

Version No. 012
Bus Safety Act 2009
No. 13 of 2009

Version incorporating amendments as at
31 December 2011

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The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to—

- (a) provide for the safe operation of bus services in Victoria;
- (b) make related amendments to the **Public Transport Competition Act 1995**, the **Rail Safety Act 2006**, the **Road Safety Act 1986**, the **Transport (Compliance and Miscellaneous) Act 1983** and certain other Acts;
- (c) change the title of the **Public Transport Competition Act 1995** to the **Bus Services Act 1995**.

S. 1(b)
amended by
No. 6/2010
s. 203(1)(Sch.
6 item 4.1) (as
amended by
No. 45/2010
s. 22).

2 Commencement

- (1) This section and sections 1 and 80 come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (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 does not come into operation before 31 December 2010, it comes into operation on that day.

3 Definitions

(1) In this Act—

accreditation fee means the fee to be paid in respect of an application for accreditation under Part 4 or any annual accreditation fee—

- (a) set by the Safety Director under section 67; or
- (b) if a fee has not been set by the Safety Director, the prescribed fee;

accredited bus operator means a bus operator accredited under Part 4;

applicable pre-1973 fraud or dishonesty offence means the offence at common law of larceny abolished by section 3(1) of the **Crimes (Theft) Act 1973**;

approved training course means a course of training provided in this State or another State or Territory that—

- (a) is prescribed; or
- (b) is approved by the Safety Director;

Australian Design Rules means the Australian Design Rules for Motor Vehicles and Trailers, endorsed by the Australian Transport Advisory Council and published pursuant to section 7 of the Motor Vehicle Standards Act 1989 of the Commonwealth;

bus means—

- (a) a motor vehicle that has been built—
 - (i) with seating positions for 10 or more adults (including the driver); and

S. 3(1) def. of *applicable pre-1973 fraud or dishonesty offence* inserted by No. 49/2011 s. 28(2).

S. 3(1) def. of *bus* amended by No. 6/2010 s. 203(1)(Sch. 6 item 4.2(a)) (as amended by No. 45/2010 s. 22).

- (ii) to comply with the requirements specified in the Australian Design Rules for a passenger omnibus (within the meaning of those Rules);
- (b) a motor vehicle prescribed to be a bus;
- (c) a motor vehicle which the Safety Director has declared to be a bus under section 7(1)—
but does not include—
 - (d) subject to section 23, a vehicle which is a taxi-cab in respect of which a taxi-cab licence is granted under the **Transport (Compliance and Miscellaneous) Act 1983**;
 - (e) a motor vehicle prescribed not to be a bus;
 - (f) a motor vehicle which the Safety Director has declared not to be a bus;
 - (g) a vehicle known as a Hummer;

Examples

- 1 A passenger car modified to have more than 9 seats (for example, a stretch limousine) is not a bus.
- 2 A motor vehicle that is built as a bus but which has had seats removed so that it seats less than 10 adults is still a bus.
- 3 A motor vehicle built overseas as a bus is a bus unless it is a motor vehicle built to be a Hummer.

bus safety work means an activity that may affect the safety of bus services including—

- (a) driving a bus or activities associated with driving a bus;

- (b) designing, constructing, supplying, repairing, modifying, maintaining, monitoring, examining or testing a bus;
- (c) designing, constructing, supplying, installing, repairing, modifying, maintaining, monitoring, examining or testing equipment in or on a bus;
- (d) setting or altering a schedule or timetable for a bus service;
- (e) a prescribed activity;

bus safety worker means a person who has carried out, is carrying out or is about to carry out, bus safety work including a person who is—

- (a) employed or engaged by a bus operator to carry out bus safety work;
- (b) engaged by any other person to carry out bus safety work;
- (c) a trainee;
- (d) a volunteer;

bus service means the operation of one or more buses to provide a service for the transport of passengers by road;

bus stop infrastructure has the same meaning as it has in section 48H of the **Road Management Act 2004**;

bus stopping point has the same meaning as it has in section 48H of the **Road Management Act 2004**;

commercial bus service means—

- (a) a route bus service, if that bus service operates a bus built with seating positions for 13 or more adults

S. 3(1) def. of
*commercial
bus service*
substituted by
No. 19/2010
s. 47(1)(a).

(including the driver) to provide that service;

- (b) a demand responsive bus service, if that bus service operates a bus built with seating positions for 13 or more adults (including the driver) to provide that service;
- (c) a tour and charter bus service, if that bus service operates a bus built with seating positions for 13 or more adults (including the driver) to provide that service;
- (d) a courtesy bus service (other than a non-commercial courtesy bus service), if that bus service operates a bus built with seating positions for 13 or more adults (including the driver) to provide that service;
- (e) a bus service which is a prescribed class of commercial bus service;
- (f) a bus service which is declared by the Safety Director to be a commercial bus service—

but does not include—

- (g) a bus service in a class of bus service which is prescribed not to be a class of commercial bus service;
- (h) a bus service which is declared by the Safety Director not to be a commercial bus service;

commercial minibus service means—

- (a) a route service, if that bus service operates a bus built with seating for 10, 11 or 12 adults (including the driver) to provide that service;

S. 3(1) def. of
***commercial
minibus***
inserted by
No. 49/2011
s. 31(2).

- (b) a demand responsive bus service, if that bus service operates a bus built with seating for 10, 11 or 12 adults (including the driver) to provide that service;
- (c) a tour and charter bus service, if that bus service operates a bus built with seating for 10, 11 or 12 adults (including the driver) to provide that service;

community and private bus service means a service—

- (a) consisting of the carriage of passengers by a bus for or in connection with the activities of a religious, educational, health, welfare, philanthropic, sporting or social body; and
- (b) which is provided for no consideration or for consideration which is limited to the costs or part of the costs incurred in making the journey;

co-operative has the same meaning as in the **Co-operatives Act 1996**;

corresponding Bus Safety Regulator means—

- (a) the person who, or body that, has functions or powers under a corresponding law that substantially correspond to the functions and powers of the Safety Director under this Act; or
- (b) a person prescribed by the regulations as the corresponding Bus Safety Regulator for another State or Territory of the Commonwealth for the purposes of this Act;

corresponding law means—

- (a) the law of another State or a Territory of the Commonwealth corresponding, or substantially corresponding, to this Act; or
- (b) a law of another State or Territory of the Commonwealth that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;

courtesy bus service means a service consisting of the carriage of passengers by a bus for any consideration or in the course of any trade or business;

demand responsive bus service means a service consisting of the carriage of passengers by a bus for hire or reward within a specified area on a regular basis along a route which varies in accordance with the demand of prospective passengers and for which passengers are each charged a separate fare;

Department means the Department of Transport;

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

drug means a substance that is a drug for the purposes of this Act by virtue of a declaration under section 8 or any other substance (other than alcohol) which, when consumed or used by a person, deprives that person (temporarily or permanently) of any of his or her normal mental or physical faculties;

S. 3(1) def. of
highway
inserted by
No. 49/2011
s. 31(2).

highway has the same meaning as it has in the
Road Safety Act 1986;

hire and drive bus service means a service
consisting of the provision of a bus for hiring
(otherwise than under a hire-purchase
agreement within the meaning of the **Fair
Trading Act 1999**) by a person for a certain
period for valuable consideration on the
condition that it will be driven during that
period by the hirer or another person on
behalf of the hirer;

incorporated association has the same meaning as
in the **Associations Incorporation Act
1981;**

S. 3(1) def. of
*local bus
service*
amended by
Nos 19/2010
s. 47(1)(c),
49/2011
s. 31(1).

local bus service means a service consisting of the
carriage of passengers by a bus built with
seating positions for 13 or more adults
(including the driver) and that—

- (a) is operated on a regular basis or subject
to demand; and
- (b) is available for use by the general
public; and
- (c) is not operated for hire or reward;

S. 3(1) def. of
motor vehicle
inserted by
No. 49/2011
s. 31(2).

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

non-commercial courtesy bus service means a
bus service declared by the Safety Director
under section 7(1)(c) to be a non-commercial
courtesy bus service;

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

officer, in relation to a company, means—

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

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

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

officer, in relation to an incorporated association means—

- (a) the public officer or secretary (within the meaning of the **Associations Incorporation Act 1981**) of the incorporated association; or
- (b) a member of the committee (within the meaning of the **Associations Incorporation Act 1981**) of the incorporated association; or
- (c) a person who is concerned, or takes part, in the management of the incorporated association;

S. 3(1) def. of *operator* amended by No. 19/2010 s. 47(1)(d).

operator, in relation to a bus service, means the person who is responsible for controlling or directing the operations of a bus service in connection with a business or activity for, or involving, the transport of passengers by road by that bus service, but does not include a person who merely—

- (a) arranges for the registration of a bus; or
- (b) maintains or arranges for the maintenance of a bus;

S. 3(1) def. of *person* inserted by No. 19/2010 s. 47(2).

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

prescribed means prescribed by the regulations;

procurer means a person who charters a bus service or otherwise engages with an operator for the purposes of using the bus service, whether or not the provision of the bus service is on a commercial basis;

registered bus operator means an operator registered to operate a bus service under section 22;

regulations means regulations made under this Act;

relevant person, in relation to an applicant for accreditation to operate a commercial bus service or local bus service or an accredited bus operator, means—

S. 3(1) def. of *relevant person* inserted by No. 19/2010 s. 47(2).

- (a) if the applicant or accredited bus operator is a natural person, the applicant or operator; or
- (b) if the applicant or accredited bus operator is a partnership, a partner who is concerned, or takes part, in the management of the activities to which the application or accreditation relates; or
- (c) if the applicant or accredited bus operator is an unincorporated body or association other than a partnership, a member of the committee of management of the body or association who is concerned, or takes part, in the management of the activities to which the application or accreditation relates; or
- (d) if the applicant or accredited bus operator is a company, a co-operative or an incorporated association, an officer of the company, co-operative or incorporated association; or
- (e) if the applicant or accredited bus operator is a body corporate other than a company, co-operative or incorporated association, an officer of

the body who is concerned, or takes part, in the management of the activities to which the application or accreditation relates;

S. 3(1) def. of *responsible person* substituted by No. 19/2010 s. 47(1)(b).

responsible person, in relation to an applicant for accreditation or an accredited bus operator, means—

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

route bus service means a bus service consisting of the carriage of passengers by a bus for hire or reward operated along a fixed route on a regular basis;

S. 3(1) def. of *Safety Director* substituted by No. 6/2010 s. 203(1)(Sch. 6 item 4.2(b)) (as amended by No. 45/2010 s. 22).

Safety Director means the Director, Transport Safety within the meaning of section 3 of the **Transport Integration Act 2010**;

Secretary means the Secretary to the Department;

S. 3(1) def. of *specified indictable fraud or dishonesty offence* inserted by No. 49/2011 s. 28(2).

specified indictable fraud or dishonesty offence means any of the following indictable offences involving fraud or dishonesty—

- (a) an offence against section 74, 81, 82, 83A or 88 of the **Crimes Act 1958**;
- (b) an offence against section 181 of the **Crimes Act 1958** that involves knowingly aiding, abetting, counselling, procuring or attempting or

taking part in or in any way being privy to an offence referred to in paragraph (a);

- (c) an offence against section 131.1, 132.1, 132.6, 132.7, 132.8, 134.1, 134.2 or 135.1 of the Criminal Code of the Commonwealth;
- (d) an offence under a law or a jurisdiction other than Victoria or the Commonwealth (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this definition;

tier 1 offence means—

- (a) an offence against the **Crimes Act 1958** that involves sexual penetration (within the meaning given by section 35(1) of that Act); or
- (b) an offence against a provision of the **Crimes Act 1958** amended or repealed before the commencement of Part 2 of the **Transport (Taxi-cab Accreditation and Other Amendments) Act 2006** of which the necessary elements at the time it was committed consisted of elements that constitute an offence referred to in paragraph (a); or
- (c) an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991**, if the victim of the offence was a child or a person with a cognitive impairment, that is not an offence referred to in paragraph (a) or (b); or

S. 3(1) def. of *tier 1 offence* amended by No. 93/2009 s. 49(3)(a).

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- (d) an offence against section 271.4 (trafficking in children), or section 271.7 (domestic trafficking in children), of the Criminal Code of the Commonwealth; or
 - (e) an offence against section 5A of the **Crimes Act 1958**; or
 - (f) an offence against section 318 of the **Crimes Act 1958** (whether in relation to a motor vehicle or a vessel); or
 - (g) a child pornography offence within the meaning of the **Working with Children Act 2005**; or
 - (h) an offence within the meaning of Division 101 of the Criminal Code of the Commonwealth; or
 - (i) an offence specified in clause 3 of Schedule 1 to the **Sentencing Act 1991**; or
 - (j) an indictable offence involving fraud or dishonesty; or
 - (k) an offence specified in clause 4 of Schedule 1 to the **Sentencing Act 1991**; or
 - (l) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this definition;

tier 2 offence means—

- (a) an offence specified in clause 1 of Schedule 1 to the **Sentencing Act 1991** that is not an offence referred to in paragraph (a), (b), (c), (d), (e) or (f) of the definition of *tier 1 offence*; or
- (b) an offence specified in clause 2 of Schedule 1 to the **Sentencing Act 1991** that is not an offence specified in clause 3 of that Schedule; or
- (c) an offence against section 24 of the **Crimes Act 1958** arising out of the driving of a motor vehicle by the offender; or
- (d) an offence against section 319(1) of the **Crimes Act 1958** (whether in relation to a motor vehicle or a vessel); or
- (e) an offence against section 319(1A) of the **Crimes Act 1958** (whether in relation to a motor vehicle or a vessel); or
- (f) an offence against section 271.3 (aggravated offence of trafficking in persons), or section 271.6 (aggravated offence of domestic trafficking in persons), of the Criminal Code of the Commonwealth; or
- (g) an offence against section 61 of the **Road Safety Act 1986** resulting in a person being killed or suffering serious injury; or
- (ga) an applicable pre-1973 fraud or dishonesty offence; or
- (gb) a specified indictable fraud or dishonesty offence; or

S. 3(1) def. of *tier 2 offence* amended by Nos 93/2009 s. 49(3)(b), 49/2011 s. 28(1).

- (h) a summary offence involving fraud or dishonesty; or
- (i) an offence against this Act; or
- (j) an offence against the **Bus Services Act 1995**; or
- (k) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this definition;

tier 3 offence means—

- (a) a criminal offence that is not a tier 1 offence or a tier 2 offence; or
- (b) an offence under a law of a jurisdiction other than Victoria (including jurisdictions outside Australia) that, if it had been committed in Victoria, would have constituted an offence of a kind listed in this definition;

tour and charter bus service means—

- (a) a bus service operated for the carriage of tourists by a bus for hire or reward to a common destination; or
- (b) a bus service operated for the carriage of a group of persons by bus for hire or reward by being previously booked or ordered by that group or by another person on behalf of that group and in respect of which the members of that group are not each charged a separate fare;

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

-
- (2) For the purposes of the definition of *route bus service* in subsection (1)—
- (a) a route is a fixed route even if—
 - (i) a stop on the route is not used on every journey, or ceases to be used altogether; or
 - (ii) different routes are used on different journeys of the bus service to get from one stop on the route to another stop on the route;
 - (b) a bus service operates on a regular basis even if—
 - (i) it only operates on any particular occasion if there is a sufficient level of demand for it; or
 - (ii) it requires a person using it to book or reserve a place before using it.
- (3) A reference to a person who has been found guilty of an offence is a reference to a person—
- (a) against whom a court has made a formal finding that he or she is guilty of the offence; or
 - (b) from whom a court has accepted a plea that he or she is guilty of the offence; or
 - (c) from whom a court has accepted an admission under section 100 of the **Sentencing Act 1991** that he or she has committed the offence, or from whom a similar admission has been accepted under equivalent provisions of the laws of a jurisdiction other than Victoria; or
-

(d) against whom a finding has been made under—

- (i) section 17(1)(b) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that he or she was not guilty of the offence or an offence available as an alternative because of mental impairment; or
- (ii) the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** of not guilty because of mental impairment; or
- (iii) section 17(1)(c) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** that he or she committed the offence—

or against whom a similar finding has been made under equivalent provisions of the laws of a jurisdiction other than Victoria (including jurisdictions outside Australia)—

being an admission, plea or finding that has not been subsequently quashed or set aside by a court.

(4) A reference to a person who has been charged with an offence is a reference to a person—

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

S. 3(4)(a)
amended by
No. 68/2009
s. 97(Sch.
item 14.1).

S. 3(4)(b)
amended by
No. 68/2009
s. 97(Sch.
item 14.2).

(5) A reference to a charge that has not been finally disposed of is a reference to a charge that has not been finally disposed of by—

(a) being withdrawn or by the discontinuance of the prosecution; or

S. 3(5)(a)
amended by
No. 68/2009
s. 97(Sch.
item 14.3).

(b) the charge having been dismissed by a court; or

(c) the person charged having been discharged by a court following a committal hearing; or

S. 3(5)(c)
amended by
No. 68/2009
s. 97(Sch.
item 14.4).

(d) the person charged having been acquitted or found guilty of the offence by a court; or

S. 3(5)(d)
amended by
No. 68/2009
s. 97(Sch.
item 14.5).

(e) any other prescribed means.

3A Transport Integration Act 2010

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

S. 3A
inserted by
No. 6/2010
s. 24(5)(Sch. 1
item 4) (as
amended by
No. 45/2010
s. 5).

4 Objects of bus safety

(1) The objects of this Act are to promote—

(a) the safety of bus services;

(b) the effective management of safety risks in bus services;

(c) continuous improvement in bus safety management;

(d) public confidence in the safety of the transport of passengers by bus;

(e) the involvement of relevant stakeholders in bus safety;

- (f) a safety culture among persons who participate in the provision of bus services.
- (2) The Parliament does not intend by Part 2 to create in any person any legal right or give rise to any civil cause of action.

5 Crown to be bound

- (1) This Act binds the Crown—
 - (a) in right of the State of Victoria;
 - (b) to the extent that the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act or the regulations.

6 Interaction with Occupational Health and Safety Act

- (1) If a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act applies to an activity in respect of which a duty is imposed under Division 2 of Part 3, that provision continues to apply, and must be observed in addition to that Division and any regulations made under this Act for the purposes of that Division.

Note

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

- (2) If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act, the **Occupational Health and Safety Act 2004** or the regulations made under it prevail to the extent of the inconsistency.

- (3) Compliance with this Act or the regulations made under this Act, or with any requirements imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.
- (4) Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.

7 Declaration powers of Safety Director

- (1) Subject to subsection (2), the Safety Director may declare by notice published in the Government Gazette that—
 - (a) a motor vehicle or class of motor vehicle that is a bus specified in paragraph (a) of the definition of *bus* in section 3(1) is not a motor vehicle or class of motor vehicle that is a bus within the meaning of that definition;
 - (b) a motor vehicle or class of motor vehicle that is not a bus specified in paragraph (a) of the definition of *bus* in section 3(1) is to be a motor vehicle or class of motor vehicle that is a bus within the meaning of that definition;
 - (c) a courtesy bus service within the meaning of the definition of *courtesy bus service* in section 3(1) is to be a *non-commercial courtesy bus service* for the purposes of section 3(1) if the Safety Director is satisfied that the operator of the service does not derive any profit from the provision of the service;

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- (d) a bus service that is not defined to be a *commercial bus service*, a *community and private bus service*, a *courtesy bus service*, a *hire and drive bus service* or a *local bus service* within the meaning of section 3(1), is a—
- (i) *commercial bus service*; or
 - (ii) *community and private bus service*; or
 - (iii) *courtesy bus service*; or
 - (iv) *hire and drive bus service*; or
 - (v) *local bus service*—
- within the meaning of that definition
(as appropriate);
- (e) a bus service that is defined to be a *commercial bus service*, a *community and private bus service*, a *courtesy bus service*, a *hire and drive bus service* or a *local bus service* within the meaning of section 3(1) is not a—
- (i) *commercial bus service*; or
 - (ii) *community and private bus service*; or
 - (iii) *courtesy bus service*; or
 - (iv) *hire and drive bus service*; or
 - (v) *local bus service*—
- within the meaning of that definition
(as appropriate) despite the bus service
meeting the specifications in that definition.
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- (2) If the Safety Director intends to make a declaration under subsection (1), the Safety Director must—
- (a) advise operators and sectors of the industry that will be affected by the declaration, if declared, of the proposed declaration; and
 - (b) provide those operators and sectors with an opportunity to make a submission in relation to the proposed declaration.
- (3) The Safety Director must have regard to any submissions received under subsection (2) before making the declaration.

8 Declaration of substances to be a drug

The Minister, by Order published in the Government Gazette, may declare any substance to be a drug for the purposes of Part 5.

PART 2—PRINCIPLES OF BUS SAFETY

9 Principle of shared responsibility

- (1) The safe operation of bus services is the shared responsibility of—
 - (a) the operator; and
 - (b) bus safety workers; and
 - (c) procurers; and
 - (d) persons who determine the location of bus stopping points, or who design, construct, install, modify or maintain a bus stopping point or bus stop infrastructure; and
 - (e) the Safety Director; and
 - (f) members of the public.
- (2) The level and nature of responsibility that a person referred to in subsection (1), or a person within a class of persons referred to in subsection (1), has for bus safety is dependent on—
 - (a) the nature of the risk to bus safety that the person creates from the carrying out of an activity or the making of a decision; and
 - (b) the capacity that that person has to control, eliminate or mitigate that risk or any other risk to bus safety.

10 Principle of accountability for managing safety risks

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

11 Principle of enforcement

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

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

12 Principle of transparency and consistency

Bus regulatory decision-making processes should be timely, transparent and nationally consistent.

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

The persons and classes of persons referred to in sections 9(1)(a), 9(1)(b), 9(1)(c) and 9(1)(d) should—

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

the formulation and implementation of measures to manage risks to safety associated with the provision of bus services.

PART 3—BUS SAFETY DUTIES

Division 1—The concept of ensuring safety

14 The concept of ensuring safety

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety requires the person to—
 - (a) eliminate risks to safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of this Act or the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety—
 - (a) the likelihood of the hazard or risk concerned eventuating;
 - (b) the degree of harm that would result if the hazard or risk eventuated;
 - (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
 - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
 - (e) the cost of eliminating or reducing the hazard or risk.

Division 2—Safety duties

15 Duty of operator

- (1) An operator of a bus service must, so far as is reasonably practicable, ensure the safety of the bus service.

Penalty: In the case of a natural person,
1800 penalty units;

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

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

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

**Note to
s. 15(2)
amended by
No. 68/2009
s. 97(Sch.
item 14.6).**

16 Duty of procurer

- (1) A procurer of a bus service must, so far as is reasonably practicable, ensure the safety of the bus service.

Penalty: In the case of a natural person,
1800 penalty units;

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

- (2) Without limiting subsection (1), a procurer of a bus service contravenes that subsection if the bus service is procured on terms that impose conditions or obligations which prevent or threaten, or are reasonably likely to prevent or threaten, the safe operation of the bus service.

- (3) A person is not a procurer of a bus service only because the person provides funding to the operator of the bus service.
- (4) An offence against subsection (1) is an indictable offence.

Note to
s. 16(4)
amended by
No. 68/2009
s. 97(Sch.
item 14.7).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

17 Duty of bus safety worker

- (1) A bus safety worker must take reasonable measures to ensure the safety of persons who may be affected by the acts or omissions of the bus safety worker.

Penalty: In the case of a natural person,
1800 penalty units;

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

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

Note to
s. 17(2)
amended by
No. 68/2009
s. 97(Sch.
item 14.8).

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

18 Duties in relation to bus stopping points and bus stop infrastructure

- (1) A person who determines the location of, designs, constructs, installs, modifies or maintains a bus stopping point or any bus stop infrastructure, or who engages a person to do any of those things, must ensure, so far as is reasonably practicable, that the location, design, construction or condition

of the bus stopping point or bus stop infrastructure is safe.

Penalty: In the case of a natural person,
1800 penalty units;

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

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

Note

However, the offence may be heard and determined summarily (see section 28 of the **Criminal Procedure Act 2009**).

**Note to
s. 18(2)
amended by
No. 68/2009
s. 97(Sch.
item 14.9).**

Division 3—Bus inspections and safety audits

19 Bus safety inspections

- (1) An accredited bus operator must ensure that each bus used to provide the commercial bus service or local bus service undergoes a safety inspection in accordance with the regulations—

- (a) annually; or
(b) at prescribed intervals.

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

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

- (1A) If a bus is required under subsection (1) to undergo an annual bus safety inspection, each annual inspection must be conducted not earlier than 14 days before, and not later than 14 days after, the anniversary of the date on which the first inspection is conducted.

**S. 19(1A)
inserted by
No. 49/2011
s. 27.**

S. 19(1B)
inserted by
No. 49/2011
s. 27.

(1B) For the purposes of subsection (1A), the first inspection of the bus is the first inspection following the accreditation of the bus operator or, if the bus is acquired after that accreditation, the first inspection following its acquisition.

(2) A registered bus operator must ensure that each bus used to provide the bus service undergoes a safety inspection in accordance with the regulations.

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

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

(3) An accredited bus operator or registered bus operator must arrange a safety inspection of each bus used to provide the bus service operated by the operator if the Safety Director directs that a safety inspection be conducted in respect of the bus service operated by the operator.

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

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

20 Safety audits

The Safety Director may conduct, or cause to be conducted, a safety audit, to determine whether or not the requirements of this Act and the regulations are satisfactorily complied with.

PART 4—ACCREDITATION AND REGISTRATION

Division 1—Preliminary matters

21 Purpose of accreditation

- (1) The purpose of accreditation under this Part is to attest that a person who operates a commercial bus service or a local bus service has demonstrated to the satisfaction of the Safety Director, and can continue to demonstrate to the satisfaction of the Safety Director, that the person has the competence and capacity to manage the risks to safety associated with operating the commercial bus service or local bus service.
- (2) For the purposes of subsection (1), if an operator of a commercial bus service or a local bus service is not a natural person, the responsible person, in relation to the commercial bus service or local bus service, is to demonstrate the competence and capacity specified in that subsection.

22 Registration of operator of bus services that are not commercial bus services or local bus services

- (1) This section applies to an operator of a bus service which is not a commercial bus service or a local bus service.
- (2) If this section applies, an operator of a bus service must apply to the Safety Director for registration.
- (3) An application must—
 - (a) be made in a manner and form determined by the Safety Director;
 - (b) contain any prescribed information.

S. 22(5A)
inserted by
No. 49/2011
s. 24(1).

S. 22(5B)
inserted by
No. 49/2011
s. 24(1).

- (4) An operator of a bus service to which this section applies must provide the Safety Director with any additional information requested by the Safety Director.
- (5) The Safety Director may register an operator to operate the bus service if the Safety Director is satisfied that the operator is not accredited to operate that bus service.
- (5A) If the Safety Director registers an operator to operate a community and private bus service and is satisfied that the bus service can be safely operated with drivers who hold a probationary driving licence, the Safety Director may permit the operator to use such drivers subject to any conditions reasonably imposed by the Safety Director.
- (5B) A permission given under subsection (5A) and any conditions to which that permission is subject must be specified on the certificate of registration issued to the operator of the bus service.
- (6) The registration of an operator to operate a bus service is subject to the following conditions—
 - (a) the operator of the bus service must—
 - (i) keep the certificate of registration issued by the Safety Director; and
 - (ii) if the operator ceases to operate the bus service, return the certificate of registration to the Safety Director;
 - (b) the operator of the bus service must, if the Safety Director requests, produce the certificate of registration to the Safety Director;

- (c) the operator of the bus service must notify the Safety Director if—
- (i) the nature of the bus service changes;
 - (ii) the details specified in the application for registration change;
 - (iii) the operator of the bus service ceases to operate the bus service;
- (d) any conditions imposed by the Safety Director under subsection (5A).

S. 22(6)(c)(iii) amended by No. 49/2011 s. 24(2)(a).

S. 22(6)(d) inserted by No. 49/2011 s. 24(2)(b).

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S. 22(7)(8) repealed by No. 49/2011 s. 24(3).

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S. 22(9)(10) inserted by No. 19/2010 s. 48, repealed by No. 49/2011 s. 24(3).

22A Offences relating to operation of bus service required to be registered

S. 22A inserted by No. 49/2011 s. 25.

- (1) An operator of a bus service which is not a commercial bus service or a local bus service must not operate the bus service unless the operator is registered.

Penalty: In the case of a natural person,
60 penalty units.

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

- (2) A registered bus operator must comply with the conditions specified in section 22(6).

Penalty: In the case of a natural person,
60 penalty units.

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

- (3) A bus operator who is registered in respect of a commercial minibus service must ensure that a person driving a bus for that bus service is the holder of a driver accreditation under Division 5 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** to drive that bus.

Penalty: 60 penalty units.

- (4) A registered bus operator must ensure that a person driving a motor vehicle that is a bus for the bus service in respect of which the operator is registered holds an appropriate driver licence for the category of motor vehicle that person is driving for the registered bus operator.

Penalty: 60 penalty units.

- (5) In subsection (4)—

appropriate driver licence, for a category of motor vehicle, means—

- (a) if the bus service is a community and private bus service and the registered bus operator has been given permission under section 22(5A) to use drivers who hold a probationary driver licence for that service—

- (i) a full driver licence for that category of motor vehicle; or
(ii) a probationary driver licence for that category of motor vehicle; or

- (iii) a driver licence issued in another jurisdiction that is equivalent to a licence specified in subparagraph (i) or (ii);
- (b) in any other case—
 - (i) a full driver licence for that category of motor vehicle; or
 - (ii) a driver licence issued in another jurisdiction that is equivalent to the licence specified in subparagraph (i);

full driver licence has the same meaning as it has in the **Road Safety Act 1986**;

probationary driver licence has the same meaning as it has in the **Road Safety Act 1986**.

23 Registration or accreditation of taxi-cab that is a bus

- (1) This section applies to a taxi-cab which—
 - (a) is licensed to operate as a taxi-cab; and
 - (b) is a bus specified in paragraph (a) of the definition of *bus*; and
 - (c) the operator proposes to use the taxi-cab to provide a bus service.
- (2) The operator of a taxi-cab must, depending on the kind of bus service proposed, apply for registration or accreditation.
- (3) In considering an application to which this section applies, the Safety Director may have regard to the conditions of the licence to operate as a taxi-cab under the **Transport (Compliance and Miscellaneous) Act 1983** and may—

S. 23(3)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 4.3) (as
amended by
No. 45/2010
s. 22).

- (a) impose different conditions in respect of the registration or accreditation as the Safety Director considers appropriate in the circumstances;
- (b) exempt the operator from some or all conditions that would otherwise be imposed for the purposes of accreditation under this Part.
- (4) In determining conditions which are to apply under subsection (3), the Safety Director must consult with the licensing authority under the **Transport (Compliance and Miscellaneous) Act 1983**.

S. 23(4)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 4.3) (as
amended by
No. 45/2010
s. 22).

Division 2—Accreditation

24 Offence for operator to operate commercial bus service or local bus service unless accredited

An operator of a commercial bus service or a local bus service must not operate the commercial bus service or local bus service unless the operator is accredited under this Part.

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

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

25 Application for accreditation

- (1) An operator may apply to the Safety Director for accreditation to operate a commercial bus service or local bus service specified in the application.
- (2) An application must—
 - (a) be made in a manner and form determined by the Safety Director;

S. 25(2)
substituted by
No. 19/2010
s. 49.

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- (b) be accompanied by—
 - (i) the application fee;
 - (ii) evidence, as required by the regulations, that each relevant person satisfies the requirements for accreditation;
 - (c) in the case of an application by a person that is not a natural person, nominate at least one relevant person as the responsible person;
 - (d) be accompanied by any other matter that is required by the regulations.
- (3) The Safety Director may require an applicant to—
- (a) supply further information specified by the Safety Director;
 - (b) verify, by statutory declaration, information supplied for the purposes of the application.
- (4) The application, and any further information supplied by the applicant under subsection (3), must be signed in accordance with subsection (5) and declared by each signatory to be true and correct.
- (5) The application must be signed—
- (a) if the applicant is a body corporate—
 - (i) being a company within the meaning of the Corporations Act, in accordance with section 127 of that Act;
 - (ii) in any other case, by each director, or each member of the committee of management, of the body corporate;
 - (b) if the applicant is an unincorporated association or body, by each member of the committee of management of the association or body;
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- (c) if the applicant is a partnership, by each partner;
- (d) if the applicant is a natural person, by that person.
- (6) In addition, each signatory referred to in subsection (5) must declare that he or she is not a person who, under Part 2D.6 of the Corporations Act, is disqualified from managing corporations.
- (7) In the case of an application by a person that is not a natural person, the Safety Director is entitled to communicate with the responsible person in relation to the application.

26 Criteria on which accreditation application to be assessed

- (1) Subject to Division 3, the Safety Director must accredit the operator of a commercial bus service or local bus service if the Safety Director is satisfied that the applicant has, and will continue to have, the competence and capacity to operate a commercial bus service or local bus service safely.
- (2) In determining whether an applicant has, and will continue to have, the competence and capacity to operate a commercial bus service or local bus service safely, the Safety Director must have regard to—
 - (a) whether the applicant or the responsible person has completed an approved training course;
 - (b) any matters prescribed for the purposes of this section;

- (c) any matters declared by the Safety Director and published in the Government Gazette.

Note

See Division 6 for criteria in respect of applications made by operators with accreditation under a corresponding law.

- (3) The Safety Director may approve training courses for the purposes of this Act.

Division 3—Accreditation refusal

27 Accreditation application to be refused in certain circumstances

S. 27
amended by
No. 19/2010
s. 50(2) (ILA
s. 39B(1)).

- (1) The Safety Director must refuse to accredit an operator of a commercial bus service or a local bus service if the Safety Director believes on reasonable grounds that—

- (a) the applicant or a relevant person—

S. 27(a)
amended by
No. 19/2010
s. 50(1).

- (i) has been found guilty of a tier 1 offence (other than a specified indictable fraud or dishonesty offence) at any time before the application for accreditation; or

S. 27(1)(a)(i)
substituted by
No. 49/2011
s. 29.

- (ia) has been found guilty in the 10 years before the application for accreditation of a tier 1 offence that is a specified indictable fraud or dishonesty offence; or

S. 27(1)(a)(ia)
inserted by
No. 49/2011
s. 29.

- (ii) is a person who is subject to—

- (A) reporting obligations referred to in section 12(1)(a) of the **Working with Children Act 2005**; or

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- (B) an order referred to in section 12(1)(b) of the **Working with Children Act 2005**; or
- (b) the applicant has previously been accredited to operate a bus service but the accreditation was cancelled and the applicant is disqualified from obtaining accreditation for a commercial bus service or local bus service; or
- (c) if the applicant is a natural person, the applicant is an insolvent under administration within the meaning of the Corporations Act; or
- (d) if the applicant is a corporation—
- (i) a receiver or receiver and manager, within the meaning of the Corporations Act, has been appointed in relation to the applicant; or
 - (ii) the applicant has been placed in administration under the Corporations Act or under the law of any place outside Australia; or
 - (iii) a court has made an order under the Corporations Act for the winding up of the applicant.
- (2) The Safety Director must not refuse to accredit an operator of a commercial bus service or local bus service on a ground referred to in subsection (1)(a) if a decision to refuse accreditation in respect of that operator has previously been overturned by VCAT.

S. 27(2)
inserted by
No. 19/2010
s. 50(2).

28 Accreditation may be refused in certain circumstances

- (1) The Safety Director must refuse to accredit the operator of a commercial bus service or local bus service if the Safety Director believes on reasonable grounds that the applicant for accreditation or a relevant person has been found guilty of—

S. 28(1)
amended by
No. 19/2010
s. 51,
substituted by
No. 49/2011
s. 30.

- (a) a tier 2 offence (other than an applicable pre-1973 fraud or dishonesty offence or a specified indictable fraud or dishonesty offence) at any time before the application for accreditation; or
- (b) an applicable pre-1973 fraud or dishonesty offence or a specified indictable fraud or dishonesty offence more than 10 years before the application for accreditation—

unless the applicant can demonstrate to the Safety Director that accreditation is appropriate in the circumstances.

- (2) The Safety Director may refuse to accredit an operator of a commercial bus service or local bus service if the Safety Director believes on reasonable grounds that—

- (a) the applicant or a relevant person has been found guilty of a tier 3 offence; or

S. 28(2)(a)
amended by
No. 19/2010
s. 51.

- (b) the applicant for accreditation to operate the commercial bus service or local bus service has contravened a condition of accreditation held, or previously held, by the applicant to operate a commercial bus service or local bus service.

S. 29(a)
amended by
No. 19/2010
s. 52.

29 Decision on application may be postponed

The Safety Director may postpone his or her decision on whether to accredit the operator of a commercial bus service or local bus service if—

- (a) the applicant or a relevant person has been charged with a disqualifying offence; and
- (b) the charge has not been finally disposed of; and
- (c) the Safety Director believes that a finding of guilt would be relevant to his or her decision.

30 Disqualification from ability to apply for accreditation

- (1) If the Safety Director has refused an application for accreditation, the Safety Director may determine that the applicant is disqualified from applying for accreditation for the period determined by the Safety Director.
- (2) The period determined by the Safety Director under subsection (1) must not exceed 5 years.

31 Notification and reasons to be given if accreditation refused

- (1) If the Safety Director refuses to accredit the operator of a commercial bus service or local bus service, the Safety Director must—
 - (a) notify the applicant—
 - (i) of that refusal; and
 - (ii) if the Safety Director has made a determination under section 30, of the disqualification; and
 - (iii) that the applicant has a right to seek review of the Safety Director's decision under Part 6; and

- (b) give the applicant a statement of reasons for the refusal, and if section 30 applies, for the disqualification.
- (2) A notification under subsection (1)(a) and a statement of reasons under subsection (1)(b) must be—
 - (a) in writing; and
 - (b) given to the applicant as soon as practicable after the Safety Director makes his or her decision.

Division 4—Provisions relating to accreditation

32 Classes of accreditation

The Safety Director may determine different classes of accreditation which are to apply in respect of different types of commercial bus service or local bus service.

33 Issue of certificate of accreditation

- (1) If the Safety Director grants an application for accreditation, the Safety Director must allocate an accreditation number to the accredited bus operator and issue a certificate of accreditation to the accredited bus operator which—
 - (a) is in the form approved by the Safety Director; and
 - (b) specifies—
 - (i) the accreditation number allocated to the accredited bus operator;
 - (ii) the name and contact details of the accredited bus operator;
 - (iii) the name and contact details of the responsible person;

S. 33(1)(b)(iii)
amended by
No. 19/2010
s. 53.

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- (iv) the class of accreditation;
 - (v) any conditions to which the accreditation is subject;
 - (vi) if the accreditation is for a fixed period, the date of expiry;
 - (vii) any additional information that the Safety Director considers appropriate.
- (2) The Safety Director may, on the application of an accredited bus operator accompanied by any reasonable fee determined by the Safety Director, issue a replacement certificate of accreditation if the Safety Director is satisfied, whether on the production of a statutory declaration or otherwise, that the certificate last issued to the accredited bus operator has been lost, stolen or destroyed.
- (3) An accredited bus operator who has made an application under subsection (2) on the ground that a certificate has been lost or stolen and who subsequently recovers the lost or stolen certificate must, within 14 days after the day on which the certificate is recovered—
- (a) notify the Safety Director of the recovery; and
 - (b) return the recovered certificate to the Safety Director unless informed by the Safety Director that it is not necessary to do so.

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

34 Accreditation granted subject to conditions

- (1) An accreditation granted to the operator of a commercial bus service or local bus service is subject to—
 - (a) the conditions specified in section 35;
 - (b) any prescribed conditions;
 - (c) any other conditions imposed by the Safety Director.
- (2) The Safety Director may, if the Safety Director considers it necessary or desirable to ensure safety, impose conditions on accreditation that are—
 - (a) general conditions declared by the Safety Director; or
 - (b) applicable to the operation of certain classes of commercial bus service or local bus service; or
 - (c) imposed on a case by case basis.
- (3) If the Safety Director intends to impose general conditions of accreditation under subsection (2)(a) or (2)(b), the Safety Director must—
 - (a) advise operators and sectors of the industry that will be affected by the conditions, if declared, of the proposed conditions; and
 - (b) provide those operators and sectors with an opportunity to make a submission in relation to the proposed conditions.
- (4) The Safety Director must have regard to any submissions received under subsection (3) before declaring the general conditions.
- (5) The Safety Director must publish any general conditions that he or she has declared in the Government Gazette.

35 Mandatory conditions of accreditation

An accreditation granted under this Part is subject to the following conditions—

S. 35(a)
amended by
No. 6/2010
s. 203(1)(Sch. 6
item 4.4) (as
amended by
No. 45/2010
s. 22).

- (a) a person must not be permitted to drive a bus for a commercial bus service or local bus service unless that person holds a driver accreditation under Division 6 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**;
- (b) an accredited bus operator must use buses that—
 - (i) comply with the vehicle standards applicable to buses under the **Road Safety Act 1986**; and
 - (ii) comply with prescribed requirements;
- (c) an accredited bus operator must—
 - (i) keep the certificate of accreditation given to the operator; and
 - (ii) produce that certificate if the Safety Director requests that the certificate be produced;
- (d) if the responsible person ceases to be an employee or officer of the accredited bus operator, the accredited bus operator must ensure that—
 - (i) another employee or officer of the operator completes an approved training course and that the Safety Director is advised of who this employee or officer is; or

- (ii) if it is not practicable for another employee or officer of the accredited bus operator to complete an approved training course before the responsible person ceases to be an employee or officer of the accredited bus operator, the accredited bus operator may seek the approval of the Safety Director to allow another person to complete an approved training course at a later date.

36 Offence to fail to comply with conditions

An accredited bus operator must comply with the conditions to which the accreditation is subject.

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

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

37 Time within which Safety Director must make decision whether to accredit

- (1) Subject to this section, the Safety Director must decide whether to accredit the operator of a commercial bus service or local bus service within 3 months after receiving an application from the operator.
- (2) The Safety Director may, before the expiry of the period specified in subsection (1), decide to extend the period within which he or she may decide whether to accredit the operator.
- (3) If the Safety Director decides to extend the period under subsection (2), the Safety Director must notify the operator of that decision and the new period within which the Safety Director intends to make his or her decision.
- (4) A notification under subsection (3) must be in writing.

38 How long accreditation lasts

- (1) An accreditation remains in force until it—
 - (a) is cancelled or surrendered; or
 - (b) expires.
- (2) The Safety Director may grant a temporary accreditation for a period of less than 12 months.

39 Accreditation cannot be transferred

- (1) An accreditation—
 - (a) is personal to the accredited bus operator;
 - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the accredited bus operator;
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of an accreditation and any other purported dealing with an accreditation by the accredited bus operator who holds it is of no effect.
- (3) This section has effect despite anything in any Act (other than the Charter of Human Rights and Responsibilities) or rule of law to the contrary.

Division 5—Variation and surrender of accreditation

40 Accredited bus operator may apply for variation

- (1) An accredited bus operator may apply to the Safety Director to—
 - (a) vary—
 - (i) a condition of an accreditation;
 - (ii) the class of bus service for which the operator is accredited to operate;

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- (iii) the scope of the accreditation by adding a bus service or class of bus service to the accreditation;
 - (iv) the expiry date that may apply to the accreditation by changing that date or omitting that date;
 - (b) revoke a condition of an accreditation.
 - (2) An application must—
 - (a) be in writing; and
 - (b) set out the reasons for the variation or revocation of the condition.
 - (3) The Safety Director must consider an application he or she receives under this section within 3 months of receiving the application.
 - (4) The Safety Director may, as the case requires—
 - (a) grant or refuse to grant the variation;
 - (b) agree or refuse to agree to the revocation;
 - (c) make any variation to the accreditation that the Safety Director considers appropriate.
 - (5) If the Safety Director refuses to grant a variation or refuses to agree to a revocation, the Safety Director must—
 - (a) notify the accredited bus operator—
 - (i) of that refusal; and
 - (ii) that the accredited bus operator has a right to seek review of the Safety Director's decision under Part 6; and
 - (b) give the accredited bus operator a statement of reasons for the refusal.
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(6) A notification under subsection (5)(a) and a statement of reasons under subsection (5)(b) must be—

- (a) in writing; and
- (b) given to the accredited bus operator as soon as practicable after the Safety Director makes his or her decision to refuse to grant the variation or to agree to the revocation (as the case requires).

41 Accredited bus operator to notify of relevant changes in circumstances

(1) If a relevant change in circumstances occurs with respect to an accreditation or an accredited bus operator, the accredited bus operator must notify the Safety Director of the change in writing within 7 days after becoming aware of the change.

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

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

(2) For the purposes of subsection (1), a relevant change in circumstances is a change in circumstances—

- (a) that has resulted or will result in any particular set out in—
 - (i) the application for the accreditation or in any document that accompanied that application or was supplied in connection with it; or
 - (ii) the certificate of accreditation—becoming inaccurate or inapplicable; or

- (b) with respect to the manner of operating the commercial bus service or local bus service that has resulted or will or may result in the accredited bus operator not being able to comply with a requirement under this Act; or
 - (c) that has resulted or will or may result in a ground for refusal of accreditation referred to in section 27 or 28 becoming applicable to the accredited bus operator; or
 - (d) with respect to the number of buses or bus services being operated by the accredited bus operator.
- (3) If the relevant change in circumstances has resulted or will result in any particular set out in the certificate of accreditation becoming inaccurate or inapplicable, the accredited bus operator must surrender the certificate to the Safety Director when the accredited operator notifies the Safety Director of the change under subsection (1).
- Penalty: In the case of a natural person,
240 penalty units;
In the case of a body corporate,
1200 penalty units.
- (4) If a certificate of accreditation is surrendered to the Safety Director in accordance with subsection (3), the Safety Director may amend the certificate or issue a replacement certificate for the remainder of the period of the accreditation.
- (5) The Safety Director may require a relevant person to provide any other information or comply with any other requirement (including a criminal records check) that the Safety Director reasonably requires to decide whether or not, because of a relevant change of circumstances, the accredited

**S. 41(5)
amended by
No. 19/2010
s. 54.**

bus operator is a suitable person to continue to be accredited.

- (6) A person must not fail to comply with a requirement under subsection (5).

Penalty: 1200 penalty units.

42 Variation of accreditation on Safety Director's own initiative

- (1) The Safety Director may at any time on his or her own initiative—
- (a) vary or revoke a condition of an accreditation; or
 - (b) impose a new condition; or
 - (c) vary the class of an accreditation; or
 - (d) vary the scope of an accreditation by adding a bus service or class of bus service to the accreditation.
- (2) Before taking action under this section, the Safety Director must—
- (a) give the accredited bus operator written notice of the action that the Safety Director proposes to take; and
 - (b) allow the accredited bus operator to make written representations about the intended action within 10 business days (or any other period that the Safety Director and the accredited bus operator agree to).
- (3) Subsection (2) does not apply if the Safety Director considers it necessary to take immediate action in the interest of public safety.
- (4) If the Safety Director takes immediate action under this section, the Safety Director must notify the accredited bus operator within 48 hours of making the decision.

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- (5) The Safety Director must—
- (a) give the accredited bus operator—
 - (i) details of any action taken under subsection (1); and
 - (ii) details of any change to the conditions of the accreditation that are required as a result of any amendment to the regulations; and
 - (iii) a statement of reasons for any action taken under subsection (1); and
 - (b) notify the accredited bus operator that the operator has a right to seek review of the Safety Director's decision under Part 6.
- (6) The Safety Director must give the details, the statement of reasons and notice under subsection (5) in writing.

43 Surrender of accreditation

- (1) An accredited bus operator may request the Safety Director to consent to the surrender of the accreditation to operate a commercial bus service or local bus service.
- (2) A request must be in writing.
- (3) On receipt of a request, the Safety Director may consent to the surrender of the accreditation.
- (4) If the Safety Director refuses to consent to the surrender of an accreditation, the Safety Director must—
 - (a) notify the accredited bus operator—
 - (i) of that refusal; and
 - (ii) that they have a right to seek review of the Safety Director's decision under Part 6; and

- (b) give the accredited bus operator a statement of reasons for the refusal.
- (5) A notification under subsection (4)(a) and statement of reasons under subsection (4)(b) must be—
 - (a) in writing; and
 - (b) given to the accredited bus operator as soon as practicable after the Safety Director makes his or her decision to refuse consent to the surrender of the accreditation.

Division 6—Bus services under corresponding law

44 Unregistered and unaccredited operators from outside Victoria

A vehicle that is permitted under the laws of another State or Territory to be operated to provide the equivalent of a bus service may operate on a highway, if, in accordance with those laws—

- (a) it is used to pick up a passenger in that other State or Territory and take the passenger to a destination in Victoria, and it operates on the highway solely for that purpose; or
- (b) having been pre-booked to do so, it is used to pick up a passenger in Victoria for the purpose of taking the passenger to a destination in that other State or Territory, and it operates on the highway solely for that purpose; or
- (c) it is used to pick up a passenger in a State or Territory other than Victoria and to take the passenger to a destination in a State or Territory other than Victoria, and it operates on the highway solely for that purpose.

45 Criteria on which accreditation application of operator accredited under corresponding law to be assessed

- (1) This section applies if the Safety Director receives an application for accreditation under Division 2 from an operator that is accredited to operate bus services in another State or Territory of the Commonwealth under a corresponding law.
- (2) If this section applies, the Safety Director may accredit the operator of a commercial bus service or local bus service if the Safety Director is satisfied that the applicant is accredited in another State or Territory of the Commonwealth under a corresponding law to operate bus services of a kind similar to a commercial bus service or local bus service in that State or Territory.
- (3) If the Safety Director accredits an operator specified in subsection (2) to operate a commercial bus service or local bus service—
 - (a) any conditions imposed on the accreditation of the operator under the corresponding law are taken to be conditions imposed by the Safety Director under Division 4 for the purposes of accreditation under this Part;
 - (b) any mandatory conditions that would normally apply to the accreditation under Division 4, apply only to the extent that they are consistent with the conditions imposed on the accreditation of the operator under the corresponding law.
- (4) Despite subsection (3), the Safety Director may—
 - (a) determine that conditions imposed on the accreditation of the operator under the corresponding law do not apply for the purposes of accreditation under this Act;

- (b) determine that the mandatory conditions specified under Division 4 apply to the operator regardless of whether those conditions are consistent with the conditions imposed on the accreditation of the operator under the corresponding law;
- (c) make any other determination in respect of the conditions that are to apply to the accreditation.

46 Notification of changes in circumstances in respect of accreditation under corresponding law

- (1) This section applies to an accredited bus operator that is also accredited in another State or Territory of the Commonwealth under a corresponding law to operate bus services of a similar kind to a commercial bus service or local bus service in that State or Territory.
- (2) If a relevant change in circumstances occurs with respect to the accreditation of an accredited bus operator under a corresponding law, the accredited bus operator must notify the Safety Director of the change in writing within 7 days after becoming aware of the change.
- (3) For the purposes of subsection (2), a relevant change in circumstances is—
 - (a) if the accredited bus operator has become subject to disciplinary action in respect of the accreditation under the corresponding law, including the suspension or cancellation of the accreditation under the corresponding law; or
 - (b) if additional conditions are imposed on the accreditation of the accredited bus operator under the corresponding law.

**47 Co-ordination between Safety Director and
corresponding Bus Safety Regulator**

- (1) This section applies if the Safety Director receives an application for accreditation under Division 2, or for variation of accreditation or the conditions of accreditation under Division 5, that indicates that the applicant is accredited, or is seeking accreditation, in another State or a Territory of the Commonwealth under a corresponding law to operate bus services of a similar kind to those the subject of the application under Division 2 or Division 5.
- (2) The Safety Director must, as soon as possible and before deciding whether or not to grant the application, consult with the relevant corresponding Bus Safety Regulator, or Regulators, in relation to the application with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.
- (3) The Safety Director, in complying with subsection (2), must take into account any guidelines prepared under subsection (5).
- (4) If the Safety Director does not, in relation to an application, act consistently with the provisions of any guidelines prepared under subsection (5), the Safety Director must give the applicant reasons for not so acting.
- (5) The Minister may prepare guidelines about the manner of the consultation the Safety Director is required to undertake under subsection (2).

Division 7—Suspension, cancellation and other disciplinary action

48 Power of immediate suspension

- (1) The Safety Director may, subject to and in accordance with the regulations (if any), immediately suspend an accreditation if the Safety Director considers it necessary to do so.
- (2) The Safety Director may immediately suspend an accreditation under this section without holding an inquiry under section 50.
- (3) A suspension under this section may be—
 - (a) for a specified period;
 - (b) until a specified event;
 - (c) if the accredited bus operator or a relevant person has been charged with a disqualifying offence and has been suspended because of that charge, until the charge has been finally disposed of;
 - (d) if the accredited bus operator has an accreditation under a corresponding law that has been suspended or cancelled, until the interstate accreditation is reinstated;
 - (e) until a further determination is made by the Safety Director.
- (4) If the accreditation of an accredited bus operator has been suspended, the operator may, by notice served on the Safety Director, require the Safety Director to hold an inquiry under section 50.
- (5) The Safety Director must commence an inquiry under section 50 within 7 days after the service on him or her of a notice under subsection (4).

S. 48(3)(c)
amended by
No. 19/2010
s. 55.

- (6) If an inquiry is to be held under section 50, the Safety Director may determine that a suspension of an accreditation continues to have effect until the completion of that inquiry.
- (7) If an inquiry is held under section 50, a suspension under this section, if then still in effect, ceases to have effect on the completion of that inquiry.
- (8) Nothing in this section limits any power of the Safety Director under section 50.

49 Mandatory cancellation

- (1) The Safety Director must cancel the accreditation of an accredited bus operator if the accredited bus operator or a relevant person in relation to that accredited bus operator has been found guilty of a tier 1 offence or becomes subject to the reporting obligations, or an order, referred to in section 27(a)(ii).
- (2) The Safety Director must not cancel an accreditation of an accredited bus operator on a ground referred to in subsection (1) if a decision to refuse accreditation or a decision to cancel an accreditation in respect of that accredited bus operator on that ground has previously been overturned by VCAT.

S. 49
amended by
No. 19/2010
s. 56
(ILA s. 39B(1)).

S. 49(2)
inserted by
No. 19/2010
s. 56(2).

50 Disciplinary action against an accredited bus operator

- (1) The Safety Director may hold an inquiry for the purpose of determining whether proper cause exists for taking disciplinary action against an accredited bus operator.
- (2) There is proper cause for taking disciplinary action against the accredited bus operator if the operator or a relevant person in relation to that accredited bus operator (as the case requires)—

S. 50(2)
amended by
No. 19/2010
s. 57(a).

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- (a) has contravened this Act or the regulations;
 - (b) has not complied with a condition of accreditation;
 - (c) is found guilty or convicted of a tier 2 or tier 3 offence;
 - (d) has obtained the accreditation improperly;
 - (e) has not paid any accreditation fee.
- (3) If, following an inquiry, the Safety Director is satisfied proper cause for taking disciplinary action against the accredited bus operator exists, the Safety Director may do one or more of the following—
- (a) reprimand the accredited bus operator;
 - (b) impose one or more new conditions of accreditation;
 - (c) suspend the accreditation for a specified period or until a specified event or until a further determination is made by the Safety Director;
 - (d) impose or vary an expiry date on the accreditation;
 - (e) vary the conditions of, or scope of the accreditation;
 - (f) cancel the accreditation and, if reasonable cause exists, disqualify the operator from applying for accreditation—
 - (i) permanently; or
 - (ii) for a specified period or until a specified event.
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- (4) If the cause for taking disciplinary action is that the accredited bus operator or a relevant person has been found guilty of a tier 2 offence, the accredited bus operator must show cause why the accreditation should not be cancelled.

S. 50(4)
amended by
No. 19/2010
s. 57(b).

51 Procedure and powers concerning disciplinary inquiries

- (1) In exercising his or her powers under section 50, the Safety Director—
- (a) must act fairly and according to equity and good conscience without regard to technicalities or legal forms; and
 - (b) is not required to conduct himself or herself in a formal manner; and
 - (c) is not bound by rules or practice as to evidence but may inform himself or herself in relation to any matter in any manner that he or she thinks fit.
- (2) For the purpose of, and in connection with, any inquiry under section 50, the Safety Director has the powers conferred by sections 14, 15, 16, 20, 20A and 21A of the **Evidence (Miscellaneous Provisions) Act 1958** on a board appointed by the Governor in Council and those sections apply as if the Safety Director was the sole member of the board.
- (3) The procedure of the Safety Director on or in connection with an inquiry under section 50 is in his or her discretion.

S. 51(2)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 8).

52 Effect of suspension

A person whose accreditation is suspended—

- (a) is not accredited during the period of suspension; and

- (b) is disqualified from applying for an accreditation of a kind for which the person was suspended.

Division 8—Miscellaneous

53 Operator to return certificate and plates when accreditation cancelled or surrendered

An operator must return to the Safety Director the certificate of accreditation and the number plates issued to the operator on accreditation, if the accreditation of the operator is cancelled or surrendered under this Act.

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

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

54 Safety Director may request information

- (1) The Safety Director may, within a period of time specified by the Safety Director, request an accredited bus operator or registered bus operator to give the Safety Director information relating to the safety of the bus service operated by the accredited bus operator or registered bus operator.

Example

Information relating to the safety of a bus service may include details relating to any incidents that may have occurred, any hazards that may have been identified or the type of risk management activities undertaken by an accredited bus operator or registered bus operator.

- (2) An accredited bus operator or registered bus operator must comply with a request made by the Safety Director under subsection (1).

Penalty: 1200 penalty units.

55 Communication with responsible person

If an accredited bus operator is not a natural person, the Safety Director may communicate at any time in relation to the accreditation with the responsible person.

PART 5—ALCOHOL AND DRUG MANAGEMENT POLICY

56 Alcohol and drug management policy

- (1) This section applies to accredited bus operators and registered bus operators.
- (2) An operator to whom this section applies must develop, maintain and implement an alcohol and drug management policy that—
 - (a) is developed in consultation with bus safety workers who are employees, or contractors, of the operator for the purposes of operating the bus service; and
 - (b) provides for the matters specified in section 57.

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

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

57 Form and content of alcohol and drug management policy

- (1) An alcohol and drug management policy must—
 - (a) be in writing; and
 - (b) specify that a driver of a bus must not have alcohol or drugs present in his or her blood or breath immediately before, or while, driving a bus; and
 - (c) comply with any guidelines regarding the form and content of alcohol and drug management policies issued by the Safety Director.

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- (2) If an alcohol and drug management policy provides for testing of the presence of alcohol or drugs in the blood or breath of a bus safety worker employed or contracted by the accredited bus operator or registered bus operator, the policy must—
- (a) specify circumstances in which a bus safety worker may be tested for the presence of alcohol or drugs in his or her blood or breath;
 - (b) specify the testing procedures for detecting alcohol or drugs in a person's blood or breath;
 - (c) specify the persons who may conduct the tests;
 - (d) specify how and where the tests are to be stored, handled or destroyed;
 - (e) specify that a test for the presence of alcohol or drugs may not be conducted more frequently than—
 - (i) an hour before the bus safety worker is to carry out bus safety work or while the bus safety worker is carrying out bus safety work; or
 - (ii) if there is reasonable cause to test the bus safety worker at another time including—
 - (A) that the bus safety worker has been involved in an accident or incident;
 - (B) that there is reason to believe the bus safety worker is impaired by alcohol or drugs;
 - (C) that in the interests of safety, the bus safety worker ought to be tested;
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- (f) recognise the purpose of testing for presence of alcohol or drugs;
 - (g) specify measures to ensure that the results of any tests conducted pursuant to the policy are treated confidentially.
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PART 6—REVIEW OF DECISIONS

58 Review by VCAT

- (1) A person may apply to VCAT for review of a decision by the Safety Director to—
- (a) refuse accreditation to an operator to operate a commercial bus service or local bus service, including a refusal made by the Safety Director under section 27;
 - (b) impose a condition on the accreditation of an accredited bus operator;
 - (c) not vary the accreditation following a request for variation by the accredited bus operator;
 - (d) vary the accreditation of an accredited bus operator;
 - (e) suspend or cancel the accreditation of an accredited bus operator;
 - (f) disqualify the operator from applying for accreditation;
 - (g) refuse to give, or revoke, permission under section 22(5A) to use drivers who hold probationary driver licences to drive buses for a registered bus service.
- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the person is notified of the decision; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is

S. 58(1)(f)
amended by
No. 49/2011
s. 26(a).

S. 58(1)(g)
inserted by
No. 49/2011
s. 26(b).

informed under section 46(5) of that Act that a statement of reasons will not be given.

- (3) In reviewing a decision of the Safety Director made under section 27 or 49, VCAT may—
- (a) consider in detail the disqualifying offence that required the Safety Director to make the decision being reviewed; and
 - (b) vary, uphold or dismiss the decision.
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PART 7—CODES OF PRACTICE

59 Codes of practice

- (1) For the purposes of providing practical guidance to accredited bus operators and any other person who may be placed under an obligation by or under this Act, the Minister may, subject to section 63, approve one or more codes of practice.
- (2) A code of practice—
 - (a) may consist of any code, standard, rule, specification or provision relating to any aspect of the bus service; and
 - (b) may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.
- (3) The approval of a code of practice takes effect on the day on which notice of the approval is published in the Government Gazette, or any later day specified in the notice.

Note

A code of practice approved under this section is disallowable by either House of Parliament: see section 71.

60 Revisions to approved codes of practice

- (1) Subject to section 63, the Minister may—
 - (a) approve any revision of the whole, or any part, of an approved code of practice;
 - (b) revoke the approval of a code of practice.
- (2) The approval of a revision to an approved code of practice takes effect on the day on which notice the approval of the revision is published in the Government Gazette, or on any later day specified in the notice.

61 Revocation of approvals of codes of practice

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

62 Availability of approved codes of practice

The Minister must cause—

- (a) a current copy of every approved code of practice; and
- (b) a copy of every document applied, incorporated or referred to in an approved code of practice (in the form in which that document has effect in the approved code of practice)—

to be made available for inspection by members of the public without charge at the office of the Safety Director during normal office hours.

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

Before the Minister approves a code of practice or any revision of the whole, or any part, of an approved code of practice under section 59 or 60, the Minister must consult with persons or bodies that may be affected by the code of practice, or revision of an approved code of practice, to be approved.

64 Effect of approved code of practice

A person is not liable to any civil or criminal proceedings by reason only that he, she or it has failed to observe any provision of an approved code of practice.

Note

A person who complies with a compliance code may however, be taken to have complied with this Act (see section 70).

PART 8—GENERAL

Division 1—General

65 Notification of incidents

An accredited bus operator or registered bus operator (as the case requires) must notify the Safety Director of prescribed incidents in accordance with the regulations.

Penalty: 50 penalty units.

66 Offence to provide false or misleading information

- (1) A person must not either deliberately or recklessly—
- (a) provide any information under this Act that is false or misleading in a material detail; or
 - (b) provide under this Act any document that is false or misleading in a material detail; or
 - (c) make any representation under this Act that provides a false or misleading impression of a material detail; or
 - (d) fail to include any material matter in any information or document provided under this Act if the failure causes the information or document to be false or misleading; or
 - (e) engage in conduct, or a course of conduct, for a purpose that is relevant to this Act, if that conduct is misleading or deceptive, or is likely to mislead or deceive.

Penalty: 600 penalty units, in the case of a body corporate;

Level 9 imprisonment (6 months maximum) or 120 penalty units or both, in any other case.

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- (2) Subsection (1)(b) does not apply if, at the time the person provided the document to the person or body to whom the document was provided, the person either—
- (a) informed that person or body that the record contained a material detail that was false or misleading and specified in what respect it was false or misleading; or
 - (b) took all reasonable steps to provide that person or body with that information.
- (3) A reference in this section to "under this Act" or "relevant to this Act" is to be read as including a reference to any purpose associated with this Act or the regulations, and regardless of whether the information, document, representation or conduct was required to be provided or was provided voluntarily.

67 Safety Director may set accreditation fees

- (1) The Safety Director may, by notice published in the Government Gazette, set—
- (a) application fees;
 - (b) annual accreditation fees;
 - (c) inspection fees.
- (2) In setting fees, the Safety Director may provide for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees;

S. 67(1)(a)
amended by
No. 19/2010
s. 58.

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- (e) the payment of fees either generally or under specified conditions or in specified circumstances, including conditions or circumstances relating to the late lodgement of an application, or the late payment of fees under the Act;
 - (f) impose different fees on accredited bus operators, having regard to the nature, size and service being provided by the accredited bus operator.
- (3) The Safety Director may provide for the reduction or waiver of fees set under subsection (1) in a particular case or a particular class of case if the Safety Director is satisfied that there are reasonable grounds to provide for the reduction, or the waiver, of fees.
- (4) A fee set by the Safety Director is not limited to an amount that is related to the cost of providing a service.
- (5) If the Safety Director intends to set fees under this section, the Safety Director must—
- (a) advise operators and sectors of the industry that will be affected by the fees, if set, of the proposed fees; and
 - (b) provide those operators and sectors with an opportunity to make a submission in relation to the proposed fees.
- (6) The Safety Director must have regard to any submissions received under subsection (5) before setting the proposed fees.

68 Imputing conduct to bodies corporate

For the purposes of this Act and the regulations, any conduct engaged in or on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

69 Liability of officers of bodies corporate

- (1) If a body corporate (including a body corporate representing the Crown) contravenes a provision of this Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.
- (2) An offence against subsection (1) is summary or indictable in nature according to whether the offence constituted by the contravention by the body corporate is summary or indictable.
- (3) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to—
 - (a) what the officer knew about the matter concerned; and
 - (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and

s. 69A

- (c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and
- (d) any other relevant matter.
- (4) An officer of a body corporate may be convicted or found guilty of an offence in accordance with subsection (1) whether or not the body corporate has been convicted or found guilty of the offence committed by it.
- (5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

S. 69A
inserted by
No. 19/2010
s. 59.

69A Liability of officers of partnerships and unincorporated bodies or associations

If—

- (a) this Act imposes a duty on a person or provides that a person is guilty of an offence; and
- (b) the person is a partnership or an unincorporated body or association (including a partnership or an unincorporated body or association representing the Crown)—

the reference to the person is taken to be instead a reference to each officer of the partnership, body or association (as the case may be).

70 Effect of compliance with regulations or approved codes of practice

If—

- (a) the regulations or an approved code of practice make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
- (b) a person complies with the regulations or the approved code of practice to the extent that it makes that provision—

the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

71 Tabling and disallowance of approved codes of practice

- (1) On or before the 6th sitting day after an approved code of practice is published in the Government Gazette, the Minister must ensure that a copy of that code is laid before each House of the Parliament.
- (2) A failure to comply with subsection (1) does not affect the operation or effect of the code of practice but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (3) A code of practice may be disallowed in whole or in part by either House of Parliament.
- (4) Part 5 of the **Subordinate Legislation Act 1994** applies a code of practice as if—
 - (a) a reference in that Part to "statutory rule" were a reference to a code of practice; and

- (b) a reference in section 23(1)(c) of that Act to "section 15(1)" were a reference to subsection (1).
- (5) A reference to a code of practice in this section includes a reference to any amendment to, or revision of the whole or any part of, a code of practice.

Division 2—Regulations

72 General

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing forms to be used for the purposes of this Act;
 - (b) prescribing the keeping and the form of any records or other documents as may be necessary for the administration of this Act;
 - (c) the collection, provision, transfer, disclosure or use of information for the purposes of this Act;
 - (d) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations made under this Act—
 - (a) may be of general or of specially limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by a specified person or specified class of persons;

- (d) may provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such extent as is specified;
- (e) may confer powers or impose duties in connection with the regulations on any specified person or specified class of persons;
- (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time;
- (g) may impose a penalty not exceeding 20 penalty units for any contravention of the regulations.

73 Bus services and bus safety work

- (1) Without limiting the generality of section 72, the regulations may be made for or with respect to—
 - (a) prescribing a class of courtesy bus service to be a non-commercial courtesy bus service;
 - (b) prescribing a class of bus service to be a—
 - (i) commercial bus service; or
 - (ii) courtesy bus service; or

S. 73(1)(d)
substituted by
No. 49/2011
s. 32.

S. 73(1)(e)
substituted by
No. 49/2011
s. 32.

- (iii) hire and drive bus service; or
- (iv) community and private bus service; or
- (v) local bus service;
- (c) prescribing a class of bus service not to be a—
 - (i) commercial bus service; or
 - (ii) courtesy bus service; or
 - (iii) hire and drive bus service; or
 - (iv) community and private bus service; or
 - (v) local bus service;
- (d) prescribing a motor vehicle or each motor vehicle within a class of motor vehicles to be a bus;
- (e) prescribing a motor vehicle or each motor vehicle within a class of motor vehicles not to be a bus;
- (f) prescribing activities to be bus safety work.

74 Safety duties

Without limiting the generality of section 72, the regulations may be made for or with respect to—

- (a) specified safety obligations to be imposed on—
 - (i) operators, bus safety workers and procurers; and
 - (ii) persons who design, determine the location of, construct, install, modify and maintain, bus stopping points or bus stop infrastructure;
- (b) prohibiting specified conduct by—
 - (i) operators, bus safety workers and procurers; and

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- (ii) persons who determine the location of, design, construct, install, modify or maintain, bus stopping points or bus stop infrastructure—
for bus safety purposes;
 - (c) the way in which duties or obligations imposed by this Act or the regulations are performed;
 - (d) regulating or requiring the taking of any action to avoid a hazard or incident in relation to operating bus services;
 - (e) regulating, requiring or prohibiting the taking of any action in the event of an incident in relation to the operation of bus services;
 - (f) regulating the engineering standards and specifications of buses and standards relating to the maintenance of buses, including in relation to safety equipment or devices to be installed on buses;
 - (g) regulating or requiring the examination, testing, maintenance or repair of buses, or equipment in, or on, a bus.

75 Inspections and safety audits

Without limiting the generality of section 72, the regulations may be made for or with respect to—

- (a) bus inspections, including in relation to—
 - (i) the nature of the inspections;
 - (ii) the frequency of the inspections;
 - (iii) the manner in which inspections are to be carried out;

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- (iv) who may conduct the inspections and the qualifications, experience and certifications required by inspectors;
 - (v) the form and content of inspection reports;
 - (vi) circumstances when an inspector cannot conduct an inspection;
 - (b) regulating the manner in which inspectors are to make recommendations to operators including with respect to—
 - (i) the type and nature of recommendations which may be obligatory and require compliance by operators;
 - (ii) the consequences for noncompliance by operators with the recommendations made by inspectors;
 - (iii) the notification of the Safety Director by an operator if an operator is unable to comply with a recommendation;
 - (c) requiring inspectors to notify the Safety Director in prescribed circumstances;
 - (d) prescribing the process by which the Safety Director may impose requirements on operators, which must be complied with, following an inspection, or based on a notification by an inspector or an operator;
 - (e) prescribing the consequences for non-compliance by an operator with a requirement imposed by the Safety Director;
 - (f) regulating the notifications required before a safety audit can be conducted by the Safety Director on an operator;
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- (g) the manner in which a safety audit is to be conducted;
- (h) the requirements the Safety Director may impose on an operator, which must be complied with, following a safety audit.

76 Accreditation and registration

Without limiting the generality of section 72, the regulations may be made for or with respect to—

- (a) the requirements and process to be observed by operators of a bus service applying to be registered;
- (b) the form of a certificate of registration;
- (c) the form of a certificate of accreditation;
- (d) the requirements, manner and process to be observed by operators of a commercial bus service or local bus service applying for accreditation;
- (e) prescribing the form of an application for accreditation;
- (f) prescribing documents and things that must accompany an application for accreditation;
- (g) matters to be considered by the Safety Director when determining an accreditation application;
- (h) prescribing approved training courses that must be completed by an applicant for accreditation or a responsible person;
- (i) prescribing classes of accreditation;
- (j) prescribing conditions of accreditation;
- (k) prescribing registration fees, application fees or accreditation fees.

S. 76(k)
amended by
No. 19/2010
s. 60.

77 Fees

- (1) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
 - (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) scales of fees;
 - (e) the payment of fees either generally or under specified conditions or in specified circumstances, including conditions or circumstances relating to the late lodgement of an application, or the late payment of fees, under this Act;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees.
- (2) If under subsection (1)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
 - (a) in respect of certain matters or transactions or classes of matters or transactions; or
 - (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or

- (e) in respect of any combination of matters, transactions, documents, events or persons—
and may be expressed to apply subject to specified conditions or in the discretion of any specified person.
- (3) A fee that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.

78 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision mentioned in subsection (1) may be retrospective in operation to the commencement of section 78.
- (3) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities) or in any subordinate instrument.
- (4) This section expires on 31 August 2013.

Division 3—Transitional provisions for operators who must be registered or accredited

Pt 8 Div. 3
(Heading and
ss 78A–78D)
inserted by
No. 19/2010
s. 61.

78A Definition

In this Division—

commencement day means 31 December 2010.

S. 78A
inserted by
No. 19/2010
s. 61.

78B Transitional provision for existing bus operators requiring registration from commencement day

- (1) This section applies to a person who was an operator of a bus service immediately before the commencement day and that bus service in respect

S. 78B
inserted by
No. 19/2010
s. 61.

of which the person is the operator, is on and from the commencement day, a bus service that is not a commercial bus service or a local bus service.

- (2) Subject to subsection (3), a person to whom this section applies is not required to comply with section 22 until 31 December 2011.
- (3) A person who is an operator of a bus service to whom this section applies is required to comply with section 22 before 31 December 2011 if the person is served with a notice from the Safety Director requiring the person to register as an operator of a bus service to which section 22 applies.
- (4) A notice served on a person under subsection (3) must—
 - (a) be in writing; and
 - (b) be served by registered or certified post; and
 - (c) state that the person is required to apply for registration under section 22 within the period specified in the notice.
- (5) The period specified in a notice under subsection (4)(c) must not be less than 28 days after the notice is served on the person.

S. 78C
inserted by
No. 19/2010
s. 61.

78C Transitional provision for bus operators no longer required to be accredited from commencement day

Despite the repeal of Part 2 of the **Public Transport Competition Act 1995** by this Act, a person who—

- (a) immediately before the commencement day, was accredited to operate a road transport passenger service within the meaning of the **Public Transport Competition Act 1995**; and

(b) on and after the commencement day—

- (i) is not required to be accredited as an operator of a bus service under Division 2 of Part 4; and
- (ii) is required to be registered as an operator of a bus service under section 22—

continues to be, on and after the commencement day, a person accredited under the **Public Transport Competition Act 1995**, as if Part 2 of that Act had not been repealed, until 31 December 2011 unless that person is registered under section 22 before 31 December 2011.

78D Transitional provision for drivers of commercial passenger vehicles

S. 78D
inserted by
No. 19/2010
s. 61.

- (1) This section applies to a person who was licensed to operate a commercial passenger vehicle immediately before the commencement day under Division 5 of Part VI of the **Transport Act 1983** and the vehicle in respect of which the person is licensed, is on and after the commencement day, a bus.
- (2) A person referred to in subsection (1) is, on and after the commencement day, deemed to comply with this Act and the regulations if the person complies with the conditions of his or her licence issued under Division 5 of Part VI of the **Transport Act 1983** until the earlier of—
 - (a) the person becoming a registered bus operator or an accredited bus operator; or
 - (b) 31 December 2011.

Bus Safety Act 2009
No. 13 of 2009

s. 79

Pt 9
(Headings
and
ss 79–102)
amended by
Nos 68/2009
s. 97(Sch.
item 14.10),
6/2010
s. 203(1)(Sch. 6
items 4.5–4.7)
(as amended
by No. 45/2010
s. 22), 19/2010
ss 62–66),
repealed by
No. 13/2009
s. 102.

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 4 December 2008

Legislative Council: 12 March 2009

The long title for the Bill for this Act was "A Bill for an Act to provide for the safe operation of bus services in Victoria, to amend the **Public Transport Competition Act 1995**, the **Rail Safety Act 2006**, the **Road Safety Act 1986** and the **Transport Act 1983**, to make consequential amendments to certain other Acts and for other purposes."

The **Bus Safety Act 2009** was assented to on 7 April 2009 and came into operation as follows:

Sections 1, 2 and 80 on 8 April 2009: section 2(1); sections 3–79, 81–91, 92(5)–(8), 94–102 on 31 December 2010: section 2(3).

Sections 92(1)–(4) and 93 were never proclaimed, repealed by No. 6/2010 section 203(1)(Schedule 6 item 4.6).

2. Table of Amendments

This Version incorporates amendments made to the **Bus Safety Act 2009** by Acts and subordinate instruments.

Bus Safety Act 2009, No. 13/2009

Assent Date: 7.4.09
Commencement Date: S. 102 on 31.12.11: s. 102
Current State: This information relates only to the provision/s amending the **Bus Safety Act 2009**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 14) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Bus Safety Act 2009**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 8) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Bus Safety Act 2009**

Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009

Assent Date: 15.12.09
Commencement Date: S. 49(3) on 17.12.09: Government Gazette 17.12.09 p. 3339
Current State: This information relates only to the provision/s amending the **Bus Safety Act 2009**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 4), 203(1)(Sch. 6 item 4) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Bus Safety Act 2009**

Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010, No. 19/2010

Assent Date: 18.5.10
Commencement Date: Ss 47–66 on 1.6.10: Government Gazette 20.5.10 p. 988
Current State: This information relates only to the provision/s amending the **Bus Safety Act 2009**

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No. 13 of 2009

Endnotes

**Transport Legislation Amendment (Public Transport Safety) Act 2011,
No. 49/2011**

<i>Assent Date:</i>	22.9.11
<i>Commencement Date:</i>	Ss 24–32 on 5.10.11: Special Gazette (No. 313) 4.10.11 p. 1 (see Erratum: Special Gazette (No. 315) 4.10.11 p. 1)
<i>Current State:</i>	This information relates only to the provision/s amending the Bus Safety Act 2009

Endnotes

3. Explanatory Details

No entries at date of publication.