

Road Traffic Amendment Bill 2005

Explanatory Memorandum

Introduction

The National Driver Licensing Scheme developed in consultation with the States and Territories in accordance with the agreed National Road Transport Commission (NRTC) process is aimed at achieving nationally consistent licensing processes and requirements.

Many of the reforms associated with the introduction of the National Driver Licensing Scheme were introduced in the *Road Traffic Amendment Act 2000*.

This Bill continues this reform process by putting in place the following aspects of the scheme:

- The creation of a National Demerit points register for common offences throughout all jurisdictions;
- A change to the demerit point suspension period and an alternative for licence holders to elect to go on a good behaviour period rather than take the suspension, with double the original demerit point suspension being applied where a person breaches the good behaviour period. Extraordinary licences will not be available to persons on demerit point related suspensions.
- Indemnity for medical practitioners and members of the public who report unsafe or unfit drivers;
- Mutual recognition of various licensing matters including assessments, tests and demerit points;
- It introduces the one person/one licence principle and provides for the requirement to surrender a licence issued in another jurisdiction upon the issue of a Western Australian driver licence;
- Provision for a review of the decisions appeal process; and
- Provision that a disqualification imposed in one jurisdiction apply in all jurisdictions.

Long title

- The long title lists the Acts that are to be amended by this Bill.
- The *Road Traffic Act 1974* (the Act) is being amended to introduce the various National Driver Licensing Scheme policy objectives.
- The *Motor Vehicle Drivers Instructors Act 1963* is being amended to ensure consistency in definitions relating to "motor vehicle" and "road" and also to more accurately specify the types of vehicles a person is licensed to provide instruction in.
- The *Fines, Penalties and Infringement Notices Enforcement Act 1994* is being amended to create a legal status of conviction relating to infringement notices issued pursuant to the Act that are subject to certain fines enforcement action.
- The *Road Traffic Amendment Act 1996* is amended to repeal a provision within that Act that will be superseded by this Bill.
- The *Road Traffic Amendment (Vehicle Licensing) Act 2001* is amended to reflect the repeal of Part IV of the *Road Traffic Act 1974* by this Bill.

Part 1 - Preliminary

Clause 1 Short title

This is the formal clause titling the Bill.

Clause 2 Commencement

As regulations will need to be developed, administrative mechanisms put in place and resources obtained to facilitate the operational application of the new licensing principles it will be necessary to proclaim various parts of the Bill at different times.

Provision has therefore been made for various parts of the Bill to be proclaimed at different times as and when the operational systems are in place.

Clause 3 The Act amended

This formally declares the principal Act being amended.

Clause 4 Section 5 amended

5(1)(a) the term "in control of" is deleted from the definition of "driver" because the term "drive" has now been defined and reference to the term "in control of" is now redundant in the definition of "driver".

5(1)(b) **"driver's licence"** has been amended to remove any reference to a particular class or classes of licence. This has been done because regulations will now define the specific kinds of authorisation to drive that may be conferred by a driver's licence. A "driver's licence" is a licence issued under the *Road Traffic Act 1974*. The definition has also been amended to exclude a "learner's permit" as a licence. This is because a learner's permit does not provide unrestricted driving rights. It only authorises the person to drive for the purposes of undergoing instruction. The term "Australian driver licence" is discussed later and includes licences issued by other jurisdictions. Therefore, where the Act makes reference to a "driver's licence" it does **not** include licences issued in other jurisdictions.

5(1)(c) **"motor vehicle"** has been redefined to create a two tiered definition. The first part defines a motor vehicle only for the purposes of driver licensing and is defined as "a vehicle that is built to be propelled by a motor that forms part of the vehicle". In other words if a person needs an authorisation to drive a motor vehicle, an authorisation is required if what you wish to drive falls within this definition.

The second part of the definition identifies what a motor vehicle is for all other purposes (i.e. vehicle licensing, offences involving the use of motor vehicles etc). This definition has not changed in substance from the repealed definition and 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 assisted pedal cycle".

5(1)(d) The definition of "repealed Act" has been deleted because there are no longer any references to that Act (*Road Traffic Act 1919*) in the current legislation. **"Unrestricted licence"** no longer requires definition because all licences will be unrestricted by default. The use of the term "Probationary licences" will cease to occur. Probationary licences will be referred to as

"Provisional licences". A person will therefore either possess a driver licence or a provisional licence. As stated above a learner's permit is not by definition a driver's licence and will not be treated as such.

- 5(1)(e) **"Australian driver licence"** this is the broader definition of a driver's licence and includes driver licences issued in this State and licences or authorisations to drive issued by other jurisdictions. It does not include authorisations issued by other jurisdictions solely for the purpose of learning to drive (Learner's permits or equivalent from other States and Territories).

"Australian driver licensing authority" means any person or body having the authority to grant an "Australian driver licence". In other words the licensing authorities of other internal States and Territories of Australia (Does not include islands such as Christmas, Cocos and Norfolk).

"Drive" this term was previously not defined with the Act and as a result there has been confusion about what actions actually constitute driving. Drive is now defined as having control over the steering, movement or propulsion of a vehicle and when dealing with animals (horses etc) it means to have control over.

"External licensing authority" means an authority of an external Territory as defined in the *Acts Interpretation Act 1901* of the Commonwealth or the licensing authority of another country.

"Extraordinary licence" These licences are already available to persons via an application to a Court of Petty Sessions and this definition simply clarifies this situation by referring to them as a licence the Director General grants as ordered (by a court) under section 76 of the Act.

"Jurisdiction" As this Bill introduces the concept of one person / one licence many licences will have been issued by different jurisdictions. There is therefore a need to define jurisdiction. It means a State or an internal Territory as defined in the *Acts Interpretation Act 1901* of the Commonwealth. It has been defined in this manner to create national consistency.

"Learner's permit" is a learner's permit under Part IVA Division 3. These have now been defined to provide greater clarity because learner's permits are treated differently to driver licences.

"Provisional licence" To achieve National consistency the term "probationary licence" has been removed and replaced with the term "Provisional licence". Provisional licences are treated differently by certain provisions of the Act (for example mandatory cancellation of the licence upon the conviction of certain offences and reduced alcohol limit for holders of this type of licence and will be created via regulations. A provisional licence is an Australian driver licence that specifies that it is a provisional licence for the purposes of this Act or the law of another jurisdiction under which the licence was granted.

Clause 5 Section 8 amended

- 8(1)(a) In the definition of "offence particulars" reference to section 103 is to be deleted and replaced with "Part IVA". This is because there is a statutory requirement for the Director General and the Commissioner of Police to

exchange certain information relating to drivers and offences. A part of that exchange of information relates to demerit points recorded against a person. Prior to this Bill demerit points were dealt with under section 103, this Bill moves that reference to Part IVA of the Act.

8(1)(b) In the definition of "permit" the words "permit under section 48C" are deleted and replace with "learner's permit". Learner's permits were previously issued under section 48C of the Act. This Bill creates a definition of a learner's permit and references the appropriate part of the Act in that definition, section 48C having been repealed by this Bill.

Clause 6 Part IVA replaced

Part IVA of the Act that deals with the licensing of drivers has been repealed and replaced with a new Part IVA. It is the new Part IVA that creates the new licensing processes aimed at achieving National consistency. This Part is discussed in greater detail later in this document.

Part IVA - Authorisation to drive

Division 1 - Preliminary

Section 41A Definitions

"condition" has been defined to include limitation to provide greater clarity when the term condition is used.

"driver's licence register" is defined as the register referred to in section 42(1)(a)(ii). It is the register of drivers that the Director General is required to keep.

Division 2 - Driver licensing

Section 42 Regulations for driver licensing scheme

Section 42(1) provides that regulations are to be made to provide for a driver licensing scheme where the Director General grants people licences to drive on roads and keeps a register to record information about drivers licences issued under the Act. Regulations are also to provide for the identification of people driving under the authority of a licence issued under this Act. Previously driver licensing was primarily controlled by the Act. This process has now been changed to provide for the administrative issues relating to driver licensing to be dealt with by regulation. By placing these in regulation greater flexibility will be gained. It will allow administrative procedures to be adjusted as and when required to ensure national consistency is maintained.

Subclause 2 provides that whilst this section provides for the making of regulations for driver licensing they do not prevent the making of any other necessary regulations under the general regulation making power contained at section 111 of the Act.

Subclauses 3,4,5, and 6 detail the purposes for which regulations can be made. In accordance with these subclauses regulations can be made for the following purposes:

- 3(a) To classify the different kinds of authorisation to drive that may be conferred by a driver's licence and provide for licences to be classified based on the class or classes of authorisation that the licence confers on the holder.
- 3(b) To grade each class of authorisation to drive based on the driving skills and other requirements to be met before a person can hold that type of authorisation. For example requiring a person to be over 21 years of age and have held a car licence for 4 years before being permitted to hold a licence to drive road trains.
- 3(c) To provide for different endorsements on driver licences. For example endorsements to carry passengers for hire or reward (buses or limousines) or to drive taxis.
- 3(d) To provide for schemes for assessing the competency of people to hold driver licences. For example to undergo certain training or attend and pass certain courses prior to the issue of a licence. This is particularly relevant for specialised occupational licences such as taxi drivers.
- 3(e) To provide for different conditions and requirements when learning to drive as opposed to holding a full drivers licence.
- 4(a) To provide for the manner and form in which applications for licences can be made. Application processes may differ for initial issue, renewal or variation of conditions.
- 4(b) To provide for the production of information deemed relevant to the type of application being made. For example, age, address, character references etc.
- 5(a) To provide for the grant or renewal of licences and provisions about the refusal to grant or renew a licence. For example where a person is no longer physically able to drive, has poor eyesight or has committed offences that may have a bearing on them holding a particular class or endorsement.
- 5(b) To provide for the placing of conditions on driver's licences. This is sometimes required where a person has limited eyesight and should only drive during daylight hours or within their local area.
- 5(c) To provide for the granting of provisional licences, formerly known as probationary licences, where restrictions are placed on the licence until the person gains sufficient experience to hold a full licence.
- 5(d) To provide the duration of a driver's licence. In other words, how long the licence will be valid for.
- 5(e) To prescribe provisions dealing with the disqualification of a person from holding a driver's licence and a persons ability or requirement to surrender their licence or for the Director General to cancel, suspend or vary a driver's licence. This is necessary in the interests of public safety where a person is deemed a risk to the community.

- 5(f) To provide for the issue of a licence document, in other words the form the driver's licence document takes.
- 5(g) To provide for the recognition of a licence class that no longer exists but that existed prior to the amendment. Also to provide for a quick way of gaining an authorisation that has ceased to exist because of the amendments.
- 5(h) To provide the circumstances in which a licence must be returned to the Director General and the manner in which it is to be returned.
- 5(i) To create offences for the alteration, destruction or misuse of a driver's licence.
- 6(a) To provide for the Director General to disclose information about a person who has applied for, who holds or has held a driver's licence. This is necessary for enforcing the one licence / one person principle. Without being able to exchange information other licensing agencies would not be able to find out if a person already holds a driver's licence.
- 6(b) To provide for the Director General to be able to waive any of the regulatory requirements relating to the issue of a driver's licence. This may be necessary because of special circumstances of the applicant. For example they may be a refugee and not be able to provide documentary proof of their birth.

Section 42A Director General's licensing functions

This clause creates the duty of the Director General to administer the driver licensing scheme.

Section 42B Certain licences authorise learner driving

This allows for a person who holds an Australian driver's licence to drive as a learner even though the licence does not authorise such driving, provided the regulations specify that the licence authorises the person to the same extent as a learner's permit. This is to address situations where a person has a licence issued in another Australian jurisdiction and the licence class is not an identical equivalent to a WA licence class but does indicate the holder has sufficient knowledge to drive as a learner driver. An example of this is where a person holds a car licence but it is limited to driving vehicles with automatic transmissions only. The regulations may allow them to drive as a learner in a car with a manual transmission, in order to gain sufficient skill to drive manual vehicles of the same type for which the licence is already held.

Section 42C Dishonestly obtained driver's licence

This makes a licence invalid where it has been obtained by making a false declaration or statement to the licensing authority to obtain the licence. It also makes it an offence to possess a licence so obtained unless the person has a lawful authority or excuse to possess the licence. (For example a person may have a lawful excuse if they possess one for training purposes.)

Section 42D Driver's licence not to be granted or renewed in certain circumstances

- (1) This introduces the one person / one licence concept by providing that the Director General may refuse to issue a driver's licence if the person does not reside in WA and they hold any other licence to drive and have not surrendered that licence.
- (2) This provides that the Director General may still issue a licence if the person holds a licence granted by an external licensing authority. This provides flexibility for the Director General in circumstances where the person does not wish to surrender their overseas driver's licence. For example a person on a 2 year work project in WA may wish to retain their home driver licence as they will be returning to their home country. However, they still require a WA licence because they are going to be resident here for 2 years.
- (3) This provides that the Director General may refuse to renew a driver's licence where a person is no longer resident in WA or they hold a licence from another jurisdiction.
- (4) This permits the Director General to issue an extraordinary driver's licence if ordered to by the courts even though the person may hold a licence from another jurisdiction. This is necessary because under the provisions of the Act a person disqualified in WA is entitled to apply for and be granted an extraordinary licence regardless of the place of issue of their regular driver's licence.
- (5) This states that the Director General can refuse to grant or renew a driver's licence for other reasons and is not limited to refusing only because the person already has a licence from another jurisdiction or is not resident in WA. Basically it clarifies that whilst the reasons specified in this section are grounds for refusal to grant a licence they are not the only grounds upon which such a decision can be made. As stated earlier the Director General must also be able to refuse to grant or renew a licence on medical and other public safety grounds.

Section 42E Additional matters to do with identity

- (1) This prevents the Director General from granting or renewing a driver's licence where the applicant has not provided proof of identity and residence. This is to give effect to the one driver / one licence policy and ensure that persons do not obtain multiple licences or obtain them in false names.
- (2) This is to ensure that the persons photograph is an accurate representation of their current appearance and that their signature is current. It is based on the premise that both appearance and handwriting change over time.
- (3) This provides discretionary power to the Director General as to how the photograph and signature will be provided. This is necessary to allow for changes in technology and administrative practices.
- (4) This requires the Director General to destroy photographs or copies of photographs that have not been used within the last 5 years. This is to ensure privacy and correct use of photographs taken for driver licensing purposes.
- (5) This makes it an offence for persons to be in possession of driver's licence photographs unless it is for the purpose of performing a licensing function under this Part. This is to prevent driver's licence photographs being used for reasons other than driver licensing. For example they cannot be used by police for identifying offenders. The appropriate use of these photographs was a key issue when approval was given to use photographic identification on driver's licences. The seriousness of this is reflected in the penalty of 2 years imprisonment for a breach.
- (6) This prevents any person connected with the production of driver's licence documents from copying photographs or signatures or permitting others to do

so if it is not in connection with the administration of this Part. Again this is to ensure security and proper use of this information. The seriousness of this is reflected in the penalty of 2 years imprisonment for a breach.

- (7) **"Destroyed"** is defined as it relates to photographs and signatures as including being damaged so as to be unusable. **"Photograph"** is defined as it applies to this Part as including a negative or an image stored electronically.

Division 3 - Learner's permit

Section 43 Learner's permit

- (1) This empowers the Director General to issue a permit to a person solely for the purposes of learning to drive a motor vehicle on a road.
- (2) This restricts the holder of a learner's permit from driving except when being instructed by an instructor licensed under the *Motor Vehicle Drivers Instructors Act 1963* or when being instructed by a person prescribed by regulations. Regulations will prescribe certain classes of person who can instruct based on various factors including how long they have held the particular class of licence they wish to instruct on.
- (3) This requires the permit to identify any conditions to which the holder is subject when using the permit.
- (4) This provides that a permit shall only be valid for 12 months and can be cancelled by the Director General by giving notice in writing to the permit holder.
- (5) This provides for regulations to be made in relation to learner's permits including regulations relating to minimum age a person must be to hold a permit. It does allow for the Director General to waive these provisions if denying the person a permit would cause undue hardship or inconvenience to the person.

Division 4 - Other matters about driver authorisations

Section 44 Authorisation to drive with a driver's licence

- (1) This provides that regulations can be made permitting motor vehicles to be driven either generally or in prescribed circumstances without the driver holding a driver's licence. This provision is necessary to provide for certain special events such as rallies, where vehicles are being driven on roads under special circumstances and the driver does not hold a driver's licence. It also provides flexibility to deal with certain unusual or special purpose vehicles where the usage of those vehicles is strictly limited.
- (2) This provision allows the Director General to permit persons to drive motor vehicles when they do not hold a driver's licence of the kind required. This varies from the above provision in that the Director General can authorise the driving, whereas the above provision allows for regulations to be made to permit driving when a licence is not held. In this provision the discretion lies with the Director General, in the above provision it occurs subject to regulated circumstances.

Section 44A Driving whilst undergoing a driving test

This deals with persons undertaking driving tests and provides that they are authorised as though they actually held the class of licence for which they are being tested. It is necessary because at the time of the test they are not undergoing instruction, and as such the learner's permit is not valid. However, they cannot be granted a licence until they have passed the test. There is therefore a need for the law to provide them with an equivalent authorisation to allow them to lawfully drive whilst being tested.

Section 44B Recognition of authorisation of another jurisdiction

- (1) This requires regulations to be made for the Director General to recognise the driving authorisation of another jurisdiction and any conditions to which that authorisation is subject. But it does not allow any authorisation to apply if it cannot do so in this State. It also allows that the regulations can specify conditions that do not need to be recognised. These regulations are to specify the effect of the recognition of another jurisdiction's authority to drive.
- (2) This provides that when recognising another jurisdiction's authority to drive the regulations cannot permit driving to any greater extent than would exist in the original jurisdiction. In other words it cannot grant or allow greater driving privileges than the original authorisation.
- (3) Regulations can permit a person to be authorised to a greater extent than would exist in the original jurisdiction where a particular limitation is prescribed in regulation as not needing to be recognised or as being unable to apply in this State. This situation may occur where there is a restriction in the home jurisdiction that has no relevance in WA, therefore there would be no need for the restriction to apply. The result would be that the person had greater authorisation in WA than they did in their own jurisdiction.
- (4) **"Another jurisdiction's driving authorisation"** means a licence or 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. This therefore means that learner's permits from other jurisdictions are also recognised.

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

- (1) This creates a power to make regulations recognising various aspects of driver licensing that relate to other jurisdictions as detailed below and the effect they will have for the purposes of the Act.
 - (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).
- (2) In section 44C a reference to a "driver licence" is a reference to any licence or authorisation that is an Australian driver licence.

Section 44D External territories and other countries

This section provides for the making of regulations to enable the Director General to recognise any authorisation or status that a person has under a foreign law about driving and any offence that a person has committed against any foreign law about driving. The regulations are to specify the effect that recognition has on the operation of the Act.

"Foreign law" is defined as the law of an external territory as defined in the *Acts Interpretation Act 1901* of the Commonwealth or the law of another country.

Section 45 Exchange of information between jurisdictions

- (1) To ensure maximum consistency in National driver licensing and to facilitate the one person / one licence principle the Director General may provide to another Australian driver licensing authority any information sought by that authority for the purposes of performing that authority's driver licensing functions.
- (2) Where the Director General provides information to another Australian driver licensing authority about a conviction or an infringement notice that has been issued, he is also to provide information relating to the quashing of that conviction, the withdrawal of the infringement notice or the matter coming before a court for determination. In addition to this he is to provide information relating to any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* and anything else known to him that is likely to be favourable to the person.
- (3) The Director General may seek from another Australian driver licensing authority any information the Director General considers relevant to the performance of his functions under this Act.
- (4) The Director General may for the purpose of performing his functions under this Act use the information obtained from the Australian licensing authority.
- (5) **"Infringement notice"** is defined as having the same meaning it does in Part IVA of the Act.

Section 46 Security of information in driver's licence register

The Director General must ensure that information contained in the driver's licence register that would disclose the name, address, date of birth or any medical details of the person or has any commercial sensitivity is not released except as provided for by the regulations.

Section 47 Regulations may refer to published documents

Regulations made for the Part may adopt the text of any published document specified in the regulations either as that text exists at a particular date or as may be amended from time to time. This would include documents such as nationally agreed medical and fitness standards for drivers. When this is done the text may be adopted wholly or in part or as modified by the regulations.

The adoption of published documents does not have to be made by direct reference in the regulations. It can be via reference within a document that is adopted by the regulations. In other words if the regulations adopt a particular document and that document references or draws upon a third document then that third document is also deemed to have been adopted by the regulations.

Any adopted text will be of no effect unless it can at all reasonable times be inspected or purchased. In other words the public must be able to have access to the text whether by purchasing or viewing it.

Section 48 Transitional regulations

This empowers regulations to be made containing provisions necessary for the transition from the existing Part IVA to the new Part IVA, enabling matters that were dealt with under the previous Part IVA to be recognised.

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

This provides that regulations may be made to allow for the review of decisions made by the Director General under this Part. This is to provide appeal and review processes in respect of administrative decisions made by the Director General.

This clause also maintains the Commissioner of Police's right to be heard in such proceedings. (This ability is currently provided in section 48(11) of the Act).

Clause 7 Section 49 replaced

Section 49 deals with driving whilst unlicensed or disqualified. Whilst the section has been replaced to reflect the new driver licensing regime, its operation remains largely unchanged.

Section 49 Driving while unlicensed or disqualified

- (1) An offence is created where a person drives, employs someone to drive or permits someone to drive a motor vehicle on a road when they are not authorised under Part IVA (they are an unlicensed driver).

The penalty for a first offence (where there are no circumstances of aggravation - suspended, disqualified etc) is 6 penalty units (1 penalty unit = \$50). For a subsequent offence the penalty is doubled to 12 penalty units. (Note: these are maximum penalties).

Where a person is driving under a fines suspension there is a legislated minimum penalty of 4 penalty units and a maximum of 30 penalty units and a discretionary penalty of imprisonment for up to 12 months. The court may also order a further licence disqualification of not more than 3 years.

Where the unlicensed driving occurs under the following circumstances, the person is liable to a penalty of not less than 8 penalty units and a maximum of 40 penalty units, in addition to a discretionary penalty of imprisonment for up to 12 months for a first offence. For a subsequent offence, these penalties are higher, the minimum penalty being not less than 20 penalty units and a maximum of 80 penalty units. There is also a mandatory disqualification of their driver's licence for not less than 9 months and not more than 3 years.

- (a) The person has applied for and been refused an Australian driver licence.
 - (b) The person does not have a valid Australian driver licence but invalidity is not due to it having expired, being surrendered or being subject to fines suspension.
 - (d) The persons Australian driver licence has been suspended (except in the case of a fines suspension).
- (2) Two statutory defences are provided for an offence of driving without a valid licence:
 - (a) Whilst the person did not have a licence the regulations permitted them to drive without a licence. (As discussed earlier the regulations may authorise a person to drive notwithstanding the fact that they do not have a valid drivers licence - see section 44(1)).
 - (b) The person having been subject to a fines suspension had been stopped by police and advised of the fact they were subject to fines suspension and given a permit by police to drive under those circumstances. (See section 49A)
- (3) Police have a specific power to arrest persons who drive whilst unlicensed where:
 - (a) the person has applied for and been refused an Australian driver licence;
 - (b) the person does not have a valid Australian driver licence but the invalidity is not due to it having expired, or being surrendered or being subject to fines suspension;
 - (c) the person's Australian driver licence has been suspended (except for a fines suspension);
 - (d) the persons licence is subject to a fines suspension.
- (5) A person described in 3(a), (b) or (c) above who has made an application to the State Administrative Tribunal in respect of the Director General's decision (to refuse to issue, or cancel or suspend their licence), cannot be arrested by the Police for unlicensed driving unless the matter has been determined by the Tribunal.
- (5) Where an order has been made by a court for the grant of an extraordinary licence and the licence has not yet been granted or the extraordinary licence has expired and not been renewed subsection (3) still applies. That is to say the existence of an order not yet granted or the fact that an extraordinary licence has expired does not limit the police power to arrest contained in 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 time. However if subsection (3)(a) [been refused a licence], (b) [does not have a valid licence] or (c) [licence has been suspended] applies to an offence under subsection (1)(a) the offence is a subsequent offence only if the person has been convicted of a relevant offence. The reason an offence can only be a subsequent offence under subsection (3)(a)(b) or (c) in certain circumstances is because these offences relate to the status of an Australian driver's licence and prior to this Bill there was no such thing at law as an Australian driver's licence. It is therefore necessary to define what offences under the old law equate to previous offences for the purpose of the new

definitions.

- (7) (a) **"Relevant offence"** means an offence of the type described that is committed under the new provisions (after section 7 of this Bill commences - creating the new circumstances in relation to driving while unlicensed or disqualified). In other words if a person commits an offence under the circumstances created by the new legislation then commits the same offence again the earlier offence will be counted as a previous offence.
- (b) Where a person's previous offence was under the old legislation then if that would have been counted as a first or previous offence for the provisions that existed then (section 49(2)(a)(ii) or (iii) or (2)(b)) it shall be counted as a previous offence for the purposes of the new legislation. This is because the new legislation makes reference to an Australian driver's licence and the old legislation did not make such reference. However, the circumstances of the offence were the same and it was merely the nomenclature of the licence that changed.
- (8) This provides that any disqualifications imposed for driving without a valid driver's licence shall be cumulative upon any other suspensions or disqualifications to which the licence may be subject.
- (9) "Penalty enforcement laws" when mentioned in subsection (3)(d) refers to a disqualification from holding or obtaining a driver's licence under sections 19 or 43 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (a fines suspension order). Or any equivalent disqualification or suspension under the law of another jurisdiction.

Clause 8 Section 49A replaced

This section provides police with an authority to caution persons who are detected driving whilst subject to a fines enforcement and who were not aware they were subject to the suspension. In essence the content of the section has not changed however, it has been reworded to provide greater clarity.

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

- (1) This section applies where a driver is found by police committing an offence of driving whilst not authorised under Part IVA and the reason they are not authorised is because of a fines suspension.
- (2) The police officer may decline to charge the person and instead give them a caution if the police officer suspects on reasonable grounds that at the time the driver did not know they were subject to a fines suspension and had not previously been cautioned since the fines suspension order had taken effect.
- (3) Any caution issued must be in a prescribed form.
- (4) Where this situation occurs and it is apparent to the police officer that it is not practical for the person to cease driving immediately or that to cease driving immediately would jeopardise the safety of any person, the police officer should include the necessity permit with the caution. For example the person is detected in a remote location and cannot reasonably be expected to stop

driving immediately. Where a caution is not issued the police officer may grant the person the necessity permit.

- (5) **"Necessity permit"** means a permit for the driver to drive by the shortest practicable route to a place specified in the permit.

Clause 9 Section 50 amended

This amendment deletes references to the section of the Act pursuant to which learner's permits are granted and insert the term "learner's permit". These amendments are required because "learners permit" is now defined within the Act and they are now issued pursuant to section 43 and not section 48C.

Clause 10 Section 50A replaced

This section deals with authorisations to drive other than Australian driver licences and in principle operates the same as it did prior to being replaced. It has however been reworded to reflect the new licensing regime.

Section 50A Authorisation other than Australian driver licence

- (1) Where a persons authority to drive depends on a licence granted under the law of an external licensing authority (Which is an external Territory such as Christmas, Cocos and Norfolk Islands or another country) the person is required whilst driving a motor vehicle on a road to carry the official document that is evidence of the authorisation. Where the document is not in English there must be an English language translation verified by a person or body approved by the Director General. The documentation referred to above must be produced to any police officer on request.
- (2) Where a person fails to comply with any condition to which the authorisation is subject that can lawfully be complied with in this State they commit an offence. First offence 8 penalty units - subsequent offence 16 penalty units (these are maximum penalties).

Clause 11 Section 51 amended

Amendments to this section are fundamentally to address the change of name of "probationary licence" to "provisional licence" and to reflect the new statutory references stemming from the earlier amendments in this Bill.

This amendment reflects the above mentioned change in nomenclature.

This new subclause is in essence the same as the one it replaces, it however now makes reference to a provisional licence as opposed to a licence issued on probation.

Section 51(5b) is repealed. This section used to specify that a person was not the holder of a licence if that licence is cancelled or suspended. It is no longer required because the definition of driver's licence assumes the licence authorises a person to drive and if it is subject to a disqualification or suspension then it by default no longer provides that authorisation.

Clause 12 Section 60 amended

Section 60 deals with the offence of reckless driving. This clause repeals section 60(4) which made reference to an equivalent offence under section 31 of the repealed Act for the purposes of determining whether or not the person had previously offended against this section. The repealed Act referred to is the *Traffic Act 1919*. Due to the time that has now elapsed since that Act was repealed there is no longer a need to refer to previous offences under the repealed Act.

Clause 13 Section 61 amended

Section 61 deals with the offence of dangerous driving. Subsection 61(4) is amended by deleting "section 31 or 31A of the repealed Act, or section 59 or 60 of this Act" and inserting instead "section 59, 59A or 60".

Reference to sections 31 and 31A of the repealed Act are to be removed because it is no longer necessary to reference the *Traffic Act 1919*. The addition of the reference to section 59A is necessary to correct an earlier drafting omission. Section 59A creates the offence of "dangerous driving causing bodily harm" and prior to this amendment that offence was not treated as a previous offence where a person was subsequently convicted of "dangerous driving". This meant that a person could be convicted of "dangerous driving" and if they had an earlier conviction for "dangerous driving causing bodily harm" it could not be taken into consideration as a previous dangerous driving offence.

Clause 14 Section 63 amended

Section 63 deals with the offence of driving under the influence of alcohol, etc. Section 63(2)(a) is deleted and a new paragraph (a) is inserted.

This amendment addresses a sentencing inconsistency whereby, a person that has previous convictions for driving with in excess of 0.08% alcohol in their blood (0.08) could be convicted of an offence of driving under the influence of alcohol (DUI) and receive a lesser penalty than if they had committed another 0.08 offence. The reason being that the previously prescribed penalties for DUI did not exceed the penalties for multiple 0.08 convictions.

This clause also removes the reference to the repealed *Traffic Act 1919* as such reference is no longer necessary.

Clause 15 Section 64 amended

Section 64 deals with the offence of driving with a prescribed percentage of alcohol in the blood. This offence is commonly referred to as "excess 0.08". This amendment removes a formatting error by deleting "but < 0.15%" in the table in subsection (2). The reference to less than 0.15% is redundant because a person with a percentage of alcohol equal to or exceeding 0.15% would have committed the offence of DUI as prescribed by section 63 of the Act. This amendment also deletes references to the repealed *Traffic Act 1919* as they are no longer considered necessary.

Clause 16 Section 64AA amended

This section deals with the offence of driving with 0.05% blood alcohol content. It is commonly referred to as "excess 0.05". Subsections (2a) and (2b) have been inserted.

Subsection (2a) clarifies what constitutes a previous 0.05 offence by prescribing that regardless of the percentage of alcohol in the persons blood at the time of the previous offence any offence against this section shall be counted as a previous offence where the person is subsequently convicted of another offence against this section. This was necessary to address the potential anomaly whereby a persons earlier offence may have been a higher reading (0.07% for example) than the current offence (0.06% for example) and an argument may have been mounted claiming that the earlier offence should not be counted as a previous offence because the person has a lesser amount of alcohol in their blood than the previous conviction.

Subsection (2b) causes previous offences of excess 0.08, DUI and refusal of breath or blood test to count as a previous excess 0.05 offence. Prior to this a person with a previous alcohol related driving offence that was not preferred under section 64AA could not be counted. This meant that having earlier convictions for a more serious alcohol driving related offence advantaged a person. This amendment now applies the same principles that apply to other drink driving related offences.

Clause 17 Section 64A amended and related amendments

Section 64A deals with Probationary driver driving with 0.02% blood alcohol content.

- (1) This deletes a reference to exceptions from the 0.02% limit provided in subsection (2) because subsection (2) is replaced.
- (2) Subsection (2) is replaced with "Subsection (1) applies to a person who holds a provisional licence or, if the person were eligible to hold a driver's licence under this Act, would be limited to holding a provisional licence."

This means that where a person has a provisional licence they are subject to a 0.02% limit. If the person does not hold a licence, but if they were to be issued one it would have be provisional they too will be on a 0.02% limit. This prevents the situation occurring where a person without a licence avoids the 0.02% limit because they do not hold a provisional licence.

- (3) This amendment replaces references to section 64A with references to section 64A(1) as it is subsection 64A(1) which creates the relevant offence.
- (4) This amendment creates the correct reference to section 64A(1) in all other sections of the Act where it is mentioned.

Clause 18 Section 67 amended

Section 63 deals with the offence of failure to comply with the requirement as to provision of breath, blood or urine sample for analysis. Section 67(3)(a) is deleted and a new paragraph (a) is inserted.

This amendment addresses a sentencing inconsistency whereby, a person that has previous convictions for driving with in excess of 0.08% alcohol in their blood (0.08) could be convicted of an offence of refusing to provide a sample for analysis and

receive a lesser penalty than if they had committed another 0.08 offence. The reason being that the previously prescribed penalties for failure to provide a sample for analysis did not exceed the penalties for multiple 0.08 convictions.

This clause also removes the reference to the repealed *Traffic Act 1919* as this reference is no longer considered necessary.

Clause 19 Section 67A amended

Section 67A deals with the offence of failure to comply with other requirements made by a member of the Police Force. This amendment deletes references to the repealed *Traffic Act 1919* as these are no longer considered necessary.

Clause 20 Section 69 amended

Section 69 deals with blood analysis and the taking of samples of blood for analysis.

Currently the requirements prescribe the taking of a single sample of blood and separating it into two equal parts (half the contents of the syringe are placed in one container and the other half in another container). Modern blood sampling methods utilise a single needle being inserted into the vein or artery and then separate sealed "vacutainers" being attached to the needle to extract each sample. These "vacutainers" are detached from the needle upon the taking of the sample and a new "vacutainer" is attached for the next sample to be taken. Under these circumstances it is not possible to take the contents of the "vacutainer" and divide it into two equal parts. In practice what will occur is that two samples will be taken, one immediately after the other.

This amendment provides that where two samples are taken one immediately after the other using the method described above each shall be deemed to be a part into which a single sample has been divided. It also provides that the time at which the sample was taken shall be the time at which the first of the two samples began to be taken. This means that whilst two samples are taken, it is done via a single injection and both samples are to be treated as one divided into two parts. (Regulations prescribe the precise method of obtaining a sample of blood and how it is to be treated. Those regulations are to remain unchanged)

It is necessary to prescribe how the time of taking the sample is determined because when making later calculations as to the percentage of alcohol in the blood at the time of driving the time of taking the samples will become relevant.

Clause 21 Section 75 amended

Section 75 deals with notification and effect of disqualification (driver's licence).

- (1) Sections 75(2),(2a),(2b) and (3) are amended by deleting "permit under section 48C" and inserting "learner's permit". This is to reflect the fact that learner's permits are now defined and will be issued pursuant to Regulations and not the Act.
- (2) Section 75(2) is amended by deleting "expiration of the period for which the licence was expressed to be issued or renewed or to extend the period for which the permit is valid or effective beyond the expiration of 12 months from the date of its issue" and inserting "time when it would be due to expire". This has been done to recognise the simplification of the licensing system by

simply making reference to when the licence or permit would expire.

- (3) Section 75(2c)(a) is amended by deleting "driver's licence issued on probation" and inserting "provisional licence". This is necessary because of the change in nomenclature of what used to be called a "probationary licence".
- (4) Section 75(2c)(b) is deleted and the following inserted:
 - "(b) otherwise, includes a reference to an extraordinary licence or any other driver's licence and whether or not it is already suspended."

This amendment simplifies the wording of the section and clarifies the case law position that an extraordinary licence is to be treated as a driver's licence for the purposes of section 75. Therefore where ever the term driver's licence is used in subsections (2),(2a) or (2b) it is to include a driver's licence that is suspended and it is to include an extraordinary licence. The application and intent of the section is not changed in any way.

- (5) Section 75(3) is amended by deleting "under section 76". The reference to section 76 has been removed because the term extraordinary licence has now been defined as a licence granted pursuant to an order under section 76 and any additional reference to section 76 is redundant.
- (6) Section 75(6) is amended to delete any reference to the repealed *Traffic Act 1919* as such reference is no longer considered necessary.

Clause 22 Section 76 amended

Section 76 deals with extraordinary licences.

Section 76(1aa) is repealed and replaced by sections 76(1aa),(1ab),(1ac) and (1ad). The original section 76(1aa) provided that persons could not apply for an extraordinary licence and a court could not hear such an application when a person was subject to a fines suspension. In practice this will still be the case however, the provision has been moved to section 76(1ac) and will be discussed in detail later.

- (1) 76(1aa) provides that where a person is prevented from being granted a driver's licence because they do not meet the requirements of section 42D (not usually resident in WA or holds a licence in another jurisdiction), or they cannot be granted a licence because they do not meet the requirements of 44C (disqualified or suspended in another jurisdiction) then for the purposes of being eligible for applying for an extraordinary licence they are not deemed to be disqualified in WA. In other words the fact that they are prevented from being granted a licence in WA because they do not reside here, possess a licence from another jurisdiction, are suspended or disqualified in another jurisdiction means they are not entitled to apply for an extraordinary licence. The reason for this is that extraordinary licences are only available to persons disqualified by the law of WA.

76(1ab) clarifies that section 76 overrides anything in Part IVA or regulations made for the purposes of Part IVA.

76(1ac) prevents a person from being able to drive on an extraordinary licence, apply for an extraordinary licence or for a court to hear an application

for an extraordinary licence when the person is subject to a demerit point suspension, a suspension arising from a breach of the "good behaviour" period associated with a demerit point suspension, or when they are subject to a fine suspension.

These restrictions relating to extraordinary licences when a person is subject to a fine suspension does not deviate from the current legislative provisions.

However, the new demerit point provisions will provide for a person to elect a 12 months "good behaviour" period in place of a demerit point suspension. To provide maximum effect of this option an extraordinary licence is no longer available for persons suffering demerit point suspensions or suspension arising from a breach of the "good behaviour" period. The aim being to encourage behaviour modification of offending drivers by allowing them to keep their licence following a demerit point suspension on the condition that they do not incur more than one demerit point in the 12 month "good behaviour" period. To make extraordinary licences available to persons in this situation would greatly reduce the incentive to modify their driving habits.

76(1ad) provides that when a person is subject to a fine suspension the above subsection applies (they cannot apply for or use an extraordinary licence and the court cannot hear an application for one) even if the fine suspension is concurrent with another suspension. This means that where a person holds an extraordinary licence and then becomes subject to a fine suspension, the extraordinary licence will cease to have effect (until the fine suspension is removed). It also means that were a person is subject to a disqualification and at the same time is also subject to a fine suspension they cannot seek an extraordinary licence until the fine suspension is removed.

- (2) Section 76(1ab)(b) is amended to delete references to the repealed *Traffic Act 1919* as they are no longer considered necessary.
- (3) Section 76(3) is amended by deleting "under this section" after "extraordinary licence". This is a redundant expression because an "extraordinary licence" is defined as a licence granted pursuant to an order under that section.
- (4) Section 76(3a) is amended to delete the word "driver's" after "extraordinary". This is to create consistency in reference to an extraordinary licence and not extraordinary driver's licence.
- (5) Section 76(5)(a) is amended to delete the redundant reference "under this section" as detailed above.
- (6) Section 76(5)(a)(i) is amended by deleting "section 42(2)" and inserting "regulations under Part IVA about applying for a driver's licence". This is to reflect the movement of the licensing application process from section 42 of the Act to regulations.
- (7) Section 76(6a) is inserted to clarify that when the disqualification that gave rise to the application and grant of the extraordinary licence ceases to have effect (the disqualification expires) the extraordinary licence is no longer valid. This is the case even if it has been renewed by the Director General. This is to prevent a person from continuing to drive on an extraordinary licence for subsequent disqualifications that take effect after the granting of the extraordinary licence. Without this provision a person could be granted an

extraordinary licence for an offence that gave rise to a disqualification. Incur another disqualification cumulative to the first (which means the disqualification will not start to "run" until the first one ends) and simply continue to drive on the extraordinary licence when the first disqualification ends and the second one takes over. This would mean a person had effectively gained an extraordinary licence for a disqualification without applying to a court for the licence.

- (8) Section 76(9)(b)(iii) amended by deleting paragraph (iii) and inserting:

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

This is to reflect the new definition of "drive". Previously paragraph (iii) made reference to no longer being capable of controlling the vehicle. This is now redundant because the definition of drive has been inserted into the Act.

- (9) The terms issue, issued and issuing are no longer used in the Act. They have been replaced with the terms grant, granted and granting. The table in subclause (9) details where the old term is to be replaced with the new term.

Clause 23 Section 77 amended

Section 77 deals with penalties for contravening conditions applying to an extraordinary licence

Section 77(1) is amended by deleting "to whom an extraordinary licence has been issued pursuant to the provisions of section 76" and replacing it with "who has an extraordinary licence", because section 77(1)(b) is deleted and replaced with the term "other than as authorised by the licence." These amendments do not affect the intent or operation of this section it merely addresses a change in terminology.

Clause 24 Section 78 amended

Section 78 of the Act currently provides that where a person is disqualified from holding or obtaining a drivers licence for a period of more than 3 years, they can, after a specified amount of time has passed, apply to a Court for the removal of the disqualification. Section 78(2) provides that where the initial disqualification was imposed by the Supreme Court, then the application for removal must be to the Supreme Court. Otherwise, applications are to be brought before the District Court.

The amendments re-word, but do not change the meaning or effect of this sub section.

Clause 25 Section 78A amended

Section 78A deals with the impounding and confiscation of vehicles for driving offences.

Under the Act, a Police Officer may impound a vehicle for 48 hours if the officer reasonably suspects that the driver has committed an impounding offence (drivers licence). The definition of "impounding offence (driver's licence)" contains references to section 48 of the Act that will be repealed. The definition is amended to provide that such an offence occurs where a person drives a motor vehicle when not authorized to do so under Part IV, in circumstances where:

- (a) the driver had applied for a licence or renewal of a licence and was refused on the basis of an addiction to alcohol or drugs or other factor affecting their ability to control a vehicle; or
- (b) the driver's licence had been cancelled or suspended for one of these reasons.

Clause 26 Section 98 amended

Section 98 deals with proof of certain matters.

In prosecutions for offences against the Act there are certain things that are deemed proven in the absence of evidence to the contrary. Section 98(1a) provided that where it was stated in a complaint (issued in accordance with the *Justices Act*) that a person did not hold a valid driver's licence or had never held a valid driver's licence then it was deemed to be correct unless the contrary was proven. This Bill introduces the power of the Director General to issue a certificate certifying the existence of any facts contained in the driver's licence register. It also provides that where a similar notice is issued by another jurisdiction it is deemed to be proof of the existence of facts contained in the register of that jurisdiction. As such there is no longer a need for the fact to be declared in the complaint because it can now be dealt with by the presentation of a certificate to the court.

The other subsection added to section 98 provides that where a person is limited by law to a blood alcohol content of less than 0.02%, an averment (declaration) in the complaint that the person was so restricted is deemed to be proof in the absence of proof to the contrary. This is required because various categories of driver are limited to a limit of less than 0.02%. These include persons on extraordinary licences, provisional drivers (the old probationary driver), and recently disqualified drivers. A recently disqualified driver is a driver who has had his licence cancelled in the past 3 years. In order to remove the need to provide detailed proof of the previous cancellations this amendment creates a situation where it is deemed to be the case when so stated unless the contrary is proven.

Clause 27 Section 101A inserted

Section 101A deals with protection of people testing or examining or giving certain information.

Section 101 of the Act already provides protection from liability to the Minister, Director General and officers who carry out functions and duties of the Act when acting in good faith.

The inserted section 101A extends this protection to persons expressing an opinion to the Director General formed as a result of carrying out a test or examination under the provisions of this Act (section 101A(2)). It also provides that an action does not lie in tort against a person who reports to the Director General in good faith information that discloses or suggests a person may be unfit to drive or it may be dangerous (section 101A(3)):

- To allow another person to hold a driver's licence or learner's permit,
- To grant a driver's licence or learner's permit to another person,
- To vary or not to vary, another person's driver's licence or learner's permit.

This protection has been included to address the situation where doctors, family members and friends advise the Director General that a person is in their opinion unfit to drive or hold a driver's licence or learner's permit. In order to maintain public safety it is necessary for such people to be able to report these matters without fear of legal action being taken against them.

Clause 28 Section 102 amended

Section 102 deals with traffic infringement notices.

For the purpose of certain provisions of the Act it is necessary to define infringement notices as being treated as a conviction (notwithstanding the usual premise that an infringement notice does not constitute a conviction).

Reference to sections 48 and 103 are deleted because these sections are no longer relevant. The provisions relating to the refusal, suspension and cancellation of a driver's licence contained in section 48 are being moved to regulation. Section 103 deals with demerit point action and this section has been repealed and a new Part VIA inserted to deal with demerit point action.

Infringements issued for offences detailed in section 51(1)(a) must be deemed convictions to permit provisional licences to be cancelled where a person commits an offence that is dealt with by infringement. These offences include excess 0.05% and careless driving that can be dealt with via infringement.

Infringements are also to be counted as convictions for the purposes of section 76(9)(b). This section deals with the courts power to cancel an extraordinary licence. Where a person holds an extraordinary licence and continues to offend but is only issued infringement notices, the court cannot at present consider these matters when forming an opinion as to the person's suitability to continue to hold an extraordinary licence. It may only consider convictions that have occurred since the granting of the extraordinary licence. This amendment addresses this by deeming all infringements as convictions.

Clause 29 Section 103 repealed

Section 103 deals with demerit point suspensions and recording. This has been replaced with a new Part VIA dealing with demerit point suspensions, exchange of points nationally and is detailed later in this document.

Clause 30 Sections 103A and 103B are repealed

Sections 103A and 103B are repealed and have been replaced by the new Part VIA.

Clause 31 Part VIA inserted

Part VIA - Demerit Points Division 1 - Preliminary

Section 104 Definitions

"Current demerit points" means demerit points that have been recorded in the demerit points register and have not expired or been cancelled.

"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:

- (a) the matter has been dealt with by paying the infringement notice,
- (b) the matter is with the Fines Enforcement Registry and part of the fees and penalties owing have been paid or an order has been made to pay the amounts owing or elect court action,
- (c) an infringement notice issued by another jurisdiction has been dealt with in a manner prescribed in regulations and it is consequently deemed to have been dealt with according to this Part. In other words, the regulations deem it to have been dealt with.

"Demerit point action" means action described in section 104G (which will be described in greater detail later in this document).

"Demerit point offence" means an offence under this Act that is prescribed as a demerit point offence or an offence under the law or another jurisdiction that is specified in the national demerit point schedule.

"Demerit point offence in WA" means an offence under this Act that the regulations prescribe as a demerit point offence in WA.

"Demerit points register" means the register that section 104N requires the Director General to maintain (detailed later in this document).

"Demerit point registry jurisdiction" for a person means the jurisdiction identified by section 104C. Every person holding an Australian driver's licence must fall under the authority of a single jurisdiction. Section 104C (which will be detailed later) prescribes how this determination is made.

"Excessive demerit points notice" means a notice issued under section 104I(1). (Detailed later in this document).

"Infringement notice" means a notice issued to a person under this Act or the law of another jurisdiction alleging the commission of a demerit point offence and offering the person an opportunity to pay an amount of money to have the matter dealt with without going to court.

"National demerit point offence" means an offence under this Act or an offence under the law of another jurisdiction that is specified in the national demerit point offence schedule.

"Section 104J election" means an election under section 104J(1) (this will be detailed later in this document).

"Section 104J election period" means the period for which a section 104J election applies under the section 104J(5) and includes the period as reinstated under section 104K(7)(b) (this will be detailed later in this document).

104A Demerit point offences in WA

- (1) This provides for the making of regulations prescribing offences under this Act as demerit point offences and specifying the number of points applying to

the offence.

- (2) An offence must involve the use or driving of a motor vehicle for it to be a demerit point offence.
- (3) The regulations may distinguish between offences based on the circumstances in which they were committed. For example, speeding may occur on an open road or in a school zone and points allocated may vary based on these differing circumstances.

104B National demerit point offence schedule

- (1) This provides for the making of regulations to prescribe a national demerit point offence schedule. This schedule will specify certain offences under this Act and under the law of another jurisdiction as being national demerit point offences. The purpose being to identify all offences both within WA and Nationally that will attract demerit points.
- (2) There are various restrictions placed on what can constitute a National demerit point offence under the schedule, these are:
 - (a) It cannot specify an offence under this Act unless it is a demerit point offence in WA. In other words, any WA offences on the National schedule must already be demerit point offences in WA.
 - (b) It cannot specify an offence under the law of another jurisdiction unless the offence involves the use or driving of a motor vehicle and under the law of that jurisdiction points may be recorded against a person for committing that offence. In other words, WA cannot allocate points under a National demerit points register if the offence does not already attract points in its own jurisdiction.
- (3) The number of demerit points applying to an offence under another jurisdiction is the number of points allocated to that offence by the original jurisdiction. In other words if an offence from Victoria attracts 3 demerit points in Victoria then it must attract 3 demerit points on the WA National demerit points register.
- (4) Regulations made under subsection (1) may distinguish between offences according to the circumstances in which they are committed.

104C Demerit point registry jurisdiction

- (1) If a person holds a driver's licence or learner's permit under this Act then this State is the demerit point jurisdiction for the purposes of this Act. It is necessary to identify the demerit point registry jurisdiction to ensure that the appropriate authority responsible for recording and tracking demerit points (and taking suspension action when necessary) is known and provided with the appropriate information as and when necessary.
- (2) If a person holds a licence or authorisation to drive in another jurisdiction, whether or not that authorisation is solely for the purposes of learning to drive then the demerit point registry jurisdiction for the person is that other jurisdiction.

- (3) Where a person does not hold a driver's licence or authorisation (including a learner's permit or equivalent) in WA or any other jurisdiction but has previously held one, the jurisdiction in which the previous authorisation was held is the demerit point registry jurisdiction. Where a person has held an authorisation or licence in more than one jurisdiction then the jurisdiction in which it was most recently held is the demerit point registry jurisdiction for that person. In other words, if they do not have a licence then identify where one was most recently held.
- (4) Where it the appropriate demerit point registry jurisdiction cannot be identified using the above principles then WA is to be the demerit point registry jurisdiction. This would be the case where a person has never held a licence in any jurisdiction and does not hold a licence in WA. It is necessary to provide WA as the default jurisdiction in these circumstances to ensure that persons that have never held any form of driving authorisation in Australia are covered by a demerit point jurisdiction.
- (5) A jurisdiction can be a demerit point registry jurisdiction even though that jurisdiction does not have a law corresponding to this Part under which points may be allocated for offences involving the driving or use of a motor vehicle. This provision is necessary because the Northern Territory does not have a demerit point system however, persons who hold Northern Territory licences can still accrue national demerit points when they commit offences in jurisdictions that do allow for the incurring of such points.

Division 2 - Incurring demerit points

104D Demerit point action after conviction

- (1) Demerit point action must 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. Basically this means that where a person is convicted of an offence that is a demerit point offence the Director General must take demerit point action.
- (2) Demerit point action must be taken against a person where they are convicted of an offence under this Act that is a demerit point offence and another jurisdiction is the demerit point registry jurisdiction. This equates to the situation where a person holding a licence in another State commits a demerit point offence in WA, demerit point action must be taken.
- (3) Where the person is convicted by a court and receives a disqualification from holding or obtaining a licence then demerit point action does not have to be taken. This is because where a person is disqualified for a conviction, demerit points will not attach to their licence.
- (4) For the purposes of the above subsection, where a person is disqualified for failing to pay a fine imposed for the offence then the person is not deemed to have been disqualified because of the conviction. This applies where a person receives a fine (but no disqualification) for a demerit point offence but fails to pay the fine and subsequently receive a fine suspension (disqualification) for the non payment of the fine. In this situation the demerit points still apply because the person was not disqualified for the offence, but

for the non payment of the fine.

- (5) A person is taken to be disqualified for the purposes of subsection (3) where under the law of this State the person is disqualified from holding or obtaining a driver's licence or their driver's licence is suspended.

Where under the law of another jurisdiction the person is disqualified from holding or obtaining an Australian driver's licence or their Australian driver's licence is suspended.

104E Demerit point action after infringement notice

- (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.
- (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. This applies to the situation where the person has a licence issued in another State and commits a demerit point offence in WA and are dealt with by infringement notice for that offence.

104F No demerit point action against body corporate

Demerit point action can only be taken against an individual. Companies cannot incur demerit points.

104G What demerit point action is to be taken

- (1) This section describes what action is to happen if demerit point action has to be taken.
- (2) The Director General is to record the demerit point offence and the number of demerit points against that person in the demerit points register whether or not this State is the demerit point registry jurisdiction.
- (3) If another jurisdiction is the demerit point registry jurisdiction and the offence is a national demerit point offence the Director General is to provide information about that offence to the Australian driver licensing authority for that jurisdiction. In other words, where it is a national demerit point offence and the person holds a licence from another jurisdiction then the Director General is to notify that other jurisdiction about the offence.
- (4) Where a person commits an offence against this Act that is a national demerit point offence and it appears to the Director General that the person usually resides in another State that is not the demerit point registry jurisdiction for that person, then the Director General is to provide information about that offence to Australian driver licensing authority for that jurisdiction. In other words, where a person resides in a State that is not the driver's demerit point registry jurisdiction, that State (the one in which the driver lives) must be advised of the offence information.

- (5) Section 45 of the Act provides for the exchange of information between jurisdictions (as already discussed) and section 104G does not limit the operation of section 45.

Division 3 - Consequences of demerit points

104H Expiry of demerit points

Provides demerit points will expire 3 years after the day on which the offence was committed.

104I Excessive demerit points notice

- (1) When the number of points recorded against a person in the demerit points register reaches 12 or more, the Director General is to give the person an excessive demerit points notice (in accordance with section 104Q - which will be explained later in this document). The notice must state the following:
- (a) the day on which that current number of demerit points was reached,
 - (b) the number of demerit points reached on that day,
 - (c) the period of disqualification (fixed by subsection (2)),
 - (d) the day on which the period of disqualification will commence (if the person does not make or cannot make an election to serve period of good behaviour in place of a disqualification - such election being made under section 104J).
- (2) The period of disqualification stated in the notice must be:
- (i) for less than 16 points, 3 months,
 - (ii) for at least 16 points but less than 20, 4 months,
 - (ii) for at least 20 points, 5 months,
- and the period of disqualification must be stated as commencing on the 28th day after the notice is given or at a later day (it must not commence less than 28 days after the notice is given).
- (3) Whether or not the person elects to take a period of good behaviour in place of the disqualification, all points in the register on or before the day on which the stated points were reached are cancelled. In other words the points covered by the notice are cancelled.
- (4) If the person does not or cannot elect to take a good behaviour period in place of the disqualification, then the person is disqualified from holding or obtaining a licence for the period fixed under subsection (2).
- (5) This section does not prevent the day of commencement of the disqualification from being postponed. This is because demerit point disqualification's are cumulative on other disqualification's and therefore may not be able to commence on the originally stated date. This would occur where there was a need to allow an earlier disqualification to finish prior to the commencement of the demerit point disqualification.
- (6) Regulations may be made to again record points that have been cancelled by subsection (3). This is necessary to correct administrative errors, make adjustments where the incorrect number of points may have been allocated

or where the service of a demerit point notice is not effected and the points have to be reinstated until such time as the person can be located.

Section 104J Making a section 104J election

- (1) This allows a person to elect to not be disqualified and instead opt for a period of good behaviour for 12 months which will commence on the day on which the disqualification was due to commence. The specifics of how this will operate is detailed later in this document. A person can only make this election if they hold a WA driver's licence. The period of commencement of the good behaviour period may vary depending on any existing disqualifications that may have to be served first. This is because demerit point disqualifications are cumulative on any existing disqualification.
- (2) A person cannot elect a period of good behaviour if they hold a provisional driver's licence.
- (3) When electing the period of good behaviour the person agrees that they will not commit an offence for which 2 or more points can be recorded or a total of two or more points can be recorded. And that they will not commit an offence that carries a mandatory period of disqualification. In other words they agree to not accrue more than 1 point over the 12 month period or commit an offence that leads to a driving disqualification.
- (4) The person makes this election in writing to the Director General in a form approved by the Director General within 21 days after the Director General served on the person the excessive demerit points notice.
- (5) The period of the election for good behaviour applies for 1 year after it commences or if the person breaches the good behaviour period by incurring a total of 2 or more demerit points it applies until the person is served with a notice advising them of the breach of the good behaviour period. In other words it lasts for 12 months or until they are advised that they have contravened the conditions of the good behaviour period, whichever is the lesser period.

104K Double disqualification after section 104J election

- (1) If the Director General records 2 or more demerit points in the demerit points register against a person during the period of good behaviour elected to be served under section 104J. Or the person is convicted and disqualified from driving (such disqualification not being a permanent disqualification – as this situation is dealt with by section 104KA) by a court for an offence committed during the good behaviour period, the Director General is to serve on the person a notice disqualifying them from holding or obtaining a driver's licence. The disqualification will be double the amount in original excessive demerit point notice. i.e. if the original demerit suspension was to be 3 months and the person elects a good behaviour period and breaches it, their licence will then be disqualified for 6 months.
- (2) Where a person has their good behaviour period cancelled because of a court imposed disqualification for an offence committed during the good behaviour period the double demerit disqualification will operate prior to the court imposed disqualification commencing. In other words, they will have to serve the double demerit disqualification period first (cannot apply for

extraordinary licence during this time). After the double demerit disqualification period has ended the court imposed disqualification will commence and it is at this time they will become eligible to apply for and extraordinary licence. This is to prevent persons from circumventing the effects of breaching a good behaviour period.

- (3) The notice is to state the following:
 - (a) Where the person had incurred 2 or more demerit points during the period good behaviour:
 - (i) the number of demerit points because of which the notice is given;
 - (ii) the day on which each offence which gave rise to those points was committed;
 - (b) where the person has been further disqualified by a court for an offence committed during the period of good behaviour:
 - (i) details of the conviction that gave rise to the issue of the notice;
 - (ii) the day on which the offence was committed;
 - (c) the period of disqualification (double the original amount); and
 - (d) the day on which the disqualification commences.
- (4) The period of disqualification is to be double the original period. The disqualification may be stated in the notice to commence on any day after the notice is served.
- (5) The person is then disqualified from holding or obtaining a driver's licence for the period stated in the notice.
- (6) The day on which the disqualification commences may be postponed because of existing disqualifications (must be cumulative on any current disqualification).
- (7) When the notice is given advising of the breach of the good behaviour period the points accrued that gave rise to the breach are cancelled and the period of good behaviour ceases, even though 12 months may not have elapsed from its commencement.
- (8) Regulations may be made to allow for the reinstatement of the points cancelled under subsection (6) and for the reinstatement of the good behaviour period. This is to allow for administrative errors, errors in point calculation or allocation that may result in a good behaviour period being cancelled when it had not in fact been breached. Under these circumstances the register may be adjusted to return it to how it was prior to the error being made.

104L Permanent disqualification ends 104J election period

- (1) If before the end of a persons elected good behaviour period their driver's licence is permanently disqualified (colloquially referred to as a life disqualification) by a court then the good behaviour period ends even though the full 12 months may not have been completed. This will occur even if the offence that gave rise to the permanent disqualification was committed prior to the commencement of the good behaviour period. This is to ensure that persons that are permanently disqualified by a court are not able to continue

driving on a elected period of good behaviour. In this situation the person is not required to serve the double demerit disqualification period because their licence is already permanently disqualified.

104M Cumulative effect of demerit points disqualification

- (1) Where a disqualification period for excessive demerit points would otherwise commence, it shall be postponed where;
 - (a) the person is already disqualified from holding or obtaining a driver's licence; or
 - (b) the person has elected to take the period of good behaviour.
- (2) The postponed commencement time shall be after any disqualification that is already in place has ended and when any good behaviour time that has commenced has ended. In other words a demerit point suspension cannot commence when another disqualification or good behaviour period is in place.
- (3) The postponement of a disqualification period does not reduce the period for which it has to operate.
- (4) A person is deemed to be disqualified from holding or obtaining a driver's licence when they are so disqualified or their licence is suspended.

104N Effect of demerit points disqualification or section 104J election on other disqualification

- (1) For the purposes of this section "**demerit period**" is defined as the period for which a persons is disqualified from holding or obtaining a driver's licence for an accumulation of demerit points or the period of good behaviour if so elected.
- (2) Where a person is disqualified from holding or obtaining a driver's licence by a court, by the operation of this Act (excluding demerit point suspensions) or by a fine suspension order that disqualification or suspension shall not commence until the end of any demerit period. Therefore, whilst a person is on a demerit point suspension or a period of elected good behaviour relating to a demerit point suspension any other suspensions or disqualification's shall be cumulative on the current demerit point matter.

Division 4 - Administrative and other provisions

104O Demerit points register

- (1) The Director General is required to maintain a demerit points register.
- (2) The demerit points register must contain details of the following:
 - (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;
 - (c) the number of demerit points against the person for the offence;
 - (d) the day on which an excessive demerit points notice was given, the number of demerit points and period of disqualification stated in it;

- (e) the day on which any election for a good behaviour period was made;
 - (f) the day on which any notice was given (if any) disqualifying a person for a breach of the good behaviour period and the period of disqualification stated in that notice;
 - (g) the day on which the demerit points expire through the passing of time or are cancelled; and
 - (h) anything else prescribed by the regulations.
- (3) If a conviction is quashed the Director General is to cause any demerit points recorded against the person to be removed from the register and they are taken to have never been recorded.
- (4) If after an offence has been dealt with by infringement notice the Director General is satisfied that;
- (a) the infringement has been withdrawn;
 - (b) any fine enforcement action has been withdrawn; or
 - (c) the matter has gone before a court for determination.

The Director General is to cause any demerit points recorded against the person to be removed from the demerit points register and they are taken to have never been recorded.

- (5) The above subsection will not prevent any points removed from the demerit points register from being again recorded if the person is subsequently convicted of the offence.
- (6) Regulations may specify when infringements issued under the law of another jurisdiction are to be treated for the purposes of subsection (4) as having been withdrawn. This will apply where an infringement issued in another jurisdiction is withdrawn and the points have to be removed. The Regulations will prescribe how and when this can occur.
- (7) Regulations may be made to provide for the adjustment of the demerit points register or make any other provisions necessary or convenient to deal with the situation where action has been taken based on demerit points in the register that are later removed from the register because of a situation detailed above. For example, a persons licence is disqualified for excessive points and then some of those points are removed from the register and the disqualification should no longer stand.
- (8) Where information is recorded in the demerit points registry for a national demerit point offence and then those details are later altered and WA is not the demerit point registry jurisdiction the Director General is to ensure that every jurisdiction that was originally advised of the demerit point information is advised of the alteration or deletion of that information. This is to ensure that demerit points and information is consistently dealt with across all jurisdictions.
- (9) The Director General must ensure that information contained in the demerit points registry 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. This is to ensure privacy of the person's details and record.

104P Obtaining Australian driver licence elsewhere

Where 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's licence granted by another Australian driver licensing authority and WA was the demerit point registry jurisdiction prior to them obtaining that Australian driver licence the Director General is to inform the Australian driver licensing authority that has issued the person a driver's licence of:

- (a) any current demerit points recorded against the person for a national demerit point offence and the details of the offence that gave rise to those points,
- (b) and cause any points recorded against that person for a national demerit point offence that is not an offence under this Act to be cancelled.

This is done to ensure that all national demerit points and offence details are transferred to the appropriate demerit point registry jurisdiction. Points allocated for national demerit point offences that were not committed in WA must be cancelled because where WA is not the demerit point registry jurisdiction it should only record points for offences committed in WA. Any national points for offences not committed in WA will attach to the person's record in their demerit point registry jurisdiction.

In summary where WA is not the demerit point registry jurisdiction it only records points for offences committed in WA. If it were required to keep national point details for persons outside its jurisdiction it would have to record all national points for all drivers in Australia and this is not the intention of this legislation.

104Q Holder of licence in another jurisdiction applying

- (1) Where a person obtains a driver's licence under this Act and immediately prior to doing so another jurisdiction was the demerit point registry jurisdiction, the Director General is to cause to be recorded in the demerit points register:
 - (a) any national demerit point offences recorded in the register of the former demerit point registry jurisdiction that are not already recorded in the WA register; and
 - (b) the demerit points recorded and other details of any offences covered by paragraph (a) above.
- (2) The number of demerit points recorded for each offence is to be the same as the number of points recorded in the register of the former demerit point registry jurisdiction.
- (3) Points do not have to be transferred where the offence was committed or allegedly committed more than 3 years before the points are required to be recorded in the register. This is because section 104H provides that points are cancelled after 3 years, therefore points over 3 years old should not be transferred over to WA.

104R How certain notices are given

Excessive demerit point notices and notices disqualifying persons who breach their good behaviour period must be given personally or in any way prescribed by regulations ensuring that it is received by the person and results in a written record of the person having received the notice.

104S Regulations about certain transitional matters

This provides that regulations made be made to deal with the transition of the existing demerit point scheme to the national demerit point scheme created by this Bill, including matters that arise from a change in a persons demerit points registry jurisdiction.

104T Regulations adapting to schemes of other jurisdictions

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. Regulations made for this purpose may modify the operation of this Part.

Clause 32 Section 104 repealed

Section 104 relates to offences under the repealed *Traffic Act 1919* that are no longer relevant to this Act it is consequently repealed by this Bill.

Clause 33 Section 105 amended

Section 105 limits the time period for which old offences may be taken into consideration by a court for sentencing purposes. Its effect is that offences over 20 years old may not be taken into consideration. This amendment deletes reference to the repealed *Traffic Act 1919* because any offences committed under that Act would be older than 20 years and not able to be taken into consideration.

Clause 34 Section 106 amended

Section 106 provides that where a court sentencing a person for an offence against section 49 which was committed in circumstances set out in 49(2) (ie. circumstances where the person has been refused a licence, or their licence has been canceled or suspended), orders the release of the person and imposes a community based order or intensive supervision order under the *Sentencing Act 1995* (or in the case of a minor, a youth community based order or an intensive youth supervision order), then the court must impose at least the community service requirement as a primary requirement of the order.

Section 106 is amended to refer to section 49(3) rather than section 49(2) to reflect changes to section 49 as a result of this Bill.

Clause 35 Sections 111AA and 111AB inserted

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

- (1) This clause empowers the Minister to make a declaration that a regulation under the Act may apply to a specific area of the State that is open to or used by the public. This means that regulations can be applied in areas that would not normally be bound by the regulation. For example some areas open to

and used by the public are not technically roads but because of certain events it may be in the public interest to have certain regulations operate in those areas at those times. A vehicle rally or large public event conducted in a public place such as a carpark or reserve would be an example of when it may be appropriate to have regulations enforceable.

- (2) A declaration will have effect for the period specified in it, unless it is revoked sooner.

111AB Power to grant exemptions from specified regulations

- (1) The Minister may by declaration exempt specified persons or vehicles from the requirements of regulations. This may be necessary where due to the remoteness of a particular area certain persons do not have access to the services required to comply with the regulations.
- (2) The Director General may grant exemptions from regulations made under regulation 111(2)(d). This regulation deals with the prescribing of, and equipment fitted to vehicles and the maintenance of that equipment.
- (3) The regulations may provide that the Commissioner of Main Roads may grant exemptions in relation to the mass and dimension limits of vehicles over 4.5 tonne gross vehicle mass and in relation to the securing of loads on vehicles. This is necessary to facilitate the movement of large loads within Western Australia.
- (4) **“Gross vehicle mass”** has been defined the same as currently exists in the *Road Traffic (Vehicle Standards) Regulations 2002* and means the maximum loaded mass of a vehicle —

- (a) as specified by the manufacturer; or
- (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
 - (iii) the vehicle has been modified to the extent that the manufacturer’s specification is no longer appropriate;

“Relevant authority” is defined (because it is referenced in the above definition) the same as currently exists in the *Road Traffic (Vehicle Standards) Regulations 2002* and in relation to a vehicle, means —

- (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
- (c) if the vehicle was last licensed or registered in another State or a Territory — the authority in that State or Territory whose functions most nearly correspond to those of the Director General;

- (5) Declarations made under the existing sections 103A and 103B are to have the same effect as if they were made under the new sections 111AA or 111AB. This is to ensure that declarations made prior to this Bill still have effect.

Part 3 - Transitional provision

Clause 36 Existing demerit points

This clause provides for the transfer of existing demerit points recorded against a person to the new demerit points register and for all offence details in relation to those demerit points to be transferred also.

Part 4 - Consequential amendments to other Acts

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

Clause 37 *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

Section 26(2) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* states when for the purpose of the *Road Traffic Act 1974* an infringement is deemed to be a conviction when being dealt with by the Fines Enforcement Registry. This is necessary because a conviction for certain offences can lead to the cancellation of a provisional (formerly probationary) driver's licence and may also result in the termination of an elected period of good behaviour following the issue of an excessive demerit point notice. This amendment corrects the relevant references in the *Road Traffic Act 1974* that are changed by this Bill.

Division 2 - *Motor Vehicle Drivers Instructors Act 1963*

Clause 38 States the amendments in this Division are to the *Motor Vehicle Drivers Instructors Act 1963*

There has been a shift in terminology in relation to driver's licences and motor vehicles to reference the kind or vehicle or use of the vehicle as opposed to a class of licence or vehicle. The majority of amendments to the *Motor Vehicle Drivers Instructors Act 1963* are in relation to this shift in nomenclature. The other amendments relate to the adoption of the new Parts of the *Road Traffic Act 1974* as inserted by this Bill. **None of the amendments represent any change in the manner in which the driver's instructors licensing scheme operates.**

Clause 39 Section 3 amended

The definition of "motor vehicle" is amended by this Bill in relation to authorisation to drive so it will mean "a vehicle that is built to be propelled by a motor that forms part of the vehicle". The term "motor vehicle" is used extensively in the *Motor Vehicle Drivers Instructors Act 1963* and the term has to be amended to ensure consistency in definitions between Acts.

"Road" is currently defined differently in the *Road Traffic Act 1974* to the *Motor Vehicle Drivers Instructors Act 1963*. This creates a situation where what constitutes a road for the purposes of being taught to drive can be different to what constitutes a road for the operation of a learner's permit. Therefore an instructor may be able to provide instruction in an area that the learner is not permitted to drive. To address

this anomaly the definition of “road” in the *Motor Vehicle Drivers Instructors Act 1963* is being amended to match the definition in the *Road Traffic Act 1974*.

Clause 40 Section 5 Amended

Section 5 deals with Driving instructors being required to have a licence or permit

Section 5(a) provides that a person must hold a valid licence or permit for the appropriate class of vehicle for which they wish to provide instruction. This is deleted and replaced with "a person shall not 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"

This amendment removes a reference to licence class and adopts the national concept of authorisation to drive as reflected in the amendments to the *Road Traffic Act 1974*.

Section 5(b) deals with advertising to act as a driving instructor and makes reference to having to advertise the particular class of vehicle on which you wish to instruct. This is deleted and replaced to remove references to classes of motor vehicle and instead refer to kinds of motor vehicle and kinds of use of motor vehicles. This is to provide for clearer understanding by the public by stating the vehicle type or use rather than relying on a coded class system. (e.g. C class is a motor car or wagon less than 4.5 tonnes Gross Vehicle Mass).

Section 5(2)(a) deals with offences of providing instruction when not holding the correct driving authorisation or licence. It is amended to delete reference to licence classes and instead state “did not hold the appropriate licence or permit”.

Section 5(3) is amended by deleting reference to Commissioner of Police and replacing it with Director General. This is because the Director General is responsible for licensing and controlling driving instructors, as such any convictions against this Act should be forwarded to the appropriate licensing authority. This responsibility was transferred to the Director General some years ago and the Act was not amended accordingly.

Clause 41 Section 6 amended.

Section 6 deals with the nature of the authorisation provided by Motor Vehicle Driving Instructor licences

Sections 6(2) and (3) reference particular classes of motor vehicle and licence. Reference to licence classes has been replaced by a reference to particular types and uses of motor vehicles to provide greater clarity for the public. (e.g. C class is a motor car or wagon less than 4.5 tonnes). This amendment provides for that change.

Clause 42 Section 7 amended

Section 7 deals with application for Motor Vehicle Driving Instructor licences

Sections 7(3)(a) and 7(5) reference particular classes of motor vehicle and licence. Reference to licence classes has been replaced by a reference to particular types and uses of motor vehicles to provide greater clarity for the public. (e.g. C class is a motor car or wagon less than 4.5 tonnes). This amendment provides for that change.

Division 3 - *Road Traffic Amendment Act 1996*

Clause 43 *Road Traffic Amendment Act 1996* amended

Section 8(3) of the *Road Traffic Amendment Act 1996* is repealed. This amendment dealt with the requirement to provide evidence of completion of a course of instruction in relation to driving motor vehicles. This provision is no longer necessary because the licensing of drivers will be dealt with via regulations. Therefore the procedures will no longer be addressed in the Act, and the sub-clause being amended by the 1996 Act is repealed by this Bill.

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

Clause 44 *Road Traffic Amendment (Vehicle Licensing) Act 2001* amended.

Division 4 amends the *Road Traffic Amendment (Vehicle Licensing) Act 2001*.

Clause 45 Section 18 repealed if not commenced

Section 18 makes a minor amendment to the learner's permit provisions of the *Road Traffic Act 1974* however, if the new driver licensing provisions provided for in this Bill are enacted prior to the above mentioned minor amendment the existing learner's permit provisions will cease to exist and as such no amendment will be required.

Clause 46 Section 19 repealed if not commenced

Section 19 makes a minor amendment to the offence provisions of the *Road Traffic Act 1974* relating to driving without a valid licence. However, if the new driver licensing provisions provided for in this Bill are enacted prior to the above mentioned minor amendment the existing offence provisions will cease to exist and as such no amendment will be required.

Clause 47 Section 20 repealed if not commenced

Section 20 makes a minor amendment to the notification and effect of disqualification provisions of the *Road Traffic Act 1974* relating to driving without a valid licence. However, if the new provisions provided for in this Bill are enacted prior to the above mentioned minor amendment the existing provisions will not require amending because the amendment provided for in this Bill will adequately address the situation.

Clause 48 Section 23 amended in not commenced

Section 23 changes the terminology from "issue" to "grant" in relation to driving authorisations. This issue is also addressed in this Bill. Therefore if this Bill is enacted prior to section 23 then there will be no requirement for this amendment (section 23) to occur.