Road Safety Amendment Act 2012

**No. 50 of 2012**

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**Victoria**

**Road Safety Amendment Act 2012[[1]](#endnote-2)**

**No. 50 of 2012**

[Assented to 4 September 2012]

**The Parliament of Victoria** **enacts:**

Part 1—Preliminary

 1 Purposes

The purposes of this Act are—

 (a) to amend the **Road Safety Act 1986**—

 (i) to allow a court to order a person found guilty of certain driving offences to complete a safe driving program that has been approved by the Corporation and that is provided by an approved provider;

 (ii) to provide further powers for the relocation or sale of vehicles that have been impounded or immobilised and to make other amendments to Part 6A of that Act;

 (iii) to amend the definition of ***statutory write-off*** as it applies to light motor vehicles (other than motor cycles) to align that definition with criteria developed nationally;

 (b) to make statute law revision amendments to the **Road Safety Act 1986** and the **Road Management Act 2004**.

 2 Commencement

s. 2

 (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

 (2) If a provision of this Act does not come into operation before 1 April 2013, it comes into operation on that day.

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Part 2—Amendment of Road Safety Act 1986

 3 Definitions

s. 3

See:
Act No.
127/1986.
Reprint No. 13
as at
1 July 2011
and amending
Act Nos
19/1991, 93/2009, 63/2010, 74/2010, 32/2011, 34/2011, 38/2011, 43/2011, 47/2011, 61/2011, 65/2011 and 77/2011.
LawToday:
www.
legislation.
vic.gov.au

In section 16B of the **Road Safety Act 1986**—

 (a) for the definition of ***repairable write-off* substitute**—

"***repairable write-off*** means a motor vehicle that—

 (a) is written off but is not a statutory write-off; or

 (b) is written off and is entered on an interstate written-off vehicles register in a corresponding category to repairable write-off under this Division;";

 (b) for the definition of ***statutory write-off* substitute**—

"***statutory write-off*** means a motor vehicle to which section 16BA applies;";

 (c) **insert** the following definitions—

"***ATM*** means aggregate trailer mass;

***GTMR*** means gross trailer mass rating;

***light motor vehicle*** means a motor vehicle with an MRC not exceeding 4·5 tonnes but does not include a motor cycle;

***MRC*** (mass rating for charging) in relation to a light motor vehicle, means—

 (a) the maximum mass of the vehicle, including any load, recorded on the compliance plate as the GVM, GTMR or ATM of the vehicle; or

 (b) if the vehicle has no compliance plate—its operating mass;".

 4 New section 16BA inserted

s. 4

After section 16B of the **Road Safety Act 1986 insert**—

 "16BA Statutory write-offs

 (1) A light motor vehicle is a statutory write-off if the light motor vehicle meets one or more of the criteria specified in clause 4 of Schedule 6.

 (2) A motor vehicle (other than a light motor vehicle or a motor cycle) is a statutory write-off if the motor vehicle is written off and—

 (a) has been damaged by at least 3 of the following impact damage indicators—

 (i) damage to an area of the roof equal to or exceeding 300 millimetres by 300 millimetres; or

 (ii) damage to an area of the cabin floor equal to or exceeding 300 millimetres by 300 millimetres; or

 (iii) damage to an area of the firewall equal to or exceeding 300 millimetres by 300 millimetres; or

 (iv) damage to the suspension; or

 (v) damage (cracked or broken) to major mechanical components such as the engine block and transmission casings; or

 (b) has been—

 (i) immersed in salt water above the doorsill level for any period; or

 (ii) immersed in fresh water up to the dashboard or steering wheel for more than 48 hours.

 (3) A motor cycle is a statutory write-off if the motor cycle is written off and—

 (a) has impact damage (excluding scratching) to the suspension and at least 2 areas of structural frame damage; or

 (b) has been—

 (i) fully immersed in salt water for any period; or

s. 4

 (ii) fully immersed in fresh water for more than 48 hours.

 (4) A motor vehicle (other than a light motor vehicle) is a statutory write-off if the motor vehicle is written off and—

 (a) has been burnt to such an extent that it is only fit for wrecking or scrap; or

 (b) has been stripped of all, or a combination of most, interior and exterior body parts, panels and components.

 (5) A motor vehicle is a statutory write-off if the motor vehicle is written off and is entered on an interstate written-off vehicles register in a corresponding category to statutory write-off under this Division.".

 5 New Part 6AB inserted

s. 5

After Part 6AA of the **Road Safety Act 1986 insert**—

"Part 6AB—Safe Driving Programs

Division 1—Preliminary

 84BJ Definitions

 (1) In this Part—

***applicable offence*** means—

 (a) an offence against section 64(1)—

 (i) in circumstances involving improper use of a motor vehicle; or

 (ii) in circumstances where a motor vehicle is driven at 45 kilometres per hour or more over the applicable speed limit; or

 (iii) in circumstances where a motor vehicle is driven, if the applicable speed limit is 110 kilometres per hour, at a speed of 145 kilometres per hour or more;

 (b) an offence against section 65(1) in circumstances involving improper use of a motor vehicle;

 (c) an offence against section 65A(1);

 (d) an offence against section 68(1) or (2);

 (e) an offence against section 65B or rule 20 of the Road Rules in circumstances where the motor vehicle is driven—

 (i) at 45 kilometres per hour or more over the applicable speed limit; or

 (ii) if the applicable speed limit is 110 kilometres per hour, at a speed of 145 kilometres per hour or more;

 (f) an offence against rule 291 of the Road Rules in circumstances involving improper use of a motor vehicle;

s. 5

 (g) an offence against rule 297 of the Road Rules in circumstances involving improper use of a motor vehicle;

***approved provider*** means a person or body approved under section 84BP;

***approved safe driving program*** means a program approved under section 84BO;

***court***, in relation to an applicable offence, means—

 (a) the court hearing and determining the charge for the applicable offence; or

 (b) if an application for an exemption under section 84BL(3) is made on a day after the determination of the charge for the applicable offence—the court hearing the application;

***improper use of a motor vehicle***, in relation to an applicable offence, means the driving of a motor vehicle in a manner that intentionally causes the motor vehicle to undergo loss of traction by one or more of its wheels;

***Road Rules*** means the Road Safety Road Rules 2009.

 (2) For the purposes of this Part, more than one applicable offence arising out of the same set of circumstances are to be treated as a single applicable offence.

 (3) For the purposes of subsection (2), the same set of circumstances is constituted by one continuous period during which a person continues to drive or be in charge of a motor vehicle.

 84BK Part does not affect other penalty

s. 5

An order under this Part for completion of an approved safe driving program is in addition to, and does not limit or otherwise affect, any other penalty that may be imposed in respect of an applicable offence.

Division 2—Requirement to complete approved safe driving program

 84BL Court order for completion of approved safe driving program

 (1) Subject to subsections (2) and (3), the court must order that a person complete an approved safe driving program if—

 (a) the person is found guilty of an applicable offence; and

 (b) in relation to the offence—

 (i) a motor vehicle has been impounded or immobilised by a member of the police force under Division 2 of Part 6A; or

 (ii) a motor vehicle has been impounded, immobilised or forfeited under a court order made under Division 3 of Part 6A.

 (2) The court must not order that a person complete an approved safe driving program if the person provides to the court written evidence of having already completed an approved safe driving program provided by an approved provider.

s. 5

 (3) In exceptional circumstances, the court may exempt a person from completing an approved safe driving program.

 (4) A person may apply to the court for an exemption under subsection (3)—

 (a) at the hearing of the charge for the applicable offence; or

 (b) at any time after the court has made an order under subsection (1).

 (5) The court must notify the Corporation of—

 (a) the making of an order under subsection (1); or

 (b) the granting of an exemption under subsection (3).

 84BM Corporation to notify person of program and period for completion

If the court orders a person to complete an approved safe driving program under section 84BL(1), the Corporation must give notice to the person of—

 (a) the approved safe driving program that the person is required to complete; and

 (b) the date (being not less than 1 month after the date of the notice) by which the person must—

 (i) complete the program; and

 (ii) provide to the Corporation written evidence of having completed the program.

 84BN Failure to complete approved safe driving program

s. 5

 (1) If, by the date specified in a notice given by the Corporation under section 84BM—

 (a) the person to whom the notice is given has failed to provide to the Corporation written evidence that he or she has completed the approved safe driving program specified in the notice; and

 (b) the court has not notified the Corporation of the granting of an exemption under section 84BL(3)—

the Corporation must take the appropriate action under subsection (2).

 (2) The Corporation must—

 (a) suspend any driver licence or permit held by the person; or

 (b) if the driver licence or permit is already suspended—further suspend the driver licence or permit from the date of expiry of the existing suspension; or

 (c) if the person does not hold a driver licence or permit—disqualify the person from driving a motor vehicle on a road in Victoria and disqualify the person from obtaining a driver licence or permit.

 (3) A suspension, further suspension or disqualification under subsection (2) remains in effect until the Corporation is satisfied that—

s. 5

 (a) the person has completed the approved safe driving program specified in the notice; or

 (b) the person has been exempted by the court from completing the approved safe driving program.

 (4) If—

 (a) the Corporation has accepted written evidence of a person having completed an approved safe driving program; and

 (b) the Corporation becomes aware that the evidence is invalid, false or issued in error—

the Corporation must take the appropriate action under subsection (2).

Division 3—Approval of safe driving programs and providers of safe driving programs

 84BO Corporation may approve safe driving programs

 (1) The Corporation may approve, in writing, safe driving programs to be provided by approved providers to persons, or a specified class of persons, who are the subject of a court order under section 84BL(1).

 (2) The Corporation may, in writing—

 (a) cancel or suspend the approval of a safe driving program; or

 (b) vary the class of persons to whom an approved safe driving program is to be provided.

 (3) The Corporation must not take action under subsection (2) unless it has allowed each approved provider that is approved to provide the approved safe driving program at least 10 working days to make written representations about the proposed action.

 84BP Corporation may approve providers of safe driving programs

s. 5

 (1) The Corporation may approve, in writing, a person or body to be a provider of safe driving programs for the purposes of this Part.

 (2) The Corporation may determine the process for approving providers and the requirements an applicant must meet to be considered for approval.

 (3) An approval under subsection (1) must be in writing and state which approved safe driving programs the person or body is approved to provide.

 84BQ Conditions etc. on approval of providers

 (1) An approval under section 84BP may be given subject to any specified condition, limitation or restriction that the Corporation considers appropriate.

 (2) At any time, the Corporation may, by giving written notice to the person or body concerned—

 (a) vary or revoke a condition, limitation or restriction to which the approval is subject; or

 (b) make the approval subject to a new condition, limitation or restriction.

 (3) The Corporation must not take action under subsection (2) unless it has allowed the person or body at least 10 working days to make written representations about the proposed action.

 84BR Cancellation or suspension of approval of provider

s. 5

 (1) The Corporation may, by giving written notice to an approved provider, cancel or suspend the provider's approval under section 84BP if the Corporation is satisfied that the provider—

 (a) has failed to comply with any condition, limitation or restriction to which the approval is subject; or

 (b) has failed to provide a safe driving program to the satisfaction of the Corporation.

 (2) The Corporation must not take action under subsection (1) unless it has allowed the approved provider at least 10 working days to make written representations about the proposed action.

 84BS Review by Tribunal

 (1) A person or body whose interests are affected by a decision of the Corporation under section 84BR to cancel or suspend an approval may apply for review of the decision to VCAT.

 (2) An application for review must be made within 28 days after the later of—

 (a) the day on which the decision is made; or

 (b) if the person or body requests a statement of reasons for the decision under section 45 of the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which—

 (i) the statement is given to the person or body; or

 (ii) the person or body is informed under section 46(5) of that Act that the statement will not be given.

Division 4—Fee relating to approved safe driving program

 84BT Payment of fee

s. 5

 (1) A person participating in an approved safe driving program must pay to the approved provider who is providing the program the fee determined by the Corporation under section 84BV(1).

 (2) The fee payable under subsection (1) is in addition to any commercial charge set by the approved provider for participation in the approved safe driving program.

 (3) The approved provider must refund the fee to the person if the approved provider—

 (a) fails to provide the approved safe driving program at the time agreed with the person; and

 (b) either—

 (i) is unable to reach agreement with the person as to an alternative time at which to provide the program; or

 (ii) fails to provide the approved safe driving program at an alternative time agreed with the person.

 84BU Approved provider to send fees to Corporation

s. 5

 (1) An approved provider must send to the Corporation the fees paid to the approved provider under section 84BT(1) in the manner and within the time determined by the Corporation.

 (2) The fees sent to the Corporation under subsection (1) must be accompanied by the information required by the Corporation relating to the approved safe driving programs to which the fees relate.

 (3) The information required by the Corporation under subsection (2) may include the names of the participants of the approved safe driving programs.

 84BV Corporation may determine fee

 (1) The Corporation may determine from time to time the fee to be imposed on persons for participating in an approved safe driving program conducted by an approved provider.

 (2) A determination under subsection (1) must be made by notice published in the Government Gazette.

 (3) In determining the amount of the fee, the Corporation must ensure that the total fees collected do not exceed the costs of the implementation and administration of the safe driving program scheme established under this Part.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_".

 6 Definitions

s. 6

In section 84C(1) of the **Road Safety Act 1986**—

 (a) in the definition of ***designated costs*** after "immobilisation order" **insert** "and any additional costs incurred if the motor vehicle is relocated by a member of the police force or an authorised person under section 84PB(1)(b) or (3)";

 (b) for the definition of ***authorised person*** **substitute**—

"***authorised person*** means, in relation to a function or power under this Part, a person authorised by a member of the police force under section 84J to perform that function or exercise that power;";

 (c) for the definition of ***senior police officer*** **substitute**—

"***senior police officer*** means a member of the police force—

 (a) of or above the rank of Inspector; or

 (b) in the position of Officer in Charge, Vehicle Impoundment Unit;".

 7 Powers of Victoria Police

s. 7

 (1) In section 84F(1)(b) of the **Road Safety Act 1986** for "period; and" **substitute** "period.".

 (2) Section 84F(1)(c) of the **Road Safety Act 1986** is **repealed**.

 8 Surrender of motor vehicle

 (1) In section 84H(1) of the **Road Safety Act 1986** **omit** ", more than 48 hours after the commission of a relevant offence,".

 (2) In section 84H(2)(a)(i) of the **Road Safety Act 1986** for "28 days" **substitute** "42 days".

 (3) After section 84H(2)(a)(i) of the **Road Safety Act 1986 insert**—

 "(ia) if the relevant offence is—

 (A) an offence under section 49(1)(b), (bb), (g) or (i) in relation to which the offender was required give a sample of blood under section 55(9A), 55B(1)(a), 55E(13) or 56(2); or

 (B) an offence under section 49(1)(bb) or (h) in relation to which the offender was required to give a sample of oral fluid under section 55E(2) or (3)—

at any time after the charge-sheet is filed but not later than 3 months after the commission of the relevant offence; or".

 (4) In section 84H(2)(b) of the **Road Safety Act 1986** after "vehicle" **insert** "unless an earlier time is consented to by the registered operator of the motor vehicle and that consent is endorsed in writing on the notice".

 (5) In section 84H(3)(a)(i) of the **Road Safety Act 1986** for "28 days" **substitute** "42 days".

 (6) After section 84H(3)(a)(i) of the **Road Safety Act 1986 insert**—

 "(ia) if subsection (2)(a)(ia) applies, within the preceding 3 months; or".

 (7) In section 84H(3)(d) and (4) of the **Road Safety Act 1986** after "personnel" **insert** "or an authorised person".

 9 Power of persons authorised by Victoria Police

s. 9

 (1) In section 84J of the **Road Safety Act 1986** for "In exercising powers under this Part a member of the police force may authorise any person to assist him or her to" **substitute** "A person authorised by a member of the police force to do so may".

 (2) For section 84J(f) of the **Road Safety Act 1986 substitute**—

 "(f) assist a member of the police force to seize or impound a motor vehicle under this Division;

 (g) release an impounded motor vehicle at a time directed by a member of the police force;

 (h) take possession of a motor vehicle surrendered in accordance with a notice under section 84H or an order under section 84S or 84T;

 (i) drive or move a motor vehicle referred to in paragraph (h) as directed by a member of the police force;

 (j) for the purposes of section 84PB or 84ZC, exercise the same powers to search for and seize a motor vehicle and other powers as are specified in sections 84G(1), (3)(b) and (3)(d) and 84I;

 (k) relocate a vehicle seized under section 84PB;

 (l) take possession of the keys to a motor vehicle as directed by a member of the police force under section 84G(3)(c).".

 10 Content of notice

s. 10

For section 84L(f)(v) of the **Road Safety Act 1986 substitute**—

 "(v) if the motor vehicle has been immobilised by use of a steering wheel lock—the name of the unit within the police force of Victoria that arranges for the release of keys for steering wheel locks and the address and telephone number of that unit; and".

 11 Offences

 (1) For section 84P(2)(ab) of the **Road Safety Act 1986 substitute**—

 "(ab) if the motor vehicle is immobilised by use of a steering wheel lock and the person who moved the vehicle or arranged for it to be moved has done so in accordance with an authorisation given under section 84PA; or".

 (2) In section 84P(3) of the **Road Safety Act 1986** for "the police force" **substitute** "police personnel".

 12 New sections 84PA and 84PB inserted

s. 12

After section 84P of the **Road Safety Act 1986 insert**—

 "84PA Authorisation to move motor vehicle

 (1) On the written application of a person, the Chief Commissioner of Police may authorise the person to move a motor vehicle that has been immobilised under this Part by use of a steering wheel lock or to arrange for the motor vehicle to be moved.

 (2) An authorisation under subsection (1) must specify the location to which the motor vehicle may be moved and state that the motor vehicle must be moved within 14 days after the date of the authorisation.

 (3) A person who is authorised under subsection (1) to move a motor vehicle, or to arrange for the motor vehicle to be moved, must do so at his or her own cost.

 84PB Relocation of immobilised motor vehicle by Victoria Police

 (1) A member of the police force or an authorised person may enter and move an immobilised motor vehicle to another location and immobilise the motor vehicle at the new location if—

 (a) the motor vehicle has been left in a location where—

 (i) it is detracting from public amenity; or

 (ii) it is posing a safety risk; or

 (iii) it is interfering with traffic flow; or

 (b) since being immobilised, the motor vehicle has been moved by a person other than a member of the police force or an authorised person without the authorisation of the Chief Commissioner of Police.

 (2) As soon as practicable after a motor vehicle has been moved under subsection (1), the member of the police force or authorised person who moved the motor vehicle must notify the registered operator in writing of the location to which it has been moved.

s. 12

 (3) A member of the police force or an authorised person may enter and move an immobilised motor vehicle, or arrange for the motor vehicle to be moved, to another location for the purpose of the sale or disposal of the motor vehicle under section 84ZQAB.

 (4) For the purpose of entering and moving a motor vehicle under this section—

 (a) a member of the police force has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1) and (3), 84GA, 84GB and 84I; and

 (b) an authorised person has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1), (3)(b) and (3)(d) and 84I.

 (5) For the purposes of subsection (4), the exercise of a power that is the same as a power under section 84G(1) is not subject to the time limits applied by section 84G(2).".

 13 How motor vehicle immobilised by steering wheel lock may be recovered

s. 13

 (1) In section 84QA(2) of the **Road Safety Act 1986**—

 (a) for "The member of the police force who served the notice under 84K" **substitute** "The Chief Commissioner of Police";

 (b) for "at the police station specified in accordance with section 84L(f)(v)" **substitute** "at the address of the unit of the police force referred to in section 84L(f)(v)".

 (2) After section 84QA(2) of the **Road Safety Act 1986 insert**—

 "(2A) A member of the unit of the police force referred to in section 84L(f)(v) may, by arrangement with the person to whom the key is to be made available, post the key to the person if the member is satisfied that it is impracticable for the person to collect the key.

 (2B) A member of the unit of the police force referred to in section 84L(f)(v) must provide to the person who collects a key to a steering wheel lock, or to whom the key is posted, written instructions stating—

 (a) the location, or choice of locations, to which the key and the steering wheel lock must be returned; and

 (b) the period, being a period of not less than 24 hours after the key is collected by the person or the key is delivered by post to the person, within which the key and the steering wheel lock must be returned.".

 (3) For section 84QA(3) of the **Road Safety Act 1986 substitute**—

 "(3) A person who collects a key to a steering wheel lock, or to whom a key to a steering wheel lock is delivered, must return the key and the steering wheel lock to the location, or one of the locations, and within the period specified in the instructions provided under subsection (2B).

Penalty: 60 penalty units.".

 14 Sections 84S and 84T amended

s. 14

In sections 84S(3) and 84T(3) of the **Road Safety Act 1986** after "personnel" **insert** "or an authorised person".

 15 Direction not to transfer registration or register motor vehicle

After section 84YA(3)(f) of the **Road Safety Act 1986 insert**—

 "(fa) the motor vehicle vests in the Crown under section 84ZQ(4), 84ZQAB(3) or 84ZW(5);".

 16 New section 84ZC substituted

For section 84ZC of the **Road Safety Act 1986 substitute**—

 "84ZC Powers of police and authorised officers to enforce orders

 (1) When acting under an impoundment or immobilisation order or a forfeiture order made under this Division—

 (a) a member of the police force has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1) and (3), 84GA, 84GB and 84I; and

 (b) an authorised person has, and may exercise, the same powers to search for and seize the motor vehicle and other powers as are specified under sections 84G(1), (3)(b) and (3)(d) and 84I.

 (2) For the purposes of subsection (1), the exercise of a power that is the same as a power under section 84G(1) is not subject to the time limits applied by section 84G(2).".

 17 Liability for costs of impoundment or immobilisation

s. 17

At the end of section 84ZD of the **Road Safety Act 1986 insert**—

 "(2) Despite subsection (1), a motor vehicle may be released from immobilisation without the payment of the designated costs if the Chief Commissioner of Police has accepted a signed undertaking given by the registered operator of the motor vehicle in accordance with subsection (3).

 (3) For the purposes of subsection (2), the undertaking must provide that, in return for the release of the motor vehicle without payment of the designated costs, the registered operator undertakes by the date specified by the Chief Commissioner of Police—

 (a) to remove the registration plates of the motor vehicle and return them to the Corporation; and

 (b) to have the motor vehicle destroyed by a recycler approved by the Chief Commissioner; and

 (c) to give to the Chief Commissioner a certificate issued by the recycler confirming the destruction of the motor vehicle.

 (4) If the registered operator complies with the undertaking, the Chief Commissioner of Police must waive the designated costs.

 (5) If the registered operator fails to comply with the undertaking—

 (a) the amount of the designated costs becomes a debt due to the Crown recoverable in a court of competent jurisdiction; and

 (b) the motor vehicle may be seized by a member of the police force and immobilised or impounded until—

 (i) the designated costs (including any further costs associated with the subsequent immobilisation or impoundment under this paragraph) are paid; or

 (ii) the vehicle is sold or disposed of under Division 5.".

 18 Application for search and seizure warrant

s. 18

In section 84ZG(1) of the **Road Safety Act 1986**—

 (a) in paragraph (d) for "vehicle." **substitute** "vehicle; or";

 (b) after paragraph (d) **insert**—

 "(e) a member of the police force is empowered under section 84PB(4)(a) to seize the motor vehicle.".

 19 Notice to be given of intention to sell or dispose

s. 19

 (1) In section 84ZQA(1)(a)(iv) of the **Road Safety Act 1986** for "Corporation; and" **substitute** "Corporation.".

 (2) Section 84ZQA(1)(b) of the **Road Safety Act 1986** is **repealed**.

 (3) In section 84ZQA(3) of the **Road Safety Act 1986** for 'expired.".' **substitute** "expired.".

 20 New sections 84ZQAB, 84ZQAC and 84ZQAD inserted

After section 84ZQA of the **Road Safety Act 1986 insert**—

 "84ZQAB Sale or disposal of motor vehicles and items deemed to be abandoned

 (1) The Chief Commissioner of Police may sell, by public auction or tender, or otherwise dispose of, a motor vehicle and any item left in or on the motor vehicle, if—

 (a) a decision is made by a member of the police force to impound or immobilise the motor vehicle under section 84F or an impoundment or immobilisation order is made against the motor vehicle; and

 (b) the motor vehicle is not collected or released after the motor vehicle becomes available for collection or release; and

 (c) the motor vehicle is deemed under subsection (2) to be abandoned.

 (2) A motor vehicle is deemed to be abandoned if—

 (a) the Chief Commissioner has given notice in accordance with section 84ZQAC; and

 (b) either—

 (i) 30 days have elapsed since the giving of the notice and none of the events referred to in section 84ZQAC(4)(a) to (f) have occurred; or

 (ii) the court has made an order under section 84ZQAD that the motor vehicle is abandoned.

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 (3) If a motor vehicle is deemed to be abandoned under subsection (2), the motor vehicle and any item or thing left in or on it vest absolutely in the Crown free from all other interests, rights, titles or claims in or to ownership or possession.

 (4) Subsection (3) has effect despite any other Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or law to the contrary.

 (5) A purchaser of a motor vehicle, item or thing sold in accordance with subsection (1) acquires good title to that vehicle, item or thing.

 (6) A person with an interest in a motor vehicle sold or disposed of under subsection (1) must be compensated in accordance with subsection (7) if, after the sale or disposal of the motor vehicle—

 (a) in the case where the motor vehicle was impounded or immobilised by a member of the police force under Division 2—

 (i) the person accused of the relevant offence in relation to which the vehicle was impounded or immobilised is found not guilty of that offence and is not found guilty of any other relevant offence arising out of the same set of circumstances; or

 (ii) no charge-sheet charging a relevant offence is filed in relation to the impoundment or immobilisation of the motor vehicle or a charge-sheet is filed but the charge is not proceeded with within 12 months after the motor vehicle was impounded or immobilised; or

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 (b) in any case—a conviction for the relevant offence in relation to which the vehicle was impounded or immobilised is set aside.

 (7) Compensation paid to a person under subsection (6) must—

 (a) be based on the market valuation of the motor vehicle obtained by the Chief Commissioner of Police; and

 (b) be proportionate to the person's interest in the motor vehicle; and

 (c) have deducted any money already paid to the person under section 84ZQD(1)(c) and (d) in respect of the motor vehicle.

 84ZQAC Notice to be given of intention to deem motor vehicle abandoned

 (1) The Chief Commissioner of Police must give notice of intention to deem a motor vehicle to be abandoned under section 84ZQAB and then to sell or otherwise dispose of the motor vehicle and any uncollected item or thing left in or on the motor vehicle by serving a notice that complies with subsections (3) and (4) on—

 (a) the driver of the motor vehicle; and

 (b) if the driver of the motor vehicle is not the registered operator of the motor vehicle—the registered operator; and

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 (c) any person who the Chief Commissioner is aware has an interest in the motor vehicle; and

 (d) the Corporation.

 (2) If the registered operator of the motor vehicle is not the owner or sole owner of the motor vehicle, the registered operator must, as soon as is reasonably practicable, take reasonable steps to serve a copy of the notice served under subsection (1) on any owner of the motor vehicle.

**Note**

See section 93 for how a notice may be served.

 (3) A notice under subsection (1) must include information that identifies the motor vehicle, including the motor vehicle's registration number (if applicable).

 (4) A notice under subsection (1) must state that the motor vehicle will be deemed to be abandoned and that the motor vehicle and any item left in or on the motor vehicle will be sold or disposed of unless, within 30 days after the date of the notice—

 (a) the designated costs in respect of the impoundment or immobilisation of the motor vehicle are paid and the motor vehicle is collected or released; or

 (b) the designated costs are not required to be paid because—

 (i) the motor vehicle is released from impoundment or immobilisation in accordance with section 84N(1)(a) or (b); or

 (ii) the motor vehicle is released from impoundment or immobilisation in accordance with section 84N(1)(c) and a senior police officer has waived the designated costs under section 84N(3); or

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 (c) a conviction for the relevant offence is set aside; or

 (d) the court makes an order under section 84O or 84ZA that the motor vehicle be released; or

 (e) the Chief Commissioner of Police accepts under section 84ZD(2) an undertaking by the registered operator to have the motor vehicle destroyed by a recycler approved by the Chief Commissioner; or

 (f) a person substantially affected by the proposed sale or disposal of the motor vehicle has applied to the Magistrates' Court under section 84ZQAD for an order declaring that the motor vehicle is not abandoned.

 (5) Subject to subsection (6), the Chief Commissioner of Police may give notice under subsection (1) if—

 (a) in the case of a motor vehicle that has been impounded—more than 7 days have elapsed since the motor vehicle became available for collection; or

 (b) in the case of a motor vehicle that has been immobilised—more than 3 months have elapsed since the motor vehicle became available for release.

 (6) The Chief Commissioner of Police must not give notice under subsection (1) if the Chief Commissioner is aware that any of the following are yet to be determined—

 (a) an application under section 84O(1);

 (b) an application under section 84U(1) for an impoundment or immobilisation order or for a forfeiture order;

 (c) an application under section 84ZA(1) for variation of an impoundment or immobilisation order or forfeiture order.

 84ZQAD Application for order that motor vehicle is not abandoned

s. 20

 (1) If the Chief Commissioner of Police gives notice of an intention to deem a motor vehicle to be abandoned, a person substantially affected by the proposed sale or disposal of the motor vehicle may apply to the Magistrates' Court for an order that the motor vehicle is not abandoned.

 (2) An application under subsection (1) may be made in conjunction with an application under section 84O(1) or 84ZA(1).

 (3) The court hearing an application under subsection (1)—

 (a) must not make an order under this section unless satisfied that the applicant has notified the Chief Commissioner of Police of the application; and

 (b) must allow the Chief Commissioner of Police to be heard at the hearing.

 (4) On application under subsection (1), the court may—

s. 20

 (a) make an order that the motor vehicle is not abandoned; or

 (b) make an order that the motor vehicle is abandoned.

 (5) The court may make an order that the motor vehicle is not abandoned only if satisfied that—

 (a) the applicant has not, in fact, abandoned the motor vehicle; and

 (b) the applicant has a genuine intention to collect or arrange for the release of the motor vehicle at some time in the future.

 (6) An order by the court that a motor vehicle is not abandoned does not prevent the Chief Commissioner of Police from—

 (a) applying under section 84ZV for a disposal order; or

 (b) selling or disposing of the motor vehicle in accordance with section 84ZQ.".

 21 Amendment of sections 84ZQB and 84ZQC

s. 21

 (1) In section 84ZQB(1) of the **Road Safety Act 1986** after "84ZQA(1)" **insert** "or 84ZQAC(1)".

 (2) In section 84ZQC(1) of the **Road Safety Act 1986** after "84ZQ(4)" **insert** "or 84ZQAB(3)".

 22 New section 84ZQD inserted

After section 84ZQC of the **Road Safety Act 1986 insert**—

 "84ZQD Application of proceeds of sale

 (1) Where a motor vehicle or item or thing is sold under section 84ZQ or 84ZQAB the proceeds of sale are to be applied in the following order of priority—

 (a) to pay the costs of the sale;

 (b) to pay any costs of impoundment or immobilisation;

 (c) to discharge any security interest over the motor vehicle, such as a bank loan or a lease arrangement, that existed immediately before the motor vehicle vested in the Crown;

 (d) to pay the registered operator of the motor vehicle or, if the registered operator cannot be reasonably located, for payment into the Consolidated Fund.

 (2) Section 73(2) of the Personal Property Securities Act 2009 of the Commonwealth applies to an interest arising out of the operation of this Division.".

 23 Notice to be given of intention to sell or dispose

s. 23

 (1) In section 84ZRA(1)(a)(iv) of the **Road Safety Act 1986** for "Corporation; and" **substitute** "Corporation.".

 (2) Section 84ZRA(1)(b) of the **Road Safety Act 1986** is **repealed**.

 24 New section 84ZRB inserted

After section 84ZRA of the **Road Safety Act 1986 insert**—

 "84ZRB Application to register financing statement after giving notice of intention to sell motor vehicle subject to forfeiture order

 (1) As soon as practicable after giving notice under section 84ZRA(1) of an intention to sell or otherwise dispose of a motor vehicle that is the subject of a forfeiture order, the Chief Commissioner of Police must apply to the Commonwealth Registrar, in accordance with the Commonwealth Act, to register a financing statement or a financing change statement (as the case requires) in respect of the motor vehicle.

**Note**

A financing statement includes a statement of the reason why the property is registered.

 (2) The Corporation may apply to register a financing statement or a financing change statement under subsection (1) on behalf of the Chief Commissioner of Police.".

 25 Application of proceeds of sale

In section 84ZS(1) of the **Road Safety Act 1986** **omit** "84ZQ or".

 26 Notice to be given of intention to apply for disposal order

s. 26

 (1) In section 84ZU(2)(a)(iv) of the **Road Safety Act 1986** for "Corporation; and" **substitute** "Corporation.".

 (2) Section 84ZU(2)(b) of the **Road Safety Act 1986** is **repealed**.

 27 New section 103ZE inserted

After section 103ZD of the **Road Safety Act 1986 insert**—

 "103ZE Transitional provision—Road Safety Amendment Act 2012

 (1) Part 6AB as inserted by section 5 of the **Road Safety Amendment Act 2012** applies only to applicable offences alleged to have been committed on or after the commencement of section 5 of that Act.

 (2) For the purposes of subsection (1), if an applicable offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 5 of the **Road Safety Amendment Act 2012**, the applicable offence is alleged to have been committed before the commencement of section 5 of that Act.

 (3) Section 84ZQAB as inserted by section 20 of the **Road Safety Amendment Act 2012** applies only to motor vehicles that have been impounded or immobilised in relation to an applicable offence alleged to have been committed on or after the commencement of section 20 of that Act.

 (4) For the purposes of subsection (3), if an applicable offence is alleged to have been committed between 2 dates, one before and one after the commencement of section 20 of the **Road Safety Amendment Act 2012**, the applicable offence is alleged to have been committed before the commencement of section 20 of that Act.".

 28 New Schedule 6 inserted

s. 28

After Schedule 5 to the **Road Safety Act 1986 insert**—

"SCHEDULE 6

Section 16BA

Criteria for Classification of Statutory Write-Off—Light Motor Vehicles

 1 Definitions

In this Schedule—

***excessive fire damage*** has the meaning given in clause 14;

***excessive stripping damage*** has the meaning given in clause 16;

***excessive structural damage*** has the meaning given in clause 5;

***excessive water damage*** has the meaning given in clause 15;

***statutory write-off*** means a vehicle that is a statutory write-off within the meaning of clause 4.

 2 Application of Technical Guide

 (1) A person who, in accordance with this Schedule, is assessing whether an area of a vehicle has been fractured, cut, cracked or buckled or is folded over onto itself must make that assessment based on the relevant diagrams contained in the Technical Guide.

 (2) In this clause, ***Technical Guide*** means the "Damage Assessment Criteria for the Classification of Statutory Write-Offs" approved by Austroads Ltd ABN 16 245 787 323 from time to time.

 3 Prescribed structural areas

s. 28

For the purposes of this Schedule, the structural areas of a vehicle are—

 (a) the roof;

 (b) each of the pillars;

 (c) the floor pan;

 (d) the firewall;

 (e) as applicable—

 (i) each of the the longitudinal structural rails; or

 (ii) the chassis;

 (f) the vehicle suspension;

 (g) mechanical components;

 (h) the supplementary restraint systems.

 4 Statutory write-off

A light motor vehicle is a statutory write-off if it is written off and has been assessed, in accordance with this Schedule, as having—

 (a) excessive structural damage; or

 (b) excessive fire damage; or

 (c) excessive water damage; or

 (d) excessive stripping damage.

 5 Excessive structural damage

 (1) A vehicle has excessive structural damage if three indicators are found in the vehicle.

 (2) In this Schedule, ***indicator*** means—

 (a) excessive damage in a structural area, determined in accordance with this Schedule;

 (b) deployment or activation of a supplementary restraint, determined in accordance with clause 13.

 (3) For the purpose of calculating the number of structural areas which have been damaged—

s. 28

 (a) excessive damage to separate pillars or to separate longitudinal structural rail or chassis is to be counted as a separate indicator;

 (b) each different and separate area of excessive damage to the floor pan or firewall is to be counted as a separate indicator;

 (c) each incidence of excessive damage to a suspension station is to be counted as a separate indicator if clause 11(2)(a) applies;

 (d) excessive damage to any part of the roof is to be counted as a single indicator;

 (e) excessive damage to any or all of the mechanical components specified in clause 12 is to be counted as a single indicator;

 (f) deployment or activation of any or all of the supplementary restraints specified in clause 13 is to be counted as a single indicator.

**Examples**

A vehicle has excessive damage in two pillars and in the roof. The vehicle is a statutory write-off.

A vehicle has excessive damage in two longitudinal structural rails and the front right suspension mount is damaged. The vehicle is a statutory write-off.

 6 Damage to the roof

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The roof of a vehicle has excessive damage if it has been loaded so that an individual structural element or member—

 (a) has been structurally—

 (i) fractured; or

 (ii) cut; or

 (iii) cracked; or

 (iv) buckled; or

 (b) is folded over onto itself.

**Note**

A cut includes the situation where the roof has been cut by emergency services to permit occupant extraction.

 7 Damage to the pillars

A pillar of a vehicle has excessive damage if it has been loaded so that an individual structural element or member—

 (a) has been structurally—

 (i) fractured; or

 (ii) cut; or

 (iii) cracked; or

 (iv) buckled; or

 (b) is folded over onto itself.

 8 Damage to the floor pan

 (1) For the purposes of this Schedule, the ***floor pan*** of a vehicle—

 (a) includes the inner sill panel where the panel attaches to the floor pan;

 (b) does not include—

 (i) the outer sill rocker (rocker panel); or

 (ii) the internal stiffener; or

 (iii) the braces between the inner and outer panels.

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 (2) The floor pan of a vehicle has excessive damage if it has been loaded so that an individual structural element or member—

 (a) has been structurally—

 (i) fractured; or

 (ii) cut; or

 (iii) cracked; or

 (iv) buckled; or

 (b) is folded over onto itself.

 9 Damage to the firewall

 (1) A vehicle has excessive damage to its firewall if the firewall has been loaded so that an individual structural or member element—

 (a) has been structurally—

 (i) fractured; or

 (ii) cut; or

 (iii) cracked; or

 (iv) buckled; or

 (b) is folded over onto itself.

 10 Damage to the longitudinal structural rails or chassis

 (1) For the purposes of this Schedule, the ***longitudinal structural rails*** or ***chassis*** do not include a deformable end plate that has been designed to be removed and replaced.

 (2) A longitudinal structural rail or chassis of a vehicle has excessive damage if it has been loaded so that an individual structural or member element—

s. 28

 (a) has been structurally—

 (i) fractured; or

 (ii) cut; or

 (iii) cracked; or

 (iv) buckled; or

 (b) is folded over onto itself.

 (3) If both longitudinal rails of a vehicle are damaged to the extent that they both require Original Equipment Manufacture replacement, that damage must be counted as excessive damage to three areas.

 11 Damage to the suspension

 (1) The suspension of a vehicle has excessive damage if there is collision-induced damage to a suspension mount to the chassis or body.

 (2) In assessing damage to the suspension—

 (a) if an independent suspension unit is damaged, so that its mount to the chassis or body is damaged, each station is one area of excessive damage;

 (b) if a live axle is damaged, so that a mount to the chassis or body is damaged, the suspension of the vehicle must be counted as one area of excessive damage for each axle.

 12 Damage to mechanical components

The mechanical components of a vehicle have excessive damage if collision-induced damage has caused one or more of the following to be cracked, deformed or broken—

 (a) the engine block;

 (b) the transmission case;

 (c) the differential case;

 (d) the axle housing.

 13 Deployment or activation of supplementary restraints

s. 28

For the purpose of this Schedule, there has been deployment or activation of a supplementary restraint if—

 (a) there has been deployment of an airbag (whether frontal, side or curtain) within the vehicle occupant cabin; or

 (b) there has been activation of a seatbelt pre-tensioner.

 14 Excessive fire damage

A vehicle has excessive fire damage if—

 (a) as a result of fire, paint on the vehicle (whether internal or external) has blistered on any three of—

 (i) the roof;

 (ii) a pillar;

 (iii) the floor pan;

 (iv) the firewall;

 (v) longitudinal structural rails or chassis; or

 (b) as a result of fire—

 (i) the vehicle has sustained a combination of exterior and interior fire damage; and

 (ii) the vehicle has suffered damage to the extent that it is written off.

 15 Excessive water damage

s. 28

A vehicle has excessive water damage if the internal cabin of the vehicle has been inundated with water (irrespective of whether the water is fresh, brackish or salt water) to a level above the level of the inner door sill.

 16 Excessive vehicle stripping damage

A vehicle has excessive stripping damage if—

 (a) it has been stripped of interior or exterior parts, panels and components such as wheels, bonnet, guards, doors, boot lid or interior parts; or

 (b) by reason of that stripping it is written off.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_".

s. 28

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Part 3—Statute Law Revision

Division 1—Road Safety Act 1986

 29 Substitution of references to Department of Infrastructure

s. 29

 (1) In section 3(1) of the **Road Safety Act 1986**, in the definition of ***Secretary*** for "Department of Infrastructure" **substitute** "Department of Transport".

 (2) In section 13(6)(b) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (3) In section 16(2)(b) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (4) In section 53(2) and (3) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (5) In section 55(1) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (6) In section 55D(2) of the **Road Safety Act 1986** for "Department of Infrastructure" **substitute** "Department of Transport".

 (7) In section 55E(1) of the **Road Safety Act 1986**, in the definitions of ***authorised officer*** and ***enforcement officer*** for "Department of Infrastructure" **substitute** "Department of Transport".

 (8) In section 55E(6) and (22)(a), (b), (c) and (d) of the **Road Safety Act 1986** for "Department of Infrastructure" **substitute** "Department of Transport".

 (9) In section 59(1)(a)(i) and (4)(b)(i) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (10) In section 74(2) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (11) In section 77(2)(c), (3) and (3A) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (12) In section 84(1), (3), (4A) and (6) of the **Road Safety Act 1986** for "Department of Infrastructure" (wherever occurring) **substitute** "Department of Transport".

 (13) In section 112(1) of the **Road Safety Act 1986** for "Department of Infrastructure" **substitute** "Department of Transport".

Division 2—Road Management Act 2004

 30 Infrastructure Reference Panel

s. 30

In section 31(2)(ja) of the **Road Management Act 2004** for "**Public Transport Competition Act 1995**" **substitute** "**Bus Services Act 1995**".

 31 Specified Roads

In section 42A(7) of the **Road Management Act 2004** for "sufficent" **substitute** "sufficient".

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Part 4—Repeal of Amending Act

 32 Repeal of amending Act

s. 32

This Act is **repealed** on 1 April 2014.

**Note**

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

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Endnotes

Endnotes

1. *Minister's second reading speech—*

 *Legislative Assembly: 2 May 2012*

 *Legislative Council: 16 August 2012*

 The long title for the Bill for this Act was "A Bill for an Act to amend the **Road Safety Act 1986** and for other purposes." [↑](#endnote-ref-2)