

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

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**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**

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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  
12 (b) section 75(2a) or (2b) of this Act as in force at  
13 any time before those provisions were deleted  
14 by the *Road Traffic Legislation Amendment*  
15 *Act 2012* section 20.  
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**

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- 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**

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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;

**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. 16**

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- 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” (1<sup>st</sup> 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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10

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

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

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

**Division 1** Amendments relating to careless driving

**s. 27**

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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: a fine of 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

24



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

2

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

3

4 **Division 2 — Amendments relating to taking samples**

5 **30. Act amended**

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

7 **31. Section 64AB amended**

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

9

10 4 hours, or 12 hours if the sample was taken under  
11 section 66(8B),

12

13 **32. Section 64AC amended**

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

15

16 4 hours, or 12 hours if the sample was taken under  
17 section 66(8B),

18

19 **33. Section 65 amended**

20 In section 65 insert in alphabetical order:

21

22 *prescribed sample taker* means —

23 (a) a medical practitioner or registered nurse; or

24 (b) an appropriately qualified person prescribed for  
25 the purposes of the provision in which the term  
26 is used;

27

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

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

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**Division 2** Amendments relating to taking samples

**s. 37**

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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 authorised drug tester 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.

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**s. 39**

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- 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**

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**Division 3** Amendments relating to driving instructors

**s. 41**

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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.

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

**Division 3** Amendments relating to driving instructors

**s. 43**

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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

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

**Division 3** Amendments relating to driving instructors

**s. 44**

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- 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

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

**Division 3** Amendments relating to driving instructors

**s. 47**

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- 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**

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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

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

**Division 3** Amendments relating to driving instructors

**s. 53**

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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**

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- 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**

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- 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 117A —  
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

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- 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 evidence may be given of —
- 19 (a) the use of speed measuring and recording  
20 equipment at a particular location; and
- 21 (b) the identity of a vehicle as recorded by that  
22 equipment at a particular time; and
- 23 (c) the speed at which a vehicle was moving as  
24 ascertained and recorded by that equipment at  
25 that time.
- 26 (7A) The evidence referred to in subsection (6) is prima  
27 facie evidence of the identity of the vehicle and the  
28 speed at which it was moving at that time and location.
- 29 (7B) In a prosecution mentioned in subsection (6), evidence  
30 of the matters referred to in that subsection may be  
31 given in the form of an image of the vehicle on which  
32 is recorded the matters referred to in subsection (2)(c),

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

1 **67. Sections 117A to 117I inserted**

2 After section 117 insert:

3

4 **117A. Evidentiary provisions for images recorded by**  
5 **speed measuring and recording equipment**

6 (1) If, in a prosecution mentioned in section 117(6),  
7 evidence is given in the form of an image as described  
8 in section 117(7B) and the image is accompanied by a  
9 certificate under subsection (2), the image —

10 (a) is to be accepted as having been recorded as  
11 described in section 117(7B), unless there is  
12 evidence to the contrary; and

13 (b) is prima facie evidence of the matters shown in  
14 or recorded on the image.

15 (2) For the purposes of subsection (1), the certificate is a  
16 certificate purporting to be signed by the  
17 Commissioner of Police, certifying that —

18 (a) the equipment, specified in the certificate, was  
19 speed measuring and recording equipment; and

20 (b) the equipment was installed or set up by an  
21 authorised person, named in the certificate, in  
22 accordance with the approved procedure on a  
23 day specified in the certificate; and

24 (c) the equipment was tested by an authorised  
25 person, named in the certificate, in accordance  
26 with the approved procedure on a day, specified  
27 in the certificate, that was within the prescribed  
28 number of days (for that type of equipment)  
29 before the day on which the alleged offence  
30 was committed; and

31 (d) on the specified day referred to in paragraph (c)  
32 and on the day on which the alleged offence  
33 was committed, the equipment was accurate  
34 and operating properly; and

- 1 (e) data relating to the vehicle and its speed, and  
2 the time and place at which its speed was  
3 ascertained and the data recorded, was retrieved  
4 from the equipment by an authorised person,  
5 named in the certificate, in accordance with the  
6 approved procedure; and
- 7 (f) the data referred to in paragraph (e) was used to  
8 produce the image by an authorised person,  
9 named in the certificate, in accordance with the  
10 approved procedure.
- 11 (3) The certificate is prima facie evidence of the matters in  
12 it.
- 13 (4) A certificate under subsection (2) is not admissible in  
14 evidence in a prosecution mentioned in section 117(6)  
15 unless a copy of the certificate and a copy of the  
16 relevant image are given to the accused at least 28 days  
17 before the day on which the proceedings begin or  
18 within a shorter period that is agreed by the accused.
- 19 (5) If a copy of the image and the certificate have been  
20 given as required by subsection (4), the accused cannot  
21 challenge or call into question a matter certified in the  
22 certificate unless —
- 23 (a) notice in writing of the accused’s intention is  
24 given to the prosecutor at least 14 days before  
25 the proceedings begin; or
- 26 (b) the court, in the interests of justice, gives the  
27 accused leave to so do.
- 28 (6) A notice under subsection (5)(a) must specify the  
29 matter that is to be challenged or called into question.
- 30 (7) In a prosecution mentioned in section 117(6), it is to be  
31 presumed, in the absence of evidence to the contrary,  
32 that a certificate under subsection (2) purporting to  
33 have been signed by the Commissioner of Police was

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1 so signed, without proof of the signature of the person  
2 purporting to have signed it or proof that the purported  
3 signatory was the Commissioner.

4 **117B. Evidence of average speed as actual speed**

5 (1) In this section and in sections 117C to 117I —

6 ***authorised person*** means —

7 (a) a police officer; or

8 (b) a person certified by the Commissioner of  
9 Police as being competent to install, set up, test  
10 or retrieve data from, an average speed  
11 detection system or produce images from the  
12 data;

13 ***average speed detection system*** means a system,  
14 comprising electronic equipment linked to an  
15 information technology system and computer  
16 programs, of a type approved by the Minister under  
17 section 117C;

18 ***carriageway*** means a portion of a road that is designed  
19 or ordinarily used for vehicular traffic;

20 ***detection points*** means the different points on a  
21 carriageway by reference to which the average speed of  
22 a vehicle is proposed to be calculated;

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

25 ***shortest practicable distance***, that could be travelled  
26 by a vehicle on a carriageway between detection  
27 points, means the shortest distance between those  
28 points that a driver of the vehicle could have used to  
29 travel between the points without contravening any  
30 road law applicable to the driver.

- 1           (2) In a prosecution for an offence under any written law  
2           evidence may be given of —
- 3               (a) the use of an average speed detection system in  
4               respect of a particular location; and
- 5               (b) the identity of a vehicle as ascertained by that  
6               system at a particular time; and
- 7               (c) the average speed of a vehicle between  
8               detection points calculated in accordance with  
9               section 117D.
- 10          (3) The evidence referred to in subsection (2)(b) is prima  
11          facie evidence of the identity of the vehicle.
- 12          (4) The average speed of a vehicle referred to in  
13          subsection (2)(c) is prima facie evidence of the actual  
14          speed of the vehicle between the detection points.
- 15          (5) In a prosecution mentioned in subsection (2), evidence  
16          of the matters referred to in that subsection may be  
17          given in the form of an image of the vehicle on which  
18          is recorded —
- 19               (a) the location referred to in subsection (2)(a); and  
20               (b) the time referred to in subsection (2)(b); and  
21               (c) the average speed of the vehicle between  
22               detection points calculated in accordance with  
23               section 117D (which may have been calculated  
24               using an average speed detection system).
- 25          (6) In a prosecution mentioned in subsection (2), evidence  
26          by an authorised person that a system used in respect of  
27          a particular location was an average speed detection  
28          system is prima facie evidence of that fact.
- 29          (7) In a prosecution mentioned in subsection (2), a  
30          certificate purporting to be signed by the  
31          Commissioner of Police certifying that a specified  
32          person is, or was at the material time, an authorised

1 person is prima facie evidence of the matters in the  
2 certificate, without proof of the signature of the person  
3 purporting to have signed it or proof that the purported  
4 signatory was the Commissioner.

5 (8) This section is in addition to, and does not derogate  
6 from, any other mode of proof of the speed of a  
7 vehicle.

8 **117C. Average speed detection systems**

9 (1) The Minister may, from time to time, by notice  
10 published in the *Gazette*, approve types of average  
11 speed detection systems for the purposes of —

12 (a) ascertaining the average speed of a vehicle  
13 between detection points; and

14 (b) recording —

15 (i) an image of the vehicle; and

16 (ii) the date on which the image was  
17 recorded; and

18 (iii) the time and location at which the image  
19 was recorded.

20 (2) The Minister may, by notice published in the *Gazette*,  
21 revoke an approval under subsection (1).

22 **117D. How average speed is to be calculated**

23 The average speed of a vehicle between detection  
24 points is to be calculated in accordance with the  
25 following formula and expressed in kilometres per hour  
26 rounded down to the next whole number —

27 
$$\frac{D_T \times 3600}{T}$$



1  
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where —

$D_T$  is the total shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between the detection points;

$T$  is the time, expressed in seconds, that elapsed between the vehicle passing the first and last detection points.

**117E. How average speed limit is to be calculated**

The average speed limit for a driver of a vehicle on a carriageway between detection points in circumstances where more than one speed limit applied to the driver between those points is to be calculated in accordance with the following formula and expressed in kilometres per hour rounded up to the next whole number —

$$\frac{D_T}{\frac{D_1}{S_1} + \frac{D_2}{S_2} + \dots + \frac{D_n}{S_n}}$$

where —

$D_T$  is the total shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between the detection points;

$D_1, D_2 \dots D_n$  are each part of the total shortest practicable distance  $D_T$  between the detection points, expressed in kilometres and rounded down to 2 decimal places, for the different speed limits  $S_1, S_2 \dots S_n$  that would

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1 have applied to the driver of the vehicle  
2 between the detection points;  
3  $S_1, S_2 \dots S_n$  are each of the speed limits, expressed  
4 in kilometres per hour, that would have  
5 applied to the driver of the vehicle if  
6 the vehicle were travelling along the  
7 shortest practicable distance  $D_T$  on a  
8 carriageway between the detection  
9 points.

10 **117F. Evidence of, proceedings for, certain matters**  
11 **related to evidence of average speed**

12 (1) The following provisions apply in a prosecution  
13 mentioned in section 117B(2) —

14 (a) for the purposes of calculating the vehicle's  
15 average speed and any average speed limit, the  
16 vehicle and any of its drivers are to be taken to  
17 have travelled between the detection points by  
18 means of the shortest practicable distance  
19 between those points regardless of the actual  
20 route taken by any of the drivers between the  
21 points;

22 (b) if more than one speed limit applied to a driver  
23 of a vehicle between detection points —

24 (i) the average speed limit for the driver on  
25 a carriageway between the points  
26 calculated in accordance with  
27 section 117E is to be taken (subject to  
28 section 117B(8)) to be the speed limit  
29 that applied to the driver at all times on  
30 the carriageway between those points;  
31 and

32 (ii) a driver of, and any responsible person  
33 for, the vehicle may be dealt with under  
34 a road law accordingly;

- 1                   (c) if there was more than one driver of the vehicle  
2                   between the detection points, each driver is to  
3                   be taken to have driven the vehicle at the  
4                   average speed of the vehicle calculated in  
5                   accordance with section 117D, except as  
6                   provided by subsection (2).
- 7           (2) Subsection (1)(c) does not apply to a driver —
- 8                   (a) who satisfies the court that he or she did not, at  
9                   any time whilst driving the vehicle between the  
10                  detection points, drive at a speed that exceeded  
11                  the speed limit applicable to that driver; or
- 12                  (b) in prescribed circumstances.
- 13           (3) If there is evidence of the average speed of a vehicle  
14                  between detection points calculated in accordance with  
15                  section 117D, one or more drivers of the vehicle may  
16                  be prosecuted for, and found guilty or convicted of, an  
17                  offence in respect of which the evidence was given.

18           **117G. Evidentiary provisions for images recorded by**  
19           **average speed detection systems**

- 20           (1) If, in a prosecution mentioned in section 117B(2),  
21                  evidence is given in the form of an image as described  
22                  in section 117B(5) and the image is accompanied by a  
23                  certificate under subsection (2), the image —
- 24                          (a) is to be accepted as having been recorded as  
25                          described in section 117B(5), unless there is  
26                          evidence to the contrary; and
- 27                          (b) is prima facie evidence of the matters shown in  
28                          or recorded on the image.
- 29           (2) For the purposes of subsection (1), the certificate is a  
30                  certificate purporting to be signed by the  
31                  Commissioner of Police certifying that —
- 32                          (a) the system, specified in the certificate, was an  
33                          average speed detection system; and

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- 1 (b) components of the system were tested by an  
2 authorised person, named in the certificate, in  
3 accordance with the approved procedure on a  
4 day, specified in the certificate, that was within  
5 the prescribed number of days (for each  
6 component) before the day on which the  
7 alleged offence was committed; and
- 8 (c) on the specified day referred to in paragraph (b)  
9 and on the day on which the alleged offence  
10 was committed, the components were operating  
11 properly and were accurate; and
- 12 (d) data obtained from the system was obtained by  
13 an authorised person, named in the certificate,  
14 in accordance with the approved procedure; and
- 15 (e) the image was produced by an authorised  
16 person, named in the certificate, in accordance  
17 with the approved procedure, from data  
18 obtained from the system.
- 19 (3) In subsection (2) —  
20 *approved* means approved by the Commissioner of  
21 Police.
- 22 (4) A certificate under subsection (2) may also certify any  
23 one or more of the following matters —
- 24 (a) the average speed calculated in accordance with  
25 section 117D at which the vehicle travelled  
26 between detection points (which may have been  
27 calculated using the average speed detection  
28 system);
- 29 (b) if one speed limit applied to a driver of the  
30 vehicle between detection points (measured  
31 along the shortest practicable distance), the  
32 speed limit;
- 33 (c) if more than one speed limit applied to a driver  
34 of the vehicle between detection points

- 1 (measured along the shortest practicable  
2 distance) —
- 3 (i) each distance for which each speed limit  
4 applied to the driver, expressed in  
5 kilometres and rounded down to  
6 2 decimal places; and
- 7 (ii) the average speed limit calculated in  
8 accordance with section 117E that  
9 applied to the driver between the  
10 detection points (which may have been  
11 calculated using the average speed  
12 detection system).
- 13 (5) The certificate is prima facie evidence of the matters in  
14 it.
- 15 (6) In a prosecution mentioned in section 117B(2), it is to  
16 be presumed, in the absence of evidence to the  
17 contrary, that a certificate under subsection (2)  
18 purporting to have been signed by the Commissioner of  
19 Police was so signed, without proof of the signature of  
20 the person purporting to have signed it or proof that the  
21 purported signatory was the Commissioner.
- 22 **117H. Certificate evidence as to shortest practicable**  
23 **distance**
- 24 (1) In this section —
- 25 *licensed surveyor* has the meaning given in the  
26 *Licensed Surveyors Act 1909* section 3(1).
- 27 (2) In a prosecution mentioned in section 117B(2), a  
28 certificate purporting to be signed by a licensed  
29 surveyor certifying any one or more of the following  
30 matters is prima facie evidence of the matters that are  
31 certified, without proof of the signature of the person

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- 1 purporting to have signed it or proof that the purported  
2 signatory was a licensed surveyor —
- 3 (a) the shortest practicable distance, expressed in  
4 kilometres and rounded down to 2 decimal  
5 places, that could be travelled by a vehicle on a  
6 carriageway between detection points;
- 7 (b) if more than one speed limit between detection  
8 points applied (measured along the shortest  
9 practicable distance), each distance for which  
10 each speed limit applied, expressed in  
11 kilometres and rounded down to 2 decimal  
12 places.

13 **117I. Certificate, image copies to be given before**  
14 **proceedings**

- 15 (1) A certificate of the Commissioner of Police under  
16 section 117G is not admissible in evidence in a  
17 prosecution mentioned in section 117B(2) unless a  
18 copy of the certificate and a copy of the relevant image  
19 are given to the accused at least 28 days before the day  
20 on which the proceedings begin or within a shorter  
21 period that is agreed by the accused.
- 22 (2) A certificate of a licensed surveyor under section 117H  
23 is not admissible in evidence in a prosecution  
24 mentioned in section 117B(2) unless a copy of the  
25 certificate is given to the accused at least 28 days  
26 before the day on which the proceedings begin or  
27 within a shorter period that is agreed by the accused.
- 28 (3) If a copy of a certificate has been given as required by  
29 subsection (1) or (2), the accused cannot challenge or  
30 call into question a matter certified in the certificate  
31 unless —
- 32 (a) notice in writing of the accused's intention is  
33 given to the prosecutor at least 14 days before  
34 the proceedings begin; or

- 1                   (b) the court, in the interests of justice, gives the  
2                   accused leave to do so.
- 3                   (4) A notice under subsection (3)(a) must specify the  
4                   matter that is to be challenged or called into question.  
5

6 **68. Part 9 Division 2 replaced**

7 Delete Part 9 Division 2 and insert:  
8

9                   **Division 2 — Transitional provisions arising from**  
10                   **certain amendments made by the *Road Traffic***  
11                   ***Legislation Amendment Act (No. 2) 2015***

12 **166. Terms used**

13 In this Division —

14 *commencement day* means the day on which the *Road*  
15 *Traffic Legislation Amendment Act (No. 2) 2015*  
16 section 66 comes into operation;

17 *RT(A) Act* means the *Road Traffic (Administration)*  
18 *Act 2008* as in force before commencement day.

19 **167. Approval of apparatus for ascertaining vehicle**  
20 **speed**

21 An approval under the RT(A) Act section 117(2) that  
22 was in effect immediately before commencement day  
23 is, on and from commencement day, to be taken to be  
24 an approval for the purposes mentioned in  
25 section 117(2)(a).

26 **168. Approval of apparatus for ascertaining distances on**  
27 **roads**

28 An approval under the RT(A) Act section 117(3) that  
29 was in effect immediately before commencement day

1 is, on and from commencement day, to be taken to be  
2 an approval for the purposes mentioned in  
3 section 117(2)(b).

4 **169. Certain authorised persons to be authorised persons**  
5 **for speed measuring and recording equipment,**  
6 **average speed detection systems**

7 (1) In this section —  
8 *speed measuring equipment* has the meaning given in  
9 the RT(A) Act section 117(1).

10 (2) A person who, immediately before commencement  
11 day, is a person certified by the Commissioner of  
12 Police as being competent to use speed measuring  
13 equipment is, on and from commencement day, to be  
14 taken to be a person certified by the Commissioner of  
15 Police as being competent to install, set up, test and  
16 retrieve data from speed measuring and recording  
17 equipment as defined in section 117(1) and produce  
18 images from the data.

19 (3) A person who, immediately before commencement  
20 day, is a person certified by the Commissioner of  
21 Police as being competent to use speed measuring  
22 equipment is, on and from commencement day, to be  
23 taken to be a person certified by the Commissioner of  
24 Police as being competent to install, set up, test and  
25 retrieve data from an average speed detection system as  
26 defined in section 117B(1) and produce images from  
27 the data.  
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