

Road Traffic Amendment Bill 2005

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Road Traffic Amendment Bill 2005

A Bill for

An Act to amend —

- **the *Road Traffic Act 1974*;**
 - **the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;**
 - **the *Motor Vehicle Drivers Instructors Act 1963*;**
 - **the *Road Traffic Amendment Act 1996*; and**
 - **the *Road Traffic Amendment (Vehicle Licensing) Act 2001*,**
- and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Road Traffic Amendment Act 2005*.

2. Commencement

- 5 (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — Road Traffic Act 1974

3. The Act amended

The amendments in this Part are to the *Road Traffic Act 1974**.

[* *Reprint 8 as at 16 July 2004.*

5 *For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 395-6
and Gazette 27 May 2005 p. 2306-08.]*

4. Section 5 amended

Section 5(1) is amended as follows:

- 10 (a) in the definition of “driver”, by deleting “, or in control
of,”;
- (b) by deleting the definition of “driver’s licence” and
inserting instead —

15 “
 “driver’s licence” means a licence under this Act
authorising the holder to drive a motor vehicle on
a road, but does not include a learner’s permit;
 ”;

- 20 (c) by deleting the definition of “motor vehicle” and
inserting instead —

25 “
 “motor vehicle” —
 (a) in relation to authorisation to drive, means a
vehicle that is built to be propelled by a
motor that forms part of the vehicle;
 (b) otherwise, means a self-propelled vehicle
that is not operated on rails, and includes a
trailer, semi-trailer or caravan while attached
to the vehicle, but does not include a power
30 assisted pedal cycle;
 ”;

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- (d) by deleting the definitions of “repealed Act” and “unrestricted licence”;
- (e) by inserting in the appropriate alphabetical positions the following definitions —

5

“

“Australian driver licence” means —

- (a) a driver’s licence under this Act; or
- (b) a licence or other authorisation granted to a person under the law of another jurisdiction authorising the person to drive a motor vehicle on a road other than solely for the purpose of learning to drive it;

10

“Australian driver licensing authority” means a person or body having the authority to grant an Australian driver licence;

15

“drive” includes —

- (a) in relation to a vehicle, to have control over the steering, movement or propulsion of the vehicle;
 - (b) in relation to an animal, to be in control of the animal,
- regardless of whether the vehicle or animal is usually referred to as being ridden rather than driven;

20

25

“external licensing authority” means an authority of —

- (a) an external Territory, as defined in the *Acts Interpretation Act 1901* of the Commonwealth; or
 - (b) another country,
- by which any licence or authorisation to drive a motor vehicle is granted;

30

“

Part IVA — Authorisation to drive

Division 1 — Preliminary

41A. Definitions

- 5 In this Part, unless the contrary intention appears —
“**condition**” includes a limitation;
“**driver’s licence register**” means the register referred
to in section 42(1)(a)(ii).

Division 2 — Driver licensing

10 42. Regulations for driver licensing scheme

- (1) The regulations are, together with this Part, to provide
for a driver licensing scheme under which —
(a) the Director General —
15 (i) grants people licences to drive motor
vehicles on roads; and
(ii) keeps a driver’s licence register to
record information about drivers’
licences under this Act;
and
20 (b) the identification of people driving motor
vehicles under the authority of those licences is
facilitated.
- (2) The particular purposes for which this Part provides
that regulations are to be, or may be, made do not
25 prevent anything in section 111 from applying to the
making of regulations for the purposes of this Part.
- (3) The regulations may —
(a) classify the different kinds of authorisation to
drive that may be conferred by a driver’s

- licence and provide for a licence to be designated according to the class or classes of authorisation that the licence confers on the holder;
- 5 (b) grade each class of authorisation to drive according to the driving skills and other requirements to be met before a person can hold a driver's licence conferring authorisation of that class;
- 10 (c) prescribe different endorsements of drivers' licences that can be made, and the effect of each endorsement;
- (d) provide for schemes for assessing the competency of people to hold drivers' licences;
- 15 (e) prescribe requirements for the holding of a licence under this Part authorising the holder to drive when learning that may differ from the requirements for the holding of a driver's licence appropriate for that driving when not
- 20 learning.
- (4) The regulations may —
- (a) provide for the manner and form in which an application may be made for the grant, renewal, or variation of a driver's licence;
- 25 (b) require an applicant for the grant, renewal, or variation of a driver's licence to produce information relevant to the application.
- (5) The regulations may —
- (a) provide for the grant or renewal of a driver's licence and include provisions about refusal to grant or renew a driver's licence;
- 30 (b) impose, or provide for the imposition of, conditions on a driver's licence;

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- (c) provide for the granting of a driver's licence as a provisional licence for the purposes of this Act;
- 5 (d) fix the period for which a driver's licence remains in force;
- (e) include provisions about the disqualification of a person from holding or obtaining a driver's licence and the surrender, cancellation, variation or suspension of a driver's licence;
- 10 (f) provide for the issue of a driver's licence document to a person who has a driver's licence;
- (g) provide for —
 - 15 (i) what is to be authorised by a licence that, before an amendment to the regulations, operated by reference to a vehicle classification that no longer exists; and
 - 20 (ii) an expedited means for the licence holder to obtain a licence authorising anything that was formerly authorised by the licence but, because of the amendment, has ceased to be authorised;
- 25 (h) prescribe circumstances in which a driver's licence document has to be returned to the Director General and prescribe how it is to be returned;
- 30 (i) create offences involving the alteration, destruction, or misuse of a driver's licence document.

- (6) The regulations may —
- (a) provide for the Director General to disclose information about a person who has applied for, who holds, or who has held, a driver's licence;
 - (b) relieve any driver described in the regulations from the requirement to comply with this Part, or a specified provision of this Part or the regulations.

42A. Director General's licensing functions

It is a function of the Director General to administer the driver licensing scheme under this Part.

42B. Certain licences authorise learner driving

- (1) The holder of an Australian driver licence may drive a vehicle on a road even though —

- (a) that licence is not sufficient authorisation to do so; and
- (b) the person does not hold a learner's permit authorising the person to do so,

if the regulations specify a licence of that description as authorising that driving to the same extent as if the person held the appropriate learner's permit.

- (2) This Act applies in respect of a person driving as authorised by this section as if the person held a learner's permit authorising that driving.

42C. Dishonestly obtained driver's licence

- (1) If a person commits an offence under section 97(b) for the purpose of obtaining the grant, renewal, or variation of a driver's licence, the driver's licence is void from the time when the offence is committed.

- (2) A person must not, without lawful authority or excuse, possess a driver's licence document for a licence that is void because of subsection (1).

Penalty: 32 PU.

5 **42D. Driver's licence not to be granted or renewed in certain circumstances**

- (1) Except as allowed by subsection (2) or in a case described in subsection (4), the Director General cannot grant a driver's licence to a person unless —

- 10 (a) the Director General —
- (i) is satisfied that the person usually resides in this State; or
- (ii) is satisfied that the person does not usually reside in any other jurisdiction and does not hold, and has never held,
- 15 an Australian driver licence granted under the law of another jurisdiction;

and

- (b) if the person has held —
- 20 (i) any Australian driver licence; or
- (ii) any licence or authorisation to drive a motor vehicle granted to the person by an external licensing authority,
- 25 the person has ceased to hold the licence or authorisation and has notified the Director General, in a form approved by the Director General, of that fact.

- 30 (2) Despite subsection (1), the Director General may, in circumstances prescribed in the regulations, grant a driver's licence to a person who still holds a licence or authorisation to drive a motor vehicle granted to the person by an external licensing authority.

- 5 (3) Except in a case described in subsection (4), the
Director General cannot renew a person's driver's
licence if the Director General —
- (a) is no longer satisfied as section 42D(1)(a)
would require if that paragraph applied; or
- 10 (b) is satisfied that the person has any other licence
or authorisation because of which, if the person
were seeking the grant rather than the renewal
of the driver's licence, subsection (1) would
prevent the Director General from granting it.
- (4) This section does not prevent the Director General
from granting an extraordinary licence to a person or
renewing a person's extraordinary licence —
- 15 (a) even though the person may not usually reside
in this State, and whether or not the person
usually resides in any other jurisdiction; and
- (b) even though the person may have a licence or
authorisation referred to in subsection (1)(b).
- 20 (5) This section does not limit the circumstances in which
the Director General may refuse to grant or renew a
driver's licence.

42E. Additional matters to do with identity

- 25 (1) The Director General cannot grant or renew a driver's
licence until the applicant has provided, in support of
the application, any evidence required by the
regulations to establish the applicant's identity and
residential address in this State.
- 30 (2) Except as prescribed in the regulations, the Director
General cannot grant or renew a driver's licence unless
the applicant has, at the time of the application or
before, provided the Director General with —
- (a) a photograph taken within 10 years of the
application; and

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- (b) a signature made within 10 years of the application,

for use on the driver's licence document.

- 5 (3) The photograph and signature are to be provided in a manner and form approved by the Director General.
- (4) The Director General is to ensure that any photograph or signature provided under this section is destroyed if it, or a copy of it, has not been used on a driver's licence document for a driver's licence granted or renewed in the preceding 10 years.
- 10 (5) A person who, other than for the purposes of this Part, possesses a photograph or signature provided under this section that is not on a driver's licence document commits an offence.
- 15 Penalty: Imprisonment for 2 years.
- (6) A person employed or engaged in connection with any aspect of the production of driver's licence documents or otherwise concerned in the administration of this Part, who, otherwise than in the administration of this
- 20 Part —
- (a) reproduces, by any means, a photograph or signature that appears, or is to appear, on a driver's licence document; or
- (b) causes or permits another person to do so,
- 25 commits an offence.
- Penalty: Imprisonment for 2 years.
- (7) In this section —
- “**destroyed**” includes damaged so as to be unusable;
- 30 “**photograph**” includes a negative or an image stored electronically.

Division 3 — Learner's permit

43. Learner's permit

- 5 (1) The Director General may issue to a person a learner's permit authorising the person to drive a motor vehicle on a road solely for the purpose of learning to drive it.
- (2) The permit does not authorise driving except in the course of driving instruction by —
- 10 (a) the holder of a licence issued under the *Motor Vehicle Drivers Instructors Act 1963*; or
- (b) anyone else prescribed in the regulations.
- (3) The permit must either set out in full or sufficiently identify any condition to which it is subject other than a condition imposed by this section or by the regulations.
- 15 (4) The permit expires at the end of a period of 3 years after the day on which it is issued unless it has terminated before then, and the Director General may cancel it at any time by notice in writing given to the permit holder.
- 20 (5) Regulations may be made about learners' permits and, without limiting what else may be dealt with in the regulations, they may fix the minimum age below which, unless the Director General is satisfied that denial of the permit would occasion undue hardship or
- 25 inconvenience, a person cannot be issued with a learner's permit.

Division 4 — Other matters about driver authorisations

44. Authorisation to drive without a driver's licence

- 30 (1) The regulations may provide that a motor vehicle of a class or kind prescribed in the regulations may, either

generally or in prescribed circumstances, be driven on roads without the driver holding a driver's licence.

- 5 (2) The regulations may provide for the Director General to permit a person to drive without holding a driver's licence of a kind that would otherwise be required to authorise that driving, and may provide for the Director General to make the permission subject to conditions.

44A. Driving while undergoing driving test

10 If the Director General causes a person applying for a driver's licence or an extension of the authority given by a driver's licence to undergo a driving test for the purposes of demonstrating the applicant's ability to drive, the applicant is authorised to drive in the course of the driving test as if the applicant were at that time
15 the holder of the appropriate driver's licence.

44B. Recognition of authorisation of another jurisdiction

- (1) The regulations are to provide for the Director General to recognise —
20 (a) another jurisdiction's driving authorisation; and
(b) any condition to which that authorisation is expressed to be subject other than a condition —
(i) that cannot apply in this State; or
25 (ii) that the regulations specify as not needing to be recognised,

and are to specify the effects of that recognition for the purposes of this Act.

- 30 (2) The recognition of another jurisdiction's driving authorisation cannot, at a particular time, authorise its holder to drive in this State to any greater extent than the recognised authorisation would, at that time, authorise the holder to drive in the other jurisdiction.

- (3) Subsection (2) does not prevent the holder of another jurisdiction's driving authorisation from being authorised to drive in this State to a greater extent than the recognised authorisation would authorise the holder to drive in the other jurisdiction because of a condition described in subsection (1)(b)(i) or (ii).

- (4) In this section —

“another jurisdiction’s driving authorisation”

means a licence or other authorisation granted to a person under the law of another jurisdiction authorising the person to drive a motor vehicle on a road whether or not solely for the purpose of learning to drive it.

44C. Things in other jurisdictions may affect authorisation to drive in WA

- (1) The regulations may provide for the recognition of —
- (a) an offence under the law of another jurisdiction or any other matter relevant for the purposes of a driver licensing scheme under the law of another jurisdiction;
 - (b) a disqualification from holding or obtaining a driver licence, a restriction on the driver licence that may be held or obtained, or the suspension of a driver licence, imposed under the law of another jurisdiction;
 - (c) anything under the law of another jurisdiction corresponding to an excessive demerit points notice under section 104I(1) or an election under section 104J(1),

and, if they do, are to specify the effects of that recognition for the purposes of this Act.

- (2) In subsection (1) —
“**driver licence**” means any licence or authorisation
that is an Australian driver licence.

44D. External territories and other countries

- 5 (1) The regulations may provide for the Director General
to recognise —
(a) any authorisation or status that a person has
under a foreign law about driving; and
(b) any offence that a person has committed against
10 any foreign law about driving,

and, if they do, are to specify the effects of that
recognition for the purposes of this Act.

- (2) In subsection (1) —
“**foreign law**” means the law of an external territory,
15 as defined in the *Acts Interpretation Act 1901* of
the Commonwealth, or the law of another country.

45. Exchange of information between jurisdictions

- (1) The Director General may provide to another
20 Australian driver licensing authority any information
sought by that authority for the purposes of performing
that authority’s functions to do with driver licensing.
- (2) If the Director General provides to another Australian
driver licensing authority information about an offence
25 of which a person has been convicted or for which a
person has been given an infringement notice, the
Director General is also to provide information of —
(a) any quashing of the conviction;
(b) any withdrawal of the infringement notice or
30 the matter coming before a court for
determination;

- 5 (c) any withdrawal of proceedings under Part 3 of
 the *Fines, Penalties and Infringement Notices*
 Enforcement Act 1994 in respect of the
 infringement notice; or
- (d) anything else known to the Director General
 concerning the offence, the disclosure of which
 is likely to be favourable to that person.
- 10 (3) The Director General may seek from another
 Australian driver licensing authority any information
 that the Director General considers relevant for the
 purposes of performing functions under this Act.
- 15 (4) The Director General may, for the purposes of
 performing functions under this Act, use information
 obtained from another Australian driver licensing
 authority.
- (5) In this section —
 “infringement notice” has the same meaning as it has
 in Part VIA.

46. Security of information in driver’s licence register

- 20 The Director General must ensure that information
 contained in the driver’s licence register that —
- (a) would disclose the name, address, date of birth,
 or any medical details of an individual; or
- 25 (b) has commercial sensitivity for the person about
 whom it is kept,
- is not released except as provided by the regulations.

47. Regulations may refer to published documents

- 30 (1) Regulations made for the purposes of this Part may
 adopt the text of any published document specified in
 the regulations —
- (a) as that text exists at a particular date; or

- (b) as that text may from time to time be amended.
- (2) The text may be adopted —
- (a) wholly or in part;
- (b) as modified by the regulations.
- 5 (3) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in any text that is itself directly or indirectly adopted).
- (4) The adoption of text is of no effect unless —
- (a) the adopted text; and
- 10 (b) if text is adopted as it may be amended from time to time, either —
- (i) the amendments to the text; or
- (ii) the text as amended,
- can at all reasonable times be inspected or purchased by the public.
- 15

48. Transitional regulations

Regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions applying before the commencement of section 6 of the *Road Traffic Amendment Act 2005* to the provisions of this Part, or regulations made under this Part, applying after that commencement.

20

48A. Review of Director General's decisions under this Part

The regulations may —

(a) provide for the review of a decision of the Director General made under this Part; and

25

- (b) give the Commissioner of Police a right to be heard in proceedings for the review of a decision of the Director General made under this Part.

5

”.

7. Section 49 replaced

Section 49 is repealed and the following section is inserted instead —

“

10

49. Driving while unlicensed or disqualified

- (1) A person who —

- (a) drives a motor vehicle on a road while not authorised under Part IVA to do so; or
- (b) employs or permits another person to drive a motor vehicle as described in paragraph (a),

15

commits an offence.

Penalty:

- (a) unless subsection (3) applies —

- (i) for a first offence, 6 PU;

20

- (ii) for a subsequent offence, 12 PU;

- (b) if subsection (3)(d), but no other paragraph of subsection (3), applies —

- (i) a fine of not less than 4 PU or more than 30 PU; and

25

- (ii) imprisonment for not more than 12 months,

and the court may order that the offender be disqualified from holding or obtaining a driver's licence for a period of not more than 3 years;

30

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- 5 (c) if subsection (3)(a), (b), or (c) applies —
- (i) for a first offence, a fine of not less than 8 PU or more than 40 PU, and imprisonment for not more than 12 months;
- (ii) for a subsequent offence, a fine of not less than 20 PU or more than 80 PU, and imprisonment for not more than 18 months,
- 10 and the court shall order that the offender be disqualified from holding or obtaining a driver's licence for a period of not less than 9 months and not more than 3 years.
- 15 (2) It is a defence to a charge of an offence under subsection (1) to prove that the motor vehicle was driven in accordance with —
- (a) regulations referred to in section 44(1); or
- (b) a necessity permit under section 49A.
- 20 (3) If an offence under subsection (1)(a) is committed by a person —
- (a) who has applied for, but has been refused, an Australian driver licence of a kind required;
- (b) who has never held an Australian driver licence of a kind required and is disqualified from holding or obtaining an Australian driver licence of a kind required other than for the reason described in paragraph (d) or who has held an Australian driver licence of a kind required but ceased to hold the licence of that kind most recently held other than —
- 25
- 30 (i) because the person voluntarily surrendered the licence most recently held or it expired; or

- (ii) for the reason described in
paragraph (d);
- (c) whose authority to drive, whether under an
Australian driver licence or otherwise, is for the
5 time being suspended other than for the reason
described in paragraph (d); or
- (d) who is no longer authorised to drive because of
penalty enforcement laws, as described in
subsection (9),
- 10 a member of the Police Force may, without a warrant,
arrest the person.
- (4) A person who would only come within a description in
subsection (3)(a), (b), or (c) because of a decision for
the review of which an application had been made to
15 the State Administrative Tribunal is excluded from that
description if the application had been made, but not
determined, when the offence under subsection (1)(a)
was committed.
- (5) If a person to whom the Director General has been
ordered under section 76(3) to grant an extraordinary
licence commits an offence under subsection (1)(a) —
20 (a) before the extraordinary licence is granted; or
(b) when the extraordinary licence has expired and
has not been renewed,
- 25 neither the order nor any extraordinary licence granted
affects subsection (3).
- (6) An offence under subsection (1) is a subsequent
offence if the offender has previously been convicted
of any offence under that subsection as in force at any
30 time, except that, if subsection (3)(a), (b), or (c) applies
to an offence under subsection (1)(a), the offence is a
subsequent offence only if the person has previously
been convicted of a relevant offence.

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(7) In subsection (6) —

“relevant offence” means —

- 5 (a) an offence under subsection (1)(a) as in force after the commencement of section 7 of the *Road Traffic Amendment Act 2005* being an offence to which subsection (3)(a), (b), or (c) applied; or
- 10 (b) an offence under subsection (1)(a) as in force at a time before the commencement of section 7 of the *Road Traffic Amendment Act 2005* being an offence that would have been taken into account in determining whether another offence committed before that commencement, in circumstances
- 15 mentioned in section 49(2)(a)(ii) or (iii) or (2)(b) as then in force, would have been a first or subsequent offence.

(8) A period of disqualification ordered under subsection (1) is cumulative upon —

- 20 (a) any other period of disqualification to which the person may then be subject; or
- (b) any period for which the operation of a driver’s licence held by the person may currently be suspended.

25 (9) When subsection (3)(d) refers to a person who is no longer authorised to drive because of penalty enforcement laws, it means that the person —

- 30 (a) has been disqualified from holding or obtaining a driver’s licence under section 19 or 43 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; or
- (b) is the subject of any disqualification or suspension under a law of another jurisdiction

that is prescribed to be a corresponding law for
the purposes of this subsection.

”.

8. Section 49A replaced

5 Section 49A is repealed and the following section is inserted
instead —

“

**49A. Offence when authorisation to drive lost because of
penalty enforcement laws**

- 10 (1) This section applies if a police officer finds a person
(the “**driver**”) committing an offence under
section 49(1)(a) in the circumstances referred to in
section 49(3)(d).
- 15 (2) If this section applies and the police officer suspects on
reasonable grounds that, at the time of committing the
offence, the driver —
- (a) did not know of the circumstances referred to in
section 49(3)(d); and
- (b) had not been cautioned previously under this
20 section since those circumstances came about,
- the police officer may decline to charge the driver with
an offence under section 49(1)(a) and may instead
issue a caution to the driver.
- 25 (3) The caution must be in a prescribed form.
- (4) If this section applies and it appears to the police
officer that it would be impracticable, or may
jeopardise the safety of any person, for the driver to
immediately cease driving —
- (a) if the police officer issues a caution, the caution
30 must include a necessity permit; and
- (b) in any other case, the police officer may grant
the driver a necessity permit.

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(5) In subsection (4) —

“**necessity permit**” means a permit for the driver to
drive by the shortest practicable route to a place
specified in the permit.

5

”.

9. Section 50 amended

Section 50 is amended as follows:

(a) by deleting “permit issued under section 48C(1)” and
inserting instead —

10

“ learner’s permit ”;

(b) by deleting “endorsed on the permit under
section 48C(2)” and inserting instead —

“ to which the permit is subject ”;

(c) by deleting “pursuant to section 48C(1)” and inserting
instead —

15

“ under section 43(2) ”.

10. Section 50A replaced

Section 50A is repealed and the following section is inserted
instead —

20

“

50A. Authorisation other than Australian driver licence

(1) A person whose authority to drive depends on a licence
or authorisation granted under the law of an external
licensing authority is required —

25

(a) while driving a motor vehicle on a road, to
carry —

(i) the official document that is evidence of
that licence or authorisation; and

30

(ii) if the official document is not in the
English language, a translation of it into

the English language verified by a
person or body approved by the Director
General;

and

- 5 (b) to produce that document for inspection at the
request of any member of the Police Force.

- (2) If the person fails to comply with any condition to
which the licence or authorisation is subject that can
lawfully be complied with in this State, the person
10 commits an offence.

Penalty:

- (a) for a first offence, 8 PU;
(b) for a subsequent offence, 16 PU.

”.

15 **11. Section 51 amended**

- (1) Section 51(1) is amended by deleting “driver’s licence issued on
probation” and inserting instead —

“ driver’s licence that is a provisional licence ”.

- 20 (2) Section 51(3) is repealed and the following subsection is
inserted instead —

“

- (3) Where the holder of a driver’s licence that is a
provisional licence is disqualified under Part VIA from
holding or obtaining a driver’s licence, the provisional
25 licence is, by operation of this subsection, cancelled.

”.

- (3) Section 51(4) is amended as follows:

- (a) by deleting “driver’s licence issued on probation” and
inserting instead —

30 “ driver’s licence that is a provisional licence ”;

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- (b) by deleting “expiration of the period for which the licence was expressed to be issued or renewed.” and inserting instead —
“ time when the licence would be due to expire. ”.
- 5 (4) Section 51(5) is repealed and the following subsection is inserted instead —
“
10 (5) Subsection (5a) applies to a person if —
(a) the person does not hold a driver’s licence; and
(b) the regulations would require that, if a driver’s licence were to be granted to the person, it be a provisional licence.
”.
- (5) Section 51(5b) is repealed.
- 15 **12. Section 60 amended**
Section 60(4) is repealed.
- 13. Section 61 amended**
Section 61(4) is amended by deleting “section 31 or 31A of the repealed Act, or section 59 or 60 of this Act” and inserting
20 instead —
“ section 59, 59A, or 60 ”.
- 14. Section 63 amended**
(1) Section 63(2) is amended by deleting paragraph (a) and inserting the following paragraph instead —
25 “
(a) for a first offence —
(i) if the person has been previously convicted of an offence against section 64, to a fine of —

- (2) Section 63(3) is amended by deleting “section 32 of the repealed Act or”.

15. Section 64 amended

25 Section 64 is amended as follows:

- 30
- (a) in the Table to subsection (2), by deleting “but < 0.15%”;
 - (b) in subsection (3), by deleting “section 32 or 32AA of the repealed Act, or section 32B(9) of the repealed Act as in force after the coming into operation of the *Traffic Act Amendment Act (No. 2) 1968* or section 63 or 67 of this Act” and inserting instead —
“ section 63 or 67 ”.

s. 16

16. Section 64AA amended

Before section 64AA(3) the following subsections are inserted —

“

- 5 (2b) For the purposes of this section, an offence is a second or subsequent offence against this section irrespective of the percentage of alcohol in the blood on the occasion of the commission of any previous offence against this section.
- 10 (2c) For the purposes of this section, where a person is convicted of an offence against this section any offence previously committed by the person against section 63, 64, or 67 shall be taken into account and be deemed to have been an offence against this section (but not to the
- 15 exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second or subsequent offence.

”.

17. Section 64A amended and related amendments

- 20 (1) Section 64A(1) is amended by deleting “Except as provided in subsection (2), a person” and inserting instead —

“ A person to whom this subsection applies ”.

- (2) Section 64A(2) is amended by deleting all of the subsection before paragraph (c) and inserting instead —

25 “

- (2) Subsection (1) applies to a person who —
- (a) holds a provisional licence;
- (b) if an Australian driver licence could be granted to the person, could only obtain a provisional
- 30 licence,

”.

- (3) Each provision specified in the Table to this subsection is amended by deleting “64A” and inserting instead —

“ 64A(1) ”.

Table

5	section 63(6)	section 64AA(3)
	section 64(4)	section 66(2)(a)(ii)

- (4) Each provision specified in the Table to this subsection is amended by deleting “that section” and inserting instead —

“ section 64A(1) ”.

Table

10	section 63(6)	section 64AA(3)
	section 64(4)	

18. Section 67 amended

- (1) Section 67(3)(a) is deleted and the following paragraph is inserted instead —

“

(a) for a first offence —

- (i) if the person has been previously convicted of an offence against section 64, to a fine of —

- (I) not less than the minimum fine that would apply if the offence were against that section instead of this section and the relevant percentage of alcohol in the person’s blood exceeded 0.14%; and

- (II) not more than 50 PU,

and, in any event, the court convicting that person shall order that the person be disqualified from holding or obtaining a driver’s licence for a period of not less

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- 5 than the minimum period of
disqualification that would apply if the
offence were against that section instead
of this section and the relevant
percentage of alcohol in the person's
blood exceeded 0.14%;
- 10 (ii) in any other case, to a fine of not less
than 16 PU or more than 50 PU; and, in
any event, the court convicting that
person shall order that the person be
disqualified from holding or obtaining a
driver's licence for a period of not less
than 6 months;
- ”.

- 15 (2) Section 67(4) is amended by deleting “section 32 of the
repealed Act or section 63 of this Act” and inserting instead —
“ section 63 ”.

19. Section 67A amended

- 20 Section 67A(4) is amended by deleting “section 32 or 32AA of
the repealed Act, or section 32B(9) of the repealed Act as in
force after the coming into operation of the *Traffic Act
Amendment Act (No. 2) 1968* or section 63, 64 or 67 of this Act”
and inserting instead —
“ section 63, 64, or 67 ”.

25 **20. Section 69 amended**

- After section 69(1) the following subsection is inserted —
“
- 30 (1a) If, instead of a sample of a person's blood being taken
and divided into 2 parts, 2 samples of the person's
blood are taken one immediately after the other, and in
a manner prescribed in the regulations —

- ”

21. Section 75 amended

- ”

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(6) Section 75(6) is amended as follows:

- (a) in paragraph (a), by deleting “section 32 or 32AA of the repealed Act or”;
- (b) in paragraph (c) —
 - (i) by deleting “section 32B(9) of the repealed Act as in force after the coming into operation of the *Traffic Act Amendment Act (No. 2) 1968* or”; and
 - (ii) by deleting “, in either case,”.

22. Section 76 amended

(1) Section 76(1aa) is repealed and the following subsections are inserted instead —

“

(1aa) For the purposes of subsection (1), being prevented under —

- (a) section 42D; or
- (b) regulations made for the purposes of section 44C,

from being granted a driver’s licence does not amount to being disqualified under this or any other Act from holding or obtaining a driver’s licence.

(1ab) To the extent that anything in this section may be inconsistent with anything in Part IVA or regulations made for the purposes of that Part, this section prevails.

(1ac) An extraordinary licence cannot authorise a person to drive at any time while the person is disqualified from holding or obtaining a driver’s licence —

- (a) under Part VIA; or

(b) because of a licence suspension order under the
Fines, Penalties and Infringement Notices
Enforcement Act 1994,

5 and an application for an order directing that a person
be granted an extraordinary licence cannot be made,
received or heard under subsection (1) while the person
is disqualified as described in paragraph (a) or (b).

10 (1ad) In the case of a licence suspension order,
subsection (1ac) has effect whether or not the
disqualification under the order is concurrent with any
other disqualification from holding or obtaining a
driver's licence.

”.

15 (2) Section 76(1a)(b) is amended by deleting “section 32AA of the
repealed Act, or section 32B(9) of the repealed Act as in force
after the coming into operation of the *Traffic Amendment Act*
(No. 2) 1968 or”.

 (3) Section 76(3) is amended by deleting “under this section” after
“extraordinary licence”.

20 (4) Section 76(3a) is amended by deleting “driver's” after
“extraordinary”.

 (5) Section 76(5)(a) is amended by deleting “under this section”
after “extraordinary licence”.

25 (6) Section 76(5)(a)(i) is amended by deleting “section 42(2)” and
inserting instead —

“

regulations under Part IVA about
applying for a driver's licence

”.

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(7) After section 76(6) the following subsection is inserted —

“

(6a) If there is no longer any disqualification referred to in subsection (1) still in effect, any extraordinary licence ceases to have effect despite subsections (3) and (6).

”.

(8) Section 76(9)(b) is amended as follows:

(a) by deleting subparagraph (iii) and inserting the following subparagraph instead —

“

(iii) is no longer capable of driving as authorised by the licence;

”;

(b) in subparagraph (v), by deleting “State or in a Territory” and inserting instead —

“ jurisdiction ”.

(9) Section 76 is amended by deleting “issue”, and words deriving from it, and replacing them as shown in the Table to this subsection.

Table

where	what is deleted	what replaces it
section 76(1)	“issue”	“grant”
section 76(3)	“issue”	“grant”
section 76(3)	“issued”	“granted”
section 76(3a)	“issue”	“grant”
section 76(5)(a)	“issue”	“grant”
section 76(5)(a)(i)	“issued”	“granted”
section 76(5)(b)	“issuing”	“granting”
section 76(6)	“issued”	“granted”
section 76(7)(a)	“issued”	“granted”
section 76(7)(b)	“issued”	“granted”
section 76(8)(a)	“issued”	“granted”
section 76(8)(b)	“issued”	“granted”

23. Section 77 amended

Section 77(1) is amended as follows:

- 5 (a) by deleting “to whom an extraordinary licence has been
 issued pursuant to the provisions of section 76” and
 inserting instead —
 “ who has an extraordinary licence ”;
- (b) by deleting paragraph (b) and inserting the following
 paragraph instead —
10 “
 (b) other than as authorised by the licence;
 ”.

24. Section 78 amended

Section 78(2) is repealed and the following subsection is
inserted instead —

- 15 “
 (2) An application under subsection (1) is made —
 (a) if the disqualification was imposed by the
 Supreme Court, to the Supreme Court;
 (b) otherwise, to the District Court.
20 ”.

25. Section 78A amended

Section 78A is amended in the definition of “impounding
offence (driver’s licence)” by deleting all of the definition after
“circumstances in which —” and inserting instead —

- 25 “
 (a) the driver had applied for the grant or
 renewal of a driver’s licence and had been
 refused on a ground involving —
 (i) the driver’s addiction to alcohol or
30 drugs; or

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- (ii) another factor that affects, or is likely to affect, the driver's ability to control a motor vehicle;
 - 5 (b) the driver had held a driver's licence that had been cancelled on a ground described in paragraph (a); or
 - (c) the driver held a driver's licence the operation of which was suspended on a ground described in paragraph (a);
- 10 ".

26. Section 98 amended

Section 98(1a) is repealed and the following subsections are inserted instead —

- “
- 15 (1a) In any prosecution or proceedings for an offence under this Act an averment in the prosecution notice that the alleged offender was, at the time of the alleged offence, a person to whom section 64A applied is to be taken to be proved in the absence of proof to the contrary.
 - 20 (1b) For the purposes of any prosecution or proceedings for an offence under this Act or verifying the accuracy of information provided under Part IVA to another Australian driver licensing authority, the Director General or a person authorised by the Director General
 - 25 may issue a certificate stating that a fact specified in the certificate appears in or is derived from the driver's licence register under Part IVA or another record kept by the Director General under this Act.
 - 30 (1c) A certificate purporting to be issued under subsection (1b) or under a law in force in another jurisdiction that corresponds to that subsection is evidence of any fact stated in the certificate.
- ”.

27. Section 101A inserted

After section 101 the following section is inserted —

“

**101A. Protection of people testing or examining or giving
certain information**

- (1) The protection given by this section is in addition to any protection given by section 101.
- (2) Proceedings for an offence are not to be brought against a person for expressing to the Director General, in good faith, an opinion formed as a result of having carried out a test or examination under this Act.
- (3) An action in tort does not lie against a person, and proceedings for an offence are not to be brought against a person, for reporting to the Director General, in good faith, information that discloses or suggests that —
 - (a) another person is or may be unfit to drive; or
 - (b) it may be dangerous to —
 - (i) allow another person to hold a driver’s licence or learner’s permit;
 - (ii) grant a driver’s licence or learner’s permit to another person; or
 - (iii) vary, or not to vary, another person’s driver’s licence or learner’s permit.

”.

28. Section 102 amended

Section 102(7) is amended by deleting “sections 48, 51(1)(a) and 103” and inserting instead —

“ sections 51(1)(a) and 76(9)(b) ”.

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29. Section 103 repealed

Section 103 is repealed.

30. Sections 103A and 103B repealed

Sections 103A and 103B are repealed.

5 **31. Part VIA inserted**

After Part VI the following Part is inserted —

“

Part VIA — Demerit points

Division 1 — Preliminary

10 **104. Definitions**

In this Part —

“**current demerit points**” means demerit points that have been recorded in the demerit points register and have not expired or been cancelled;

15 “**dealt with by infringement notice**”, when referring to an alleged demerit point offence, means that an infringement notice has been issued for the alleged offence and —

- 20 (a) the matter has been dealt with by paying an amount in accordance with the infringement notice;
- (b) section 26(2) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* requires the matter to be treated, for the purposes of this Part, as having been dealt with by infringement notice; or
- 25 (c) if the infringement notice was issued under a law of another jurisdiction, the matter has been dealt with in a way that the regulations

specify is to be treated, for the purposes of
this Part, as having been dealt with by
infringement notice;

5 **“demerit point action”** means the action described in
 section 104G;

“demerit point offence” means —

- (a) an offence under this Act that the regulations
 prescribe as a demerit point offence in WA;
 or
- 10 (b) an offence under the law of another
 jurisdiction that is specified in the national
 demerit point offence schedule;

“demerit point offence in WA” means an offence
 under this Act that the regulations prescribe as a
15 demerit point offence in WA;

“demerit point registry jurisdiction” for a person
 means the jurisdiction identified by section 104C;

“demerit points register” means the register that
 section 104O requires the Director General to
20 maintain;

“excessive demerit points notice” means an excessive
 demerit points notice under section 104I(1);

“infringement notice” means a notice issued to a
 person —

- 25 (a) under this Act; or
- (b) under a law of another jurisdiction,
 alleging the commission of a demerit point offence
 and offering the person an opportunity, by paying
 an amount of money, to have the matter dealt with
30 out of court;

“national demerit point offence” means —

- (a) an offence under this Act; or

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(b) an offence under the law of another jurisdiction,
that is specified in the national demerit point offence schedule;

5 **“national demerit point offence schedule”** means the national demerit point offence schedule referred to in section 104B;

“section 104J election” means an election under section 104J(1);

10 **“section 104J election period”** means the period for which a section 104J election applies under section 104J(5) and includes the period as reinstated under regulations under section 104K(8)(b).

15 **104A. Demerit point offences in WA**

- (1) The regulations may prescribe an offence under this Act as a demerit point offence in WA, and specify the number of demerit points applying to the offence.
- (2) An offence cannot be a demerit point offence in WA unless it involves the driving or use of a motor vehicle.
- (3) Regulations referred to in subsection (1) may distinguish between offences according to the circumstances in which they are committed.

104B. National demerit point offence schedule

- 25 (1) The regulations may prescribe a national demerit point offence schedule for the purposes of this Act specifying —
- (a) certain offences under this Act; and
- (b) certain offences under the laws of other
- 30 jurisdictions.

- 5 (2) The national demerit point offence schedule —
- (a) cannot specify an offence under this Act unless
 it is a demerit point offence in WA; and
- (b) cannot specify an offence under the law of
 another jurisdiction unless —
- (i) the offence involves the driving or use
 of a motor vehicle; and
- 10 (ii) under a law of that jurisdiction
 corresponding to this Part, points may
 be recorded against a person committing
 that offence who holds an Australian
 driver licence under the law of that
 jurisdiction.
- 15 (3) The number of demerit points applying under this Act
 to an offence under the law of another jurisdiction that
 is a national demerit point offence is the number of
 points applying to that offence under the law of that
 other jurisdiction.
- 20 (4) Regulations referred to in subsection (1) may
 distinguish between offences according to the
 circumstances in which they are committed.

104C. Demerit point registry jurisdiction

- 25 (1) If a person holds a driver's licence or a learner's permit
 under this Act, this State is, for the purposes of this
 Act, the demerit point registry jurisdiction for that
 person.
- 30 (2) If a person holds a licence or other authorisation
 granted under the law of another jurisdiction
 authorising the person to drive a motor vehicle on a
 road, whether or not solely for the purpose of learning
 to drive it ("**another jurisdiction's driving
 authorisation**"), the demerit point registry jurisdiction

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for that person is, for the purposes of this Act, that other jurisdiction.

- 5 (3) If a person holds neither a driver's licence or a learner's permit under this Act (a **"WA driving authorisation"**) nor another jurisdiction's driving authorisation but has previously held a WA driving authorisation or another jurisdiction's driving authorisation, the demerit point registry jurisdiction for that person is, for the purposes of this Act —
- 10 (a) the jurisdiction under the law of which the person previously held one of those authorisations; or
- 15 (b) if paragraph (a) would identify 2 or more jurisdictions, the jurisdiction under the law of which the person most recently held one of those authorisations.
- 20 (4) If this section does not otherwise identify one, and only one, jurisdiction as the demerit point registry jurisdiction for a person, this State is, for the purposes of this Act, the demerit point registry jurisdiction for that person.
- 25 (5) A jurisdiction can be the demerit point registry jurisdiction even though that jurisdiction does not have a law corresponding to this Part under which points may be recorded for offences involving the driving or use of motor vehicles.

Division 2 — Incurring demerit points

104D. Demerit point action after conviction

- 30 (1) Demerit point action is to be taken against a person for whom this State is the demerit point registry jurisdiction if the Director General becomes aware that the person has been convicted of an offence under this

Act or the law of another jurisdiction that is a demerit point offence.

- 5 (2) Demerit point action is to be taken against a person for whom another jurisdiction is the demerit point registry jurisdiction if the Director General becomes aware that the person has been convicted of an offence under this Act that is a demerit point offence.
- 10 (3) If, because of the conviction, the person was disqualified by a court or by operation of law from holding or obtaining a licence, this section does not require demerit point action to be taken.
- 15 (4) For the purposes of subsection (3), disqualification because the person failed to pay a fine imposed for the offence is not to be taken to be because of the conviction.
- (5) For the purposes of subsection (3), a person is to be taken to be disqualified from holding or obtaining a licence during any time for which —
- 20 (a) under the law of this State —
- (i) the person is disqualified from holding or obtaining a driver's licence; or
- (ii) a driver's licence held by the person is suspended;
- or
- 25 (b) under the law of another jurisdiction —
- (i) the person is disqualified from holding or obtaining an Australian driver licence granted under the law of that jurisdiction; or
- 30 (ii) an Australian driver licence granted to that person under the law of that jurisdiction is suspended.

104E. Demerit point action after infringement notice

- 5 (1) Demerit point action is to be taken against a person for whom this State is the demerit point registry jurisdiction if the Director General becomes aware that the person has been dealt with by infringement notice for an alleged offence under this Act or the law of another jurisdiction that is a demerit point offence.
- 10 (2) Demerit point action is to be taken against a person for whom another jurisdiction is the demerit point registry jurisdiction if the Director General becomes aware that the person has been dealt with by infringement notice for an alleged offence under this Act that is a demerit point offence.

104F. No demerit point action against body corporate

- 15 Demerit point action can be taken only against an individual.

104G. What demerit point action is to be taken

- 20 (1) This section describes what is to happen if this Division requires that demerit point action be taken against a person for a demerit point offence.
- 25 (2) Whether or not this State is the demerit point registry jurisdiction for the person, the Director General is to cause the demerit point offence and the number of demerit points that apply to be recorded against that person in the demerit points register.
- 30 (3) If another jurisdiction is the demerit point registry jurisdiction for the person and the offence is a national demerit point offence, the Director General is to provide information about the offence to the Australian driver licensing authority for that jurisdiction as if it had sought that information under section 45.

- 5 (4) If the offence is an offence under this Act that is a national demerit point offence and it appears to the Director General that the person against whom demerit point action is required to be taken usually resides in a jurisdiction other than this State that is not the demerit point registry jurisdiction for the person, the Director General is to provide information about the offence to the Australian driver licensing authority for that jurisdiction as if it had sought the information under
- 10 section 45.
- (5) This section does not prevent the Director General from providing information under section 45 in other circumstances.

Division 3 — Consequences of demerit points

15 **104H. Expiry of demerit points**

At the end of the period of 3 years after the day on which an offence was committed or allegedly committed, any demerit points applying to the offence expire.

20 **104I. Excessive demerit points notice**

- (1) If the number of current demerit points recorded against a person in the demerit points register reaches at least 12, the Director General is to give the person, in accordance with section 104R, an excessive demerit points notice stating —
- 25 (a) the day on which that number of current demerit points was reached;
- (b) the number of current demerit points reached on that day;
- 30 (c) the period of disqualification fixed under subsection (2); and

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- (d) the day on which the period of disqualification will commence if the person cannot, or for any other reason does not, make a section 104J election.
- 5 (2) The period of disqualification to be stated in the notice is —
- (a) for less than 16 points, 3 months;
- (b) for at least 16 but less than 20 points, 4 months;
- (c) for at least 20 points, 5 months,
- 10 and the day on which the period is stated to commence is to be the 28th day after the notice is given or a later day.
- (3) Whether or not the person makes a section 104J election, demerit points recorded against the person in the demerit points register on or before the day on which, according to the notice, the stated number of demerit points was reached are cancelled.
- 15
- (4) If the person cannot, or for any other reason does not, make a section 104J election, the person is disqualified from holding or obtaining a driver's licence for the period of disqualification fixed under subsection (2).
- 20
- (5) Nothing in this section prevents the day on which the period of disqualification commences from being postponed under section 104M.
- (6) Regulations referred to in section 104O(7) may provide for all or some of the demerit points cancelled under subsection (3) to be again recorded against the person.
- 25

104J. Making a section 104J election

- 30 (1) A person who is given an excessive demerit points notice may, unless prevented by subsection (2) from doing so, avoid being disqualified from holding or

obtaining a driver's licence because of the notice by making an election under this section for the year commencing when, having regard to section 104M, the period of disqualification specified in the notice would have commenced.

5

(2) In order to be able to make a section 104J election a person must hold a driver's licence other than a provisional licence.

10

(3) By making a section 104J election the person elects not to commit, during the year for which the election is made —

(a) an offence for which 2 or more demerit points can be recorded under this Part against the person;

15

(b) offences for which a total of 2 or more demerit points can be recorded under this Part against the person;

20

(c) an offence for which the court convicting the person is required by law to disqualify the person from holding or obtaining a driver's licence; or

25

(d) an offence the conviction of which results in the person being disqualified by operation of this Act from holding or obtaining a driver's licence.

30

(4) The election is to be made in writing, in the form approved by the Director General, and given to the Director General within 21 days after the day on which the Director General gave the excessive demerit points notice.

(5) A section 104J election applies for the period ending at the end of the year for which it is made or, if the period ends earlier under this Part, until the earlier end of the period.

104K. Double disqualification after section 104J election

(1) If —

(a) the Director General records in the demerit points register a total of 2 or more demerit points for an offence or offences committed or allegedly committed by a person during a section 104J election period; or

(b) a court convicts a person of an offence committed during a section 104J election period as a result of which conviction —

(i) the court is required by law to disqualify the person from holding or obtaining a driver's licence but the disqualification is not required to be permanent; or

(ii) the person is disqualified by operation of this Act from holding or obtaining a driver's licence,

the Director General is to give the person, in accordance with section 104R, a notice in writing disqualifying the person from holding or obtaining a driver's licence.

(2) If subsection (1)(b) applies, the commencement of the period of disqualification referred to in that paragraph is postponed until the period of disqualification fixed under subsection (4) has ended.

(3) The notice is to state —

(a) if it is given under subsection (1)(a) —

(i) the number of demerit points because of which the notice is given; and

(ii) the day on which each offence to which any of those points relates was committed or allegedly committed;

- 5
- (b) if it is given under subsection (1)(b) —
- (i) the conviction because of which the notice is given; and
- (ii) the day on which the offence of which the person was convicted was committed;
- (c) the period of disqualification fixed under subsection (4) and the day on which that period commences.
- 10
- (4) The period of disqualification to be stated in the notice is to be double the period of disqualification that was stated in the excessive demerit points notice that led to the person making the section 104J election, and any day after the notice under this section is given may be
- 15
- stated as the day on which the period is to commence.
- (5) The person to whom the notice is given is disqualified from holding or obtaining a driver's licence for the period of disqualification stated in the notice.
- (6) Nothing in this section prevents —
- 20
- (a) the commencement of the period of disqualification under a notice under this section from being postponed under section 104M; or
- (b) the commencement of a period of
- 25
- disqualification referred to in subsection (1)(b) from being postponed under section 104N.
- (7) When the notice is given —
- (a) if it is given under subsection (1)(a), demerit points recorded against the person in the demerit points register for the offences specified in the notice are cancelled; and
- 30

- (b) in any case, the period for which the section 104J election applies ends even though the year for which the election was made may not have elapsed.

- 5 (8) Regulations referred to in section 104O(7) —
 - (a) may provide for all or some of the demerit points cancelled under subsection (7)(a) to be again recorded against the person;
 - 10 (b) may provide for the period for which the section 104J election applies to be reinstated.

104L. Permanent disqualification ends section 104J election period

- 15 (1) If, before the end of a person's section 104J election period, a court permanently disqualifies the person from holding or obtaining a driver's licence, the period for which the section 104J election applies ends even though the year for which the election was made may not have elapsed.
- 20 (2) Subsection (1) applies whether or not the disqualification is for an offence committed during a section 104J election period.

104M. Cumulative effect of demerit points disqualification

- 25 (1) If, when the period for which a person is disqualified under this Part from holding or obtaining a driver's licence (the “**disqualification period**”) would otherwise commence —
 - (a) the person is already disqualified from holding or obtaining a driver's licence; or
 - 30 (b) the person has made a section 104J election and the section 104J election period has not ended,
- the commencement of the disqualification period is postponed, and the disqualification under this Part does

not have effect, until the time described in subsection (2) as the postponed commencement time.

- (2) The postponed commencement time is when —
- (a) any disqualification that has already commenced when the disqualification period would otherwise have commenced, or that commences subsequently, has ended; and
 - (b) any section 104J election period that has already commenced when the disqualification period would otherwise have commenced, or that commences subsequently, has ended.
- (3) Postponing the commencement of the disqualification period does not reduce the disqualification period.
- (4) For the purposes of subsections (1) and (2), a person is to be taken to be disqualified from holding or obtaining a driver's licence during any time for which —
- (a) the person is disqualified from holding or obtaining a driver's licence; or
 - (b) a driver's licence held by the person is suspended.

104N. Certain disqualifications after demerit points disqualification or section 104J election

- (1) In this section —
- “demerit period”** means —
- (a) a period for which a person is disqualified under this Part from holding or obtaining a driver's licence; or
 - (b) a section 104J election period relating to a person.

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(2) If —

(a) because of an offence that was not committed during a section 104J election period, a person is disqualified by a court or by operation of this Act, otherwise than under this Part, from holding or obtaining a driver's licence and the disqualification is not permanent; or

(b) a licence suspension order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* disqualifying a person from holding or obtaining a driver's licence,

and the commencement of the period of disqualification, or the taking effect of the licence suspension order, as the case may be, (the “**starting time**”) would occur during a demerit period or at the same time as a demerit period commences, the starting time is, despite any other enactment, postponed until the end of the demerit period.

Division 4 — Administrative and other provisions

104O. Demerit points register

(1) The Director General is required to maintain a demerit points register in accordance with this Act.

(2) The demerit points register is to contain details of —

(a) each person against whom demerit points are recorded under this Act;

(b) each offence for which demerit points are recorded against that person and the day on which the offence was committed or allegedly committed;

(c) the number of demerit points recorded against the person for the offence;

- 5
- (d) the day on which an excessive demerit points notice was given, and the number of demerit points and period of disqualification stated in it;
- (e) the day on which a section 104J election, if any, was received;
- (f) the day on which a notice, if any, disqualifying a person from holding or obtaining a driver's licence was given under section 104K, and the period of disqualification stated in it;
- 10
- (g) the day on which demerit points —
- (i) expire through the passing of time; or
- (ii) are cancelled,
- and the number of points that expire or are cancelled; and
- 15
- (h) anything else prescribed in the regulations.
- (3) If a conviction is quashed, the Director General is to cause any demerit points recorded because of the conviction to be removed from the demerit points register, and they are to be taken to have never been recorded.
- 20
- (4) If, after an alleged offence has been dealt with by infringement notice the Director General is satisfied that —
- (a) the infringement notice has been withdrawn;
- 25
- (b) proceedings under Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the infringement notice have been withdrawn; or
- (c) the matter has come before a court for determination,
- 30

the Director General is to cause any demerit points recorded because the alleged offence has been dealt with by infringement notice to be removed from the

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demerit points register, and they are to be taken to have never been recorded.

- 5
- (5) Subsection (4) does not prevent the points removed from being again recorded if the alleged offender is convicted of the alleged offence.
- (6) Regulations may specify circumstances in which an infringement notice issued under a law of another jurisdiction is to be treated, for the purposes of subsection (4), as having been withdrawn.
- 10
- (7) Regulations may —
- (a) provide for the adjustment of the demerit points register; or
 - (b) make any other provision necessary or convenient to be made,
- 15
- to deal with consequences of subsection (3) or (4) in a case in which, before the demerit points are removed from the demerit points register, anything has been done on the basis that the demerit points were recorded.
- 20
- (8) The Director General must ensure that, when information in the demerit points register about a national demerit point offence recorded against a person for whom this State is not the demerit point registry jurisdiction is altered or removed, notice of the
- 25
- alteration or removal is provided to each Australian driver licensing authority that was provided with information about the offence under section 104G(3) or (4).
- 30
- (9) The Director General must ensure that information contained in the demerit points register that —
- (a) would disclose the name, address, or date of birth of an individual; or

- (b) has commercial sensitivity for the person about whom it is kept,

is not released except as provided by the regulations.

104P. Obtaining Australian driver licence elsewhere

5 If the Director General becomes aware that a person against whom demerit points are recorded in the demerit points register has become the holder of an Australian driver licence granted by the Australian driver licensing authority of another jurisdiction (the
10 **“new licensing jurisdiction”**) and, before the person became the holder of that licence, this State was the demerit point registry jurisdiction for that person under this Act, the Director General is to —

- 15 (a) inform the Australian driver licensing authority of the new licensing jurisdiction of —
 - (i) any current demerit points that are recorded against that person under this Act for a national demerit point offence; and
 - 20 (ii) details of any offence or alleged offence for which any of those points were recorded;
- and
- 25 (b) cause any current demerit points recorded against the person under this Act for a national demerit point offence that is not an offence under this Act to be cancelled.

104Q. Holder of licence in another jurisdiction applying

- 30 (1) When a driver’s licence under this Act is obtained by a person for whom, immediately before the person obtains the licence, another jurisdiction was the demerit point registry jurisdiction (the **“former**

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demerit point registry jurisdiction”), the Director General is to cause to be recorded against the person in the demerit points register —

- 5 (a) any national demerit point offence (as defined in this Act) that —
- (i) immediately before the person obtains the driver’s licence, stands recorded against the person under a law of the former demerit point registry jurisdiction corresponding to this Part; and
- 10 (ii) is not already recorded in the demerit points register;
- and
- 15 (b) demerit points for, and other details of, any offence required by paragraph (a) to be recorded against the person.
- (2) The number of demerit points to be recorded for the offence is the number of points that were recorded against the person for the offence under the law of the former demerit point registry jurisdiction.
- 20 (3) Subsection (1) does not require an offence to be recorded if it was committed or allegedly committed more than 3 years before the day on which the offence would otherwise be required to be recorded in the demerit points register, and section 104H applies also to demerit points for an offence recorded under this section.
- 25

104R. How certain notices are to be given

- 30 (1) This section applies to —
- (a) an excessive demerit points notice; or

- (b) a notice under section 104K disqualifying a person from holding or obtaining a driver's licence.

- (2) The notice is given in accordance with this section if it is given to the person to whom it is addressed either personally or in any other way prescribed in the regulations that ensures that it is received by that person and results in a written record of that person having received the notice.

104S. Regulations about certain transitional matters

Regulations may contain provisions that are necessary or convenient for dealing with —

- (a) matters concerning the transition from the provisions applying before the commencement of section 29 of the *Road Traffic Amendment Act 2005* to the provisions of this Part, or regulations made under this Part, applying after that commencement;
- (b) transitional matters related to this Part that arise from a change in the jurisdiction that is a person's demerit point registry jurisdiction.

104T. Regulations adapting to schemes of other jurisdictions

- (1) Regulations may be made to deal with anomalies arising from a difference between what this Act identifies as a person's demerit point registry jurisdiction and what applies according to a corresponding concept under the law of another jurisdiction.
- (2) Regulations made for that purpose may modify the operation of this Part.

”.

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32. Section 104 repealed

Section 104 is repealed.

33. Section 105 amended

Section 105(b) is amended by deleting “or the repealed Act”.

5 **34. Section 106 amended**

Section 106(4)(a) and (5)(a) are each amended by deleting
“section 49(2)” and inserting instead —
“ section 49(3) ”.

35. Sections 111AA and 111AB inserted and saving

10 (1) Before section 111A, the following sections are inserted —
“

111AA. Power to include areas in the scope of specified regulations

- 15 (1) The Minister may declare that a regulation specified in the declaration applies to a specified area of the State that is open to or used by the public.
- (2) A declaration has effect for the period specified in it unless it is sooner revoked.

20 **111AB. Power to grant exemptions from specified regulations**

- (1) The regulations may provide for the Minister to declare, in writing in accordance with the regulations, that a specified requirement of the regulations does not apply to a specified person or vehicle.
- 25 (2) The regulations may provide for the Director General to grant exemptions from regulations made under section 111(2)(d).

- (3) The regulations may provide for the Commissioner of Main Roads —
- 5 (a) to grant exemptions in respect of vehicles with a gross vehicle mass exceeding 4.5 tonnes from regulations made under section 111(2)(d)(iii) or (viii); and
- (b) to delegate to an officer of the Commissioner or a police officer the power to grant those exemptions.
- 10 (4) In this section —
- “gross vehicle mass”** means the maximum loaded mass of a vehicle —
- (a) as specified by the manufacturer; or
- 15 (b) as specified by the relevant authority if —
- (i) the manufacturer has not specified a maximum loaded mass;
- (ii) the manufacturer cannot be identified; or
- 20 (iii) the vehicle has been modified to the extent that the manufacturer’s specification is no longer appropriate;
- “relevant authority”**, in relation to a vehicle, means —
- 25 (a) if the vehicle has never been licensed or registered but the vehicle is used or is intended to be used in this State — the Director General;
- (b) if the vehicle was last licensed in this State — the Director General; or
- 30 (c) if the vehicle was last licensed or registered in another State or a Territory — the authority in that State or Territory whose

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functions most nearly correspond to those of
the Director General.

”.

- 5 (2) A declaration under section 103A of the *Road Traffic Act 1974*
or regulation under section 103B of that Act made before the
commencement of this section is to have effect after the
commencement of this section as if it was made under
section 111AA or 111AB, as the case requires, of that Act.

Part 3 — Transitional provision

36. Existing demerit points

5

Points currently recorded in respect of a person under section 103 of the *Road Traffic Act 1974* immediately before that section is repealed by section 29, and details of any offence in respect of which the points were recorded, are to be recorded as demerit points against the person in the demerit points register referred to in Part VIA of the *Road Traffic Act 1974* as inserted by section 31.

Part 4 — Consequential amendments to other Acts

Division 1 — *Fines, Penalties and Infringement Notices Enforcement Act 1994*

37. Section 26 amended

- 5 (1) The amendments in this Division are to the *Fines, Penalties and Infringement Notices Enforcement Act 1994**.

[* *Reprinted as at 2 November 2001.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2004, Table 1, p. 167.]*

- 10 (2) Section 26(2) is repealed and the following subsection is inserted instead —

“

- (2) If the alleged offence is under the *Road Traffic Act 1974* —

- 15 (a) the payment of the whole or a part of the modified penalty and associated enforcement fees in relation to a traffic infringement notice before an order to pay or elect is made in respect of the notice; or
- 20 (b) the making of an order to pay or elect in respect of a traffic infringement notice,

25 constitutes a conviction of the alleged offender for the alleged offence for the purposes of section 51(1)(a) of that Act and, for the purposes of Part VIA of that Act, the matter is to be treated as having been dealt with by infringement notice when the payment or order is made.

”.

Division 2 — Motor Vehicle Drivers Instructors Act 1963

38. The Act amended

The amendments in this Division are to the *Motor Vehicle Drivers Instructors Act 1963**.

5 [* Reprinted as at 8 February 2002.
For subsequent amendments see *Western Australian Legislation Information Tables for 2004, Table 1, p. 301.*]

39. Section 3 amended

Section 3 is amended as follows:

- 10 (a) by deleting the definition of “motor vehicle” and inserting instead —

“

“**motor vehicle**” has the same meaning as it has in Part IVA of the *Road Traffic Act 1974*;

15 ”;

- (b) by deleting the definition of “road” and inserting instead —

“

“**road**” has the same meaning as it has in Part IVA of the *Road Traffic Act 1974*;

20 ”.

40. Section 5 amended

- (1) Section 5(1)(a) and (b) are deleted and the following paragraphs are inserted instead —

25 “

- (a) act as a driving instructor in respect of a motor vehicle, unless authorised to do so by a licence or permit held by the person;

(b) advertise, notify or state that the person acts or is willing to act as a driving instructor unless —

(i) the advertisement, notification or statement specifies the kinds of motor vehicle, and the kinds of use of them, for which the person acts or is willing to act as a driving instructor; and

(ii) the person holds a licence or permit authorising the person to act as specified;

”.

(2) Section 5(2) is amended by deleting paragraph (a) and “or” after it and inserting instead —

“

(a) did not hold an appropriate licence or permit; or

”.

(3) Section 5(3) is amended by deleting “Commissioner of Police” and inserting instead —

“ Director General ”.

41. Section 6 amended

Section 6(2) and (3) are repealed and the following subsections are inserted instead —

“

(2) A licence may authorise the holder to act as a driving instructor for any kind of motor vehicle, or kind of use, specified in the licence, or for all kinds of motor vehicles and uses.

(3) If no kind of motor vehicle or use is specified in a licence, the licence authorises the holder to act as a driving instructor for all kinds of motor vehicles and uses.

”.

42. Section 7 amended

- (1) Section 7(3) is amended by deleting paragraph (a) and “and” after it and inserting instead —

“

- 5 (a) of the applicant’s competency for any driving of a kind that the licence would authorise the applicant to teach; and

”.

- (2) Section 7(5) is amended as follows:

- 10 (a) in paragraph (d), by deleting “of the class in respect of which he has applied for a license” and inserting instead —

“ as the licence would authorise ”;

- 15 (b) in paragraph (e), by deleting “of the class in respect of which he has applied for a license” and inserting instead —

“

as persons would be taught by the applicant to do under the licence sought

”.

Division 3 — Road Traffic Amendment Act 1996

43. Section 8 amended

- (1) The amendment in this Division is to the *Road Traffic Amendment Act 1996**.

25 [* Act No. 76 of 1996.]

- (2) Section 8(3) is repealed.

**Division 4 — Road Traffic Amendment (Vehicle Licensing)
Act 2001**

44. The Act amended

5 The amendments in this Division are to the *Road Traffic
Amendment (Vehicle Licensing) Act 2001**.

[* Act No. 28 of 2001.]

45. Section 18 repealed if not commenced

10 Unless it has already come into operation, section 18 of the
Road Traffic Amendment (Vehicle Licensing) Act 2001 is
repealed immediately before section 6 of this Act comes into
operation.

46. Section 19 repealed if not commenced

15 Unless it has already come into operation, section 19 of the
Road Traffic Amendment (Vehicle Licensing) Act 2001 is
repealed immediately before section 7 of this Act comes into
operation.

47. Section 20 repealed if not commenced

20 Unless it has already come into operation, section 20 of the
Road Traffic Amendment (Vehicle Licensing) Act 2001 is
repealed immediately before section 21(2) of this Act comes
into operation.

48. Section 23 amended if not commenced

25 Unless it has already come into operation, section 23 of the
Road Traffic Amendment (Vehicle Licensing) Act 2001 is,
immediately before section 6 of this Act comes into operation,
amended as follows:

- (a) in the Table to subsection (1), by deleting each item
relating to any provision of sections 42 to 76 of the
Road Traffic Act 1974;

- 5
- (b) in the Table to subsection (2), by deleting —
- (i) both items relating to section 5(1) of the *Road Traffic Act 1974*;
 - (ii) each item relating to any provision of sections 42 to 51 of the *Road Traffic Act 1974*;
 - (iii) the items relating to any provision of sections 75 to 77 of the *Road Traffic Act 1974*;
- 10
- (c) in the Table to subsection (3), by deleting the item relating to section 51(5) of the *Road Traffic Act 1974*;
- (d) by repealing subsection (4) and the Table to it.

=====