

Explanatory Memorandum

Road Traffic Legislation Amendment Bill (No. 2) 2015

This Bill amends the *Road Traffic Act 1974* (“RTA”), *Road Traffic (Administration) Act 2008*, *Road Traffic (Authorisation to Drive) Act 2008* and the *Young Offenders Act 1994* to implement a number of proposals developed to deter errant drivers. In addition, the Bill addresses a number of technical administrative difficulties within the Road Traffic suite of legislation.

Briefly, the Bill amends the above Acts to provide:

- the introduction of drug and alcohol restrictions for persons providing driving instruction to learner drivers;
- the introduction of an offence for careless driving causing death, grievous bodily harm or bodily harm;
- the power to require compulsory blood testing of suspected drivers involved in a traffic crash which resulted in death or serious bodily harm;
- the removal of an anomaly in the offence of driving without authorisation whilst under suspension or disqualification;
- the removal of an anomaly limiting the time period for the commencement of a prosecution for an indictable offence under a road law to 12 months;
- the option to report a traffic crash to the Western Australia Police online through the internet;
- the power for the Commissioner of Police to disclose RTA information to a relevant authority or to specified persons involved in an incident;
- a mandatory disqualification of a driver’s licence of 2 years for an offence under s.54 of the RTA “Driver in incident occasioning bodily harm to stop, ensure assistance and give information”;
- updated terminology relating to the use of speed and distance measuring equipment;
- the power for the Minister for Police to approve or revoke the types of apparatus and equipment used to measure speed and distance;

- legislative framework for the enforcement of Point to Point (P2P) speed enforcement;
- the power for the Minister for Police to approve or revoke the types of apparatus and devices used to ascertain the presence of alcohol and drugs in samples of breath, blood, urine and oral fluid;
- the power for the Commissioner of Police to certify a person as being competent to operate all types of breath analysing equipment;
- the power to issue infringement notices based on photographic evidence for the offence of using an unlicensed light vehicle;
- the repeal of the superseded section 50 of the RTA;
- the power to arrest under section 67 of the RTA a person who fails to comply with a request to accompany a police officer in relation to a failure to comply with a request to provide a breath, blood, urine or oral fluid sample;
- an amendment to provide that a person who is convicted of an offence under a road law and who is sentenced to imprisonment, and disqualified from holding or obtaining a driver's licence, the period of disqualification does not commence while the person is in custody;
- an amendment to Schedule 1 of the *Young Offenders Act 1994* to expand RTA offences for which a caution cannot be given; which cannot be referred to a Juvenile Justice Team; and for which a conviction will normally be recorded to include:
 - s.61 "Dangerous driving";
 - s.62 "Careless driving";
 - s.62A "Causing excessive noise, smoke"; and
 - s.67A "Failure to comply with other requirements made under s.66 to 66E";
 and
- an amendment to Schedule 2 of the *Young Offenders Act 1994* to expand the RTA offences for which a caution cannot be given, which cannot be referred to a Juvenile Justice Team; for which a conviction will normally be recorded; and which may lead to the mandatory detention of offenders who repeatedly commit offences to include s.54 "Driver in incident occasioning bodily harm to stop, ensure assistance and give information" s.59BA "Careless driving causing death, grievous bodily harm or bodily harm".

Part 1 - Preliminary

1. Short title

Pursuant to this clause, when this Bill is passed and receives Royal Assent, it will be known as the *Road Traffic Legislation Amendment Act (No. 2) 2015*.

2. Commencement

Pursuant to this clause, when this Bill is passed and receives Royal Assent, Part 2 of the Bill will come into effect the day after Assent. The provisions in Part 3 of the Bill will commence operation on a day that is nominated for that purpose in a proclamation.

The provisions are not required to commence operation all at once. There may be one or more proclamations and some provisions may commence operation prior to others.

This is necessary to enable agencies, such as the Department of Transport and the Western Australia Police to undertake systems programming and make any other arrangements required to give effect to the amendments contained in the Bill.

Allowance has been made in this Bill for the commencement of the *Road Traffic (Alcohol Interlocks) Act 2014*. There are several overlapping amendments between this Bill and the Act. At the time of drafting this Bill, Parts 2 and 3 of that Act had not commenced operation. Refer to discussion on clauses 45, 47 and 62-64 for the commencement considerations of those clauses.

Part 2 – Road Traffic Act 1974 amended

3. Act Amended

The Act that will be amended by the provisions of Part 2 Division 1 of this Bill is the *Road Traffic Act 1974*.

4. Section 50 deleted

The *Road Traffic (Authorisation to Drive) Act 2008* section 10(1) empowers the CEO to issue a person with a learner's permit. It provides that the learner's permit authorises the person to drive a motor vehicle on a road for the purpose of learning to drive.

In order to be eligible for the issue of a learner's permit, a person must meet the relevant requirements set out in the *Road Traffic (Authorisation to Drive) Regulations 2014* ("Regulations") Part 3. (See in particular regulations 44 to 46.)

Sections 10(1) and (2) provide that authorisation to drive pursuant to a learner's permit is limited to the holder of the learner's permit driving in the course of driving instruction

provided by either a person who holds a licence granted under the *Motor Vehicle Drivers Instructors Act 1963* or a person prescribed in the regulations (an “instructor”).

Two other classes of person’s are prescribed in the regulations (see regulation 43(2)) for the purposes of section 10(2):

- (a) a person who is an instructor in a youth driver education course conducted or supervised by a body authorised by the CEO for that purpose; or
- (b) a person who is authorised to perform any driving of a kind for which the driving instruction is to be given and has had that authorisation for a period of, or periods adding up to –
 - (i) in the case of driving a moped, at least 2 years; or
 - (ii) in any other case, at least 4 years.

Section 10 empowers the imposition by the CEO of conditions upon a learner’s permit. It also contemplates conditions being imposed upon a learner’s permit under the section or regulations.

Regulation 47 specifies two such conditions.

Regulation 47(3)(a) provides that the holder of a learner’s permit must be accompanied by an “instructor”.

Regulation 47(3)(b) provides that the speed of a motor vehicle being driven by the holder of a learner’s permit must not exceed 100 km/h at any time.

Regulation 48 sets out the consequences of breaching:

- the condition imposed by regulation 47(3)(a);
- the condition imposed by regulation 47(3)(b); and
- a condition imposed pursuant to section 10.

Regulation 48(1) provides that a breach of the condition imposed by regulation 47(3)(a), the requirement for the holder of a learner’s permit to drive accompanied by an “instructor”, will invalidate the learner’s authorisation to drive.

It also provides that a breach of the condition imposed by regulation 47(3)(b), or of any other condition that has been imposed, does not invalidate the authorisation but does constitute an offence pursuant to regulation 50(2). A penalty of 4 PU, or a modified penalty of 2 PU, applies in this latter case.

It was intended that a breach of the condition imposed by regulation 47(3)(a) be dealt with as an offence against the RTA section 49, that is, an offence of unauthorised driving.

A failure to repeal section 50 of the RTA resulted in the Supreme Court finding (*Jarvis v Angok* [2009] WASC 342) that the holder of a learner's permit who drives whilst unaccompanied by an "instructor" must be charged with an offence against that section.

Section 50 provides:

The holder of a learner's permit shall not drive a motor vehicle except in conformity with any conditions to which the permit is subject and unless accompanied by a driving instructor under whose instruction the permit authorises the holder to drive ...

Penalty: 6 PU

To rectify this issue, section 50 will be repealed by this clause.

5. Section 54 amended

The RTA section 54 creates various duties for drivers of vehicles involved in incidents where another person is injured.

Section 54(1) requires the driver to stop immediately, and for as long as is necessary, in order to comply with section 54(2). Section 54(2) requires the driver to ensure that the injured person receives assistance.

A person who fails to comply with these requirements is guilty of an offence, the penalties for which are set out in section 54(3).

The penalties were recently amended to reflect the penalties that apply for an offence against section 59.

However, while the penalty for an offence against section 54(1) or (2) does provide a discretion for a court to disqualify a person's drivers licence, it does not include a mandatory period of disqualification, as is the case when a person is convicted of an offence against section 59.

This clause amends section 54(3) to provide that:

- (i) where:
 - a person is convicted under section 54(3) of contravening section 54(1) or 54(2); and
 - that person is liable to the penalty described in either section 54(3)(a) or (b),

the court convicting the person is required to order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years; and

(ii) where:

- a person is convicted under section 54(3) of contravening either section 54(1) or 54(2); and
- that person is liable to the penalty described in section 54(3)(c),

the court convicting the person is to be required to order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 12 months. This also applies upon summary conviction.

As a consequence of the above amendment, the clause also deletes section 54(4).

6. Section 56 amended

The RTA sections 56(1) and (4) impose a duty on drivers to report specified incidents to the officer in charge of a police station. Currently, section 56(1) includes drivers who are involved in an incident occasioning bodily harm to another person but not where they are the only person injured. A 'driver' includes a person riding a bicycle.

This clause amends section 56 to include incidents where the driver suffers bodily harm.

The section is also amended to provide that, in addition to reporting an incident to the officer in charge of a police station, the Commissioner of Police may approve other means of complying with these requirements.

For example, it is proposed to provide that such a report may be made via the Insurance Commission of Western Australia's (ICWA's) 'Online Crash Reporting Facility'.

7. Section 64A amended

The *Road Traffic Legislation Amendment Act 2012* amended section 64A of the *Road Traffic Act 1974* (RTA). Prior to being amended by the *Road Traffic Legislation Amendment Act 2012* section 64A provided that a person who does not hold a drivers licence, because the licence had been cancelled under section 75(2a) or (2b) of the RTA, and who drives with a blood alcohol content of 0.02g of alcohol per 100ml of blood or above, commits an offence.

The *Road Traffic Legislation Amendment Act 2012* repealed section 75(2a) and (2b) of the RTA and the provision was replicated at section 22 of the *Road Traffic (Authorisation to Drive) Act 2008*. Because of this, a consequential amendment was made to section 64A and reference to section 75(2a) or (2b) of the RTA was replaced with section 22(1) or (2) of the *Road Traffic (Authorisation to Drive) Act 2008*. It has since been realised that the amendment to section 64A should not have removed reference to the repealed section. Reference to the repealed section 75 is needed so that drivers whose licence was cancelled

under the now repealed section 75 will continue to be liable for the penalty under section 64A of the RTA, if they drive with a BAC of 0.02g per 100ml of blood or more.

Another minor anomaly contained in section 64A that only drivers of vehicles with Gross Combination Mass (GCM) that exceeds 22.5 tonnes are restricted to zero BAC. This is incorrect as the intent of the provision was that the zero BAC should apply to vehicles with a GCM of 22.5 tonnes or more; not only those vehicles with a GCM in excess of 22.5 tonnes.

To rectify these two matters this clause amends section 64A of the RTA to reinsert reference to persons whose driver's licence has been cancelled under section 75(2a) or (2b) of the Act as it was in force at any time before those provisions were deleted by the *Road Traffic Legislation Amendment Act 2012* and to provide that drivers of vehicles with a GCM of 22.5 tonnes or more are subject to zero BAC.

8. Section 65 amended

Section 65 provides definitions for terms relating to breath, blood and oral fluid testing. Currently, the terms only apply to Part V Division 2 and section 59B(5) of the Act. Several offences containing elements of alcohol or drug presence or intoxication sit outside Division 2. This includes elements of 'Dangerous driving causing death or grievous bodily harm at section 59,' 'Dangerous driving causing bodily harm' at section 59A and the new offence of 'Providing driving instruction: blood alcohol content' inserted by clause 44.

This clause expands the coverage of the definitions in section 65 to include all offences with elements of alcohol or drug presence or intoxication, from sections 59 to 73 inclusive.

Section 72(3) authorises the chief executive officer of the Chemistry Centre (WA) to certify persons to perform particular roles in the enforcement of alcohol and drug related offences under the RTA.

Section 72(3)(c) authorises the chief executive officer to certify a person as being competent to operate breath analysing equipment.

This clause also amends the definition of 'authorised person' in section 65 as a consequence of the amendments by clause 12 to section 72.

9. Section 65A amended

Section 65A provides, for the purposes of breath analysing equipment and for preliminary tests, that a concentration of alcohol in 210 litres of breath is to be regarded as being that number of grams of alcohol per 100 ml of blood.

This clause expands the coverage of the definitions to include all offences with elements of BAC, from sections 59 to 73 inclusive. This includes the new offence of 'Providing driving instruction: blood alcohol content' inserted by clause 44.

10. Section 67 amended

Section 66(2) empowers a police officer to require a person to provide a sample of breath for analysis, or to allow a sample of blood to be taken for analysis and/or to provide a sample of urine for analysis.

It also empowers the officer to require the person to accompany the officer to a police station or other place and to wait there for the purposes of the person complying with the aforementioned requirement.

There are two elements of compliance with the requirements imposed under section 66(2):

1. accompanying a police officer for the purposes of providing the required sample;
and
2. providing the required sample.

Non-compliance with the first element attracts a different, and lesser, sanction than non-compliance with the second element.

Non-compliance with the first element is treated as an offence against section 67A. Non-compliance with the second element is treated as an offence against section 67.

This is an unintended consequence.

This clause amends section 67(2) to include the first element as an offence against section 67. Where a person refuses to accompany a police officer, the person will be guilty of an offence against section 67.

This also addresses an anomaly in the ability for a police officer to arrest a person who fails to accompany the officer. The power to arrest under section 67 will also apply to a person who fails to comply with a request to accompany a police officer in relation to a failure to comply with a request to provide a breath, blood or urine sample.

11. Section 70 amended

Section 70 of the RTA provides for evidentiary matters relating to sampling and testing for alcohol and drugs. This clause contains several consequential amendments relating to the certification of persons to operate breath analysing equipment pursuant to section 72 as amended by clause 12.

The amendments in this clause reflect the amendments to section 72 whereby the Commissioner of Police will be empowered to certify persons to perform particular roles in the enforcement of alcohol and drug related offences under the RTA.

Subclause 11(1) amends section 70(2) that provides for evidentiary certificates for use in proceedings for specified alcohol related offences. The amendment changes the references from the Chief Executive Officer of the Chemistry Centre (WA) to the Commissioner of Police.

Subclause 11(2) amends section 70(3c) that provides for an evidentiary certificate for use in proceedings for an offence of failing to provide a sample of breath for analysis pursuant to a requirement under section 66. The amendment changes the references from the Chief Executive Officer of the Chemistry Centre (WA) to the Commissioner of Police.

12. Section 72 amended

Subclause 12(1)

Section 72(1) provides a head of power for the making of regulations relating to testing for alcohol and drugs. Currently, the head of power only relates to Part V Division 2 and section 59B(5) of the Act. Several offences containing elements of alcohol or drug presence or intoxication sit outside Division 2. This includes elements of Dangerous driving causing death or Grievous bodily harm at section 59, Dangerous driving causing bodily harm at section 59A and the new offence of 'Providing driving instruction: blood alcohol content' inserted by clause 44.

This clause expands the coverage of the head of power to include all offences with elements of alcohol or drug presence or intoxication, from sections 59 to 73 inclusive.

Subclause 12(2)

Section 72(2) empowers the Minister responsible for the administration of the RTA to approve types of apparatus to be used in enforcing alcohol and drug related offences under the RTA.

Enforcement of these offences is the responsibility of the Commissioner of Police.

This subclause amends section 72 to provide that, for the purposes of section 72, references to "the Minister" are to be construed as references to the Minister responsible for the administration of the *Police Act 1892*.

Subclause 12(3) and (4)

Section 72(3) authorises the Chief Executive Officer of the Chemistry Centre (WA) to certify persons to perform particular roles in the enforcement of alcohol and drug related offences under the RTA.

Section 72(3)(c) authorises the Chief Executive Officer to certify a person as being competent to operate breath analysing equipment.

This subclause amends section 72(3) and inserts new subsections to authorise the Commissioner of Police to certify persons for the purposes of operating breath testing equipment or the collection and testing of oral fluid for the purposes of section 66D.

Western Australia Police conduct training in the use of breath testing equipment and in the collection and testing of oral fluid. Personnel must have conducted this training in order to be certified. Pursuant to inserted sections 72(5) & (6), the Commissioner must not certify a person to operate breath testing equipment or to collect and conduct drug testing of samples of oral fluid respectively unless he is of the opinion that the person has the appropriate training to do so.

Pursuant to inserted section 72(7), persons who were certified pursuant to section 72(3)(b) at the time of commencement of this clause will be considered to have been certified by the Commissioner of Police under this provision.

Division 2 – *Road Traffic (Administration) Act 2008* amended

13. Act amended

The Act that will be amended by the provisions of Part 2 Division 2 of this Bill is the *Road Traffic (Administration) Act 2008*.

14. Section 12 amended

Section 12 of the *Road Traffic (Administration) Act 2008* provides for the exchange of information between the CEO and the Commissioner of Police. The term 'incident information' is defined and used in the section to describe information obtained pursuant to section 56(1) or (4) and details of any evidence, statement, report or other information obtained as a result of any investigation made into the incident. (Refer to discussion on clause 15 for description on section 56 RTA)

This clause expands the scope of the definition to also include copies of statements or reports produced as a result of investigation into the incident. The same definition is to be used in the new section 13D – Disclosure of incident information to ICWA which is to be inserted by clause 15.

15. Sections 13D and 13E inserted

The RTA section 56 imposes a duty on the driver of a vehicle that is involved in an incident that:

- occasions bodily harm to another person; or
- damages property,

“to report the incident forthwith to the officer in charge of a police station”.

(The proposed amendments described in clause 6 will enable such a driver to comply with requirements imposed under section 56 by alternative means.)

The purpose of requiring these details is to enable the Western Australia Police to determine whether an investigation, into an alleged offence against the RTA, ought to be pursued.

Where an incident occurs and, as a consequence, a police officer attends the scene of the incident, the member takes details from the driver or drivers involved. The officer may also take a statement. In such a case, the driver or drivers involved in the incident are considered to have complied with the requirements imposed under section 56.

These details are retained by the Western Australia Police.

From time to time, one of the parties involved in an incident will contact the Western Australia Police to seek details of another party involved in the incident.

Section 54 requires the driver of a vehicle involved in an incident occasioning bodily harm to provide the driver’s name and address and, if known, the name and address of the responsible person for the vehicle, to a person who has been injured in the incident, or to a representative of that person.

Section 55 imposes a similar requirement upon the driver of a vehicle involved in an incident in which property is damaged. In the case of section 55, the details are to be provided to a person whose property has been damaged in the incident, or to a representative of that person.

The parties to such an incident are sometimes injured, in shock or distressed following the occurrence of the incident. As a result, the details described in sections 54 and 55 may not be provided, or exchanged, as the case may be.

This clause amends the RTA to empower the disclosure of the details, where they are sought by one of the parties to an incident, to the requesting party or to a person authorised by that party for this purpose.

Similarly, the clause will empower the disclosure of the details to the ICWA, established under the *Insurance Commission of Western Australia Act 1986*, where the information is sought for the purposes of the *Motor Vehicle (Third Party Insurance) Act 1943*.

It is intended to enable requests for the disclosure of this information to be able to be made:

- by written application provided to the officer in charge of a police station; or
- by written application to the Office of Information Release, a branch within the Western Australia Police; or

- via the completion and submission of an on line form on the Western Australia Police website.

This clause will insert new sections 13D and 13E into the Act.

Section 13D will permit the Commissioner of Police to disclose 'incident information' to the ICWA for use in the performance of their functions under the *Motor Vehicle (Third Party Insurance) Act 1943*, but not for any other purpose.

A new definition of 'incident information' is to be used for the purposes of section 13D. The scope of the definition covers information from reports of an incident made pursuant to sections 56(1) or (4) of the Act, details obtained as a result of investigation into the incident and copies of statements or reports produced as a result of investigation into the incident.

Section 13E will permit the Commissioner of Police to disclose 'incident information' relating to an incident to particular persons involved in the incident. The particular persons are:

- a person who suffered bodily harm in the incident;
- the driver of a vehicle involved in the incident;
- an owner of a vehicle involved in the incident; and
- an owner of property damaged in the incident.

The Commissioner may also release the information to a representative of a particular person. A representative may include those who have been authorised to represent the particular person such as family members, a legal representative or an insurance company.

The definition of 'incident information' for the purposes of section 13E differs to that used in section 13D in that it does not include copies of statements or reports produced as a result of an investigation into the incident. The scope of information permitted for disclosure under this section is limited to that information reported pursuant to sections 56(1) or (4) or information obtained as a result of an investigation into the incident.

16. Section 15 amended

Section 15 of the Act permits the CEO to release specified information to a person for a 'road safety purpose' as defined in the section. This clause expands the section to permit the Commissioner of Police to release 'incident information' to a person if the Commissioner considers that the information is required by the person for a road safety purpose.

A new definition of 'incident information' is to be inserted into the section. The scope of the definition covers information from reports of an incident made pursuant to sections 56(1) or (4) of the Act, details obtained as a result of investigation into the incident and copies of statements or reports produced as a result of investigation into the incident. This is the same definition as amended by clause 14 and in the new section 13D inserted by clause 15. (Refer to discussion on clause 15 for description on section 56 RTA).

17. Section 84 amended

On 27 April 2015, the *Road Traffic Legislation Amendment Act 2012* commenced. Section 232 of the Act amended, among other sections specified in the table to the section, section 84(2) of the *Road Traffic (Administration) Act 2008* by deleting each occurrence of 2008, replacing it with 2012 – the intention being to fix up all of the references to the “*Road Traffic (Vehicles) Act 2008*” which did not pass until 2012. The amendment unintentionally also amended a reference to the *Road Traffic (Authorisation to Drive) Act 2008* to read “*Road Traffic (Authorisation to Drive) Act 2012*”. This clause corrects the incorrect reference.

18. Section 91 amended

Section 91 of the *Road Traffic (Administration) Act 2008* provides for the service of an infringement notice on a responsible person for a vehicle if the identity of an alleged offender is not known. Where an offence for which an infringement notice may be given has an element of driving or being in charge of a vehicle and the ‘reasonable belief’ that the offence has been committed is based on photographic evidence, an infringement may be addressed to the responsible person for the vehicle if the name and address of the driver or person in charge of the vehicle is not known and the identity of the vehicle may be ascertained from the photographic evidence.

Section 91(a) provides that such an infringement may not be issued for the offence of using an unlicensed vehicle on a road pursuant to section 4(2) of the *Road Traffic (Vehicles) Act 2012*. This amendment removes the restriction and, consequently, infringements will be able to be served for the offence based on photographic evidence.

19. Section 106 amended

Prior to the commencement of the ‘Compliance & Enforcement’ (C&E) suite of road laws on 27 April 2015, section 107 of the RTA provided that a prosecution for the simple offences created by sections 24, 49(1)(a), 53, 97 or 103(1) of the Act must be commenced within 2 years after the date on which the offence was allegedly committed. This section overrode the general 12 month limitation provision provided in section 21(2) of the *Criminal Procedure Act 2004* (CPA) for the specified simple offences.

Section 107 of the RTA was silent on offences other than those specified, leaving the limitation periods in section 21(2) of the CPA to apply, i.e. 12 months for simple offences and ‘any time’ for indictable offences (also refer to s. 3(3) of *The Criminal Code*). The underlying purpose of extending the limitation period to 2 years for the specified offences was to provide for the often extended period of time for the offences to be detected and investigated prior to a charge being laid.

With the commencement of the C&E suite of road laws, section 107 of the RTA was replaced with section 106 of the *Road Traffic (Administration) Act 2008*. Section 106(1)

Road Traffic (Administration) Act 2008 provides that the prosecution of an offence under Part 4 of that Act; section 49(1)(a) of the RTA; and for any offence under the *Road Traffic (Vehicles) Act 2012* must be commenced within 2 years after the date on which the offence was allegedly committed. Similarly to the former section 107 of the RTA, this overrides section 21(2) of the CPA as all of the offences specified are simple offences.

Section 106(2) *Road Traffic (Administration) Act 2008* provides that a prosecution for any other offence under a road law must be commenced within 12 months (i.e. those not specified in section 106(1) of that Act). The term 'any other offence' picks up all other offences included in any road law; simple or indictable (refer definition of 'offence' section 2 of *The Criminal Code*, section 67 of the *Interpretation Act 1984* and definitions 'indictable offence' and 'simple offence' in section 3 CPA). As the term 'any other offence' includes indictable offences under a road law, it overrides section 21(1) of the CPA (and section 3(3) of *The Criminal Code*). The net result being that indictable offences created in the RTA (the only 'road law' to create indictable offences) have a 12 month statute of limitations in which a prosecution may be commenced.

There is no policy intent to limit the commencement of a prosecution for indictable offences under a road law. As such, it is an anomaly that such offences have been captured in section 106(2) of the *Road Traffic (Administration) Act 2008*.

The undesired effect of the anomaly is, from 27 April 2015, any prosecutions for RTA indictable offences such as 'Dangerous driving causing death or grievous bodily harm' and 'Reckless driving in circumstances of aggravation' (stolen vehicle, police pursuit, 45 km/h over the speed limit) will have to have commenced within 12 months of the alleged offence occurring. It is likely that this will have retrospective application to offences committed prior to the commencement of the *Road Traffic (Administration) Act 2008* (i.e. prosecutions for any such offences committed prior to 27 April 2015 would have to be commenced within 12 months of them occurring).

This clause amends section 106 of the *Road Traffic (Administration) Act 2008* to remove any time limitations applicable to the commencement of a prosecution for an indictable offence under a road law. The intention being that the general provision of section 21(1) of the CPA will apply. Subclause (4) is a transitional provision that ensures the pre-amendment section 106 does not apply to any road law indictable offences committed prior to or during the time it was in operation.

Division 3 – Other Acts amended

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

The Act that will be amended by this clause is the *Road Traffic (Authorisation to Drive) Act 2008*.

The RTA creates a number of offences, the penalty for which includes both a term of imprisonment and a mandatory disqualification.

It was always intended that a disqualification period, or part thereof, should not elapse while the person upon whom the disqualification was imposed was serving a custodial sentence.

Prior to its deletion by the *Sentencing (Consequential Provisions) Act 1995*, the RTA section 75(4) provided:

Where a person convicted of an offence is sentenced to imprisonment and disqualified from holding or obtaining a driver's licence for a period, the period of the disqualification shall be computed from the date of his release from imprisonment, whether on parole or otherwise.

The *Sentencing Act 1995* section 103(1) provides that *"If a disqualification order is made in respect of an offender, the term of the disqualification does not elapse ... while the offender is in custody serving any sentence of imprisonment ..."*

The provisions of the *Sentencing Act 1995* section 103(1) do not apply in the case of a disqualification imposed under the RTA.

This is not what was intended.

This clause adds section 23A to the *Road Traffic (Authorisation to Drive) Act 2008* to ensure that where a disqualification is imposed under the RTA, the disqualification period, or part thereof, does not elapse while the person upon whom the disqualification was imposed is serving a custodial sentence or while appealing against the conviction or sentence giving rise to the disqualification. This amendment brings mandatory disqualifications imposed under road laws in line with disqualifications imposed by the courts under the *Sentencing Act 1995*.

21. Young Offenders Act 1994 amended

The Act that will be amended by this clause is the *Young Offenders Act 1994*.

The *Young Offenders Act 1994* provides power for police to administer a caution or refer a matter to a Juvenile Justice Team instead of laying a charge against a juvenile. There are exceptions to this arrangement for certain offences that are listed in Schedules 1 and 2 of this Act.

Due to drafting omissions in previous Bills, several offences in the RTA that appropriately should be included in the Schedules were missed.

Schedule 1 offences are those for which a caution cannot be given, which cannot be referred to a Juvenile Justice Team and for which a conviction will normally be recorded.

This Bill amends Schedule 1 by inserting 'Dangerous driving' (section 61 RTA), 'Careless driving' (section 62 RTA), 'Causing excessive noise/smoke' (section 62A RTA) and 'Failing to comply with the requirement made by a police officer in respect to breath testing' (section 67A). The reference to section 67 RTA is being expanded to include the offence of failing to accompany a police officer.

Schedule 2 offences are those for which a caution cannot be given; which cannot be referred to a Juvenile Justice Team; for which a conviction will normally be recorded; and which may lead to detention of an offender who repeatedly commit offences.

Schedule 2 is being amended to insert the offence 'Failing to stop/render assistance after a crash' (section 54 RTA).

Part 3 – Amendments that will be brought into operation by Proclamation

Division 1 – Amendments related to careless driving

Subdivision 1 – *Road Traffic Act 1974* amended

22. Act amended

The Act that will be amended by this subdivision is the *Road Traffic Act 1974*.

23. Section 59 amended

Refer to clause 25 for comments on the careless driving amendment package.

This clause inserts the new offence of 'Careless driving causing death, grievous bodily harm or bodily harm' inserted by clause 25 of this Bill as an alternative verdict on the summary trial for the offence of 'Dangerous driving causing grievous bodily harm'.

24. Section 59A amended

Refer to clause 25 for comments on the careless driving amendment package.

This clause inserts the new offence of 'Careless driving causing death, grievous bodily harm or bodily harm' inserted by clause 25 of this Bill as an alternative verdict on the trial for the offence of 'Dangerous driving causing bodily harm'.

25. Section 59BA inserted

In recent years the Coroner of Western Australia has made comment that instances of careless driving that result in death or serious injury should be liable for a criminal sanction.

Specifically in 2011, the Coroner in his findings into the death of Mr Jeremy Armstrong called for an alternate charge which would recognise that the standard of driving was below that which should be expected of a reasonably prudent driver and that as a result of that driving a person died or was injured.

In order to bridge the gap between the dangerous driving and careless driving provisions, this clause inserts a summary offence to apply where a motor vehicle is involved in an incident occasioning death, grievous bodily harm or bodily harm to a person other than the driver and the manner of driving, at the time of the incident, was careless.

This offence carries a penalty of a fine of 720PU (\$36,000) or imprisonment of up to 3 years and disqualification from holding or obtaining a drivers licence for a period not less than 3 months;

Provision similar to existing subsections 59(2)(b) and (c) and 59A(2)(b) has been included in this offence to provide that it is immaterial that the death or grievous bodily or bodily harm might have been avoided by proper precaution on the part of a person other than the person charged or might have been prevented by proper care or treatment; and when an incident occasions grievous bodily harm to a person and that person receives surgical or medical treatment, and death results either from the harm or the treatment, the incident is deemed to have occasioned the death of that person, although the immediate cause of death was the surgical or medical treatment if the treatment was reasonably proper in the circumstances and was applied in good faith.

The offence of 'Careless driving' (section 62 RTA) is an alternative verdict on the trial for this offence.

26. Section 59B amended

This clause inserts a defence to the offence of 'Careless driving causing death, grievous bodily harm or bodily harm' that is to be inserted by clause 25 as section 59BA of the RTA.

The defence is available to a person charged with the above offence. It applies where the person can prove, on the balance of probabilities, that the death, grievous bodily harm or bodily harm occasioned by the incident is not in any way caused by the level of care and attention with which the motor vehicle is driven.

27. Section 62 amended

This clause increases the penalty for 'Careless driving' from 12PU (\$600) to 30 PU (\$1500).

Subdivision 2 – *Young Offenders Act 1994* amended

28. Act amended

The Act that will be amended by this subdivision is the *Young Offenders Act 1994*.

29. Schedule 2 amended

The *Young Offenders Act 1994* provides power for police to administer a caution or refer a matter to a Juvenile Justice Team instead of laying a charge against a juvenile. There are exceptions to this arrangement for certain offences that are listed in Schedules 1 and 2 of that Act.

Schedule 2 offences are those for which a caution cannot be given; which cannot be referred to a Juvenile Justice Team; for which a conviction will normally be recorded; and which may lead to detention of an offender who repeatedly commit offences.

Schedule 2 is being amended to insert the new offence (inserted by clause 25) of Careless driving causing death, grievous bodily harm or bodily harm. An amendment is also being made to the description in the Schedule of the offence created by section 59 of the RTA to bring it into line with the description in that Act of the offence 'Dangerous driving causing death or grievous bodily harm'.

Division 2 – Amendments relating to taking samples

30. Act amended

The Act that will be amended by this division is the *Road Traffic Act 1974*.

31. Section 64AB amended

This clause is a part of the 'crash blood' policy described in the discussion on clause 34.

Section 64AB(7) provides that in a proceeding for an offence against section 64AB (driving whilst impaired by drugs), a sample taken within 4 hours of the alleged offence may prove, in the absence of evidence to the contrary, that the drug was present at the time of driving or attempted driving.

This clause amends section 64AB(7) to provide that, if a sample is taken under the new section 66(8B), the time period within which the sample may be taken is 12 hours.

32. Section 64AC amended

This clause is a part of the 'crash blood' policy described in the discussion on clause 34.

Section 64AC(4) provides that in a proceeding for an offence against section 64AB (driving with prescribed illicit drug in oral fluid or blood), a sample taken within 4 hours of the alleged offence may prove, in the absence of evidence to the contrary, that the drug was present at the time of driving or attempted driving.

This clause amends section 64AC(4) to provide that, if a sample is taken under the new section 66(8B), the time period within which the sample may be taken is 12 hours.

33. Section 65 amended

The *Road Traffic Act 1974* currently provides for blood samples to be taken by, and urine samples to be provided to, a medical practitioner or registered nurse.

It is desired to enable a broader range of appropriately qualified personnel to take blood samples and to be provided with urine samples.

This clause amends the RTA section 65 by adding a new definition '*prescribed sample taker*' to provide that regulations may prescribe other appropriately qualified classes of person, such as phlebotomists, to be prescribed for this purpose.

34. Section 66 amended

The impetus behind the following amendments is a comment by the State Coroner, following inquiries into three incidents where passengers in a motor vehicle or by-standers have been killed.

The comment surrounded the alleged failure by police responding to these incidents to require the driver of the motor vehicle to allow a medical practitioner or registered nurse to take a sample of the driver's blood for analysis, for the purposes of determining whether the person was under the influence of alcohol and/or drugs.

There is no legislative authority to do so where the timeframe for the imposition of the requirement has passed or where a breath analysis result indicated that there was no alcohol present in the driver's blood and the police officer did not have the necessary reason to believe that person was under the influence of alcohol and/or drugs in order to be empowered to require the provision of a blood sample.

A police officer has certain powers under section 66 of the *Road Traffic Act 1974*.

1. A police officer may require any driver to provide a sample of breath for a preliminary test. (See section 66(1)).

Following an incident involving a motor vehicle, in which a person has been injured or property damaged, a police officer may also require a person he or she has reasonable grounds to believe was the driver of that vehicle to provide a sample of breath for a preliminary test. (See section 66(1a)).

The result of the analysis of a preliminary test may not constitute evidence in proceedings for an offence. Where a preliminary test indicates the presence in a person's blood of a concentration of alcohol, a member of the Police Force may require the person to provide a breath or a blood sample, the result of the analysis of which may be used for evidentiary purposes. (See section 66(2)(a)).

2. In some circumstances, a police officer may require a person to provide a breath or a blood sample, without the requirement for the person to have first provided a sample of breath for a preliminary test.

These circumstances are those in which:

- a person cannot or will not provide a sample of breath for a preliminary test (see section 66(2)(b)); or
- a police officer has reasonable grounds to believe that the person has committed an offence of driving while under the influence of alcohol and/or drugs to such an extent as to be incapable of having proper control of the motor vehicle (see section 66(2)(c)); or
- a police officer has reasonable grounds to believe that a person has committed an offence of dangerous driving occasioning death, grievous bodily harm or bodily harm while under the influence of alcohol and/or drugs to such an extent as to be incapable of having proper control of the motor vehicle (see section 66(2)(ca)); or
- a police officer has reasonable grounds to believe that a person has committed an offence of driving or attempting to drive a motor vehicle while under the influence of alcohol and/or drugs to such an extent as to be incapable of having proper control of the vehicle, resulting in an incident in which a person has been injured or property has been damaged (see section 66(2)(d)).

The only circumstances in which a person may be required to allow a medical practitioner or registered nurse to take a sample of his or her blood for analysis are where:

- the person's physical condition is such that the person cannot provide a breath sample (see sections 66(4)(c) and 66(5));
- the person has provided two breath samples and the analysis of each sample by the breath analysis equipment has failed (see sections 68(11) and 66(5)(a)); or

- a person has provided a breath sample and the result of the analysis indicates either the presence of no alcohol or a level of alcohol that is not consistent with the person's behaviour, condition or appearance (see section 66(11)).

This clause amends section 66 to empower a police officer to require the provision of a blood sample, or blood and urine samples, following an incident in which one or more persons have died or suffered serious bodily harm, and/or one or more persons have been or are likely to be required to present at a hospital for examination or treatment as a result of injuries sustained in the incident.

The police officer will be able to make the requirement where the member has reasonable grounds to believe:

- the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of serious bodily harm to, or the death of, a person; and
- a person may have been the driver or person in charge of a motor vehicle at the time; or

The timeframe for the taking of the blood or urine sample pursuant to this power is within 12 hours of the incident. This is consistent with the recommendation of the State Coroner that the time for taking a sample should be extended beyond the currently permitted four hour period to allow for the length of time that may elapse following the response and investigation into a fatal or serious accident in the State's remote and regional areas.

Where a person is unable to consent to the taking of a blood sample, a police officer is to be empowered to cause a prescribed sample taker (as defined by the amendment in clause 33) to take a blood sample.

Clause 39 of this Bill amends three references to the provision of, and the taking of, samples of blood and of urine within a 4 hour timeframe to include a 12 hour timeframe where samples are taken under this power: sections 70(1)(d), 70(3a)(a) and 70(3a)(b).

35. Section 69 amended

Section 69(1) of the RTA provides that, where a sample of a person's blood is taken for analysis, the sample is to be divided into 2 parts. One part is to be given to a police officer for the purpose of conveying it to the Chemistry Centre (WA) for analysis in connection with the alleged offence. The other part is to be either given to or retained for the person from whom the sample was taken, or given to another person on behalf of the person from whom the sample was taken. This provision is intended to enable the alleged offender to arrange for independent analysis of the sample.

Sections 69A and 69B make similar provision in the case of urine samples and oral fluid samples, respectively.

This clause amends section 69 of the RTA to provide that the second part of the blood sample is instead to be given to a police officer for the purpose of it being conveyed to and retained by the Chemistry Centre (WA) for a period of 3 months. The sample may be conveyed to the Chemistry Centre (WA) by either a police officer, police staff or a contractor (e.g. courier) engaged for that purpose.

Clause 38 inserts new sections 70A and 70B to provide for the storage and subsequent request for independent analysis of the sample.

At any time within the 3-month period after the taking of the sample, the person from whom the sample was taken is to be able to apply to the Chemistry Centre (WA) to request that the Chemistry Centre (WA) convey the sample to a medical practitioner or laboratory nominated by the person in order for the sample to be analysed.

The cost of conveying and analysing the sample is to be borne by the person.

The person may not nominate an analyst other than a medical practitioner or laboratory.

The proposed amendment is intended to address instances of alleged offenders tampering with samples or, due to their hospitalisation, being unable to store a sample properly and later arguing that they were unable to mount a defence by having their sample analysed independently.

The timeframe of 3 months is preferred in Western Australia on the advice of the Chemistry Centre (WA) that an analysis of blood conducted more than 3 months after the taking of the sample would not be accurate due to deterioration. For consistency, the timeframe for urine and oral fluid is also to be 3 months.

36. Section 69A amended

Section 69A of the RTA provides that, where a sample of a person's urine is taken for analysis, the sample is to be divided into 2 parts. One part is to be given to a police officer for the purpose of conveying it to the Chemistry Centre (WA) for analysis in connection with the alleged offence. The other part is to be either given to or retained for the person from whom the sample was taken, or given to another person on behalf of the person from whom the sample was taken. This provision is intended to enable the alleged offender to arrange for the independent analysis of the sample.

Sections 69 and 69B make similar provision in the case of blood samples and oral fluid samples, respectively.

This clause amends the section 69A to provide that the second part of the urine sample is instead to be given to a police officer for the purpose of it being conveyed to and retained by the Chemistry Centre (WA) for a period of 3 months. The sample may be conveyed to the Chemistry Centre (WA) by either a police officer, police staff or a contractor (e.g. courier) engaged for that purpose.

Clause 38 inserts new sections 70A and 70B to provide for the storage and subsequent request for independent analysis of the sample.

At any time within the 3-month period after the taking of the sample, the person from whom the sample was taken is to be able to apply to the Chemistry Centre (WA) to request that the Chemistry Centre (WA) convey the sample to a medical practitioner or laboratory nominated by the person in order for the sample to be analysed.

The cost of conveying and analysing the sample is to be borne by the person.

The person may not nominate an analyst other than a medical practitioner or laboratory.

The proposed amendment is intended to address instances of alleged offenders tampering with samples or, due to their hospitalisation, being unable to store a sample properly and later arguing that they were unable to mount a defence by having their sample analysed independently.

The timeframe of 3 months is preferred in Western Australia on the advice of the Chemistry Centre WA, that analysis of blood conducted more than 3 months after the taking of the sample would not be accurate due to deterioration. For consistency, the timeframe for urine is also to be 3 months.

37. Section 69B amended

Section 69B of the RTA provides that, where a sample of a person's oral fluid is taken for analysis, the sample is to be divided into 2 parts. One part is to be given to a police officer for the purpose of conveying it to the Chemistry Centre (WA) for analysis in connection with the alleged offence. The other part is to be either given to or retained for the person from whom the sample was taken, or given to another person on behalf of the person from whom the sample was taken. This provision is intended to enable the alleged offender to arrange for the independent analysis of the sample.

Sections 69 and 69A make similar provision in the case of blood samples and urine samples, respectively.

This clause amends the section 69B to provide that the second part of the oral fluid sample is instead to be given to a police officer for the purpose of it being conveyed to and retained by the Chemistry Centre (WA) for a period of 3 months. The sample may be conveyed to the Chemistry Centre (WA) by either a police officer, police staff or a contractor (e.g. courier) engaged for that purpose.

Clause 38 inserts new sections 70A and 70B to provide for the storage and subsequent request for independent analysis of the sample.

At any time within the 3-month period after the taking of the sample, the person from whom the sample was taken is to be able to apply to the Chemistry Centre (WA) to request

that the Chemistry Centre (WA) convey the sample to a medical practitioner or laboratory nominated by the person in order for the sample to be analysed.
The cost of conveying and analysing the sample is to be borne by the person.
The person may not nominate an analyst other than a medical practitioner or laboratory.

The proposed amendment is intended to address instances of alleged offenders tampering with samples or, due to their hospitalisation, being unable to store a sample properly and later arguing that they were unable to mount a defence by having their sample analysed independently.

The timeframe of 3 months is preferred in Western Australia on the advice of the Chemistry Centre WA, that analysis of blood conducted more than 3 months after the taking of the sample would not be accurate due to deterioration. For consistency, the timeframe for oral fluid is also to be 3 months.

38. Sections 70A and 70B inserted

Sections 69(1), 69A and 69B of the RTA provide that, where a sample of a person's blood, urine or oral fluid respectively is taken for analysis, the sample is to be divided into 2 parts. One part is to be given to a police officer for the purpose of conveying it to the Chemistry Centre (WA) for analysis in connection with the alleged offence. Amendments by this Bill to sections 69(1), 69A and 69B (by clauses 35, 36 & 37 respectively) provide that the second part of the oral fluid sample is to be given to a police officer for the purpose of it being conveyed to and retained by the Chemistry Centre (WA) for a period of 3 months. The sample may be conveyed to the Chemistry Centre (WA) by either a police officer, police staff or a contractor (e.g. courier) engaged for that purpose.

This clause inserts sections 70A and 70B. Section 70A provides for the appropriate storage and subsequent request for independent analysis of the sample. Section 70B provides for evidentiary certificates relating to the delivery of the samples.

Section 70A

At any time within the 3-month period after the taking of the sample, the person from whom the sample was taken is to be able to apply to the Chemistry Centre (WA) to request that the Chemistry Centre (WA) convey the sample to a medical practitioner or laboratory nominated by the person in order for the sample to be analysed.

The cost of conveying and analysing the sample is to be borne by the person.
The person may not nominate an analyst other than a medical practitioner or laboratory.

The proposed amendment is intended to address instances of alleged offenders tampering with samples or, due to their hospitalisation, being unable to store a sample properly and later arguing that they were unable to mount a defence by having their sample analysed independently.

The timeframe of 3 months is preferred in Western Australia on the advice of the Chemistry Centre WA, that analysis of blood conducted more than 3 months after the taking of the sample would not be accurate due to deterioration. For consistency, the timeframe for urine and oral fluid is also to be 3 months.

Section 70B

The new section 70B provides for an evidentiary certificate relating to the delivery of the samples upon being handed to a police officer to be conveyed to the Chemistry Centre (WA) for analysis. A sample may not necessarily be conveyed by the member to whom it is given pursuant to sections 69(1), 69A and 69B. The sample may be conveyed to the Chemistry Centre (WA) by either a police officer, police staff or a contractor (e.g. courier) engaged for that purpose.

In order to maintain the chain of evidence, a form titled "P69 Form to Accompany" is utilised. It is completed by each person who handles the sample.

To obviate the requirement for each person in the chain to attend court of each occasion to testify that it is his or her signature that appears on the Form and that he or she conveyed the relevant sample to the next person in the chain, the new section provides that in any proceedings against a person for an offence against section 63, 64, 64AA, 64A, 64AAA, 64AB or 64AC, evidence of the delivery of the sample to an analyst or drug analyst may be given in the form of a certificate, setting out prescribed particulars relating to the custody and conveying of the sample. The certificate is to be sufficient evidence of those matters and its contents in the absence of evidence to the contrary.

Unless the accused consents, the certificate cannot be given in proceedings and is inadmissible unless a copy is given to the accused at least 28 days before the proceedings.

If a copy of the certificate is given to the accused as outlined above, the accused cannot challenge or call into question any matter set out in the certificate unless notice in writing, setting out what it is that is to be challenged, is given to the prosecutor at least 14 days prior to proceedings. The court may also give the accused leave to challenge or call in to question a matter set out in the certificate if it considers it to be in the interests of justice.

39. Section 70 amended

Section 70 of the RTA provides for evidentiary matters relating to the sampling and testing for alcohol and drugs. This clause contains several consequential amendments to other amendments as described below:

Subclause 39(1) is a part of the 'crash blood' policy described in the discussion on clause 34. The subclauses amend three references to the provision of, and the taking of, samples of blood and of urine within a 4 hour timeframe to include a 12 hour timeframe where samples are taken pursuant to section 66(8B) as inserted by clause 34 : sections 70(1)(d),

70(3a)(a) and 70(3a)(b). The effect of the amendments are that if a sample is taken under the new section 66(8B), evidence may be given of the taking of a sample of blood or urine if the sample was taken within 12 hours.

Subclause 39(2) relates to the insertion of the definition by clause 33 of 'prescribed sample taker'. This subclause amends the existing reference to 'medical practitioner, registered nurse' to the new definition as a consequence of that amendment.

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

The RTA currently provides for blood samples to be taken by, and urine samples to be provided to, a medical practitioner or registered nurse.

It is desired to enable a broader range of appropriately qualified personnel to take blood samples and to be provided urine samples.

This clause amends the sections listed in the table, replacing existing references to 'medical practitioner or registered nurse' to 'prescribed sample taker' as inserted by clause 33.

Clause 33 provides that regulations may prescribe other appropriately qualified classes of person, such as phlebotomists, who are to be allowed to take blood samples and to be provided urine samples, in addition to medical practitioners and registered nurses.

Division 3 – Amendments relating to driving instructors

Subdivision 1 – Road Traffic Act 1974 amended

41. Act amended

The Act that will be amended by this subdivision is the *Road Traffic Act 1974*.

42. Part V Division 1A replaced

This clause inserts a new Division 1AA and 1A into the RTA.

Division 1AA – Terms used in this Part

The proposed section 49AAA provides the following definitions relating to the drug and alcohol prohibitions applicable to instructors:

- **instructor** – means persons who may give driving instruction under the *Road Traffic (Authorisation to Drive) Act 2008* section 10(2). These are:
 - the holder of a licence issued under the *Motor Vehicle Drivers Instructors Act 1963*;

- an instructor in a youth driver education course conducted or supervised by a body authorised by the CEO for that purpose; or
 - a person who is authorised to perform any driving of a kind for which the driving instruction is to be given and has had that authorisation for a period of, or periods adding up to 2 years for a moped or 4 years for any other motor vehicle.
- **Learner driver** – means:
 - the holder of a learner’s permit. Learner’s permits are issued pursuant to section 10 of the *Road Traffic (Authorisation to Drive) Act 2008*; or
 - a person authorised to drive under the *Road Traffic (Authorisation to Drive) Act 2008* section 6. Section 6 provides that the holder of an *Australian driver licence* may drive a vehicle not covered by the licence to the same extent as if the person held the appropriate learner’s permit if regulations specify accordingly. The *Road Traffic (Authorisation to Drive) Regulations 2014* regulation 56 and Schedule 8 specify the types of vehicles that may be driven by a learner driver relying on a specified licence.
 - **Provide driving instruction** – this term is used throughout the provisions in this Division. It provides a description of the actions of an instructor in respect to a learner driver - the meaning being to provide or attempt to provide driving instruction to a learner driver who is driving a motor vehicle. This is also a common element of the offences created in the proposed section 62B, for example, in s.62B(1) - ‘an instructor who *provides driving instruction* to a learner driver...’

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

The proposed section 49AA provides a rebuttable presumption for a person in specified circumstances to be an *instructor providing driving instruction*.

The offence provisions inserted by clause 44 apply to a person who is providing or attempting to provide driving instruction to a learner driver.

The proposed section 49AA provides that a person who is travelling in a motor vehicle being driven by another person who is a learner driver, and who is seated or standing, as the case may be, as specified in the section, is to be taken to be the learner driver’s instructor unless the contrary is shown.

The circumstances specified in the section cover most situations but are not intended to be exhaustive, for example, in relation to a learner driver on a motor cycle; the instructor may be riding another motor cycle nearby.

The section provides a person is taken to be an instructor providing driving instruction to a learner driver if the person is, in a vehicle being driven by the learner driver:

- Seated beside the learner driver;

- If there is no seat directly beside the learner driver, seated in the nearest forward facing seat to the learner driver or standing near the learner driver; or
- In relation to a motor cycle being driven by a learner driver, riding in a side car attached, or on a fitted pillion seat.

Where the learner driver is driving the motor vehicle unaccompanied, or the person taken to be the instructor (by virtue of his or her position in, the motor vehicle) is not a person described in section 10(2) of the *Road Traffic (Authorisation to Drive) Act 2008* or regulation 43(2) of the *Road Traffic (Authorisation to Drive) Regulations 2014*, the authorisation to drive conferred by the learner's permit is invalid and the learner driver commits an offence against the RTA section 49.

The proposed section 49AA(2) will provide that an instructor providing driving instruction to a learner driver is, for the purposes of Part V RTA (other than for sections 49AB and 66A), taken to be in charge of the motor vehicle driven by the learner driver. As 'a person in charge of a motor vehicle' an instructor will be subject to several provisions in this Part.

Namely:

- S. 57 – Owner etc. of vehicle occasioning bodily harm to help police identify driver etc;
- S. 66 – Police powers to require breath, blood or urine sample; and
- S. 66C – Police powers to require oral fluid test;

The proposed section 49AA(3) provides that subsection (2) as described above, does not affect any liability of a learner driver for any offence committed by the learner driver while driving or being in charge of a vehicle.

43. Section 49AB amended

Section 49AB provides specified circumstances of aggravation for the purposes of Part V Division 1 of the RTA. This Division provides a number of driving offences that attract higher penalties if committed under the circumstances specified in this section.

Clause 42 inserts section 49AA into the RTA, section 49AA(2) will provide, for the purposes of Part V RTA, that an instructor providing driving instruction to a learner driver is to be taken to be in charge of the motor vehicle being driven by the learner driver.

Section 49AB(1)(a) provides a circumstance of aggravation relating to the unlawful use of a vehicle being driven without the consent of the owner or person in charge of the vehicle. It is not intended that an instructor is to be a person in charge of the vehicle for this purpose. Consequently, this clause provides that an instructor (as described in the new section 49AA) is not to be taken to be in charge of the motor vehicle driven by the learner driver.

44. Part V Division 2A inserted

Drug and Alcohol Restrictions for Supervisors of Learner Drivers

Statistics indicate that in Western Australia, young and novice drivers are over-represented in fatal and serious injury crashes.

In 2001, legislation commenced operation that introduced a new graduated driver training and licensing system in Western Australia. The system is aimed at producing better and safer drivers.

In or around 2004, in parallel with a separate review of the effectiveness of the new system that was commissioned by the Road Safety Council, the Office of Road Safety commissioned the Monash University Accident Research Centre (“MUARC”) to undertake a review (“the Review”) of national and international literature on young driver training, licensing and regulatory systems. The purpose of the Review was to make recommendations for appropriate changes in Western Australia.

In June 2005, MUARC produced a report entitled, “Review of Literature Regarding National and International Young Driver Training, Licensing and Regulatory Systems”. The report contained a series of recommendations, some of which have already been implemented.

The amendments in this and related clauses are desired to give effect to an outstanding Review recommendation, as outlined in the Cabinet Submission.

The relevant Review recommendation concerns the proposal for the application of alcohol and other drug related offences to “supervisory drivers”.

It reads:

“Mandate a zero, or below 0.02% or 0.05% [blood alcohol] limit for supervisory drivers, as found to be acceptable in the WA context” (see page 117 of the Review report).

“Supervisory drivers” as used above are people who provide “driving instruction” for the purposes of Road Laws.

The *Road Traffic (Authorisation to Drive) Act 2008* section 10 empowers the CEO to issue a person with a learner’s permit “authorising the person to drive a motor vehicle on a road solely for the purpose of learning to drive it”.

Under section 10(2), “[t]he permit does not authorise driving except in the course of driving instruction by –

- (a) the holder of a licence issued under the *Motor Vehicle Drivers Instructors Act 1963*; or
- (b) anyone else prescribed in the regulations”.

For the purposes of section 10(2)(b), the *Road Traffic (Authorisation to Drive) Regulations 2014* (“the Regulations”) regulation 43 prescribes other persons who may give driving instruction to a person who holds a learner’s permit, as follows:

- (a) a person who is an instructor in a youth driver education course conducted or supervised by a body authorised by the Director General for that purpose; or
- (b) a person who is authorised to perform any driving of a kind for which the driving instruction is to be given and has had that authorisation for a period of, or periods adding up to –
- (i) in the case of driving a moped, at least 2 years; or
- (ii) in any other case, at least 4 years.

In addition to a learner's permit, section 6 of the *Road Traffic (Authorisation to Drive) Act 2008* provides that the holder of an Australian driver licence may drive a vehicle not covered by the licence to the same extent as if the person held the appropriate learner's permit if regulations specify accordingly. The *Road Traffic (Authorisation to Drive) Regulations 2014* regulation 56 and Schedule 8 specify the types of vehicles that may be driven by a learner driver relying on a specified licence.

Following consideration of the Review recommendation by a group of stakeholder agencies, including the Western Australia Police, the Office of Road Safety and the Department of Transport, the Road Safety Council endorsed the following proposal regarding persons who give driving instruction to learner drivers.

The offence provisions described below apply to a person (the 'instructor') who is providing driving instruction to a person who holds a learner's permit (the 'learner driver').

The amendments in clause 42 provide that a person who is travelling in a motor vehicle being driven by another person who is the holder of a valid learner's permit, and who is seated or standing, as the case may be, as described in the clause, is to be deemed to be the learner driver's instructor providing driving instruction.

Proposed Division 2A

This clause inserts a new Division 2A and two offences relating to instructors – S. 62B Providing driving instruction: blood alcohol content and s. 62C Providing driving instruction with prescribed illicit drug in oral fluid or drug.

Proposed section 62B

The offences apply to persons who are instructors.

It is to be an offence for a person to be an instructor who provides driving instruction to a learner driver:

- while having a blood alcohol content of or above 0.05 grams of alcohol per 100 ml of blood;
- if the person is a person to whom any of the following applies, while having any blood alcohol content; and
 - is the holder of an extraordinary licence;
 - is a recently (within the previous 3 years) disqualified driver; or

- has recently obtained a driver's licence (in the last 3 years) after it having been cancelled as a result of an order disqualifying the instructor from driving for specified alcohol or drug driving offences.
- in circumstances in which a vehicle with a gross combination mass of 22.5 tonnes or more is being driven by the driver for the purpose of learning to drive it while having any blood alcohol content.

The penalty for each offence is to be a minimum of 6 PU (\$300) and a maximum of 10 PU (\$500).

Where a person is charged with the proposed offence described at (i), if the person is a person to whom the proposed offence described at (ii) applies, it is to be possible for the person to be convicted instead of the latter offence.

Proposed section 62C

It is to be an offence for a person to be an instructor who provides driving instruction to a learner driver while a prescribed illicit drug is present in his or her oral fluid or blood.

This offence is similar in scope to the existing offence of Driving with prescribed illicit drug in oral fluid or blood created by section 64AC RTA as applicable to a driver of a vehicle.

The term 'prescribed illicit drug' is defined in section 65 RTA as meaning a drug that is declared by the regulations to be a prescribed illicit drug. Currently, regulation 3 of the *Road Traffic (Drug Driving) Regulations 2007* declare tetrahydrocannabinol; methylamphetamine; and 3, 4-methylenedioxy-n, alpha-dimethylphenylethylamine (MDMA).

The penalty for this offence is to be a minimum of 6 PU (\$300) and a maximum of 10 PU (\$500).

45. Section 62B amended

The *Road Traffic Amendment (Alcohol Interlocks and Other Matters) Act 2015* (Interlocks Act) section 17 will, upon commencement, insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences (who will be known as "alcohol interlock offenders" pursuant to the proposed regulations) will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

Section 12 of the Interlocks Act will amend section 64A(2) to insert new section 64A(2)(g).

The new section 64A(2)(g) will provide that regulations made under the new *Road Traffic (Authorisation to Drive) Act 2008* section 5A may prescribe a class of person for the purposes of section 64A(2)(g).

The class of person prescribed will be a person who is, pursuant to regulations made under section 5A, an “alcohol interlock offender”

This clause will amend the offence provision inserted by clause 44 by including persons with an alcohol interlock restriction - an ‘alcohol interlock offender’, with the specified persons with a zero alcohol limit whilst providing driving instruction.

As this amendment is consequential on Interlocks Act section 12 it must not commence until after that section has commenced. If Interlocks Act section 12 is to come into operation before (or at the same time as) this clause, the amendments in this clause should be proclaimed to commence immediately after those in clause 44.

46. Section 62C amended

Clause 34 introduces the ability for police to obtain a blood and/or urine sample from a driver or person in charge of a motor vehicle where the motor vehicle has occasioned or its use has caused serious bodily harm to or the death of a person (“crash blood”).

This clause amends the offence of providing driving instruction while having a prescribed illicit drug present to include samples taken within 12 hours pursuant to the new crash blood provisions.

This amendment is related to the crash blood amendments discussed in clause 34. If the crash blood amendments commence before, or at the same time as, the driving instructor amendments in clause 44, then this clause should commence immediately after clause 44. If the driving instructor amendments commence first then this clause should not come into operation until the sample taking amendments do (and then at the same time).

47. Section 66 amended

Section 66 of the RTA provides police officers with the power to require breath, blood or urine samples from a driver or person in charge of a motor vehicle (see the detailed description at clause 34). The proposed amendments to this section, will enable the same provisions to apply to an instructor.

The amendment in clause 47(3) is consequential on section 8 of the Interlocks Act and so must not commence until after that section has commenced. If Interlocks Act section 8 is to come into operation before (or at the same time as) the rest of clause 47, the amendments in subclause (3) should be proclaimed to commence immediately after those in the rest of clause 47.

48. Section 66A amended

Clause 4 inserts section 49AA into the RTA, section 49AA(2) will provide, for the purposes of Part V RTA, that an instructor providing driving instruction to a learner driver is to be taken to be in charge of the motor vehicle being driven by the learner driver.

Section 66A RTA provides police officers with the power to require a driver or a person in charge of a vehicle to undergo an assessment for drug impairment. It is not intended that an instructor is to be a person in charge of the vehicle for this purpose. This amendment rebuts the presumption (as per the new section 49AA), that an instructor is a person in charge of the vehicle, so that these provisions *will not* apply to an instructor.

49. Section 67 amended

Section 67 of the RTA provides an offence that applies when a person fails to comply with a breath, blood or urine sample requirement as per section 66. The proposed amendment will preclude instructors from the offences provided.

Clause 52 inserts section 68A which will provide an equivalent offence for instructors who fail to comply with a requirement to provide a sample.

50. Section 67AB amended

Section 67AB of the RTA provides an offence for failure to comply with section 66D or 66E requirements to provide oral fluid or blood sample. The proposed amendment will preclude instructors from the offences provided.

Clause 52 inserts section 68A which will provide an equivalent offence for instructors who fail to comply with a requirement to provide an oral fluid or blood sample.

51. Section 67A amended

Section 67A of the RTA provides an offence for failure to comply with other requirements of a police officer. These requirements may arise out of any power pursuant to section 66 to 66E RTA, other than those for which non-compliance offences are provided.

The proposed amendment will preclude instructors from the offences provided.

Clause 52 inserts section 68A which will provide an equivalent offence for instructors who fail to comply with a requirement relating to the provision of an oral fluid or blood sample.

52. Section 68A inserted

This clause inserts section 68A into the RTA. Section 68A provides an offence for an instructor who fails to comply with any requirement made under section 66, 66C, 66D or 66E.

The new section 68A effectively replaces, for an instructor, section 67, 67AB and 67A as applicable to a driver or person in charge of a motor vehicle, that is, any requirement to provide a breath, blood or oral fluid sample or any requirement relating to the provision of such a sample.

The penalty for an instructor for failing to comply with a requirement is 20PU (\$1000).

53. Section 70B amended

Section 70B is to be inserted by clause 38 and provides for an evidentiary certificate relating to the delivery of the samples upon being handed to a member of the Police Force to be conveyed to the Chemistry Centre (WA) for analysis.

This clause amends section 70B to provide the certificates may also be used in a prosecution for an offence against the new section 62B or 62C as inserted by clause 44.

If the sample taking amendments, including clause 38, commence before, or at the same time as, the driving instructor amendments, then this clause should commence immediately after clause 38. If the driving instructor amendments commence first then this clause should not come into operation until the sample taking amendments do (and then at the same time).

54. Section 70 amended

Section 70 of the RTA provides for evidentiary matters relating to sampling and testing for alcohol and drugs.

This clause will amend section 70 to provide the evidentiary matters will also apply to the new section 62B or 62C as inserted by clause 44.

Subdivision 2 – *Road Traffic (Administration) Act 2008* amended

55. Act amended

The Act that will be amended by the provisions of this Subdivision is the *Road Traffic (Administration) Act 2008*.

56. Section 28 amended

Section 28 *Road Traffic (Administration) Act 2008* provides terms used in Part 4 – Enforcement of road laws. This clause inserts the terms ‘instructor’, ‘learner driver’ and ‘provide driving instruction’ into section 28. The terms are to be defined by section 49AAA once amended by clause 42.

57. Division 2A inserted

This clause inserts Division 2A and section 32A into the *Road Traffic (Administration) Act 2008*. This amendment provides a rebuttable presumption for a person in specified circumstances to be an *instructor providing driving instruction* for the purposes of the enforcement provisions of the Act. Refer, for discussion on the presumption, to clause 42 that inserts an equivalent provision into the RTA.

58. Section 33 amended

Section 33 of the *Road Traffic (Administration) Act 2008* provides the requirement for a driver of any vehicle to produce their driver’s licence document or learner’s permit upon direction from a police officer.

This clause widens this requirement to include an instructor providing driving instruction to a learner driver.

59. Section 35 amended

Section 35 of the *Road Traffic (Administration) Act 2008* provides that a responsible person for a vehicle must take reasonable measures or make reasonable arrangements to ensure that if a driver identity request is made in relation to the vehicle, the person will be able to comply.

This clause amends the term ‘driver identity request’ by removing the word ‘driver’ in reference to an instructor providing driving instruction to a learner driver being in charge of the vehicle. This has the effect of requiring the responsible person for a vehicle being required to take reasonable measures or make reasonable arrangements to identify the driver as well as identify an instructor providing driving instruction to a learner driver in the vehicle.

60. Section 109 amended

Section 109 *Road Traffic (Administration) Act 2008* provides for evidentiary averments for use in prosecutions under a road law.

Section 109(1)(f) provides an averment relating to persons who have a zero blood alcohol limit whilst driving a motor vehicle. This clause amends section 109(1)(f) to include reference to persons who are subject to a zero alcohol limit whilst providing driving instruction to a learner driver as specified in section 62B(4) of the RTA.

This clause also inserts a new paragraph 109(1)(gaa) to provide an evidentiary averment relating to the vehicle being driven by a learner driver whilst a driving instructor is providing driving instruction. If the vehicle is specified in section 62B(5) of the RTA, a zero blood alcohol limit applies to the instructor.

Refer to clause 44 for discussion on the new section 62B.

Division 4 – Other amendments

Subdivision 1 -

61. Act amended *Road Traffic Act 1974* amended

The Act that will be amended by this Subdivision is the *Road Traffic Act 1974*.

62. Section 49 amended

Section 49 creates the offence of driving without authorisation. The offence provides an increased penalty pursuant to section 49(3) where a person is legally disqualified to drive for reasons including having been refused a licence, being disqualified from holding or obtaining a licence, or for having a licence that has been suspended or cancelled.

An anomaly exists in the section where a person is disqualified from holding or obtaining a licence by a court whilst not holding a licence that had been previously held. This could be because it had expired and not been renewed or had been voluntarily surrendered. The person would not be liable for the increased penalty as intended.

The current wording of section 49(3)(b) includes persons who have never held such a licence and are disqualified from holding a licence as well as those who have ceased to hold such a licence but excludes those who let their licence expire or who have voluntarily surrendered it.

The amendment will ensure these persons receive the increased penalty in addition to those covered under the current clause, including drivers with a cancelled licence pursuant to the proposed section 49(3)(ca).

This clause has been drafted to take into account uncommenced amendments by the Interlocks Act. The Interlocks Act also makes amendments to section 49.

If the Interlocks Act commences prior to this amendment then subclauses (1)-(4) can be commenced by proclamation with clause 64 not to commence. In the case where this amendment commences prior to the Interlocks legislation, subclauses (2)-(4) can be commenced by proclamation along with clause 64, leaving subclause (1), and clause 63, to commence immediately after the commencement of section 11 of the Interlocks Act.

63. Section 78A amended

This clause is consequential to the amendment to section 49 by clause 62. It inserts references to the additional subsection (ca) added to section 49 in the definition of 'impounding offence (driver's licence)'. Accordingly, persons committing the offence under section 49 under the circumstances outlined in the new subsection (ca) will be committing an 'impounding offence (driver's licence)' and be liable to having their vehicle impounded.

The amendments in this clause are affected by the commencement of the Interlocks Act Part 3. The commencement of this clause has the same considerations as clause 62(1).

64. Section 109 inserted

This clause provides transitional provisions for where clause 62 is to commence prior to the Interlocks Act Part 3. In this scenario, clauses 62(1) and 63 cannot commence as the Interlocks Act would overwrite the amendments. This clause provides the effect of those clauses until they come into effect following the commencement of the Interlocks Act.

Subdivision 2 - *Road Traffic (Administration) Act 2008* amended

65. Act amended

The Act that will be amended by this subdivision is the *Road Traffic (Administration) Act 2008*.

66. Section 117 amended

Regulations made under the RTA create offences of driving in excess of the applicable speed limit.

Sections 117(2) and 117(3) of *Road Traffic (Administration) Act 2008* empower the Minister responsible for the administration of the RTA to approve of speed measuring equipment and distance measuring equipment, respectively, for the purposes of enforcing these offences.

Pursuant to section 117(4) of the *Road Traffic (Administration) Act 2008*, where evidence regarding the speed of a vehicle is gathered via the use by an authorised person of approved speed measuring equipment, it is deemed to be prima facie evidence of the speed at which the vehicle was travelling.

Pursuant to section 117(5) of the *Road Traffic (Administration) Act 2008*, where evidence regarding the speed of a vehicle is ascertained by the use by an authorised person of approved distance measuring equipment, it is deemed to be prima facie evidence of the speed at which the vehicle was moving when it travelled the distance measured between two identified points on the relevant road.

There are a few different means by which speed measuring equipment and distance measuring equipment approved under section 117 is operated.

- i. Some equipment is hand held and is operated by a member of the Police Force at the roadside to ascertain the speed at which a particular approaching vehicle is travelling.
- ii. Some equipment is mounted, either temporarily or permanently, in a Western Australia Police vehicle. It is operated by a member of the Police Force travelling in the vehicle to ascertain the speed at which a particular vehicle is travelling.
- iii. Some equipment is portable but not hand held. An authorised person conveys the equipment to the desired location, mounts it on a tripod, tests it, readies it for operation and then remains nearby to monitor its operation. The equipment itself detects when a vehicle is approaching it at a speed equal to or greater than a set limit and takes photographic evidence of the event. The operator will later dismantle the equipment and bring it to the location at which the data is downloaded into the dedicated Western Australia Police computer system for the processing and management of infringements.
- iv. Some equipment is “fixed”, such as in the case of fixed cameras installed at intersections.

In the case of fixed cameras, digital images of alleged speed and red light offences are captured by the camera and stored on the camera’s hard drive. The images are downloaded on a regular basis by an operator who attends the site, conducts a “field test” (to verify that the camera is and has been working properly), plugs a cable into the hard drive, downloads the data from the hard drive and brings it to the location mentioned above for the transfer of the data into the computer system mentioned above.

The equipment may also be monitored and downloaded remotely by an authorised person working in a central location. The authorised person will regularly conduct checks on the camera’s operation, check the camera angles and adjust them as required.

This clause amends section 117 to provide for all circumstances where evidence is gathered via the use of the equipment described, it will constitute prima facie evidence, as the case may be, of the speed at which a particular vehicle was moving at the relevant time.

Included in the above is the equipment – ‘speed measuring and recording equipment’ that may also be approved by the Minister by notice published in the Government Gazette. The equipment has the capability to ascertain the speed at which a vehicle is moving, recording an image of the vehicle and recording:

- the speed at which the vehicle was moving;
- the date on which the image was recorded;
- the time and location at which the image was recorded; and
- the speed limit applicable at that location at that time.

As with speed measuring and distance measuring equipment, evidence gathered by speed measuring and recording equipment will constitute prima facie evidence. The evidence includes the image of the vehicle and the matters recorded as well as the identity of the vehicle. Evidence may be given in the form of an image of the vehicle on which the matters are recorded.

Sections 117(2) and 117(3) empower the Minister responsible for the administration of the RTA to approve of speed measuring equipment and distance measuring equipment, respectively, to be used in the detection of offences under the RTA.

Enforcement of these offences is the responsibility of the Commissioner of Police.

The clause also amends section 117 to provide that, for the purposes of section 117, references to “the Minister” are to be construed as references to the Minister responsible for the administration of the *Police Act 1892*.

67. Sections 117A to 117I inserted

This clause introduces section 117A, providing for evidentiary certificates for speed measuring and recording equipment discussed in the previous clause, and sections 117B-117I to facilitate the approval, operation and evidence provided by an ‘average speed detection system’.

Proposed section 117A

Evidentiary certificates of the type being introduced provide prima facie evidence of the matters contained within and may be given in court in lieu of a person attending court and giving oral evidence of those matters.

An evidentiary certificate issued pursuant to section 117A may be given in a proceeding for an offence against the RTA or any other Act involving the driving of a vehicle when it accompanies evidence given in the form of an image produced from speed measuring and recording equipment.

Where the certificate accompanying such an image is given into evidence, it is to be accepted, unless there is evidence to the contrary, as having been recorded in accordance

with section 117(7B) that refers to the matters referred to in section 117(2)(c), as ascertained and recorded by the equipment at the time and location referred to in section 117(7A). The image is then prima facie evidence of the matters shown in or recorded on the image. The evidence being:

- the identity of the vehicle (derived from the image);
- the speed at which the vehicle was moving;
- the date on which the image was recorded;
- the time and location at which the image was recorded; and
- the speed limit applicable at that location at that time.

There are a number of matters to be certified in the certificate which is prima facie evidence of the matters in it. The matters being:

- the equipment specified in the certificate was speed measuring and recording equipment;
- the equipment was installed or set up by an authorised person in accordance with the approved procedure on a specified day;
- the equipment was tested by an authorised person in accordance with the approved procedure on a specified day that was within the prescribed number of days for that type of equipment before the day on which the alleged offence took place;
- the equipment was accurate and operating properly on the day of testing;
- data relating to the vehicle and its speed, and the time and place at which its speed was ascertained and the data recorded, was retrieved from the equipment by an authorised person in accordance with the approved procedure; and
- the data that was retrieved was used to produce the image by an authorised person in accordance with the approved procedure.

This section provides that the certificate is inadmissible unless a copy of the image and certificate is given to the accused at least 28 days before the proceedings begin. The accused may agree to a shorter period.

If a copy of the certificate is given to the accused as outlined above, the accused cannot challenge or call into question any matter set out in the certificate unless notice in writing, setting out what is to be challenged, is given to the prosecutor at least 14 days prior to proceedings. The court may also give the accused leave to challenge or call in to question a matter set out in the certificate if it considers it to be in the interests of justice.

Proposed section 117B

Background - Point to Point (P2P) – Average speed detection and enforcement

Speed measuring equipment in Western Australia currently operates to determine the speed a vehicle is travelling at a particular point in time. Section 117 of the RTAA provides for the authorisation of speed measuring equipment.

P2P measuring devices use licence plate recognition to determine the time that a vehicle passes through two or more fixed points to calculate whether the average speed travelled between the points would have exceeded the speed limit. This does not fit into the current definition of speed measuring equipment and, therefore, amendments to the RTAA are required to enable the enforcement of P2P speed detection.

This is because it is considered that:

- to be speed measuring equipment, the P2P technology must be capable of measuring the speed at which a vehicle is travelling and, as per the description below of its proposed use, it is not; and
- speed measuring equipment and distance measuring equipment must be “used” by an authorised person, and the P2P technology will not be used by an authorised person.

It is intended to use P2P speed measurement and recording technology in the enforcement of speed-related offences, as follows:

- P2P cameras will be installed at the start and finish of the relevant area of road;
- the shortest distance on the carriageway between P2P camera locations will be measured by a licensed surveyor;
- the P2P cameras will take photographs of vehicles, together with the number plate of the vehicle photographed, at each camera location;
- the P2P cameras will record the time when each vehicle reaches the point at which the P2P camera takes the photograph;
- the P2P cameras will be aligned to a standard time clock to provide time synchronisation;
- computer software will read the number plate;
- the captured information (images, vehicle identification, etc) will be uploaded via secure telecommunications link and stored for subsequent processing;
- a computer software system will receive the information and transfer it into a data buffering system and/or database;
- the computer system will then match the number plate records for each successive camera and calculate the travel time for matched number plates by subtracting the former time stamp for each camera;
- the computer system will calculate the average speed by dividing the distance between the photographic points by the time taken to travel the distance; and
- if the average speed calculated exceeds the applicable speed limit, an infringement notice will be issued by matching the record to the vehicle registration details.

Regulations in the *Road Traffic Code 2000* (“RTC”) create offences of driving in excess of the applicable speed limit.

Section 117 RTAA empowers the Minister responsible for the administration of the *Road Traffic Act 1974* (“RTA”) to approve of speed and distance measuring equipment for the purposes of enforcing these offences.

Pursuant to section 117(4), where evidence regarding the speed of a vehicle is gathered via the use, by an authorised person, of approved speed measuring equipment, it is deemed to be prima facie evidence of the speed at which the vehicle was travelling.

Pursuant to section 117(5), where evidence regarding the speed of a vehicle is ascertained by the use, by an authorised person, of approved distance measuring equipment, it is deemed to be prima facie evidence of the speed at which the vehicle was moving when it travelled the distance measured between two identified points on the relevant road.

These new sections 117B-117I will accommodate P2P speed enforcement.

Section 117B provides definitions and evidentiary matters relating to average speed detection systems.

The following definitions are of particular note:

Average speed detection system – this definition describes a system consisting of a number of components. The components of the system are electronic equipment, typically cameras linked to an information technology system - computers running custom programs linked to the cameras via secure communications links. Some components, such as the cameras, are on site, whilst other components, such as computers to process the images from the cameras, may be installed at a central location.

Carriageway – Describes the improved part of a road that vehicles ordinarily travel upon. This is in contrast to the expansive definition of a road contained in the *RTAA* which includes everything within a road reserve, including footpaths, traffic islands and verges. This term is used in the definition of ‘shortest practicable distance’ which is a key factor in the calculation of average speed and average speed limits.

Shortest practicable distance – describes the shortest distance that could be travelled by a vehicle between detection points on a carriageway without contravening any road law that would have applied to the driver. This is the distance that is measured by a licensed surveyor (described in section 117H) and used in the calculation of a vehicle’s average speed (section 117D) as well as any applicable average speed limit (section 117E). Note that the use of this express provision to describe the distance between points overrides the general provision in section 65 of the *Interpretation Act 1984* that provides that a distance shall be measured in a straight line on a horizontal plane (refer section 3 *Interpretation Act 1984* for the application of provisions of the Act).

In the prosecution for an offence under written law, the proposed section 117B provides that evidence may be given of and is prima facie evidence of the following:

- the use of an average speed detection system at a particular location;
- the identity of a vehicle ascertained by the system; and
- the average speed of a vehicle between detection points (calculated in accordance with section 117D).

Subsection 117B(4) provides that the average speed of a vehicle between detection points is prima facie evidence of the actual speed of the vehicle between the points. Where evidence of average speed is given in proceedings, it is taken to be the speed that the vehicle was moving whilst travelling between the points unless there is contrary evidence of the actual speed of the vehicle.

This provision is necessary for the application of existing offences where the speed of a vehicle is an element or is relevant, when what is detected is an average speed over a distance rather than a speed at a particular place and time. Such offences include, speeding (regulation 11 of the *RTC*) or reckless driving (section 60 of the *RTA*). The calculated average speed between the points will be the speed for the purposes of these offences.

It should be noted that subsection 117B(8) provides that this section is in addition to and does not derogate from any other mode of proof of the speed of a vehicle. This is important because a vehicle's speed may be measured by other means at a place on a stretch of road monitored by an average speed detection system and found to be higher at that particular place than the average speed calculated by the P2P system.

Other forms of speed detection and enforcement will continue to operate on roads where average speed detection systems are operating. For example, an average speed detection system may detect that a vehicle travelled between two points along a road at an average speed of 120kph. A speed camera or a police patrol vehicle may have also detected the vehicle travelling at 130kph at a location between the points. In that case, it would be open to the police to charge the driver with a speeding offence at the higher speed rather than rely on the average speed. In that situation, the lower average speed would not be relevant. Note that, in the example given, the driver could not be punished for two speeding offences because of the "double jeopardy" rules enshrined in law (refer section 11 *Sentencing Act 1995* and section 19 *The Criminal Code*).

Proposed section 117C

This section will empower the Minister (as defined in section 117B) to approve types of average speed detection systems by notice published in the *Government Gazette*.

The systems have the capability to ascertain the average speed of a vehicle between detection points, recording an image of the vehicle and:

- the date on which the image was recorded; and
- the time and location at which the image was recorded.

An 'average speed detection system' as defined in section 117B is a system comprised of individual components. Those components may be located in separate geographical locations and may be sourced from different manufacturers. Accordingly, such a system may be described in relation to its components.

Proposed section 117D

This section provides how the average speed of a vehicle between detection points is to be calculated. The formula is an arithmetical calculation for converting the 'shortest practicable distance' as defined in section 117B (expressed in kilometres rounded down to 2 decimal places) and trip time (expressed in seconds) into a speed expressed in kilometres per hour.

Proposed section 117E

This section provides the method of calculating an average speed limit in circumstances where there is more than one speed limit applicable to the driver of a vehicle between detection points.

The formula is an arithmetical calculation for converting the speed limits that would have applied to the driver of the vehicle if the vehicle were travelling along the 'shortest practicable distance' as defined in section 117B into an average speed limit. The resultant average speed limit is expressed in kilometres per hour and rounded up to the next whole number.

Pursuant to section 117F(1)(b), for the purposes of a prosecution where the average speed of a vehicle is relevant, this calculated average speed limit is the speed limit applicable to the driver at all times on the carriageway between the detection points.

Proposed section 117F

This section provides evidentiary matters relating to prosecutions where evidence of average speed is adduced.

During such a prosecution:

- a) in calculating the vehicle's average speed, the vehicle and any driver are taken to have travelled between detection points via the shortest practicable distance as defined in section 117B;
- b) if multiple speed limits applied to a driver of a vehicle between the detection points, the average speed limit calculated in accordance with section 117E is taken to be the speed limit applicable to the driver at all times on the carriageway between the points. Where applicable, the driver and responsible persons for the vehicle may be

dealt with under a road law in accordance with this calculated speed limit. The application of this speed limit is subject to the mode of proof of the speed of the vehicle. It is limited in application to where average speed is being used in a prosecution. For example, if a patrol car or a speed camera detected the speed of the vehicle on the carriageway between the detection points, the detected speed would be compared against the relevant posted speed limit, not the calculated average speed limit; and

- c) If there are multiple drivers of the vehicle between detection points, each driver is taken to have driven the vehicle at the calculated average speed. If such a driver satisfies the court that he or she did not drive the vehicle between the detection points in excess of the applicable speed limit then the presumption will not apply. In addition to this, there is the ability to prescribe other exculpatory circumstances whereby a driver may avoid the application of this presumption of speed.

Where there is evidence of average speed of a vehicle between detection points, one or more drivers of the vehicle may be prosecuted for and found guilty or convicted of an offence in respect of which the evidence was given. This provision provides for where there are multiple drivers of a vehicle between detection points and that these drivers may each be held criminally responsible for driving the vehicle at an excessive average speed.

Proposed section 117G

This clause introduces evidentiary certificates for average speed detection systems as defined in section 117B.

Evidentiary certificates of this type provide prima facie evidence of the matters contained within and may be given in court in lieu of a person attending court and giving oral evidence of those matters.

An evidentiary certificate issued pursuant to this section may be given in a proceeding for an offence when it is attached to evidence given in the form of an image produced from an average speed detection system.

Where the certificate attached to such an image is given into evidence, it is to be accepted, unless there is evidence to the contrary, as having been recorded in accordance with section 117B(5) that refers to the matters referred to in section 117B(2), as ascertained and recorded by the equipment at the time and location referred to in that section. The image is then prima facie evidence of the matters shown in or recorded on the image. The evidence being:

- the use of an average speed detection system in respect of a particular location;
- the identity of the vehicle as ascertained by that system at a particular time; and
- the average speed of a vehicle between detection points calculated in accordance with section 117D (which may have been calculated using an average speed detection system).

There are a number of matters to be certified in the certificate which is prima facie evidence of the matters in it. The matters being:

- the system specified in the certificate was an average speed detection system;
- the components of the system were tested by an authorised person in accordance with the approved procedure on a specified day that was within the prescribed number of days for each component before the day on which the alleged offence was committed;
- the components were operating properly and were accurate on the day of testing and on the day of the alleged offence being committed;
- data obtained from the system was by an authorised person in accordance with the approved procedure; and
- the data that was retrieved was used to produce the image by an authorised person in accordance with the approved procedure.

One or more of the following matters may also be certified in the certificate:

- the average speed at which the vehicle travelled between the detection points, calculated in accordance with section 117D. This average speed may have been calculated using the average speed detection system;
- the speed limit, if one speed limit applied to a driver of the vehicle between detection points; and
- if more than one speed limit applied to a driver of the vehicle between detection points:
 - each distance for which each speed limit applied to the driver; and
 - the average speed limit applicable to the driver calculated in accordance with section 117E.

Subsection 117G(3) provides that references in subsection 117G(2) to an approved procedure are in reference to a procedure that has been approved by the Commissioner of Police.

Proposed section 117H

This section provides for an evidentiary certificate from a licensed surveyor, certifying one or more of the following:

- the 'shortest practicable distance' (as defined in section 117B) between detection points. This distance is used in the calculation of average speed pursuant to section 117D; and
- if more than one speed limit applied between the detection points, each distance for which each speed limit applied. These distances are used in the calculation of the average speed limit pursuant to section 117E.

Evidentiary certificates of this type provide prima facie evidence of the matters contained within and may be given in court in lieu of a person attending court and giving oral evidence of those matters.

Proposed section 117I

This section provides that the certificate of the Commissioner of Police under section 117G, or of a licensed surveyor under section 117H is inadmissible unless a copy of the image and certificate is given to the accused at least 28 days before the proceedings. The accused may agree to a shorter period.

If a copy of the certificate is given to the accused as outlined above, the accused cannot challenge or call into question any matter set out in the certificate unless notice in writing, setting out what is to be challenged, is given to the prosecutor at least 14 days prior to proceedings. The court may also give the accused leave to challenge or call into question a matter set out in the certificate if it considers it to be in the interests of justice.

Clause 68. Part 9 Division 2 replaced

This clause will delete a redundant head of power in the *Road Traffic (Administration) Act 2008* to make amendments to regulations under any Act to deal with matters consequential to the commencement of the Act. The Act commenced on 27 April 2015 as a part of the 'compliance and enforcement' suite of traffic legislation. No regulations have been made pursuant to this head of power.

The new inserted Division 2, sections 166-169 are transitional provisions dealing with matters arising from the commencement of amendments made by this Bill. In particular, the matters arise from amendments in the RTLAB to legislation concerning the approval and operation of speed and distance measuring apparatus. Included at section 169(3) is a transitional provision providing for persons certified by the Commissioner of Police as being competent to use speed measuring equipment to also be certified to install, set up, test and retrieve data from an average speed detection system.