

# EXPLANATORY MEMORANDUM

## ***Transport Legislation Amendment (Identity Matching Services) Bill 2020***

The Premier and all other First Ministers signed the intergovernmental agreement on Identity Matching Services (IGA) at the special Council of Australian Governments (COAG) meeting on counter terrorism on 5 October 2017.

To enable Western Australia to meet its objectives under the IGA, this Bill proposes to amend the:

- *Road Traffic (Administration) Act 2008*
- *Road Traffic (Authorisation to Drive) Act 2008*; and
- *Western Australian Photo Card Act 2014*

to enable the disclosure of photographs from Western Australian driver's licences, learner's permits and photo cards to the National Driver Licence Facial Recognition Solution (Solution) for identity matching.

The IGA underpins the National Facial Biometric Matching Capability (Capability), a central interoperability hub managed by the Commonwealth Department of Home Affairs, of which the Solution is part. The Capability enables the sharing and matching of identity information to prevent identity crime, support law enforcement, uphold national security, promote road safety, enhance community safety and improve service delivery, while maintaining privacy and security safeguards. The Solution will enable requests for driver's licence, learner's permit and photo card information from all participating jurisdictions to be disclosed on request. The Capability will include Commonwealth information relating to passports, visas and citizenship images as well.

To enable Western Australia to participate in the Solution, this Bill seeks to expand existing provisions relating to the disclosure of information to enable the disclosure of photographs and signatures (as well as other information about a person) to the Solution for identity matching.

The Department of Transport (DoT) has also identified additional opportunities to enhance services for customer convenience and to deliver efficiencies across WA government agencies. In addition to the main purpose of the Bill, to enable the disclosure of information including photographs for identity matching (Objective 1 below) and allow that disclosure to be made by an automated system (Objective 2 below), the Bill also captures additional opportunities as described in Objectives 3 to 6 below.

A full list of the Objectives of the Bill are as follows:

**1. Enable the disclosure of photographs and signatures to the Solution for identity matching**

*1.1. Existing restrictions on disclosure of photographs*

Existing legislation limits the disclosure of photographs to certain parties in limited circumstances.

Section 11C of the *Road Traffic (Authorisation to Drive) Act 2008* and section 15 of the *Western Australian Photo Card Act 2014* requires the disclosure of photographs to the WA Police Force, Australian Security Intelligence Organisation, and, with the prior approval of the Commissioner of Police, allows disclosure to prescribed law enforcement officials (such as Australian police forces and the Corruption and Crime Commission), for the performance of the functions of those agencies under a written law.

Section 11E of the *Road Traffic (Authorisation to Drive) Act 2008* allows the disclosure of photographs to the CEO (road passenger services) under the *Transport (Road Passenger Services) Act 2018* for the production of a passenger transport driver authorisation or other identification document.

The *Road Traffic (Authorisation to Drive) Act 2008*, section 11D and the *Western Australian Photo Card Act 2014*, section 16 allows the disclosure of the photograph of a person who has died to the executor or administrator or the person's estate.

The CEO currently contracts with a private organisation for the production of driver's licences and photo card documents under the *Public Sector Management Act 1994*. Section 11 of the *Road Traffic (Administration) Act 2008* allows the CEO to enter into an agreement providing for the CEO's functions and to share information with another body for this purpose, but does not currently allow the sharing of photographs or signatures. Clause 5 of the Bill proposes to empower the CEO to disclose photographs and signatures provided under the *Road Traffic (Authorisation to Drive) Act 2008* to the body or person with whom the agreement is made under section 11(5A) of the *Road Traffic (Administration) Act 2008*, if required for the performance of that function. The equivalent amendment is proposed by clause 24 to section 17A of the *Western Australian Photo Card Act 2014*.

*1.2. Existing restrictions on disclosure of other information*

Existing legislation allows the disclosure of information about a person (such as name, date of birth and last known address) to certain parties in certain circumstances. For example, section 20 of the *Western Australian Photo Card*

*Act 2014* allows the CEO to enter into an agreement with a person or body to perform functions on behalf of the CEO, and to disclose photo card information that is required for the purposes of performing those functions.

The *Road Traffic (Administration) Act 2008*, section 14(2)(a) and the *Western Australian Photo Card Act 2014*, section 14, allows the disclosure of driver's licence information and photo card information respectively (which includes information about persons who hold or have made applications for these documents) to prescribed persons for an authorised purpose relating to the functions, administration or enforcement of another written law or an authorised purpose prescribed in regulations.

Prescribed persons for the purpose of disclosure of driver's licence information as listed in regulation 7 of the *Road Traffic (Administration) Regulations 2014* currently include the CEO of WA public sector agencies, Chairperson of ASIC, the Chief of the Defence Force and Australian Border Force Commissioner or a person nominated by those persons, among others. Regulation 8A provides that if the Secretary of the Department of Home Affairs of the Commonwealth is a prescribed person, which is currently the case, an authorised purpose is verification of a driver's licence or learner's permit using the national Document Verification Service.

The Document Verification Service, hosted by the Commonwealth Department of Home Affairs, is currently used by WA law enforcement agencies and the private sector to verify identification information on driver's licences and other government issued identity documents with the consent of the customer. However, it is unable to detect documents such as a driver's licence that contains a fraudulent photo but a legitimate name and address. Nor can it identify an unknown person from a facial image.

The *Western Australian Photo Card Regulations 2014*, regulation 10 and 10A similarly provide for the disclosure of photo card information to prescribed persons for authorised purposes.

To enable the disclosure of photographs and signatures (as well as other identifying information) to the Solution for identity matching, in a similar way to the current disclosure of driver's licence information via the national Document Verification Service, this Bill would expand existing legislative provisions.

### *1.3. Proposed provisions enabling disclosure of information to the Solution*

Proposed section 11C of the *Road Traffic (Authorisation to Drive) Act 2008* gives effect to this objective of the Bill by empowering the CEO to disclose identifying information to a prescribed person for an authorised purpose.

It is intended that the Secretary of the Department of Home Affairs be prescribed under section 11C, and that an authorised purpose will be specified as verification or identification of a driver's licence or learner's permit image using the Capability. This is similar to existing regulation 8A of the *Road Traffic (Administration) Regulations 2014*, which provides that if the Secretary of the Department of Home Affairs of the Commonwealth is a prescribed person, which is currently the case, an authorised purpose is verification of a driver's licence or learner's permit using the national Document Verification Service.

Upon commencement of the Bill, information and facial images from WA driver's licence, learner's permits and photo card holders will be uploaded to the Solution, and may be compared with other images and information held by other Government agencies nationally on request by participating Agencies or Organisations. The Solution will be a database of identification information operated and maintained by the Secretary of the Department of Home Affairs.

Both public Agencies and private Organisations will be subject to an independent privacy impact assessment along with other privacy safeguards. Detailed rules for access to images by authorised officers of authorised bodies for authorised purposes are included in participation agreements to be signed by participating jurisdictions.

Agency is defined in clause 3.1 of the IGA as:

'any agency, government sector agency, public sector agency or public sector body as defined in the *Public Service Act 1999* (Cth) or equivalent state or territory public service legislation, including any Road Agency, law enforcement agency or relevant Commonwealth agency that is participating in or may wish to participate in any of the Identity Matching Services.'

Once an Agency has been authorised by the National Identity Security Coordination Group (the body responsible to the Ministerial Council for Police and Emergency Management for the management of the identity matching services) to access information via the Solution, the DoT (and each agency providing data via the Solution) will retain discretion over whether or not to enter into a legally binding Face Matching Services Participation Agreement (Participation Agreement) to share data with the Agency.

As stated in Part 5.1 of the IGA, private sector access to the Solution will be limited to organisations that:

- (a) are required or authorised by a law to require the identification of an individual or to verify the identity of an individual, or
- (b) have a reasonable need to use government identifiers to verify the identity of an individual.

These will include financial institutions and telecommunications providers, which have identity verification obligations under the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

An organisation is defined in clause 3.1 of the IGA as:

‘a member of the private sector, being an individual, body corporate, partnership, unincorporated association or trust that is not an Agency and that is participating in or may wish to participate in the Identity Matching Services.’

Approval in writing by the Minister for Transport will be required before an organisation may have access to WA Department of Transport customer identifying information via the Solution. Consent from the individual whose identity is being verified is also required.

Private sector organisations may have access to a face verification service, which will return a match/no match response as to whether a facial image and purported identity matches that held on a Department of Transport record, but will not be able to retrieve a facial image or signature.

## **2. Enable disclosure by an automated system**

Existing legislation, as described in Objective 1, allows for the disclosure of identifying information including facial images to certain parties in limited circumstances.

It is not clear, however, whether such disclosure could be made using an automated computer system without case-by-case human intervention. This is how photographs, signatures and other identifying information are intended to be disclosed to authorised agencies and organisations via the Solution if disclosure is authorised under a road law or the *Western Australian Photo Card Act 2014* and proposed business rules to be set by the DoT. This would allow for efficient, cost-effective data sharing and access to the Solution.

For example, a Tasmanian police officer investigating an offence which carries a maximum penalty of a term of imprisonment of more than three years may require a facial image of a person of interest. This would be released pursuant to this Bill in accordance with the DoT business rules without a person authorising individual access to that image.

Agencies accessing identifying information (including photographs and signatures) disclosed by the DoT to the Solution will be required to adhere to a Participation Agreement. A Participation Agreement is to be made between all Agencies interacting with the Solution and the data providing agency, such as the DoT, setting out their respective roles, rights and obligations to each other. Identifying information will be processed and/or disclosed under a Participation Agreement without the intervention of a DoT officer.

To enable the disclosure of photographs, signatures and other information about a person to the Solution by an automated system, this Bill seeks to introduce a head power to allow disclosure by means of an automated system in proposed sections 16C of the *Road Traffic (Administration) Act 2008* and 12A of the *Western Australian Photo Card Act 2014*.

### **3. Enable the disclosure of identifying information to other WA Government agencies to support ServiceWA**

Section 14(2)(a) of the *Road Traffic (Administration) Act 2008* and section 14 of the *Western Australian Photo Card Act 2014* already allow the disclosure of driver's licence information and photo card information (which are each information about a person not including photographs and signatures) to prescribed persons for an authorised purpose. Regulation 7 of the *Road Traffic (Administration) Regulations 2014* lists prescribed persons for the purposes of section 14(2)(a) of the Act, and regulation 8A provides that an authorised purpose is verification of a driver's licence or learner's permit using the national Document Verification Service. The Document Verification Service is currently used by WA law enforcement agencies and the private sector to verify identification information on driver's licences and other government issued identity documents.

Regulation 10 and 10A of the *Western Australian Photo Card Regulations 2014* similarly provide for the disclosure of photo card information to prescribed persons and for authorised purposes for the disclosure of photo card information respectively.

The ServiceWA (Digital) Program run by the Office of Digital Government aims to assist government customers by facilitating access to digital services. This can include consolidating single gateways for common services and enabling individuals to use a single credential to access multiple WA government services. Anticipating that further interoperability will be required with other WA government agencies as part of ServiceWA, this Bill empowers disclosure of identifying information with the consent of the person to whom it relates in proposed section 11D *Road Traffic (Authorisation to Drive) Act 2008* and section 14A of the *Western Australian Photo Card Act 2014*.

Allowing disclosure of identifying information to other WA government agencies for the performance of their respective functions, with the customer's consent, would reduce the costs of maintaining registry and licensing schemes, improve customer convenience, keep contact details up to date, and reduce opportunities for fraud. The Bill would allow customers to access a central government log in, once relevant systems are developed, to apply for various licences using one set of identifying information.

To enable the disclosure of identifying information to other WA government agencies to support ServiceWA, this Bill would expand on existing legislative provisions to allow the disclosure of photographs and signatures to prescribed persons for an authorised purpose prescribed in regulations. Proposed section 11C *Road Traffic (Authorisation to Drive) Act 2008* and the proposed amendment to section 14 of the *Western Australian Photo Card Act 2014* give effect to this objective.

#### **4. Enable the disclosure of a customer's identifying information with their consent**

Existing legislation does not allow individuals to give consent for their information held by the Department to be disclosed to other parties. There may be instances where a customer may wish to give consent for the CEO DoT to disclose their information to an organisation (such as a bank) to verify their identity.

A consent mechanism could also enable customers to consent to their WA identifying information being used in documentation issued by other jurisdictions. While not currently supported by technology, this would allow customers to consent to their photograph being used in a passport or interstate driver's licence, for example. The UK Government currently allows customers to nominate that the same photograph can be used in a passport and driver's licence. This provision would also potentially allow a customer to permit their employer to verify whether they are authorised to drive company vehicles.

To enable the disclosure of a customer's identifying information with their consent, this Bill seeks to introduce a head of power in section 11D of the *Road Traffic (Authorisation to Drive) Act 2008* and section 14A of the *Western Australian Photo Card Act 2014* to allow customers to give informed consent to the CEO DoT or other person accessing the Solution to disclose their identifying information to specified bodies.

#### **5. Enable the use of photographs and signatures between driver's licence documents, learner's permit documents and photo cards**

The *Road Traffic (Authorisation to Drive) Act 2008*, section 11A(5) currently allows a photograph or signature provided to the CEO DoT for use on a learner's permit to be used on a driver's licence document. However, a photograph or signature provided for a driver's licence document or photo card can only be used on the document it was provided for.

It is proposed to introduce a head of power to allow identifying information provided to CEO by an applicant to produce one document (either a driver's licence document, a learner's permit document or a photo card) to be used to produce another document.

Extending the usability of photographs and signatures provided to the DoT would streamline customer transactions and potentially offer existing customers the option to complete online transactions. This would reduce red tape and lead to an improved customer experience, for example, enabling a seamless transition from a driver's licence to a photo card for customers wishing to relinquish their driver's licence and retain a photographic proof of identity document.

To enable this, the Bill would allow the CEO to use a photograph or signature provided by the applicant to produce one document (either a driver's licence, a learner's permit or a photo card) to be used to produce another document. Proposed sections 9(5) and 11A(6) of the *Road Traffic (Authorisation to Drive) Act 2008* and section 6(5) of the *Western Australia Photo Card Act 2014* give effect to this objective.

## **6. Enable the retention of historical photographs and signatures**

Sections 9(5) and 11A(6) of the *Road Traffic (Authorisation to Drive) Act 2008* and section 17(1) of the *Western Australia Photo Card Act 2014* currently require the CEO to ensure that customer photographs and signatures are destroyed if not used on a learner's permit, driver's licence or photo card within the preceding ten years. This also applies to copies of photographs held by other agencies, such as WA Police Force.

This requirement is no longer considered appropriate, as historical photographs may be relevant to law enforcement, particularly where crimes remain unsolved for decades. There is potential for new evidence, for example a photograph or CCTV footage, to become available well beyond the ten year limit.

To enable the retention of photographs and signatures by the DoT or other agencies, this Bill would remove the requirement to destroy a photograph and signature after ten years by deleting section 9(5) and replacing section 11A(6) of the *Road Traffic (Authorisation to Drive) Act 2008* and deleting section 17(1) of the *Western Australia Photo Card Act 2014*.

The photographs and signatures are government records as defined in the *State Records Act 2000* and the provisions of that Act would apply to the retained historical photographs.

## **Part 1 — Preliminary**

### **1. Short title**

Clause 1 provides that when this Bill is passed by Parliament and receives Royal Assent, it will be known as the *Transport Legislation Amendment (Identity Matching Services) Act 2020*.

### **2. Commencement**

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

Clause 2(a) would provide that Part 1 of the Bill is proposed to commence operation on the day on which the Bill receives Royal Assent and becomes an Act. Part 1 of the Bill contains confirmation of the Bill's short title and the commencement provisions for the Act.

Clause 2(b) would provide that the rest of the Act is intended to commence operation on a day fixed by proclamation. It is intended that the rest of the Act commence as soon as possible. Commencement by proclamation is necessary as the exact commencement date will depend on the drafting of regulations and system preparedness.

The completion of approximately six months of data testing and cleansing is also required before the DoT can participate in the Capability, which cannot proceed until the Bill commences due to current information sharing restrictions.

## **Part 2 — Road Traffic (Administration) Act 2008 amended**

### **3. Act amended**

This clause confirms that the provisions of Part 2 of the Bill would amend the *Road Traffic (Administration) Act 2008*.

The *Road Traffic (Administration) Act 2008* provides for the administration and enforcement of the *Road Traffic Act 1974*, the *Road Traffic (Authorisation to*

*Drive) Act 2008* and the *Road Traffic (Vehicles) Act 2012* and for other matters relating to road traffic.

Amendments to the *Road Traffic (Administration) Act 2008* are necessary to amend provisions which relate to the disclosure of information, and to introduce new definitions.

#### **4. Section 4 amended**

Clause 4 would insert two new definitions into section 4 of the *Road Traffic (Administration) Act 2008*.

A definition of “photograph” is proposed to include an electronic record of a photograph, to avoid specifying that photograph includes an electronic record of a photograph throughout the *Road Traffic (Administration) Act 2008*. This would mirror the proposed definition to be inserted into the *Road Traffic (Authorisation to Drive) Act 2008* by clause 9.

A definition of “signature” is proposed to include an electronic record of a handwritten signature, to reflect modern digital practices. This avoids having to specify that “signature” includes an electronic record of a signature throughout the *Road Traffic (Administration) Act 2008*.

#### **5. Section 11 amended**

Subclause (a) and (b) would remove the first two occurrences of the term “information”, as the insertion of subparagraph 11(5A)(f) would mean that not every listed category would be described as “information”. Subclause (b) would replace “information” with “disclosure”, aligning with the first reference to “disclose” in subsection (5A).

Subclause (c) would make a grammatical amendment from a full stop to a semi colon to allow subparagraph 11(5A)(f) to be inserted.

Subclause (d) would insert subparagraph 11(5A)(f) to empower the CEO to disclose photographs and signatures provided under the *Road Traffic (Authorisation to Drive) Act 2008* to the body or person with whom an agreement is made under section 11(5A) of the *Road Traffic (Administration) Act 2008* to perform a function of the CEO, if required for the performance of that function.

Section 11 of the *Road Traffic (Administration) Act 2008* currently allows the CEO to enter into an agreement providing for the CEO’s functions and to share information with another body for this purpose, but does not currently allow the sharing of photographs or signatures.

## 6. Sections 16B and 16C inserted

Clause 6 proposes to insert new sections 16B and 16C into Part 2 of the *Road Traffic (Administration) Act 2008* regarding disclosure of information, giving effect to Objective 4 above.

Section 16B would allow the CEO of the *Road Traffic (Administration) Act 2008* to disclose information about a person obtained in the administration of either the *Road Traffic (Administration) Act 2008*, *Road Traffic (Vehicles) Act 2012* or the *Road Traffic (Authorisation to Drive) Act 2008* to another person with the consent of the person to whom the information relates.

Similar provisions for disclosure by consent exist in proposed section 11D of the *Road Traffic (Authorisation to Drive) Act 2008*, however section 11D only applies to information collected under that Act, and only to 'identifying information'. 'Identifying information' is defined in proposed section 11B as a photograph, signature, or information associated with such photograph or signature.

Section 16B of the *Road Traffic (Administration) Act 2008* would apply to all 'information about a person', which is intended to be broader than identifying information. It would also apply to information obtained in the administration of any road law. This provision could be relied on, for example, in a situation where a DoT customer wishes for their employer or potential employer to verify that the customer is currently authorised to drive a motor vehicle of the kind required for their employment. With the customer's consent, the employer could contact the DoT for verification of the validity of the driver's licence already provided by the customer.

Section 143A of the *Road Traffic (Administration) Act 2008* currently also provides that a person who is or has been engaged in the performance of functions under a road law must not disclose (among other things) information contained under a road law, except with the consent of a person to whom the information relates. It is considered necessary to insert an explicit power to disclose in section 16B, however, as section 143A(c) is a penalty provision that does not in itself provide a clear power to disclose. Rather, it sets out exceptions to the prohibition and associated penalty against disclosure.

Section 16C(1) of the *Road Traffic (Administration) Act 2008* would allow the CEO of the *Road Traffic (Administration) Act 2008* to disclose a photograph, signature or information under a road law to be made by means of an automated system, if disclosure is authorised. This is how photographs, signatures and other identifying information are intended to be disclosed to authorised agencies and organisations via the Solution.

This gives effect to Objective 2 above. Current road laws are not clear about whether disclosure of information can be made using an automated computer system without case-by-case human intervention. Section 16C(1) would enable automated disclosure where a disclosure is authorised, allowing for efficient, cost-effective data sharing and access to the Solution.

Agencies accessing photographs, signatures and biographical information disclosed by the DoT to the Solution will be required to adhere to a Participation Agreement. A Participation Agreement is to be made between all Agencies interacting with the Solution and the data providing agency, such as the DoT, setting out their respective roles, rights and obligations to each other. Identifying information will be processed and/or disclosed under a Participation Agreement without the intervention of a DoT officer.

Section 16C(2) would provide for regulations to be made to specify requirements for the automation of information disclosure. These regulations will provide the parameters within which the automated system must operate. These are anticipated to include reference to Participation Agreements.

Section 16C(3) would allow relevant persons to retrieve data in the system and to be sent alerts about data that has been modified or added to the system. This would allow an employer, for example, to be provided with regular automatic updates of the status of an employee's driver's licence with the employee's consent. A customer could also consent for their local council, various government departments or utility provider to be notified where the customer updates their address or phone number with the DoT.

## **7. Section 36 amended**

This clause would amend section 36 to make minor drafting corrections to insert the words "or" after paragraphs (a) and (ba). The amendments simply insert omitted words to reflect current drafting practices and do not change the meaning of section 36.

## **Part 3 — *Road Traffic (Authorisation to Drive) Act 2008* amended**

Part 3 of the Bill seeks to amend the *Road Traffic (Authorisation to Drive) Act 2008*, which provides for the authorisation of persons to drive motor vehicles and related matters.

Part 2 of the *Road Traffic (Authorisation to Drive) Act 2008* contains provisions relating to photographs provided to the CEO to produce driver's licence documents and

learner's permit documents; and the disclosure of those photographs to certain parties in certain circumstances.

Amendments to the *Road Traffic (Authorisation to Drive) Act 2008* are necessary to expand on the CEO's ability to disclose photographs, signatures, and other information to certain parties for certain purposes.

## **8. Act amended**

This clause confirms that the provisions of Part 3 of the Bill propose to amend the *Road Traffic (Authorisation to Drive) Act 2008*.

## **9. Section 3 amended**

Clause 9 would insert three new definitions into section 3 of the *Road Traffic (Authorisation to Drive) Act 2008*.

A definition of "photograph" is proposed to include an electronic record of a photograph but remove the reference to a negative that is currently provided for in the definitions of "photograph" in sections 9(1) and 11A(1) of the Act. The concept of a negative is obsolete. Those existing definitions of "photograph" already refer to an image stored electronically. This definition would consolidate the two identical definitions into one which would apply to both sections.

A definition of "related Act" is proposed to be introduced to mean the *Western Australian Photo Card Act 2014* or an Act prescribed by the regulations. The phrase is intended to be used in sections 9(5), 11A(6), 11H(1) and (3) to enable the CEO to use a photograph or signature provided by an applicant for the purpose of applying for either a driver's licence, learner's permit or photo card, for another application by the same person.

The *Road Traffic (Authorisation to Drive) Act 2008*, section 11A(5), already allows a photograph and signature provided to the CEO for use on a learner's permit to be used on a driver's licence document, but a photograph or signature provided for use on a driver's licence document currently may not be used on a learner's permit. Further, a photograph or signature provided for use on a photo card under the *Western Australian Photo Card Act 2014* cannot be used for a learner's permit or driver's licence.

This inconveniences applicants who are required to have additional photographs taken for additional applications with the DoT, as well as adding to administrative costs. Extending the usability of photographs and signatures provided to the DoT would enable customers to complete applications online and reduce red tape.

Paragraph (b) allows "related Act" to mean an Act prescribed by the regulations instead of the *Western Australian Photo Card Act 2014*. This would allow the

regulations made under the *Road Traffic (Authorisation to Drive) Act 2008* to prescribe other Acts as well as the *Western Australian Photo Card Act 2014* as Acts under which a customer may have provided a photograph or signature that the CEO is authorised to use on a driver's licence or learner's permit document under proposed section 9(5) and 11A(6) of the *Road Traffic (Authorisation to Drive) Act 2008* respectively.

For example, the *Fish Resources Management Act 1994* or the *Western Australian Marine Act 1982* could be prescribed in order to allow the CEO to use a photograph and signature provided under those Acts for the purposes of applying for a fishing licence or skipper's ticket respectively for the purpose of creating a driver's licence or learner's permit for that customer.

A definition of "signature" is proposed to include an electronic record of a handwritten signature, to reflect modern digital practices. This avoids having to specify that "signature" includes an electronic record of a signature throughout the *Road Traffic (Authorisation to Drive) Act 2008*.

Clause 8(2) would make a minor grammatical change to enable the insertion of new definitions in section 3.

## **10. Section 9 amended**

Clause 10(1) proposes to delete the definition of "destroyed" in the *Road Traffic (Authorisation to Drive) Act 2008*, which is used in section 9(5) in relation to destroying photographs or signatures, which is also proposed to be deleted.

The requirement of the CEO to ensure photographs and signatures provided to verify identity in relation to a driver's licence application are destroyed if not used on a driver's licence document in the preceding 10 years is proposed to be deleted. This is appropriate for law enforcement purposes. For example, the WA Police Force may wish to retain a photograph originally provided for driver's licencing purposes for a database of images for use in unsolved crimes.

Clause 10(1) would also delete the definition of "photograph" as including a negative or image stored electronically, as the new definition of "photograph" to be provided in section 3(1) by clause 9 of the Bill would apply to section 9. This definition would remove the concept of a negative, which is obsolete, but retain the reference to an electronic photograph.

Clause 10(2) seeks to replace "regulations" with "regulations or subsection (5)" in section 9(3), to provide that the CEO cannot grant a driver's licence unless the applicant has provided the CEO with a photograph and signature taken or made within 10 years of the application, except as prescribed in the regulations or subsection (5). Subsection (5) is proposed to be deleted and replaced with a subsection providing that the CEO is authorised to use a photo or signature

provided under section 11A of the *Road Traffic (Authorisation to Drive) Act 2008* or under a related Act on a driver's licence. "Related Act" is proposed to be inserted by clause 8(1) to mean the *Western Australian Photo Card Act 2014* or an Act prescribed.

Clause 10(3) seeks to delete subsection 9(4A), which provides that subsection 9(3) does not prevent the grant or renewal of a driver's licence if the applicant has provided the CEO with a photograph or signature within 10 years of the application.

Clause 10(4) proposes to delete subsections 9(5) to (8) and insert a new subsection 9(5). Proposed section 9(5) would give effect to Objective 6 of the Bill. The deletion of existing section 9(5) would give effect to Objective 7 of the Bill, while subsections (6) to (8) are intended to be deleted as it is intended that they are replaced by provisions within proposed section 11H.

Proposed subsection (5) would authorise the CEO to use a photo or signature provided under section 11A of the *Road Traffic (Authorisation to Drive) Act 2008* in relation to a learner's permit, or under a related Act, on a driver's licence. "Related Act" is proposed to be inserted by clause 8(1) to mean the *Western Australian Photo Card Act 2014* or an Act prescribed. This would give effect to Objective 5, allowing the CEO to use photographs and signatures for different purposes without requiring the customer to provide another photograph and signature for a secondary application.

## **11. Section 11A amended**

Clause 11 proposes to amend section 11A of the *Road Traffic (Authorisation to Drive) Act 2008*. The amendments proposed to section 11A mirror the amendments to section 9, but deal with learner's permits instead of driver licencing.

Clause 11(1) proposes to delete the definition of "destroyed" in the *Road Traffic (Authorisation to Drive) Act 2008*, which is used in section 11A(6) in relation to destroying photographs or signatures, which is also proposed to be deleted.

The requirement of the CEO to ensure photographs and signatures provided to verify identity in relation to a learner's permit application are destroyed if not used on a learner's permit document in the preceding 10 years is proposed to be deleted. This is appropriate for law enforcement purposes. For example, the WA Police Force may wish to retain a photograph originally provided for learner's permit purposes for a database of images for use in unsolved crimes.

Clause 11(1) would also delete the definition of "photograph" as including a negative or image stored electronically, as the concept of a negative is

obsolete, and the new definition of “photograph” to be provided in section 3(1) by clause 8 of the Bill would apply to section 11A.

Clause 11(2) seeks to replace “regulations” with “regulations or subsection (6)” in section 11A(3), to provide that the CEO cannot grant a learner’s permit unless the applicant has provided the CEO with a photograph and signature taken or made within 10 years of the application, except as prescribed in the regulations or subsection (6). Subsection (6) is proposed to be deleted and replaced with a subsection providing that the CEO is authorised to use a photo or signature provided under the *Road Traffic (Authorisation to Drive) Act 2008* or a related Act on a learner’s permit. “Related Act” is proposed to be inserted by clause 9(1) to mean the *Western Australian Photo Card Act 2014* or an Act prescribed.

Clause 11(3) seeks to delete the phrase “10 years of” from section 11A(5) and replace it with “the period of 10 years after”. This would not alter the meaning of the provision but changes the language to be consistent with the language in section 6(3) and (4)(b) of the *Western Australian Photo Card Act 2014*.

Clause 11(4) seeks to delete subsections 11A(6) to (9) and insert a new subsection 11A(6), to authorise the CEO to use a photo or signature provided under the *Road Traffic (Authorisation to Drive) Act 2008* or under a related Act, on a learner’s permit. “Related Act” is proposed to be inserted by clause 8(1) to mean the *Western Australian Photo Card Act 2014* or an Act prescribed. This would give effect to Objective 5, allowing the CEO to use photographs and signatures for different purposes without requiring the customer to provide another photograph and signature for a secondary application.

## **12. Part 2 Division 3A replaced**

Clause 12 proposes to delete Part 2 Division 3A of the *Road Traffic (Authorisation to Drive) Act 2008* and insert a new Division 3A- Information management. This Division includes proposed sections 11B-11I.

Proposed subsection 11B(1) introduces a new concept of “identifying information” which is defined for the purposes of Division 3A. This definition is necessary to give effect to Objective 1 of the Bill. Identifying information would include a photograph or signature of a person provided to or used by the CEO under Part 2 of the *Road Traffic (Authorisation to Drive) Act 2008*, as well as information associated with such a photograph or signature to facilitate identification.

Subsection 11B(2) would provide a qualifying statement to apply to the phrase “photograph or signature provided to or used by the CEO under this Part”, such that a photograph or signature could have been provided before or after commencement of this section. This would ensure that the CEO can disclose all photographs provided before and after the commencement of this Bill, to

effectively participate in the Solution. Although this provision uses the phrase “photograph or signature”, reference may be to either a photograph or signature (or multiples of each) and still be captured by this definition, due to section 9 of the *Interpretation Act 1984* which provides that “other parts of speech and grammatical forms of that word or phrase have corresponding meanings.”

Proposed section 11C gives effect to Objective 1 of the Bill by providing that the CEO may disclose identifying information to a prescribed person if the CEO considers that the information is required for an authorised purpose, and provides an offence provision for unauthorised disclosure.

For the purpose of section 11C, “authorised purpose” and “prescribed person” are defined in proposed section 11C(1).

“Authorised purpose” is defined in relation to performing functions under a written law, the administration or enforcement of a written law, or a purpose prescribed by regulations. It is anticipated that on commencement of the Bill a purpose will be prescribed that is to verify the authenticity of a driver’s licence, learner’s permit or photo card using the national Document Verification Service.

This is similar to existing regulation 8A of the *Road Traffic (Administration) Regulations 2014* which provides that the authorised purpose in section 14(1) of that Act is to verify the authenticity of a driver’s licence or learner’s permit using the national Document Verification Service.

“Prescribed person” is defined to mean a person or class of person prescribed in regulations, which is anticipated on commencement of the Bill to be the Secretary of the Department of Home Affairs. This would be similar to existing regulation 8A of the *Road Traffic (Administration) Regulations 2014*, which provides that the Secretary of the Department of Home Affairs of the Commonwealth is a prescribed person, as well as various other persons.

The Commissioner of Police is also intended to be prescribed under proposed section 11C(1) for the purpose of allowing the CEO to disclose signatures to the WA Police Force. This would be necessary for signature analysis during the investigation of a crime. Proposed section 11E would apply to photographs which, as is currently the case, would be disclosed automatically to the WA Police Force.

Proposed section 11C(2) allows the CEO to disclose of identifying information to a prescribed person for an authorised purpose, both of which are defined in proposed subsection (1). This would give effect to the primary objective of the Bill. As a result of this section, upon commencement of the Bill, identifying information including facial images of WA driver’s licence and learner’s permits

can be compared with other images and information held by other Government agencies nationally on request by participating Agencies or Organisations.

Proposed section 11C(3) would provide a penalty for a person disclosing identifying information for a purpose other than the authorised purpose of imprisonment for two years or a fine of 480 penalty units (currently \$24,000 pursuant to section 7 of the *Road Traffic (Administration) Act 2008*). This penalty is equivalent to the current penalty for misuse of photographs under the *Road Traffic (Authorisation to Drive) Act 2008* in sections 9(6), 9(7) and 11A(9). While the penalties for those offences are described as imprisonment for two years, section 41 of the *Sentencing Act 1995* provides that a court may substitute a period of imprisonment with a fine if an Act provides for imprisonment only. This fine is to be calculated according to the formula in section 41(6), which results in a term of two years imprisonment being substituted with a \$24,000 fine.

Proposed section 11D would allow the CEO to disclose identifying information with the consent of the person to whom it relates. This provision would give effect to Objective 4. Section 11D would only apply to information collected under the *Road Traffic (Authorisation to Drive) Act 2008*, and only to 'identifying information'. 'Identifying information' is defined in proposed section 11B as a photograph, signature, or information associated with such photograph or signature. This provision could be relied on, for example, in a situation where a DoT customer wishes for their employer or potential employer to verify that the customer is currently authorised to drive a motor vehicle of the kind required for their employment. With the customer's consent, the employer could contact the DoT for verification of the validity of the driver's licence already provided by the customer.

A similar provision for disclosure by consent exists in proposed section 16B of the *Road Traffic (Administration) Act 2008*, which applies to "information about a person" obtained in the administration of either the *Road Traffic (Administration) Act 2008*, *Road Traffic (Vehicles) Act 2012* or the *Road Traffic (Authorisation to Drive) Act 2008*. "Information about a person" is intended to be broader than identifying information, but proposed section 11D is necessary to ensure photographs and signatures are covered by the consent provision in the *Road Traffic (Authorisation to Drive) Act 2008*.

Section 143A of the *Road Traffic (Administration) Act 2008* currently also provides that a person who is or has been engaged in the performance of functions under a road law must not disclose (among other things) information contained under a road law, except with the consent of a person to whom the information relates. Despite this exception, it is necessary to insert an explicit power to disclose in section 11D. Section 143A(c) is a penalty provision that

does not in itself provide a clear power to disclose. Rather, it sets out exceptions to the prohibition and associated penalty against disclosure.

Proposed section 11E would incorporate the existing definitions in the current section 11C which is proposed to be deleted by clause 11, except for the definitions of “CEO (road passenger services)” and “photograph” which are proposed to be removed from this section.

“CEO (road passenger services)” is currently used in section 11E regarding disclosure of information to the CEO (road passenger services), which is proposed to be deleted and replaced by an almost identical section 11G, which would also allow for disclosure to the CEO (road passenger services).

The definition of “photograph” is proposed to be deleted as the proposed new definition in section 3(1) would apply to section 11E.

Proposed subsection (2) replicates almost exactly the current section 11C(1). Due to the removal of the definition of photograph as “provided to the CEO under this Part” in existing section 11B, the provision is clarified to state that it relates to photographs provided to or used by the CEO under this Part. The addition of this phrase also links to proposed section 11B(2), which provides that a photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

Proposed subsection (3) replicates almost exactly the current section 11C(2). Due to the removal of the definition of photograph as “provided to the CEO under this Part” in existing section 11B, the provision is clarified to state that it relates to photographs provided to or used by the CEO under this Part. The addition of this phrase also links to proposed section 11B(2), which provides that a photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

Proposed subsection (4) replicates almost exactly the current section 11C(3). Due to the removal of the definition of photograph as “provided to the CEO under this Part” in existing section 11B, the provision is clarified to state that it relates to photographs provided to or used by the CEO under this Part. The addition of this phrase also links to proposed section 11B(2), which provides that a photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

Proposed section 11F replicates almost exactly the current section 11D. Due to the removal of the definition of photograph as “provided to the CEO under this Part” in existing section 11B, the provision is clarified to state that it relates to photographs provided to or used by the CEO under this Part. The addition of this phrase also links to proposed section 11B(2), which provides that a

photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

Proposed section 11G(1) provides the same definition of CEO (road passenger services) that is proposed to be deleted from section 11B. The term is not used elsewhere in the *Road Traffic (Authorisation to Drive) Act 2008*. Currently both the *Road Traffic (Authorisation to Drive) Act 2008* and the *Transport (Road Passenger Services) Act 2018* are administered by the same Department and have the same CEO.

Proposed section 11G(2) replicates almost exactly the current section 11E. Due to the removal of the definition of photograph as “provided to the CEO under this Part” in existing section 11B, the provision is clarified to state that it relates to photographs provided to or used by the CEO under this Part. The addition of this phrase also links to proposed section 11B(2), which provides that a photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

Proposed section 11H(1) replicates the effect of existing sections 9(6) (relating to driver’s licences only) and 11A(7), with the additional exception of possession being permitted if it is for the purposes of a related Act, meaning the *Western Australian Photo Card Act 2014* or an Act prescribed by the regulations as proposed to be inserted by clause 9.

Section 9(6) and 11A(7) provide a penalty of imprisonment for two years, whereas proposed section 11H(1) would include an alternative penalty of a fine of 480 penalty units. This is not a material change, as section 41 of the *Sentencing Act 1995* provides that a court may substitute a period of imprisonment with a fine even if an Act provides that imprisonment but not a fine may apply. This fine is to be calculated according to the formula in section 41(6) of the *Sentencing Act 1995*, which results in a term of two years imprisonment being substituted with a \$24,000 fine. This is the equivalent of 480 penalty units.

Proposed section 11H(2) replicates sections 9(7A) and 11A(7A) which provide that the offence provision in sections 9(6) and 11A(6) respectively does not apply to a person who possesses a photograph provided under that section as a result of its disclosure under Division 3A. Division 3A deals with disclosure of photographs to police, ASIO, law enforcement officials, an executor or administrator or the CEO (road passenger services).

This Bill proposes to relocate these provisions to proposed sections 11E-11G. Accordingly, section 11H(2) would state that the offence provision in subsection 11H(1) does not apply to a person who possesses a photograph or signature as a result of disclosure under this Division, which would incorporate sections

11E-11G, as well as proposed provisions regarding disclosure to a prescribed person (11C) and with consent (11D).

Proposed section 11H(3) replicates section 9(7) and (8) (relating to driver's licences only) and section 11A(9) of the *Road Traffic (Authorisation to Drive) Act 2008*. Proposed section 11H(3) would add the administration of a related Act, meaning the *Western Australian Photo Card Act 2014* or an Act prescribed by the regulations as proposed to be inserted by clause 9, or the *Transport (Road Passenger Services) Act 2018* Part 7 to the exceptions to the offence for reproducing a photograph or signature. Part 7 of the *Transport (Road Passenger Services) Act 2018* contains section 156, which provides that the CEO of that Act is authorised for the purpose of producing a passenger transport driver authorisation to use any photograph that was provided by the person under the *Road Traffic (Authorisation to Drive) Act 2008* in connection with the grant of a driver's licence or learner's permit to the person.

Section 9(7) and 11A(9) each provide a penalty of imprisonment for two years, whereas proposed section 11H(3) would include an alternative penalty of a fine of 480 penalty units. This is not a material change, as section 41 of the *Sentencing Act 1995* provides that a court may substitute a period of imprisonment with a fine even if an Act provides imprisonment but not a fine may apply. This fine is to be calculated according to the formula in section 41(6) of the *Sentencing Act 1995*, which results in a term of two years imprisonment being substituted with a \$24,000 fine. This is the equivalent of 480 penalty units.

Proposed section 11I would introduce a new section 11I of the *Road Traffic (Authorisation to Drive) Act 2008* to prevent identifying information from being compelled to be produced or disclosed in civil proceedings by subpoena or otherwise. This provision is proposed to be replicated in section 17A of the *Western Australian Photo Card Act 2014*.

This clause is designed to continue the status quo, as the DoT has not previously been subpoenaed for photographs or signatures. The DoT however, regularly receive subpoenas for bulk requests of identifying information of owners of vehicles who are allegedly liable for unpaid parking fines from private companies. It is intended to avoid potential situations where companies seek to subpoena photographs and signatures used on driver authorisation documents for commercial purposes.

These documents are tightly protected under road traffic legislation and it is intended for this to continue under this Bill. Section 11I would put beyond doubt that identifying information is not to be compelled to be produced or disclosed in civil proceedings, to avoid this being attempted by private organisations for commercial purposes. It is not intended to prevent photographs or signatures being subpoenaed in any criminal proceedings. As some civil proceedings are related to criminal offences, it is proposed to allow regulations to be made under

this provision to exclude certain proceedings from the operation of this provision, such that subpoenas issued under certain civil proceedings may request photographs or signatures from the DoT.

Consultation with the State Solicitor's Office and Department of Justice was undertaken on this point. It is intended that following further consultation with the Department of Justice, civil proceedings under the *Dangerous Sexual Offenders Act 2006* and *Criminal Organisations Control Act 2012* would be prescribed under section 11I.

## **Part 4 — *Western Australian Photo Card Act 2014* amended**

Part 4 of the Bill proposes to amend the *Western Australian Photo Card Act 2014* which provides for the issue of an identity document, the Western Australian photo card.

Amendments to the *Western Australian Photo Card Act 2014* are necessary as it contains provisions relating to photographs provided to the CEO to produce photo cards. Part 2 contains provisions which relate to photographs provided to the CEO to produce photo cards and Part 3 provides for the disclosure of photographs to certain parties in certain circumstances.

### **13. Act amended**

This clause confirms that the provisions of Part 4 of the Bill propose to amend the *Western Australian Photo Card Act 2014*.

### **14. Section 3 amended**

Clause 14 proposes to amend section 3 of the *Western Australian Photo Card Act 2014* which provides for definitions.

Clause 14(1) would delete the definition of "photograph" as including a negative or image stored electronically, as the concept of a negative is obsolete.

Clause 14(2) would, as with clause 4 of the Bill in relation to the *Road Traffic (Authorisation to Drive) Act 2008*, introduce three new definitions for "photograph", "related Act" and "signature".

The proposed definition of "photograph" would include an electronic record of a photograph, replicating the definitions proposed to be inserted into the *Road Traffic (Administration) Act 2008* and the *Road Traffic (Authorisation to Drive) Act 2008* by clauses 4 and 9 respectively.

"Related Act" is proposed to be defined as the *Road Traffic (Authorisation to Drive) Act 2008* or a prescribed Act; mirroring the proposed definition in the

*Road Traffic (Authorisation to Drive) Act 2008* as meaning the *Western Australian Photo Card Act 2014* or a prescribed Act. This term would be used in sections 6(3), (4)(b), 6(5), 17(1) and (4).

“Signature” is proposed to include an electronic record of a signature, to reflect modern digital practices, and encompass an electronic copy of a handwritten signature. This would replicate the definition proposed to be inserted into the *Road Traffic (Administration) Act 2008* and the *Road Traffic (Authorisation to Drive) Act 2008* by clauses 4 and 9 respectively.

Clause 14(3) would make a minor grammatical change to enable the insertion of new definitions in section 3.

## **15. Section 6 amended**

Clause 15(1) proposes to amend section 6(3) and (4)(b) of the *Western Australian Photo Card Act 2014* to allow the CEO to use a photograph or signature provided under the *Road Traffic (Authorisation to Drive) Act 2008* (or a prescribed Act) for use on a photo card. This would give effect to Objective 5 of the Bill and allow the CEO to use a customer photograph or signature already provided for the purposes of applying for a driver’s licence or learner’s permit on a photo card.

Clause 15(2) proposes to insert a new subsection 6(5) to authorise the CEO to use a photograph or signature provided under the *Western Australian Photo Card Act 2014* or a related Act up to 10 years previously on a photo card. “Related Act” is proposed to be defined in section 3 as the *Road Traffic (Authorisation to Drive) Act 2008* or a prescribed Act.

This would allow the regulations made under the *Western Australian Photo Card Act 2014* to prescribe other Acts as well as the *Road Traffic (Authorisation to Drive) Act 2008* as Acts under which a customer may have provided a photograph or signature that the CEO is authorised to use on a driver’s licence or learner’s permit document. For example, the *Fish Resources Management Act 1994* or the *Western Australian Marine Act 1982* could be prescribed in order to allow the CEO to use a photograph and signature provided under those Acts for the purposes of applying for a fishing licence or skipper’s ticket

respectively for the purpose of creating a driver's licence or learner's permit for that customer.

Extending the usability of photographs and signatures provided to the DoT would enable customers to complete applications online and reduce red tape. This provision would also give effect to Objective 5 of the Bill.

**16. Section 10 amended**

Clause 16 seeks to make a minor amendment to section 10(3) of the *Western Australian Photo Card Act 2014* to clarify that the penalty listed applies to subsection 10(3) only.

**17. Section 11 amended**

Clauses 17(1)-(5) seek to clarify the existing situation that the penalty provision listed at the end of section 11 applies to a breach of any of the subsections of section 11. This reflects current drafting practices.

**18. Section 12 replaced**

Clause 18 proposes to delete section 12 of the *Western Australian Photo Card Act 2014* and replace it with a new section 12 and 12A.

Existing section 12 provides for definitions of "photograph" and "signature" for the purpose of Part 3. As new definitions of these terms are proposed to be inserted by clause 14 in section 3, applying to the whole Act, these definitions are no longer required.

Proposed section 12(1) would introduce a new concept of "identifying information" which is defined for the purposes of Part 3. This definition is necessary to give effect to Objective 1 of the Bill. Identifying information would include a photograph or signature of a person provided to or used by the CEO under the *Western Australian Photo Card Act 2014*, as well as information associated with such a photograph or signature to facilitate identification.

Subsection (2) would provide a qualifying statement to apply to the phrase "photograph or signature provided to or used by the CEO under this Act", such that a photograph or signature could have been provided before or after commencement of this section. This would ensure that the CEO can disclose all photographs provided before and after the commencement of this Bill, to effectively participate in the Solution. Although this provision uses the phrase "photograph or signature", reference may be to either a photograph or signature (or multiples of each) and still be captured by this definition, due to section 9 of

the *Interpretation Act 1984* which provides that “other parts of speech and grammatical forms of that word or phrase have corresponding meanings.”

Proposed section 12A would allow the CEO of the *Western Australian Photo Card Act 2014* to disclose a photograph, signature or information under a road law to be made by means of an automated system, if disclosure is authorised. This is how photographs, signatures and other identifying information are intended to be disclosed to authorised agencies and organisations via the Solution.

This gives effect to Objective 2 of the Bill. Currently the *Western Australian Photo Card Act 2014* is not clear about whether disclosure of information can be made using an automated computer system without case-by-case human intervention. Section 12A would enable automated disclosure where a disclosure is authorised, allowing for efficient, cost-effective data sharing and access to the Solution.

Agencies accessing photographs, signatures and biographical information disclosed by the DoT to the Solution will be required to adhere to a Participation Agreement. A Participation Agreement is to be made between all Agencies interacting with the Solution and the data providing agency, such as the DoT, setting out their respective roles, rights and obligations to each other. Identifying information will be processed and/or disclosed under a Participation Agreement without the intervention of a DoT officer.

Section 12A(2) would provide for regulations to be made to specify requirements for the automation of information disclosure. These regulations will provide the parameters within which the automated system must operate. These are anticipated to include reference to Participation Agreements.

Section 12A(3) would allow relevant persons to retrieve data in the system and to be sent alerts about data that has been modified or added to the system. This would allow an employer, for example, to be provided with regular automatic updates of the status of an employee’s driver’s licence with the employee’s consent. A customer could also consent for their local council, various government departments or utility provider to be notified where the customer updates their address or phone number with the DoT.

## **19. Section 14 amended**

Clause 19(1) seeks to amend section 14 by replacing references to “photo card information” in subsections 14(2) and (3) with “identifying information or photo card information”.

The proposed amendment to subsection 14(2) would give effect to Objective 1 by allowing the CEO to disclose identifying information as well as photo card

information to a prescribed person if the CEO considers that the information is required for an authorised purpose.

The proposed amendment to subsection 14(3) would extend the offence for persons to use photo card information for an unauthorised purpose to identifying information as well. Photo card information is currently defined in section 3 to mean information about photo cards but not including photographs and signatures. Clause 18 proposes to introduce a definition of “identifying information” to be a photograph or signature of a person provided to or used by the CEO under the *Western Australian Photo Card Act 2014*, as well as information associated with such a photograph or signature to facilitate identification.

Clause 19(2) proposes to replace the currently penalty in subsection 14(3) of a fine of \$5,000 or imprisonment for 12 months with a penalty of a fine of \$24,000 or imprisonment for two years. This reflects the fact that the provision is being amended to apply to unauthorised disclosure of identifying information, including photographs and signatures, as opposed to only information about photo cards. The increased fine brings the penalty up to date since the commencement of this provision on 1 July 2014, and mirrors the equivalent penalty in proposed section 11C of the *Road Traffic (Authorisation to Drive) Act 2008*.

The note to this clause provides that the amended heading of section 14 is to be amended accordingly to reflect the addition of “identifying information”.

## **20. Section 14A inserted**

Clause 20 proposes to insert a new section 14A regarding disclosure of identifying or photo card information with consent. This would allow the CEO to disclose identifying information or photo card information to another person with the consent of the person to whom the information relates.

Photo card information is currently defined in section 3 to mean information about photo cards but not including photographs and signatures. Clause 18 proposes to introduce a definition of “identifying information” to be a photograph or signature of a person provided to or used by the CEO under the *Western*

*Australian Photo Card Act 2014*, as well as information associated with such a photograph or signature to facilitate identification.

Similar provisions for disclosure by consent exist in proposed section 11D of the *Road Traffic (Authorisation to Drive) Act 2008* and proposed section 16B of the *Road Traffic (Administration) Act 2008*.

**21. Section 15 amended**

Clause 21 proposes to amend section 15, which mirrors proposed section 11E of the *Road Traffic (Authorisation to Drive) Act 2008* which would replace sections 11B and 11C. Amended section 15 would include the phrase “provided to or used by the CEO under this Act” after “disclose photographs” in subsections 15(2), (3) and (4) for consistency with the *Road Traffic (Authorisation to Drive) Act 2008*. The addition of this phrase also links to proposed section 12(2), which provides that a photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

**22. Section 16 amended**

Clause 22 proposes to insert “provided to or used by the CEO under this Act” after the first use of the word “photographs” in section 16, similarly to clause 21 above.

**23. Section 17 amended**

Clause 23(1) proposes to delete section 17(1), which provides that a photograph or signature should be destroyed if not used on a photo card issued in the preceding ten years. This would give effect to Objective 6 of the Bill, and replicate the change proposed to the *Road Traffic (Authorisation to Drive) Act 2008* to delete sections 9(5) and 11A(6) which currently requires the CEO to ensure that customer photographs and signatures are destroyed if not used on a learner’s permit, driver’s licence or photo card within the preceding ten years.

Section 17(1) currently obligates the CEO to ensure the WA Police Force or anyone authorised to hold a photograph or signature also destroy all copies of photographs or signatures. This requirement is no longer considered appropriate for effective law enforcement.

Clause 23(1) also proposes to delete section 17(2), and replace it with subsection 17(1). Like existing section 17(2), this provision would make it an offence for a person to possess a photograph or signature that is not on a photo card. However proposed section 17(1) would also provide that possession is not an offence if for the purposes of a related Act, and that the offence is for possession of a photograph or signature that was “provided to or used by the

CEO” under the *Western Australian Photo Card Act 2014* that is not on a photo card.

This provision replicates proposed section 11H of the *Road Traffic (Authorisation to Drive) Act 2008* for consistency. The addition of this phrase also links to proposed section 12(2), which provides that a photograph or signature referred to in this way may have been provided to or used by the CEO before or after commencement of this section.

A penalty of imprisonment for two years or a fine of \$24,000 is proposed for this offence, consistent with that proposed under section 11H for possession of a photograph or signature under the *Road Traffic (Authorisation to Drive) Act 2008*.

Clause 23(2) seeks to amend section 17(3) to provide that possession of a signature as well as a photograph is exempt from the penalty in proposed section 17(1) (which would include a signature as well as a photograph) if possession is a result of disclosure under Part 3 of the Act.

The reference to “this Part” (Part 3 of the Act) would replace the current reference to section 15 or 16 regarding disclosure to law enforcement officials or an executor or administrator. This would allow disclosure by consent in proposed section 14A to be a further exception to the penalty in proposed section 17(1).

Clause 23(3)(a) seeks to amend section 17(4) to provide an additional exception to the offence of reproducing (or causing or permitting the reproduction of) a photograph or signature provided to or used by the CEO otherwise than in the administration of the *Western Australian Photo Card Act 2014*. This would be reproduction or causing or permitting the reproduction of a photograph or signature in the administration of a related Act, meaning the *Road Traffic (Authorisation to Drive) Act 2008* or a prescribed Act as per the proposed amendment to section 3 in clause 14.

This would reflect the fact that pursuant to this Bill, photographs and signatures provided to the CEO under the *Western Australian Photo Card Act 2014* could lawfully be disclosed for use in the administration of that Act or a related Act. This provision assists in giving effect to Objective 5 of the Bill.

Clause 23(3)(b) would specify that a relevant signature in section 17(4) is one that is provided to or used by the CEO under the *Western Australian Photo Card Act 2014*. This is consistent with the language to be used in proposed section 11H(3) of the *Road Traffic (Authorisation to Drive) Act 2008* which provides a similar offence. The amendment would also link to the definition in

proposed section 12(2) to apply to signatures provided before commencement of this section.

Clause 23(3)(c) would delete the penalty of imprisonment for two years and insert a penalty of imprisonment for two years or a fine of \$24,000; consistent with that proposed in section 14(3), 17(1) of the *Western Australian Photo Card Act 2014* and with similar offences in proposed sections 11C and 11H, the *Road Traffic (Authorisation to Drive) Act 2008* (which uses penalty units to the equivalent amount). This is not a material change, as section 41 of the *Sentencing Act 1995* provides that a court may substitute a period of imprisonment with a fine even if an Act provides that imprisonment but not a fine may apply. This fine is to be calculated according to the formula in section 41(6) of the *Sentencing Act 1995*, which results in a term of two years imprisonment being substituted with a \$24,000 fine.

#### **24. Section 17A amended**

Clause 24 proposes to amend the Act to insert a new section 17A to prevent identifying information from being compelled to be produced or disclosed in civil proceedings by subpoena or otherwise. Section 17A would mirror proposed section 11I of the *Road Traffic (Authorisation to Drive) Act 2008*.

This clause is designed to continue the status quo, as the DoT has not previously been subpoenaed for photographs or signatures. The DoT however, regularly receive subpoenas for bulk requests of identifying information of owners of vehicles who are allegedly liable for unpaid parking fines from private companies. It is intended to avoid potential situations where companies seek to subpoena photographs and signatures used on driver authorisation documents for commercial purposes.

These documents are tightly protected under road traffic legislation and it is intended for this to continue under this Bill. Clause 24 would put beyond doubt that identifying information is not to be compelled to be produced or disclosed in civil proceedings, to avoid this being attempted by private organisations for commercial purposes. It is not intended to prevent photographs or signatures being subpoenaed in any criminal proceedings. As some civil proceedings are related to criminal offences, it is proposed to allow regulations to be made under this provision to exclude certain proceedings from the operation of this provision, such that subpoenas issued under certain civil proceedings may request photographs or signatures from the DoT.

Consultation with the State Solicitor's Office and Department of Justice was undertaken on this point. It is intended that following further consultation with the Department of Justice, civil proceedings under the *Dangerous Sexual*

*Offenders Act 2006* and *Criminal Organisations Control Act 2012* would be prescribed under section 11I.

**25. Section 20 amended**

Clause 25(a) proposes to amend section 20(5) to include photographs and signatures provided to the CEO under the *Western Australian Photo Card Act 2014* as information that the CEO may disclose to the person or body with whom an agreement is made under section 20(1) for the performance of the CEO's functions, if required for the performance of that function. This is equivalent to clause 5 of the Bill which proposes to empower the CEO to disclose photographs and signatures provided under the *Road Traffic (Authorisation to Drive) Act 2008* by amending section 11 of that Act.

Clause 25(b) would remove the second occurrence of the term "information", as the amendment proposed by subclause 25(a) would mean that the listed things the CEO may disclose under section 20(5) would not all be described as "information".

**26. Section 21 amended**

Clause 26 proposes to delete the penalty in section 21(1) and insert a penalty of imprisonment for one year or a fine of \$12,000 for an offence against subsection 21(1). This maintains the same imprisonment period as is currently provided for in section 21(1), but increases the \$5,000 penalty, which is provided in the alternative.

The increased fine brings the penalty up to date since the commencement of this provision on 1 July 2014. It would also provide consistency with other offences under the *Western Australian Photo Card Act 2014* which provide for imprisonment for two years or a fine of \$24,000, and with the calculation of a fine where only imprisonment is provided for under section 41(6) of the *Sentencing Act 1995*.