

Explanatory Memorandum

Perth Parking Management Bill 2023

Background to the Perth Parking Management Bill 2023

The *Perth Parking Management Act 1999* (existing Act), supporting regulations and Perth Parking Policy were first introduced in 1999 as a joint initiative between the City of Perth and the WA Government. The aim of this legislative regime was to limit the increase of non-residential commuter parking bays in the Perth central area and correlated growth in traffic congestion as well as impacts on air quality and amenity for people walking and riding bikes in the city and maximising the value of the WA government's investment in public transport.

The existing Act introduced a requirement for all non-residential bays within a prescribed Perth parking management area to be licensed and, where applicable, pay a licence fee for each parking bay. Since 1999, revenue raised from licence fees has been reinvested in key transport initiatives including the popular free Central Area Transit (CAT) buses, free public transport travel within the CBD, cycling lanes, public transport upgrades and other initiatives that help promote a 'balanced transport system' for access to and around central Perth.

Under the existing Act, parking for sole use by residents is exempt from a requirement to be licensed and pay licence fees. Other types of parking are also exempt from fees including ACROD, loading and servicing bays as well as parking facilities for properties with five or less bays in use. Where some or all parking bays are not being utilised by a property owner or their commercial tenants, parking can effectively be 'delicensed' for a nominated period where licence fees do not apply.

The existing Act also provided for the establishment of a Perth Parking Policy which governs maximum rates of non-residential parking provision and has the long-term aim to progressively reduce levels of commuter parking in the city as it develops while freeing up short term parking for shoppers and other visitors to the city.

Over the past 20 years this regime has been successful in significantly reducing car travel to the city and increasing the proportion of people who travel to and around the city centre by public and active transport. Revenue from the Perth Parking Fund has been reinvested in transport initiatives within the area in which licence fees are paid and significantly contributed to improving city amenity and sustainable transport outcomes.

In September 2022 the WA Cabinet approved amendments to the existing Act to expand the purposes for which licence fee revenue can be used to include key initiatives within the \$1.5 billion Perth City Deal. The objective of these changes was to provide for the Perth Parking Fund to improve the overall amenity and accessibility of the central city area rather than being limited to transport initiatives only.

Additionally, Cabinet approved a range of other changes that were identified through a review of the Act to address emerging issues and bring the legislation into line with the contemporary environment. The proposed changes were aimed at improving flexibility in how the existing Act is administered and addressing potential areas of future risk to compliance and revenue.

A rewrite of the Act was required to provide a modern and consolidated framework for the management and licensing of parking in the Perth parking management area.

Accordingly, this Bill, once it is passed and receives the Royal Assent will repeal the *Perth Parking Management Act 1999* (existing Act) and create a new Act to authorise and regulate the licensing of non-residential parking in the Perth parking management area. Supporting changes will also be made to the *Perth Parking Management Regulations 1999* and the Perth Parking Policy (2014) following the passage of this Bill.

Overview of Bill

The objectives of the Bill are to:

- Replace the existing legislative regime for licensing and managing parking in the Perth parking management area with a modern and consolidated framework. Once proclaimed in full, the Bill will repeal the *Perth Parking Management Act 1999*, the *Perth Parking Management (Taxing) Act 1999*, and the *Perth Parking Management Regulations 1999*
- Expand the existing purposes for which revenue from Perth parking licence fees can be used so that it can fund city activation, including the construction and operation of Perth City Deal projects, and other future projects.
- Improve existing processes, address areas of risk and provide greater certainty to stakeholders associated with administration of the existing *Perth Parking Management Act 1999*.

The Bill will provide for the ongoing licensing of parking spaces within the parking management area and for revenue raised from licensing fees to be paid into the parking management area account (PM area account) and used to improve that area's accessibility and amenity. This will remove the restrictions in the existing Act that specify licence fee revenue can only be used to fund initiatives for a purpose that gives effect to the Perth Parking Policy (the Policy) which is primarily concerned with promoting 'balanced' transport outcomes within the Perth parking management area.

Parking in buildings for sole use by residents will continue to be exempt from a requirement to be licensed and exemptions that currently exist for certain types of parking as outlined above will also continue to apply.

The Policy will remain the key planning and land-use instrument to progressively mitigate increasing supply of non-residential parking bays and traffic congestion in the Perth parking management area as the city grows and redevelops. This is achieved through:

- Regulating the provision of short and long-stay public parking, particularly parking used by commuters located in the heart of the city;
- Limiting the amount of tenant parking that can be included in new developments or redevelopments. (Sites with pre-1999 planning approval are permitted to retain their existing tenant parking until a new planning approval is required for the site's redevelopment)

The Bill will continue to provide for the existing compliance regime which allows inspectors (to be renamed authorised officers in the Bill) to be appointed and empowered to ensure Perth parking property owners comply with the Act. While the administration of this regime will continue to focus on education and achieving voluntary compliance where possible, existing offences will continue to apply to property owners, and will now also apply to lessees or occupiers of land (under the definition 'responsible occupier') within the parking management area that:

- permit parking on their land or buildings that is not licensed or parked in prescribed circumstances
- do not comply with a parking bay licence or its conditions
- advertise or otherwise indicate parking is available on land or buildings within the parking management area for purposes that are not permitted by the licence or where a valid licence is not held for the parking bays
- obstruct compliance inspectors in the performance of their functions

Maximum penalties for these offences have not been updated since the 1999 Act despite the cost of annual licence fees and the market value of parking bays increasing significantly since that time. The Bill provides for all penalties to be increased to ensure that both maximum and modified penalties remain an effective deterrent to non-compliance with the licensing and approvals regime.

A clause-by-clause commentary on the Bill is provided below.

PART 1 — PRELIMINARY

Part 1 contains the short title, commencement provisions, terms used and key definitions applicable to the Bill's scope and interpretation including definitions of owner, parking management area (PM area) parking space and exempt circumstances

Clause 1 Short Title

This Bill, once it is passed and received the Royal Assent, will be known as the *Perth Parking Management Act 2023* (the Act).

Clause 2 Commencement

This clause provides for when parts of this Bill, once passed, will come into operation.

Clause 2 (a) provides that Part 1 (other than sections 3 to 10) will come into operation on the day on which the Act receives the Royal Assent.

Clause 2(b) provides that Part 12 and section 188 will come into operation on the day after assent day.

Clause 2(c) provides the rest of the Act is to come into effect on a day fixed by proclamation.

Clause 3 Objects of the Act

The 1999 Act does not include an objects clause. To provide better guidance around the purpose of the Act and supports the broadened purposes for which licence fee revenue can be expended, Clause 3 provides for the new Act to include a set of objectives.

Clause 3(a) provides that these are to provide for the existing licensing scheme as a means of managing parking within the metropolitan region. This clause also specifies that the purpose of parking management is to:

- mitigate traffic congestion, promote a sustainable transport system,
- improve transport, accessibility, economic activity or urban amenity.

Clause 3(b) provides that licensing revenue can be used to benefit the PM area for improvements that meet the objects of the Bill.

Clause 4 Terms used

Defines the terms used in the Bill. Notable definitions not included in the existing Act include:

Applicant means any of the following person applying for a parking space licence under clause 21;

- a pre-authorisation under clause 28;
- a special purpose authorisation under clause 33;
- to vary a parking space licence under clause 42;
- to vary a pre-authorisation under clause 47;
- to vary a special purpose authorisation under clause 51
- to transfer a parking space licence under clause 56
- in any other case – the relevant person who made the application;

Approval holder means the licence holder for the parking space licence or the authorisation holder for the special purpose licence. This combined definition includes both types of holders.

Authorisation holder means the person to whom the special purpose authorisation is granted. Under Clause 33 of the Bill an owner of land in the

PM area may apply to the CEO for a special purpose authorisation to approve the provision of parking that is not required to be licensed.

category means in relation to a parking space as defined in clause 8;

Department means the department of the Public Service principally assisting in the administration of this Bill;

development approval means

- approval under the *Planning and Development Act 2005* for the development of land; or
- a development approval issued by the Metropolitan Redevelopment Authority under the Metropolitan Redevelopment Authority Act 2011 section 66(2)(b); or
- a prescribed approval, authorisation, consent of permission, under any written law, for the development of land.

exempt circumstances has the meaning in clause 9(2);

manage includes to regulate and prohibit;

owner in relation to land, has the meaning given in clause 5(2);

parking management plan, in relation to land, means a plan in relation to parking spaces or managing parking on the land that complies with prescribed requirements;

parking space has the meaning given in clause 7(2);

parking space approval means (a) a parking space licence or (b) a special purpose authorisation;

parking space register has the meaning given in clause 73(1);

pre-authorisation for 1 or more parking spaces, means a pre-authorisation granted under clause 29(5) for the parking spaces;

The Bill introduces the new concept of pre-authorisation; the ability to pre-authorise parking spaces which is designed to provide greater certainty to developers and property owners in the PM area that are undertaking development or redevelopment of a site. Clause 29 will provide certainty to property developers that a Minister's decision at development approval stage will be upheld at the completion of the project when the time comes to licence the parking.

pre-authorisation holder in relation to a pre-authorisation [that is in force] means the person to whom the pre-authorisation was granted;

relevant approval holder in relation to a parking space approval which has more than one approval holder, means one of the approval holders; and where the parking space approval is held by only one approval holder means that single approval holder;

relevant licence holder in relation to a parking space licence with more than one licence holder, means one of the licence holders; and where there is only one licence holder of the parking space licence, that single licence holder.

relevant owner in relation to land owned by more than one owner, one of the owners; or if the land is owned by a single owner, that single owner;

relevant pre-authorisation holder in relation to a pre-authorisation holder with more than one pre-authorisation holder, one of the pre-authorisation holders; or where there is only one pre-authorisation holder that single pre-authorisation holder;

relevant vehicle – this definition includes all vehicles for which a licence (registration) is required as well as caravans and trailers (whether or not connected to another vehicle) and does not include vehicles such as bicycles and e-rideables). Regulations may prescribe other vehicles that are not considered relevant for the purposes of this Bill;

responsible occupier is defined as including a person who is not owner of the land, but who occupies or controls the land or entitled to be in occupation or control of the land, and includes a lessee of the land;

reviewable decision is the meaning in section 76;

special event is any planned disruption of public transport and any planned event or attraction that may create more demand for parking spaces in a location;

special purpose in relation to parking means a special event or a prescribed purpose

special purpose authorisation means an authorisation granted under clause 34;

Vehicle has the meaning in section 4 *Road Traffic (Administration) Act 2008*.

Clause 5 Owner

The current definition of a property ‘owner’ in the existing Act has been clarified. particularly in relation to land or buildings that are owned by or vested in Commonwealth, State and local government agencies. Clarification is also required to cater for complex and/or new types of land ownership that have emerged in recent years through changes to other legislation, including the Strata Titles Act 1985 and the Community Titles Act 2018.

This clause provides explicit meanings to the terms used in the definition of owner to address these ambiguities and clarify who is responsible for licensing of non-residential parking within the Perth parking management area.

Clause 5(1) defines terms used in clause 5 and provides that:

Administrator includes anyone appointed to act on behalf of a person under a State or Commonwealth law and can include an attorney, an executor, a liquidator, receiver and/or manager.

Common property

- for a community titles scheme – the meaning given in section 3(1) of the *Community Titles Act 2018*
- for a strata titles scheme – the meaning given in section 10 of the *Strata Titles Act 1985*

Community corporation and *community titles scheme* have the meanings given in the *Community Titles Act 2018*

Crown land has the meaning given in section 3(1) of the *Land Administration Act 1997*

Freehold scheme and *leasehold scheme* have the meanings given in the *Strata Titles Act 1985*

lot, for a community titles scheme, has the meaning given in section 3(1) of the *Community Titles Act 2018*

lot in a strata scheme or survey-strata scheme has the meaning given in section 3(1) of the *Strata Titles Act 1985*

public authority means any of the following —

- a Minister of the State;
 - the chief executive officer of an agency;
 - a local government, regional local government or regional subsidiary;
 - a body, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law performs a statutory function on behalf of the State;
 - a prescribed person or body with a function in relation to Crown land;
- but does not include a person or body prescribed in regulations for the purposes of this paragraph;

strata company and *strata titles schemes* has the meaning given in section 3(1) of the *Strata Titles Act 1985*

Clause 5(2) provides for an owner of land to be:

- The community corporation or administrator of that corporation, where the land is common property or a lot in a community titles scheme; (5(2)(a) or
- The strata company or administrator of that company, where the land is common property or a lot within a strata scheme or a survey-strata scheme (regardless of whether these are leasehold or freehold schemes); (5(2)(b) & (c) or
- The public authority that has care, control and management of land, or licence or lease-holder of land, where that land is crown land; or (5(2)(e)&(d).
- The proprietor of an estate, where the land is an estate in fee simple; or(5(2)(f)(i))
- The person registered as the land-holder, where the land is freehold land; (s5(f)(ii)) or
- A mortgagee in possession of the land, where the land is mortgaged. 5(2)(f)(iii).
- The term owner will include any state or commonwealth public authority either in the capacity as lessee or licensee over land, or where a public authority has care control or management of the land. It will also include any public authority or person who is the owner in fee simple under the Transfer of land Act 1893 (or, if applicable, freehold owner under the Registration of Deeds Act 1856).

Clause 6 Parking management area (PM area)

Similar to the existing Act, subclause (1) of this clause provides for regulations to prescribe an area within the metropolitan region known as the parking management area (shortened to the more convenient ‘PM area’).

In line with recent changes (in 2022) to the boundary of the existing Perth parking management area to include areas such as Kings Park and parts of the Swan River. Subclause (2) clarifies that an area can be prescribed as the PM area regardless of whether the area is the whole or part of one

or more local government districts, contains parking spaces to be managed under the bill and may be comprised of both land and water.

Clause 7 Parking space

Subclause (1) provides definitions for private road and road

Subclause (2) clarifies that a parking space is any off-street or on-street space (regardless of how signed and marked) set aside and used for the parking of a 'relevant vehicle'.

Relevant vehicles include all vehicles for which a licence (registration) is required as well as caravans and trailers (whether or not connected to another vehicle) and does not include vehicles such as bicycles and e-rideables). Regulation may prescribe other vehicles that are not considered relevant for the purposes of this Act.

Clause 8 Category

Under the Bill, different licensing requirements will apply to different categories of parking. This clause provides that categories of parking spaces can be specified according to their location, type or whether they are set aside for a particular use, as will be prescribed in the regulations.

Clause 9 Exempt circumstances

This clause maintains the existing's Act's provision for residential parking to be exempt from licensing requirements.

Subclause 9(1) provides for the purposes of the clause, definitions for relevant accommodation, residential building, and residential land.

Subclause 9(1) definitions clarify that residential buildings do not include dwellings used for temporary residential accommodation such as hotels or short-stay accommodation in the Perth parking management area. Owners of these buildings will still be required to licence all parking bays in use.

Clause 9(2) (a) provides that vehicles parked in spaces on solely residential land or buildings are parked in exempt circumstances, and therefore those spaces are not required to be licensed by the land or building owner or occupier.

Clause 9(2)(b) provides for regulations to prescribe other vehicles that are parked in exempt circumstances, which will also not be required to be licensed by the landowner or occupier under the Act.

Regulations may prescribe range of circumstances where a vehicle is parked, in a parking space or where no parking space exists, that exempts the parking from the provisions of this Act. This will include all parking set aside for residents whether in mixed-use buildings or public parking facilities and parking of emergency vehicles.

Clause 10 Act binds Crown

This clause binds the State and so far as the legislative power of the Parliament permit, the Crown in all its other capacities.

PART 2 — MANAGING PARKING IN PM AREA

Division 1 — Owners of land require parking space approvals for parking spaces

Clause 11 Owners of land must not permit parking in unapproved parking spaces

This clause establishes an offence for a landowner within the Perth PM area to permit parking of any relevant vehicle in an unapproved parking space, unless the vehicles are parked in exempted circumstances specified at Clause 9 (such as for sole use by residents).

An unapproved parking space means any parking space for which there is no parking space approval in force.

Under the existing Act the penalty for a breach of section 7 of permitting a vehicle to be parking in the Perth parking managed area (other than where the land was being used solely for private residential purposes or exempt circumstances) is insufficient to act as a deterrent since the penalty has not kept pace with increases in the fees payable.

This was shown in a recent prosecution under which the Magistrate awarded a penalty of \$3,500, which after applying the corporate multiplier, in real terms meant a base penalty of only \$700 with current licence fees for a parking bay (space) being approximately \$1,200 per annum. Accordingly, the Bill will increase the penalties and will be based on a graduated penalty scheme that will provide a sufficient deterrence to alter an offender's behaviour to ensure compliance.

The maximum penalty that can be imposed for this offence ranges from \$30,000 for an offence involving 5 or fewer vehicles parked in unapproved parking spaces, and up to \$250,000 for offences that involve 200 or more vehicles parked in unapproved parking spaces. A daily penalty of \$2,000 may also apply for each day or part-day during which the offence continues.

The penalties set out in (a) – (f) are for offences involving

- 5 or fewer relevant vehicles parking in unapproved parking spaces at any one time – fine of \$30,000; and
- more than 5 but fewer than 15 relevant vehicles parking in unapproved parking spaces at any one time – a fine of \$50,000; and
- 15 or more, but fewer than 50 relevant vehicles parking in unapproved parking spaces at any one time – a fine of \$80,000; and
- 50 or more, but fewer than 100 relevant vehicles parking in unapproved parking spaces at any one time – a fine of \$150,000; and
- 100 or more but fewer than 200 relevant vehicles parking in unapproved parking spaces at any one time – a fine \$200,000; and
- In any other case – a fine of \$250,000

The penalty in subclause (f) applies if the other penalties in (a)-(e) cannot be applied for some reason, such as uncertainty about the number of vehicles parked, or where the number of relevant vehicles parking in unapproved parking spaces at any one time exceeds 200.

This graduated penalty scheme based on the range of numbers of vehicles parked will lead to a fairer result with the penalty being commensurate to the scale of the offence.

Clause 12 Owners of land must not advertise parking without parking space approval

Parking space approval is defined as a parking space licence or a special purpose authorisation.

This clause establishes an offence for landowner within the PM area to advertise that parking for a relevant vehicle is available where a parking space approval is not in force, unless the vehicles are parked in exempt circumstances specified at clause 9 (such as for sole use by residents). This means that owners cannot advertise their parking bays for use by commuters or other non-residential purposes.

The maximum penalty that can be imposed for this offence is \$20,000. A daily penalty of \$2,000 may also apply for each day or part-day during which the offence occurs.

Division 2 — Owners of land must comply with parking space approvals

Clause 13 Owners of land must not advertise parking except in accordance with parking space approvals

This clause establishes an offence for landowners within the PM area to advertise that parking for a relevant vehicle is available where the conditions of the parking space approval do not permit the relevant vehicle to be parked on the land as advertised.

The conditions of the parking space approval will stipulate a limit of the number or category of parking spaces, and the owner must not advertise the availability of parking that does not comply with the parking space approval.

The maximum penalty that can be imposed for this offence is \$20,000. A daily penalty of \$2,000 may also apply for each day or part-day during which the offence occurs.

Clause 14 Owners of land must ensure compliance with conditions of parking space approvals

This clause establishes that it is an offence for landowners within the PM area to permit parking in licensed or otherwise authorised parking bays that does not comply with the conditions of that approval. This could include situations where an unapproved parking type or category is allowed, or more vehicles than are allowed for in the approval, are permitted to park.

The maximum penalty that can be imposed for this offence ranges from \$30,000 for an offence that involves less than five vehicles parked in unapproved spaces up to \$250,000 for offences that involve 200 or more vehicles. A daily penalty of \$2,000 may also apply for each day or part-day during which the offence occurs.

Division 3 — Responsible occupiers require parking space approvals for parking spaces

This division is an addition to the provisions of the 1999 Act to ensure that lessees and parties effectively in control of parking access on land or buildings within PM areas (such as private car park operators), are liable for similar offences that apply to property owners or approval holders.

A responsible occupier is defined as any person (other than an owner) who occupies or controls land (or is entitled to do so) and includes a tenant or lessee of the land.

Clause 15 Responsible occupiers must not permit parking in unapproved parking spaces

Similar to clause 11, this clause establishes that it is an offence for a responsible occupier of land within the Perth parking management area to permit parking in unapproved bays or spaces (i.e. not licensed or otherwise authorised) or for vehicles that are not parked in exempt circumstances (as outlined in clause 9).

The same penalties outlined in clause 11 that apply to landowners within the Perth parking management area also apply to responsible occupiers for this offence.

A defence to this charge can be made in circumstances where a person honestly and reasonably believed that the approval permitted a vehicle to be parked as advertised. In the absence of evidence to the contrary, this is taken to mean where the responsible occupier requests information about parking space approval (under clause 135) and is advised by the CEO that the parking is permitted up to 12 months before the day on which the parking space is advertised or otherwise indicated.

Only the owner of land is the person to whom a parking space licence is granted. Therefore, the responsible occupier may not be aware whether the parking spaces have been approved or not. Accordingly, in the interest of fairness, this clause allows the responsible occupier an additional defence, where otherwise only a defence of mistake of fact under the Criminal Code would be permitted.

It is a defence that the person honestly and reasonably believed that a parking space approval was in force at the time of the offence (similar to below).

Clause 16 Responsible occupiers must not advertise parking on land without parking space approval

Similar to Clause 12, this clause establishes that it is an offence where responsible occupiers of land within the Perth parking management area to advertise that parking is available in unapproved parking spaces or for vehicles that are not parked in exempt circumstances as set out in Clause 9.

The same penalties outlined in clause 12 that apply to landowners within the Perth parking management area also apply to responsible occupiers for this offence.

It is a defence that a person honestly and reasonably believed that the approval permitted a vehicle to be parked as advertised. In the absence of evidence to the contrary, this is taken to mean where the person requests and is advised by the CEO that the parking is permitted up to 12 months before the day on which the parking space is advertised or otherwise indicated.

Division 4 — Relevant occupiers must comply with parking space approvals

Clause 17 Relevant occupiers must not advertise parking on land except in accordance with parking space approvals

This clause establishes that it is an offence where responsible occupiers of land within the Perth parking management area advertises parking availability for vehicles in a licensed or otherwise approved parking space where the parking would not comply with that approval.

The maximum penalty that can be imposed in court for this offence is \$20,000. A daily penalty of \$2,000 may also apply for each day or part-day during which the offence occurs.

The same defence can be made to this charge as outlined above in Clause 15.

Clause 18 Relevant occupiers must ensure compliance with conditions of parking space approvals

Similar to Clause 14, this clause establishes an offence for responsible occupiers of land within the Perth parking management area that do not comply with conditions of approval for an approved parking space with the same penalties to apply.

The same defence can be made to this charge as outlined above in Clause 16.

PART 3 — PARKING SPACE APPROVALS AND PRE-AUTHORISATIONS

Division 1 — Application of Part

Clause 19 Application of Part when land has more than 1 owner

This clause clarifies that when land is owned by more than one person, any requirement under the Act that applies to one landowner also applies to other owners except in circumstances where a requirement is only meant to apply to a single owner (See clauses 33(2)(f) or 51(2)(e)). See also clause 146.

Clause 20 Application of Part when parking space approvals or pre-authorisation is held by more than one person

This clause clarifies that when more than one person is the holder of a parking space approval, licence, special purpose authorisation or pre-authorisation holder, any requirement of that approval applies to all other holders of the parking space approval, licence, special purpose authorisation or pre-authorisation. See also clause 147.

Division 2 — Applications for and grants of parking space licences

Clause 21 Applications for parking space licences

This clause sets out the process for landowners within the parking management area to apply for a parking space licences for one or more vehicles.

Consistent with the existing process, subclause (2) provides that the application must be in a form approved by the CEO, include a legal description of the land on which parking spaces are to be provided as well as any pre-authorisation that applies to those bays.

The application must be accompanied by any (non-refundable) application fee¹ or information that is prescribed in regulations. A parking management plan for the land or building is also required to assist inspectors undertaking inspections and other compliance activities.

Clause 22 Grants of parking space licences without approval from Minister

This clause provides for the CEO to grant a licence to landowners within the parking management area where an application proposes parking requirements for the site (including type and number of bays) that:

- are consistent with the Perth parking policy; or
- have been pre-authorised by the Minister and that pre-authorisation remains in force (see Clause 23 below).

¹ No fee is currently charged when applying for the grant of a licence

The CEO cannot grant a parking space licence that is not in accordance with parking requirements established by the latest development approval that applies to the site or for a number of parking spaces that exceed the maximum allowable under that approval. A licence may be granted for fewer bays if required by the licensee.

Where a previous approval or pre-authorisation has been cancelled, the CEO must also be satisfied that an owner will comply with the Act's requirements and any conditions to which the licence is subject.

Clause 23 Grants of parking space licences with pre-authorisation

This clause provides for the CEO to grant a licence (on payment of the relevant fees) to applicants in cases where a pre-authorisation is in force, provided that

- the licence is granted in accordance with the pre-authorisation and the latest development approval that applies to the site (although a licence may be issued for fewer bays than have development approval); and
- the landowner has met any conditions of the pre-authorisation; and
- where a previous approval or preauthorisation has been cancelled, the CEO is satisfied that an owner will comply with the Act's requirements and any conditions to which the licence is subject.

Clause 24 Grants of parking space licences with approval from Minister

This clause maintains the existing Act's provision for the CEO to refer licence applications that are not consistent with the parking policy to the Minister for approval.

Subclause 24(2) outlines matters to be considered by the CEO when deciding to refer these applications for the Minister's approval. These have been broadened from the existing Act and now include:

- whether the number or types of parking spaces are appropriate in the specific circumstances; and
- the impact that the proposed parking will have on the area's traffic flow and transport network, pedestrians and cyclists and public transport operations as well as the area's economic activity and urban amenity; and
- availability of public transport close to the site; and
- whether infrastructure, facilities or services are to be provided which improve access to the area or its amenity for the benefit of land occupants or the public; and
- whether an owner has had a previous licence or pre-authorisation cancelled; and
- any other relevant matter.

Subclause (4) provides that an application will only be referred to the Minister if it is consistent with the latest development approval for a site and where the landowner has complied with any conditions of that approval.

Under subclause 24(3), the Minister, may approve that a licence that is not consistent with the Perth parking policy be granted when satisfied that an application addresses matters outlined above in 24(2) and/or any other relevant matter.

Subclause 24(4) and (5) provide that the Minister cannot grant a parking space licence for more parking spaces than the maximum permitted by the

latest development approval for the site and may grant a licence for fewer spaces.

Under subclause 24(6), the CEO must grant a licence (on payment of any relevant fees) once this has been approved by the Minister.

Clause 25 Conditions of parking space licences

Subclauses (1)(2) and (3) of this clause provide that the grant of a parking bay licence may be subject to certain conditions imposed by the CEO or Minister when granting or approving a licence or other conditions prescribed in regulations.

Subclause (4) provides that conditions can be imposed on the number, type, location on the owner's land and marking of parking spaces. Conditions may also restrict land from being subdivided or require the provision of infrastructure, facilities and services which improve access to the area and its amenity for the benefit of land occupants or the public.

Subclause (5) provides that a prescribed condition of a licence cannot take effect before the date that the licence is renewed for existing licences.

Clause 26 Duration of parking space licences

This clause provides that a licence commences from a day specified in writing by the CEO when the licence is granted. This day may be earlier than the day on which the licence is granted but cannot precede the date of application.

The licence is granted either for a period selected by the licensee (options will be prescribed in regulations) or, where no prescribed period applies or the licensee does not choose a specific period, a period ending on 30 June of the financial year. The licence remains in force until it expires or is cancelled.

Provision for the licensee to nominate the period for which a licence is to be granted replaces the existing Act's provision for licence fees to be paid in instalments. This will maintain flexibility and choice for licensees when paying licence fees. It will also ensure that licences are only valid when payment of all appropriate fees has been made.

Clause 27 Information must be given for parking space licences

This clause requires the CEO to provide licensees with certain information in respect of their licence in writing including:

- their name; and
- a legal description of the land (where available) on which parking bays are to be authorised and location of those spaces; and
- any conditions imposed by the CEO or approved by the Minister; and
- the licence commencement and expiry date; and
- any information prescribed in regulations

Subclause (2) provides that where a licence is subject to conditions imposed by the CEO, written notice must include a statement that the holder may have a right to apply for a review of that decision as set out in Part 4 of the Bill.

Division 3 — Applications for and grants of pre-authorisations

The ability to pre-authorise parking space is a change to the existing Act that is designed to provide greater certainty to developers and property owners in the Perth parking management area that are undertaking development or redevelopment of a site.

While clause 24 of this Bill and sections 9(2) and (3) of the existing Act both provide for the Minister to approve the grant of a licence for parking that is inconsistent with the Perth parking policy, in practice this approval is typically sought at planning approval stage (rather than when applying for a licence) to ensure project proponents do not build or provide parking as part of a development that cannot be licensed once it is complete.

By providing for pre-authorisation of parking as part of a development process, the new Act will provide landowners and property developers with greater certainty that a Minister's decision at development approval stage will be upheld at the completion of the project when the time comes to licence the parking.

Clause 28 Applications for pre-authorisations

This clause sets out the process that a landowner or developer within the Perth parking management area can apply for pre-authorisation of one or more parking bays with the approval of the Minister.

Applications for pre-authorisation must be in a form approved by the CEO, include a legal description of the land and information on how land is to be subdivided if this is proposed. The applicant may also be required to provide a parking management plan, any other prescribed information and pay any relevant application fees prescribed in regulations².

The CEO may notify the applicant if further information is required and may refuse to grant or consider an application where this is not provided within 15 business days of the notice. An application that is not in accordance with the Act may also be refused for further consideration.

Clause 29 Grants of pre-authorisations

Similar to clause 24, this clause provides for pre-authorisation in relation to land within the Perth parking management area to be approved by the Minister in cases where the parking spaces sought would not be consistent with the Perth parking policy.

Subclause 29(2) provides for the CEO to refer suitable applications, that is applications that are considered to have merit based on the matters to be considered, to the Minister for Transport for approval. Subsection 29(2) outlines matters to be considered when determining the suitability of an application. These are the same as those outlined above in subsection 24(2) and include:

- whether the number or types of parking spaces are appropriate in the specific circumstances; and
- the impact that the proposed parking will have on the area's traffic flow and transport network, pedestrians and cyclists and public transport operations as well as the area's economic activity and urban amenity; and
- availability of public transport close to the site; and
- whether infrastructure, facilities or services are to be provided which improve access to the area or its amenity for the benefit of land occupants or the public; and

² Currently no fee applies to an application for a parking licence submitted at development approval stage

- whether an owner has had a previous licence or pre-authorisation cancelled; and
- any other relevant matter.

The Minister may approve a pre-authorisation when satisfied that an application has regard for those and any other relevant matter.

Sub-clause 29(4) provides that when a pre-authorisation is approved by the Minister, this must be granted by the CEO.

Clause 30 Conditions of pre-authorisations

This clause provides that pre-authorisation of parking space approvals may be subject to certain conditions imposed by the Minister when approving the grant of the pre-authorisation under Clause 29.

Conditions may include provision of infrastructure, services or facilities that improve an impacted area's access and amenity for the benefit of land occupants or the public and compliance with any development approval in relation to parking.

Pre-authorisations will also be subject to compliance with the development approval in relation to parking.

Clause 31 Duration of pre-authorisations

This clause provides that a pre-authorisation commences on the day it is granted (or a later day as specified in writing by the Minister) and remains in force for a period specified in writing by the Minister until it is cancelled or expires.

The CEO may extend this period in cases where a redevelopment approval period is also extended or where there are exceptional circumstances to warrant an extension.

Clause 32 Information must be given for pre-authorisations

This clause requires the CEO to provide pre-authorisation holders with certain information in respect of their pre-authorisation in writing including:

- their name; and
- a legal description of the land (where available) on which parking bays are to be authorised and location of those spaces; and
- any conditions imposed by the CEO or approved by the Minister; and
- the pre-authorisation commencement and expiry date; and
- any information prescribed in regulations

Division 4 — Applications for and grants of special purpose authorisations

Clause 33 Applications for special purpose authorisations

This clause sets out the process by which landowners in the parking management area may apply for parking on their land to be approved for a special purpose. This is to allow for parking to be permitted on land, such as temporary parking for special events or construction vehicles, without a requirement for the spaces to be licensed.

The application must be in a form approved by the CEO and accompanied by any prescribed information or documents, such as a parking management plan, and payment of any prescribed fee³. The application must also be authorised by the owner or joint owners of the land.

³ Currently no fee applies to applications for special purpose authorisations.

The CEO may notify the applicant if further information is required and may refuse to grant or consider an application where this is not provided within 15 business days or where the application is not in accordance with the Act.

Clause 34 Grant of special purpose parking authorisations by CEO

This clause provides for the CEO to grant temporary parking space authorisation to a landowner within the Perth parking management area when satisfied that the parking is for a special purpose, the proposed authorisation is consistent with the relevant parking policy and complies with any development approval that applies to the site on which parking is to occur.

Where the special purpose is a special event, the CEO must also be satisfied that travel demand cannot be met by alternative means such as increased public transport services or available parking nearby.

Clause 35 Conditions of special purpose space authorisations

This clause provides for special purpose authorisations to be subject to any prescribed or imposed conditions about the maximum number, type and location of parking spaces on the owner's land. Conditions may also restrict parking to particular types of vehicles or to vehicles parked in prescribed circumstances.

Clause 36 Duration of special purpose authorisations

This clause provides that a special purpose parking authorisation commences on the day it is granted (or a later day specified in writing by the CEO) and may be issued for a period specified in writing by the CEO for up to 30 days for special events or other special purposes or for a longer period as prescribed in regulations.

The authorisation is to remain in force until it is cancelled or expires.

Clause 37 Information must be given for special purpose parking authorisations

This clause requires the CEO to provide authorisation holders with certain information in respect of their pre-authorisation in writing including:

- their name; and
- a legal description of the land (where available) on which parking bays are to be authorised and location of those spaces; and
- any conditions imposed by the CEO or approved by the Minister; and
- the authorisation commencement and expiry date; and
- any information prescribed in regulations

Subclause (2) provides that where a special purpose authorisation is subject to conditions imposed by the CEO or Minister, written notice must include a statement that the holder may have a right to apply for a review of that decision as set out in Part 4 of the Bill.

Division 5 — Renewal of parking space licences

Clause 38 Renewal of parking space licences

This clause provides that the CEO may renew a parking space licence on payment of the relevant fee before the licence expires. In deciding to renew a licence the CEO may consider whether any false or misleading information has been provided by a licensee when applying or varying a licence and any failure on the part of a licensee to comply with an Act requirement or condition of their licence

Clause 39 Conditions of parking space licences on renewal

This clause provides for a licence for parking spaces to be subject to any prescribed or imposed conditions about the maximum number, type and location of parking spaces on the owner's land. Conditions may also restrict parking to particular types of vehicles or to vehicles parked in prescribed circumstances.

Clause 40 Duration of renewal of parking space licences on renewal

This clause provides that a licence can be renewed from the date immediately following the licence's expiry for a period prescribed in regulations as selected by the licensee.

Provision for the licensee to nominate the period for which a licence is to be renewed replaces the existing Act's provision for licence fees to be paid in instalments. This will help increase flexibility and choice for licensees when paying licence fees.

If no period is prescribed or selected by the licensee, it will expire on a date agreed in writing by the CEO and licence holder or on 30 June of the financial year for which the licence is renewed.

Unless suspended, a renewed licence remains in force until it expires or is cancelled.

Clause 41 Information must be given for renewal of parking space licences

This clause requires the CEO when renewing a licence to provide holders with certain information in respect of their licence in writing including:

- their name; and
- a legal description of the land (where available) on which parking bays are to be authorised and location of those spaces; and
- any conditions imposed by the CEO or approved by the Minister; and
- the licence commencement and expiry date; and
- any information prescribed in regulations

Subclause (2) provides that where a licence is subject to conditions imposed by the CEO or Minister, written notice must include a statement that the holder may have a right to apply for a review of that decision as set out in Part 4 of the Bill.

Division 6 — Varying parking space licences

Clause 42 Applications for varying parking space licences

This clause sets out the application process for a licensee to apply to vary their parking bay licence or conditions. Licensees may choose to vary their parking licence to de-license or re-license certain parking bays or change their use on a property according to changing circumstances and/or to reduce their liability for licence fees.

The application must be approved by the landowner, in a form approved by the CEO and may need to be accompanied by an updated parking management plan or other prescribed information and a non-refundable fee if applicable.

The CEO may notify the applicant if further information is required and may refuse to grant or consider an application where this is not provided within the specified timeframe (which cannot be less than 15 days) or where the application is not in accordance with the Act.

Clause 43 Varying parking space licences without approval from Minister

This clause provides that the CEO may approve a variation to a licence (other than a change to a condition of the licence that has been approved by the Minister under subclause 37(b) above) provided that:

- a new development approval is not required in relation to the variation (i.e. the variation will not change the type and/or numbers of parking bays that are permitted by the latest development approval for the site;
- any additional licence fees for the varied licence have been paid.

Where a previous parking space licence has been cancelled or suspended, the CEO must also be satisfied that the relevant licensee will comply with the Act's requirements and any conditions to which the licence is subject.

Licences may be varied in respect of the number and category of parking spaces under the licence and to change, add or remove conditions of the licence (that have not been imposed by the Minister).

A licence cannot be varied during a licence period if

- the licence has already been varied a maximum number of times during the licence period to be prescribed by the regulations (unless exceptional circumstances apply to justify the variation) or
- the licence is suspended; or
- the variation would change the number and/or type of parking bays in a way not permitted by the Perth parking policy (in force on the day on which the latest development approval is granted in respect of the site).
- the variation would not be in accordance with parking requirements set out in the latest development approval that applies to the site.

Providing for the regulations to restrict the number of times a licence can be varied within a licence period is a change from the existing Act. It is intended to ensure licensees do not continually vary their licence throughout the licence period in response to temporary and fluctuating circumstances such as use of city public parking facilities out of standard business hours. It will also ensure that the administrative burden associated with variations remains manageable.

Clause 44

Varying parking space licences with approval from Minister

Similar to clause 24 and clause 29, this clause provides for a licensee who makes an application for a licence variation that is not consistent with the parking policy to be referred to the Minister for approval.

Where the CEO receives these applications, subclause 44(2) provides that these may be referred to the Minister for Transport when

- considered suitable; and
- where the licence has not already been varied a maximum number of times during the licence period (as prescribed by the regulations) unless exceptional circumstances apply to justify the variation.

Matters to be considered when determining the suitability of an application are the same as those outlined above in subclause 24(2) and include:

- whether the number or types of parking spaces are appropriate in the specific circumstances; and
- the impact that the proposed parking will have on the area's traffic flow and transport network, pedestrians and cyclists and public transport

operations as well as the area's economic activity and urban amenity;
and

- availability of public transport close to the site; and
- whether infrastructure, facilities or services are to be provided which improve access to the area or its amenity for the benefit of land occupants or the public; and
- whether an owner has had a previous licence or pre-authorisation cancelled; and
- any other relevant matter.

The Minister may approve a licence variation when satisfied that an application addresses these and any other relevant matters.

Subclause 44 (4) provides that when a variation is approved by the Minister, this must be granted by the CEO on payment of any additional licence fees that apply.

Clause 45 Information must be given for variations of parking space licences

This clause requires the CEO to provide written notice to a holder when varying a licence which states how licence has been varied and that the licensee may have a right of review under Part 4 of the Act.

The regulations may prescribe other details to be provided by the CEO

Clause 46 Effect of variations

This section provides that a licence variation takes effect the day after the day on which written notice is provided to the licensee or on a day specified by the CEO in that notice.

Division 7 — Varying pre-authorisations

Clause 47 Applications for varying pre-authorisations

This clause sets out the process by which a pre-authorisation holder may apply to the CEO to vary a pre-authorisation or one more of its conditions with the approval of the Minister. This is to cater for pre-authorisations that are issued early in the development process and further planning changes, or development approval conditions may impact the pre-authorisation conditions.

This must be a form approved by the CEO and accompanied by any relevant information and non-refundable application fees that are prescribed in regulations.

The CEO may notify the applicant in writing if further information is required and may refuse to grant or consider an application where this is not provided within 15 days or where the application is not in accordance with the Act.

Clause 48 Varying pre-authorisations with approval from Minister

This clause provides for CEO to refer an application to vary a pre-authorisation to the Minister when considered suitable.

Matters to be considered when determining the suitability of an application are the same as those outlined above in subsection 24(2) and include:

- whether the number or types of parking spaces are appropriate in the specific circumstances; and
- the impact that the proposed parking will have on the area's traffic flow and transport network, pedestrians and cyclists and public transport

operations as well as the area's economic activity and urban amenity;
and

- availability of public transport close to the site; and
- whether infrastructure, facilities or services are to be provided which improve access to the area or its amenity for the benefit of land occupants or the public; and
- whether an owner has had a previous licence or pre-authorisation cancelled; and
- any other relevant matter.

The Minister may approve a pre-authorisation variation when satisfied that an application has regard for those matters and/or any other relevant matters.

Subclause (4) provides that variations may include changes to the number and category of parking spaces under the pre-authorisation or one or more of its conditions.

Subclause (5) provides that when a variation of a pre-authorisation is approved by the Minister, this must be granted by the CEO.

Clause 49 Information must be given for variations to pre-authorisations

This clause requires the CEO to provide written notice to a holder when varying a pre-authorisation which states how it has been varied.

The regulations may prescribe other details to be provided by the CEO

Clause 50 Effect of variations

This clause provides that the effect of a variation to a pre-authorisation commences on

- the day after the date at which the written notice is provided to the pre-authorisation holder; or
- a day specified by the CEO in the notice (which may be earlier than the date on which the decision is made to vary the preauthorisation but must not precede the date of the application for the variation).

Division 8 — Varying special purpose authorisations

Clause 51 Applications for varying special purpose authorisations

This clause sets out the process by which an authorisation holder may apply to the CEO to vary a special purpose authorisation or one or more of its conditions. This must be a form approved by the CEO, consistent with any planning approvals and the relevant parking management policy and accompanied by any relevant information and non-refundable application fees⁴ that are prescribed in regulations.

Clause 52 Varying special purpose authorisations by CEO

This clause provides for the CEO to grant a variation to a special purpose authorisation when satisfied that:

- it is in accordance with planning and development approvals; and
- it is necessary or convenient to give effect to a special purpose and
- (in the case of a special event) demand for parking cannot be accommodated by other means such as parking located elsewhere or by an increase in public transport services.

⁴ Current no fee applies to an application for a special purpose authorisation

Clause 53 Information must be given for special purpose authorisations

This clause requires the CEO to provide written notice to a special purpose holder when varying this authorisation which states how it has been varied and that the holder may have a right of review under Part 4 of the Act.

The regulations may prescribe other details to be provided by the CEO.

Clause 54 Effect of variations

This clause provides that the effect of a special purpose authorisation variation takes effect:

- the day after the date at which the written notice is provided to the authorisation holder; or
- a day specified by the CEO in the notice (which may be earlier than the date on which the decision is made to vary the authorisation but must not precede the date of the application for the variation).

Division 9 — Transferring parking space licences

Clause 55 Terms used

This clause defines

- a *new licence holder* as the licensee to which a licence has been transferred
- a *new owner* as the person who becomes registered as the proprietor of freehold land or as otherwise prescribed.

Clause 56 Application to transfer parking space licences

This clause sets out the process for a new owner to apply to transfer an existing licence into their name.

This must be

- done within 20 working days of the person becoming the new owner or for a longer period when exceptional circumstances apply as approved in writing by the CEO; and
- in a form approved by the CEO and
- accompanied by any relevant information and non-refundable application fees⁵ that are prescribed in regulations.

The CEO may notify the applicant if further information is required and may refuse to grant or consider an application where this is not provided within 20 working days or where the application is not in accordance with the Act.

Clause 57 Transferring parking space licences

This clause provides for the CEO to transfer a parking space licence to a new land or building owner within the Perth parking management area when satisfied that the new owner:

- will not breach the Act; and
- will comply with any conditions of the licence; and
- has paid any licence fees (if liable) commencing from the day on which they became the new owner.

Where the CEO decides not to transfer a licence, it is cancelled from the day of that decision.

⁵ Currently no fees apply to the transfer of a licence

Clause 58 Information must be given for transfer of parking space licences

This clause requires the CEO, on transfer of a licence, to provide the new licence holder with a written notice which states the

- new licensee's name; and
- legal description of land on which parking spaces are located (where available) and where the spaces are located on that land; and
- any condition imposed by the CEO or approved by the Minister
- the day on which the transfer date takes place.

The regulations may prescribe other details to be provided by the CEO.

Clause 59 Effect of transfer of parking space licences

This clause provides that the date of transfer takes effect of the day on which the new licence holder becomes the new owner.

From that date previous owner is no longer taken to be the licence holder or be liable for any licence fees on or after that day. The former licensee is also entitled to a refund of any licence fees that have been paid for the remaining period of the licence following its transfer or they can elect to transfer the amount to the new licence holder.

Division 10 — Suspending parking space approvals

Clause 60 Terms used: suspension order

This clause defines 'suspension order' as the meaning given in section 61(1).

Clause 61 Suspending parking space approvals

Subsection (1) of this clause provides for the CEO to suspend a parking space approval if:

- false or misleading information is provided by the approval holder in connection with the application for or transfer of a licence or other parking space approval; or
- the approval holder has failed to comply with an Act requirement or a condition of approval; or
- any fees for which the approval holder is liable have not been paid by the due date.

Under subsection (2), the CEO must not issue a suspension order before giving notice to the parking space approval holder at least 15 working days before the order is made (as per Clause 60) and considered any reasons received from that approval order or any other relevant matter as to why the suspension order should not be made.

Clause 62 Notice of proposed suspension

This clause provides for the CEO to give notice to a parking space approval holder that provides details of the grounds for suspension and allows the approval holder to provide written reasons why a suspension order should not be made within 15 days after the day the notice is given.

Clause 63 Period of suspensions

This clause provides that a suspension of a parking approval will begin on the day that the CEO provides written notice of their decision and ends

either on the day that the suspension is revoked or the day at which the parking space approval is cancelled or expires.

Clause 64 Effect of suspensions

This clause provides that a parking space approval is not in force while suspended and that it may be cancelled or expire. A suspended parking licence may be transferred as outlined in Division 9.

The approval holder is not liable for licence fees during the suspension period.

Clause 65 Revocation of suspensions

This clause provides for the CEO to revoke a suspension order at any time when satisfied that the grounds for making the order no longer exist or the licence is to be varied so that the approval holder will be compliant with the Act and any conditions associated with the approval.

The CEO is to provide written notice to the licence holder when revoking a suspension order and the revocation takes effect on either the day of this notice or a specified later date.

Division 11 — Cancelling parking space approvals and pre-authorisations

Clause 66 Cancelling parking space approvals

Subclause (1) of this clause provides for the CEO to cancel approval for one or more parking spaces when:

- false or misleading information is provided by the approval holder; or
- the approval holder has failed to comply with an Act requirement or a condition of approval;
- any fees for which the approval holder is liable have not been paid by the due date; or
- the land is subject to a development approval that affects parking on the land or subdivides the land; or
- a new owner of land within the parking management area has not applied to transfer the licence or whether the transfer of a licence to a new owner is not approved.

Under subclause (2), the CEO must not issue a cancellation order before giving notice to the parking space approval holder at least 15 working days before the order is made (as per Clause 67) and considered any reasons received from that approval order or any other relevant matter as to why the approval should not be cancelled.

Under subclause (3), the CEO must also cancel a parking space approval on the request of the approval holder.

Clause 67 Cancelling pre-authorisations

Subclause (1) of this clause provides for the CEO to cancel a pre-authorisation for one or more parking spaces when:

- false or misleading information is provided by the pre-authorisation holder in connection with their application for pre-authorisation; or
- the pre-authorisation holder has failed to comply with an Act requirement or a condition of pre-authorisation; or
- the land is subject to a development approval that is changed in such a way that affects parking on the land or has parking requirements which have not been complied with.

- a new owner of land within the parking management area has not applied to transfer the licence or whether the transfer of a licence to a new owner is not approved.

The CEO must give notice under Clause 68 to the pre-authorisation holder and consider any reasons provided or other relevant matter as to why the pre-authorisation should not be cancelled.

Under subclause (2), the CEO must also cancel a pre-authorisation on the request of the pre-authorisation holder or landowner.

Clause 68 Notice of proposed cancellation

This clause provides for the CEO to give notice to a parking space approval holder or pre-authorisation holder that provides details of the grounds for cancellation and allows the approval holder to provide written reasons why the approval or pre-authorisation should not be cancelled within 15 days after the day the notice is given.

Clause 69 Effect of cancellations

Subclause (1) of this clause provides that a parking space approval is cancelled from the day on which the CEO provides notice to the approval holder or on a later day as specified in the notice.

Under subclause (2), an approval holder whose approval is cancelled is entitled for a refund for any licence fees paid for any licence period remaining after the day at which the cancellation takes effect.

Division 12 — Licence fees for parking space licences

Clause 70 Licence fees

Subclause (1) of this clause provides that licensees are required to pay any fees that are prescribed in regulations in advance of the grant, variation, renewal or transfer of a licence.

Under subclause (2)(a) the regulations are to provide for licence fees to be calculated in relation to:

- the duration of the licence period; and
- The number of parking spaces under a licence; and
- different rates for different types of parking as specified on the licence; and
- types of parking under the licence or parking spaces in specified locations for which no fees are payable; and
- location of the parking spaces for which different rates apply to different locations

Subclause 68(2)(b) also allows for regulations to prescribe other ways for fees on any other basis.

Subsection 68(2)(c) provides that fees can include amounts greater than those necessary for cost recovery or contributions toward funding projects within the parking management area.

Clause 71 Exemptions from licence fees

Subclause (1) of this clause provides for the regulations to prescribe a category of parking spaces that are to be exempt from licence fees when this is justified by exceptional circumstances.

This is a change to the existing Act to provide for circumstances that significantly impact licensees and their commercial activities such as public health emergencies, flooding, bushfires or other emergencies.

Subclause (2) also allows for an exemption from fees for up to three years some property owners to encourage new development in certain parts of the Perth central area.

Exemptions may be subject to certain conditions and a period must be specified for which it applies.

Providing for exemptions from licence fees does not limit the power of regulations to prescribe other nil fees for certain categories of parking bays as currently occurs in relation to bays that are generally used for non-commuting purposes such as loading, servicing and emergency vehicle bays or for facilities with five or less licensed bays.

Division 12 — Notice of decisions

Clause 72 Notice of decisions

Subclause (1) of this clause provides that the CEO must give written notice to an applicant, licensee or approval holder of any decision by the CEO or Minister to

- refuse the grant, variation, renewal or transfer of a parking space licence; and
- refuse the grant or variation of a pre-authorisation or special purpose authorisation
- refuse to consider (or consider further) an application for a licence, pre-authorisation, special purpose authorisation or variation
- refuse to refer an application for the grant or variation of a parking space licence to the Minister for approval; and
- refuse to refer an application for the grant or variation of a pre-authorisation to the Minister for approval; and
- suspend or cancel a parking space approval
- cancel or vary a pre-authorisation or parking space authorisation

The written notice must state the reasons for the decisions when the decision is also a reviewable decision and (if applicable) that the person may have a right to a review under Part 4.

Division 14 — Parking space register

Clause 73 Parking space register

Subclause (1) of this clause provides for the CEO to establish and maintain a register of parking space approvals, pre-authorisation or other prescribed matters.

This is a change to the existing Act which is required to better provide for evidence of licence status in cases where prosecutions are pursued for ongoing breaches of the Act.

Subclause (2) provides that the form and content of this register as well as how access and requests for information are permitted to be prescribed in regulations.

Division 15 — False or misleading information

Clause 74 False or misleading information

This clause provides that it is an offence for a person to provide false or misleading information in respect of parking space approvals and pre-authorisations (Part 3 of the Act) with a penalty of up to \$10,000 to apply.

PART 4 — REVIEW OF DECISIONS

Clause 75 Terms used

This clause determines that a 'review applicant' and 'review period' have the respective meanings provided in clause 76.

Clause 76 Application to State Administrative Tribunal for review

This clause outlines the persons (review applicant) and reviewable decisions that can be referred to the State Administrative Tribunal (SAT) for review within 20 business days (review period) after the person is provided notice of the decision.

Persons who can apply to SAT for a review of decisions of the CEO include:

- any person who is refused the grant, renewal, or transfer of a parking space licence; and
- any licensee who is refused the grant or variation of a licence or it is varied in a way not applied for; and
- any person who is refused the grant or variation of a special purpose authorisation or where the authorisation is not varied as applied for; and
- a licensee or authorisation holder who has had one or more conditions imposed on their licence or special purpose authorisation; and
- an approval holder who has had their parking space approval suspended; and
- an approval holder (or former approval holder) who has had their parking space approval cancelled

However, decisions of the Minister are not reviewable (including related decisions of the CEO to refer or not refer a decision to the Minister).

Subclause (2) provides that this application must be made within 20 days of the date at which the person is notified of that decision.

Clause 77 Extension of time to apply for review of reviewable decision by certain review applicants

Subclause (2) of clause 77 allows an extended time for the applicant to apply to SAT to have SAT review an earlier reviewable decision of up to 40 business days after being notified of a non-reviewable decision.

This is intended to cover cases where the applicant has not applied SAT to review an earlier reviewable decision, due to the possibility that they were waiting on a non-reviewable decision to be made instead.

Relevant decisions to which this extended time frame would apply include a refusal to grant or vary a licence in a way that would be consistent with the parking policy or where pre-authorisation is in force, in cases involving later or subsequent non-reviewable decisions such as

- The CEO's refusal to refer an application for a grant or variation of a licence that would be inconsistent with the Perth parking policy to the Minister for approval under section 24(2) or section 44(2)

- The Minister's refusal to approve the grant of a licence under section 24(3) or variation of a licence under section 44(4);
- The CEO's refusal to grant or vary a licence that has been approved by the Minister under sections 24(6) or 44(8).

PART 5 — ENFORCEMENT

Division 1 – Authorised officers

Clause 78 Authorised officers

Authorised officers will be responsible for the enforcement of the provisions of this Bill. Persons designated by the CEO as authorised officers will perform a dedicated enforcement role.

Clause 78(1) clarifies that the persons the CEO may designate as authorised officers are to be persons employed or engaged by the Department of Transport.

Clause 78(2) requires the CEO to ensure that each person whom the CEO designates as an authorised officer is issued with an identity card in a form approved by the CEO which displays the authorised officer's name and identifies the person as an authorised officer. Clause 78(3) provides for the CEO may approve the form of the identity card.

Clause 78(4) will provide that, in any legal proceedings, such as a prosecution, the card constitutes proof that the person to whom it was issued is the authorised officer designated by the CEO (unless another person tenders evidence that proves otherwise).

Division 2 — General powers

Clause 79 Term used: relevant person

This clause defines the term 'relevant person' being a person who is or appears to be the owner or relevant occupier of land in the parking management area or a person who is or was or appears to be an approval holder or pre-authorisation holder.

Clause 80 Purposes for which powers of authorised officers may be exercised

This clause sets out the powers an authorised officer may exercise to:

- monitor compliance with this Bill,
- investigate a suspected failure to comply with this Bill, and
- to investigate whether there are grounds for suspending or cancelling a parking space approval or pre-authorisation granted under this Bill.

Clause 81 Directions to relevant persons and related matters

In the context of an authorised officer's general powers in section 80, authorised officers will have the power to direct a relevant person to:

- to provide any information required including their name, residential address and date of birth; and
- answer a question put to them; and
- produce a document or record that the person is capable of producing.

Authorised officers are empowered to seize, inspect, make a copy, take an extract, download or print out such a document or record and retain it for as long as is reasonably necessary (clause 81(c) and (d)).

Clause 82 Inspection of premises and powers in relation to vehicles

This clause provides an authorised officer with powers of entry and search, and related powers, where these powers are necessary for the purposes set out in Clause 80.

On entering premises, clause 82(1) empowers an authorised officer to:

- search the premises; and
- inspect a vehicle parked at the premises; and
- direct any person in charge of or within a vehicle parking on to premises to answer questions, provide any information required including their name and date of birth and produce any document or record in that person's possession or control; and
- make a still or moving image or recording of the premises and anything in or on the premises; and
- make a copy of, take an extract from, download or print any document or record found on the premises; and
- seize a document, or make a record that the authorised officer can retain for as long as is reasonably necessary; and,
- direct the occupier of the premises, or another person at the premises, to give the authorised officer any assistance that the authorised officer reasonably requires.

The powers under clause 82(1) will allow the authorised officer to download CCTV images or download receipts for parking tickets. Under (f) the authorised officer may require assistance from the occupier in relation to unlocking any part of the premises such as access to lifts, computers or file cabinets.

Clause 82(2) will ensure that entry to a premises where part of the premises is a dwelling can only be made to gain entry to parking spaces where a vehicle is or may be parked. Inspection and search powers can only be exercised in relation to the part of the premises that is a dwelling to the extent necessary to exercise powers in relation to the remainder of the premises.

Clause 82(3) will ensure that these powers may only be exercised if the occupier of the premises consents to the entry or, if the occupier does not consent, under an entry warrant obtained pursuant to Division 3 of this Part.

Consent of the owner of the premises that is not, or does not form part of, a dwelling is not required for the authorised officer to carry out the inspection and search powers.

The powers provided by this clause will only be exercisable in respect of premises occupied by a relevant person. 'Relevant person' is defined in clause 79 above.

Clause 83 Requirement to comply with directions

This clause provides that where a person is directed to give any information, answer any question or produce any document or record (under clauses 81, or 82) they cannot refuse to comply with these directions on the grounds that the information, answer, document or record may tend to incriminate the person or make them liable for any penalty.

However, where that person is an individual, clause 83(b) provides that any information or answer given, or document or record produced, by the person is not admissible as evidence in any criminal proceedings against the person (other than proceedings for providing false or misleading

information). This preserves the common law privilege against self-incrimination, but only where the person is an individual.

Clause 84 Assistance to exercise powers

This clause will allow authorised officers to authorise third parties to provide assistance. Examples could include a computer expert or expert to assist to access and download data or footage on computer hard drives or CCTV.

Pursuant to clause 84(5), a person who assists an authorised officer in accordance with this clause will have the benefit of any enactment that protects an authorised officer or the State from liability for the person's acts or omissions as though those acts or omissions included the acts or omissions of the person assisting, when acting under this clause.

Clause 85 Offences

Clause 85 sets out the offences for non-compliance with enforcement activities.

Clause 85(1) provides that it constitutes an offence for a person to fail to obey a direction given by authorised officer under Part 5. The maximum penalty that a court may impose for such an offence is \$10,000.

Clause 85(2) provides that it constitutes an offence for a person to interfere or seek to obstruct an authorised officer who is performing, or trying to perform, an enforcement function under this Part. The maximum penalty that a court may impose for such an offence is \$10,000.

Clause 85(3) provides that it constitutes an offence for a person to provide false information to, or wilfully mislead, an authorised officer exercising a function under this Part. The maximum penalty that a court may impose for such an offence is \$10,000.

Clause 85(4) provides that it constitutes an offence for a person to fail to assist an authorised officer in exercising a function under this Part when required to do so.

The maximum penalty that a court may impose for such an offence is \$10,000.

Division 3 — Entry warrants

This division sets out how entry warrants are to be applied for and their effect.

The provisions of this Bill relating to entry warrants replicate provisions in the *Criminal Investigation Act 2006* Part 5 Division 3 relating to search warrants. The powers of a police officer or a public officer relating to search warrants under that Act are not available to persons who are designated by the CEO as authorised officers responsible for the enforcement of the provisions of this Bill.

Clause 86 Terms used

This clause defines 'remote communication' to mean any way of communicating at a distance including by telephone, fax, email and radio. This definition applies to the use of this term in this Division.

Clause 86(2) clarifies that any reference to making an application in this Division includes a reference to giving information in support of the application.

Clause 87 Applications for entry warrant

This clause enables an application to be made to a magistrate for an entry warrant authorising entry of premises where necessary for the purposes set out in clause 80.

The application must be made in accordance with this Division and must include any other information that is prescribed information.

Clause 88 Application to be in person unless urgent

This clause requires an applicant for an entry warrant to make the application in person before a Magistrate, unless there is an urgent need for the entry warrant and the applicant reasonably suspects that there is no Magistrate available within a reasonable distance of the applicant.

If this is the case, subclause (2) permits an authorised officer to make an application for an entry warrant to a Magistrate via remote communication, which, under subclause (1), may include the use of a telephone, fax, email or radio communication.

Clause 89 Application to be in writing unless made remotely

This clause requires an application for an entry warrant to be made in writing, unless the application is being made via remote communication and it is not practicable to send written material to the Magistrate to whom the application is being made.

If this is the case, then subclause (2) empowers the authorised officer to make the application for the entry warrant orally. In such a case, this requires the Magistrate to whom the application is made to make a written record of the application, as well as any information the authorised officer provides orally in support of the application.

Clause 90 Application must be on oath unless made remotely

This clause requires an application to be made on oath when applying for an entry warrant. The *Interpretation Act 1984* provides that an oath means an oath or affirmation taken or made in accordance with the *Oaths, Affidavits and Statutory Declarations Act 2005*. This reflects the gravity of the request to enter private premises without the consent of the occupier of those premises.

Subclause (1) specifies that it is not necessary for the applicant to swear an oath when making a remote communication application where it is impracticable for the Magistrate to whom the application is being made to administer an oath.

If this is the case, subclause (2) permits an application to be made without the applicant swearing an oath. Following the issue of the entry warrant the applicant must then, as soon as practical, send to the Magistrate an affidavit that verifies the application and any supporting information.

Clause 91 Form of entry warrant made remotely

This clause sets out the procedure if a Magistrate issues an entry warrant, applied for via remote communication. In these cases, the Magistrate to must send a copy of the warrant to the applicant by remote communication (for example, by email or fax), where this is practical.

If not practical, the Magistrate is to send the applicant, by remote communication, any information that must be set out in the warrant. Applicants must then transcribe this information into a form devised by the applicant and provide the Magistrate with a copy as soon as possible.

The Magistrate then attaches a copy of that form to the original warrant, together with any affidavit provided under clause 90(2), where it is not

possible for the applicant to swear an oath when making the application and makes these documents available for the applicant to collect.

Clause 91(2) provides that a copy of the original warrant, or warrant made remotely will have the same force and effect as the original warrant issued by the Magistrate.

Clause 92 Evidence obtained inadmissible if section 90(2)(b) or 91(1)(b) contravened

This clause provides that any evidence obtained by the authorised officer under the entry warrant is not admissible in proceedings in court or in the State Administrative Tribunal if the applicant for the warrant does not:

- send the Magistrate an affidavit where the application was made via remote communication and it was not practicable for the applicant to swear an oath (clause 90(2)(b)); or
- provide the Magistrate with a copy of the form of warrant completed by the applicant, containing information provided by the Magistrate via remote communication, where it was not practicable for the Magistrate to send the applicant a copy of the original warrant by remote communication (clause 91(1)(b)).

Clause 93 Issue and content of entry warrant

Subclause (1) empowers a Magistrate to issue an entry warrant to an authorised officer, who has applied for one under clause 87, if satisfied that an authorised officer needs to enter a premises for the purposes set out in clause 80.

Clause 93(2) sets out that an entry warrant must contain:

- the applicant's full name and authorisation (93(2)(a)); and
- a description of the premises to which it relates (93(2)(b)); and
- a description of the purposes for which entry to the place is required (93(2)(c)); and
- details of the relevant provision or provisions of the Bill, if entry is required because it is suspected that there has been a breach of those provisions (93(2)(d)); and
- the period of validity of the entry warrant, which cannot be longer than 30 days following the date of issue of the entry warrant (93(2)(e)); and
- the name of the Magistrate who issued it (93(2)(f)); and,
- the date and time the entry warrant was issued by the Magistrate (93(2)(g)).

Under clause 93(3), an entry warrant is to be in the form prescribed in regulation for this purpose.

Clause 93(4) provides that, if a Magistrate refuses an application made by an authorised officer for the issue of an entry warrant, the Magistrate must make record the reasons and time of the refusal.

Clause 94 Effect of entry warrant

This clause provides that an entry warrant will have effect in accordance with its content, and in accordance with this section and comes into force immediately once issued by a Magistrate.

Clause 94(3) clarifies that an entry warrant issued by a Magistrate may be executed by any authorised officer for the purposes of this Bill.

Division 4 — Obtaining business records

This division sets out how business records may be obtained for the purposes of this Part. The provisions of this division relating to obtaining business records replicate provisions in the Criminal Investigation Act 2006 Part 6 pertaining to obtaining business records.

Clause 95 Terms used

This clause defines the terms used in this Division.

Business is taken to mean any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling.

Business record means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business.

Order to produce means an order issued under clause 99(1).

Clause 96 Application of Division

Clause 96 provides that an order to produce cannot be issued to a person in relation to a business record that does, or may, relate to an offence that the person is suspected of having committed.

The intent of this Clause 96(1) is to ensure that an order to produce a business record is not used to obtain evidence from suspects as an alternative to a search warrant. Clause 96(2) provides that an authorised officer is not prevented from applying for an entry warrant in relation to a business record, whether before or after an issue of an order to produce.

Clause 97 Application for order to produce

Clause 97(1) provides that an authorised officer may apply for an order to produce a business record

- when seeking to investigate a suspected contravention of a provision in this Bill; or to
- investigate suspected grounds for suspending or cancelling an authorisation granted under this Bill.

Clause 97(2) provides that the application must be made to a Magistrate in accordance with Division 3 (entry warrants), with any necessary changes relevant applications of that Division to apply to orders to produce business records.

This means that the provisions of Division 3 dealing with remote applications or those made in urgent circumstances also apply to this Division.

Clause 97(3) sets out the information that must be included on an order to produce which must:

- specify the applicant's full name and authorisation; and
- state the purposes for which the order is required; and
- set out prescribed information, if any; and
- state the name of the person to whom the requested order will apply; and
- state that the person is not suspected of having committed an offence; and
- describe the business record or class of business record that the applicant wants the person to produce; and
- state the reason the applicant reasonably believes the business record or class of business record is relevant to the investigation; and
- state whether the original or a copy of the business record or class of business record is required.

Clause 98 Issue of order to produce

Clause 98(1) empowers a Magistrate to issue an order to produce a business record to an authorised officer who has applied for under Clause 97 when satisfied that there are reasonable grounds for the authorised officer to suspect

- a breach of the Bill; or
- that grounds exist for suspending or cancelling a parking space approval or pre-authorisation granted under this Bill.

An order to produce issued by a Magistrate is to be served on the person to whom it applies. Clause 98(2) sets out that the order must contain: and

- the applicant's full name and authorisation; and
- the name of the person to whom the order applies; and
- a description of the business record or class of business record to be produced; and
- an order that the person is required to produce the record or records; and

- whether the original or a copy of the record or records is required, and the form they are to be in (paper, electronic or other version); and
- the place where the record or records are to be produced; and
- the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order; and
- the name of the Magistrate who issued it; and
- the date and time it was issued.

Under clause 98(3), an order to produce must be in the form prescribed in regulation for this purpose.

Clause 98(4) provides that, if a Magistrate refuses an application made by an authorised officer for the issue of an order to produce, the reasons and date and time of the refusal must be recorded.

Clause 99 Service of order to produce

This clause provides that an order to produce is to be served as soon as is practicable after it is issued and may be served either personally, by post or, with the consent of the person to which it relates, by fax or email.

Clause 100 Effect of order to produce

Subclause (1) of this clause provides that an order to produce will have effect according to its contents.

Subclause (2) provides that it constitutes an offence for a person to disobey an order to produce a business record without lawful excuse. The maximum penalty that a court may impose for such an offence is \$10,000.

Clause 101 Powers in relation to order to produce

This clause allows for a business record that has been produced to be retained for a reasonable time to determine its evidentiary value. Further, if necessary to preserve the evidentiary value of the document or to subject it to forensic analysis, an authorised officer may seize, forensically examine, and make and retain a copy of a business record produced pursuant to an order.

Subclause (3) also precludes any action in contract or tort against a person complying with an order.

Division 5 — Seizing things and related matters

The provisions of this Bill relating to seizing things and related matters are based on provisions in the *Criminal Investigation Act 2006* Part 13 pertaining to seizing things and related matters.

Subdivision 1 — Seizing of things

Clause 102 Application

This clause provides that this subdivision of the Bill applies to and in relation to any seizures of a thing under this Part of the Bill.

Clause 103 Grounds for seizing things

Part 5 empowers an authorised officer to seize a thing when they reasonably suspect that this is necessary to prevent it from being concealed, disturbed or lost, to preserve its evidentiary value, to subject it to forensic analysis; or, to prevent it from being used in the commission of an offence.

Clause 104 Copying records

Clause 104(1) provides that where an authorised officer may seize a record, the officer may instead reproduce the record if practicable, and seize the reproduction.

This clause provides the example of a record on a computer, which could be reproduced by printing it out on paper or copying it to a data storage device and the paper or data storage device could then be seized.

Pursuant to clause 104(2), an authorised officer may also copy or take extracts from a record that has already been seized.

Clause 104(3) also provides that if a person who appears entitled to possession of a seized record, and who does not already have a copy of it, requests, the authorised officer must:

- give a copy of the record to the person as soon as practicable after it is seized, where it is practicable to do so; or
- allow the person to have access to the record to inspect it and make and keep a copy of it, unless the officer suspects that this would jeopardise the evidentiary value of the record.

Clause 104(4) defines ‘relevant person’ for the purposes of 103(3), as a person who appears entitled to possession of the record and who does not already have a copy of the record.

Clause 104(1) provides that where an authorised officer may seize a record, the officer may instead reproduce the record if practicable, and seize the reproduction.

Clause 105 Seizing of devices and equipment

This clause provides that if a record may be seized, any device or equipment needed to gain access to, recover or reproduce the information in the record may also be seized.

Clause 106 Powers to facilitate seizing of records

Clause 106(1) provides that an authorised officer may exercise powers under this section for the purposes of seizing a record or exercising a power to reproduce a record or copy or take extracts from a seized record as set out in Clause 104.

Clause 106(2) empowers an authorised officer to operate any device or equipment possessed by the person from whom the record is seized where required to gain access to, recover or reproduce a record, regardless of whether the device or equipment has been seized under clause 105.

Clause 106(3) provides that if an authorised officer reasonably suspects that the person from whom a record may be seized, or an employee of that person, knows how to access to or to operate a device or equipment that is required to gain access to, recover or reproduce a record, the officer may direct the relevant person to assist.

If subject to a direction under this clause, the relevant person is required to provide any information or assistance that is reasonably necessary to enable the authorised officer to seize the record or exercise the relevant power. For example, the person may be directed to provide a password or a decryption code for a computer. Failure to obey such a direction would be an offence under clause 87(1).

Clause 106(4) defines ‘relevant person’ for the purposes of 107(3), to mean the person from whom the record may be seized, or an employee (whether under a contract of service or contract for services) of that person.

Clause 107 List of seized things to be supplied on request

Where an authorised officer has seized any thing, this clause provides for

- the person who had control or possession of the thing before seizure, or
- the occupier of the premises where the thing was seized, upon request.

to request an authorised officer to provide a list of those things (which must be provided within a reasonable time following that requests).

Clause 107(3) permits the authorised officer to give a general description of all the things seized, where not practical to list everything seized because they are too numerous.

Under clause 107(2), an authorised officer may copy or take extracts from the record.

Under clause 107(3) when a relevant person requests for a copy of the seized record, an authorised person must provide this as soon as practicable after it is seized unless the officer suspects this might jeopardise its evidentiary value.

Subdivision 2 — Procedure on seizure or production of privileged material

Clause 108 Terms used

This clause defines some terms used in this subdivision of the Bill:

Court means the Magistrates Court.

Privileged means either a legal professional privilege or a public interest privilege, or both.

Clause 109 Seizure or production of privileged material

This clause provides for when the procedure set out in this Subdivision for dealing with information that may be subject to legal professional privilege or public interest privilege applies.

The procedure applies in respect of records that are seized under this Part, and records produced pursuant to an order to produce a business record issued under clause 99, if privilege is claimed by any person entitled to the record, or if an authorised officer suspects that all or some of the information in the record is privileged.

Clause 110 Record to be secured

If a record is seized or produced under this Part, it must be secured in a way that prevents it from being concealed, disturbed, or lost, preserves its evidentiary value, and prevents access to the information by any person not entitled to the information if it were privileged.

Clause 111 Application to court

Clause 110(1) provides that the authorised officer in charge of the investigation relevant to the seizure or production of the record must apply to the Magistrates Court to determine whether the information is privileged. The authorised officer must deliver the record into the custody of the court.

Under 1110(2), an application must be made in accordance with the rules of court and served on the person entitled to possession of the record or,

where the identity or whereabouts of the person is unknown, on any person directed by the court to be served.

Clause 1110(3) provides that, if the court thinks fit, the application may be heard in private.

Clause 1110(4) provides the authorised officer and any person entitled to possession of the record may make submissions to the court

Clause 112 Decision of court

Notwithstanding that a record may be privileged, clause 112(1) provides that for the purpose of deciding the application the court may have access to all of the information in the record.

If the court decides that the record is not privileged, it must order that the record be available to the authorised officer who made the application (clause 112(2)).

If the court decides that the record is privileged, it must make the record available to be collected by the person from whom it was seized (clause 112(3)).

If the court decides that some of the information in the record is privileged, it must make orders to enable the authorised officer who made the application to have access to the information that is not privileged (clause 112(4)).

Clause 113 Forensic examination on record

Clause 113 applies if the court decides under clause 110 that all or some of the information is privileged and that the authorised officer has applied to be permitted to do a forensic examination of the record.

In these circumstances, the court must make orders to allow a forensic examination to be done on the record and to ensure that the privileged material remains privileged.

Clause 114 Ancillary orders

After arriving at a decision under clause 110 as to whether some or all of the information in a record is privileged, the court may make any orders it thinks fit as to costs and as to securing the record or suspending the operation of any orders made under this clause, until an appeal against the determination is dealt with.

Clause 115 Proceedings part of criminal jurisdiction

This clause provides that proceedings under this subdivision of the Bill are part of the court's criminal jurisdiction. This confers jurisdiction on the Magistrate's Court to hear and determine applications under this Subdivision as a part of the Court's criminal jurisdiction.

Clause 116 Appeals

This clause provides that a decision of the court under this subdivision may be appealed in accordance with Part 2 of the *Criminal Appeals Act 2004*.

Subdivision 3 — Return or disposal of seized things

Clause 117 Return or disposal of seized things

This clause deals with the return or disposal of seized things.

Clause 117(1) provides that the CEO may authorise the return of any thing seized under this Part of the Bill to the owner or person entitled to its possession, or the person from whom the thing was seized.

Clause 117(2) provides that the CEO may dispose of a thing seized under this Part if the CEO has taken all reasonable steps to return the item to the person and

- has been unable to locate the person; or
- the person has refused to take possession of the item or,
- the person has not collected the item within one month of having been contacted about its return.

The length of time between contacting a relevant person about return of an item and the disposal of the item by the CEO, accords with section 18(2) of the *Criminal and Found Property Disposal Act 2006*. That Act permits one month for collection of property before a person is no longer entitled to it and the CEO may dispose of it.

Clause 117(3) permits the CEO to dispose of the item in any manner considered appropriate.

Clause 117(4) permits sale proceeds sold under subclause (3) to be credited to the PM area Account.

Division 6 — Prosecution for offences

Clause 118 When prosecution can be commenced

Clause 118 specifies that a prosecution of a person for an offence under the provisions of this Bill must begin within two years after the day on which the offence was allegedly committed.

Compliance functions to support prosecutions under the Bill will include gathering and evaluation of evidence. This can take some time, particularly in the case of complex strata ownership structures.

Division 7 — Evidentiary provisions

Clause 119 Evidentiary certificates

Under clause 119(1) a certificate may be issued for a prosecution for an offence under any written law, or any legal proceedings under the provisions of this Bill.

Clauses 119(2) and (3) permit the CEO to issue a certificate stating any of the following, which, in the absence of evidence to the contrary, is evidence of proof of any fact stated in the certificate:

- that on a specified date or during a specified period a person held, or did not hold a parking space approval; and
- that on a specified date a parking space approval was, or was not granted, renewed, varied, suspended or cancelled; and
- that on a specified date during a specified period a parking space approval was subject to certain conditions; and
- that a specified document was or was not lodged, or a specified fee was or was not paid, by a specified person

Clause 120 Proof of certain matters not required in legal proceedings

Clause 120 provides that, in absence of evidence to the contrary, proof is not required in any proceeding for a prosecution to commence for an offence under this Bill.

Clause 121 Proof of appointments and signatures unnecessary

Clause 121(1) stipulates that for the purposes of this Bill it is not necessary to prove the appointment or authorisation by the CEO of an authorised officer.

Clause 78(4) provides that, in any proceedings, production of the authorised officer's identity card is evidence that the person is a designated authorised officer. Clause 121(3) provides that for the purposes of the Bill a signature purporting to be the signature of the CEO, is (in the absence of evidence to the contrary) evidence of the signature it purports to be.

Division 8 — Infringement notices and the *Criminal Procedure Act 2004*

Clause 122 Infringement notices and the *Criminal Procedure Act 2004*

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 Bill will be known as the *Perth Parking Management Act 2023* when it is passed by Parliament and receives Royal Assent.

Clause 122(1) provides that if the *Perth Parking Management Act 2023* 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 of Part 2 applies. However, under clause 123(3) sections 11- 13 of the *Criminal Procedure Act 2004* do not apply to an alleged offence under this act.

Clause 122(2) provides that an infringement notice issued for an offence against this Bill must be served within 6 months after the alleged offence is believed to have been committed. Some investigations require additional time to obtain sufficient evidence to support the allegation of the offence.

Clause 122(3) provides Sections 11 to 13 of the *Criminal Procedure Act 2004* do not apply to an alleged offence under this Act. The powers and duties in sections 11 to 13 either cover similar powers and duties provided in this Bill or are not relevant in the context of the *Perth Parking Management Act 2023*.

Clause 122(4) provides that the *Criminal Procedure Act 2004* Part 2 is modified to the extent necessary to give effect to this section.

PART 6 — PM AREA ACCOUNT

This Part establishes a parking management (PM) area account and governs expenditure of licence fee revenue.

Clause 123 Terms used

This clause provides definitions of key terms relevant to expenditure of licence fee revenue as follows:

Fundable projects are projects within the parking management (PM) area that include

- transport and accessibility initiatives that promote a sustainable balance between different modes of transport; and
- other infrastructure or services that improve economic activity or urban amenity; and

- traffic management

Infrastructure, projects or services outside the PM area that are declared to be ancillary (under section 124) may also be funded from licence fee revenue.

Clause 124 Ancillary areas

This clause provides for the Minister to declare by written notice an area outside but contiguous to the PM area to be an ancillary area for the purposes of funding infrastructure or services that are necessary and convenient to complete other infrastructure, projects or services funded from the levy and that are for the benefit of the PM area. An example of this includes the section of the Green CAT bus services which extends for a short period of its route outside the PM area into Leederville. Currently this section of the route cannot be funded by the levy.

Clause 125 Infrastructure, projects or services

This clause clarifies that infrastructure, projects or services include both the capital costs of establishing an initiative as well as its ongoing operational costs, such as maintenance and administration.

Clause 126 PM Area Account

This clause establishes the PM area account as a special purpose account into which all money collected through licence and other fees, infringements and any other amounts lawfully received must be paid.

Subclause (3) provides for the fund to be used for all costs associated with administering and enforcing the Act, refunds where applicable and, with the approval of the Minister, one or more fundable projects as defined above in clause 123.

Subclause (4) provides that without limiting s61 of the *Financial Management Act 2006*, the annual report prepared by the department as required by that Act must contain information about the operation of the PM Area Account.

Subclause (5) provides that if money standing to the credit of the PM Area Account was applied during a financial year, the annual report for the financial year must include details of how the money was applied.

Clause 127 Approval by Minister for payments from PM Area Account

This clause provides that the Minister may approve funding from the PM area account for a fundable project either within the PM area or an ancillary area as declared in Clause 124.

Before approving the funding, the Minister must be satisfied that consultation has occurred with all local government authorities in which the project is to be implemented.

PART 7 — REGULATIONS AND PARKING POLICY

Division 1 — Regulations

Clause 128 Regulations

This clause provides for regulations to be made to prescribe matters that are

- required or permitted by the Act; or
- necessary or convenient to give effect to the Act's purpose.

All fees payable under the Act (which are to include amounts such as licence fees that are greater than necessary for cost recovery or are required to contribute to fundable projects under Part 6 of the Act)

- Dealing with refunds or overpayment of fees; and
- Providing that a contravention of a regulation is an offence and for modified penalties (that do not exceed the maximum penalty of \$20,000) ; and
- Providing for information required under the Act may be required to be verified by statutory declaration; and
- conditions of parking space approvals and pre-authorisations.
- Review of decisions by SAT; and
- Changes to the boundary of the parking management area.

Regulations may also adopt the text of the Perth parking policy

Division 2 — Parking policy

This Division provides for the parking policy (known under the existing Act as the Perth Parking Policy) to apply to the management of parking within the PM area. The Policy is the key instrument under the legislative regime that mitigates the growth of excessive non-residential parking and associated traffic congestion in central Perth.

Clause 129 Parking policy

Subclause (1) defines a contributing local government as each local government area in which there are contributing parking space licences i.e. contains parking bays where fees are payable.

Subclause (2) provides for the Minister to approve the parking policy for managing parking bays and their use within the PM area.

Subclause (3) provides that a reference under the Act to the parking policy is either a specified version of the policy (such as the parking policy in place when a relevant development approval was granted) or the policy as in force from time to time.

Subclause (4) provides for the parking policy can provide for:

- Principles and criteria for assessing licence applications
- Restrictions and allowances on provision of parking bays, including bays of different types under, under a parking space approval or pre-authorisation;
- Information or documents to be provided with an application for a licence;
- Use and management for different types of parking bays
- Different provisions for parking spaces in different locations.

Before approving the policy, subsection (5) requires the Minister to consult with the Minister for the Environment and Minister for Planning as well as all local government authorities within the PM area where fee-liable bays are located.

Subclause (6) requires the parking policy to be made publicly available on the Department of Transport's website.

Subclause (7) provides for the parking policy to commence on the day it is posted to the website or a later day specified by the policy.

Subclause (8) provides that the policy is not subsidiary legislation for the purposes of the Interpretation Act however is subject to general provisions

in that Act concerning the powers to make subsidiary legislation and its wording. It is also subject to Part 8 of that Act which contains provisions regarding time and distance.

PART 8 — MISCELLANEOUS

Division 1 — Delegation

Clause 130 Delegation

This Clause provides for the CEO to delegate their powers or functions under the Act.

Division 2 – Agreements for performance of functions

Clauses 131 CEO may enter into agreements for performance of functions

Under this Bill the CEO will be the authority responsible for most aspects of the regulation of the policy and the Perth parking licensing scheme.

The CEO may exercise powers and duties conferred on the CEO under this Bill themselves, or pursuant to this clause if it is determined that it is appropriate for another person to exercise some of those powers or to perform some of those duties, and to delegate those powers or duties accordingly.

Under the current Act s24(3) the Minister may enter into an agreement on recommendation of the CEO to carry out functions of the CEO under the Act. Currently there is such an arrangement signed between the Minister and the Minister for Finance where Revenue WA, a business unit of the Department Finance, carries out various CEO functions under the Act.

Clause 131(1) defines ‘responsible minister’ as the term is used in subclause (3) where the agreement may be approved by the responsible Minister administering the *Taxation Administration Act 2003* or another responsible Minister assisting in the administration of an Act prescribed for this purpose under clause 132(3).

Clause 131(2) permits the CEO, with the Minister’s approval, to enter into an agreement for the CEO’s functions under the Bill to be performed on behalf of the CEO. It is appropriate that the CEO be able to enter into an agreement with the person or body with the oversight of the Minister, in terms of Ministerial approval.

Clause 131(4) permits the CEO to stipulate, in such an agreement, how functions are to be performed and to set out the terms and conditions which apply to that agreement.

Clause 131(5) provides that where a person or body performing a function under an agreement which is dependent on the CEO’s opinion or belief, they may exercise their own opinion or belief to perform that function (or another person provided for in the agreement).

Clause 131(6) specifies that the effect of a function being performed by an agent pursuant to an agreement is no different than the effect of that same function being performed by the CEO.

Division 3 — Confidentiality and information sharing

Clause 132 Confidentiality

This Bill requires people to share certain information with the CEO in the administration of the parking licensing scheme.

Clause 132(1) provides that any person engaged in the performance of functions under the Bill including under an agreement made under clause 131, must not, directly or indirectly, disclose or make use of any information obtained in the course of the duty except in the following circumstances, and makes non-compliance an offence:

- for the purposes of or in connection with performance of a function under this Bill; or
- as required or allowed under this Bill, or another written law; or
- for the purposes of legal proceedings arising under the Bill; or
- with the written consent of the person to whom the information relates; or
- in prescribed circumstances

Non-compliance attracts a fine of \$12,000.

Clause 132(2) provides that the prohibition in subclause (1) does not extend to de-identified data, where the disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

Clause 133 Information sharing

Under the parking licensing scheme there is information exchange between other agencies who have an interest in the legislation such as Department of Finance and also local governments in particular City of Perth.

This clause will set up an information sharing process under which an information sharing officer designated by the CEO may in accordance with guidelines disclose relevant information to an officer of the defined information sharing agencies listed in clause 133(1). There is information sharing with Department of Finance/ Revenue WA, who in turn liaises with Landgate. There is also information sharing with local planning authorities (generally City of Perth) in relation to planning applications or approvals

Clause 133(1) provides the definitions referred to in the clause.

Clause 133(2) provides the CEO may in writing designate a person employed by the Department of Transport to be an information sharing officer

Subclause (3) provides the information sharing officer may disclose relevant information defined in in subclause (1) to an officer of an information sharing agency.

Subclause (4) will allow an information sharing officer in accordance with guidelines request a CEO or chief employee of a public agency or information sharing agency in which information is held to disclose the information to that officer.

Subclause (5) provides information may be disclosed under subclause (3) or in compliance with a request under subsection (4), despite any written law relating to confidentiality or secrecy

Subclause (6) provides protections if the information is disclosed in good faith under subsection (3) or in compliance with a request under subsection (4).

Under subclause (7) the CEO must issue guidelines as to disclose of information under subclause (3) and the requesting of information under subclause (4)

Subclause (8) provides that regulations may include provisions regarding receiving and storing of information discussed and restricting access to such information.

Clause 134 Requests for information about parking space approvals

This clause allows responsible occupiers to obtain relevant parking approval information. That information provided may be relied upon by the responsible occupier in defence of charges brought against them under:

- Clause 15 for responsible occupiers permitting parking in unapproved parking spaces; and
- Clause 16 for advertising parking on land without parking space approval – see clause 16(2) & (3); and
- Clause 17 for advertising parking on land not in accordance with parking space approvals – see subclause 17(2) & (3); and
- Clause 18 for failing to ensure compliance with conditions of parking space approvals – see subclauses 18(1) & (3).

Subclause (1) defines relevant parking approval information as used in the clause.

Subclause (2) provides the responsible occupier of land in the PM area make a request to the CEO to disclose relevant parking approval information to the person, which may be disclosed by the CEO under subclause (3)

Subclause (4) provides protections against criminal liability, breach of any duty of conditionality or breach of professional ethics or standards where the information is disclosed under subclause (3) in good faith.

Division 4 — Power to waive or write off liability

Clause 135 Waiving amounts payable

This clause provides a specific power to waive fees payable by any person and is required to the extent that fees are a tax. It is based on the *Taxation Administration Act 2003* section 56(1) & (2).

Where the CEO waives an amount payable, liability for payment is extinguished.

Clause 136 Writing off liability

This clause is based on section 58 of the *Taxation Administration Act 2003*. It provides for the CEO to write off liability for amounts where it is impractical or unwarranted to recover the debt.

Clause 137 Powers subject to *Financial Management Act 2006*

This clause provides that this Division is subject to the operation of WA's *Financial Management Act 2006*. It is based on section 58 of the *Taxation Administration Act 2003*.

Clause 138 No action to compel waiver or write off

This clause prevents any action from being brought to a court to compel the CEO to waive payment of fees or to write off a liability for fees. It is based on section 59 of the *Taxation Administration Act 2003*.

Clause 139 Waiving or writing off tax

This clause provides that to the extent that any fee under this Bill is a tax the fee may be waived under clause 135 or written off under clause 136.

Division 5 — Recovery of amounts payable under Act

Clause 140 Joint and several liability for amounts payable under Act

This clause is to cover liability for payment of amounts where there are multiple owners of the land and covers approval holder (in relation to parking space approval), licence holder (in relation to a parking space licence), authorisation holder (in relation to a special purpose authorisation) and pre-authorisation holder.

Clause 140(1) provides that apart from fines or modified penalties any amount payable by an owner of land owned by more than one owner is each owner is jointly and severally liable for the amount

Subsection 140(2) provides that if an amount (other than a fine or modified penalties) is payable under the Bill by an approval holder in relation to parking space approval that is held by more than one approval holder, each other approval holder is jointly and severally liable for the amount

Subclause (3) provides that if an amount (other than a fine or modified penalties) is payable under the Bill by a licence holder in relation to a parking space licence that is held by more than one licence holder, each other licence holder is jointly and severally liable for the amount.

Subclause (4) provides that if an amount (other than a fine or modified penalties) is payable under the Bill in relation to a **special purpose authorisation** held by more than one authorisation holder, **each other authorisation holder** is jointly and severally liable for the amount.

Subclause (5) provides that if an amount (other than a fine or modified penalties) is payable under the Bill by a **pre-authorisation holder**, **each other pre-authorisation holder** is jointly and severally liable for the amount.

Subclause (6) provides that nothing in the section affects the right of a person who pays an amount under the Bill to recover contribution from a person jointly liable for the amount.

Clauses 141 Liability continues when person ceases to be approval holder or pre-authorisation holder

This clause makes it clear that the liability of an approval holder or pre-authorisation holder remains after they cease being an approval holder or pre-authorisation holder.

Clause 142 Recovery of costs

This clause any legal costs or any prescribed costs incurred by the CEO in relation to legal proceedings to recover any amount for which a person is liable for under this Bill.

Clause 143 Recovery of amounts payable under Act

This clause provides that any licence fees (as outlined in clause 70) or other fees payable under the Act as well as legal or other costs (outlined in Clause 142) above is recoverable by the CEO as a debt due to the State.

Division 6 — Other matters

Clause 144 Term used: responsible person

This clause defines a responsible person for the purposes of this Division as an authorised officer, the CEO or Minister.

Clause 145 Fees

This clause makes it clear that the powers in the Bill in relation to fees are in addition to, and do not limit the operation of section 43, 45 and 45A *Interpretation Act 1984* concerning the ability to make regulations in relation to fees or charges.

Clause 146 Functions under Act when land has more than 1 owner

In most cases with joint ownership of land within the parking management area, functions under the Bill apply to all owners (see clause 20).

This clause provides that when a parking space approval or pre-authorisation is held by more than one person, the person exercising a function or power under the Act (including the CEO, the CEOs delegate or, where applicable, the Minister) may consider the actions of any one of the owners in their decision-making.

This is to allow the CEO, delegate or Minister to take into account the previous actions of any one of the joint holders (for example, a landowner that has previously had a parking space approval or pre-authorisation cancelled) when performing a function under the Act.

Clause 147 Functions under Act when parking space approval or pre-authorisation is held by more than 1 person

This clause applies when a parking space approval, licence, pre-authorisation or special purpose authorisation is held by more than one person.

It clarifies that a person performing a function under the Act in relation to a jointly-held parking space approval is required or permitted to exercise this function in respect of every holder of the parking space approval, licence, pre-authorisation or special purpose authorisation.

Clause 148 Parking space approvals or pre-authorisations not personal property for purposes of Personal Property Securities Act 2009 (Cwlth)

This clause confirms that parking space approvals or pre-authorisations are not personal property for the purposes of the of *the Personal Property Securities Act 2006* (Cth). This reiterates the provision of section 9(6) of the existing Act.

Clause 149 Protection from liability for wrongdoing

This clause prevents any a person, such as a person employed or engaged by the Department of Transport, who performs a function under the Act (provided that it is done in good faith), from being sued for damages arising from any loss suffered by another person as a result.

Performing a function in good faith involves doing it honestly and sincerely. The protections under the clause also apply where a function is performed pursuant to an agreement made under clause 132 between the CEO and another party.

Similar protections are commonly provided in other comparable statutes in Western Australia. Without them, employees and contractors of State Government agencies could be reluctant or unwilling to undertake responsibilities that could lead to them being personally sued.

Clause 149(1) will not prevent a person employed or engaged in the performance of a function under this Bill from being held criminally responsible, if the person's actions, or inaction, constitute a criminal offence.

Clause 149(2) will extend the protection from liability that is the subject of clause 149(1) to the Minister responsible for the administration of this Bill and to the State of Western Australia. It provides that, where a person performs a function under the Act in good faith, neither the Minister nor the State of Western Australia may be held vicariously liable for any loss suffered by another person that results from the exercise of that function.

Vicarious liability concerns circumstances in which, for example, an employer may be held responsible for the actions of an employee and ordered to pay damages arising from those actions. Similar protections are commonly provided in other comparable statutes in Western Australia. They are intended to protect the community by preventing civil claims, in circumstances in which an employee or contractor acted honestly and sincerely.

Without such protection, the State's capacity to ensure the provision of services and facilities required by the Western Australian community, at a reasonable cost, would be uncertain and precarious.

Clause 148(3) expresses that the protections provided under this clause will apply, even if the actions of the person employed or engaged by the Department of Transport could have been done, regardless of whether the provisions of this Bill existed or not. This will ensure that protection will exist in the unlikely event that, in the case of an action performed by such a person, there also exists in another enactment a power to undertake the same action, or the action did not require legislative authority.

Clause 148(4) makes clear that in this clause, a reference to the doing of includes a reference to an omission to do anything.

Clause 150 Giving documents

Clause 150(1) provides that a document required or authorised under this Bill to be given to a person may be given to the person by:

- (a) giving it to the person personally; or
- (b) leaving it at the person's place of residence or business; or
- (c) sending it by pre-paid post addressed to the person -
 - (i) in accordance with the *Interpretation Act 1984* section 75(1); or
 - (ii) at an address appearing on recent correspondence addressed by or on behalf of the person to the CEO or authorised officer; or
 - (iii) at an address shown in the rate record kept by a local government as the address for the service of rate notices on that person; or
- (d) faxing it or emailing it to an email address provided by the person, or otherwise notified to the CEO or authorised officer, or published by the person; or
- (e) communicating it in some other way agreed with the person; or
- (f) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving it, or posting it as a letter addressed, in each case, to the corporation or association at its principal place of business or principal office in the State.

Clause 150(2) provides that the use of one particular method for giving a document to a specific person does not prevent it being given to the same

person the same person in a different way. The type of document and the circumstances relevant to its issue will be relevant to the method of service in each case.

Clause 151 Time when documents given

Subclause (1) provides that, in the absence of proof to the contrary, a document that is (a) emailed or faxed to a person under clause 149(1)(d) is taken to be given on the next business day after the day on which the document was faxed or emailed; or (b) delivered or left for a person in accordance with clause 151(1)(b) or (f) is taken to be given on the next business day after the day the document was delivered or left.

Subclause (2) provides that, in the absence of proof to the contrary, a document that is sent by prepaid post to an address within Australia, is taken to be given to the person

- at the time the document would have been delivered in the ordinary course of the post. For an address outside of Australia, the document is taken to be given on the day that
- is elevent business days after the document was posted.

These provisions will make clear when documents are to be given for the purpose of this Bill a person has a certain time period in which to do this after being given written notice of decision. For example, under clause 76, a person may apply to the State Administrative Tribunal for a review of the reviewable decision within 20 business days after the person is given notice under clause 72 of the reviewable decision.

Clause 152 Parking space approvals, pre-authorisations, variations, renewals and transfers take effect or commence at beginning of day

This clause clarifies when parking space approvals, pre-authorisations variation renewals and transfers take effect or commence. Part VIII of the *Interpretation Act 1984* applies clearly to a time period beginning on a day and ending on a day. However, it does not apply so clearly to an event happening on a particular day such as the issue/grant of an administrative instrument or an administrative decision. Without limiting Part VIII of the Interpretation Act this clause provides clarity.

Clause 153 Parking space approvals, pre-authorisations and suspensions orders expire, end or are cancelled at the end of the day

Part VIII of the *Interpretation Act 1984* applies clearly to a time period beginning on a day and ending on a day. However, it does not apply so clearly to an event happening on a particular day such as the issue/grant of an administrative instrument or an administrative decision or an expiry happening on a particular day. Without limiting Part VIII of the Interpretation Act this clause provides clarity.

Clause 154 Variations cannot have prejudicial effect in certain cases

This clause provides that a variation to a parking space approval or pre-authorisation cannot take effect earlier than the day after which notice of the variation is provided to the holder unless they provide consent, or the variation is not prejudicial to them.

Clause 155 Approved forms

This clause provides that the CEO may approve any forms where the Bill provides that an approved form may or must be given to the CEO. If any forms are approved the CEO must make them available on request to a person with an interest in land in the PM area.

Clause 156 Review of the Act

Subclause (1) requires that the Minister must review the operation and effectiveness of this Bill, as soon as is practicable after the fifth anniversary of the date of commencement of this clause.

Subclause (2) requires the Minister to prepare a report on the review and table it before Parliament as soon as is practicable after it is prepared.

PART 9 — REPEALS

This Part repeals or revokes existing legislative and other instruments for managing parking in the Perth parking management area.

Clause 157 This clause repeals the *Perth Parking Management Act 1999*

Clause 158 This clause repeals the *Perth Parking Management (Taxing) Act 1999*

Clause 159 This clause repeals the *Perth Parking Management Regulations 1999*

Clause 160 This clause revokes the latest current *Perth Parking Policy* made under the existing Act.

PART 10 — TRANSITIONAL PROVISIONS

This part contains transitional provisions that will apply between the application of the *Perth Parking Management Act 1999* and the date at which the provisions of this Bill commence.

Division 1 — Preliminary

Clause 161 Terms used

This clause defines the terms used in Part 10 and refers to sections under the current Perth Parking Management Act 1999, to be repealed. It provides definitions for the following terms:

- *CEO issued licence* which means a parking bay licence issued under section 9 of the existing Act.
- *commencement day* means the day on which section 3 comes into operation.
- *Minister approved licence* means a parking bay licence issued under section 9 of the existing Act.
- *Perth parking management area* means the area currently prescribed by section 6 of the existing Act,
- *Repealed Act* means the *Perth Parking Management Act 1999* (existing Act) in force immediately before the new Act commences.

Clause 162 Application of Interpretation Act 1984 not affected

This clause makes it clear that, except as provided in Part 10 and any transitional regulations made under this Part, this Part and any regulations made under this Part do not affect the application of the *Interpretation Act 1984* in relation to the repeals in Part 9

Division 2 — Parking bay licences under repealed Act

Subdivision 1 — Parking bay licences to become transitional licences

Clause 163 CEO issued licences

This clause refers to CEO issued licences held immediately before commencement day as a ‘transitional licence’. It provides that the person who held a licence issued by the CEO prior to commencement day (a pre-commencement licence) is taken to hold a parking space licence (a transitional licence) granted under clause 22 of this Bill.

Subclause (2) provides a person to whom subclause (1) applies is taken to be the holder of the transitional licence under the Bill for the remainder of the period that applied to the person’s pre-commencement licence subject to

- the same terms and conditions that applied immediately before commencement day; and
- any prescribed conditions that apply to transitional licences, and
- any instalment arrangement under section 11 of the repealed Act for the licence fee for the pre-commencement licence.

Subclause (3) provides that were an instalment is payable and the instalment is not paid by the due date the licence may be suspended under clause 61(1)(e) or cancelled under clause 66(1)(e) under section of this Bill.

Subclause (4) provides despite clause 25(5) a prescribed conditions may apply to a transitional licence immediately on and after commencement day.

Where a condition to the licence is prescribed, this can apply immediately or on after the date the Act commences.

Clause 164 Minister approved licences

This clause provides that the provisions outlined in clause 162 also apply to Minister approved licences. A person who held a pre-commencement licence from the Minister is taken to hold a parking space licence (a transitional licence) granted under clause 24 of this Bill.

Clause 165 Expiring CEO issued licences

Subclause (1) defines the term *expiring CEO issued licence*, as a CEO issued licence that was to expire at the end of the day before commencement day for which an application for renewal had been made under section 16(1) of the repealed Act, and for which the CEO had decided, before commencement day to renew under section 16(3) of the repealed Act for a further term.

The term *renewal term* is also defined in relation to an expiring CEO licence, as the further term referred to in clause 165(1)(c).

Subclause (2) provides that expiring CEO licences must be treated as being in force immediately before commencement day and be dealt with under clause 163 as a pre-commencement licence. Therefore, a person who holds an expiring CEO licence, is taken to hold a parking space licence granted under clause 22 of this Bill.

Subclause (3) provides that for the purposes of clause 163(2)(a) the remainder of the term (that would have applied to the pre-commencement licence that is an expiring CEO issued licence) is taken to thebe the remainder of the renewal term of the licence.

Clause 166 Expiring Minister approved licences

Similar to clause 165 above, this subclause (1) defines ‘expiring Minister approved licence’.

Subdivision 2 — Treatment of relevant transitional licences

The purpose of subdivision 2 is to allow or permit information at the time that was relevant to a parking bay licence (as the term is used under the repealed Act) that converts to a parking space licence under clauses 162(1) and 163(1) to be considered when exercising powers of renewal, suspension or cancellation under this Bill. This is because some information might not come to light for consideration when these powers are exercised.

Accordingly, information at any of the various stages in the lifecycle of the parking bay licence may be considered when exercising powers or functions under the Act including:

- an application for a parking bay licence under section 8 of the repealed Act; or
- an application for transfer of the parking bay licence under section 14 of the repealed Act; or
- an application for variation of the parking bay licence under section 15 of the repealed Act; or
- an application for a renewal of the parking bay licence under section 16 of the repealed Act

Clause 167 Term used: relevant transitional licence

This clause defines the term *relevant transitional licence* used in this subdivision as:

- a transitional licence referred to in clause 162(1) or 163(1); or
- a parking space licence that was a transitional licence referred to in clauses 162(1) or 163(2) before it was renewed, varied, or transferred on or after commencement day.

Clause 168 Renewal of relevant transitional licences

This clause allows information that was relevant at various stages of a parking bay licence (under the repealed Act) that converts to a parking space licence under this Bill (under clauses 162 and 163) to be considered when a relevant transitional licence is renewed, on or after the commencement date.

This is done by providing that a reference under clause 38(3)(a) in this Bill to information given by a relevant licence holder, is taken to include information provided under applications under the following provisions of the repealed Act:

- (a) section 8 - for a parking bay licence that became the relevant transitional licence; and
- (b) section 14 - for a transfer of the parking bay licence that became the relevant transitional licence; and
- (c) section 15 - for a variation of the parking bay licence that became a relevant transitional licence; and
- (d) section 16 - for a renewal of the parking bay licence that became the transitional licence.

Clause 169 Suspending relevant transitional licences

This clause allows or permits information that was relevant at various stages of a parking bay licence (under the repealed Act) that converts to a parking space licence under this Bill (under clauses 162 and 163) to be

considered when a relevant transitional licence is suspended on or after the commencement date

Clause 170 Cancelling relevant transitional licences

This clause allows or permits information that was relevant at various stages of a parking bay licence (under the repealed Act) that converts to a parking space licence under this Bill (under clauses 162 and 163) to be considered when a relevant transitional licence is cancelled on or after the commencement date.

Division 3 — Applications under repealed Act

Clause 171 Undecided applications for parking bay licences if not approved by Minister

This clause provides that where an application for a parking bay licence under 8 of the repealed Act is undecided before commencement day, the application lapses and the person is entitled to be refunded any amounts paid for the application for a parking bay licence.

Clause 172 Parking bay licence approved by Minister

This clause provides that where a parking bay licence has been approved by the Minister under section 9(3) of the repealed Act but not issued by the CEO before commencement day then it must

- be given effect as though the repealed Act were in force; and
- is to be treated as if it were a parking bay licence in force immediately before commencement day, and
- dealt with as a pre-commencement licence under clause 162.

Clause 173 Undecided applications to transfer parking bay licence

Subclause (1) provides that an undecided application under section 14(3) of the repealed Act (relating to the transfer of the licence) received before the commencement day but undecided before commencement day is

- taken to be an application under clause 56 of this Bill
- must be decided under this Bill as if it were an application received within the 20 business days referred to in clause 56(1)(a).

Subclause (2) provides that the CEO may require the applicant to update the details of the application to meet the requirements of the Bill or provide any relevant information and pay any licence fees in clause 57(2)(b).

Subclause (3) provides that if a parking space licence is transferred under clause 57(2) in relation to an application under subclause (1) then the parking space licence must be taken to take effect no earlier than commencement day.

Clause 174 Undecided applications for variation of parking bay licence.

This clause provides that where an application under section 15 (1) of the repealed Act for a variation is received before commencement day but remains undecided before commencement day, the application lapses on and after the commencement day, and the applicant is entitled to be refunded any applicable application fees.

Clause 175 Undecided application for renewal of parking bay licences

This clause provides that any undecided application under section 16(1) of the repealed Act for a renewal received before commencement day, but has not been decided, lapses on and after commencement day, and the applicant is entitled to be refunded any applicable application fees.

Division 4 — Transfers

Clause 176 Transfers

Subclause (1) provides that despite clauses 56(1) and 66(1)(g) a person who becomes a new owner of land in the Perth parking management area within 28 days referred to in section 14(5) of the repealed Act, may apply to transfer the licence under clause 56 within 20 business days after commencement day and the period of 28 days referred in clause 66(1)(g) is taken to be extended to 20 business days after commencement day.

Subclause (2) provides that if a parking space licence under subclause (1) is transferred the parking space licence is taken to take effect no earlier than commencement day.

Division 5 — Suspensions and cancellations

Clause 177 Parking bay licences suspended

This clause deals with parking by licences that are suspended under clause 13 of the repealed Act immediately before commencement day and how they are dealt with.

Clause 178 Parking bay licences cancelled

This clause provides that for the purposes of clause 22((2)c), 23(2)(d), 24(2)(e), 29(2)(e) and 44(2)(d) a reference to a parking space approval cancelled under clause 66 is taken to include a reference to a parking bay licence cancelled under section 13 of the repealed Act.

Division 6 — Offences and infringement notices

Clause 179 Infringement notices

This clause provides for how infringement notices and any unpaid penalties in relation to infringement notices issued before commencement day under the repealed Act are to be dealt with.

Clause 180 Investigations

This clause provides any information gathered under exercise of a power under section 21 of the repealed Act before commencement day may be used under Part 5 of this Bill.

Division 7 — Finance and Perth Parking Licensing Account

Clause 181 Parking bay licence fees

This clause provides how unpaid parking by licence fees payable under the repealed Act are to be dealt with.

Clause 182 PM Area Account

This clause provides for the continuation of the Perth Parking Licensing Account that was established under the repealed Act that from commencement day is to be referred as the PM Area Account. Money owing, but not yet credited as well as money standing to the credit of the Perth Parking Licensing Account is to be credited to the PM Area account.

Division 8 — Parking Policy

Clause 183 Parking policy when development approval granted before commencement day

This clause deals with how the parking policy applies when development approval was granted before commencement day. It is taken to be the relevant Perth parking policy in force when the latest relevant development approval is granted.

Clause 184 No parking policy when development approval granted

This clause deals with where there was no parking policy when development approval was granted before commencement day (before the commencement of section 3 of the existing Act). This maintains the current provision that properties that received development approval prior to 1999 do not need to comply with the parking policy (until a new development approval is sought).

Division 9 — Ownership of land and responsible occupiers

Clause 185 Ownership of land

This clause provides the Bill applies on and after commencement day in relation to the owner of land, irrespective of when they became the owner.

Clause 186 Responsible occupiers

This clause provides the Bill applies on and after commencement day in relation to a responsible occupier of land of land, irrespective of when they became the responsible occupier. The Bill also applies on and after commencement day in relation to a lease or licence to occupy land.

Division 10 — Permitting relevant vehicles to park

Clause 187 Permitting relevant vehicles to park

This clause provides that clauses 11, 14, 15 and 18 of this Bill apply on and after commencement day irrespective of whether a person permitted a relevant vehicle to be parked before on or after commencement day.

Division 11 — Exercising powers before commencement

Clause 188 Exercising powers before commencement that rely on instruments that have not commenced

This clause provides for exercising powers before commencement day that rely on instruments that have not commenced.

Division 12 — Transitional regulations

Clause 189 Transitional Regulations

This clause provides that regulations may contain provisions that are necessary or convenient to be prescribed for the purpose of dealing with matters concerning the transition from the provisions of the repealed Act to the provisions under this Bill

Transition from one set of laws to another can be complex. This regulation making power will ensure that regulations can be made to address any unforeseen issues associated with the transition to the provisions of the Bill. Similar provision is commonly made in other statutes in Western Australia that address the introduction of a new or amended legislative framework for the regulation of a matter.

PART 11 — CONSEQUENTIAL AMENDMENT

Clause 190 Act amended

This part amends the *Sentencing Act 1995* so that amounts recovered through the payment of penalties can be credited directly to the PM Area Account.

Clause 191 Schedule 1 amended

This specifies the schedule to be amended of the *Sentencing Act 1995* to achieve the above

PART 12 — PERTH PARKING MANAGEMENT ACT 1999

Clause 192 This clause amends the existing Act to include the expanded expenditure provisions of the new Bill. This will enable the existing Act to authorise use of the parking levy to fund Perth City Deal projects which deliver non-transport benefits (as set out in Clause 193).

Clause 193 This clause amends section 23 of the existing Act so that fundable projects in relation to the existing Perth parking management area includes:

- Transport or accessibility initiatives within that area that promote a sustainable balance between different modes of transport; and
- Other infrastructure, projects or services that improve, economic activity or urban amenity;

Fundable projects do not include sporting or cultural events (other than traffic management required for the event).

Clause 194 This clause inserts a Part 5 (transitional provisions) into the existing Act which provides for money credited to the existing Perth Parking Licensing Account may be used for fundable projects as set out in Clause 193.