

# Explanatory Memorandum

## ***Road Traffic Amendment (Alcohol Interlocks and Other Matters) Bill 2014***

Each year in Western Australia, around 4,000 drivers commit high end drink driving offences, repeat drink driving offences or offences of refusing to provide a breath, blood or urine sample when required by a police officer to do so for the purpose of determining whether they are complying with drink driving laws.

These offenders place themselves and every other road user at risk each time they make the decision to drive with an illegal amount of alcohol in their system.

This Bill's key provision is clause 17. It will amend the *Road Traffic (Authorisation to Drive) Act 2008* to insert in it regulation-making powers that will be used to create a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

Persons who will be subject to the alcohol interlock restriction will be persons whose conviction history indicates they may have difficulty separating drinking and driving behaviour. When the proposed regulations commence operation, it is intended that persons who are subsequently convicted of:

- an offence of driving under the influence of alcohol or of alcohol and drugs (*Road Traffic Act 1974* section 63(1)); or
- an offence of dangerous driving causing death or grievous bodily harm, committed in circumstances in which the driver was driving under the influence of alcohol or of alcohol and drugs (*Road Traffic Act 1974* section 59(1)(a)); or
- an offence of dangerous driving causing bodily harm, committed in circumstances in which the driver was driving under the influence of alcohol or of alcohol and drugs (*Road Traffic Act 1974* section 59A(1)(a)); or
- an offence of failing to comply with a request to provide a sample of breath, blood or urine to a police officer (*Road Traffic Act 1974* section 67); or
- a second offence of driving while having a blood alcohol content of or above 0.05 grams of alcohol per 100 mls of blood, where the conviction occurs within 5 years of a previous conviction of such an offence; or
- a second offence of driving while having a blood alcohol content of or above 0.02 grams of alcohol per 100 mls of blood, where the conviction occurs within 5 years of a previous conviction of such an offence, in the case of persons to whom this limit applies (*Road Traffic Act 1974* section 64A),

will, if they are granted authorisation to drive at a later date, be granted authorisation to drive subject to the alcohol interlock restriction.

A disqualification imposed on a person convicted of an offence mentioned above will have the effect of cancelling any driver's licence held by the offender.

As is currently the case, the offender may:

- serve the applicable period of disqualification and then apply to the Director General for the grant of a driver's licence; or
- following the expiration of the prescribed waiting period, apply to the court for an order that the Director General grant the person an extraordinary licence.

If the Director General grants the offender a driver's licence or, in compliance with a court order to that effect, an extraordinary licence, the proposed regulations will require the Director General to grant that licence subject to the alcohol interlock restriction.

A person whose authorisation to drive is granted subject to the alcohol interlock restriction will be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device.

He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person's success at separating drinking and driving behaviour.

Driving a motor vehicle that is not fitted with an approved alcohol interlock device will constitute an unauthorised driving offence of a serious kind. The penalties for such an offence are a minimum fine of \$400 and a minimum period of disqualification of 9 months, for a first such offence, or a minimum fine of \$1,000 and a minimum period of disqualification of 9 months for a subsequent such offence. The court is also at liberty to imprison an offender for up to 12 months in the case of a first offence and up to 18 months in the case of a subsequent such offence.

In addition, a police officer is required to impound a motor vehicle used in the commission of such an offence.

In order to start a motor vehicle fitted with an alcohol interlock device, a breath sample must be provided into the device. The device will analyse the breath sample and will prevent the motor vehicle from being started if it detects that more than a certain low level of blood alcohol content is present in the breath sample.

Requiring these offenders to comply with an alcohol interlock restriction is intended to ensure that their drinking and driving behaviour is separated and to enable the monitoring of their performance and, where it appears there is difficulty in separating those behaviours, their referral to an alcohol assessment and treatment programme.

The restriction will be revoked when it has been in force for a minimum period and a person subject to it has demonstrated a satisfactory level of performance in the separation of drinking and driving behaviour.

The minimum period for which the restriction must be in force is:

- in the case of an offender who served the applicable disqualification period and was granted a driver's licence by the Director General, 6 months; or

- in the case of an offender who applied for and was granted an extraordinary licence, 6 months or the duration of the remainder of the disqualification period, whichever is the greater period; or
- in the case of an offender who applied for and was granted an extraordinary licence because of a permanent disqualification, a period of 3 years.

A person will demonstrate a satisfactory level of performance if, for a continuous period of 6 months immediately prior to the revocation of the restriction:

- there has been no evidence of tampering or attempted tampering with the alcohol interlock device; and
- the person has complied with any alcohol assessment and treatment requirement imposed on him or her; and
- during each month of that 6-month period, the alcohol interlock device has recorded two or less instances in which:
  - a breath sample was provided into the alcohol interlock device in order to start the motor vehicle, and the device analysed the breath sample as having a blood alcohol content of or above a certain low level; and/or
  - during a journey, the alcohol interlock device signalled that a retest breath sample was required to be provided and the sample was not provided; and/or
  - during a journey, the alcohol interlock device signally that a retest breath sample was required to be provided and the sample, when provided, was analysed as having a blood alcohol content of or above a certain low level.

The Director General will not be required to grant a person authorisation to drive subject to the alcohol interlock restriction if the person:

- suffers from a medical condition that makes the person physically incapable of operating an alcohol interlock device; or
- resides in a place which is more than 150 kilometres away from an alcohol interlock service provider.

## **Part 1 - Preliminary**

### **1. Short title**

Pursuant to this clause, when this Bill is passed and receives Royal Assent, it will be known as the *Road Traffic Amendment (Alcohol Interlocks and Other Matters) Act 2014*.

### **2. Commencement**

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

The provisions are not required to commence operation all at once. There may be one or more proclamations and some provisions may commence operation prior to others.

This is necessary to enable agencies, such as the Department of Transport, to undertake systems programming and make any other arrangements required to give effect to the amendments contained in the Bill.

Some of the Bill's provisions will amend legislation that is yet to commence operation, such as the *Road Traffic (Administration) Act 2008*, the *Road Traffic (Authorisation to Drive) Act 2008* and the *Road Traffic (Vehicles) Act 2012*. These amendments are contained in Part 3 of the Bill.

For this reason, clause 2(2) will ensure that these provisions may not commence operation until that unproclaimed legislation has commenced operation.

## **Part 2 – Amendments which may be brought into operation on or after Royal Assent**

### **3. Act amended**

The Act that will be amended by the provisions of Part 2 of this Bill is *Road Traffic Act 1974*.

### **4. Section 59 amended**

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person's success at separating drinking and driving behaviour.

In order to start a motor vehicle fitted with an alcohol interlock device, a breath sample must be provided. The device will analyse the breath sample and will prevent the vehicle from being started if it detects that more than a certain blood alcohol content is present in the breath sample.

An alcohol interlock device is not capable of detecting the presence of drugs in an individual who provides a breath sample into the device. It is of no assistance in separating drug use and driving behaviour.

The *Road Traffic Act 1974* section 59(1)(a) creates the offence of driving causing death or grievous bodily harm, in circumstances in which the driver was driving while under the influence of alcohol, drugs or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

It is intended that a person convicted of a section 59(1)(a) offence, in circumstances in which the person was driving while under the influence of alcohol, or alcohol and drugs, will be

subject to an alcohol interlock restriction, if and when he or she is subsequently authorised to drive.

Clause 4(1) will replace the existing section 59(1)(a) with proposed sections 59(1)(a), 59(1)(ba) and 59(1)(bb).

Proposed section 59(1)(a) will create an offence of driving causing death or grievous bodily harm, in circumstances in which the driver was driving while under the influence of alcohol to such an extent as to be incapable of having proper control of the vehicle.

Proposed section 59(1)(ba) will create an offence of driving causing death or grievous bodily harm, in circumstances in which the driver was driving while under the influence of drugs to such an extent as to be incapable of having proper control of the vehicle.

Proposed section 59(1)(bb) will create an offence of driving causing death or grievous bodily harm, in circumstances in which the driver was driving while under the influence of alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

These amendments will ensure that a person convicted of a section 59(1) offence will be subject to an alcohol interlock restriction, if and when subsequently authorised to drive, only if alcohol was an element of the offence.

Clause 4(2) will amend section 59(3) and is necessary as a consequence of the amendments that will be made by clause 4(1).

Section 59(3) sets out the penalty that is to apply to a person convicted of an offence against section 59(1)(a) or section 59(1)(b).

Because section 59(1)(a) will be replaced with proposed new sections 59(1)(a), 59(1)(ba) and 59(1)(bb), clause 4(2) will amend section 59(3) to replace reference in it to section 59(1)(a) with reference instead to sections 59(1)(a), 59(1)(ba) and 59(1)(bb).

## **5. Section 59A amended**

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an “alcohol interlock restriction” if and when they are subsequently authorised to drive.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person’s success at separating drinking and driving behaviour.

In order to start a motor vehicle fitted with an alcohol interlock device, a breath sample must be provided. The device will analyse the breath sample and will prevent the vehicle

from being started if it detects that more than a certain blood alcohol content is present in the breath sample.

An alcohol interlock device is not capable of detecting the presence of drugs in an individual who provides a breath sample into the device. It is of no assistance in separating drug use and driving behaviour.

The *Road Traffic Act 1974* section 59A(1)(a) creates the offence of driving causing bodily harm, in circumstances in which the driver was driving while under the influence of alcohol, drugs or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

It is intended that a person convicted of a section 59A(1)(a) offence, in circumstances in which the person was driving while under the influence of alcohol, or alcohol and drugs, will be subject to an alcohol interlock restriction, if and when he or she is subsequently authorised to drive.

Clause 5(1) will replace the existing section 59A(1)(a) with proposed sections 59A(1)(a), 59A(1)(ba) and 59A(1)(bb).

Proposed section 59(1)(a) will create an offence of driving causing bodily harm, in circumstances in which the driver was driving while under the influence of alcohol to such an extent as to be incapable of having proper control of the vehicle.

Proposed section 59A(1)(ba) will create an offence of driving causing bodily harm, in circumstances in which the driver was driving while under the influence of drugs to such an extent as to be incapable of having proper control of the vehicle.

Proposed section 59A(1)(bb) will create an offence of driving causing bodily harm, in circumstances in which the driver was driving while under the influence of alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

These amendments will ensure that a person convicted of a section 59A(1) offence will be subject to an alcohol interlock restriction, if and when subsequently authorised to drive, only if alcohol was an element of the offence.

Clause 5(2) will amend section 59A(3a) and is necessary as a consequence of the amendments that will be made by clause 5(1).

Section 59A(3a) sets out the penalty that is to apply to a person convicted of an offence against section 59A(1)(a).

Because section 59A(1)(a) will be replaced with proposed new sections 59A(1)(a), 59A(1)(ba) and 59A(1)(bb), clause 5(2) will amend section 59A(3a) to replace reference in it to section 59A(1)(a) with reference instead to sections 59A(1)(a), 59A(1)(ba) and 59A(1)(bb).

## 6. Section 63 amended

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an “alcohol interlock restriction” if and when they are subsequently authorised to drive.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person’s success at separating drinking and driving behaviour.

In order to start a motor vehicle fitted with an alcohol interlock device, a breath sample must be provided. The device will analyse the breath sample and will prevent the vehicle from being started if it detects that more than a certain blood alcohol content is present in the breath sample.

An alcohol interlock device is not capable of detecting the presence of drugs in an individual who provides a breath sample into the device. It is of no assistance in separating drug use and driving behaviour.

The *Road Traffic Act 1974* section 63(1) creates the offence of driving while under the influence of alcohol, drugs or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

It is intended that a person convicted of a section 63(1) offence, in circumstances in which the person was driving while under the influence of alcohol, or alcohol and drugs, will be subject to an alcohol interlock restriction, if and when he or she is subsequently authorised to drive.

This clause will replace the existing section 63(1) with proposed sections 63(1)(a), 63(1)(b) and 63(1)(c).

Proposed section 63(1)(a) will create an offence of driving while under the influence of alcohol to such an extent as to be incapable of having proper control of the vehicle.

Proposed section 63(1)(b) will create an offence of driving while under the influence of drugs to such an extent as to be incapable of having proper control of the vehicle.

Proposed section 63(1)(c) will create an offence of driving while under the influence of alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

These amendments will ensure that a person convicted of a section 63(1) offence will be subject to an alcohol interlock restriction, if and when subsequently authorised to drive, only if alcohol was an element of the offence.

Clause 6(2) will amend section 63(7) and is necessary as a consequence of the amendments that will be made by clause 6(1).

Section 63(7) applies if a person is charged with an offence against section 63(1) which is alleged to have been committed in circumstances in which the person was under the influence of drugs only.

Clause 6(1) will amend section 63(1) to replace it with proposed new sections 63(1)(a), 63(1)(b) and 63(1)(c). Proposed new section 63(1)(b) will create the offence of driving while under the influence of drugs only.

Clause 6(2)(a) will therefore replace reference in section 63(7) to “[proceedings for an offence] against this section if it is alleged or appears on the evidence that the accused was under the influence of drugs alone” with reference instead to “[proceedings for an offence] against section [63](1)(b)”.

Similarly, clause 6(2)(b) will replace reference in section 63(7) to “those drugs” with reference instead to “the drugs, under the influence of which the accused is alleged of appears on the evidence to be”.

## **7. Section 64AA amended**

The *Road Traffic Act 1974* section 64AA(1) creates the offence of driving while having a blood alcohol content of or above 0.05 grams of alcohol per 100 mls of blood.

Section 64AA(2) sets out the penalty that is to apply to a person convicted for the first time of an offence against section 64AA(1).

Section 64AA(2a) sets out the penalty that is to apply to a person convicted of a second or subsequent offence against section 64AA(1).

For the purposes of determining whether the penalty in section 64AA(2a) is to apply to a person convicted of an offence against section 64AA(1), section 64AA(2c) provides that the conviction is to be deemed a second or subsequent conviction, even if it is the person’s first conviction of a section 64AA(1) offence, if the person has previously been convicted of an offence against the *Road Traffic Act 1974* section 63, 64 or 67.

This is because offences against section 63, 64 and 67 are offences of a higher level of severity than an offence against section 64AA.

Section 63 creates the offence of driving while under the influence of alcohol, drugs or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

Section 64 creates the offence of driving while having a blood alcohol content of or above 0.08 grams of alcohol per 100 mls of blood.

Section 67 creates the offence of failing to comply with a requirement imposed by a member of the Police Force, for the purposes of ascertaining whether or not a person has committed an offence against the *Road Traffic Act 1974* involving drink or drug driving.

This clause will amend section 64AA(2c) to include reference in it to an offence against the *Road Traffic Act 1974* section 64A.

Section 64A creates the offence of driving while having a blood alcohol content of or above 0.02 grams of alcohol per 100 mls of blood. It applies to certain, higher risk drivers only, such as persons who are novice drivers, who are authorised to drive pursuant to an extraordinary licence or who are driving vehicles carrying paying passengers or dangerous goods.

Any blood alcohol content will impair driving ability. The higher the level of impairment, the higher the risk associated with the driving. It is considered that the drivers to whom section 64A applies are higher risk drivers, either because of their level of driving experience or prior traffic conviction history, or because of the nature of the driving activity in which they are engaged and the significant impacts that could result from a crash involving that particular vehicle.

While a section 64A offence involves a level of impairment that is lower than that involved in the case of an offence against section 64AA(1), it is considered that the higher risk circumstances surrounding the drivers to whom section 64A applies make an offence against section 64A an offence of a level of severity that is comparable to an offence against section 64AA(1).

For this reason, this clause will provide that a person convicted of an offence against section 64AA(1) will be liable to the penalties set out in section 64AA(2a), even if it the person's first conviction of a section 64AA(1) offence, if the person has previously been convicted of an offence against 64A.

## **8. Section 66 amended**

The *Road Traffic Act 1974* section 66(2)(ca) empowers a member of the Police Force to require a person, whom the member reasonably believes has committed an offence against the *Road Traffic Act 1974* section 59(1)(a) or 59A(1)(a), to provide a sample of his or her breath for analysis, to allow a sample of his or her blood to be taken for analysis or to provide a sample of his or her urine for analysis.

Section 59(1)(a) creates the offence of driving causing death or grievous bodily harm, in circumstances in which the driver was driving while under the influence of alcohol, drugs or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

Section 59A(1)(a) creates the offence of driving causing bodily harm, in circumstances in which the driver was driving while under the influence of alcohol, drugs or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle.

This clause will amend section 66(2)(ca)(i) and is necessary as a consequence of the amendments that will be made by clauses 4 and 5 of this Bill.

Clause 4 will amend section 59(1)(a), by deleting it and replacing it with proposed new sections 59(1)(a), 59(1)(ba) and 59(1)(bb). It will separate offences against section 59(1) into offences involving alcohol, drugs, or alcohol and drugs, respectively.

Clause 5 will amend section 59A(1)(a), by deleting it and replacing it with proposed new sections 59A(1)(a), 59A(1)(ba) and 59A(1)(bb). It will separate offences against section 59A(1) into offences involving alcohol, drugs, or alcohol and drugs, respectively.

This clause will therefore replace reference in section 66(2)(ca)(i) to sections 59(1)(a) and 59A(1)(a) with reference instead to proposed new sections 59(1)(a), 59(1)(ba), 59(1)(bb), 59A(1)(a), 59A(1)(ba) and 59A(1)(bb).

## **9. Section 97 amended**

This clause will amend the *Road Traffic Act 1974* section 97(2).

Section 97(2)(a) creates the offence of applying for or obtaining a driver's licence or a vehicle licence while being disqualified from holding or obtaining such a licence.

Prior to the advent of the current, highly sophisticated, computer-based driver and vehicle licence registers, the existence of this offence would have acted to deter disqualified persons from applying for the grant of a licence in an environment in which the Director General's records regarding a person's disqualification status were not as reliable as they are today.

In the present day, however, it is appropriate to permit a person to apply for the grant of a driver's licence within the 6-week period leading up to the end of a disqualification period.

As part of the application process, an applicant may be required to undergo a theory test or a practical driving assessment or to submit to a medical assessment, or to do all of the above. Where an applicant is applying for the grant of a driver's licence, after having had his or her driver's licence cancelled because of a drink driving conviction, a component of that medical assessment is likely to involve a liver function test.

Permitting an application for the grant of a driver's licence to be made during the final 6 weeks of a disqualification period will provide the applicant with a window of time within which to begin complying with these requirements, enabling the more timely grant or refusal of the application when the disqualification period has ended.

For this reason, this clause will delete the existing section 97(2)(a) and replace it with proposed new sections 97(2)(a) and 97(2)(ba).

Pursuant to proposed new section 97(2)(a), it will remain an offence to apply for or to obtain a driver's licence while disqualified from doing so, however it will not be an offence to apply for a driver's licence during the last 6 weeks of the disqualification period.

Pursuant to the proposed new section 97(2)(ba), it will remain an offence to apply for or to obtain a licence other than a driver's licence while disqualified from doing so. Presently, the only licences contemplated under the *Road Traffic Act 1974*, other than driver's licences, are

vehicle licences. If any other kind of licence were to be introduced, however, this provision would also apply in the case of those licences.

**Part 3 – Amendments which may be brought into operation on or after the day fixed under the *Road Traffic (Administration) Act 2008* section 2(b)**

**Division 1 – *Road Traffic Act 1974* amended**

**10. Act amended**

The Act that will be amended by the provisions contained in Part 3 Division 1 of this Bill is the *Road Traffic Act 1974*.

**11. Section 49 amended**

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an “alcohol interlock restriction” if and when they are subsequently authorised to drive.

A person may be authorised to drive after serving his or her disqualification period and applying successfully to the CEO for the grant of a driver’s licence. The CEO will grant the driver’s licence subject to the alcohol interlock restriction.

Alternatively, the person may apply to a court for an order for the grant of an extraordinary licence, after the prescribed waiting period has elapsed. If the order is granted and the CEO subsequently grants the extraordinary licence, the extraordinary licence will be granted subject to the alcohol interlock restriction.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device.

He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person’s success at separating drinking and driving behaviour.

In order to start a motor vehicle fitted with an alcohol interlock device, a breath sample must be provided. The device will analyse the breath sample and will prevent the vehicle from being started if it detects that more than a certain blood alcohol content is present in the breath sample.

Persons subject to the alcohol interlock restriction will be persons whose conviction history indicates they may have difficulty separating drinking and driving behaviour. Being subject to the alcohol interlock restriction is intended to ensure that their drinking and driving behaviour is separated and to enable the monitoring of their performance and, where it

appears there is difficulty in separating those behaviours, their referral to an alcohol assessment and treatment programme.

It is therefore of paramount importance that a person who is subject to an alcohol interlock restriction comply with that restriction.

The *Road Traffic Act 1974* section 49(1)(a) creates the offence of driving a motor vehicle while not authorised to do so.

A person commits a section 49(1)(a) offence if he or she is authorised to drive, subject to a condition or conditions, and drives otherwise than in compliance with the condition or conditions.

Under paragraph (c) of the section 49(1) penalty provision, more significant penalties apply to a person who commits a section 49(1)(a) offence, if the severity of the offence is exacerbated by the circumstances in which it is committed. Sections 49(3)(a), 49(3)(b) and 49(3)(c) set out such circumstances.

For example, a person who commits a section 49(1)(a) offence by driving while his or her driver's licence is suspended (see section 49(3)(c)) will be subject to more significant penalties.

In addition, section 49(3) provides that a member of the Police Force may arrest an alleged offender without warrant.

Driving a motor vehicle while not complying with the alcohol interlock restriction will constitute an offence against section 49(1)(a). It is considered that a person who commits an unauthorised driving offence in such circumstances should be treated in the same manner as persons described in sections 49(3)(a), 49(3)(b) and 49(3)(c).

Clause 11(1) will therefore amend paragraph (c) of the section 49(1) penalty provision to include reference to a new section 49(3)(da).

Clause 11(2) will insert proposed new section 49(3)(da) in section 49(3).

Proposed new section 49(3)(da) will provide that regulations made under the proposed new *Road Traffic (Authorisation to Drive) Act 2008* section 5A may prescribe a class of person for the purposes of section 49(3)(da).

The class of person prescribed will be a person who is, pursuant to regulations made under section 5A, an "interlock-restricted offender", that is, a person whose authorisation to drive has been granted by the CEO subject to the alcohol interlock restriction.

Acts cannot cross-refer to provisions contained in subsidiary legislation. Subsidiary legislation is made and amended by an Executive Government process rather than by Parliament and, as it deals with matters that are more operational in nature, is amended more frequently. Cross-references to subsidiary legislation contained in Acts would quickly become obsolete or incorrect.

For this reason, proposed new section 49(3)(da) must instead provide for regulations made under section 5A to prescribe a class of person for the purposes of the section.

## **12. Section 64A amended**

The *Road Traffic Act 1974* section 64A(1) creates the offence of driving while having a blood alcohol content of or above 0.02 grams of alcohol per 100 mls of blood.

Pursuant to section 64A(2), the offence applies to certain, higher risk drivers only, such as persons who are novice drivers, who are authorised to drive pursuant to an extraordinary licence or who are “recently disqualified drivers”.

Any blood alcohol content will impair driving ability. The higher the level of impairment, the higher the risk associated with the driving. It is considered that the drivers to whom section 64A(1) applies are higher risk drivers, because of their level of driving experience or prior traffic conviction history, hence they are subject to lower blood alcohol content limits.

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences (who will be known as “alcohol interlock offenders” pursuant to the proposed regulations) will be subject to an “alcohol interlock restriction” if and when they are subsequently authorised to drive.

Persons subject to the alcohol interlock restriction will be persons whose conviction history indicates they may have difficulty separating drinking and driving behaviour. Being subject to the alcohol interlock restriction is intended to ensure that their drinking and driving behaviour is separated and to enable the monitoring of their performance and, where it appears there is difficulty in separating those behaviours, their referral to an alcohol assessment and treatment programme.

“Alcohol interlock offenders” are higher risk drivers in the same way as are other drivers described in section 64A(2).

For this reason, clause 12 will amend section 64A(2) to insert new section 64A(2)(g).

Proposed new section 64A(2)(g) will provide that regulations made under the proposed new *Road Traffic (Authorisation to Drive) Act 2008* section 5A may prescribe a class of person for the purposes of section 64A(2)(g).

The class of person prescribed will be a person who is, pursuant to regulations made under section 5A, an “alcohol interlock offender”.

Acts cannot cross-refer to provisions contained in subsidiary legislation. Subsidiary legislation is made and amended by an Executive Government process rather than by Parliament and, as it deals with matters that are more operational in nature, is amended more frequently. Cross-references to subsidiary legislation contained in Acts would quickly become obsolete or incorrect.

For this reason, proposed new section 64A(2)(g) must instead provide for regulations made under section 5A to prescribe a class of person for the purposes of the section.

### 13. Section 78A amended

The amendment contained in this clause is related to the clause 11 amendments.

The *Road Traffic Act 1974* Part V Division 4 provides for the impounding and confiscation of vehicles used in the commission of “impounding offences (driver’s licence)” and “impounding offences (driving)”.

Section 78A defines the term “impounding offence (driver’s licence)”. Paragraph (a) of the definition provides that it is an offence against “[the *Road Traffic Act 1974*] section 49(1)(a) that is committed by a person described in section 49(3)(a), (b) or (c)”.

Impounding offences (driver’s licence) are offences of driving while not authorised to do so, in circumstances in which the penalty for doing so will be more significant because the severity of the offences is compounded by the circumstances in which the offender is driving unauthorised. For example, a person who commits a section 49(1)(a) offence by driving while his or her driver’s licence is suspended (see section 49(3)(c)) will be subject to more significant penalties.

Section 79A requires a member of the Police Force to impound a vehicle that the member reasonably suspects has been used in the commission of an impounding offence (driver’s licence). This sanction is intended to act as a further deterrent to unauthorised driving.

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an “alcohol interlock restriction” if and when they are subsequently authorised to drive.

Driving a motor vehicle while not complying with the alcohol interlock restriction will constitute an offence against section 49(1)(a). It is considered that a person who commits an unauthorised driving offence in such circumstances should be treated in the same manner as persons described in sections 49(3)(a), 49(3)(b) and 49(3)(c), so clause 11 will therefore:

- amend paragraph (c) of the section 49(1) penalty provision to include reference to a new section 49(3)(da); and
- insert proposed new section 49(3)(da) in section 49(3).

Proposed new section 49(3)(da) will provide that regulations made under the proposed new *Road Traffic (Authorisation to Drive) Act 2008* section 5A may prescribe a class of person for the purposes of section 49(3)(da).

The class of person prescribed will be a person who is, pursuant to regulations made under section 5A, an “interlock-restricted offender”, that is, a person whose authorisation to drive has been granted by the CEO subject to the alcohol interlock restriction.

This clause will amend the definition of “impounding offence (driver’s licence)” in section 78A so that it includes reference to an offence against section 49(1)(a) committed by a person who belongs to a class of person prescribed under proposed new section 49(3)(da).

Under this proposal, if a person whose driver's licence is subject to the alcohol interlock restriction drives a motor vehicle that is not fitted with an approved alcohol interlock device, the person will commit an impounding offence (driver's licence) and, if detected, the vehicle used in the commission of the offence will be impounded.

## **Division 2 – Road Traffic (Administration) Act 2008**

### **14. Act amended**

The Act that will be amended by the provisions contained in Part 3 Division 2 of this Bill is the *Road Traffic (Administration) Act 2008*.

The *Road Traffic (Administration) Act 2008* has yet to commence operation. It is one Act in a suite of legislation that will significantly reform and restructure Western Australian road traffic legislation. The other Acts in the suite are the:

- *Road Traffic (Authorisation to Drive) Act 2008*;
- *Road Traffic (Vehicles) Act 2012*; and
- *Road Traffic Legislation Amendment Act 2012*.

The Acts are all drafted to commence operation simultaneously. The drafting of substantial supporting regulations is in progress and agencies are readying their administrative systems and arrangements. It is expected that the suite of legislation will commence operation during the second half of 2014.

### **15. Section 36 amended**

This clause will amend the *Road Traffic (Administration) Act 2008* section 36(2), when that section commences operation.

Section 36(2)(a) will create the offence of applying for or obtaining a driver's licence or a vehicle licence while being disqualified from holding or obtaining such a licence.

Prior to the advent of the current, highly sophisticated, computer-based driver and vehicle licence registers, the existence of this offence would have acted to deter disqualified persons from applying for the grant of a licence in an environment in which the Director General's records regarding a person's disqualification status were not as reliable as they are today.

In the present day, however, it is appropriate to permit a person to apply for the grant of a driver's licence within the 6-week period leading up to the end of a disqualification period.

As part of the application process, an applicant may be required to undergo a theory test or a practical driving assessment or to submit to a medical assessment, or to do all of the above. Where an applicant is applying for the grant of a driver's licence, after having had his or her driver's licence cancelled because of a drink driving conviction, a component of that medical assessment is likely to involve a liver function test.

Permitting an application for the grant of a driver's licence to be made during the final 6 weeks of a disqualification period will provide the applicant with a window of time within which to begin complying with these requirements, enabling the more timely grant or refusal of the application when the disqualification period has ended.

For this reason, this clause will delete the existing section 36(2)(a) and replace it with proposed new sections 36(2)(a) and 36(2)(ba).

Pursuant to proposed new section 36(2)(a), it will remain an offence to apply for or to obtain a driver's licence while disqualified from doing so, however it will not be an offence to apply for a driver's licence during the last 6 weeks of the disqualification period.

Pursuant to the proposed new section 36(2)(ba), it will remain an offence to apply for or to obtain a licence other than a driver's licence while disqualified from doing so. Presently, the only licences contemplated under Western Australian road traffic law, other than driver's licences, are vehicle licences. If any other kind of licence were to be introduced, however, this provision would also apply in the case of those licences.

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

#### **16. Act amended**

The Act that will be amended by the provisions contained in Part 3 Division 3 of this Bill is the *Road Traffic (Authorisation to Drive) Act 2008*.

The *Road Traffic (Authorisation to Drive) Act 2008* has yet to commence operation. It is one Act in a suite of legislation that will significantly reform and restructure Western Australian road traffic legislation. The other Acts in the suite are the:

- *Road Traffic (Administration) Act 2008*;
- *Road Traffic (Vehicles) Act 2012*; and
- *Road Traffic Legislation Amendment Act 2012*.

The Acts are all drafted to commence operation simultaneously. The drafting of substantial supporting regulations is in progress and agencies are readying their administrative systems and arrangements. It is expected that the suite of legislation will commence operation during the second half of 2014.

#### **17. Section 5A inserted**

This clause will insert a new section 5A in the *Road Traffic (Authorisation to Drive) Act 2008*.

Proposed new section 5A(2)(a) will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol

interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person's success at separating drinking and driving behaviour.

In order to start a motor vehicle fitted with an alcohol interlock device, a breath sample must be provided. The device will analyse the breath sample and will prevent the vehicle from being started if it detects that more than a certain blood alcohol content is present in the breath sample.

Proposed new section 5A(2)(b) will empower the making of regulations setting out circumstances in which alcohol interlock requirements, prescribed pursuant to proposed new section 5A(2)(a), are to cease to apply.

Proposed new section 5A(3) will make it clear that the regulation-making powers contained in proposed new section 5A(2) do not prevent the general regulation-making powers contained in the *Road Traffic (Authorisation to Drive) Act 2008* section 61 from also being relied upon in making regulations creating the proposed alcohol interlocks framework.

Similarly, proposed new section 5A(4) will make it clear that the regulation-making powers provided by the *Road Traffic (Authorisation to Drive) Act 2008* section 4 may also be relied upon in making regulations creating the proposed alcohol interlocks framework.

Section 4 contains more specific regulation-making powers relating to the licensing of drivers and the granting of authorisation to drive.

## **18. Section 16 amended**

This clause will amend the *Road Traffic (Authorisation to Drive) Act 2008* section 16, when that section commences operation.

Section 16 applies to a person who holds a provisional driver's licence. A provisional driver's licence is granted to a person who has not yet reached 19 years of age or who has not yet held a driver's licence for a period of, or periods adding up to, 2 years.

Section 16(1) provides that if such a person is convicted of a specified offence, the person's driver's licence will be cancelled, by operation of section 16(1).

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

One aspect of the proposed regulations will be that the driver's licence of a person convicted of such a drink driving offence will be cancelled. The person will either:

- serve the relevant disqualification period and then apply to the CEO for the grant of a licence which, if granted, will be issued subject to the alcohol interlock restriction; or

- await the expiration of the prescribed waiting period and apply to the court for an order that the CEO grant the person an extraordinary licence, which will be issued subject to the alcohol interlock restriction.

In the case of driver's licences that are not provisional driver's licences, the *Road Traffic (Authorisation to Drive) Act 2008* sections 20, 21 and 22 are used to bring about the cancellation of a driver's licence following a person's conviction of a specified offence. Pursuant to these sections, regulations will be made setting out those drink driving offences the conviction of which will result in the cancellation of a driver's licence held by the convicted offender, for the purposes of the proposed alcohol interlock regime.

This clause will amend section 16(1) to ensure that there is a corresponding ability to cancel provisional driver's licences in connection with the proposed alcohol interlocks regime.

In particular, it will amend section 16(1)(a)(iv), which lists a number of offences under the *Road Traffic Act 1974* the conviction of which will result in the cancellation of a provisional driver's licence.

The amendment will provide that regulations made pursuant to the proposed new section 5A will prescribe those offences the conviction of which will result in the cancellation of a provisional driver's licence.

#### **19. Section 20, 21 and 22 replaced**

This clause will delete the *Road Traffic (Authorisation to Drive) Act 2008* sections 20, 21 and 22 and replace them with new sections 20 and 21.

Currently:

- section 20 imposes requirements upon the court to notify the CEO regarding convictions, the associated imposition of a disqualification and whether or not the latest conviction renders the convicted offender a "prescribed offender" (that is, a person whose driver's licence is to be cancelled as a consequence of the latest conviction);
- section 21 sets out when a disqualification imposed on a person is to result in the suspension of the person's driver's licence, if one is held; and
- section 22 sets out when a disqualification imposed on a person is to result in the cancellation of the person's driver's licence, if one is held.

In practice, it is not the court that determines whether or not a person's latest conviction renders the person a "prescribed offender". The determination of whether or not a person's driver's licence is suspended or is cancelled as a result of the person's conviction of an offence rests with the driver licensing authority, which is the CEO. The court's role is to acquit or to convict an alleged offender, to impose a sentence on a convicted offender and to notify the CEO regarding any conviction or sentence.

To reflect this position, the replacement section 20 will therefore impose a requirement upon the court to notify the CEO regarding conviction and sentencing information only. In the event that, in the future, it is determined that it is necessary for the court to inform the CEO of another relevant matter that it is within the court's power to so inform the CEO,

proposed new section 20(2) will empower the making of regulations prescribing the particular matter.

The replacement section 21 will condense into one section the subject matter of the current sections 21 and 22, pertaining to when a person's driver's licence is to be suspended or is to be cancelled.

It will do so by providing for these matters to be prescribed in regulations, rather than in section 21 itself.

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

One aspect of the proposed regulations will be that the driver's licence of a person convicted of such a drink driving offence will be cancelled, necessitating the person's subsequent application for the grant of a driver's licence. If the application is successful, the proposed regulations will require the CEO, when granting the driver's licence, to endorse it with the alcohol interlock restriction.

Regulations made under the proposed new section 21 will:

- set out those drink driving offences the conviction of which will result in the cancellation of a driver's licence held by the convicted offender, for the purposes of the proposed alcohol interlocks regime; and
- preserve the position currently set out in sections 21 and 22 in relation to the suspension or cancellation of a driver's licence flowing from other circumstances, such as conviction of other offences under the *Road Traffic Act 1974*, conviction of offences under another written law or because of a licence suspension order made under the *Fines, Penalties and Infringement Notices Act 1994*.

## **20. Section 26 amended**

This clause will amend the *Road Traffic (Authorisation to Drive) Act 2008* section 26, when it commences operation, for the following reasons.

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

The key provision that will be inserted is section 5A(2)(a), which will empower the making of a regulation providing that, if a driver's licence is granted to a person convicted of such a drink driving offence, the CEO must endorse the driver's licence with the condition that it authorises the holder to drive only a vehicle in which an approved alcohol interlock device is installed.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol

interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person's success at separating drinking and driving behaviour.

There are two ways in which a person may subsequently gain authorisation to drive.

- i. A person may be authorised to drive after serving his or her disqualification period and applying successfully to the CEO for the grant of a driver's licence. The CEO will grant the driver's licence subject to the alcohol interlock restriction.
- ii. Alternatively, the person may apply to a court for an order for the grant of an extraordinary licence, after the prescribed waiting period has elapsed. If the order is granted and the CEO subsequently grants the extraordinary licence, the extraordinary licence will be granted subject to the alcohol interlock restriction.

The *Road Traffic (Authorisation to Drive) Act 2008* Part 3 Division 3 sets out the framework relating to applications for the grant of extraordinary licences.

As the terminology indicates, extraordinary licences are driver's licences of a very special nature which are granted outside of the usual driver licensing framework.

Applications are made to the court. An applicant must serve a waiting period and must meet particular threshold criteria before the court will hear the application. The decision regarding whether or not to grant an extraordinary licence rests entirely with the court. The court may impose conditions on the extraordinary licence.

The CEO must give effect to a court decision. The legislation sets out the process that the CEO must follow if he or she wishes to seek a variation to the court order regarding the grant of the extraordinary licence, because the CEO objects to the granting of it, objects to conditions the court imposed, seeks the variation of conditions the court imposed or considers that the court ought to have imposed particular conditions and did not.

Section 26 provides that, if there is any inconsistency between the law pertaining to driver licensing and the law set out in Part 3 Division 3 relating to extraordinary licences, the law relating to extraordinary licences is to prevail over the law pertaining to driver licensing.

This clause will insert a new section 26(2) which will make it clear that, despite the foregoing rule regarding the prevalence of the law relating to extraordinary licences, regulations made under proposed new section 5A to give effect to the proposed alcohol interlocks regime may:

- provide that an extraordinary licence may be issued subject to a condition that it authorises driving only a vehicle in which an approved alcohol interlock device is installed; and
- also make other provision as required in order to give effect to the proposed alcohol interlocks regime.

## **21. Section 32 amended**

This clause will amend the *Road Traffic (Authorisation to Drive) Act 2008* section 32, when it commences operation, for the following reasons.

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an “alcohol interlock restriction” if and when they are subsequently authorised to drive.

The key provision that will be inserted is section 5A(2)(a), which will empower the making of a regulation providing that, if a driver’s licence is granted to a person convicted of such a drink driving offence, the CEO must endorse the driver’s licence with the condition that it authorises the holder to drive only a vehicle in which an approved alcohol interlock device is installed.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person’s success at separating drinking and driving behaviour.

There are two ways in which a person may subsequently gain authorisation to drive.

- i. A person may be authorised to drive after serving his or her disqualification period and applying successfully to the CEO for the grant of a driver’s licence. The CEO will grant the driver’s licence subject to the alcohol interlock restriction.
- ii. Alternatively, the person may apply to a court for an order for the grant of an extraordinary licence, after the prescribed waiting period has elapsed. If the order is granted and the CEO subsequently grants the extraordinary licence, the extraordinary licence will be granted subject to the alcohol interlock restriction.

The *Road Traffic (Authorisation to Drive) Act 2008* Part 3 Division 3 sets out the framework relating to applications for the grant of extraordinary licences.

As the terminology indicates, extraordinary licences are driver’s licences of a very special nature which are granted outside of the usual driver licensing framework.

Applications are made to the court. An applicant must serve a waiting period and must meet particular threshold criteria before the court will hear the application. The decision regarding whether or not to grant an extraordinary licence rests entirely with the court. Section 32 empowers the court to impose conditions on the extraordinary licence. For example, it may impose conditions restricting the locality in which and the roads on which the applicant is entitled to drive, the purposes for which the applicant is entitled to drive and the hours during which the applicant is entitled to drive.

The CEO must give effect to a court decision. The legislation sets out the process that the CEO must follow if he or she wishes to seek a variation to the court order regarding the

grant of the extraordinary licence, because the CEO objects to the granting of it, objects to conditions the court imposed, seeks the variation of conditions the court imposed or considers that the court ought to have imposed particular conditions and did not.

Section 26 provides that, if there is any inconsistency between the law pertaining to driver licensing and the law set out in Part 3 Division 3 relating to extraordinary licences, the law relating to extraordinary licences is to prevail over the law pertaining to driver licensing.

This clause will insert a new section 32(2) which will make it clear that, despite:

- the rule regarding the prevalence of the law relating to extraordinary licences; and
- the process established under Part 3 Division 3 for the imposition of conditions on an applicant for an extraordinary licence by the court,

regulations made under proposed new section 5A to give effect to the proposed alcohol interlocks regime may be made empowering the CEO to impose conditions on an extraordinary licence issued subject to the alcohol interlock restriction, in order to ensure that the extraordinary licence holder will be able to comply with the requirements of that restriction.

The reason this provision is important is because the court may order that the CEO grant a person an extraordinary licence, subject to conditions that would restrict the applicant from being able to comply with requirements relating to the alcohol interlock restriction.

For example, if the extraordinary licence authorised the applicant to drive to and from work only, the applicant would be unable to comply, lawfully, with the CEO's requirement that the applicant attend the premises of an accredited alcohol interlock service provider, on a regular basis, for the purpose of having the alcohol interlock device inspected and data downloaded from it to enable the CEO to monitor the applicant's success at separating drinking and driving behaviour.

This amendment will ensure that the CEO is able to impose a condition on the extraordinary licence issued to such an applicant that will enable the applicant to meet the CEO's requirements associated with the alcohol interlock restriction while otherwise complying with the restrictions imposed by the court.

## **22. Section 38 amended**

This clause will amend the *Road Traffic (Authorisation to Drive) Act 2008* section 38, when it commences operation, for the following reasons.

Clause 17 of this Bill will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

The key provision that will be inserted is section 5A(2)(a), which will empower the making of a regulation providing that, if a driver's licence is granted to a person convicted of such a drink driving offence, the CEO must endorse the driver's licence with the condition that it

authorises the holder to drive only a vehicle in which an approved alcohol interlock device is installed.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person's success at separating drinking and driving behaviour.

There are two ways in which a person may subsequently gain authorisation to drive.

- i. A person may be authorised to drive after serving his or her disqualification period and applying successfully to the CEO for the grant of a driver's licence. The CEO will grant the driver's licence subject to the alcohol interlock restriction.
- ii. Alternatively, the person may apply to a court for an order for the grant of an extraordinary licence, after the prescribed waiting period has elapsed. If the order is granted and the CEO subsequently grants the extraordinary licence, the extraordinary licence will be granted subject to the alcohol interlock restriction.

The *Road Traffic (Authorisation to Drive) Act 2008* Part 3 Division 3 sets out the framework relating to applications for the grant of extraordinary licences.

As the terminology indicates, extraordinary licences are driver's licences of a very special nature which are granted outside of the usual driver licensing framework.

Applications are made to the court. An applicant must serve a waiting period and must meet particular threshold criteria before the court will hear the application. The decision regarding whether or not to grant an extraordinary licence rests entirely with the court. Section 32 empowers the court to impose conditions on the extraordinary licence. For example, it may impose conditions restricting the locality in which and the roads on which the applicant is entitled to drive, the purposes for which the applicant is entitled to drive and the hours during which the applicant is entitled to drive.

The CEO must give effect to a court decision. The legislation sets out the process that the CEO must follow if he or she wishes to seek a variation to the court order regarding the grant of the extraordinary licence, because the CEO objects to the granting of it, objects to conditions the court imposed, seeks the variation of conditions the court imposed or considers that the court ought to have imposed particular conditions and did not.

Section 38(1) provides that, if the holder of an extraordinary licence fails to comply with any conditions imposed on that extraordinary licence, he or she will commit an offence against section 38(1). The penalty is a fine of up to 24 PU (\$1,200).

Section 38(2) provides that, when sentencing a person for an offence against section 38(1), the court may determine whether or not to cancel the offender's extraordinary licence.

A person who is authorised to drive pursuant to the grant of a driver's licence that is not an extraordinary licence and that is subject to the alcohol interlock restriction will commit an offence against the *Road Traffic Act 1974* section 49(1)(a), in circumstances contemplated by proposed new *Road Traffic Act 1974* section 49(3)(da), if the person drives a motor vehicle that is not fitted with an approved alcohol interlock device.

As it is of paramount importance that a person who is subject to an alcohol interlock restriction comply with that restriction, such a person will be liable to significant penalties, including a period of disqualification, and the vehicle used in the commission of the offence will be liable to be impounded.

This clause will amend section 38 to ensure the same treatment of a person who is authorised to drive pursuant to the grant of an extraordinary licence that is subject to the alcohol interlock restriction.

Under this amendment, if the holder of an extraordinary licence that is subject to the alcohol interlock restriction drives a motor vehicle that is not fitted with an approved alcohol interlock device, that person will be charged with a *Road Traffic Act 1974* section 49(1)(a) offence rather than a section 38 offence.

### **23. Section 64A inserted**

This clause will insert a new section 64A in the *Road Traffic (Authorisation to Drive) Act 2008*.

Proposed new section 64A(1) will require all of the amendments contained in this Bill to be reviewed, as soon as is practicable after five years have elapsed since the commencement of operation of the provisions of clause 17 of this Bill.

Clause 17 contains this Bill's key provisions. It will insert provisions in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the making of regulations providing for the creation of a framework under which persons convicted of certain drink driving offences will be subject to an "alcohol interlock restriction" if and when they are subsequently authorised to drive.

A person on whom an alcohol interlock restriction is imposed will, while subject to that restriction, be authorised to drive only a motor vehicle fitted with an approved alcohol interlock device. He or she will also be required to comply with other related requirements, such as the requirement to present such a vehicle to an accredited alcohol interlock service provider at regular intervals in order for the device to be inspected and for data recorded by the device to be downloaded in order to enable the CEO to monitor the person's success at separating drinking and driving behaviour.

The review is to examine the operation, in practice, of the Bill's provisions and to assess their effectiveness.

Proposed new section 64A(2) will require the Minister to table a report of that review in each House of Parliament within 6 months of the date on which five years have elapsed since the commencement of operation of the provisions of clause 17.

#### **Division 4 – Road Traffic (Vehicles) Act 2012**

##### **24. Act amended**

The Act that will be amended by the provisions contained in Part 3 Division 4 of this Bill is the *Road Traffic (Vehicles) Act 2012*.

##### **25. Section 9 amended**

This clause will correct an unintended error in the *Road Traffic (Vehicles) Act 2012*.

The *Road Traffic (Vehicles) Act 2012* is yet to commence operation. It is one Act in a suite of legislation that will significantly reform and restructure Western Australian road traffic legislation. The other Acts in the suite are the:

- *Road Traffic (Administration) Act 2008*;
- *Road Traffic (Authorisation to Drive) Act 2008*; and
- *Road Traffic Legislation Amendment Act 2012*.

The four Acts will commence operation simultaneously.

When they commence operation, the *Road Traffic Legislation Amendment Act 2012* will delete provisions in the *Road Traffic Act 1974* relating to the licensing of drivers and the licensing of vehicles, as these provisions will be contained in the *Road Traffic (Authorisation to Drive) Act 2008* and the *Road Traffic (Vehicles) Act 2012* respectively.

It will also delete provisions from the *Road Traffic Act 1974* that deal with administrative matters, such as those relating to delegations, enforcement powers, evidentiary matters and the disclosure of information. These matters will be contained in the *Road Traffic (Administration) Act 2008*, which will apply to the *Road Traffic (Authorisation to Drive) Act 2008*, the *Road Traffic (Vehicles) Act 2012* and the *Road Traffic Act 1974* (as it will be amended by the *Road Traffic Legislation Amendment Act 2012*).

Currently, the *Road Traffic Act 1974* section 23A sets out circumstances in which the Director General:

- may cancel a vehicle licence; and
- may or must suspend a vehicle licence.

Of particular importance to the proposed alcohol interlock regime that forms the key subject matter of this Bill, section 23A(3) requires the Director General to suspend a vehicle licence, or to revoke such a suspension, at the request of the Commissioner of Police pursuant to the *Road Traffic Act 1974* section 79BD.

Section 79BD forms part of the *Road Traffic Act 1974* Part V Division 4, which contains provisions pertaining to the impounding and confiscation of vehicles used in the commission of offences that are “impounding offences (driving)” and “impounding offences (driver’s licence)”.

A person whose authorisation to drive has been granted subject to an alcohol interlock restriction will commit an impounding offence (driver's licence) if he or she drives a motor vehicle that is not fitted with an approved alcohol interlock device. A member of the Police Force who reasonably suspects that an impounding offence (driver's licence) has been committed is required to impound the vehicle used in the commission of the offence.

Where a member of the Police Force is unable, at the time immediately following the commission of an impounding offence (driving) or an impounding offence (driver's licence), to impound the vehicle used in the commission of the offence, the member may give the responsible person for the vehicle a notice, requiring the responsible person to surrender the vehicle for impounding.

If a vehicle is not surrendered for impounding, the ability for the Commissioner of Police to request the Director General suspend the vehicle licence is important. It will render the vehicle the subject of the surrender notice useless, as it will be unable to be driven lawfully on a road and the vehicle licence will be unable to be renewed or transferred.

When the *Road Traffic (Vehicles) Act 2012* was being drafted and the provisions of the *Road Traffic Act 1974* section 23A were being transplanted into it, the substance of section 23A(3) was omitted unintentionally.

This clause will insert it, correcting this inadvertent error.

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