

WESTERN AUSTRALIA

# LEGISLATIVE ASSEMBLY

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## VOTES AND PROCEEDINGS

No. 221

FIRST SESSION OF THE THIRTY-NINTH PARLIAMENT

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WEDNESDAY, 24 AUGUST 2016

**1. Meeting of Assembly**

The Assembly met at 12.00 noon pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

**2. Paper**

The following paper was presented and ordered to lie upon the Table of the House –

By the Clerk –

Surveillance Devices Act 1998 – Western Australia Police Annual Report Pursuant to Section 43 of the Act 2015/2016 (4460).

**3. Notices of Motion**

**4. Brief Ministerial Statement**

A Brief Ministerial Statement was made by –

The Minister for Finance on the relocation of more than 800 staff from the Departments of Water and Environmental Regulation and the Office of the Environmental Protection Authority to premises in Joondalup.

**5. Precedence of Private Members' Business**

The Treasurer, on behalf of the Leader of the House, pursuant to notice, moved,

That so much of Standing Orders be suspended as is necessary to enable Private Members' Business to have priority on Wednesday, 24 August 2016 between 4.00 p.m. and 8.00 p.m.

Question put and passed.

## **6. Container Deposit and Recovery Scheme Bill 2016**

Mr C.J. Tallentire, pursuant to notice, moved,

That a bill for “An Act to establish a beverage container deposit and recovery scheme to be administered by the Waste Authority, to impose a levy as part of that scheme, and for related purposes.” be introduced and read a first time.

Question put and passed.

Mr C.J. Tallentire presented an explanatory memorandum and bill read a first time.

Ordered, That the second reading of the bill be made an Order of the Day for a later stage of the sitting.

## **7. Heritage Bill 2016**

The Minister for Heritage, pursuant to notice, moved,

That a bill for “An Act to –

- recognise the importance of and to promote understanding and appreciation of Western Australia’s cultural heritage; and
- provide for the identification and documentation of places of heritage significance and for the conservation, use, development and adaption of such places; and
- repeal the *Heritage of Western Australia Act 1990*; and
- make consequential amendments to various other Acts,

and for related purposes.” be introduced and read a first time.

Question put and passed.

The Minister for Heritage presented an explanatory memorandum and bill read a first time.

The Minister for Heritage moved, That the bill be now read a second time.

Mr D.A. Templeman moved, That the debate be adjourned.

Question put and passed.

## **8. Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016**

The Order of the Day for the resumption of the debate upon the second reading of the bill was read.

Debate resumed.

Debate interrupted by the Chair (Ms J.M. Freeman speaking) and adjourned until a later stage of the sitting.

## **9. Questions**

Questions without Notice were taken.

Questions on Notice Nos 5819 to 5822 were asked.

Questions on Notice Nos 5515, 5540, 5560, 5591, 5603, 5606 and 5610 were answered.

Paper tabled by the Minister representing the Minister for Education; Aboriginal Affairs; Electoral Affairs –

Question on Notice No. 5603 – Financial leases entered into by the Department of Education since 8 September 2008 and currently in force (4461).

## **10. Matter of Public Interest – Elizabeth Quay Water Park**

The Speaker informed the Assembly that he was in receipt of a notice from Ms R. Saffioti that she intended to move a motion on a matter of public interest.

At least five members having risen in support,

Ms R. Saffioti moved,

That this House condemns the Liberal National Government for placing public health and safety at risk by rushing the opening of the Elizabeth Quay water park for purely political deadlines, against expert advice.

Debate ensued.

Question put.

The Assembly divided.

#### Ayes (20)

Ms L.L. Baker  
Dr A.D. Buti  
Mr R.H. Cook  
Ms J. Farrer  
Ms J.M. Freeman  
Mr R.F. Johnson  
Mr W.J. Johnston

Mr F.M. Logan  
Mr M. McGowan  
Mr M.P. Murray  
Mr P. Papalia  
Mr J.R. Quigley  
Ms M.M. Quirk  
Mrs M.H. Roberts

Ms R. Saffioti  
Mr C.J. Tallentire  
Mr P.C. Tinley  
Mr P.B. Watson  
Mr B.S. Wyatt  
Mr D.A. Templeman (*Teller*)

#### Noes (31)

Mr P. Abetz  
Mr F.A. Alban  
Mr C.J. Barnett  
Mr I.C. Blayney  
Mr I.M. Britza  
Mr G.M. Castrilli  
Mr V.A. Catania  
Mr M.J. Cowper  
Mr J.H.D. Day  
Ms E. Evangel  
Mr J.M. Francis

Mrs G.J. Godfrey  
Mr B.J. Grylls  
Dr K.D. Hames  
Mrs L.M. Harvey  
Mr C.D. Hatton  
Mr A.P. Jacob  
Dr G.G. Jacobs  
Mr S.K. L'Estrange  
Mr W.R. Marmion  
Mr J.E. McGrath  
Ms L. Mettam

Mr P.T. Miles  
Ms A.R. Mitchell  
Mr N.W. Morton  
Mr J. Norberger  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.H. Taylor  
Mr T.K. Waldron  
Mr A. Krsticevic (*Teller*)

Question thus negatived.

### 11. Variation to the Order of Business

Ordered, That consideration of Government Business Order of the Day No. 1 be resumed.

### 12. Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Bill 2016

The Order of the Day for the resumption of the debate upon the second reading of the bill was read.

Debate resumed.

Debate interrupted by the Chair (Mr M.P. Murray speaking) and adjourned until a later stage of the sitting.

### 13. Variation to the Order of Business

Ordered, That Private Members' Business Order of the Day for the second reading of the Container Deposit and Recovery Scheme Bill 2016 and Private Members' Business Notices of Motion Nos 9 and 1 be next considered.

### 14. Container Deposit and Recovery Scheme Bill 2016

The Order of the Day for the second reading of the bill was read.

Mr C.J. Tallentire moved, That the bill be now read a second time.

Mr D.A. Templeman moved, That the debate be adjourned.

Question put and passed.

### **15. Skippers Row Wetlands Area**

Ms L.L. Baker, pursuant to notice, moved,

That this House condemns the Liberal National Government for its poor management of the Skippers Row Wetlands area in Bayswater, for failing to protect vital urban wetlands through either planning or environmental legislation, and calls for the urgent protection of the remaining Bayswater wetlands known as Carter's Block which are still currently at risk.

Debate ensued.

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#### *Suspension of Member*

The Acting Speaker, having called Mr C.J. Tallentire to order more than three times, suspended the member from the service of the Assembly for the remainder of the sitting.

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Debate interrupted by the Chair (Dr K.D. Hames speaking) and adjourned until a later stage of the sitting.

### **16. Variation to the Order of Business**

Ordered, That consideration of Government Business Order of the Day No. 3 be resumed.

### **17. Road Traffic Legislation Amendment Bill (No. 2) 2015**

The Order of the Day for the further consideration in detail of the bill was read.

#### *CONSIDERATION IN DETAIL*

Clauses 28 to 32 agreed to.

Clause 33.

Mrs M.H. Roberts moved,

Page 19, line 24 – Before “person” insert:

“ medically qualified ”.

Amendment, by leave, withdrawn.

The Minister for Road Safety moved,

Page 19, line 24 – Before “person” insert:

“ appropriately qualified ”.

Amendment put and passed.

Clause 33, as amended, agreed to.

Clauses 34 to 36 agreed to.

Clause 37.

The Minister for Road Safety moved,

Page 22, line 28 – To delete “prescribed sample taker” and substitute:

“ authorised drug tester ”.

Amendment put and passed.  
 Clause, as amended, agreed to.  
 Clauses 38 to 63 agreed to.  
 Postponed Clause 6.  
 Mr J.R. Quigley had moved,  
 Page 4, after line 23 – To insert:

“

(2) In sections 56(2) and 56(3) where the words “not less than 12 months” appear in 3 places, insert:

cumulative upon any other period of disqualification of the driver’s licence.

”.

Amendment, by leave, withdrawn.  
 Clause 6 agreed to.  
 Clauses 64 and 65 agreed to.  
 Clause 66.  
 The Minister for Road Safety moved,  
 Page 42, line 14 – To delete “118A” and substitute:

“ 117A ”.

Amendment put and passed.  
 The Minister for Road Safety moved,  
 Page 43, line 10 – To delete “from” and substitute:

“ from, ”.

Amendment put and passed.  
 The Minister for Road Safety moved,  
 Page 44, line 18 – To delete “involving the driving of a vehicle,”.  
 Amendment put and passed.  
 The Minister for Road Safety moved,  
 Page 44, line 22 – To delete “the vehicle” and substitute:

“ a vehicle ”.

Amendment put and passed.  
 The Minister for Road Safety moved,  
 Page 44, line 24 – To delete “the vehicle” and substitute:

“ a vehicle ”.

Amendment put and passed.  
 The Minister for Road Safety moved,  
 Page 46, lines 1 to 21 – To delete the lines.  
 Amendment put and passed.

Clause 66, as amended, agreed to.

Clause 67.

The Minister for Road Safety moved,

Page 46, line 23 – To delete “**Section 118A inserted**” and substitute:

“ **Sections 117A to 117I inserted** ”.

Amendment put and passed.

The Minister for Road Safety moved,

Page 46, line 26 – To delete “**118A.**” and substitute:

“ **117A.** ”.

Amendment put and passed.

The Minister for Road Safety moved,

Page 47, lines 7 and 8 – To delete “as defined in section 117(1)”.

Amendment put and passed.

The Minister for Road Safety moved,

Page 47, lines 18 and 19 – To delete “after the day on which the alleged offence took place;” and substitute:

“ before the day on which the alleged offence was committed; ”.

Amendment put and passed.

The Minister for Road Safety moved,

Page 47, line 20 – To delete “day referred to in paragraph (c),” and substitute:

“

specified day referred to in paragraph (c) and on the day on which the alleged offence was committed,

”.

Amendment put and passed.

The Minister for Road Safety moved,

Page 48, lines 1 to 5 – To delete the lines and substitute:

“

- (4) A certificate under subsection (2) is not admissible in evidence in a prosecution mentioned in section 117(6) unless a copy of the certificate and a copy of the relevant image are given to the accused at least 28 days before the day on which the proceedings begin or within a shorter period that is agreed by the accused.

”.

Amendment put and passed.

The Minister for Road Safety moved,

Page 48, lines 8 and 9 – To delete “or set out”.

Amendment put and passed.

The Minister for Road Safety moved,  
Page 48, line 12 – After “proceedings” insert:

“ begin ”.

Amendment put and passed.  
The Minister for Road Safety moved,  
Page 48, line 19 – To delete “described in” and substitute:

“ under ”.

Amendment put and passed.  
The Minister for Road Safety moved,  
Page 48, after line 23 – To insert:

“

**117B. Evidence of average speed as actual speed**

- (1) In this section and in sections 117C to 117I —

*authorised person* means —

- (a) a police officer; or
- (b) a person certified by the Commissioner of Police as being competent to install, set up, test or retrieve data from, an average speed detection system or produce images from the data;

*average speed detection system* means a system, comprising electronic equipment linked to an information technology system and computer programs, of a type approved by the Minister under section 117C;

*carriageway* means a portion of a road that is designed or ordinarily used for vehicular traffic;

*detection points* means the different points on a carriageway by reference to which the average speed of a vehicle is proposed to be calculated;

*Minister* means the Minister to whom the administration of the *Police Act 1892* is committed;

*shortest practicable distance*, that could be travelled by a vehicle on a carriageway between detection points, means the shortest distance between those points that a driver of the vehicle could have used to travel between the points without contravening any road law applicable to the driver.

- (2) In a prosecution for an offence under any written law evidence may be given of —

- (a) the use of an average speed detection system in respect of a particular location; and
- (b) the identity of a vehicle as ascertained by that system at a particular time; and

- (c) the average speed of a vehicle between detection points calculated in accordance with section 117D.
- (3) The evidence referred to in subsection (2)(b) is prima facie evidence of the identity of the vehicle.
- (4) The average speed of a vehicle referred to in subsection (2)(c) is prima facie evidence of the actual speed of the vehicle between the detection points.
- (5) In a prosecution mentioned in subsection (2), evidence of the matters referred to in that subsection may be given in the form of an image of the vehicle on which is recorded —
  - (a) the location referred to in subsection (2)(a); and
  - (b) the time referred to in subsection (2)(b); and
  - (c) the average speed of the vehicle between detection points calculated in accordance with section 117D (which may have been calculated using an average speed detection system).
- (6) In a prosecution mentioned in subsection (2), evidence by an authorised person that a system used in respect of a particular location was an average speed detection system is prima facie evidence of that fact.
- (7) In a prosecution mentioned in subsection (2), a certificate purporting to be signed by the Commissioner of Police certifying that a specified person is, or was at the material time, an authorised person is prima facie evidence of the matters in the certificate, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.
- (8) This section is in addition to, and does not derogate from, any other mode of proof of the speed of a vehicle.

#### **117C. Average speed detection systems**

- (1) The Minister may, from time to time, by notice published in the *Gazette*, approve types of average speed detection systems for the purposes of —
  - (a) ascertaining the average speed of a vehicle between detection points; and
  - (b) recording —
    - (i) an image of the vehicle; and
    - (ii) the date on which the image was recorded; and
    - (iii) the time and location at which the image was recorded.
- (2) The Minister may, by notice published in the *Gazette*, revoke an approval under subsection (1).



**117D. How average speed is to be calculated**

The average speed of a vehicle between detection points is to be calculated in accordance with the following formula and expressed in kilometres per hour rounded down to the next whole number —

$$\frac{D_T \times 3600}{T}$$

where —

$D_T$  is the total shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between the detection points;

$T$  is the time, expressed in seconds, that elapsed between the vehicle passing the first and last detection points.

**117E. How average speed limit is to be calculated**

The average speed limit for a driver of a vehicle on a carriageway between detection points in circumstances where more than one speed limit applied to the driver between those points is to be calculated in accordance with the following formula and expressed in kilometres per hour rounded up to the next whole number —

$$\frac{D_T}{\frac{D_1}{S_1} + \frac{D_2}{S_2} + \dots + \frac{D_n}{S_n}}$$

where —

$D_T$  is the total shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between the detection points;

$D_1, D_2 \dots D_n$  are each part of the total shortest practicable distance  $D_T$  between the detection points, expressed in kilometres and rounded down to 2 decimal places, for the different speed limits  $S_1, S_2 \dots S_n$  that would have applied to the driver of the vehicle between the detection points;

$S_1, S_2 \dots S_n$  are each of the speed limits, expressed in kilometres per hour, that would have applied to the driver of the vehicle if the vehicle were travelling along the shortest practicable distance  $D_T$  on a carriageway between the detection points.

**117F. Evidence of, proceedings for, certain matters related to evidence of average speed**

- (1) The following provisions apply in a prosecution mentioned in section 117B(2) —
  - (a) for the purposes of calculating the vehicle's average speed and any average speed limit, the vehicle and any of its drivers are to be taken to have travelled between the detection points by means of the shortest practicable distance between those points regardless of the actual route taken by any of the drivers between the points;
  - (b) if more than one speed limit applied to a driver of a vehicle between detection points —
    - (i) the average speed limit for the driver on a carriageway between the points calculated in accordance with section 117E is to be taken (subject to section 117B(8)) to be the speed limit that applied to the driver at all times on the carriageway between those points; and
    - (ii) a driver of, and any responsible person for, the vehicle may be dealt with under a road law accordingly;
  - (c) if there was more than one driver of the vehicle between the detection points, each driver is to be taken to have driven the vehicle at the average speed of the vehicle calculated in accordance with section 117D, except as provided by subsection (2).
- (2) Subsection (1)(c) does not apply to a driver —
  - (a) who satisfies the court that he or she did not, at any time whilst driving the vehicle between the detection points, drive at a speed that exceeded the speed limit applicable to that driver; or
  - (b) in prescribed circumstances.
- (3) If there is evidence of the average speed of a vehicle between detection points calculated in accordance with section 117D, one or more drivers of the vehicle may be prosecuted for, and found guilty or convicted of, an offence in respect of which the evidence was given.

**117G. Evidentiary provisions for images recorded by average speed detection systems**

- (1) If, in a prosecution mentioned in section 117B(2), evidence is given in the form of an image as described in section 117B(5) and the image is accompanied by a certificate under subsection (2), the image —
  - (a) is to be accepted as having been recorded as described in section 117B(5), unless there is evidence to the contrary; and

- (b) is prima facie evidence of the matters shown in or recorded on the image.
- (2) For the purposes of subsection (1), the certificate is a certificate purporting to be signed by the Commissioner of Police certifying that —
- (a) the system, specified in the certificate, was an average speed detection system; and
  - (b) components of the system were tested by an authorised person, named in the certificate, in accordance with the approved procedure on a day, specified in the certificate, that was within the prescribed number of days (for each component) before the day on which the alleged offence was committed; and
  - (c) on the specified day referred to in paragraph (b) and on the day on which the alleged offence was committed, the components were operating properly and were accurate; and
  - (d) data obtained from the system was obtained by an authorised person, named in the certificate, in accordance with the approved procedure; and
  - (e) the image was produced by an authorised person, named in the certificate, in accordance with the approved procedure, from data obtained from the system.
- (3) In subsection (2) —  
***approved*** means approved by the Commissioner of Police.
- (4) A certificate under subsection (2) may also certify any one or more of the following matters —
- (a) the average speed calculated in accordance with section 117D at which the vehicle travelled between detection points (which may have been calculated using the average speed detection system);
  - (b) if one speed limit applied to a driver of the vehicle between detection points (measured along the shortest practicable distance), the speed limit;
  - (c) if more than one speed limit applied to a driver of the vehicle between detection points (measured along the shortest practicable distance) —
    - (i) each distance for which each speed limit applied to the driver, expressed in kilometres and rounded down to 2 decimal places; and
    - (ii) the average speed limit calculated in accordance with section 117E that applied to the driver between the detection points (which may have been calculated using the average speed detection system).
- (5) The certificate is prima facie evidence of the matters in it.

- (6) In a prosecution mentioned in section 117B(2), it is to be presumed, in the absence of evidence to the contrary, that a certificate under subsection (2) purporting to have been signed by the Commissioner of Police was so signed, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.

**117H. Certificate evidence as to shortest practicable distance**

- (1) In this section —  
*licensed surveyor* has the meaning given in the *Licensed Surveyors Act 1909* section 3(1).
- (2) In a prosecution mentioned in section 117B(2), a certificate purporting to be signed by a licensed surveyor certifying any one or more of the following matters is prima facie evidence of the matters that are certified, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was a licensed surveyor —
- (a) the shortest practicable distance, expressed in kilometres and rounded down to 2 decimal places, that could be travelled by a vehicle on a carriageway between detection points;
  - (b) if more than one speed limit between detection points applied (measured along the shortest practicable distance), each distance for which each speed limit applied, expressed in kilometres and rounded down to 2 decimal places.

**117I. Certificate, image copies to be given before proceedings**

- (1) A certificate of the Commissioner of Police under section 117G is not admissible in evidence in a prosecution mentioned in section 117B(2) unless a copy of the certificate and a copy of the relevant image are given to the accused at least 28 days before the day on which the proceedings begin or within a shorter period that is agreed by the accused.
- (2) A certificate of a licensed surveyor under section 117H is not admissible in evidence in a prosecution mentioned in section 117B(2) unless a copy of the certificate is given to the accused at least 28 days before the day on which the proceedings begin or within a shorter period that is agreed by the accused.
- (3) If a copy of a certificate has been given as required by subsection (1) or (2), the accused cannot challenge or call into question a matter certified in the certificate unless —
- (a) notice in writing of the accused's intention is given to the prosecutor at least 14 days before the proceedings begin; or
  - (b) the court, in the interests of justice, gives the accused leave to do so.
- (4) A notice under subsection (3)(a) must specify the matter that is to be challenged or called into question.

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*Paper*

The following paper was presented and ordered to lie upon the Table of the House –

By the Minister for Road Safety –

Road Safety, Minister for – Explanatory Notes on the Amendments to the Road Traffic Legislation Amendment Bill (No. 2) 2015 for the Point to Point Speed Enforcement (4462).

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Amendment put and passed.

Clause, as amended, agreed to.

New Clause 68.

The Minister for Road Safety moved,

Page 48, after line 23 – To insert:

“

**68. Part 9 Division 2 replaced**

Delete Part 9 Division 2 and insert:

**Division 2 — Transitional provisions arising from certain amendments made by the *Road Traffic Legislation Amendment Act (No. 2) 2015***

**166. Terms used**

In this Division —

*commencement day* means the day on which the *Road Traffic Legislation Amendment Act (No. 2) 2015* section 66 comes into operation;

*RT(A) Act* means the *Road Traffic (Administration) Act 2008* as in force before commencement day.

**167. Approval of apparatus for ascertaining vehicle speed**

An approval under the RT(A) Act section 117(2) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an approval for the purposes mentioned in section 117(2)(a).

**168. Approval of apparatus for ascertaining distances on roads**

An approval under the RT(A) Act section 117(3) that was in effect immediately before commencement day is, on and from commencement day, to be taken to be an approval for the purposes mentioned in section 117(2)(b).

**169. Certain authorised persons to be authorised persons for speed measuring and recording equipment, average speed detection systems**

(1) In this section —

*speed measuring equipment* has the meaning given in the RT(A) Act section 117(1).

- (2) A person who, immediately before commencement day, is a person certified by the Commissioner of Police as being competent to use speed measuring equipment is, on and from commencement day, to be taken to be a person certified by the Commissioner of Police as being competent to install, set up, test and retrieve data from speed measuring and recording equipment as defined in section 117(1) and produce images from the data.
- (3) A person who, immediately before commencement day, is a person certified by the Commissioner of Police as being competent to use speed measuring equipment is, on and from commencement day, to be taken to be a person certified by the Commissioner of Police as being competent to install, set up, test and retrieve data from an average speed detection system as defined in section 117B(1) and produce images from the data.

”.

New Clause put and passed.

Title agreed to.

Consideration in detail concluded.

Ordered, That the third reading of the bill be made an Order of the Day for the next sitting of the Assembly.

#### **18. Highways (Liability for Straying Animals) Amendment Bill 2016**

Message No. 140 dated 24 August 2016 from the Legislative Council was reported forwarding for concurrence a bill for “An Act to amend the *Highways (Liability for Straying Animals) Act 1983*.”

Ordered, That the first reading of the bill be made an Order of the Day for the next sitting of the Assembly.

#### **19. Adjournment**

The Leader of the House moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly at 12.05 a.m. on Thursday, 25 August 2016 until 9.00 a.m. on the same day.

*Members present during any part of the day's proceedings* – All the members except Ms M. Davies, Ms W.M. Duncan, Mr D.J. Kelly, Mr R.S. Love, Ms S. McGurk and Mr D.C. Nalder.

**KIRSTEN M. ROBINSON**  
Clerk of the Legislative Assembly

**HON. MICHAEL SUTHERLAND**  
Speaker of the Legislative Assembly