

Explanatory Memorandum

Western Australian Photo Card Bill 2013

There is an increasing need for members of the Western Australian community to supply photographic proof of identity when conducting certain transactions with government agencies, banks and other businesses.

Presently, the key sources of such proof of identity are passport documents and driver's licence documents.

Some members of the community possess neither form of documentation, however. In the case of driver's licence documents, in particular, some people are ineligible for the grant of a driver's licence and therefore ineligible to be issued with a driver's licence document.

This Bill will enable any person who ordinarily resides in Western Australia to apply for the issue of a Western Australian Photo Card ("photo card").

The decision to obtain a photo card will be a purely voluntary one. Its purpose is its use as a means of substantiating the cardholder's identity, age and/or residential address, where it is accepted by a government agency, bank or other business for this purpose.

A photo card will bear the cardholder's name, date of birth, photograph and signature and, if the cardholder so elects, the cardholder's residential address. A photo card will also contain some other information, such as the photo card expiry day.

A photo card does not confer any authority on the cardholder and the provisions of this Bill do not oblige any third party to accept a photo card, tendered by a cardholder, as proof of any matter.

Part 1 - Preliminary

1. Short title

This clause will provide that when this Bill is passed by the Parliament and receives Royal Assent, it will be known as the *Western Australian Photo Card Act 2013*.

2. Commencement

This clause sets out when the provisions of the *Western Australian Photo Card Bill 2013* will commence operation.

Under clause 2(a), clause 1 (which will give the Bill its short title) and this clause will commence operation on the day on which the Bill receives the Royal Assent and becomes an Act.

Under clause 2(b), the Bill's remaining provisions will commence operation on a day designated in a proclamation made for that purpose.

Clause 2(b) will enable these provisions to commence operation at different times pursuant to two or more proclamations, however it is likely that they will all commence operation at once.

3. Terms used

This clause will define various terms that are used throughout this Bill.

The term **applicant** is to mean a person who applies for the issue of a Western Australian photo card under clause 5.

The term **cardholder** is to mean a person to whom a Western Australian photo card is issued.

The term **CEO** is to mean the chief executive officer of the department of the Public Service that is assisting the Minister responsible for the administration of this Bill with its administration. It is intended that the Minister for Transport will be the Minister responsible for the administration of this Bill and that the chief executive officer of the Department of Transport will assist the Minister in administering it.

The term **Commissioner of Police** is to mean the person holding the office of, or acting in the office of, the Commissioner of Police pursuant to the *Police Act 1892* section 5.

The term **Department** is to mean the department of the Public Service that is assisting the Minister responsible for the administration of this Bill with its administration. It is intended that the Minister for Transport will be the Minister responsible for the administration of this Bill and that the chief executive officer of the Department of Transport will assist the Minister in administering it.

The term **destroyed** is to include being damaged so as to be unable to be used or of use.

The term to **disclose** is to include to provide, to release and to give access to.

The term **eligible person** is to mean a person who is eligible for the issue of a Western Australian photo card pursuant to clause 4.

The term **expiry day** is to mean the last day on which a Western Australian photo card is current.

The term **photo card** is to mean a Western Australian photo card issued under the provisions of this Bill.

The term is also to mean:

- a Western Australian photo card that is issued to replace a lost, stolen, damaged or destroyed Western Australian photo card in accordance with regulations made under the provisions of this Bill; or
- an additional Western Australian photo card that is issued in accordance with regulations made under the provisions of this Bill.

Clause 24(2)(a) will empower the making of regulations in relation to applications for, and the issue of, replacement photo cards.

For example, a person may have a need to apply for the issue of a replacement photo card if the originally issued photo card is lost, stolen, damaged or destroyed.

Clause 24(2)(b) will empower the making of regulations in relation to applications for, and the issue of, additional photo cards.

It is intended to promulgate regulations that will enable a person to apply for the issue of, and will empower the CEO to issue to the person, an additional photo card, provided the person is a person to whom the CEO has already issued a photo card which is currently valid.

An additional photo card will, effectively, be a copy of the original photo card, except that if the original photo card includes the cardholder's residential address details, the additional photo card will not include those details. Alternatively, if the original photo card does not include the cardholder's residential address details, the additional photo card will include these details. The rationale for providing cardholders with this capability is as follows.

A cardholder may apply for the issue of a photo card for a variety of reasons: to establish his or her age in order to enter licensed premises, to establish his or her identity when applying for a Tax File Number or to open a bank account or to establish his or her residential address in order to enrol his or her child in school, for example.

In some circumstances, in which a cardholder wishes to establish his or her age only, the cardholder may prefer the party with whom he or she is transacting not to have access to the cardholder's residential address information as part of the transaction. For example, a cardholder wishing to enter a nightclub may prefer not to disclose his or her residential address to nightclub staff.

The term **photo card information** is to mean information about photo cards, such as information kept by the CEO in the photo card register pursuant to clause 13(1). It is not to include photographs and signatures provided to the CEO pursuant to clause 6 for use on a Western Australian photo card.

The term **photograph** is to include a negative or a digital image.

The term **prescribed** is to mean prescribed in regulations.

Part 2 - Western Australian Photo Card

4. Eligibility for photo card

This clause will set out who is to be eligible for the issue of a Western Australian photo card.

A person will be eligible if the person:

- (a) is ordinarily a resident of Western Australia; and
- (b) is at least 16 years of age; and
- (c) meets any other requirements that are prescribed in regulation for the purposes of this section.

No regulations, prescribing further eligibility criteria, are presently contemplated. This clause will ensure, however, that in the future, other matters identified as relevant, if any, may be prescribed for the purposes of determining whether or not a person should be eligible for the issue of a photo card.

5. Application for photo card

This clause will set out the means by which a person may apply for the issue of a Western Australian photo card.

Clause 5(1) will require a person to apply in writing to the CEO for the issue of a photo card.

Clause 5(2) will require an application to be made in a form that has been approved by the CEO for this purpose.

Clause 5(3) will require the application to be accompanied by:

- (a) evidence that satisfies the CEO of the applicant's eligibility, identity and residential address; and
- (b) where relevant, a photograph and signature; and
- (c) the prescribed fee.

In practice, the CEO will rely upon a combination of five different identification documentation, and declarations, to be satisfied regarding matters such as an applicant's full name, residential address, date of birth and residence in Western Australia.

The application form for the issue of a photo card, accompanying information and the Department of Transport website will set out clearly the various means by which the CEO will be able to be satisfied as required under clause 5(3)(a).

A similar standard of proof will be required as is required to establish the credentials of an applicant for a driver's licence. This standard of proof is based upon the National Identity Security Strategy Gold Standard Enrolment Framework ("GSEF").

The GSEF was jointly developed by Australian Commonwealth, State and Territory Governments, in an endeavour to ensure the application of consistent and secure standards by Government agencies when there is a need to verify an individual's identity.

Clause 6 will require an applicant for a photo card to provide the CEO with a photograph and signature for use on the photo card, unless clause 6(3) or clause 6(4) applies.

Clause 6(3) will provide that an applicant does not have to provide the CEO with a photograph if the applicant has already, within the preceding 10 years, provided a photograph to the CEO for use on a photo card.

Clause 6(4) will provide that an applicant does not have to provide the CEO with a signature if the applicant is unable to sign because of a permanent disability.

Clause 5(4) will make it clear that a person cannot apply for a photo card under clause 5(1) if it is more than 6 months prior to the expiry of the person's current photo card.

Clause 5(5) will provide that clause 5(4) does not apply, however, to an application for a replacement photo card or an additional photo card.

Clause 24(2)(a) will empower the making of regulations in relation to applications for, and the issue of, replacement photo cards.

For example, a person may have a need to apply for the issue of a replacement photo card if the originally issued photo card is lost, stolen, damaged or destroyed.

Clause 24(2)(b) will empower the making of regulations in relation to applications for, and the issue of, additional photo cards.

It is intended to promulgate regulations that will enable a person to apply for the issue of, and will empower the CEO to issue to the person, an additional photo card, provided the person is a person to whom the CEO has already issued a photo card which is currently valid.

An additional photo card will, effectively, be a copy of the original photo card, except that if the original photo card includes the cardholder's residential address details, the additional photo card will not include those details. Alternatively, if the original photo card does not include the cardholder's residential address details, the additional photo card will include these details. The rationale for providing cardholders with this capability is as follows.

A cardholder may apply for the issue of a photo card for one or more of a variety of reasons: to establish his or her age in order to enter licensed premises, to establish his or her identity when applying for a Tax File Number or to open a bank account or to establish his or her residential address in order to enrol his or her child in school, for example.

In some circumstances, in which a cardholder wishes to establish his or her age only, the cardholder may prefer the party with whom he or she is transacting not to have access to the cardholder's residential address information as part of the transaction. For example, a cardholder wishing to enter a nightclub may prefer not to disclose his or her residential address to nightclub staff.

6. Provision of photograph and signature

The key purpose of a Western Australian photo card is its potential use as a means of establishing the cardholder's identity. For this reason, a photo card must display the cardholder's photograph and signature.

Clause 6(1) will require an applicant for the issue of a photo card to provide the CEO with a photograph and a signature for use on the photo card, unless pursuant to clause 6(3) the applicant is not required to provide a photograph or pursuant to clause 6(4) the applicant is not required to provide a signature.

Clause 6(2) will require the photograph and signature to be provided in accordance with the CEO's requirements. They will be captured and stored electronically so as to enable the production of a photo card in a similar format to the format in which a driver's licence document is produced.

Clause 6(3) will provide that an applicant for the issue of a photo card does not have to provide the CEO with a photograph pursuant to clause 6(1), if the applicant has previously, within the preceding 10 years, provided a photograph to the CEO under clause 6(1) for use on a photo card.

Under clause 17(1), the CEO will be required to ensure that a photograph provided for use on a photo card pursuant to clause 6(1) is destroyed if it, or a copy of it, has not been used on a photo card within the preceding 10 years. Until this timeframe has elapsed, however, the CEO may use the photograph on photo cards, replacement photo cards or additional photo cards, in response to applications for the issue of such photo cards made by the person who provided the photograph.

Clause 6(4) will provide that an applicant for the issue of a photo card does not have to provide the CEO with a signature pursuant to clause 6(1) if the applicant:

- is unable to sign because of a permanent disability; or
- has previously, within the preceding 10 years, provided a signature to the CEO under clause 6(1).

Under clause 17(1), the CEO will be required to ensure that a signature provided for use on a photo card pursuant to clause 6(1) is destroyed if it, or a copy of it, has not been used on a photo card within the preceding 10 years. Until this timeframe has elapsed, however, the CEO may use the signature on photo cards, replacement photo cards or additional photo cards, in response to applications for the issue of such photo cards made by the person who provided the signature.

7. Issue of photo card

This clause will empower the CEO to issue a Western Australian photo card to an applicant if:

- the CEO is satisfied that the applicant is an eligible person pursuant to clause 4; and
- the applicant has:
 - provided evidence of the applicant's eligibility, identity and residential address as required by clause 5(3)(a);
 - provided a photograph and signature for use on the photo card as required by clause 6; and
 - paid the prescribed fee as required by clause 5(3)(c).

8. Form and content of photo card

Clause 8(1) will require a photo card to be in a form that has been approved by the CEO for this purpose.

Clause 8(2) will require the photo card to contain:

- the cardholder's photograph;
- the cardholder's name;
- the cardholder's date of birth;
- the cardholder's residential address, if the cardholder wishes;
- the cardholder's signature, unless the cardholder is unable to sign because of a permanent disability;
- the date on which the photo card will expire.

9. Duration of photo card

This clause will empower the making of regulations that will set out the duration for which a Western Australian photo card will be current.

Presently, it is intended to make regulations pursuant to this clause providing that the duration of a photo card will be 5 years.

10. Cancellation of photo card

Clause 10(1) will empower the CEO to write to a cardholder to cancel a Western Australian photo card:

- (a) if the CEO considers that the cardholder is no longer an eligible person pursuant to clause 4 (that is, that the cardholder is no longer ordinarily resident in Western Australia); or
- (b) if the CEO considers that the cardholder obtained the photo card on the basis of incorrect or misleading information or in a manner otherwise contrary to the provisions of this Bill; or
- (c) if the cardholder paid to obtain the photo card using a payment method that was subsequently dishonoured; or
- (d) on any other grounds that may be prescribed for this purpose.

If a photo card is cancelled pursuant to clause 10(1), clause 10(2) will empower the CEO to give a written notice to the cardholder, directing the cardholder to:

- return the photo card to the CEO within the timeframe specified and in the manner specified in the written notice; or
- notify the CEO in writing that the photo card has been stolen, lost or destroyed.

Clause 10(3) will provide that it is an offence for a person not to comply with a direction given in writing by the CEO under clause 10(2). The maximum penalty that a court may impose for such an offence will be \$2 500.

11. Other offences relating to photo cards

This clause will create a number of offences relating to photo cards.

The maximum penalty that a court may impose for each offence created under this clause will be \$2 500.

Under clause 11(1), it will be an offence for a person to give information, that the person knows is false or misleading, to a person who is performing a function under this Bill. For example, it will be an offence under this subclause for an applicant for the issue of a Western Australian photo card to give information that the applicant knows is false or misleading to an officer of the Department of Transport when making the application.

Under clause 11(2), it will be an offence for a person to forge or to fraudulently alter a photo card.

Under clause 11(3), it will be an offence for a person to use:

- a forged or fraudulently altered photo card; or
- another person's photo card.

Under clause 11(4), it will be an offence for a person to have a photo card in his or her possession, or an article resembling a photo card, with intent to use it to deceive another person.

Under clause 11(5), it will be an offence for a person:

- to lend his or her photo card to another person; or
- to allow another person to use his or her photo card.

Part 3 - Information management

12. Terms used

This clause will define terms used throughout this Part.

The term **photograph** is to mean a photograph provided to the CEO under clause 6 for use on a Western Australian photo card.

The term **signature** is to mean a signature provided to the CEO under clause 6 for use on a Western Australian photo card.

13. Register

This clause will require the CEO to keep an accurate and up to date register, containing the following information about each Western Australian photo card issued under the provisions of this Bill:

- (a) the cardholder's name;
- (b) the cardholder's date of birth;
- (c) the cardholder's last known residential address;
- (d) the day on which the photo card will become current;
- (e) the day on which the photo card is to expire;
- (f) if the photo card has been cancelled under clause 10, the date on which it was cancelled;
- (g) details of whether a replacement photo card or an additional photo card has been issued to the cardholder;
- (h) any other information the CEO considers appropriate.

Clause 24(2)(a) will empower the making of regulations in relation to replacement photo cards. For example, a person may have a need to apply for the issue of a replacement photo card if the originally issued photo card is lost, stolen, damaged or destroyed.

Clause 24(2)(b) will empower the making of regulations in relation to applications for, and the issue of, additional photo cards.

It is intended to make regulations pursuant to this provision that will enable a person to apply for the issue of, and will empower the CEO to issue to the

person, an additional photo card, provided the person is a person to whom the CEO has already issued a photo card which is currently valid.

An additional photo card will, effectively, be a copy of the original photo card, except that if the original photo card includes the cardholder's residential address details, the additional photo card will not include those details. Alternatively, if the original photo card does not include the cardholder's residential address details, the additional photo card will include these details. The rationale for providing cardholders with this capability is as follows.

A cardholder may apply for the issue of a photo card for a variety of reasons: to establish his or her age in order to enter licensed premises, to establish his or her identity when applying for a Tax File Number or to open a bank account or to establish his or her residential address in order to enrol his or her child in school, for example.

In some circumstances, in which a cardholder wishes to establish his or her age only, the cardholder may prefer the party with whom he or she is transacting not to have access to the cardholder's residential address information as part of the transaction. For example, a cardholder wishing to enter a nightclub may prefer not to disclose his or her residential address to nightclub staff.

14. Disclosure of photo card information

Under the provisions of this Bill, the CEO will be responsible for assessing, granting and refusing applications for the issue of Western Australian photo cards, including capturing and securely storing photographs and signatures provided for use on photo cards, cancelling photo cards in certain circumstances, and maintaining a photo card register.

In the course of the CEO performing these functions, the CEO will have cause to obtain and to hold personal information regarding applicants and cardholders.

This clause will set out limited circumstances in which the CEO may disclose "photo card information", in order to enable the administration or enforcement, or the performance of functions, under a written law.

Pursuant to clause 3, photo card information is to be information about photo cards, such as information kept by the CEO in the photo card register pursuant to clause 13(1).

It is not, however, to include a photograph or signature provided to the CEO under clause 6(1) of this Bill, for use on a photo card. The CEO's powers and obligations to disclose photographs form the subject of clauses 15 and 16.

Clause 14(1) will define various terms that are used throughout this clause.

The term **authorised purpose** is to mean:

- (a) the purpose of performing functions under a written law of Western Australia, the Commonwealth or another Australian jurisdiction;
- (b) a purpose related to the administration or enforcement of a written law of Western Australia, the Commonwealth or another Australian jurisdiction;
- (c) another purpose prescribed in regulations for the purposes of this definition.

The term **prescribed person** is to mean a person, or a person belonging to a class of persons, prescribed for the purposes of this definition.

Clause 14(2) will empower the CEO to disclose photo card information to a prescribed person if the CEO considers that the information is required by the person for an authorised purpose.

Under clause 14(3), it will be an offence for:

- a person to whom photo card information is disclosed under clause 14(2); or
- a person who is employed or engaged by a person to whom photo card information is disclosed under clause 14(2),

to use that information for any purpose other than the authorised purpose for which it was disclosed.

In accordance with the seriousness of such an offence, the penalty that a court may impose will be up to \$5,000 or up to 12 months' imprisonment.

This clause reflects the substance of the *Road Traffic Act 1974* section 12, which empowers the Director General to disclose certain licensing information to prescribed persons for authorised purposes.

15. Disclosure of photographs to police, ASIO and law enforcement officials

An applicant for the issue of a Western Australian photo card will be required, under clause 6(1), to provide the CEO with a photograph for use on the photo card.

This clause will set out limited circumstances in which the CEO must or may disclose such a photograph, in order to enable the enforcement of a written law of the performance of a function under a written law.

Clause 15(1) will define terms that are used throughout clause 15.

The term **ASIO Act** is to mean the *Australian Security Intelligence Organisation Act 1979* (Cth).

The ASIO Act establishes the Australian Security Intelligence Organisation, a Commonwealth 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 ASIO 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.

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

The term **ASIO official** 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 clause 15(3).

The term **Director-General of Security** is to mean the person who holds the office of Director-General of Security established under the *Australian Security Intelligence Organisation Act 1979*.

The term **law enforcement official** is to mean a person prescribed in regulations made pursuant to this subclause as a law enforcement official, or a person belonging to a class of persons prescribed for the purposes of this subclause as a law enforcement official.

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 the disclosure of photographs under clause 15(4).

The term **police official** is to mean:

- the Commissioner of Police pursuant to the *Police Act 1892* section 5;
- a police officer who has been authorised by the Commissioner of Police in relation to the disclosure of photographs under clause 15(2);
- 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 clause 15(2).

Clause 15(2) will require the CEO to disclose a photograph provided to the CEO under clause 6(1) to a person who is a police official, for the purposes of the performance of the police official's functions under a written law.

Clause 15(3) will require the CEO to disclose a photograph provided to the CEO under clause 6(1) to a person who is an ASIO official, for the purposes of the performance of the ASIO official's functions under the ASIO Act or under another Commonwealth law.

Clause 15(4) will empower, rather than require, the CEO to disclose a photograph that has been provided to the CEO under clause 6(1) to a person who is a law enforcement official, where the CEO considers that the photograph is required for the purposes of performance of the law enforcement official's functions under a written law. Before the CEO may disclose such a photograph, however, the CEO will be required to obtain the approval of the Commissioner of Police.

This clause replicates the substance of the *Road Traffic Act 1974* sections 44AA and 44AB in relation to the disclosure of photographs, provided to the Director General for use in the production of driver's licence documents and learner's permit document, to persons who are police officials, ASIO officials or law enforcement officials.

16. Disclosure of photographs to executor or administrator

This clause has been included for compassionate reasons.

It will empower the CEO to disclose a photograph that has been provided to him or her under clause 6 of this Bill for use on a Western Australian photo card, where the photograph has been provided by a person who has since died and the photograph is sought by an executor or administrator of the person's estate.

This clause replicates the substance of the *Road Traffic Act 1974* section 44AC in relation to the disclosure of photographs provided to the Director General for use in the production of a driver's licence document. Prior to the enactment of section 44AC, requests were made for the disclosure of such photographs, however the Director General was unable to accede to those requests.

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, through the executor or administrator of the deceased person's estate, 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.

17. Photographs and signatures: possession, reproduction and destruction

Clause 6(1) will require an applicant for the issue of a photo card to provide the CEO with a photograph and a signature for use on the photo card.

To guard against the use of a photograph or signature, that has been provided under clause 6(1), for a fraudulent purpose or for any purpose other than its use on a photo card issued by the CEO under the provisions of this Bill, this clause will impose responsibilities on the CEO and will create various offence provisions.

Clause 17(1) will require the CEO to ensure that a photograph or signature provided for use on a photo card pursuant to clause 6(1) is destroyed if it, or a copy of it, has not been used on a photo card within the preceding 10 years.

Until this timeframe has elapsed, however, the CEO may use the photograph or signature on photo cards, replacement photo cards or additional photo cards, in response to applications for the issue of such photo cards made by the person who provided the photograph or signature.

Clause 17(2) will provide that it is an offence for any person to possess a photograph or signature, provided to the CEO pursuant to clause 6(1), other than for the purposes of this Bill, unless that photograph and signature appear on a photo card. In accordance with the seriousness of such an offence, the maximum penalty that a court may impose for the offence will be imprisonment of up to 2 years.

Under clause 17(3), however, it will not constitute an offence under clause 17(2) to possess a photograph provided to the CEO for use on a photo card, if the person who possesses the photograph does so following its disclosure by the CEO pursuant to clause 15 or 16.

Clause 15 will require the CEO to disclose a photograph that has been provided to the CEO under clause 6(1) for use on a photo card to:

- a person who is a police official, for the purposes of the police official's functions under a written law; and
- a person who is an ASIO official, for the purposes of the performance of the police official's or the ASIO official's functions under the *Australian Security Organisation Act 1979* (Cth) or another Commonwealth law.

Clause 15 will also empower the CEO to disclose a photograph that has been provided to the CEO under clause 6(1) for use on a photo card to a person who is a law enforcement official, where the CEO considers that the photograph is required for the purposes of performance of the law enforcement official's functions under a written law. Before the CEO may disclose such a photograph, however, clause 15 will require the CEO to obtain the approval of the Commissioner of Police.

Clause 16 will empower the CEO, for compassionate reasons, to disclose a photograph that has been provided to the CEO under clause 6(1) for use on a photo card, where the photograph has been provided by a person who has since died and the photograph is sought by an executor or administrator of the person's estate.

Clause 17(4) will create an offence that will apply to persons who have access to photographs or signatures that have been provided to the CEO under clause 6(1) because they are employed in a capacity connected with the production of photo cards or are in some other way involved in the administration of the provisions of this Bill.

Such a person will commit an offence under clause 17(4) if the person, for any reason other than for the purposes of this Bill:

- reproduces, by any means, a photograph or signature; or
- makes another person do so or allows another person to do so.

In accordance with the seriousness of such an offence, the maximum penalty that a court may impose will be imprisonment of up to 2 years.

Clause 17 is modelled upon the *Road Traffic Act 1974* section 42E, which relates to photographs and signatures provided for use in the production of driver's licence documents, and section 43A, which relates to photographs and signatures provided for use in the production of learner's permit documents.

Part 4 - Administration

18. Delegation of functions of CEO

Clause 18(1) will empower the CEO to delegate any of the CEO's powers or duties, conferred on the CEO under another provision of the Bill, to another person.

The power of delegation is necessary as the CEO will be unable personally to perform all of the duties and exercise all of the powers conferred on the CEO. Using this power, the CEO will be able to delegate relevant powers and duties to appropriate persons.

Clause 18(2) will require any delegation under clause 18(1) to be made by the CEO in writing, in order for that delegation to be valid.

Under clause 18(3), if the CEO wishes to delegate a power or duty to a person who is not employed in the Department of Transport, the CEO will be required first to obtain the Minister's approval for the proposed delegation.

Clause 18(4) will enable the Minister to approve, under clause 18(3), the CEO delegating a power or duty to a specific individual, to a person belonging to a specified class of person or to a person who holds a particular position either in a permanent or in an acting capacity.

Clause 18(5) will make it clear that a person, to whom the CEO has delegated a power or duty under clause 18(1), is not permitted to delegate that power or duty to another person. This provision will ensure that the CEO retains control over who may perform a duty or exercise a power of the CEO.

Clause 18(6) contemplates the CEO making a delegation subject to terms that the CEO considers appropriate or necessary. It will create a legal presumption that, unless proven otherwise, the delegate has exercised the power the subject of the delegation or performed the duty the subject of the delegation in accordance with the terms of the delegation.

Clause 18(7) will make it clear that clause 18 is in no way intended to limit the CEO's ability to ensure that a particular power is exercised or a particular duty is performed *otherwise* than under a clause 18(1) delegation, such as by:

- authorising an officer working in the Department of Transport to do so on the CEO's behalf; or
- entering into an agreement pursuant to clause 20 with another party, under which agreement the other party will do so on behalf of the CEO as an agent of the CEO.

19. Delegation of functions of Commissioner of Police

Clause 15(4) will empower the CEO to disclose a photograph that has been provided to the CEO under clause 6(1), for use on a photo card, to a person who is a law enforcement official, where the CEO considers that the photograph is required for the purposes of performance of the law enforcement official's functions under a written law.

Before the CEO may disclose such a photograph, however, the CEO will be required to obtain the approval of the Commissioner of Police.

The Commissioner has many functions to perform under a number of Western Australian laws and it may not always be practicable for the Commissioner himself or herself to assess requests for the disclosure of photographs under clause 15(4). For this reason, it is appropriate to enable the Commissioner to delegate his responsibilities as the Commissioner views it is necessary and appropriate to do so.

Clause 19(1) will empower the Commissioner of Police to delegate his or her power of approval under clause 15(4) to another person.

The Commissioner will be empowered to make such a delegation either to a particular police officer or a particular civilian employee of the Western Australia Police, or to a police officer of a specified class (such as, for example, a police officer of the rank of Assistant Commissioner).

In addition, clause 15(2) will require the CEO to disclose a photograph provided to the CEO under clause 6(1) to a person who is a police official, for the purposes of the performance of the police official's functions under a written law.

Pursuant to clause 15(1), a police official will be

- the Commissioner himself or herself;
- a police officer who has been authorised by the Commissioner of Police in relation to the disclosure of photographs under clause 15(2);
- 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 clause 15(2).

Clause 19(1) will also empower the Commissioner to delegate his powers of authorisation under clause 15(1).

20. Agreements for performance of functions

Under the provisions of this Bill, the CEO will be responsible for assessing, granting and refusing applications for the issue of Western Australian photo cards, including capturing and securely storing photographs and signatures provided for use on photo cards, cancelling photo cards in certain circumstances, and maintaining a photo card register.

The Bill will confer various powers and duties on the CEO. The CEO may exercise those powers or perform those duties himself or herself.

In addition, clause 18 will empower the CEO to determine when it is appropriate for another person to exercise some of those powers or to perform some of those duties and to delegate those powers or duties accordingly.

This clause will provide the CEO with a further means of ensuring that the CEO's powers are exercised and the CEO's duties are performed appropriately.

Clause 20(1) will empower the CEO to enter into an agreement with a third party, under which agreement the third party will, on behalf of the CEO, perform a function or functions of the CEO that is or are the subject of the agreement, in accordance with the terms of the agreement.

The CEO is at liberty to determine when this is appropriate.

For example, clause 7 will empower the CEO to issue a photo card to a successful applicant. A photo card will be a plasticised card, in a form approved by the CEO pursuant to clause 8(1) and containing the information described in clause 8(2). It will have security features similar to those in or on a driver's licence document issued by the Director General pursuant to the *Road Traffic Act 1974*.

The CEO may consider that it is more economical to enter into an agreement, under this clause, pursuant to which a third party will produce photo cards, instead of the CEO purchasing card production equipment and employing officers to perform this function.

Clause 20(2) will make it clear that there is no restriction upon with whom the CEO may enter into such an agreement. It contemplates an agreement being entered into with a commercial entity, a local government, the Commissioner of Police or any other person or body of a statutory or commercial nature.

Clause 20(3) contemplates the CEO stipulating, in such an agreement, how a function the subject of the agreement is to be performed and setting out terms and conditions to which the agreement is subject.

Clause 20(4) will make it clear that if, in order to perform a function the subject of an agreement, the CEO would be required to form an opinion about a matter, it is valid for the agent performing the function on the CEO's behalf to form that opinion when performing the function, provided this occurs in accordance with the terms and conditions of the agreement.

Clause 20(5) will empower the CEO to disclose information that is **photo card information** to a person with whom the CEO has entered into an agreement, if the CEO considers its disclosure is necessary for the purposes of the performance by the person of a function of the CEO pursuant to the agreement.

Pursuant to clause 3, **photo card information** means information about photo cards, such as information kept by the CEO in the photo card register pursuant to clause 13(1).

Clause 20(6) will make it clear that the effect of a function being performed by an agent pursuant to an agreement is no different than the effect of that same function being performed by the CEO himself or herself.

Part 5 - Other matters

21. Confidentiality of information

Under the provisions of this Bill, the CEO will be responsible for assessing, granting and refusing applications for the issue of Western Australian photo cards, including capturing and securely storing photographs and signatures provided for use on photo cards, cancelling photo cards in certain circumstances, and maintaining a photo card register.

In the course of the CEO performing these functions, the CEO will have cause to obtain and to hold personal information regarding applicants and cardholders.

This clause will apply to any person who is or has been engaged in the performance of functions under this Bill, whether as an employee, agent or contractor of the CEO, or in any other capacity in which that person was engaged in the performance of functions under the Bill.

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

Clause 21(1) 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 Bill; or
- because of a requirement under this Bill 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 accordance with the seriousness of the proposed offence, the penalty is to be a maximum fine of \$5,000 or the imposition of a term of imprisonment of up to 12 months' duration.

The proposed offence reflects similar offences that exist under the *Road Traffic Act 1974* (see the *Road Traffic Act 1974* sections 42E, 43A and 103).

Clause 21(2) will provide that it will not, however, constitute an offence under clause 21(1) to disclose statistical or other information that could not reasonably be expected to lead to the identification of a person to whom the information relates.

22. Protection from liability for wrongdoing

Under clause 22(1), a person, such as a person employed or engaged by the Department of Transport, who performs a function under the provisions of this Bill will not be able to be sued for damages arising from a loss suffered by another person as a result, provided the person performed the function in good faith.

Performing a function in good faith involves doing it honestly and sincerely.

Similar protections are commonly provided in other Western Australian statutes. Without them, employees and contractors of State Government agencies would be reluctant or unwilling to undertake responsibilities that could lead to them being personally sued.

Clause 22(1) will not prevent a person employed or engaged in the performance of a function under this Bill from being held criminally responsible, however, in the event that the person's actions, or inactions, constitute a criminal offence.

Clause 22(2) will extend the protection from liability that is the subject of clause 22(1) to the State of Western Australia. It will provide that, where a person employed or engaged in the performance of a function under the provisions of this Bill performs that function in good faith, the State of Western Australia may not be held vicariously liable for any loss suffered by another person as a result of the performance of that function.

Vicarious liability concerns circumstances in which, for example, an employer may be held responsible for the actions of an employee and ordered to pay damages arising from those actions.

Similar protections are commonly provided in other similar statutes in Western Australia. They are intended to protect the community by preventing civil claims, in circumstances in which an employee or contractor acted honestly and sincerely. Without such protection, the State's capacity to ensure the provision of services and facilities required by the Western Australian community, at a reasonable cost, would be uncertain and precarious.

Clause 22(3) will make it clear that the protections provided pursuant to this clause will apply, even if the actions of the person employed or engaged by the Department of Transport could have been done, regardless of whether the provisions of this Bill existed or not.

This will ensure that protection will exist in the unlikely event that, in the case of an action performed by such a person, there also exists in another enactment a power to undertake the same action, or the action did not require legislative authority.

Clause 22(4) will make it clear that the protections provided pursuant to this clause will apply, whether as a result of a person's action or inaction, provided the person's action or inaction occurred in good faith.

23. Proceedings for offences

This Bill will create a number of offences in relation to Western Australian photo cards.

Clause 23(1) will provide that a prosecution for such an offence may only be commenced by:

- the Director of Public Prosecutions; or
- the CEO; or
- an individual authorised in writing by the CEO for this purpose; or
- a person belonging to a class of person authorised in writing by the CEO for this purpose.

For example, the CEO might authorise a person who holds the position of Prosecutions Officer in the Department of Transport as a person who may commence a prosecution.

Under the *Director of Public Prosecutions Act 1991* section 11(1), it is one of the functions of the Director of Public Prosecutions to “*commence and conduct the prosecution of any offence*”.

It is likely, however, that the majority of prosecutions will be commenced by the CEO or by a person authorised by the CEO.

Clause 23(2) will provide that the time limit within which a prosecution must be commenced, in relation to an alleged offence under the provisions of this Bill, is to be 2 years after the date on which the alleged offence was committed.

24. Regulations

Clause 24(1) will provide a general regulation-making power, empowering the making of any regulations that are necessary or convenient to support the operation of this Bill.

Clause 24(2) will provide more specific regulation-making powers.

Clause 24(2)(a) will empower the making of regulations in relation to applications for, and the issue of, replacement photo cards.

For example, a person may have a need to apply for the issue of a replacement photo card if the originally issued photo card is lost, stolen, damaged or destroyed.

It is intended to make regulations pursuant to this provision setting out the circumstances in which a person may apply for a replacement photo card and how that application must be made.

Clause 24(2)(b) will empower the making of regulations in relation to applications for, and the issue of, additional photo cards.

It is intended to make regulations pursuant to this provision that will enable a person to apply for the issue of, and will empower the CEO to issue to the person, an additional photo card, provided the person is a person to whom the CEO has already issued a Western Australian photo card which is currently valid.

An additional photo card will, effectively, be a copy of the original photo card, except that if the original photo card includes the cardholder's residential address details, the additional photo card will not include those details. Alternatively, if the original photo card does not include the cardholder's residential address details, the additional photo card will include these details. The rationale for providing cardholders with this capability is as follows.

A cardholder may apply for the issue of a Western Australian photo card for a variety of reasons: to establish his or her age in order to enter licensed premises, to establish his or her identity when applying for a Tax File Number or to open a bank account or to establish his or her residential address in order to enrol his or her child in school, for example.

In some circumstances, in which a cardholder wishes to establish his or her age only, the cardholder may prefer the party with whom he or she is transacting not to have access to the cardholder's residential address information as part of the transaction. For example, a cardholder wishing to enter a nightclub may prefer not to disclose his or her residential address to nightclub staff.

Clause 24(2)(c) will empower the making of regulations relating to the provision of photographs and signatures for use on replacement photo cards and additional photo cards.

Such provisions will be necessary in the event that a photograph and signature previously provided to the CEO under clause 6, by an applicant for a replacement photo card or for an additional photo card, may not be used by the CEO on the replacement photo card or on the additional photo card because the photograph and signature are more than 10 years old.

Clause 24(2)(d) will empower the making of regulations setting out circumstances in which a photo card must be returned to the CEO and the manner in which it must be returned.

Clause 24(2)(e) will empower the making of regulations requiring a cardholder to notify the CEO if the cardholder's photo card has been damaged, stolen, lost or destroyed.

Clause 24(2)(f) will empower the making of regulations requiring the cardholder to notify the CEO if the cardholder's residential address or other prescribed particulars change.

Clause 24(2)(g) will empower the making of regulations prescribing fees payable in relation to any matter under this Bill, such as fees for the issue of photo cards, replacement photo cards and additional photo cards.

Clause 24(2)(h) will empower the making of regulations creating offences in respect of which the applicable penalty may be up to \$5,000.
