

PARLIAMENT OF VICTORIA

Road Safety (Wheel Clamping) Act 1996

Act No.

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PARLIAMENT OF VICTORIA

Initiated in Council 28 May 1996

A BILL

to prohibit, except in certain circumstances, the detention or immobilisation of motor vehicles that enter on certain land, to regulate the removal of vehicles from certain areas, to enable a breach of parking restrictions on private property to be prosecuted where the owner or occupier has entered into a parking services agreement with the municipal council, to amend the **Road Safety Act 1986** and for other purposes.

Road Safety (Wheel Clamping) Act 1996

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is—

- (a) to prohibit, except in certain circumstances, the detention or immobilisation of motor

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vehicles that enter on certain land and to regulate the removal of motor vehicles from certain areas;

(b) to enable a breach of parking restrictions on private property to be prosecuted where the owner or occupier has entered into a parking services agreement with the municipal council;

(c) to amend the **Road Safety Act 1986**.

2. Commencement

(1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.

(2) Subject to sub-section (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.

(3) If a provision referred to in sub-section (2) does not come into operation within the period of 6 months beginning on, and including, the day on which this Act receives the Royal Assent, it comes into operation on the first day after the end of that period.

3. Principal Act

In this Act, the **Road Safety Act 1986** is called the Principal Act.

4. New Part 7A inserted in Road Safety Act 1986

After Part 7 of the Principal Act insert—

'PART 7A—PRIVATE PARKING AREAS**90A. Definitions**

In this Part—

No. 127/1986.
Reprinted to
No. 58/1995
and
subsequently
amended by
No. 100/1995.

"council controlled area" means an area in respect of which there is in force an agreement under section 90D;

"driver", in relation to a motor vehicle that has been parked or left standing, means the person who was driving the motor vehicle when it was parked or left standing;

"owner", in relation to a motor vehicle, has the same meaning as in Part 7;

"parking services", in relation to land, means services in relation to the regulation or control of the parking of motor vehicles on the land including the issue of parking infringement notices;

"public parking area" means—

- (a) an area provided on land for the parking of motor vehicles by members of the public on payment of a charge; or
- (b) any area that is prescribed to be a public parking area, or is included in a class of areas that is prescribed to be public parking areas, for the purposes of this Part.

90B. *Abolition of distress damage feasant in relation to motor vehicles*

- (1) The common law remedy of distress damage feasant is abolished to the extent to which it applies in relation to trespass on land by motor vehicles.
- (2) Nothing in this Part affects any right that a person may have, apart from this Part, to remove or cause to be removed from land a

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motor vehicle that has been parked or left standing on that land.

- 5 (3) Sub-section (2) does not apply to a motor vehicle that has been detained or immobilised in contravention of section 90C.

90C. Detention or immobilisation of motor vehicles

- (1) A person, not being—

- 10 (a) a member of the police force; or
(b) the sheriff or any other person authorised by law to execute a warrant against the motor vehicle; or
15 (c) a person authorised to do so by or on behalf of the owner or driver of the motor vehicle—

must not detain or immobilise (whether by wheel clamps or any other means) a motor vehicle that has been parked or left standing (whether attended or not) on land to which this section applies.

20 Penalty: 20 penalty units.

- (2) This section applies to land other than land that is—

- 25 (a) a public highway within the meaning of the **Local Government Act 1989**; or
(b) a declared road within the meaning of the **Transport Act 1983**; or
(c) a public parking area.

- 30 (3) Nothing in this section affects the exercise of any power over a motor vehicle that a person may have as the holder of a security interest (within the meaning of the **Chattel**
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Securities Act 1987) in the motor vehicle or under a possessory lien or pledge over the motor vehicle.

90D. Agreements

- (1) The owner or occupier of any land (other than land on which, apart from section 90E, a parking infringement could be committed in respect of a vehicle) may enter into an agreement with the municipal council in whose municipal district the land is situated for the provision by that council of parking services.
- (2) The agreement must provide for—
 - (a) compliance by the owner or occupier with specified requirements in relation to—
 - (i) restricting access to the land by motor vehicles;
 - (ii) signs to be placed, or markings to be made, on the land;
 - (iii) the siting, installation and maintenance of signs and markings;
 - (b) the kind of parking services to be provided by the municipal council and the times at which, or circumstances in which, those parking services are to be provided;
 - (c) the fees, costs and charges (if any) to be paid to the municipal council by the owner or occupier;
 - (d) rights of access to the land by persons authorised by the municipal council in connection with the provision of

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parking services and the duties and obligations to be complied with by those persons while exercising those rights;

(e) any other matter that may be prescribed.

(3) The agreement may contain—

(a) a provision leaving any matter to be determined, approved or dispensed with by a specified person or body;

(b) a provision providing for the suspension of obligations under the agreement in specified circumstances;

(c) any other provisions that are not inconsistent with this Part or the regulations.

(4) A provision of an agreement under this section that specifies requirements in relation to signs or their siting must—

(a) where appropriate and subject to any standards notified under sub-section (5), provide for signs of the kind used for the regulation and control of vehicular traffic on highways;

(b) require signs installed on the land to be prominently displayed and clearly visible to users of the land;

(c) require the installation of a sign indicating the place to which a vehicle towed from the land under section 90F is to be taken and stored pending payment of the release fee or giving a telephone number from which information about that place may be obtained at any time of the day or night;

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- (d) comply with standards notified under sub-section (5).
- (5) The Minister may, by notice in the Government Gazette, require compliance with standards for signs in council controlled areas.
- (6) A standard may apply, adopt or incorporate any matter contained in any document issued or published by any person or body whether—
- (a) wholly or partially or as amended by the standard; or
 - (b) as issued or published at the time the notice is published or at any time before then; or
 - (c) as issued or published from time to time.
- (7) The standards must be available for inspection on request at a place which is open to the public and is specified in the notice.

90E. *Parking in council controlled areas*

A person must not park a motor vehicle, or leave a motor vehicle standing, in a council controlled area or part of a council controlled area—

- (a) contrary to the inscription on any sign associated with the area or part; or
- (b) except in the manner indicated by the inscription on any sign associated with the area or part; or
- (c) contrary to any limitation in respect of days, periods of the day, classes of persons or classes of vehicles indicated

by the inscription on any sign associated with the area or part.

Penalty: 3 penalty units.

90F. Removal of vehicles from council controlled areas

- (1) A member of the police force may, in accordance with this section, remove, or cause to be removed, from a council controlled area a motor vehicle that has been parked or left standing in that area and in respect of which a parking infringement has been committed.
- (2) A member of the police force may only act under sub-section (1) if a parking infringement notice has been served in respect of the parking infringement and—
 - (a) the member of the police force is satisfied that the owner or occupier of the council controlled area has requested the owner or driver of the vehicle to remove it and that person has refused to do so; or
 - (b) in the opinion of the member of the police force, the vehicle—
 - (i) is obstructing access to, or egress from, the council controlled area by vehicles or pedestrians; or
 - (ii) is obstructing the free passage of vehicles or pedestrians within the council controlled area; or
 - (iii) has been left unattended for more than 48 hours; or

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- (iv) is endangering life or property or otherwise causing concern about safety.
- (3) A vehicle removed in accordance with this section from a council controlled area must be towed from the area by a tow truck within the meaning of Part VI of the **Transport Act 1983** operating in accordance with a licence granted under Division 8 of that Part.
- (4) The authority to tow within the meaning of Part VI of the **Transport Act 1983** must be signed by a member of the police force.
- (5) A vehicle that has been towed under this section must be taken to, and stored at, the place specified in the authority to tow and released to its owner or the owner's agent on payment by that person of a release fee.
- (6) The amount of a release fee must not exceed the prescribed amount or, if there is no prescribed amount, an amount that reasonably represents the cost of towing, storing and releasing the vehicle (including any relevant overhead and other indirect costs).

90G. *Entry by police to council controlled areas*

- (1) A member of the police force may, for the purpose only of issuing parking infringement notices or authorising the towing of motor vehicles, enter any place that is a council controlled area.
- (2) Nothing in this section limits any other power of entry to a council controlled area that a member of the police force has under any other law.

90H. Wheel clamping agreements

- 5 (1) An agreement, whether entered into before or after the commencement of section 4 of the **Road Safety (Wheel Clamping) Act 1996**, is void to the extent to which it authorises, or purports to authorise, a person to do an act in contravention of section 90C or to remove from any land a motor vehicle detained or immobilised in contravention of section 90C.
- 10 (2) A party to an agreement that is void wholly or partly by reason of sub-section (1) is not entitled to recover from the owner or occupier of any land to which the agreement relates or purports to relate or any other person any amount in respect of the provision of services under the void agreement or part agreement and must repay to the person from whom it was received—
- 15 (a) any amount received before the commencement of section 4 of the **Road Safety (Wheel Clamping) Act 1996** in respect of those services, being services that were to be provided after that commencement; and
- 20 (b) any amount received after the commencement of section 4 of the **Road Safety (Wheel Clamping) Act 1996** in respect of those services.
- 25 (3) If a party does not repay an amount required by sub-section (2) to be repaid, the person entitled to be repaid may recover the amount from the party as a debt in a court of competent jurisdiction.'
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5. Power to serve parking infringement notices

- (1) In section 87(1) of the Principal Act, after "vehicle" **insert** "on land or premises other than a council controlled area within the meaning of Part 7A".
- (2) In section 87 of the Principal Act, after sub-section (1) **insert**—
- "(1A) Without limiting sub-section (1), if a person, not being a member of staff of the municipal council, who is authorised in writing to do so either generally or in any particular case by a municipal council has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of the municipal council, he or she may serve or cause to be served a parking infringement notice as provided in the regulations.
- (1B) If—
- (a) a member of the police force; or
 - (b) a member of staff of the municipal council; or
 - (c) a person, not being a member of staff of the municipal council, who is authorised in writing to do so either generally or in any particular case by the municipal council—

has reason to believe that a parking infringement has been committed in respect of any vehicle on land within the municipal district of a municipal council, being land that is a council controlled area within the meaning of Part 7A, he or she may serve or

cause to be served a parking infringement notice as provided in the regulations.

5 (1C) A municipal council may only authorise under sub-section (1A) or (1B)(c) a person whom it is satisfied—

(a) is competent to exercise the functions conferred on an authorised person by or under this Part; and

0 (b) is of good repute, having regard to character, honesty and integrity; and

5 (c) has agreed in writing to exercise the functions conferred on an authorised person by or under this Part according to performance criteria established from time to time by the municipal council.

(1D) A municipal council must issue an identity card to any person authorised by it under sub-section (1A) or (1B)(c).

10 (1E) An identity card under sub-section (1D) must—

(a) contain a photograph of the authorised person; and

(b) contain the signature of the authorised person; and

15 (c) be signed by a member of staff of the municipal council authorised by the municipal council to do so either generally or in any particular case.

20 (1F) A person issued with an identity card under sub-section (1D) must produce it on being requested to do so.

Penalty: 5 penalty units.

(1G) Any action taken or thing done by a person authorised under sub-section (1A) or (1B)(c) is not invalidated by his or her failure to produce his or her identity card.

(1H) A person must not falsely represent himself or herself to be a person authorised under sub-section (1A) or (1B)(c).

Penalty: 10 penalty units."

6. *Penalty for parking infringement in council controlled area*

(1) In section 87(3) of the Principal Act, after "other than" **insert** "a penalty for a parking infringement referred to in sub-section (3A) or".

(2) In section 87 of the Principal Act, after sub-section (3) **insert**—

"(3A) The penalty for a parking infringement constituted by a contravention of section 90E is \$100 or the higher amount prescribed by the regulations in respect of infringements of that kind."

7. *Consequential amendment*

In the definition of "parking infringement" in section 3(1) of the Principal Act, before paragraph (a) **insert**—

"(aa) section 90E; or".

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NOTES

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