

Road Traffic Legislation Amendment Bill (No. 2) 2015

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Western Australia

LEGISLATIVE ASSEMBLY

**Road Traffic Legislation Amendment Bill
(No. 2) 2015**

A Bill for

An Act to amend —

- **the *Road Traffic Act 1974*; and**
- **the *Road Traffic (Administration) Act 2008*; and**
- **the *Road Traffic (Authorisation to Drive) Act 2008*; and**
- **the *Young Offenders Act 1994*.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Road Traffic Legislation Amendment Act (No. 2) 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 — on the day after assent day;
- (c) Part 3 — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Amendments that commence on the day after**
2 **Royal Assent**

3 **Division 1 — *Road Traffic Act 1974* amended**

4 **3. Act amended**

5 This Division amends the *Road Traffic Act 1974*.

6 **4. Section 50 deleted**

7 Delete section 50.

8 **5. Section 54 amended**

9 (1) In section 54(3) delete each penalty and insert:
10

11 Penalty for this subsection: imprisonment for —

- 12 (a) 20 years, if the incident occasioned death
13 and, in any event, the court convicting the
14 person must order that the person be
15 disqualified from holding or obtaining a
16 driver's licence for a period of not less than
17 2 years;
- 18 (b) 14 years, if the incident occasioned grievous
19 bodily harm but not death and, in any event,
20 the court convicting the person must order
21 that the person be disqualified from holding
22 or obtaining a driver's licence for a period of
23 not less than 2 years;
- 24 (c) 10 years, in any other case and, in any event,
25 the court convicting the person must order
26 that the person be disqualified from holding
27 or obtaining a driver's licence for a period of
28 not less than 12 months.

29 Summary conviction penalty in a case to which
30 paragraph (c) applies: imprisonment for 3 years and, in

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 2 Amendments that commence on the day after Royal Assent

Division 1 Road Traffic Act 1974 amended

s. 6

1 any event, the court convicting the person must order
2 that the person be disqualified from holding or
3 obtaining a driver's licence for a period of not less than
4 12 months.
5

6 (2) Delete section 54(4).

7 (3) In section 54(6) in the Penalty delete "Penalty:" and insert:
8

9 Penalty for this subsection:
10

11 **6. Section 56 amended**

12 (1) In section 56(1):

13 (a) after "bodily harm to" insert:
14

15 the driver or
16

17 (b) delete "to the officer in charge of a police station." and
18 insert:
19

20 to —

21 (a) the officer in charge of a police station; or

22 (b) the Commissioner of Police in a manner
23 approved by the Commissioner.
24

25 (2) In section 56(4) delete "to the officer in charge of a police
26 station." and insert:
27

28 to —

29 (a) the officer in charge of a police station; or

- 1 (b) the Commissioner of Police in a manner
2 approved by the Commissioner.
3

4 **7. Section 64A amended**

- 5 (1) Before section 64A(1) insert:
6

- 7 (1A) In this section —
8 *cancellation provision* means —

- 9 (a) a provision of the *Road Traffic (Authorisation to Drive) Act 2008* Part 3 Division 2 under
10 which a driver’s licence may be cancelled; or
11 (b) section 75(2a) or (2b) of this Act as in force at
12 any time before those provisions were deleted
13 by the *Road Traffic Legislation Amendment Act 2012* section 20.
14
15
16

- 17 (2) In section 64A(2)(d) delete “the *Road Traffic (Authorisation to Drive) Act 2008* section 22(1) or (2)” and insert:
18
19

20 a cancellation provision
21

- 22 (3) In section 64A(3)(b) delete “the *Road Traffic (Authorisation to Drive) Act 2008* section 22(1) or (2)” and insert:
23
24

25 a cancellation provision
26

- 27 (4) In section 64A(5)(d) delete “GCM exceeding 22.5 tonnes; or”
28 and insert:
29

30 GCM that is 22.5 tonnes or more; or
31

1 **8. Section 65 amended**

2 (1) In section 65 delete “section 59B(5) and sections 63” and insert:

3

4 sections 59

5

6 (2) In section 65 in the definition of *authorised person* delete
7 “chief executive officer of the Chemistry Centre (WA)” and
8 insert:

9

10 Commissioner of Police

11

12 (3) In section 65 in the definition of *breath analysing equipment*
13 after “Minister” insert:

14

15 under section 72(2)(a)

16

17 (4) In section 65 in the definition of *preliminary test* after
18 “Minister” insert:

19

20 under section 72(2)(b)

21

22 Note: The heading to amended section 65 is to read:

23 **Terms used in s. 59 to 73**

24 **9. Section 65A amended**

25 In section 65A(1) delete “section 59B(5) and sections 63” and
26 insert:

27

28 sections 59

29

1 **10. Section 67 amended**

2 In section 67(2):

3 (a) in paragraph (c) delete “analysis,” and insert:

4

5 analysis; or

6

7 (b) after paragraph (c) insert:

8

9 (d) to accompany a police officer to a police station
10 or some other place, and to wait at that place,

11

12 Note: The heading to amended section 67 is to read:

13 **Failure to comply with s. 66 requirement to provide sample, allow**
14 **sample to be taken or to accompany police officer**

15 **11. Section 70 amended**

16 (1) In section 70(2):

17 (a) in paragraph (a) delete “chief executive officer of the
18 Chemistry Centre (WA),” and insert:

19

20 Commissioner of Police,

21

22 (b) delete the passage that begins with “such chief executive
23 officer, or” and continues to the end of the subsection
24 and insert:

25

26 the Commissioner of Police, the chief executive officer
27 of the Chemistry Centre (WA), an authorised person, a
28 technologist, a medical practitioner or registered nurse
29 or an analyst (as is relevant).

30

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 2 Amendments that commence on the day after Royal Assent

Division 1 Road Traffic Act 1974 amended

s. 12

- 1 (2) In section 70(3c):
2 (a) delete “chief executive officer of the Chemistry Centre
3 (WA),” and insert:
4
5 Commissioner of Police,
6
7 (b) delete “such chief executive officer.” and insert:
8
9 the Commissioner of Police.
10
- 11 **12. Section 72 amended**
- 12 (1) In section 72(1) delete “section 59B(5) and sections 63” and
13 insert:
14
15 sections 59
16
- 17 (2) After section 72(2a) insert:
18
- 19 (3A) In subsections (2) and (2a) —
20 **Minister** means the Minister to whom the
21 administration of the *Police Act 1892* is committed.
22
- 23 (3) In section 72(3):
24 (a) in paragraph (aa) delete “substances; and” and insert:
25
26 substances,
27
28 (b) delete paragraph (b).

- 1 (4) Delete section 72(4) and (5) and insert:
2
- 3 (4) The Commissioner of Police may, from time to time —
4 (a) certify a person as being competent to operate
5 all types of breath analysing equipment; and
6 (b) authorise a person to collect, and conduct drug
7 testing of, samples of oral fluid for the purposes
8 of section 66D; and
9 (c) rescind or revoke a certificate or an
10 authorisation.
- 11 (5) The Commissioner of Police must not certify a person
12 under subsection (4)(a) unless, in the Commissioner’s
13 opinion, the person has the appropriate training to
14 operate all types of breath analysing equipment.
- 15 (6) The Commissioner of Police must not authorise a
16 person under subsection (4)(b) unless, in the
17 Commissioner’s opinion, the person has the
18 appropriate training to collect, and conduct drug testing
19 of, samples of oral fluid in accordance with the
20 regulations.
- 21 (7) If the certification of a person by the chief executive
22 officer of the Chemistry Centre (WA) under
23 subsection (3)(b) was in effect immediately before
24 commencement day, the certification has effect, on and
25 after commencement day, as if it were the certification
26 of the person by the Commissioner of Police under
27 subsection (4)(a) (including for the purposes of
28 section 70(2)(a)).
- 29 (8) In subsection (7) —
30 *commencement day* means the day on which the *Road*
31 *Traffic Legislation Amendment Act (No. 2) 2015*
32 section 12 comes into operation.
33

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 2 Amendments that commence on the day after Royal Assent

Division 2 Road Traffic (Administration) Act 2008 amended

s. 13

1 Note: The heading to amended section 72 is to read:

2 **Taking and testing samples: regulations for s. 59 to 73, and**
3 **approval of apparatus and persons**

4 **Division 2 — Road Traffic (Administration) Act 2008 amended**

5 **13. Act amended**

6 This Division amends the *Road Traffic (Administration)*
7 *Act 2008*.

8 **14. Section 12 amended**

9 In section 12(1) in the definition of *incident information*:

10 (a) in paragraph (b) delete “incident;” and insert:

11

12 incident; and

13

14 (b) after paragraph (b) insert:

15

16 (c) a copy of a statement or a report produced as a
17 result of any investigation made into the
18 incident;

19

20 **15. Sections 13D and 13E inserted**

21 After section 13C insert:

22

23 **13D. Disclosure of incident information to ICWA**

24 (1) In this section —

25 *ICWA* means the Commission as defined in the
26 *Insurance Commission of Western Australia Act 1986*
27 section 3;

- 1 ***incident information*** means —
- 2 (a) information provided in relation to an incident
- 3 in a report made under the *Road Traffic*
- 4 *Act 1974* section 56(1) or (4); and
- 5 (b) details of any evidence, statement, report or
- 6 other information obtained as a result of any
- 7 investigation made into the incident; and
- 8 (c) a copy of a statement or a report produced as a
- 9 result of any investigation made into the
- 10 incident.
- 11 (2) The Commissioner of Police may disclose incident
- 12 information to ICWA.
- 13 (3) Information disclosed under subsection (2) may be
- 14 used in the performance of ICWA’s functions under
- 15 the *Motor Vehicle (Third Party Insurance) Act 1943*
- 16 but not for any other purpose.
- 17 (4) The disclosure of information under subsection (2) is to
- 18 be free of charge.

19 **13E. Disclosure of incident information to involved**

20 **persons**

- 21 (1) In this section —
- 22 ***incident information*** means —
- 23 (a) information provided in relation to an incident
- 24 in a report made under the *Road Traffic*
- 25 *Act 1974* section 56(1) or (4); and
- 26 (b) details of any evidence, statement, report or
- 27 other information obtained as a result of any
- 28 investigation made into the incident.
- 29 (2) The Commissioner of Police may, in relation to an
- 30 incident, disclose incident information to any of the
- 31 following —
- 32 (a) a person, or a representative of the person, who
- 33 suffered bodily harm in the incident;

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Part 2 Amendments that commence on the day after Royal Assent

Division 2 Road Traffic (Administration) Act 2008 amended

s. 16

- 1 (b) the driver, or a representative of the driver, of a
2 vehicle involved in the incident;
3 (c) an owner, or a representative of the owner, of a
4 vehicle involved in the incident;
5 (d) an owner, or a representative of the owner, of
6 property damaged in the incident.
7

8 **16. Section 15 amended**

9 (1) In section 15(1) insert in alphabetical order:
10

11 *incident information* means —

- 12 (a) information provided in relation to an incident
13 in a report made under the *Road Traffic*
14 *Act 1974* section 56(1) or (4); and
15 (b) details of any evidence, statement, report or
16 other information obtained as a result of any
17 investigation made into the incident; and
18 (c) a copy of a statement or a report produced as a
19 result of any investigation made into the
20 incident;
21

22 (2) After section 15(2) insert:
23

24 (3A) The Commissioner of Police may disclose incident
25 information to a person if the Commissioner considers
26 that the information is required by the person for a road
27 safety purpose.
28

29 (3) In section 15(3):

- 30 (a) in paragraph (a) delete “subsection (2); or” and insert:
31
32 subsection (2) or (3A); or
33

1 (b) in paragraph (b) delete “subsection 2,” and insert:
2
3 subsection (2) or (3A),
4

5 **17. Section 84 amended**

6 In section 84(2) delete “2012” (1st occurrence) and insert:

7
8 2008
9

10 **18. Section 91 amended**

11 In section 91(a) delete “given, other than an offence under the
12 *Road Traffic (Vehicles) Act 2012* section 4(2),” and insert:

13
14 given
15

16 **19. Section 106 amended**

17 After section 106(2) insert:

- 18
19 (3) Subsection (2) does not apply to an indictable offence.
20 (4) Subsection (3) has effect, in relation to an offence that
21 was allegedly committed before the day on which the
22 *Road Traffic Legislation Amendment Act (No. 2) 2015*
23 section 19 comes into operation, as if that section had
24 come into operation on the day on which this Act
25 (other than sections 1 and 2) came into operation (that
26 is, 27 April 2015).
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Division 3 — Other Acts amended

20. Road Traffic (Authorisation to Drive) Act 2008 amended

- (1) This section amends the *Road Traffic (Authorisation to Drive) Act 2008*.
- (2) After section 22 insert:

23A. Calculation of period of disqualification

- (1) If a person is convicted by a court of an offence under a road law and, as a consequence, is disqualified from holding or obtaining a driver's licence, whether by an order of the court or operation of that law, the term of the disqualification does not elapse —
 - (a) while the person is in custody serving any sentence of imprisonment; or
 - (b) while the person is appealing against the conviction or sentence that gave rise to the disqualification.
- (2) Subsection (1) applies to all disqualifications other than a disqualification that commenced before the day on which the *Road Traffic Legislation Amendment Act (No. 2) 2015* section 20 comes into operation.

21. Young Offenders Act 1994 amended

- (1) This section amends the *Young Offenders Act 1994*.
- (2) In Schedule 1 item 3:
 - (a) after the row relating to section 60 insert:

s. 61	Dangerous driving
s. 62	Careless driving

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s. 62A Causing excessive noise or smoke from
vehicle's tyres

(b) delete the row relating to section 67 and insert:

s. 67 Failure to comply with s. 66 requirement to
provide sample, allow sample to be taken or
to accompany police officer

(c) after the row relating to section 67AB insert:

s. 67A Failure to comply with other requirements
made under s. 66 to 66E

(3) In Schedule 2 item 3 before the row relating to section 59 insert:

s. 54 Driver in incident occasioning bodily harm
to stop, ensure assistance and give
information

1 **Part 3 — Amendments that will be brought into**
2 **operation by proclamation**

3 **Division 1 — Amendments relating to careless driving**

4 **Subdivision 1 — *Road Traffic Act 1974* amended**

5 **22. Act amended**

6 This Subdivision amends the *Road Traffic Act 1974*.

7 **23. Section 59 amended**

8 In section 59(4) after “59A,” insert:

9

10 59BA(1),

11

12 **24. Section 59A amended**

13 In section 59A(4) after “section” insert:

14

15 59BA(1),

16

17 **25. Section 59BA inserted**

18 After section 59A insert:

19

20 **59BA. Careless driving causing death, grievous bodily**
21 **harm or bodily harm**

22 (1) If a motor vehicle driven by a person (the *driver*) is
23 involved in an incident occasioning the death of, or
24 grievous bodily harm or bodily harm to, another person
25 and the driver was, at the time of the incident, driving
26 the motor vehicle without due care and attention, the
27 driver commits an offence.

1 Penalty for this subsection: imprisonment for 3 years or
2 a fine of 720 PU and, in any event, the court
3 convicting the person must order that the person be
4 disqualified from holding or obtaining a driver's
5 licence for a period of not less than 3 months.

- 6 (2) For the purposes of subsection (1) —
- 7 (a) it is immaterial that the death, grievous bodily
8 harm or bodily harm might have been avoided
9 by proper precaution on the part of a person
10 other than the person charged or might have
11 been prevented by proper care or treatment; and
- 12 (b) when an incident occasions grievous bodily
13 harm to a person and that person receives
14 surgical or medical treatment, and death results
15 either from the harm or the treatment, the
16 incident is deemed to have occasioned the death
17 of that person, although the immediate cause of
18 death was the surgical or medical treatment if
19 the treatment was reasonably proper in the
20 circumstances and was applied in good faith.
- 21 (3) A person charged with an offence against
22 subsection (1) may, instead of being convicted of that
23 offence, be convicted of an offence against section 62.
24

25 **26. Section 59B amended**

- 26 (1) In section 59B(1) and (2) delete “59 and 59A,” and insert:
27
28 59, 59A and 59BA(1),
29

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Part 3 Amendments that will be brought into operation by proclamation

Division 1 Amendments relating to careless driving

s. 27

1 (2) After section 59B(6) insert:

2

3 (7) In any proceeding for an offence against
4 section 59BA(1) it is a defence for the person charged
5 to prove that the death, grievous bodily harm or bodily
6 harm occasioned by the incident was not in any way
7 attributable to the level of care and attention with
8 which the motor vehicle was driven.

9

10 Note: The heading to amended section 59B is to read:

11 **Ancillary matters and defences for sections 59, 59A and 59BA**

12 **27. Section 62 amended**

13 In section 62 delete the Penalty and insert:

14

15 Penalty: 30 PU.

16

17 **Subdivision 2 — *Young Offenders Act 1994* amended**

18 **28. Act amended**

19 This Subdivision amends the *Young Offenders Act 1994*.

20 **29. Schedule 2 amended**

21 In Schedule 2 item 3:

22 (a) delete the row relating to section 59 and insert:

23

s. 59 Dangerous driving causing death or grievous
bodily harm

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(b) after the row relating to section 59A insert:

s. 59BA(1) Careless driving causing death, grievous
bodily harm or bodily harm

Division 2 — Amendments relating to taking samples

30. Act amended

This Division amends the *Road Traffic Act 1974*.

31. Section 64AB amended

In section 64AB(7) delete “4 hours” and insert:

4 hours, or 12 hours if the sample was taken under
section 66(8B),

32. Section 64AC amended

In section 64AC(4) delete “4 hours” and insert:

4 hours, or 12 hours if the sample was taken under
section 66(8B),

33. Section 65 amended

In section 65 insert in alphabetical order:

prescribed sample taker means —

- (a) a medical practitioner or registered nurse; or
- (b) a person prescribed for the purposes of the
provision in which the term is used;

1 **34. Section 66 amended**

2 After section 66(6a) insert:

3

4 (7) Subsection (8B) applies if a police officer has
5 reasonable grounds to believe that —

6 (a) the presence of a motor vehicle has occasioned,
7 or its use has been an immediate or proximate
8 cause of serious bodily harm to, or the death of,
9 a person; and

10 (b) a person (*the person*) may have been the driver
11 or person in charge of the motor vehicle at the
12 time of that presence or use.

13 (8A) In subsection (7) —

14 *serious bodily harm*, in relation to a person, means
15 bodily harm that the police officer has reasonable
16 grounds to believe is likely to require the attendance of
17 the person at a hospital (whether or not that is
18 practicable).

19 (8B) If this subsection applies, a police officer may —

20 (a) require the person to do one or both of the
21 following —

22 (i) allow a prescribed sample taker to take
23 a sample of the person's blood for
24 analysis;

25 (ii) provide a sample of the person's urine
26 for analysis;

27 or

28 (b) where the person is incapable of complying
29 with that requirement — cause a prescribed
30 sample taker to take a sample of the person's
31 blood for analysis.

- 1 (8C) For the purposes of subsection (8B), a police officer
2 may require the person to accompany a police officer
3 to a police station or some other place, and may require
4 the person to wait at the police station or place.
- 5 (8) A police officer must not make a requirement under
6 subsection (8B)(a), or cause a prescribed sample taker
7 to take a sample under subsection (8B)(b), if it appears
8 to the police officer that the sample cannot be taken or
9 provided within 12 hours after the time of the presence
10 or use of the motor vehicle referred to in
11 subsection (7)(a).

12
13 **35. Section 69 amended**

- 14 (1) In section 69(1) delete the passage that begins with “Act,” and
15 continues to the end of the subsection and insert:

16
17 Act.

- 18
19 (2) After section 69(1a) insert:

20
21 (2A) The prescribed sample taker must ensure that both
22 samples are delivered to a police officer.

23 (2B) One of the samples must be delivered, on behalf of the
24 person from whom the samples were taken, to the
25 Chemistry Centre (WA) by a police officer or a person
26 appointed or engaged for that purpose.

27
28 **36. Section 69A amended**

- 29 (1) In section 69A:

30 (a) delete “Where pursuant” and insert:

31
32 (1) Where pursuant
33

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Part 3 Amendments that will be brought into operation by proclamation

Division 2 Amendments relating to taking samples

s. 37

1 (b) delete the passage that begins with “Act,” and continues
2 to the end of the section and insert:

3

4 Act.

5

6 (2) At the end of section 69A insert:

7

8 (2) The prescribed sample taker must ensure that both
9 samples are delivered to a police officer.

10 (3) One of the samples must be delivered, on behalf of the
11 person who provided the samples, to the Chemistry
12 Centre (WA) by a police officer or a person appointed
13 or engaged for that purpose.

14

15 **37. Section 69B amended**

16 (1) In section 69B:

17 (a) delete “If the drug” and insert:

18

19 (1) If the drug

20

21 (b) delete the passage that begins with “Act,” and continues
22 to the end of the section and insert:

23

24 Act.

25

26 (2) At the end of section 69B insert:

27

28 (2) The prescribed sample taker must ensure that both
29 samples are delivered to a police officer.

30 (3) One of the samples must be delivered, on behalf of the
31 person who provided the samples, to the Chemistry

1 Centre (WA) by a police officer or a person appointed
2 or engaged for that purpose.
3

4 **38. Sections 70A and 70B inserted**

5 After section 69B insert:
6

7 **70A. Blood, urine or oral fluid sample: delivery of**
8 **person's sample to Chemistry Centre (WA)**

- 9 (1) A sample of blood, urine or oral fluid delivered to the
10 Chemistry Centre (WA) on behalf of a person under
11 section 69(2B), 69A(3) or 69B(3) must be retained, and
12 appropriately stored, by the Chemistry Centre (WA)
13 until the person requests the sample.
- 14 (2) The person may, within 3 months after the day on
15 which the sample was delivered to the Chemistry
16 Centre (WA), request that the sample be delivered to
17 an analyst (as defined in the *Misuse of Drugs Act 1981*
18 section 3(1)) nominated by the person, for analysis.
- 19 (3) The cost of delivering the sample is to be paid for by
20 the person.
- 21 (4) Despite subsection (1), the Chemistry Centre (WA)
22 need not store the sample for more than 3 months.

23 **70B. Evidence of delivery of blood, urine or oral fluid**
24 **samples**

- 25 (1) In proceedings for an offence against section 63, 64,
26 64AA, 64A, 64AAA, 64AB or 64AC, evidence of the
27 delivery of a sample to an analyst or drug analyst may
28 be given in the form of a certificate in which a person
29 who took delivery of the sample sets out the prescribed
30 particulars of the delivery of the sample to the person
31 together with their signature.

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 2 Amendments relating to taking samples

s. 39

- 1 (2) In the absence of evidence to the contrary —
2 (a) it is to be presumed that each signature on the
3 certificate is the signature of the person of
4 whom it purports to be the signature; and
5 (b) the certificate is evidence of its contents.
- 6 (3) Except with the consent of the accused, evidence of the
7 delivery of a sample to a person in the form of a
8 certificate cannot be given in the proceedings and, if it
9 is given, is not admissible, unless a copy of the
10 certificate is given to the accused at least 28 days
11 before the proceedings.
- 12 (4) If a copy of the certificate has been given as required
13 by subsection (3), the accused cannot challenge or call
14 into question a matter set out in the certificate
15 unless —
16 (a) notice in writing of the accused’s intention is
17 given to the prosecutor at least 14 days before
18 the proceedings; or
19 (b) the court, in the interests of justice, gives the
20 accused leave to so do.
- 21 (5) A notice under subsection (4)(a) must specify the
22 matter that is to be challenged or called into question.
23

24 **39. Section 70 amended**

- 25 (1) In section 70(1)(d) and (3a)(a) and (b) delete “4 hours” and
26 insert:
27
28 4 hours, or 12 hours if the sample was taken under
29 section 66(8B),
30

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(2) In section 70(3b) delete “medical practitioner, registered nurse,” and insert:

prescribed sample taker,

40. Various references to “medical practitioner or registered nurse” amended

In the provisions listed in the Table delete “medical practitioner or registered nurse” (each occurrence) and insert:

prescribed sample taker

Table

s. 66(2), (5), (6), (6a), (11) and (12)	s. 66B(1), (2) and (4)
s. 66E(1), (2) and (4)	s. 66F(1) and (2)
s. 67(2)	s. 67AA(2)
s. 67AB(2)	s. 67A(2)
s. 68(3) and (7)	s. 69(1)
s. 69A	s. 70(1), (2), (3a) and (3b)
s. 72(1)	

14
15

Note: The heading to amended section 66F is to read:

Prescribed sample takers authorised to take blood samples

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 41

1 **Division 3 — Amendments relating to driving instructors**

2 **Subdivision 1 — Road Traffic Act 1974 amended**

3 **41. Act amended**

4 This Subdivision amends the *Road Traffic Act 1974*.

5 **42. Part V Division 1A replaced**

6 Delete Part V Division 1A and insert:

7

8 **Division 1AA — Terms used in this Part**

9 **49AAA. Terms used**

10 In this Part —

11 ***grievous bodily harm*** has the meaning given in
12 *The Criminal Code* section 1(1);

13 ***instructor*** means a person who may give driving
14 instruction under the *Road Traffic (Authorisation to*
15 *Drive) Act 2008* section 10(2);

16 ***learner driver*** means —

17 (a) the holder of a learner's permit; or

18 (b) a person authorised to drive under the *Road*
19 *Traffic (Authorisation to Drive) Act 2008*
20 section 6;

21 ***provide driving instruction*** means to provide or
22 attempt to provide driving instruction to a learner
23 driver who is driving a motor vehicle.

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Division 1A — When person taken to be instructor or in charge of vehicle

49AA. Circumstances in which person taken to be instructor or in charge of motor vehicle

- (1) For the purposes of this Part, unless the contrary is shown, a person is to be taken to be an instructor providing driving instruction to a learner driver if the person is —
- (a) seated beside the learner driver in a motor vehicle driven by the learner driver; or
 - (b) if there is no seat directly beside the learner driver —
 - (i) seated in the seat nearest the learner driver that faces forward in a motor vehicle driven by the learner driver; or
 - (ii) standing near the learner driver in a motor vehicle driven by the learner driver;
- or
- (c) riding in a side car attached, or on a pillion seat fitted, to a motor cycle driven by the learner driver.
- (2) Without limiting the circumstances in which a person is in charge of a motor vehicle, an instructor providing driving instruction to a learner driver is, for the purposes of this Part (other than sections 49AB and 66A), to be taken to be in charge of the motor vehicle driven by the learner driver.
- (3) Subsection (2) does not affect any liability of a learner driver for any offence committed by that person while driving or being in charge of a vehicle.

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 43

1 **43. Section 49AB amended**

2 Before section 49AB(1) insert:

3

4 (1A) In this section an instructor providing driving
5 instruction to a learner driver is not to be taken, under
6 section 49AA, to be in charge of the motor vehicle
7 driven by the learner driver.
8

9 **44. Part V Division 2A inserted**

10 After Part V Division 1 insert:

11

12 **Division 2A — Providing driving instruction to learner**
13 **drivers: alcohol and drug related offences**

14 **62B. Providing driving instruction: blood alcohol content**

15 (1) An instructor who provides driving instruction to a
16 learner driver while having a blood alcohol content of
17 or above 0.05 g of alcohol per 100 ml of blood
18 commits an offence.

19 Penalty for this subsection: a fine of not less than 6 PU
20 or more than 10 PU.

21 (2) Subsection (4) applies to an instructor who —

- 22 (a) holds an extraordinary licence as defined in the
23 *Road Traffic (Authorisation to Drive) Act 2008*
24 section 3(1); or
25 (b) has, within the last 3 years, ceased to be subject
26 to an order disqualifying the instructor from
27 holding or obtaining a driver's licence imposed
28 for an offence against section 63 or 67, or for a
29 second or subsequent offence against
30 section 64, committed after the commencement
31 of the *Road Traffic Amendment Act 1997*; or

- 1 (c) has, within the last 3 years, been granted a
2 driver's licence in a case where the instructor
3 did not hold a driver's licence because it had
4 been cancelled under a cancellation provision
5 as a result of an order disqualifying the
6 instructor from holding or obtaining a driver's
7 licence imposed for an offence against
8 section 63 or 67, or for a second or subsequent
9 offence against section 64, committed after the
10 commencement of the *Road Traffic Amendment*
11 *Act 1997*.
- 12 (3) In subsection (2)(c) —
13 ***cancellation provision*** means —
14 (a) a provision of the *Road Traffic (Authorisation*
15 *to Drive) Act 2008* Part 3 Division 2 under
16 which a driver's licence may be cancelled; or
17 (b) section 75(2a) or (2b) of this Act as in force at
18 any time before those provisions were deleted
19 by the *Road Traffic Legislation Amendment*
20 *Act 2012* section 20.
- 21 (4) An instructor to whom this subsection applies who
22 provides driving instruction to a learner driver while
23 having any blood alcohol content commits an offence.
24 Penalty for this subsection: a fine of not less than 6 PU
25 or more than 10 PU.
- 26 (5) An instructor who provides driving instruction to a
27 learner driver in respect of a motor vehicle that has a
28 GCM that is 22.5 tonnes or more while having any
29 blood alcohol content commits an offence.
30 Penalty for this subsection: a fine of not less than 6 PU
31 or more than 10 PU.
- 32 (6) It is a defence to a charge of an offence against
33 subsection (4) or (5) for the accused to prove that the

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 44

- 1 accused's blood alcohol content was not to any extent
2 caused by any of the following —
- 3 (a) the consumption of an alcoholic beverage
4 (otherwise than for the purposes of religious
5 observance);
- 6 (b) the consumption or use of any other substance
7 (for example, food or medicine) for the purpose
8 of consuming alcohol.
- 9 (7) A person charged with an offence against
10 subsection (1) may, instead of being convicted of that
11 offence, be convicted of an offence against
12 subsection (4) or (5) if, at the time of the alleged
13 offence, the person was a person to whom
14 subsection (4) or (5) applied.
- 15 **62C. Providing driving instruction with prescribed illicit**
16 **drug in oral fluid or blood**
- 17 (1) An instructor who provides driving instruction to a
18 learner driver while a prescribed illicit drug is present
19 in the instructor's oral fluid or blood commits an
20 offence.
- 21 Penalty for this subsection: a fine of not less than 6 PU
22 or more than 10 PU.
- 23 (2) If in any proceeding for an offence against this section
24 it is proved that a certain drug was present in the
25 accused's body at any time within 4 hours after the
26 time that the accused was providing the driving
27 instruction, the presence of that drug in the accused's
28 body at the time the accused was providing the driving
29 instruction is to be taken to be proved in the absence of
30 proof to the contrary.
- 31 (3) If a person takes a prescribed illicit drug mistakenly
32 believing it to be another drug, that mistake is not a
33 defence in any proceeding for an offence against this

1 section if that other drug is also a drug within the
2 meaning of paragraph (a) or (b) of the definition of
3 **drug** in section 65.
4

5 **45. Section 62B amended**

6 In section 62B(2):

7 (a) in paragraph (c) delete “*Act 1997.*” and insert:

8

9 *Act 1997*; or

10

11 (b) after paragraph (c) insert:

12

13 (d) is a member of a class of persons prescribed for
14 the purposes of section 64A(2)(g) by
15 regulations made for the purposes of the *Road*
16 *Traffic (Authorisation to Drive) Act 2008*
17 section 5A.
18

19 **46. Section 62C amended**

20 In section 62C(2) delete “4 hours” and insert:

21

22 4 hours, or 12 hours if the sample was taken under
23 section 66(8B),
24

25 **47. Section 66 amended**

26 (1) In section 66(2)(a)(ii) delete “section 64A(1)” and insert:

27

28 section 62B(4) or (5) or 64A(1)
29

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 47

- 1 (2) After section 66(2)(ca) insert:
2
- 3 (cb) a police officer has reasonable grounds to
4 believe that —
- 5 (i) an offence against section 59(1)(a) or
6 59A(1)(a) has been committed by a
7 learner driver; and
- 8 (ii) a person may have been an instructor
9 providing driving instruction to that
10 learner driver at the time of that offence;
- 11 or
12
- 13 (3) In section 66(2)(cb)(i) delete “section 59(1)(a) or 59A(1)(a)”
14 and insert:
15
- 16 section 59(1)(a), (ba) or (bb) or 59A(1)(a), (ba) or (bb)
17
- 18 (4) In section 66(2)(d) delete “63,” and insert:
19
- 20 63; or
21
- 22 (5) After section 66(2)(d) insert:
23
- 24 (e) a police officer has reasonable grounds to
25 believe that —
- 26 (i) the presence of a motor vehicle has
27 occasioned, or its use has been an
28 immediate or proximate cause of,
29 personal injury or damage to property;
30 and

- 1 (ii) a learner driver was driving or
2 attempting to drive the motor vehicle at
3 the time of that presence or use; and
4 (iii) a person may have been an instructor
5 providing driving instruction to the
6 learner driver at that time; and
7 (iv) at that time, the person would have
8 committed an offence against section 63
9 if the person had been driving a motor
10 vehicle,
11

12 (6) In section 66(6a)(a) delete “(ca) or (d),” and insert:
13

14 (ca), (cb), (d) or (e),
15

16 (7) In section 66(11) delete “(ca) or (d)” and insert:
17

18 (ca), (cb), (d) or (e)
19

20 **48. Section 66A amended**

21 Before section 66A(1) insert:
22

23 (1A) In this section an instructor providing driving
24 instruction to a learner driver is not to be taken, under
25 section 49AA, to be in charge of the motor vehicle
26 driven by the learner driver.
27

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 49

1 **49. Section 67 amended**

2 In section 67(2) delete “person” and insert:

3

4 person, other than a person to whom section 68A(3) applies,

5

6 **50. Section 67AB amended**

7 In section 67AB(2) delete “person” and insert:

8

9 person, other than a person to whom section 68A(3) applies,

10

11 **51. Section 67A amended**

12 In section 67A(1) delete “person” and insert:

13

14 person, other than a person to whom section 68A(3) applies,

15

16 **52. Section 68A inserted**

17 After section 67A insert:

18

19 **68A. Failure to comply with s. 66, 66C, 66D or 66E**
20 **requirement: instructors**

21 (1) In this section —

22 *requirement* means a requirement of a police officer
23 made under section 66, 66C, 66D or 66E.

24 (2) Subsection (3) applies to a person of whom a
25 requirement was made on the basis that the person was,
26 or that there were reasonable grounds to believe that
27 the person was, an instructor providing driving
28 instruction to a learner driver.

- 1 (3) A person to whom this subsection applies who fails to
2 comply with a requirement commits an offence.
- 3 (4) A person convicted of an offence against this section is
4 liable to a fine of 20 PU.
- 5 (5) It is a defence to a prosecution for an offence against
6 this section if the accused satisfies the court that there
7 was some substantial reason for the accused's failure to
8 comply other than a desire to avoid providing
9 information that might be used as evidence.
- 10 (6) Without limiting the generality of subsection (5), it is a
11 defence to a prosecution for failing to comply with a
12 requirement under section 66, to provide a urine
13 sample, if the accused satisfies the court that the
14 accused attempted to comply with the requirement.
- 15 (7) Without limiting the generality of subsection (5), it is a
16 defence to a prosecution for failing to comply with a
17 requirement to provide a sample of breath for a
18 preliminary test if the accused satisfies the court that
19 the accused complied with a requirement under
20 section 66, to provide a sample of breath for analysis or
21 to allow a sample of blood to be taken for analysis, that
22 arose out of —
- 23 (a) the accused's failure to comply with the
24 requirement to provide a sample of breath for a
25 preliminary test; or
- 26 (b) the circumstances that gave rise to the
27 requirement to provide a sample of breath for a
28 preliminary test.
- 29

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 53

1 **53. Section 70B amended**

2 In section 70B(1) after “offence against section” insert:

3

4 62B, 62C,

5

6 **54. Section 70 amended**

7 (1) In section 70(1) after “offence against section” insert:

8

9 62B,

10

11 (2) In section 70(3a) after “offence against section” insert:

12

13 62C or

14

15 (3) In section 70(3c) after “section 67(2)(a)” insert:

16

17 or 68A

18

19 (4) In section 70(3d) after “section 67A(1)” insert:

20

21 or 68A

22

23 (5) In section 70(5c), (5d) and (5e) delete “67AB or 67A.” and
24 insert:

25

26 67AB, 67A or 68A.

27

1 (6) In section 70(6) delete “67AA or 67A.” and insert:

2

3 67AA, 67A or 68A.

4

5 **Subdivision 2 — Road Traffic (Administration) Act 2008 amended**

6 **55. Act amended**

7 This Subdivision amends the *Road Traffic (Administration)*
8 *Act 2008*.

9 **56. Section 28 amended**

10 In section 28 insert in alphabetical order:

11

12 *instructor* has the meaning given in the *Road Traffic*
13 *Act 1974* section 49AAA;

14 *learner driver* has the meaning given in the *Road*
15 *Traffic Act 1974* section 49AAA;

16 *provide driving instruction* has the meaning given in
17 the *Road Traffic Act 1974* section 49AAA;

18

19 **57. Part 4 Division 2A inserted**

20 After Part 4 Division 1 insert:

21

22 **Division 2A — When person taken to be instructor or in**
23 **charge of vehicle**

24 **32A. Circumstances in which person taken to be**
25 **instructor or in charge of motor vehicle**

26 (1) For the purposes of this Part, unless the contrary is
27 shown, a person is to be taken to be an instructor

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 3 Amendments relating to driving instructors

s. 58

- 1 providing driving instruction to a learner driver if the
2 person is —
- 3 (a) seated beside the learner driver in a motor
4 vehicle driven by the learner driver; or
- 5 (b) if there is no seat directly beside the learner
6 driver —
- 7 (i) seated in the seat nearest the learner
8 driver that faces forward in a motor
9 vehicle driven by the learner driver; or
- 10 (ii) standing near the learner driver in a
11 motor vehicle driven by the learner
12 driver;
- 13 or
- 14 (c) riding in a side car attached, or on a pillion seat
15 fitted, to a motor cycle driven by the learner
16 driver.
- 17 (2) Without limiting the circumstances in which a person
18 is in charge of a motor vehicle, an instructor providing
19 driving instruction to a learner driver is, for the
20 purposes of this Part, to be taken to be in charge of the
21 motor vehicle driven by the learner driver.
- 22 (3) Subsection (2) does not affect any liability of a learner
23 driver for any offence committed by that person while
24 driving or being in charge of a vehicle.
25

26 **58. Section 33 amended**

27 In section 33(1) delete “vehicle” and insert:

28

29 vehicle, or an instructor providing driving instruction to a
30 learner driver,
31

1 **59. Section 35 amended**

2 (1) Delete section 35(1) and insert:

3

4 (1) In this section —

5 *identity request* means a request made under a road law
6 for information as to the identity of the person who was
7 driving or in charge of a vehicle at any particular time.

8

9 (2) In section 35(2) delete “a driver” and insert:

10

11 an

12

13 Note: The heading to amended section 35 is to read:

14 **Duty to take reasonable measures to be able to comply with**
15 **identity request**

16 **60. Section 109 amended**

17 In section 109(1):

18 (a) in paragraph (f) after “section” insert:

19

20 62B(4) or

21

22 (b) after paragraph (f) insert:

23

24 (gaa) that the vehicle to which the alleged offence
25 relates was, at the time of the alleged offence, a
26 motor vehicle referred to in the *Road Traffic*
27 *Act 1974* section 62B(5);

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Division 4 — Other amendments

Subdivision 1 — Road Traffic Act 1974 amended

61. Act amended

This Subdivision amends the *Road Traffic Act 1974*.

62. Section 49 amended

(1) In section 49(1) in the Penalty delete “Penalty:” and insert:

Penalty for this subsection:

(2) In section 49(1) in the Penalty paragraph (c) after “(b),” insert:

(ca),

(3) Delete section 49(3)(b) and insert:

(b) who, at the time of the commission of the offence, is disqualified from holding or obtaining an Australian driver licence of a kind required, other than for the reason described in paragraph (d), whether or not the person has ever held an Australian driver licence of the kind required; or

(ca) who has held an Australian driver licence of a kind required but ceased to hold the licence of that kind most recently held other than —

(i) because the person had, before the time of the commission of the offence, voluntarily surrendered the licence most recently held; or

(ii) because the licence expired; or

1 (iii) for the reason described in
2 paragraph (d);

3 or
4

5 (4) In section 49(4) and (6) after “(b),” insert:
6

7 (ca)
8

9 (5) In section 49(7) in the definition of *relevant offence*
10 paragraph (a) after “(b),” insert:
11

12 (ca)
13

14 **63. Section 78A amended**

15 In section 78A in the definition of *impounding offence*
16 (*driver’s licence*) paragraph (a) after “(b),” insert:
17

18 (ca),
19

20 **64. Section 110 inserted**

21 At the end of Part VIII insert:
22

23 **110. Transitional provisions for the Road Traffic**
24 **Legislation Amendment Act (No. 2) 2015**

25 (1) Until the *Road Traffic Legislation Amendment Act*
26 (*No. 2*) 2015 section 62(2) comes into operation,
27 section 49(1) has effect as if paragraph (c) of the
28 Penalty also referred to the application of
29 subsection (3)(ca).

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 4 Other amendments

s. 65

- 1 (2) Until the *Road Traffic Legislation Amendment Act*
2 (*No. 2*) 2015 section 63 comes into operation, the
3 definition of ***impounding offence (driver's licence)***
4 paragraph (a) in section 78A, has effect as if it also
5 referred to section 49(3)(ca).
6

7 **Subdivision 2 — *Road Traffic (Administration) Act 2008* amended**

8 **65. Act amended**

9 This Subdivision amends the *Road Traffic (Administration)*
10 *Act 2008*.

11 **66. Section 117 amended**

12 (1) In section 117(1) delete “section —” and insert:
13

14 section and section 118A —
15

16 (2) In section 117(1) delete the definition of ***Minister***.

17 (3) In section 117(1) insert in alphabetical order:
18

19 ***approved procedure***, in relation to setting up,
20 installing, testing or retrieving data from speed
21 measuring and recording equipment or producing
22 images from the data, means the procedure approved
23 by the Commissioner of Police;

24 ***Minister*** means the Minister to whom the
25 administration of the *Police Act 1892* is committed;

26 ***speed measuring and recording equipment*** means
27 apparatus of a type approved by the Minister under
28 subsection (2)(c);
29

- 1 (4) In section 117(1) in the definition of *authorised person* after
2 paragraph (b) insert:
3
4 and
5 (c) in relation to speed measuring and recording
6 equipment, means —
7 (i) a police officer; or
8 (ii) a person certified by the Commissioner
9 of Police as being competent to install,
10 set up, test or retrieve data from the
11 equipment or produce images from the
12 data;
13
- 14 (5) In section 117(1) in the definition of *distance measuring*
15 *equipment* delete “(3);” and insert:
16
17 (2)(b);
18
- 19 (6) In section 117(1) in the definition of *speed measuring*
20 *equipment* delete “(2).” and insert:
21
22 (2)(a).
23
- 24 (7) Delete section 117(2) and (3) and insert:
25
26 (2) The Minister may, from time to time, by notice
27 published in the *Gazette*, approve of types of apparatus
28 for the purposes of —
29 (a) ascertaining the speed at which a vehicle is
30 moving; or
31 (b) ascertaining distances on roads; or

Road Traffic Legislation Amendment Bill (No. 2) 2015

Part 3 Amendments that will be brought into operation by proclamation

Division 4 Other amendments

s. 66

- 1 (c) ascertaining the speed at which a vehicle is
2 moving, recording an image of the vehicle and
3 recording —
- 4 (i) the speed at which the vehicle was
5 moving; and
- 6 (ii) the date on which the image was
7 recorded; and
- 8 (iii) the time and location at which the image
9 was recorded; and
- 10 (iv) the speed limit applicable at that
11 location at that time.
- 12 (3) The Minister may, by notice published in the *Gazette*,
13 revoke an approval under subsection (2).
14
- 15 (8) Delete section 117(6) and insert:
16
- 17 (6) In a prosecution for an offence under a written law
18 involving the driving of a vehicle, evidence may be
19 given of —
- 20 (a) the use of speed measuring and recording
21 equipment at a particular location; and
- 22 (b) the identity of the vehicle as recorded by that
23 equipment at a particular time; and
- 24 (c) the speed at which the vehicle was moving as
25 ascertained and recorded by that equipment at
26 that time.
- 27 (7A) The evidence referred to in subsection (6) is prima
28 facie evidence of the identity of the vehicle and the
29 speed at which it was moving at that time and location.
- 30 (7B) In a prosecution mentioned in subsection (6), evidence
31 of the matters referred to in that subsection may be
32 given in the form of an image of the vehicle on which

- 1 is recorded the matters referred to in subsection (2)(c),
2 as ascertained and recorded by the speed measuring
3 and recording equipment at the time and location
4 referred to in subsection (6).
5
- 6 (9) In section 117(7):
7 (a) delete “(5),” and insert:
8
9 (4), (5) or (6),
10
11 (b) after “person was” insert:
12
13 speed measuring equipment, speed measuring and
14 recording equipment or
15
- 16 (10) Delete section 117(8) and insert:
17
- 18 (8) In a prosecution mentioned in subsection (4), (5) or (6),
19 a certificate purporting to be signed by the
20 Commissioner of Police certifying that a specified
21 person is, or was at the material time, a person certified
22 by the Commissioner as being competent to —
23 (a) use distance measuring equipment; or
24 (b) use speed measuring equipment; or
25 (c) install, set up, test or retrieve data from, speed
26 measuring and recording equipment or produce
27 images from the data,
28 is prima facie evidence of the matters in the certificate,
29 without proof of the signature of the person purporting
30 to have signed it or proof that the purported signatory
31 was the Commissioner.
32

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- 1 (11) After section 117(9) insert:
2
3 (10) If the certification of a person for the purposes of
4 paragraph (b)(ii) of the definition of *authorised person*
5 in subsection (1) was in effect immediately before
6 commencement day, the certification has effect in
7 relation to installing, setting up, testing and retrieving
8 data from speed measuring and recording equipment on
9 and after commencement day as if it were also the
10 certification of the person for the purposes of
11 paragraph (c)(ii) of that definition in relation to those
12 matters.
- 13 (11) An approval under subsection (2) or (3) that was in
14 effect immediately before commencement day has
15 effect on and after commencement day, according to its
16 terms, as if made under subsection (2) as in effect on
17 and after commencement day.
- 18 (12) In subsections (10) and (11) —
19 *commencement day* means the day on which the *Road*
20 *Traffic Legislation Amendment Act (No. 2) 2015*
21 section 66 comes into operation.
22

23 **67. Section 118A inserted**

24 After section 117 insert:

25
26 **118A. Evidentiary provisions for images recorded by**
27 **speed measuring and recording equipment**

- 28 (1) If, in a prosecution mentioned in section 117(6),
29 evidence is given in the form of an image as described
30 in section 117(7B) and the image is accompanied by a
31 certificate under subsection (2), the image —
32 (a) is to be accepted as having been recorded as
33 described in section 117(7B), unless there is
34 evidence to the contrary; and

- 1 (b) is prima facie evidence of the matters shown in
2 or recorded on the image.
- 3 (2) For the purposes of subsection (1), the certificate is a
4 certificate purporting to be signed by the
5 Commissioner of Police, certifying that —
- 6 (a) the equipment, specified in the certificate, was
7 speed measuring and recording equipment as
8 defined in section 117(1); and
- 9 (b) the equipment was installed or set up by an
10 authorised person, named in the certificate, in
11 accordance with the approved procedure on a
12 day specified in the certificate; and
- 13 (c) the equipment was tested by an authorised
14 person, named in the certificate, in accordance
15 with the approved procedure on a day, specified
16 in the certificate, that was within the prescribed
17 number of days (for that type of equipment)
18 after the day on which the alleged offence took
19 place; and
- 20 (d) on the day referred to in paragraph (c), the
21 equipment was accurate and operating properly;
22 and
- 23 (e) data relating to the vehicle and its speed, and
24 the time and place at which its speed was
25 ascertained and the data recorded, was retrieved
26 from the equipment by an authorised person,
27 named in the certificate, in accordance with the
28 approved procedure; and
- 29 (f) the data referred to in paragraph (e) was used to
30 produce the image by an authorised person,
31 named in the certificate, in accordance with the
32 approved procedure.
- 33 (3) The certificate is prima facie evidence of the matters in
34 it.

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- 1 (4) Except with the consent of the accused, a certificate
2 described in subsection (2) cannot be given in the
3 proceedings and, if it is given, is not admissible, unless
4 a copy of the image and the certificate is given to the
5 accused at least 28 days before the proceedings.
- 6 (5) If a copy of the image and the certificate have been
7 given as required by subsection (4), the accused cannot
8 challenge or call into question a matter certified or set
9 out in the certificate unless —
- 10 (a) notice in writing of the accused’s intention is
11 given to the prosecutor at least 14 days before
12 the proceedings; or
- 13 (b) the court, in the interests of justice, gives the
14 accused leave to so do.
- 15 (6) A notice under subsection (5)(a) must specify the
16 matter that is to be challenged or called into question.
- 17 (7) In a prosecution mentioned in section 117(6), it is to be
18 presumed, in the absence of evidence to the contrary,
19 that a certificate described in subsection (2) purporting
20 to have been signed by the Commissioner of Police
21 was so signed, without proof of the signature of the
22 person purporting to have signed it or proof that the
23 purported signatory was the Commissioner.
- 24

25