

MAIN ROADS AMENDMENT BILL 2023

EXPLANATORY MEMORANDUM

Introduction

The activities and operations of Main Roads Western Australia (**'Main Roads'**) are constrained by the powers and duties conferred on the Commissioner or Main Roads (**'Commissioner'**) under the *Main Roads Act 1930* (**'the Act'**).

The Act was written in the context of an early 20th century state road authority, focusing on the provision of highways and main roads for a largely undeveloped state. Although amended from time to time since 1930, the focus and scope of the Act remains fundamentally unchanged with little ability to allow Main Roads, through the Commissioner, to respond effectively to modern community expectation or current government initiatives outside the narrow focus of road construction and maintenance.

Following extensive consultation, a proposal was previously developed to modernise the Act. The Main Roads Bill 2015 (**'2015 Amendments'**) was introduced into the Legislative Assembly in 2015, but did not proceed beyond its second reading, and fell away with the proroguing of Parliament in 2017.

The proposed amendment in the 2015 Amendments relating to heavy vehicle charging is abandoned and not pursued under this Bill. There has also been a change of focus over the 6 years since the 2015 Amendments.

There continues to be limits under the current Act, which in turn places limits on the ability of the Commissioner to optimise the commercial use of the substantial asset base. These limitations will be addressed by introducing the key elements of the 2015 Amendments, conferring and supporting enhanced commercial powers, the enactment of which will allow Main Roads to operate in a more commercial manner to the benefit of the state.

Overview of *Main Roads Amendment Bill 2023* ('Bill')

This Bill will amend the Act. The amendments have arisen from previous consultation across Main Roads and other government departments. The role of the Commissioner as a body corporate has evolved and changed over time from when the Act was originally enacted.

The amendments will facilitate the operations and functions of Main Roads and create an improved framework for the provision of services in line with a modern road authority. The Bill's key provisions are:

- **Section 18E – Other powers to include forms of contract and innovative business arrangements.** This proposed provision will enable the Commissioner to operate more commercially through the use of business arrangements and acquiring and disposing of property. Certain Business arrangements will require Minister and Treasurer approval.
- **Section 18D(1)(a) – Change of contract approval levels.** Currently pursuant to the existing section 18, any contract over \$500,000 requires written Ministerial consent. The Act is an old piece of legislation and at the time of subsequent amendments to this provision, the last being in 1996, \$500,000 was deemed to be the appropriate contractual limit for which Ministerial approval was required. Currently the majority of the road works contracts are frequently in excess of \$1m.
This proposed section will provide that contracts that exceed an amount that will be prescribed in the regulations will require Ministerial approval. It is intended that the prescribed amount may be between \$1m - \$5m, with the ability to set separate thresholds for different classes of contract, if required. Increasing, or varying the monetary contract approval level in this manner in the regulations will facilitate and assist in the day to day functions of the Commissioner. The Minister will still have the ability to oversee the contract levels but in a manner that takes into account the modern focus of a road authority. Furthermore, as the prescribed amount will be set out in regulations, it can be easily amended as circumstances change.
- **Sections 15A(1) & (2), 16A(3) & (4), 23, 28A(7) Increase of penalty levels.** These proposed provisions will increase the respective penalty levels thereby offering a more effective penalty regime.
- **Section 22B and 29 - Road service centres.** These are commercial centres which are accessible from highways and main roads, and which sell or otherwise provide fuel, food, refreshments and other road user services together with toilet facilities and recreational areas. These proposed provisions provide the Commissioner power to facilitate the operation of road service centres, and to lease land to other persons for those persons to build and operate a road service centre on that land.
- **Section 22A Adjoining works** This proposed provision will provide the Commissioner with power to undertake activities outside the road reserve of highways and main roads in fulfilling functions under the Act. Those activities

can include but are not limited to matters such as installing noise abatement measures on private property that adjoins highway or main road, undertaking drainage on adjoining and establishing or using quarries on land outside the road reserve.

- **Section 37 – Enhanced regulation making powers.** These proposed provisions will provide the power to make regulations in respect of various matters, including:
 - For which fees and charges may be prescribed
 - The removal, storage, forfeiture and sale or other disposal of vehicles, goods and animals left on designated places (including highways or main roads, or any other place owned by, or under the care, control and management of, the Commissioner)
 - Road train assembly and breakdown areas on designated places
 - Activities, including works, by persons other than the Commissioner in relation to designated places.
- **Section 36 - Infringement Notices.** Establishment of an infringement regime under the *Criminal Procedure Regulations 2005* made under the *Criminal Procedure Act 2004*.

1. Short title

Clause 1 of this Bill provides that, when this Bill passes, it will be called the *Main Roads Amendment Act 2023*.

2. Commencement

Clause 2 sets out when the provisions of the Act are proposed to commence operation.

Clause 2(a) would provide that sections 1 and 2 are proposed to commence operation on the day which the Act receives Royal Assent and becomes an Act.

Clause 2(b) would provide that the rest of the Act would commence on a day fixed by proclamation, which may provide that different provisions may be commences on different days.

3. Act amended

Clause 3 provides that the Bill would amend the *Main Roads Act 1930* (the Act).

4. Long title amended

Clause 4 would expand the long title of the Act so that the Act is to confer functions on the Commissioner for Main Roads, including in relation to works unrelated to roads.

The Bill introduces the new term “works” which is broadly drafted to cover a range of activities wider than construction of roads. The proposed term would include a broad range of activities including, among others, the construction of something, the improvement of something, the maintenance repair and reconstruction of the things so constructed or improved, the provision of any equipment or service for the proper management of any thing constructed or improved, the acquisition of land for the purposes of construction or improvement, and the demolition or removal of something.

This proposed amendment will be an expansion of the Commissioner’s functions, undertaking works unrelated to the construction of roads. The amendment is also consistent with changes throughout this Bill to replace construction with the broader term works

5. Section 6 amended

Section 6 of the Act provides the terms used in the Act.

Clause 5 would amend section 6 of the Act to delete, amend and insert various terms used in the Act.

Clause 5(1) would delete the term “**road construction**” which will be replaced with the proposed new broader term “**works**” (described further below) which incorporates construction.

Clause 5(2) would insert proposed new terms as follows:

“**adjoining works**” this proposed term is required to provide the Commissioner with power to undertake activities outside the road reserve of main roads and highways for the purposes of the Commissioner fulfilling functions under the Act. It includes reference to the proposed term “works” which is defined to include broad range of works and related activities. This proposed term is required to provide clarity as to what constitutes adjoining works for the purposes of proposed section 22A of the Act. Under the current Act the Commissioner’s functions are largely confined to the road reserves of main roads and highways.

Section 22A and the defining term “adjoining works” will enable the Commissioner to undertake a number of activities outside the road reserve of main roads and highways including matters such as installing noise abatement measures on private properties adjoining main roads or highways with the consent of the owners; undertaking drainage modifications on adjoining land; establishing and using pits or quarries located on land outside the road reserve.

In addition, the term “adjoining works” is incorporated into the broader proposed term “main roads works”. That gives the Commissioner power to carry out adjoining works under the Commissioner’s general powers under section 15B, and other parts in the Bill where the term “main roads works” is used – such as:

- amended section 16(3) under which local government may, at the Commissioner’s request undertake to tender for any agreement with the Commissioner for main road works within its district;
- amended section 17(a)(ii) and (iii) dealing with the Commissioner’s power to carry out surveys and investigations as to ascertain the extent of resources suitable for main roads works and the most effective methods of undertaking main roads works;
- Proposed section 18C under which the Commissioner has the power to authorise a person to carry out “main roads works” which includes “adjoining works”.

“agreement” this proposed term directly refers to and includes “business arrangement”. It is required to provide clarity for the use of the term in the context of the Act, especially in relation to proposed sections 18A, - 18B, and 18D-18F relating to the Commissioner’s powers to enter into agreements.

“business arrangement” this is a proposed new term, and is required to support and provide clarity to the powers of the Commissioner under proposed sections 15B(1)(g) and 18E, which in certain circumstances requires the approval of the Minister and Treasurer to participate in alternative forms of agreements and business arrangements as is set out in proposed section 18F of the Bill.

“carry out” this proposed term will provide that it includes “supervise.” It is used to avoid having to repeat the words “or supervise” in every case the term carry out is used.

“COA road section” this term is introduced, as it is a shorter and more convenient way of referring to a road section with or subject to control of access or section or part of a road with control of access.

“enter” this proposed term is used to provide clarity to the Commissioner’s

powers to enter into agreements that are “business arrangements” under proposed section 18F. The term is to include “... promote, establish, manage, dissolve, wind up, and do anything incidental to the participating in a business arrangement”.

“environmental offset works” environmental offsets are regularly required as part of the environmental approval process under the *Environmental Protection Act 1986* for projects which involve the otherwise adverse environmental impacts. This proposed term is required to provide clarity as to the Commissioner’s powers in carrying out “main roads works” which definition includes environmental offset works.

“heavy vehicle” this definition is necessary, for the context of proposed section 33(1)(f)

“local government” this proposed term is included for clarity

“main roads works” this proposed new term is required to explain and cover the various types of works that are covered under the general functions of the Commissioner under proposed section 15B, and matters for which agreements may be entered into under proposed sections 18AA, 18B, 18C and 18E. It will mean “road works; adjoining works; road service centre works; environmental offset works; and any other works the Commissioner is empowered to carry out under the Act or any other written law.”

“oversize” this definition is necessary, for the context of proposed section 33(1)(f)

“road service centre” – Road service centres are commercial centres which are accessible from main roads and highways and which sell or otherwise provide fuel, food, refreshments and other road user services together with toilet facilities and recreational areas. This proposed new term is necessary to explain and provide clarity to the commissioner’s functions in relation to approving, supervising the works, power to acquire and lease land and entry into agreements for and in relation to road service centre works on highways and main roads as in sections 15B, 18AA, 18B, 18C, 18E, 22B and 29.

“road works” this term means works related to a road. The term makes it clear that any reference to road works incorporates the term “works”.

“works” This is a proposed new term that recasts the former term used in “road construction” but without using the words “road” or “construction” but rather the more generic term “works”. Works will include activities such as:

the construction of something; the improvement and reconstruction of something; the maintenance of those things constructed, improved or reconstructed; the provision and maintenance of any equipment or service necessary for or incidental to the proper management of the things constructed improved or reconstructed; the acquisition of land for the purposes of construction; improvement or reconstruction; any demolition or removal of something and administration of anything relating to construction, improvement or reconstruction including planning, research, investigation, survey and design.

This term is broadly drafted to enable it to be applied to a varied and broad range of construction type works and other related works. In conjunction with the specific heads of powers under proposed sections 18AA -18C, and 18E, it will provide for the Commissioner to enter into agreements relating to such matters covered under the wide ambit of the term.

Clause 5(3) would amend the definition of '**highway**' to replace 'thereof' with 'of the highway', to modernise the language in the Act. This minor amendment reflects contemporary drafting practice and does not change the meaning of the term.

Clause 5(4) would amend the term "**main road**", to replace the words 'thereof' with 'of the thoroughfare, highway or road' to modernise the language in the Act. This minor amendment reflects contemporary drafting practice and does not change the meaning of the term.

Clause 5(5) would amend the term "**road**", as follows:

(a) by replacing the reference to 'thereof' and replacing this with the clearer "of the thoroughfare, highway or road," to modernise the language in the Act. This minor amendment reflects contemporary drafting practice and does not change the meaning of the term

and

(b) by removing the word "appurtenant". This term is amended to make it clear that references to road include shared and cycle only paths that are "*related to, or used in connection with a road*". This avoids the need for separate terms for footpath, shared path or cycle only path. This term will permit works on paths related to any other roads under the care, control and management of the Commissioner.

Clause 5(6) would amend the term "**secondary road**" to replace the word 'thereof' with 'of the road'. This minor amendment reflects contemporary drafting practice and does not change the meaning of the term. The concept of the term secondary road is no longer in use.

6. Section 7 amended.

Clause 6 would amend section 7 of the Act to modernise the language in the Act.

Section 7 of the Act provides for the appointment of the Commissioner and deputy.

Specifically, clause 6(1) would amend section 7(2) by deleting “shall while so acting have all the powers and perform all the duties” and insert “has while so acting all the powers and may perform all the functions”. The term “function” is defined in the *Interpretation Act 1984* to include “powers, duties, responsibilities, authorities and jurisdictions”.

These amendments use the shortened term “functions”, which is more concise and certain in language and does not change meaning of section 7(2).

Where however, the scope of the functions in provisions are more specific such as proposed section 16 of the Act, the term “powers” is used.

Clause 6(2) would amend section 7(3) as follows:

Subclause (2)(a) amends section 7(3)(c) by deleting “duties” and inserting “functions”.

Subclause (2)(b) and (d) amends section 7(3)(b), (c), & (d) by replacing ‘he’ with “the person”.

Subclause (2)(c) amends section 7(3)(c) by replacing “his duties with “the functions of the Commissioner”.

Subclause (2)(e) amends section 7(3)(d) by replacing the words “any contract made” with “an agreement entered into”; and also replacing “any such contract” with “that agreement”.

Subclause (2)(f) amends section 7(3)(d) “any such contract” with “any such contract” and insert “agreement entered into”; and replacing “any such contract” with “that agreement”. These amendments in subsection (3)(d) are necessitated by the replacement of the term “contract with agreement”.

In addition, the heading to amended section 7 would be amended to read **“Appointment of Commissioner and deputy”**

This more appropriately describes the ambit of the section.

7. Section 9 amended

Clause 7 of this Bill amends section 9. This amendment is required to replace the words “acts and powers” with “functions”. The term “function” is defined in the *Interpretation Act 1984* to include “powers, duties, responsibilities, authorities and jurisdictions”. This amendment uses the shortened term “functions,” which is more concise and certain in language.

8. Section 9AA inserted

This clause inserts proposed section 9AA.

There is no express provision in the current Act that provides the Commissioner is an agent of the Crown, such consequence being implied. This new section will put beyond doubt the intention that the Commissioner is an instrumentality of the State and therefore enjoys the privileges and immunities of the State.

9. Section 10 amended

This clause 9 of the Bill amends section 10. The amendment to section 10(2)(a) deletes the words “construction; and” which is to be replaced with “Construction or in connection with the performance of any other function of the Commissioner, and”.

This is to reflect the broadened functions of the to the Commissioner’s general functions under proposed section 15B.

Subsection (2)(d) is deleted and is incorporated in proposed section 10A. Subsection (3) has minor amendments to accord with modern legislative practices. The reference to the word “contract” in (3)(b) is deleted as this term is incorporated into the proposed broader definition “agreement”.

The heading to the amended section 10 will be amended to more closely reflect the subject matter of the section.

10. Sections 10A and 10B, are replaced

This clause 10 of the Bill deletes sections 10A and 10B, and inserts proposed sections 10A, 10B, and 10C. The Act is an old piece of legislation. The existing section 10(2)(d) of the Act in dealing with appointment of staff by the Minister is outdated. The current approach in existing section 10(2)(d) of the appointment of the Commissioner’s staff by the Minister is outdated and furthermore is inconsistent with the principles regarding the separation of political office holders from responsibility for arrangements in the public sector, as outlined in the 1992 WA Inc. Royal Commission. It is also not consistent with sections 8(2) and 105 of the *Public Sector Management Act 1994*.

Proposed section 10A

Proposed section 10A(1) will provide the Commissioner with the power of appointment of officers or employees in the public service or a state agency, with the approval of the CEO of other public sector agencies. It is largely a restatement of the existing section 10(2)(d), but removes the requirement for the Minister's approval.

Proposed section 10A(2) will enable the Commissioner to make use of any facilities of other WA government departments or agencies.

These powers will support the Commissioner in performing functions under the MR Act, including via cooperative arrangements with other agencies and stakeholders

Proposed section 10B Delegation by Minister

Subsection(1)(a) will provide that the Minister may by written instrument, delegate to the Commissioner any of the Minister's functions under the Act. However, the Minister's powers under proposed section 18D may not be delegated.

Subsection (2) will provide that (1)(a) does not apply to the function of the Minister referred to in section 18D. This makes it clear the Minister is not permitted to delegate to the Commissioner the Minister's function under that section.

Subsection (1)(b) permits the Minister to delegate to the Commissioner a function of the Minister under another Act.

Subsection (1) reflects the use of the term "function" in place of "powers".

Subsection (3) permits the delegation to expressly authorise the Commissioner to further delegate the function.

Subsection (4) & (5) are standard provisions in delegation powers.

Proposed section 10C Delegation by Commissioner

Subsection (1) will allow the Commissioner to delegate to an officer of the Commissioner or with approval of the Minister to another person;

- (a) any function of the Commissioner's under the Act;
- (b) a function delegated to the Commissioner under **another** Act.

In keeping with the amendments in this Bill, this refers to the more concise term "functions" explained in clause 7 above.

The power to delegate is not intended to limit the ability of the Commissioner to perform a function through an employee or agent. It should

continue to operate in addition to the power in the Act for the Commissioner to enter into agreements with any person.

The Commissioner has various functions under road laws such as the powers under the *Road Traffic (Vehicles) Act 2012* and regulation to provide the function for escorting oversize loads. The power to delegate functions is related to the power to recover the cost of the Commissioner providing services that arise under such other legislation (as covered in proposed section 33 (1)(f) section below) requesting a regulation power to cover such costs or charges.

11. Section 11 amended

This clause amends section 11. This section is amended to reflect the use of the term function in place of powers and duties. The term “function” is defined in the *Interpretation Act 1984* to include “powers, duties, responsibilities, authorities and jurisdictions”. This amendment uses the shortened term “function,” which is more concise and certain in language.

12. Section 11A amended

This clause 12(a) replaces the word “notwithstanding” with “Despite”. Clause 12 (c) replaces the words “Act that Act shall prevail” with “Act, that Act prevails. These amendments follow modern legislative drafting conventions.

Clause 12(b) amends section 11A(a) to include or Deputy to make it clear that the Deputy Commissioner is also a member of the SES for the purposes of the *Public Sector Management Act 1994*.

13. Section 13 amended

Section 13 provides for the proclamation of highways and main roads. Clause 13(1) provides minor amendments to section 13(1) in the interest of clarity and to follow modern legislative drafting conventions. Clause 13(2) inserts proposed new subsection (2)(f).

Clause 12(2)(b) inserts proposed subsection (2)(f) to permit the types of works contemplated in relation to paths along or related to any highways or main roads under the care control and management of the Commissioner and will include any related path. A path intended to run alongside a freeway might deviate quite far from the freeway, yet still be “related to” or “used in connection with” the freeway (see the proposed amended term of “road” in clause 5(3) which will include approaches and paths for pedestrians and cyclists.)

14. Amends section 15

Section 15 provides for property in, and control of highways and main roads. This clause 14(c) will amend subsection (3) to remove the archaic term “appurtenant” to be replaced with the words “related to the highways and main roads” in the interest of clarifying the provision. There are other small changes to section 15 to follow modern legislative drafting conventions.

15. Amends section 15A

Section 15A provides for offences relating to damage to plants and litter. This clause 15 will amend section 15A.

Clause 15(1)(c) will amend subsection (1) to delete the word “consent” and replace it with the word “approval”. This is for consistency with the use of the word “approval” in place of “consent” in proposed sections 16A(2), 22C, 28A(4)&(7), and 28(1).

Clause 15(1)(a) deletes the words “no person shall” and replaces them with “A person must not”; and in (b) deletes “upon any” and replaces them with “on a”. These are minor amendments in accordance with modern legislative drafting conventions, and in the interest of clarity.

Clause 15(2) will amend subsection (1) to provide a penalty for breach of the subsection, being a fine of \$10,000.

Clause 15A(3) will amend section 15A(2) to delete the words ‘no person shall deposit any litter upon any’ and replace them with “A person must not deposit any litter on a”. This amendment in accordance with modern legislative drafting conventions, and in the interest of clarity.

Clause 15(4) will amend section 15A(2) by increasing the penalty relating to depositing litter on highways and main roads from \$200 to \$10,000.

The current penalties for offences under the Act are amounts set at the time of the creation of the offences, in some cases up to 40 years ago. The penalties are low in comparison with the penalties that exist in other legislation. The activity of littering can have various impacts depending on the nature of the objects or litter. Littering will vary from those of a minor nature, to the dumping of any objects or material of whatever dimension or nature on the verges of main roads and highways. The use of road reserves as a dumping ground can have various impacts including environmental, safety and aesthetic. The deliberate or wanton dumping of any rubbish or unwanted goods could constitute an obstruction or hazard for users of the main road or highway. Accordingly, the penalties do not provide an adequate deterrent for the behaviour targeted, in this case depositing litter on a highway or main road.

The penalty is the maximum, which will be reserved for the most serious and wanton cases of dumping or littering, where there are aggravating

factors. Courts will use the maximum penalty as a guide to what lesser penalty should be ordered in a particular case. Alternately the courts will start with the minimum penalty as provided for in any modified penalties where there is an infringement system in the legislation. Refer to proposed section 36 which provides for an infringement notice regime.

16. Part 5 heading amended

This clause will amend the heading in Part 5 to read “Functions of Commissioner”.

This is consistent with the approach to replace the term “powers and duties” with “functions,” and to convert those functions into a more concise and certain language consistent with legislative drafting standards and practice.

17. Section 15B inserted

This clause will insert proposed section 15B, which will have the heading “**General functions of the Commissioner.**”

The Act in its current form repeatedly refers to powers, functions or duties of the Commissioner in various contexts but does not specify any functions apart from section 16. Many functions can be inferred from the fact that under section 15 the Commissioner has the care, control and management of main roads and highways. However, some functions currently performed by the Commissioner are not as readily inferred. In addition to specific powers the Bill provides, it is necessary for the Commissioner to have a general overarching power to provide broad scope for the Commissioner’s and Main Roads activities.

The scope of this provision therefore, is to set out, in general terms the functions of the Commissioner.

Subsection 15B(1)(a) will make it clear that the Commissioners broad functions include construction and management the network of highways and main roads including shared paths and similar paths.

subsection 15B(1)(b) will include reference to the proposed new terms “carry out” and “works” and amended term “roads”. The term “works” is broadly drafted to enable it to be applied to a varied and broad range of other works, and for the Commissioner to enter into agreements for such matters. Compound terms like “road works” are able to be used together quite meaningfully as words like “road” and “works” are both defined. The amended term “road” includes shared and cycle only paths that are “related to, or used in connection with a road”. This avoids the need for

separate terms of footpath shared path or cycle only path. This amended term will permit works on paths related to any other roads under the care control and management of the Commissioner.

Subsection 15B(1)(c) will provide the general function to “carry out” “works” connected with roads including to construct or manage infrastructure associated with roads and traffic. This is a reference to specified functions under the proposed section 22A to carry out adjoining works.

Subsection 15B(1)(d) will provide that the Commissioner’s functions include “other main roads works”. The proposed term “main roads works” is broadly drafted to include road works, adjoining works, road service centre works, environmental offset works, and any other works the Commissioner is empowered to carry out under the Act or any other written law.

Subsection 15B(1)(e) will provide control or regulate traffic directly on highways and main roads and on other roads in conjunction with local governments and other road authorities. This is to be cross referenced with proposed section 16(1C) that the Commissioner is taken to have always been authorised to erect, establish or display traffic or road signs, road markings, traffic control signals and similar devices. This subsection (and also section 15B(1)(a) is intended to refer to the provision of signals, traffic information and infrastructure. It is not intended to extend the traffic management activities currently undertaken by other areas of government. These provisions will support works such as those recently undertaken in relation to the Smart Freeways project and ensure that any such similar works could be carried out in the future, including in connection with the Commissioner’s proposed commercial contracting powers this Bill provides.

Subsection 15B(1)(f) will provide the Commissioner with the general function to undertake civil construction works that are not road related for public purposes on behalf of other government agencies or government owned entities. This provision relating to the Commissioner’s general powers supports the Commissioner’s specific power or function to enter into undertake other work under proposed section 18B.

Subsection 15B(1)(g) will provide the Commissioner with the power to use the Commissioners assets for public purposes not necessarily connected with construction or maintenance of roads, or to undertake activities to exploit the Commissioner’s assets, and operate for commercial purposes including to enter into agreements, leases and

licenses or to generate or make a profit. This is a key amendment and supports the Commissioner's specific powers or function to operate commercially by entering into a range of business arrangements including relating to property as provided for in proposed section 18E.

Subsection 15B(1)(h) will provide that the Commissioner's functions include any functions that are conferred on the Commissioner by any legislation – which would include, for example the *Road Traffic Act 1974*, the *Road Traffic (Vehicles) Act 2012* and *Road Traffic (Administration) Act 2008*.

Subsection 15B (2) & (3) are standard clauses

Subsection 15B(4) is to ensure there are no unintended limits on police functions under other laws. For example, as explained in subsection 15B(1)(e) above – it is not the intent to extend the traffic management activities currently undertaken by other areas of government such as the direction of traffic by Police.

18. Section 16 amended

Section 16 provides for the specific powers of the Commissioner. Clause 18(1) of this Bill deletes section 16(1) and inserts proposed subsection (1). This subsection provides the Commissioner may exercise in regard to any highway or main road any power which a local government may exercise for a road within its district. This largely restates the substance of section 16 (1)(b), but uses simpler language.

The current subsection (1)(a) provides the Commissioner may construct all highways or main roads “...and do all things necessary for or incidental to the proper management thereof”.

Proposed section 15B(1)(b) refers to the proposed new term “works,” which is broadly defined to cover a range of activities more extensive than construction. Furthermore, the proposed term “works” by its breadth covers things that are “... necessary for or incidental” to the management or the works. Accordingly, section 16(1)(a) is no longer necessary and is to be deleted.

Clause 18(2) **amends subsection (1a)** to replace the words “highway or main roads” with only “road”

Clause 18(3) similarly to 18(2) **amends subsection (1b)** by deleting the words “highway or main road by any means” and inserting “road”.

The only reference in the Act to the Commissioner's powers that are conferred under the road traffic legislation are in existing subsections 16(1b)

and 16(1c). However, the scope of those conferred powers is limited by the specific reference in section 16(1)(b) to the Commissioner's power "...to control or regulate traffic, or any person, on a main road or highway..." This limits the Commissioner's powers conferred by only referring to main roads and highways and not the other roads which make up the majority of the State's public roads. Accordingly, the replacement of the words "highway or main road" with "road" is necessary to remove any potential limitation on the Commissioner's powers conferred under the road traffic legislation.

Clause 18(4) **will delete subsection (1C)** and replace it with the words
"The Commissioner is taken to have always been authorised to erect, establish or display traffic or road signs, road marking, traffic control signals and similar devices."

This amendment is necessary as a consequence of the amendment to the *Road Traffic Legislation Amendment Act 2012* clause 32, which amended s111(2)(a)(iii) and (iiia) of the *Road Traffic Act 1974*. That amendment was proclaimed on 27 April 2015. This amendment is necessary to remove any restriction on those powers conferred on the Commissioner. Road markings are an important means by which traffic is controlled and regulated. Therefore, this amendment will make it clear that the Commissioner's powers under road traffic legislation will include the power to erect, establish or display road markings, in addition to the other traffic or road signs, signals or devices.

Clause 18(5) **will insert proposed subsection (2A)**. This subsection (2A) will provide that nothing in (the existing) subsection (2) requires the Commissioner's approval to be obtained before each exercise by a local government of its powers over a highway or main road. It is necessary to clarify that section 16(2) is an empowering section, which grants the Commissioner the power to control and direct the exercise of a local governments' powers over main roads and highways. It makes it clear that it does not otherwise prohibit the local governments' powers under the *Local Government Act 1995* or require that the Commissioner's consent be obtained before the local government exercises those powers.

Clause 18(6) **will amend subsection (3)**. This subsection is amended as a consequence of the new term of "works" and "main roads works" and the deletion of the term "road construction", and the new term "agreement" to replace contracts.

Clause 18(7) **will delete subsection (4)**, and replace it with a new subsection (4) and (4A). This current subsection (4) is the only reference in the Act to the Commissioner's delegation made under the *Land Administration Act 1997* (LAA). By using the words in the new subsection

(4) it will reduce any limitation on the Commissioner's ability to exercise powers delegated to the Commissioner under the LAA powers, under delegations made under the LAA.

Clause 18(8) **will amend subsection (5)**. It will replace the words "provide, construct and supervise" with "carry out". These amendments are necessary because of the deletion of the term construct or road construction which is subsumed in the proposed new broader term of "works" and clarified by the new definition "carry out".

19. Section 16A amended

Section 16A provides for the Commissioner's powers to close highways or main roads.

Clause 19 Subclauses (1) & (2)(a) of this Bill will amend section 16A **(1)** to remove references to "thereof" with "road, or part of a highway or main road". This is for clarity and also in accordance with legislative drafting conventions.

Subclause (2)(b) will also amend subsection 16A(2) to replace "consent" with "approval". This is consistent with the same changes elsewhere in the Act.

Subclause (3) will amend subsection 16A(3) making similar changes as in subclause (1) & (2)(a) above which are in accordance with drafting convention.

Subclause (4) will amend subsection 16A(3) by increasing the penalty for interfering with signs that indicate a main road or highway is closed, from \$200 to \$10,000. The Act is an old piece of legislation. The last time section 16A was amended was in 1975. The penalty level is very low, does not provide any deterrent value and is ineffective. It does not provide an adequate deterrent or disincentive for the behaviour concerned, namely the activity of interfering (without the Commissioner's approval) with signs that indicate that a road is closed. Such behaviour can both endanger lives and cause significant and costly damage to main roads and highways. Accordingly, the increase will bring the section in line with an appropriate penalty level that is commensurate with the offence.

Subclause (5) will amend subsection 16A(4) by carrying out amendments that follow legislative drafting conventions, again in connection with the use of the word "thereof"

Subclause (6) will amend subsection 16A(4) by increasing the penalty under the subsection, for driving on highways or main roads that are

closed. Such behaviour of driving on roads that are closed without the authority of the Commissioner can endanger lives and also, as has occurred in the past, caused significant and costly damage to main roads and highways. Again, the penalty level is increased to \$10,000, to bring the penalty level in line with the appropriate level that is commensurate with the offence.

20. Section 17 amended

Section 17 provides for the Commissioner's powers in relation to carrying out surveys and investigations to ascertain, among other matters, the most effective methods of undertaking "works" and to purchase land for the purposes of the Act.

This clause 20 will amend subsection 17(a)(ii) and (iii) to take into account the proposed deletion of the term "road construction" or "construction" with the term "works". It also refers to the proposed new term "main roads works". The reference to "main roads works" means the section provides the Commissioner's powers with regard to carrying out surveys and investigations can including road works, adjoining works; road service centre works; environmental offset works; and any other works the Commissioner is empowered to carry out under the Act or another written law.

Proposed subsection (v) is inserted. It permits the Commissioner to carry out surveys and investigations as are necessary or expedient to ascertain what road service centres are required for particular highways and main roads. This power is to be cross referenced with the substantive power to carry out road service centre works, or to facilitate the operation of such road service centres under proposed section 22B.

21. Section 18 deleted

This clause will delete section 18. It is deleted and is included as part of proposed new section 18D. It is logical for that proposed section to come after the proposed new sections 18A and 18B, as it qualifies their operation.

22. Section 18A amended

The heading is amended to read:

"General power to enter into agreements relevant to the Commissioner's functions".

Section 18A is the Commissioner's core contractual power to enter into agreements with contractors or other entities.

Subclause 22(1) will delete subsection 18A(1). Part of the powers that appear in the subsection 18A(1), which is to be deleted, will be included (with certain changes to take into effect the deletion of the term construction and its replacement with "main roads works") and redrafted in proposed new section 18AA. (see clause 23(1) below).

Subclause 22(1) will delete subsection 18A(2), and introduce a new subsection 18A(1). This is largely a restatement of the existing subsection (2), but consistently with the proposed amendments in this Bill, it uses the term 'agreement' in place of 'contract' and removes the reference to construction and refers to the Commissioner's functions under the Act. The Commissioner's general functions are broadly stated under proposed section 15B, which refers to the expanded definitions of works and main roads works. This amendment in 18A(2) recognises that the Commissioner's contractual functions covers far more than simply contracts for the construction of roads. The function of the Commissioner as a road authority has changed from its inception when the Act was enacted over 90 years ago. Furthermore, the nature and breadth of the contracts have changed from simply construction type contracts to a range of contracts. This amendment will support the Commissioner's functions.

Subclause 22(2) will amend subsection 18A(3) by deleting the words "other than those referred to in subsection(2)".

Subclause 22(3) will amend subsection 18A(4) to delete "road" and replace that with "road or other place" on each occasion those words are used.

Subclause 22(4) will amend subsection 184(5) by replacing the words "Where" with "if" and "upon" with "on", in keeping with current drafting conventions.

23. Section 18AA inserted

This clause 23 will insert a new section 18AA with the heading:

"Agreements for contributions towards the Commissioner's expenditure."

Resource companies frequently approach Main Roads to seek changes to road networks in order to provide new or additional access to a mine site from existing roads. That may involve the building of new roads, crossings, overpasses bridges or other such infrastructure from or adjoining an existing

road network in order to access the Company's mine site, and to facilitate its operations. This will be covered under the proposed new section 18AA and under proposed new section 33 dealing with Costs and charges.

The Commissioner has entered into agreements for work for the benefit of third parties, such as road realignments to assist mining companies' operations, or for the benefit of property developers for housing or other property developments.

Current sections 18A(1) and 18B has been typically relied on as a basis to require such companies, or developers to enter into an agreement with the Commissioner, where they agree to pay for, or contribute to the costs incurred in relation to such construction works. This will be restated under the proposed amendment to section 18AA in clearer terms, and supported by the proposed amendment to section 18B and proposed section 18C.

Subsection (1)

Subsection (1) is a restatement, in part of the current section 18A(1). However, by referring to the new term "agreement" in place of contract and introducing the new definition "main roads works", it supports the Commissioners functions to enter into a broad range of agreements, rather than being limited to "construction or any aspect of construction of the road".

Subsection (2)

Subsection (2) is expressed is expressed in a way that it is intended not to limit the generality of the power in subsection (1), and that such agreements may relate to any of the following

- (a) "works" that comprise modifications of, or the placement of infrastructure on or under roads to accommodate mining operations or property developments. This covers the range of circumstances where mining companies seek to place pipelines on a road reservice or to modify roads to assist their operations. Likewise, in the case of property developers who needed to modify a road network to provide access to a new developments
- (b) "road service centre works" – such as where the Commissioner modifies a main road or highway to facilitate road service centres (the substantive power under proposed section 22B) Road service centres are commercial centres providing amendments as well as selling fuel and refreshments situation on or adjoining main roads and highways.
- (c) Works associated with providing or establishing any infrastructure facilities or services.
- (d) Works associated with activities that are commercial in nature

This proposed section 18AA will put beyond doubt the ability of the Commissioner to enter into such agreements, and to negotiate within the terms of the agreement with that third party that they pay for, or pay a contribution towards the costs to carry out such “main roads works”, which are for the benefit of that third party. Rather than rely on inferred powers to enter into such agreements, this proposed section will put the Commissioner’s powers beyond doubt. The powers under section 18AA are to be read together with the powers in proposed section 33 providing the ability recover and agree on costs and charges arising from such contracts, arrangements or business arrangements on a commercial basis.

Many of these third parties are mining or development companies and are large multinational entities or large national companies. Accordingly, proposed section 18AA will provide greater certainty and assertion of the Commissioner’s right to seek payment or contribution in agreements.

It is important to note that this power will be restricted to private companies and will have no application to public utilities.

24. Section 18B replaced

Clause 24 deletes section 18B and inserts a new section 18B.

Subsection 18B(1) will set out, for the purposes of the section what a reference to “works” will include. In addition, the ambit of the matters in the broad definition “works” in section 6 is included.

The proposed definition of “works” in the Bill will substantially broaden the ambit of section 18B, and the range of works that can be undertaken.

Subsection 18B(2) is largely a restatement of the existing subsection 18B(1). It refers to the proposed definition “works” and will provide the Commissioner the power to enter into an agreement with a person to do work whether or not connected with functions of the Commissioner under the Act for that person.

The Commissioner currently has the power under the existing section 18B to undertake other work whether or not connected with the functions of the Commissioner, and to enter into a contract for an agreed rate to be paid to the Commissioner for such work. This proposed new section will make it clear that the Commissioner may carry out any “works” for the benefit of others and includes a broad range of works or activities set out under the ambit of the term and under the term “works”.

25. Sections 18C to 18F inserted

Clause 25 will introduce new sections **18C to 18F**

Section 18C will have the heading:

“Power to authorise work”

Subsection (1) will make it clear that the Commissioner may authorise a person to carry out a range of or works set out under the definition “main roads works” which includes “works”.

Subsection (2) will provide that the broad range of works and main roads works authorised under subsection (1) may be carried out entirely at the other persons expense, or shared between the Commissioner and the other person, or some other basis as determined by the Commissioner (This is in part a restatement of what is the current section 18B(2) of the Act).

Subsection (3) will allow the authorisation in subsection (1) to be subject to conditions specified by the Commissioner.

Subsection (4) will provide that if the authorisation allows a person to carry out works in relation to a road under the care control or management of a local government, the approval of the relevant local government is required before commencing the works.

Proposed section 18D will have the heading

“Agreements requiring Minister’s approval”.

It will be, in part, a redraft of existing section 18. Currently, pursuant to the existing section 18, any contract over \$500,000 requires Ministerial consent. This requires the Minister to have a high level of oversight over the award of many contracts that are by nature routine and non-contentious.

The Act is an old piece of legislation and at the time of subsequent amendments to this the existing section 18, the last being in 1996, \$500,000 was deemed to be the appropriate contractual limit for which Ministerial approval was required.

The cost of the public function of providing, upgrading repairing and maintaining highways and main roads to an appropriate standard may involve expenditure of substantial sums. Those costs are subject to inflation and other increases over time. This proposed section 18D provides that agreements that exceed an amount that will be prescribed in the regulations will require Ministerial approval. That prescribed amount can, with Ministerial approval, be varied when required and can also reflect a different range of contract types, e.g. different thresholds for services

contracts and capital works contracts.

Increasing or varying the monetary contract approval level in this manner in the regulations will facilitate and assist in the day to day functions of the Commissioner.

The regulations may be easily amended to increase levels where required. That takes into account the changing expectations of government as government of the day changes and with that, different expectations of the level of ministerial involvement and oversight.

This proposed section is a practical outcome that will facilitate the functions of the Commissioner and avoid unnecessary delays in signing of contracts. There is no intent to remove ministerial powers to oversee agreements, but to set an appropriate and workable level at which ministerial approval is required, which will be set out in the prescribed amount in the regulations. The prescribed amount for major contracts that will be provided for in the regulations may be in the region of between \$1M to \$5M. The level of oversight of the Minister will remain intact, but will allow for more flexibility in carrying out the functions of the Commissioner in line with functions and duties of a modern road authority.

Section 18D(1) will specifically provide the Commissioner is to seek Ministerial approval for those agreements:-

- (a) that may involve an expenditure by the Commissioner of an amount that exceeds the prescribed amount, being an amount that will be prescribed in the regulations;
- (b) an agreement under section 18AA (for contributions towards Commissioner's expenditure) or 18B (power to undertake other work) that will or may involve payment to the Commissioner of an amount exceeding the prescribed amount, – being an amount that will be prescribed in the regulations;
- (c) any other agreement of a kind that will be specified in the regulations.

Section 18D(2) this will allow the regulations to specify certain types of agreements, that may involve an expenditure below a prescribed amount or payment to the Commissioner below a prescribed amount that are still required to be submitted to the Minister for approval in certain circumstances prescribed in the regulations. This recognises there may be certain agreements irrespective of their monetary level, which due to their nature or subject matter are appropriate that Ministerial approval be obtained.

Proposed section 18E

Proposed section 18E will have the heading

“Other powers”.

This proposed section 18E will provide the Commissioner with specific power to enter into alternative forms of commercial and business arrangements.¹

Subsection (1) will introduce 6 terms “acquire” “business arrangement”, “dispose of,” “participate in,” “property” and “research body”.

“Acquire” is broadly drafted to include acquire by lease, licence, easement, bailment or any other manner in which an interest in property may be acquired.

The term “business arrangement” is broadly defined to include a company, partnership, a trust, a joint venture, an arrangement for sharing profits or an arrangement for sponsorship.

“Dispose of” will include disposal by lease, licence easement, bailment or any other manner in which property may be disposed of.

“Participate in” in relation to a business arrangement will include form, promote, establish, enter into, manage, dissolve, wind up and do things incidental to participating in a business arrangement.

“Property” will be broadly drafted to include property of every kind whether real, personal, tangible or intangible and any interest in property.

“Research body” will include a body that is within the Commonwealth, and has as its objects the carrying out of research, investigation or studies into roads and their management.

It is advantageous for the Commissioner to have the power to participate in other less conventional forms of contract and to be able to participate in this range of commercial arrangements.

These powers to acquire, develop, dispose of, or deal with property or enter into a business arrangement, will require the written approval of the Minister and Treasurer. Therefore, while the power provides the ability to enter into alternative broad business arrangements, such power will be subject to the overriding imprimatur of both the Minister and Treasurer, as set out in proposed section 18F.

The Commissioner is party to a number of agreements or arrangements with other government entities concerning asset management. Those agreements relate to matters such as allocating maintenance and management responsibility for land in the vicinity of roads, road verges and interchanges that comprise parts of roads.

¹ see for example powers in section 13(2)(d) and 13(5) *Public Transport Authority Act 2003* relating to powers to participate in a business concern

These arrangements can include government and other agencies such as the Public Transport Authority, Development WA and numerous local governments.

Such agreements or arrangements will be specifically recognised and provided for under proposed section 18E.

Section 18E(2) will provide the Commissioner with the power to do all or any of the matters listed in (a) – (q). This includes:

- (a) acquire, develop, dispose of or in any way deal with property ;
- (b) undertake works for the safety and protection of infrastructure and property. Cross refer with the regulation making power under proposed subsection 37(3)(g) which will provide the Commissioner with the power to regulate activities on a road reserve including in the interest of general road safety and is consistent with the powers of a modern road authority;
- (c) to construct, undertake works for, or be involved in the establishment of road service centres and other facilities, which supports the Commissioner's functions under proposed section 22B to facilitate the construction and development of road service centres, and other infrastructure;
- (d) provide roadside reserves and other land for drivers to rest and for the general use or enjoyment of people using a particular highway or main road. There is a growing recognition of the need for roadside rest areas on highways and main roads outside urban areas;
- (e) give directions about the use or management of reserves or land provided under paragraph (d), including erecting no camping signs and other signs that forbid or regulate a particular activity. This is to be cross referenced with the regulation making power under proposed subsection 37(3)(g) regulating the activities of persons on "designated places";
- (f) this will permit the provision of refreshments and food by commercial or other private operators in roadside reserves (such as coffee vans) subject to such operators complying with any statutory approvals;
- (g) provide road-related information to road users, including through other persons;
- (h) assist vehicle users to move broken down vehicles;
- (i) enter into agreements with land owners of any land adjoining property to conduct works on their land including payment for those works and future arrangements for the ongoing risk allocation and maintenance of the completed works;
- (j) the power to use the expertise and resources of Main Roads to provide consultancy, advisory or other services including services for profit;
- (k) develop policies in consultation with the local government sector, including the Commissioner's role of providing advice, technical support and other forms of assistance to local governments regarding the

maintenance, upgrading and construction of roads under their care control or management;

- (l) Subject to the requirements of section 18F, where the contract requires Ministerial and Treasurer approval, to enter into any business arrangement or research body or hold and dispose of shares, units or other interests in or relating to a business arrangement or research body.
- (m) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research;
- (n) Develop and turn to account any technology, software, resource or intellectual property, and for that purpose hold, apply for, receive exploit and dispose of any intellectual property. This sub-section specifically permits the Commissioner to make a profit from its intellectual property. It supports the specific power relating to intellectual property in proposed section 22.
- (o) promote and market the Commissioner, including any business name approved by the Minister, and any of the Commissioner's functions, activities or initiatives;
- (p) sponsor events and causes. This will provide the ability for the Commissioner to sponsor events and causes relating to road traffic safety, or land transport purposes that is of public benefit; and the provision or promoting of opportunities with the training, development or employment associated with the delivery or maintenance of civil infrastructure;
- (q) enter into an arrangement for the purposes of anything referred to in paragraphs (a) – (p).

Proposed section 18F

This section will have the heading “**Business arrangements and general agreements requiring Minister's and Treasurer's approval**”.

The provision will allow the use of innovative forms of contract and business arrangements to maximize commercial return (with Minister and Treasurer approval) – such as arrangements with public/private partnerships, joint ventures etc.

Subsection (1) will make it clear that the Commissioner needs the written approval of the Minister and Treasurer for certain agreements. These are:-

- (a) business arrangements listed in section 15B(1)(g)(ii) or (iii); or
- (b) Agreements including agreements with a research body by which the Commissioner acquires, holds or disposes of shares or any other interest in or relating to a business arrangement.

For the purposes of (a) above the Minister's and Treasurer's approval will only be required where the activity is a business activity AND fits in 15B(1)(g)(ii) or (iii). An example under 15B(1)(g)(iii) will include the Commissioner's power to grant a lease or licence to occupy freehold land acquired under proposed amended section 29, or land otherwise under the care, control and management of the Commissioner for the purposes of road service centres under proposed section 22B.

Usual leases under the general business of the Commissioner will not require Ministerial and Treasurer approval under this provision.

26. Section 19 amended

This clause 26 amends section 19

Section 19 heading will be amended to read:

"Other functions of the Commissioner"

Clause 26(a) in section 19(b) replaces "his" with "the Commissioner":

Clause 26(b) will delete subsection 19(e) and replace this with "perform other prescribed functions". This is in keeping with amendments in this Act to replace duties with functions.

27. Section 22 replaced

This clause 27 will delete section 22 and insert proposed new sections 22, 22A, 22B, & 22C.

Proposed section 22 - Intellectual property

Subsection (1) introduces the term "intellectual property" which includes intellectual property -

- (a) created or acquired in the course of the performance of the Commissioner's functions under the Act; or
- (b) otherwise created in the course of performance of functions by a person in the capacity as an officer or employee of the Commissioner.

Subsection (2) will provide that any intellectual property, or right to apply for, hold, receive, exploit or dispose of intellectual property that the State acquires is, by operation of the section assigned to the Commissioner.

This proposed section will put beyond doubt and provide certainty as to the Commissioner's power to enter into commercial arrangements to turn to profit, or develop any technology, software or other intellectual property

that is created or acquired in the performance of the Commissioner's functions under the Act. This is in line with the State's "Western Australian Government Intellectual Property Policy 2015" which advocates commercialising, transferring or disposing of IP in an open accountable and competitive manner consistent with government legislation, policies and guidelines.

Proposed section 22A – Adjoining works

Under the current wording of the Act (as in existing section 16(1)) the Commissioner's activities are largely confined to the road reserve of main roads and highways. It is necessary, on occasion, for the Commissioner to undertake a number of activities outside the road reserve including:

- (a) installing noise abatement measures on private properties adjoining main roads or highways with the consent of the owners;
- (b) undertaking drainage modifications on adjoining land; and
- (c) establishing and using pits or quarries that are located on land outside the road reserve; requiring the Commissioner to undertake activities which include establishing access tracks, fencing, arranging for operation of the pit/quarry and eventually rehabilitation of the land.

Examples of the purposes for which the power in (c) above is required include maintaining water flow from one side of a road to another, preventing flooding and to reduce the risk of pollution from water running from roads onto adjacent lands.

The proposed new term "adjoining works" provides the Commissioner with power to undertake such activities outside the road reserve of main roads and highways for the purposes of the Commissioner fulfilling functions under the Act. It includes reference to the proposed term "works" which in turn is defined to include broad range of works and related activities. This proposed new term provides clarity as to what constitutes adjoining works for the purposes of this section 22B.

The proposed term "adjoining works" is to mean, "*...in relation to a road, means works necessitated by works on, or the use of road:*

- (a) *on land that adjoins the road; or*
- (b) *relating to a watercourse that adjoins or intersects the road,"*

Subsection (1) will provide that the Commissioner may carry out "adjoining works" in relation to highways and main roads.

Subsection (2) will provide the Commissioner may by negotiation or

agreement enter upon the land adjoining the highway or main road to perform “adjoining works”.

Subsection (3) will provide that nothing in the section affects a power of the Commissioner to enter the land under another written law.

This proposed section will provide the Commissioner with the clear power to undertake activities outside the road reserve of highways and main roads for the purpose of fulfilling its functions under the Act. Those activities can include, but are not limited to matters such as installing noise abatement measures on private property that adjoins a main road or highway, undertaking drainage on adjoining and establishing or using pits or quarries on land outside the road reserve.

The power is subject to any approvals and agreement with the landowner.

Proposed section 22B - Road Service Centres on highways and main roads

Proposed subsection (1) will provide that the Commissioner may carry out road service centre works in relation to a highway or main road.

Subsection (2) will provide that the Commissioner may facilitate the operation of road service centres for the purpose of exercising the Commissioner’s functions under proposed section 15B(2)(a).

Subsection (3) will provide that the Commissioner may do anything necessary in the exercise of a power referred to in subsection (2), including -

- (a) enter into an agreement with any person under which the person is to operate a road service centre; and
- (b) for the purposes of paragraph (a), exercise the power under the proposed amended section 29(2) to provide a lease or licence to occupy freehold land, or grant any other interest in that freehold land.

Road service centres (including roadhouses) are commercial centres which are accessible from main roads and highways and which sell or otherwise provide fuel, food, refreshments and other road-user services, together with toilet facilities and recreational areas. Long-term projections show

significant increases in the traffic volumes on highways such as the Great Northern Highway which will have a major impact on the future need for the road user facilities provided by road service centres. These centres provide significant social advantages and will become increasingly desirable to the Commissioner as a road authority because they will:

- (a) ensure road-users have access to the services necessary for longer journeys;
- (b) assist to reduce driver fatigue; and
- (c) potentially provide a site for the provision of real-time information to road-users concerning road conditions, road hazards and road closures, as well as for the facilitation of planning journeys.

It is not intended for the Commissioner to operate these road service centres in its own right, nor is this proposed section or part of this Bill seeking amendments to enable it to do so. The Commissioner is only proposing to ensure that suitable sites are available for private sector proponents to enable these centres to be built.

In the future, it is also proposed in some places to co-locate heavy vehicle compliance facilities with some road service centres. These may include:

- (a) facilities for the purpose of weighing, inspecting and, where necessary, issuing infringements to heavy vehicles;
- (b) weigh bridges for operators to check loads; (which are to ensure that heavy vehicles are compliant with the restricted access vehicle permit regime in road transport legislation); and
- (c) road train assembly and break down areas.

Proposed section 22C- Incidental works to roads

This is largely a restatement of existing section 22. For consistency with changes throughout the Bill, the word “construct” is replaced with the term “carryout”, and use of the term functions in place of powers.

The use of the words “under the care control and management of” makes it clear that the incidental powers relate to not just the road or highway, but any land under the care control and management of the Commissioner.

28. Section 23 amended

Section 23 provides for an offence for defacing works.

Clause 28 amends section 23.

Clause (1) (a) deletes “any” and replaces it with “a”

Clause (1)(b) deletes “Upon” and replaces it with “on”

Clause (1)(c) deletes “shall be guilty of an offence and liable on conviction to a penalty not exceeding \$40,” and replaces it with: “Commits an offence”

These changes re to modernise the language in the Act. These amendments reflect contemporary drafting practice and does not change the meaning of the section.

Clause 28(2) will insert at the end of section 23:

“Penalty: a fine of \$5,000”

The heading of section 23 is amended to read

“Person must not remove or deface works”

This clause 28 will amend section 23 is to increase the penalty for defacing or removing “*any signs, marks, trenches, posts, pegs or the like, made, erected or inserted in or upon any land*” in the course of making surveys or establishing distances, warnings, directions and the like.

The Act is an old piece of legislation. The last time section 23 was amended was in 1965. The penalty level is very low and does not provide any deterrent value, and therefore is ineffective. It does not provide an adequate deterrent or disincentive for the behaviour concerned, namely the obliterating, removing or defacing of signs and other equipment for the purposes of making surveys or establishing distances, warnings and directions. Such behaviour can result in significant and costly damage and loss to the Commissioner and could potentially endanger lives.

Accordingly, the increase will bring the section in line with an appropriate penalty level that is commensurate with the offence.

29. Section 24 amended

Section 24 provides for declaration of secondary roads and local governments’ functions as to secondary roads.

The classification of secondary roads is a defunct classification that is no longer in use and was phased out in the 1990’s. The concept of secondary roads is not currently part of the operation of the network in Western Australia.

However, as the Act is being amended rather than rewritten as a new Act, the drafting convention is not to interfere too invasively with the current structure, otherwise the intent of the Act could be compromised.

This clause 29, subclauses (1), (2), (4), and (5) amend subsections (1) (4) (5) & (6). The amendments in these subsections are necessitated to maintain consistency with the Bill and to replace the term “construct” with the new proposed term “works.” They are also amendments to modernise the language in the Act, and reflect contemporary drafting practice and do not change the meaning of the subsections.

Clause 29(2) deletes existing subsection (3) and inserts proposed new subsection (3).

Clause 29(6) deletes subsection (7), and replaces it with proposed

subsections (7), (7A) & (7B).

These changes in subclauses 29(2) and (6), are to modernise the language in the Act. These minor amendments reflect contemporary drafting practice does not change the meaning of the subsections or section 29.

30. Section 27A replaced

This clause deletes section 27A and replaces it with a new section 27A.

27A Commissioner's powers as to roads that are not highways, main roads or secondary roads"

Section 27A provides the Commissioner's powers as to roads that are not highways, main roads or secondary roads

This clause will provide consistency throughout the Bill and replaces the term construct with the broader proposed term "works" which encompasses a broader range of activities. It also intrudes the term local government and road, and otherwise is substantially a restatement of the existing section 27A.

This clause will introduce a new subsection (6) which will provide the Commissioner the power to undertake activities outside the road reserve of highways and main roads in order to carryout "adjoining works and 'environmental offset works".

31. Section 28 amended

This clause 31 will amend section 28(11) by deleting "notwithstanding" and inserting "despite". This minor amendment reflects contemporary drafting practice and does not change the meaning of the subsection or section.

The heading for amended section 28 will read:

Construction, repairs and other works done to motor traffic passes

32. Part 9 Heading replaced

Part 9 currently provides for the control of access to main roads.

This clause will amend the heading in Part 9, from "Control of Roads" to read "Specific powers in relation to land".

This amendment is necessary as proposed amendments to section 29 within Part 9 will relate to more than only control of access.

33. Part 9 Division 1 heading and section 28AA inserted

Part 9 currently provides for the control of access to main roads.

Clause 33 will amend the heading in Part 9, from "control of roads" to read:

“Part 9 - Specific powers in relation to land” as proposed amendments to section 29 will relate to more than only control of access.

This clause will provide a new Division 1 titled “Control of access”.

This heading is necessary to make it clear the following proposed new sections 28AA and 28A are concerned with control of access. [Note Clause 36 below introduces a new Division 2 to Part 9 of the Act].

This clause 33 will also introduce section 28AA – terms used.

The proposed terms “COA road section” and “road section” comprise the extended meaning of the words currently used in section 28A. These terms are provided for both clarity and convenience for both divisions in Part 9.

34. Section 28A amended.

The existing section 28A provides authority for the Commissioner to recommend to the Governor that a road or section of road be declared control of access. The roads that are declared control of access are highways, freeways and town bypasses, typically roads with high volume and high speed traffic.

The premise and idea behind control of access is to provide a safe, uninterrupted, high speed road. The access to and from such roads needs to be controlled in the interest of safe and efficient flow of traffic. The objective of control of access is not to prohibit access, but to ensure appropriate control of access to such roads. Accordingly, access to and from such roads is controlled through traffic signals or other mechanisms such as road interchanges.

The first control of access road was the Kwinana freeway between the Canning and Narrows bridges when it was built in the late 1950"s. This coincides with the time section 28A was first inserted into the Act.

Under section 28A(2A) there is no right of access into or from a control of access road section except at places provided pursuant to the provisions of the Act for the purpose.

Existing section 28A (2F) provides the Commissioner may enter into agreements relating to right of access. Main Roads has internal guidelines for control of access procedures. This sets out the types of access sought (such as residential, agricultural, commercial or pedestrian/cycle), and the procedures to be followed.

Currently section 28A provides authority for the Commissioner to recommend to the Governor that a road, or a section of road be declared

control of access.

This clause contains many small amendments to section 28A. The amendments to this section will:

- provide new and shortened terms “COA road section” and road section. Many of the subsections will be simplified by using the shortened terms avoiding the need to repeat the full extended term on each occasion;
- replace the term “power” with the broader term “functions” for completeness and consistency throughout the Bill; and
- replace the term “construct” with the broader proposed term “works,” which is consistent with the use of the proposed term “works” in place of “construction” through the Bill.

Subclause (1) will amend subsection (1A)(a) and (b) to use the new shortened terms “COA road section” and “road section”. Subsection (1A)(a) will be amended by the deletion of the words “section or part of a road should have control of access” and replaced with “road section should be a COA road section.”

Subclause (1) will amend subsection (1A)(b) to delete the words “road section with control of access” and insert “COA road section.”

Subclause (2) will amend subsection (1B)(a) to delete the words “such a section or part of a road is subject to control of access,” and insert the words “the road section is a COA road section”.

Subclause (2) will amend subsection (1B)(b) to delete the words “road section subject to control of access,” and insert the words of the proposed shortened term “COA road section”.

Subclause (3) will amend subsection (1C) to delete the words “he shall” and insert the words “the Commissioner may”. This minor amendment reflects contemporary drafting practice, and does not change the meaning of the term.

Subclause (4) will amend subsection (1E) to delete the words “the provisions of.” These words are redundant and is a minor amendment that reflects contemporary drafting practice.

Subclause (5) will amend subsection (1F) to replace the term “powers” with the term “functions.” The term “function” is more concise and certain language. This is consistent with legislative drafting standards and practice to use more concise and certain language. The term “functions” is mostly used where this means “function, power or duty”. In other cases there is a reference to “power,” because the scope of the section is more

specific (such as in section 16).

Subclause (5) will also amend subsection (1F) by deleting the word “subsection” and insert “section”. The correct word in this context is section.

Subclause (5) will also after “exercised” insert the words “and performed; and will delete the words “notwithstanding the provisions of” and replace them with “despite”. These changes are minor and reflect contemporary drafting practice and does not change the meaning of the subsection or section.

Subclause (6) will amend subsection (2A) to delete the words “section or part of a road subject to control of access,” and insert the proposed shortened term “COA road section.”

Subclause (7) will introduce proposed new subsections (2AA) and (2AB).

Proposed subsection (2AA)

The current subsections (2A) to (2J) deal with the process for seeking payment of compensation where a right of access to a road is extinguished as a result of that section of the road being declared Control of Access.

Current subsection (2F) provides that the Commissioner may enter into agreements in relation to right of access to a COA road, however this power in the context of preceding subsections, which operate in the context of relief that might be granted to private owners adjacent to a control of access road or section of road who may be affected by limits on access. The agreement of the nature referred to in subsection (2F) and (2G) could be construed as being limited to a compensation agreement. Subsections (2F) and (2G) therefore apply in the context of relief that might be granted to private owners adjacent to a COA road who may be affected by limits on access, particularly where their properties is bisected or affected by COA roads.

Accordingly, it is necessary to provide the Commissioner with a clear and unambiguous head of power to provide access to COA road sections to owners or occupiers of adjacent land, other than in situations where such a person is not a potential compensation claimant.

Under the proposed section 22B the Commissioner will have the power to approve road service centres on highways and main roads. The road service centres will be commercial centres where drivers may access refreshments and other amenities and generally have a break in their journey. This initiative is in the interest of reducing driver fatigue and a measure to improve road safety.

Proposed subsection (2AA) is necessary to ensure that the Commissioner has the concurrent head of power to grant private

landowners or lessees of the land on which a road service centre will be constructed, access to control of access roads for the purpose of conducting the road service centres.

Practically speaking the access would be provided by the construction of “on and off” ramps for the road service centres. The subsection will also make it clear that the Commissioner may grant the access to COA road sections to any private owner or occupier irrespective of the purpose for which the right of access is sought.

This proposed subsection will put beyond doubt the ability of the Commissioner to allow control of access for both road service centre operators or owners, and generally for owners or occupiers of land.

Proposed subsection (2AB)

The proponent of a road service centre will, in effect, be seeking access onto a high traffic volume and high speed highway which involves a valuable commercial benefit to the proponent. The Commissioner in considering applications for road service centres may expend considerable time and resources in assessing and taking into account all factors and considerations relevant to the application. This proposed subsection will enable the Commissioner to grant the control of access on terms and conditions the Commissioner thinks fit “having regard to the purpose of the COA road section”. This is the case whether the purpose for the access is for a road service station or for any other reason or purpose.

It may be appropriate for example, for the Commissioner to stipulate or provide directions as to the manner of construction of the on/off ramps to the COA road section from the road service centre, or any other property adjacent to the COA road section that accords with safety standards in the interest of road safety. This proposed subsection is to be cross referenced with the power under proposed sections 18AA and 18B for the Commissioner to enter into an agreement for the Commissioner to carry out “main roads works” for others (bearing in mind that the proposed term “main roads works” includes among other matters road service centre works).

This proposed subsection will provide that the Commissioner may place conditions or require undertakings in relation to access granted pursuant to proposed subsection (2AA).

Subclause (8) will amend subsection (2B)(a) (b) and (c) to incorporate the proposed shortened terms “COA road section” and “road section” in place of the longer more cumbersome full description. These amendments are:

- in (2B)(a) to delete the words “section or part of a road not subject to

control of access,” and insert the words “section that is not a COA road section”;

- In (2B)(b) to delete the words “section or part” and insert the proposed new shortened term “road section”;
- In (2B)(c) to delete the words “section or part being declared to be subject to control of access” and insert the words “road section becoming a COA road section”.

Clause 34 will also introduce a new subclause (2AC). The purpose of this amendment is to facilitate mining operations and activities in the north west of the state, and to promote economic activity, and development of the north west generally

Main Roads will, under proposed section 18A or existing section 28A (2F) be empowered to enter into an agreement with mining companies to grant access in respect of a COA road section granted for their exclusive use.

Under proposed section 33(1)(b) in the Bill, Main Roads will be empowered to enter into agreements with mining companies to pay for access to the relevant COA road section.

Subclause (9) will amend subsection (2D) and (2E) to delete the words “section or part of the road to be subject to control of access”, and insert the shortened term “COA road section”.

Subclause (10) will amend subsection (2G)(c) to delete the words “section or part of a road subject to control of access” and insert the proposed shortened term “COA road section” (on each occasion). The subclause will also delete the word “he,” and insert the words “the Commissioner.” This provides certainty and clarity.

Subclause (11) will amend subsection (2H) to delete the words “to (2K) applies mutandis mutandis,” and insert the words “and (2B) to (2K) applies, with appropriate modifications.” This amendment is necessary to make it clear that the proposed new subparagraphs (2AA) and (2AB) are not included, as it is intended that they fall outside the regime in the other subsections dealing with agreements for compensation, where a right to access is extinguished as a result that section of the road being declared control of access.

Subclause (12) will amend subsection (2I) to delete the words “the provisions of this” as those words are necessary and their deletion reflects contemporary drafting practice, but does not alter the meaning of the subsection. After “subsections (2A)” insert “and (2B)”. Delete the words “the provisions of” (2 occurrences. Again that is to reflect drafting practice.

Subclause (13) will amend subsection (2J)(a) to in paragraph (a) before “agreement” insert “an” – this is to address a missing word in that subsection.

Subclause (13) will amend subsection (2J)(b) to:

- Before the word “benefit” insert “the” (to cover the missing word)
- Delete the words “construction or improvement” and insert the word “works”. Consistent with changes throughout the Bill, the proposed new term “works” is used in place of “construction”. The proposed term “works” is drafted in broad terms to enable it to be applied to a varied and broad range of construction works, actions and related works.
- Delete the words (on 2 occasions) “section or part of the road to be subject to control of access” and insert the proposed shortened term “COA road section.”

Subclause (14) will delete subsection (3) to (5B).

Subclause (13) will insert proposed new:

- Subsection (3), which is largely a restatement of the current subsection (3) with the addition of the words “with appropriate modifications”, and the use of the shortened term “COA road section” in place of the more lengthy and cumbersome “sections or parts of a road subject to control of access”; and
- subsection (4), which is largely a restatement of the current subsection (4) but uses the word “Despite” instead of “Notwithstanding,” “must” in place of “shall” and “approval” in place of “consent”. These words are consistent with modern drafting standards and practice. Subsection (4) will also use the proposed shortened “COA road section” in place of the longer “section or part of a road subject to control of access”; and
- subsection (5A) will provide that *“The Commissioner may undertake works to provide local access and may carry a road over or under any COA road section to provide local access, or may carry a COA road section over or under a road to provide local access”*. This is largely a restatement of the current subsection (5A) the only change being the use of the proposed term “works “ in place of “construct” to cover the broad ambit that is contemplated by that term “works”. This is consistent with the use of the new term works in place of construction. In addition the proposed shortened term “COA road section” is used.
- subsection (5B) which is a restatement of the current subsection (5B) with the words “with appropriate modifications” added. It will provide that the provisions of section 24(5) apply with appropriate modification to a road to provide local access. The classification and concept of secondary roads is defunct and no longer in use. The amendment is simply made to simplify words in accordance with modern drafting conventions.

Subclause (15) will amend subsection (6) and (7)(a) to delete the words “section or part of a road subject to control of access,” and insert the proposed shortened term “COA road section”.

Clause (16) will amend subsection (7).

Subsection (7) amended

Subsection (7) currently provides for offences relating to control of access matters.

Subclause (16)(a) will amend subsection (7)(b) to delete “consent “ and inset “approval”

Subclause (16)(b) will amend subsection (7)(b) to delete “section or part of a road subject to control of access” and insert the proposed shortened “COA road section”

Subclause (16)(c) will amend subsection (7)(c) to delete the words “consent where consent” and insert “approval where approval.” This is consistent with the changes in the Act to replace consent with approval

Subclause 16(d) will delete subsection (7)(e) and insert a new proposed subsection (7)(e) which is largely a restatement of the existing subsection (7)(e), replacing the word “consent” with “approval”.

Subclause 16(e) will amend subsection (7)(f) by deleting the words “section or part of a road subject to control of access” and relacing it with the shortened “COA road section”.

Subclause(ea) is required to provide a specific offence where an unauthorised person uses a COA road section granted under subsection (2AC).

Subclause (17) amends subsection (7) to insert the words “Penalty for this subsection: a fine of \$5,000.”

This penalty applies to all offences in subsections 7(a) –(f).

Roads that are proclaimed control of access roads or proposed control of access roads are freeways, highways and town bypasses. By their nature these roads are used by substantial volumes of traffic including in many cases heavy vehicles and sometimes road trains. Typically these Control of Access roads are high volume and high speed roads, in order to facilitate the flow of traffic. Accordingly, in the interest of road safety the Commissioner is entitled under the existing section 28A to stipulate the places at which such COA roads or road sections may be entered or departed from.

The current penalty level of \$40 for contravening subsection (7) is glaringly

low and out of step with penalties that exist in other modern legislation. It does not provide an adequate deterrent for the behaviour targeted, and is therefore ineffective. Accordingly, the increase in penalty will bring the provision in line within an appropriate penalty level that is commensurate with the respective offences, in alignment with modern legislation. This is justified on an analysis of the offences and their impacts as follows:

Subsection (7(a)) deals with entering or leaving a COA road section otherwise than at a place provided pursuant to the provisions of the Act. COA roads by their nature have traffic that is high volume and high speed. The premise and idea behind control of access is to provide safe, uninterrupted, high speed roads. The access to and from such roads needs to be controlled in the interest of safe and efficient flow of traffic. Entering onto COA a road section other than in the manner approved by the Commissioner, can be extremely dangerous and could foreseeably result in serious crashes.

Subsection 7(b) deals with the offence where a person constructs something without any approval, or contrary to the conditions of the approval across access to a COA road section. This behaviour shows a wanton disregard, by actively building or laying something across an access route without any prior permission or consent, or disobeying access conditions. This behaviour can cause damage to infrastructure resulting in expenses to repair such damage and jeopardises road safety, as such unauthorised access could lead to crashes of a serious or fatal nature.

Subsection 7(c) deals with the offence where a person removes or damages a barricade or other structure erected by the Commissioner across a road. Such behaviour, similarly to subsection 7(b) displays reckless or wanton actions that both causes expense to the Commissioner, and could result in serious crashes.

Subsection 7(d) deals with the offence where a person removes or damage a notice erected by the Commissioner. This causes the Commissioner costs and expenses, and is unsafe.

Subsection (e) deals with the offence of using a COA road section for movement of livestock except in a vehicle in accordance with the Act. The moving of livestock over such roads is a dangerous practice that undermines the safety of all users of the road. A contravention of the subsection can lead to collisions of a serious nature to drivers.

Subsection (f) deals with the offence of using a COA road section for traffic otherwise than in accordance with the regulations. While there are currently no such regulations, the regulations may provide for such specific

situations.

Clause (18) will delete the penalties for the offences in subsection (7) and will insert the following penalty:

A fine of \$5,000

Subclause (18) amends section 28A at the end to delete the penalty, as this is replaced by the new penalty in subclause 17.

35. Section 28B amended

Section 28B provides various powers in relation to structures on roads subject to control of access. Section 28B prohibits any person including government agencies from placing any tower, pole, wire pile or other structure or apparatus of any kind on, over or under a road subject to control of access, without the prior written consent of the Commissioner.

Clause 35 will amend section 28B

The heading to section 28B will be amended to read

“No structure or apparatus to be placed on COA road section without prior approval”

Subclause (1) (a) will amend subsection (1) to delete the word “notwithstanding” and insert “Despite”. This is a minor amendment that reflects contemporary drafting practice and does not change the meaning of the subsection.

Clause(1)(b) &(c) will amend subsection (1) to delete “section or part of a road subject to control of access” and insert “COA road section” (in both occurrences.)

Clause (1)(d) will amend subsection (1) to delete “consent” and insert “approval”. This is for consistency with the use of the word “approval” in place of “consent.

Clause (2) will amend subsection (2) to delete “section or part of a road subject to control of access” and insert “COA road Section”.

Cause (3) will amend subsection (3)(b) to delete “him” and insert “the Commissioner”. This minor amendment reflects contemporary drafting practice and does not change the meaning of the section or subsection.

36. Part 9 Division 2 heading inserted

Part 9 currently provides for the control of access to main roads.

Clause 35 will introduce Division 2

This clause will insert a proposed heading in Part 9 Division 2 – **“Acquiring and leasing land for main roads works and road service centres”**.

This heading is necessary and appropriate as it describes the matters dealt with under section 29, which relates to more than only control of access.

37. Section 29 amended

Section 29 provides the Commissioner the power to acquire land and grant a lease or licence to occupy any land acquired by the Commissioner to any person from whom the land was acquired.

The heading to amended section 29 is to read
“Acquiring, leasing and making agreements in relation to land.”

Under existing subsection (1) the Commissioner’s power to compulsorily acquire land (in accordance with Part 9 of the *Land Administration Act 1997*) (LAA) is limited to situations where the land is required for the purposes of the Act. The subsection in its current form does not permit the acquisition of the land for the purposes of road service centres.

The power as currently stated in subsection (1) does not extend to the acquisition of land for the purposes of road service centres. Road service centres under the new term and new power under proposed section 22B, are commercial centres providing amenities as well as selling fuel and refreshments situated on or adjoining main roads and highways. The need for the Commissioner to become involved in the provision of road service centres, including the power to compulsorily acquire land for such purposes has arisen from the Commissioner’s role as a road authority in:

- (a) promoting safe driving practices;
- (b) ensuring the safe and appropriate location of facilities for heavy vehicles; and
- (c) providing information to road users for journey planning purposes.

The Commissioner needs the power to acquire land in order to realign carriageways and main roads and highways to enable the location of road service centres within the interchanges of those roads; and also to enable the construction of road service centres on land adjoining highways and main roads.

Land within highways and main roads is increasingly being used for the co-location of other modes of transport or to facilitate their use (e.g. current and further railways between railway carriageways and Public Transport Authority carparks within freeway interchanges) The infrastructure for these other purposes is not always constructed as part of the same project

and may only be constructed months or even years later. It is not always possible to distinguish with certainty in the early stages of a road project between the areas of land to be used for purely road purposes, and those which will be used, or may be available for another purpose. For these reasons it is beneficial for the Commissioner to be able to exercise land acquisition powers for wider purposes, and not limited to the purposes of the Act as currently expressed.

Under the existing subsection (1)(b) the Commissioner has the power to compulsorily acquire land in accordance with the procedure in Part 9 of the *Land Administration Act 1997* („LAA“). However, the Commissioner does not have the direct powers under the process in Part 10 of the LAA, to compensate landowners whose property is compulsorily acquired, without a formal delegation from the Minister for Lands to the Minister for Transport and then sub delegated to the Commissioner or an officer of the Commissioner.

This proposed amendment to subsection (1)(b) by expressly referring to the procedure contained in Part 10 of the LAA, will provide the Commissioner the power to exercise those compensation powers, without the need for a delegation under the LAA.

Subclause (1)

This subclause will insert proposed subsection (1A) to be inserted before section 29(1). This introduces the term “**designated purposes**”,

“(1A) In this section

“Designated purpose” means-

- (a) main roads works or other works associated with the construction of infrastructure; or
- (b) activities to provide services for vehicles or road users or in connection with road travel or transport; or
- (c) other purposes directly or indirectly connected with the Commissioner’s functions or other public purposes.”

This proposed subsection (1A) is inserted to explain the term “designated purpose” as used in the amendment to proposed subsection (1). The term refers to the proposed main definition “main roads works” which in turn includes road service centre works.

Subclause (2)

Subclause (2)(a) will amend subsection (1) to delete the words “When and as

often as land is required for the purposes of this Act” and insert “Without limiting section 18E, when land is required for a designated purpose”.

The power under subsection (1) is expressed not to limit proposed section 18E(2)(a), which in turn provides the Commissioner the power to “acquire develop, dispose of, and otherwise deal with property”. This is to ensure that nothing in the subsection affects or limits the operation of section 18E(2)(a).

Subclause (2)(b) will amend subsection (1)(b) and delete the words “Part 9 of the *Land Administration Act 1997*” and insert the words “*the Land Administration Act 1997 Parts 9 & 10*”

The proposed amendments to subsection (1)(a) &(b) set out above will:

- (a) give the Commissioner the power to acquire to acquire land for the “designated purpose” of Main roads works”. The term “main roads works” includes road service centre works, and also includes the term “works”, which covers a broad range of activities. Therefore, the subsection will provide the ability to acquire land for wider purposes, including for road service centres, and other activities that fall within the term “main road works” and “work”; and
- (b) provide the Commissioner with the power to compensate landowners from whom the land is acquired pursuant the process under Part 10 of the LAA, without the need for any delegation under the LAA.

Subclause (3)

Subclause (3) will delete subsection (2) and insert a proposed new (2) & (2A)

Currently the Commissioner does not have the power to lease acquired land other than to the person from whom the land was acquired. There is also no power for the Commissioner to lease acquired land or other land for the purpose of that person constructing and operating a road service centre on the land.

Subclause (3) will delete the existing subsection (2) and insert a proposed new subsections (2) & (2A) as follows:

- “(2) Without limiting section 18E, the Commissioner may grant to any person on such terms as the Commissioner thinks fit –
 - (a) a lease or licence to occupy –
 - (i) freehold land acquired by the Commissioner under the section; or

- (ii) any other land otherwise under the care, control and management of the Commissioner; and
- (b) any interest in land referred to in (a)(i).

(2A) Without limiting section 18F, the acquisition of land under subsection (1)(b) for a road service centre requires approval of the Minister.”

This is in part a restatement of the existing subsection (2) but makes it clear that the Commissioner may grant ANY person a lease or licence in relation to land acquired by the Commissioner, or land otherwise under the care control and management of the Commissioner.

It is proposed that the Commissioner have the power to acquire (under subsection (1) and pursuant to proposed subsection (2), to lease appropriate land for road service centres that meet the Commissioner’s requirements. Any such lease would be subject to the approval of the Minister, and Treasurer pursuant to proposed section 18F and also be subject to a public tender process, or equivalent to ensure value for money. The Commissioner’s power to enter into a lease for the purposes of a road service centre under proposed section 22B and section 29(2) is, pursuant to proposed section 18F subject to the prior formal approval of the Minister and Treasurer.

Under the existing subsection (2) the Commissioner has no power to lease or licence land OTHER than the power to lease or licence land to parties from whom the land was acquired under subsection (1). Currently leasing and licensing of land to parties other than the previous owners of that land is undertaken using sub-delegations of powers within Parts 5 & 6 of the *Land Administration Act 1997*. Accordingly, it would be beneficial for the Commissioner to have the power to grant leases or licences to occupy any freehold land held by the Commissioner to any person, not just to the person from whom the land was acquired. This subsection will also enable the Commissioner to grant to any person a lease or licence to occupy Crown land that is under the care control and management of the Commissioner.

Easements over Crown land can only be granted under the LAA, which sets out processes for granting and cancelling of easements. The Act does not provide any process for the granting or cancelling of easements as in the LAA. Therefore, proposed subsection 29(2)(b) makes it clear that the grant of any interest such as an easement, is limited to freehold land.

Proposed subsection (2) will facilitate the Commissioner’s functions as a modern road authority. It puts beyond doubt, the power to (subject, where applicable, to proposed section 18F) enter into leases or licences with persons, other than the person from whom the land has been acquired, and

thereby provides certainty both for the Commissioner and any third party lessees or licensees.

Subclause (4)

Subclause (4) will, in subsection 29(4) delete “and dealing with any land acquired” and insert in its place “of, and dealing with, land”.

This proposed amendment will provide the Commissioner with the power to enter into any agreement that relates to acquisition of land, or any other dealing with land pursuant to the section.

Subclause (5)

Subclause (5) will, in subsection (6) (c) delete the words “proclaimed, reserved”; delete the word “be”; and delete the word “notwithstanding” and insert “despite”. These amendments reflect contemporary drafting practice and do not change the meaning of the subsection or section.

Subclause (6)

Subclause (6) will in subsection (7) delete the words “1902, to this Act the expressions” and insert “1902 to this Act the terms” This amendment reflects contemporary drafting practice and does not change the meaning of the subsection or section.

38. Section 31 amended

Section 31 deals with the Main Roads Trust Account, the establishment of the account and money to be credited to it.

This clause will amend subsection (1) (aa) by deleting the words “a contract, or an agreement” and inserting the words “an agreement. This is for consistency in the Act where the term agreement is used rather than contract.

Subsection (1)(c) is also amended to replace the word construction with the broader new proposed term “works”.

39. Section 32 amended

This section deals with expenditure from the Main Roads Trust Account This clause will in section 32(1)(a) delete the word “his” and insert “the Commissioner”

In section 32(1)(b) delete the word “road construction; and” insert “main roads works”. This amendment is for consistency, throughout the Bill, as it replaces the term “road construction and other works” with the broader ambit of the proposed terms “main road works” and “works”.

In section 32(1)(e) delete the words “road construction and other works” and insert “main roads works: and will delete the words “construction, erection and maintenance of” and insert “works on”.

These amendments are for consistency, to replace the term road construction with the proposed terms “main roads works” and “works”.

40. Part 10A inserted

This clause 40 inserts proposed **“Part 10A - Costs and Charges”**

Proposed section 33 Infrastructure and other works

This clause inserts proposed new section 33 Infrastructure and other works.

The Commissioner has no general power in the Act to impose charges or fees. There are limited powers granted to the Commissioner to carry on trading concerns under the State Trading concerns legislation for very limited purposes,² which is further limited by the requirement that the fees or charges to be imposed have Ministerial approval.

This proposed section will provide the power for the Commissioner to recover costs through commercial charges where there is no prescribed fee, which will be done in the context of the enhanced agreement and contract powers in proposed sections 18AA-18C and 18E.

Resource companies frequently approach Main Roads to seek changes to road networks in order to provide new or additional access to a mine site from existing roads. That may involve the building of new roads, crossings, overpasses bridges or other such infrastructure from or adjoining an existing road network in order to access the Company's mine site, and to facilitate its operations. Similar type requests come from property developers.

The Commissioner has entered into agreements for work for the benefit of third parties, such as road realignments to assist mining companies' operations, and also for the benefit of property developers for housing or other property developments.

As a further example other than road alignment or additional road, or road related infrastructure works, mining companies or other companies may approach Main Roads to seek approval to lay a pipeline or other infrastructure beneath a highway, main road in a main road reserve. There is an expectation that mining companies or other entities that have the benefit of laying or placing their infrastructure over land that comprises a road reserve of a highway or main road should pay for the benefit of the use of the

² State Trading Concerns (Authorisation) Regulations 1998 Schedule 2

land under the care control and management of the Commissioner.

Proposed subsections 33(1)(a)-(b) will put beyond doubt the ability of the Commissioner to enter into such agreements (under the agreement provision in section 18AA) and to negotiate within the terms of the agreement with that third party that they pay for, or pay a contribution towards the costs to carry out such main roads works which are for the benefit of that third party.

The power will be restricted to private companies and will have no application to public utilities.

Main Roads have arrangements with mining companies for concessional loading agreements (ie concessional loading to allow additional/increased mass limit) on condition that the companies agree to pay a certain amount to cover damage to the roads by entering into specific agreements. These are user pays concessional loading schemes.

Mining companies often design road trains will design trucks to have additional trailers and to carry more load and higher tonnage – this is what the concessional rate is for, to allow an additional mass limit.

Main roads have several such agreements with mining companies in reliance on general or implied powers of the Commissioner.

Proposed subsection 33(1)(c) will provide a clear head of power to seek payment of such costs and charges through commercial charges in the context of the enhanced contract powers in sections 18AA, 18B, 18C and 18E.

The Commissioner is regularly approached by companies wishing to place infrastructure in the road reserve such as water, gas and slurry pipelines, cables and associated above ground infrastructure such as boxes, inspection pits etc. These pipelines are typically associated with mining companies or heavy industry which do not have legislative powers to unilaterally place infrastructure in land like utility companies have.

Proposed subsection 33(1)(d) will provide a clear head of power to seek payment and recover costs arising from contracts or business arrangements on a commercial basis.

Proposed section 33(1) will provide:

- (1) Without limiting any other provision, the Commissioner may charge -
 - (a) a property developer for the cost of infrastructure, work or other activities associated with providing access onto, over or under a highway or main road on account of a development, or to safely accommodate traffic arising from a new development; and

- (b) an entity associated with mining operations for the cost of infrastructure, work or other activities associated with providing access onto, over or under a highway or main road on account of
 - (i) new mining operations; or
 - (ii) a significant change (or proposed change) to existing mining operations; and to support the company's mining operations, including for new mining operations or a significant change (or proposed change) to existing mining operations.; and
- (c) any other person whose activities "require the Commissioner to construct, reconstruct establish alter or maintain infrastructure, or to undertake any other work in relation to a highway or main road"; and
- (d) a person for the placement of infrastructure on road reserves where the authority or permission to do so is not covered by a lease, licence, easement, or other similar arrangement; and
- (e) a person for the right to place an advertising sign or hoarding on or over a highway or main road; and
- (f) a person for the cost of additional wear to a highway or main road on account of the use of that road by a heavy vehicle or for the work required in connection with the use of a highway or main road of an oversized vehicle.

Proposed subsection 33(2) will provide the manner the cost is charged

Any of the charges under (1) can be a specified amount, including an amount relating to the cost of the infrastructure, or the capital costs of the works; or for an amount payable on a periodic or other basis; or a combination of an initial payment and a periodic payment.

Proposed subsection 33(3)

Subsection (3) will provide for the charge to be imposed under the agreement in some other way to be determined by the Commissioner. This will be the agreement entered into under any of the provisions in 18AA-18C and 18E.

Proposed subsection 33(4)

Subsection (4) will provide that the amount of a charge payment under this section is recoverable by the Commissioner in a court of competent jurisdiction as a debt due to the State. This will be supported by the

agreement with the third party.

Proposed subsection 33(5)

This subsection will provide that the amount of any charge paid or recovered under the section is to be credited to the Main Roads Trust Account.

Proposed subsection 33(6)

This subsection will make it clear the section does not limit the ability to impose any regime of fees or charges under section 37(3)(a). If any costs or charges cannot be dealt with via contractual arrangements, they may be recovered in accordance with fees imposed under the regulation making power under proposed section 37(3)(a).

41. Section 33 B amended

Section 33B relates to regulations as to controls relating to advertisements near certain roads.

This clause will amend the heading to the section to read

“Regulations to control advertising structures near certain roads” to advertisements near certain roads”.

This clause will amend section 33B(1) to delete the words “section or part of a road subject to control of access” and insert “COA sections” on both occasions.

42. Section 33C amended

Section 33C deals with the Commissioner’s ability to delegate powers under regulations made pursuant to section 33B to local government.

This clause amends the heading of this section to read:

Commissioner may delegate functions under regulations to local government

Subclause (1) will amend subsection (1) to delete the words “his powers and functions” and insert “the functions of the Commissioner”.

Subclause (1) will amend subsection (1)(b) to delete the words “delegation given by him” and insert “delegation

Subclause (2) will amend subsection (2) by deleting “power or” (the first occurrence); deleting “exercised or”, and in subsection (2)(b) deleting “the exercise of the power or”; and in subsection (2)(d) deleting upon (each occurrence) and inserting “on”.

Subclause (3) will delete subsection (3) by deleting “prevent the exercise of

a power or” and insert “limit any other section or prevent”

These changes are to replace the term power with function to follow consistency with changes in the Act. The other changes are minor amendments which reflect contemporary drafting practice and do not change the meaning of the subsections.

Subclause (3) will amend subsection (3) by deleting “prevent the exercise of a power or” and insert “limit any other section or prevent”.

43. Part 12 replaced

This clause deletes part 12, including section 35 the power to make regulations, and inserts new Part 12 - Miscellaneous, and new sections 34,35,36 & 37

Part 12- Miscellaneous

Proposed section 34 “Protection from liability for wrongdoing”

This proposed section will provide that no action in negligence may be brought against any person (other than the Commissioner) in carrying out the performance of functions under the Act in good faith.

Subsection (1) will provide that an action in tort does not lie against a person (other than the Commissioner) for anything that person had done, in good faith in the performance, or purported performance of a function/s under the Act.

Subsection (2) will provide that the protection in subsection (1) applies even though the activity in (1) may have been capable of being done, whether or not the Act had been enacted.

Subsection (3) will provide that despite (1) neither the Commissioner nor the State is relieved of liability it might have for another person having done anything in subsection (1).

Subsection (4) will provide that the reference to the doing of anything, includes a reference to the omission to do anything.

Because of the road traffic environment in which they operate, decisions made by many officers of the Commissioner can have a very direct and attributable effect on public safety. Likewise, officers operating in a contractual environment can be exposed to the threat of being named as parties to legal action by contractors, and unsuccessful tender respondents who are aggrieved by tender assessment decisions.

This is particularly so for those senior officers appointed as superintendents making decisions for road construction and road maintenance contracts. A specific provision protecting officers is required to eliminate any doubt concerning the personal liability of the Commissioner's officers.

Provisions such as these, which provide protection from personal liability for anything done or omitted to be done in good faith, in connection with performance of functions under the relevant act is commonplace. One example is the *Public Transport Authority Act 2003* section 54, on which this proposed section is modelled, given the PTA, like the Commissioner of Main Roads, is a body corporate

Proposed section 35 Time for commencement of prosecution

This will allow a 2 year time limitation in which the proceedings for an offence must commence.

If this time is not stipulated the Act will be bound by the one year limitation set out in the *Criminal Procedure Act 2004* [Section 21(2)]. There are situations where Main Roads requires more than one 1 year to commence a prosecution, because some offences involve more time to carry out investigation and complete assessment of evidence.

Proposed section 36 Infringement Notices

This section introduces an infringement regime

The *Criminal Procedure Act 2004* Part 2 deals with alleged offenders without prosecuting them and provides for prescribed offences, modified penalties and infringement notices. Pursuant to this Part, regulations made under a prescribed Act may prescribe an offence to be an offence for which an infringement notice may be issued.

This clause provides that if this Act is a prescribed Act for the purposes of Part 2 of the Criminal Procedure Act 2004, this clause applies in relation to the service of an infringement notice by an authorised officer in relation to an alleged offence under this Act and the effect to Part 2.

Subsection (3) provides that an infringement notice issued for an offence against this Bill must be served within 21 days after the authorised officer forms the opinion there is sufficient evidence to support the allegation of the offence. Further the infringement notice must be served within 6 months after the alleged offence is believed to have been committed.

Sections 11 to 13 of the Criminal Procedure Act 2004 do not apply to an alleged offence under this Act.

Proposed section 37 “Regulations”

Existing section 35 is deleted by clause 42, and this proposed section 37 is inserted.

This proposed section will provide for the Governor to make regulations. The section will set out powers to make regulations as to matters in general terms or about specific matters.

Currently, apart from the power to make regulations for advertisements in the vicinity of main roads and highways in section 33B of the Act, there is only a general power to make regulations under section 35. This general power is limited to making regulations which are “*necessary or convenient to prescribe for the purpose of giving effect to the objects and purposes of [the] Act*”. The Act does not specify *what* matters may be the subject of regulations and does not specify what powers may be conferred by regulations.

Regulation making powers are essential functions under enabling legislation that provide the power to make regulations in the interest of convenience and expediency.

Currently there are 2 sets of regulations made under the Act. These are:

Main Roads (Control of Advertisements) Regulations 1996; and

Main Roads (Engineering Cadets) Regulations 1982.

Apart from those 2 separate regulations dealing with a very confined and discrete area of the Commissioner’s functions, there are no regulations to assist the Commissioner in the administration of other more core functions.

Accordingly, it is necessary and essential to provide a regulation making power that provides specific matters about which regulations may be made. This will be able to provide the machinery for practical and workable regulations, in the interest of efficiency and certainty of operations and functions of the Commissioner.

The regulations that will be made pursuant to this Bill will be made by virtue of powers conferred by Parliament and contained in this proposed section 37.

37 Regulations

This proposed section will provide for the Governor to make regulations. The section will set out powers to make regulations as to matters in general terms or about specific matters.

Currently, apart from the specific power to make regulations for advertisements in the vicinity of main roads and highways in section 33B of the Act, there is only a general power to make regulations under section 35. This general power is limited to making regulations which are “necessary or convenient to prescribe for the purpose of giving effect to the objects and purposes of [the] Act”. The Act does not specify what matters may be the subject of regulations and does not specify what powers may be conferred by regulations.

Regulation making powers are essential functions under enabling legislation that provide the power to make regulations in the interest of convenience and expediency.

Subsection (1)

Subsection (1) introduces a term “designated place” for the purposes of its use in proposed section 37(3). This is defined as including a highway or main road or any other place that is owned by, or under the care control or management of the Commissioner. There may be some situations where Main Roads proposes to exercise powers, say for example in relation to a road train assembly area which may not be located in the road reserve of a main road or highway, but rather on freehold land owned by the Commissioner of Main Roads. This definition makes it clear that the powers under proposed regulations made pursuant to proposed subsections 3(c) -(g) can also apply in situations where the land is owned by the Commissioner.

Subsection (2)

Subsection (2) will provide the power to make regulations prescribing all matters that:

- (a) are required or permitted by this Act, to be prescribed; or
- (b) are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

This subsection is largely a restatement of existing section 35(1).

Subsection (2)(b) will provide the head of power under which regulations will be made for the following purpose (in addition to those that already exist):

- setting out the prescribed amount of expenditure under agreements which require Ministerial approval under proposed section 18D(1)(a); and
- setting out the prescribed amount of payments to the Commissioner arising from agreements under sections 18AA or 18B that require Ministerial approval under 18D(1)(b).

Subsection (3)(a) fees

This subsection provides the head of power to prescribe or make regulations in respect of which fees may be charged under the Act, and to prescribe the amount of the fees. This subsection is deliberately drafted to cover a broad express power to impose fees and charges for the purposes under the Act.

The regulation making power in section 37(3)(a) to impose fees will have no application to public utilities.

A number of opportunities to charge fees and instances where there is a need to recover costs have been identified in recent years, but the Commissioner has had to refrain from imposing charges for want of power to do so. Most of the Commissioner's specific powers are set out in section 16 of the Act. The Commissioner has no general powers under section 16 or elsewhere in the Act to charge fees.

There is a need for the Commissioner to have the power to make regulations to impose fees.

In many cases the fees can be the subject of negotiations with third parties under the increased agreement powers under proposed sections 18A – 18E and proposed section 33. However, there is a need to be able to recover fees on a cost recovery basis for other matters. The intention is, bearing in mind the nature of Main Roads' operations, that where possible appropriate charges will generally be dealt with via agreements. However, it is still necessary to prescribe fees and charges for other matters, where they cannot be dealt with via contractual arrangement. Therefore, the subsection will provide the ability to impose a regime of fees in regulations.

This subsection will provide the power to make regulations, for example that deal with a range of services and matters, such as assessing applications for road service centres, including the provision of mobile road services such as coffee vans, and considering applications for control of access.

The prescribed fees to imposed under regulations made pursuant to this subsection are only to be imposed on a cost recovery basis.

Subsection (3)(b) regulating access to and movement of prescribed vehicles

This subsection will provide for regulating the access to, and movement of, prescribed types of vehicles on designated places.

Section 16A of the Act permits the Commissioner to temporarily close main roads and highways or parts thereof to traffic generally, or to traffic of a particular class in the circumstances described in subsection 16A(1).

The Commissioner may also reopen the relevant main road or highway to traffic generally or to traffic of a particular class under s16A(1).

This subsection will permit the making of regulations to prescribe the vehicles to which any closed road applies, and which class of vehicles such roads may be authorised, or reopened for. Given that the penalty for breaching section 16A is proposed to be increased substantially, these regulations would provide certainty.

The proposed subsection is drafted so as to provide the Commissioner (on conditions the Commissioner sees fit) the power to make regulations to permit specific vehicles on to travel on closed roads where in the opinion of the Commissioner:

- (a) the main road or highway is not unsafe for that specific vehicle type; and
- (b) the purpose of the use of that vehicle outweighs the risk of damage to the main road or highway in question (for example emergency service vehicles), which would justify the opening of the highway or main road to traffic of that particular class.

Subsection 3(c) regulations for road train assembly and break down areas

This subsection will provide the Commissioner the power to regulate road train assembly and break down areas in designated places.

Road train assembly and break down areas are in essence a large parking facility provided by a road authority for the exclusive use of heavy vehicles to attach and detach trailers for changing their vehicle configuration.

Pursuant to the *Road Traffic (Vehicle) Act 2012* and its regulations the Commissioner is responsible for the scheme that issues permits to prescribed heavy vehicles that cannot be on a road without access approval. Under this permit regime there is a restriction on the access of such vehicles to certain roads.

On major freight routes it can be almost essential that one of these assembly areas be located at each point on the road network where the permitted lengths of heavy vehicle configurations change. For example, where a change in permitted length dictates a change in the number of trailers a road train may tow, the trucking companies co-ordinate their operations on the basis that the surplus trailer can either be picked up or left at an assembly area depending on their direction of travel. For larger freight companies, the prime mover collecting the extra trailer will not necessarily be the same one which left it in the assembly area. In the case of primary freight routes to the Pilbara and Kimberley, this practice can lead to in excess of 60 trailers being present at a road train assembly and break down area at any one time.

In some cases, the owners may leave the trailers in the road train assembly and break down areas for weeks or even months, effectively treating the site as a free holding yard. In other cases, the trailers may be parked in a way that obstructs the free passage of other vehicles entering,

departing, or within the site. Such conduct reduces the capacity and efficiency of the area for other road transport operators and may also pose a hazard.

While local governments may enact local laws to deal with these issues, they have not indicated an interest in doing so.

In order to ensure the safe and efficient provision of such vital services for freight transport companies, it is important for the Commissioner to have the power to regulate the use of road train assembly and break down areas. It is anticipated the powers will deal with the permitted length of time trailers may be left on the site and to regulate the leaving of trailers in a manner that causes an obstruction. Pursuant to proposed subsection (4) the regulations may also provide for offences where the regulations are contravened.

Subsection 3(d) regulating the parking or standing of vehicles on designated places

Parking or leaving of vehicles on verges of highways and main roads, (including the broader definition designated places) and in particular control of access roads is unacceptable and inappropriate and could have the potential to contribute to an unsafe situation. An example is where a telecommunication or other utility provider is carrying out maintenance works on their infrastructure. The contractor may leave their vehicle unattended for long periods of time. Likewise in relation to camping in designated places. It would be beneficial for the Commissioner to have the power to be able to regulate such matters to direct the owners of such vehicles to move on, and to impose a penalty, pursuant to subsection (4) for those who fail to comply.

This power is to be cross referenced with the power under subsection (3)(e) which will give the Commissioner the power to make regulations to remove, store forfeit and sell or dispose of vehicles.

Subsection 3(e) regulating removal, storage, forfeiture, and sale or disposal of vehicles etc

This proposed subsection will provide the power to make regulations concerning the removal, storage, forfeiture and sale or other disposal of vehicles, goods and animals left on designated places.

This subsection is aimed at vehicles that are left on designated places by being abandoned or unattended for long periods of time

Currently there are no provisions the Act specifically providing the Commissioner with the power to remove, impound and dispose of vehicles which have been abandoned or left on main roads and highways. The presence of these vehicles can adversely impact on road users and public safety, encourage anti-social conduct and detract from public amenity.

While a power to remove vehicles from main roads and highways can be implied from the Commissioner's general powers in existing subsection 16(1), the power to dispose of them cannot be implied. The lack of power to enact regulations as to such matters restricts the efficient and proper performance of the Commissioner's functions.

Likewise, the same limitations apply in the case of goods left unattended on main roads and highways for any period of time as well as straying and unattended domesticated animals.

While the *Disposal of Uncollected Goods Act 1970* provides a regime for the sale or disposal of uncollected goods, this is an unwieldy procedure that requires formal court application for orders permitting the sale of abandoned goods not collected. Such processes can use resources and detract from the Commissioner's day to day core functions. This conflicts with the Commissioner's need to respond expeditiously to remove abandoned or unattended vehicles or goods, which in some cases could constitute an obstruction or hazard.

It is appropriate that the Commissioner have such power to remove, impound, forfeit, sell or dispose of such vehicles or goods that are left unattended on roads (including the broader definition designated places).

Such provisions are commonly found in other legislation³

The regulations will set out the procedural requirements in which the vehicle goods, or animal is to be removed, impounded, sold or disposed of.

This is to be cross referenced with subsection 3(j) which will provide for regulations to be made for the recovery of the Commissioner's related costs for such removal, impounding, sale or disposal.

Subsection (3)(f) agreements with others relating to removal storage and forfeiture and sale or disposal of vehicles etc under the care control and management of another person

This proposed subsection will provide the power of the Commissioner to enter into agreements with another person relating to the removal forfeiture and sale or disposal of vehicle goods or animals left on any road under the care control and management of that person. It will also enable the Commissioner to arrange for the removal, storage, forfeiture and sale or disposal of such vehicles, goods or animals in accordance with the agreement.

The arrangement between the Commissioner and the City of Perth is a useful example.

³ Local Government Act 1985 sections 3.47 powers in relation to disposal of confiscated or uncollected goods, also section 3.48 regarding powers to recover impounding expenses.

Vehicles that obstruct traffic in heavily built-up areas can have the effect of overloading other parts of the road network. This is particularly so with vehicles parked in clearways during peak hour within city of Perth.

Vehicles that stop in clearways, no stopping zones or designated bus lanes prevent the safe and efficient flow of traffic during these busiest times of the day.

An initiative was introduced by the Commissioner to tow away vehicles in clearways (on roads that fall within the City of Perth's jurisdiction) in September 2014.

The management of Perth's road network includes the need for the Commissioner to have the power to remove, or cause to be removed, any vehicle that is parked so as to cause an obstruction to traffic on any road (i.e., not just designated places). This will minimise the need to duplicate services with local governments and enable a single point of decision making for dealing with obstruction on all roads that impact on the flow of traffic particularly at peak hour. Information provided by the City of Perth shows that fines alone are not a sufficient deterrent for many drivers who leave cars parked in clearways on roads across the City. Some individual vehicle owners pay multiple fines in a given year.

This subsection will provide the head of power to enable the Commissioner to enter into agreements with local government to tow away and remove (and impound, forfeit and sell or dispose of) vehicles on roads that constitute or cause an obstruction. The regulations will set out the details of procedural and notice requirements.

Subsection (3)(g) activities and works by other persons

This subsection provides for the regulation of activities and works by other persons other than the Commissioner in designated places.

Currently there are no enforceable powers for the Commissioner to direct persons to leave verges of land comprising main roads or highways or designated places, or to cease unauthorised activities at these locations.

The police will only become involved in the most serious of cases.

The following are some examples of the context of the activities for which regulations are required:

1. Persons distracting road users with signs, banners or placards in the vicinity of main roads and highways.
2. Activities of fishing, climbing, throwing things and rope swinging from bridges and other structures forming part of any main road or highway.
3. People conducting works in the verge or roadside of highways or main roads (as set out in term designated places). These works can include a number of activities such as:
 - excavations on verges and medians on a designated place, or
 - the use of vehicle mounted cranes lifting articles from a designated place into private property.

This subsection will provide the Commissioner with the power to regulate activities on a road reserve is in the interest of general road safety and is consistent with the powers of a modern road authority. (Cross refer with proposed section 18E(2)(b) the power to “undertake works for the safety and protection of infrastructure and property”.)

The regulations will give the Commissioner the power to direct third parties to cease the activity, including where appropriate, to leave the road reserve of the relevant main road or highway.

This subsection will provide the Commissioner with the power to regulate activities on a road reserve is in the interest of general road safety and is consistent with the powers of a modern road authority.

Subsection (3)(h) prohibiting the construction, reconstruction or placement of anything on, over or under a designated place

This subsection will provide the Commissioner with the power to regulate persons who construct or place any object in, on, or over a designated place, without the authority of the Commissioner.

The following are some examples of the context of the activities for which regulations are required

- unauthorised installation and maintenance of pipes, conduits and cables,
- the use of vehicle mounted cranes lifting articles into private property,
- the erection of large signs in adjacent land and the installation of driveways; and
- the construction of anything on over or under a designated place.

This will provide the power to direct the activities of a third party in laying infrastructure and is to be cross referenced with the power to enter into agreements with such entities, as set out in proposed section 18AA.

The regulation making power in 37(3)(a) to impose fees will have no application to public utilities.

Subsection (3)(i) providing for corrective works necessitated by activities in (e),(f), (g) or (h)

The Commissioner as a result of unauthorised activities may be put to the cost of carrying out corrective or remedial works to repair or to remove a structure that is unauthorised. The Commissioner may be required to reinstate and rehabilitate land under its control as a result of those activities. This proposed subsection will put beyond doubt the power to make regulations in relation to carrying out any such works necessitated by:-

- the removal, storage, forfeiture, and sale or disposal of goods or

vehicles goods and animals left on highways, main roads, and roads. The Commissioner in such cases should be entitled to recover from the owner of a vehicle or other goods (or animals) costs incurred for the removal or storage and if not reclaimed the eventual sale of the vehicle other goods or animals [proposed section 37(3)(f) & (g)];

- Remedial works necessitated by unauthorised activities including works by third parties [subsection(3)(g)]
- remedial works necessitated by unauthorised construction or placement of any thing or object on over or under a designated place [subsection (3)(h)].

Subsection (3)(j) recovery of costs

This subsection provides for the Commissioner to recover costs incurred arising in relation to:

- parking or standing of vehicle on highways and main roads contrary to the regulations [proposed section 35(2)(d)];
- the removal, storage, forfeiture, and sale or disposal of goods or vehicles goods and animals left on highways, main roads, and roads. The Commissioner in such cases should be entitled to recover from the owner of a vehicle or other goods (or animals) costs incurred for the removal or storage and if not reclaimed the eventual sale of the vehicle other goods or animals [proposed section 37(3)(e) & (f)];
- Remedial works necessitated by the unauthorised activities of third parties, and from any corrective works for the removal of vehicles goods and animals on highways and main roads and roads [under proposed section 37(3)(g) (h) & (i)]

Subsection (3)(k) regulating employment of cadets

Under existing section 10(2)(b) the Commissioner may employ persons as cadets. This will allow regulations to be made regulating the employment of cadets.

Subsection (4)

This proposed subsection will provide the power to make provision in the regulations for offences, and for a penalty to apply for any breach or of any such regulation to apply not exceeding a fine of \$2,000.

This will provide an efficient regulatory framework under which persons may be charged for offences under the Act, for which fines can be imposed. This will substantially enhance the efficiency of the Commissioner's day to day functions.

