 37(1) or 38(1), be forfeited by order of the court.

Division 8—Directions, defect notices, removal of material

160 Direction to require production of information, documents and related items

- (1) The regulator or an authorised officer may, for compliance and investigative purposes, direct a person specified in subsection (2) to provide—
 - (a) information or a document that is required to be kept under an industry law; or
 - (b) information or a document or device or other thing in the person's possession or control relating to—
 - (i) commercial passenger vehicle operations; or
 - (ii) the provision of booking services; or
 - (iii) the provision of a non-cash payment processing service; or
 - (iv) a non-cash payment surcharge.
- (2) The direction may be given to—
 - (a) a booking service provider; or
 - (b) an accredited driver; or
 - (c) the owner of a commercial passenger vehicle; or
 - (d) the person in whose name a motor vehicle is registered under Part 3; or
 - (e) a person who the regulator or authorised officer believes on reasonable grounds may be able to provide information, a document, device (including a non-cash payment

processing device) or other thing to the regulator or officer.

- (3) A person who is given a direction under subsection (1) must comply with the direction unless the person has a reasonable excuse.

Penalty: In the case of an individual,
60 penalty units;
In the case of a body corporate,
300 penalty units.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (4) The regulator or authorised officer may—
- (a) inspect any document, device or other thing that is produced; or
 - (b) copy or print any document that is produced; or
 - (c) copy any device or other thing that is produced; or
 - (d) seize and remove any document, device or other thing that is produced that the regulator or officer believes on reasonable grounds provides, or may on further inspection provide, evidence of a contravention of an industry law.

161 Manner of giving direction under section 160

- (1) The regulator must give a direction under section 160 in writing.
- (2) An authorised officer may give a direction under section 160 orally or in writing.

- (3) Whether given orally or in writing, the direction must state where, to whom and how the information, document, device or other thing is to be produced.
- (4) If giving the direction orally, the authorised officer must—
 - (a) state whether the direction is to be complied with immediately or within a specified period; and
 - (b) warn the person to whom the direction is given that it is an offence under section 160(3) to not comply with the direction.
- (5) If giving the direction in writing, the regulator or authorised officer 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 section 160(3) to not comply with the direction.
- (6) The direction may—
 - (a) require that a document produced is a copy of the original; or
 - (b) require that a document that is produced in electronic form is accompanied by sufficient information to enable the regulator or authorised officer to access the document.
- (7) The direction may specify—
 - (a) the particular information, or a particular document, device or other thing, that is to be produced; or

- (b) the particular class of information, document, device or other thing that is to be produced.

162 Directions to driver of commercial passenger vehicle

- (1) An authorised officer may, for compliance and investigative purposes, direct the driver of a motor vehicle—
 - (a) to produce for inspection any licence, permit or document which is required to be carried in, or by the driver of, a commercial passenger vehicle; or
 - (b) to state their name and address; or
 - (c) to stop the vehicle; or
 - (d) to keep the vehicle stationary for a sufficient period of time for the vehicle to be inspected; or
 - (e) to move the vehicle to the nearest convenient and safe place for the vehicle to be inspected; or
 - (f) to present a commercial passenger vehicle at a reasonable time and place for inspection by—
 - (i) an authorised officer; or
 - (ii) a police officer; or
 - (iii) a prescribed person.
- (2) Subject to subsection (5), a driver who is given a direction under subsection (1) must comply with the direction unless the person has a reasonable excuse.

Penalty: 10 penalty units.

- (3) A direction under subsection (1)(c) or (d) may be given by calling or signalling to the driver.
- (4) It is a defence to a charge for an offence against subsection (2) relating to a direction under subsection (1)(c) or (d) that the accused was obeying a provision of the rules made under section 95D of the **Road Safety Act 1986**.
- (5) If a direction under subsection (1)(f) is given to a driver who is not the person in whose name the vehicle is registered under Part 3, the driver must, as soon as practicable, notify the person in whose name the vehicle is registered under Part 3 of—
- (a) the direction; and
 - (b) if the driver has not been, or is not, reasonably able to comply with the direction, that fact.

Penalty: 5 penalty units.

- (6) A person who, under subsection (5), is notified of a direction must comply with the direction unless the person has a reasonable excuse.

Penalty: 20 penalty units.

- (7) In this section—

driver means a person who is in charge of the vehicle within the meaning of section 3AA of the **Road Safety Act 1986**.

163 Regulator may direct that vehicle be inspected

- (1) The regulator may, for compliance and investigative purposes, direct the person in whose name a motor vehicle is registered under Part 3 to present the vehicle at a reasonable time and place for inspection by—
 - (a) an authorised officer; or
 - (b) a police officer; or
 - (c) a prescribed person.
- (2) A person who is given a direction under subsection (1) must comply with the direction unless the person has a reasonable excuse.

Penalty: 20 penalty units.

164 Authorised officer or police officer may issue defect notice

- (1) This section applies in relation to an inspection undertaken in accordance with any provision of this Act.
- (2) An authorised officer or police officer who inspects a commercial passenger vehicle may issue a defect notice for the vehicle if the authorised officer or police officer is satisfied that the vehicle—
 - (a) is unsafe, unsuitable or unfit for use; or
 - (b) does not comply with—
 - (i) this Act or the regulations; or
 - (ii) a condition of the registration for that vehicle under Part 3.

- (3) A defect notice is issued by serving the notice on the person in whose name the vehicle is registered under Part 3.
- (4) A defect notice—
- (a) must identify the vehicle and the defect in respect of which the notice is issued; and
 - (b) must state that the person to whom the notice is issued must fix that defect; and
 - (c) must state a time and date after which the vehicle must not be driven unless the defect is fixed; and
 - (d) may direct the person to whom the notice is issued to present the vehicle for further inspection at a specified location and at a specified time and date.
- (5) The person in whose name the vehicle is registered under Part 3 must not drive the vehicle, or permit the vehicle to be driven, after the time and date referred to in subsection (4)(c) unless the defect has been fixed.
- Penalty: 20 penalty units.
- (6) If a defect notice includes a direction under subsection (4)(d), the person to whom the notice is issued must comply with that direction unless the person has a reasonable excuse.
- Penalty: 20 penalty units.

165 Direction to provide evidence of an inspection

- (1) This section applies if a direction under this Part requiring that a commercial passenger vehicle be inspected is given to the person in whose name the vehicle is registered under Part 3.
- (2) The person who gave the direction may direct the person in whose name the vehicle is registered under Part 3 to provide evidence of the inspection.
- (3) A direction under subsection (2) may specify the kind of evidence that is to be provided.
- (4) A person who is given a direction under subsection (2) must comply with the direction unless the person has a reasonable excuse.

Penalty: 10 penalty units.

Division 9—Miscellaneous

166 Use of force

- (1) This section applies in relation to a power—
 - (a) that is conferred on an authorised officer under this Part; and
 - (b) under which the officer may—
 - (i) enter a place or a motor vehicle;
or
 - (ii) do anything at any place or in any motor vehicle.
- (2) In exercising a power to which this section applies, the authorised officer may use only so much force as is reasonably necessary to effect the entry or to do the thing.

167 Authorised officer or assistant must cause as little inconvenience as possible

In exercising a power conferred on an authorised officer or an assistant under this Part, the officer or assistant must—

- (a) cause as little inconvenience as possible; and
- (b) not remain at any place or in any motor vehicle longer than is reasonably necessary.

168 Compensation for damage caused during exercise of powers under this Part

- (1) The regulator must pay compensation for any damage caused by an authorised officer, or a person assisting an authorised officer, in exercising (or purporting to exercise) any power conferred under this Part.
- (2) However, the regulator is not liable to pay compensation to a person for any damage caused during any inspection or search conducted in accordance with a search warrant under Division 4 or in accordance with Division 5 or 6 if—
 - (a) the thing that was the object of the inspection or search is found; and
 - (b) that thing provides evidence of a contravention of an industry law; and
 - (c) the damage caused was no more than reasonably necessary in inspecting, or searching for, the thing.
- (3) In determining the amount of compensation payable in relation to any damage caused to electronic equipment, regard must be had to—

- (a) whether any of the following persons were available at the time to provide a warning or guidance as to the operation of the equipment—
 - (i) the occupier of the place at which the inspection or search occurred (or an employee or agent of the operator);
 - (ii) the driver of the motor vehicle that was searched or inspected;
 - (iii) the person in whose name that vehicle is registered under Part 3; and
- (b) whether any warning or guidance was given by a person referred to in paragraph (a); and
- (c) whether the warning or guidance was appropriate in the circumstances.

169 Abrogation of privilege against self-incrimination

- (1) A person is not excused from complying with a direction given under this Part on the ground that complying with the direction may result in information being provided that—
 - (a) might incriminate the person; or
 - (b) may make the person liable to a penalty.
- (2) The material specified in subsection (3)—
 - (a) is not admissible in evidence against the person referred to in that subsection in a criminal proceeding, or a proceeding for the imposition of a civil penalty, other than a proceeding in

respect of the provision of false information; and

- (b) must not be used in any action, proceeding or process that may make the person liable to a penalty, other than a proceeding in respect of the provision of false information.
- (3) The specified material is—
 - (a) information obtained from an individual under a direction given under this Part (other than information contained in any document or item that the person is required to keep under an industry law); and
 - (b) information, or a document or thing, obtained as a direct result or indirect consequence of information referred to in paragraph (a).

170 Client legal privilege not abrogated

Nothing in this Part requires a person to produce a document that would disclose or otherwise provide information that is the subject of client legal privilege.

Part 8—Enforcement measures

Division 1—Improvement notices

171 Service of improvement notices

- (1) This section applies if the regulator or an authorised officer reasonably believes that a person—
 - (a) is contravening a provision of this Act or the regulations; or

- (b) has contravened a provision of this Act or the regulations in circumstances that make it likely that the contravention will continue or be repeated; or
 - (c) is providing commercial passenger vehicle services that threaten safety.
- (2) Subject to this section, the regulator or the authorised officer may serve an improvement notice requiring the person—
 - (a) to remedy the contravention; or
 - (b) to prevent a likely contravention from occurring; or
 - (c) to remedy the things or operations causing the contravention or likely contravention; or
 - (d) to provide commercial passenger vehicle services in a manner that is not likely to threaten safety.
- (3) Before serving an improvement notice under this section, an authorised officer must inform the regulator of the authorised officer's intention to do so.

172 Contents of improvement notices

- (1) An improvement notice must—
 - (a) if the notice relates to a contravention or likely contravention of this Act or the regulations—
 - (i) state that the regulator or the authorised officer believes the person—
 - (A) is contravening a provision of this Act or the regulations;
or

- (B) has contravened a provision of this Act or the regulations in circumstances that make it likely that the contravention will continue or be repeated; and
 - (ii) state the provision the regulator or the officer believes is being, or has been, contravened; and
 - (iii) briefly state how the provision is being, or has been, contravened; and
 - (iv) state the day before which the person is required to remedy the contravention or likely contravention; and
- (b) in any other case—
- (i) state that the regulator or the officer believes the person is providing, or has provided, commercial passenger vehicle services that threaten safety; and
 - (ii) briefly state how the commercial passenger vehicle services are threatening, or have threatened, safety; and
 - (iii) state the day before which the person is required to provide commercial passenger vehicle services so that safety is not threatened or likely to be threatened; and
- (c) set out the penalty for non-compliance with the notice; and

- (d) inform the person that they have a right to seek review of the regulator's decision to serve the notice under Part 12; and
 - (e) state that the notice is served under section 171.
- (2) An improvement notice served on a person on a ground stated in section 171(1)(a) or (b) may include directions concerning the action to be taken to remedy the contravention or prevent the likely contravention, to which the notice relates.
 - (3) An improvement notice served on a person on the ground stated in section 171(1)(c) may include directions concerning the action to be taken so that commercial passenger vehicle safety is not threatened or likely to be threatened.
 - (4) An improvement notice may include recommendations.
 - (5) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

173 Directions in improvement notices

A direction included in an improvement notice may—

- (a) refer to an approved code of practice; and
- (b) offer the person on whom it is served a choice of ways in which to remedy the contravention or likely contravention.

174 Compliance with improvement notice

- (1) A person on whom an improvement notice is served must comply with the notice within the period specified in the notice unless the person has a reasonable excuse.

Penalty: In the case of an individual,
\$50 000;

In the case of a body corporate,
\$500 000.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (2) It is not an offence to fail to comply with recommendations in an improvement notice.

175 Amendment of improvement notice

- (1) An improvement notice that has been served may be amended by the regulator or any authorised officer.
- (2) An amendment of an improvement notice is effected by serving on the person affected a notice stating the terms of the amendment.
- (3) An amendment of an improvement notice is ineffective if it purports to deal with a contravention of a different provision of this Act or the regulations from that dealt with in the improvement notice as first served.
- (4) A notice of an amendment of an improvement notice must—
- (a) state the reasons for the amendment;
 - and

(b) inform the person affected that they have a right to seek review of the regulator's decision to amend the notice under Part 12; and

(c) state that it is served under this section.

176 Cancellation of improvement notices

- (1) An improvement notice served on a person may only be cancelled by the regulator.
- (2) Notice of cancellation of an improvement notice is required to be served on the person affected.

177 Clearance certificates for improvement notices

- (1) This section applies if the regulator or an authorised officer is satisfied that a person on whom an improvement notice has been served has complied with all the requirements of, or a specific requirement of, that notice.
- (2) The regulator or an authorised officer must serve a clearance certificate on the person to the effect that (as the case requires)—
 - (a) all of the requirements of the improvement notice have been complied with; or
 - (b) the specific requirement of the improvement notice has been complied with.
- (3) The clearance certificate must be served as soon as practicable after the regulator or an authorised officer is so satisfied.

- (4) A requirement of the improvement notice to which the clearance certificate relates ceases to operate when the person receives the certificate.

178 Proceedings for offences not affected by improvement notices or clearance certificates

- (1) The service, amendment or cancellation of an improvement notice does not affect any proceeding for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice was served.
- (2) The service of a clearance certificate under section 177 in respect of an improvement notice does not affect any proceeding for an offence against this Act or the regulations in connection with any matter in respect of which the improvement notice was served.

179 Extension of time for compliance with improvement notices

- (1) This section applies if a person has been served with an improvement notice.
- (2) The regulator or an authorised officer may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the regulator or the authorised officer may only extend the compliance period if the period has not ended.
- (4) In this section—

compliance period means the period stated in the improvement notice served under section 171, and includes that period as extended under this section.

Division 2—Prohibition notices

180 Service of prohibition notice

- (1) This section applies if the regulator or an authorised officer reasonably believes that—
 - (a) an activity is occurring in relation to commercial passenger vehicle services that involves or will involve an immediate risk to safety; or
 - (b) an activity may occur in relation to commercial passenger vehicle services that, if it occurs, will involve an immediate risk to safety.
- (2) The regulator or an authorised officer may serve a prohibition notice on a person who has, or appears to have, control over the activity prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way.
- (3) Despite section 192, a prohibition notice may be given orally, but must be confirmed by written notice served on the person as soon as practicable after it is given.

181 Contents of prohibition notice

- (1) A prohibition notice must—
 - (a) state that the regulator or the authorised officer believes that grounds for the service of the prohibition notice exist and the basis for that belief; and
 - (b) briefly state the activity that the regulator or the officer believes involves or will involve the risk and the matters that give or will give rise to the risk; and

- (c) state the provision (if any) of this Act or the regulations that the regulator or the officer believes is being, or is likely to be, contravened by that activity; and
 - (d) set out the penalty for contravening the notice; and
 - (d) inform the person that they have a right to seek review of the regulator's decision to serve the notice under Part 12; and
 - (f) state that the notice is served under section 180.
- (2) A prohibition notice may include directions.
- (3) A prohibition notice may include recommendations.

182 Directions in prohibition notices

A direction included in a prohibition notice may do any one or more of the following—

- (a) refer to an approved code of practice;
- (b) specify measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in section 181(1)(c);
- (c) offer the person on whom it is served a choice of ways in which to remedy—
 - (i) the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in section 181(1)(c);
 - (ii) the matter or matters that involve, or will involve, an immediate risk to safety.

183 Compliance with prohibition notice

- (1) A person on whom a prohibition notice is served must comply with the notice unless the person has a reasonable excuse.

Penalty: In the case of an individual,
\$150 000;
In the case of a body corporate,
\$1 500 000.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against this subsection.

- (2) It is not an offence to fail to comply with recommendations in a prohibition notice.

184 Amendment of prohibition notice

- (1) A prohibition notice that has been served may be amended by the regulator or any authorised officer.
- (2) An amendment of a prohibition notice is effected by serving on the person affected a notice stating the terms of the amendment.
- (3) An amendment of a prohibition notice is ineffective if it purports to prohibit the carrying out of an activity that is different from the activity prohibited by the prohibition notice as first served.
- (4) A notice of an amendment of a prohibition notice must—
 - (a) state the reasons for the amendment;
and

- (b) inform the person affected that they have a right to seek review of the regulator's decision to amend the notice under Part 12; and
- (c) state that it is served under this section.

185 Withdrawal of prohibition notices

- (1) A prohibition notice served on a person may only be withdrawn by the regulator.
- (2) Notice of the withdrawal of a prohibition notice is required to be served on the person affected.

186 Certificates that matters that give rise to immediate risks to safety remedied

- (1) This section applies if the regulator or an authorised officer is satisfied that a person served with a prohibition notice has remedied all of the matters or the matter that—
 - (a) gave, or will give, rise to an immediate risk to safety; and
 - (b) is specified in the prohibition notice.
- (2) The regulator or an authorised officer must serve a certificate on the person to the effect that (as the case requires)—
 - (a) all of the matters or the matter that gave rise to an immediate risk to safety because of the activity specified in the prohibition notice have been remedied; or
 - (b) all of the matters or the matter that could have given rise to an immediate risk to safety because of the activity specified in the prohibition notice have been remedied.

- (3) The certificate must be served as soon as practicable after the regulator or authorised officer is so satisfied.
- (4) A matter stated in the prohibition notice that has been remedied to the satisfaction of the regulator or authorised officer, and to which the certificate relates, ceases to operate when the person receives the certificate.

187 Proceedings for offences not affected by prohibition notices or certificates

- (1) The service, amendment or withdrawal of a prohibition notice does not affect any proceeding for an offence against this Act or the regulations in connection with any matter in respect of which the prohibition notice was served.
- (2) The service of a certificate under section 186 in respect of a prohibition notice does not affect any proceeding for an offence against this Act or the regulations in connection with any matter in respect of which the prohibition notice was served.

188 When regulator may carry out action

- (1) This section applies if a person on whom a prohibition notice is served fails to take reasonable steps to comply with the notice.
- (2) The regulator may take any remedial action the regulator believes reasonable to make the situation safe after giving written notice to the person on whom the prohibition notice was served of—
 - (a) the regulator's intention to take that action; and
 - (b) the person's liability for the costs of that action.

189 Power of regulator to take other remedial action

- (1) This section applies if—
 - (a) the regulator reasonably believes that circumstances in which a prohibition notice can be served exist; and
 - (b) after taking reasonable steps, the regulator cannot find the person with control or management of the premises or vehicle in relation to which the notice would be served.
- (2) The regulator may take any remedial action necessary to make the situation safe.

190 Costs of remedial or other action

The regulator may recover, as a debt due to the regulator in a court of competent jurisdiction, the reasonable costs of any remedial action taken under—

- (a) section 188 from the person on whom the prohibition notice is served; or
- (b) section 189 from any person on whom the prohibition notice could have been served in respect of the matter.

Division 3—General requirements applying to notices

191 Definition

In this Division—

notice means an improvement notice or a prohibition notice.

192 Notice must be in writing

A notice must be in writing.

193 Minor variations of notices

The regulator or an authorised officer may make minor changes to a notice—

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

194 Formal irregularities or defects in notice

A notice is not invalid merely because of—

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person on whom the notice is served if the notice sufficiently identifies the person and is served or given to the person in accordance with section 195.

195 Serving notices

- (1) A notice may be served on a person—
 - (a) in accordance with section 288; or
 - (b) if the notice relates to industry premises, by leaving it—
 - (i) at the premises to which the notice relates; or
 - (ii) with a person who is or appears to be the person with control or management of those premises; or
 - (c) if the notice relates to a motor vehicle, by leaving it—
 - (i) on the vehicle to which the notice relates; or

- (ii) with a person who is or appears to be in control of that vehicle.

Division 4—Injunctions

196 Injunctions for contravention of specified provisions

- (1) This section applies to the following provisions (the *specified provisions*)—
- (a) section 53;
 - (b) section 54;
 - (c) section 55;
 - (d) section 113(3).
- (2) The Supreme Court may grant an injunction, in any terms that it considers appropriate, if satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
- (a) a contravention of a specified provision; or
 - (b) attempting to contravene a specified provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene a specified provision; or
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene a specified provision; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a specified provision; or

- (f) conspiring with others to contravene a specified provision.
- (3) Without limiting subsection (2), the Supreme Court may grant an injunction under that subsection restraining a person from doing any thing specified in subsection (4)—
 - (a) for a specified period; or
 - (b) except on specified terms and conditions.
- (4) The things are—
 - (a) receiving or accepting requests for a person to be provided with a commercial passenger vehicle service (whether or not as part of, or incidental to, the carrying on of another business); and
 - (b) facilitating the receiving or acceptance of requests referred to in paragraph (a); and
 - (c) carrying on a business or supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business).
- (5) The Supreme Court may only grant an injunction under subsection (2) on an application made by the regulator.
- (6) The power of the Supreme Court to grant an injunction under subsection (2) restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and

- (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (7) The power of the Supreme Court to grant an injunction under subsection (2) requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (8) On an application under subsection (2) the Supreme Court may grant an injunction by consent of all the parties to the proceeding, whether or not the Court is satisfied as required by that subsection.
- (9) If in the opinion of the Supreme Court it is desirable to do so, the Court may grant an interim injunction pending the determination of an application under subsection (2).
- (10) In granting an interim injunction, the Supreme Court must not require the applicant or any other person to give any undertakings as to damages as a condition of doing so.

197 Injunctions for non-compliance with improvement notice or prohibition notice

- (1) The regulator may apply to the Magistrates' Court for an injunction—
 - (a) compelling a person to comply with an improvement notice or a prohibition notice; or
 - (b) restraining a person from contravening an improvement notice or a prohibition notice.
- (2) The regulator may do so—
 - (a) whether or not a proceeding has been commenced for an offence against this Act or the regulations in connection with any matter in respect of which the notice was served; and
 - (b) whether or not any period for compliance with the notice has expired.

Division 5—Enforceable voluntary undertakings

198 Enforceable voluntary undertaking by registered booking service providers

- (1) The regulator may accept a written undertaking given by a registered booking service provider in connection with a matter relating to a contravention or alleged contravention by the provider of this Act or the regulations.

- (2) The regulator must not accept an undertaking under subsection (1) if—
 - (a) the undertaking is in connection with a matter relating to a contravention or alleged contravention of an indictable offence under this Act; and
 - (b) the regulator considers that it would be appropriate for the regulator to prosecute that offence.
- (3) The giving of an undertaking does not constitute an admission of guilt by the provider in respect of the contravention or alleged contravention to which the undertaking relates.

199 Notice of decisions and reasons for decision

The regulator must give the registered booking service provider seeking to give an undertaking written notice of—

- (a) the regulator's decision to accept or reject the undertaking; and
- (b) the reasons for the decision.

200 When an undertaking is enforceable

An undertaking takes effect and becomes enforceable—

- (a) when the regulator's decision to accept the undertaking is given to the registered booking service provider who gave the undertaking; or
- (b) at any later date specified by the regulator.

201 Compliance with undertaking

A registered booking service provider who has given an undertaking that is in effect must not contravene the undertaking.

Penalty: In the case of an individual,
60 penalty units;
In the case of a body corporate,
300 penalty units.

202 Contravention of undertaking

- (1) This section applies if the regulator considers that a registered booking service provider has contravened an undertaking accepted by the regulator from that provider.
- (2) The regulator may apply to the Magistrates' Court for enforcement of the undertaking.
- (3) If the Magistrates' Court is satisfied that the provider has contravened the undertaking, the Court, in addition to imposing any penalty, may make any of the following orders—
 - (a) an order that the provider must comply with the undertaking or take specified action to comply with the undertaking;
 - (b) an order discharging the undertaking;
 - (c) an order directing the provider to pay to the regulator—
 - (i) the costs of the proceeding; and
 - (ii) the reasonable costs of the regulator in monitoring compliance with the undertaking in the future;
 - (d) any other order that it considers appropriate in the circumstances.

- (4) A registered booking service provider must comply with an order under this section.

Penalty: In the case of an individual,
60 penalty units;

In the case of a body corporate,
300 penalty units.

- (5) Nothing in this section prevents a proceeding being commenced for the contravention or alleged contravention of this Act or the regulations to which the undertaking relates.

203 Withdrawal or variation of undertaking

- (1) A registered booking service provider who has given an undertaking may withdraw or vary the undertaking with the written agreement of the regulator.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act or the regulations.

204 Proceedings for alleged contravention

- (1) Subject to this section, no proceeding for a contravention or alleged contravention of this Act or the regulations may be commenced against a registered booking service provider if an undertaking is in effect in relation to that contravention.
- (2) No proceeding may be commenced for a contravention or alleged contravention of this Act or the regulations against a registered booking service provider who has—
- (a) given an undertaking in respect of that contravention; and
 - (b) completely discharged the undertaking.

- (3) The regulator may accept an undertaking in respect of a contravention or alleged contravention before a proceeding in respect of that contravention has been finalised.
- (4) If the regulator accepts an undertaking before a proceeding is finalised, the regulator must take all reasonable steps to have the proceeding discontinued as soon as possible.

Division 6—Infringement offences

205 Infringement notices

- (1) A police officer or an authorised officer who has reason to believe that a person has committed a prescribed infringement offence may serve an infringement notice on that person.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The penalty for the purposes of this section in respect of any infringement is the amount prescribed in respect of that infringement.

Division 7—Specific court orders

206 Commercial benefits penalty order

- (1) A court that finds a person guilty of an offence under this Act or the regulations may make an order under this section on application by—
 - (a) the prosecutor; or
 - (b) the regulator.
- (2) The court may make an order under this section requiring 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 obtained or obtainable, 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 authorised officer in connection with the commission of the offence—would have been obtained or obtainable, by the person or by an associate of the person, from the commission of the offence had the journey been completed uninterrupted.
- (3) In estimating the gross commercial benefit that was or would have been obtained or obtainable from the commission of the offence, the court may take into account—
- (a) benefits of any kind, whether monetary or otherwise; and
 - (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved or achievable because of the commission of the offence; and
 - (c) any other matter that it considers relevant.
- (4) However, in estimating the gross commercial benefit that was or would have been obtained or obtainable 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) For the purposes of this section, a person is an *associate* of another if—
- (a) one is a spouse, de facto partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or
 - (c) they are partners; or
 - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
 - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
 - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
 - (g) they are related bodies corporate within the meaning of the Corporations Act; or
 - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (7) For the purposes of subsection (6), a beneficiary of a trust includes an object of a trust.

207 Supervisory intervention order

- (1) A court that finds a person guilty of an offence under this Act or the regulations may make an order under this section on application by—
 - (a) the prosecutor; or
 - (b) the regulator.
- (2) The court may make an order under this section requiring the person (at the person's own expense and for a specified period not exceeding one year) to do all or any of the following—
 - (a) to do specified things that the court considers will improve the person's compliance with this Act or the regulations, including (for example) the following—
 - (i) appointing or removing staff to or from particular activities or positions;
 - (ii) training and supervising staff;
 - (iii) obtaining expert advice as to maintaining appropriate compliance;
 - (iv) installing monitoring, compliance, managerial or operational equipment;
 - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
 - (b) implement specified monitoring, compliance, managerial or operational practices, systems or procedures subject

to the direction of one or more of the following as specified in the order—

- (i) the regulator;
 - (ii) a person nominated by the regulator;
- (c) to furnish compliance reports to the regulator or the court, or both, as specified in the order;
- (d) to appoint a person to have responsibilities—
- (i) to assist the person in improving compliance with this Act or the regulations, or specified provisions of this Act or the regulations; and
 - (ii) to monitor the person's performance in complying with this Act or the regulations, or specified provisions of this Act or the regulations and in complying with the requirements of the order; and
 - (iii) to furnish compliance reports to the regulator the court, or both, as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form and manner in which, and the frequency with which, compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or parts of compliance reports be made public, and may specify the form and manner in which, and the frequency with which, they are to be made public.

- (5) A court may only make an order under this section against a person if it considers the person to be a systematic or persistent offender against this Act or the regulations.
- (6) The court may only make an order under this section if it is satisfied that the order is capable of improving the person's ability or willingness to comply with this Act or the regulations, having regard to—
 - (a) the offences against this Act or the regulations of which the person has been previously found guilty; and
 - (b) the offences against this Act or the regulations for which the person has been proceeded against by way of unwithdrawn infringement notices; and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with—
 - (i) the provision of commercial passenger vehicle services; or
 - (ii) the provision of booking services.
- (7) An order under this section 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.
- (8) The court may revoke or amend an order made under this section on the application of—
 - (a) the regulator; 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 circumstances warranting the revocation or amendment.
- (9) In this section—
- compliance report***, in relation to a person in respect of whom an order is made under this section, means a report relating to—
- (a) the performance of the person in complying with—
 - (i) this Act or the regulations, or provisions of this Act or the regulations specified in the order; and
 - (ii) the requirements of the order; and
 - (b) without limiting paragraph (a)—
 - (i) things done by the person to ensure that any failure by the person to comply with this Act or the regulations, or the specified provisions of this Act or the regulations, does not continue; and
 - (ii) the results of those things having been done.

208 Contravention of supervisory intervention order

A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in a contravention of the requirement.

Penalty: In the case of an individual,
120 penalty units;
In the case of a body corporate,
600 penalty units.

209 Exclusion orders

- (1) A court that finds a person guilty of an offence against this Act or the regulations may make an order under this section on application by—
 - (a) the prosecutor; or
 - (b) the regulator.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against this Act or the regulations, the court may, if it considers it appropriate to do so, make an order under this section prohibiting the person, for a specified period, from—
 - (a) providing, or being otherwise involved in the providing of, commercial passenger vehicle services or booking services; or
 - (b) being a director, secretary or officer concerned in the management of a body corporate involved in providing commercial passenger vehicle services or booking services.
- (3) The court may only make an order under this section if it considers the person to be a systematic or persistent offender against this Act or the regulations.
- (4) The court may only make an order under this section if it is satisfied that the person should not continue the things that are the subject of the proposed order and that a supervisory

intervention order is not appropriate, having regard to—

- (a) the offences against this Act or the regulations of which the person has previously been found guilty; and
 - (b) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with the provision of commercial passenger vehicle services or booking services.
- (5) The court may revoke or amend an order made under this section on the application of—
- (a) the regulator; 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 circumstances warranting the revocation or amendment.

210 Contravention of exclusion order

A person who is subject to an exclusion order must not engage in conduct that results in a contravention of the order.

Penalty: In the case of an individual,
120 penalty units;
In the case of a body corporate,
600 penalty units.

211 Release on the giving of a safety undertaking

- (1) If a court convicts a person or finds a person guilty of an offence against this Act or the regulations, the court may (with or without recording a conviction) adjourn the

- proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions.
- (2) An undertaking must specify the following conditions—
- (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
 - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act or the regulations;
 - (c) that the offender observes any special conditions imposed by the court.
- (3) Without limiting subsection (2)(c), the court may impose on an offender special conditions that the offender—
- (a) engage a consultant, who is approved in writing by the regulator, to advise on or assist with safety matters; or
 - (b) develop and implement a systematic approach to managing risks to safety that arise or may arise in the conduct of the offender's undertaking; or
 - (c) arrange for the carrying out of an audit of the offender's undertaking in relation to safety by an independent person who is approved in writing by the regulator.
- (4) An offender who has given an undertaking under this section may be called on to appear before the court—
- (a) by order of the court; or

- (b) by notice issued by the proper officer (within the meaning of section 72(4) of the **Sentencing Act 1991**) of the court.
- (5) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (6) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.
- (7) The court may make an order under this section in relation to an offender in addition to or instead of—
 - (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.

212 Variation or contravention of orders under section 211

Section 78 and Divisions 1 and 2 of Part 3C of the **Sentencing Act 1991** (and any definitions in that Act of terms used in that section or Divisions 1 and 2 of that Part) apply to an order under section 211 for the release of an offender as though they were incorporated into this Act and as though—

- (a) a reference to Subdivision (2) or (3) were instead a reference to section 207; and
- (b) a reference to section 72 or 75 were a reference to section 211; and

- (c) a reference to a prescribed person, a member of a prescribed class of person, the informant or a police prosecutor were instead a reference to the regulator; and
- (d) the reference in section 83AC of the **Sentencing Act 1991** to a level 10 fine were instead a reference to a fine not exceeding 10 penalty units for an individual or 50 penalty units for a body corporate; and
- (e) any other necessary modifications were made.

213 Adverse publicity order

- (1) A court that finds a person guilty of an offence against this Act or the regulations may make an order under this section on application by the prosecutor or the regulator.
- (2) The court may make an order under this section requiring the offender to do all or any of the following within the period specified in the order—
 - (a) publicise, in the way specified in the order and within the period specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
 - (b) notify a specified person or a person of a specified class, in the way specified in the order and within the period specified in the order, of the offence, its consequences, the penalty imposed and any other related matter;

- (c) give the regulator, within 5 business days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.
- (3) The court may make an order under this section in addition to—
 - (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.
- (4) This section does not limit a court's powers under any other provision of this Act.

Part 9—Disciplinary action

214 When the regulator may take disciplinary action

The regulator may take disciplinary action under this Part against a permission holder in respect of a permission held by the permission holder if satisfied of any of the following—

- (a) that the permission holder has contravened or is contravening a condition imposed on the permission;
- (b) that the permission was obtained because of false or misleading information given as part of, or in relation to, the application for the permission;
- (c) that the permission holder has contravened a requirement applying to the permission holder under—

- (i) Part 11 or any regulations made for the purposes of that Part; or
 - (ii) the **Taxation Administration Act 1997** as it applies to Part 11 and any regulations made for the purposes of that Part;
- (d) in the case of a registered booking service provider—
- (i) the provider's registration, or a relevant person in relation to the registration, has contravened or is contravening this Act or regulations made under this Act; or
 - (ii) the provider would no longer satisfy any one or more of the matters that the regulator must consider when deciding whether to register or refuse to register the provider as a registered booking service provider;
- (e) in the case of an accredited driver, that they—
- (i) have been found guilty (within the meaning of Part 5) of a category 2 offence or a category 3 offence or are subject to a charge for a disqualifying offence that has not been finally disposed of; or
 - (ii) would no longer satisfy any one or more of the matters that the regulator must consider when deciding whether to approve or refuse to approve the application for the driver accreditation.

215 Disciplinary actions that may be taken in relation to permissions

- (1) Subject to this Part, the regulator may take one or more of the following actions (*disciplinary actions*) in relation to a permission holder—
- (a) cancel the permission;
 - (b) if a permission is cancelled, disqualify the holder from applying for a permission of that kind for a specified period not exceeding 5 years;
 - (c) suspend the permission for a specified period or until a specified event occurs;
 - (d) if the permission is already suspended, do either of the following—
 - (i) cancel the permission and disqualify the holder from applying for a permission of that kind for a period not exceeding 5 years;
 - (ii) suspend the permission for an additional period;
 - (e) warn the permission holder that more serious action may be taken in the future if the holder repeats the behaviour;
 - (f) reprimand the permission holder;
 - (g) if the permission holder is an accredited driver—
 - (i) require the accredited driver to undertake a course of training or to pass a test specified under section 72;

- (ii) impose a new condition on, or vary a condition on, the driver accreditation.
- (2) If a permission holder holds more than one kind of permission, the regulator may take action in relation to any one or more of the permissions.

216 Procedure for taking disciplinary action

- (1) This section applies if the regulator proposes to take disciplinary action against a permission holder under this Part.
- (2) The regulator must serve on the permission holder a notice (a *disciplinary notice*) that—
 - (a) specifies the proposed disciplinary action (including any proposed period of suspension or disqualification); and
 - (b) if the permission holder holds more than one permission, specifies the permission or permissions to which the proposed disciplinary action relates; and
 - (c) specifies the grounds for the proposed disciplinary action; and
 - (d) invites the permission holder to make a written submission within a specified period as to why the proposed disciplinary action should not be taken.
- (3) For the purposes of subsection (2)(d), the period specified in the disciplinary notice may be—
 - (a) if an immediate suspension notice is also served under section 220, a period of at least 10 business days after the day on which the disciplinary notice is served on the permission holder; or

- (b) in any other case, a period of at least 20 business days after the day on which the disciplinary notice is served on the permission holder.

217 Regulator may extend time for making submissions in relation to disciplinary notices

- (1) A permission holder served a disciplinary notice under section 216 may request the regulator to extend the time within which the holder must make a submission under a notice under that section.
- (2) A request must be in writing and set out the reasons for the request.
- (3) On receiving a request, the regulator, by written notice served on the permission holder, may extend the time within which the holder may make the submission.
- (4) A notice under subsection (3) must state the new date by which the permission holder may make the submission.

218 Decision on taking disciplinary action

- (1) If the regulator is satisfied that grounds for taking disciplinary action against a permission holder have been established, the regulator may take—
 - (a) any disciplinary action specified in the disciplinary notice; or
 - (b) disciplinary action that is less severe.
- (2) In deciding whether to take disciplinary action, the regulator must consider any submission made to the regulator by the permission holder in accordance with the disciplinary notice served on the holder.

- (3) The regulator must, as soon as practicable, serve written notice on the permission holder of the decision with respect to taking, or not taking, disciplinary action.
- (4) If the decision is to take disciplinary action, the written notice must set out—
 - (a) the disciplinary action being taken; and
 - (b) the reasons for the decision; and
 - (c) the date on which any cancellation, suspension, disqualification or new or varied condition takes effect.
- (5) The date set out in a notice under subsection (4) must not be earlier than 5 business days after the day on which the notice under subsection (3) is served.

219 Mandatory cancellation of driver accreditations in certain cases

- (1) The regulator must cancel a driver accreditation if the accredited driver—
 - (a) is found guilty (within the meaning of Part 5) of a category 1 offence; or
 - (b) becomes subject to—
 - (i) reporting obligations imposed under Part 3 of the **Sex Offenders Registration Act 2004**; or
 - (ii) a supervision order or interim supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**.
- (2) The regulator must not cancel a driver accreditation of a person on a ground referred to in subsection (1) if any of the following decisions in respect of the person

has been previously set aside (but not remitted) by VCAT on that ground—

- (a) a decision to refuse to issue a driver accreditation;
- (b) a decision to cancel an accreditation.

220 Immediate suspension of permission at the discretion of the regulator

- (1) This section applies if the regulator—
 - (a) has decided to serve, or has served, a disciplinary notice on a permission holder; and
 - (b) believes, on reasonable grounds, that it is in the public interest that the permission held by the person be suspended as soon as practicable before a decision is made to take action under section 218 in relation to that person.
- (2) In forming the belief referred to in subsection (1)(b), the regulator must consider—
 - (a) the circumstances leading to the decision to serve the disciplinary notice; and
 - (b) the grounds specified, or proposed to be specified, in the disciplinary notice.
- (3) The regulator may serve on the permission holder a notice (an *immediate suspension notice*) suspending the permission.
- (4) An immediate suspension notice served in relation to a permission ends—
 - (a) if the permission is cancelled or suspended under section 218, when the cancellation or suspension takes effect; or

- (b) if a condition is imposed on the permission, or a condition on the permission is varied, when the condition or varied condition takes effect; or
- (c) in any other case, when the permission holder is notified under section 218(3) of the decision made on the disciplinary notice.

221 Mandatory immediate suspension of driver accreditation

- (1) This section applies if an accredited driver is subject to a charge for a category 1 offence that has not been finally disposed of.
- (2) The regulator must serve on the accredited driver a notice (an *immediate suspension notice*) suspending the driver accreditation.
- (3) An immediate suspension notice served in relation to a driver accreditation ends—
 - (a) if the accreditation is cancelled under section 219(1)(a), on the day of that cancellation; or
 - (b) if the person served the immediate suspension notice is found not guilty of the offence, on the day of that finding; or
 - (c) if the charge is dismissed by a court or is withdrawn, on the day of that dismissal or withdrawal; or
 - (d) if the proceeding for the hearing of the charge is discontinued by the prosecution, on the day of that discontinuance; or

- (e) if the person served the immediate suspension notice is discharged by a court following a committal proceeding, on the day of that discharge.

222 Mandatory suspension of driver accreditation if driver licence suspended or cancelled

- (1) This section applies if an accredited driver has their driver licence or probationary licence under the **Road Safety Act 1986** suspended or cancelled under that Act.
- (2) The regulator must suspend the driver accreditation.
- (3) A suspension under this section of a driver accreditation remains in effect until the regulator reinstates the accreditation of the person in accordance with section 223.

223 Reinstatement of driver accreditation following reinstatement of driver licence

The regulator must reinstate a driver accreditation that is suspended in accordance with section 222 if—

- (a) the person who holds the suspended accreditation gives evidence, to the satisfaction of the regulator, that—
 - (i) the suspension of the person's driver licence or probationary licence under the **Road Safety Act 1986** has ceased; or
 - (ii) the person has been granted a driver licence or probationary licence under the **Road Safety Act 1986**; and

- (b) there are no grounds for the regulator to consider taking disciplinary action under this Part.

224 Person whose driver licence or probationary licence is suspended or cancelled must notify the regulator

An accredited driver whose driver licence or probationary licence under the **Road Safety Act 1986** is suspended or cancelled under that Act must, within 5 business days after that suspension or cancellation—

- (a) notify the regulator of that suspension or cancellation; and
- (b) return to the regulator their certificate of accreditation.

Penalty: 5 penalty units.

225 Effect of suspension of permission

- (1) This section applies if a person's permission is suspended under this Part.
- (2) During the period of the suspension of the permission—
 - (a) the permission is taken not to be in effect; and
 - (b) the person is taken not to be, as the case requires—
 - (i) a person in whose name a commercial passenger vehicle is registered; or
 - (ii) a registered booking service provider; or
 - (iii) an accredited driver; and
 - (c) the person is disqualified from applying for a permission of that kind.

226 Re-instatement of driver accreditation

If the regulator has suspended the driver accreditation of a person under section 218 pending the hearing of a charge for a disqualifying offence, and the person is not found guilty of the offence (within the meaning of Part 5), the regulator must re-instate the accreditation.

Part 10—Register of permission holders

Division 1—Establishment of register

227 Register of permission holders

- (1) The regulator must keep a register of permission holders.
- (2) The regulator must include on the register an entry for each permission holder that includes—
 - (a) the name of the permission holder; and
 - (b) the prescribed details.
- (3) The regulator may include on the register the following details for each permission holder—
 - (a) business contact details (including a telephone number, fax number, postal address, email address and internet site);
 - (b) if the permission holder is a person in whose name a motor vehicle is registered under Part 3, details of the vehicle;

- (c) if the permission holder is a registered booking service provider, details of the booking service;
- (d) if the permission holder is an accredited driver, details of the issue of the certificate of accreditation.

228 Public version of register

- (1) The regulator must keep a public version of the register of permission holders.
- (2) The public version of the register must not include any information to which public access is restricted under Division 2 or section 252.
- (3) The regulator must make a copy of the public version of the register available at the regulator's office during office hours for any person to inspect free of charge.
- (4) The regulator may publish a copy of the public version of the register on the regulator's internet site.

229 Corrections of register

- (1) The regulator may correct any error or omission in the register of permission holders (including the public version of that register).
- (2) The regulator may make a correction by—
 - (a) inserting information; or
 - (b) amending information; or
 - (c) omitting information.

Division 2—Restriction of public access to information

230 What happens when information is included on the register?

- (1) On including information in the register of permission holders, the regulator must determine, for the purposes of section 228(2), whether public access to any of the information is to be restricted.
- (2) The regulator may determine that public access is to be restricted—
 - (a) indefinitely; or
 - (b) for a specified period.
- (3) The regulator must not determine that public access is to be restricted unless the regulator is satisfied that the restriction is justified in the circumstances.

Example

The regulator may be satisfied that a person's privacy needs to be protected.

231 Notification that information to be made publicly available

- (1) This section applies if the regulator determines under section 230 that public access to any information is not to be restricted.
- (2) The regulator must give written notice to the person to whom that information relates.
- (3) A notice under subsection (2) must specify the information to which public access is not to be restricted.

- (4) For the purposes of section 228(2), public access is to be restricted until the earlier of—
- (a) 20 business days after the day on which the person is notified under subsection (2); or
 - (b) the day on which the person consents to the information being made publicly available.

232 Application to restrict public access to information

- (1) A person may apply to the regulator to restrict public access to information on the register of permission holders that relates to the person.
- (2) An application under subsection (1) must—
- (a) be in writing; and
 - (b) specify the information to which the person wants public access to be restricted.
- (3) For the purposes of section 228(2), public access to the information is to be restricted until the application is determined.
- (4) Subsection (3) does not apply to information in respect of which the person has previously made an application under subsection (1) or section 251(1)(b).

233 Determination of application

- (1) On receiving an application under section 232(1), the regulator must determine, for the purposes of section 228(2), whether public access to any of the information to which the application relates is to be restricted.

- (2) The regulator must not determine that public access is to be restricted unless the regulator is satisfied that the restriction is justified in the circumstances.
- (3) If the regulator determines that public access is to be restricted, the regulator must restrict public access—
 - (a) indefinitely; or
 - (b) for a specified period.

234 Notification of determination

- (1) Within 10 business days after making a determination under section 233, the regulator must give the person to whom the information relates written notice of the determination.
- (2) A notice under subsection (1) must—
 - (a) specify—
 - (i) the information to which public access is to be restricted; and
 - (ii) the information to which public access is not to be restricted; and
 - (b) include a statement of reasons for the determination; and
 - (c) inform the person that they have a right to seek review of the regulator's determination under Part 12.
- (3) For the purposes of section 228(2), public access to the information referred to in subsection (2)(a)(ii) is to be restricted until the earlier of—
 - (a) 20 business days after the day on which the person is notified under subsection (1); or

- (b) the day on which the person consents to the information being made publicly available."

19 New Parts 12 to 14 inserted

After Part 11 of the Principal Act insert—

**"Part 12—Internal review and
VCAT decisions**

Division 1—Interpretation

247 Reviewable decisions

- (1) The following table sets out—
- (a) decisions made under this Act or the regulations that are reviewable in accordance with this Act (*reviewable decisions*); and
- (b) who is eligible to apply for review of a reviewable decision (the *eligible person* in relation to the reviewable decision).

Table

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
1	Section 43, 60 or 77 (imposition of condition on permission by regulator)	The permission holder
2	Section 46 (variation or revocation of condition, or imposition of new condition, on registration of a motor vehicle under Part 3)	Person in whose name the motor vehicle is registered under Part 3

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<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
3	Section 49(3), 66(3) or 84(5) (imposition of condition on grant of consent to surrender permission)	The permission holder
4	Section 58(2) (refusal to register a booking service provider)	The applicant or a relevant person in relation to the applicant
5	Section 63 (variation or revocation of condition, or imposition of new condition, on registration of booking service provider)	The registered booking service provider
6	Section 75 (refusal to issue driver accreditation)	The applicant
7	Section 85 (disqualification from applying for driver accreditation)	The disqualified person
8	Section 159 (forfeiture of seized things)	The person entitled to the thing
9	Section 160 (issue of written direction)	The person issued the written direction
10	Section 171 (service of improvement notice)	The person on whom the improvement notice is served

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
11	Section 180 (service of prohibition notice)	The person on whom the prohibition notice is served
12	Section 218 (the taking of disciplinary action)	The permission holder

Note

Additionally, under section 251(1)(b), VCAT may review a decision by the regulator about whether public access to certain information on the register of permission holders is to be restricted.

- (2) A **reviewable decision** does not include a decision referred to in the table in subsection (1) that was—
- (a) affirmed, varied or substituted for another decision under section 250; or
 - (b) made by the regulator and not by a delegate of the regulator.

Division 2—Internal review

248 Application for internal review

- (1) An eligible person may apply to the regulator for review of a reviewable decision.

Note

Division 3 provides for the review by VCAT of a reviewable decision.

- (2) An application under subsection (1) must be made within—
- (a) 20 business days after the day on which the decision first came to the eligible person's notice; or

- (b) such longer period as the regulator allows.
- (3) An application under subsection (1) must be made in the manner and form determined by the regulator.

249 Regulator may stay operation of decision subject to application for internal review

- (1) An application under section 248(1) does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the regulator stays the operation of the decision pending the determination of the internal review—
 - (a) on the regulator's own initiative; or
 - (b) on the application of the applicant for review.
- (2) The regulator must make a decision on an application for a stay within 2 business days after the making of that application.
- (3) If the regulator has not made a decision in accordance with subsection (2), the regulator is taken to have made a decision to grant a stay.
- (4) The regulator may attach any conditions to a stay of the operation of a reviewable decision that the regulator considers appropriate.

250 Determination of application for internal review

- (1) On receiving an application made in accordance with section 248, the regulator must make a fresh decision—
 - (a) that affirms or varies the reviewable decision; or

- (b) that sets aside the reviewable decision and substitutes another decision that the regulator considers appropriate.
- (2) The regulator must give a written notice (a *decision notice*) to the applicant setting out—
 - (a) the decision of the regulator under subsection (1) and the reasons for the decision; and
 - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.
- (3) The regulator must give a decision notice to the applicant within 20 business days after the application is made.
- (4) If the regulator does not comply with subsection (3), the regulator is taken to have made a decision to affirm the reviewable decision.

Division 3—VCAT review

251 Review of regulator decisions by VCAT

- (1) An eligible person may apply to VCAT for review of—
 - (a) a decision referred to in the table in section 247(1) made by the regulator under section 250, or otherwise; or
 - (b) a decision under section 233(1).
- (2) For the purposes of subsection (1), a person whose interests are affected by a decision under section 233(1) is an *eligible person* in relation to that decision.

- (3) To avoid doubt, subsection (1) does not apply to a refusal by the regulator to issue a driver accreditation or to a cancellation of a driver accreditation in the circumstances to which section 253 applies.
- (4) VCAT must not make a decision under this section that would give rise to the issue of a driver accreditation unless VCAT is satisfied of the matters set out in section 75(1)(b).
- (5) In making a decision under this section on a matter involving a disqualifying offence, VCAT may have regard to any matter to which a consideration in section 75(6) would apply.
- (6) An application under subsection (1) must be made within 28 days after the later of—
 - (a) the day on which the decision of the regulator was made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

252 VCAT review in relation to decision not to restrict public access to information

- (1) This section applies if an application for review under section 251(1) is made in respect of certain information.
- (2) If no other application for review under section 251(1) has previously been made in respect of the information, public access to that information is restricted for the purposes

of section 228(2) until the application is determined.

- (3) If an application for review under section 251(1) has previously been made in respect of the information, VCAT may by order determine that public access to that information is to be restricted for the purposes of section 228(2) until the application is determined.

Division 4—VCAT orders in relation to category 1 offenders

253 VCAT orders in relation to category 1 offenders

- (1) This section applies to the following persons—
- (a) a person whose application for the issue of a driver accreditation is refused on a ground set out in section 75(2)(b) or (c);
 - (b) a person who is disqualified from applying for a driver accreditation under section 85;
 - (c) a person whose driver accreditation is cancelled under section 219.
- (2) The person may apply to VCAT for an order that the regulator issue or reinstate the driver accreditation or cancel the disqualification (as the case requires).
- (3) On an application under subsection (2) VCAT may by order direct the regulator to—
- (a) issue a driver accreditation to the applicant; or

- (b) reinstate the driver accreditation of the applicant; or
 - (c) make a determination cancelling the disqualification of the applicant.
- (4) VCAT must not make an order under subsection (3) to issue or reinstate a driver accreditation unless—
 - (a) VCAT is satisfied of the matters set out in section 75(1)(b); and
 - (b) the applicant has demonstrated that the issue or reinstatement is appropriate having regard to the public care objective; and
 - (c) VCAT is satisfied that—
 - (i) the making of the order would not pose an unjustifiable risk to the safety of users of commercial passenger vehicle services; and
 - (ii) in all the circumstances, it is in the public interest to make the order.
- (5) For the purposes of subsection (4)(c)(i), VCAT must have regard to the matters set out in section 75(6).
- (6) If VCAT refuses to make an order applied for under subsection (2), VCAT may by order disqualify the person from applying for a driver accreditation for a period not exceeding 5 years.
- (7) A period of disqualification under an order under subsection (6) may be in substitution of a period of disqualification imposed by the regulator.

Part 13—Information gathering and handling

Division 1—Confidential or commercially sensitive information

254 Definition

(1) In this Part—

sensitive information means information—

- (a) that is obtained by or on behalf of the regulator in the performance of a function or exercise of a power under, or in connection with, this Act or the **Transport Integration Act 2010** or given to the regulator; and
- (b) that is—
 - (i) of a confidential or commercially sensitive nature; or
 - (ii) stated to be of a confidential or commercially sensitive nature at the time that it is given to the regulator; and
- (c) whether obtained or given—
 - (i) under Division 3 or otherwise; and
 - (ii) in a document or otherwise.

(2) In this Part, *sensitive information* does not include information contained in an FOI exempt document.

255 Restriction on disclosure or use of sensitive information

The regulator must not disclose or use sensitive information other than in accordance with this Division.

256 Use for performance of function or exercise of power permitted

The regulator may use sensitive information in the performance of a function or exercise of a power under, or in connection with, this Act or the **Transport Integration Act 2010**.

257 Disclosure for performance of function or exercise of power permitted in certain cases

- (1) The regulator may disclose sensitive information in the performance of a function or exercise of a power under, or in connection with, this Act or the **Transport Integration Act 2010** if the regulator has—
 - (a) invited submissions, and considered any made, in accordance with subsection (2); and
 - (b) formed an opinion referred to in subsection (3); and
 - (c) given notice in accordance with subsection (4).
- (2) For the purposes of subsection (1)(a), the regulator must—
 - (a) give the person from whom the regulator obtained, or who has given, the sensitive information (the *provider*) an opportunity to make a submission to the regulator specifying—

- (i) why the information is of a confidential or commercially sensitive nature; and
 - (ii) the detriment that would be caused by the disclosure of the information; and
 - (b) give the same opportunity to each person—
 - (i) who the regulator knows gave the information to the provider; and
 - (ii) whose identity and address is known to the regulator; and
 - (c) consider any submission made.
- (3) For the purposes of subsection (1)(b), the opinion is either—
 - (a) an opinion that the disclosure would not cause detriment to—
 - (i) the provider; and
 - (ii) any other person who the regulator knows gave the information to the provider; or
 - (b) an opinion that, although the disclosure would cause detriment to a person referred to in paragraph (a), the public benefit in disclosing the information outweighs that detriment.
- (4) For the purposes of subsection (1)(c), the regulator must give written notice to—
 - (a) the provider; and
 - (b) each person—
 - (i) who the regulator knows gave the information to the provider; and

(ii) whose identity and address is known to the regulator.

- (5) The notice must—
- (a) state that the regulator wants to disclose the sensitive information; and
 - (b) specify the nature of the intended disclosure; and
 - (c) set out detailed reasons why the regulator wants to make the disclosure; and
 - (d) state the opinion that the regulator has formed in relation to the recipient of the notice under subsection (3); and
 - (e) set out detailed reasons why the regulator has formed that opinion; and
 - (f) include a copy of this Division.

258 Disclosure or use permitted if required by Act

The regulator may disclose or use sensitive information if that disclosure or use is expressly required by or under a provision of any Act.

259 Disclosure or use with consent permitted

The regulator may disclose or use sensitive information with the consent of the person who gave the information.

260 Disclosure or use in legal proceedings permitted

The regulator may disclose or use sensitive information in legal proceedings at the direction of a court or tribunal.

261 Disclosure or use permitted if information in public domain

The regulator may disclose or use sensitive information if the information is in the public domain at the time it is disclosed or used.

Division 2—Exempt freedom of information documents

262 Restriction on disclosure and use of exempt freedom of information documents

The regulator must not disclose or use information contained in an FOI exempt document other than in accordance with this Division.

263 Use for performance of function permitted

The regulator may use information contained in an FOI exempt document in the performance of a function or exercise of a power under, or in connection with, this Act or the **Transport Integration Act 2010**.

Division 3—Power of regulator to obtain and share information

264 Power to obtain information and documents

- (1) The regulator, by written notice, may require a permission holder who the regulator believes is capable of providing information or producing documents that may assist the regulator in performing the regulator's functions—
 - (a) to provide, in accordance with the notice, that information to the regulator;or

- (b) to produce those documents, in accordance with the notice, to the regulator or a person specified in the notice who is acting on the regulator's behalf; or
- (c) to appear before the regulator at a time and place specified in the notice to provide that information, either orally or in writing, or produce those documents.

Note

A notice under subsection (1) may be given to a permission holder by serving it in accordance with section 288.

- (2) A person must not—
 - (a) refuse or fail to comply with a notice under subsection (1) to the extent that the person is capable of complying with it; or
 - (b) in purported compliance with a notice under subsection (1), knowingly provide information that is false or misleading; or
 - (c) obstruct or hinder the regulator in exercising a power under this section.

Penalty: In the case of an individual,
120 penalty units;

In the case of a body corporate,
600 penalty units.

- (3) Nothing in this section entitles or requires a person to provide information or produce a document—
 - (a) that is the subject of client legal privilege; or

- (b) if its provision or production might tend to incriminate the person or make the person liable to a penalty.
- (4) Any information provided or document produced by a person in compliance with a notice under subsection (1) is not admissible in evidence against the person in any proceedings other than proceedings under this section.
- (5) If any documents are produced to the regulator under this section, the regulator may—
 - (a) inspect the documents or authorise a person to do so; or
 - (b) make copies of, or take extracts from, the documents and retain possession of those copies and extracts.

265 Complaints

- (1) Any person may complain to the Secretary about the exercise of a power by the regulator under this Division.
- (2) The Secretary must—
 - (a) investigate any complaint; and
 - (b) provide a written report to the complainant on the results of the investigation.

266 Information sharing

- (1) The regulator may enter into an arrangement (an *information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information held by the regulator and the relevant agency.

- (2) The information to which an information sharing arrangement may relate is limited to the following—
- (a) information concerning investigations, inquiries, law enforcement, assessment of complaints or any registration or accreditation matters;
 - (b) probity assessments and reference checks concerning persons who provide, or propose to provide, commercial passenger vehicle services;
 - (c) any other information affecting the interests of users of commercial passenger vehicle services;
 - (d) information relating to the administration and enforcement of Part 11;
 - (e) any other information of a prescribed kind.
- (3) Under an information sharing arrangement, the regulator and the relevant agency are authorised—
- (a) to request and receive information held by the other party to the arrangement; and
 - (b) to disclose information to the other party.
- (4) The regulator and the relevant agency may only do a thing authorised under subsection (3)(a) or (b) to the extent that the information is reasonably necessary to assist—
- (a) the regulator in the exercise of functions under this Act or the **Transport Integration Act 2010**; or

- (b) the relevant agency concerned in the exercise of the agency's functions.
- (5) Without limiting subsections (3) and (4), the regulator may also (whether as part of an information sharing arrangement or otherwise)—
 - (a) refer to a commercial passenger vehicle agency or law enforcement agency any matter (including any complaint) with respect to the commercial passenger vehicle industry or that affects the interests of users of commercial passenger vehicle services; or
 - (b) receive any matter of a type described in paragraph (a) from a commercial passenger vehicle agency or law enforcement agency; or
 - (c) conduct a joint investigation into any such matter with a commercial passenger vehicle agency or law enforcement agency.
- (6) This section does not limit—
 - (a) the powers of the regulator under this Act or the **Transport Integration Act 2010**; or
 - (b) the operation of section 267; or
 - (c) the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body; or
 - (d) the giving of information—
 - (i) to a court or tribunal in the course of legal proceedings; or

- (ii) under an order of a court or tribunal; or
- (iii) to the extent reasonably required to enable the investigation or the enforcement of a law of the State or of any other State or of a Territory or of the Commonwealth; or
- (iv) to the ESC; or
- (v) with the written authority of the Secretary; or
- (vi) with the written authority of the person to whom the information relates.

(7) In this section—

commercial passenger vehicle agency

means an agency of the State, or of the Commonwealth, or of another State or a Territory or of an overseas jurisdiction, that exercises functions under an enactment with respect to commercial passenger vehicle services;

law enforcement agency means—

- (a) Victoria Police or the police force or police service of another State or of a Territory or of an overseas jurisdiction; or
- (b) the Australian Federal Police; or
- (c) the Australian Criminal Intelligence Commission; or
- (d) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the

Commonwealth, another State or a Territory or an overseas jurisdiction;

relevant agency means—

- (a) a commercial passenger vehicle agency; or
- (b) a law enforcement agency; or
- (c) the ESC; or
- (d) the Commissioner; or
- (e) any other person or body that exercises functions, in the public interest, that involve protecting the interests of users of commercial passenger vehicle services.

267 Duty on Chief Commissioner of Police to notify regulator of certain matters relating to offences

- (1) The Chief Commissioner of Police must take all reasonable steps to ensure that the regulator—
 - (a) is notified as soon as practicable after the Chief Commissioner becomes aware that a notifiable person has been charged with—
 - (i) a category 1 offence; or
 - (ii) a category 2 offence; or
 - (iii) a category 3 offence; and
 - (b) is given the details in respect of the charge requested by the regulator.

- (2) The regulator may only request details of a charge referred to in subsection (1) that the regulator reasonably requires to exercise functions under this Act.
- (3) The Chief Commissioner of Police must take all reasonable steps to ensure that the regulator is notified as soon as practicable of how a charge for an offence referred to in subsection (1) has been finally dealt with.
- (4) In this section—
notifiable person means—
 - (a) a person who holds a driver accreditation; or
 - (b) a person who has applied for a driver accreditation.

Part 14—General

Division 1—Offences

268 Offence to assault or obstruct officer

- (1) A person must not assault or incite or encourage any other person to assault any of the following persons who is acting in the execution of their duty under this or any other Act, or under regulations made under this or any other Act—
 - (a) an authorised officer;
 - (b) a person assisting an authorised officer as described in section 134(2), 140(2), 141(2), 148(3) or 149(3);

- (c) any other officer or agent of the regulator.
- Penalty:** In the case of an individual,
level 9 imprisonment;
In the case of a body corporate,
300 penalty units.
- (2) A person must not, without reasonable excuse—
- (a) resist, obstruct, hinder or refuse to comply with a lawful request or direction of an officer or agent referred to in subsection (1); or
- (b) incite or encourage any other person to resist, obstruct, hinder or refuse to comply with a lawful request or direction of an officer or agent referred to in subsection (1).
- Penalty:** In the case of an individual,
60 penalty units;
In the case of a body corporate,
300 penalty units.
- (3) For the purposes of subsection (2), the following things do not constitute a lawful request or direction—
- (a) a direction under section 160(1), 162(1), 163(1) or 165(2);
- (b) a defect notice under section 164.

Note

See sections 160(3), 162(2), 163(2), 164(6) and 165(4) in relation to compliance with these directions and notices.

269 Giving false or misleading information

- (1) A person who is required by or under this Act to provide information must not provide information that the person knows is false or misleading in a material way (whether because it omits any relevant information or otherwise) unless the person—
- (a) indicates (whether in writing or otherwise) the respect in which the information is false or misleading; and
 - (b) if practicable, provides the correct information.

Penalty: In the case of an individual,
120 penalty units;
In the case of a body corporate,
600 penalty units.

- (2) A person who is required by or under this Act to provide information must not provide information that is false or misleading in a material way (whether because it omits any relevant information or otherwise) being reckless as to whether or not the information is false or misleading in a material way.

Penalty: In the case of an individual,
120 penalty units;
In the case of a body corporate,
600 penalty units.

270 Offences relating to security cameras and privacy of passengers

- (1) A person must not download or print an image or other data obtained from the use of a security camera installed in a commercial passenger vehicle unless—

- (a) the person is acting in accordance with—
 - (i) an agreement under section 271;
or
 - (ii) the regulations (if any); or
- (b) the person is employed by the regulator or the person's services are being used by the regulator in accordance with section 115R(2) of the **Transport Integration Act 2010** and is acting in accordance with—
 - (i) the written authorisation of the regulator; or
 - (ii) the regulations (if any).

Penalty: In the case of an individual,
240 penalty units;
In the case of a body corporate,
1200 penalty units.

- (2) A person must not—
 - (a) possess, publish, transmit or disclose to any other person an image or any other data obtained from the use of a security camera in a commercial passenger vehicle; or
 - (b) transmit images or data directly from a security camera in a commercial passenger vehicle—unless the person is acting in accordance with the written authorisation of the regulator or the regulations (if any).

- Penalty: In the case of an individual,
240 penalty units;
In the case of a body corporate,
1200 penalty units.
- (3) The regulator's written authorisation for the purpose of subsection (1)(b)(i) or (2) is subject to—
- (a) the conditions determined by the regulator and specified in the authorisation (if any); and
 - (b) the prescribed conditions (if any).
- (4) A person must not make an audio recording of any passenger of a commercial passenger vehicle.
- Penalty: In the case of an individual,
240 penalty units;
In the case of a body corporate,
1200 penalty units.
- (5) Nothing in this section—
- (a) prohibits anything done by a police officer in the course of their duty that would be lawful apart from this section; or
 - (b) affects or takes away from the provisions of the **Surveillance Devices Act 1999**.

Note

Section 284 (criminal liability of officers of bodies corporate—failure to exercise due diligence) applies to an offence against subsection (1), (2) or (4).

271 Agreements in relation to images obtained from security cameras

- (1) The regulator may make an agreement with a person for the downloading or printing of images or other data obtained from the use of a security camera installed in a commercial passenger vehicle.
- (2) The agreement may authorise the person with whom it is made, or a person employed or engaged by that person, to download or print images or other data obtained from the use of a security camera installed in a commercial passenger vehicle, on the terms and conditions contained in the agreement.
- (3) The **Privacy and Data Protection Act 2014** applies to a person with whom the regulator makes an agreement under this section as if—
 - (a) the person were a contracted service provider; and
 - (b) the agreement were a State contract—
within the meaning of that Act.
- (4) Without limiting the application of subsection (3), an agreement under this section between the regulator and a person must provide—
 - (a) that the person is bound by the following things with respect to any act done or practice engaged in by the person for the purposes of the agreement—
 - (i) the Information Privacy Principles under the **Privacy and Data Protection Act 2014**;

- (ii) any applicable code of practice under that Act; and
- (b) that the person is bound by those things with respect to that act or practice in the same way and to the same extent that the regulator would have been bound if it had been directly done or engaged in by the regulator.

272 Notification of incidents

A person on whom a safety duty is imposed under Division 3 of Part 2 must notify the regulator of a prescribed incident in accordance with the regulations.

Penalty: 50 penalty units.

Division 2—Regulator inquiries

273 Inquiries by the regulator

- (1) This section applies to an inquiry conducted by the regulator under section 115F(1)(dc) of the **Transport Integration Act 2010**.
- (2) At least one Commissioner (as defined by section 115A of the **Transport Integration Act 2010**) of the regulator must preside at the inquiry.
- (3) Subject to this Division, the regulator may conduct the inquiry in any manner it considers appropriate.
- (4) If directed to do so by the Minister, the regulator must conduct an inquiry into any matter relating to the commercial passenger vehicle industry.
- (5) A direction made by the Minister under subsection (4) must be in writing.

274 Regulator to report on outcomes of inquiries

- (1) Without limiting section 115F(1)(df) of the **Transport Integration Act 2010**, at the conclusion of an inquiry the regulator must give the Minister a report on the outcomes of the inquiry.
- (2) A report under subsection (1) must be in writing.

Division 3—Monitoring, compliance and enforcement policy

275 Regulator to develop policy

- (1) The regulator must, in accordance with section 276, develop a policy to promote compliance with, and enforcement of, industry laws.
- (2) The policy must set out—
 - (a) proportionate, cost effective and efficient options for monitoring and promoting compliance with, and enforcement of, industry laws; and
 - (b) how enforcement agencies will use those options to monitor and promote compliance with, and enforcement of, industry laws.
- (3) The regulator must publish the policy on the regulator's internet site no later than 12 months after the commencement of this section.
- (4) The regulator must review the policy every 3 years in accordance with section 276.

276 Regulator must consult when developing or reviewing policy

- (1) When developing or reviewing the monitoring, compliance and enforcement policy, the regulator must consult—
 - (a) Victoria Police; and
 - (b) the Information Commissioner appointed under section 6C of the **Freedom of Information Act 1982**; and
 - (c) the Roads Corporation; and
 - (d) persons who participate in the commercial passenger vehicle industry.
- (2) The regulator may consult with persons who regulate commercial passenger vehicle industries in other jurisdictions when developing and reviewing the policy if the regulator considers that it would be useful to do so.

277 Content of policy

- (1) The monitoring, compliance and enforcement policy must provide guidance on—
 - (a) the exercise of the following kinds of powers under an industry law—
 - (i) monitoring and compliance powers;
 - (ii) investigation powers;
 - (iii) enforcement powers; and
 - (b) the exercise of powers under sections 13, 14(1), 84ZY, 77 and 88 of the **Road Safety Act 1986**—

- (i) by authorised officers or the regulator; and
 - (ii) in relation to commercial passenger vehicle services; and
 - (c) the measures to be adopted by the regulator to promote compliance with and enforcement of the industry laws.
- (2) The policy may provide guidance on other matters relevant to monitoring compliance with and enforcement of industry laws.

278 Regulator must coordinate and support implementation of policy

- (1) The regulator must provide training, guidance and support to authorised officers for the purpose of coordinating and supporting the implementation of the monitoring, compliance and enforcement policy.
- (2) In addition, the regulator may coordinate and support the implementation of the policy in any other manner the regulator determines to be appropriate.

279 Certain persons to have regard to policy

Persons involved in compliance, monitoring and enforcement activities under an industry law, or a provision referred to in section 277(1)(b), must, so far as is reasonably practicable, have regard to the monitoring, compliance and enforcement policy when performing functions and duties and exercising powers under that law.

Division 4—Proceedings and evidentiary provisions

280 Who may commence proceedings for offences against an industry law

- (1) A proceeding under an industry law (including a proceeding for an offence against an industry law) may only be commenced by—
 - (a) the regulator; or
 - (b) an authorised officer with the written authorisation of the regulator (either generally or in a particular case); or
 - (c) a police officer.
- (2) An authorisation under subsection (1)(b) is sufficient authority to continue a proceeding in any case where the court amends the charge-sheet, warrant or summons.
- (3) An authorised officer who commences a proceeding may conduct the proceeding before the court.
- (4) Without limiting section 328 of the **Criminal Procedure Act 2009**, the person commencing a proceeding under subsection (1) may appear—
 - (a) by another person authorised by the regulator; or
 - (b) even if the informant is not a police officer, by a police prosecutor.
- (5) Despite subsection (1), the Director of Public Prosecutions may commence a proceeding for an indictable offence against an industry law.

281 Evidentiary certificates

In any proceeding for an offence against an industry law, a certificate signed, or purporting to be signed, by the regulator or an authorised officer stating any of the following matters is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated—

- (a) a stated document is one of the following things made, given, served or issued under an industry law—
 - (i) an appointment or a decision;
 - (ii) a notice, notification, direction or requirement;
 - (iii) a permission;
- (b) a stated document is one of the following things served—
 - (i) an improvement notice or an amendment to an improvement notice already served;
 - (ii) a prohibition notice or an amendment to a prohibition notice already served;
 - (iii) a clearance certificate served in relation to an improvement notice;
 - (iv) a certificate served in relation to a prohibition notice;
- (c) a stated document is a copy of a thing referred to in paragraph (a) or (b);
- (d) on a stated day, or during a stated period, a stated person was or was not an accredited driver or registered booking service provider;

- (e) on a stated day, or during a stated period, a permission was or was not in effect;
- (f) on a stated day, or during a stated period, a permission was suspended;
- (g) on a stated day a permission was cancelled or surrendered;
- (h) on a stated day a condition on a permission was, imposed varied or revoked;
- (i) on a stated day, or during a stated period, an appointment as an authorised officer was, or was not, in effect for a stated person;
- (j) on a stated day a stated person was given a stated notice, notification or direction under this Act or the regulations;
- (k) on a stated day a person was served—
 - (i) an improvement notice or prohibition notice; or
 - (ii) an amendment to an improvement notice or prohibition notice already served;
- (l) on a stated day—
 - (i) an improvement notice was cancelled; or
 - (ii) a prohibition notice was withdrawn;
- (m) on a stated day a clearance certificate under section 177 was served;
- (n) on a stated day a certificate under section 186 was served;

- (o) on a stated day a stated requirement was made of a stated person;
- (p) that a stated amount is payable under this Act or the regulations by a stated person and has not been paid.

Division 5—Other

282 Regulatory fees

- (1) The regulator, by notice published in the Government Gazette, may determine—
 - (a) the fees payable for applications for permissions;
 - (b) annual registration fees payable by—
 - (i) persons in whose name a motor vehicle is registered under Part 3;
 - (ii) registered booking service providers;
 - (c) annual accreditation fees payable by accredited drivers.
- (2) The regulator must obtain the approval of the Minister for any fee the regulator determines under subsection (1).
- (3) Fees determined under subsection (1) may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance.
- (4) A fee determined under subsection (1) takes effect on—
 - (a) the day the notice under which it is determined is published in the Government Gazette; or

- (b) if that notice specifies a later date, that date.

283 Regulatory exemptions

- (1) The regulator, by written notice, may exempt a person from a requirement under this Act or the regulations if the regulator is satisfied that—
 - (a) the person is substantially complying with the requirement; or
 - (b) the person has adequately achieved the purpose of the requirement; or
 - (c) the person's compliance with the requirement would, in the particular circumstances, be impracticable, unnecessary or inappropriate.
- (2) An exemption may be either indefinite or for a specified period and either absolute or on specified conditions.
- (3) The regulator may at any time suspend or cancel an exemption, or alter its period or its terms and conditions, by written notice given to the person given the exemption.

284 Criminal liability of officers of bodies corporate—failure to exercise due diligence

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 23(1);
 - (b) section 24(1);
 - (c) section 25(1);
 - (d) section 26(1);
 - (e) section 39;
 - (f) section 53;
 - (g) section 56;
 - (h) section 64;
 - (i) section 160(3);
 - (j) section 174(1);
 - (k) section 183(1);
 - (l) section 270(1), (2) and (4).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.

- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer* in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

285 Criminal liability of officers of bodies corporate—failure to exercise due diligence (evidential burden of proof)

- (1) Subject to subsection (3), if a body corporate commits an offence against a provision specified in subsection (2), an officer of the

- body corporate also commits an offence against the provision.
- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 113(3);
 - (b) section 114(1).
- (3) An officer of a body corporate does not commit an offence against a provision specified in subsection (2) if—
- (a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the commission of the offence by the body corporate; and
 - (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.

- (5) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (6) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (7) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer* in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
 - (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

286 Corporations Act displacement

Section 209 is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 2D of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

287 Offences by partnerships or unincorporated association

If this Act or the regulations provide that a person commits an offence, that reference to the person must—

- (a) in the case of a partnership, be read as a reference to each member of the partnership; and
- (b) in the case of an unincorporated body or association, be read as a reference to each member of the committee of management of the body or association.

288 Service of documents

- (1) A document to be served on, or given to, a person under this Act or the regulations may be served or given—
 - (a) if the person to be served or given the document is a person who is not a company or a registered foreign company within the meaning of the Corporations Act—
 - (i) by delivering it personally to the person; or
 - (ii) by sending it by post to the person at the person's usual or last known residential or business address; or

- (iii) by leaving it at the person's usual or last known residential or business address with a person at the premises who appears to be at least 16 years old and appears to be residing or employed there; and
 - (b) if the person to be served or given the document is a company or a registered foreign company within the meaning of the Corporations Act, by serving it in accordance with section 109X or 601CX of that Act, as the case requires.
- (2) In addition, a document to be served on, or given to, a permission holder under this Act or the regulations may be served on, or given to, the permission holder by—
 - (a) sending it by post to the holder at the last address the holder has given to the regulator; or
 - (b) leaving it with a person at the premises at the last address the holder has given to the regulator who appears to be—
 - (i) at least 16 years old; and
 - (ii) residing or employed there.

289 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) any matter or thing specified in Schedule 2;
 - (b) any matter or thing required or permitted to be prescribed or necessary to be prescribed to give effect to this Act.

- (2) The regulations may—
- (a) be of general or of limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) confer a discretionary authority or impose a duty on a specified person or a person of a specified class;
 - (d) provide in a specified case or class of case for the exemption 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;
 - (e) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time; or
 - (iii) as in force from time to time;
 - (f) impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (3) The Minister must not recommend the making of regulations specifying an amount of \$1 or more as the amount of the levy unless the ESC recommends the specification of that amount in accordance with subsection (4).
- (4) The ESC must not recommend the specification of an amount unless the ESC is satisfied that it is the lowest amount that is reasonably likely to result in the total amount of the levy collected in the beginning 1 July

2018 and ending 30 June 2026, being equal to the cost of the transitional assistance package up to the end of that period.

- (5) For the purposes of subsection (4), the *transitional assistance package* comprises—
- (a) money paid by the State to participants in the commercial passenger vehicle industry to assist them in relation to changes to the law applying to that industry made by this Act; and
 - (b) \$112 million (as at 30 June 2017), being State revenue forgone as a result of those changes; and
 - (c) costs incurred in administering Part 11 and any regulations made for the purposes of that Part; and
 - (d) administrative and compliance costs incurred in connection with—
 - (i) the administration of grants paid to commercial passenger vehicle industry participants referred to in paragraph (a); or
 - (ii) rebate or subsidy schemes established and maintained to support those participants.

290 Transitional provisions

Schedule 3 has effect."

20 New Schedules 1, 2 and 3 inserted

After Part 14 of the Principal Act insert—

"Schedule 1—Categorised offences

Section 3

Part 1—Category 1 offences

1. An offence against the Crimes Act 1958 that involves sexual penetration.
2. An offence against a provision of the **Crimes Act 1958** amended or repealed before the commencement of section 8 of the **Transport Legislation (Further Amendment) Act 2006** of which the necessary elements at the time it was committed consisted of elements that constitute an offence referred to in item 1.
3. An offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991**, if the victim of the offence was a child or a person with a cognitive impairment or mental illness, that is not an offence referred to in item 1 or 2.
4. An offence against section 5A of the **Crimes Act 1958**.
5. An offence against section 318(1) of the **Crimes Act 1958** (whether in relation to a motor vehicle or a vessel).
6. An offence specified in clause 3 of Schedule 1 to the **Sentencing Act 1991**.
7. A child abuse material offence within the meaning of the **Working with Children Act 2005**.
8. An offence against a provision of Division 101 of the Criminal Code of the Commonwealth.
9. An offence against section 271.4 (trafficking in children), or section 271.7 (domestic trafficking in children), of the Criminal Code of the Commonwealth.

10. An offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence listed in this Part.

Part 2—Category 2 offences

11. An offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** that is not an offence referred to in item 1, 2, 3, 4 or 5 of Part 1 of this Schedule.
12. An offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** that is not an offence specified in clause 3 of that Schedule.
13. An offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991**.
14. An offence against section 24 of the **Crimes Act 1958** arising out of the driving of a motor vehicle by the offender.
15. An offence against section 21A of the **Crimes Act 1958**.
16. An offence against section 49N of the **Crimes Act 1958**.
17. An offence against section 77A of the **Crimes Act 1958**.
18. An offence against section 77B of the **Crimes Act 1958**.
19. An offence against section 79 of the **Crimes Act 1958**.
20. An offence against section 79A of the **Crimes Act 1958**.
21. An offence against section 319(1) of the **Crimes Act 1958** (whether in relation to a motor vehicle or a vessel).
22. An offence against section 319(1A) of the **Crimes Act 1958** (whether in relation to a motor vehicle or a vessel).
23. An offence against section 61 of the **Road Safety Act 1986** resulting in a person being killed or suffering serious injury.

24. An offence against section 71AB or 71B of the **Drugs, Poisons and Controlled Substances Act 1981**.
25. An offence against section 46 or 47 or Part 5 of the **Sex Offenders Registration Act 2004** (other than section 70).
26. An offence against the **Serious Sex Offenders Monitoring Act 2005** (other than section 42(3)).
27. An offence against the **Serious Sex Offenders (Detention and Supervision) Act 2009** (other than section 182 or 186).
28. An offence against section 271.4 (trafficking in children) or section 271.7 (domestic trafficking in children) of the Criminal Code of the Commonwealth other than in circumstances where the purpose of the exploitation is to provide sexual services within the meaning of that Code.
29. An offence against section 271.3 (aggravated offence of trafficking in persons) or section 271.6 (aggravated offence of domestic trafficking in persons) of the Criminal Code of the Commonwealth.
30. An offence involving fraud or dishonesty.
31. An offence against the **Bus Safety Act 2009**.
32. An offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence listed in this Part.

Part 3—Category 3 offences

- 33 An offence specified in any of the following infringement notices—
 - (a) a safety work infringement notice to which section 95(1) of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** applies;

- (b) an infringement notice to which section 61A(2) of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** applies;
 - (c) a traffic infringement notice to which section 89A(2) of the **Road Safety Act 1986** applies.
- 34 An offence that is not a category 1 offence, a category 2 offence or an offence referred to in item 33.
- 35 An offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence listed in this Part.

Schedule 2—Subject-matter for regulations

Section 289

Safety duties

1. Safety obligations to be imposed on—
 - (a) owners of motor vehicles to whom section 23 applies;
 - (b) booking service providers;
 - (c) persons to whom section 25 applies;
 - (d) persons to whom section 26 applies;
 - (e) drivers of motor vehicles to whom section 27 applies.
2. Prohibiting specific conduct by persons referred to in item 1 for commercial passenger vehicle safety purposes.
3. Requiring or regulating records of safety incidents to be kept by specified persons and for the inspection of those records by the regulator or an authorised officer.
4. The way in which duties or obligations imposed by this Act or the regulations are to be performed.

5. Requiring or regulating the taking of any action to avoid a hazard or incident in relation to commercial passenger vehicle services.
6. Requiring, regulating or prohibiting the taking of any action in the event of an incident in relation to commercial passenger vehicle services.
7. Requiring or regulating the examination, testing, maintenance or repair of commercial passenger vehicles or equipment or fittings to be used in or on commercial passenger vehicles.

Registration of vehicles as commercial passenger vehicles

8. Conditions to which registration is subject.
9. Variation or revocation of conditions on registration or imposition of new conditions on registration.
10. The date on which registration commences.
11. Requiring the regulator to be notified of changes in the ownership or description of commercial passenger vehicles, or in any other information given with an application for registration, within 14 business days after the change occurs.
12. The kinds of things to be displayed on commercial passenger vehicles to indicate that they are being used or available to be used to provide commercial passenger vehicle services, the requirements to be complied with in relation to displaying them and their removal.
13. The kinds of things to be installed and operating in or on a motor vehicle to indicate that the vehicle is being used to provide a commercial passenger vehicle service and the thing's operation.

Booking service providers

14. Registration of booking service providers including the conditions to which registration is subject including conditions relating to—

- (a) the keeping of records, including records as to—
 - (i) fares paid for commercial passenger vehicle services;
 - (ii) gross revenue earned;
 - (iii) complaints received and how dealt with;
 - (iv) all journeys undertaken in the provision of commercial passenger vehicle services provided through a booking service provided by the booking service provider;
 - (b) the submission of information (including copies of records) to the regulator;
 - (c) the inspection or auditing of records;
 - (d) the safety of commercial passenger vehicle drivers, passengers and members of the public;
 - (e) customer service;
 - (f) complaint handling processes;
 - (g) education and training;
 - (h) a requirement to implement disciplinary procedures that are to apply when a driver or owner of a commercial passenger vehicle to whom the provider provides a booking service fails to comply with the agreement under which those services are provided;
 - (i) preparing and complying with a safety management system.
15. Exemptions to persons or persons of a specified class from the requirement to be registered under Part 4 to provide a booking service.
16. The prescription of persons for the purposes of section 7(4) or (5).

Driver accreditation

17. Applications for driver accreditations.
18. The qualifications to be required of, and the tests to be passed by, applicants for driver accreditations.
19. The conditions to which driver accreditations, or any class of driver accreditations, are subject.
20. The conduct and duties (other than duties under Division 3 of Part 2) of accredited drivers.
21. Conditions relating to the operation and use of commercial passenger vehicles when driven by accredited drivers.

Consumer protections in respect of fares

22. Making available information about fares for the provision of commercial passenger vehicle services by the following to persons hiring or booking commercial passenger vehicles—
 - (a) the owners or drivers of commercial passenger vehicles;
 - (b) booking service providers.
23. Requiring booking service providers or owners or drivers of commercial passenger vehicles to give estimates of fares for the provision of commercial passenger vehicle services to persons hiring or booking commercial passenger vehicles before the journeys start.
24. Requiring fares for the provision of commercial passenger vehicle services to be—
 - (a) prominently displayed inside or outside a commercial passenger vehicle;
 - (b) provided or made accessible to persons hiring commercial passenger vehicles for the provision of commercial passenger vehicle services.

Non-cash payment surcharges

25. The keeping by persons who provide services for processing non-cash payment surcharges of records of, or relating to, the following—
- (a) non-cash payment surcharges charged or collected by persons using the services;
 - (b) the operation and programming of equipment that enables non-cash payment transactions to be made;
 - (c) the retention and storage of information, data and electronic communications relating to non-cash payment surcharges;
 - (d) the structure of, setting of and receipt of non-cash payment surcharges;
 - (e) commercial arrangements supporting non-cash payment surcharges.

Operational requirements

26. Safety, design and construction of commercial passenger vehicles.
27. Standards and requirements, including performance standards, for commercial passenger vehicles.
28. Equipment (including security cameras) or fittings to be installed in, fitted on or to, or carried on commercial passenger vehicles, and their maintenance and use.
29. Standards and requirements for equipment and fittings installed in, fitted on or to, or carried on commercial passenger vehicles and for maintenance and use referred to in item 28.
30. The examination or testing of equipment or fittings referred to in item 28.
31. Prohibiting the installation, use or operation of equipment, devices and fittings (internal or external) in or on commercial passenger vehicles.

32. Requirements for emergency warning devices and systems, including system requirements, emergency response capabilities, protocols and performance standards.
33. The identification of commercial passenger vehicles.
34. The appearance of commercial passenger vehicles or class or classes of vehicles (including the signs, symbols, lights, notices and labels to be used or not to be used, in or on the vehicles).
35. The downloading, printing, possession, publication, transmission or disclosure of images or other data obtained from security cameras installed in commercial passenger vehicles.
36. Information derived from or contained in equipment required or permitted by or under this Act or the regulations to be used in or on a commercial passenger vehicle, including—
 - (a) the keeping of information; and
 - (b) the provision of the information to the regulator.
37. Records to be kept in relation to commercial passenger vehicles and the inspection of those records.
38. Standards to be complied with in relation to the entry into, and accommodation in, commercial passenger vehicles by persons with a disability, including wheelchair users and persons with mobility or sensory difficulties.
39. The prohibition or regulation of the carriage of passengers' luggage, goods, articles and animals in or on commercial passenger vehicles.
40. The prohibition of activities in commercial passenger vehicles.
41. The condition of commercial passenger vehicles.
42. Goods abandoned in commercial passenger vehicles and their destruction or disposal.

43. Information that is required to be displayed in commercial passenger vehicles.
44. Alteration, maintenance and repair of commercial passenger vehicles.
45. Insurance requirements in relation to commercial passenger vehicles or their use, servicing and maintenance.

Infringement offences

46. Prescribing infringement offences for which an infringement notice may be served.
47. In addition to the requirements of section 13 of the **Infringements Act 2006**, any particulars, not inconsistent with that Act, to be contained in an infringement notice.
48. The penalty for any infringement notice.

Commercial passenger vehicle service levy

49. The specification of an amount less than \$2 as the amount of the levy.
50. The specification of a period not exceeding 12 months as the return period.

Forms

51. Forms.

Schedule 3—Transitional provisions

Section 290

Part 1—Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017

Division 1—Preliminary

1 Definitions

In this Part—

amending Act means the **Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017**;

commencement day means the day on which section 18 of the amending Act comes into operation;

corresponding new accreditation means, in relation to an old driver accreditation, the accreditation under Part 5 that the old driver accreditation is taken to become under this Part;

corresponding new registration means—

- (a) in relation to an old BSP accreditation, the registration under Part 4 that, under this Part, the accreditation is taken to become;
- (b) in relation to an old CPV licence, the registration under Part 3 that, under this Part, is taken to exist for the motor vehicle that is the subject of that licence;

new driver accreditation means an accreditation under Part 5;

old Act means the **Transport (Compliance and Miscellaneous) Act 1983**;

old BSP accreditation means an accreditation, under Division 4 of Part VI of the old Act accrediting a person to be a provider of a booking service;

old CPV licence means a commercial passenger vehicle licence granted under Division 5 of Part VI of the old Act;

old driver accreditation means an accreditation, under Division 6 of Part VI of the old Act, accrediting a person to drive a commercial passenger vehicle;

TSC means the Taxi Services Commission within the meaning of the **Transport Integration Act 2010** as in force immediately before the commencement day.

2 Interpretation of Legislation Act 1984 not affected

This Part does not affect or take away from the **Interpretation of Legislation Act 1984**.

3 References to provisions of old Act

If a provision of this Part refers to a provision of the old Act, that reference is taken to be a reference to the provision of the old Act as in force immediately before the commencement day.

4 References to TSC or licensing authority

If a provision of this Part applies a provision of the old Act on or after the commencement day, the provision of the old Act applies as if a reference in that provision to the TSC, or to the licensing authority, were a reference to the regulator.

Division 2—Old CPV licences

5 Application not determined before commencement day

- (1) This clause applies to an application under section 140 of the old Act if that application had not been determined before the commencement day.
- (2) On the commencement day, the application is taken to be an application for registration under Part 3—
 - (a) of the motor vehicle referred to in the application under section 140 of the old Act; and
 - (b) in the name of the person who made that application.
- (3) Despite section 40(2)(b), the application for registration under Part 3 must be accompanied by the fee that was required to accompany the application under section 140 of the old Act at the time that application was made.

6 Old CPV licence becomes registration under Part 3

On the commencement day, a motor vehicle that is the subject of an old CPV licence that was in force or suspended immediately before the commencement day is taken to be registered under Part 3 in the name of the person who held the licence.

7 Old CPV licence that is suspended

- (1) This clause applies to an old CPV licence that is suspended immediately before the commencement day.

- (2) The old Act, as in force immediately before the commencement day, continues to apply in relation to that suspension.
- (3) The corresponding new registration is taken to be suspended for the duration of that suspension.

8 TSC considering whether to cancel, suspend or revoke old CPV licence

- (1) This clause applies to an old CPV licence that was in force or suspended immediately before the commencement day if, immediately before that day—
 - (a) the TSC had—
 - (i) under section 153 of the old Act, notified the owner of the vehicle to which the licence related that the TSC proposed to cancel the licence; or
 - (ii) under section 157(3) of the old Act, begun to give a person a reasonable opportunity to show cause why the licence should not be suspended or revoked; but
 - (b) the TSC had not yet decided whether to take that action.
- (2) Despite the amendments made by the amending Act to Part VI of the old Act, the regulator must decide whether to take that action in accordance with that Part.
- (3) If the regulator decides to cancel or revoke the old CPV licence—
 - (a) the corresponding new registration is cancelled or revoked on that decision; and

- (b) the old Act, as in force immediately before the commencement day, applies in relation to that cancellation or revocation.
- (4) If the regulator decides to suspend the old CPV licence—
 - (a) the old Act, as in force immediately before the commencement day, applies in relation to that suspension; and
 - (b) the corresponding new registration is, on that suspension, taken to be suspended for the duration of that suspension.

9 Application for transfer of old CPV licence taken to have been refused

- (1) This clause applies to an application, under section 149 of the old Act, for the transfer of an old CPV licence if that application had not been determined before the commencement day.
- (2) The application is taken to have been refused immediately before the commencement day.

10 Conditions

- (1) This clause applies, if under this Part, an old CPV licence is taken to be a registration under Part 3.
- (2) The conditions (if any) imposed on the old CPV licence are not taken to be imposed on the corresponding new registration.

Division 3—Old BSP accreditations

11 Application for old BSP accreditation not determined before commencement day

- (1) This clause applies to an application under section 132 of the old Act for an old BSP accreditation if that application had not been determined before the commencement day.
- (2) On the commencement day, the application is taken to be an application for the applicant to be registered under Part 4 as a provider of a booking service.
- (3) Despite section 57(2)(b), the application for the applicant to be registered under Part 4 as a provider of a booking service must be accompanied by the fee that was required to accompany the application under section 132 of the old Act at the time that application was made.

12 Old BSP accreditation becomes registration under Part 4

On the commencement day, an old BSP accreditation that was in force or suspended immediately before the commencement day is taken to be a booking service provider registration.

13 Old BSP accreditation that is suspended

- (1) This clause applies to an old BSP accreditation that is suspended immediately before the commencement day.
- (2) The old Act, as in force immediately before the commencement day, continues to apply in relation to that suspension.

- (3) The corresponding new registration is taken to be suspended for the duration of that suspension.

14 TSC considering whether to take disciplinary action

- (1) This clause applies to an old BSP accreditation that was in force or suspended immediately before the commencement day if, immediately before that day—
- (a) the TSC had, under section 135B of the old Act, served a notice stating that the TSC proposed to take disciplinary action in relation to that accreditation; but
 - (b) the TSC had not yet decided whether to take that action.
- (2) The old Act, as in force immediately before the commencement day, continues to apply in relation to the notice served under section 135B of that Act.
- (3) If the regulator decides to suspend the old BSP accreditation—
- (a) the old Act, as in force immediately before the commencement day, applies in relation to that suspension; and
 - (b) the corresponding new registration is taken to be suspended for the duration of that suspension.
- (4) If the regulator decides to cancel the old BSP accreditation—
- (a) the old Act, as in force immediately before the commencement day, applies in relation to that cancellation; and

- (b) on that cancellation, the corresponding new registration is taken to be cancelled.

15 Conditions and responsible persons

- (1) This clause applies if, under this Part, an old BSP accreditation is taken to be a booking service provider registration.
- (2) On the commencement day—
 - (a) the conditions, restrictions and limitations (if any) imposed on the old BSP accreditation are taken to be conditions imposed on the corresponding new registration; and
 - (b) the responsible person (within the meaning of section 130A(1) of the old Act) for the old BSP accreditation is taken to be the responsible person for the booking service provider registration.

16 Disqualification from applying for old BSP accreditation

- (1) This clause applies if, immediately before the commencement day, a person was disqualified under the old Act from applying for an old BSP accreditation for a specified period.
- (2) On the commencement day—
 - (a) the old Act, as in force immediately before the commencement day, continues to apply in relation to that disqualification; and
 - (b) the person is taken to be disqualified from applying for a booking service provider registration for the duration of the disqualification under the old Act.

Division 4—Old driver accreditations

17 Application for old driver accreditation not determined before commencement day

- (1) This clause applies to an application under section 166(2) of the old Act for an old driver accreditation if that application had not been determined before the commencement day.
- (2) On the commencement day, the application is taken to be an application for a new driver accreditation.
- (3) Despite section 71(2)(c), the application for a new driver accreditation must be accompanied by the fee that was required to accompany the application under section 166(2) of the old Act at the time that application was made.

18 Information and things required to accompany application for accreditation

On the commencement day, the information and things required, under section 166(3)(b) of the old Act, to accompany an application for an old driver accreditation are taken to be required, under section 71(2)(b), to accompany an application for a new driver accreditation.

19 Tests, qualifications and other requirements

On the commencement day, the requirements under section 167(1) of the old Act are taken to be the requirements and specifications under section 72(1).

20 Application for renewal of old driver accreditation not determined before commencement day

- (1) This clause applies to an application under section 168(2) of the old Act for the renewal of an old driver accreditation if that application had not been determined before the commencement day.
- (2) On the commencement day, the old driver accreditation is taken to be a new driver accreditation.

21 Old driver accreditation becomes new driver accreditation

On the commencement day, an old driver accreditation that was in force or suspended immediately before the commencement day is taken to be a new driver accreditation.

22 TSC considering whether to take disciplinary action

- (1) This clause applies to an old driver accreditation that was in force or suspended immediately before the commencement day if, immediately before that day—
 - (a) the TSC had, under section 169G of the old Act, served a notice stating that the TSC proposed to take disciplinary action in relation to that accreditation; but
 - (b) the TSC had not yet decided whether to take that action.
- (2) The old Act, as in force immediately before the commencement day, continues to apply in relation to the notice served under section 169G of that Act.

- (3) If the regulator decides to suspend the old driver accreditation—
 - (a) the old Act, as in force immediately before the commencement day, applies in relation to that suspension; and
 - (b) the corresponding new accreditation is taken to be suspended for the duration of that suspension.
- (4) If the regulator decides to impose a further condition on the old driver accreditation, on that condition being imposed the corresponding new accreditation is taken to be subject to that condition.
- (5) If the regulator decides to cancel the old driver accreditation—
 - (a) the old Act, as in force immediately before the commencement day, applies in relation to that cancellation; and
 - (b) on that cancellation, the corresponding new accreditation is taken to be cancelled.

23 Old driver accreditation suspended under section 169EA of old Act

- (1) This clause applies to an old driver accreditation that, immediately before the commencement day, was suspended under section 169EA of the old Act.
- (2) The regulator must grant the person a new driver accreditation in place of the old driver accreditation if the regulator is satisfied that—

- (a) on the basis of evidence given by the holder of the old driver accreditation—
 - (i) the suspension of the holder's driver licence or probationary licence under the **Road Safety Act 1986** has ceased; or
 - (ii) the person has been granted a driver licence or probationary licence under that Act; and
- (b) there are no grounds on which the TSC would have considered taking action under section 169I(1) of the old Act in relation to the old driver accreditation.

24 Old driver accreditation that is suspended under section 169I or 169K of old Act

- (1) This clause applies to an old driver accreditation that, immediately before the commencement day, was suspended under section 169I(1)(d) or 169K(1) or (2) of the old Act.
- (2) The old Act, as in force immediately before the commencement day, applies in relation to that suspension.
- (3) The corresponding new accreditation is taken to be suspended for the duration of that suspension.

25 Conditions of accreditation

- (1) This clause applies if, under this Part, an old driver accreditation is taken to be a new driver accreditation.
- (2) On the commencement day, the conditions imposed on the old driver accreditation are taken to be imposed on the new driver accreditation.

26 Disqualification from applying for old driver accreditation

- (1) This clause applies if, immediately before the commencement day, a person was disqualified under the old Act from applying for an old driver accreditation for a specified period that had not yet concluded.
- (2) On the commencement day, the person is taken to be disqualified, under section 215(1)(b), from applying for a new driver accreditation for the remainder of the specified period.

Division 5—Driver agreements

27 VCAT proceeding

- (1) This clause applies to a proceeding under section 162Q of the old Act that has commenced, but has not been finally disposed of, before the commencement day.
- (2) On and after the commencement day, Part VI of the old Act continues to apply in relation to that proceeding.

Division 6—Authorised officers

28 Definition

In this Division—

taxi compliance officer means a person who, immediately before the commencement day, was a taxi compliance officer within the meaning of Division 4ABA of Part VII of the old Act.

29 Taxi compliance officer taken to be authorised officer

On the commencement day, a taxi compliance officer is taken to be an authorised officer.

30 Identity cards

- (1) This clause applies to an identity card that—
 - (a) was issued under section 228RD of the old Act; and
 - (b) immediately before the commencement day, was held by a taxi compliance officer.
- (2) On the commencement day, the identity card is taken to be an identity card issued under section 126.

Division 7—Investigation powers

31 Requirement to provide information or document

- (1) This clause applies to a notice that—
 - (a) was given under section 191YA of the old Act; and
 - (b) immediately before the commencement day, had not yet been complied with.
- (2) On and after the commencement day, Part VI of the old Act continues to apply in relation to the notice.

32 Search warrants

- (1) This clause applies to a search warrant that—
 - (a) was issued under section 228RN of the old Act; and

- (b) immediately before the commencement day, had not yet ceased to have effect.
- (2) On the commencement day, the search warrant is taken to be a search warrant issued under section 141.

33 Seized things

- (1) This clause applies to a thing that was seized under—
 - (a) section 216(3) or 228RR(2)(a) of the old Act; or
 - (b) a search warrant issued under section 228RN of the old Act.
- (2) On and after the commencement day, Part VII of the old Act continues to apply in relation to the thing and the seizure of the thing.

34 Direction to provide information, document or related item

- (1) This clause applies to a direction that—
 - (a) was given under section 228RY of the old Act; and
 - (b) immediately before the commencement day, had not yet been complied with.
- (2) On and after the commencement day, Part VII of the old Act continues to apply in relation to the direction.

Division 8—Enforcement instruments and injunctions

35 Definitions

In this Division—

old enforcement instrument means any of the following—

- (a) an improvement notice that—
 - (i) was served under section 135F of the old Act; and
 - (ii) was in force immediately before the commencement day;
- (b) a commercial benefits penalty order that was made under section 230B of the old Act;
- (c) a supervisory intervention order that was made under section 230C of the old Act;
- (d) an exclusion order that was made under section 230DA of the old Act and that prohibits a person from doing a thing referred to in section 230DA(2)(d) or (e) of that Act;
- (e) an adverse publicity order that was made under section 230FA of the old Act;

old injunction means an injunction granted under any of the following sections of the old Act—

- (a) section 131C(1) or (6);
- (b) section 144K(1) or (6).

36 Old Act continues to apply to old enforcement instrument

On and after the commencement day, Parts VI and VII of the old Act continue to apply in relation to an old enforcement instrument.

37 Application for old injunction taken to be application for new injunction

- (1) This section applies to an application for an old injunction if that application had not been determined before the commencement day.
- (2) On the commencement day, the application is taken to be an application for an injunction under section 196.

38 Old Act continues to apply to old injunction

On and after the commencement day, Part VI of the old Act continues to apply in relation to an old injunction.

Division 9—Review of decisions

39 Right to review continues

- (1) This section applies if a person had a right, immediately before the commencement day, to make an application to the TSC or to VCAT under section 135K, 136A, 143C, 146C, 157, 169MA, 169O, 169ZI or 228RZF of the old Act but the person had not done so before that day.
- (2) The person may make that application on or after that day and within the period allowed under the old Act for the making of that application.

40 Regulator must determine old review application

- (1) This clause applies to an application for a review under section 135K or 169MA of the old Act if the application—
 - (a) was made under the old Act or in accordance with clause 39; and
 - (b) was not determined by the TSC before the commencement day.
- (2) On and after the commencement day, Part VI of the old Act continues to apply in relation to the application.

41 Effect of regulator's decision to set aside cancellation on review

- (1) If the regulator decides, in accordance with clause 40, to set aside a decision to cancel an old BSP accreditation, the old BSP accreditation is taken to be a booking service provider registration on and after that decision.
- (2) If the regulator decides, in accordance with clause 40, to set aside a decision to cancel an old driver accreditation, the old driver accreditation is taken to be a new driver accreditation on and after that decision.

42 VCAT must determine old review application

- (1) This clause applies to an application for a review under section 136A, 143C, 146C, 157, 169O, 169ZI or 228RZF of the old Act if the application—
 - (a) was made under the old Act or in accordance with clause 39; and

- (b) was not determined by VCAT before the commencement day.
- (2) On and after the commencement day, Parts VI and VII of the old Act continue to apply in relation to the application.
- 43 Effect of VCAT's decision to set aside cancellation on review**
- (1) If VCAT decides, in accordance with clause 42, to set aside a decision to cancel an old BSP accreditation, the old BSP accreditation is taken to be a booking service provider registration on and after that decision.
- (2) If VCAT decides, in accordance with clause 42, to set aside a decision to cancel an old driver accreditation, the old driver accreditation is taken to be a new driver accreditation on and after that decision.
- (3) This clause applies despite section 51(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.
- 44 Effect of other decisions made on review**
- (1) This clause applies to a decision affirmed or varied, or substituted for another decision—
- (a) by the regulator—
- (i) in accordance with clause 40; or
- (ii) on being invited by VCAT to reconsider a decision under section 51A of the **Victorian Civil and Administrative Tribunal Act 1998** and in accordance with clause 42; or
- (b) by VCAT in accordance with clause 42.

- (2) If the decision is of a kind referred to in column 1 of a row in the following table, it is taken to be the decision referred to in column 2 of that row.

Table	
Column 1	Column 2
<i>Old decision</i>	<i>New decision</i>
A decision to refuse to issue an old BSP accreditation	A decision under section 58(2) to refuse to register a person as a provider of a booking service
A decision under section 132H to disqualify a person from applying for an old BSP accreditation	A decision under section 218(1) to disqualify the person from applying for a booking service provider registration
A decision under section 133 of the old Act to impose a condition, restriction or other limitation on an old BSP accreditation	A decision under section 60 to impose that condition, restriction or other limitation as a condition on the corresponding new registration
A decision under section 133A of the old Act to vary, revoke or impose a condition, restriction or other limitation on an old BSP accreditation	A decision under section 63 to make that change to the corresponding new registration
A decision under section 135B(4) of the old Act to take an action listed in section 135A of that Act in relation to an old BSP accreditation (other than a direction that a person undertake particular training)	A decision under section 218(1) in relation to the corresponding new registration

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Column 1 <i>Old decision</i>	Column 2 <i>New decision</i>
A decision under section 135C of the old Act to suspend an old BSP accreditation	A decision under section 220 to suspend the corresponding new registration
A decision under section 135F of the old Act to serve an improvement notice on the holder of an old BSP accreditation	A decision under section 171(2) to serve an improvement notice on the holder of the corresponding new registration
A decision to refuse to grant an application for an old CPV licence (other than an application in respect of a vehicle which is to operate as a public commercial passenger vehicle)	A decision under section 42 to refuse to register the motor vehicle that was the subject of that application
A decision under section 143A(11) of the old Act to suspend an old CPV licence	A decision under section 45(2) to suspend the corresponding new registration
A decision under section 143A(11) of the old Act to cancel an old CPV licence	A decision under section 45(2) to cancel the corresponding new registration
A decision under section 146(1) to cancel an old CPV licence	A decision under section 48(1) to cancel the corresponding new registration
A decision under section 146(1) of the old Act to alter the conditions attached to an old CPV licence	A decision under section 46 to make that alteration to the conditions attached to the corresponding new registration

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Column 1 <i>Old decision</i>	Column 2 <i>New decision</i>
A decision under section 147A(3) of the old Act to suspend an old CPV licence	A decision under section 218(1) to suspend the corresponding new registration
A decision under section 147A(3) of the old Act to cancel an old CPV licence	A decision under section 218(1) to cancel the corresponding new registration
A decision under section 157(1) of the old Act to suspend an old CPV licence	A decision under section 218(1) to suspend the corresponding new registration
A decision under section 157(1) of the old Act to revoke an old CPV licence	A decision under section 218(1) to cancel the corresponding new registration
A decision to refuse to issue an old driver accreditation	A decision under section 75 to refuse to issue a new driver accreditation
A decision to refuse to renew an old driver accreditation	A decision under section 75 to refuse to issue a new driver accreditation
A decision under section 169A(1)(a) of the old Act to impose a condition on an old driver accreditation on issuing the accreditation	A decision under section 77(1) to impose that condition on the corresponding new accreditation

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Column 1 <i>Old decision</i>	Column 2 <i>New decision</i>
A decision under section 169A(1)(b) of the old Act to impose a condition on an old driver accreditation at any time during the course of an accreditation	A decision under section 81(1) to impose that condition on the corresponding new accreditation
A determination under section 169C(1) of the old Act to disqualify a person from applying for the issue of an old driver accreditation	A determination under section 85 that the person is disqualified from applying for the issue of a new driver accreditation
A decision under section 169EB of the old Act not to reinstate an old driver accreditation of a person suspended	A decision under section 226 not to reinstate the corresponding new driver accreditation
A decision under section 169I(1) of the old Act to take an action listed in that provision in relation to an old driver accreditation	A decision under section 218(1) to take that action in relation to the corresponding new accreditation
A decision under section 228RX of the old Act to forfeit a seized thing	A decision under section 159 to forfeit that thing

- (3) The decision is taken to have been made on the commencement day.
- (4) In relation to a decision affirmed, varied or substituted by VCAT in accordance with clause 42, subclause (3) applies despite section 51(3) of the **Victorian Civil and Administrative Tribunal Act 1998**.

45 Decision of VCAT to remit matter

- (1) This clause applies if VCAT determines an application, in accordance with clause 42, by setting aside the decision under review and remitting the matter for re-consideration.

Note

See section 51(2)(d) of the **Victorian Civil and Administrative Tribunal Act 1998**.

- (2) Despite the decision having been made by the TSC, the matter is remitted to the regulator.
- (3) For the purposes of subclause (2), to the extent that the matter relates to a decision is of a kind referred to in column 1 of a row in the table in clause 44(2), the matter is taken to relate to the decision referred to in column 2 of that row.

Division 10—Register of taxi permission holders

46 Application to restrict public access

- (1) This clause applies to an application under section 169ZF(1) of the old Act in relation to public access to information on the register under section 169ZA of that Act if that application had not been determined before the commencement day.
- (2) On the commencement day, the application is taken to be an application under section 232 in relation to public access to that information on the register of permission holders.

47 Determination to restrict public access

- (1) This clause applies to a determination, under section 169ZD(3) or 169ZG of the old Act, that public access to certain information is to be restricted if that determination is in force immediately before the commencement day.
- (2) On and after the commencement day, the determination is taken to be a determination under the corresponding provision of this Act.
- (3) In this clause—
corresponding provision means—
 - (a) in relation to a determination made under section 169ZD(3) of the old Act, section 230(3); and
 - (b) in relation to a determination made under 169ZG of the old Act, section 233.

Division 11—Miscellaneous

47A Price determination

- (1) This clause applies to the determination that was—
 - (a) made under Division 5A of Part VI of the old Act; and
 - (b) in force immediately before the commencement day.
- (2) On the commencement day, the determination as modified by subclause (3) is taken to be a determination under Division 1A of Part 6.

- (3) For the purposes of subclause (2), the determination is modified as follows—
- (a) a determination of a price that is expressed to relate to Urban and Large Regional Zone taxi licences is taken to be a determination of a price for an applicable unbooked service in respect of a journey that begins in the Urban and Large Regional Zone;
 - (b) a determination of a price that is expressed to relate to metropolitan zone taxi licences is taken to be a determination of a price for an applicable unbooked service in respect of a journey that begins in the Melbourne Metropolitan Zone.
- (4) Nothing in this clause affects the ESC's obligation, under section 110F(1), to make a determination under Division 1A of Part 6 in the time specified in that section.
- (5) In this clause—
- applicable unbooked service* has the meaning given by section 110A;
 - Melbourne Metropolitan Zone* has the meaning given by section 110A;
 - Urban and Large Regional Zone* has the meaning given by section 110A.

48 Authorisation to download or print image or data from security camera

- (1) This clause applies to a written authorisation that was—
- (a) given under section 158B(1)(b)(i) of the old Act; and

- (b) in force immediately before the commencement day.
- (2) On the commencement day, the authorisation is taken to be an authorisation under section 270(1)(b)(i).

49 Authorisation to do other things with image or data from security camera

- (1) This clause applies to a written authorisation that was—
 - (a) given under section 158B(2)(c) of the old Act; and
 - (b) in force immediately before the commencement day.
- (2) On the commencement day, the authorisation is taken to be an authorisation under section 270(2).

50 Agreement in relation to images obtained from security camera

- (1) This clause applies to an agreement that was—
 - (a) made under section 158C(1) of the old Act; and
 - (b) in force immediately before the commencement day.
- (2) On the commencement day, the agreement is taken to be an agreement under section 271(1).

51 Determination of ESC

On the commencement day, a determination under section 162I of the old Act that is in force immediately before that day is taken to be a determination made by the ESC under section 124(1).

52 VCAT must determine old application

- (1) This clause applies to an application under section 169N(1) of the old Act if the application was not determined before the commencement day.
- (2) Subject to this clause, Part VI of the old Act continues to apply to the application on and after the commencement day.
- (3) If, on the application, VCAT makes an order directing the TSC to issue or renew an old driver accreditation, that order is taken to be an order directing the regulator to issue a new driver accreditation.
- (4) If, on the application, VCAT makes an order directing the TSC to reinstate an old driver accreditation, that order is taken to be an order directing the regulator to reinstate the corresponding new accreditation.
- (5) If, on the application, VCAT makes an order directing the TSC to make a determination cancelling the disqualification of the applicant, that order is taken to be an order cancelling the disqualification from applying for a new driver accreditation.

53 Inquiries by TSC

- (1) This clause applies to an inquiry under section 170 of the old Act if the TSC had not reported on the outcomes of the inquiry under section 171 of that Act before the commencement day.
- (2) Despite the amendments made to Part VI of the old Act by the amending Act, that Part continues to apply in relation to that inquiry.

54 Complaints

- (1) This clause applies to a complaint—
 - (a) that was made under section 191YB of the old Act; and
 - (b) for which the Secretary did not complete an investigation under that section (including by providing a written report).
- (2) On the commencement day, the complaint is taken to be a complaint under section 265.

55 Information sharing arrangement

- (1) This clause applies to an arrangement under section 191YD of the old Act that was in force immediately before the commencement day.
- (2) On the commencement day, the arrangement is taken to be an arrangement under section 266.

Division 12—Regulations

56 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the amending Act.
- (2) Regulations under this clause may—
 - (a) have a retrospective effect to a day on or after a day not earlier than the day on which the amending Act receives the Royal Assent; and
 - (b) be of limited or general application; and

- (c) differ according to time, place or circumstance; and
 - (d) leave any matter or thing to be decided by a specified person or class of person.
- (3) To the extent to which any provision of regulations under this clause takes effect from a date that is earlier than the date of its making, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its making; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its making.
- (4) Regulations under this clause have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities) or in any subordinate instrument.
- (5) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to regulations made under this clause.
- (6) This clause expires on 7 July 2020."

4 Explanatory details

No entries at date of publication.