



Additional Network Standards & Guidelines

Part 2.6 – Extending the Road Safety Act to Off-Street Areas

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Current versions of Acts and Regulations referred to in this document are available by searching Victorian Law Today at www.legislation.vic.gov.au

1 Introduction

1.1 Background

Off-street areas such as shopping centre or railway station car parks or roads on university or hospital campuses are generally viewed and used by the public as an intrinsic part of the road network.

These and other off-street areas differ from roads and streets because they are not explicitly covered by the *Road Safety Act 1986* and related regulations, so the controls that regulate traffic, such as the Road Rules and parking signs, may not be applicable or enforceable.

The *Road Safety Act 1986* includes provisions by which the Act and regulations can explicitly apply to off-road areas, as outlined in the following section 1.2.

1.2 Legislative Basis

The *Road Safety Act 1986* and regulations (including the *Road Safety Road Rules 2009*) broadly apply to roads and road related areas that are open to or used by the public. Although the “road” and “road related area” definitions (included in Table A 1 in Attachment A) can be viewed as applying to many off-street areas, legal advice is that it is prudent to obtain an extension of the Act to ensure sound legal grounds for the administrative and physical work carried out in such areas.

One or other of the following *Road Safety Act 1986* provisions can be used to make it clear and unambiguous that an off-street area is covered by the Act and regulations:

1. **extend application of the Act by an Order under Section 98** (an “**Order**”)

Mechanism: Minister extends application of the Act by an Order (a “*declaration under sub-section (2)(a)*”), published in the Government Gazette

Effect: Those provisions of the *Road Safety Act* and regulations included in Order apply to the extended area

If the Order broadly extends the provisions of the Act and regulations, standard traffic control devices including parking, intersection and speed limit signing can be installed and can be enforced and infringement penalties applied

2. **enter into an agreement with Council under Part 7A of the Act**

Mechanism: Agreement entered into between the owner / occupier and a Council pursuant to Section 90D

Effect: Provisions of Part 7A apply to the area covered by the agreement. These are limited to the control of parking

Standard parking signs can be erected and infringement penalties can be applied, **but** no other provisions of the Act or regulations can be applied

1.3 Scope

The remainder of this document deals with the extension of the *Road Safety Act 1986* to off-street areas by an Order under Section 98. Anyone wishing to extend the Act by way of an agreement under Part 7A should contact the relevant municipal Council directly.

1.4 Use of Traffic Control Devices

Including in any off-street area to which the *Road Safety Act 1986* has been extended, the use of traffic control devices to control traffic and parking must be in accordance with the *Road Safety (Traffic Management) Regulations 2009*. Information on powers and authorisations related to traffic control devices can be found in VicRoads Traffic Engineering Manual Volume 3 Part 2.6 – *Extending the Road Safety Act to Off-Street Areas (2015)*.

2 Eligibility for an Order

2.1 Public Authorities and Prescribed Persons

Prescribed persons and public authorities (“*prescribed bodies*”) can apply to the Minister for an Order to extend the application of provisions of the *Road Safety Act 1986* to any land or premises vested in or under their control.

Such bodies are prescribed in Regulation 85 of the *Road Safety (General) Regulations 2009* and listed in Table A 2 in Attachment A.

VicRoads is a prescribed body and the Minister has delegated¹ the power to make an Order to the following VicRoads officers:

- Chief Executive
- Chief Operating Officer
- Executive Director Regional Operations
- Executive Director Metropolitan Operations
- Regional Director

In the absence of their own delegation from the Minister, a prescribed body may request VicRoads to make an Order.

Metro Trains (a prescribed body) has constructed a new car park area at a railway station and wants the Road Safety Act to extend to this area. Metro Trains can request the Minister (or VicRoads as the Minister’s delegate) to make an Order under Section 98 of the Act.

2.2 Other Bodies and Private Land Owners

Shopping centre, business park or industrial park owners and the owners of individual properties are **not** prescribed bodies and cannot apply directly to the Minister to extend the application of provisions of the *Road Safety Act 1986* to their land.

These parties must first enter into an agreement with a prescribed body (generally the municipal Council) before applying for an Order. An agreement with a prescribed body may cover the following:

- the term of the agreement and how it may be terminated
- any rental fee and how and when it may be payable
- who is to be responsible for the maintenance and rates and taxes in respect of the areas to be covered by the Act
- who is to be responsible for the supply, installation and maintenance of traffic control devices and at whose expense they will be supplied, installed and maintained
- who may retain any parking fines collected.

Helpful Hardware (**not** a prescribed body) has built a new retail outlet and wants the Road Safety Act to extend to the car park area. Helpful Hardware can make an agreement with the municipal Council (a prescribed body) for management of traffic and parking and related facilities in the car park area and subsequently request the Minister (or VicRoads as the Minister’s delegate) to make an Order under Section 98 of the Act.

¹ Instrument of Delegation by the Minister of Roads, 19 November 2013

3 Scope and Enforcement of Orders

3.1 Provisions included in Orders

The legislation listed below is generally included on Orders made under Section 98.

Road Safety Act

Section 59	General duty of driver or person in charge of motor vehicle
Section 64	Dangerous driving
Section 65	Careless driving
Section 65A	Improper use of motor vehicle
Section 76	Arrest without warrant
Section 77	Power to prosecute
Sections 84BA-84BI	Operator Onus
Sections 86-90	Infringements
Section 100	Rule for inconsistent regulations and local laws

Road Safety Road Rules 2009

Road Safety (General) Regulations 2009

Part 8	Parking Infringements
Part 9	Traffic Infringements
Schedule 6	Parking Infringements
Schedule 7	Traffic Infringements

3.2 Enforcement

Section 77(2) of the *Road Safety Act 1986* prescribes the persons able to prosecute for offences against the Act or regulations, subject to the provisions of Sections 77(4) and 88(1A) of the Act and Regulations 82 and 83 of the *Road Safety (General) Regulations 2009*.

4 Processing of Requests

4.1 Making Requests

Requests for any Order sent to the VicRoads Regional Director should:

- contain a plan that defines the location and boundaries of the subject area and the location of existing or proposed vehicular access points to and from streets or roads – the plan does not have to be a survey or title plan
- for privately owned land, include a copy of the relevant agreement with a prescribed body
- indicate if the area over which the Order is sought is a new area, or is:
 - additional or adjacent to an existing Order (for example, an extension of a car park area – it may be appropriate to issue a new Order covering the total area)
 - covered by an existing Order but the area has changed (for example, part of a car park redeveloped for retail space – the redeveloped area should be shown on the plan)
- provide an undertaking and related details for payment of the costs of publishing the Order in the Government Gazette.

4.2 Assessment

VicRoads officers should generally process requests for an Order as follows:

- ensure adequate information is provided by the applicant, including a detailed Plan suitable for publication in the Government Gazette
- ensure the request includes documentation that the land or premises are vested in or under the control of a prescribed body, including any agreement related to privately owned land
- ensure that the off-street area and connection to the abutting streets conform with relevant standards and guidelines (an Order should not be made for an impractical or non-conforming area)
- inspect the site if necessary
- prepare a Memorandum (sample in section 4.5), and Order (sample in section 4.6) for approval by a VicRoads officer with the delegation to make an Order (a “*delegate*”).

4.3 Arranging for an Order

When the Order is signed by the delegate, a Microsoft Word version of the Order and plan is sent by email to the Government Gazette Office with instructions regarding:

- when it should be published
- that publication in a General Gazette is sufficient
- the date of the Order was signed by the delegate
- the billing details – who to send the invoice to and
- the requesting officer’s name and phone number so that the Gazette Officer can send the draft notice to be proof read before publication.

At the time of issue of this document, contact details for the Government Gazette Office are:

Email: gazette@bluestargroup.com.au

Phone number: 8523 4601

Address: Level 5, 460 Bourke Street, Melbourne, VIC 3000

4.4 Effective Date

The Order will become effective from the date of publication in the Government Gazette.

4.5 Sample Memorandum

Date:

To: <name of officer with delegated power>

From: <position>

Ext:

Business area:

File no:

Your ref:

Subject: Order under section 98 of the Road Safety Act 1986
Mooroolbark Railway Station Car Park Areas

PURPOSE:

1. To seek your endorsement of, and your signature on, the enclosed draft Order under section 98(1) of the *Road Safety Act 1986* ("**the Act**").

BACKGROUND:

2. Section 98(1) of the Act empowers the Minister for Roads, at the request of any public authority or other person prescribed for the purposes of that provision, to extend the application of any provisions of the Act or regulations made under the Act, to any land or premises vested in or under the control of that authority or person.
3. Those provisions then apply to the relevant land as if that land was a 'road', within the meaning of the Act.
4. Metro Trains Melbourne Pty Ltd ("Metro Trains") is prescribed as a person for the purposes of section 98(1) of the Act.
5. The Minister's predecessor delegated the power under section 98(1) of the Act to you under an instrument of delegation dated 19 November 2013. A copy of this instrument, which remains valid, is attached.
6. Metro Trains has requested that VicRoads facilitate the making and publication of an Order under section 98(1) of the Act to extend certain provisions of the Act and the regulations made under the Act to the "park and ride facilities" at the Mooroolbark Railway Station, Mooroolbark.
7. The Order is intended to enable properly authorised officers of Metro Trains to enforce parking and other controls in those areas.
8. Orders under section 98(1) of the Act have already been made in relation to the park and ride facilities located at the other 131 railway stations vested in, or under the control of, Metro Trains.

DISCUSSION/ISSUES:

9. Park and ride facilities are defined in the Act as facilities which are vested in, or under the control of, a rail or bus operator and to which specified provisions of the Act and the regulations relating to the regulation or control of the parking of a vehicle, or the leaving standing of a vehicle, apply under an Order made under section 98 of the Act.
10. Section 77(2)(db) of the Act provides, further, that a person authorised under section 229(1AA) of the *Transport (Compliance and Miscellaneous) Act 1983* ("**Transport Act**") to bring a proceeding for a ticket offence, may prosecute for any offence under the Act or any regulations made under the Act if the offence occurs on, or in, a park and ride facility.
11. Section 229(1AA) of the Transport Act provides that a proceeding for a ticket offence may be brought by a person who is employed or engaged by a passenger transport company. Metro Trains is a declared passenger transport company.
12. The relevant provisions of the Act and the Regulations made under the Act which it is proposed, under the Order, be extended to the park and ride facilities at Mooroolbark are:
 - (a) sections 59, 64, 65, 65A, 76, 77, 84BA-84BI, 86-90 and 100 of the Act;
 - (b) the *Road Safety Road Rules 2009*; and

- (c) Parts 8 and 9 and Schedules 6 and 7 of the *Road Safety (General) Regulations 2009*.
13. The consequence of the making of the Order, then, is that persons employed or engaged by Metro Trains may prosecute offenders in respect of:
- (a) the offences of dangerous driving (s.64 of the Act), careless driving (s.65 of the Act) and deliberate loss of traction (s.65A of the Act); and
 - (b) any offence under the *Road Safety Road Rules 2009*.
14. The Order will also:
- (a) empower police, authorised employees of the Department of Transport, Planning and Local Infrastructure and authorised employees of VicRoads to issue traffic infringement notices for prescribed infringement offences set out in Schedule 7 to the *Road Safety (General) Regulations 2009* in the park and ride areas and
 - (b) mean that the obligations contained in section 59 of the Act apply to the park and ride facilities, including the obligation to stop a motor vehicle if requested to do so and to obey any lawful direction given by a member of the police force.
15. Legal Services will arrange for the publication of the Order in the Government Gazette. Metro Trains will pay the cost of the publication.
16. An Order made under section 98 is an exempt legislative instrument for the purposes of the *Subordinate Legislation Act 1994*. This means that it is not required to be tabled in Parliament or provided to the Scrutiny of Acts and Regulations Committee of the Parliament.

RECOMMENDATION:

17. That you approve and sign the attached draft Order for publication in the Government Gazette.

Prepared by:

Endorsed by:

/ / 2015

APPROVED / NOT APPROVED

<NAME>
<POSITION>, VICROADS
/ / 2015

4.6 Sample Order

Road Safety Act 1986

ORDER UNDER SECTION 98 OF THE **ROAD SAFETY ACT 1986** EXTENDING PROVISIONS TO THE PARK AND RIDE FACILITIES AT MOOROOLBARK RAILWAY STATION CAR PARKS

I, << Name & Position >> of VicRoads and delegate of the Minister of Roads, by this Order made under section 98 of the **Road Safety Act 1986** ("Act") extend the application of:

- (a) sections 59, 64, 65, 65A, 76, 77, 84BA-84BI, 86-90 and 100 of the Act;
 - (b) the **Road Safety Road Rules 2009**; and
 - (c) Parts 8 and 9 of, and Schedules 6 and 7 to, the **Road Safety (General) Regulations 2009**,
- to the off-street parking facilities and parking access roads located at Mooroolbark Railway Station, particulars of which are shown hatched on the attached plan.

Dated 2015

<<Name>>
<< Position >>
VicRoads

ATTACHMENT A – Related Legislative Provisions

Information in this Attachment is taken from the referenced legislation that was in effect at the time this document version was issued. Current versions of Acts and Regulations referred to in this document are available by searching Victorian Law Today at www.legislation.vic.gov.au.

Table A 1 – “Road” Related Definitions

Road Safety Act 1986, Section 3(1) ²
<p>road means—</p> <p>(a) an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles; or</p> <p>(b) a place that is a road by virtue of a declaration under subsection (2)(a) — but does not include a place that is not a road by virtue of a declaration under subsection (2)(a);</p>
<p>road related area means—</p> <p>(a) an area that divides a road; or</p> <p>(b) a footpath or nature strip adjacent to a road; or</p> <p>(c) an area that is open to the public and is designated for use by cyclists or animals; or</p> <p>(d) an area that is not a road and that is open to or used by the public for driving, riding or parking motor vehicles; or</p> <p>(e) a place that is a road related area by virtue of a declaration under subsection (2)(a)— but does not include a place that is not a road related area by virtue of a declaration under subsection (2)(a);</p>

Table 2 lists the bodies prescribed under Regulation 85 of the *Road Safety (General) Regulations 2009*.

Table A 2 – Prescribed Persons and Public Authorities

<ul style="list-style-type: none"> • The Roads Corporation • Metro Trains Melbourne Pty Ltd • A Council within the meaning of the Local Government Act 1989 • The Melbourne Market Authority established under the Melbourne Market Authority Act 1977 • An authority within the meaning of the Water Act 1989 • Port of Melbourne Corporation established under the Port Services Act 1995 • The council of a university established by or under any Act • A Council incorporated under Part 3.2 of the Education and Training Reform Act 2006 or the council or governing body of a TAFE institute within the meaning of that Act • A committee of management appointed under the Crown Land (Reserves) Act 1978 • The board of a public hospital or denominational hospital within the meaning of the Health Services Act 1988 • The House Committee within the meaning of the Parliamentary Committees Act 2003 • The Secretary of the Department of Sustainability and Environment • Parks Victoria established under the Parks Victoria Act 1998 • An officer of the Marine Board of Victoria appointed under Part 8 of the Marine Act 1988.
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² . Complimentary definitions are included in the Road Safety Road Rules 2009 (Rules 12 and 13)

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Previous versions of this document are available on request by contacting the VicRoads – Network Standards team.

For enquiries regarding this supplement, please contact the VicRoads – Network Standards team via tem@roads.vic.gov.au or 9854 2417.