

# **EXPLANATORY MEMORANDUM**

## ***Road Traffic Legislation Amendment (Information) Bill 2010***

The *Road Traffic Act 1974* ("the Act") ensures the safety of road users by regulating authorisation to drive, road user behaviour and the standards to which vehicles must be constructed, maintained and operated.

The Director General is responsible for administering and enforcing the Act's provisions regulating the licensing of drivers and vehicles and for administering a demerit points regime.

The Commissioner of Police is responsible for enforcing the Act's traffic regulation provisions and breaches, detected by members of the Police Force, of the Act's driver and vehicle licensing provisions.

In order to be able to perform their respective functions under the Act, it is necessary for the Director General and the Commissioner of Police to share information with one another.

Presently, section 8 of the Act sets out the information each party must provide to the other.

Section 8 also requires the Director General to provide information to the Registrar of the Fines Enforcement Registry established under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, in order to enable the Registrar to perform the Registrar's functions under that Act. These functions relate to the imposition of driver and vehicle licence suspension orders, arising from the non-payment of fines.

The Commissioner of Main Roads also performs functions under the Act, however is not referred to in section 8. In particular, the Commissioner of Main Roads may exempt heavy vehicles from mass and dimension limits prescribed in regulations made under the Act, via the issue of a permit or a notice published in the *Government Gazette*. In order to carry out these responsibilities, the Commissioner of Main Roads requires access to certain driver and vehicle licence information.

Other entities require access to various kinds of information held by the Director General, in order to enable them to enforce the provisions of other laws. For example, local government authorities are responsible for the enforcement of breaches of local government by-laws regarding parking. It would not be possible for local government authorities to enforce those by-laws without access to information regarding the name and address of the responsible person for an offending vehicle.

These other entities and the Acts they administer and enforce are not expressly referred to in the Act, however the Director General supplies information to them pursuant to regulation 5A of the *Road Traffic (Licensing) Regulations 1975*.

Some doubt has been cast on the sufficiency of regulation 5A to permit the Director General to disclose driver and/or vehicle licensing information to entities other than the Commissioner of Police and the Registrar under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

This has highlighted the absence of a clear and comprehensive framework relating to the disclosure by the Director General of information obtained by the Director General in the course of performing his or her functions under the Act.

This Bill will therefore repeal the Act's existing provisions dealing with the disclosure by the Director General of information held by the Director General and replace them with a far more explicit framework.

The Bill will also amend the Act to provide that the Director General cannot issue an applicant for a learner's permit with that learner's permit unless the applicant has first provided the Director General with a photograph and signature for use on the learner's permit document. This provision mirrors the existing section 42E, which makes the same stipulation in relation to the provision of a photograph and signature for use on a driver's licence document.

Requiring photographs and signatures on these documents better enables enforcement of the Act and reduces the likelihood of a person fraudulently obtaining or using a driver's licence or learner's permit.

In addition, the Bill will amend the Act to require the Director General to disclose photographs, obtained by the Director General for the production of driver licences and learner's permits, to the Commissioner of Police and the Director-General of Security under the *Australian Security Intelligence Organisation Act 1979* (Cth). This requirement is considered necessary to assist the Commissioner of Police to enforce the provisions of this and other Acts and to aid the Australian Security Intelligence Organisation in its endeavours to safeguard national security.

It will also empower the Director General to disclose such photographs to a prescribed law enforcement official, where:

- the Director General considers the disclosure is necessary for the performance of the law enforcement official's functions under a written law; and
- the Commissioner of Police has approved the disclosure.

Finally, the Bill will amend the Act to empower the Director General to disclose a photograph of a deceased person to the administrator or executor of the deceased person's estate.

The Director General is presently unable to comply with requests made by family members of a deceased person for the disclosure on compassionate grounds of a photograph of the deceased that has been provided for use in the production of a driver's licence document. This is because the provisions of the Act prohibit the Director General from disclosing such a photograph and prohibit the possession by any person of such a photograph, other than when it appears on a driver's licence document or when it is held for the purposes of producing a driver's licence document.

Pursuant to the amendment, such a photograph will be treated like any other asset of the deceased. It will be able to be disclosed by the administrator or executor of the deceased's estate in accordance with the wishes, or likely wishes, of the deceased.

## **Part 1 – Preliminary**

### **1. Short title**

This clause will provide that, when this Bill has been passed by the Parliament and has received the Royal Assent, it will be known as the *Road Traffic Legislation Amendment (Information) Act 2010*.

### **2. Commencement**

This clause will set out when the provisions of the Bill will commence operation.

It will provide that different provisions of the Bill may commence operation on different days, via the making of a proclamation or proclamations to this effect.

While it is desired to provide for the commencement of operation of all provisions of the Bill as soon as possible, delayed commencement of some provisions may be necessary in order to enable the Director General to make any administrative arrangements required in readiness for their commencement.

## **Part 2 – Road Traffic Act 1974 amended**

### **3. Act amended**

This clause confirms that the provisions of Part 2 of the Bill will amend the *Road Traffic Act 1974*.

#### **4. Section 5 amended**

Section 5 of the *Road Traffic Act 1974* (“the Act”) contains definitions necessary for interpreting the Act.

Clauses 6 and 10 of the Bill will insert new provisions in the Act setting out when the Director General must or may “disclose” certain information. This clause will therefore provide for the insertion in section 5 of a definition of the term “disclose”, as well as provide terms for the six different categories of information the Director General must or may disclose, as follows.

##### **“demerit points information”**

Under Part VIA of the Act, regulations may be made prescribing certain offences in respect of which the penalty includes the recording against the offender of a number of demerit points. When the number of demerit points recorded against a person reaches a prescribed number, the person will either be subject to period of disqualification or may elect to participate in a “good behaviour period”. Breach of the good behaviour period will result in the imposition of a period of disqualification that is double the length of the period that would have applied if the person had not elected to participate in the good behaviour period.

Part VIA of the Act sets out the demerit points regime. The Director General has various responsibilities under Part VIA, including maintaining a register in which details are recorded of the number of demerit points a person has accumulated and any demerit point action that has been taken in relation to that person.

This clause provides that, whenever the term “demerit points information” is used in the Act, is it to mean information held in the demerit points register referred to in Part VIA of the Act that is maintained by the Director General.

##### **“disclose”**

The term “disclose” is used throughout the provisions of this Bill that deal with the sharing of information by the Director General with other entities, or by the Commissioner of Police with the Director General.

Presently, the term “supply” is used to mean “provide access to or allow access to [information]”. (See section 8(1) of the Act.)

The term “disclose” will replace the term “supply” and is to be taken to mean “to provide, to release and to give access to [information]”.

### **“driver’s licence information”**

Part IVA of the Act empowers the making of regulations setting out a driver licensing scheme. The Director General is responsible for all matters associated with authorisation to drive pursuant to Part IVA and regulations made under it.

This definition articulates that one category of information that the Director General may disclose under certain provisions of this Bill relates to driver’s licences. It is not exhaustive but lists particular examples of the kind of information relating to driver’s licences that are to be considered to be “driver’s licence information”.

### **“instructor information”**

Under the *Motor Vehicle Drivers Instructors Act 1963*, the Director General is responsible for the licensing of persons who wish to act as motor vehicle driver instructors.

This definition articulates that one category of information that the Director General may disclose under certain provisions of this Bill relates to persons who are or have been licensed under the *Motor Vehicle Drivers Instructors Act 1963* or who have applied to be licensed. It is not exhaustive but lists particular examples of the kind of information relating to the licensing of motor vehicle driver instructors that are to be considered “instructor information”.

### **“optional plates information”**

Section 113 of the Act enables the making of regulations setting out a scheme under which the Director General may grant a person the right to display a number plate bearing a series of characters and/or numbers of the person’s choosing (subject to various parameters set by the Director General). Such number plates are known as “optional plates”.

When an optional plate is affixed to a vehicle that is licensed under the Act, detail relating to that optional plate would be considered to be “vehicle licence information” (see the definition below).

Sometimes, a person applies for the right to display a particular optional plate but does not immediately affix the optional plate to a vehicle licensed under the Act. In these cases, information relating to the optional plate will not be considered “vehicle licence information” because the optional plate is not yet associated with a vehicle licence under the Act.

This definition articulates that one category of information that the Director General may disclose under certain provisions of this Bill relates to optional plates that are not yet associated with a vehicle

licence under the Act. It is not exhaustive but lists particular examples of the kind of information relating to optional plates that are to be considered “optional plates information”.

#### **“permit information”**

Section 43 of the Act empowers the Director General to issue learner’s permits to persons seeking authorisation to drive for the purpose of learning to drive.

Section 26(1) of the Act empowers the Director General to grant a person a permit authorising the person to drive or tow an unlicensed vehicle on a road, either for a purpose associated with the licensing of the vehicle or for another purpose prescribed in regulation.

This definition articulates that one category of information that the Director General may disclose under certain provisions of this Bill relates to permits issued by the Director General under section 43 or granted by the Director General under section 26. It is not exhaustive but lists particular examples of the kind of information relating to these permits that are to be considered “permit information”.

#### **“vehicle licence information”**

Part III of the Act requires a vehicle of a kind prescribed in regulation to be licensed. The Director General is responsible for the grant, renewal, transfer, suspension and cancellation of vehicle licences

This definition articulates that one category of information that the Director General may disclose under certain provisions of this Bill relates to vehicle licences that the Director General has granted, renewed, transferred, suspended or cancelled or applications for the grant of a vehicle licence made pursuant to Part III. It is not exhaustive but lists particular examples of the kind of information relating to vehicle licences that are to be considered “vehicle licence information”.

### **5. Section 6B amended**

The Director General has various responsibilities under the *Road Traffic Act 1974* (“the Act”), including the licensing of drivers and vehicles and the administration of a demerit points regime.

Section 6B of the Act enables the Director General to contract with other parties for the purpose of those other parties performing specified functions of the Director General on the Director General’s behalf.

For example, pursuant to section 6B, the Director General contracts with Australia Post in order to enable the payment of driver’s licence and vehicle licence renewals to be made at Australia Post outlets.

This clause will insert a provision in section 6B stipulating what information the Director General may disclose to a party with whom the Director General contracts under section 6B. The disclosure of information under section 6B will relate to that information that the contractor requires access to in order to perform the relevant functions of the Director General.

The Director General will be empowered to disclose “driver’s licence information”, “permit information”, “vehicle licence information”, “optional plates information”, “demerit points information” and “instructor information”, as required, to a contractor.

Please refer to clause 4 for definitions of these terms.

## **6. Section 8 replaced**

The *Road Traffic Act 1974* (“the Act”) ensures the safety of road users by regulating authorisation to drive, road user behaviour and the standards to which vehicles must be constructed, maintained and operated.

The Director General and the Commissioner of Police have certain responsibilities under the Act.

The Director General is responsible for administering and enforcing the Act’s provisions regulating the licensing of drivers and vehicles and for administering a demerit points regime.

The Commissioner of Police is responsible for enforcing the Act’s traffic regulation provisions and breaches, detected by members of the Police Force, of the Act’s driver and vehicle licensing provisions.

In order to be able to perform their respective functions under the Act, it is necessary for the Director General and the Commissioner of Police to share information with one another.

Presently, section 8 sets out details of the information that the Director General and the Commissioner of Police must provide to one another.

Section 8 also requires the Director General to provide information to the Registrar of the Fines Enforcement Registry established under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, in order to enable the Registrar to perform the Registrar’s functions under that Act. These functions relate to the imposition of driver and vehicle licence suspension orders, arising from the non-payment of fines.

The Commissioner of Main Roads also performs functions under the Act, however is not referred to in section 8. In particular, under the *Road Traffic (Vehicle Standards) Regulations 2000*, the Commissioner of Main Roads may exempt heavy vehicles from prescribed mass and

dimension limits via the issue of a permit or a notice published in the *Government Gazette*.

Other entities also require access to various kinds of information held by the Director General, in order to enable them to enforce the provisions of other laws. For example, local government authorities are responsible for the enforcement of breaches of local government by-laws regarding parking. It would not be possible for local government authorities to enforce those by-laws without access to information regarding the name and address of the responsible person for an offending vehicle.

These other entities and the Acts they administer and enforce are not expressly referred to in section 8 or in any other provisions in the Act, however the Director General supplies information to them pursuant to regulation 5A of the *Road Traffic (Licensing) Regulations 1975*.

Some doubt has been cast on the sufficiency of regulation 5A to permit the Director General to disclose driver and/or vehicle licensing information to entities other than the Commissioner of Police and the Registrar under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

This has highlighted the absence of a clear and comprehensive framework relating to the disclosure by the Director General of information obtained by the Director General in the course of performing his or her functions under the Act.

To address this deficiency, this clause will delete existing section 8 and replace it with proposed new sections 8 through 13 inclusive. The proposed new sections will set out expressly those persons or entities to whom the Director General may or must disclose information, and what categories of information the Director General may or must disclose to those persons or entities. (There will be six categories of information that may or must be disclosed, definitions for each of which will be inserted by clause 4 of this Bill.)

### **Proposed section 8**

This section will require the Director General and the Commissioner of Police to disclose particular information to one another. The exchange of this information is necessary to enable the Director General and the Commissioner of Police to perform their functions under the Act and, in the case of the Commissioner of Police, to perform also his or her functions under any other Act.

Section 8(1) contains definitions necessary for interpreting section 8.

The terms “incident information” and “offence information” appear in section 8(4). Section 8(4) will require the Commissioner of Police to



disclose specified information to the Director General, including “incident information” and “offence information”.

In section 8(4), “incident information” will mean information provided by a driver whose vehicle has been involved in an incident resulting in bodily harm or property damage. (Section 56 of the Act requires such a driver to make a report to Police regarding the incident.)

In section 8(4), “offence information” will mean information the Commissioner of Police possesses regarding the traffic and criminal conviction history, if any, of a person who has applied to the Director General for, or who currently holds or has previously held, a “relevant authorisation”.

Wherever the term “relevant authorisation” appears in section 8, it is to be taken to mean authorisation:

- to drive pursuant to a driver’s licence; or
- that permits the use of a vehicle on a road pursuant to a vehicle licence that has been granted in respect of that vehicle; or
- to drive pursuant to a learner’s permit that has been issued for the purpose of learning to drive; or
- that permits the use of an unlicensed vehicle on a road pursuant to a temporary permit that has been issued in respect of that vehicle; or
- to act as a driving instructor pursuant to a licence or permit that has been issued under the *Motor Vehicle Drivers Instructors Act 1963*.

Section 8(2) will require the Director General to disclose to the Commissioner of Police the information specified in paragraphs (a) to (g) inclusive. (Please refer to clause 4 for definitions of the terms used to describe the categories of information at paragraphs (a) to (f) inclusive.)

Section 8(3) will restrict the use by the Commissioner of Police of information disclosed by the Director General under section 8(2), by providing that it may only be used in the performance of the Commissioner’s functions under the Act or under another Act.

Section 8(4) will require the Commissioner of Police to disclose to the Director General the information specified in paragraphs (a) through (d) inclusive.

Section 8(5) will restrict the use by the Director General of information disclosed by the Commissioner of Police under section 8(4), by providing that it may only be used in the performance of the Director General’s functions under the Act or under the *Motor Vehicle Drivers Instructors Act 1963*.

Section 8(6) will provide that neither the Director General nor the Commissioner of Police are to seek to recover any costs incurred in disclosing information to one another pursuant to section 8.

### **Proposed section 9**

The Act imposes various duties upon the Director General, including responsibility for the licensing of drivers and vehicles and the administration of a demerit points regime.

These provisions are based upon national model legislation that has also been enacted in other jurisdictions, in order to bring about a uniform and nationally consistent scheme for the licensing of drivers and vehicles. Driver and vehicle licences issued by the Director General are recognised in other Australian jurisdictions in the same way as driver and vehicle licences issued by licensing authorities in other Australian jurisdictions are recognised by the Director General.

There is a need for the Director General and other licensing authorities to share driver and vehicle information in order to be able to perform their functions.

In addition, existing section 104G of the Act requires the Director General to provide information to other jurisdictions relating to any demerit points that may be recorded against persons who normally reside in those jurisdictions.

Section 9(2) will empower the Director General to disclose to a “relevant authority” the information specified in paragraphs (a) through (f) inclusive. (Please refer to clause 4 for definitions of the terms used to describe these categories of information.)

Section 9(1) will provide that a “relevant authority” means a licensing authority in another Australian jurisdiction or country, or a person, or class of person, prescribed for the purposes of section 9.

Other agencies or entities, which have as their responsibility matters related to driver and/or vehicle licensing, road safety or road transport, may not be relevant authorities pursuant to paragraph (a), (b) or (c) of the definition. The need may arise, however, to disclose information to such an agency or entity, for the benefit of these areas of responsibility.

Proposed section 9(1)(d) will therefore enable regulations to prescribe details of the agency or entity for the purposes of the disclosure of specified information.

For example, Austroads is the association of Australian and New Zealand road transport and traffic authorities. Austroads members comprise the six Australian State and two Australian Territory road transport and traffic authorities, and the Commonwealth Department of

Infrastructure, the Australian Local Government Association and the New Zealand Transport Agency. Austroads' purpose is to contribute to the achievement of improved Australian and New Zealand transport-related outcomes by:

- undertaking nationally strategic research on behalf of Australasian road agencies and communicating the outcomes of that research;
- promoting improved practice by Australasian road agencies;
- facilitating collaboration between road agencies to avoid duplication; and
- promoting harmonisation, consistency and uniformity in road and related operations.

Austroads is not a relevant authority pursuant to paragraph (a), (b) or (c) of the definition contained in section 9(1), however it would be possible to prescribe that Austroads is a relevant authority for the purposes of proposed section 9, where the Director General determines it either necessary or appropriate to disclose specific information to Austroads.

Section 9(3) will provide that the Director General is not to seek to recover any costs incurred in disclosing information to a relevant authority pursuant to section 9.

If information disclosed by the Director General under section 9(2) includes information relating to an offence in respect of which a person has been convicted or in relation to which a person has been given an infringement notice, section 9(4) will require the Director General also to disclose any information concerning the quashing of the conviction or the withdrawal of the infringement notice.

Sections 9(5) and 9(6) will empower the Director General to seek the disclosure of, and to use, information from another licensing authority that the Director General might require in order to perform his or her functions under the Act.

### **Proposed section 10**

Regulations made under the Act set out standards relating to the mass, loading and dimension of vehicles.

Under those regulations, the Commissioner of Main Roads controls heavy vehicle access to the road network and may exempt heavy vehicles from prescribed mass and dimension limits via the issue of a permit or a notice published under the *Government Gazette* where it is appropriate to do so.

In order to enable the Commissioner of Main Roads to perform his or her functions, section 10(1) will require the Director General to disclose to the Commissioner the information specified in paragraphs (a)

through (d) inclusive. (Please refer to clause 4 for definitions of the terms used to describe the categories of information at paragraphs (a) to (c) inclusive.)

Section 10(2) will restrict the use by the Commissioner of information disclosed by the Director General under section 10(1), by providing that it may only be used in the performance of the Commissioner's functions under the Act.

Section 10(3) will provide that the Director General is not to seek to recover any costs incurred in disclosing information to a relevant authority pursuant to section 10(1).

### **Proposed section 11**

The *Fines, Penalties and Infringement Notices Enforcement Act 1994* ("the FPINE Act") provides for the enforcement of the payment of fines and modified penalties, by means including the imposition of driver and vehicle licence suspension orders.

The Fines Enforcement Registry is established under the FPINE Act. That Act also provides for the appointment of a Registrar to perform various functions under the FPINE Act.

Proposed section 11(1) will require the Director General to disclose driver and vehicle licence information to the Registrar, including information relating to temporary permits authorising the use of unlicensed vehicles on roads, in order to enable the Registrar to perform his or her functions under the FPINE Act.

Proposed section 11(2) will restrict the use by the Registrar of information disclosed by the Director General under section 11(1), by providing that it may only be used in the performance of the Registrar's functions under the FPINE Act.

Proposed section 11(3) will provide that the Director General is not to seek to recover any costs incurred in disclosing information to the Registrar pursuant to section 11(1).

### **Proposed section 12**

Other entities require access to various kinds of information held by the Director General, in order to enable them to enforce the provisions of laws other than the *Road Traffic Act 1974*. For example, local government authorities are responsible for the enforcement of breaches of local government by-laws regarding parking. It would not be possible for local government authorities to enforce those by-laws without access to information regarding the name and address of the responsible person for an offending vehicle.

Proposed section 12 will therefore empower the Director General to disclose information to a prescribed person, or class of prescribed person, where that disclosure is in the public interest because it relates to the performance of functions under, or the enforcement of, a written law.

### **Proposed section 13**

Proposed section 13 will empower the Director General to disclose specified information to a person where such disclosure is in the interests of research into a road safety issue or to enable the dissemination of road safety literature.

## **7. Section 42 amended**

Section 42 of the *Road Traffic Act 1974* (“the Act”) empowers the making of regulations prescribing a driver licensing regime.

Section 42(6)(a) empowers the making of regulations relating to the disclosure by the Director General of driver’s licence information.

This clause will delete section 42(6)(a) as the disclosure of driver’s licence information will be covered by the provisions inserted by clauses 5 and 6 of this Bill.

## **8. Section 42E amended**

This clause will amend section 42E of the *Road Traffic Act 1974* (“the Act”) which provides that the Director General cannot grant or renew a driver’s licence unless the applicant for the grant or renewal has provided the Director General with a photograph and signature for use on the driver’s licence document.

Requiring photographs and signatures on driver’s licence documents better enables enforcement of the Act and reduces the likelihood of a person fraudulently obtaining or using a driver’s licence document.

Clause 8(1) is necessary because of clause 9 of this Bill, which will insert a new section 43A in the Act providing that the Director General cannot issue an applicant for a learner’s permit with that learner’s permit unless the applicant has provided the Director General with a photograph and signature for use on the learner’s permit document.

Section 43A will provide that a photograph provided under section 43A may also be used to produce a driver’s licence document relating to a driver’s licence subsequently issued to the applicant, provided the driver’s licence document is produced within a period of 10 years from the date the photograph was provided under section 43A.

Clause 8(1) will therefore amend section 42E to provide that the Director General may grant or renew a driver's licence if the applicant has, within the preceding 10 years, provided the Director General with a photograph and signature pursuant to section 43A of the Act.

Clause 8(2) is necessary because of clause 10 of this Bill, which will insert a new section 44AB in the Act requiring the Director General to disclose a photograph that has been provided under section 42E to the Commissioner of Police and the Director-General of Security under the *Australian Security Intelligence Organisation Act 1999* (Cth).

Clause 8(2) will amend section 42E to provide that a person who possesses a photograph that has been provided under section 42E, pursuant to the provisions of the new section 44AB, will not commit an offence under section 42E(5). Section 42E(5) would otherwise provide that it is an offence for a person to possess such a photograph, unless that photograph appears on a driver's licence document.

Clause 8(3) deals with a technical amendment only. It will delete the existing section 42E(6)(a) and replace it with words that reflect the substance of the existing provision but are drafted in the same manner as mirror provisions in the proposed new section 43A(9)(a).

## **9. Section 43A inserted**

This clause will insert a new section 43A in the *Road Traffic Act 1974* ("the Act"), providing that the Director General cannot issue an applicant for a learner's permit with that learner's permit unless the applicant has first provided the Director General with a photograph and signature for use on the learner's permit document.

Section 43A mirrors the existing section 42E, which makes the same stipulation in relation to the provision of a photograph and signature for use on a driver's licence document.

Requiring photographs and signatures on learner's permit documents and driver's licence documents better enables enforcement of the Act and reduces the likelihood of a person fraudulently obtaining or using a learner's permit or driver's licence.

Proposed section 43A(1) will define what is meant by the terms "destroyed" and "photograph" when they appear in proposed section 43A. They replicate equivalent terms used in existing section 42E relating to driver's licence documents.

Wherever the term "destroyed" is used in section 43A, it is also to be taken to mean damaging the item in a way that makes it unable to be used.

Wherever the term “photograph” is used in section 43A, it is to be taken to include an image that is stored electronically.

Proposed section 43A(2) will require an applicant for a learner’s permit to supply prescribed evidence to the Director General, in support of the application, that will enable the Director General to be assured as to the identity and residential address of the applicant.

Proposed section 43A(3) will prevent the Director General from issuing an applicant for a learner’s permit with that learner’s permit unless the applicant has first provided the Director General with a photograph and signature for use on the learner’s permit document.

Proposed section 43A(4) will require an applicant for a learner’s permit to provide the required photograph and signature in accordance with the Director General’s requirements. The photograph will be captured and stored electronically so as to enable the production of a learner’s permit document in a plasticised card format, similar to the format in which a driver’s licence document is produced.

Proposed section 43A(5) will empower the Director General to use a photograph that has been provided under section 43A to produce subsequent learner’s permit documents or driver’s licence documents relating to the applicant, provided these are produced within a period of 10 years from the date the photograph was first provided.

An individual’s appearance changes with the passage of time. In order to maintain the effectiveness of the use of photographs on learner’s permit documents and driver’s licence documents, the Director General will, from time to time, require the provision of a new (and therefore current) photograph. As a result, section 43A(6) will require the destruction of a photograph that has been provided under section 43A after a period of 10 years following its provision.

To guard against the use of a photograph that has been provided under section 43A for any fraudulent purpose or any purpose other than the production of a learner’s permit document or a driver’s licence document, section 43A(7) will provide that it is an offence to possess such a photograph, unless the photograph appears on a learner’s permit document or a driver’s licence document. In accordance with the severity of such an offence, the proposed penalty is 2 years’ imprisonment.

Section 43A(8) is necessary because of clause 10 of this Bill, which will insert a new section 44AB in the Act requiring the Director General to disclose a photograph that has been provided under section 43A to the Commissioner of Police and the Director-General of Security under the *Australian Security Intelligence Organisation Act 1979* (Cth).

Section 43A(8) will provide that a person who possesses a photograph that has been provided under section 43A, pursuant to the provisions of the new section 44AB, will not commit an offence under section 43A(7).

To guard against the use of a photograph that has been provided under section 43A for any fraudulent purpose or any purpose other than the production of a learner's permit document or a driver's licence document, section 43A(9) will create an offence similar to the offence created by section 43A(7).

Section 43A(9) will create an offence that will apply to persons who have access to photographs that have been provided under section 43A because they are employed in a capacity connected with the production of learner's permit documents or driver's licence documents. Such a person will commit an offence under section 43A(9) if he or she reproduces a photograph or signature that has been provided under section 43A, makes another person do so or allows another person to do so. In accordance with the severity of such an offence, the proposed penalty is 2 years' imprisonment.

#### **10. Part IVA Division 4A inserted**

Section 42E of the *Road Traffic Act 1974* ("the Act") requires an applicant for the grant or renewal of a driver's licence to provide the Director General with a photograph for use in the production of a driver's licence document for the applicant.

Clause 9 of this Bill will insert a new section 43A in the Act that will impose the same requirement upon an applicant for a learner's permit.

Requiring photographs on these documents better enables enforcement of the Act and reduces the likelihood of a person fraudulently obtaining or using a driver's licence or learner's permit.

This clause will insert a new Part IVA Division 4A in the Act that will enable the limited disclosure of photographs provided to the Director General under section 42E or section 43A.

Proposed Part IVA Division 4A contains sections 44AA, 44AB and 44AC.

#### **Proposed section 44AA**

This proposed section contains definitions necessary for interpreting proposed sections 44AB and 44AC.

Whenever the term "ASIO Act" appears, it is to mean the *Australian Security Intelligence Organisation Act 1979* (Cth).



That Act establishes the Australian Security Intelligence Organisation, a federal agency the main role of which is to gather information and produce intelligence that will enable it to warn Government about activities or situations that might endanger Australia's national security.

Under the Act, the term "security" is defined as the protection of Australia's territorial and border integrity from serious threats, and the protection of Australia and its people from espionage, sabotage, politically motivated violence, the promotion of communal violence, attacks on Australia's defence system and acts of foreign intelligence.

That Act also establishes the office of Director-General of Security. Under the Act, the Director-General of Security controls the Australian Security Intelligence Organisation.

Whenever the term "ASIO official" appears, it is to mean either the Director-General of Security or an officer or employee of the Australian Security Intelligence Organisation who has been authorised by the Director-General of Security in relation to the disclosure of photographs under proposed section 44AB.

Whenever the term "Director-General of Security" appears, it is to mean the person who holds the office of Director-General of Security established under the *Australian Security Intelligence Organisation Act 1979*.

A person may be prescribed as a "law enforcement official", or a person of a particular class may be prescribed as a "law enforcement official", in relation to the disclosure of photographs under proposed section 44AB. For example, it may be considered appropriate to provide that a member of the Australian Federal Police is a law enforcement official for the purposes of section 44AB.

Whenever the term "photograph" appears, it is to be taken to mean a photograph that has been provided to the Director General pursuant to section 42E or the proposed new section 43A.

Whenever the term "Commissioner of Police" appears, it is to be taken to mean:

- the Commissioner of Police; or
- a member of the Police Force who has been authorised by the Commissioner of Police in relation to the disclosure of photographs under proposed section 44AB; or
- a person who works for the Western Australia Police in an unsworn, administrative capacity and who has been authorised by the Commissioner of Police in relation to the disclosure of photographs under proposed section 44AB.

## **Proposed section 44AB**

This proposed section will require the Director General to disclose to a police official or an ASIO official photographs that have been provided to him or her under section 42E or proposed section 43A of the Act for the purposes of producing a driver's licence document or a learner's permit document.

(Please refer to proposed section 44AA above for definitions of the terms "police official" and "ASIO official".)

This requirement is considered necessary to assist the Commissioner of Police to enforce the provisions of this and other Acts, to aid the Australian Security Intelligence Organisation in its endeavours to safeguard national security.

Proposed section 44AB will provide that photographs disclosed under this proposed section are to be used for the purposes of the performance of a police official's functions under this or another Act only and for the purposes of the performance of an ASIO official's functions under the *Australian Security Intelligence Act 1979* or another Commonwealth Act only.

The Commissioner of Police has previously advised that the disclosure of photographs would have greatly assisted officers in past situations involving missing persons, hostages and siege conditions.

Proposed section 44AB(3) will empower the Director General to disclose photographs to a person who is a "law enforcement official", where the Director General considers that the photographs are necessary to enable the law enforcement official to perform a function or functions under a written law and the Commissioner of Police has approved of the disclosure.

The Commissioner's prior approval is necessary to ensure that the identity of a person who is a protected witness, pursuant to the *Witness Protection (Western Australia) Act 1996* (WA), will not be jeopardised as a consequence of the disclosure.

Under the *Witness Protection (Western Australia) Act 1996*, the Commissioner is responsible for establishing and maintaining the State Witness Protection Program. The Commissioner's responsibilities include providing assistance and protection to ensure the safety and welfare of witnesses, applying for "new identity orders" for protected witnesses, where appropriate, and maintaining a register of protected witnesses.

## **Proposed section 44AC**

This proposed section will empower the Director General to disclose a photograph that has been provided to him or her under section 42E or proposed section 43A of the Act for the purposes of producing a driver's licence document or a learner's permit document, where the photograph has been provided by a person who has since died.

It will empower the Director General to disclose such a photograph to the administrator or executor of the deceased person's estate.

The inclusion of this section is for compassionate reasons.

Requests have previously been made for the disclosure of photographs in these circumstances, however the provisions of the Act as currently drafted do not empower the Director General to comply with them.

Restrictions on the disclosure of photographs exist in order to safeguard the identity of photographed persons. In circumstances where the photographed person has died, however, and the photograph is sought by a next of kin or another person close to the deceased, it is considered that matters of security are less likely to be an issue and that disclosure of the photograph is appropriate on compassionate grounds.

Under this proposed section, a photograph will be treated like any other asset of the deceased. It will be able to be disclosed by the administrator or executor of the deceased's estate in accordance with the wishes, or likely wishes, of the deceased.

## **11. Sections 45 and 46 deleted**

This clause will provide for the deletion of sections 45 and 46 of the *Road Traffic Act 1974* ("the Act"), as the subject matter of these sections will be covered by the provisions inserted by clauses 5 and 6 of this Bill.

Section 45 deals with the exchange of information between the Director General and driver licensing authorities in other Australian jurisdictions. It empowers the Director General to provide driver licensing information to, and to seek the provision of driver licensing information from, such a driver licensing authority.

Section 46 requires the Director General to ensure that certain information relating to driver's licences is not released, unless the regulations permit that release.

Clauses 5 and 6 of the Bill will amend the Act to require the Director General to disclose information relating to driver's licences to certain

entities and to empower the Director General to disclose such information to other entities.

## **12. Section 103 inserted**

This clause will insert a new section 103 in the *Road Traffic Act 1974* ("the Act").

Under the Act, the Director General is responsible for the licensing of drivers and vehicles and the administration of a demerit points regime.

In the course of the Director General performing his or her functions under the Act, the Director General obtains and holds information, for example, in a driver's licence register, a vehicle licence register or a demerit points register, to enable the on-going performance of the Director General's functions.

This clause will insert a new section 103 in the Act that will apply to any person who is or has been engaged in the performance of functions under this Act, whether that be as an employee, agent or contractor of the Director General, or in any other capacity in which that person was engaged in the performance of functions under the Act.

Such persons have, or may have, access to information obtained and held by the Director General, which access is necessary to enable those persons to perform their functions.

Proposed section 103 will provide that it will be an offence for such a person to record, disclose or use that information unless such an action is done:

- in the course of performing functions under, or enforcing, this Act; or
- because of a requirement under this Act or another written law; or
- with the consent of the person to whom the information relates; or
- in other circumstances that may be prescribed in regulation.

In recognition of the seriousness of the proposed offence, the penalty is to be a maximum fine of 100 PU (\$5,000) or the imposition of a term of imprisonment of up to 12 months' duration.

The proposed offence reflects similar offences that exist with regard to photographs and signatures that must be provided to the Director General for the production of driver's licence documents (section 42E of the Act) and learner's permit documents (proposed section 43A that will be inserted by clause 9 of this Bill).

### **13. Section 104G amended**

Part VIA of the *Road Traffic Act 1974* ("the Act") sets out a demerit points regime. Section 104G, contained in Part VIA, sets out what action the Director General is to take when a person is convicted of, or given an infringement notice relating to, an offence the penalty for which includes the recording of a demerit point or demerit points against the person.

Amongst other matters, section 104G requires the Director General to provide information to other jurisdictions, relating to any demerit points that may be recorded against persons who normally reside in those other jurisdictions.

Sections 104G(3), (4) and (5) currently contain references to section 45, which deals with the exchange of information between the Director General and driver licensing authorities in other Australian jurisdictions.

Clause 11 of this Bill will delete section 45, as it will be replaced by provisions that will be inserted by clauses 5 and 6 of the Bill. For that reason, this clause will replace references in sections 104G(3), (4) and (5) to section 45 with references instead to proposed section 9.

The subject matter of proposed section 9 reflects that of the current section 45.

### **14. Section 104O amended**

Part VIA of the *Road Traffic Act 1974* ("the Act") sets out a demerit points regime. Under section 104O, contained in Part VIA, the Director General is responsible for maintaining a demerit points register in which is to be maintained information relating to any demerit points recorded, and any demerit point action taken, against a person.

This clause will provide for the deletion of section 104O(9), as the subject matter it contains will be covered by the provisions inserted by clauses 5 and 6.

Section 104O(9) provides that the Director General must not disclose information relating to demerit points, except as prescribed in regulation.

Clauses 5 and 6 of the Bill will amend the Act to require the Director General to disclose information relating to demerit points to certain entities and to empower the Director General to disclose such information to other entities.

## 15. Section 107 amended

Section 107 of the *Road Traffic Act 1974* ("the Act") relates to offences committed under the Act and proceedings for those offences.

Section 107(4) provides that in the case of specified offences, there is a time limit of 2 years from the time of commission of an alleged offence for the commencement of prosecution proceedings in relation to the alleged offence.

Under section 21(2) of the *Criminal Procedure Act 2004*, there would otherwise be a time limit of 12 months from the time of commission of the specified offences.

The longer time limit in the case of the specified offences applies either because:

- the offence is of a serious nature but is not specified in the Act to be a crime (where, if it were specified to be a crime, under section 21(1) of the *Criminal Procedure Act 2004*, there would be no time limit for the commencement of prosecution proceedings); or
- given the nature of those offences, which involve fraudulent conduct, alleged breaches may only come to light subsequently or in the course of other proceedings.

This clause will provide that the same time limit will apply in the case of an offence against proposed section 103, which will be inserted by clause 12 of this Bill.

Proposed section 103 will apply to any person who is or has been engaged in the performance of functions under this Act, whether that be as an employee, agent or contractor of the Director General, or in any other capacity in which that person was engaged in the performance of functions under the Act.

Such persons have, or may have, access to information obtained and held by the Director General, which access is necessary to enable those persons to perform their functions.

Proposed section 103 will provide that it will be an offence for such a person to record, disclose or use that information unless such an action is done:

- in the course of performing functions under, or enforcing, this Act; or
- because of a requirement under this Act or another written law; or
- with the consent of the person to whom the information relates; or
- in other circumstances that may be prescribed in regulation.

In recognition of the seriousness of the proposed offence, the penalty is to be a maximum fine of 100 PU (\$5,000) or the imposition of a term of imprisonment of up to 12 months' duration.

The proposed offence is of a serious nature, however it is not to be specified to be a crime. In addition, the nature of the proposed offence is such that alleged breaches may only come to light some time following their commission.

These matters make it appropriate to provide, via this clause, for a time limit of 2 years from the time of commission of an alleged offence for the commencement of prosecution proceedings.

### **Part 3 – *Road Traffic (Administration) Act 2008* amended**

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

This clause provides that all of the provisions of Part 3 of this Bill will amend the *Road Traffic (Administration) Act 2008*.

The *Road Traffic (Administration) Act 2008* has yet to commence operation. It forms part of a suite of legislation for the reform of the *Road Traffic Act 1974* comprising the:

- *Road Traffic (Administration) Act 2008*;
- *Road Traffic (Authorisation to Drive) Act 2008*;
- *Road Traffic (Vehicles) Bill 2007*; and
- *Road Traffic (Consequential Provisions) Bill 2007*.

All four pieces of legislation must commence operation simultaneously. The latter two Bills have yet to pass.

Pursuant to these reforms, the provisions of the *Road Traffic Act 1974* dealing with administrative matters (such as delegations, evidentiary matters, information disclosure, sentencing and liability, for example) will be transferred to the *Road Traffic (Administration) Act 2008*.

The amendments in Part 3 of this Bill are necessary to ensure that, when the reform legislation commences operation, amendments to the administrative provisions of the *Road Traffic Act 1974* made by Part 2 of this Bill will not be lost. In order to provide for their continuation, Part 3 contains corresponding amendments to the relevant provisions of the *Road Traffic (Administration) Act 2008*.

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

This clause is necessary because of clause 4 of this Bill, which will insert various definitions in section 5 of the *Road Traffic Act 1974* that are necessary to interpret other clauses in the Bill.

Section 4 of the *Road Traffic (Administration) Act 2008* ("RT(A)A") contains definitions necessary for the interpretation of the RT(A)A.

In order to ensure that the amendments contained in this Bill will be maintained when the RT(A)A commences operation, this clause will provide for the insertion of those definitions in section 4 of the RT(A)A also.

**18. Section 11 amended**

This clause is necessary because of clause 5 of this Bill, which will amend section 6B of the *Road Traffic Act 1974* ("RTA").

Section 6B empowers the Director General to enter into agreements with other parties to perform the Director General's functions under the RTA.

The provisions of section 6B of the RTA will form the substance of section 11 of the *Road Traffic (Administration) Act 2008* ("RT(A)A").

This clause will ensure that the amendments to section 6B of the RTA contained in clause 5 will be maintained in section 11 of the RT(A)A when the RT(A)A commences operation.

**19. Section 12 replaced**

This clause is necessary because of clause 6 of this Bill, which will delete section 8 of the *Road Traffic Act 1974* ("RTA") and insert a number of new sections (proposed new sections 8 through 13 inclusive) either requiring or empowering the Director General to disclose certain information that the Director General possesses to certain entities.

The provisions of section 8 of the RTA will form the substance of section 12 of the *Road Traffic (Administration) Act 2008* ("RT(A)A").

In order to ensure that the amendments contained in clause 6 of this Bill will be maintained when the RT(A)A commences operation, this clause will provide for the deletion of section 12 and the insertion of new sections replicating the substance of proposed new sections 8 through 11 inclusive of the RTA that will be inserted by clause 6 of the Bill.

(Clause 21 of this Bill will provide for the insertion in the RT(A)A of new sections replicating the substance of proposed new sections 12 and 13 inclusive of the RTA that will also be inserted by clause 6 of the Bill. Please see clause 21 below.)



## **20. Section 13 amended**

Section 13 of the *Road Traffic (Administration) Act 2008* (“RT(A)A”) empowers the CEO to provide information to a corresponding authority.

Clause 20(1) is necessary in order to maintain consistency of terminology. Other clauses of this Bill refer to the disclosure of information. Clause 20(1) will amend section 13 so that the term “disclose” (with regard to information) is used rather than the term “provide”.

Clause 20(2) will insert a necessary cross-reference in section 13 to the new section 13A that will be inserted by clause 19.

Section 13(2) provides that other provisions of the RT(A)A, dealing with the disclosure of information, neither affect nor are affected by section 13. Clause 20(2) will provide that the proposed new section 13A, dealing with the exchange of information between the CEO and other licensing authorities, does not affect and is not affected by section 13.

## **21. Sections 14 and 15 replaced**

This clause is necessary because of clause 6 of this Bill, which will delete section 8 of the *Road Traffic Act 1974* (“RTA”) and insert a number of new sections (proposed new sections 8 through 13 inclusive) either requiring or empowering the Director General to disclose certain information that the Director General possesses to certain entities.

The provisions of section 8 of the RTA will form the substance of section 12 of the *Road Traffic (Administration) Act 2008* (“RT(A)A”).

In order to ensure that the amendments contained in clause 6 of this Bill will be maintained when the RT(A)A commences operation, clause 19 will provide for the deletion of section 12 and the insertion of new sections replicating the substance of proposed new sections 8 through 11 inclusive of the RTA that will be inserted by clause 6 of the Bill.

This clause 21 will provide for the insertion in the RT(A)A of new sections replicating the substance of proposed new sections 12 and 13 inclusive of the RTA that will also be inserted by clause 6 of the Bill.

## **22. Section 143A inserted**

This clause is necessary because of clause 12 of this Bill, which will insert a new section 103 in the *Road Traffic Act 1974* (“RTA”).

Section 103 of the RTA will apply to any person who is or has been engaged in the performance of functions under this Act, whether that be as an employee, agent or contractor of the Director General, or in

any other capacity in which that person was engaged in the performance of functions under the RTA.

Such persons have, or may have, access to information obtained and held by the Director General, which access is necessary to enable those persons to perform their functions.

Proposed section 103 will provide that it will be an offence for such a person to record, disclose or use that information unless such an action is done:

- in the course of performing functions under, or enforcing, the RTA; or
- because of a requirement under the RTA or another written law; or
- with the consent of the person to whom the information relates; or
- in other circumstances that may be prescribed in regulation.

In recognition of the seriousness of the proposed offence, the penalty is to be a maximum fine of 100 PU (\$5,000) or the imposition of a term of imprisonment of up to 12 months' duration.

The proposed offences reflect similar offences that exist with regard to photographs and signatures that must be provided to the Director General for the production of driver's licence documents (section 42E of the RTA) and learner's permit documents (proposed section 43A of the RTA that will be inserted by clause 9 of this Bill).

In order to ensure that the amendments contained in this Bill will be maintained when the *Road Traffic (Administration) Act 2008* ("RT(A)A") commences operation, this clause will insert a new section 143A in the RT(A)A that replicates the substance of proposed section 103 of the RTA.

#### **Part 4 – *Road Traffic (Authorisation to Drive) Act 2008* amended**

##### **23. Act amended**

This clause provides that all of the provisions of Part 4 of this Bill will amend the *Road Traffic (Authorisation to Drive) Act 2008*.

The *Road Traffic (Authorisation to Drive) Act 2008* has yet to commence operation. It forms part of a suite of legislation for the reform of the *Road Traffic Act 1974* comprising the:

- *Road Traffic (Administration) Act 2008*;
- *Road Traffic (Authorisation to Drive) Act 2008*;
- *Road Traffic (Vehicles) Bill 2007*; and
- *Road Traffic (Consequential Provisions) Bill 2007*.

All four pieces of legislation must commence operation simultaneously. The latter two Bills have yet to pass.

Pursuant to these reforms, the provisions of the *Road Traffic Act 1974* dealing with driver licensing will be transferred to the *Road Traffic (Authorisation to Drive) Act 2008*.

The amendments in Part 4 of this Bill are necessary to ensure that, when the reform legislation commences operation, amendments to the driver licensing provisions of the *Road Traffic Act 1974* made by Part 2 of this Bill will not be lost. In order to provide for their continuation, Part 4 contains corresponding amendments to the relevant provisions of the *Road Traffic (Authorisation to Drive) Act 2008*.

#### **24. Section 9 amended**

This clause is necessary because of clause 8 of this Bill, which will amend section 42E of the *Road Traffic Act 1974* ("RTA").

Section 42E concerns the requirement for photographs and signatures to be provided for the production of driver's licence documents.

The provisions of section 42E of the RTA will form the substance of section 9 of the *Road Traffic (Authorisation to Drive) Act 2008* ("RT(AtD)A").

This clause will amend section 9 of the RT(AtD)A in the same manner as clause 8 amends section 42E in order to ensure that the amendments contained in this Bill will continue in force when the RT(AtD)A commences operation.

#### **25. Section 11A inserted**

This clause is necessary because of clause 9 of this Bill, which will insert a new section 43A in the *Road Traffic Act 1974* ("RTA").

Section 43A of the RTA will require photographs and signatures to be provided by applicants for learner's permits, for use in the production of learner's permit documents.

In order to ensure that the provisions of section 43A of the RTA will be maintained when the *Road Traffic (Authorisation to Drive) Act 2008* commences operation, this clause will insert a new section 11A in the *Road Traffic (Authorisation to Drive) Act 2008*. Section 11A will replicate the substance of section 43A of the RTA.

#### **26. Part 2 Division 3A inserted**

This clause is necessary because of clause 10 of this Bill, which will insert a new Part IVA Division 4A in the *Road Traffic Act 1974* ("RTA").

Part IVA Division 4A of the RTA will require the Director General to disclose photographs provided to the Director General under the RTA, for the production of driver's licence documents and learner's permit documents, to the Commissioner of Police and the Director-General of Security.

It will also empower the Director General to disclose such photographs:

- to prescribed law enforcement officials, where the disclosure is considered necessary for the performance of the law enforcement official's functions under a written law, and the Commissioner of Police has approved the disclosure; or
- where the person the subject of a photograph has died, to the administrator or executor of the deceased person's estate.

In order to ensure that the provisions of Part IVA Division 4A of the RTA will be maintained when the *Road Traffic (Authorisation to Drive) Act 2008* commences operation, this clause will insert a new Division 3A in the *Road Traffic (Authorisation to Drive) Act 2008*. Division 3A will replicate the substance of Part IVA Division 4A of the RTA.

## **27. Section 47 amended**

This clause is necessary because of clauses 19 and 20.

Section 47 of the *Road Traffic (Authorisation to Drive) Act 2008* ("RT(AtD)A") section 14 of the *Road Traffic (Administration) Act 2008* ("RT(A)A").

Section 14 of the RT(A)A will be deleted by clause 20 and replaced by a new section 13A that will be inserted by clause 19.

This clause will therefore replace references in section 47 of the RT(AtD)A to section 14 of the RT(A)A with references instead to section 13A of the RT(A)A.