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Amendments to the *Road Traffic Legislation Amendment Bill (No. 2) 2015* for Point to Point speed enforcement

The following amendments to the *Road Traffic (Administration) Act 2008* ("RTAA") are required to enable Point to Point (P2P) speed enforcement.

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

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

This is because it is considered that:

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

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

- P2P cameras will be installed at the start and finish of the relevant area of road;
- the shortest distance on the carriageway between P2P camera locations will be measured by a licensed surveyor;
- the P2P cameras will take photographs of vehicles, together with the number plate of the vehicle photographed, at each camera location;
- the P2P cameras will record the time when each vehicle reaches the point at which the P2P camera takes the photograph;
- the P2P cameras will be aligned to a standard time clock to provide time synchronisation;
- computer software will read the number plate;
- the captured information (images, vehicle identification, etc) will be uploaded via secure telecommunications link and stored for subsequent processing;
- a computer software system will receive the information and transfer it into a data buffering system and/or database;

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- the computer system will then match the number plate records for each successive camera and calculate the travel time for matched number plates by subtracting the former time stamp for each camera;
- the computer system will calculate the average speed by dividing the distance between the photographic points by the time taken to travel the distance; and
- if the speed exceeds the applicable speed limit, an infringement notice will be issued by matching the record to the vehicle registration details.

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

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

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

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

These amendments to the *Road Traffic Legislation Amendment Bill (No. 2) 2015* ("RTLAB") seek to amend section 117 of the RTAA to accommodate P2P speed enforcement. The RTLAB changes the Minister approving the equipment to be the Minister responsible for the administration of the *Police Act 1892*. It introduces "speed measuring and recording equipment" to the types of equipment that may be approved under the section. Provision is also to be made for evidentiary matters relating to that equipment.

The following amendments are intended to be made via amendment to the RTLAB whilst in consideration in detail:

Clause 27

RTLAB clause 27 increases the penalty for careless driving from 12PU (\$600) to 30 PU (\$1500).

This amendment brings the clause into line with the current drafting standard for the imposition of a fine. Section 62 of the RTA will state: 'Penalty: a fine of 30PU' instead of 'Penalty: 30PU'.

Clause 37

RTLAB clause 37 amends section 69B of the RTA to provide that, if an 'authorised drug tester' is of the opinion that a person's oral fluid sample contains a prescribed illicit drug, the sample is to be divided into two parts and the samples are both to be handed to a police officer for subsequent delivery to the Chemistry centre.

The RTLAB amendment inserts subsection 69B(2) which mistakenly refers to a 'prescribed sample taker' instead of an 'authorised drug tester', this amendment fixes the mistake.

Clause 66

RTLAB clause 66 introduces provisions into the RTAA relating to the approval and operation of 'speed measuring and recording equipment'.

Similar new provisions are being inserted into clause 67 RTLAB relating to average speed detection systems requiring a restructure of the existing clauses. Some minor consequential changes for consistency of language and operation between the different types of equipment are being made.

This amendment, in conjunction with the introduction of a new clause 68, will also relocate all transitional provisions.

Clause 67

RTLAB clause 67 introduces evidentiary provisions relating to the use of images produced by 'speed measuring and recording equipment'.

The amendments to this clause introduce provisions to facilitate the approval, operation and evidence provided by an 'average speed detection system'. Once amended, clause 67 will insert new RTAA sections 117B – 117I.

Proposed section 117B

This section provides definitions and evidentiary matters relating to average speed detection systems.

The following definitions are of particular note:

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

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

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

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

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

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

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

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

Other forms of speed detection and enforcement will continue to operate on roads where average speed detection systems are operating. For example, an average speed detection system may detect that a vehicle travelled between two points along a road at an average speed of 120kph. A speed camera or a police patrol vehicle may have also detected the vehicle travelling at 130kph at a location between the

points. In that case, it would be open to the police to charge the driver with a speeding offence at the higher speed rather than rely on the average speed. In that situation, the lower average speed would not be relevant. Note that, in the example given, the driver could not be punished for two speeding offences because of the "double jeopardy" rules enshrined in law (refer section 11 *Sentencing Act 1995* and section 19 *The Criminal Code*).

Proposed section 117C

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

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

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

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

Proposed section 117D

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

Proposed section 117E

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

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

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

Proposed section 117F

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

During such a prosecution:

- a) in calculating the vehicle's average speed, the vehicle and any driver are taken to have travelled between detection points via the shortest practicable distance as defined in section 117B;
- b) if multiple speed limits applied to a driver of a vehicle between the detection points, the average speed limit calculated in accordance with section 117E is taken to be the speed limit applicable to the driver at all times on the carriageway between the points. Where applicable, the driver and responsible persons for the vehicle may be dealt with under a road law in accordance with this calculated speed limit. The application of this speed limit is subject to the mode of proof of the speed of the vehicle. It is limited in application to where average speed is being used in a prosecution. For example, if a patrol car or a speed camera detected the speed of the vehicle on the carriageway between the detection points, the detected speed would be compared against the relevant posted speed limit, not the calculated average speed limit; and
- c) If there are multiple drivers of the vehicle between detection points, each driver is taken to have driven the vehicle at the calculated average speed. If such a driver satisfies the court that he or she did not drive the vehicle between the detection points in excess of the applicable speed limit then the presumption will not apply. In addition to this, there is the ability to prescribe other exculpatory circumstances whereby a driver may avoid the application of this presumption of speed.

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

Proposed section 117G

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

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

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

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

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

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

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

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

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

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

Proposed section 117H

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

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

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

Proposed section 117I

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

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

New clause 68

RTLAB new clause 68 will delete a redundant head of power in the RTAA to make amendments to regulations under any Act to deal with matters consequential to the commencement of the Act.

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