

Explanatory memorandum

Road Traffic Amendment Bill (No. 2) 2007

This Bill will amend the *Road Traffic Act 1974* (“the Act”) to give effect to the following three initiatives.

Breath analysis

The Act provides that it is an offence for a person to drive or attempt to drive a motor vehicle, while the percentage of alcohol present in that person’s blood equals or exceeds a prescribed amount.

For the purposes of enforcing these provisions, the percentage of alcohol present in a person’s blood is determined either by the analysis of a breath sample provided by the person, or by the analysis of a blood sample provided by the person.

Presently, the analysis of both breath samples and blood samples results in a reading in the unit of measurement, “x grams of alcohol/100 millilitres of blood”.

A new national standard has been developed that will require the result of a breath sample to be expressed in the unit of measurement, “x grams of alcohol/210 litres of breath”, where that result will be required to constitute evidence in proceedings for an offence.

The use of this unit of measurement is considered more appropriate than that currently used, whereby the analysis of a breath sample for the presence of alcohol produces a result expressed as a measurement of alcohol in blood.

This national standard will apply in Western Australia from July 2008. As a result, it is necessary to amend the Act to enable the use of a breath analysis result, expressed in the new unit of measurement, to determine whether the person who provided the sample has committed an offence of driving or attempting to drive a motor vehicle while the percentage of alcohol in that person’s blood equalled or exceeded a prescribed amount.

The amendments contained in Part 2 Divisions 1 and 2 of the Bill are intended to achieve this outcome.

Driver’s duties following an incident in which a person is injured or property is damaged

The Act imposes certain duties on drivers, including the requirements:

- to stop immediately after an accident in which the driver’s motor vehicle has been involved, if a person has been injured or property has been damaged (section 54(1));
- to render assistance to any person who has been injured as a result of the accident (section 54(6));
- to report an accident in which the driver’s motor vehicle has been involved, where the accident in results in bodily injury to another person (section 55); and
- to report an accident in which the driver’s motor vehicle has been involved, where the accident in results in property damage (section 56).

The penalties that currently apply to a person for the failure to comply with these requirements are low by comparison with the penalties that would apply to the person, if the person were charged with and convicted of dangerous driving occasioning death or grievous bodily harm, or dangerous driving occasioning bodily harm, as a consequence of the accident.

This clause will therefore elevate some of the offences to crimes and increase significantly the penalties that will apply to a driver who fails to comply with these duties. These amendments are intended to act as a deterrent to a person who might otherwise elect to flee the scene of an accident in order to escape the possible conviction of a dangerous driving charge and imposition of the associated penalty.

The amendments contained in Part 2 Division 3 of the Bill are intended to achieve these outcomes.

Novice drivers

This Bill contains reforms that are being introduced to combat the disproportionately high number of novice drivers involved in road traffic crashes.

It introduces two significant recommendations arising from the novice driver review conducted by the Office of Road Safety and amends the Act to provide for the creation of regulations required for the implementation of other recommendations.

The two recommendations addressed in the Bill are:

- the creation of a graduated demerit point scheme for novice drivers, providing that drivers will have their driver licence disqualified if they accrue more than 3 demerit points in their first year of licensed driving and more than 7 demerit points in their first 2 years of licensed driving; and
- the introduction of a zero blood alcohol limit for novice drivers.

A novice driver is any person who has not held or has never held a driver's licence issued in any other state or country for at least two years and includes persons that hold a learner's permit.

As can be seen the concept of a novice driver hinges on the number of years the person has held a driver's licence rather than the age of the driver. In practice the vast majority of novice drivers will be under the age of 25 years.

The amendments contained in Part 2 Divisions 4, 5 and 6 of the Bill are intended to achieve these outcomes.

Part 1 - Preliminary

1. Short title

This Bill will become the *Road Traffic Amendment Act (No. 2) 2007*.

2. Commencement

Part 1 of this Bill contains the clause that will give the Bill its title as an Act, and this clause.

This clause provides that Part 1 of the Bill will commence operation when the Act receives the Royal Assent.

Regulations will be necessary to support the operation of other clauses of the Bill and the Western Australia Police will have to take steps to ensure its operational readiness to administer the new provisions. For these reasons, the remainder of the Bill will commence operation on a day to be fixed by proclamation, except as follows.

- Clause 6(2)(b)(ii) of this Bill will amend the Table to section 64(2) of the *Road Traffic Act 1974*, however section 15(a) of the *Road Traffic Amendment Act 2006* (“the RTAA 2006”), which has yet to commence operation, also contains an amendment identical to that contained in clause 6(2)(b)(ii).

Clause 2(c) will therefore provide that if the commencement of operation of section 15(a) of the RTAA 2006 occurs before the commencement of operation of the provisions of this Bill, then clause 6(2)(b)(ii) will have no effect at all.

- The commencement of clause 17 of this Bill is dependent upon the commencement of section 16 of the RTAA 2006, which has yet to commence operation.

Clause 2(d) will therefore provide that, if section 16 has not come into operation when the provisions of this Bill come into operation, clause 17 will commence operation later and only when section 16 commences operation.

- The commencement of clause 18 of this Bill is dependent on the commencement of section 18 of the RTAA 2006, which has yet to commence operation.

Clause 2(e) will therefore provide that, if section 18 has not come into operation when the provisions of this Bill come into operation, clause 18 will commence operation later and only when section 18 commences operation.

- The commencement of clause 25 of this Bill is dependent on section 9 of the RTAA 2006, which has yet to commence operation.

Clause 2(f) will therefore provide that, if section 9 has not come into operation when the provisions of this Bill come into operation, clause 25 will commence operation later and only when section 9 commences operation.

- Part 2 Division 4 of this Bill is dependent upon the RTAA 2006 coming into operation. This is because that Act introduces a major restructure to the current demerit point system and Part 2 Division 4 of this Bill relates to the extension of the demerit point scheme (4 and 8 points for novice drivers).

As such the revised demerit point scheme must be in place before the amendments contained in the Bill can take effect as they make amendments to the scheme as revised by the RTAA 2006.

- The commencement of Part 2 Division 5 of this Bill, other than clause 38, is dependent upon the commencement of clause 9 of this Bill, and sections 17 and 31 of the RTAA (which have yet to commence operation).

Clause 2(h) will therefore provide that Part 2 Division 5, other than clause 38, will only commence operation after those provisions commence operation.

- The commencement of clause 38 is dependent upon the commencement of section 16 of the *Road Traffic Amendment (Drugs) Act 2007*, which has yet to commence operation.

Clause 2(i) will therefore provide that, if section 16 has not come into operation when the provisions of this Bill come into operation, clause 38 will commence operation later and only when section 16 commences operation.

Part 2 – Road Traffic Act 1974 amended

Division 1 – Act amended

3. The Act amended in this Part

The clauses contained in this Part of the Bill will amend the *Road Traffic Act 1974*.

Division 2 – Amendments relating to breath analysis

Subdivision 1 – Amendments not based on *Road Traffic Amendment Act 2006* having commenced

4. Section 59B amended

Section 59 of the *Road Traffic Act 1974* (“the Act”) creates the crime of dangerous driving occasioning death or grievous bodily harm. Section 59A creates the offence of dangerous driving occasioning bodily harm.

Section 59B(3) sets out matters that are relevant for determining whether a person has committed a crime under section 59 or an offence under section 59A, in circumstances of aggravation. In particular, it provides that an alleged offender will be deemed to have been under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle, if that person had “a percentage of alcohol in his blood of or exceeding 0.15%” at the time of the incident.

Various clauses in this Bill, including this clause, will replace the Act’s references to the “percentage of alcohol” in a person’s blood with more precise terminology.

The percentage of alcohol present in a person’s blood is determined either by the analysis of a breath sample provided by the person, or by the analysis of a blood sample provided by the person.

Currently, the analysis of both breath samples and blood samples produces a result expressed in the unit of measurement, “x grams of alcohol/100 millilitres of blood”.

In order to be able to use an analysis result to determine whether a person has committed an offence against the Act, it is necessary to determine what percentage of alcohol in that person’s blood the particular number of grams of alcohol stated in the result represents.

Section 65 of the Act defines “percentage of alcohol” as meaning the number of grams of alcohol contained in 100 millilitres of a person’s blood. For example, if a blood analysis results in a reading of 0.08 grams of alcohol in 100 millilitres of a person’s blood, then the percentage of alcohol in that person’s blood is taken to be 0.08%.

This Bill will remove all references in the Act to the percentage of alcohol in a person’s blood, replacing them with direct references to the number of grams of alcohol in 100 millilitres of a person’s blood that is relevant to determine whether an offence has been committed.

This clause will amend section 59B(5) by replacing the reference in it to a person who has a “percentage of alcohol in his blood of or exceeding 0.15%” with reference to a person who has a “blood alcohol content of or above 0.15 g[rams] of alcohol per 100 [millilitres] of blood”.

The terminology “per” 100 millilitres of blood is used, as a blood sample provided by a person may be in an amount smaller than 100 millilitres.

5. Section 63 amended

Section 63 of the *Road Traffic Act 1974* (“the Act”) provides that a person who drives or attempts to drive a motor vehicle while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle commits an offence.

Section 63(5) says that a person will be deemed to have been under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle, if that person had “a percentage of alcohol in his blood of or exceeding 0.15%” at the relevant time.

Various clauses in this Bill, including this clause, will replace the Act’s references to the “percentage of alcohol” in a person’s blood with more precise terminology.

The percentage of alcohol present in a person’s blood is determined either by the analysis of a breath sample provided by the person, or by the analysis of a blood sample provided by the person.

Currently, the analysis of both breath samples and blood samples produces a result expressed in the unit of measurement, “x grams of alcohol/100 millilitres of blood”.

In order to be able to use an analysis result to determine whether a person has committed an offence against the Act, it is necessary to determine what

percentage of alcohol in that person's blood the particular number of grams of alcohol stated in the result represents.

Section 65 of the Act defines "percentage of alcohol" as meaning the number of grams of alcohol contained in 100 millilitres of a person's blood. For example, if a blood analysis results in a reading of 0.08 grams of alcohol in 100 millilitres of a person's blood, then the percentage of alcohol in that person's blood is taken to be 0.08%.

This Bill will remove all references in the Act to the percentage of alcohol in a person's blood, replacing them with direct references to the number of grams of alcohol in 100 millilitres of a person's blood that is relevant to determine whether an offence has been committed.

This clause will amend section 63(5) by replacing the reference in it to a person who has a "percentage of alcohol in his blood of or exceeding 0.15%" with reference to a person who has a "blood alcohol content of or above 0.15 g[rams] of alcohol per 100 [millilitres] of blood".

The terminology "per" 100 millilitres of blood is used, as a blood sample provided by a person may be in an amount smaller than 100 millilitres.

6. Section 64 amended

Section 64 of the *Road Traffic Act 1974* ("the Act") provides that a person who drives or attempts to drive a motor vehicle while the "percentage of alcohol in his blood equals or exceeds 0.08%" commits an offence.

Various clauses in this Bill, including this clause, will replace the Act's references to the "percentage of alcohol" in a person's blood with more precise terminology.

The percentage of alcohol present in a person's blood is determined either by the analysis of a breath sample provided by the person, or by the analysis of a blood sample provided by the person.

Currently, the analysis of both breath samples and blood samples produces a result expressed in the unit of measurement, "x grams of alcohol/100 millilitres of blood".

In order to be able to use an analysis result to determine whether a person has committed an offence against the Act, it is necessary to determine what percentage of alcohol in that person's blood the particular number of grams of alcohol stated in the result represents.

Section 65 of the Act defines "percentage of alcohol" as meaning the number of grams of alcohol contained in 100 millilitres of a person's blood. For example, if a blood analysis results in a reading of 0.08 grams of alcohol in 100 millilitres of a person's blood, then the percentage of alcohol in that person's blood is taken to be 0.08%.

This Bill will remove all references in the Act to the percentage of alcohol in a person's blood, replacing them with direct references to the number of grams of alcohol in 100 millilitres of a person's blood that is relevant to determine whether an offence has been committed.

Clause 6(1) will amend section 64(1) by replacing the reference in it to a person who drives or attempts to drive a motor vehicle while the "percentage of alcohol in his blood equals or exceeds 0.08%" with reference to a person who drives or attempts to drive a motor vehicle while "having a blood alcohol content of or above 0.08 g[rams] of alcohol per 100 [millilitres] of blood". The terminology "per" 100 millilitres of blood is used, as a blood sample provided by a person may be in an amount smaller than 100 millilitres.

Similarly, clause 6(2)(a) will amend the reference to "percentage of alcohol" in the heading to the first column of the Table to section 64(2), and replace it with reference to "blood alcohol content" expressed in grams of alcohol per 100 millilitres. This Table prescribes the penalty that is to apply to a person convicted of an offence against section 64(1). The penalty differs based upon a person's blood alcohol content, increasing in severity as the blood alcohol content increases above 0.08 grams of alcohol per 100 millilitres of the person's blood and according to the number of the person's prior convictions for such an offence.

Clause 6(2)(b)(i) will remove the "percentage" (%) symbol wherever it appears in the first column of the Table to section 64(2), in keeping with the new terminology. This is also necessary because subclause 6(2)(a) will amend the heading to the first column of the Table to replace reference to "percentage of alcohol" with reference to "blood alcohol content" expressed in a number of grams of alcohol per 100 millilitres of blood.

Clause 6(2)(b)(ii) will amend the first column of the Table to section 64(2), in the final row of that column. Pursuant to the amendment that will be made by subclause 6(2)(b)(i), that row will say " ≥ 0.14 but < 0.15 ". Clause 6(2)(b)(ii) will remove the words "but < 0.15 " because they are unnecessary. A person who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.15 grams of alcohol per 100 millilitres of blood will commit an offence against section 63 of the Act.

It should be noted that section 15(a) of the *Road Traffic Amendment Act 2006* contains an amendment identical to the one contained in subclause 6(2)(b)(ii). Commencement of operation of that section has yet to be proclaimed, however. Clause 2 of this Bill therefore provides that if section 15(a) of the *Road Traffic Amendment Act 2006* commences operation prior to clause 6(2)(b)(ii) commencing operation, then clause 6(2)(b)(ii) will have no effect at all.

Clause 6(3) will amend the Note beneath the Table to section 64(2). The Note explains what the symbols " \geq " and " $<$ " signify. This clause will provide that the symbol " \geq " signifies "of or above" rather than "greater than or equal to", in keeping with the new terminology regarding blood alcohol content.

Clause 6(4) will amend the reference in section 64(2a) to "percentage of alcohol" in blood" to "blood alcohol content", in keeping with the new terminology.

7. Section 64AA amended

Section 64AA of the *Road Traffic Act 1974* ("the Act") provides that a person who drives or attempts to drive a motor vehicle while the "percentage of alcohol in his blood equals or exceeds 0.05%" commits an offence.

Various clauses in this Bill, including this clause, will replace the Act's references to the "percentage of alcohol" in a person's blood with more precise terminology.

The percentage of alcohol present in a person's blood is determined either by the analysis of a breath sample provided by the person, or by the analysis of a blood sample provided by the person.

Currently, the analysis of both breath samples and blood samples produces a result expressed in the unit of measurement, "x grams of alcohol/100 millilitres of blood".

In order to be able to use an analysis result to determine whether a person has committed an offence against the Act, it is necessary to determine what percentage of alcohol in that person's blood the particular number of grams of alcohol stated in the result represents.

Section 65 of the Act defines "percentage of alcohol" as meaning the number of grams of alcohol contained in 100 millilitres of a person's blood. For example, if a blood analysis results in a reading of 0.05 grams of alcohol in 100 millilitres of a person's blood, then the percentage of alcohol in that person's blood is taken to be 0.05%.

This Bill will remove all references in the Act to the percentage of alcohol in a person's blood, replacing them with direct references to the number of grams of alcohol in 100 millilitres of a person's blood that is relevant to determine whether an offence has been committed.

Clause 7(1) will amend section 64AA(1) by replacing reference in it to a person who drives or attempts to drive a motor vehicle while the "percentage of alcohol in his blood equals or exceeds 0.05%" with reference to a person who drives or attempts to drive a motor vehicle while "having a blood alcohol content of or above 0.05 g[rams] of alcohol per 100 [millilitres] of blood". The terminology "per" 100 millilitres of blood is used, as a blood sample provided by a person may be in an amount smaller than 100 millilitres.

Similarly, clause 7(2)(a) will amend the reference to "percentage of alcohol" in the heading to the first column of the Table to section 64AA(2a), and replace it with reference to "blood alcohol content" expressed in grams of alcohol per 100 millilitres. This Table prescribes the penalty that is to apply to a person convicted of an offence against section 64AA(1). The penalty differs based upon a person's blood alcohol content, increasing in severity as the blood alcohol content increases above 0.05 grams of alcohol per 100 millilitres of the person's blood and according to the number of the person's prior convictions for such an offence.

Clause 7(2)(b)(i) will remove the percentage (%) symbol wherever it appears in the first column of the Table to section 64AA(2a), in keeping with the new terminology. This is also necessary because clause 7(2)(a) will amend the heading to the first column of the Table to replace reference to "percentage of alcohol" with reference to "blood alcohol content" expressed in a number of grams of alcohol per 100 millilitres of blood.

Clause 7(2)(b)(ii) will amend the first column of the Table to section 64AA(2a), in the final row of that column. Pursuant to the amendment that will be made by clause 7(2)(b)(i), that row will say "≥ 0.07 but < 0.08". Clause 7(2)(b)(ii) will

remove the words “but < 0.08” because they are unnecessary. A person who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.08 grams of alcohol per 100 millilitres of blood will commit an offence against section 64 of the Act.

Clause 7(3) will amend the Note beneath the Table to section 64AA(2a). The Note explains what the symbols “≥” and “<” signify. This subclause will provide that the symbol “≥” signifies “of or above” rather than “greater than or equal to”, in keeping with the new terminology regarding blood alcohol content.

8. Section 64A amended

Section 64A of the *Road Traffic Act 1974* (“the Act”) provides that certain persons who drive or attempt to drive a motor vehicle while the “percentage of alcohol in [their] blood equals or exceeds 0.02%” commit an offence.

Various clauses in this Bill, including this clause, will replace the Act’s references to the “percentage of alcohol” in a person’s blood with more precise terminology.

The percentage of alcohol present in a person’s blood is determined either by the analysis of a breath sample provided by the person, or by the analysis of a blood sample provided by the person.

Currently, the analysis of both breath samples and blood samples produces a result expressed in the unit of measurement, “x grams of alcohol/100 millilitres of blood”.

In order to be able to use an analysis result to determine whether a person has committed an offence against the Act, it is necessary to determine what percentage of alcohol in that person’s blood the particular number of grams of alcohol stated in the result represents.

Section 65 of the Act defines “percentage of alcohol” as meaning the number of grams of alcohol contained in 100 millilitres of a person’s blood. For example, if a blood analysis results in a reading of 0.02 grams of alcohol in 100 millilitres of a person’s blood, then the percentage of alcohol in that person’s blood is taken to be 0.02%.

This Bill will remove all references in the Act to the percentage of alcohol in a person’s blood, replacing them with direct references to the number of grams of alcohol in 100 millilitres of a person’s blood that is relevant to determine whether an offence has been committed.

This clause will amend section 64A(1) by replacing reference in it to a person who drives or attempts to drive a motor vehicle while the “percentage of alcohol in his blood equals or exceeds 0.02%” with reference to a person who drives or attempts to drive a motor vehicle while “having a blood alcohol content of or above 0.02 g[rams] of alcohol per 100 [millilitres] of blood”. The terminology “per” 100 millilitres of blood is used, as a blood sample provided by a person may be in an amount smaller than 100 millilitres.

9. Section 65 amended

The *Road Traffic Act 1974* (“the Act”) provides that it is an offence for a person to drive or attempt to drive a motor vehicle while the percentage of alcohol present in that person’s blood equals or exceeds a prescribed amount.

Section 65 of the *Road Traffic Act 1974* (“the Act”) defines certain terms that are used in those sections of the Act dealing with evidence and proceedings for alcohol-related driving offences.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the “percentage of alcohol” in a person’s blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

Clause 9(a) will amend the definition of “analyst” by replacing reference in it to the “percentage” of alcohol in bodily substances with reference to the “concentration” of alcohol in bodily substances.

Clause 9(b) will amend the definition of “breath analysing equipment” by replacing reference in it to “the percentage of alcohol present in a person’s blood” with reference to “a person’s blood alcohol content”.

Clause 9(c) will delete the definition of “percentage of alcohol” and insert in section 65, in the appropriate alphabetical position, a definition of “blood alcohol content”, which will mean the concentration of alcohol in a person’s blood, expressed in grams of alcohol per 100 millilitres of blood.

Clause 9(d) will amend the definition of “preliminary test” by replacing references in it to “the percentage of alcohol” in a person’s blood” with references to “a person’s blood alcohol content”.

These amendments are in keeping with the changes in terminology that will be effected throughout Part V of the Act by various clauses in this Bill.

10. Section 65A inserted

This clause is necessary because of the introduction of a new national standard for the measurement of breath analysis results. It will provide for:

- the introduction of a new, more appropriate unit of measurement for expressing the result of an analysis of a breath sample; and
- the transition from the use of the current unit of measurement to the new unit of measurement,

as follows.

The *Road Traffic Act 1974* (“the Act”) creates various offences of driving or attempting to drive a motor vehicle, while a person’s blood alcohol content exceeds a particular amount.

For the purposes of enforcing these provisions, a person's blood alcohol content is determined either by the analysis of a breath sample or the analysis of a blood sample.

Presently, the analysis of both breath samples and blood samples results in a reading given in the unit of measurement, "x grams of alcohol/100 millilitres of blood".

A new national standard has been developed that requires the analysis of a breath sample to result in a reading expressed in the unit of measurement, "x grams of alcohol/210 litres of breath", where that result will be required to constitute evidence in proceedings for an offence.

The use of this unit of measurement is considered more appropriate than that currently used, whereby the analysis of a breath sample for the presence of alcohol produces a result expressed as a measurement of alcohol in blood.

The presence of alcohol in a person's breath is merely an indicator, however, of the presence of alcohol in the person's blood. It is the presence of alcohol in a person's blood that affects, or may affect, a person's ability to have proper control a motor vehicle. For this reason, the Act's offence provisions are all expressed in terms of blood alcohol content.

The Act empowers a member of the Police Force to require any driver to undergo a preliminary breath test, and in certain circumstances to require a person to provide a breath, blood or urine sample for the purposes of determining whether, and proving to a court that, the person has committed an alcohol-related offence against the Act. The Act provides that a breath sample, taken and analysed using approved breath sampling apparatus, can constitute evidence for the purposes of proceedings for such an offence.

The same quantity of alcohol present in 100 millilitres of a person's blood will be found in 210 litres of the same person's breath at the same point in time.

This clause will insert a new section 65A that will enable a breath analysis result to be used to determine whether, and to constitute evidence that, a person has committed an alcohol-related offence against the Act.

In order to do so, the new section 65A(1) will deem that:

- where a person provides a breath sample;
- the breath sample is analysed; and
- the result is y grams of alcohol per 210 litres of the person's breath,

then the person's blood alcohol content is to be taken to be y grams of alcohol in 100 millilitres of the person's blood.

Currently, breath analysing equipment approved under the Act produces a breath analysis result in the existing unit of measurement, x grams of alcohol in 100 millilitres of blood.

The Western Australia Police is in the process of procuring replacement breath analysing equipment that will comply with the new national standard. This breath analysing equipment will also be approved under the Act for use in analysing breath samples for the purposes of proceedings for alcohol-

related offences against the Act. It will produce a breath analysis result in the new unit of measurement, x grams of alcohol in 210 litres of breath.

For a short period of time, during the transition from old equipment to new, both forms of approved breath analysing equipment will be in use in Western Australia.

The new section 65A(2) is necessary to facilitate this transition. It will provide that the result of the analysis of a breath sample, obtained using either form of approved equipment, will be able to be used for the purposes of proceedings for an alcohol-related offence against the Act. It will provide that the result will be valid, regardless of whether the result given by the equipment is directly expressed in grams of alcohol/100 millilitres of blood, or is obtained by the application of the deeming provision in the new section 65A(1) to a result given by the equipment that is expressed in grams of alcohol/210 litres of breath.

The result of a preliminary breath test is intended to provide an indication of the amount of alcohol present in a person's blood. It does not constitute proof for the purposes of proceedings against the person for an alcohol-related offence against the Act. Where a preliminary breath test indicate the presence of a particular amount of alcohol in the blood, a member of the Police Force is empowered to require the person to provide a breath sample that will be analysed by approved "evidentiary" breath analysing equipment. The result produced by that breath analysing equipment will constitute evidence for the purposes of any proceedings against the person for an alcohol-related offence against the Act.

Apparatus used to perform preliminary breath tests must also be approved under the Act. Currently, approved apparatus for preliminary breath testing purposes produces an analysis result in the existing unit of measurement, x grams of alcohol in 100 millilitres of blood.

As is the case with regard to evidentiary breath analysing equipment, the Western Australia Police is in the process of procuring replacement apparatus, for use in conducting preliminary breath tests, that will comply with the new national standard. This apparatus will produce an analysis result in the new unit of measurement, x grams of alcohol in 210 litres of breath.

For a short period of time, during the transition from old equipment to new, both kinds of approved apparatus will be in use in Western Australia.

The new section 65A(3) is necessary to facilitate this transition. It will provide that the result of the analysis of a breath sample, obtained using either form of approved apparatus, will be able to be used for the purposes of providing an indication of the amount of alcohol present in a person's blood, in order to empower a member of the Police Force to require the provision of a breath or blood sample to be used for evidentiary purposes.

The new section 65A(3) will provide that the result will be valid, regardless of whether the result given by the apparatus is directly expressed in grams of alcohol/100 millilitres of blood, or is obtained by the application of the deeming provision in the new section 65A(1) to a result given by the apparatus that is expressed in grams of alcohol/210 litres of breath.

11. Section 66 amended

The *Road Traffic Act 1974* (“the Act”) provides that it is an offence for a person to drive or attempt to drive a motor vehicle while the percentage of alcohol present in that person’s blood equals or exceeds a prescribed amount.

Section 66 of the Act empowers a member of the Police Force to require any driver to undergo a preliminary breath test, in order to provide an indication of the percentage of alcohol in the person’s blood.

Section 66 also empowers a member of the Police Force, in certain circumstances, to require a person to provide a breath, blood or urine sample for the purposes of determining whether, and proving to a court that, a person has committed an offence against the Act.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the “percentage of alcohol” in a person’s blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

Section 66(2)(a)(i) empowers a member of the Police Force to require a person to provide a breath sample or a blood sample, where:

- the person has provided a breath sample for a preliminary test; and
- the preliminary test indicates that the person has a percentage of alcohol in his or her blood equal to or greater than 0.05%.

Clause 11(1) will amend section 66(2)(a)(i) to replace reference to the indication that the “percentage of alcohol in the blood of the person equals or exceeds 0.05%” with reference to the person’s “blood alcohol content” being “of or above 0.05 g[rams] of alcohol per 100 [millilitres] of blood”. This amendment is in keeping with the changes to this terminology that will be effected throughout Part V of the Act by various clauses of this Bill.

Section 66(11)(b) empowers a member of the Police Force to require a person to provide a blood sample or a urine sample, where:

- the member of the Police Force has reason to believe the person has committed an offence of driving whilst under the influence of alcohol and/or drugs to such an extent as to be incapable of having proper control of the vehicle;
- the person has provided a breath sample for analysis; and
- the analysis result indicates that there is alcohol present in the person’s blood, however it is of a level that does not correlate with the person’s conduct, condition or appearance.

Clause 11(2) will amend section 66(11)(b) to replace reference to the “percentage of alcohol present in the blood of the person” with reference to the “person’s blood alcohol content”. This amendment is in keeping with the changes to this terminology that will be effected throughout Part V of the Act by various clauses of this Bill.

12. Section 68 amended

The *Road Traffic Act 1974* (“the Act”) creates various offences of driving or attempting to drive a motor vehicle, while the percentage of alcohol in a person’s blood equals or exceeds a prescribed amount.

For the purposes of enforcing these provisions, the percentage of alcohol in a person’s blood is determined either by the analysis of a breath sample or the analysis of a blood sample.

Section 68 prescribes how a breath sample is to be analysed.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the “percentage of alcohol” in a person’s blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

In addition, clause 10 will insert a new section 65A that will provide for:

- the use of a new unit of measurement for expressing the result of the analysis of a breath sample, in accordance with a new national standard; and
- the use of a breath analysis result, expressed in the new unit of measurement, to be used to determine whether, and to constitute evidence that, a person has committed an alcohol-related offence against the Act.

Clause 12(1)(a) will amend section 68(4)(a) by replacing reference in it to “the percentage of alcohol” in a person’s blood with reference to a person’s “blood alcohol content”, in keeping with the new terminology.

Clause 12(1)(b) will amend section 68(4)(a) to provide that, by the application of section 65A (the deeming provision inserted by clause 10 of this Bill), the result of the analysis of a breath sample will be taken to be the person’s blood alcohol content, whether the breath analysing equipment produces the result in the new unit of measurement (x grams of alcohol/210 litres of breath) or the existing unit of measurement (x grams of alcohol/100 millilitres of blood).

Clause 12(2) will amend section 68(8):

- by replacing references in it to the “percentage of alcohol” in a person’s blood with references to a person’s “blood alcohol content”, in keeping with the new terminology; and
- by providing that, by the application of section 65A (the deeming provision inserted by clause 10 of this Bill), the result of the analysis of a breath sample will be taken to be the person’s blood alcohol content, whether the breath analysing equipment produces the result in the new unit of measurement (x grams of alcohol/210 litres of breath) or the existing unit of measurement (x grams of alcohol/100 millilitres of blood).

13. Section 69 amended

The *Road Traffic Act 1974* (“the Act”) provides that it is an offence for a person to drive or attempt to drive a motor vehicle while the percentage of alcohol present in that person’s blood equals or exceeds a prescribed amount.

Section 66 empowers a member of the Police Force, in certain circumstances, to require a person to provide a breath, blood or urine sample for the purposes of determining whether, and proving to a court that, a person has committed an offence against the Act.

Section 69(2) provides that, where a blood sample is analysed by an analyst in accordance with regulations made under the Act, the percentage of alcohol found by the analyst to be present in the blood sample is to be taken to be the percentage of alcohol present in the person’s blood at the time the sample was taken. This provision is relevant for the purposes of prosecuting a person for an alcohol-related offence against the Act.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the “percentage of alcohol” in a person’s blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

Clause 13(a) will therefore amend section 69(2) to replace reference in it to the “percentage of alcohol found by the analyst to be present in” the person’s blood with reference to the “person’s blood alcohol content”. This amendment is in keeping with the changes to this terminology that will be effected throughout Part V of the Act by various clauses of this Bill.

14. Section 71 amended

The *Road Traffic Act 1974* (“the Act”) creates various offences of driving or attempting to drive a motor vehicle, while the percentage of alcohol in a person’s blood equals or exceeds a prescribed amount.

For the purposes of enforcing these provisions, the percentage of alcohol in a person’s blood is determined either by the analysis of a breath sample or the analysis of a blood sample.

Section 71 provides that, for the purposes of proceedings for an alcohol-related offence against the Act, a calculation is to be applied to the analysis result of a breath or blood sample to determine what the relevant percentage of alcohol in that person’s blood was at the time it is alleged the person committed the offence.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the “percentage of alcohol” in a person’s blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

Clause 14(1) will repeal the existing section 71(1) and insert a replacement section 71(1) that replicates the substance of that section, however:

- amends the references in it to the “percentage of alcohol” present in a person’s blood and replaces them with references to a person’s “blood alcohol content”; and
- amends the references in it to specific percentages of alcohol and replaces them with references to specific numbers of grams of alcohol per 100 millilitres of blood.

Clause 14(2) will amend section 71(4) by replacing reference to the “percentage” of alcohol calculated to have been present in a person’s blood with reference to “concentration” of alcohol so calculated.

These amendments are in keeping with the changes in terminology that will be effected throughout Part V of the Act by various clauses in this Bill.

15. Section 72 amended

The *Road Traffic Act 1974* (“the Act”) creates various offences of driving or attempting to drive a motor vehicle, while the percentage of alcohol in a person’s blood equals or exceeds a prescribed amount.

For the purposes of enforcing these provisions, the percentage of alcohol in a person’s blood is determined either by the analysis of a breath sample or the analysis of a blood sample.

Section 72(2) empowers the Minister to approve of apparatus that may be used for ascertaining the percentage of alcohol present in a person’s blood by the analysis of a sample of the person’s breath.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the “percentage of alcohol” in a person’s blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

In addition, clause 10 will insert a new section 65A that will provide for:

- the use of a new unit of measurement for expressing the result of the analysis of a breath sample, in accordance with a new national standard; and
- the use of a breath analysis result, expressed in the new unit of measurement, to be used to determine whether, and to constitute evidence that, a person has committed an alcohol-related offence against the Act.

This clause will amend section 72(2):

- by replacing reference in it to apparatus used for ascertaining “the percentage of alcohol” in a person’s blood with reference to apparatus

used for ascertaining “a person’s blood alcohol content”, in keeping with the new terminology; and

- by providing that apparatus that produces the result of the analysis of a breath sample in the new unit of measurement (x grams of alcohol/210 litres of breath) will be considered to be apparatus used for the purpose of ascertaining a person’s blood alcohol content by the analysis of a sample of the person’s breath, by the application of section 65A (the deeming provision inserted by clause 10 of this Bill).

16. Section 98A amended

This clause will amend section 98A to maintain consistency in drafting style between Parts V and VI.

Section 72(2)(a) empowers the Minister to approve of types of apparatus “for ascertaining by analysis of a sample of a person’s breath the percentage of alcohol present in his blood”.

Clause 15 of this Bill will amend section 72 to replace reference in it to “the percentage of alcohol present in his blood” with reference to “the person’s blood alcohol content”, in keeping with changes to this terminology that will be effected throughout Part V of the Act by various clauses of this Bill.

Clause 15 will also provide that the Minister may approve of types of apparatus “for **the purpose of** ascertaining a person’s blood alcohol content by analysis of a sample of the person’s breath”.

To maintain stylistic consistency, clause 16(a) will amend section 98A(2) to provide that the Minister may approve of types of apparatus “for **the purpose of** ascertaining the speed at which a vehicle is moving”.

To maintain stylistic consistency, clause 16(b) will amend section 98A(3) to provide that the Minister may approve of types of apparatus “for **the purpose of** ascertaining distances on roads”.

Subdivision 2 – Amendments depending on *Road Traffic Amendment Act 2006*

17. Section 64AA amended

Section 16 of the *Road Traffic Amendment Act 2006* will amend section 64AA of the *Road Traffic Act 1974* (“the Act”) by inserting in it a new section 64AA(2b), however it has yet to commence operation.

This clause will amend the new section 64AA(2b), when it commences operation.

Section 64AA currently provides that it is an offence for a person to drive or attempt to drive a motor vehicle while the percentage of alcohol in the person’s blood equals or exceeds 0.05%.

The penalty that applies to a person convicted of an offence against section 64AA increases in severity according to what the person’s blood alcohol content was at the time of the offence, as well as the number of the person’s prior convictions for such an offence.

The purpose of the new section 64AA(2b) is to provide that for the purposes of sentencing a person convicted of an offence against section 64AA, a prior conviction of a more serious offence may be counted as a prior offence for the purposes of section 64AA.

Examples of more serious offences are driving under the influence of alcohol and/or drugs (section 63), failure to comply with a requirement to provide a breath, blood or urine sample for analysis (section 67) and driving or attempting to drive with a blood alcohol content equal to or greater than 0.08% (section 64).

A person's prior conviction of one of these offences may be counted as a prior offence against section 64AA, resulting in the imposition of a greater penalty.

Clause 7 will replace references in section 64AA to the "percentage of alcohol" in a person's blood with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the amended section 64AA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a 0.05 grams of alcohol per 100 millilitres of blood.

This clause will replace reference to "percentage of alcohol in the blood" in the new section 64AA(2b) with reference to "blood alcohol content", in keeping with the new terminology.

18. Section 67 amended

Section 18 of the *Road Traffic Amendment Act 2006* ("the RTAA 2006") will amend section 67 of the *Road Traffic Act 1974* ("the Act") by deleting the existing section 67(3)(a) and inserting a replacement section, however it has yet to commence operation.

This clause will amend the replacement section 67(3)(a), when it commences operation.

Section 67 creates the offence of failure to comply with a requirement to provide a breath, blood or urine sample for analysis. The RTAA 2006 amendment will rectify an unintended inadequacy in the sentencing provisions for an offence against section 67.

Presently, a person with previous convictions for contravening section 64 (driving with a percentage of alcohol in his or her blood that equals or exceeds 0.08%) could be convicted of an offence against section 67, a far more serious offence, however receive a lesser penalty than if the person had committed a further offence against section 64. Section 18 of the RTAA 2006 will amend section 67 to increase the applicable penalty in these circumstances.

Part 2 Divisions 1 and 2 of this Bill will amend the Act to remove all references to the "percentage of alcohol" in a person's blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

This clause will amend section 67(3)(a), as it will be amended by the RTAA 2006, by replacing references in it to circumstances in which the “relevant percentage of alcohol in the person’s blood exceeded 0.14%” with references to circumstances in which the “person’s blood alcohol content were above 0.14 g[rams] of alcohol per 100 [millilitres] of blood”. This amendment is in keeping with changes to this terminology that will be effected throughout Part V of the Act by various clauses of this Bill.

Division 3 – Other amendments

Subdivision 1 – Amendments not based on *Road Traffic Amendment Act 2006* having commenced

19. Division 1A inserted in Part V

This clause will insert new Division 1A in Part V of the *Road Traffic Act 1974* (“the Act”).

Division 1A will contain the new section 49AA, which will define the meaning of the terms “grievous bodily harm” and “bodily harm”, where these terms appear in Part V.

“Grievous bodily harm” will have the meaning it has in the *Criminal Code*, which is any bodily injury that endangers or is likely to endanger life or causes or is likely to cause permanent injury to health.

“Bodily harm” will have the meaning it has in the *Criminal Code*, which is any bodily injury that interferes with health or comfort.

20. Sections 54, 55 and 56 replaced

The *Road Traffic Act 1974* (“the Act”) imposes certain duties on drivers, including the requirements:

- to stop immediately after an accident in which the driver’s motor vehicle has been involved, if a person has been injured or property has been damaged (section 54(1));
- to render assistance to any person who has been injured as a result of the accident (section 54(6));
- to report an accident in which the driver’s motor vehicle has been involved, where the accident in results in bodily injury to another person (section 55); and
- to report an accident in which the driver’s motor vehicle has been involved, where the accident in results in property damage (section 56).

The penalties that currently apply to a person for the failure to comply with these requirements are low by comparison with the penalties that would apply to the person, if the person were charged with and convicted of dangerous driving occasioning death or grievous bodily harm, or dangerous driving occasioning bodily harm, as a consequence of the accident.

This clause will therefore elevate some of the offences to crimes and increase significantly the penalties that will apply to a driver who fails to comply with these duties. These amendments are intended to act as a deterrent to a person who might otherwise elect to flee the scene of an accident in order to

escape the possible conviction of a dangerous driving charge and imposition of the associated penalty.

In addition to elevating the quantum of the applicable penalties, the opportunity is also being taken to reorder and reorganise the provisions of sections 54, 55 and 56 to make them clearer.

This clause will therefore repeal the existing sections 54, 55 and 56 and insert replacement sections 54, 55 and 56.

Replacement section 54

Section 54(1) will require a driver to stop immediately after the occurrence of any incident involving the driver's motor vehicle, if another person has been injured as a result of the incident.

The use of the term "incident" in this section means that the driver's duty will arise following a collision between two motor vehicles, where one of the vehicles is the driver's vehicle, and may also arise in the case of an occurrence that involves the driver's motor vehicle only.

In addition, section 54(1) will clarify that the driver is required to stop for as long as is necessary to also comply with other requirements imposed by the section, such as the requirement to render assistance to an injured person or to identify himself or herself to a member of the Police Force, the injured person or a representative of the injured person.

This will ensure that a person cannot avoid prosecution for a contravention of section 54(1) because the person stopped immediately after the incident, provided some form of assistance and then left the scene.

Section 54(2) will require a driver to provide appropriate assistance to a person who has been injured as a result of an incident involving the driver's motor vehicle. Appropriate assistance might include calling for medical aid, or taking some action to minimise the risk of further incidents occurring at the scene while awaiting the arrival of medical aid and/or the Police.

Section 54(3) will provide that a person who contravenes either section 54(1) or 54(2) will commit a crime.

If the alleged offender is convicted in the District Court, the sentence that may be imposed will depend upon the extent of the injuries caused to a victim in the incident.

In the case of the victim's death, the offender will be liable to up to 20 years' imprisonment (a penalty equivalent to that which would apply if the offender were convicted instead of dangerous driving, committed in circumstances of aggravation, that caused the death of a victim).

In the case of grievous bodily harm, the offender will be liable to up to 14 years' imprisonment (a penalty equivalent to that which would apply if the offender were convicted instead of dangerous driving, committed in circumstances of aggravation, that caused grievous bodily harm to a victim).

In any other case, the offender will be liable to up to 10 years' imprisonment (a penalty equivalent to that which would apply if the offender were convicted

instead of dangerous driving that did not cause death or grievous bodily harm to a victim).

If the offender is convicted by a magistrate, he or she will be liable to a penalty of up to 3 years' imprisonment.

Section 54(4) will empower the court to disqualify an offender from holding or obtaining a driver licence for any period it considers appropriate, in addition to imposing a penalty.

Section 54(5) will enable an alleged offender, charged with failing to stop or to assist a victim following an incident, to be acquitted if he or she satisfies the court that he or she did not realise that the incident occurred.

Section 54(6) will require a driver, whose motor vehicle has been involved in an incident in which another person has been injured, to give his or her name and address, and the name and address of the responsible person for the vehicle, to a member of the Police Force, the injured person, or a person representing the injured person, if asked to do so by any of these people.

Section 54(7) will enable an alleged offender, charged with failing to stop or to assist a victim following an incident, to be acquitted if he or she satisfies the court that it was not possible to do so because of an injury the alleged offender suffered in the incident.

Replacement section 55

Section 55(1) will require a driver to stop immediately after the occurrence of any incident involving the driver's motor vehicle, if damage to property has been caused as a result of the incident.

The driver will be required to stop for as long as is necessary to also comply with the requirement to identify himself or herself to a member of the Police Force, a person whose property has been damaged or a representative of a person whose property has been damaged.

The existing penalty, a maximum fine of 30 PU, will apply for a contravention of this requirement.

Section 55(2) will empower the court to disqualify an offender from holding or obtaining a driver licence for any period it considers appropriate, in addition to imposing a penalty.

Section 55(3) will enable an alleged offender to be acquitted, if he or she satisfies the court that he or she did not realise the incident occurred.

Section 55(4) will require a driver, whose motor vehicle has been involved in an incident in which property has been damaged, to give his or her name and address, and the name and address of the responsible person for the vehicle, to a member of the Police Force, a person whose property has been damaged, or a person representing such a person, if asked to do so by any of these people.

The existing penalty, a maximum fine of 30 PU, will apply for a contravention of this requirement.

Section 55(5) will enable an alleged offender, charged with failing to stop or failing to provide information as required by this section, to be acquitted if the alleged offender satisfies the court that he or she did not realise the incident occurred.

Replacement section 56

Section 56(1) will require a driver to make a report to the Police without delay following any incident that occurs involving the driver's motor vehicle, where another person is injured as a result of the incident.

Section 56(2) will provide that if a driver fails to report such an incident, and another person dies or suffers grievous bodily harm as a result of the incident, the driver will commit a crime.

If the offender is convicted in the District Court, he or she will be liable to up to 10 years' imprisonment.

If the offender is convicted by a magistrate, he or she will be liable to up to 12 months' imprisonment.

In either case, the court must also order that the offender is disqualified from holding or obtaining a driver licence for at least 12 months.

Section 56(3) will provide that if a driver fails to report an incident, and the incident did not result in the death of or grievous bodily harm to a person, the driver will commit an offence. The offender will be liable to up to 12 months' imprisonment. The court must also order that the offender is disqualified from holding or obtaining a driver licence for at least 12 months.

Section 56(4) will require a driver to make a report to the Police without delay following any incident that occurs involving the driver's motor vehicle, where damage to property occurs as a result of the incident. The penalty for a first offence will be a maximum fine of 8 PU, and for a subsequent offence a maximum fine of 16 PU.

Section 56(5) will enable an alleged offender, charged with failing to report an incident as required by this section, to be acquitted if the alleged offender satisfies the court that he or she could not fulfil any requirement because of an injury he or she suffered in the incident.

21. Section 57 amended

Where an incident involving the driving of a motor vehicle occurs, and results in the death of or bodily harm to a person, section 57 requires a responsible person for the vehicle to give any information he or she can give that will help to identify who the driver of the vehicle was, if required by a member of the Police Force to do so.

Clause 21(1) will amend section 57(1) by removing the penalty provision, as subclause 21(2) will provide for the penalty for an offence against section 57 to be prescribed in a new section 57(2).

Clause 21(2) will repeal the existing section 57(2). Currently, this section defines the meaning of the term "bodily harm" for the purposes of section 57, however the definition will be redundant because clause 19 of this Bill will

insert a new section 49AA that defines the meaning of the term for the purposes of Part V of the Act.

In addition, clause 21(2) will provide that it will be an offence to give false information to a member of the Police Force in response to a request for information made under section 57(1). Under this new section 57(2), information will also be false if the responsible person falsely claims to have no information to give in response to the request.

Clause 21(2) will also provide that the penalty for an offence against either section 57(1) or 57(2) will be a fine of 60 PU or 12 months' imprisonment.

22. Section 59 amended

This clause will amend the penalties that may apply to a person convicted of the crime of dangerous driving that caused the death of or grievous bodily harm to another person.

Clause 22(1) will provide that, where a magistrate convicts a person of this crime, and the crime was committed in circumstances of aggravation, the offender will be liable to a penalty of up to 3 years' imprisonment (an increase from the existing 18 months) or a maximum fine of 160 PU. The court will continue to be required also to disqualify the offender from holding or obtaining a driver licence for at least 2 years.

Clause 22(2) will repeal section 59(2)(d), which defines the term "bodily harm" for the purposes of section 59. This term will be defined in the new section 49AA, which will be inserted by clause 19 of this Bill.

Clause 22(3) will provide that, where a person is convicted of this crime in the District Court, and the crime was not committed in circumstances of aggravation, the offender will be liable to up to 10 years' imprisonment (an increase from the existing 4 years) or a maximum fine of 400 PU. The court will continue to be required also to disqualify the offender from holding or obtaining a driver licence for at least 2 years.

23. Section 59A amended

This clause is necessary because of the insertion by clause 19 of a new section 49AA into the *Road Traffic Act 1974* ("the Act").

The new section 49AA will provide that, wherever the term "grievous bodily harm" appears in Part V of the Act, that term has the same meaning as it has in the *Criminal Code*.

Section 59A(2)(d) currently defines the term "grievous bodily harm", for the purposes of section 59A.

There will be more widespread reference to the term "grievous bodily harm" in Part V, however, as a result of the amendments contained in clause 20 of this Bill. Clause 19 will therefore provide for the relocation of the term's definition to the new section 49AA, which will have application to the whole of Part V.

The definition contained in section 59A(2)(d) will therefore become redundant and will be repealed by this clause.

24. Section 73 amended

The *Road Traffic Act 1974* (“the Act”) regulates vehicles and their use on roads to which the Act applies, and the conduct of drivers and other road users.

A “road” for the purposes of the Act is defined in section 5, however section 73 provides that certain sections of the Act will apply to the driving, or attempting to drive, of a motor vehicle in some places that may not be roads within this definition of the term, but that are places that are open to or used by the public.

An example of such a place might be a car park. A car park is not likely to be a “road” pursuant to the definition of a road in section 5, however it is a place in which motor vehicles are driven and may be a place that is open to and used by the public.

Currently, section 73 provides that a person may be charged with the crime of dangerous driving occasioning death or grievous bodily harm (section 59), or the offences of:

- dangerous driving occasioning bodily harm (section 59A);
- reckless driving (section 60);
- dangerous driving (section 61);
- careless driving (section 62);
- driving under the influence of alcohol and/or drugs (section 63); or
- driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed amount (sections 64, 64AA and 64A),

if the crime or offence is committed in a place that may not be a road but that is open to or used by the public.

These offences are not offences against the provisions of the Act that regulate the orderly movement of traffic on roads or in places open to or used by the public. They are offences of a serious nature involving the driving of a motor vehicle and which harm or have the potential to cause harm to other persons.

This clause will amend section 73 so that a person may also be charged with the following crimes and offences, if the crime or offence is committed in a place that may not be a road but that is open to or used by the public:

- the crime created by the replacement section 54 (that will be inserted by clause 20) of failing to stop and to render assistance to a person injured as a result of an incident involving a motor vehicle driven by the offender;
- the offence created by the replacement section 55 (that will be inserted by clause 20) of failing to stop following an incident involving a motor vehicle driven by the offender in which property damage was caused; and
- the offence created by the replacement section 56 (that will be inserted by clause 20) of failing to report an incident involving a motor vehicle driven by the offender and as a result of which bodily harm was caused to another person.

Non-compliance with the above provisions is considered to be of a nature serious enough to warrant the provisions’ inclusion in section 73. An offender

may be guilty of committing a crime or an offence pursuant to section 59, 59A, 60, 61, 62, 63, 64, 64AA or 64A and fail to comply with his or her duties under the above provisions in order to escape detection, charge and the imposition of a sanction.

Subdivision 2 – Amendments depending on *Road Traffic Amendment Act 2006*

25. Section 50 amended

This clause will correct a drafting ambiguity in section 50 of the *Road Traffic Act 1974*, as it will be amended by section 9 of the *Road Traffic Amendment Act 2006* (“the RTAA 2006”).

Section 9 of the RTAA 2006 has not yet commenced operation, but when it does it will amend section 50 to provide that a person who holds a learner’s permit must not drive a motor vehicle unless the person:

- is complying with any conditions endorsed on the permit; and
- is accompanied by a driving instructor with whom the holder is authorised to drive.

A learner driver may be accompanied by a person who is a licensee under the *Motor Vehicle Drivers Instructors Act 1963*, by any person who currently holds, and has held for a prescribed minimum period of time, a driver licence of the same class as the vehicle the learner driver is learning to drive, or by another class of person approved by the Director General.

Section 50 as amended will contain an incorrect inference that it is the fact of being accompanied by a person of this class that authorises the learner driver to drive.

This clause will amend section 50 to make it clear that it is the learner’s permit that confers authorisation upon the learner driver to drive, and then only while the learner driver complies with any conditions to which the learner’s permit is subject and is accompanied by a person belonging to one of the classes of person mentioned above.

Division 4 – Amendments about graduated demerit point system for novice drivers

26. Section 104 amended

Clause 26(a) creates a subsection (1) in section 104 as this section currently has no subsections.

Clause 26(b) introduces various definitions required to give effect to the modified demerit point scheme for novice drivers and each definition will be discussed separately.

“excessive demerit points (novice driver) notice”

This distinguishes between an “ordinary” excessive demerit points notice and one that applies only to a novice driver and represents the exceeding of either 3 or 7 demerit points.

“novice driver”

A novice driver is a person that has not held a licence issued in any jurisdiction whether within or from outside Australia for at least two years.

The definition of a novice driver links to the definition of novice driver (type 2) contained at subsection (2).

“novice driver (type 1)”

A novice driver (type 1) is a person that has not held a drivers licence issued in any jurisdiction whether within or from outside Australia for more than one year.

Type 1 is limited to no more than 3 demerit points and type 2 is limited to no more than 7 demerit points.

“novice driver (type 2)”

A type 2 novice driver is a person that has held a drivers licence issued in any jurisdiction whether within or from outside Australia for at least one year but for less than two years.

Subclause (2) clarifies the application of this Part to novice drivers only and reiterates the definition of a novice driver.

Subclause (3) provides that when determining how long a person has held a drivers licence (regardless of the jurisdiction in which it was issued) any period where the person was disqualified from holding or obtaining a drivers licence shall not be counted toward the aggregate period for which they have held the licence. For example a person may have held a licence for three years but been subject to a disqualification for two years of that time. As such the two year period of disqualification shall not be counted as time the licence has been held. Therefore for the purposes of this Part the person will only have held a licence for one year and as a consequence will be a novice driver.

27. Section 104IA inserted**104IA Excessive demerit points (novice driver) notice****“post commencement demerit points”**

To prevent persons that fall within the definition of a novice driver from being subject to disqualifications for demerit points they accrued prior to the enactment of these provisions the concept of post commencement demerit points is being created. This will ensure that the new demerit point limits (3 for novice driver (type 1) and 7 for novice driver (type 2)) will only apply in relation to points accrued after the enactment of this Bill. In effect all points that were accrued prior to the enactment of this Bill will not be counted for the purposes of the new reduced demerit point threshold for novice drivers, but they will still be taken into consideration for the current 12 point demerit point disqualifications.

Subclause (2) provides that where a novice driver (type 1) accrues at least 4 post commencement demerit points or a novice driver (type 2) accrues at

least 8 post commencement demerit points then the Director General must issue the novice driver an excessive demerit points (novice driver) notice and that notice must contain the information listed at (a), (b), (c) and (d).

The concept of post commencement demerit points applies because the provision will only apply to a person that accrues those points after this Bill is enacted as detailed above.

Subclause (3) mirrors the existing demerit point disqualification concept in that once an excessive demerit points notice has been issued all the points to which that notice relates are cancelled. This is to “right off” those points from the demerit point register so they are not counted again later. In effect once the points have accrued to a level that a person is subject to a disqualification those points have been “dealt with” and must be cancelled.

Subclause (4) provides that the disqualification period is to be three months.

Subclause (5) references section 104M which is contained in the *Road Traffic Amendment Act 2006* (which must be proclaimed prior to this Part taking effect as discussed at the beginning of this document). Section 104M provides that demerit point disqualifications shall be cumulative on other disqualifications and as such shall not take effect until after any existing disqualifications have expired.

Subclause (6) references section 104O (7) which is contained in the *Road Traffic Amendment Act 2006* (which must be proclaimed prior to this Part taking effect as discussed at the beginning of this document). Section 104O (7) provides that where an infringement is withdrawn or a matter is referred to a court then the demerit points associated with that offence are to be removed from the demerit points register, but pending the outcome of the court hearing or reinstatement of the infringement notice may be again recorded in the demerit point register.

Subclause (7) references section 104I which is contained in the *Road Traffic Amendment Act 2006* (which must be proclaimed prior to this Part taking effect as discussed at the beginning of this document). Section 104I provides that where persons accrue 12 or more points greater periods of disqualification apply.

28. Section 104J amended

This extends the operation of section 104J to also prevent a novice driver from applying for period of 12 months good driving in place of the demerit point disqualification. Drivers that hold a provisional licence (or are novice drivers) do not have the option of continuing to drive on a 12 month good behaviour period as an alternative to a demerit disqualification. The rationale being that these drivers are inexperienced and should be subject to strong punitive action when transgressing against the road rules.

29. Section 104O amended

This updates section 104O to require the details of the issue of an excessive demerit points (novice driver) notice to also be entered into the demerit points register as a record of the action taken.

30. Section 104R amended

This amendment references section 104R which is contained in the *Road Traffic Amendment Act 2006* (which must be proclaimed prior to this Part taking effect as discussed at the beginning of this document). Section 104R provides for the manner in which excessive demerit point notices are to be served and extends this requirement to new notices that will be issued to novice drivers.

Division 5 – Amendments about zero blood alcohol content for novice drivers

31. Section 63 amended

32. Section 64 amended

33. Section 64AA amended

34. Section 64A amended

These clauses provide that where a novice driver exceeds a higher legislated alcohol limit (for example 0.02, 0.05, 0.08 or DUI) that applies to them then they will be subject to the more serious offence. Provisions contained at clause 12(4) amend other drink driving related offences to allow a court to convict a person of the lesser charge where the court is satisfied that the person had alcohol in the person's blood but not at a level sufficient to establish the offence that was alleged. For example a person is charged with a 0.02% offence and the court is not satisfied the person had a blood alcohol content equal to or exceeding 0.02% but the court is satisfied that there was some alcohol in their blood then they will be able to convict them of the offence provided for by section 64AAA. This principle applies to all drink driving related offences.

35. Section 64AAA inserted

Section 64AAA is inserted to create a new offence of driving with a blood alcohol content exceeding 0.00% for all novice drivers.

Subclause (1) creates the offence of being a novice driver and driving or attempting to drive a motor vehicle with any alcohol in the person's blood.

It provides a minimum penalty of 2 penalty units (currently \$100) and a maximum penalty of 6 penalty units (currently \$300). This offence will also attract 3 demerit points but these will be prescribed in regulations and do not form a part of this Bill.

Subclause (2) provides that the zero blood alcohol limit applies to novice drivers as already defined.

Subclause (3) enables an alleged offender to be acquitted of a charge, if the alleged offender satisfies the court that he or she had a blood alcohol content either because:

- the alleged offender consumed alcohol for the purposes of religious observance; or
- the alleged offender ate or drank a substance other than alcoholic beverage, that is the cause of his or her blood alcohol content, but did not consume that substance in order to consume alcohol.

- 36. **Section 66 amended**
- 37. **Section 70 amended**
- 38. **Section 71B amended**

These clauses insert the new zero BAC limit offence into existing sections dealing with police powers to require persons to undergo breath tests and comply with other police requirements relating to alcohol and driving related offences.

- 39. **Section 98 amended**

Section 98 deals with evidentiary and proof issues relating to charges and inserts the new zero BAC offence as well as updating the reference to 0.02 offences.

Division 6 – Other amendment

- 40. **Section 111 amended**

This clause is necessary to correct an unintended omission from the *Road Traffic Amendment Act 2006* (“the RTAA 2006”).

Currently, section 44 of the *Road Traffic Act 1974* (“the Act”) empowers the Director General to issue a driver’s licence subject to such conditions or limitations as the Director General considers appropriate or necessary. Section 44(2) makes it an offence for a person to fail to comply with such a condition or limitation.

When the RTAA 2006 commences operation, many sections of the Act that currently detail Western Australia’s driver licensing regime will be repealed and replaced with provisions empowering regulations to be made prescribing these matters. As part of this reform, section 44 will be repealed, however it has recently come to notice that the RTAA 2006 does not contain the necessary power to make regulations in relation to the subject matter of section 44(2).

This clause will therefore insert such a regulation-making power to rectify this omission.

Part 3 – *Young Offenders Act 1994* amended

- 41. **The Act amended in this Part**

The clauses contained in this Part of the Bill will amend the *Young Offenders Act 1994*. The amendments to that Act are necessary as a consequence of the amendments contained in Part 2 of the Bill.

- 42. **Schedule 1 amended**

This clause is necessary as a consequence of the amendments to the *Road Traffic Act 1974* (“the RTA”) contained in Part 2 of the Bill.

Clauses 6, 7 and 8 will amend sections 64, 64AA and 64A of the RTA.

Currently, section 64 provides that it is an offence for a person to drive or attempt to drive a motor vehicle while the percentage of alcohol in the person's blood equals or exceeds 0.08%.

Section 64AA provides that it is an offence for a person to drive or attempt to drive a motor vehicle while the percentage of alcohol in the person's blood equals or exceeds 0.05%.

Section 64A provides that it is an offence for certain persons to drive or attempt to drive a motor vehicle while the percentage of alcohol in their blood equals or exceeds 0.02%.

Part 2 of this Bill will amend the RTA to remove all references to the "percentage of alcohol" in a person's blood and replace these references with more precise terminology. Rather than prescribing a prohibited percentage of alcohol, the relevant provisions of the RTA will prohibit a person from driving or attempting to drive a motor vehicle while having a blood alcohol content of or above a prescribed number of grams of alcohol per 100 millilitres of blood.

The *Young Offenders Act 1994* ("the YOA") provides that in some circumstances:

- a young offender may be given a caution rather than be charged with an offence;
- an offence may be dealt with by a juvenile justice team rather than by a court; and
- a court is not required to record a conviction against a young offender.

Schedule 1 prescribes certain offences, however, in respect of which a young offender may **not** be given a caution, an offence may **not** be dealt with by a juvenile justice team rather than a court, and a court is required to record a conviction.

Three such offences are offences against sections 64, 64AA and 64A of the RTA.

This clause will amend Schedule 1 of the YOA, where sections 64, 64AA and 64A of the RTA are mentioned, to reflect the terminology changes to those sections that will be made by Part 2 of the Bill.