

PARLIAMENT OF VICTORIA

Ports and Marine Legislation Amendment Bill 2017

TABLE OF PROVISIONS

<i>Clause</i>	<i>Page</i>
Part 1—Preliminary	1
1 Purposes	1
2 Commencement	3
3 Principal Act	3
Part 2—Amendment of Marine Safety Act 2010	4
4 Definitions	4
5 New section 4A substituted	4
6 Heading to Part 2.2	4
7 Duties of local port managers to ensure safety of marine safety infrastructure operations	4
8 New Part 2.2B inserted	5
9 Duties of suppliers of marine safety infrastructure operations to local port managers	7
10 Duties of pilotage service providers to owners of vessels	7
11 Licence endorsement	8
12 Dangerous operation of a recreational vessel or hire and drive vessel	8
13 Power of court to cancel or suspend marine licences	9
14 Making of waterway rules	9
15 Repeal of section 186	9
16 Publication of notice of assessment of urgent safety rule	9
17 Publication of notice of request or proposal to make a rule	10
18 Publication of notice of proposal to request the making of a rule	10
19 Publication of declaration made under section 203(3)	11
20 Activity exclusion zones	11
21 New Division 1 of Part 5.5 inserted	11
22 New Division 2 of Part 5.5 inserted	11
23 Offence not to use a pilot	16
24 Application for pilot licence	16
25 Grant of pilot licence	16
26 New section 252A inserted	17
27 Section 285 substituted	17
28 New Part 8.8A inserted	19
29 Section 306 repealed	30
30 General regulation-making powers	30

<i>Clause</i>	<i>Page</i>
31 Ongoing fees for permission	30
32 Definitions	30
33 Statute law revision	30
Part 3—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988	31
34 Breath analysis	31
35 Taking of blood samples by approved health professionals	31
36 Blood and urine samples	32
37 Oral fluid testing and analysis	32
38 Evidentiary provisions—blood tests	32
39 Breath analysing instruments	32
40 Avoidance of certain provisions in contracts of insurance	32
41 Removal of pollution	32
42 Liability of officers of bodies corporate	33
Part 4—Amendment of Port Management Act 1995	35
43 New section 88AP inserted	35
44 New section 88Q substituted	36
45 Powers when moving things	37
46 Requirement to make enquiries as to owner of thing	37
47 Disposal of thing	37
48 Recovery of costs	38
49 Payment of compensation	39
50 Proceeds of disposal where owner not located	39
51 Power to prosecute	39
Part 5—Amendment of Road Safety Act 1986	40
52 Authorised use or disclosure	40
Part 6—Repeal of amending Act	41
53 Repeal of amending Act	41
<hr/> <hr/>	
Endnotes	42
1 General information	42

PARLIAMENT OF VICTORIA

Introduced in the Assembly

Ports and Marine Legislation Amendment Bill 2017

A Bill for an Act to amend the **Marine Safety Act 2010**,
the **Marine (Drug, Alcohol and Pollution Control) Act 1988**,
the **Port Management Act 1995** and the **Road Safety Act 1986** and
for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- 5 (a) to amend the **Marine Safety Act 2010**—
- (i) to apply safety duties to local port managers and to persons who manage boating activity events; and
 - (ii) to extend the safety duties that apply to pilotage service providers; and

Part 1—Preliminary

- 5
- 10
- 15
- 20
- 25
- 30
- (iii) to remove the ability of children between the ages of 12 and 16 to apply for a personal watercraft endorsement on their marine licence; and
 - (iv) to make the dangerous operation of a vessel offence apply in circumstances where the vessel is at anchor or made fast to the shore; and
 - (v) to permit waterway managers to relocate, seize and dispose of things abandoned on waterways under the waterway manager's control and recover all associated costs of relocating, seizing and disposing of abandoned things; and
 - (vi) to provide for the maintenance of the knowledge, skills and medical fitness of vessel pilots; and
 - (vii) to change the way criminal liability of officers of bodies corporate in respect of certain specified offences is to be determined; and
 - (viii) to provide for new arrangements for the use and disclosure of information collected and held by the Safety Director; and
 - (ix) to make other amendments to improve the operation of that Act; and
- (b) to amend the **Marine (Drug, Alcohol and Pollution Control) Act 1988**—
- (i) to permit approved health professionals to take blood samples; and

Part 1—Preliminary

- 5 (ii) to make provision for criminal liability of officers of bodies corporate for contraventions of certain specific offences under that Act; and
- (iii) to make other amendments to improve the operation of that Act; and
- (c) to amend the **Port Management Act 1995**—
- 10 (i) to permit port managers to relocate, seize and dispose of things abandoned at ports and recover all associated costs under Division 4 of Part 5B of that Act; and
- (ii) to make other amendments to improve the operation of that Act; and
- 15 (d) to amend the **Road Safety Act 1986** to make an amendment to the information disclosure provisions that is consequential to the new information disclosure provisions in the **Marine Safety Act 2010**.

20 **2 Commencement**

- (1) Subject to subsection (3), this Act (except section 32) comes into operation on a day or days to be proclaimed.
- 25 (2) Section 32 comes into operation on the day on which Part 3 of the **Medical Treatment Planning and Decisions Act 2016** comes into operation.
- (3) If a provision of this Act (except section 32) does not come into operation before 1 March 2018, it comes into operation on that day.

30 **3 Principal Act**

In this Act, the **Marine Safety Act 2010** is called the Principal Act.

Part 2—Amendment of Marine Safety Act 2010

4 Definitions

In section 3(1) of the Principal Act—

- 5 (a) in the definition of *marine safety work*—
- (i) **omit** "in respect of a domestic commercial vessel" (where secondly and thirdly occurring);
 - 10 (ii) **omit** "domestic commercial" (where first, secondly and thirdly occurring);
- (b) in the definition of *operate*, before "means" **insert** ", except in section 87,".

5 New section 4A substituted

15 For section 4A of the Principal Act **substitute**—

"4A Meaning of *recreational hire and drive vessel*

20 For the purposes of this Act, a vessel is a *recreational hire and drive vessel* if the vessel is a hire and drive vessel being used wholly for recreational purposes."

6 Heading to Part 2.2

In the heading to Part 2.2 of the Principal Act, after "**bodies**" **insert** "**and local port managers**".

7 Duties of local port managers to ensure safety of marine safety infrastructure operations

- (1) In the heading to section 24 of the Principal Act, after "**bodies**" **insert** "**and local port managers**".

(2) In section 24(1) of the Principal Act—

(a) after "port management body" (where twice occurring) **insert** "or local port manager";

(b) after "that body" **insert** "or manager".

5 (3) In section 24(2) of the Principal Act, after "port management body" (wherever occurring) **insert** "or local port manager".

8 New Part 2.2B inserted

After Part 2.2A of the Principal Act **insert**—

10 **"Part 2.2B—Safety duties of persons who manage boating activity events"**

15 **25A Duty of a person who manages a boating activity event to ensure safety of participants and other affected persons**

(1) A person who manages a boating activity event must, so far as is reasonably practicable, ensure the safety of participants in the boating activity event or persons affected by the boating activity event.

20 Penalty: In the case of a natural person,
1800 penalty units;
In the case of a body corporate,
9000 penalty units.

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

(3) Without limiting subsection (1), a person contravenes that subsection if a person fails to do any of the following—

- 5
- (a) provide participants with the necessary information to enable those participants to participate in the boating activity event safely;
- 10
- (b) provide persons (other than participants) at the place where the boating activity event is taking place, or in the immediate surrounding area of that place, the necessary information to ensure the safety of those persons;
- (c) ensure that rescue services and first aid services are available to participants.
- 15
- (4) For the purposes of this section, a person manages a boating activity event if that person organises, facilitates or controls a boating activity event.
- (5) In this section—
- boating activity event*—
- 20
- (a) means an event on State waters that directly or indirectly involves vessel operations; and
- Examples**
- 25
- Boat race, open water swimming race, water sports competition or exhibition, filming or promotional event, school kayak excursion.
- (b) does not include—
- (i) a pyrotechnic display or show on State waters; or

- (ii) groups of people cruising together in vessels on State waters in a coordinated and informal manner.

5

Note

This section applies irrespective of whether a person has applied for or obtained an exemption or the establishment of an exclusion zone under Part 5.3."

10

9 Duties of suppliers of marine safety infrastructure operations to local port managers

- (1) In the heading to section 28 of the Principal Act, after "**bodies**" insert "**and local port managers**".
- (2) In section 28(1) of the Principal Act, after "port management body" insert "or local port manager".

15

10 Duties of pilotage service providers to owners of vessels

- (1) In the heading to section 29 of the Principal Act omit "**domestic commercial**".
- (2) In section 29(1) of the Principal Act—
 - (a) omit "domestic commercial";
 - (b) for "reasonable" substitute "reasonably".
- (3) In section 29(2) of the Principal Act—
 - (a) for paragraph (a) substitute—
 - "(a) the person causes or allows the vessel to be operated and that vessel is an unsafe vessel; or";
 - (b) in paragraph (b)—
 - (i) omit "domestic commercial";
 - (ii) for "submerged." substitute "submerged; or";

20

25

(c) after paragraph (b) **insert**—

"(c) the person fails to provide or maintain systems of marine safety work that are, so far as is reasonably practicable, safe; or

5

(d) the person fails to provide, so far as is reasonably practicable, such information, instruction, training or supervision to marine safety workers as is necessary to enable those workers to perform marine safety work in a way that is safe."

10

11 Licence endorsement

In section 55(2) of the Principal Act, after "a person" **insert** "aged 16 years or older".

15

12 Dangerous operation of a recreational vessel or hire and drive vessel

(1) In the heading to section 87 of the Principal Act **omit** ", government vessel".

20

(2) In section 87(2A) of the Principal Act, for "The master of a recreational hire and drive vessel must not operate the vessel" **substitute** "A person must not operate a recreational hire and drive vessel".

25

(3) After section 87(5) of the Principal Act **insert**—

"(6) In this section—

operate means to facilitate or control the movement or navigation of a vessel (or a thing connected to a vessel) including a vessel that is—

30

(a) at anchor; or

(b) made fast to the shore; or

(c) aground.

(7) For the purposes of this section, a person does not operate a vessel solely because the person is in charge of the vessel."

13 Power of court to cancel or suspend marine licences

5 In section 171(2) of the Principal Act, after "section" **insert** "24,".

14 Making of waterway rules

After section 184(1) of the Principal Act **insert**—

"(1A) The Safety Director may make a rule—

- 10 (a) at the request of a port management body, local port manager, waterway manager or police officer under section 194; or
- 15 (b) on the Safety Director's own initiative."

15 Repeal of section 186

Section 186 of the Principal Act is **repealed**.

16 Publication of notice of assessment of urgent safety rule

20 For section 192(2)(a) of the Principal Act **substitute**—

"(a) publish notice of the assessment of the urgent safety rule—

- 25 (i) on the Safety Director's Internet site; and
- (ii) in some other way that gives notice of the assessment to persons who the Safety Director reasonably believes will be affected by the urgent safety rule; and".
- 30

17 Publication of notice of request or proposal to make a rule

For section 195(3)(a) of the Principal Act
substitute—

- 5 "(a) publish notice of the request or proposal to
 make a rule—
- (i) on the Safety Director's Internet site;
 and
 - 10 (ii) in some other way that gives notice of
 the request or proposal to persons who
 the Safety Director reasonably believes
 will be affected by the requested or
 proposed rule, if made; and".

**18 Publication of notice of proposal to request the
making of a rule**

For section 196(2)(a) of the Principal Act
substitute—

- 15 "(a) publish notice of the proposal to request the
 making of a rule—
- 20 (i) on the body's or manager's Internet site;
 and
 - (ii) in some other way that gives notice of
 the proposal to persons who the body or
 manager reasonably believes will be
25 affected by the proposed rule, if made;
 and".

19 Publication of declaration made under section 203(3)

For section 203(6) of the Principal Act
substitute—

- 5 "(6) A declaration under subsection (3) must be published—
- (a) on the applicable regulatory entity's Internet site; and
- 10 (b) in some other way that gives notice of the declaration to persons affected by the declaration."

20 Activity exclusion zones

Section 208(4) of the Principal Act is **repealed**.

21 New Division 1 of Part 5.5 inserted

15 Before section 216 of the Principal Act **insert—**

 "**Division 1—Functions and powers**".

22 New Division 2 of Part 5.5 inserted

After section 219 of the Principal Act **insert—**

20 "**Division 2—Abandoned or unclaimed goods or things**

219A Removal of things

- 25 (1) Subject to subsection (2), a waterway manager may move any thing or cause any thing to be moved from waters under the control of the waterway manager if—
- (a) the thing has been left unattended on those waters for more than one month; and
- 30 (b) the identity or location of the owner of the thing cannot be established or the waterway manager reasonably believes

that the owner of the property will not move the property.

- 5
- (2) A waterway manager may immediately remove a thing from waters under the control of the waterway manager if—
- (a) the waterway manager is of the opinion that the thing has been left unattended on those waters and—
- 10
- (i) is causing an impediment to the use of those waters; or
- (ii) is causing an environmental hazard to those waters; or
- (iii) is a risk to the safety or security, or use, of those waters; or
- 15
- (iv) is a danger to public health; and
- (b) the identity or location of the owner of the thing cannot be established or the waterway manager reasonably believes that the owner of the property will not move the property.
- 20

219B Powers when moving things

- (1) In the case of a vehicle or vessel, a person acting in accordance with section 219A(1) or (2) may enter the vehicle or vessel using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving the vehicle or vessel.
- 25
- (2) A waterway manager when moving a thing under section 219A(1) or (2) must move it to a place that the waterway manager reasonably believes is the nearest safe and convenient place.
- 30

219C Requirement to make enquiries as to owner of thing

5 If a waterway manager has moved a thing under section 219A(1) or (2), the waterway manager must make all reasonable enquiries to establish the identity or location of the owner of the property.

219D Disposal of thing

- 10 (1) If, after reasonable enquiries, a waterway manager is unable to establish the identity or location of the owner of a thing that has been moved under section 219A(1) or (2), the waterway manager may dispose of the thing either by gift, sale or destruction of the thing or by otherwise dealing with the thing.
- 15 (2) A waterway manager must not dispose of a thing under subsection (1) unless—
- 20 (a) the waterway manager has given notice about the disposal of the thing in a newspaper circulating generally in Victoria and on the manager's Internet site; and
 - (b) 28 days have expired since the giving of the notice.
- 25 (3) The requirements of subsection (2) do not apply to the disposal of a thing that is perishable.
- 30 (4) If a waterway manager establishes the identity or location of the owner of a thing that has been moved under section 219A(1) or (2), the waterway manager must give the owner notice in writing that the waterway manager intends to dispose of the thing.

- 5 (5) If a waterway manager gives notice in writing under subsection (4) to the owner and the owner of the thing does not recover the thing from the waterway manager within 28 days the waterway manager may dispose of the thing after the 28 days have expired, either by gift, sale or destruction of the thing or by otherwise dealing with the thing.
- 10 (6) The requirements of subsection (5) do not apply to the disposal of a thing that is perishable.

219E Recovery of costs

- 15 (1) If a waterway manager has moved a thing under section 219A(1) or (2), the waterway manager may recover from the owner—
- (a) the costs of the moving of the thing; and
 - (b) the costs of storing the thing; and
 - 20 (c) if the thing has been disposed of, the costs of the disposal of the thing.
- (2) An amount payable under subsection (1) may be recovered in any court of competent jurisdiction as a debt due to the waterway manager.
- 25 (3) If the thing is disposed of, an amount that may be recovered under subsection (1) is to be paid out of the proceeds (if any) of the disposal.

219F Payment of compensation

- 30 (1) If the owner of a thing is unable to recover possession of the thing because the thing has been disposed of under this Division, the waterway manager must pay to the owner and any other person with an interest in the thing an amount commensurate with the
- 35
-

value of the person's interest in the thing less any amount payable under section 219E.

- 5
- (2) An amount payable under subsection (1) is to be paid out of the proceeds (if any) of the disposal of the thing.
- 10
- (3) A person with an interest in a thing that has been disposed of under this Division may make an application to the Magistrates' Court for an order that compensation be paid in accordance with subsection (2) and the Court may make either or both of the following orders, where appropriate—
- 15
- (a) an order that compensation be paid to that person commensurate with the value of the person's interest in the thing;
- 20
- (b) an order that the costs incurred by the waterway manager in moving or disposing of the thing under this Division may be retained by the waterway manager out of the proceeds of the sale of the thing.
- 25
- (4) An application under subsection (3) must be made within 12 months of the date of the disposal of the thing.
- 30
- (5) 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.

219G Proceeds of disposal where owner not located

If a thing has been disposed of under section 219D(1) where neither the identity nor the location of the owner has been established—

- 5
- (a) the waterway manager may recover the costs of moving and disposal of the thing from the proceeds of that disposal; and
- 10
- (b) if no claim has been made under section 219F within 12 months of the disposal of the thing, any proceeds from the disposal of the thing, after the recovery of any costs under paragraph (a), must be paid to the State."

23 Offence not to use a pilot

- 15
- (1) In section 248(2)(c) of the Principal Act—
- (a) after "master" **insert** "of a vessel that is less than 35 metres long";
- (b) for "waters; or" **substitute** "waters."
- (2) Section 248(2)(d) of the Principal Act is **repealed**.

24 Application for pilot licence

- 20
- In section 251(2)(b)(i) of the Principal Act, after "competencies" **insert** ", medical fitness".

25 Grant of pilot licence

- 25
- (1) In section 252(1)(a) of the Principal Act, after "competencies" **insert** ", medical fitness".
- (2) In section 252(2) of the Principal Act, for "a condition" **substitute** "conditions".
- (3) After section 252(2) of the Principal Act **insert**—
- 30
- "(2A) Conditions imposed by the Safety Director may include conditions requiring the pilot to maintain the pilot's competencies and medical fitness."

26 New section 252A inserted

After section 252 of the Principal Act **insert**—

"252A Imposition of conditions relating to pilot competencies and medical fitness

5 The Safety Director, by written notice
given to a pilot who holds a pilot licence,
may impose conditions on that pilot licence
which require the pilot to maintain the
10 pilot's competencies and medical fitness
as specified in the conditions."

27 Section 285 substituted

For section 285 of the Principal Act **substitute**—

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

- 15
- (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.
- 20
- (2) For the purposes of subsection (1) the following provisions are specified—
- 25
- (a) section 24(1);
 - (b) section 26(1);
 - (c) section 27(1);
 - (d) section 28(1);
 - (e) section 29(1);
 - 30 (f) section 102(1).

- 5
- 10
- 15
- 20
- 25
- 30
- (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—

- 5
- (a) a person who is an officer
(as defined by section 9 of the
Corporations Act) of the body
corporate; or
- 10
- (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."

28 New Part 8.8A inserted

After Part 8.8 of the Principal Act **insert**—

15

**"Part 8.8A—Use and disclosure of
information**

298A Definitions

In this Part—

- 20
- authorised representative*, in relation to an
individual, means a person who is—
- (a) a guardian of the individual; or
- (b) an attorney for the individual
under an enduring power of
attorney; or
- 25
- (c) an agent for the individual within
the meaning of the **Medical
Treatment Act 1988**; or
- 30
- (d) an administrator or a person
responsible within the meaning
of the **Guardianship and
Administration Act 1986**; or

- 5
- (e) a parent of an individual, if the individual is a child; or
- (f) otherwise empowered under law to perform any functions or duties or exercise powers as an agent of or in the best interests of the individual—
- 10
- except to the extent that acting as an authorised representative of the individual is inconsistent with an order made by a court or tribunal;
- consent* means express consent or implied consent;
- individual* includes a deceased individual;
- 15
- information protection agreement* means an agreement between a person or body and the Safety Director in relation to relevant information that complies with section 298E(2);
- 20
- law enforcement agency* means—
- (a) Victoria Police or the police force or police service of the Commonwealth or of any other State or Territory; or
- 25
- (b) any other body or person responsible for the performance of functions or activities directed to—
- 30
- (i) the prevention, detection, investigation, prosecution or punishment of offences against the laws of Victoria, the Commonwealth or any other State or Territory; or

- 5 (ii) the enforcement of
infringement penalties
(by whatever name they
are known in the relevant
jurisdiction) issued under
a law of Victoria, the
Commonwealth or any
other State or Territory; or
- 10 (iii) the enforcement of the orders
of a court;
- (c) a body or person authorised
by a law of Victoria, the
Commonwealth or any other State
or Territory to enforce a warrant;
- 15 ***relevant information*** means information
that, under section 298B, is information
to which this Part applies;
- relevant person*** means a person who is or
has been a delegate of or employed by
or engaged to provide services for—
- 20 (a) the Safety Director; or
- (b) any other person or body engaged
to provide services for the Safety
Director.
- 25 **298B Information to which this Part applies**
- (1) This Part applies to information—
- 30 (a) that is collected or received by the
Safety Director in relation to the
performance or exercise of the Safety
Director's functions or powers within
this Act; and
- (b) that identifies an individual or from
which an individual's identity can be
reasonably ascertained.

- 5 (2) For the purposes of subsection (1), the facial image of an individual is information that identifies the individual or from which the individual's identity can be reasonably ascertained.

298C Authorised use or disclosure

- 10 (1) Subject to section 298E, the Safety Director or a relevant person may disclose or use relevant information—
- 15 (a) in connection with the administration of this Act or the regulations; or
 - (b) to provide information of community interest or benefit; or
 - 20 (c) for the purpose of research, or the compilation or analysis of statistics, conducted in the public interest, other than for publication in a form that identifies an individual or from which an individual's identity can be reasonably ascertained; or
 - 25 (d) for the purpose of monitoring compliance with a relevant marine safety law or enforcing the requirements of this Act or the regulations; or
 - 30 (e) if the disclosure or use is to the National Regulator within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law or any delegate of the National Regulator, for a purpose relating to the administration or enforcement of that law or marine safety; or
-

- 5
- (f) for the purpose of any legal proceedings arising out of this Act or the regulations or for the purpose of any report of such a proceeding; or
- (g) at the direction of the Minister; or
- 10
- (h) in circumstances in which the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious or imminent threat to the life or health of one or more persons; or
- (i) with the consent of—
- 15
- (i) the individual to whom the information relates; or
- (ii) the authorised representative of that individual; or
- (j) to a not-for-profit organisation to assist the organisation—
- 20
- (i) to locate a missing person; or
- (ii) to facilitate the reunion of members of a family or friends—
- for non-commercial, humanitarian purposes; or
- 25
- (k) for the purposes of one or more of the following functions and activities when undertaken by or on behalf of a law enforcement agency—
- 30
- (i) the prevention, detection, investigation, prosecution or punishment of offences of any kind;
- (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
-

- 5 (iii) the preparation for, or conduct of, proceedings before any court or enforcement of the orders of a court;
- (iv) the protection of public revenue;
- (v) the enforcement of infringement penalties (by whatever name they are known in the relevant jurisdiction); or
- 10 (1) if the disclosure or use is required or authorised by law.
- (2) In addition, but subject to section 298E, the Roads Corporation may use or disclose information referred to in subsection (1)(a) in the course of using or disclosing relevant information, within the meaning of section 90I of the **Road Safety Act 1986**, in accordance with Part 7B of that Act.
- 15
- 298D Exceptional circumstances**
- 20 (1) This section applies if the Minister is satisfied that—
- (a) exceptional circumstances exist or have occurred, whether in or outside Victoria; and
- 25 (b) it is appropriate to use or disclose relevant information in accordance with this section during or in the aftermath of those exceptional circumstances.
- (2) On being notified that the Minister is satisfied of the matters referred to in subsection (1), the Safety Director must publish a notice on the Safety Director's Internet site stating that—
- 30

- 5
- (a) the Minister is satisfied as to the matters referred to in subsection (1); and
- (b) accordingly, the Safety Director or a relevant person may use or disclose relevant information for the purpose of dealing with the exceptional circumstances.
- 10
- (3) While a notice under subsection (2) remains published on the Safety Director's Internet site, but not later than 12 months after the date on which the notice is first published, the Safety Director or a relevant person may use or disclose relevant information if—
- 15
- (a) the Safety Director or the relevant person reasonably believes that the individual to whom the relevant information relates may be or may have been involved in, or affected by, the exceptional circumstances; and
- 20
- (b) the use or disclosure is for a permitted purpose in relation to the exceptional circumstances; and
- 25
- (c) the disclosure is to an agency or organisation that—
- (i) is, or is likely to be, involved in managing, or assisting in the management of, the exceptional circumstances; or
- 30
- (ii) is directly involved in providing government services, medical or other treatment, health services or financial or other humanitarian assistance to individuals involved in the exceptional circumstances; and
- 35
-

(d) the disclosure is not to a media organisation.

(4) For the purposes of this section—

exceptional circumstances are circumstances which—

(a) endanger, or threaten to endanger, the life, health or safety of any individual; or

(b) destroy or damage, or threaten to destroy or damage, any property, the environment or part of the environment;

Examples

Events such as natural disasters, fires, explosions, accidents, unlawful acts (whether actual or threatened) and disruptions to essential services may constitute exceptional circumstances.

permitted purpose means a purpose that directly relates to the State's response to the exceptional circumstances in respect of which the notice under subsection (2) has been published, including any of the following purposes—

(a) identifying individuals who—

(i) are, or may be, injured, missing or dead as a result of the exceptional circumstances; or

(ii) are, or may be, otherwise involved in the exceptional circumstances;

- 5 (b) assisting individuals involved
in the exceptional circumstances
to obtain services such as
government services, medical or
other treatment, health services or
financial or other humanitarian
assistance;
- 10 (c) assisting with law enforcement
in relation to the exceptional
circumstances;
- (d) coordination or management of
the exceptional circumstances.

298E Information protection agreements

- 15 (1) The Safety Director or a relevant person
must not disclose relevant information to a
person or body under section 298C(1)(c), (j)
or (k), unless the person or body has first
entered into an information protection
agreement with the Safety Director.
- 20 (2) An information protection agreement must—
- (a) specify—
- 25 (i) the purpose for which the
information is proposed to be
disclosed to the person or body;
and
- (ii) the provision of this Act under
which the Safety Director is
authorised to disclose the
information; and
- 30 (iii) the means by which the
information will be provided
by the Safety Director; and
- 35 (iv) the means by which the
information will be protected
by the person or body; and
-

- 5
- (v) how compliance with the terms of the agreement will be monitored and enforced by each party to the agreement; and
- (vi) the auditing arrangements; and
- (vii) the procedures for managing any breach of privacy; and
- 10
- (b) include an undertaking by the person or body that the information will be used or disclosed only for the purpose specified in the agreement.
- 15
- (3) An information protection agreement may include any other requirements, qualifications or conditions specified by the Safety Director.
- (4) Subsection (2) does not apply if—
- 20
- (a) an information protection agreement is currently in force between the Safety Director and the delegator, employer, contractor or principal of the person or body who has requested the relevant information; and
- 25
- (b) in making the request for the relevant information, the person or body is acting within the scope of their actual or apparent authority under the delegation, employment, contractual relationship or agency.
- 30
- (5) If a person or body requests relevant information other than for a purpose specified in subsection (2), the Safety Director or a relevant person may require the person or body to first enter into an information protection agreement with the
- 35
- Safety Director.
-

- 5 (6) A person or body is not required to enter into an information protection agreement with the Safety Director in relation to the use or disclosure of relevant information if—
- (a) the person or body is a relevant person; and
- (b) the relevant information is disclosed to the person or body in their capacity as a relevant person.

10 **298F Disclosure not mandatory**

Nothing in this Part requires the Safety Director or a relevant person to disclose relevant information.

Note

15 The Safety Director or a relevant person is entitled not to disclose relevant information in the absence of a legal obligation to disclose it.

298G Freedom of Information Act 1982

- 20 (1) A document which contains relevant information is an exempt document within the meaning of section 38 of the **Freedom of Information Act 1982**.
- (2) Subsection (1) does not limit the operation of section 38 of the **Freedom of Information Act 1982**.
- 25

298H Offence to use or disclose relevant information without authorisation

Unless authorised under this Part, the Safety Director or a relevant person must not—

- 30 (a) disclose relevant information; or
- (b) use the person's knowledge of relevant information.

Penalty: 120 penalty units."

29 Section 306 repealed

Section 306 of the Principal Act is **repealed**.

30 General regulation-making powers

5 In section 309(1)(f) of the Principal Act,
after "undertaken for the purposes of" **insert**
"granting, issuing or maintaining".

31 Ongoing fees for permission

10 After section 310(1)(a) of the Principal Act
insert—
"(ab) by the Safety Director, annually, for the
holding of a permission; and".

32 Definitions

15 In section 298A of the Principal Act, in the
definition of *authorised representative*—
(a) for paragraph (c) **substitute—**
"(c) a medical treatment decision maker
for the individual within the meaning
of the **Medical Treatment Planning
and Decisions Act 2016**; or";
20 (b) in paragraph (d) **omit** "or person
responsible".

33 Statute law revision

25 In section 165(3)(b) of the Principal Act,
for "**Transport (Compliance and
Miscellaneous) Act 1983**" **substitute**
"**Transport (Safety Schemes Compliance
and Enforcement) Act 2014**".

Part 3—Amendment of Marine (Drug, Alcohol and Pollution Control) Act 1988

34 Breath analysis

5 Section 31(9B) and (11) of the **Marine
(Drug, Alcohol and Pollution Control) Act 1988**
are repealed.

35 Taking of blood samples by approved health professionals

- 10 (1) In section 31A(2) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988**, after "allow"
insert "an approved health professional or".
- (2) For section 31A(3) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988** substitute—
- 15 "(3) Subsection (2) does not apply if, in the
opinion of the doctor first responsible for the
examination or treatment of the person, the
taking of a blood sample from that person
would be prejudicial to that person's proper
20 care and treatment."
- (3) In section 31A(4) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988**, for "a doctor"
substitute "an approved health professional or
doctor".
- 25 (4) In section 31A(6) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988**, for "a doctor"
substitute "an approved health professional or
doctor".
- 30 (5) In section 31A(7) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988**—
- (a) for "a doctor" substitute "an approved health
professional or doctor";

(b) for "the doctor" (where twice occurring)
substitute "the approved health professional
or doctor".

36 Blood and urine samples

5 Section 31AB(3) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988** is repealed.

37 Oral fluid testing and analysis

10 Section 31AE(14) and (19) of the **Marine
(Drug, Alcohol and Pollution Control) Act 1988**
are repealed.

38 Evidentiary provisions—blood tests

15 Section 32(8)(b)(iii) of the **Marine
(Drug, Alcohol and Pollution Control)
Act 1988** is repealed.

39 Breath analysing instruments

20 In section 33(5) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988**, for
'the expressions "Drager Alcotest 7110" and
"3530791"' **substitute**—

'the expressions—

(a) "Alcotest 7110" and "3530791"; or

(b) "Alcotest 9510 AUS" and "8320869"—'.

**40 Avoidance of certain provisions in contracts of
insurance**

25 In section 33A(1) of the **Marine (Drug, Alcohol
and Pollution Control) Act 1988**, for ".05"
substitute "0.05".

41 Removal of pollution

30 Section 38(7) of the **Marine (Drug, Alcohol and
Pollution Control) Act 1988** is repealed.

42 Liability of officers of bodies corporate

After section 66 of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** insert—

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

- 5
- 10
- 15
- 20
- 25
- 30
- (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 39(2);
 - (b) section 46(1).
 - (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.

- 5 (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.
- 10 (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.
- 15 (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—
- 20 (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- 25 (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."

Part 4—Amendment of Port Management Act 1995

43 New section 88AP inserted

5 Before section 88P of the **Port Management Act 1995** insert—

"88AP Definitions

In this Division—

relevant port means—

- 10 (a) if the port manager is the Victorian Ports Corporation (Melbourne)—those parts of the port comprising port of Melbourne waters and port of Melbourne land that is not leased
- 15 port of Melbourne land;
- (b) if the port manager is the port of Melbourne operator—those parts of the port comprising leased port of Melbourne land;
- 20 (c) if the port manager is the VRCA—a commercial trading port (other than the port of Melbourne);
- 25 (d) if the port manager is a person or body appointed under section 44A—the local port in respect of which that person or body was appointed under that section."

44 New section 88Q substituted

For section 88Q of the **Port Management Act 1995 substitute—**

"88Q Removal of things

- 5 (1) Subject to subsection (2), a port manager may move any thing or cause any thing to be moved from a relevant port if—
- 10 (a) the thing has been left unattended at the relevant port for more than one month; and
- 15 (b) the identity or location of the owner of the thing cannot be established or the port manager reasonably believes that the owner of the property will not move the property.
- (2) A port manager may immediately remove a thing from a port if—
- 20 (a) the port manager is of the opinion that the thing has been left unattended at the relevant port and—
- 25 (i) is causing an impediment to the operations of the port; or
- (ii) is causing an environmental hazard to the port; or
- (iii) is a risk to the safety or security of the port or port operations; or
- 30 (iv) is a danger to public health; and
- (b) the identity or location of the owner of the thing cannot be established or the port manager reasonably believes that the owner of the property will not move the property."

45 Powers when moving things

In section 88R(2) of the **Port Management Act 1995**—

- 5
- (a) for "The Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "A port manager";
 - (b) for "Corporation or port of Melbourne operator" **substitute** "port manager".

46 Requirement to make enquiries as to owner of thing

10 In section 88S of the **Port Management Act 1995**—

- (a) for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager";
- 15 (b) for "Corporation or port of Melbourne operator" **substitute** "port manager".

47 Disposal of thing

(1) In section 88T(1) of the **Port Management Act 1995**—

- 20
- (a) for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager";
 - (b) for "Corporation or port of Melbourne operator" **substitute** "port manager".

25 (2) In section 88T(2) of the **Port Management Act 1995**—

- (a) for "The Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "A port manager";
 - 30 (b) in paragraph (a), for "Corporation or port of Melbourne operator" **substitute** "port manager".
-

- 5
- (3) In section 88T(4) of the **Port Management Act 1995**—
- (a) for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager";
 - (b) for "Corporation or port of Melbourne operator" (where twice occurring) **substitute** "port manager";
 - (c) **omit** "(as the case requires)".
- 10
- (4) In section 88T(5) of the **Port Management Act 1995**—
- (a) for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager";
 - 15 (b) for "Corporation or port of Melbourne operator" (where twice occurring) **substitute** "port manager";
 - (c) **omit** "(as the case requires)".
- 48 Recovery of costs**
- 20
- (1) In section 88U(1) of the **Port Management Act 1995**—
- (a) for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager";
 - 25 (b) for "Corporation or port of Melbourne operator" **substitute** "port manager".
- (2) In section 88U(2) of the **Port Management Act 1995**, for "the Corporation or port of Melbourne operator (as the case requires)" **substitute** "the port manager".
- 30
-

49 Payment of compensation

- 5 (1) In section 88V(1) of the **Port Management Act 1995**, for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager".
- (2) In section 88V(3)(b) of the **Port Management Act 1995**—
- 10 (a) for "the Corporation or port of Melbourne operator" **substitute** "a port manager";
- (b) for "Corporation or port of Melbourne operator" **substitute** "port manager".

50 Proceeds of disposal where owner not located

In section 88W of the **Port Management Act 1995**—

- 15 (a) in paragraph (a), for "the Victorian Ports Corporation (Melbourne) or port of Melbourne operator" **substitute** "a port manager";
- 20 (b) in paragraph (b)(i), for "the Victorian Ports Corporation (Melbourne)" **substitute** "a port manager (other than the port of Melbourne operator)".

51 Power to prosecute

- 25 (1) In section 97 of the **Port Management Act 1995**, for "brought" **substitute** "commenced".
- (2) At the end of section 97 of the **Port Management Act 1995 insert**—
- 30 "(2) Proceedings for an offence against this Act or regulations made under this Act may be commenced by the Secretary."

Part 5—Amendment of Road Safety Act 1986

52 Authorised use or disclosure

In section 90K(h) of the **Road Safety Act 1986**,
for "section 306(2)" **substitute** "Part 8.8A".

Part 6—Repeal of amending Act

53 Repeal of amending Act

This Act is **repealed** on 1 March 2019.

Note

5

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**).

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.