

**Road Safety (Responsible Driving) Act 2002**  
**Act No. 46/2002**

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Victoria

No. 46 of 2002

# Road Safety (Responsible Driving) Act 2002<sup>†</sup>

[Assented to 22 October 2002]

The Parliament of Victoria enacts as follows:

## PART 1—PRELIMINARY

### 1. *Purposes*

The purposes of this Act are—

- (a) to amend the **Road Safety Act 1986**—
  - (i) to introduce measures to deter excessive speeding; and

- (ii) to expand the circumstances in which a learner permit or probationary driver licence may be immediately suspended for certain offences involving alcohol; and
  - (iii) to clarify the scope of the failing a breath test offence—
- and to make other amendments to that Act;
- (b) to amend the **Marine Act 1988** to clarify the scope of the failing a breath test offence.

## **2. Commencement**

- (1) This Part and sections 8 and 15 come into operation on the day after the day on which this Act receives the Royal Assent.
  - (2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
  - (3) If a provision of this Act referred to in sub-section (2) does not come into operation before 1 December 2003, it comes into operation on that day.
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**PART 2—AMENDMENT OF ROAD SAFETY ACT 1986**

**3. Definitions**

In section 3(1) of the **Road Safety Act 1986**—

- (a) the definition of "probationary driver infringement" is **repealed**;
- (b) paragraph (g) of the definition of "traffic infringement" is **repealed**.

See:  
Act No.  
127/1986.  
Reprint No. 7  
as at  
19 June  
2002 and  
amending  
Act Nos  
19/1991,  
89/1991 (as  
amended by  
Nos 23/2001,  
92/2001) and,  
54/2001.  
LawToday:  
www.dms.  
dpc.vic.  
gov.au

**4. Probationary driver licences**

In section 21 of the **Road Safety Act 1986**,  
sub-sections (3), (4) and (5) are **repealed**.

**5. Demerits register**

- (1) In section 25 of the **Road Safety Act 1986**,  
sub-sections (2A) and (2B) are **repealed**.
- (2) In section 25 of the **Road Safety Act 1986**, for  
sub-section (3) **substitute**—  
"(3) The Corporation must serve a notice  
containing the prescribed particulars on—
  - (a) the holder of a full driver licence if he  
or she incurs 12 or more demerit points  
within any 3 year period; and
  - (b) the holder of a learner permit or  
probationary driver licence if he or she  
incurs—

- (i) 5 or more demerit points within any 1 year period; or
    - (ii) 12 or more demerit points within any 3 year period."
  - (3) In section 25(3B) of the **Road Safety Act 1986**, for paragraph (a) **substitute**—
    - "(a) in the case of a person who holds a full driver licence, suspend the licence for 6 months and an additional 2 months for each 4 demerit points in excess of 12 recorded against the person as at the date of issue of the notice under sub-section (3); and
    - (ab) in the case of a person who holds a learner permit or probationary driver licence, suspend the permit or licence for—
      - (i) 6 months in respect of the first 5 demerit points recorded against the person as at the date of issue of the notice under sub-section (3); and
      - (ii) an additional 2 months for each 4 demerit points in excess of 5 recorded against the person as at that date; and"
  - (4) In section 25(3B) of the **Road Safety Act 1986**—
    - (a) in paragraph (b), for "that person" **substitute** "the person referred to in paragraph (a) or (ab)"; and
    - (b) in paragraph (c), for "the person" **substitute** "the person referred to in paragraph (a) or (ab)".
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(5) In section 25(3D) of the **Road Safety Act 1986**, for paragraph (a) **substitute**—

"(a) suspend his or her driver licence (whether or not a probationary driver licence) or learner permit for 3 months and an additional 1 month for each 4 demerit points in excess of—

(i) 12, in the case of a full driver licence or, if the holder incurred 12 or more demerit points within any 3 year period but not 5 or more within any 1 year period, a learner permit or probationary driver licence; or

(ii) 5 in the case of a learner permit or probationary driver licence if the holder incurred 5 or more demerit points within any 1 year period—

recorded against the person as at the date of issue of the notice under sub-section (3); and".

#### **6. *Appeal to Magistrates' Court***

In section 26(1)(c) of the **Road Safety Act 1986**, after "section 25(3B)(a)" **insert** ", (3B)(ab)".

#### **7. *Power of court to cancel, suspend or vary licences and permits***

In section 28 of the **Road Safety Act 1986**—

(a) in sub-section (1)(a)(ii), for "30 kilometres" **substitute** "25 kilometres";

(b) at the foot of the section **insert**—

"Note: A period during which a licence or permit is cancelled or suspended under this section is in addition to, and does not count as part of, a period of suspension under section 25 (see section 25(4C) and (4D)).".

**8. Failing a breath test offence**

In section 49(1)(f) of the **Road Safety Act 1986**, for "55(1) or (2AA)" **substitute** "55".

**9. Immediate suspension of driver licence or permit in certain circumstances**

(1) In section 51(1) of the **Road Safety Act 1986**—

(a) **omit** "an offence under";

(b) for paragraph (a) **substitute**—

"(a) an offence under paragraph (b), (f) or (g) of section 49(1) where it is alleged that the concentration of alcohol in the person's blood was—

(i) if the person holds a full driver licence, 0.15 grams per 100 millilitres of blood or more; or

(ii) if the person holds a learner permit or probationary driver licence, 0.07 grams per 100 millilitres of blood or more; or";

(c) in paragraph (b), before "paragraph" **insert** "an offence under";

(d) for paragraph (c) **substitute**—

"(c) an offence that would be a subsequent offence within the meaning of section 48(2) if the person were convicted—".

(2) After section 51(1A) of the **Road Safety Act 1986** **insert**—

"(1B) Any member of the police force may give a person a notice (containing the prescribed particulars) informing the person that his or her driver licence or permit is immediately

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suspended and requiring the person to surrender the licence or permit document to the member of the police force if—

- (a) paragraph (f) or (g) of section 49(1) applies to the person; and
  - (b) a certificate is issued under section 55(4) or 57 stating the concentration of alcohol present in the person's blood as indicated by the analysis of the person's breath or blood sample; and
  - (c) that concentration is—
    - (i) if the person holds a full driver licence—0.15 grams per 100 millilitres of blood or more; or
    - (ii) if the person holds a learner permit or probationary driver licence—0.07 grams per 100 millilitres of blood or more; or
    - (iii) if the person has, within 10 years before the commission of the alleged offence, been found guilty or convicted of an offence (other than an accompanying driver offence) referred to in section 48(2)(a), (b), (c), (e) or (f)—the prescribed concentration of alcohol or more than the prescribed concentration of alcohol.
- (1C) A notice under sub-section (1B) may be given at any time within 12 months after the certificate is issued and must specify the period of suspension in accordance with sub-section (3)."

(3) For section 51(3) of the **Road Safety Act 1986** substitute—

"(3) Immediately on the giving of a notice under sub-section (1), (1A) or (1B) the person's driver licence or permit is suspended—

- (a) if the notice is given under sub-section (1) or (1A), until the charge has been determined by a court; or
- (b) subject to sub-section (3A), if the notice is given under sub-section (1B), until the lesser of—
  - (i) 12 months after the notice is given; or
  - (ii) the period, after the notice is given, set out in Column 2 of Schedule 1 that corresponds to the blood alcohol concentration in Column 1 of that Schedule that is stated in the certificate.

(3A) If—

- (a) a person's driver licence or permit is suspended in accordance with a notice under sub-section (1B); and
- (b) less than 28 days before the end of the period of suspension, a traffic infringement notice is issued against the person in respect of the alleged offence—

the period of suspension under sub-section (3)(b) is not affected by the person giving a notice of objection to the traffic infringement notice before the end of that period but, if the person does not give a notice of objection before the end of that period, the period is

extended until the end of the 28 day period for giving the notice of objection.

(3B) If—

- (a) a person's driver licence or permit is suspended in accordance with a notice under sub-section (1B); and
- (b) 28 days or more before the end of the period of suspension, a traffic infringement notice is issued against the person in respect of the alleged offence—

the period of suspension under sub-section (3)(b) is not affected by the person giving a notice of objection to the traffic infringement notice within the 28 day period for doing so.

Note: If the person does not give a notice of objection within the 28 day period for doing so the person's driver licence or permit may be cancelled under section 89C(1).

(3C) If—

- (a) sub-section (3A) or (3B) applies to a person; and
- (b) the person does not give a notice of objection to the traffic infringement notice within the 28 day period for doing so; and
- (c) the person's driver licence or permit is cancelled under section 89C(1)—

any period of suspension under this section ends when the driver licence or permit is cancelled under section 89C(1) and the period for which the person is disqualified under that section from obtaining a driver licence or permit is reduced by the period of

the suspension (as extended, if applicable, by sub-section (3A)).

- (3D) If a person who is given a notice under sub-section (1B) is charged with the alleged offence during the period of suspension (as extended, if applicable, by sub-section (3A)), from the time the charge is laid the notice is taken to be instead a notice under sub-section (1) or (1A) (whichever is applicable).

Note: The period of suspension therefore continues until the charge is determined by a court (see sub-section (3)(a)).".

- (4) In sub-sections (4) and (5) of section 51 of the **Road Safety Act 1986**, for "(1) or (1A)" **substitute** "(1), (1A) or (1B)".
- (5) After section 51(9) of the **Road Safety Act 1986**, **insert—**
- "(9A) The Chief Commissioner of Police may cancel a notice under sub-section (1), (1A) or (1B) by notifying (in writing) the person to whom the notice was given and must cause a copy of the cancellation to be sent immediately to the Corporation.".
- (6) In section 51(10) of the **Road Safety Act 1986**, for "(1) or (1A)" **substitute** "(1), (1A) or (1B)".
- (7) After section 51(12) of the **Road Safety Act 1986** **insert—**
- "(12A) If a person whose driver licence or permit is suspended in accordance with a notice under sub-section (1), (1A) or (1B) is before a court for any reason in relation to the alleged offence, the court may make an order cancelling the notice if it is satisfied that exceptional circumstances exist which justify making the order.".
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**10. Cancellation of licence or permit for drink-driving infringements**

In section 89C of the **Road Safety Act 1986**—

(a) at the foot of sub-section (1) **insert**—

"Note: The period for which the person is disqualified from obtaining a driver licence or permit is reduced if the person's licence was already suspended in accordance with a notice under section 51(1B) (see section 51(3C)).";

(b) sub-sections (2) and (3) are **repealed**;

(c) in sub-section (3A) **omit** ", suspended or suspended and disqualified";

(d) in sub-section (4) **omit** ", suspension and extension of probation under sub-section (2) or suspension and disqualification under sub-section (3)";

(e) in sub-section (5)—

(i) **omit** "or suspension"; and

(ii) **omit** "or suspended";

(f) in sub-section (8), for "is more than 0.05 grams per 100 millilitres of blood."

**substitute**—

"is—

(a) 0.05 grams per 100 millilitres of blood or more, if section 52 applies to the person; or

(b) 0.07 grams per 100 millilitres of blood or more, in any other case."

**11. *Suspension of licence or permit for excessive speed infringements***

In section 89D of the **Road Safety Act 1986**—

- (a) sub-section (2) is **repealed**;
- (b) in sub-section (3), for ", disqualification or extension of probation" **substitute** "or disqualification";
- (c) at the foot of the section **insert**—

"Note: A period during which a licence or permit is suspended under this section is in addition to, and does not count as part of, a period of suspension under section 25 (see section 25(4C) and (4D)).".

**12. *Disclosure of information***

In section 92(3) of the **Road Safety Act 1986**, after paragraph (ia) **insert**—

- "(ib) for the purposes of the police force of Victoria or the Corporation notifying a person about the possible consequences of incurring further demerit points; or".

**13. *New section 103C inserted***

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

**"103C. *Application of amendments made by the Road Safety (Responsible Driving) Act 2002***

- (1) Despite the amendments made by section 4 of the **Road Safety (Responsible Driving) Act 2002**, sub-sections (3), (4) and (5) of section 21 of this Act, as in force immediately before the commencement of those amendments, continue to apply to offences alleged to have been committed before that commencement.

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- (2) The amendments to section 25(3), (3B) and (3D) of this Act made by section 5 of the **Road Safety (Responsible Driving) Act 2002** only apply to a person who held a learner permit or probationary driver licence before the amendments commence if the person incurs one or more demerit points after that commencement.
  - (3) If the amendments referred to in sub-section (2) apply to a person, a reference in section 25 of this Act to demerit points incurred by the person includes a reference to demerit points incurred by the person before the commencement of those amendments.
  - (4) The amendments to this Act made by sections 7 and 14 of the **Road Safety (Responsible Driving) Act 2002** only apply to offences alleged to have been committed after the commencement of those amendments.
  - (5) The amendment to section 49(1)(f) of this Act made by section 8 of the **Road Safety (Responsible Driving) Act 2002** only applies to offences alleged to have been committed after the commencement of that amendment.
  - (6) The amendments to section 51 of this Act made by section 9(1)(b) and section 9(2) to (7) of the **Road Safety (Responsible Driving) Act 2002** only apply to offences alleged to have been committed after the commencement of those amendments.
  - (7) The amendments to section 51 of this Act made by section 9(1)(a), (c) and (d) of the **Road Safety (Responsible Driving) Act 2002** apply to offences alleged to have been
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- committed before, on or after the commencement of those amendments.
- (8) Despite the amendments made by section 10 of the **Road Safety (Responsible Driving) Act 2002**, sub-sections (2), (3), (4) and (5) of section 89C of this Act, as in force immediately before the commencement of those amendments, continue to apply to offences alleged to have been committed before that commencement.
- (9) The amendment to section 89C(8) of this Act made by section 10 of the **Road Safety (Responsible Driving) Act 2002** applies to any traffic infringement notice issued on or after 21 December 2001 for a drink-driving infringement irrespective of when the infringement was committed.
- (10) For the purposes of sub-sections (1), (4), (5), (6) and (8), if an offence is alleged to have been committed between two dates, one before and one after the commencement referred to in the particular sub-section, the offence is alleged to have been committed—
- (a) in the case of sub-sections (1) and (8), before the commencement referred to in sub-section (1) or (8) (as the case may be); or
  - (b) in the case of sub-sections (4), (5) and (6), after the commencement referred to in that sub-section."
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**14. New Schedule 5 substituted**

For Schedule 5 to the **Road Safety Act 1986**  
**substitute—**

**"SCHEDULE 5**

Section 28  
Section 89D

**MINIMUM SUSPENSION PERIODS FOR  
EXCESSIVE SPEED**

<i>Column 1</i>	<i>Column 2</i>
<i>Speed of vehicle</i>	<i>Minimum period</i>
1. Exceed speed limit by 25 kilometres per hour or more, but less than 35 kilometres per hour.	1 month
2. Exceed speed limit by 35 kilometres per hour or more, but less than 45 kilometres per hour.	6 months
3. Exceed speed limit by 45 kilometres per hour or more.	12 months
4. Any speed of 130 kilometres per hour or more that is not covered by item 1, 2 or 3.	1 month

"

**PART 3—AMENDMENT OF MARINE ACT 1988**

**15. *Failing a breath test offence***

See:  
 Act No.  
 52/1988.  
 Reprint No. 5  
 as at  
 7 February  
 2002 and  
 amending Act  
 Nos 77/2001  
 and 11/2002.  
 LawToday:  
 www.dms.  
 dpc.vic.  
 gov.au

In section 28(1)(e) of the **Marine Act 1988**, for "31(1)" substitute "31".

**16. *New Division 4 inserted in Part 11***

In Part 11 of the **Marine Act 1988**, after Division 3 insert—

**"Division 4—Transitional Provision—Road Safety (Responsible Driving) Act 2002**

**155. *Transitional provision—failing a breath test offence***

- (1) The amendment to section 28(1)(e) of this Act made by section 15 of the **Road Safety (Responsible Driving) Act 2002** only applies to offences alleged to have been committed after the commencement of that amendment.
- (2) For the purposes of sub-section (1), if an offence is alleged to have been committed between two dates, one before and one after the commencement referred to in that sub-section, the offence is alleged to have been committed after that commencement."

**ENDNOTES**

† *Minister's second reading speech—*

*Legislative Assembly: 12 September 2002*

*Legislative Council: 15 October 2002*

The long title for the Bill for this Act was "to make miscellaneous amendments to the **Road Safety Act 1986**, to amend the **Marine Act 1988** and for other purposes."