

MAIN ROADS AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

Overview of *Main Roads Amendment Bill 2015* (Bill)

This Bill will amend the *Main Roads Act 1930*. These amendments have arisen from consultation across Main Roads and external stakeholders, including government departments. The role of the Commissioner of Main Roads as a body corporate has evolved and changed over time from when the *Main Roads Act 1930* was originally enacted. The amendments will facilitate the operations and functions of the Commissioner of Main Roads and create an improved framework for the provision of services in line with a modern road authority. The Bill's key provisions are:

- **Section 15AA – Heavy Vehicle Charging.** This proposed provision provides the power to impose fees for heavy vehicle users on prescribed routes. These fees or charges will be the means by which a significant proportion of the Perth Freight Link construction costs will be recouped from the private sector (i.e. the road transport industry). Those charges, and the prescribed roads to which they will apply, will be set out in regulations.
- **Section 18E – Alternative powers and forms of contract and innovative business arrangements.** This proposed provision will enable the Commissioner of Main Roads to operate more commercially through the use of business arrangements and acquiring and disposing of property.
- **Section 18D(b) – Increase of contract approval levels.** Currently pursuant to the existing section 18 any contract over \$500,000 requires Ministerial consent. The *Main Roads Act 1930* ("The Act") is an old piece of legislation and at the time of subsequent amendments to this provision, the last being in 1996, \$500,000 was deemed to be the appropriate contractual limit for which Ministerial approval was required. Currently the majority of the road works contracts are frequently in excess of \$1million.

This proposed section will provide that contracts that exceed an amount that will be prescribed in the regulations will require Ministerial approval. The prescribed amount that will be provided for in the regulations may be in the region of between \$1M - \$5M. Increasing the monetary contract approval level in this manner in the regulations will facilitate and assist in the day to day functions of the Commissioner. The Minister will still have the ability to oversee the contract levels but in a manner that takes into account the modern focus of a road authority. Furthermore as the prescribed amount will be set out in regulations, it can be easily amended as circumstances change.

- **Section 15(2) and section 16(1D) - Road Safety and congestion management.** These proposed provisions broaden the powers of the Commissioner to specifically cover identifying and promoting measures to improve safety of roads, to reduce deaths of people resulting from incidents on roads and to install cameras and electronic equipment necessary for monitoring traffic.
- **Sections 15A, 16A(3) & (4), 23, 28A(7)(a)-(f) and 35(3) - Increase of penalty levels.** These proposed provisions will increase the respective penalty levels thereby offering a more effective penalty regime.
- **Section 22C and 29 - Road Service Centres.** These are commercial centres which are accessible from main roads and highways and which sell or otherwise provide fuel, food, refreshments and other road user services together with toilet facilities and recreational areas. These proposed provisions provide the Commissioner power to facilitate the operation of service centres and to lease land to other persons for those persons to build and operate a road service centre on that land.
- **Section 22E - Clearing works.** It is important and in the interest of safety for the Commissioner to have clearing powers set out in the Act where it is necessary for the Commissioner to undertake urgent clearing for safety in circumstances not currently addressed in the environmental legislation. This provision provides a clear power for the Commissioner to clear native vegetation without the need for a permit (under the environmental legislation), to urgently respond to unplanned events or serious safety hazards.
- **Section 22B and 22D – Adjoining works and environmental offsets.** These proposed provisions will provide the power to undertake works in land adjoining the road reserve of a main road or highway and to establish and operate environmental offsets and acquire land for environmental offsets. Environmental offsets are regularly required as part of the environment approval process for projects, public or private, which involve otherwise adverse environmental impacts through the clearing of native bush or loss of wetlands under the *Environmental Protection Act 1986*. Section 51(2)(b) of the *Environmental Protection Act 1986* provides the power to impose conditions involving offsets when granting a clearing permit.

Pursuant to proposed section 22B the Commissioner will have the power to undertake activities outside the road reserve for the purpose of functions under the Bill. Additionally, the Commissioner will have the power to acquire land under the *Land Administration Act 1997* for environmental offsets under amendments to section 29(1).

- **Section 35(1) and (2) – Enhanced regulation making powers.** These proposed provisions will provide the power to make regulations in respect of matters including:
 - For which fees and charges may be prescribed
 - The removal, storage and disposal of vehicles and other goods left on main roads and highways
 - Road train assembly and breakdown areas
 - Activities including works by persons other than the Commissioner in relation to highways and main roads.

1. Short title

Clause 1 of this Bill provides that, when this Bill passes, it will be called the *Main Roads Amendment Act 2015*.

2. Commencement

Pursuant to this clause 2, when this Bill is passed, its provisions will commence operation on a day that is nominated for that purpose in a proclamation.

3. Act amended

Pursuant to Clause 3 the *Main Roads Amendment Act 2015* amends the *Main Roads Act 1930*

4. Long title amended

Pursuant to clause 4, the long title of the Act will include the words “access to roads, undertaking related works...”

The Bill introduces the new term “works” which is very broadly drafted to cover a range of activities far wider than construction of roads. The proposed term will include a broad range of activities including, among others, the construction of something, the improvement of something, the maintenance repair and reconstruction of the things so constructed or improved, the provision of any equipment or service for the proper management of any thing constructed or improved, the acquisition of land for the purposes of construction or improvement, and the demolition or removal of something. Accordingly, this proposed amendment by referring to the proposed term “works”, will remove any restriction on the Commissioner undertaking works which have no connection with the construction of roads.

5. Section 6 amended

Clause 5 (1) of this Bill will delete “**proclaimed area**” and “**road construction**” and “**construct**” from section 6, as these terms will no longer be necessary.

The term “proclaimed area” does not appear in the Act or any subsidiary legislation.

The term “**road construction**”, will be replaced with the proposed new broader term “works” which will incorporate construction.

Clause 5(2) inserts proposed terms as follows:

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

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

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

- proposed section 16(1D) to install and operate cameras and electronic equipment to supervise “main road works”;
- amended section 16(3) under which local government may, at the Commissioner’s request undertake to tender for any agreement with the Commissioner for main road works within its district;
- amended section 17(a)(i) and (ii) dealing with the Commissioner’s power to carry out surveys and investigations as to ascertain the extent

of resources suitable for main roads works and the most effective methods of undertaking main roads works;

- Proposed section 18A agreements for others to carry out “main road works” – this will give the Commissioner the power to enter into agreements with third parties to carry out “main roads works” which includes “adjoining works”.

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

“**business arrangement**” this is a proposed new term, and is required to support and provide clarity to the powers of the Commissioner with the approval of the Minister and Treasurer to participate in alternative forms of agreements and business arrangements as is set out in proposed section 18E of the Bill.

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

“**clearing**” this proposed term is required to cover the new functions of the Commissioner to include clearing works or removal under proposed section 22E. This will provide the power for the Commissioner to undertake urgent clearing for safety in circumstance not covered in the *Environmental Protection Act 1986* or the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. The term has the same meaning given in the *Environmental Protection Act 1986* section 51A. The term clearing is also included within the term of “main roads works” and “works”.

“**enter**” this proposed term is used to provide clarity to the Commissioner’s powers to enter into agreements that are “business arrangements” under proposed section 18E. The term is to include “... promote, establish, manage, dissolve, wind up, and do anything incidental to the participating in a business arrangement”.

“**environmental offset works**” environmental offsets are regularly required as part of the environmental approval process for clearing permits under the *Environmental Protection Act 1986* for projects which involve the otherwise adverse environmental impacts through the clearing of native vegetation. This proposed term is required to provide clarity as to the Commissioner’s

powers to carry out “environmental offset works” under proposed section 22D. The term is also included in the proposed term of “main road works”.

“**local government**” this proposed term is included as a consequence of inserting the term of “public authority”.

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

“**prescribed**” this proposed term makes it clear that “prescribed” is what is set out in the regulations made under the Act. It avoids any possible confusion that could occur as to other types of prescription that might occur (such as under other Act or in other instruments).

“**public authority**” this proposed term is to explain its use in proposed sections 16(1D)(b); and 18E(4).

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

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

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

- the construction of something; the improvement and reconstruction of something; the maintenance of those things constructed, improved or reconstructed; the provision and maintenance of any equipment or service necessary for or incidental to the proper management of the things constructed improved or reconstructed; the acquisition of land for the purposes of construction; improvement or reconstruction; clearing; any demolition or removal of something and administration of

anything relating to construction, improvement or reconstruction including planning, research, investigation, survey and design.

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

Clause 5(3) will amend the term “**road**”. It will remove the archaic term “appurtenant”. This term is amended to make it clear that references to road include shared and cycle only paths that are “*related to, or used in connection with a road*”. This avoids the need for separate terms for footpath, shared path or cycle only path. This term will permit works on paths related to any other roads under the care, control and management of the Commissioner.

Clause 5(4) makes a small amendment to the term “**secondary road**”. The concept of the term secondary road is no longer in use, however Cabinet approval for drafting amendments did not include amending this provision. The amendment is necessary to be consistent with the proposed amendment to the term “road”.

6. Section 7 amended.

This clause amends section 7.

Subclause (1) in section 7(2) deletes “powers and perform all the duties” and insert “functions”. The term “function” is defined in the *Interpretation Act 1984* to include “powers, duties, responsibilities, authorities and jurisdictions”.

These amendments use the shortened term “functions”, which is more concise and certain in language. This is consistent with legislative drafting standards and practice to use more concise and certain language.

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

Subclause (2) in section 7(3)(c) deletes “duties” and inserts “functions”. In section 7(3)(d) the words “Contract made” and “any such contract” are deleted and replaced with “any such contract” and insert “agreement entered into” and “that agreement”.

Subsections (2) & (3)(c) substitute the word “functions” in place of the term “powers” or “powers and duties”. The amendment in subsection (3)(d) is necessitated by the replacement of the term “contract with agreement”.

7. Section 9 amended

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

8. Section 9AA inserted

This clause inserts proposed section 9AA. There is no express provision in the current Act that provides the Commissioner is an agent of the Crown, such consequence being implied. This new section will put beyond doubt the intention that the Commissioner is an instrumentality of the State and therefore enjoys the privileges and immunities of the State.

9. Sections 10, 10A and 10B replaced

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

Proposed section 10

Proposed section 10(1) will provide the Commissioner with the power of appointment of officers, instead of the Minister.

Proposed subclause (2) is largely a restatement of the existing subsection (2) with small changes.

Proposed subsection (2)(a) will provide that the Commissioner may employ such employees as are required for main road works. The term “main roads works” is used in place of construction.

Proposed subsection (2) (b) & (c) are in the same terms as the existing subsections.

Proposed subsection (2)(d) will give the Commission the power to make use of State public servants of other agencies who are not officers of the Commissioner with the approval of the CEO of other public sector agencies. Proposed subsection (3) is a restatement of the existing subsection (3)(b) and (c), however subsection (a) will not be restated. Existing subsection 10(3)(a) which provides that staff of the Commissioner shall not engage in employment outside their office without approval of the Commissioner, will not be restated in proposed subsection (3). That subsection will be removed as section 102 of the *Public Sector Management Act 1994* provides for activities of staff concerning employment outside the public sector.

Proposed section 10A

This proposed section will provide that the Minister may by written instrument, delegate to the Commissioner any of the Minister's functions under the Act other than the power of delegation under section 10A, or the function referred to in section 18D. This section reflects the use of the term "function" in place of "powers". The Minister may delegate to the Commissioner any of the Minister's powers apart from the power of delegation under the provision and the Minister's functions under proposed section 18D. Proposed section 18D will provide for those agreements that require Ministerial approval. To avoid the purpose and intent of section 18D being defeated, the Minister is not permitted to delegate to the Commissioner the Minister's function under that section.

(The former subsection (2) is not included, as a consequence of proposed section 10(1) giving the Commissioner the power to appoint persons to be officers of the Commissioner. The existing subsection (2) provided that the exercise of a power of appointment under section 10(1) by the Commissioner under section 10A shall be deemed to be the exercise of that power by the Minister. Given that proposed section 10(1) will be amended to provide the Commissioner with the power of appointment of persons to be officers of the Commissioner, this subsection (2) will no longer be required.

Proposed section 10B

This proposed section will have the new heading "Other delegation". A high level of cooperation exists between the respective Commissioners of Main Roads and Police in order to facilitate incident management on main roads and highways. For this purpose it is appropriate for the Commissioner of Main Roads to have the power to delegate the road closure power under subsection 16A(1) of the Act to the Police Commissioner. These provisions permit the Commissioner to delegate his function under section 16A of the Act to close main roads and highways to the Commissioner of Police and to provide for sub-delegation of that power by the Commissioner of Police.

Subsection (1) introduces the term “COP,” being the abbreviated term for the Commissioner of Police.

Subsection (2) is, in part, a restatement of part of the existing subsection 10B(1). This will provide the Commissioner may generally, or as otherwise provided by a written instrument signed by the Commissioner, delegate to an officer of the Commissioner any of the Commissioner’s functions under the Act or another written law, other than the power of delegation.

Subsection (3) will provide that the Commissioner may delegate to the COP any of the functions under section 16A (the powers to close roads).

Subsection (4) will provide the COP the power to sub delegate a power under subsection (3) to a specific police officer or police officers of a specified class.

Subsection (5) will provide that a police officer to whom the COP has sub-delegated the function under subsection (4) may not delegate that function.

Subsection (6) will provide that if a function of the Commissioner is performed in accordance with a delegation under the section, that function is deemed to be performed by the Commissioner.

10. Section 11 amended

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

11. Part 3 deleted

This clause deletes Part 3, which consists of sections 12A and 12B.

Sections 12A and 12B were inserted into the Act in 1996 together with Schedule 1. These provided for the establishment of a Main Roads Advisory Board whose sole functions were to advise the Minister on the road related matters set out in section 12B. The Main Roads Advisory Board has never actually been convened nor have any board members been appointed. Specific Ministerial advisory groups have been convened for areas of interest to the Minister and stakeholders. Accordingly, there is no value in retaining the provisions.

12. Section 13 amended

Section 13 provides for the proclamation of highways and main roads. This clause amends section 13 and inserts proposed new subsection (2)(f). Clause 12(1) amends subsection (1) by deleting the words in the passage that begin with “or shall cease” and continues to the end of the subsection. Those words which refer to proclamation of footpaths will be deleted as a result of the amendment to the term of “road”. The proposed amended term “road” in section 6 (provided for in clause 5(3)) will include all related “paths for pedestrians, cyclists or both.” Accordingly, this subsection can be used to proclaim any such paths on that basis, without the need to specifically refer to the word footpath.

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

13. Amends section 14

Section 14 provides for the power to provide highways and main roads. This clause 13 amends section 14. The intention of section 14 is that the opening of a road to the public makes it a declared road to which section 15 applies. Therefore, it is more appropriate to refer to a declaration under section 13 rather than a proclamation. Accordingly, subsection (1) replaces the word “proclaimed” with “declared”.

14. Amends section 15

Section 15 provides for property in and control of highways and main roads. This clause 14 will amend subsection (3) to remove the archaic term “appurtenant” to be replaced with the words “related to the highways and main roads” in the interest of clarifying the provision.

15. Amends section 15A

Section 15A provides for offences relating to damage to plants and litter. This clause 15 will amend section 15A. Clause 15(1) will amend subsection (1) to delete the word “consent” and replace with the word “approval”. This is for consistency with the use of the

word “approval” in proposed section 18 (which relates to agreements that require the Minister’s and Treasurer’s approval). It will also provide for an offence for subsection (1) to be a fine of \$10,000.

Clause 15(2) will amend subsection (2) to increase the penalty for the offence relating to depositing litter on highways and main roads in section 15A(1) from \$200 to \$10,000.

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

The penalty is the maximum, which will be reserved for the most serious and wanton cases of dumping or littering. Courts will use the maximum penalty as a guide to what lesser penalty should be ordered in a particular case.

It is anticipated that the regulations will provide for infringements to invoke the infringement notice procedure set out in the *Criminal Procedure Act 2004* by listing the *Main Roads Act 1930* as a prescribed Act in the *Criminal Procedure Regulations 2005*. In this way, infringements may be issued for which modified penalties will apply. This offence could fall among those offences that will be dealt with by the infringement notice procedure.

16. Section 15AA inserted

This clause 16 will insert proposed section 15AA, which will have the heading “Charges for use of prescribed roads by heavy vehicles.”

Section 15AA is a new provision that will give the Commissioner power to implement a heavy vehicle charging scheme in regulations.

The act of imposing a heavy vehicle charge for the use of prescribed roads is a means of raising funds for the construction and maintenance of roads.

The Federal and State government have committed substantial funds for the construction of the Perth Freight Link. The Perth Freight Link will significantly reduce transport costs for heavy vehicle users, boost freight efficiency and improve freight access from Kewdale to Fremantle Port.

Users of the future Perth Freight Link network and most importantly heavy vehicle operators, will benefit with the project expected to considerably reduce travel times.

The implementation of a direct charging scheme ensures the efficient provision and use of prescribed roads by heavy vehicles. These fees or charges will be the means by which a significant proportion of the State Government's contribution to the Perth Freight Link construction costs will be recouped from the private sector (i.e. the road transport industry). Those heavy vehicle charges and the prescribed roads to which they will apply, will be set out in regulations which will be in place once the road network is complete.

While the intention is for the heavy vehicle charging scheme to be applicable initially only in relation to the Perth Freight Link, the provision allows for other roads to be included under the roads that may be prescribed in the regulations.

The proposed section is not intended to apply to all vehicles, but can only be applicable to heavy vehicles as defined in the *Road Traffic (Vehicles) Act 2012*. This effectively means heavy vehicles with a gross vehicle mass exceeding 4.5 tonnes.

Proposed subsection (1) sets out the definitions of terms used in the section, namely heavy vehicle, prescribed charge, prescribed road and responsible person. The regulations (using the power under proposed section 35(1)) will set out the prescribed roads in specific detail, setting out the name of the road and what section or sections of the road it applies to. The regulations will also (in reliance on proposed section 35(2)(a)) set out the details of the prescribed charge.

The operative provision is subsection (2), pursuant to which the "prescribed charge" will be payable by the "responsible person" for a heavy vehicle that is used on a "prescribed road".

Proposed subsection (3) makes it clear that the amount of any "prescribed charge" that is payable, is recoverable by the Commissioner as a debt due to the State. This provision is commonly seen in legislation and is the standard way in which civil action may be taken (if necessary) to recover a statutory charge.

Proposed subsection (4) makes it clear that the prescribed charges payable under subsection (2) are to be credited to the Consolidated Fund.

Proposed subsection (5) enables the Commissioner to enter into an agreement with any third parties in relation to the collection of the prescribed charges. Such agreement could include business arrangements where the Commissioner disposes of the right to collect a portion, or all of the prescribed charges. Any such agreement, which would fall within the ambit of a business arrangement or agreement in which the Commissioner disposes of any interest in property, will require the written approval of both the Minister and Treasurer under the amended section 18 of the Act.

Proposed subsection (6)(a) will provide that regulations may be made to specify one or more prohibited road or roads in relation to any prescribed road.

Proposed subsection (6)(b) will provide for regulations to prescribe that it is an offence for drivers of heavy vehicles on those prohibited roads where they are driving without lawful excuse.

For each part of the network of roads that comprise the Perth Freight Link, there could be one or several other road/s which are an alternative route that heavy vehicle operators could use. In order for the heavy vehicle charging scheme to be effective it is important to provide a disincentive, in the form of a statutory penalty, for driving on other alternative roads rather than the prescribed roads with the view to evade paying the relevant prescribed charge.

Seeking to avoid payment of the prescribed charge will not constitute lawful excuse because of subsection (6)(b).

Proposed subsection (6)(c) will provide that a prescribed charge is payable for the use of the heavy vehicle on any prohibited road as if the vehicle were being used on the prescribed road. Accordingly, the regulations may provide the power to recover the penalty, and also ensures that the offender remains liable to pay the charge regardless of which road he/she ends up choosing.

Section 15AA is to be read in conjunction with the general regulation making power in proposed section 35(1) providing the power to make regulations "*that (a) are required or permitted by this Act to be prescribed or (b) are necessary or convenient to be prescribed for giving effect to the purposes of this Act.*" That will be the basis for making regulations dealing with the heavy vehicle user charging scheme.

Section 15AA(2) and proposed section 35(2)(a) will be the basis of the power to make regulations dealing with the charges or fees relating to the heavy vehicle charging scheme.

17. Part 5 heading amended

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

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

18. Section 15B inserted

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

The Act in its current form repeatedly refers to powers, functions or duties of the Commissioner in various contexts but does not specify any functions apart from section 16. Many functions can be inferred from the fact that under section 15 the Commissioner has the care, control and management of main roads and highways. However, some functions currently performed by the Commissioner are not as readily inferred.

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

Section 15B will have the heading “General functions of the Commissioner”.

Subsection (1)(a) & (b) refers to the proposed new term “works” and amended term “roads”. The term “works” is broadly drafted to enable it to be applied to a varied and broad range of other works, and for the Commissioner to enter into agreements for such matters. Compound terms like “road works” are able to be used together quite meaningfully as words like “road” and “works” are both defined.

The amended term “road” includes shared and cycle only paths that are “related to, or used in connection with a road”. This avoids the need for separate terms of footpath shared path or cycle only path. This amended term will permit works on paths related to any other roads under the care control and management of the Commissioner.

Under subsection (1)(a) the Commissioner’s functions will include the carrying out of works in relation to highways, main roads and secondary roads, and other roads under functions conferred under the Act (being other roads in

conjunction with local governments and other road authorities). This provision relating to Commissioner's general powers supports the Commissioner's specific power or function to enter into agreements for the works (under the amended section 18A or new section 18B).

Under subsection (1)(b) the Commissioner's functions will include carrying out of works in relation to, and management of infrastructure to control traffic on such highways, main roads or other roads conferred by the Act. The reference to "*management of infrastructure for controlling traffic*" in (b) is a reference to provision of signals traffic signals, traffic information and infrastructure. This is to be cross referenced with the Commissioner's specific power under proposed section 23A to make recommendations to the Minister to give directions to local government with respect to the performance of the local governments' functions that relate to, or could impact on highways or main roads or the flow of traffic on such roads.

Subsection (1)(c) will provide that the Commissioner's functions include "*identifying, assessing and ameliorating the effect of these works on land adjoining the relevant roads or on the environment generally,*" are exercised together with the functions under the proposed sections 22B and 22C. Those proposed sections specifically cover the Commissioner's powers to carry out adjoining works and environmental offsets.

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

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

Subsection (2)(a) will provide that in carrying out the functions in (1) the Commissioner must identify, implement and promote measures to improve the safety of roads and to reduce the injuries and deaths of people arising from vehicle crashes occurring on roads in the State. This subsection recognises that the Commissioner in the carrying out its general functions under subsection (1) is to include safety related considerations. The Commissioner is to identify, implement and promote measures to improve safety of roads and reduce deaths of people or injuries and damage to property arising from incidents on roads.

In addition under subsection (2)(b), the Commissioner is to consider the impacts of its general functions on the economy, community, environment and development of the State. This will necessarily involve, where possible, the engaging and consideration of the views and needs of respective stakeholder groups in the performance of those general functions.

19. Section 16 amended

Section 16 provides for the specific powers of the Commissioner.

Clause 19(1) deletes section 16(1) and inserts proposed subsection (1). This subsection provides the Commissioner may exercise in regard to any highway or main road any power which a local government may exercise for a road within its district. This largely restates the substance of section 16 (1)(b), but uses simpler language.

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

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

Clause 19(2) amends subsection (1b) to replace the words “highway or main road” with “road”.

The only reference in the Act to the Commissioner’s powers that are conferred under the road traffic legislation are in existing subsections 16(1b) and 16(1c). However, the scope of those conferred powers is limited by the specific reference in section 16(1)(b) to the Commissioner’s power to “...to control or regulate traffic, or any person, on a main road or highway...” This limits the Commissioner’s powers conferred by only referring only to main roads and highways and not the other roads which make up the majority of the State’s public roads.

Accordingly, the replacement of the words “highway or main road” with “road” is necessary to remove any potential limitation on the Commissioner’s powers conferred under the road traffic legislation.

Clause 19(3) will amend subsection (1c) to delete the words “operate traffic signs and traffic control signals and similar devices, the erection of which is authorised by those regulations” and insert instead the words “erect, establish or display traffic or road signs, road markings, traffic control signals and similar devices referred to in those regulations.”

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

Clause 19(4) will insert proposed Subsection (1D).

The Act is an old piece of legislation that does not cater for the functions of a modern road authority such as the use of video cameras and other electrical and electronic devices for monitoring traffic congestion, and use of the roads on a highway or main road.

Subsection (1D) will provide that despite the *Surveillance Devices Act 1998* the Commissioner has the power to:

- (a) *“Install and operate cameras and any electronic equipment necessary for or incidental to –*
 - (i) *Carrying out main roads works; and*
 - (ii) *monitoring traffic on a highway or main road; and*
 - (iii) *investigating and prosecuting alleged offences under this Act;*

and
- (b) *Share images or other information obtained from the equipment with another public authority.”*

This proposed section will provide that the requirements of the *Surveillance Devices Act 1998* will not have any application in respect of the Commissioner's ability to install and operate cameras and electronic equipment in order to supervise “main roads works,” to assess and monitor traffic and traffic congestion, for the consideration and implementation of measures to improve the flow of traffic and for planning purposes.

The proposed subsection will also permit the Commissioner to be able to use the equipment and electronic devices for investigation and prosecution of alleged contraventions of the Act. The primary application of the proposed power in this subsection will be circumstances where heavy vehicles seek to evade paying the heavy vehicle charge by travelling on a prohibited road in contravention of regulations that will be made pursuant to proposed section 15AA(6).

The proposed subsection will also expressly include the power to make the images and other information from those devices available to other government agencies, primarily the WA Police.

Clause 19(5) will insert proposed subsection (3A). This subsection (3A) will provide nothing in (the existing) subsection (2) requires the Commissioner's approval to be obtained before each exercise by a local government of its powers over a highway or main road. It is necessary to clarify that section 16(2) is an empowering section, which grants the Commissioner the power to control and direct the exercise of a local governments' powers over main roads and highways. It makes it clear that it does not otherwise prohibit the local governments' powers under the *Local Government Act 1995* or require that the Commissioner's consent be obtained before the local government exercises those powers.

Clause 19(6) **will amend subsection (3)**. This subsection is amended as a consequence of the new term of "main roads works" and the deletion of the term "road construction", and the new term "agreement" to cover contracts.

Clause 19(7) **will delete subsection (4)**. Its substance is restated in the proposed new subsection (4) in clearer terms.

Clause 19(8) **will delete Subsection (5)**. These amendments are necessary because of the deletion of the term construct or road construction which is subsumed in the proposed new broader term of "works".

20. Section 16A amended

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

Subclause (1) will amend section 16A(2) to delete "consent" and replace it with "approval".

Subclause (2) will amend subsection (3) to increase the penalty for interfering with signs that indicate a main road or highway is closed, from \$200 to \$2,000. The Act is an old piece of legislation. The last time section 16A was amended was in 1975. The penalty level is very low, does not provide any deterrent value and is ineffective. It does not provide an adequate deterrent or disincentive for the behaviour concerned, namely the activity of interfering (without the Commissioner's approval) with signs that indicate that a road is closed. Such behaviour can both endanger lives and cause significant and costly damage to main roads and highways. Accordingly, the increase will bring the section in line with an appropriate penalty level that is commensurate with the offence.

Subsection (4) will be amended to increase the penalty under the subsection, for driving on highways or main roads that are closed. Such behaviour of driving on roads that are closed without the authority of the Commissioner can endanger lives and also, as has occurred in the past, caused significant and costly damage to main roads and highways. Again, the penalty level is increased to \$10,000, to bring the penalty level in line with the appropriate level that is commensurate with the offence.

21. Section 17 amended

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

This clause will amend subsection 17(a)(ii) to take into account the proposed replacement of the term "road construction" or "construction" with the term "works". It also refers to the proposed new term "adjoining works" which makes it clear that the Commissioner has powers to undertake activities outside the road reserve of main roads and highways for the purposes of fulfilling the functions under the Act. The main power to carry out "adjoining works" is set out in section 22B. Under this subsection the Commissioner shall *"...carry out all surveys and investigations as may be necessary or expedient to ascertain..."* *"(ii) the nature and extent of the resources of the State.....and materials suitable for the purposes of road works and related adjoining works,..."*

Subsection (iii) amendments are likewise necessitated to replace the term "road construction" with "main roads works" and to extend the application of the section to the proposed term "adjoining works". The section provides the Commissioner with the power to carry out surveys and investigations to determine the most effective methods of undertaking both "road works" and also any related "adjoining works".

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

Proposed subsection (vi) is inserted. It will permit the Commissioner to carry out surveys and investigations as are necessary or expedient to ascertain what "environmental offsets works" are necessary or desirable. Environmental offsets are regularly required as part of the environmental approval process for

clearing permits under the *Environmental Protection Act 1986* for projects which involve the otherwise adverse environmental impacts through the clearing of native vegetation. This subsection is to be cross referenced with the Commissioner's substantive power in relation to environmental offsets works in relation to a highway or main road under proposed section 22D.

Subsection (b) amendments are necessitated as a result of the deletion of the term "construction of roads" and its replacement with the proposed terms "works" and "main road works".

22. Section 18 deleted

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

23. Section 18A amended

The heading is amended to read "Agreements for others to carry out main roads works," which reflects the application of the section.

Subclause (1) will delete section 18A(1). Part of the powers that appear in the subsection 18A(1), which is to be deleted, is repeated (with certain changes to take into effect the deletion of the term construction and its replacement with "works" or "main roads works") and redrafted in both proposed sections 18B and 18C.

Resource companies frequently approach Main Roads to seek changes to road networks in order to provide new or additional access to a mine site from existing roads. That may involve the building of new roads, crossings, overpasses bridges or other such infrastructure from or adjoining an existing road network in order to access the Company's mine site, and to facilitate its operations. State funding for such purposes would not be available, accordingly section 18A(1) has been typically relied on as a basis to require such companies to enter into an agreement with the Commissioner, where they agree to pay for, or contribute to the costs incurred in relation to such construction works. This will be restated under the new proposed sections 18B and 18C in more specific and clear terms.

Subclause 23(2) will amend section 18A(2).

It will provide that the Commissioner has the power, and has always had the power, to enter into an agreement with any person under which the person is to carry out "main roads works". This is largely a restatement of the existing

subsection (2) but consistently with the proposed amendments in this Bill uses the term “main roads works” in place of construction.

Section 18A is the Commissioner’s core contractual power to enter into agreements with contractors or other entities to carry out various “works” for the purposes of its functions in relation to highways and main roads under the Act. This section enables the Commissioner to enter into an agreement with a proponent – whether it be a mining company, development company, or other entity to carry out “main roads works” in a road reserve of a main road or highway on the terms and conditions as required by the Commissioner. It also provides the ability for the Commissioner to enter into agreements with third parties to carry out “main roads works” on behalf of the Commissioner.

The amendment in 18A(2) recognises that the Commissioner’s contractual functions covers far more than simply contracts for the construction of roads. The function of the Commissioner as a road authority has changed from its inception when the Act was enacted over 80 years ago. Furthermore, the nature and breadth of the contracts have changed from simply construction type contracts to a range of contracts. Accordingly, this proposed amended subsection, by referring to the term “main roads works,” takes into account the broad range of the types of works or activities for which the Commissioner may enter into agreements. The power to enter into agreements will extend to all kinds of “main roads works.”

The amendments in 18A(2) are required to be consistent with the use of the term agreement in place of contract, and the replacement of the reference to the term “construction” with the proposed new broader term “main roads works”. While the Commissioner currently has the power to enter into contracts with third parties - that is confined to the narrow context of carrying out road or other construction the Commissioner is empowered to perform under the Act.

This proposed subsection (2) is expressed in the context of agreements and the function to carry out the broader range of “main roads works”, which proposed term encompasses a broad range of works including “road works” (which in turn includes the term “works”), “adjoining works” (the substantive power of which is in section 22B), “road service centre works” (substantive power in section 22C), “environmental offset works” (substantive power in proposed section 22D), “clearing” (substantive power in proposed section 22E); and other works the Commissioner is empowered to carry out under the Act.

24. Section 18B replaced

This clause will delete section 18B and replace it with proposed section 18B, and will also insert proposed sections 18C, 18D, 18E and 18.

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

Proposed section 18B will have the heading:

“Agreements for the Commissioner to carry out “main roads works” for others”. It will provide that the Commissioner may enter into an agreement with any person to carry out “main roads works” for that person, and that such agreement may provide for an amount to be paid to the Commissioner for the main roads works to be carried out.

This proposed section will make it clear that the Commissioner has the power, and is to be taken as always having had the power to enter into agreements with any person to carry out “main roads works” for that person. It also provides the Commissioner with the contractual freedom to negotiate with the third party agreed rates by which the third party will pay for the Commissioner to carry out such “main road works”.

Proposed section 18B restates with changes, what is in existing sections 18A(1) and 18B, both to be deleted. The main effect of the change in proposed section 18B is:

- to broaden the nature of the type of contracts by replacing the restricted word “construction” with the broad ambit of the proposed term “main road works.” The use of the term “main roads works” provides more clarity than the reference in the current section 18B to the use of the general and undefined word, work.
- To provide that ministerial approval to the agreement is no required, unless the agreement falls within the prescribed amount as referred to in proposed section 18D, or otherwise falls within the ambit of proposed section 18D.

Section 18A(1) has typically been relied on by Main Roads in those situations where companies from the resource sector or property development companies require the Commissioner to carry out “works” on road networks to provide additional or improved access to mine sites, or for the purpose of new developments respectively. Under the existing/current section 18A (1), the Minister’s approval is required for the Commissioner to enter into any such agreement with a person where the person pays for, or contributes to the expenditure of any construction works. This requirement has been too restrictive and unwieldy.

Such contracts can involve small amounts involving routine matters, to others that could cover substantial sums and involved subject matter that may be of importance and profile. To require the Minister’s approval for each and every such agreement, where the person agrees to contribute or pay for the costs of the works, can lead to delays in the signing of agreements. It is not every agreement that would warrant ministerial approval. Proposed section 18D will provide that those contracts that involve expenditure that exceeds the prescribed sum or for specified contracts set out in regulations, will require Ministerial approval.

Accordingly, agreements under proposed section 18B can be subject to Ministerial scrutiny and approval with the regulations setting out the prescribed amount of contract values, and specified types or categories of agreements that require ministerial approval.

Proposed section 18C will have the heading “Agreements for contributions towards Commissioner’s expenditure”.

Subsection 18C(1) is in part what currently exists in section 18A(1), but is to be deleted. However, the power under this proposed subsection is broader in its application in that it:

- refers to the term “main roads works,” which encompasses within its ambit a broad range of works, rather than being limited to “construction or any aspect of construction of the road”; and
- is not subject to the consent of the Minister, unless it falls within the specified ambit of agreements under proposed section 18D that require ministerial approval.

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

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

This proposed section 18C will put beyond doubt the ability of the Commissioner to enter into such agreements, and to negotiate within the terms of the agreement with that third party that they pay for, or pay a contribution towards the costs to carry out such “main roads works”, which are for the benefit of that third party. Rather than rely on inferred powers to enter into such agreements – this proposed section will put the Commissioner’s powers beyond doubt.

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

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

Proposed section 18C is drafted in general terms so as to maximise the flexibility of the power. Subsection (1) will provide that the Commissioner has the power to enter into an agreement with any person to provide for that person to pay for or contribute to the expenditure incurred by the Commissioner in relation to main roads works.

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

- (a) “works” that comprise modifications of, or the placement of, infrastructure on or under roads or to accommodate mining operations or property developments. This covers the range of circumstances where mining companies seek to place pipelines on a road reserve or to modify roads to assist their operations. Likewise, in the case of property developers who need to modify a road network to provide access to a new development.
- (b) “road service centre works” – such as where the Commissioner modifies a main road or highway to facilitate road service centre (the substantive power under proposed section 22C). Road service centres are

commercial centres providing amenities as well as selling fuel and refreshments situated on or adjoining main roads and highways.

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

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

The cost of the public function of providing, upgrading repairing and maintaining highways and main roads to the highest standard involves expenditure of substantial sums. Those costs are subject to regular increases. This proposed section 18D provides that contracts that exceed an amount that will be prescribed in the regulations will require Ministerial approval. Increasing the monetary contract approval level in this manner in the regulations will facilitate and assist in the day to day functions of the Commissioner.

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

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

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

- (a) relating to road service centre works entered into using the powers set out in proposed 18E(2)(a), (namely the power of acquisition, development disposal or otherwise dealing with property). Road service centre works are for or in connection with road service centres, which are commercial centres accessible from main roads and highways, and which sell or otherwise provide fuel, food, refreshments and other road user services together with toilet facilities and recreational areas;
- (b) that involve an expenditure by the Commissioner of an amount that exceeds the prescribed amount – being an amount that will be prescribed in the regulations;
- (c) any other agreement of a kind that will be specified in the regulations.

Section 18D(c) provides for the regulations to specify certain types of agreements for which Ministerial approval will be required.

Proposed section 18E

Proposed section 18E will have the heading “Other powers”.

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

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

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

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

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

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

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

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

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

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

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

These arrangements can include government and other agencies such as the Public Transport Authority, Landcorp and numerous local governments. As an example, the Commissioner in the past has entered into tripartite agreements to permit the Commissioner to construct and operate a weighbridge on land leased by a stevedoring company from a port authority.

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

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

- (a) To acquire, develop, dispose of or in any way deal with property;
- (b) Subject to the requirements of section 18, where the contract requires Ministerial and Treasurer approval, to enter into any business arrangement or research body or hold and dispose of shares, units or other interests in or relating to a business arrangement or research body.
- (c) Develop and turn to account intellectual property – this sub-section specifically permits the Commissioner to make a profit from its intellectual property.
- (d) To use the expertise and resources of the department to provide consultancy, advisory or other services for profit. Main Roads provides services to heavy vehicle operators, in relation to supporting heavy vehicles that are subject to the complying restricted access vehicle permit regime under the *Road Traffic (Vehicles) Act 2012* and regulations. Main Roads from time to time, provides freight companies, at their request, with check weigh services to ensure their vehicles are

within the appropriate weight to be compliant. Other services include the provision of vehicle escort services under the *Road Traffic Administration Act 2008* and regulations for oversized vehicles. This subsection provides certainty surrounding the Commissioner's power to enter into agreements of such a nature.

- (e) For the purposes of anything in (a) – (e) enter into a contract or arrangement.

Subsection (3) will provide the Commissioner is permitted to act in conjunction with any person or public authority, or department of the public service or agency of the Commonwealth in performing any of the powers under section 18E(2).

Clause 24 will also insert proposed Section 18

This section makes it clear that the Commissioner needs the written approval of the Minister and Treasurer for agreements:-

- (a) That are business arrangements ; or
- (b) By which the Commissioner acquires, holds or disposes of shares or any other interest in or relating to a business arrangement; or
- (c) that involves the exercise of the Commissioner's power to grant a lease or licence to occupy freehold land acquired under proposed amended section 29, or otherwise under the care and control and management of the Commissioner for the purposes of road service centres under proposed section 22C.

25. Section 19 amended

Section 19 provides for other duties of the Commissioner.

Clause 25 will amend section 19 to delete "construct or supervise roads" and insert "carry out main roads". This amendment is necessary to maintain consistency with the amendments and to replace the term "construct" with the broader ambit of the proposed term "main roads works".

This clause will delete section 19(d), as the functions for the Commissioner to "supervise the construction of highways main roads and secondary roads and other works to be carried out under this Act" is redundant as it is covered under the general provisions in proposed section 15B(1).

26. Section 21 amended

This section provides for local governments to give the Commissioner information on request.

This clause 26 will delete “work” and insert “road works”. This section 21 is amended for consistency – and to replace the term work with the proposed new term “road works,” which refers to “works,” and encompasses a broad range of works or activities.

27. Section 22 replaced

This clause 27 will delete section 22 and insert proposed new sections 22A, 22B, 22C, 22D, & 22E, 22 and 23A.

Proposed section 22A - Intellectual property

Subsection (1) & (2) introduce the term “intellectual property” which includes

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

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

This proposed section will put beyond doubt and provide certainty as to the Commissioner’s power to enter into commercial arrangements to turn to profit, or develop any technology, software or other intellectual property that is created or acquired in the performance of the Commissioner’s functions under the Act. This is in line with the State’s policy regarding government intellectual property policy in the Public Sector Commissioner’s Circular (number 2009-30) issued 14 April 2003, which advocates commercialisation of intellectual property.

Proposed section 22B – Adjoining works

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

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

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

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

(a) on land that adjoins the road or

(b) relate to a watercourse that adjoins or intersects the road,

necessitated by works on, or the use of, that road.”

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

Subsection (2) will provide the Commissioner may by negotiation or agreement enter upon the land adjoining the highway or main road to perform the “adjoining works”.

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

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

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

Subsection (4) will provide that the power to carry out “adjoining works” is subject to the requirements of the *Rights in Water and Irrigation Act 1914*. Under that legislation permits are required for works that deviate or interfere with the flow of any watercourse.

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

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

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

Subsection (3) will provide that the Commissioner may do anything necessary in the exercise of the power in subsection (2) including to enter into an agreement with any person under which the person is to operate a road service centre, and for that purpose exercise the power under amended section 29(2) to provide a lease or licence to occupy freehold land, or grant any other interest in that freehold land.

Road service centres are commercial centres which are accessible from main roads and highways and which sell or otherwise provide fuel, food, refreshments and other road-user services, together with toilet facilities and recreational areas. Long-term projections show very significant increases in the traffic volumes on highways such as the Great Northern Highway which will have a significant impact on the future need for the road user facilities provided by road service centres. These centres provide significant social advantages and will become increasingly desirable to the Commissioner as a road authority because they will:

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

Proposed section 15B (2) is amended to recognise the Commissioner's role in identifying implementing and promotion of measures to improve the safety of roads in the State, and to reduce the deaths and injuries of people arising from incidents on roads. This proposed section 22C, providing the Commissioner the power to facilitate road service centres is in the interest of promoting road safety.

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

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

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

Proposed section 22D - Environmental Offsets

Environmental offsets are now regularly required as part of the environment approval process under the *Environmental Protection Act 1986* ('EPA') for projects, public or private, which involve otherwise adverse environmental impacts through the clearing of native bush or loss of wetlands. The environmental approval conditions may contain a requirement that the applicant:

- (a) establish, where necessary, and maintain vegetation on land other than land cleared under the permit in order to 'offset' the loss of the cleared vegetation; or
- (b) make monetary contributions to a fund maintained for the purpose of establishing or maintaining vegetation. (Section 51I EPA.)

In many instances the most satisfactory way of doing so is for the applicant to provide a nominated area of bushland or wetland, which is to be held by the Crown and managed by, or with some form of the oversight of the Conservation Commission of Western Australia, under the *Conservation and Land Management Act 1984* ('CALM Act'), with funds provided by the developer.

The term "environmental offset works" makes it clear that the broad range of activities that could fall within the term "works" can be carried out in order to offset the environmental effects of main roads works in 2 ways.

1. By protecting, establishing and maintaining native vegetation as defined in the EPA on land other than the land on which clearing was undertaken; or
2. By undertaking other actions as a requirement to offset the adverse environmental impact from "main roads works".

The proposed section 22D will provide that subject to the EPA, the Commissioner may carry out or do anything necessary for the purposes of carrying out environmental offset works in relation to a highway or main road.

Proposed section 22D will provide the Commissioner with the clear power to undertake activities outside the boundaries of a main road or highway in order

to meet the environmental requirements or statutory approval for works which the Commissioner undertakes for the purposes of the Main Roads Act including:-

- (a) The establishing and maintaining of environmental offsets; and
- (b) Creating banks of offsets for use in respect of projects which will not necessarily have been identified at the time of the creation or acquisition of the offsets.

The Commissioner will have the ability to enter into agreements with third parties (including the Conservation Commission WA or other government departments) on the provision of funding by the Commissioner to purchase and manage offset land which is to provide an offset for “main roads works”. The term “main roads works” is broadly drafted to include, among other matters, environmental offset works. Such agreements would be supported by the proposed amended section 18A.

Proposed section 22E Clearing works

There are significant tracts of native vegetation on land held by the Commissioner for the purposes of future road construction and for road building materials as well as for future offsets.

Clearing of native vegetation in Western Australia is regulated by the *Environmental Protection Act 1986* ('EPA'). It is an offence under section 51C of that Act for any person who clears or allows clearing of native vegetation unless the clearing is:

- Done in accordance with a clearing permit; or
- Is of the kind set out in Schedule 6 of the EPA; or
- It is of a kind prescribed in the regulations for the purposes of section 51C of the EPA.

Most of the Commissioner's clearing is undertaken using specific clearing permits under section 51E of the EPA, or in reliance on existing exemptions in the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (“Environmental Clearing Regulations”). On occasion the Commissioner relies on the exemption regulation 5 item 2 of the Environmental Clearing Regulations “for the purposes of preventing imminent danger to human life or health or irreversible damage to a significant portion of the environment.”

However there are other circumstances in which the Commissioner needs to undertake urgent clearing for safety, which would not fall within the ambit of “imminent danger to human life or health” in the Environmental Clearing Regulations. Accordingly, it would be beneficial and in the interest of safety for the Commissioner to have clearing powers set out in the Act where it is

necessary for the Commissioner to undertake urgent clearing for safety in circumstances not currently addressed in the environmental legislation.

Examples of other circumstances which will not fall within the ambit of existing exemptions, and for which it the Commissioner requires the power to undertake urgent clearing for safety includes:

1. Storm action which can cause tree roots to become loosened, creating a possible hazard or danger. While a tree in an unstable condition may not present imminent danger, such danger could arise in a subsequent storm. Protection of public safety demands swift action is taken to remove the danger.
2. Where a collision has occurred with a vehicle and a tree or clump of trees, resulting in a serious injury or fatality. There may be a justifiable need to remove the tree/s promptly. There is a community expectation that there be a quick response by the Commissioner to serious hazards or potential hazards. The urgency to respond in such situations is not compatible with the time frame to complete the requirements of the clearing permit regime under the environmental legislation.
3. Fatal accident/crash reports may recommend the removal of trees in the interest of improving road safety. Again there is community expectation that the recommendation be implemented expeditiously.
4. From time to time a member of the public or a road users group will raise concerns about vegetation restricting visibility and causing a safety issue at a location. An assessment may confirm if there is a significant safety issue and whether the risks are best dealt with by removal of the trees or cluster of trees or bushes. There is the expectation that the Commissioner remove vegetation in such situations without unnecessary delay.
5. Events on roads that can cause damage to road infrastructure and create safety hazards. Such events could include storms, flooding, bushfires and vehicle crashes. Responsive action may necessitate urgent clearing of native vegetation.

Proposed section 22E will provide that the Commissioner in performing functions conferred by the Act may carry out any clearing or other vegetation removal that is:

- (a) necessary for facilitating the performance of those functions; or
- (b) necessary to protect the safety of people or protect the environment.

Subsection (a) is to be cross referenced with clauses 44 and 45 in this Bill which will provide for a proposed consequential amendment to the *Environmental Protection Act 1986* Schedule 6 – to include a new item 10A which will specify:

“Clearing by the Commissioner of Main Roads under the *Main Roads Act 1930* section 22E(b).”

In this way, the Commissioner’s power to carry out clearing works under 22E(b) that is “*necessary to protect the safety of people or to protect the environment*”, will be exempt from the requirement for a clearing permit under the EPA.

Proposed section 22 - Incidental works to roads, power to construct

This is largely a restatement of existing section 22. It refers to the Commissioner’s functions under proposed sections 15B, 22B, 22C, 22D & 22E and amended section 16, which was necessary in order to make sense to section 22. For consistency with changes throughout the Bill, the word “construct” is replaced with the broader proposed term “works”.

Proposed Section 23A Directions by Minister to local government

While approximately 60% of the State’s traffic volume is on main roads and highways most of the individual vehicles enter and exit those roads through local government roads. The flow of traffic from the two levels of road networks is inherently linked. The efficient operation of the network of State main roads and highways and local government roads is dependent on the interface between the regulation of traffic on both levels of roads.

Unilateral decisions by local government regarding changes to road layouts may have the effect of overloading other parts of the road network, and result in congestion of traffic. Comparatively minor road modifications on a local government road can potentially result in traffic entering it queuing onto a freeway.

The purpose of the proposed section is to ensure the Commissioner has a process where, through negotiations with local government, agreement can be reached in the interest of ensuring proper and efficient flow of traffic on roads.

In many instances these issues are addressed in the course of wider town planning processes. In such instances the balance between local amenity and public expectations for minimising traffic congestion across the road network can be addressed. However, in other instances road modifications may not form part of a planning proposal.

Currently it is possibly open to the Commissioner to intervene to reverse works by undertaking road construction under the current section 27A. However, section 27A is not tailored to the current purpose to be able to direct a local government in relation to road construction or modification on roads in

their district. Nor does the existing section 27A require the local government to bear the costs of carrying out modifications or reversing such works.

This proposed section 23A is drafted to give the Minister, rather than the Commissioner, the power to give directions to local government. Local government is a completely separate level of government from the State, and has its own functions. So while the Minister representing State government may issue a direction to local government for a specific purpose, it is inappropriate for an officer (or agency) under the Minister to do so directly.

Proposed section 23A(1) will provide the Minister with the power, on the recommendation of the Commissioner to give a written direction to local government in relation to the performance of its functions that may affect a highway or main road, or the flow of traffic on such highway or main road.

Under proposed subsection (2) the Commissioner will be obliged to consult with the local government before making any such recommendation to the Minister under subsection (1). This consultative process will require full and proper disclosure, and negotiation before any recommendation is made. It is anticipated that agreement will be negotiated in this consultative process in the great majority of cases. Only in the exceptional cases where, despite extensive consultation agreement cannot be reached with the local government, that the Commissioner would then recommend that the Minister issue the direction.

Proposed subsections (3), (4) & (5) simply flow on from the process where after full consultation and discussion no agreement is able to be negotiated, and in the interest of best managing and ensuring the efficient flow of traffic, the Commissioner is obliged to carry out the works comprised in the Minister's direction.

Proposed subsection (3) will provide the Commissioner with the power to carry out the works the subject of the direction where the local government fails to comply.

Proposed subsection (4) will require the local government to repay the costs and expenses incurred by the Commissioner in carrying out any works pursuant to subsection (3).

Proposed subsection (5) will provide that the expenses incurred in carrying out the works under subsection (3) may be recovered from the local government in court as a debt due to the State.

Proposed subsection (6) will provide that the moneys repaid or recovered under section 23A are to be credited to the special purpose account, the Main Roads Trust Account.

28. Section 23 amended

Section 23 provides for an offence for defacing works.

This clause 28 will amend section 23 is to increase the penalty for defacing or removing “*any signs, marks, trenches, posts, pegs or the like, made, erected or inserted in or upon any land*”....in making surveys or establishing distances, warnings, directions and the like. The proposed amendment to section 23 refers to penalties rather than penalty units, in accordance with the State’s standard legislative drafting practice.

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

29. Section 24 amended

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

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

However, as the Act is being amended rather than rewritten as a new Act, the drafting convention is not to interfere too invasively with the current structure, otherwise the intent of the Act could be compromised. In any event, the drafting instructions which were approved by Cabinet did not include a requirement to delete the sections dealing with secondary roads.

This clause 24, subclauses (1), (2) and (3) in turn amend subsections (1) (4) & (6). The amendments in these subsections are necessitated to maintain consistency with the Bill and to replace the term “construct” with the new proposed term “works.”

Clause 29(4) deletes existing subsection (7) and inserts proposed subsections (7), (8A) and (8B) which simply modernises the language of existing subsection (7). These amendments are included merely for consistency with proposed subsections 23A(3) to (5).

30. Section 26 replaced

This clause 30 will delete section 26 and insert a new clause 26. This inserted section is for consistency throughout the Bill and replaces the word powers with “functions” and also includes a reference to adjoining land and land on which environmental offset works are being carried out.

31. Section 27A replaced

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

This clause 31 will delete section 27A and inserts a new proposed section 27A.

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

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

Subsection (1) will introduce the terms “local government” and “road” for the purposes of section 27A.

Subsection (2) will provide what was previously subsection (1) but now provides that the Commissioner may “carry out works” instead of simply may “construct roads”.

Subsections (3) and (4) will provide what was previously subsection (2).

Subsection (3) will provide that the Commissioner must consult with the relevant local authority before commencing “works” on roads that are not highways and main roads or secondary roads.

Subsection (4) will provide that after the “works” have been carried out, the road and its maintenance is the responsibility of the relevant local government.

Subsection (5) will provide what was previously subsection (3) and for completeness and consistency replaces the term “power” with “functions”.

The term “functions” under the *Interpretation Act 1984* includes “*powers, duties, responsibilities, authorities and jurisdictions.*” The Bill by using the term “functions” concisely incorporates the full ambit of the term without having to restate it in full. The term “functions” is mostly used where this means “function power or duty,” and in other cases there is a reference to power because the scope of the section is more specific (such as in section 16).

Subsection (6) will make it clear that the sections of the Act dealing with highways and main roads adjoining land and land on which “environmental offset works” are being carried out, applies equally to roads that are not highways, main roads or secondary roads. In other words, it provides the Commissioner with the clear power to undertake activities outside the boundaries of a main road or highway in order to meet the environmental legislation requirements, or to carry out “adjoining works”.

Subsection (6) refers to adjoining land and land on which “environmental offsets works” are being carried out. This is to be read in conjunction with the substantive powers dealing with the power to carry out “adjoining works” under proposed section 22B, and the power to carry out “environmental offset works” under proposed section 22D. This amended section will provide the Commissioner with the power to undertake activities outside the road reserve of main roads and highways to carry out “adjoining works” and to carry out “environmental offset works”. “Environmental offsets works” are those that are required under environmental legislation to offset the loss of cleared native vegetation as a result of works on roads.

Under the current Act the Commissioner’s functions are largely confined to the road reserves of main roads and highways. Proposed section 22B and the explaining term “adjoining works” will enable the Commissioner to undertake a number of activities outside the road reserve of main roads and highways, including matters such as installing noise abatement measures on private properties adjoining main roads or highways with the consent of the owners; undertaking drainage modifications on adjoining land; establishing and using pits or quarries located on land outside the road reserve; requiring the Commissioner to undertake various activities for the purposes of fulfilling functions under the Act.

This proposed section 27A extends the powers under proposed sections 22B and 22D to roads that apply under section 27A being roads other than highways, main roads or secondary roads.

32. Section 28 amended

Section 28 provides various powers in relation to motor traffic passes, such as their construction and repair.

Subsection (1) currently provides a term of “relevant authority”.

This clause will amend subsection (1) to introduce a term “construction” which will include other “works”. Thereby, it includes the proposed new term “works” in section 6, which captures more than just construction of roads, and covers a wide range of works covered by the proposed new term “works”. This will provide that all references to construction within this section 28 will include activities that fall within the proposed term “works”.

33. Part 9 heading replaced

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

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

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

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

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

Clause 33 will amend the heading in Part 9, from “control of roads” to read: “Specific powers in relation to land” as proposed amendments to section 29 will relate to more than only control of access.

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

This heading is necessary to make it clear the following proposed new sections 28AA and 28A are concerned with control of access.

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

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

35. Section 28A amended.

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

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

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

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

Existing section 28A (2F) provides the Commissioner may enter into agreements relating to right of access. Main Roads has internal guidelines for control of access procedures (issued August 1999 and amended October 2014). This sets out the types of access sought (such as residential, agricultural, commercial or pedestrian/cycle), and the procedures to be followed.

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

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

- provide new and shortened terms "COA road section" and road section. Many of the subsections will be simplified by using the shortened terms avoiding the need to repeat the full extended term on each occasion;
- replace the term "power" with the broader term "functions" for completeness and consistency throughout the Bill; and

- replace the term “construct” with the broader proposed term “works,” which is consistent with the use of the proposed term “works” in place of “construction” through the Bill.

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

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

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

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

Subclause (3) will amend subsection (1F) to replace the term “powers” with the term “functions.” The term “function” is more concise and certain in language. This is consistent with legislative drafting standards and practice to use more concise and certain language. The term “functions” is mostly used where this means “function, power or duty”. In other cases there is a reference to “power,” because the scope of the section is more specific (such as in section 16).

Subclause (4) will amend subsection (2A) to delete the words “section or part of a road subject to control of access,” and insert the proposed shortened term “COA road section.”

Subclause (5) will introduce proposed new subsections (2BA) and (2B).

Proposed subsection (2BA)

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

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

being limited to a compensation agreement. Subsections (2F) and (2G) therefore apply in the context of relief that might be granted to private owners adjacent to a COA road who may be affected by limits on access, particularly where their properties is bisected or affected by COA roads.

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

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

Proposed subsection (2BA) is necessary to ensure that the Commissioner has the concurrent head of power to grant private landowners or lessees of the land on which a road service centre will be constructed, access to control of access roads for the purpose of conducting the road service centres. Practically speaking the access would be provided by the construction of 'on and off' ramps for the road service centres. The subsection will also make it clear that the Commissioner may grant the access to COA road sections to any private owner or occupier irrespective of the purpose for which the right of access is sought.

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

Proposed subsection (2BB)

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

It may be appropriate for example, for the Commissioner to stipulate or provide directions as to the manner of construction of the on/off ramps to the

COA road section from the road service centre, or any other property adjacent to the COA road section that accords with safety standards in the interest of road safety. This proposed subsection is to be cross referenced with the power under proposed section 18B for the Commissioner to enter into an agreement for the Commissioner to carry out “main roads works” for others (bearing in mind that the proposed term “main roads works” includes among other matters road service centre works).

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

Subclause (6) will amend subsection (2B)(a) (b) and (c) to incorporate the proposed shortened terms “COA road section” and “road section” in place of the longer more cumbersome full description. These amendments are:

- in (2B)(a) to delete the words “section or part of a road not subject to control of access,” and insert the words “section that is not a COA road section”;
- In (2B)(b) to delete the words “section or part” and insert the proposed new shortened term “road section”;
- In (2B)(c) to delete the words “section or part being declared to be subject to control of access” and insert the words “road section becoming a COA road section”.

Subclause (7) will amend subsection (2D) to delete the words “section or part of the road to be subject to control of access”, and insert the shorted term “COA road section”.

Subclause (8) will amend subsection (2E) to delete the words “section or part of the road to be subject to control of access”, and insert the words of the proposed shortened term “COA road section”.

Subclause (9) will amends subsection (2G)(c) to delete the words “section or part of a road subject to control of access” and insert the proposed shortened term “COA road section”. The subclause will also delete the words “section or part of a road subject to control of access he,” and insert the words “COA road section the Commissioner.” This provides certainty and clarity.

Subclause (10) will amend subsection (2H) to delete the words “to (2K) applies mutandis mutandis,” and insert the words “and (2B) to (2K) applies, with appropriate modifications.” This amendment is necessary to make it clear that the proposed new subparagraphs (2BA) and (2BB) are not included, as it is intended that they fall outside the regime in the other subsections dealing with agreements for compensation, where a right to access is

extinguished as a result that section of the road being declared control of access.

Subclause (11) will amend subsection (2I) to delete the words “to (2K)” and insert the words “and (2B) to (2K)”. This amendment, as with the amendment made by the preceding subclause (10) is necessary to make it clear that proposed new subclause (2BA) and (2BB) will not apply to the subsections dealing with agreements for compensation.

Subclause (12) will amend subsection (2J)(b) to:

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

Subclause (13) will delete subsection (3) and (4). Subclause (13) will insert proposed new:

- Subsection (3), which is largely a restatement of the current subsection (3) with the addition of the words “with appropriate modifications“, and the use of the shortened term “COA road section” in place of the more lengthy and cumbersome “sections or parts of a road subject to control of access”; and
- subsection (4), which is largely a restatement of the current subsection (4) but uses the word “Despite” instead of “Notwithstanding,” “must” in place of “shall” and “approval” in place of “consent”. These words are consistent with modern drafting standards and practice. Subsection (4) will also use the proposed shortened “COA road section” in place of the longer “section or part of a road subject to control of access”.

Subclause (14) will delete subsection (5A) and insert a proposed new subsection (5A). This subsection will provide that the Commissioner may undertake works to provide local access and may “...*carry a road to provide local access over or under any COA road section, or may carry a COA road section over or under a road to provide local access*”. This is largely a restatement of the current subsection (5A) the only change being the use of the proposed term “works “ in place of “construct” to cover the broad ambit that is contemplated by that term “works”. This is consistent with the use of the new term works in place of construction. In addition the proposed shortened term “COA road section” is used.

Subclause (15) will delete subsection (5B) and insert a proposed new subsection (5B) which is a restatement of the current subsection (5B) with the words “with appropriate modifications” added. It will provide that the provisions of section 24(5) apply with appropriate modification to a road to provide local access. The classification and concept of secondary roads is defunct and no longer in use. The amendment is simply made to simplify words in accordance with modern drafting conventions.

Subclause (16) will amend subsection (6) to delete the words “section or part of a road subject to control of access,” and insert the proposed shortened term “COA road section”.

Clause (17) will amend subsection (7).

Subsection (7) amended

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

Subclause (17)(a) amends subsection (7)(a) to delete the words “section or part of a road subject to control of access” and to insert the proposed shortened term “COA road section.”

Subclause (17)(b) deletes subsection (7)(b) and inserts proposed subsection 7(b). This is largely a restatement of the current subsection 7(b). Consistently with proposed amendments in this subsection (7) and throughout this Bill, the word “approval” is used in place of “consent,” and the new term “works” in place of “construct”, as well as the shortened term “COA road section”.

Subclause 17(c) deletes subsections (e) and (f), and inserts proposed (e) and (f) which are largely a restatement of the existing subsection (7)(e) and (f). The restated subsections use the word “approval” in place of “consent (in (7)(e), and the proposed new shortened terms “COA road section” in both subsection s(7)(e) and (f).

Subclause 18 amends subsection (7) to increase the penalties for the offences under subsections 7(a), (b), (c), (d), (e) and (f).

Roads that are proclaimed control of access roads or proposed control of access roads are freeways, highways and town bypasses. By their nature these roads are used by substantial volumes of traffic including in many cases heavy vehicles and sometimes road trains. Typically these Control of Access roads are high volume and high speed roads, in order to facilitate the flow of traffic. Accordingly, in the interest of road safety the Commissioner is entitled

under the existing section 28A to stipulate the places at which such COA roads or road sections may be entered or departed from.

The current penalty level of \$40 for contravening subsection (7) is very low in comparison with penalties that exist in other legislation. They do not provide an adequate deterrent for the behaviour targeted, and are therefore ineffective. Accordingly, the increases in these proposed subsections will bring the provisions in line within an appropriate penalty level that is commensurate with the respective offences.

Subsection (7(a)) deals with entering or leaving a COA road section otherwise than at a place provided pursuant to the provisions of the Act. COA roads by their nature have traffic that is high volume and high speed. The premise and idea behind control of access is to provide safe, uninterrupted, high speed roads. The access to and from such roads needs to be controlled in the interest of safe and efficient flow of traffic. Entering onto COA a road section other than in the manner approved by the Commissioner, can be extremely dangerous and could foreseeably result in serious crashes. The penalty for a contravention of the subsection is amended to a fine of \$2,500 which is commensurate with the nature of the offence.

Subsection 7(b) deals with the offence where a person constructs or lays out access to a COA road section, or does not comply with the conditions of consent. This behaviour shows a wanton disregard, by actively building an access route without any prior permission or consent, or disobeying access conditions. This behaviour can cause damage to infrastructure resulting in expenses to repair such damage and jeopardises road safety, as such unauthorised access could lead to crashes of a serious or fatal nature. Accordingly, it is appropriate that the fine be increased to \$5,000 to reflect the seriousness of the offence.

Subsection 7(c) deals with the offence where a person removes or damages a barricade or other structure erected by the Commissioner across a road. Such behaviour, similarly to subsection 7(b) displays reckless or wanton actions that both causes expense to the Commissioner, and could result in serious crashes. The increase of the fine to \$5,000 fits the nature of the offence.

Subsection 7(d) deals with the offence where a person removes or damage a notice erected by the Commissioner. This causes the Commissioner costs and expenses, and is unsafe. The increase in the fine to \$2,500 is warranted.

Subsection (e) deals with the offence of using a COA road section for movement of livestock except in a vehicle in accordance with the Act. Likewise, the moving of livestock over such roads is a dangerous practice that undermines the safety of all users of the road. A contravention of the

subsection can lead to collisions of a serious nature to drivers. The increase in the fine to \$2,500 is justifiable.

Subsection (f) deals with the offence of using a COA road section for traffic otherwise than in accordance with the regulations. While there are currently no such regulations, the regulations may provide for such specific situations. Amending the penalty to increase the fine to \$2,500 is warranted.

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

- (a) for an offence under subsection (7)(a), (d), (e), or (f) a fine of \$2,500;
- (b) for an offence under subsection (7)(b)(b) or (c) a fine of \$5,000.

36. Section 28B replaced

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

This clause 36 will delete section 28B and insert a new proposed section 28B.

Proposed subsection (1) will provide 5 new terms, “COA land section,” “on,” “person,” “remove” and “structure”.

The proposed term “COA land section” will mean ‘*any land acquired, set apart or taken or resumed for a COA road section.*’ It incorporates the shortened term in section 28A, “COA road section,” and includes land acquired or resumed for a COA road or road section. The use of this proposed shortened term is in the interest of both convenience and certainty.

The proposed term “on” will include “over or under”. It is easier to use the shortened term rather than repeat the extended meaning each time the term is used.

The proposed term “person” will provide that it includes:

- (a) An agency or an organisation as those terms are defined in the *Public Sector Management Act 1994*; or
- (b) a body corporate or unincorporated, that is established or continued for a public purpose under a written law, other than the Commissioner; or
- (c) A local government or regional local government”

This is largely a restatement of the existing subsection (1) setting out the persons and entities to whom the prohibition is directed, except this new term will include the additional category in (b).

The proposed new term “remove” will mean “pull down or take up”. It is an abbreviated or shortened term for the words already used in current section 28B.

The proposed new term “structure” will include “*a tower, pole, wire, pipe or apparatus*”. This is a shortened term of the words already used in existing section 28B.

Subsection (2) will provide that a person must not without the prior written approval of the Commissioner place a structure on a COA land section. It is largely a restatement of what appears in existing subsection (1) but uses the proposed new terms.

Subsection (3) will provide that the Commissioner may by written notice direct a person who has contravened subsection (2) to remove the structure placed on the COA land section within the time specified in the notice. This is largely a restatement of the current subsection (2), but includes the requirement the Commissioner give the person a time frame in which to remove the structure.

Subsection (4) will provide that where the person fails to comply with the notice the Commissioner may remove the structure. This is largely a restatement of the existing or current subsection (3).

Subsection (5) will provide that any expenses incurred by the Commissioner in exercising the power in subsection (4) to remove the structure must be repaid to the Commissioner within 3 months after a demand. In accordance with principles of procedural fairness, this subsection will require the Commissioner to issue a letter or notice of demand, and provide the person with the opportunity to repay the expenses within 3 months of the demand.

Subsection (6) will provide that the amount of the expenses incurred in the removal of the structure is recoverable by the Commissioner in court as a debt due to the State. This is a restatement of what exists in the current subsection (3). However any such proceeding may not be brought unless the person has failed to repay the expenses within 3 months from the date of any notice of demand for repayment under proposed subsection (5).

Subsection (7) will provide that all moneys that are repaid or recovered from a person under section 28B must be credited to the Main Roads Trust Account.

37. Part 9 Division 2 heading inserted

Part 9 currently provides for the control of access to main roads. Clause 33 will amend the heading in Part 9, from “Control of roads” to read “Specific powers in relation to land” as proposed amendments to section 29 within Part 9 will relate to more than only control of access.

This clause will insert a proposed heading in Part 9 Division 2 – “Acquiring and leasing land for main roads works and road service centres”. This heading is necessary and appropriate as it describes the nature of the matters that are dealt with under section 29, which relates to more than only control of access.

38. Section 29 amended

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

The heading to amended section 29 is to read “Acquiring and leasing land”.

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

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

- (a) promoting safe driving practices (Note the Commissioners general functions under the proposed new section 15B(2)(a), which include to identify implement and promote measures to improve the safety of roads and reduce deaths of people on roads);
- (b) ensuring the safe and appropriate location of facilities for heavy vehicles; and
- (c) providing information to road users for journey planning purposes.

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

Land within highways and main roads is increasingly being used for the co-location of other modes of transport or to facilitate their use (e.g. current and further railways between railway carriageways and Public Transport Authority carparks within freeway interchanges) The infrastructure for these other purposes is not always constructed as part of the same project and may only be constructed months or even years later. It is not always possible to distinguish with certainty in the early stages of a road project between the areas of land to be used for purely road purposes, and those which will be used, or may be available for another purpose. For these reasons it is beneficial for the Commissioner to be able to exercise land acquisition powers for wider purposes, and not limited to the purposes of the Act as currently expressed.

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

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

The proposed amendments to subsection (1) will:

- provide the ability to acquire the land for wider purposes including for road service centres, to carry out works for road service centres, and other activities that fall within the term "main roads work"; and
- provide the Commissioner with the power to compensate landowners from whom the land is acquired pursuant the process under Part 10 of the LAA, without the need for any delegation under the LAA.

Subclause (1) will amend subsection (1)

Clause 38(1) will amend subsection (1).

Subsection (1) will provide that without limiting the requirements of proposed section 18E(2)(a) when land is required for “main roads works” the Commissioner-

- (a) may acquire the land by negotiation or agreement; or
- (b) may enter on survey and compulsorily acquire the land under the powers in accordance with the procedure in the *Land Administration Act 1997* Parts 9 & 10.

The proposed amendments to this subsection will give the Commissioner the power to acquire land for the purpose of main roads works. The term “main roads works” includes road service centre works, and also includes the term “works”, which covers a broad range of activities and works. The proposed amendments to the subsection makes it clear that the powers under subsection (1) may be exercised to acquire land for anything that falls within the term “main roads works”.

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

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

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

Subclause (2) will delete the existing subsection (2) and insert a proposed new subsection (2) to provide the Commissioner the power, subject to proposed subsection in proposed section 18E(2)(a), to grant any person on terms and conditions the Commissioner sees fit and approved by the Minister:--

- (a) a lease or licence to occupy –
 - (i) freehold land acquired by the Commissioner under the section; or
 - (ii) any other land otherwise under the care, control and management of the Commissioner;
- and
- (b) any interest in land referred to in (a)(i)..

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

It is proposed that the Commissioner have the power to acquire (under subsection (1) and pursuant to proposed subsection (2), to lease appropriate land for road service centres that meet the Commissioner's requirements. Any such lease would be subject to the approval of the Minister and Treasurer pursuant to proposed section 18(c) and also be subject to a public tender process.

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

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

Subsection (2) will facilitate the Commissioner's functions as a modern road authority. It puts beyond doubt, the power to enter into leases or licences with persons, other than the person from whom the land has been acquired, and thereby provides certainty both for the Commissioner and any third party lessees or licensees.

The Commissioner's power to enter into a lease for the purposes of a road service centre under proposed section 22C and section 29(2) is, pursuant to proposed section 18(c) subject to the prior written approval of the Minister and Treasurer.

Subclause (3) will in section 29(4) delete "and dealing with any land acquired" and insert in its place "of, and dealing with, land".

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

Subclause (4) will, in section 29(5) delete “proclaimed”.

Subsection (6) deletes the word proclaimed. This is consistent with the amendment in section 14(1) and section 13 to remove the word proclaimed. Under section 13 the relevant event is the declaration and proclamation is the means by which the highway or main road is declared. Therefore it is more appropriate to refer to a declaration than proclamation.

39. Section 39 amended

Subsection (1)(aa) and (c) are amended to delete the word contract. This is for consistency in the Act where the term agreement is used rather than contract

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

Subsection (1)(e) is amended to make it clear that monies received or payable to the Commissioner except for those received pursuant to proposed section 15AA, being charges for the use of prescribed roads by heavy vehicles, are payable to the special purpose account, the Main Roads Trust Account. This is consistent with proposed section 15AA(4) which will provide that all prescribed charges paid under section 15AA(2) are to be credited to the Consolidated Fund.

40. Section 32 amended

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

Subclause (2) will in section 32(1)(e):

- (a) Delete “road construction and other works” and insert “main roads works:,”
- (b) Delete “road construction “ and insert “main roads works”
- (c) Delete “construction, erection and maintenance of” and insert “works on”.

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

41. Section 33C amended

This clause 41 will amend section 33C. This section will be amended to substitute the word “functions” in place of the term “powers”. The term “function” is defined in the *Interpretation Act 1984* to include “powers, duties, responsibilities, authorities and jurisdictions”. The term is more concise and certain in language. This is consistent with legislative drafting standards and practice to use more concise and certain language.

The heading to section 33C is to be amended and is to read:

“Commissioner may delegate functions under regulations to local government.”

42. Part 12 replaced

This clause 42 deletes Part 12 and inserts the heading “Miscellaneous,” and inserts proposed new sections under Part 12.

This heading is appropriate to cover the general nature of the proposed sections that fall within Part 12.

Proposed section 34 – “Orders costs or expenses for loss or damage”

This proposed section will provide the Commissioner with the ability to seek court orders for the recovery costs or expenses for loss or damage in addition to any other penalty imposed on the conviction of offences under sections 15A, 16A(3) or (4) , 23 or 28A(7).

This proposed section is necessary to provide the Commissioner with a right of action against offenders who are convicted of offences under the Act. The specific offences are those listed, being sections 15A, 16A(3) or (4), 23, or 28(7).

The Commissioner has to rectify damage caused by offenders’ conduct. In many cases the damages caused by such conduct can result in substantial costs being incurred. The following are examples of where the Commissioner has incurred substantial costs to rectify, namely behaviour or conduct that:

- damages or interferes with signs, driving on closed highways (section 16A)
- defaces or removes signs, marks, trenches, posts, pegs and such like, for the purposes of surveys or to issue warnings or directions (section 23);

- actively constructs unauthorised access routes to COA road sections without any prior consent, contrary to control of access requirements, (section 28A(7)(a);
- removing or damaging all or part of a barricade to a COA road section (Section 27(7)(c).

Such a right of recovery of damages against offenders found guilty of the offences is found in other legislation. One such example is in the *Conservation and Land Management Act 1984* section 110.

Proposed section 35A “Protection from liability for wrongdoing”

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

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

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

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

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

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

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

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

Proposed section 35 “Regulations”

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

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

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

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

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

Main Roads (Control of Advertisements) Regulations 1996; and

Main Roads (Engineering Cadets) Regulations 1982.

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

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

The regulations that will be made pursuant to this Bill will be made by virtue of powers conferred by Parliament and contained in this proposed section 35.

Subsection (1)(a)

This is the general regulation making power which restates what appears in the existing section 35. This will provide the head of power to make regulations that “*are required or permitted by this Act to be prescribed*”.

Subsection (1)(b) will provide the power to make regulations for the general ‘catch all’ of where they are “*necessary or convenient to give effect to the purposes of the Act.*”

Subsection (1)(b) will provide the head of power under which regulations will be made for the following purposes (in addition to those that already exist):

- for setting out the heavy vehicle charging scheme under proposed section 15AA. This will include the prescribed roads to which the charges will apply, and prohibited roads for any prescribed road (under s15AA(6)). The regulations will set out the means and manner in which the charges are payable;
- setting out the prescribed amount of expenditure under agreements which require prior written Ministerial approval – under proposed section 18D;
- setting out agreements of a specified nature that require Ministerial approval before they can be entered into – proposed section 18D.

Subsection (2)

(2a) Fees

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

The regulation making power in section 35(2)(a) to impose fees will have no application to public utilities.

Currently the Commissioner’s funding is almost exclusively sourced from the State and Federal budgets. A number of opportunities to charge fees and instances where there is a need to recover costs have been identified in recent years, but the Commissioner has had to refrain from imposing charges for want of power to do so.

Most of the Commissioner’s specific powers are set out in section 16 of the Act. The Commissioner has no general powers under section 16 or

elsewhere in the Act to charge fees. At present there is only an implied power to recover costs arising out of transactions on a reimbursement basis.

Other limited powers have been gained for the Commissioner to carry on trading concerns for the following purposes:

- (a) for advertising signs and hoardings on or over main roads and highways; and
- (b) the provision of goods (including technical publications), information or intellectual property rights, relating to the functions of the Commissioner;

under the *State Trading Concerns (Authorisation) Regulations 1998*. These permit charging on a non-cost recovery basis for those purposes with all fees and charges being subject to Ministerial approval. The power of approval can be delegated. The requirement for Ministerial approval can also be satisfied by the Minister approving the manner in which a fee or charge may be determined.

There is a need for the Commissioner to have the power to make regulations to impose fees. This proposed subsection will provide the power to make regulations imposing fees for a range of services.

In many cases the fees can be the subject of negotiations with third parties under the increased agreement powers under proposed sections 18A – 18E. However there is a need to be able to recover fees on a cost recovery basis for other matters. This subsection will provide the power to make regulations that deal with a range of services and matters, such as assessing applications for road service centres, including mobile road service centres, and considering applications for control of access.

This subsection will also be the basis for setting out the prescribed charge that will be imposed pursuant to the heavy vehicle charging scheme under proposed section 15AA.

Subsection 2(b)

This will allow regulations to be made regarding the employment of persons as cadets. This relates to the existing Commissioner's power under section 10(2)(b) to employ persons as cadets.

Subsection (2)(c)

This subsection will provide for regulating the access to, and movement of, prescribed types of vehicles on highways and main roads.

Section 16A of the Act permits the Commissioner to temporarily close main roads and highways or parts thereof to traffic generally, or to traffic of a particular class in the circumstances described in subsection 16A(1). The Commissioner may also reopen the relevant main road or highway to traffic generally or to traffic of a particular class under s16A(1).

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

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

- (a) the main road or highway is not unsafe for that specific vehicle type; and
- (b) the purpose of the use of that vehicle outweighs the risk of damage to the main road or highway in question (for example emergency service vehicles)

Subsection (2)(d)

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

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

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

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

left it in the assembly area. In the case of primary freight routes to the Pilbara and Kimberley, this practice can lead to in excess of 60 trailers being present at a road train assembly and break down area at any one time.

In some cases the owners may leave the trailers in the road train assembly and break down areas for weeks or even months, effectively treating the site as a free holding yard. In other cases the trailers may be parked in a way that obstructs the free passage of other vehicles entering, departing, or within the site. Such conduct reduces the capacity and efficiency of the area for other road transport operators, and may also pose a hazard.

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

In order to ensure the safe and efficient provision of such vital services for freight transport companies, it is important for the Commissioner to have the power to regulate the use of road train assembly and break down areas. It is anticipated the powers will deal with the permitted length of time trailers may be left on the site and to regulate the leaving of trailers in a manner that causes an obstruction. Pursuant to subsection (3) the regulations may also provide for offences where the regulations are contravened.

Subsection (2)(e)

This subsection deals with the power to make regulations concerning the parking or standing of vehicles on roads.

Parking or leaving of vehicles on verges of highways and main roads, and in particular control of access roads is unacceptable and inappropriate and could have the potential to contribute to an unsafe situation. An example is where a telecommunication or other utility provider is carrying out maintenance works on their infrastructure. The contractor may leave their vehicle unattended for long periods of time. It would be beneficial for the Commissioner to have the power to be able to regulate such matters to direct the owners of such vehicles to move on, and to impose a penalty, pursuant to subsection (3) for those who fail to comply.

This power is to be cross referenced with the power under subsection (2)(f) which will give the Commissioner the power to make regulations to remove, store forfeit and sell or dispose of vehicles.

Subsection (2)(f)

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

This subsection is aimed at vehicles that are left on main roads and highways by being abandoned or unattended for long periods of time

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

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

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

While the *Disposal of Uncollected Goods Act 1970* provides a regime for the sale or disposal of uncollected goods, this is an unwieldy procedure that requires formal court application for orders permitting the sale of abandoned goods not collected. Such processes can use resources and detract from the Commissioner's day to day core functions. Furthermore, such applications may require the waiting time of up to 6 months to expire after a notice to remove the goods is given before an application may be made to the court for orders permitting the sale or disposal of the goods. This conflicts with the Commissioner's need to respond expeditiously to remove abandoned or unattended vehicles or goods, which in some cases could constitute an obstruction or hazard

It is appropriate that the Commissioner have such power to remove, impound, forfeit, sell or dispose of such vehicles or goods that are left unattended on roads.

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

This is to be cross referenced with subsection 2(j) which will provide for regulations to be made for the recovery of the Commissioner's related costs for such removal, impounding, sale or disposal.

Such provisions are commonly found in other legislation.

Subsection (2)(g)

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

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

Vehicles that obstruct traffic in heavily built up areas can have the effect of overloading other parts of the road network. This is particularly so with vehicles parked in clearways during peak hour within city of Perth. Vehicles that stop in clearways, no stopping zones or designated bus lanes prevent the safe and efficient flow of traffic during these busiest times of the day.

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

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

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

Subsection 2(h)

This subsection provides for the regulation of activities and works by other persons other than the Commissioner in highways and main roads.

Currently there are no enforceable powers for the Commissioner to direct persons to leave verges of land comprising main roads or highways, or to

cease unauthorised activities at these locations. The police will only become involved in the most serious of cases.

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

1. Protesters delaying roadworks involving the clearing of trees and other vegetation. This has caused considerable costs and inconvenience to multiple parties delaying a \$25M highway upgrade project.
2. Protesters distracting road users with signs, banners or placards in the vicinity of main roads and highways.
3. Activities of fishing, climbing, throwing things and rope swinging from bridges and other structures forming part of any main road or highway.
4. People conducting works in the verge or road side of main roads or highways. These works can include a number of activities such as:
 - unauthorised installation and maintenance of pipes, conduits and cables,
 - the use of vehicle mounted cranes lifting articles into private property,
 - the erection of large signs in adjacent land and the installation of driveways.
 - Excavations on verges and medians on main roads and highways.
 - The construction or anything on over or under a main road or highway.

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

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

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

The regulation making power in section 35(1) and (2) to impose fees will have no application to public utilities.

Subsection (2)(i)

The Commissioner as a result of unauthorised activities may be put to the cost of carrying out remedial works to repair or to remove a structure that is unauthorised. The Commissioner may be required to reinstate and

rehabilitate land under its control as a result of those activities. This proposed subsection will put beyond doubt the power to carry out any such works necessitated by:-

- unauthorised activities in sub-regulation (g) and
- the removal storage forfeiture, sale, or disposal of vehicles, other goods or animals or left on roads under sub-regulation (f).

Subsection 2(j)

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

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

Subsection (3)

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

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

Part 13 Transitional provisions for the Main roads Amendment Act 2015

Section 36 will provide that on commencement day when clause 11 comes into operation the Main Roads Advisory board is taken to be abolished and its members go out of office. This is to be cross referenced to clause 11 of the Bill which deletes Part 3 dealing with the Main Roads Advisory Board. The Main Roads Advisory Board has never actually been convened nor have any board members been appointed. Specific Ministerial advisory groups have been convened for areas of interest to the Minister and stakeholders.

Accordingly, there is no value in retaining the provisions in Part 3, and they are deleted.

43. First Schedule deleted.

This clause 43 will delete the First Schedule. This is a consequence of the deletion of part 3 of the Act.

44. Part 3 *Environmental Protection Act 1986* amended

This clause 44 will amend the *Environmental Protection Act 1986*.

45. Schedule 6 amended

This clause 45 will provide for an amendment to Schedule 6 to the *Environmental Protection Act 1986* to insert proposed new item 15 to read
“Item 15 Clearing by the Commissioner of Main Roads under the Main Roads Act 1930 section 22E(2).”

This is to be cross referenced to the power under proposed section 22E(b) which will enable the Commissioner to carry out clearing or other vegetation removal if it is necessary to protect safety of people, or to protect the environment.