

## ***OPERATOR ONUS OFFENCE***

Ever been in a situation where you've lent your car to a friend or family member, and then a month later you receive a fine you're not responsible for? This is quite common and known as an "operator onus offence".

### *What's the law?*

Generally speaking, there are some types of road offences where the identity of the driver cannot be established at the time the offence is detected. Consequently, the person who is last known to have possessed or controlled the vehicle is presumed to have committed the offence and is hence held responsible for the offence.

However, this rule operates subject to an exception. If the charged person can show that they were not responsible for the vehicle at the time of the offence, they will not be held liable.

### *How do you show you're not responsible?*

In Victoria under the *Road Safety Act 1986*, if you have been charged but were not responsible for the offence, you need to provide evidence of this to an enforcement official. The evidence required can take the form of any one of the following statements:

- An illegal user statement
- A known user statement
- A sold vehicle statement
- An unknown user statement
- A tolling nomination statement

The statement type selected depends on your individual circumstance.

For the statement to be valid, it must be accurate and complete. Providing misleading or false evidence is an offence and will likely see the enforcement official cancelling the statement.

### *Can you get a time extension?*

Sometimes, you may experience difficulty in completing statements. You may, for instance, be unable to contact the person you suspect has committed the offence and require more time. Consequently, a time extension can be requested for the submission of certain statements.

To qualify for the time extension, you must show the following:

- You must have been issued with a **traffic infringement notice**, for excessive speeding (i.e. travelling 130km/hour or were travelling more than 25km/hour above the speed limit); AND
- The infringement notice has **not been personally delivered** to you so you were not aware of the notice.

*How do you apply for a time extension?*

If you meet the above criteria and wish to apply for a time extension, you must make an application within 14 days of becoming aware of the notice. The notice then needs to be filed with a registrar, either an infringements registrar or a registrar of the Children's Court. This must be accompanied by a sworn statement or by a statutory declaration setting out the grounds for the application.

*Effect of the statement*

If the statement you have lodged is accepted by the Magistrates' Court or by a registrar, the following will result:

- The conviction is set aside
- Any cancellation, disqualification or suspension arising from the conviction is set aside
- Any demerit points recorded from the conviction are cancelled
- The infringement notice is cancelled

So the next time you're charged with a road offence you haven't committed, make sure you set it straight!

*Rama Sama  
(The law as it stands in October 2013)*