

ROAD TRAFFIC AMENDMENT (IMPAIRED DRIVING AND PENALTIES) BILL 2019 EXPLANATORY MEMORANDUM

Overview

The Road Traffic Amendment (Impaired Driving and Penalties) Bill 2019 (Bill) is aimed at addressing drink and drug driving in Western Australia. The Bill amends the *Road Traffic Act 1974* (RTA) to implement the following reforms which will:

1. allow a police officer to immediately prohibit a driver who tests positive to the presence of prescribed illicit drugs at roadside from driving for 24 hours;
2. introduce new offences to target people who drive with an illegal level of alcohol and prescribed illicit drugs;
3. increase penalties for existing drink and drug driving offences to ensure that they remain an effective deterrent;
4. enhance and streamline drink and drug driving enforcement processes; and
5. update the regulation-making authority to ensure that future safety reforms to address new technological changes for instance can be implemented in an effective and timely manner.

Counting Rules

A key characteristic of the drink and drug driving offences in the RTA is that they provide for escalated penalties where the person is convicted for a second or subsequent offence.

The RTA also provides for previous convictions for other relevant offences to be counted as prior offences for the purpose of determining if the current offence is a first, second or subsequent offence. For ease of reference, such provisions are referred to in this explanatory memorandum as 'counting rules'.

For example, if an offender was previously convicted of an offence against section 64 for driving with a blood alcohol content (BAC) of 0.09, and is later convicted of an offence against section 64AA for driving with a BAC of 0.05, the Court must take the previous conviction against section 64 into account and sentence the offender according to the higher prescribed penalties for a second or subsequent offence under section 64AA.

Part 1 – Preliminary

1. Short title

Under clause 1, when the Bill is passed and receives Royal Assent, it will be known as the *Road Traffic Amendment (Impaired Driving and Penalties) Act 2019*.

2. Commencement

Clause 2 provides that Part 1 of the Bill will come into effect on the day on which it receives Royal Assent. The rest of the provisions will come into effect on proclamation. This is necessary to allow agencies, including the Western Australia Police Force (WA Police Force) and the Department of Transport, to make administrative changes to support the implementation of the amendments. Relevant changes to regulations will also be drafted and timed to commence with amendments in this Bill to support implementation.

Part 2 – Road Traffic Act 1974 amended

3. Act amended

Clause 3 provides that the provisions in Part 2 amend the RTA.

4. Section 62B amended

Clause 4 implements Reform 3 by amending the prescribed penalties in section 62B(1),(4) and (5) to increase the penalties which apply to driving instructors who have an illegal blood alcohol content (BAC) level while providing driving instruction to a learner driver.

5. Section 62C amended

Clause 5 implements Reform 3 by increasing the prescribed penalties for driving instructors who provide driving instruction while having a prescribed illicit drug in their oral fluid or blood.

6. Section 63 amended

Section 63(1) currently prescribes the same penalty for driving under the influence of alcohol alone, drugs alone, or alcohol and drugs in combination. To implement Reforms 2 and 3 effectively, this clause separates the offence of driving under the influence of alcohol *or* drugs (proposed new section 63(1)) from the offence of driving under the influence of alcohol *and* drugs (proposed new section 63(2)).

Clause 6(2) implements Reform 3 by increasing the existing penalty for the offence in amended section 63(1).

The current legislative policy in section 63 of taking into account prior offending behaviour has been maintained under clause 6(2). The first offence penalty varies depending on whether the person has any previous convictions for an offence involving 0.08 BAC or above. Where the person has such a prior criminal history, the minimum fine that applies is higher than if the person had no such history. Further, where a person has more than one prior conviction against section 64, a higher minimum disqualification period applies for the first offence against amended section 63(1).

Similarly, subclause (2) also provides for the situation where the person has prior convictions for an offence against proposed new section 64B(3). Where a person has

more than one prior conviction against section 64B(3), a higher minimum disqualification period applies for the first offence against amended section 63(1).

Subclause (3) applies the same offence structure and introduces higher penalties where a person is convicted of the offence of driving under the influence of both alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle. This implements Reform 2 by ensuring that an appropriate penalty applies where a person drives despite being impaired by drugs and alcohol.

Subclause (7) sets out the alternative convictions that could apply should a person be charged with the offence in proposed new section 63(2). This means that where a person is charged with the offence in amended section 63(2), it is open to the Court to convict the person of an offence prescribed in proposed new section 63(6A) instead if the evidence supports such a conviction. This is consistent with the approach in current section 63(6), which sets out alternative convictions for the offence in section 63(1).

7. Section 64 amended

Clause 7(1) implements Reform 3 by increasing the penalties which apply under existing section 64 for driving with a BAC of 0.08 or above.

Clause 7(2) updates the counting rules set out in section 64(3) to include convictions for proposed new offences which are of similar or greater seriousness in proposed new section 64B(3) and section 67AD(4) and (6).

8. Section 64AA amended

Clause 8(1) and (2) implement Reform 3 by increasing the penalties which apply under existing section 64AA for driving with a BAC of 0.05 or above.

Clause 8(3) updates the counting rules in section 64AA(2c) to include offences in proposed new sections 64B and 67AD.

9. Section 64A amended

Clause 9(1) and (4) implement Reform 3 by increasing the penalties in relation to certain persons who are subject to a zero BAC requirement who drive with a BAC of 0.02 or above.

Clause 9(2) and (3) updates the type of offences which should be taken into account in determining if a person is a 'recently disqualified driver' to include offences in proposed new sections 64B(3), 67AD(4) and (6).

10. Section 64AAA amended

Clause 10 implements Reform 3 by increasing the penalties in section 64AAA(1) and (2) in relation to certain persons who are subject to a zero BAC requirement who drive with any BAC above zero.

11. Section 64AB amended

Clause 11(1) implements Reform 3 by increasing the penalties in section 64AB in relation to persons who drive while impaired by drugs. The changes also maintain the existing internal relativities between sections 64AB and 63(1) (as amended by clause 6).

Clause 11(2) updates the counting rules set out in section 64AB(3) to include the offence in proposed new section 67AD(6).

12. Section 64AC amended

Clause 12(1) implements Reform 3 by increasing the penalties in section 64AC in relation to persons who drive with a prescribed illicit drug in their oral fluid or blood. The changes also maintain the current internal relativities between sections 64AC and 64AA.

Clause 12(2) updates the counting rules set out in section 64AC(3) to include offences in proposed new sections 64B, 64C and 67AD.

Clause 12(3) removes section 64AC(4) and (6), which are replicated in proposed new section 64D (inserted by clause 13).

13. Sections 64B to 64D inserted

Clause 13 implements Reform 2 by introducing a range of new offences which target driving with a BAC at a particular threshold level or above, and with a prescribed illicit drug in oral fluid or blood.

Section 64B

Proposed new section 64B(1) makes it an offence to drive with a prescribed illicit drug in the person's oral fluid or blood, and a BAC of 0.05 or above.

Proposed new section 64B(3) makes it an offence to drive with a prescribed illicit drug in the person's oral fluid or blood, and a BAC of 0.08 or above.

Consistent with the existing approaches in sections 64AA and 64, the offence in proposed new section 64B(1) is followed by counting rules for the offence in proposed new section 64B(2). Similarly, the offence in proposed new section 64B(3) is followed by counting rules for the offence in subsection (4).

Proposed new section 64(7) sets out alternative convictions available to the Court where a person is charged with an offence against subsection (1) or (3), and the evidence supports a conviction for the prescribed offences.

Section 64C

Proposed new section 64C makes it an offence for certain persons who are subject to a zero BAC requirement to drive while a prescribed illicit drug is present in the person's oral fluid or blood and with any BAC, or a BAC of 0.02 or above.

There is no equivalent of section 64A(4A) in proposed new section 64C. Section 64A(4A) excludes emergency services volunteers driving in the course of responding to an incident from the scope of the drink driving offences in sections 64A and 64AA. It is considered inappropriate to exclude emergency services volunteers from the scope of an offence

which includes driving with a prescribed illicit drug in oral fluid or blood as an element of the offence.

Proposed new section 64C(1) makes it an offence for certain persons who are subject to a zero BAC requirement to drive with prescribed illicit drug is present in the person's oral fluid or blood and a BAC above zero.

Proposed new section 64C(2) mirrors the defence in section 64AAA(3) by providing a defence where the accused proves that their BAC was not to any extent caused by the consumption of an alcoholic beverage otherwise than for the purposes of religious observance, or the consumption or use of any other substance for the purpose of consuming alcohol. Where such a defence is successfully established to satisfaction of the Court, the accused may be convicted of an offence against section 64AC (for driving with a prescribed illicit drug in the person's oral fluid or blood).

Proposed new section 64C(3) sets out counting rules for the offence in proposed new section 64C(1).

Proposed new section 64C(4) makes it an offence for certain persons who are subject to a zero BAC requirement to drive while a prescribed illicit drug is present in the person's oral fluid or blood and with a BAC of 0.02 or above.

Proposed new section 64C(5) sets out counting rules for the offence in proposed new section 64C(4).

Section 64D

Proposed new section 64D contains evidentiary provisions common to the offences in section 64AC, and proposed new sections 64B and 64C.

14. Section 65 amended

Section 65 sets out definitions for terms used in sections 59 – 73. Clause 14 implements Reform 4 by removing references to obsolete equipment no longer in use by the WA Police Force.

All breath analysing equipment used by the WA Police Force are self-testing breath analysing equipment. This has been the case for the last two decades. As such, this Bill removes the distinction between self-testing and non self-testing breath analysing equipment. To this end, clause 14 removes the definition of self-testing breath analysing equipment from the definitions set out in section 65.

15. Section 66 amended

Section 66 relates to powers that a police officer has to facilitate the process of obtaining samples for testing. While most of the provisions relate to obtaining samples for breath for alcohol analysis, section 66(7) – (8) relates to obtaining blood samples where there has been serious bodily harm or death.

Clauses 15(1) – (11) make minor changes to section 66 to reflect modern drafting practices, such as gender-neutral language. They do not affect any changes in policy or to the operation of this provision.

Clause 15(2) also implements Reform 4 by removing references to urine sampling, as urine is no longer used in drink and drug driving law enforcement evidentiary procedures.

16. Section 66B replaced

Section 66B relates to powers that a police officer in obtaining samples for the purpose of drug analysis.

Clause 16 implements Reform 4 by introducing the power for a police officer to require a person to accompany the police officer to a place (such as a mobile testing unit or police station) and wait at that place for the purposes of drug analysis. This will support existing powers in current section 66B for a police officer to require a person to provide a sample for drug analysis where a driver assessment indicates that the person is drug impaired.

This clause also removes references to urine sampling in current section 66B. Urine sampling and analysis are no longer used in evidentiary procedures in alcohol and drug driving law enforcement.

17. Section 67 amended

Section 67 is a 'failure to comply' offence. Such offences complement drink and drug driving offences by removing any incentive for a person to refuse to comply with alcohol or drug testing procedures to avoid prosecution for drink or drug driving.

To this end, the penalty for the failure to comply offence is set at the highest penalty for the underlying driving offence to remove any advantage from refusing the alcohol or drug test.

The failure to comply offence in section 67 relates specifically to the failure to comply with the requirements in section 66 to provide a sample for alcohol testing. As such, the relevant 'underlying offence' is the impaired driving offence in section 63. To this end, the penalties in section 63 are currently mirrored in section 67.

Clause 17 amends section 67 to maintain the current relativities between the impaired driving offence in amended section 63 and the failure to comply offence penalties in section 67, by mirroring the offence penalties in amended section 63(2) (as amended by clause 6).

Proposed new section 67(1) sets out the requirements under section 66 in relation to obtaining a sample for analysis.

Proposed new section 67(2) sets out the offence of failing to comply with the requirements in subsection (1), and the penalty for the offence. The penalty is equivalent to that in amended section 63(2).

Proposed new section 67(2A) sets out the counting rules for the offence in subsection (2), and is based on current section 67(4).

Current section 67(3a) of the RTA relates to the situation where the police officer believes there has been an incident occasioning the death, or grievous bodily harm or bodily harm to another person. If the driver refuses to comply with the police officer's requirement to

provide a blood sample after the police officer has explained the situation and the consequences of failure to comply to the driver, the driver may be charged with a crime.

Proposed new section 67(3) updates the offence in current section 67(3a) to reflect modern drafting practices. There is no change to the substance of section 67(3a), which is to make failure to comply in circumstances where there has been a death, grievous bodily harm or bodily harm a crime which attracts penalties commensurate with the seriousness of the behaviour.

18. Section 67AA amended

Section 67AA is a failure to comply offence which makes it an offence for a person to fail to comply with a requirement to undergo a driver assessment or a requirement under section 66B (as amended by clause 16).

Clause 18(1) implements Reform 3 by increasing the penalties for the existing offence of failing to comply with the requirement of a police officer to accompany the police officer to a place, undergo driver assessment, or provide a blood sample for drug testing.

Together with clause 16 (which amended the requirements in section 66B), clause 18(1) implements Reform 4 by ensuring that police officers have sufficient powers to enforce drug driving laws, and making it an offence to fail to comply with a requirement to accompany the police officer to a place for the purposes of drug testing.

Clause 18(1) also implements Reform 4 by removing references to urine sampling currently in section 67AA. Urine sampling and analysis are no longer used in evidentiary procedures in alcohol and drug driving law enforcement.

Clause 18(2) updates the counting rules set out in section 67AA(4) to include the offence in proposed new section 67AD(6).

19. Section 67AB amended

Section 67AB is a failure to comply offence which makes it an offence to refuse to comply with a requirement of a police officer made under section 66D or 66E to provide a sample of blood or oral fluid for drug testing. The underlying driving offence which this failure to comply offence maintains parity of penalties with is section 64AC – the offence of driving with a prescribed illicit drug in oral fluid or blood (amended in clause 12).

Clause 19(1) implements Reform 3 by increasing the penalties in section 67AB in relation to persons who fail to comply with a requirement imposed by a police officer to accompany the police officer to a place and provide samples for drug testing. This also ensures that the internal relativities with the underlying drug driving offence (section 64AC) are maintained.

Clause 19(2) updates the counting rules set out in section 67AB(4) to include offences in proposed new sections 64B, 64C, 67AC and 67AD.

20. Sections 67AC to 67AF inserted

Clause 20 implements Reform 2 by introducing a range of new failure to comply offences to complement the proposed new polydrug driving offences (introduced in clause 13).

These new provisions are aimed at addressing the situation where a person provides a sample (in accordance with section 66) which indicates the presence of a certain BAC, then refuses to comply with drug testing in the hope of avoiding prosecution for a polydrug driving offence. These proposed new 'failure to comply' offences will address such behaviour by setting a penalty which is equivalent to the penalty which applies for the underlying polydrug driving offence, removing any potential advantage to the driver for refusing to provide an oral fluid or blood sample.

Section 67AC

Proposed new section 67AC makes it an offence for certain persons who are subject to a zero BAC requirement (under section 64A(1) or (4)) to drive with a BAC above zero and fail to comply with a requirement to provide a sample for drug testing.

The penalties in proposed new section 67AC are aligned to the penalties which apply to the underlying driving offence in proposed new section 64C.

Proposed new section 67AC(2) sets out the offence where a person subject to a zero BAC requirement has a BAC above zero and refuses to provide a sample for drug testing.

Proposed new section 67AC(3) sets out the counting rules for the offence in section 67AC(2).

Proposed new section 67AC(4) sets out the offence where a person subject to a zero BAC requirement has a BAC of 0.02 or above and refuses to provide a sample for drug testing.

Proposed new section 67AC(5) sets out the counting rules for the offence in section 67AC(4).

Section 67AD

Proposed new section 67AD makes it an offence for persons with a BAC of or above a certain threshold level to fail to comply with a drug test requirement.

The penalties for the offence in proposed new section 67AD(2) are aligned to the penalties which apply to the underlying driving offence in proposed new section 64B(1), which relates to driving with a prescribed illicit drug in oral fluid or blood and a BAC of 0.05 or above.

Proposed new section 67AD(3) sets out the counting rules for the offence in proposed new section 67AD(2).

The penalties for the offence in proposed new section 67AD(4) are aligned to the penalties which apply to the underlying driving offence in proposed new section 64B(3), which relates to driving with a prescribed illicit drug in oral fluid or blood and a BAC of 0.08 or above.

Proposed new section 67AD(5) sets out the counting rules for the offence in proposed new section 67AD(4).

The penalties for the offence in proposed new section 67AD(6) are aligned to the penalties which apply to the underlying driving offence in amended section 63(2), which relates to driving under the influence of drugs and alcohol to such an extent as to be incapable of proper control of a vehicle.

Proposed new section 67AD(7) sets out the counting rules for the offence in proposed new section 67AD(6).

Section 67AE

Proposed new section 67AE sets out administrative and evidentiary provisions which apply to the offences in proposed new sections 67AC and 67AD.

Proposed new section 67AE(1) provides a police officer with the power to arrest a person without warrant where the person has committed an offence against section 67AC or 67AD, consistent with the current approach with drink driving law enforcement in the RTA.

Proposed new section 67AE(2) provides that the Court may convict a person charged with an offence under section 67AC or 67AD with other alternate offences if the evidence supports such a conviction.

Proposed new section 67AE(3) provides a defence where the person satisfies the Court that there was some substantial reason for the person's failure to comply, other than a desire to avoid providing information that might be used as evidence. This aligns with the approach in section 67AB.

21. Section 67A amended

Section 67A relates to the failure to comply with certain requirements. An example of a requirement which section 67A relates to is the requirement to provide a breath sample for a preliminary breath test.

Clause 21(1) updates the prescribed excluded requirements in section 67A(1) to include offences in proposed new sections 67AC and 67AD.

Clause 21(2) implements Reform 4 by removing references to urine sampling from section 67A. Urine sampling and analysis are no longer used by in evidentiary procedures in alcohol and drug driving law enforcement.

Clause 21(3) implements Reform 3 by increasing the penalties which apply under existing section 67A(3) for failing to comply with certain requirements made of driver by the police officer, such as a requirement to provide a sample for a preliminary oral fluid test under section 66C(1).

Clause 21(4) updates the counting rules in section 67A(4) to include offences in proposed new sections 64AC, 64B(3), 67AD(4) and (6).

Clause 21(5) and (6) update the language used in current section 67A(5) and (6) to reflect modern drafting practices, and update the existing reference to 'requirement' in section 67 to the relevant new provision in amended section 67(1) (as amended by clause 17).

22. Section 68A amended

Clause 22(1) implements Reform 3 by increasing the penalty which applies under section 68A(4) to driving instructors who fail to comply with a requirement made by a police officer under sections 66, 66C, 66D or 66E in relation to collecting samples for alcohol and drug testing.

Clause 22(2) implements Reform 4 by removing section 68A(6), which sets out processes related to urine sampling. Urine sampling and analysis are no longer used in evidentiary procedures in alcohol and drug driving law enforcement.

23. Section 68 amended

Section 68 relates to processes involved in the analysis of breath samples. Clause 23 amends section 68 to update the language used to reflect modern drafting practices. It also implements Reform 4 by removing references to obsolete equipment no longer used for breath analysis.

All breath analysing equipment used by the WA Police Force are self-testing. This has been the situation for the last two decades. As such, clause 23 updates section 68 by removing the references to “breath analysing equipment [which] is not self-testing breath analysing equipment” in section 68(1a) – (5).

Given that all breath analysing equipment in use by the WA Police Force is self-testing, clause 23 removes the references to “self-testing” since there is no longer any need to make a distinction between self-testing and non self-testing equipment.

24. Section 69 amended

Section 69 relates to how blood samples are to be taken and analysed.

Clause 24(1) and (3) amend section 69 to update the language used to reflect modern drafting practices.

Clause 24(2) amends section 69(1a) to align it with existing blood sampling practices in section 69(1).

25. Section 69A deleted

Clause 25 implements Reform 4 by removing section 69A, which sets out procedures for urine sampling. Urine sampling and analysis are no longer used in evidentiary procedures in alcohol and drug driving law enforcement.

26. Section 69B amended

Section 69B sets out the process for taking oral fluid samples for the purposes of testing for drugs.

Clause 26(1) amends section 69B(1) to update the language used to reflect modern drafting practices.

Clause 26(2) implements Reform 4 by allowing a police officer to require a second sample of oral fluid for the purposes of drug testing if the first sample returns an invalid result. Allowing the taking of a second sample of oral fluid for drug testing is consistent with the existing approach in breath analysis for alcohol testing, where a police officer may require

the driver to provide a second sample should the analysis of the first sample fail under section 68(11) of the RTA.

27. Section 70A amended

Clause 27 implements Reform 4 by removing references to urine samples in the body of the section as well as its heading. Urine sampling and analysis are no longer used in evidentiary procedures in alcohol and drug driving law enforcement.

28. Section 70B amended

Section 70B relates to evidence of the delivery of samples to an analyst for testing.

Clause 28 supports the implementation of Reform 4 by removing the reference to urine in the heading of the provision. It also updates section 70B(1) by including offences in proposed new sections 64B and 64C.

29. Section 70 amended

Section 70 relates to evidentiary provisions and how evidence may be presented to a Court, for instance, through the use of certificates and forms.

Clause 29(1) and (4) updates section 70 to ensure the current evidentiary provisions also apply to offences in proposed new sections 64B and 64C.

Clause 29(2), (3) and (5) support the implementation of Reform 4 by removing references to obsolete procedures such as urine sampling.

Clause 29(6), (10) and (11) update section 70 to ensure the current evidentiary provisions also apply to relevant offences in proposed new sections 67AC and 67AD.

30. Section 71 amended

Clause 30 amends 71(2) to ensure that the evidentiary provisions in relation to how BAC is determined also apply to proposed new offences in sections 64B, 64C, 67AC and 67AD.

31. Section 71A amended

Section 71A provides that samples taken for the purposes of drug or alcohol testing are not to be used to obtain DNA.

Clause 31 supports the implementation of Reform 4 by removing references to urine sampling, since urine samples are no longer collected or used for drug or alcohol testing by the WA Police Force.

32. Section 71B amended

Clause 32(1) updates section 71B to ensure that the current power of a police officer to require a driver to hand over the keys to a motor vehicle in certain circumstances also apply to offences in proposed new sections 64B and 64C.

Clause 32(2) implements Reform 3 by increasing the penalty for the offence in section 71B(8) of contravening a requirement to hand over keys or obstructing the police officer.

33. Section 71BA inserted

Clause 33 introduces proposed new section 71BA to implement Reform 1 by giving a police officer the ability to issue a prohibition notice to prevent persons from driving for 24 hours if they are found to have a prescribed illicit drug in their oral fluid.

Proposed new section 71BA(1) provides that the prohibition notice may be issued if the driver returns a positive drug analysis test, or a positive preliminary drug test which is not contradicted by the drug analysis test. A prohibition notice may also be issued if the person refuses to comply with a requirement to undergo drug testing.

Proposed new section 71BA(2) sets out the information which must be contained in the prohibition notice issued to the person.

Proposed new section 71BA(3) sets out the penalty for contravening the prohibition notice. This penalty is aligned with the penalty for the offence of driving with a prescribed illicit drug in oral fluid or blood in section 64AC (as amended by clause 12).

34. Section 71C amended

Clause 34 supports the implementation of the new polydrug driving offences in Reform 2 by amending section 71C to ensure police officers can issue disqualification notices for polydrug driving offences involving a BAC of or above 0.08 with the same immediacy as they currently do for drink driving offences under section 64. This means that the current practice of issuing a disqualification notice for any driving offence involving a BAC of or above 0.08 is maintained.

Clause 34(1)(a) amends section 71C(1) to provide the trigger for the issuance of the disqualification notice is the conduct of driving with a BAC of or above 0.08 – the key element common to both relevant polydrug driving offences and drink driving offences. This will be known as the ‘alleged conduct’.

Clause 34(1)(b) and (3)(b) update section 71C to include relevant offences in proposed new section 67AD which involve a BAC of above 0.08 in section 71C(1)(b) and (6)(b).

Clause 34(2) and (3) amend section 71C to insert references to the ‘alleged conduct’.

35. Section 71E amended

Section 71E currently provides that a disqualification notice must be revoked if the charge for an offence to which the notice relates has not been laid within 10 days after the disqualification notice was issued.

Clause 35 extends this period from 10 days to a month to provide the WA Police Force with sufficient time to obtain confirmatory analysis of the oral fluid by ChemCentre where required. For instance, this may be necessary where the person had returned a BAC of 0.08 or above as well as positive oral fluid drug tests at roadside.

The effect of the changes in clauses 34 and 35 is to provide the WA Police Force with the capacity to address the situation where the ChemCentre analysis finds that the roadside oral fluid test had produced a false positive. In this case, the WA Police Force would lay a charge under section 64 in relation to driving with a BAC of 0.08 or above, rather than a charge under proposed new offence section 64B(3). There would be no need to revoke

the disqualification notice previously issued at roadside since both charges involve the alleged conduct of driving with a BAC of 0.08 or above.

This produces a fairer result for the offender than revoking the original roadside disqualification notice and reissuing a new one following the ChemCentre analysis, since any period of disqualification served by the offender under a revoked disqualification notice cannot be taken into account by a Court sentencing an offender who is convicted of the drink driving charge.

36. Section 71H amended

Clause 36 makes a minor amendment to section 71H to reflect the fact that there is more than one offence which may involve the 'alleged conduct' as an element of the offence (as a consequence of amendments in clause 34).

37. Section 72 amended

Section 72 provides that the Governor may make regulations in relation to the apparatus and persons involved in the taking and testing of samples.

Clause 37 supports the implementation of Reform 4 by removing references to obsolete processes and equipment such as urine and breath analysing equipment which is not self-testing in section 72.

38. Section 72A deleted

Clause 38 removes the requirement for the review of certain provisions introduced by the *Road Traffic Amendment (Drugs) Act 2007*. This provision is now obsolete as the review has been conducted, and was tabled in Parliament on 12 May 2009.

39. Section 106 amended

Section 106 sets out additional sentencing options the Court has when imposing penalties for certain offences.

Clause 39 updates section 106(3), (4) and (5) to include the offence in proposed new section 67AD(6) as an offence where the Court has additional sentencing options.

40. Section 110A inserted

Clause 40 inserts proposed new transitional provision 110A to remove any doubt that in a situation where a driver is charged under section 67(3a) following an incident which occasions grievous bodily harm or bodily harm prior to the commencement of the proposed new section 67(3), and that incident ultimately results in death after the commencement of the proposed new section 67(3), the driver may still be prosecuted and convicted under section 67(3).

41. Section 111 amended

Clause 41 implements Reform 5 by inserting proposed new section 111(1)(b) to confirm that regulations can be made to regulate the use of devices in vehicles in both positive and negative terms.

Part 3 – Amendments to other Acts

Division 1 – *Criminal Investigation Act 2006* amended

42. Act amended

The changes in Part 3 are consequential amendments that do not result in any substantive change to the underlying policy in the other Acts.

Clause 42 provides that the clauses in Part 3 Division 1 amend the *Criminal Investigation Act 2006* (CIA).

43. Section 28 amended

Section 28(2) of the CIA currently provides that the requirement in subsection (1) to inform a person who is requested to accompany a police officer that the person is not under arrest and is free to leave at any time, does not apply to a person required to accompany a police officer under section 66.

Clause 43 updates the exclusion in section 28(2) to also apply to other similar provisions in the RTA which contain the same requirement to accompany a police officer to a place for the purposes of drug or alcohol testing. Accordingly, sections 66B (as amended by clause 16), 66D and 66E of the RTA have been included.

44. Section 135 amended

Clause 44 updates section 135(2)(b) to make it clear that a person subject to a requirement to accompany a police officer and wait at a place for the purposes of collecting a sample for testing or undergoing driver assessment in sections 66B (as amended by clause 16), 66D and 66E of the RTA may be searched under section 135 of the CIA. This is consistent with the current requirement in section 66 of the RTA.

Division 2 – *Cross-border Justice Act 2008* amended

45. Act amended

Clause 45 provides that the clauses in Part 3 Division 2 amend the *Cross-border Justice Act 2008*.

46. Section 43 amended

Section 68 of the RTA is amended in clause 23 to remove procedures related to obsolete breath analysing equipment which is not self-testing. As part of this change, section 68(4)(a) currently referenced in section 43 of the *Cross-border Justice Act 2008* will be removed.

Clause 46 updates section 43 by replacing the reference which will be deleted with section 68(8) of the RTA (as amended by clause 23).

Division 3 – *Road Traffic (Authorisation to Drive) Act 2008* amended

47. Act amended

Clause 47 provides that the clauses in Part 3 Division 3 amend the *Road Traffic (Authorisation to Drive) Act 2008* (ATD Act).

48. Section 5A amended

Clause 48 updates the definition of ‘alcohol offence’ in section 5A to remove the reference to urine. This reflects the removal of urine sampling and analysis from the RTA.

49. Section 19 amended

Clause 49 removes redundant defined terms in section 19 of the ATD Act which are no longer used in the ATD Act.

50. Section 28 amended

Section 28 of the ATD Act sets out the periods during which persons who are disqualified from holding or obtaining a driver’s licence cannot apply to a Court for an extraordinary licence. The length of these waiting periods turn on the particular drink driving offences in the RTA the person was convicted of and sentenced to a period of disqualification.

Clause 50 updates section 28 to include offences in proposed new sections 64B(3), 67AD(4) and (6) of the RTA to maintain the current framework in the ATD Act.

Division 4 – *Young Offenders Act 1994* amended

51. Act amended

Clause 51 provides that the clauses in Part 3 Division 4 amend the *Young Offenders Act 1994* (YOA).

52. Schedule 1 amended

Schedule 1 of the YOA lists offences which cannot be referred to a juvenile justice team.

Clause 52 updates Schedule 1 to include offences in proposed new sections 64B, 64C, 67AC and 67AD of the RTA which are relevant to the current framework in the YOA.