



Western Australia

Road Traffic Act 1974

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Road Traffic Act 1974

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Western Australia

Road Traffic Act 1974

An Act to consolidate and amend the law relating to road traffic; to repeal the *Traffic Act 1919* and for incidental and other purposes.

Part I — Preliminary

1. Short title

This Act may be cited as the *Road Traffic Act 1974*¹.

2. Commencement

- (1) Subject to subsection (2) the provisions of this Act shall come into operation on such date or such dates as is or are, respectively, fixed by proclamation¹.
- (2) Section 4 shall come into operation on the day on which this Act receives the Royal Assent¹.

[3. Deleted by No. 82 of 1982 s. 4.]

4. Repeal

The provisions of the *Traffic Act 1919* shall be repealed on such date or such dates as is or are, respectively, fixed by proclamation.

5. Terms used

- (1) In this Act, unless the contrary intention appears —

Australian driver licence means —

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

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

demerit points information means information contained in the demerit points register as defined in section 104;

Director General means the chief executive officer of the department of the Public Service principally assisting in the administration of the licensing provisions of this Act;

disclose includes to provide, to release and to give access to;

district means a district under the *Local Government Act 1995*;

drive includes —

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

driver means any person driving a vehicle or animal;

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

driver's licence information means information about driver's licences including —

- (a) details of the persons who have made applications for or in relation to those licences; and
- (b) details of the persons who hold or have held those licences; and
- (c) information contained in the driver's licence register referred to in section 42(1)(a)(ii),

but not including photographs and signatures provided to the Director General under Part IVA;

external licensing authority means an authority of —

- (a) an external Territory, as defined in the *Acts Interpretation Act 1901* of the Commonwealth; or
- (b) another country,

by which any licence or authorisation to drive a motor vehicle is granted;

extraordinary licence means a driver's licence that the Director General grants as ordered under section 76;

Government road means a road declared by Order in Council under the *Public Works Act 1902* to be a Government road or a highway or main road to which section 13(4) of the *Main Roads Act 1930* applies;

instructor information means information about licences and permits under the *Motor Vehicle Drivers Instructors Act 1963* including —

- (a) details of the persons who have made applications for or in relation to those licences and permits; and
- (b) details of the persons who hold or have held those licences and permits;

jurisdiction means —

- (a) a State; or
- (b) an internal Territory, as defined in the *Acts Interpretation Act 1901* of the Commonwealth;

learner's permit means a learner's permit under Part IVA Division 3;

licence means a licence granted under this Act;

licensing provisions of this Act means —

- (a) Parts III, IV and IVA, section 76, section 82, section 113; and
- (b) regulations made for the purposes of the provisions mentioned in paragraph (a); and
- (c) regulations made under section 111(2)(d) to (g), (i), (l) and (m), (2a) and (2b); and
- (d) regulations made under section 111(2)(j), (k) and (n), (3), (4) and (5) for the purposes of the regulations referred to in paragraph (c);

mechanical power includes any motive power not being animal power;

motor vehicle —

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

number plate means an identification tablet or number plate issued under the regulations bearing numerals, or letters, or numerals and letters;

omnibus means a passenger vehicle equipped to carry more than 8 adult persons and used to carry passengers for separate fares;

optional plates information means information about optional number plates referred to in section 113 including —

- (a) details of the persons who have the right to use those number plates; and
- (b) details of the persons to whom those number plates have been supplied;

owner, in relation to a vehicle, means —

- (a) the person who is entitled to the immediate possession of the vehicle; or
 - (b) if there are several persons entitled to its immediate possession, the person whose entitlement is paramount,
- but if one of 2 or more persons fitting that description has been nominated for the purposes of section 5(4), it means only the person nominated;

passenger vehicle means —

- (a) a taxi within the meaning of the *Taxi Act 1994* and any vehicle that is licensed to stand or ply for the carriage of passengers for reward, including an omnibus; or

s. 5

- (b) a motor vehicle that is fitted with seats for 13 or more persons, including the driver of the vehicle, and is being used to carry 13 or more persons, including the driver;

permit means permit granted under this Act;

permit information means information about learner's permits or permits under section 26(1) including —

- (a) details of the persons who have made applications for or in relation to those permits; and
- (b) details of the persons who hold or have held those permits,

but not including photographs and signatures provided to the Director General under Part IVA;

power assisted pedal cycle means a vehicle designed to be propelled through a mechanism operated solely by human power, to which is attached one or more auxiliary propulsion motors having a combined maximum output not exceeding 200 watts;

provisional licence means an Australian driver licence that specifies that it is a provisional licence for the purposes of this Act or the law of another jurisdiction under which the licence is granted;

recording fee means the fee payable under section 19(1);

responsible person, for a vehicle, means a person responsible for the vehicle under section 5A;

road means any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation, median strip and traffic island thereon;

stock includes horses, mares, fillies, foals, geldings, colts, camels, bulls, bullocks, cows, heifers, steers, calves, asses, mules, sheep, lambs, goats and swine;

traffic infringement notice has the meaning given by section 102(1);

traffic regulation provisions of this Act means the provisions of this Act other than the licensing provisions of this Act;

vehicle includes —

- (a) every conveyance, not being a train, vessel or aircraft, and every object capable of being propelled or drawn, on wheels or tracks, by any means; and
- (b) where the context permits, an animal being driven or ridden;

vehicle licence charge means the charge payable under section 19(3);

vehicle licence information means information about vehicle licences under this Act including —

- (a) details of the persons who have made applications for or in relation to those licences; and
- (b) details of the persons who hold or have held those licences; and
- (c) information contained in the register of vehicle licences referred to in section 27(1);

warden means a warden appointed under section 7.

- (1a) In provisions of this Act dealing with penalties for offences —
 - (a) these abbreviations are used:
 - “**Disq**” for minimum period of disqualification;
 - “**Max**” for maximum fine;
 - “**Min**” for minimum fine;
 - “**PU**” for penalty unit or penalty units;and
 - (b) a reference to a number of PU is a reference to an amount (in dollars) that is that number multiplied by 50.
- (2) For the purposes of this Act a vehicle which is, in any manner, drawn or propelled on a road shall be deemed to be used on a road.
- [(3) *deleted*]

s. 5A

- (4) Where a vehicle is owned by more than one person and one of those persons is nominated by all such persons, by notice in writing given to the Director General, the nominated person shall for the purposes of this Act be deemed to be the owner of the vehicle.

[Section 5 amended by No. 77 of 1975 s. 3; No. 89 of 1978 s. 3; No. 71 of 1979 s. 3; No. 71 of 1981 s. 3; No. 105 of 1981 s. 3 and 19; No. 102 of 1984 s. 16; No. 121 of 1987 s. 4; No. 11 of 1988 s. 4; No. 50 of 1991 s. 3; No. 13 of 1992 s. 4; No. 83 of 1994 s. 48; No. 21 of 1995 s. 4; No. 14 of 1996 s. 4; No. 30 of 1996 s. 13; No. 76 of 1996 s. 4, 20(1) and (3); No. 50 of 1997 s. 4; No. 39 of 2000 s. 4; No. 28 of 2001 s. 4 and 23(2); No. 5 of 2002 s. 15; No. 7 of 2002 s. 27; No. 74 of 2003 s. 105(2); No. 6 of 2004 s. 4; No. 10 of 2004 s. 4; No. 54 of 2006 s. 4; No. 4 of 2007 s. 5; No. 18 of 2011 s. 4.]

5A. Person responsible for a vehicle

- (1) For the purposes of this Act a person responsible for a vehicle is —
- (a) if the vehicle is licensed — any licence holder who has not given a notice as described in paragraph (b); or
 - (b) if a licence holder has given notice under section 24(1), or a corresponding law of another State or Territory or the Commonwealth, of a change in ownership of the vehicle and subsection (2) does not apply — the new owner as specified in the notice or, if more than one is specified, each of them; or
 - (c) if the vehicle is not licensed but was previously licensed and subsection (2) does not apply — a person responsible under paragraph (a) or (b) before the vehicle last ceased to be licensed; or
 - (d) in any other case —
 - (i) the person who is entitled to the immediate possession of the vehicle; or

- (ii) if there are several persons entitled to its immediate possession, the person whose entitlement is paramount.
- (2) Despite subsection (1), a person is not responsible for a vehicle under subsection (1)(b), if it can be shown that the person did not agree to becoming an owner of the vehicle and has notified the Director General in writing accordingly or has given a notice to a similar effect to a licensing authority of another State or Territory or the Commonwealth.
- (3) The Minister may by notice published in the *Gazette* declare a law of another State or Territory or the Commonwealth to be a corresponding law for the purposes of this section and may by subsequent notice so published vary or cancel any such declaration.
- (4) In this section —
- licence holder***, in relation to a vehicle, means a person in whose name the vehicle is licensed;
- licensed*** means licensed under this Act, registered under the *Control of Vehicles (Off-road Areas) Act 1978* or licensed or registered under a corresponding law of another State or Territory or the Commonwealth.

[Section 5A inserted by No. 39 of 2000 s. 5.]

Part II — Administration

[Heading inserted by No. 76 of 1996 s. 5.]

6. Functions of Commissioner of Police and Director General

- (1) The Commissioner of Police is responsible for the control and regulation of traffic in the State and for the enforcement of the traffic regulation provisions of this Act.
- (2) The administration of the licensing provisions of this Act shall be carried out through the Director General who shall be responsible for the enforcement of those provisions.
- (3) Without limiting subsection (2), the functions of the Director General include the exercise and performance of all powers, duties and responsibilities vested in or imposed on the Director General by this Act.
- (4) Subsection (2) does not affect the powers of a member of the Police Force in relation to offences, or suspected offences, against the licensing provisions of this Act.

[Section 6 inserted by No. 76 of 1996 s. 5.]

6AA. Delegation of functions of Commissioner of Police

- (1) The Commissioner of Police may delegate to —
 - (a) a specified member of the Police Force; or
 - (b) a member of the Police Force of a specified class; or
 - (c) a person who is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*,any power or duty of the Commissioner under another provision of this Act other than a power delegated to the Commissioner under section 83(6).
- (2) The delegation must be in writing signed by the Commissioner of Police.

- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

[Section 6AA inserted by No. 51 of 2010 s. 4.]

6A. Delegation of functions of Director General

- (1) The Director General may delegate to a person any power or duty of the Director General under another provision of this Act.
- (2) The delegation must be in writing signed by the Director General.
- (3) If a person is not employed in the Director General's department, a power or duty can only be delegated to the person under this section if the person has been approved by the Minister for the purposes of this section.
- (4) An approval under subsection (3) may be given in respect of —
 - (a) a specified person or persons of a specified class; or
 - (b) the holder or holders for the time being of a specified office or class of office.
- (5) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (6) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (7) Nothing in this section limits the ability of the Director General to perform a function through an officer or agent.

s. 6B

[Section 6A inserted by No. 7 of 2002 s. 28.]

6B. Agreements for performance of functions

- (1) The Director General may enter into an agreement providing for the Director General's functions under this Act that are described in the agreement to be performed on behalf of the Director General.
- (2) The agreement may be with the Commissioner of Police, a local government, or any other person or body, whether or not the person or body has itself functions of a public nature.
- (3) A function described in the agreement may be performed —
 - (a) in accordance with the agreement; and
 - (b) on and subject to terms and conditions in the agreement.
- (4) If the performance of a function is dependent upon the opinion, belief, or state of mind of the Director General it may be performed under the agreement upon the opinion, belief, or state of mind of the body or person with whom the agreement is made or another person provided for in the agreement.
- (5A) The Director General may disclose the following information to the body or person with whom the agreement is made if the Director General considers that the information is required for the purposes of performing a function under the agreement —
 - (a) driver's licence information;
 - (b) permit information;
 - (c) vehicle licence information;
 - (d) optional plates information;
 - (e) demerit points information;
 - (f) instructor information.
- (5) For the purposes of this Act or any other written law, an act or thing done by, to, by reference to, or in relation to, a body or person in connection with the performance by that body or

person under the agreement of a function of the Director General is as effectual as if it had been done by, to, by reference to, or in relation to, the Director General.

[Section 6B inserted by No. 7 of 2002 s. 28; amended by No. 18 of 2011 s. 5.]

7. Wardens

- (1) The Commissioner of Police may appoint wardens to perform —
 - (a) duties relating to the controlling of vehicles and pedestrians at children's crossings and pedestrian crossings;
 - (b) duties relating to the parking and standing of vehicles;
 - (c) duties of such other nature relating to the traffic regulation provisions of this Act as the Minister administering the *Police Act 1892* may from time to time approve.
- (2) The Director General may appoint wardens to perform duties of such nature relating to the licensing provisions of this Act as the Minister may from time to time approve.
- (3) For the purposes of the performance of the duties for which a warden was appointed under this section —
 - (a) the warden has such of the powers conferred by this Act on a member of the Police Force as may be prescribed; and
 - (b) a reference in this Act to a member of the Police Force is to be read as including a warden if the regulations so provide.
- (4) A warden appointed under this section shall be issued with a certificate of appointment in the prescribed form which the warden shall carry whenever performing the duties of a warden, and shall, on reasonable demand, produce for inspection by any person.

[Section 7 inserted by No. 76 of 1996 s. 5.]

8. Exchange of information between Director General and Commissioner of Police

(1) In this section —

incident information means —

- (a) information provided in relation to an incident in a report made under section 56(1) or (4); and
- (b) details of any evidence, statement, report or other information obtained as a result of any investigation made into the incident;

offence information means details of —

- (a) any offence of which a person has been convicted whether within the State or elsewhere and whether relating to a road traffic matter or any other matter; and
- (b) any penalty, suspension, cancellation or disqualification arising from any such conviction; and
- (c) the instances in which a person has paid a penalty under a traffic infringement notice under this Act;

relevant authorisation means —

- (a) a driver's licence; or
- (b) a vehicle licence under this Act; or
- (c) a learner's permit; or
- (d) a permit under section 26(1); or
- (e) a licence or permit under the *Motor Vehicle Drivers Instructors Act 1963*.

(2) The Director General must disclose the following information to the Commissioner of Police —

- (a) driver's licence information;
- (b) permit information;
- (c) vehicle licence information;

- (d) optional plates information;
 - (e) demerit points information;
 - (f) instructor information;
 - (g) information obtained from a relevant authority under section 9.
- (3) Information disclosed under subsection (2) —
- (a) may be used in the performance of the Commissioner of Police's functions, whether under this Act or otherwise, but not for any other purpose; and
 - (b) may be disclosed by the Commissioner of Police to an officer, department or instrumentality of this State, another State, a Territory, the Commonwealth or another country for use in the performance of the functions of that officer, department or instrumentality but not for any other purpose.
- (4) The Commissioner of Police must disclose the following information to the Director General —
- (a) incident information about a person who has applied for, holds or has held a relevant authorisation;
 - (b) offence information about a person who has applied for, holds or has held a relevant authorisation;
 - (c) information about the impounding or confiscation of vehicles under Part V Division 4;
 - (d) information of a class prescribed by the regulations for the purposes of this subsection.
- (5) Information disclosed under subsection (4) may be used in the performance of the Director General's functions under this Act or the *Motor Vehicle Drivers Instructors Act 1963* but not for any other purpose.
- (6) The disclosure of information under subsection (2) or (4) is to be free of charge.

[Section 8 inserted by No. 18 of 2011 s. 6.]

9. Exchange of information between Director General and other authorities

- (1) In this section —
infringement notice has the meaning given in section 104(1);
relevant authority means —
- (a) an Australian driver licensing authority; or
 - (b) an external licensing authority; or
 - (c) a person whose functions under the law of another jurisdiction correspond or substantially correspond to a function of the Director General under this Act; or
 - (d) a person prescribed, or of a class prescribed, by the regulations for the purposes of this definition.
- (2) The Director General may disclose the following information to a relevant authority if the Director General considers that the information is required by the relevant authority for the purposes of performing its functions —
- (a) driver's licence information;
 - (b) permit information;
 - (c) vehicle licence information;
 - (d) optional plates information;
 - (e) demerit points information;
 - (f) instructor information.
- (3) The disclosure of information under subsection (2) is to be free of charge.
- (4) If information disclosed under subsection (2) includes information about an offence of which a person has been convicted or for which a person has been given an infringement notice, the Director General must also disclose to the relevant authority —
- (a) any quashing of the conviction; or

- (b) any withdrawal of the infringement notice or the matter coming before a court for determination; or
 - (c) any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* Part 3 in respect of the infringement notice; or
 - (d) anything else known to the Director General concerning the offence, the disclosure of which is likely to be favourable to that person.
- (5) The Director General may seek from a relevant authority any information that the Director General considers is required for the purposes of performing the Director General's functions under this Act.
- (6) The Director General may, for the purposes of performing the Director General's functions under this Act, use information obtained from a relevant authority.

[Section 9 inserted by No. 18 of 2011 s. 6.]

10. Disclosure of information to Commissioner of Main Roads

- (1) The Director General must disclose the following information to the Commissioner of Main Roads —
- (a) driver's licence information;
 - (b) permit information;
 - (c) vehicle licence information;
 - (d) information obtained from a relevant authority under section 9.
- (2) Information disclosed under subsection (1) may be used in the performance of the functions of the Commissioner of Main Roads under this Act but not for any other purpose.
- (3) The disclosure of information under subsection (1) is to be free of charge.

[Section 10 inserted by No. 18 of 2011 s. 6.]

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11. Disclosure of information to Registrar

- (1) The Director General must disclose the following information to the Registrar appointed under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* —
 - (a) driver's licence information;
 - (b) permit information;
 - (c) vehicle licence information.
- (2) Information disclosed under subsection (1) may be used in the performance of the Registrar's functions under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* but not for any other purpose.
- (3) The disclosure of information under subsection (1) is to be free of charge.

[Section 11 inserted by No. 18 of 2011 s. 6.]

12. Disclosure of information to prescribed persons

- (1) In this section —

authorised purpose means —

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

prescribed person means a person prescribed, or of a class prescribed, by the regulations for the purposes of this definition.

- (2) The Director General may disclose the following information to a prescribed person if the Director General considers that the information is required by the person for an authorised purpose —

- (a) driver's licence information;
- (b) permit information;
- (c) vehicle licence information;
- (d) demerit points information;
- (e) instructor information.

(3) A person —

- (a) to whom information is disclosed under subsection (2);
or
- (b) who is employed or engaged by a person to whom
information is disclosed under subsection (2),

must not use the information for a purpose other than the
authorised purpose for which it was disclosed.

Penalty: a fine of 100 PU or imprisonment for 12 months.

[Section 12 inserted by No. 18 of 2011 s. 6.]

13. Disclosure of information for road safety purposes

(1) In this section —

road safety purpose means —

- (a) the purpose of research directed to the promotion of road
safety; or
- (b) the purpose of distributing information about road
safety.

(2) The Director General may disclose the following information to
a person if the Director General considers that the information is
required by the person for a road safety purpose —

- (a) driver's licence information;
- (b) permit information;
- (c) vehicle licence information;
- (d) demerit points information;
- (e) instructor information.

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- (3) A person —
- (a) to whom information is disclosed under subsection (2);
or
 - (b) who is employed or engaged by a person to whom
information is disclosed under subsection (2),

must not use the information for a purpose other than the road safety purpose for which it was disclosed.

Penalty: a fine of 100 PU or imprisonment for 12 months.

[Section 13 inserted by No. 18 of 2011 s. 6.]

15A. Disclosure of information for the purposes of the *Personal Property Securities Act 2009* (Commonwealth)

The Director General may disclose the following information to the Registrar as defined in the *Personal Property Securities Act 2009* (Commonwealth) section 10 —

- (a) information relating to vehicles that have been stolen or written off;
- (b) information contained in the register of vehicle licences referred to in section 27(1) that the Director General considers to be relevant to the operation of the register as defined in section 10 of that Act.

[Section 15A inserted by No. 42 of 2011 s. 103.]

[Part IIA: s. 14 deleted by No. 76 of 1996 s. 5.]

Part III — Licensing of vehicles

15. Vehicle licences

- (1) A vehicle licence is required for a vehicle prescribed in the regulations.
- [(2) deleted]*
- (3) Where a vehicle for which there is not a valid vehicle licence granted under this Act is used on any road, a responsible person for the vehicle and any person so using the vehicle or causing or permitting such use commits an offence against this Act, but —
 - (a) if the regulations provide that when a vehicle licence is renewed on an application made within a prescribed period after the expiry of the licence the renewal is to be regarded as having taken effect immediately after the licence expired, this subsection does not apply to the use of the vehicle within that prescribed period; and
 - (b) it is a defence to a charge of an offence against this subsection against any person other than a responsible person for the vehicle if the accused proves that he had no knowledge that a valid vehicle licence had not been granted in respect of the vehicle; and
 - (c) a person shall not be convicted of an offence against this subsection if he has already been convicted, or charged and acquitted of an offence against section 4(3A) of the *Motor Vehicle (Third Party Insurance) Act 1943*, and both those offences or alleged offences were committed simultaneously.
- (4) A person who is convicted of an offence against this section shall be liable to a penalty not exceeding 10 PU, and in addition, the court shall order the accused to pay a further penalty equal to the charges payable under this Act for the grant of a vehicle licence for the vehicle concerned for a period of 6 months.

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- (5) Any person who has committed an offence against this section for which he has not been prosecuted shall be liable to pay to the Director General the charges which he might have been ordered to pay on conviction of such offence, and such charges shall be recoverable in any court of competent jurisdiction.
- (6) For the purposes of the provisions of this section a vehicle licence document or equivalent document issued in any other State or Territory of the Commonwealth for a vehicle for which each responsible person is not ordinarily resident within the State of Western Australia shall, during the currency of the licence, be deemed to be a vehicle licence document under this Act in respect of the vehicle when used on any road within the State of Western Australia.

[Section 15 amended by No. 105 of 1981 s. 19; No. 11 of 1988 s. 5 and 24; No. 13 of 1994 s. 12; No. 57 of 1995 s. 4; No. 76 of 1996 s. 20(3); No. 50 of 1997 s. 13; No. 39 of 2000 s. 7; No. 28 of 2001 s. 6 and 23(1); No. 84 of 2004 s. 80 and 82; No. 19 of 2010 s. 51.]

[16. Deleted by No. 28 of 2001 s. 7.]

17. Applications for grant, renewal and transfer of vehicle licences

- (1) An owner of a vehicle may apply for the grant, renewal or transfer of a licence for a vehicle by —
 - (a) submitting an application in a form approved by the Director General; and
 - (b) paying the amount of —
 - (i) any fee or charge that would be required by section 19; and
 - (ii) the duty, and any penalty tax, payable under the *Duties Act 2008* on the grant or transfer of the licence.

- (1a) On the payment of —
- (a) a sum ordered under section 24(3) to be paid; or
 - (b) a sum specified under section 102(2a) in a traffic infringement notice,
- an application for a transfer under subsection (1) is to be taken to have been made, and the payment is to be taken to have been a payment under subsection (1)(b).
- (2) Upon an application under subsection (1), the Director General shall, subject to the regulations, issue, renew or transfer a licence for a vehicle if —
- (a) the vehicle meets the prescribed standards and requirements and is otherwise fit for the purpose for which the licence is required; and
 - (b) in the case of an application by an individual, the applicant has attained any minimum age prescribed by regulations under section 111(2)(i) and provided any proof of age and identity required by those regulations; and
 - (c) the applicant has complied with any applicable provisions of the *Duties Act 2008* relating to the grant or transfer of licences for vehicles; and
 - (d) the Director General is satisfied that —
 - (i) the vehicle is kept primarily in this State; or
 - (ii) the vehicle is not kept primarily in any State or Territory;and
 - (e) the applicant would not be prevented by or under the law of another State or a Territory from holding a licence for, or being registered in respect of, the vehicle.
- (3) A vehicle cannot be licensed in the name of more than one person at a particular time.

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- (4) Any one of 2 or more owners may apply for the grant or transfer of a licence and the application is to be signed by each of them.
- (5) An application under subsection (4) is to be regarded as notice of the nomination of the applicant for the purposes of section 5(4).
- (6) Nothing in this section authorises or permits the Director General to grant or renew a vehicle licence contrary to any provision of the *Motor Vehicle (Third Party Insurance) Act 1943* or any other provision of this Act or the regulations.
- (7) The Director General shall refund any amount paid by a person in connection with —
 - (a) an application under this section that is refused; or
 - (b) an application for the transfer of a licence upon which the licence is not transferred but cancelled.

[Section 17 inserted by No. 39 of 2000 s. 9 (as amended by No. 45 of 2002 s. 28(2)); amended by No. 28 of 2001 s. 8 and 23(1) (as amended by No. 45 of 2002 s. 29(2)); No. 12 of 2008 Sch. 1 cl. 33(1) and (2).]

18. Regulations for the grant and renewal of vehicle licences

- (1) The regulations may provide for the grant or renewal of a vehicle licence by the Director General to the extent that a matter is not provided for in section 17.
- (2) Without limiting subsection (1), the regulations may —
 - (a) fix the periods for which a vehicle licence may be granted or renewed; and
 - (b) fix the period, whether before or after the expiry of a licence, within which the licence may be renewed; and
 - (c) if the regulations enable a licence to be renewed after its expiry, provide that renewal within a specified period after the expiry continues the licence, except that the licence is to be regarded as having been suspended on

and from the day of its expiry to the day before the renewal; and

- (d) provide for 3 or more vehicle licences held by the same person to expire on the same day.

[Section 18 inserted No. 28 of 2001 s. 9.]

19. Fees or charges for vehicle licences

- (1) The prescribed recording fee shall be paid to the Director General for the grant or renewal of any licence for a vehicle (other than under Part IV), irrespective of whether the whole or any part of a vehicle licence charge is also payable for the grant or renewal of the licence.
- (2) The prescribed transfer fee shall be paid to the Director General for effecting the transfer of any licence for a vehicle.
- (3) Subject to any exemption, reduction, refund or deferral provided for in the regulations, the appropriate charge prescribed in the regulations shall be paid to the Director General for granting or renewing any licence for a vehicle.

[(4)-(16) deleted]

- (17) Where a vehicle licence has been granted by the Director General without the payment of a vehicle licence charge, or upon the payment of a reduced vehicle licence charge, subject to conditions specified in the licence or in this Act or subject to the ownership or use of the vehicle, under the provisions of this Act, and the conditions are not observed or the ownership is changed to that of some person who would not be entitled to a licence granted, or the vehicle is put to some use that would not occasion the licence to be granted without payment of a vehicle licence charge or at a reduced vehicle licence charge, then, unless, or until the vehicle licence charge, or the difference between the vehicle licence charge and the reduced vehicle licence charge, has been paid in respect of that vehicle licence,

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every person using that vehicle on a road contravenes the provisions of section 15.

- (18) Where a vehicle licence is granted pursuant to the provisions of this Act and the fees or charges paid in respect of the licence are subsequently found to be either in excess of or less than the fees or charges which are properly payable in respect of the licence, the Director General —
- (a) shall forthwith upon demand refund the amount of the excess to the person to whom the licence was granted;
 - (b) may recover the deficiency in a court of competent jurisdiction from the person to whom the licence was granted, if that person fails to pay the deficiency to the Director General within 7 days after the amount of the deficiency has been demanded in writing from him.

[Section 19 amended by No. 93 of 1975 s. 5; No. 135 of 1976 s. 2; No. 89 of 1978 s. 4; No. 9 of 1979 s. 6; No. 10 of 1979 s. 3; No. 42 of 1980 s. 3; No. 81 of 1980 s. 3; No. 105 of 1981 s. 19; No. 10 of 1982 s. 28; No. 25 of 1982 s. 12; No. 60 of 1982 s. 3; No. 95 of 1984 s. 2; No. 78 of 1986 s. 5; No. 21 of 1995 s. 6; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 10, 23(2) and 24.]

20. Licence obtained by means of a dishonoured cheque void

- (1) Where the fees or charges for the grant or renewal of a vehicle licence are paid by a cheque which is not honoured by the financial institution on which it is drawn, the licence is void as from the time of grant or renewal as the case may be.
- (2) The person to whom a licence referred to in subsection (1) is granted shall, on demand made by or on behalf of the Director General, forthwith deliver the licence and the number plates relating to that licence to the Director General.
- (3) Where the person to whom the licence is granted —
 - (a) fails so to deliver the licence or the number plates; or

- (b) after the demand uses or continues to use or allows any other person to use the licence or the number plates relating to that licence,

he commits an offence.

Penalty: For a first offence, 2 PU.

For a subsequent offence, 6 PU.

[Section 20 amended by No. 105 of 1981 s. 19; No. 11 of 1988 s. 24; No. 78 of 1995 s. 147; No. 76 of 1996 s. 20(3); No. 24 of 2000 s. 39(1) and 55; No. 28 of 2001 s. 11, 23(1) and (2).]

[21. Deleted by No. 21 of 1995 s. 7.]

22. Certain fees and charges to be credited to Main Roads Trust Fund

- (1) The Director General shall, on or before the 15th day of the month next following that in which it receives them, credit to the Consolidated Account, all vehicle licence charges.
- (2) All recording fees paid to the Director General may be retained by the Director General.
- [(3) deleted]*
- (4) All fees taken pursuant to the regulations on the grant of a permit for the carrying on a vehicle of a load exceeding a prescribed load, shall be credited to the Consolidated Account.
- (5) An amount equal to the amounts credited to the Consolidated Account under subsections (1) and (4) shall be —
 - (a) credited to the Main Roads Trust Fund maintained under the *Main Roads Act 1930*; and
 - (b) charged to the Consolidated Account,

and this subsection appropriates the Consolidated Account accordingly.

[Section 22 amended by No. 105 of 1981 s. 19; No. 25 of 1982 s. 13; No. 6 of 1993 s. 6; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 12 and 23(1); No. 77 of 2006 s. 4.]

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[23. Deleted by No. 39 of 2000 s. 11.]

23A. Cancellation or suspension of vehicle licence in certain circumstances

- (1) The Director General may cancel the licence in respect of any vehicle where —
 - (a) the proper fees and charges have not been paid; or
 - (b) the vehicle does not meet the prescribed standards and requirements; or
 - (c) a responsible person for the vehicle has failed to present it for inspection when so directed by the Director General pursuant to the provisions of this Act; or
 - (d) the licence for the vehicle is surrendered in accordance with section 28A of the *Motor Vehicle Dealers Act 1973*.
- (2) The Director General may, in circumstances described in subsection (1), suspend the licence in respect of a vehicle until the circumstances giving rise to the suspension are remedied.
- (3) If requested under section 79BD to do so, the Director General must, in accordance with the request —
 - (a) suspend the licence in respect of a vehicle; or
 - (b) revoke the suspension of the licence in respect of a vehicle.

[Section 23A inserted by No. 89 of 1978 s. 5; amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No. 39 of 2000 s. 12; No. 28 of 2001 s. 13; No. 4 of 2002 s. 72; No. 23 of 2009 s. 4.]

24. Transfer of vehicle licences

- (1) Where a person to whom a licence in respect of a vehicle has been granted ceases to be the owner of the vehicle, he shall —
 - (a) within 7 days after ceasing to be the owner, give notice in writing to the Director General of the name and address of the new owner of the vehicle; and

- (b) if the licence had been obtained without the payment of a vehicle licence charge or upon the payment of a reduced vehicle licence charge and unless the provisions of section 19(17) have been complied with, within 7 days after ceasing to be the owner, return the licence and the appropriate number plates to the Director General.
- (2) A person who becomes the owner of a vehicle in respect of which a licence has been granted shall, within 14 days after becoming the owner, give notice in writing to the Director General of that fact.
- (2a) As soon as practicable after receiving notice under subsection (1)(a) or (2), or otherwise, of a change in the ownership of a vehicle in respect of which a licence has been granted —
 - (a) if the Director General reasonably suspects that the vehicle does not meet a prescribed standard or requirement relating to the security of the vehicle, the Director General may issue to the new owner a notice requiring that the vehicle be modified so that it does meet the prescribed standard or requirement; or
 - (b) if the Director General is satisfied that the licence may be transferred under section 17(2) and no application has been made under section 17(1), the Director General may issue to the new owner a notice requiring that an application for the transfer of the licence be made under section 17.
- (2b) In subsection (2a) —

new owner, in relation to a vehicle, means a person who, according to the notice received by the Director General, has become a new owner of the vehicle and, if there is more than one such person, each or any of them.
- (2c) If a vehicle has not been modified in accordance with a notice issued under subsection (2a)(a) within 28 days after the notice is

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issued, or any longer period that the Director General allows, the Director General shall cancel the licence in respect of the vehicle.

- (2d) A person to whom a notice is issued under subsection (2a)(b) commits an offence if an application for the transfer of the licence for the vehicle is not made within 28 days after the notice is issued, or any longer period that the Director General allows, unless it can be shown that —
- (a) the person did not agree to becoming an owner of the vehicle and has notified the Director General in writing accordingly; or
 - (b) another person has been nominated for the purposes of section 5(4); or
 - (c) there is more than one owner of the vehicle and there is good reason why a person was not nominated under section 5(4); or
 - (d) there was some other good reason why the application for the transfer of the licence was not made.
- (3) The court convicting a person of an offence against subsection (2d) shall, whether imposing a penalty or not, order the person to pay the sum of —
- (a) the prescribed transfer fee; and
 - (b) the amount payable under a taxation Act, as defined in the *Taxation Administration Act 2003* Glossary, in respect of the transfer of the licence.
- (4) The other subsections of this section do not apply if a person to whom a licence in respect of a vehicle has been granted dies, and in that case the Director General shall on an application under section 17, if any, by the executor or administrator of the estate of that person endorse on the licence the transfer of the licence to that executor or administrator.

[Section 24 amended by No. 105 of 1981 s. 19; No. 11 of 1988 s. 19; No. 21 of 1995 s. 8; No. 57 of 1995 s. 6; No. 76 of 1996

s. 20(3); No. 24 of 1999 s. 9; No. 39 of 2000 s. 13; No. 28 of 2001 s. 23(2) and 24; No. 45 of 2002 s. 27; No. 12 of 2008 Sch. 1 cl. 33(3).]

24A. Requirement to make declaration on applying for grant or transfer of vehicle licence

- (1) Regulations may require an applicant for the grant or transfer of a licence in respect of a vehicle to declare in writing that the vehicle meets any prescribed standard or requirement relating to the security of vehicles that applies to that vehicle.
- (2) If the applicant does not comply with a requirement of regulations made for the purposes of subsection (1), it may be taken for the purposes of section 17(2)(a) that the vehicle concerned does not meet the prescribed standard or requirement.

[Section 24A inserted by No. 52 of 1998 s. 4; amended by No. 39 of 2000 s. 14.]

24B. Change of nominated owner

- (1) If a person is the owner of a vehicle as the result of a nomination for the purposes of section 5(4), the person may apply to the Director General, in a form approved by the Director General, to cancel the nomination.
- (2) The application is to include a statement, signed by each person who would be an owner if there had been no nomination, to the effect that they agree to another of them being the owner of the vehicle for the purposes of this Act.
- (3) If the Director General approves the application and the applicant pays the prescribed fee, if any —
 - (a) the current nomination ceases to have effect; and
 - (b) the statement under subsection (2) is to be treated as being a nomination for the purposes of section 5(4); and

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- (c) the Director General is to vary the licence by changing the name of the person to whom the licence is granted in accordance with the application.

[Section 24B inserted by No. 39 of 2000 s. 15; amended by No. 28 of 2001 s. 23(2).]

25. Review

- (1) An application for review may be made to the State Administrative Tribunal in any case where an application for the grant, renewal, transfer, or variation of a licence under this Part is refused, or where a licence is cancelled or suspended under section 23A.

[(2) deleted]

[Section 25 amended by No. 39 of 2000 s. 16(1); No. 28 of 2001 s. 14 and 23(1); No. 55 of 2004 s. 1062.]

26. Permits etc. for unlicensed vehicles

- (1) The Director General may, on payment of the prescribed fee, grant to a person a permit authorising, subject to such conditions as the Director General may impose, the driving of an unlicensed vehicle or the towing of an unlicensed vehicle —
 - (a) to or from any place at which the Director General grants vehicle licences or examines vehicles in connection with the granting of vehicle licences or to or from any place at which the vehicle is to be or has been repaired; or
 - (b) for such other purposes as may be prescribed or approved by the Director General.
- (2) The Director General may, on payment of the prescribed fee, assign and issue to a person of a prescribed class number plates which may be used, subject to such conditions as may be prescribed, on any unlicensed motor vehicle.

- (2a) Without limiting any power conferred upon him to make regulations under this Act, the Governor may make regulations prescribing —
- (a) a fee to be paid from time to time for the use and possession of number plates issued under subsection (2); and
 - (b) a deposit to be paid on the issue of, and in respect of, such number plates, and the circumstances in which that deposit shall be forfeited or refunded; and
 - (c) as a condition referred to in subsection (2) and subsection (3)(b), the use of an unlicensed motor vehicle in such circumstances or for such purposes as the Director General may, in any particular case, approve.
- (3) Where an unlicensed motor vehicle is used on a road —
- (a) under the authority of a permit granted under subsection (1) and in accordance with such conditions, if any, as may have been imposed at the time of the grant of the permit; or
 - (b) with number plates issued pursuant to subsection (2) and in accordance with such conditions as may be prescribed relating to the use of those plates and of vehicles to which they may be attached,
- the use of the vehicle shall be lawful notwithstanding any provision of section 15 to the contrary.
- (4) Where an unlicensed motor vehicle for which a permit has been granted under subsection (1) is driven or towed otherwise than in accordance with any condition imposed under that subsection, the Director General may cancel the permit by notice in writing under subsection (5).
- (5) A notice in writing referred to in subsection (4) —
- (a) shall be signed by a person authorised so to do by the Director General; and

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- (b) shall be served on the person to whom the permit was granted; and
- (c) shall come into operation when it is so served or at such later time (if any) as is specified in the notice.

[Section 26 amended by No. 71 of 1979 s. 4; No. 81 of 1980 s. 4; No. 105 of 1981 s. 10 and 19; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 23(1) and (2).]

[Section 26. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

27. Register of vehicle licences

- (1) The Director General shall keep a register of vehicle licences, and enter therein particulars of every vehicle licence granted.

[(2) deleted]

[Section 27 amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No. 24 of 2000 s. 39(2); No. 39 of 2000 s. 17; No. 28 of 2001 s. 23(1) and (2); No 39 of 2009 s. 4.]

27AA. Labels to be affixed to certain vehicles

Regulations may provide for —

- (a) the Director General to issue a label (*label*) on the grant or renewal, under this Part, of a vehicle licence for a vehicle of a prescribed class; and
- (b) specified information about a vehicle to be contained in or on a label for the vehicle; and
- (c) matters relating to the affixing to vehicles, and display, of labels.

[Section 27AA inserted by No. 39 of 2009 s. 5.]

27A. Effect of disqualification

- (1) Where a licence suspension order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of a person, a licence held by that person in respect of a vehicle specified in the order or in respect of any vehicle (as the order directs), shall by force of this section be suspended so long as the licence suspension order continues in force and during that period shall be of no effect.
- (2) Subsection (1) shall not operate to extend the period for which a vehicle licence may be valid or effective beyond the expiration of the period for which the licence was expressed to be granted or renewed.
- (3) A vehicle licence obtained by a person who is disqualified from holding or obtaining a vehicle licence shall be of no effect.

[Section 27A inserted by No. 92 of 1994 s. 35; amended by No. 28 of 2001 s. 23(2).]

28. Classification of vehicle licences

Notwithstanding any other provision of this Part, the Governor may make regulations prescribing classes of vehicle licences and by those regulations —

- (a) designate the kind or kinds of vehicle to which any class of licence is to apply; and
- (b) permit licences of any particular class to be granted for a limited period or limited periods; and
- (c) empower the Director General to impose limitations on the use of a vehicle for which a particular class of licence is granted.

[Section 28 amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 23(2).]

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28A. Fees may be amended by regulation

[(1) deleted]

- (2) Where regulations made under section 19(3) are amended or replaced, the regulations as in force immediately before the commencement day of the amending or replacing regulations shall continue to apply in relation to —
- (a) the grant of a vehicle licence if that licence is granted before the specified day; and
 - (b) the renewal of a vehicle licence if, in accordance with regulations made under section 18, that renewal has effect, or is deemed to have effect, on and from a day that precedes the specified day.

- (3) In this section —

commencement day in relation to regulations, means the day from which, pursuant to section 41 of the *Interpretation Act 1984*, those regulations take effect and have the force of law;

specified day, in relation to regulations, means the day prescribed therein as the specified day for the purposes of this section, being a day not less than 30 days after the commencement day of those regulations.

[Section 28A inserted by No. 10 of 1979 s. 4; amended by No. 28 of 2001 s. 15.]

29. Minister may require vehicles to be inspected

- (1) The Minister may, by notice published in the *Government Gazette*, prohibit the grant, renewal or transfer of any vehicle licence, in respect of a vehicle unless and until the vehicle has been examined and a certificate of inspection has been issued pursuant to this Act that the vehicle meets the prescribed standards and requirements and that the vehicle is fit for the purpose for which the licence is desired.

- (2) The Minister may, in a notice under subsection (1), declare that the provisions of the notice —
- (a) apply in respect of vehicles generally or in respect of vehicles of a class specified in the notice;
 - (b) apply throughout the State or in a part of the State specified in the notice;
 - (c) do not apply in a case, or cases of a class, specified in the notice.

[Section 29 inserted by No. 71 of 1979 s. 5; amended by No. 76 of 1996 s. 6; No. 28 of 2001 s. 23(1).]

Part IV — Overseas motor vehicles when temporarily in Australia

30. Application of this Part

- (1) This Part applies to any motor vehicle which is imported for temporary use in the Commonwealth from any country outside the Commonwealth and is —
 - (a) landed in this State direct from that country; or
 - (b) brought to this State from any other State or a Territory of the Commonwealth.
- (2) The provisions of this Part do not affect the other provisions of this Act or the provisions of the regulations made under this Act except to the extent expressly provided.

[Section 30 amended by No. 57 of 1997 s. 106(1).]

31. When owner of overseas vehicle entitled to free licence

Where a motor vehicle to which this Part applies and which is owned by a person who is not a permanent resident of any State or Territory of the Commonwealth is landed in this State direct from any country outside the Commonwealth, the owner of the vehicle is entitled, on application to the Director General and subject to the provisions of sections 34 and 35, to be granted a vehicle licence for that vehicle without payment of the vehicle licence charge, for a period not exceeding 12 months calculated from the date when the vehicle was landed in this State, if it appears to the Director General that there are in force —

- (a) a vehicle licence or registration effected in relation to that vehicle under the law of the country of which the owner is a permanent resident; and

- (b) a contract of insurance with respect to the vehicle as provided in section 4 of the *Motor Vehicle (Third Party Insurance) Act 1943*,

but the period for which the Director General grants a licence under this section shall not extend beyond the date of the expiry of the licence or registration effected under the law of that country nor beyond the date of the expiry of the contract of insurance.

[Section 31 amended by No. 105 of 1981 s. 19; No. 21 of 1995 s. 9; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 16, 23(3) and 24.]

32. Licence granted in another State valid in this State

For the purpose of this Part a licence granted or a registration effected by any licensing or registering authority of another State or Territory of the Commonwealth in respect of a vehicle to which this Part applies is, during the currency of the licence or registration and so long as a contract of insurance with respect to that vehicle as provided in section 3(4), or in section 4, of the *Motor Vehicle (Third Party Insurance) Act 1943* is in force, to be regarded as a vehicle licence under this Act in respect of the vehicle when it is used on any road within the State.

[Section 32 amended by No. 28 of 2001 s. 23(2).]

33. When free licence may be extended free of charge

Where a licence granted without payment of the vehicle licence charge under section 31, or a licence granted, or a registration effected, free of charge by any licensing or registering authority of another State or a Territory of the Commonwealth, in respect of a motor vehicle to which this Part applies, expires, the owner of the vehicle is, if the vehicle is being used in this State, on application to the Director General and subject to the provisions of sections 34 and 35, entitled to an extension or a renewal of the licence or registration by the Director General without

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payment of the vehicle licence charge for a period not extending beyond the period of 12 months from the date on which the vehicle was landed in the Commonwealth, if it appears to the Director General that there are in force —

- (a) a vehicle licence or registration effected in respect of that vehicle under the law of the country of which the owner is a permanent resident; and
- (b) a contract of insurance with respect to the vehicle as provided in section 3(4), or in section 4, of the *Motor Vehicle (Third Party Insurance) Act 1943*,

but the period for which the Director General extends or renews the licence or registration under this section is not to extend beyond the date of the expiry of the licence or registration, as the case may be, effected under the law of that country nor beyond the date of the expiry of the contract of insurance.

[Section 33 amended by No. 105 of 1981 s. 19; No. 21 of 1995 s. 9; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 23(2) and 24.]

34. Owner to furnish evidence of guarantee that vehicle will be taken out of Australia before free licence or extension of licence granted

The owner of the vehicle is not entitled to be granted a licence for the vehicle without payment of the vehicle licence charge under section 31 or to an extension or renewal of the licence or registration without payment of the vehicle licence charge under section 33, unless he produces for inspection by the Director General a document representing a valid *Triptyque* or *Carnet de passages en douane* relating to the vehicle, or such other documentary evidence as the Director General requires establishing that the owner has given to the Customs Department of the Commonwealth Government a guarantee that the vehicle is to be subsequently taken out of Australia.

[Section 34 amended by No. 105 of 1981 s. 19; No. 21 of 1995 s. 9; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 23(3) and 24.]

35. No licence to be granted or extended unless requirements regarding construction etc. of vehicles complied with

The Director General shall not grant, extend or renew a licence in respect of a motor vehicle to which this Part applies, notwithstanding the provisions of section 31 or 33, unless it appears to a licensing officer of the Director General that the provisions of this Act relating to the construction, appliances, lamps and other equipment of motor vehicles have been complied with in regard to that motor vehicle.

[Section 35 amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 17.]

36. Free licence or renewal ceases to be valid when owner becomes, or transfers vehicle to, permanent resident

When the owner of a vehicle to which this Part applies and in respect of which a vehicle licence is granted, extended or renewed without payment of the vehicle licence fee under this Part becomes, or transfers the vehicle to, a permanent resident of the Commonwealth of Australia, the licence so granted, extended or renewed becomes invalid.

[Section 36 amended by No. 21 of 1995 s. 9; No. 28 of 2001 s. 23(2).]

37. When provisions of Act apply as though this Part was not enacted

Where the owner of a vehicle to which this Part applies is not entitled to be granted with a licence for the vehicle without payment of the vehicle licence charge under section 31, or to an extension or renewal of the licence without payment of the vehicle licence charge under section 33, or where a licence granted without payment of the vehicle licence charge in respect of a vehicle to which this Part applies becomes invalid as provided by section 36, the vehicle may be licensed in

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accordance with the provisions of this Act as though this Part was not enacted.

[Section 37 amended by No. 21 of 1995 s. 9; No. 28 of 2001 s. 23(2) and 24.]

[38. Deleted by No. 39 of 2009 s. 6.]

39. Number plates on overseas vehicles

- (1) Where a motor vehicle, to which this Part applies and which is owned by a person who is not a permanent resident of any State or Territory of the Commonwealth, when landed in or brought to this State, is equipped with one or more number plates in accordance with the law of the country, or the States or Territory of the Commonwealth from which it was so landed or brought, those number plates are to be regarded, so long as the vehicle licence under this Act remains or is regarded to be in force and the vehicle is being used temporarily within the Commonwealth, as number plates issued under this Act.
- (2) Where the vehicle is not so equipped or where the number plate is so mutilated that any material part is obscured, obliterated or indistinct, the Director General shall, on payment of the prescribed charge, issue to the person a temporary plate or plates which he shall affix to the vehicle in the manner prescribed and which are to be regarded, so long as a vehicle licence or registration under this Act remains in force in respect of the vehicle and the vehicle is being used temporarily within the Commonwealth, as a number plate or plates issued under this Act.

[Section 39 amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3).]

40. Regulations

The Governor may make such regulations as may be necessary or convenient for carrying out or giving effect to the provisions

of this Part and, without limiting the generality of the foregoing, by such regulations may —

- (a) prescribe the particulars to be stated in any application made under section 31 or 33; and
 - (b) prescribe the type of temporary number plates to be issued by the Director General, the charge for temporary number plates and the conditions of their use, and provide for their surrender before the vehicles in respect of which they are issued are taken out of Australia; and
 - (c) provide for the issue by the Director General at a prescribed charge of plates displaying the words “Left-Hand Drive” in letters at least 50 millimetres high to owners of vehicles to which this Part applies and which have the steering apparatus on the left-hand side of the vehicle; and
 - (d) prescribe the charge for those plates; and
 - (ea) provide for —
 - (i) the Director General to issue a label (*label*) on the grant, extension or renewal, under this Part, of a vehicle licence for a vehicle of a prescribed class; and
 - (ii) specified information about a vehicle to be contained in or on a label for the vehicle; and
 - (iii) matters relating to the affixing to vehicles, and display, of labels;
- and
- (e) prescribe the conditions under which “Left-Hand Drive” vehicles to which this Part applies may be used on any road in this State; and
 - (f) prescribe the nature and kind of information and particulars owners of vehicles to which this Part applies are to give the Director General at any specified time or from time to time; and

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- (g) authorise the licensing under this Part and the use in this State of vehicles to which this Part applies notwithstanding that any regulations relating to the construction, appliances, lamps and other equipment have not been complied with; and
- (h) require every vehicle to which this Part applies and in respect of which any regulations referred to in paragraph (g) have not been complied with to be converted so as to comply with those regulations when the owner becomes, or the vehicle is transferred to, a permanent resident of the Commonwealth.

[Section 40 amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No 39 of 2009 s. 7.]

41. *Transport Co-ordination Act 1966 not affected*

The provisions of this Part do not affect any of the provisions of the *Transport Co-ordination Act 1966*.

Part IVA — Authorisation to drive

[Heading inserted by No. 54 of 2006 s. 6.]

Division 1 — Preliminary

[Heading inserted by No. 54 of 2006 s. 6.]

41A. Terms used

In this Part, unless the contrary intention appears —
condition includes a limitation;

driver's licence register means the register referred to in section 42(1)(a)(ii).

[Section 41A inserted by No. 54 of 2006 s. 6.]

Division 2 — Driver licensing

[Heading inserted by No. 54 of 2006 s. 6.]

42. Regulations for driver licensing scheme

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

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

- (d) fix the period for which a driver's licence remains in force;
 - (e) include provisions about the disqualification of a person from holding or obtaining a driver's licence and the surrender, cancellation, variation or suspension of a driver's licence;
 - (f) provide for the issue of a driver's licence document to a person who has a driver's licence;
 - (g) provide for —
 - (i) what is to be authorised by a licence that, before an amendment to the regulations, operated by reference to a vehicle classification that no longer exists; and
 - (ii) an expedited means for the licence holder to obtain a licence authorising anything that was formerly authorised by the licence but, because of the amendment, has ceased to be authorised;
 - (h) prescribe circumstances in which a driver's licence document has to be returned to the Director General and prescribe how it is to be returned;
 - (i) create offences involving the alteration, destruction, or misuse of a driver's licence document.
- (6) The regulations may —
- [(a) deleted]*
 - (b) relieve any driver described in the regulations from the requirement to comply with this Part, or a specified provision of this Part or the regulations.

[Section 42 inserted by No. 54 of 2006 s. 6; amended by No. 18 of 2011 s. 7.]

42A. Director General's licensing functions

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

[Section 42A inserted by No. 54 of 2006 s. 6.]

42B. Certain licences authorise learner driving

- (1) The holder of an Australian driver licence may drive a vehicle on a road even though —
- (a) that licence is not sufficient authorisation to do so; and
 - (b) the person does not hold a learner's permit authorising the person to do so,

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

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

[Section 42B inserted by No. 54 of 2006 s. 6.]

42C. Dishonestly obtained driver's licence

- (1) If a person commits an offence under section 97(2)(b) for the purpose of obtaining the grant, renewal, or variation of a driver's licence, the driver's licence is void from the time when the offence is committed.
- (2) A person must not, without lawful authority or excuse, possess a driver's licence document for a licence that is void because of subsection (1).

Penalty: 32 PU.

[Section 42C inserted by No. 54 of 2006 s. 6; amended by No. 14 of 2011 s. 4.]

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

- (1) Except as allowed by subsection (2) or in a case described in subsection (4), the Director General cannot grant a driver's licence to a person unless —
- (a) the Director General —
 - (i) is satisfied that the person usually resides in this State; or
 - (ii) is satisfied that the person does not usually reside in any other jurisdiction and does not hold, and has never held, an Australian driver licence granted under the law of another jurisdiction;
- and
- (b) if the person has held —
 - (i) any Australian driver licence; or
 - (ii) any licence or authorisation to drive a motor vehicle granted to the person by an external licensing authority,

the person has ceased to hold the licence or authorisation and has notified the Director General, in a form approved by the Director General, of that fact.
- (2) Despite subsection (1), the Director General may, in circumstances prescribed in the regulations, grant a driver's licence to a person who still holds a licence or authorisation to drive a motor vehicle granted to the person by an external licensing authority.
- (3) Except in a case described in subsection (4), the Director General cannot renew a person's driver's licence if the Director General —
- (a) is no longer satisfied as section 42D(1)(a) would require if that paragraph applied; or

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- (b) is satisfied that the person has any other licence or authorisation because of which, if the person were seeking the grant rather than the renewal of the driver's licence, subsection (1) would prevent the Director General from granting it.
- (4) This section does not prevent the Director General from granting an extraordinary licence to a person or renewing a person's extraordinary licence —
 - (a) even though the person may not usually reside in this State, and whether or not the person usually resides in any other jurisdiction; and
 - (b) even though the person may have a licence or authorisation referred to in subsection (1)(b).
- (5) This section does not limit the circumstances in which the Director General may refuse to grant or renew a driver's licence.

[Section 42D inserted by No. 54 of 2006 s. 6.]

42E. Additional matters to do with identity

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

- (3A) Subsection (2) does not prevent the grant or renewal of a driver's licence if the applicant has provided the Director General with a photograph and signature under section 43A within 10 years of the application.
- (3) The photograph and signature are to be provided in a manner and form approved by the Director General.
- (4) The Director General is to ensure that any photograph or signature provided under this section is destroyed if it, or a copy of it, has not been used on a driver's licence document for a driver's licence granted or renewed in the preceding 10 years.
- (5) A person who, other than for the purposes of this Part, possesses a photograph or signature provided under this section that is not on a driver's licence document commits an offence.
Penalty: Imprisonment for 2 years.
- (6A) Subsection (5) does not apply to a person who possesses a photograph provided under this section as a result of its disclosure under Division 4A.
- (6) A person employed or engaged in connection with any aspect of the production of driver's licence documents or otherwise concerned in the administration of this Part, who, otherwise than in the administration of this Part —
- (a) reproduces, by any means, a photograph or signature provided under this section; or
 - (b) causes or permits another person to do so,
- commits an offence.
Penalty: Imprisonment for 2 years.
- (7) In this section —
- destroyed*** includes damaged so as to be unusable;
photograph includes a negative or an image stored electronically.

[Section 42E inserted by No. 54 of 2006 s. 6; amended by No. 18 of 2011 s. 8.]

Division 3 — Learner's permit

[Heading inserted by No. 54 of 2006 s. 6.]

43. Learner's permit

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

[Section 43 inserted by No. 54 of 2006 s. 6.]

Division 4A — Disclosure of photographs

[Heading inserted by No. 18 of 2011 s. 10.]

44AA. Terms used

In this Division —

ASIO Act means the *Australian Security Intelligence Organisation Act 1979* (Commonwealth);

ASIO official means —

- (a) the Director-General of Security; or
- (b) an officer or employee of the Australian Security Intelligence Organisation (continued under the ASIO Act) who is authorised by the Director-General of Security for the purposes of this Division;

Director-General of Security means the Director-General of Security holding office under the ASIO Act;

law enforcement official means a person prescribed, or a person of a class prescribed, by the regulations for the purposes of this Division;

photograph means a photograph provided to the Director General under this Part;

police official means —

- (a) the Commissioner of Police; or
- (b) a member of the Police Force who is authorised by the Commissioner of Police for the purposes of this Division; or
- (c) a person employed or engaged in the department of the Public Service principally assisting in the administration of the *Police Act 1892* who is authorised by the Commissioner of Police for the purposes of this Division.

[Section 44AA inserted by No. 18 of 2011 s. 10.]

44AB. Disclosure to police, ASIO and law enforcement officials

- (1) The Director General must disclose photographs to a police official for the purposes of the performance of the police official's functions under this Act or another written law.

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- (2) The Director General must disclose photographs to an ASIO official for the purposes of the performance of the ASIO official's functions under the ASIO Act or another law of the Commonwealth.
- (3) The Director General may, with the prior approval of the Commissioner of Police, disclose photographs to a law enforcement official if the Director General considers that the photographs are required for the purposes of the performance of the law enforcement official's functions under a written law, a law of another jurisdiction or a law of the Commonwealth.

[Section 44AB inserted by No. 18 of 2011 s. 10.]

44AC. Disclosure to executor or administrator

If the person shown in a photograph has died, the Director General may disclose the photograph to an executor or administrator of the person's estate.

[Section 44AC inserted by No. 18 of 2011 s. 10.]

Division 4 — Other matters about driver authorisations

[Heading inserted by No. 54 of 2006 s. 6.]

44. Authorisation to drive without a driver's licence

- (1) The regulations may provide that a motor vehicle of a class or kind prescribed in the regulations may, either generally or in prescribed circumstances, be driven on roads without the driver holding a driver's licence.
- (2) The regulations may provide for the Director General to permit a person to drive without holding a driver's licence of a kind that would otherwise be required to authorise that driving, and may provide for the Director General to make the permission subject to conditions.

[Section 44 inserted by No. 54 of 2006 s. 6.]

44A. Driving while undergoing driving test

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

[Section 44A inserted by No. 54 of 2006 s. 6.]

44B. Recognition of authorisation of another jurisdiction

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

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

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

- (4) In this section —

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

[Section 44B inserted by No. 54 of 2006 s. 6.]

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

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

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

- (2) In subsection (1) —

driver licence means any licence or authorisation that is an Australian driver licence.

[Section 44C inserted by No. 54 of 2006 s. 6.]

44D. External Territories and other countries

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

- (b) any offence that a person has committed against any foreign law about driving,

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

- (2) In subsection (1) —

foreign law means the law of an external Territory, as defined in the *Acts Interpretation Act 1901* of the Commonwealth, or the law of another country.

[Section 44D inserted by No. 54 of 2006 s. 6.]

[45, 46. Deleted by No. 18 of 2011 s. 11.]

47. Regulations may refer to published documents

- (1) Regulations made for the purposes of this Part may adopt the text of any published document specified in the regulations —
 - (a) as that text exists at a particular date; or
 - (b) as that text may from time to time be amended.
- (2) The text may be adopted —
 - (a) wholly or in part;
 - (b) as modified by the regulations.
- (3) The adoption may be direct (by reference made in the regulations), or indirect (by reference made in any text that is itself directly or indirectly adopted).
- (4) The adoption of text is of no effect unless —
 - (a) the adopted text; and
 - (b) if text is adopted as it may be amended from time to time, either —
 - (i) the amendments to the text; or
 - (ii) the text as amended,

can at all reasonable times be inspected or purchased by the public.

[Section 47 inserted by No. 54 of 2006 s. 6.]

48. Transitional regulations

Regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions applying before the commencement of section 6 of the *Road Traffic Amendment Act 2006*¹ to the provisions of this Part, or regulations made under this Part, applying after that commencement.

[Section 48 inserted by No. 54 of 2006 s. 6.]

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

The regulations may —

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

[Section 48A inserted by No. 54 of 2006 s. 6.]

[48B-48F.] Deleted by No. 54 of 2006 s. 6.]

Part V — Regulation of traffic

[Heading inserted by No. 76 of 1996 s. 11.]

Division 1A — Terms used in this Part

[Heading inserted by No. 39 of 2007 s. 19.]

49AA. Terms used

In this Part —

bodily harm has the meaning given in *The Criminal Code* section 1(1);

grievous bodily harm has the meaning given in *The Criminal Code* section 1(1).

[Section 49AA inserted by No. 39 of 2007 s. 19.]

Division 1 — Driving of vehicles: general offences

[Heading inserted by No. 10 of 2004 s. 6.]

49. Driving while unlicensed or disqualified

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

commits an offence.

Penalty:

- (a) unless subsection (3) applies —
 - (i) for a first offence, 6 PU;
 - (ii) for a subsequent offence, 12 PU;

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- (b) if subsection (3)(d), but no other paragraph of subsection (3), applies —
 - (i) a fine of not less than 4 PU or more than 30 PU; and
 - (ii) imprisonment for not more than 12 months, and the court may order that the offender be disqualified from holding or obtaining a driver's licence for a period of not more than 3 years;
- (c) if subsection (3)(a), (b), or (c) applies —
 - (i) for a first offence, a fine of not less than 8 PU or more than 40 PU, and imprisonment for not more than 12 months;
 - (ii) for a subsequent offence, a fine of not less than 20 PU or more than 80 PU, and imprisonment for not more than 18 months, and the court shall order that the offender be disqualified from holding or obtaining a driver's licence for a period of not less than 9 months and not more than 3 years.
- (2) It is a defence to a charge of an offence under subsection (1) to prove that the motor vehicle was driven in accordance with —
 - (a) regulations referred to in section 44(1); or
 - (b) a necessity permit under section 49A.
- (3) If an offence under subsection (1)(a) is committed by a person —
 - (a) who has applied for, but has been refused, an Australian driver licence of a kind required; or
 - (b) who has never held an Australian driver licence of a kind required and is disqualified from holding or obtaining an Australian driver licence of a kind required other than for the reason described in paragraph (d) or who has held an Australian driver licence of a kind

required but ceased to hold the licence of that kind most recently held other than —

- (i) because the person voluntarily surrendered the licence most recently held or it expired; or
 - (ii) for the reason described in paragraph (d);
- or
- (c) whose authority to drive, whether under an Australian driver licence or otherwise, is for the time being suspended other than for the reason described in paragraph (d); or
 - (d) who is no longer authorised to drive because of penalty enforcement laws, as described in subsection (9),

a member of the Police Force may, without a warrant, arrest the person.

- (4) A person who would only come within a description in subsection (3)(a), (b), or (c) because of a decision for the review of which an application had been made to the State Administrative Tribunal is excluded from that description if the application had been made, but not determined, when the offence under subsection (1)(a) was committed.
- (5) If a person to whom the Director General has been ordered under section 76(3) to grant an extraordinary licence commits an offence under subsection (1)(a) —
 - (a) before the extraordinary licence is granted; or
 - (b) when the extraordinary licence has expired and has not been renewed,

neither the order nor any extraordinary licence granted affects subsection (3).

- (6) An offence under subsection (1) is a subsequent offence if the offender has previously been convicted of any offence under that subsection as in force at any time, except that, if subsection (3)(a), (b), or (c) applies to an offence under

subsection (1)(a), the offence is a subsequent offence only if the person has previously been convicted of a relevant offence.

(7) In subsection (6) —

relevant offence means —

- (a) an offence under subsection (1)(a) as in force after the commencement of section 7 of the *Road Traffic Amendment Act 2006*¹ being an offence to which subsection (3)(a), (b), or (c) applied; or
 - (b) an offence under subsection (1)(a) as in force at a time before the commencement of section 7 of the *Road Traffic Amendment Act 2006*¹ being an offence that would have been taken into account in determining whether another offence committed before that commencement, in circumstances mentioned in section 49(2)(a)(ii) or (iii) or (2)(b) as then in force, would have been a first or subsequent offence.
- (8) A period of disqualification ordered under subsection (1) is cumulative upon —
- (a) any other period of disqualification to which the person may then be subject; or
 - (b) any period for which the operation of a driver's licence held by the person may currently be suspended.
- (9) When subsection (3)(d) refers to a person who is no longer authorised to drive because of penalty enforcement laws, it means that the person —
- (a) has been disqualified from holding or obtaining a driver's licence under section 19 or 43 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; or
 - (b) is the subject of any disqualification or suspension under a law of another jurisdiction that is prescribed to be a corresponding law for the purposes of this subsection.

[Section 49 inserted by No. 54 of 2006 s. 7.]

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

- (1) This section applies if a police officer finds a person (the *driver*) committing an offence under section 49(1)(a) in the circumstances referred to in section 49(3)(d).
- (2) If this section applies and the police officer suspects on reasonable grounds that, at the time of committing the offence, the driver —
 - (a) did not know of the circumstances referred to in section 49(3)(d); and
 - (b) had not been cautioned previously under this section since those circumstances came about,

the police officer may decline to charge the driver with an offence under section 49(1)(a) and may instead issue a caution to the driver.

- (3) The caution must be in a prescribed form.
- (4) If this section applies and it appears to the police officer that it would be impracticable, or may jeopardise the safety of any person, for the driver to immediately cease driving —
 - (a) if the police officer issues a caution, the caution must include a necessity permit; and
 - (b) in any other case, the police officer may grant the driver a necessity permit.

- (5) In subsection (4) —

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

[Section 49A inserted by No. 54 of 2006 s. 8.]

[Section 49A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

50. Unauthorised driving by learner drivers

The holder of a learner's permit shall not drive a motor vehicle except in conformity with any conditions to which the permit is subject and unless accompanied by a driving instructor under whose instruction the permit authorises the holder to drive seated beside the holder or, in the case of a permit to drive a motor cycle, riding in a side car attached, or on a pillion seat fitted, to the motor cycle or riding on an accompanying motor cycle.

Penalty: 6 PU.

[Section 50 inserted by No. 76 of 1996 s. 12; amended by No. 50 of 1997 s. 13; No. 28 of 2001 s. 23(2); No. 54 of 2006 s. 9; No. 39 of 2007 s. 25.]

50A. Authorisation other than Australian driver licence

- (1) A person whose authority to drive depends on a licence or authorisation granted under the law of an external licensing authority is required —
 - (a) while driving a motor vehicle on a road, to carry —
 - (i) the official document that is evidence of that licence or authorisation; and
 - (ii) if the official document is not in the English language, a translation of it into the English language verified by a person or body approved by the Director General;
 - and
 - (b) to produce that document for inspection at the request of any member of the Police Force.
- (2) If the person fails to comply with any condition to which the licence or authorisation is subject that can lawfully be complied with in this State, the person commits an offence.

Penalty:

- (a) for a first offence, 8 PU;

(b) for a subsequent offence, 16 PU.

[Section 50A inserted by No. 54 of 2006 s. 10.]

51. Cancellation of drivers' licences granted on probation

(1) Where the holder of a driver's licence that is a provisional licence —

(a) is convicted of an offence —

- (i) mentioned in section 277 of *The Criminal Code* and the offence arose out of the driving by him of a motor vehicle; or
- (ii) under section 378 of *The Criminal Code* where the property in question was a motor vehicle; or
- (iii) under section 53(1), section 54, 55, 56, 59, 59A, 61, 62, 62A, 64AA, 64A, 64AC, 89, 90 or 97; or
- (iv) under any regulation that may be prescribed for the purposes of this section;

or

(b) is disqualified by a court pursuant to the provisions of this or any other Act (other than the *Fines, Penalties and Infringement Notices Enforcement Act 1994*), from holding or obtaining a driver's licence,

then, that licence is, by operation of this subsection, cancelled.

(2) A person whose driver's licence is cancelled by operation of subsection (1) is disqualified from holding or obtaining a driver's licence —

- (a) for any period for which he is so disqualified by the court; or
- (b) for a period of 3 months from the date of his conviction or, where he is convicted on more than one occasion of an offence mentioned in subsection (1), from the date of his latest conviction,

whichever period terminates later.

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- (3) Where the holder of a driver's licence that is a provisional licence is disqualified under Part VIA from holding or obtaining a driver's licence, the provisional licence is, by operation of this subsection, cancelled.
- (4) Where a person who is the holder of a driver's licence that is a provisional licence is disqualified from holding or obtaining a driver's licence by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, then that licence is, by operation of this subsection, suspended so long as the disqualification continues in force and during the period of suspension the licence is of no effect, but the provisions of this subsection do not operate so as to extend the period for which the licence may be valid or effective beyond the time when the licence would be due to expire.
- (5) Subsection (5a) applies to a person if —
- (a) the person does not hold a driver's licence; and
 - (b) the regulations would require that, if a driver's licence were to be granted to the person, it be a provisional licence.
- (5a) Where a person to whom this subsection applies is —
- (a) convicted of an offence such as is mentioned in subsection (1) or an offence against section 49(1)(a); or
 - (b) disqualified by a court from holding or obtaining a driver's licence,

that person is disqualified from holding or obtaining a licence —

- (c) for any period for which he is so disqualified by the court; or
- (d) for a period of 3 months from the date of his conviction or, where he is convicted on more than one occasion of an offence referred to in paragraph (a), from the date of his latest conviction,

whichever period terminates later.

- (6) Regulations made for the purpose of subsection (1)(a)(iv) may limit the application of that subsection to offences against the regulations that are attended by prescribed circumstances.

[Section 51 amended by No. 105 of 1981 s. 19; No. 82 of 1982 s. 7; No. 11 of 1988 s. 10; No. 37 of 1991 s. 21; No. 13 of 1992 s. 6; No. 92 of 1994 s. 36; No. 76 of 1996 s. 13; No. 39 of 2000 s. 29; No. 51 of 2000 s. 16; No. 28 of 2001 s. 23(2) and (3); No. 10 of 2004 s. 7; No. 44 of 2004 s. 4; No. 54 of 2006 s. 11; No. 6 of 2007 s. 4.]

[52. Deleted by No. 76 of 1996 s. 14.]

53. Driver failing to give name and address to member of Police Force, failing to stop etc.

- (1) Any driver of a vehicle who —
- (a) when required by a member of the Police Force to state his name and place of abode refuses to do so, or states a false name or place of abode; or
 - (b) refuses or fails to stop his vehicle when called upon to do so by a member of the Police Force,

commits an offence.

Penalty: For a first offence, 6 PU.

For a subsequent offence, 12 PU.

- (2) Any driver of a vehicle who, when required by any member of the Police Force, does not produce his driver's licence on demand, commits an offence against this Act and shall be liable to a penalty not exceeding 4 PU, but it shall not be an offence if the driver subsequently produces the licence, within a reasonable time after demand, to the Director General or to the officer-in-charge of any police station.
- (3) Any person who was present at the scene of any accident in which a vehicle was involved, and who, in the opinion of a member of the Police Force, may be able to give information or evidence in relation to the accident, shall, if requested so to do

by the member of the Police Force, furnish to him particulars of his name and place of abode, and if the person refuses to furnish any of those particulars when requested so to do, or furnishes particulars of his name or place of abode which are false or untrue in any respect he shall be guilty of an offence.

Penalty: 4 PU.

- (4) Where a member of the Police Force has reasonable grounds for believing that a person has committed an offence against this Act, he may require that person to furnish him with particulars of his name and place of abode, and a person who, when so required, refuses to furnish those particulars or furnishes particulars which are false or untrue in any respect commits an offence.

Penalty: For a first offence, 6 PU.

For a subsequent offence, 12 PU.

[Section 53 amended by No. 105 of 1981 s. 19; No. 11 of 1988 s. 24; No. 78 of 1995 s. 147; No. 76 of 1996 s. 20(3); No. 50 of 1997 s. 13.]

[Section 53. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

54. Bodily harm: duty to stop and give information and assistance

- (1) If a vehicle driven by a person (the **driver**) is involved in an incident occasioning bodily harm to another person, the driver must stop immediately after the occurrence of the incident and for as long as is necessary to comply with subsections (2) and (6).
- (2) If a vehicle driven by a person (the **driver**) is involved in an incident occasioning bodily harm to another person (a **victim**), the driver must ensure that each victim receives all the assistance, including medical aid, that is necessary and practicable in the circumstances.

- (3) A person who contravenes subsection (1) or (2) commits a crime.

Penalty: imprisonment for —

- (a) 20 years, if the incident occasioned death;
- (b) 14 years, if the incident occasioned grievous bodily harm but not death;
- (c) 10 years, in any other case.

Summary conviction penalty in a case to which paragraph (c) applies: imprisonment for 3 years.

- (4) If in the opinion of the court an offence under subsection (3) is of a sufficiently serious nature the court may make an order disqualifying the offender from holding or obtaining a driver's licence for such period as it thinks fit.
- (5) It is a defence to a charge of an offence under subsection (3) for the accused to prove that the accused was not aware of the occurrence of the incident.
- (6) If a vehicle driven by a person (the *driver*) is involved in an incident occasioning bodily harm to another person (a *victim*), the driver must, if required to do so by a victim, a representative of a victim, or a member of the Police Force, give the driver's name and address and, if known to the driver, the name and address of a responsible person for the vehicle.
- Penalty: a fine of 30 PU.
- (7) It is a defence to a charge of an offence under subsection (3) or (6) for the accused to prove that the accused could not comply with a requirement in the relevant provision because of an injury suffered by the accused in the incident.

[Section 54 inserted by No. 39 of 2007 s. 20.]

55. Damage to property: duty to stop and give information

- (1) If a vehicle driven by a person (the *driver*) is involved in an incident in which any property is damaged, the driver must stop

immediately after the occurrence of the incident and for as long as is necessary to comply with subsection (4).

Penalty: a fine of 30 PU.

- (2) If in the opinion of the court an offence under subsection (1) is of a sufficiently serious nature the court may make an order disqualifying the offender from holding or obtaining a driver's licence for such period as it thinks fit.
- (3) It is a defence to a charge of an offence under subsection (1) for the accused to prove that the accused was not aware of the occurrence of the incident.
- (4) If a vehicle driven by a person (the *driver*) is involved in an incident in which any property is damaged, the driver must, if required to do so by a person whose property was damaged in the incident or a representative of that person or a member of the Police Force, give the driver's name and address and, if known to the driver, the name and address of a responsible person for the vehicle.
Penalty: a fine of 30 PU.
- (5) It is a defence to a charge of an offence under subsection (1) or (4) for the accused to prove that the accused could not comply with a requirement in that subsection because of an injury suffered by the accused in the incident.

[Section 55 inserted by No. 39 of 2007 s. 20.]

56. Duty to report incidents involving bodily harm or damage to property

- (1) If a vehicle driven by a person (the *driver*) is involved in an incident occasioning bodily harm to another person, the driver must report the incident forthwith to the officer in charge of a police station.

- (2) If a person contravenes subsection (1) and the incident occasioned death or grievous bodily harm, the person commits a crime.

Penalty: imprisonment for 10 years and in any event the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 12 months.

Summary conviction penalty: imprisonment for 12 months and in any event the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 12 months.

- (3) If a person contravenes subsection (1) and the incident did not occasion death or grievous bodily harm, the person commits an offence.

Penalty: imprisonment for 12 months and in any event the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 12 months.

- (4) If a vehicle driven by a person (the *driver*) is involved in an incident in which any property is damaged the driver must report the incident forthwith to the officer in charge of a police station.

Penalty:

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

- (5) It is a defence to a charge of an offence under subsection (2), (3) or (4) for the accused to prove that —

- (a) the accused could not comply with a requirement in the relevant provision because of an injury suffered by the accused in the incident; or
- (b) a member of the Police Force attended at the scene of the incident and took the necessary particulars of the incident.

- (6) It is a defence to a charge of an offence under subsection (4) for the accused to prove —
- (a) that the accused had reasonable cause for believing that the total value of the damage did not exceed the amount prescribed for the purposes of this subsection; and
 - (b) that the owner, in each case, of any property damaged was present or represented at the place where and at the time when, or immediately after, the incident occurred.

[Section 56 inserted by No. 39 of 2007 s. 20.]

[Section 56. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

57. Duty of owner to identify driver of vehicle involved in accident

- (1) Where the use of a motor vehicle has occasioned, or been an immediate or proximate cause of, the death of a person or bodily harm to a person, a responsible person for the vehicle and any person to whom the possession or control of the vehicle was entrusted shall, if required by a member of the Police Force, give any information which it is in his power to give which may lead to the identification of the person who was driving or who was in charge or control of the vehicle at the time when the use of the vehicle occasioned or was an immediate or proximate cause of the death or bodily harm.
- (2) A person who is required under subsection (1) by a member of the Police Force to give information must not in response to the request give false information.

Penalty: applicable to subsections (1) and (2), a fine of 60 PU or imprisonment for 12 months.

[Section 57 amended by No. 105 of 1981 s. 19; No. 11 of 1988 s. 24; No. 50 of 1997 s. 13; No. 39 of 2000 s. 31; No. 39 of 2007 s. 21.]

58. Duty to identify offending driver or person in charge of vehicle

- (1) A responsible person for a vehicle commits an offence if —
- (a) an offence against any written law is alleged to have occurred of which the driving or being in charge of the vehicle is an element; and
 - (b) a member of the Police Force requests the responsible person to give information which may lead to the identification of the driver or person in charge of the vehicle at the time of the alleged offence; and
 - (c) the responsible person has, or could reasonably have ascertained, the information; and
 - (d) the responsible person fails to give the information.

Penalty: For a first offence by an individual, 24 PU.

For a subsequent offence by an individual, 48 PU.

For an offence by a person other than an individual,
100 PU.

- (2) A responsible person for a vehicle commits an offence if —
- (a) an offence against any written law is alleged to have occurred of which the driving or being in charge of the vehicle is an element; and
 - (b) a member of the Police Force requests the responsible person to give information which may lead to the identification of the driver or person in charge of the vehicle at the time of the alleged offence; and
 - (c) the responsible person gives false information in response to the request.

Penalty: For a first offence by an individual, 24 PU.

For a subsequent offence by an individual, 48 PU.

For an offence by a person other than an individual,
100 PU.

- (3) In subsections (1) and (2) —
responsible person includes a person to whom the possession or control of the vehicle was entrusted at the time of the alleged offence referred to in subsection (1)(a) or (2)(a), as the case may be.
- (4) Subsection (1) does not apply if the request for information was made in a notice under section 102C.
- (5) If a person is charged with an offence against subsection (1) the person may be convicted of an offence against section 58A.
[Section 58 inserted by No. 39 of 2000 s. 32 (as amended by No. 84 of 2004 s. 80).]

58A. Duty to take reasonable measures to be able to comply with a driver identity request

- (1) In this section —
driver identity request means a request made under this Act for information as to the identity of the person who was driving or in charge of a vehicle at any particular time.
- (2) A responsible person for a vehicle commits an offence if the responsible person fails to take reasonable measures, or make reasonable arrangements, to ensure that if a driver identity request is made in relation to the vehicle, the responsible person will be able to comply with it.

Penalty: For a first offence by an individual, 24 PU.

For a subsequent offence by an individual, 48 PU.

For an offence by a person other than an individual,
100 PU.

[Section 58A inserted by No. 39 of 2000 s. 32.]

59. Dangerous driving causing death, injury etc.

- (1) If a motor vehicle driven by a person (the *driver*) is involved in an incident occasioning the death of, or grievous bodily harm to,

another person and the driver was, at the time of the incident, driving the motor vehicle —

- (a) while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle; or
- (b) in a manner (which expression includes speed) that is, having regard to all the circumstances of the case, dangerous to the public or to any person,

the driver commits a crime and is liable to the penalty in subsection (3).

Summary conviction penalty: imprisonment for 3 years or a fine of 720 PU and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

(2) For the purposes of this section —

[(a) deleted]

- (b) it is immaterial that the death or grievous bodily harm might have been avoided by proper precaution on the part of a person other than the person charged or might have been prevented by proper care or treatment; and
- (c) when an incident occasions grievous bodily harm to a person and that person receives surgical or medical treatment, and death results either from the harm or the treatment, the incident is deemed to have occasioned the death of that person, although the immediate cause of death was the surgical or medical treatment if the treatment was reasonably proper in the circumstances and was applied in good faith.

(3) A person convicted on indictment of an offence against this section is liable —

- (a) if the offence is against subsection (1)(a), or the offence is against subsection (1)(b) and is committed in

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circumstances of aggravation, to a fine of any amount and to imprisonment for —

- (i) 20 years, if the person has caused the death of another person; or
- (ii) 14 years, if the person has caused grievous bodily harm to another person;

or

- (b) in any other circumstances, to a fine of any amount and to imprisonment for —
 - (i) 10 years, if the person has caused the death of another person; or
 - (ii) 7 years, if the person has caused grievous bodily harm to another person,

and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

- (4) On the summary trial of a person charged with an offence against this section the person may, instead of being convicted of that offence, be convicted of an offence against section 59A, 61 or 62.

[Section 59 amended by No. 89 of 1978 s. 12; No. 82 of 1982 s. 9; No. 11 of 1988 s. 24; No. 37 of 1991 s. 6(2); No. 1 of 1992 s. 6; No. 50 of 1997 s. 13; No. 4 of 2004 s. 58; No. 44 of 2004 s. 5; No. 39 of 2007 s. 22; No. 29 of 2008 s. 38.]

59A. Dangerous driving causing bodily harm

- (1) If a motor vehicle driven by a person (the *driver*) is involved in an incident occasioning bodily harm to another person and the driver was, at the time of the incident, driving the motor vehicle —
 - (a) while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle; or

- (b) in a manner (which expression includes speed) that is, having regard to all the circumstances of the case, dangerous to the public or to any person,
the driver commits an offence.
- (2) For the purposes of this section —
- [(a) deleted]*
- (b) it is immaterial that the bodily harm might have been avoided by proper precaution on the part of a person other than the person charged or might have been prevented by proper care or treatment.
- (3) Subject to subsection (3a), a person convicted of an offence against subsection (1) is liable —
- (a) for a first offence, to a fine of 80 PU or to imprisonment for 9 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 12 months;
- (b) for a second or subsequent offence, to a fine of 160 PU or to imprisonment for 18 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 18 months.
- (3a) In the case of an offence under subsection (1)(a), or an offence under subsection (1)(b) committed in circumstances of aggravation, the offence is a crime and a person convicted of it is liable to a fine of any amount and imprisonment for 7 years and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.
- Summary conviction penalty: imprisonment for 18 months or a fine of 160 PU and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 18 months.

- (4) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 61 or 62.

[Section 59A inserted by No. 89 of 1978 s. 13; amended by No. 82 of 1982 s. 10; No. 11 of 1988 s. 24; No. 50 of 1997 s. 13; No. 50 of 2003 s. 92(2); No. 44 of 2004 s. 6; No. 39 of 2007 s. 23.]

59B. Section 59 and 59A offences: ancillary matters and defence

- (1) For the purposes of sections 59 and 59A, the circumstances in which a motor vehicle is involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, a person include those in which the death or harm is occasioned through —
- (a) the motor vehicle overturning or leaving a road while the person is being conveyed in or on the motor vehicle (whether as a passenger or otherwise); or
 - (b) the person falling from the motor vehicle while being conveyed in or on it (whether as a passenger or otherwise); or
 - (c) an impact between any object or thing and the motor vehicle while the person is being conveyed in or on the motor vehicle (whether as a passenger or otherwise); or
 - (d) an impact between the person and the motor vehicle; or
 - (e) an impact of the motor vehicle with another vehicle or an object or thing in, on or near which the person is at the time of impact; or
 - (f) an impact with any object on or attached to the motor vehicle; or
 - (g) an impact with any object that is in motion through falling from the motor vehicle.
- (2) For the purposes of sections 59 and 59A, a motor vehicle is also involved in an incident occasioning the death of, or grievous

bodily harm or bodily harm to, a person if the death or harm is occasioned through the motor vehicle —

- (a) causing an impact between other vehicles or between another vehicle and any object, thing or person; or
 - (b) causing another vehicle to overturn or leave a road; or
 - (c) causing a person being conveyed in or on another vehicle to fall from that other vehicle.
- (3) For the purposes of sections 59 and 59A a person commits an offence in *circumstances of aggravation* if at the time of the alleged offence —
- (a) the person was unlawfully driving the vehicle concerned without the consent of the owner or person in charge of the vehicle; or
 - (b) the person was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 km/h, the speed limit (if any) applicable to that length of road; or
 - (c) the person was driving the vehicle concerned to escape pursuit by a member of the Police Force.
- (4) For the purposes of subsection (3)(c) it does not matter whether the pursuit was still proceeding, or had been suspended or terminated, at the time of the alleged offence.
- (5) In any proceeding for an offence against section 59 or 59A a person who had at the time of the alleged offence a blood alcohol content of or above 0.15g of alcohol per 100ml of blood shall be deemed to have been under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle at the time of the alleged offence.
- (6) In any proceeding for an offence against section 59 or 59A it is a defence for the person charged to prove that the death, grievous bodily harm or bodily harm occasioned by the incident was not in any way attributable (as relevant) —
- (a) to the fact that the person charged was under the influence of alcohol, drugs, or alcohol and drugs; or

- (b) to the manner (which expression includes speed) in which the motor vehicle was driven.

[Section 59B inserted by No. 44 of 2004 s. 7; amended by No. 39 of 2007 s. 4.]

60. Reckless driving

- (1) Every person who wilfully drives a motor vehicle in a manner (which expression includes speed) that is inherently dangerous or that is, having regard to all the circumstances of the case, dangerous to the public or to any person commits an offence.
- (1a) A person who drives a motor vehicle at a speed of 155 km/h or more commits an offence.
- (1b) A person who drives a motor vehicle at a speed exceeding the speed limit set under this Act for that vehicle or the place where the driving occurs by 45 km/h or more commits an offence.
- (1c) Despite subsections (1a) and (1b), the driver of a motor vehicle is not guilty of an offence under those subsections if —
- (a) either —
- (i) the motor vehicle is being used to convey a member of the Police Force on official duty and the travelling at such speed is necessary to prevent the commission or continuation of an offence or to apprehend an offender or to assist a driver excused under subparagraphs (ii), (iii) or (iv); or
 - (ii) the driver is on official duty responding to a fire or fire alarm; or
 - (iii) the driver is on official duty responding to an emergency or rescue operation where it is reasonable to assume that human life is likely to be in danger; or
 - (iv) the motor vehicle is an ambulance and is being used to answer an urgent call or to convey a

person to a place for the provision of urgent medical treatment;

and

- (b) the driver is taking reasonable care; and
 - (c) the vehicle is displaying a blue or red flashing light or sounding an alarm unless, in the circumstances, it is reasonable for a light not to be displayed or an alarm not to be sounded.
- (1D) A member of the Police Force who reasonably suspects that a person has committed an offence against this section may, without a warrant, arrest the person.
- (2) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 61 or 62 or, if the charge is of an offence against subsection (1), an offence against section 62A.
- (3) A person convicted of an offence against this section is liable —
- (a) for a first offence, to a fine of 40 PU or to imprisonment for 9 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 6 months; and
 - (b) for a second offence, to a fine of 60 PU or to imprisonment for 9 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 12 months; and
 - (c) for a third or subsequent offence, to a fine of 80 PU or to imprisonment for 12 months; and, in any event, the court convicting that person shall order that he be permanently disqualified from holding or obtaining a driver's licence.

[Section 60 amended by No. 11 of 1988 s. 24; No. 78 of 1995 s. 147; No. 50 of 1997 s. 13; No. 50 of 2003 s. 92(2); No. 10 of 2004 s. 8; No. 54 of 2006 s. 12; No. 24 of 2008 s. 4; No. 23 of 2009 s. 5.]

61. Dangerous driving

- (1) Every person who drives a motor vehicle in a manner (which expression includes speed) that is, having regard to all the circumstances of the case, dangerous to the public or to any person commits an offence.
- (2) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 62 or 62A.
- (3) A person convicted of an offence against this section is liable —
 - (a) for a first offence, to a fine of 16 PU; and
 - (b) for any subsequent offence, to a fine of 40 PU or to imprisonment for 9 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 12 months.
- (4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by him against section 59, 59A, or 60 shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first or subsequent offence.

[Section 61 amended by No. 11 of 1988 s. 24; No. 78 of 1995 s. 147; No. 50 of 1997 s. 13; No. 50 of 2003 s. 92(2); No. 54 of 2006 s. 13; No. 23 of 2009 s. 6.]

62. Careless driving

Every person who drives a motor vehicle without due care and attention commits an offence.

Penalty: 12 PU.

[Section 62 amended by No. 11 of 1988 s. 24; No. 50 of 1997 s. 13.]

62A. Causing excessive noise, smoke

A person who wilfully drives a motor vehicle on a road or in a carpark so as to cause —

- (a) excessive noise to be made with one or more of the vehicle's tyres; or
- (b) smoke to come from one or more of the vehicle's tyres or a substance on the driving surface,

commits an offence.

Penalty: 12 PU.

[Section 62A inserted by No. 10 of 2004 s. 9.]

Division 2 — Driving of vehicles: alcohol and drug related offences

[Heading inserted by No. 10 of 2004 s. 9.]

63. Driving under the influence of alcohol etc.

- (1) A person who drives or attempts to drive a motor vehicle while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle commits an offence, and the offender may be arrested without warrant.
 - (2) A person convicted of an offence against this section is liable —
 - (a) for a first offence —
 - (i) if the person has been previously convicted of an offence against section 64, to a fine of —
 - (I) not less than the minimum fine that would apply if the offence were against that section instead of this section; and
 - (II) not more than 50 PU,
- and, in any event, the court convicting that person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than the minimum period of

disqualification that would apply if the offence were against that section instead of this section;

- (ii) in any other case, to a fine of not less than 18 PU or more than 50 PU; and, in any event, the court convicting that person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 10 months;

and

- (b) for a second offence, to a fine of not less than 42 PU or more than 70 PU or to imprisonment for 9 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 30 months; and
 - (c) for a third or subsequent offence, to a fine of not less than 42 PU or more than 100 PU or to imprisonment for 18 months; and, in any event, the court convicting that person shall order that he be permanently disqualified from holding or obtaining a driver's licence.
- (3) For the purposes of subsection (2), where a person is convicted of an offence against this section any offence previously committed by him against section 64AB or 67AA or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second, third or subsequent offence.
- (4) The charging of a person with an offence against this section shall not limit the operation of section 66, but the person charged shall immediately be told by the person laying the charge that —
- (a) he has the right to be examined by a medical practitioner nominated by him, if one is available; and

- (b) he has the right to communicate with a legal practitioner and another person nominated by him,

and if he desires to exercise any of those rights, every reasonable facility to do so shall be afforded him.

- (4a) The rights and requirements in subsection (4) do not apply unless the person is under arrest or otherwise in custody at the time of being charged.
- (4b) The right in subsection (4)(a), and the requirements relating to it, do not apply if a sample of the person's blood has been taken pursuant to section 66, 66B or 66E before the person is charged.
- (5) In any proceeding for an offence against this section a person who had at the time of the alleged offence a blood alcohol content of or above 0.15g of alcohol per 100ml of blood shall be deemed to have been under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle at the time of the alleged offence.
- (6) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of —
- (a) an offence against section 64, 64AA, 64AB or 64AC; or
 - (b) an offence against section 64A(1) or 64AAA(1) if, at the time of the alleged offence, the person was a person to whom section 64A(1) applied; or
 - (c) an offence against section 64A(4) or 64AAA(2) if, at the time of the alleged offence, the motor vehicle concerned was a motor vehicle to which section 64A(4) applied.
- (7) In any proceedings for an offence against this section if it is alleged or appears on the evidence that the accused was under the influence of drugs alone, it is a defence for the accused to prove —
- (a) that those drugs were —
 - (i) taken by him pursuant to a prescription of a medical practitioner, nurse practitioner or dentist; or

- (ii) administered to him by a medical practitioner, nurse practitioner or dentist, for therapeutic purposes; and
- (b) that he was not aware, and could not reasonably have been expected to be aware, that those drugs were likely to render him incapable of having proper control of a motor vehicle.

[Section 63 amended by No. 82 of 1982 s. 11; No. 11 of 1988 s. 24; No. 13 of 1992 s. 7; No. 50 of 1997 s. 13; No. 9 of 2003 s. 54; No. 50 of 2003 s. 92(2); No. 84 of 2004 s. 82; No. 50 of 2006 Sch. 3 cl. 20(2); No. 54 of 2006 s. 14 and 17(3) and (4); No. 6 of 2007 s. 5; No. 39 of 2007 s. 5 and 31; No. 35 of 2010 s. 151; No. 14 of 2011 s. 5.]

64. Driving with blood alcohol content of or above 0.08

- (1) A person who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.08g of alcohol per 100ml of blood commits an offence, and the offender may be arrested without warrant.
- (2) If a court convicts a person of an offence against this section —
 - (a) the person is liable to the relevant penalty in the Table to this subsection; and
 - (b) the court shall order that the person be disqualified from holding or obtaining a driver's licence for not less than the relevant minimum period of disqualification in the Table to this subsection.

Table

Blood alcohol content (g/100ml)		First offence	Second offence	Subsequent offence
≥ 0.08	Min:	10 PU	12 PU	12 PU
but	Max:	30 PU	30 PU	30 PU
< 0.09	Disq:	6 months	8 months	10 months

Blood alcohol content (g/100ml)		First offence	Second offence	Subsequent offence
≥ 0.09 but < 0.11	Min: Max: Disq:	11 PU 30 PU 7 months	18 PU 30 PU 10 months	18 PU 30 PU 13 months
≥ 0.11 but < 0.13	Min: Max: Disq:	13 PU 30 PU 8 months	24 PU 40 PU 14 months	24 PU 40 PU 17 months
≥ 0.13	Min: Max: Disq:	15 PU 30 PU 9 months	32 PU 50 PU 18 months	32 PU 60 PU 30 months

Note: ≥ signifies of or above
 < signifies less than

- (2a) For the purposes of the Table to subsection (2), an offence is a second or subsequent offence against this section irrespective of the blood alcohol content on the occasion of the commission of any previous offence against this section.
- (3) For the purposes of subsection (2), where a person is convicted of an offence against this section any offence previously committed by him against section 63 or 67 shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second or subsequent offence.
- (4) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of —
- (a) an offence against section 64AA; or
 - (b) an offence against section 64A(1) or 64AAA(1) if, at the time of the alleged offence, the person was a person to whom section 64A(1) applied; or
 - (c) an offence against section 64A(4) or 64AAA(2) if, at the time of the alleged offence, the motor vehicle concerned was a motor vehicle to which section 64A(4) applied.

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[Section 64 amended by No. 71 of 1979 s. 9; No. 82 of 1982 s. 12; No. 11 of 1988 s. 24; No. 13 of 1992 s. 8; No. 50 of 1997 s. 6; No. 54 of 2006 s. 15 and 17(3) and (4); No. 39 of 2007 s. 6 and 32; No. 51 of 2010 s. 6; No. 14 of 2011 s. 6.]

64AA. Driving with blood alcohol content of or above 0.05

- (1) A person who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.05g of alcohol per 100ml of blood commits an offence.
- (2) If a court convicts a person of a first offence against this section the person is liable to a fine of not more than 10 PU.
- (2a) If a court convicts a person of a second or subsequent offence against this section —
 - (a) the person is liable to the relevant penalty in the Table to this subsection; and
 - (b) the court shall order that the person be disqualified from holding or obtaining a driver's licence for not less than the relevant minimum period of disqualification in the Table to this subsection.

Table

Blood alcohol content (g/100ml)		Second offence	Subsequent offence
≥ 0.05 but < 0.07	Min: Max: Disq:	10 PU 20 PU 6 months	10 PU 20 PU 8 months
≥ 0.07	Min: Max: Disq:	12 PU 20 PU 8 months	12 PU 20 PU 10 months

Note: ≥ signifies of or above
< signifies less than

- (2b) For the purposes of this section, an offence is a second or subsequent offence against this section irrespective of the blood

alcohol content on the occasion of the commission of any previous offence against this section.

- (2c) For the purposes of this section, where a person is convicted of an offence against this section any offence previously committed by the person against section 63, 64, or 67 shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second or subsequent offence.
- (3) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of —
- (a) an offence against section 64A(1) or 64AAA(1) if, at the time of the alleged offence, the person was a person to whom section 64A(1) applied; or
 - (b) an offence against section 64A(4) or 64AAA(2) if, at the time of the alleged offence, the motor vehicle concerned was a motor vehicle to which section 64A(4) applied.

[Section 64AA inserted by No. 13 of 1992 s. 9; amended by No. 50 of 1997 s. 7; No. 54 of 2006 s. 16, 17(3) and (4); No. 39 of 2007 s. 7, 17 and 33; No. 14 of 2011 s. 7.]

64A. Certain persons driving with blood alcohol content of or above 0.02

- (1) A person to whom this subsection applies who drives or attempts to drive a motor vehicle while having a blood alcohol content of or above 0.02g of alcohol per 100ml of blood commits an offence.

Penalty: Not less than 3 PU or more than 6 PU; and, in any event, the court convicting a person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 3 months.

- (2) Subsection (1) applies to a person who —

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- (a) is a novice driver as defined in section 104(2); or
 - [(b) deleted]*
 - (c) is subject to an order disqualifying the person from holding or obtaining a driver's licence imposed for an offence against section 63 or 67, or for a second or subsequent offence against section 64, committed after the commencement of the *Road Traffic Amendment Act 1997*¹; or
 - (d) does not hold a driver's licence because it has been cancelled under section 75(2a) or (2b) as a result of an order disqualifying the person from holding or obtaining a driver's licence imposed on the person upon being convicted of an offence committed after the commencement of the *Road Traffic Amendment Act 1997*¹; or
 - (e) holds an extraordinary licence; or
 - (f) is a recently disqualified driver.
- (3) For the purpose of subsection (2), a person is a recently disqualified driver if, within the last 3 years, the person —
- (a) has ceased to be subject to; or
 - (b) has been granted a driver's licence in a case where the person did not hold a driver's licence because it had been cancelled under section 75(2a) or (2b) as a result of,

an order disqualifying the person from holding or obtaining a driver's licence imposed for an offence against section 63 or 67, or for a second or subsequent offence against section 64, committed after the commencement of the *Road Traffic Amendment Act 1997*¹.
- (4) A person who drives or attempts to drive a motor vehicle to which this subsection applies while having a blood alcohol content of or above 0.02g of alcohol per 100ml of blood commits an offence.

Penalty: not less than 3 PU or more than 6 PU; and, in any event, the court convicting a person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 3 months.

- (4A) Subsection (4) does not apply to a person who drives or attempts to drive a motor vehicle described in subsection (5)(a) or (d) if the person —
- (a) is a person of a class prescribed by the regulations for the purposes of this paragraph; and
 - (b) is driving or attempting to drive the vehicle in the course of responding to an incident as defined in the *Fire and Emergency Services Authority of Western Australia Act 1998* section 3.
- (5) Subsection (4) applies to a motor vehicle —
- (a) that is equipped to seat more than 12 adult persons (including the driver), if, at the relevant time, the vehicle is carrying passengers, whether or not the passengers are being carried for hire or reward; or
 - (b) that is an omnibus as defined in the *Transport Co-ordination Act 1966* section 4(1), but is not a vehicle referred to in paragraph (a), if, at the relevant time, the vehicle is carrying passengers for hire or reward; or
 - (c) on which taxi plates issued under the *Taxi Act 1994* are being used, or in respect of which a taxi-car licence has been issued under the *Transport Co-ordination Act 1966* Part IIIB, if, at the relevant time, the vehicle is carrying passengers for hire or reward; or
 - (d) that has a gross combination mass exceeding 22.5 tonnes; or
 - (e) that is of a class prescribed by the regulations for the purposes of this paragraph, if, at the relevant time, the vehicle is being used to transport dangerous goods as defined in the *Dangerous Goods Safety Act 2004* section 3(1).

- (6) For the purposes of subsection (5)(d) —

gross combination mass means the greatest possible sum of the maximum loaded mass of the motor vehicle and of any vehicles that may lawfully be towed by it at one time —

- (a) as specified by the motor vehicle's manufacturer; or
- (b) as specified by the relevant authority if —
 - (i) the manufacturer has not specified the sum of the maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the motor vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

relevant authority means —

- (a) if the motor vehicle has never been licensed or registered but is used or is intended to be used in this State — the Director General; or
 - (b) if the motor vehicle was last licensed in this State — the Director General; or
 - (c) if the motor vehicle was last licensed or registered in another State or a Territory — the authority in that State or Territory whose functions most nearly correspond to those of the Director General.
- (7) A person charged with an offence against subsection (1) may, instead of being convicted of that offence, be convicted of an offence against section 64AAA(1).
- (8) A person charged with an offence against subsection (4) may, instead of being convicted of that offence, be convicted of an offence against section 64AAA(2).

[Section 64A inserted by No. 82 of 1982 s. 13; amended by No. 11 of 1988 s. 22; No. 13 of 1992 s. 10; No. 50 of 1997 s. 8; No. 28 of 2001 s. 23(2); No. 54 of 2006 s. 17(1) and (2); No. 39 of 2007 s. 8 and 34; No. 14 of 2011 s. 8.]

64AAA. Certain persons driving with any blood alcohol content

- (1) A person to whom section 64A(1) applies who drives or attempts to drive a motor vehicle while having any blood alcohol content commits an offence.

Penalty: not less than 3 PU or more than 6 PU.

- (2) A person who drives or attempts to drive a motor vehicle to which section 64A(4) applies while having any blood alcohol content commits an offence.

Penalty: not less than 3 PU or more than 6 PU.

- (2A) Subsection (2) does not apply to a person who drives or attempts to drive a motor vehicle described in section 64A(5)(a) or (d) if the person —

- (a) is a person of a class prescribed by the regulations for the purposes of this paragraph; and
- (b) is driving or attempting to drive the vehicle in the course of responding to an incident as defined in the *Fire and Emergency Services Authority of Western Australia Act 1998* section 3.

- (3) It is a defence to a charge of an offence against subsection (1) or (2) for the accused to prove that the accused's blood alcohol content was not to any extent caused by any of the following —

- (a) the consumption of an alcoholic beverage (otherwise than for the purposes of religious observance);
- (b) the consumption or use of any other substance (for example, food or medicine) for the purpose of consuming alcohol.

[Section 64AAA inserted by No. 14 of 2011 s. 9.]

64AB. Driving while impaired by drugs

- (1) A person who drives or attempts to drive a motor vehicle while impaired by drugs commits an offence, and the offender may be arrested without warrant.

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- (2) A person convicted of an offence against this section is liable —
- (a) for a first offence, to a fine of not less than 18 PU or more than 50 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 10 months; and
 - (b) for a second offence, to a fine of not less than 42 PU or more than 70 PU or to imprisonment for 9 months; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 30 months; and
 - (c) for a third or subsequent offence, to a fine of not less than 42 PU or more than 100 PU or to imprisonment for 18 months; and, in any event, the court convicting the person shall order that the person be permanently disqualified from holding or obtaining a driver's licence.
- (3) For the purposes of subsection (2), where a person is convicted of an offence against this section any offence previously committed by the person against section 63 or 67AA or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second, third or subsequent offence.
- (4) Section 63(4) to (4b) extend to the charging of a person with an offence against this section.
- (5) The accused may be convicted of an offence against this section if the prosecutor proves that —
- (a) the accused drove or attempted to drive a motor vehicle; and

- (b) one or more drugs were present in the accused's body at the time of that driving or attempted driving; and
 - (c) the conduct, condition or appearance of the accused at or after the time of that driving or attempted driving, or during a driver assessment, was consistent with conduct, a condition or an appearance associated with a person who has consumed or used that drug or those drugs; and
 - (d) the conduct or condition associated with a person who has consumed or used that drug or those drugs would be inconsistent with the person being capable of having proper control of a motor vehicle.
- (6) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of an offence against section 63 or 64AC.
- (7) If in any proceeding for an offence against this section it is proved that a certain drug was present in the accused's body at any time within 4 hours after the time of the driving or attempted driving of a motor vehicle that gave rise to the alleged offence, the presence of that drug in the accused's body at the time of that driving or attempted driving is taken to be proved in the absence of proof to the contrary.
- (8) In any proceeding for an offence against this section it is a defence for the accused to prove in respect of the drug, or each drug, referred to in subsection (5) —
- (a) that the drug was —
 - (i) taken pursuant to a prescription of a medical practitioner, nurse practitioner or dentist; or
 - (ii) administered by a medical practitioner, nurse practitioner or dentist,
for therapeutic purposes; and
 - (b) that where the drug was received or obtained by the accused in a packaged form, the packaging of the drug did not include a label advising that the drug was likely

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to result in conduct or a condition that would be inconsistent with the person being capable of having proper control of a motor vehicle; and

- (c) that the accused was not aware, and could not reasonably have been expected to be aware, that the drug was likely to result in conduct or a condition that would be inconsistent with the person being capable of having proper control of a motor vehicle.

- (9) Subsection (8) has effect despite subsection (5).

[Section 64AB inserted by No. 6 of 2007 s. 6; amended by No. 35 of 2010 s. 152; No. 14 of 2011 s. 10.]

64AC. Driving with prescribed illicit drug in oral fluid or blood

- (1) A person who drives or attempts to drive a motor vehicle while a prescribed illicit drug is present in the person's oral fluid or blood commits an offence.
- (2) A person convicted of an offence against this section is liable —
 - (a) for a first offence, to a fine of not more than 10 PU; and
 - (b) for a second or subsequent offence, to a fine of not less than 10 PU or more than 20 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 6 months.
- (3) For the purposes of subsection (2), where a person is convicted of an offence against this section any offence previously committed by the person against section 67AB shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second or subsequent offence.
- (4) If in any proceeding for an offence against this section it is proved that a certain drug was present in the accused's body at any time within 4 hours after the time of the driving or

attempted driving of a motor vehicle that gave rise to the alleged offence, the presence of that drug in the accused's body at the time of that driving or attempted driving is taken to be proved in the absence of proof to the contrary.

- (5) If a person takes a prescribed illicit drug mistakenly believing it to be another drug, that mistake is not a defence in any proceeding for an offence against this section if that other drug is also a drug within the meaning of paragraph (a) or (b) of the definition of **drug** in section 65.

[Section 64AC inserted by No. 6 of 2007 s. 6; amended by No. 14 of 2011 s. 11.]

65. Terms used

For the purposes of section 59B(5) and sections 63 to 73, inclusive —

analyst means a person certified by the chief executive officer of the Chemistry Centre (WA) as being competent to determine the concentration of alcohol in bodily substances;

approved device means a device of a type approved by the Minister under section 72(2)(c) for the purpose of ascertaining the presence of prescribed illicit drugs in a person's oral fluid;

authorised drug tester means a person authorised by the Commissioner of Police to collect, and conduct drug testing of, samples of oral fluid for the purposes of section 66D;

authorised person means a person certified by the chief executive officer of the Chemistry Centre (WA) as being competent to operate all types of breath analysing equipment;

blood alcohol content means the concentration of alcohol in a person's blood, expressed in grams of alcohol per 100ml of blood;

breath analysing equipment means apparatus of a type approved by the Minister for the purpose of ascertaining a person's blood alcohol content by analysis of a sample of his breath;

conduct includes behaviour and demeanour;

dentist means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the dental profession whose name is entered on the Dentists Division of the Register of Dental Practitioners kept under that Law;

driver assessment means an assessment of drug impairment required by a member of the Police Force under section 66A(1) or (2);

drug means —

- (a) a drug to which the *Misuse of Drugs Act 1981* applies; or
- (b) a substance that is included in the *Poisons Act 1964* Schedule 4; or
- (c) a substance (other than alcohol) that, when consumed or used by a person, deprives the person (temporarily or permanently) of any of the person's normal mental or physical faculties;

drug testing, in relation to oral fluid, means testing for the presence of prescribed illicit drugs;

drugs analyst means a person certified by the chief executive officer of the Chemistry Centre (WA) as being competent to ascertain whether and to what extent drugs are present in bodily substances;

medical practitioner means a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

nurse practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* whose name is entered on the Register of Nurses kept under that Law as being qualified to practise as a nurse practitioner;

preliminary oral fluid test means a test of a sample of a person's oral fluid by means of a device of a type approved by the Minister under section 72(2)(d) for the purpose of providing a preliminary indication of the presence of prescribed illicit

drugs in the oral fluid, and a person *undergoes* a preliminary oral fluid test if the person provides a sample of the person's oral fluid for a preliminary oral fluid test;

preliminary test means a test of a sample of a person's breath by means of apparatus of a type approved by the Minister for the purpose of providing an indication of a person's blood alcohol content or an indication of whether or not a person's blood alcohol content is of or above a predetermined level or an indication of whether or not alcohol is present in the blood of a person;

prescribed illicit drug means a drug that is declared by the regulations to be a prescribed illicit drug;

registered nurse means a person who is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse;

self-testing breath analysing equipment means breath analysing equipment of a type that is designated as self-testing apparatus under section 72(2a).

[Section 65 amended by No. 82 of 1982 s. 14; No. 121 of 1987 s. 5; No. 19 of 1990 s. 8; No. 39 of 2000 s. 34; No. 44 of 2004 s. 8; No. 50 of 2006 Sch. 3 cl. 20(3); No. 6 of 2007 s. 7; No. 10 of 2007 s. 43; No. 39 of 2007 s. 9; No. 22 of 2008 Sch. 3 cl. 51; No. 35 of 2010 s. 153.]

[Section 65. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

65A. Using breath sample to find blood alcohol content

- (1) For the purposes of section 59B(5) and sections 63 to 73, inclusive, if the concentration of alcohol in a person's breath is a particular number of grams of alcohol per 210 litres of breath the person's blood alcohol content is to be regarded as being that number of grams of alcohol per 100ml of blood.

- (2) For the purposes of section 72(2)(a) and the definition of ***breath analysing equipment*** in section 65, apparatus is to be regarded as being for the purpose of ascertaining a person's blood alcohol content by analysis of a sample of the person's breath whether the apparatus gives the blood alcohol content directly as the analysis result or enables it to be derived under subsection (1).
- (3) For the purposes of the definition of ***preliminary test*** in section 65, apparatus is to be regarded as being for the purpose of providing an indication of the kind mentioned in that definition whether the apparatus gives the indication directly or enables it to be derived under subsection (1).

[Section 65A inserted by No. 39 of 2007 s. 10.]

66. Requirement to submit sample of breath or blood for analysis

- (1) A member of the Police Force may require the driver or person in charge of a motor vehicle, or any person he has reasonable grounds to believe was the driver or person in charge of a motor vehicle, to provide a sample of his breath for a preliminary test in accordance with the directions of the member of the Police Force, and for the purposes of this subsection may require that person to wait at the place at which the first-mentioned requirement was made.
- (1aa) A member of the Police Force may —
 - (a) call upon the driver of a motor vehicle to stop the vehicle;
 - (b) direct the driver of a motor vehicle to wait at a place indicated by the member of the Police Force,in order that a requirement may be made under subsection (1).
- (1a) Where a member of the Police Force —
 - (a) has reasonable grounds to believe that the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and

- (b) does not know, or has doubt as to, who was the driver or person in charge of the motor vehicle at the time of that presence or use,

the member of the Police Force may require any person who he has reasonable grounds to believe may have been the driver or person in charge of the motor vehicle at that time to provide a sample of his breath for a preliminary test in accordance with the directions of the member of the Police Force, and for the purposes of this subsection may require that person to wait at the place at which the first-mentioned requirement was made.

- (1b) Where a person required under subsection (1) or (1a) to provide a sample of breath for a preliminary test is in a motor vehicle, a member of the Police Force may require the person to leave the vehicle for the purpose of providing the sample.

- (2) Where —

- (a) a person having provided a sample of his breath for a preliminary test —
- (i) it appears to a member of the Police Force that the preliminary test indicates that the person has a blood alcohol content of or above 0.05g of alcohol per 100ml of blood; or
 - (ii) it appears to a member of the Police Force that the preliminary test indicates that there is alcohol present in the blood of the person and the member of the Police Force has reasonable grounds to believe that the person is a person to whom section 64A(1) applies or that the motor vehicle concerned is a motor vehicle to which section 64A(4) applies;

or

- (b) a person having been so required, refuses or fails to provide, or appears to a member of the Police Force to be incapable of providing a sample of his breath for a preliminary test or refuses or fails to provide, or appears

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to a member of the Police Force to be incapable of providing, a sample of his breath in sufficient quantity to enable a preliminary test to be carried out; or

(c) a member of the Police Force has reasonable grounds to believe that a person has committed an offence against section 63; or

(ca) a member of the Police Force —

(i) has reasonable grounds to believe that an offence against section 59(1)(a) or 59A(1)(a) has been committed; and

(ii) does not know, or has doubt as to, who was the driver of the motor vehicle concerned,

but has reasonable grounds to believe that a person may have been the driver of the motor vehicle; or

(d) a member of the Police Force —

(i) has reasonable grounds to believe that the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and

(ii) does not know, or has doubt as to, who was the driver or person in charge of the motor vehicle at the time of that presence or use,

but has reasonable grounds to believe that a person may have been the driver or person in charge of the motor vehicle at that time and that, if he was, he has committed an offence against section 63,

a member of the Police Force may require that person to provide a sample of his breath for analysis or to allow a medical practitioner or registered nurse to take a sample of his blood for analysis or to allow a sample of blood to be so taken and to provide a sample of his urine for analysis, pursuant to the provisions of subsections (4), (5) and (6a), and for the purposes of this subsection may require that person to accompany a member of the Police Force to a police station or some other

place, and may require that person to wait at any such police station or place.

- (3) A person who is required to supply a sample of his breath for a preliminary test or for analysis shall comply with that requirement by providing the sample of his breath into approved apparatus in accordance with the directions of a member of the Police Force or an authorised person, as the case may be.
- (4) A person shall not be required under subsection (2) to provide a sample of his breath for analysis if it appears to a member of the Police Force that —
- [(a) deleted]*
 - (b) the sample of breath could not be provided within 4 hours after the time at which driving, attempted driving, use or management of a motor vehicle in circumstances giving rise to the requirement is believed to have taken place; or
 - (c) because of his physical condition he is incapable of providing the specimen of breath or a specimen of breath in sufficient quantity for analysis.
- (5) Where —
- (a) a member of the Police Force might require a person to provide a sample of his breath for analysis under subsection (2) but is precluded from so doing by subsection (4) or section 68(11); or
 - (b) a member of the Police Force might, by virtue of subsection (1) or (1a), require a person to provide a sample of his breath for a preliminary test but it appears to the member of the Police Force that the physical condition of the person is such as to render him incapable of providing a sample of his breath in accordance with the directions of the member of the Police Force for a preliminary test,

then the member of the Police Force may require the person to allow a medical practitioner or registered nurse nominated by

the member of the Police Force to take a sample of the person's blood for analysis or where the person is incapable of complying with that requirement, that member of the Police Force may cause a medical practitioner or registered nurse to take a sample of the blood of the person for analysis.

- (6) A person shall not be required to allow a medical practitioner or registered nurse to take a sample of his blood, and a medical practitioner or registered nurse shall not be caused to take a sample of the blood of a person under subsection (5) if it appears to the member of the Police Force that the sample cannot be taken within 4 hours after the time at which driving, attempted driving, use or management of a motor vehicle in circumstances giving rise to the requirement is believed to have taken place.

- (6a) Where —

- (a) a member of the Police Force might, by virtue of subsection (2)(c), (ca) or (d), require a person to provide a sample of his breath for analysis but is precluded from so doing by subsection (4); and
- (b) under subsection (5), the member of the Police Force requires the person to allow a medical practitioner or registered nurse to take a sample of his blood for analysis,

the member of the Police Force may also require the person to provide the medical practitioner or registered nurse with a sample of his urine for analysis.

[(7)-(9) deleted]

- (10) Where a person is apparently unconscious or seriously injured a member of the Police Force shall facilitate the provision of medical assistance for that person.

(11) Where a person provides a sample of his breath for analysis pursuant to a requirement made under subsection (2)(c), (ca) or (d) and the analysis result obtained pursuant to section 68 indicates —

- (a) that there is no alcohol present in the blood of the person; or
- (b) that the person's blood alcohol content is such that it does not reasonably explain the conduct, condition or appearance of the person by reason of which the requirement was made,

a member of the Police Force may require the person —

- (c) to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis; or
- (d) to provide a medical practitioner or registered nurse nominated by the member of the Police Force with a sample of the person's urine for analysis,

or to do both of those things, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

(12) A person shall not be required —

- (a) to allow a medical practitioner or registered nurse to take a sample of his blood; or
- (b) to provide a medical practitioner or registered nurse with a sample of his urine,

under subsection (11), and a medical practitioner or registered nurse shall not be caused to take a sample of the blood of a person under that subsection, if it appears to the member of the Police Force that the sample cannot be taken or given, as the case may be, within 4 hours after the time at which driving, attempted driving, use or management of a vehicle in

circumstances giving rise to the requirement is believed to have taken place.

[Section 66 amended by No. 71 of 1979 s. 10; No. 81 of 1980 s. 8; No. 105 of 1981 s. 12 and 19; No. 82 of 1982 s. 15; No. 121 of 1987 s. 6; No. 11 of 1988 s. 12; No. 16 of 1988 s. 4; No. 13 of 1992 s. 11; No. 50 of 1997 s. 9; No. 39 of 2000 s. 36; No. 44 of 2004 s. 9; No. 54 of 2006 s. 17(3); No. 6 of 2007 s. 8; No. 39 of 2007 s. 11 and 36; No. 51 of 2010 s. 7; No. 14 of 2011 s. 12.]

[Section 66. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

66A. Requirement to undergo driver assessment

- (1) A member of the Police Force may require —
- (a) the driver or person in charge of a motor vehicle; or
 - (b) any person the member of the Police Force has reasonable grounds to believe was the driver or person in charge of a motor vehicle,

to undergo an assessment of drug impairment if a member of the Police Force has reasonable grounds to believe that the person is, or was while driving or attempting to drive the motor vehicle, impaired by something, other than alcohol alone, affecting the person's capacity to drive a motor vehicle.

- (2) Where a member of the Police Force —
- (a) has reasonable grounds to believe that the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and
 - (b) does not know, or has doubt as to, who was the driver or person in charge of the motor vehicle at the time of that presence or use,

but has reasonable grounds to believe —

- (c) that the person may have been the driver or person in charge of the motor vehicle at that time; and
- (d) that the person was at that time impaired by something, other than alcohol alone, affecting the person's capacity to drive a motor vehicle,

a member of the Police Force may require the person to undergo an assessment of drug impairment.

- (3) For the purposes of subsection (1) or (2) a member of the Police Force may require a person who is required to undergo a driver assessment to wait at the place at which the requirement was made.
- (4) Where a person required under subsection (1) or (2) to undergo a driver assessment is in a motor vehicle, a member of the Police Force may require the person to leave the vehicle for the purpose of undergoing the assessment.
- (5) A person who is required to undergo a driver assessment shall comply with that requirement by undergoing the assessment in accordance with the directions of a member of the Police Force.
- (6) A person shall not be required to undergo a driver assessment if it appears to a member of the Police Force that —
 - (a) the driver assessment could not be conducted within 4 hours after the time at which driving, attempted driving, use or management of a motor vehicle in circumstances giving rise to the requirement is believed to have taken place; or
 - (b) because of the person's physical condition the person is incapable of undergoing the driver assessment.
- (7) A driver assessment shall be conducted by a member of the Police Force in accordance with regulations prescribing the procedure for assessing drug impairment.

[Section 66A inserted by No. 6 of 2007 s. 9.]

66B. Requirement to provide blood or urine sample if driver assessment indicates drug impairment

- (1) Where —
- (a) a person having undergone a driver assessment, it appears to a member of the Police Force that the assessment indicates that the person is drug impaired; or
 - (b) a person refuses or fails to undergo a driver assessment having been required to do so; or
 - (c) a member of the Police Force might require a person to undergo a driver assessment but is precluded from doing so by section 66A(6)(b),

a member of the Police Force may require the person —

- (d) to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis; or
- (e) to provide a medical practitioner or registered nurse nominated by the member of the Police Force with a sample of the person's urine for analysis,

or to do both of those things, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

- (2) Where a person is incapable of complying with a requirement under subsection (1)(d), a member of the Police Force may cause a medical practitioner or registered nurse to take a sample of the person's blood for analysis.
- (3) Where a person is apparently unconscious or seriously injured a member of the Police Force shall facilitate the provision of medical assistance for the person.
- (4) A person shall not be required —
- (a) to allow a medical practitioner or registered nurse to take a sample of the person's blood; or

- (b) to provide a medical practitioner or registered nurse with a sample of the person's urine,

under subsection (1), and a medical practitioner or registered nurse shall not be caused to take a sample of a person's blood under subsection (2), if it appears to the member of the Police Force that the sample cannot be taken or provided, as the case may be, within 4 hours after the time at which driving, attempted driving, use or management of a vehicle in circumstances giving rise to the requirement is believed to have taken place.

[Section 66B inserted by No. 6 of 2007 s. 9; amended by No. 51 of 2010 s. 8.]

[Section 66B. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

66C. Requirement to undergo a preliminary oral fluid test

- (1) A member of the Police Force may require the driver or person in charge of a motor vehicle, or any person he has reasonable grounds to believe was the driver or person in charge of a motor vehicle, to undergo a preliminary oral fluid test.
- (2) A member of the Police Force may —
- (a) call upon the driver of a motor vehicle to stop the vehicle;
 - (b) direct the driver of a motor vehicle to wait at a place indicated by the member of the Police Force,
- in order that a requirement may be made under subsection (1).
- (3) Where a member of the Police Force —
- (a) has reasonable grounds to believe that the presence of a motor vehicle has occasioned, or its use has been an immediate or proximate cause of, personal injury or damage to property; and

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- (b) does not know, or has doubt as to, who was the driver or person in charge of the motor vehicle at the time of that presence or use,

the member of the Police Force may require any person who he has reasonable grounds to believe may have been the driver or person in charge of the motor vehicle at that time to undergo a preliminary oral fluid test.

- (4) For the purposes of subsection (1) or (3) a member of the Police Force may require a person who is required to undergo a preliminary oral fluid test to wait at the place at which the requirement was made.
- (5) Where a person required to undergo a preliminary oral fluid test is in a motor vehicle, a member of the Police Force may require the person to leave the vehicle for the purpose of undergoing the test.
- (6) A person who is required to undergo a preliminary oral fluid test shall comply with that requirement by undergoing the test in accordance with the directions of a member of the Police Force.
- (7) A preliminary oral fluid test shall be conducted by a member of the Police Force in accordance with regulations prescribing the procedure for those tests.

[Section 66C inserted by No. 6 of 2007 s. 9.]

66D. Requirement to provide sample of oral fluid for testing

- (1) Where —
- (a) a person having undergone a preliminary oral fluid test, it appears to a member of the Police Force that the test indicates that the person's oral fluid contains a prescribed illicit drug; or

- (b) a person refuses or fails to undergo a preliminary oral fluid test having been required to do so,

a member of the Police Force may require the person to provide a sample of the person's oral fluid for drug testing, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.

- (2) A person who is required under subsection (1) to provide a sample of oral fluid for drug testing shall comply with that requirement by providing the sample in accordance with the directions of an authorised drug tester.
- (3) A person shall not be required under subsection (1) to provide a sample of oral fluid for drug testing if it appears to a member of the Police Force that —
- (a) the sample of oral fluid could not be provided within 4 hours after the time at which driving, attempted driving, use or management of a motor vehicle in circumstances giving rise to the requirement is believed to have taken place; or
 - (b) because of the person's physical condition the person is incapable of providing the sample of oral fluid.
- (4) Where, under subsection (1), a person provides a sample of oral fluid for drug testing, an authorised drug tester shall —
- (a) collect the sample in the manner prescribed by the regulations; and
 - (b) conduct drug testing of the sample by an approved device in accordance with the procedure prescribed by the regulations.

[Section 66D inserted by No. 6 of 2007 s. 9.]

[Section 66D. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

66E. Requirement or right to provide sample of blood for analysis instead of providing sample of oral fluid

- (1) Where a member of the Police Force might, under section 66D(1), require a person to provide a sample of oral fluid for drug testing but is precluded from doing so by section 66D(3)(b), a member of the Police Force may require the person to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis, and for the purposes of this subsection may require the person to accompany a member of the Police Force to a place, and may require the person to wait at that place.
- (2) Where a person is incapable of complying with a requirement under subsection (1), a member of the Police Force may cause a medical practitioner or registered nurse to take a sample of the person's blood for analysis.
- (3) Where a person is apparently unconscious or seriously injured a member of the Police Force shall facilitate the provision of medical assistance for the person.
- (4) A person shall not be required to allow a medical practitioner or registered nurse to take a sample of the person's blood under subsection (1), and a medical practitioner or registered nurse shall not be caused to take a sample of a person's blood under subsection (2), if it appears to the member of the Police Force that the sample cannot be taken or provided, as the case may be, within 4 hours after the time at which driving, attempted driving, use or management of a vehicle in circumstances giving rise to the requirement is believed to have taken place.

[Section 66E inserted by No. 6 of 2007 s. 9; amended by No. 51 of 2010 s. 9.]

[Section 66E. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

66F. Medical practitioners and registered nurses authorised to take blood samples

- (1) Where under section 66, 66B or 66E a member of the Police Force —
- (a) requires a person to allow a medical practitioner or registered nurse nominated by the member of the Police Force to take a sample of the person's blood for analysis; or
 - (b) causes a medical practitioner or registered nurse to take a sample of a person's blood for analysis,

this section authorises the medical practitioner or registered nurse to take that sample.

- (2) No action lies against a person who is a medical practitioner or registered nurse by reason only of the person taking a sample of another person's blood for analysis under section 66, 66B or 66E.

[Section 66F inserted by No. 6 of 2007 s. 9.]

67. Failure to comply with requirement as to provision of breath, blood or urine sample for analysis

- (1) In this section *requirement* means a requirement of a member of the Police Force made pursuant to section 66.
- (2) A person who fails to comply with a requirement —
- (a) to provide a sample of his breath for analysis; or
 - (b) to allow a medical practitioner or registered nurse to take a sample of his blood for analysis; or
 - (c) to provide a medical practitioner or registered nurse with a sample of his urine for analysis,

commits an offence, and the offender may be arrested without warrant.

- (3) Subject to subsection (3a), a person convicted of an offence against this section is liable —
- (a) for a first offence —
- (i) if the person has been previously convicted of an offence against section 64, to a fine of —
- (I) not less than the minimum fine that would apply if the offence were against that section instead of this section and the person's blood alcohol content were above 0.14g of alcohol per 100ml of blood; and
- (II) not more than 50 PU,
- and, in any event, the court convicting that person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than the minimum period of disqualification that would apply if the offence were against that section instead of this section and the person's blood alcohol content were above 0.14g of alcohol per 100ml of blood;
- (ii) in any other case, to a fine of not less than 18 PU or more than 50 PU; and, in any event, the court convicting that person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 10 months;
- (b) for a second offence, to a fine of not less than 42 PU or more than 70 PU or to imprisonment for 9 months; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 30 months;
- (c) for any subsequent offence, to a fine of not less than 42 PU or more than 100 PU or to imprisonment for 18 months; and, in any event, the court convicting that

person shall order that he be permanently disqualified from holding or obtaining a driver's licence.

- (3a) If when a requirement is made a member of the Police Force —
- (a) advises the person concerned that the member of the Police Force believes that the motor vehicle of which the person was, or is believed to have been, the driver has been involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, another person; and
 - (b) explains to the person the consequences under this subsection of failure to comply with the requirement,

an offence against this section of failing to comply with that requirement is a crime and a person convicted of it is liable to a fine of any amount and imprisonment for 14 years and in any event the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

Summary conviction penalty: imprisonment for 18 months or a fine of 160 PU and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 18 months.

- (4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by him against section 63 shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second, third or subsequent offence but any offence committed by him against this section as in force before the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ shall not be taken into account for that purpose.

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- (5) It shall be a defence to a prosecution for an offence against this section if the accused satisfies the court that there was some substantial reason for his failure to comply other than a desire to avoid providing information that might be used as evidence.
- (6) Without limiting the generality of subsection (5) it shall be a defence to a prosecution for failing to comply with a requirement mentioned in subsection (2)(c) if the accused satisfies the court that he attempted to comply with the requirement.

[Section 67 inserted by No. 82 of 1982 s. 16; amended by No. 11 of 1988 s. 24; No. 50 of 1997 s. 13; No. 39 of 2000 s. 36; No. 50 of 2003 s. 92(2); No. 44 of 2004 s. 10; No. 84 of 2004 s. 82; No. 54 of 2006 s. 18; No. 39 of 2007 s. 18; No. 51 of 2010 s. 10; No. 14 of 2011 s. 13.]

67AA. Failure to comply with requirement as to driver assessment or provision of blood or urine sample for analysis under s. 66A or 66B

- (1) In this section —
requirement means a requirement of a member of the Police Force made under section 66A or 66B.
- (2) A person who fails to comply with a requirement —
- (a) to undergo a driver assessment; or
 - (b) to allow a medical practitioner or registered nurse to take a sample of the person's blood for analysis; or
 - (c) to provide a medical practitioner or registered nurse with a sample of the person's urine for analysis,
- commits an offence.
- (3) A person convicted of an offence against this section is liable —
- (a) for a first offence, to a fine of not less than 18 PU or more than 50 PU; and, in any event, the court convicting the person shall order that the person be disqualified

- from holding or obtaining a driver's licence for a period of not less than 10 months; and
- (b) for a second offence, to a fine of not less than 42 PU or more than 70 PU or to imprisonment for 9 months; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 30 months; and
 - (c) for any subsequent offence, to a fine of not less than 42 PU or more than 100 PU or to imprisonment for 18 months; and, in any event, the court convicting the person shall order that the person be permanently disqualified from holding or obtaining a driver's licence.
- (4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by the person against section 63 or 64AB or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second, third or subsequent offence.
- (5) It is a defence to a prosecution for an offence against this section if the accused satisfies the court that there was some substantial reason for the accused's failure to comply other than a desire to avoid providing information that might be used as evidence.
- (6) Without limiting the generality of subsection (5) it is a defence to a prosecution for failing to comply with a requirement mentioned in subsection (2)(c) if the accused satisfies the court that the accused attempted to comply with the requirement.

[Section 67AA inserted by No. 6 of 2007 s. 10; amended by No. 14 of 2011 s. 14.]

67AB. Failure to comply with requirement as to provision of oral fluid or blood sample for testing or analysis under s. 66D or 66E

(1) In this section —

requirement means a requirement of a member of the Police Force made under section 66D or 66E.

(2) A person who fails to comply with a requirement —

- (a) to provide a sample of oral fluid for drug testing; or
- (b) to allow a medical practitioner or registered nurse to take a sample of the person's blood for analysis,

commits an offence.

(3) A person convicted of an offence against this section is liable —

- (a) for a first offence, to a fine of not more than 10 PU; and
- (b) for a second or subsequent offence, to a fine of not less than 10 PU or more than 20 PU; and, in any event, the court convicting the person shall order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 6 months.

(4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by the person against section 64AC or 67AA or section 67 as in force after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining whether that first-mentioned offence is a first, second or subsequent offence.

(5) It is a defence to a prosecution for an offence against this section if the accused satisfies the court that there was some substantial reason for the accused's failure to comply other than

a desire to avoid providing information that might be used as evidence.

[Section 67AB inserted by No. 6 of 2007 s. 10; amended by No. 14 of 2011 s. 15.]

67A. Failure to comply with other requirements made by member of Police Force

- (1) Subject to subsection (2), a person who fails to comply with any requirement of a member of the Police Force made pursuant to any of sections 66 to 66E, other than a requirement mentioned in section 66(1aa), 66C(2), 67(2), 67AA(2) or 67AB(2), commits an offence.
- (2) This section does not apply to a medical practitioner or registered nurse by reason of his failing to co-operate in the taking of a sample of a person's blood for analysis or in the collection of a sample of a person's urine for analysis.
- (3) A person convicted of an offence against this section is liable —
 - (a) for a first offence, to a fine of not less than 6 PU or more than 16 PU; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 3 months;
 - (b) for any subsequent offence, to a fine of not less than 12 PU or more than 28 PU; and, in any event, the court convicting that person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 6 months.
- (4) For the purposes of subsection (3), where a person is convicted of an offence against this section any offence previously committed by him against section 63, 64, 64AB, 67, 67AA or 67AB shall be taken into account and be deemed to have been an offence against this section (but not to the exclusion of any other previous offence against this section) in determining

whether that first-mentioned offence is a first or subsequent offence.

- (5) It shall be a defence to a prosecution for an offence against this section if the accused satisfies the court that there was some substantial reason for his failure to comply other than a desire to avoid providing information that might be used as evidence.
- (6) Where a person is prosecuted for an offence against this section of failing to comply with a requirement to provide a sample of his breath for a preliminary test it shall be a defence to the prosecution if the accused satisfies the court that he complied, in accordance with section 66, with a requirement mentioned in section 67(2)(a) or 67(2)(b) that arose out of —
 - (a) his failure to comply with the first-mentioned requirement; or
 - (b) the circumstances that gave rise to the first-mentioned requirement.

[Section 67A inserted by No. 82 of 1982 s. 16; amended by No. 121 of 1987 s. 7; No. 11 of 1988 s. 24; No. 50 of 1997 s. 13; No. 39 of 2000 s. 36; No. 84 of 2004 s. 82; No. 54 of 2006 s. 19; No. 6 of 2007 s. 11.]

68. Analysis of alcohol in breath

- (1) Where, pursuant to section 66, a person provides a sample of his breath for analysis the analysis shall be made by breath analysing equipment.
 - (1a) If the breath analysing equipment is not self-testing breath analysing equipment subsections (1b) to (4) shall have effect in relation to the analysis.
 - (1b) The breath analysing equipment shall be operated by an authorised person and shall be operated in accordance with the regulations relating to analysis by breath analysing equipment of the relevant type.

- (2) At the conclusion of the analysis the authorised person shall determine in accordance with the regulations whether the breath analysing equipment is in proper working order.
- (3) Subject to subsection (11), if the breath analysing equipment is determined not to be in proper working order a member of the Police Force may again require the person to provide a sample of his breath for analysis or to allow a medical practitioner or registered nurse to take a sample of his blood for analysis under section 66(2).
- (4) If the breath analysing equipment is determined to be in proper working order —
 - (a) the result indicated by the breath analysing equipment at the conclusion of the analysis shall be the analysis result and the person's blood alcohol content given by or derived under section 65A from the analysis result shall be deemed to be the person's blood alcohol content at the time the sample of breath was provided; and
 - (b) the authorised person shall complete, sign, and hand to the person a statement in writing of the analysis result (which may be by way of an indication on a scale) and of the date and time of the analysis.
- (5) If the breath analysing equipment is self-testing breath analysing equipment subsections (6) to (10) shall have effect in relation to the analysis.
- (6) The breath analysing equipment shall be operated by an authorised person and shall be operated in accordance with the regulations relating to analysis by self-testing breath analysing equipment of the relevant type.
- (7) Subject to subsection (11), if the breath analysing equipment does not indicate a result in the prescribed manner at the conclusion of the analysis, a member of the Police Force may again require the person to provide a sample of his breath for analysis or to allow a medical practitioner or registered nurse to take a sample of his blood for analysis under section 66(2).

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- (8) If the breath analysing equipment indicates a result in the prescribed manner at the conclusion of the analysis, the result so indicated shall be the analysis result and the person's blood alcohol content given by or derived under section 65A from the analysis result shall be deemed to be the person's blood alcohol content at the time the sample of breath was provided.
- (9) Subject to subsection (10), the authorised person shall complete, sign, and hand to the person a statement in writing of the analysis result and of the date and time of the analysis.
- (10) If the manner of indication of a result prescribed for the purposes of subsections (7) and (8) is the printing of a statement by the breath analysing equipment, the authorised person may comply with the requirements of subsection (9) by signing and dating the statement so printed and handing it to the person.
- (11) If the person has provided 2 samples of his breath for analysis under section 66(2) and the analysis of each sample has failed, the person shall not be required to provide another sample of his breath for analysis under section 66(2).
- (12) For the purposes of subsection (11) an analysis of a sample of breath shall be regarded as having failed if, and only if—
- (a) the analysis is made by breath analysis equipment that is not self-testing breath analysing equipment and the breath analysing equipment is determined not to be in proper working order; or
 - (b) the analysis is made by self-testing breath analysing equipment and the breath analysing equipment does not indicate a result in the prescribed manner.

[Section 68 amended by No. 121 of 1987 s. 8; No. 39 of 2000 s. 36; No. 39 of 2007 s. 12.]

69. Blood analysis

- (1) Where, pursuant to the provisions of section 66, 66B or 66E, a medical practitioner or registered nurse takes a sample of a

person's blood for analysis the sample shall be taken in accordance with the regulations, or otherwise in a proper manner, and shall be divided into 2 parts, each of which shall be deemed to be a sample of the person's blood for the purposes of this Act, and one of which shall be given to or retained for the person from whom it was taken, or shall be given to some other person on behalf of the first-mentioned person, and the other of which shall be given to a member of the Police Force.

- (1a) If, instead of a sample of a person's blood being taken and divided into 2 parts, 2 samples of the person's blood are taken one immediately after the other, and in a manner prescribed in the regulations —
- (a) the taking of those 2 samples is to be regarded as the taking of a single sample at the time at which the first of the 2 samples began to be taken; and
 - (b) each of the 2 samples taken is to be regarded as a part into which the single sample has been divided.
- (2) Where a sample of blood is analysed for alcohol by an analyst in accordance with the regulations the blood alcohol content of the sample shall be the analysis result and shall be deemed to be the person's blood alcohol content at the time the sample of blood was taken.

[Section 69 amended by No. 105 of 1981 s. 19; No. 39 of 2000 s. 36; No. 54 of 2006 s. 20; No. 6 of 2007 s. 12; No. 39 of 2007 s. 13.]

69A. Urine samples

Where pursuant to section 66 or 66B a person provides a medical practitioner or registered nurse with a sample of his urine for analysis the sample shall be collected in prescribed equipment and shall be divided into 2 parts, each of which shall be deemed to be a sample of the person's urine for the purposes of this Act, and one of which shall be given to or retained for the person by whom it was provided, or shall be given to some

other person on behalf of the first-mentioned person, and the other of which shall be given to a member of the Police Force.

[Section 69A inserted by No. 82 of 1982 s. 17; amended by No. 39 of 2000 s. 36; No. 6 of 2007 s. 13.]

69B. Oral fluid samples

If the drug testing of a sample of a person's oral fluid under section 66D(4)(b) indicates, in the opinion of the authorised drug tester who conducted the drug testing, that the person's oral fluid contains a prescribed illicit drug, the sample shall be divided into 2 parts, each of which shall be deemed to be a sample of the person's oral fluid for the purposes of this Act, and one of which shall be given to or retained for the person by whom it was provided, or shall be given to some other person on behalf of the first-mentioned person, and the other of which shall be given to a member of the Police Force.

[Section 69B inserted by No. 6 of 2007 s. 14.]

70. Evidence

- (1) Without affecting the admissibility of any other evidence that may then be given, in any proceeding for an offence against section 64, 64AA, 64A or 64AAA, or for an offence against this or any other Act in which the question whether a person was or was not, or the extent to which he was, under the influence of alcohol at any material time is relevant, evidence may be given of —
 - (a) the provision of a sample of breath by the person for analysis, if provided within 4 hours after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and
 - (b) the analysis of the sample of breath by breath analysing equipment operated by an authorised person; and
 - (c) the determination that breath analysing equipment that was not self-testing breath analysing equipment was in proper working order; and

- (ca) the manner in which self-testing breath analysing equipment indicated the result of an analysis; and
 - (d) the taking of a sample of blood from the person by a medical practitioner or registered nurse, if taken within 4 hours after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and
 - (e) the analysis of the sample of blood for alcohol by an analyst; and
 - (f) the analysis result obtained pursuant to section 68 or 69.
- (2) In any proceeding such as is mentioned in subsection (1), a certificate in the prescribed form —
- (a) purporting to be signed by the chief executive officer of the Chemistry Centre (WA), certifying that a person therein named is, or was at the material time, an authorised person; or
 - (b) purporting to be signed by the chief executive officer of the Chemistry Centre (WA), certifying that a person therein named is, or was at the material time, an analyst; or
 - (ba) purporting to be signed by an authorised person —
 - (i) certifying that a person therein named provided a sample of breath for analysis on a date and at a time stated therein; and
 - (ii) certifying that a sample of breath so provided was analysed by apparatus operated by him and that apparatus was breath analysing equipment, other than self-testing breath analysing equipment, within the meaning of section 65; and
 - (iii) certifying that the breath analysing equipment was operated by him in the prescribed manner and that all regulations relating to analysis by breath analysing equipment of the relevant type were complied with; and

- (iv) setting out the analysis result obtained from the analysis; and
 - (v) certifying that the breath analysing equipment was determined by him in accordance with the regulations to be in proper working order on the occasion of its operation; and
 - (vi) certifying that in accordance with section 68(4)(b) he completed, signed, and handed to the person by whom the sample of breath was provided, a statement as required by that paragraph; and
 - (vii) certifying that he was at the material time an authorised person;
- or
- (bb) purporting to be signed by an authorised person —
 - (i) certifying that a person therein named provided a sample of breath for analysis on a date and at a time stated therein; and
 - (ii) certifying that the sample of breath so provided was analysed by apparatus operated by him and that apparatus was self-testing breath analysing equipment within the meaning of section 65; and
 - (iii) certifying that the breath analysing equipment was operated by him in the prescribed manner and that the regulations relating to analysis by self-testing breath analysing equipment of the relevant type were complied with; and
 - (iv) certifying that the breath analysing equipment indicated a result in the prescribed manner at the conclusion of the analysis; and
 - (v) setting out the analysis result obtained from the analysis; and

- (vi) certifying that in accordance with section 68(9) he completed, signed, and handed to the person by whom the sample of breath was provided, a statement as required by that subsection, or that he complied with the requirements of that subsection by signing, dating, and handing to the person, a statement printed by the breath analysing equipment; and
- (vii) certifying that he was at the material time an authorised person;

or

- (c) purporting to be signed by a technologist of a body approved by the Minister, certifying that identified sampling equipment comprises the prescribed items, that those items have been prepared by him and are sterile and fit for the purpose of taking a sample of blood for analysis if used not later than a specified date; or
- (d) purporting to be signed by a medical practitioner or registered nurse, certifying that an identified sample of blood was taken from a named person, on a date and at a time therein specified, in accordance with the regulations using identified sampling equipment, which was received in a described condition from an identified person; or
- (e) purporting to be signed by an analyst, certifying either or both of the following, namely, that an identified sample of blood taken from a named person was analysed for alcohol in accordance with the regulations, and the analysis result obtained from the analysis,

is prima facie evidence of the matters therein certified or set out, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was such chief executive officer, or was an authorised person, or was such a technologist, or was a medical practitioner, registered nurse or analyst.

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- (2a) In any proceeding such as is mentioned in subsection (1), evidence by an authorised person that —
- (a) the apparatus operated by him pursuant to section 68 was self-testing breath analysing equipment within the meaning of section 65; or
 - (b) self-testing breath analysing equipment was operated by him in the prescribed manner and the regulations relating to analysis by self-testing breath analysing equipment of the relevant type were complied with; or
 - (c) self-testing breath analysing equipment indicated a result in the prescribed manner on the occasion of its operation,

is prima facie evidence of that fact.

- (3) In any proceeding such as is mentioned in subsection (1), evidence by an authorised person that —
- (a) the apparatus operated by him pursuant to section 68 was breath analysing equipment, other than self-testing breath analysing equipment, within the meaning of section 65; or
 - (b) breath analysing equipment was operated by him in the prescribed manner and all regulations relating to analysis by breath analysing equipment of the relevant type were complied with; or
 - (c) breath analysing equipment that was not self-testing breath analysing equipment and was determined by him in accordance with the regulations to be in proper working order on the occasion of its operation,

is prima facie evidence of that fact.

- (3a) Without affecting the admissibility of any other evidence that may then be given, in any proceeding for an offence against section 64AC, or for an offence against this or any other Act in which the question whether a person was or was not, or the extent to which he was, under the influence of or impaired by

drugs at any material time is relevant, evidence may be given of —

- (a) the taking of a sample of blood from the person by a medical practitioner or registered nurse, if taken within 4 hours after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and
- (b) the provision of a sample of urine by the person for analysis, if provided within 4 hours after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and
- (c) the analysis of a sample of blood or urine for drugs by a drugs analyst and the result obtained from the analysis; and
- (d) the conduct, condition or appearance of the person at or after the time of the driving or attempted driving of a motor vehicle that gave rise to the alleged offence or during a driver assessment; and
- (e) conduct, a condition or an appearance associated with a person who has consumed or used a particular drug or particular drugs; and
- (f) the usual effect that conduct or a condition associated with a person who has consumed or used a particular drug or particular drugs has on a person's capacity to have proper control of a motor vehicle; and
- (g) the provision of a sample of oral fluid by the person under section 66D, if provided within 4 hours after the driving, attempted driving, use or management of a motor vehicle that gave rise to the alleged offence; and
- (h) the analysis for drugs by a drugs analyst of a sample of oral fluid provided under section 66D, and the result obtained from the analysis.

- (3b) In any proceedings such as is mentioned in subsection (3a), a certificate in the prescribed form —
- (a) purporting to be signed by the chief executive officer of the Chemistry Centre (WA) certifying that a person named therein is, or was at the material time, a drugs analyst; or
 - (b) purporting to be signed by a technologist of a body approved by the Minister, certifying that identified sampling equipment comprises the prescribed items, that those items have been prepared by him and are sterile and fit for the purpose of taking a sample of blood for analysis if used not later than a specified date; or
 - (c) purporting to be signed by a technologist of a body approved by the Minister, certifying that identified sampling equipment comprises the prescribed items, that those items have been prepared by him and are sterile and fit for the purpose of the collection of a sample of a person's urine for analysis if used not later than a specified date; or
 - (d) purporting to be signed by a medical practitioner or registered nurse, certifying that an identified sample of blood was taken from a named person, on a date and at a time therein specified, in accordance with the regulations using identified sampling equipment, which was received in a described condition from an identified person; or
 - (e) purporting to be signed by a medical practitioner or registered nurse, certifying that an identified sample of urine was provided by a named person on a date and at a time therein specified and was collected using identified sampling equipment which was received in a described condition from an identified person; or

- (f) purporting to be signed by a drugs analyst certifying either or both of the following —
 - (i) that an identified sample of blood, urine or oral fluid taken from or provided by a named person was analysed for drugs;
 - (ii) the analysis result obtained from the analysis;or
- (g) purporting to be signed by an approved expert describing conduct, a condition or an appearance associated with a person who has consumed or used a drug or drugs specified in the certificate; or
- (h) purporting to be signed by an approved expert setting out the usual effect that conduct or a condition associated with a person who has consumed or used a particular drug or particular drugs has on a person's capacity to have proper control of a motor vehicle; or
- (i) purporting to be signed by a member of the Police Force describing the conduct, condition or appearance of a person at or after the time the person drove or attempted to drive a motor vehicle; or
- (j) purporting to be signed by a member of the Police Force certifying the following —
 - (i) that the member conducted a driver assessment on a person named in the certificate on a date and at a time stated in the certificate;
 - (ii) that the assessment was conducted in accordance with the regulations,and describing the conduct, condition or appearance of the person during the assessment; or
- (k) purporting to be signed by an authorised drug tester certifying that, under section 66D, an identified sample of oral fluid was collected by the authorised drug tester in accordance with the regulations from a named person on a date and at a time specified in the certificate using

identified sampling equipment which was received in a described condition from an identified person,

is prima facie evidence of the matters therein certified or set out, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was such chief executive officer, or was such a technologist, or was a medical practitioner, registered nurse, drug analyst, approved expert, member of the Police Force or authorised drug tester.

- (3c) In any proceeding for an offence against section 67(2)(a) a certificate in the prescribed form purporting to be signed by the chief executive officer of the Chemistry Centre (WA), certifying that a person therein named is, or was at the material time, an authorised person is prima facie evidence of the matters therein certified, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was such chief executive officer.
- (3d) In any proceeding for an offence against section 67A(1) of failing to comply with a requirement made pursuant to section 66D(1) a certificate in the prescribed form purporting to be signed by the Commissioner of Police certifying that a person therein named is, or was at the material time, an authorised drug tester is prima facie evidence of the matters therein certified, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner of Police.
- (4) Nothing in this section shall be construed as precluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act.
- (5) Except at the instance, or with the consent, of the accused in any proceeding such as is mentioned in subsection (3a), a certificate mentioned in subsection (3b)(f), (g) or (h) shall not be adduced,

and if adduced shall not be admitted, in that proceeding unless a copy of the certificate is proved to have been served on the accused at least 28 days before the day on which the certificate is adduced.

- (5a) If subsection (5) has been complied with in relation to a certificate, the accused shall not challenge or call into question any matter certified or set out in the certificate unless —
- (a) notice of the accused's intention to do so is proved to have been served on the prosecutor at least 14 days before the day on which the certificate is adduced; or
 - (b) the court, in the interests of justice, gives the accused leave to do so.
- (5b) A notice under subsection (5a)(a) must specify the matter that is to be challenged or called into question.
- (5c) Except at the instance, or with the consent, of that person, evidence that a person underwent a preliminary oral fluid test and of any indication provided by such a test shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for an offence against section 67AB or 67A.
- (5d) Except as provided by subsection (3a) or (3b) or at the instance, or with the consent, of that person, evidence that a person provided a sample of the person's oral fluid for drug testing shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for an offence against section 67AB or 67A.
- (5e) Except at the instance, or with the consent, of that person, evidence of the result of the drug testing of a sample of a person's oral fluid by an approved device, shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for an offence against section 67AB or 67A.

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- (6) Except at the instance, or with the consent, of that person, evidence that a person provided a sample of his breath for a preliminary test and of any indication provided by such a test shall not be adduced, and if adduced shall not be admitted, in any proceedings other than proceedings for unlawful arrest or for an offence against section 64AB, 67, 67AA or 67A.
- (7) In this section —
- approved expert** means a qualified clinical pharmacologist approved by the Minister for the purpose of this section by notice published in the *Gazette*;
- technologist** means —
- (a) a person registered as an analyst under section 203 of the *Health Act 1911*; or
 - (b) a person approved, or belonging to a class of persons approved, by the Minister to prepare sampling equipment.

[Section 70 amended by No. 71 of 1979 s. 12; No. 82 of 1982 s. 18; No. 121 of 1987 s. 9; No. 11 of 1988 s. 13; No. 19 of 1990 s. 8; No. 13 of 1992 s. 12; No. 39 of 2000 s. 35 and 36; No. 6 of 2007 s. 15; No. 10 of 2007 s. 43; No. 39 of 2007 s. 37.]

71. Determination of blood alcohol content at material time

- (1) In any proceeding such as is mentioned in section 70(1) a person's blood alcohol content at any time which is or may be material in the proceeding (the **material time**) shall be calculated having regard to —
- (a) the time of the person's last drink containing alcohol taken at or before the material time; and
 - (b) the material time; and
 - (c) the time at which the sample of the person's breath or blood was provided or taken for analysis (the **time of sampling**); and

- (d) the person's blood alcohol content at the time of sampling,

so as to give effect to the presumption that after a person's latest drink containing alcohol the person's blood alcohol content increases at the rate of 0.016g of alcohol per 100ml of blood per hour for a period of 2 hours and, after that period, decreases at the rate of 0.016g of alcohol per 100ml of blood per hour.

- (2) For the purpose of making a calculation under subsection (1) in any case where any one or more of the times referred to in that subsection can only be ascertained as falling within a period of time, the calculation shall be made taking such time within that period as produces the result most favourable to the person charged.
- (3) For the purpose of making a calculation under subsection (1) but subject to subsection (2), in any case where the time of a person's last drink containing alcohol is not ascertained, the time of the person's last drink containing alcohol shall be taken to have been such time as produces the result most favourable to the person charged.
- (4) In any proceeding such as is mentioned in section 70(1), the concentration of alcohol calculated to have been present in the blood of a person at any time under the preceding provisions of this section shall be conclusively presumed to have been present in the blood of that person at that time.

[Section 71 amended by No. 39 of 2007 s. 14.]

71A. Samples not to be used to obtain DNA

- (1) In this section —
sample means a sample of blood, urine or oral fluid taken from or provided by a person (the *subject*) and given to a member of the Police Force under section 69, 69A or 69B.

- (2) A person must not use a sample to obtain the subject's DNA.
Penalty: imprisonment for 12 months.

[Section 71A inserted by No. 6 of 2007 s. 16.]

71B. Power to prevent use of vehicle by suspected offender

- (1) If a member of the Police Force has reason to suspect that a person (the *offender*) is driving, is attempting to drive, has driven or has attempted to drive a motor vehicle in contravention of section 63, 64, 64AA, 64A, 64AAA or 64AB, the member of the Police Force may require the offender to immediately hand over all keys to any motor vehicle that are there and then in the offender's possession —
- (a) to the member of the Police Force; or
 - (b) to another person who is in the company of the offender if the member of the Police Force is satisfied that the person —
 - (i) is authorised to drive the vehicle on a road; and
 - (ii) is responsible and is able to drive the vehicle properly.
- (2) A member of the Police Force may make a requirement under subsection (1) if satisfied that the requirement is necessary in the circumstances and is in the interest of the offender, or of any other person or of the public, and may do so whether or not the offender has been or is to be charged with an offence.
- (3) If keys to a motor vehicle are handed over under subsection (1)(a), a member of the Police Force may take any steps that, in the opinion of the member of the Police Force, are appropriate and practicable in order to ensure that the vehicle is not causing any obstruction to traffic and is secure.
- (4) Those steps may include moving the vehicle to a more suitable place.

- (5) If a person requests a member of the Police Force to hand over to the person keys to a motor vehicle that have been handed over under subsection (1)(a), the member of the Police Force is to comply with the request if satisfied that the person —
- (a) is entitled to lawful possession of the vehicle or is in the company of a person who is entitled to lawful possession of the vehicle; and
 - (b) is authorised to drive the vehicle on a road; and
 - (c) is responsible and able to drive the vehicle properly.
- (6) Before keys to a motor vehicle are handed over to a person under subsection (1)(b) or (5) a member of the Police Force may, for the purposes of subsection (1)(b)(ii) or (5)(c), require the person to provide a sample of the person's breath for a preliminary test in accordance with the directions of the member of the Police Force.
- (7) If keys to a motor vehicle are not handed over within 24 hours after a request is made under subsection (5), the offender may apply to the Magistrates Court, in accordance with its rules of court, for an order for the keys to be handed over to a person named in the application.
- (8) A person who —
- (a) contravenes any requirement made by a member of the Police Force under subsection (1); or
 - (b) attempts in any manner to obstruct a member of the Police Force in the exercise of any power conferred on the member of the Police Force under subsection (1), (3) or (4),

commits an offence.

Penalty: 8 PU.

[Section 71B inserted by No. 6 of 2007 s. 16; amended by No. 39 of 2007 s. 38 (correction to reprint in Gazette 19 Oct 2010 p. 5202).]

72. Regulations etc.

(1) The Governor may make regulations prescribing all matters that are necessary or convenient for the purpose of carrying out, or giving effect to, the provisions of section 59B(5) and sections 63 to 73 inclusive, and, in particular and without limiting the generality of the foregoing, may make regulations —

- (a) prescribing the manner of providing samples of breath and oral fluid and taking samples of blood, and regulating the manner of dealing with samples of breath, blood, urine and oral fluid; and
- (aa) prescribing equipment for use in the taking of samples of blood and the collection of samples of urine and oral fluid; and
- (ab) prescribing the manner and methods by which samples of blood may be analysed for alcohol; and
- (ac) prescribing the manner and methods by which samples of blood, urine and oral fluid may be analysed for drugs; and
- (b) prescribing the manner of operation of breath analysing equipment and of determining breath analysing equipment, other than self-testing breath analysing equipment, to be in proper working order; and
- (ba) prescribing the manner of indication of a result for the purposes of section 68(7) and (8); and
- (bb) prescribing the procedure for assessing whether a person is drug impaired; and
- (bc) prescribing the procedure for conducting preliminary oral fluid tests; and
- (bd) prescribing the procedure for drug testing samples of oral fluid by an approved device; and

- (c) prescribing forms, including any certificate required for the purposes of the sections herein mentioned; and
 - (d) prescribing the fees payable to a medical practitioner or registered nurse attending a person for the purpose of taking a sample of his blood or collecting a sample of his urine and those payable in respect of the analysis of a sample of blood by an analyst, or a sample of blood, urine or oral fluid by a drugs analyst, and for the payment and recovery of those fees.
- (1a) Without limiting subsection (1), procedures may be prescribed under subsection (1)(bc) or (bd) by reference to instructions provided by the manufacturer of a device of a type approved under subsection (2)(c) or (d).
- (2) The Minister may, from time to time, by notice published in the *Government Gazette*, approve of —
- (a) types of apparatus for the purpose of ascertaining a person's blood alcohol content by analysis of a sample of the person's breath; and
 - (b) types of apparatus for the purpose of conducting preliminary tests for the purposes of section 66; and
 - (c) types of devices for the purpose of conducting drug testing of a sample of a person's oral fluid for the purposes of section 66D; and
 - (d) types of devices for the purpose of conducting preliminary oral fluid tests for the purposes of section 66C,

and may, by notice so published, revoke any such approval.

- (2a) Where approval is given under subsection (2)(a) in relation to a type of apparatus that, in the opinion of the Minister, does not need to be tested to determine whether it is in proper working order after each occasion on which it is used to make an analysis of a sample of breath, the Minister may, in the notice

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by which the approval is given, designate that type of apparatus as self-testing apparatus.

- (3) The chief executive officer of the Chemistry Centre (WA) may, from time to time —
- (a) certify a person as being competent to determine the concentration of alcohol in bodily substances; and
 - (aa) certify a person as being competent to ascertain whether and to what extent drugs are present in bodily substances; and
 - (b) certify a person as being competent to operate all types of breath analysing equipment,

and may rescind any certificate given under this subsection.

- (4) The Commissioner of Police may, from time to time, authorise a person to collect, and conduct drug testing of, samples of oral fluid for the purposes of section 66D.
- (5) The Commissioner of Police must not authorise a person under subsection (4) unless, in the opinion of the Commissioner of Police, the person has the appropriate training to collect, and conduct drug testing of, samples of oral fluid in accordance with the regulations.

[Section 72 amended by No. 82 of 1982 s. 19; No. 121 of 1987 s. 10; No. 19 of 1990 s. 8; No. 39 of 2000 s. 36; No. 44 of 2004 s. 11; No. 6 of 2007 s. 17; No. 10 of 2007 s. 43; No. 39 of 2007 s. 15.]

72A. Review of amendments relating to drugs

- (1) In this section —

amended provisions means this Act as amended by the *Road Traffic Amendment (Drugs) Act 2007* Part 2;

commencement day means the day of the coming into operation of the *Road Traffic Amendment (Drugs) Act 2007* Part 2¹.

- (2) The Minister is to carry out a review of the operation and effectiveness of the amended provisions as soon as practicable after the end of the period of 12 months beginning on the commencement day.
- (3) In the course of the review the Minister is to consider and have regard to —
 - (a) the attainment of the objects of the amended provisions; and
 - (b) the need for the amended provisions to continue in operation; and
 - (c) any other matters that appear to the Minister to be relevant.
- (4) The Minister is to prepare a report following the review and is to cause it to be laid before each House of Parliament before the end of the period of 18 months beginning on the commencement day.
- (5) If a House of Parliament is not sitting, the Minister may transmit a copy of the report to the Clerk of that House.
- (6) A copy of the report transmitted to the Clerk of a House is to be regarded as having been laid before the House.
- (7) The laying of a copy of the report before a House that is regarded as having occurred under subsection (6) is to be reported to the House by the Clerk, and recorded in the Votes and Proceedings or Minutes of Proceedings, on the first sitting day of the House after the Clerk received the copy.
- (8) This section expires as soon as a copy of the report has been laid, or recorded under subsection (7) as having been laid, in each House.

[Section 72A inserted by No. 6 of 2007 s. 18.]

Division 3 — General matters as to driving offences

[Heading inserted by No. 10 of 2004 s. 10.]

73. Certain offences extend to driving or attempting to drive in public places

In sections 54, 55 and 56 and in sections 59 to 72 inclusive, but not in section 62A, a reference, however expressed, to the driving of or attempting to drive a motor vehicle shall be construed as a reference to the driving of or attempting to drive a motor vehicle on a road or in any place to which the public is permitted, whether on payment of a fee or otherwise, to have access, and a reference to a driver shall be construed accordingly.

[Section 73 amended by No. 10 of 2004 s. 11; No. 39 of 2007 s. 24.]

74. Representation in proceedings under Part V

- (1) Both the Commissioner of Police and the Director General have a right to be heard in proceedings under section 76.
- (2) The Director General has a right to be heard in proceedings under section 78.
- (3) The Commissioner of Police has a right to be heard in proceedings under Division 4.
- (4) A person who, under this section, has a right to be heard in proceedings may be represented by any person he or she authorises for that purpose.

[Section 74 inserted by No. 10 of 2004 s. 12.]

75. Notification and effect of disqualification

- (1) Where a person is convicted before a court of an offence against this or any other Act and is disqualified by the court from holding or obtaining a driver's licence the court shall cause

particulars of the conviction and of the order made by the court to be sent to the Director General.

- (1a) Where an offence to which subsection (1) applies (in this subsection referred to as the ***present offence***) is a prescribed offence the court shall, in addition to causing the particulars required by that subsection to be sent, cause the Director General to be informed as to whether or not the offender has previously been convicted of a prescribed offence and, if he has and the present offence is against section 64, as to the date of his most recent previous conviction for a prescribed offence.
- (2) Where a person is disqualified from holding or obtaining a driver's licence —
- (a) by order of a court other than upon being convicted of a prescribed offence; or
 - (b) by order of a court upon being convicted of a prescribed offence, other than an offence against section 64, and the person has not previously been convicted of a prescribed offence; or
 - (c) by order of a court upon being convicted of an offence against section 64 (in this paragraph referred to as the ***present offence***) and that person has not been convicted of a prescribed offence within the period of 5 years preceding his conviction for the present offence; or
 - (d) by operation of this Act; or
 - (e) by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,

any driver's licence or learner's permit held by that person shall by force of this section be suspended so long as the disqualification continues in force and during the period of suspension shall be of no effect, but the provisions of this subsection shall not operate so as to extend the period for which the licence may be valid or effective beyond the time when it would be due to expire.

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- (2a) Where a person is disqualified from holding or obtaining a driver's licence upon being convicted of a prescribed offence, other than an offence against section 64, and that person has previously been convicted of a prescribed offence any driver's licence or learner's permit held by that person shall by force of this section be cancelled.
- (2b) Where a person is disqualified from holding or obtaining a driver's licence upon being convicted of an offence against section 64 (in this subsection referred to as the *present offence*) and that person has been convicted of a prescribed offence within the period of 5 years preceding his conviction for the present offence any driver's licence or learner's permit held by that person shall by force of this section be cancelled.
- (2c) A reference in subsection (2), (2a) or (2b) to a driver's licence held by a person —
- (a) does not include reference to a provisional licence;
 - (b) otherwise, includes reference to an extraordinary licence or any other driver's licence and whether or not it is already suspended.
- (3) A driver's licence (other than an extraordinary licence) or a learner's permit obtained by any person who is disqualified from holding or obtaining a driver's licence shall be of no effect.

[(4), (5) deleted]

- (6) In this section *prescribed offence* means an offence against —
- (a) section 63, 64 or 64AB of this Act; or
 - (b) section 67 of this Act as enacted after the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ or section 67AA of this Act; or
 - (c) section 67 of this Act as in force before the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹ being an offence of failing to comply with a requirement to provide a sample of breath for

analysis or to allow a sample of blood to be taken for analysis.

[Section 75 amended by No. 105 of 1981 s. 19; No. 82 of 1982 s. 20; No. 11 of 1988 s. 14; No. 92 of 1994 s. 37; No. 78 of 1995 s. 115; No. 76 of 1996 s. 15, 20(1) and (3); No. 28 of 2001 s. 20 and 23(2); No. 54 of 2006 s. 21; No. 6 of 2007 s. 19.]

76. Extraordinary licences

- (1) Subject to the provisions of this section, where under this or any other Act a person is disqualified from holding or obtaining a driver's licence, that person may apply to a court for an order directing the Director General to grant an extraordinary licence to him.
- (1aa) For the purposes of subsection (1), being prevented under —
- (a) section 42D; or
 - (b) regulations made for the purposes of section 44C,
- from being granted a driver's licence does not amount to being disqualified under this or any other Act from holding or obtaining a driver's licence.
- (1ab) To the extent that anything in this section may be inconsistent with anything in Part IVA or regulations made for the purposes of that Part, this section prevails.
- (1ac) An extraordinary licence cannot authorise a person to drive at any time while the person is disqualified from holding or obtaining a driver's licence —
- (aa) under section 71D(1); or
 - (a) under Part VIA; or
 - (b) because of a licence suspension order under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,

and an application for an order directing that a person be granted an extraordinary licence cannot be made, received or

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heard under subsection (1) while the person is disqualified as described in paragraph (aa), (a) or (b).

- (1ad) In the case of a licence suspension order, subsection (1ac) has effect whether or not the disqualification under the order is concurrent with any other disqualification from holding or obtaining a driver's licence.
- (1a) Subject to subsection (1B), no application under subsection (1) shall be made to, or heard by, any court —
- (a) within 4 months after the applicant has been disqualified under section 63(2)(b) or (c), 64AB(2)(b) or (c), 67(3)(b) or (c) or 67AA(3)(b) or (c); or
 - (b) within 3 months after the applicant has been disqualified pursuant to section 63(2)(a), 64AB(2)(a), 67(3)(a) or 67AA(3)(a) where the applicant has previously been convicted of an offence against section 64 or 67A of this Act or section 67 of this Act as in force before the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*¹; or
 - (c) within 3 months after the applicant has been disqualified pursuant to section 64(2)(b) on conviction of an offence that is a third or subsequent offence for the purposes of section 64(2); or
 - (d) within 3 months after the applicant has been disqualified pursuant to section 67A(3)(b) on conviction of an offence that is a third or subsequent offence for the purposes of section 67A(3); or
 - (e) within 2 months after the applicant has been disqualified pursuant to section 64(2)(b) on conviction of an offence that is a second offence for the purposes of section 64(2); or
 - (f) within 2 months after the applicant has been disqualified pursuant to section 64(2)(b) where the applicant has previously been convicted of an offence against section 67A; or

- (g) within 2 months after the applicant has been disqualified pursuant to section 67A(3)(b) on conviction of an offence that is a second offence for the purposes of section 67A(3); or
 - (h) within 21 days after the applicant has been disqualified in any case not referred to in paragraph (a), (b), (c), (d), (e), (f) or (g).
- (1B) A period referred to in subsection (1a) in relation to an offence is to be reduced by any period during which the applicant was disqualified from holding or obtaining a driver's licence by a disqualification notice given to the applicant under section 71C in relation to the offence.
- (2)(a) In the case of a disqualification imposed by the Supreme Court or The District Court of Western Australia any application under subsection (1) shall be made to the court by which the disqualification was imposed.
- (b) In the case of a disqualification imposed by a court of summary jurisdiction, or a disqualification that takes effect by the operation of the provisions of this Act, an application under subsection (1) shall be made to the Magistrates Court or, in the case of a person under 18 years of age, the Children's Court.
- [(c) deleted]*
- (2a) An application made under subsection (1) that is made to the Magistrates Court or the Children's Court shall be heard by the court constituted by a magistrate.
- (3) The court may if it thinks proper having regard to —
- (a) the safety of the public generally; and
 - (b) the character of the applicant; and
 - (c) the circumstances of the case; and
 - (d) the nature of the offence or offences giving rise to the disqualification; and

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(e) the conduct of the applicant subsequent to the disqualification,

[(f) deleted]

either make an order directing the Director General, on payment of the prescribed fee, to grant to the applicant an extraordinary licence for such period not exceeding 12 months from the date on which it is granted as the court thinks fit, or refuse the application.

[(3a) deleted]

(3b) Despite subsection (3), the court shall not make an order directing the grant of an extraordinary licence unless it is satisfied that the refusal of the application would —

(a) deprive the applicant of the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the applicant or a person who is a member of his family; or

(b) place an undue financial burden on the applicant or his family, by depriving him of his principal means of obtaining income; or

(c) deprive the applicant or a person who is a member of his family of the only practicable means of travelling to and from the place at which he or that person, as the case may be, is employed.

(4) Where an application under subsection (1) is refused no further application under that subsection shall be heard if it is made within 6 months after the date of the refusal.

[(4a) deleted]

(5)(a) An order directing the grant of an extraordinary licence may impose —

(i) a condition requiring the applicant to comply with the requirements of regulations under Part IVA about

applying for a driver's licence before the extraordinary licence is granted to him;

- (ii) such limitations and conditions as the court thinks proper subject to the observance of which the authority to drive pursuant to the licence may be exercised, including limitations and conditions as to the locality in which and roads on which the applicant is entitled to drive, the purposes for which the applicant is entitled to drive, the hours during which the applicant is entitled to drive, and the vehicle or class of vehicle that may be driven under the authority of the licence.
- (b) The Director General shall give effect to the order according to its tenor and when issuing the licence shall specify therein any limitations and conditions imposed pursuant to paragraph (a)(ii).
- (6) The Director General shall from time to time, on payment of the prescribed fee, renew an extraordinary licence for any period not exceeding 12 months if during the currency of the licence the holder of the licence has not contravened any of the limitations and conditions which the court imposed when directing the licence to be granted and has otherwise complied with the provisions of this Act, and the renewal thereof shall be endorsed thereon by the Director General.
- (6a) If there is no longer any disqualification referred to in subsection (1) still in effect, any extraordinary licence ceases to have effect despite subsections (3) and (6).
- (7)(a) The holder of an extraordinary licence (whether granted before or after the coming into operation of this section) may from time to time during the currency of the licence apply to a court for an order varying the limitations and conditions to which the licence is for the time being subject or cancelling those limitations and conditions and substituting other limitations and conditions.
- (b) The Director General may from time to time during the currency of an extraordinary licence (whether granted before or

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after the coming into operation of this section) apply to a court for an order —

- (i) varying the limitations and conditions to which the licence is for the time being subject or cancelling those limitations and conditions and substituting other limitations and conditions; or
 - (ii) cancelling the licence.
- (8)(a) Any application under subsection (7) in relation to an extraordinary licence granted at the direction of the Supreme Court or The District Court of Western Australia shall be made to the court by which that direction was made.
- (b) An application under subsection (7) in relation to an extraordinary licence granted at the direction of the Magistrates Court or the Children's Court shall be made to the court that made the direction, which shall be constituted by a magistrate.
- (9) Where an application is made under subsection (7) —
- (a) if the court is of opinion that the limitations and conditions to which the extraordinary licence is then subject should be varied, or that those limitations and conditions should be cancelled and other limitations or conditions substituted, for the reason that the holder of the licence has changed his place of residence, place of employment or hours of employment or for any other reason which the court considers sufficient, the court may order accordingly and when an order is so made, the Director General shall cause the limitations and conditions as so varied or substituted to be endorsed on the licence;
 - (b) if the court is of the opinion that the holder of the extraordinary licence —
 - (i) is addicted to alcohol or drugs to such an extent as to render him a danger to the public when in control of a motor vehicle on a road; or

- (ii) suffers from a mental disorder or from a physical disability that is likely to impair his ability to control a motor vehicle; or
 - (iii) is no longer capable of driving as authorised by the licence; or
 - (iv) is not of good character; or
 - (v) should not, by reason of the number or nature of his convictions for offences incurred since the granting of the extraordinary licence, being offences under this Act or the regulations or offences under the law in force in any other jurisdiction or other country of which the driving or using of a motor vehicle was an element, be the holder of a driver's licence,
- the court may cancel the extraordinary licence.
- (10) An application under this section —
- (a) made to the Supreme Court or to The District Court of Western Australia shall be made in accordance with the rules of the court to which it is made;
 - (b) made to the Magistrates Court or the Children's Court shall be made in accordance with rules of court.
- (11) The court may order the applicant to pay the whole or any part of the costs of an application made under this section.
- [(12), (12a) deleted]*
- (13) For the purposes of subsection (1a) —
- (a) any period during which the applicant was imprisoned shall not be taken into account in determining whether a period of time has elapsed; and

- (b) **disqualified** means disqualified from holding or obtaining a driver's licence.

[Section 76 amended by No. 48 of 1976 s. 4; No. 71 of 1979 s. 13; No. 105 of 1981 s. 19; No. 82 of 1982 s. 21; No. 49 of 1988 s. 53; No. 92 of 1994 s. 38; No. 76 of 1996 s. 20(3); No. 28 of 2001 s. 23(1) and (2); No. 59 of 2004 s. 141; No. 54 of 2006 s. 22; No. 6 of 2007 s. 20; No. 51 of 2010 s. 12.]

77. Penalty for contravening conditions of extraordinary licence

- (1) Any person who has an extraordinary licence shall not drive on a road any motor vehicle —
- (a) at a time, for a purpose, or in a locality or on roads, other than as specified in the licence;
 - (b) other than as authorised by the licence;
 - (c) otherwise than in compliance with such other limitations and conditions, if any, as are specified in the licence.

Penalty: 24 PU.

- (2) In addition to the penalty which may be imposed under the provisions of subsection (1), the court before which the accused is convicted shall cancel the extraordinary licence unless the court thinks that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence.

[Section 77 amended by No. 11 of 1988 s. 24; No. 50 of 1997 s. 13; No. 28 of 2001 s. 23(2); No. 84 of 2004 s. 82; No. 54 of 2006 s. 23.]

78. Removal of disqualification

- (1) Subject to the succeeding provisions of this section, where under this or any other Act a person is disqualified by a court from holding or obtaining a driver's licence for a period exceeding 3 years, that person may apply to a court for an order removing the disqualification.

- (2) An application under subsection (1) is made —
- (a) if the disqualification was imposed by the Supreme Court, to the Supreme Court;
 - (b) otherwise, to the District Court.
- (3) No application shall be made under subsection (1) for the removal of a disqualification before the expiration of whichever is relevant of the following periods from the date on which the disqualification took effect, that is to say —
- (a) if the disqualification is for not more than 6 years: 3 years;
 - (b) if the disqualification is for more than 6 years but not more than 20 years: one-half of the period of the disqualification;
 - (c) if the disqualification is for more than 20 years: 10 years.
- (4) For the purposes of subsection (3) the permanent disqualification of a person from holding or obtaining a driver's licence shall be regarded as a disqualification for more than 20 years.
- (5) The court may if it thinks proper having regard to —
- (a) the safety of the public generally; and
 - (b) the character of the applicant; and
 - (c) the circumstances of the case; and
 - (d) the nature of the offence or offences giving rise to the disqualification; and
 - (e) the conduct of the applicant subsequent to the disqualification,

either make an order removing the disqualification as from such date as may be specified in the order or refuse the application.

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- (6) Where an application under subsection (1) is refused no further application under that subsection shall be heard if it is made within one year after the date of the refusal.
- (7) If under this section a court orders a disqualification to be removed, the court shall cause particulars of the order to be sent to the Director General.
- (8) An application under this section shall be made in accordance with the rules of the court to which it is made.
- (9) The court may order the applicant to pay the whole or any part of the costs of an application under this section.
- (10) Nothing in this section shall be construed as limiting or otherwise affecting any right that a person may have to appeal against an order or judgment of a court disqualifying him from holding or obtaining a driver's licence.

[Section 78 amended by No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No. 54 of 2006 s. 24.]

Division 4 — Impounding and confiscation of vehicles for certain offences

[Heading inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 12.]

Subdivision 1 — Preliminary

[Heading inserted by No. 10 of 2004 s. 13.]

78A. Terms used

In this Division —

approved means approved by the Commissioner;

Commissioner means the Commissioner of Police;

day of the offence means the day on which the relevant offence was committed;

hired, in relation to a vehicle, means a vehicle that —

- (a) is owned by a person whose business is the short term hire of vehicles; and
- (b) is part of the business's fleet; and
- (c) under a written agreement, is hired for the hirer's short term use;

impounding offence (driver's licence) means —

- (a) an offence against section 49(1)(a) that is committed by a person described in section 49(3)(a), (b) or (c); or
- (b) an offence against section 77(1)(a); or
- (c) an offence committed before the coming into operation of the *Road Traffic Amendment Act 2008* section 5(a) that was an impounding offence (driver's licence) as defined in this section as in force when the offence was committed;

impounding offence (driving) means an offence against section 60 or 62A committed after the coming into operation of the *Road Traffic Amendment (Hoons) Act 2009* section 7 or an offence committed before the coming into operation of that section that was an impounding offence (driving) as defined in this section as in force when the offence was committed;

impounding or confiscation order means a court order under section 80A(1), 80B(1), 80C(1), 80CA(1), 80CB(1) or 80FA;

impounding order means a court order under section 80B(1), 80CA(1) or 80FA;

impounding period means the period for which the vehicle is specified to be impounded;

lent in addition to the ordinary meaning of the word means hired in the ordinary meaning of that word, or subject to a hire purchase agreement within the meaning of that term in the *Hire-Purchase Act 1959* or subject to a goods mortgage in connection with a credit contract within the meaning of the *National Credit Code* (Commonwealth);

road rage circumstances accompany the commission of an offence if —

[(a) deleted]

- (b) the offence is committed as a reaction to, and is to a substantial extent motivated by, an occurrence that takes place on a road, or in any place to which the public is permitted, whether on payment of a fee or otherwise, to have access, while —
 - (i) the offender is driving a vehicle on the road or in the place; and
 - (ii) a victim of the offence is using the same road or place, whether as the driver of, or a passenger in, another vehicle or otherwise;

road rage offence means an offence the commission of which is accompanied by road rage circumstances, but only if it is —

- (a) an offence of which it is an element that the offender —
 - (i) assaults a victim; or
 - (ii) damages property in the possession of, or under the control of, a victim;
- or
- (b) an offence against section 60 in circumstances that involve the offender driving in a manner that is dangerous to a particular victim;

senior police officer means a person appointed under the *Police Act 1892* Part I to be a member of the Police Force of Western Australia who is, or is acting as, an inspector or an officer of a rank more senior than an inspector;

surrender period, in relation to a vehicle, means the period specified under section 80F in an order as the period in which the vehicle is to be surrendered to the Commissioner;

vehicle referred to in section 80GA means a vehicle for the impounding or confiscation of which an application may be made in accordance with section 80GA.

[Section 78A inserted by No. 10 of 2004 s. 13; amended by No. 54 of 2006 s. 25; No. 4 of 2007 s. 4, 11, 13 and 30; No. 24 of 2008 s. 5; No. 23 of 2009 s. 7; No. 14 of 2010 s. 12.]

[Section 78A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

78B. Penalties etc. not affected

- (1) The impounding or confiscation of a vehicle under this Division does not affect or in any way limit a provision of this Act relating to the imposition of any penalty or disqualification on a person convicted of an offence in respect of which the vehicle was impounded or confiscated.
- (2A) The impounding of a vehicle under Subdivision 2 is not relevant to the exercise by a court of its discretion under Subdivision 3 to impound or confiscate a vehicle.
- (2) For the purposes of the *Sentencing Act 1995* section 8 the fact that a vehicle may be, or has been, impounded or confiscated under this Division is not a mitigating factor.

[Section 78B inserted by No. 10 of 2004 s. 13; amended by No. 24 of 2008 s. 6.]

78C. Powers for this Division

- (1) A member of the Police Force and any person assisting a member of the Police Force in the exercise of a power under section 79(1) or 79A(1) may drive, tow or otherwise convey a vehicle impounded under that section —
 - (a) to the place where the vehicle is to be stored; or
 - (b) at the place where the vehicle is stored.

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- (2A) A member of the Police Force may take possession of a vehicle for the purpose of impounding it by operation of section 79BB(2), 79BCB(2) or 79BCE(2).
- (2) A member of the Police Force and any person assisting a member of the Police Force giving effect to the impounding of a vehicle by operation of section 79BB(2), 79BCB(2) or 79BCE(2) or an impounding or confiscation order may drive, tow or otherwise convey the vehicle concerned —
- (a) to the place where the vehicle is to be stored; or
 - (b) at the place where the vehicle is stored.
- (3) A member of the Police Force may seize the keys to a vehicle that is —
- (a) impounded under section 79(1) or 79A(1); or
 - (ba) impounded, or to be impounded, by operation of section 79BB(2), 79BCB(2) or 79BCE(2); or
 - (b) the subject of an impounding or confiscation order but which is not surrendered to the Commissioner within the surrender period.
- (4) If a member of the Police Force reasonably suspects that the keys to a vehicle referred to in subsection (3)(ba) or (b) are, or the vehicle is, in any premises, the member may, without a warrant, at any time, enter the premises for either or both of the following purposes —
- (a) seizing the keys;
 - (b) driving, towing or otherwise conveying the vehicle to a place where the vehicle is to be stored.
- (5) A person may use reasonable force to exercise a power given by this section.
- (6) The powers that may be exercised under this section are —
- (a) subject to the provisions of an impounding or confiscation order; and

(b) in addition to the powers under section 86A.

[Section 78C inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 14; No. 24 of 2008 s. 23 and 24(1); No. 23 of 2009 s. 8; No. 20 of 2010 s. 4.]

[Section 78C. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

78D. Contracts for conveying, storing impounded or confiscated vehicles

The Commissioner may, on behalf of the State, enter into a written contract under which the contractor provides services in respect of any of the following —

- (a) the driving, towing or otherwise conveying of vehicles impounded under section 79(1), 79A(1), 79BB, 79BCB or 79BCE or that are the subject of impounding or confiscation orders;
- (ba) the surrender of vehicles under this Division;
- (b) the storage and the release of vehicles that are, or have been, impounded or confiscated under this Division;
- (ca) the sale or other disposal of vehicles or items under section 80J;
- (c) otherwise assisting the Commissioner and members of the Police Force in the performance of their respective functions under this Division.

[Section 78D inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 15; No. 24 of 2008 s. 23 and 24(2); No. 23 of 2009 s. 9; No. 20 of 2010 s. 5.]

78E. Recovery of expenses owed to Commissioner

The Commissioner may recover expenses for which a person is liable under section 79E, 80H, 80K or 80LA from that person in

a court of competent jurisdiction as a debt due to the Commissioner.

[Section 78E inserted by No. 10 of 2004 s. 13; amended by No. 23 of 2009 s. 10.]

Subdivision 2 — Impounding of vehicles by police

[Heading inserted by No. 10 of 2004 s. 13.]

79. Impounding of vehicles for racing etc.

(1A) In this section —

previous offender means a person —

- (a) who has previously been convicted of an impounding offence (driving); or
- (b) against whom a charge of an impounding offence (driving) is pending;

surrender notice has the meaning given in section 79BA.

- (1) If a member of the Police Force reasonably suspects that, while driving a vehicle, the driver has committed an impounding offence (driving), the member must, unless in the circumstances it is impracticable to do so, impound the vehicle within a period of 28 days after the day of the offence.
- (2) The period for which the vehicle is impounded ends —
 - (a) unless the member of the Police Force specifies a longer period under paragraph (b) or the Commissioner extends the period under subsection (3), on the 28th day after the day on which the vehicle is impounded;
 - (b) if, under subsection (3A), the member of the Police Force specifies that the length of the impounding period is to be 3 months, on the last day of the period of 3 months commencing on the day after the day on which the vehicle was impounded;
 - (c) if the Commissioner extends the period under subsection (3), on the last day of the period of 3 months

commencing on the day after the day on which the vehicle was impounded.

- (3A) If, at the time of impounding the vehicle, the member of the Police Force reasonably believes that the driver of the vehicle is a previous offender, the member must specify that the length of the impounding period is to be 3 months.
- (3B) An impounding period the length of which is specified as 28 days or 3 months under this section, or in a surrender notice for which subsection (1) of this section is the impounding provision, includes the part of the day on which the vehicle is impounded that is after the impounding occurred even though including that part of the day makes the period more than 28 days or 3 months, as the case requires.
- (3) If the driver of the vehicle is a previous offender but the member of the Police Force does not specify under subsection (3A) that the length of the impounding period is to be 3 months, the Commissioner must, on being satisfied that the driver is a previous offender, extend the impounding period to end on the last day of the period of 3 months commencing on the day after the day on which the vehicle was impounded.
- (4) The giving of a notice under section 79B(1) does not prevent the Commissioner from, under subsection (3), extending the period for which the vehicle is impounded.
- (5) An extension under subsection (3) is of no effect unless, not less than 24 hours before the end of the initial period, notice of the extension is given under section 79B(3) to a responsible person.

[Section 79 inserted by No. 10 of 2004 s. 13; amended by No. 24 of 2008 s. 7; No. 23 of 2009 s. 11.]

79A. Impounding of vehicle for impounding offence (driver's licence)

- (1) If a member of the Police Force reasonably suspects that, while driving a vehicle, the driver has committed an impounding offence (driver's licence), the member must, unless in the

circumstances it is impracticable to do so, impound the vehicle within a period of 28 days after the day of the offence.

- (2) The period for which the vehicle is impounded ends on the 28th day after the day on which the vehicle is impounded.

[Section 79A inserted by No. 23 of 2009 s. 12.]

79BA. Notice to surrender vehicle for impoundment

- (1) This section applies if —
- (a) a member of the Police Force (the *member*) suspects that the driver of a vehicle (the *vehicle*) has committed an offence (the *offence*); and
 - (b) the member —
 - (i) would have been required by section 79(1) or 79A(1) (the *impounding provision*) to impound the vehicle if it had been practicable to do so but, because it was impracticable, the vehicle was not impounded; or
 - (ii) is required by section 79(1) or 79A(1) (the *impounding provision*) to impound the vehicle but by the time the member forms the necessary suspicion the impounding can most conveniently be achieved by giving a notice under this section.
- (2) If this section applies the member may give to a responsible person for the vehicle, personally or by registered post, a notice in accordance with this section (a *surrender notice*).
- (3) The surrender notice cannot be given after the expiry of a period of 28 days from the day of the offence.
- (4) The surrender notice must contain a statement to the effect that, because the vehicle was used in the commission of the offence, the vehicle is required to be surrendered to the Commissioner for impounding, and the notice must specify —
- (a) sufficient details of the vehicle to identify it; and

- (b) the time and place at which the offence is suspected to have been committed; and
 - (c) sufficient other details of the offence to identify the grounds for giving the notice; and
 - (d) if known, the name of the person who was driving the vehicle when the offence is suspected to have been committed; and
 - (e) which of sections 79(1) and 79A(1) is the impounding provision; and
 - (f) if the impounding provision is section 79(1) and the notice is given on the basis that the driver is a previous offender as defined in section 79(1A), sufficient details to explain why the driver is regarded as a previous offender; and
 - (g) the length of the impounding period, which is to be —
 - (i) if section 79(1) is the impounding provision, either 28 days or 3 months according to which of those periods is the impounding period for which section 79(1) requires the vehicle to be impounded or would require the vehicle to be impounded if it applied; and
 - (ii) if section 79A(1) is the impounding provision, 28 days;
- and
- (h) the place at which, and the time of day during which, the vehicle and its keys are required to be surrendered under this Division; and
 - (i) the last day on or before which the vehicle and its keys are required to be surrendered, being the 7th day after the day on which the notice is given.
- (5) The surrender notice must also include —
- (a) a statement to the effect that this Division contains law about the notice and the impounding of the vehicle; and

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- (b) a statement as to the effect of section 79BB(5); and
- (c) a statement to the effect that failure to comply with the notice will result in the vehicle being impounded by operation of section 79BB(2).

[Section 79BA inserted by No. 23 of 2009 s. 12.]

79BB. Consequences of surrender notice

- (1) If a responsible person for a vehicle who is given a surrender notice surrenders the vehicle according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.
- (2) If a responsible person for a vehicle who is given a surrender notice fails to surrender the vehicle according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when a member of the Police Force takes possession of the vehicle for the purpose of impounding it.
- (3) The time when the period for which a vehicle is impounded by operation of subsection (1) or (2) commences is not required to be within a period of 28 days after the day of the offence.
- (4) The period for which a vehicle is impounded by operation of subsection (1) or (2) ends when the impounding period has passed since the end of the day on which the vehicle was impounded.
- (5) A responsible person for a vehicle who has been given a surrender notice relating to the vehicle commits an offence and is liable to a fine of 50 PU if, when the vehicle has not been impounded by operation of subsection (1) or (2) as a consequence of the notice, the person disposes of an interest that the person has in the vehicle.

[Section 79BB inserted by No. 23 of 2009 s. 12.]

79BCA. Notice to surrender substitute vehicle for impoundment

- (1) This section applies if —
 - (a) a vehicle (the *initially impounded vehicle*) is impounded under section 79, 79A or 79BB; and
 - (b) under section 79D(2), the initially impounded vehicle is released before the impounding period ends; and
 - (c) the person (the *alleged offender*) who allegedly committed the offence in respect of which the initially impounded vehicle was impounded (the *offence*) is a responsible person for one or more other vehicles.
- (2) If this section applies, a member of the Police Force may give the alleged offender, personally or by registered post, a notice in accordance with this section (a *surrender substitute vehicle notice*).
- (3) The surrender substitute vehicle notice cannot be given after 28 days after the date of the release of the initially impounded vehicle.
- (4) The surrender substitute vehicle notice must contain a statement to the effect that, because the initially impounded vehicle has been released, a vehicle for which the alleged offender is a responsible person (the *substitute vehicle*) is required to be surrendered to the Commissioner for impounding instead of the initially impounded vehicle.
- (5) The surrender substitute vehicle notice must specify the following —
 - (a) in relation to the offence, its details and the time and place at which it is suspected to have been committed; and
 - (b) which of sections 79(1) and 79A(1) is the provision that authorised the impounding of the initially impounded vehicle (the *impounding provision*); and
 - (c) sufficient details of the initially impounded vehicle to identify it; and

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- (d) when the initially impounded vehicle was impounded;
and
 - (e) when the initially impounded vehicle was released under section 79D(2); and
 - (f) sufficient details of the substitute vehicle to identify it;
and
 - (g) if the impounding provision is section 79(1) and the alleged offender is a previous offender as defined in section 79(1A), sufficient details to explain why the alleged offender is regarded as a previous offender; and
 - (h) the length of the impounding period for the substitute vehicle, which is to be —
 - (i) if section 79(1) was the impounding provision for the initially impounded vehicle, either 28 days or 3 months according to which of those periods was the impounding period for which section 79(1) required the initially impounded vehicle to be impounded; and
 - (ii) if section 79A(1) was the impounding provision for the initially impounded vehicle, 28 days;
and
 - (i) the place at which, and the time of day during which, the vehicle and its keys are required to be surrendered under this Division; and
 - (j) the last day on or before which the vehicle and its keys are required to be surrendered, being the seventh day after the day on which the notice is given.
- (6) The surrender substitute vehicle notice must also include —
- (a) a statement to the effect that this Division contains law about the notice and the impounding of the vehicle; and
 - (b) a statement as to the effect of section 79BCB(5); and

- (c) a statement to the effect that failure to comply with the notice will result in the vehicle being impounded by operation of section 79BCB(2).
- (7) If the alleged offender is a responsible person for 2 or more other vehicles, the surrender substitute vehicle notice must specify only one of them as the substitute vehicle, being the one decided by the member of the Police Force issuing the notice.

[Section 79BCA inserted by No. 20 of 2010 s. 6.]

79BCB. Consequences of surrender of substitute vehicle notice

- (1) If a responsible person who is given a surrender substitute vehicle notice under section 79BCA surrenders the substitute vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.
- (2) If a responsible person who is given a surrender substitute vehicle notice under section 79BCA fails to surrender the substitute vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when a member of the Police Force takes possession of the vehicle for the purpose of impounding it.
- (3) An impounding period the length of which is specified as 28 days or 3 months in a surrender substitute vehicle notice includes the part of the day on which the vehicle is impounded that is after the impounding occurred even though including that part of the day makes the period more than 28 days or 3 months, as the case requires.
- (4) The period for which a vehicle is impounded by operation of subsection (1) or (2) ends when the impounding period has passed since the end of the day on which the vehicle was impounded.

- (5) A responsible person who is given a surrender substitute vehicle notice under section 79BCA commits an offence and is liable to a fine of 50 PU if, when the substitute vehicle specified in the notice has not been impounded by operation of subsection (1) or (2) as a consequence of the notice, the person disposes of an interest that the person has in the vehicle.

[Section 79BCB inserted by No. 20 of 2010 s. 6.]

79BCC. Cancelling notices to surrender

- (1) In this section —

notice to surrender means —

- (a) a surrender notice given under section 79BA; or
- (b) a surrender substitute vehicle notice given under section 79BCA; or
- (c) a surrender alternative vehicle notice given under section 79BCD.

- (2) If a senior police officer is satisfied that —

- (a) a notice to surrender has been given to a person in respect of a vehicle; and
- (b) the vehicle has not been impounded under section 79BB, 79BCB or 79BCE, as the case may be; and
- (c) either —
 - (i) if the vehicle were so impounded, the vehicle would be a vehicle that could, under section 79D, be released before the impounding period ends; or
 - (ii) the vehicle's condition is such that it no longer functions as a vehicle and a licence could not be issued for it under Part III,

the officer may cancel the notice to surrender.

- (3) As soon as is practicable after a senior police officer cancels a notice to surrender, the officer must give a written notice of the cancellation to the person to whom the notice to surrender was given.

[Section 79BCC inserted by No. 20 of 2010 s. 6.]

79BCD. Notice to surrender alternative vehicle if surrender notice cancelled

- (1) This section applies if —
- (a) under section 79BA a surrender notice is given to a person responsible for a vehicle (**vehicle A**) the driver of which (the **alleged offender**) is suspected of having committed an offence (the **offence**); and
 - (b) under section 79BCC the surrender notice is cancelled before vehicle A is impounded under section 79BB; and
 - (c) the alleged offender is a responsible person for one or more other vehicles.
- (2) If this section applies, a member of the Police Force may give the alleged offender, personally or by registered post, a notice in accordance with this section (*a **surrender alternative vehicle notice***).
- (3) The surrender alternative vehicle notice cannot be given after 28 days after the date on which the surrender notice was cancelled.
- (4) The surrender alternative vehicle notice must contain a statement to the effect that, because vehicle A will not be impounded, a vehicle for which the alleged offender is a responsible person (the **alternative vehicle**) is required to be surrendered to the Commissioner for impounding instead of vehicle A.
- (5) The surrender alternative vehicle notice must specify the following —

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- (a) in relation to the offence, its details and the time and place at which it is suspected to have been committed;
 - (b) which of sections 79(1) and 79A(1) is the provision that authorised the impounding of vehicle A (the ***impounding provision***);
 - (c) sufficient details of vehicle A to identify it;
 - (d) when the surrender notice was cancelled under section 79BCC;
 - (e) sufficient details of the alternative vehicle to identify it;
 - (f) if the impounding provision is section 79(1) and the alleged offender is a previous offender as defined in section 79(1A), sufficient details to explain why the alleged offender is regarded as a previous offender;
 - (g) the length of the impounding period for the alternative vehicle, which is to be —
 - (i) if section 79(1) was the impounding provision for vehicle A, either 28 days or 3 months according to which of those periods was the impounding period for which section 79(1) required vehicle A to be impounded; and
 - (ii) if section 79A(1) was the impounding provision for vehicle A, 28 days;
 - (h) the place at which, and the time of day during which, the alternative vehicle and its keys are required to be surrendered under this Division;
 - (i) the last day on or before which the alternative vehicle and its keys are required to be surrendered, being the seventh day after the day on which the notice is given.
- (6) The surrender alternative vehicle notice must also include —
- (a) a statement to the effect that this Division contains law about the notice and the impounding of the vehicle; and
 - (b) a statement as to the effect of section 79BCE(5); and

- (c) a statement to the effect that failure to comply with the notice will result in the vehicle being impounded by operation of section 79BCE(2).
- (7) If the alleged offender is a responsible person for 2 or more other vehicles, the surrender alternative vehicle notice must specify only one of them as the alternative vehicle, being the one decided by the member of the Police Force issuing the notice.

[Section 79BCD inserted by No. 20 of 2010 s. 6.]

79BCE. Consequences of surrender of alternative vehicle notice

- (1) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD surrenders the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.
- (2) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD fails to surrender the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when a member of the Police Force takes possession of the vehicle for the purpose of impounding it.
- (3) An impounding period the length of which is specified as 28 days or 3 months in a surrender alternative vehicle notice includes the part of the day on which the vehicle is impounded that is after the impounding occurred even though including that part of the day makes the period more than 28 days or 3 months, as the case requires.
- (4) The period for which a vehicle is impounded by operation of subsection (1) or (2) ends when the impounding period has passed since the end of the day on which the vehicle was impounded.

- (5) A responsible person who is given a surrender alternative vehicle notice under section 79BCD commits an offence and is liable to a fine of 50 PU if, when the alternative vehicle specified in the notice has not been impounded by operation of subsection (1) or (2) as a consequence of the notice, the person disposes of an interest that the person has in the vehicle.

[Section 79BCE inserted by No. 20 of 2010 s. 6.]

79BC. Effect of resolving pending charge in favour of driver

- (1) This section applies if —
- (a) because of a pending charge of an impounding offence (driving) against a person (the **driver**), the person has been regarded under this Subdivision as a previous offender as defined in section 79(1A) (a **previous offender**); and
 - (b) the driver is acquitted of or discharged from the charge; and
 - (c) the driver would not otherwise have been a previous offender.
- (2) If the acquittal or discharge occurs when a vehicle has been impounded on the basis that the person is a previous offender but the impounding period that would have applied if the person had not been a previous offender (the **shorter impounding period**) has not yet elapsed, the impounding period is reduced by this section to the shorter impounding period.
- (3) If the acquittal or discharge occurs when a vehicle has been impounded on the basis that the person is a previous offender and the impounding period that would have applied if the person had not been a previous offender (the **shorter impounding period**) has already elapsed but the vehicle is still impounded, the impounding period is reduced by this section to end on the day on which the acquittal or discharge occurs.
- (4) The Commissioner is to ensure that each person, other than the Director General, to whom a notice of the impounding of the

vehicle has been given under section 79B is given a notice of a reduction of the impounding period by this section.

- (5) Whether the acquittal or discharge occurs while the vehicle is still impounded or not, for calculating a liability under this Division to pay an amount by reference to the expenses incurred by the Commissioner in impounding the vehicle those expenses are limited to expenses that would have been incurred in impounding the vehicle for the shorter impounding period.
- (6) A person who has already paid under this Division an amount that exceeds the amount calculated according to subsection (5) is entitled to a refund from the Commissioner of the amount of the excess.

[Section 79BC inserted by No. 23 of 2009 s. 12.]

79BD. Suspension of vehicle licence at request of Commissioner

- (1) If —
 - (a) a responsible person for a vehicle who is given a surrender notice under section 79BA fails to surrender the vehicle specified in the notice according to the notice; or
 - (b) a responsible person for a vehicle who is given a surrender substitute vehicle notice under section 79BCA fails to surrender the substitute vehicle specified in the notice according to the notice; or
 - (c) a responsible person for a vehicle who is given a surrender alternative vehicle notice under section 79BCD fails to surrender the alternative vehicle specified in the notice according to the notice,

the Commissioner may request the Director General to suspend the licence in respect of the vehicle until the vehicle is impounded under this Division or the Commissioner requests the Director General to revoke the suspension.

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- (2) The Commissioner is required, on being satisfied that a circumstance described in a paragraph of section 79D(2) exists, to request the Director General to revoke the suspension and may, if for any other reason the Commissioner considers it appropriate to do so, request the Director General to revoke the suspension.
- (3) While the licence in respect of a vehicle is suspended according to a request under this section —
 - (a) the licence is of no effect; and
 - (b) an application to renew the licence cannot be granted, even if the application was made before the licence was suspended.
- (4) The suspension does not extend the period for which the licence may be valid or effective beyond the expiration of the period for which the licence was expressed to be granted or renewed.

[Section 79BD inserted by No. 23 of 2009 s. 12; amended by No. 20 of 2010 s. 7.]

79B. Notice of impounding

- (1) The Commissioner is to ensure that, as soon as practicable after a vehicle is impounded under section 79(1), 79A(1) or 79BB, notice of the impounding is given to —
 - (a) each responsible person; and
 - (b) if the driver is not a responsible person, the driver; and
 - (c) if the licence in respect of the vehicle is for the time being suspended under section 79BD, the Director General.
- (2) The notice of the impounding given under subsection (1) is to be in an approved form and contain details of —
 - (a) the time when the vehicle was impounded; and
 - (b) the address of the place where the vehicle is stored; and
 - (ca) if under section 79(3A) the length of the impounding period is specified to be 3 months, the charge or

- previous conviction because of which the driver was a previous offender as defined in section 79(1A); and
- (cb) the vehicle sufficient to identify it; and
 - (cc) the time and place at which the offence, in the commission of which the vehicle was used, is suspected to have been committed; and
 - (cd) the offence sufficient to identify the grounds on which the vehicle was impounded; and
 - (ce) if known, the person who was driving the vehicle when the offence is suspected to have been committed; and
 - (cf) the length of the impounding period, which is to be —
 - (i) if section 79(1) is the impounding provision, either 28 days or 3 months according to which of those periods is the impounding period for which section 79(1) requires the vehicle to be impounded or would require the vehicle to be impounded if it applied; and
 - (ii) if section 79A(1) is the impounding provision, 28 days;
- and
- (cg) the grounds on which the vehicle may be released under section 79D; and
 - (c) how, when and to whom the vehicle can be released; and
 - (d) the powers of a court under sections 80A, 80B, 80C and 80FA in relation to the impounding and confiscation of vehicles.
- (3A) The Commissioner is to ensure that, as soon as practicable after a vehicle (the *substitute vehicle*) is impounded under section 79BCB following the issue of a surrender substitute vehicle notice to a responsible person for the vehicle under section 79BCA, notice of the impounding is given to —
- (a) each responsible person for the vehicle; and

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(b) if the licence in respect of the vehicle is for the time being suspended under section 79BD, the Director General.

(3B) The notice of the impounding given under subsection (3A) is to be in an approved form and contain details of —

- (a) the time and place at which the offence, in the commission of which the initially impounded vehicle (as defined in section 79BCA(1)) was used, is suspected to have been committed; and
- (b) the offence sufficient to identify the grounds on which the initially impounded vehicle was impounded; and
- (c) the person who was driving the initially impounded vehicle when the offence is suspected to have been committed; and
- (d) the substitute vehicle sufficient to identify it; and
- (e) the time when the substitute vehicle was impounded; and
- (f) the address of the place where the substitute vehicle is stored; and
- (g) the length of the impounding period for the substitute vehicle which is to be the period specified in the surrender substitute vehicle notice under section 79BCA(5)(h); and
- (h) the grounds on which the substitute vehicle may be released under section 79D; and
- (i) how, when and to whom the substitute vehicle can be released; and
- (j) the powers of a court under sections 80A, 80B, 80C and 80FA in relation to the impounding and confiscation of vehicles.

(3C) The Commissioner is to ensure that, as soon as practicable after a vehicle (the *alternative vehicle*) is impounded under section 79BCE following the issue of a surrender alternative

vehicle notice to a responsible person for the vehicle under section 79BCD, notice of the impounding is given to —

- (a) each responsible person for the vehicle; and
- (b) if the licence in respect of the vehicle is for the time being suspended under section 79BD, the Director General.

(3D) The notice of the impounding given under subsection (3C) is to be in an approved form and contain details of —

- (a) the offence referred to in section 79BCD(1)(a) including the time and place at which it is suspected to have been committed; and
- (b) the alternative vehicle sufficient to identify it; and
- (c) the time when the alternative vehicle was impounded; and
- (d) the address of the place where the alternative vehicle is stored; and
- (e) the length of the impounding period for the alternative vehicle which is to be the period specified in the surrender alternative vehicle notice under section 79BCD(5)(g); and
- (f) the grounds on which the alternative vehicle may be released under section 79D; and
- (g) how, when and to whom the alternative vehicle can be released; and
- (h) the powers of a court under sections 80A, 80B, 80C and 80FA in relation to the impounding and confiscation of vehicles.

(3) The Commissioner is to ensure that, as soon as practicable after an impounding period is extended under section 79(3), notice of the extension is given to each responsible person and, if the driver is not a responsible person, the driver.

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- (4) The notice of the extension is to be in an approved form and contain details of —
- (a) the impounded vehicle; and
 - (b) the time when the vehicle was impounded and when the impounding period would end if it were not extended; and
 - (c) the charge or previous conviction because of which the impounding period is extended; and
 - (d) the powers of a court under sections 80A, 80B, 80C and 80FA in relation to the impounding and confiscation of vehicles.

[Section 79B inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 31(1); No. 24 of 2008 s. 9 and 23; No. 23 of 2009 s. 13; No. 20 of 2010 s. 8.]

79C. Senior officer to be informed if vehicle impounded

- (1) A member of the Police Force, other than a senior police officer, who impounds a vehicle under section 79(1) or 79A(1) or gives a surrender notice under section 79BA or a surrender substitute vehicle notice under section 79BCA or a surrender alternative vehicle notice under section 79BCD is to inform a senior police officer, as soon as practicable after the vehicle is impounded or the notice is given, as the case requires, of —
- (aa) the impounding, or the giving of the notice, as the case requires; and
 - (a) the grounds on which the member suspects the matters mentioned in section 79(1) or 79A(1), as is relevant to the case; and
 - (b) if the member specified that the length of the impounding period was to be 3 months, the charge or previous conviction because of which the driver of the vehicle was a previous offender as defined in section 79(1A).

- (2) A senior police officer who is informed under subsection (1) by a member of the Police Force is to make enquiries so as to satisfy him or herself —
- (a) that there are reasonable grounds for the member to suspect the matters mentioned in section 79(1) or 79A(1), as the case requires; and
 - (b) if the member specified that the length of the impounding period was to be 3 months, that there are reasonable grounds for believing that the driver of the vehicle is a previous offender as defined in section 79(1A).
- (3) If a senior police officer is not satisfied as required by subsection (2)(a) —
- (a) if the vehicle has been impounded under section 79, 79A or 79BB, the senior police officer and the member of the Police Force are to take measures to ensure that the vehicle is released from impoundment and returned to a responsible person, or if no responsible person is available, to the driver of the vehicle;
 - (b) if under section 79BA a surrender notice has been given but the vehicle has not yet been surrendered, the senior police officer is to cancel the notice and immediately notify the person to whom the notice was given that the notice has been cancelled;
 - (c) if a substitute vehicle has been impounded under section 79BCB, or an alternative vehicle has been impounded under section 79BCE, the senior police officer and the member of the Police Force are to take measures to ensure that the vehicle is released from impoundment and returned to a responsible person;
 - (d) if under section 79BCA a surrender substitute vehicle notice has been given, or under section 79BCD a surrender alternative vehicle notice has been given, but the vehicle has not yet been surrendered, the senior police officer is to cancel the notice and immediately

notify the person to whom the notice was given that the notice has been cancelled.

- (4) If a senior police officer is satisfied as required by subsection (2)(a) but is not satisfied as required by subsection (2)(b), the senior police officer is to alter the impounding period to end on the 28th day after the day on which the vehicle is impounded and the Commissioner is to give notice of the variation to each person who has been given notice under section 79B of the impounding and, if the vehicle has not yet been impounded, to the person who was given the surrender notice or surrender substitute vehicle notice or surrender alternative vehicle notice, as the case may be.

[Section 79C inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 31; No. 24 of 2008 s. 10 and 23; No. 23 of 2009 s. 14; No. 20 of 2010 s. 9.]

79D. Release of impounded vehicles

- (1) In this section —

impounded vehicle means a vehicle impounded under section 79(1), 79A(1), 79BB, 79BCB or 79BCE;

service, in relation to a vehicle, includes to clean, examine, improve, inspect, paint, park, repair, store and transport it;

taxi means a vehicle —

- (a) on which taxi plates issued under the *Taxi Act 1994* are being used; or
- (b) in respect of which a taxi-car licence has been issued under the *Transport Co-ordination Act 1966* Part IIIB,

and it does not matter whether or not, at the relevant time, it is standing or plying for hire or carrying passengers for reward;

taxi operator, of a taxi, means a person who —

- (a) under the *Taxi Act 1994*, owns or leases the taxi plates, issued under that Act, that are being used on the taxi; or

- (b) holds the taxi-car licence issued under the *Transport Co-ordination Act 1966* in respect of the taxi;

vehicle service provider means a person who, for reward in the course of a business, services vehicles.

- (2) The Commissioner is to ensure that an impounded vehicle is not released before the impounding period ends unless —
- (a) a member of the Police Force is satisfied that, at the time that the offence in respect of which the vehicle was impounded was committed, the vehicle was a stolen vehicle or a hired vehicle; or
 - (b) a senior police officer is not satisfied as required by section 79C(2)(a); or
 - (c) a senior police officer is satisfied that unless the vehicle is released, exceptional hardship will be suffered in the particular case; or
 - (d) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle, with the consent of a person lawfully in possession of it, was in the possession of a vehicle service provider for the purposes of being serviced by the vehicle service provider; and
 - (ii) the person who allegedly committed the offence was the vehicle service provider or a person employed by, contracted to or acting with the authority of the vehicle service provider; and
 - (iii) the person who allegedly committed the offence was not a responsible person for the vehicle;
- or
- (e) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —

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- (i) the vehicle had been lent by a vehicle service provider to the person who allegedly committed the offence for use while the vehicle service provider was servicing a vehicle for the person; and
- (ii) the person who allegedly committed the offence was not a responsible person for the vehicle;

or

- (f) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle was for sale; and
 - (ii) the person who allegedly committed the offence (the *alleged offender*) was test-driving the vehicle with the consent of the person selling it for the purpose of deciding whether to buy it; and
 - (iii) the person who consented to the alleged offender test-driving the vehicle had complied with subsection (3); and
 - (iv) the alleged offender was not employed by or contracted to the person selling the vehicle; and
 - (v) the alleged offender was not a responsible person for the vehicle;

or

- (g) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle was used primarily in the course of a business conducted by a person (the *business owner*); and
 - (ii) the person who allegedly committed the offence (the *alleged offender*) was an employee or contractor of the business owner; and

- (iii) the alleged offender was driving the vehicle with the consent of the business owner or an agent of the business owner; and
- (iv) the person who consented to the alleged offender driving the vehicle had complied with subsection (4); and
- (v) the alleged offender was not a responsible person for the vehicle;

or

- (h) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle was a taxi; and
 - (ii) the person who allegedly committed the offence (the *alleged offender*) was driving the taxi under an agreement between him or her and the taxi operator of the taxi, or an agent of the taxi operator, under which the alleged offender pays the operator or agent in order to be allowed to drive the taxi for reward; and
 - (iii) the taxi operator or agent who entered into the agreement with the alleged offender had complied with subsection (5); and
 - (iv) the alleged offender was not a responsible person for the vehicle;

or

- (i) a senior police officer is satisfied that, at the time the offence in respect of which the vehicle was impounded was committed —
 - (i) the vehicle was licensed under the *Transport Co-ordination Act 1966* to be operated as an omnibus; and

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- (ii) the person who allegedly committed the offence (the *alleged offender*) was an employee or contractor of the holder of that licence; and
 - (iii) the alleged offender was driving the vehicle with the consent of the holder of that licence; and
 - (iv) the person who consented to the alleged offender driving the vehicle had complied with subsection (4); and
 - (v) the alleged offender was not a responsible person for the vehicle;
- or
- (j) a senior police officer is satisfied that —
 - (i) the vehicle cannot be released under any of paragraphs (a) to (i) or under circumstances prescribed under paragraph (k); and
 - (ii) unless the vehicle is released, manifest injustice or manifest unfairness will be suffered by a person other than the alleged offender;
- or
- (k) circumstances prescribed by the regulations exist.
- (3) For the purposes of subsection (2)(f)(iii), a person who consents to a person test-driving a vehicle must —
- (a) ensure the driver has a driver's licence that authorises him or her to drive the vehicle; and
 - (b) inform the driver that he or she must obey the law when test-driving the vehicle.
- (4) For the purposes of subsection (2)(g)(iv) and (i)(iv), a person who consents to an employee or contractor driving a vehicle must —
- (a) ensure the driver has a driver's licence that authorises him or her to drive the vehicle; and

- (b) ensure the driver has been instructed to obey the law when driving the vehicle.
- (5) For the purposes of subsection (2)(h)(iii), a taxi operator or agent who enters into an agreement with a driver must —
 - (a) ensure the driver has a driver's licence that authorises him or her to drive the vehicle; and
 - (b) ensure the driver has been instructed to obey the law when driving the vehicle.
- (6) For the purposes of subsection (2)(j) none of these factors by itself means manifest injustice or manifest unfairness will be suffered by a person —
 - (a) if the offence in respect of which the vehicle was impounded was an impounding offence (driver's licence), the fact that a person responsible for the vehicle concerned had no grounds to suspect the alleged offender was not authorised to drive the vehicle at the time of the offence;
 - (b) the fact that, although a responsible person for the vehicle expressly or impliedly authorised the person who allegedly committed the offence in respect of which the vehicle was impounded (the *alleged offender*) to drive the vehicle, the responsible person had no grounds to suspect the alleged offender would drive in a manner that contravened this Act.
- (7) A member of the Police Force or a senior police officer may require a person seeking the release of an impounded vehicle to provide information to him or her for the purposes of this section in a statutory declaration.
- (8) Circumstances that may be prescribed by regulations made for the purposes of subsection (2)(k) are not limited by the circumstances described in the other paragraphs of subsection (2).

[Section 79D inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 6; No. 24 of 2008 s. 11 and 23; No. 23 of 2009 s. 15; No. 20 of 2010 s. 10.]

79E. Liability for expenses of police impounding

If a vehicle is impounded under this Subdivision and a person is convicted of the offence for which the vehicle was impounded, that person is liable to pay to the Commissioner an amount specified by the Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle and any substitute vehicle impounded under section 79BCB and any alternative vehicle impounded under section 79BCE less —

- (a) any amount received by the Commissioner under section 80IB(1); and
- (b) any amount received by the Commissioner under section 80JA(8)(b),

in relation to impounding the vehicle or vehicles.

[Section 79E inserted by No. 23 of 2009 s. 16; amended by No. 20 of 2010 s. 11.]

Subdivision 3 — Impounding and confiscation of vehicles by court order

[Heading inserted by No. 10 of 2004 s. 13.]

[80. Deleted by No. 23 of 2009 s. 17.]

80A. Confiscation of vehicles for racing etc.

- (1) A court that convicts a person of an impounding offence (driving) may, by order, confiscate the vehicle used in the offence.
- (2) A court is not to make an order under subsection (1) unless it is satisfied that in the 5 years before the day on which the offence

was committed the person was convicted of 2 previous impounding offences (driving).

[Section 80A inserted by No. 10 of 2004 s. 13.]

80B. Impounding of vehicles for driving without driver's licence etc.

- (1) A court that convicts a person of an impounding offence (driver's licence) may, by order, impound a vehicle referred to in section 80GA for a period starting on the date on which —
- (a) the vehicle is surrendered; or
 - (b) under section 78C, the vehicle is conveyed to the place where it is to be stored,

and being such period, not exceeding 3 months, as is specified in the order.

- (2) A court is not to make an order under subsection (1) unless it is satisfied that in the 3 years before the day on which the offence was committed the person was convicted of a previous impounding offence (driver's licence).

[Section 80B inserted by No. 10 of 2004 s. 13; amended by No. 24 of 2008 s. 12.]

80C. Confiscation of vehicles for driving without driver's licence etc.

- (1) A court that convicts a person of an impounding offence (driver's licence) may, by order, confiscate a vehicle referred to in section 80GA.
- (2) A court is not to make an order under subsection (1) unless it is satisfied that in the 5 years before the day on which the offence was committed the person was convicted of 2 previous impounding offences (driver's licence).

[Section 80C inserted by No. 10 of 2004 s. 13; amended by No. 24 of 2008 s. 13.]

80CA. Impounding of vehicles for road rage offences

- (1) A court that convicts a person of a road rage offence may, by order, impound a vehicle referred to in section 80GA for a period starting on the date on which —
- (a) the vehicle is surrendered; or
 - (b) under section 78C, the vehicle is conveyed to the place where it is to be stored,

and being of the duration, not exceeding 6 months, specified in the order.

[(2) deleted]

[Section 80CA inserted by No. 4 of 2007 s. 16; amended by No. 24 of 2008 s. 14.]

80CB. Confiscating of vehicles for road rage offences

- (1) A court that convicts a person of a road rage offence may, by order, confiscate a vehicle referred to in section 80GA.

[(2) deleted]

[Section 80CB inserted by No. 4 of 2007 s. 16; amended by No. 24 of 2008 s. 15.]

80D. Effect of confiscation

- (1) The property in a vehicle that is confiscated under section 80A(1), 80C(1) or 80CB(1) vests absolutely in the State when the order is made, free from all interests, rights, titles or claims in or to the ownership or possession of the vehicle.
- (2) Subsection (1) does not operate to prevent proceeds from the sale or disposal of a confiscated vehicle from being paid in accordance with section 80J(7).

[Section 80D inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 17.]

80E. Court not to confiscate vehicle that was stolen, hired or lent

- (1) A court is not to make an order under section 80A(1) if it is satisfied that at the time that the offence for which the person is convicted was committed, the vehicle was a stolen vehicle or a hired vehicle.
- (2) A court is not to make an order under section 80A(1) if it is satisfied that at the time the offence for which the person is convicted was committed, the vehicle was a lent vehicle and instead may make an order under section 80FA(2).

[Section 80E inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 18; No. 24 of 2008 s. 16; No. 23 of 2009 s. 18.]

80FA. Cases when court may order impounding instead of confiscation

- (1) In circumstances in which a court could, by order under section 80C(1) or 80CB(1), confiscate a vehicle, the court may instead, by order under this subsection, impound the vehicle for a period, not exceeding 6 months, specified in the order.
- (2) In circumstances in which a court could, by order under section 80A(1), confiscate a vehicle but for section 80E(2) and the fact that the vehicle was a lent vehicle at the relevant time, the court may instead, by order under this subsection, impound the vehicle for a period, not exceeding 6 months, specified in the order.
- (3) The impounding period under subsection (1) or (2) starts on the day on which —
 - (a) the vehicle is surrendered; or
 - (b) under section 78C, the vehicle is conveyed to the place where it is to be stored.

[Section 80FA inserted by No. 24 of 2008 s. 17; amended by No. 23 of 2009 s. 19.]

80F. Responsible person to surrender impounded, confiscated vehicle at time and place ordered by court

If a court makes an impounding or confiscation order in respect of a vehicle, the court is to specify in the order the time by which, and the place at which, a responsible person is to surrender the vehicle and its keys to the Commissioner.

[Section 80F inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 19 and 31(1); No. 24 of 2008 s. 18 and 24(1).]

[Section 80F. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

80GA. Vehicle about which certain orders may be made

- (1) The Commissioner cannot apply for an order under section 80B(1), 80C(1), 80CA(1) or 80CB(1) for the impounding or confiscation of a vehicle unless —
 - (a) the offender is a responsible person for the vehicle; and
 - (b) the vehicle is —
 - (i) in the case of an order under section 80B(1) or 80C(1), the vehicle used in the offence or a substitute vehicle nominated by the Commissioner under subsection (2);
 - (ii) in the case of an order under section 80CA(1) or 80CB(1), the vehicle referred to in paragraph (b)(i) of the definition of ***road rage circumstances*** in section 78A or a substitute vehicle nominated by the Commissioner under subsection (2).
- (2) If the alleged offender is not a responsible person for the vehicle to which subsection (1)(b) would, if the Commissioner did not nominate a substitute vehicle, refer, the Commissioner may nominate as a substitute vehicle a motor vehicle for which the alleged offender is, at the time of applying for the order, a responsible person.

- (3) The Commissioner cannot nominate a substitute vehicle unless at least 14 days before the application is made the Commissioner gives to the alleged offender written notice of the intention to apply for the order in respect of that vehicle.

[Section 80GA inserted by No. 24 of 2008 s. 19.]

80G. Applications for orders to impound or confiscate vehicles

- (1) In this section —

Commissioner includes a person for the time being authorised by the Commissioner in writing to perform functions of the Commissioner under this section;

interest, in relation to a vehicle, means a legal or equitable interest, right or title in or to the ownership or possession of the vehicle;

order means an order under section 80A(1), 80B(1), 80C(1), 80CA(1) or 80CB(1).

- (2) An application for an order —

- (a) can only be made by the Commissioner; and
- (b) is to be heard —
 - (i) as part of the proceedings in which the person is convicted of the offence because of which the order is sought; or
 - (ii) in subsequent proceedings commenced no later than 3 months after the proceedings in respect of the conviction.

- (3) A person is to be regarded as having sufficient notice of the Commissioner's intention to make an application for an order in respect of a particular vehicle if —

- (a) the Commissioner gives the person written notice of that intention at least 14 days before the application is made and the person is —
 - (i) the driver of the vehicle; or
 - (ii) a responsible person; or

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- (iii) any other person who the Commissioner is aware has or may have an interest in the vehicle;
 - or
 - (b) in the case of a person not referred to in paragraph (a), the Commissioner publishes notice of that intention at least 14 days before the application is made in a newspaper having State-wide circulation.
- (4) Before a court makes an order it has to give a reasonable opportunity to show cause why the order should not be made to —
- (a) the driver of the vehicle; and
 - (b) if a person other than the driver is a responsible person for the vehicle, each responsible person; and
 - (c) each other person, if any, who has an interest in the vehicle.
- (5) In determining an application for an order other than an order under section 80A(1) the court may have regard to —
- (a) whether the offence because of which the order is sought was committed with the knowledge and acquiescence of a person who has an interest in the vehicle; and
 - (b) whether making the order will cause severe financial or physical hardship to a person who has an interest in the vehicle or the usual driver of the vehicle; and
 - (c) any other relevant matter.
- (6A) The court is required to grant an application for an order that it may make under section 80A(1) unless it is satisfied that the order would cause severe financial or physical hardship to a person, other than the driver of the vehicle, who has an interest in the vehicle or is the usual driver of the vehicle.
- (6) A person —
- (a) who is given notice under subsection (3)(a); or

- (b) who has satisfied the court that the person has an interest in the vehicle,

must not, before the application is decided, do a restricted act in respect of the vehicle unless a court has made an order approving of the proposed act.

Penalty: 50 PU.

- (7A) A person does a restricted act in respect of the vehicle if the person —
- (a) disposes of any interest that the person has in the vehicle; or
- (b) does anything, or causes or permits another person to do anything, that results or will result in a reduction in the value of the vehicle.

- (7) If the Commissioner advises the Director General in writing that the Commissioner intends to apply for an order in respect of a particular vehicle, the Director General must not, before the application is decided, transfer the licence of the vehicle if the vehicle is licensed.

[Section 80G inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 20, 31(1) and 32; No. 24 of 2008 s. 20; No. 23 of 2009 s. 20.]

80H. Expenses of court-ordered impounding payable by convicted driver

- (1) If a vehicle is impounded on an impounding order, the person because of whose conviction the vehicle was impounded is liable to pay to the Commissioner all expenses reasonably incurred by the Commissioner by way of giving effect to the order.

[(2) deleted]

[Section 80H inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 8 and 21; No. 24 of 2008 s. 25.]

Subdivision 4 — Miscellaneous provisions about impounded or confiscated vehicles

[Heading inserted by No. 10 of 2004 s. 13.]

80IA. Release of vehicle that was impounded

- (1) When a vehicle has been impounded under Subdivision 2 or on an impounding order and the impounding period ends, the Commissioner is to ensure that the vehicle is released if a responsible person applies in an approved manner for its release.
- (2) Subsection (1) does not prevent the Commissioner from refusing under subsection (3) or section 80IB or 80I(1) to release the vehicle.
- (3) The Commissioner may refuse to release the vehicle until the place where it is stored is open to the public.

[Section 80IA inserted by No. 4 of 2007 s. 9; amended by No. 24 of 2008 s. 21, 23 and 25; No. 23 of 2009 s. 21.]

80IB. Payment for impounding expenses before vehicle released

- (1) When a vehicle has been impounded under Subdivision 2 or on an impounding order and the impounding period ends, the Commissioner may refuse to release the vehicle until the Commissioner has been paid an amount specified by the Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle.
- (2A) If the vehicle impounded under Subdivision 2 is a substitute vehicle impounded under section 79BCB, the expenses referred to in subsection (1) are both the expenses incurred in impounding the substitute vehicle and any unpaid expenses incurred in impounding the initially impounded vehicle (as defined in section 79BCA(1)).
- (2) Subsection (1) applies even if the person seeking the release of the vehicle is not the person suspected of having committed, or

found to have committed, the offence for which the vehicle was impounded.

- (3) The Commissioner may release the vehicle without requiring payment of the amount described in subsection (1) if the Commissioner considers it appropriate in the circumstances to do so.
- (4) If payment of the amount described in subsection (1) is made for the release of the vehicle, that payment extinguishes any liability under section 79E or 80H, as the case requires, to pay the Commissioner for expenses of the impounding even though the payment may not have been made by the person who was liable under that section.
- (5) In the case of a vehicle impounded under Subdivision 2 the Commissioner has to refund, to the person who made the payment, an amount described in subsection (1) that was paid to the Commissioner for the release of the vehicle if —
 - (a) no charge of committing the offence for which the vehicle was impounded is laid during the period of one year after the day on which the offence is suspected to have been committed; or
 - (b) during the period described in paragraph (a) a person is charged with committing the offence but the person is not convicted of that offence within that period or within an extension of that period ordered by the court.

[Section 80IB inserted by No. 4 of 2007 s. 9; amended by No. 24 of 2008 s. 23 and 25; No. 23 of 2009 s. 22; No. 20 of 2010 s. 12.]

80I. Before impounded vehicles released, costs of storage for post-impounding period may be payable

- (1) The Commissioner may refuse to release a vehicle impounded under Subdivision 2 or on an impounding order until the Commissioner is paid the expenses incurred in storing the vehicle after the impounding period ends.

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(2A) If the vehicle impounded under Subdivision 2 is a substitute vehicle impounded under section 79BCB, the expenses referred to in subsection (1) are both the expenses incurred in storing the substitute vehicle and any unpaid expenses incurred in storing the initially impounded vehicle (as defined in section 79BCA(1)).

(2) The expenses referred to in subsection (1) are not to include the costs of storing the vehicle for any 24 hour period during which the place where the vehicle is stored is not open to the public.

[Section 80I inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 22; No. 24 of 2008 s. 23 and 25; No. 23 of 2009 s. 23; No. 20 of 2010 s. 13.]

80JA. Commissioner may sell vehicle impounded under s. 79A at any time with consent of owner etc.

(1) In this section —

impounded vehicle means a vehicle that is impounded under section 79A;

interest, in relation to a vehicle, means a legal or equitable interest, right or title in or to the ownership or possession of the vehicle.

(2) If the Commissioner is satisfied that each person who has an interest in an impounded vehicle has, in accordance with subsection (4), consented to the Commissioner doing so, the Commissioner, on behalf of those persons, may sell or otherwise dispose of the vehicle.

(3) The Commissioner may sell or otherwise dispose of a vehicle under subsection (2) —

- (a) even if the impounding period has not elapsed; and
- (b) even if the Commissioner may sell the vehicle under section 80J; and
- (c) whether or not a charge of an offence for which the vehicle was impounded has been heard or determined by a court; and

- (d) whether or not any appeal against the conviction for an offence for which the vehicle was impounded or confiscated has been concluded.
- (4) The consent of a person who has an interest in an impounded vehicle to the Commissioner selling or otherwise disposing of the vehicle has no effect unless —
 - (a) the person has been informed in accordance with subsection (5); and
 - (b) the consent is in writing and signed by the person; and
 - (c) the consent is given at least 48 hours after the vehicle is impounded.
- (5) The Commissioner must ensure a person who has an interest in an impounded vehicle is informed —
 - (a) of the effect of this Division in relation to impounding and selling vehicles; and
 - (b) of the liabilities that this Division imposes on persons for the costs and expenses incurred by the Commissioner.
- (6) The Commissioner may require a person who has an interest in an impounded vehicle to provide information to the Commissioner for the purposes of this section in a statutory declaration.
- (7) If the Commissioner sells or otherwise disposes of an impounded vehicle under subsection (2) —
 - (a) the Commissioner must release the vehicle to the buyer; and
 - (b) the buyer obtains a good title to the vehicle if the person acquires it in good faith and without notice of any failure to comply with this section in relation to the sale or disposal; and
 - (c) the proceeds of the sale are to be paid in the order of priority provided by subsection (8).

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- (8) The proceeds of the sale or disposal of a vehicle under subsection (2) are to be paid in the following order of priority —
- (a) for expenses incurred in selling the vehicle;
 - (b) for the expenses specified by the Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle;
 - (c) if the sale or disposal occurs after the impounding period ends, for expenses (if any) incurred in storing the vehicle after that period ends;
 - (d) the balance —
 - (i) if only one person has an interest in the vehicle, to that person;
 - (ii) if there are 2 or more persons who each have an interest in the vehicle, to each such person according to the proportion that the value of the person's interest bears to the value of the vehicle.
- (9) If an impounded vehicle is sold or otherwise disposed of under subsection (2) and —
- (a) no charge is laid for the offence for which the vehicle was impounded within 3 months after the date of the offence; or
 - (b) the charge for that offence is withdrawn or dismissed for want of prosecution; or
 - (c) the person charged with that offence is acquitted,

the Commissioner must pay to the person or persons referred to in subsection (8)(d) in accordance with that paragraph an amount equal to the amounts paid under subsection (8)(a), (b) and (c).

[Section 80JA inserted by No. 23 of 2009 s. 24.]

80J. Disposing of confiscated, uncollected vehicles and items therein

(1) In this section —

confiscated vehicle means a vehicle that is confiscated under section 80A(1), 80C(1) or 80CB(1);

item means an item that was in or on a confiscated vehicle or an uncollected vehicle at the time when —

- (a) the vehicle was impounded under Subdivision 2; or
- (b) the vehicle was surrendered; or
- (c) under section 78C, the vehicle was conveyed to a place for storage,

as is relevant to the case;

uncollected vehicle means a vehicle that was impounded under Subdivision 2 or on an impounding order and not collected within 28 days after the end of the impounding period.

(2) The Commissioner may sell or otherwise dispose of a confiscated vehicle, an uncollected vehicle or an item.

(3) The Commissioner is not to sell or otherwise dispose of a confiscated vehicle, an uncollected vehicle or an item unless —

- (a) any appeal against the conviction for an offence in respect of which the vehicle was impounded or confiscated is determined; and
- (b) any appeal against an impounding or confiscation order in respect of the vehicle is determined.

(4) The Commissioner is not to sell or otherwise dispose of an uncollected vehicle or an item unless —

- (a) each responsible person is given at least 14 days' written notice of the Commissioner's intention to sell or dispose of the vehicle or item; and
- (b) a notice of the intention to sell or dispose of the vehicle or item is published, at least 14 days before the proposed

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- sale or disposal, in a newspaper having State-wide circulation; and
- (c) in the case of an item, reasonable steps have been taken to return the item to its owner; and
 - (d) any proceedings under subsection (5) or (6) in relation to the vehicle or item and any appeal in respect of those proceedings are determined.
- (5) The owner of an uncollected vehicle may apply to the Magistrates Court for an order that the sale or disposal of the vehicle under subsection (2) not take place until after such time as is specified in the order but no later than 3 months after the day of the order.
- (6) The owner of an item may apply to the Magistrates Court for an order that the item be returned.
- (7) Proceeds of the sale or disposal under subsection (2) of a vehicle or item are to be paid in the following order of priority —
- (a) for expenses incurred in selling the vehicle or item;
 - (b) in the case of a confiscated vehicle, for expenses incurred consequent on the confiscation of the vehicle;
 - (c) in satisfaction of an unpaid amount for which a person is liable under section 79E;
 - (d) in satisfaction of an unpaid amount of a judgment debt arising out of a liability under section 79E;
 - (e) in satisfaction of an unpaid amount for which a person is liable under section 80H;
 - (f) in satisfaction of an unpaid amount of a judgment debt arising out of a liability under section 80H;
 - (g) for the expenses incurred in storing the vehicle after the impounding period ends;
 - (h) in the case of an uncollected vehicle, in satisfaction of any unpaid amount known to the Commissioner for

- which the vehicle is nominated in writing as security for the payment of that amount;
- (i) in the case of a confiscated vehicle, in satisfaction of any unpaid amount known to the Commissioner —
 - (i) for which the vehicle was nominated in writing as security for the payment of that amount; and
 - (ii) that, but for the confiscation of the vehicle, would have been payable to a person other than the person convicted of the offence in respect of which the vehicle was confiscated;
 - (j) the balance, in the case of a confiscated vehicle —
 - (i) if the vehicle was confiscated under section 80A(1) or 80C(1), to the credit of the Road Trauma Trust Account established in accordance with the *Road Safety Council Act 2002* section 12;
 - (ii) if the vehicle was confiscated under section 80CB(1), to the credit of the Confiscation Proceeds Account established in accordance with the *Criminal Property Confiscation Act 2000* section 130;
 - (k) the balance, in the case of an uncollected vehicle or an item, to the Treasurer of the State to be dealt with under the *Unclaimed Money Act 1990* as prescribed retained money.
- (8) A person who acquires an uncollected vehicle or an item on a sale or disposal under subsection (2) of the vehicle or item obtains a good title to the vehicle or item if the person acquires it in good faith and without notice of any failure to comply with subsection (4) in relation to the sale or disposal.

[Section 80J inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 10, 23 and 31(1); No. 24 of 2008 s. 22, 23, 24(1) and 25; No. 23 of 2009 s. 25.]

80K. Expenses of confiscation not obtained on sale payable by convicted driver

- (1) If a vehicle is sold under section 80JA(2) but the proceeds of the sale are insufficient to pay the expenses incurred in selling it, the person because of whose conviction the vehicle was impounded is liable to pay to the Commissioner the difference between the amount of those expenses and the proceeds of the sale.
- (2) If a confiscated vehicle is sold under section 80J(2) but the proceeds of the sale are insufficient to pay the expenses incurred consequent on the confiscation of the vehicle and the expenses incurred in selling it, the person because of whose conviction the vehicle was confiscated is liable to pay to the Commissioner the difference between the amount of those expenses and the proceeds of the sale.

[Section 80K inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 24; No. 23 of 2009 s. 26.]

80LA. Liability for unrecovered expenses of selling uncollected vehicle

- (1) This section applies if a vehicle is sold under section 80J(2) as an uncollected vehicle and a person (the *offender*) has been convicted of the offence for which the vehicle was impounded.
- (2) If the proceeds of the sale are insufficient to pay the expenses reasonably incurred to sell the vehicle (the *selling expenses*), the offender is liable to pay to the Commissioner an amount specified by the Commissioner as being equivalent to the selling expenses that remain to be recovered.

[Section 80LA inserted by No. 23 of 2009 s. 27.]

80L. Transfer of vehicle licence

- (1) If a licensed vehicle is confiscated on an order under section 80A(1), 80C(1) or 80CB(1) or is to be sold as an uncollected vehicle under section 80J(2) —

- (a) the Commissioner of Police is to give notice in writing to the Director General of that fact; and
 - (b) the Director General is to transfer the vehicle's licence to the State of Western Australia.
- (2) Section 24(1)(a), (2), (2a), (2b) and (2c) do not apply if the Director General is given notice under subsection (1).

[Section 80L inserted by No. 10 of 2004 s. 13; amended by No. 4 of 2007 s. 25 and 33.]

[81.] *Deleted by No. 76 of 1996 s. 17.]*

Part VA — Events on roads

[Heading inserted by No. 64 of 1988 s. 4.]

81A. Terms used

In this Part, unless the contrary intention appears —
event —

- (a) includes a race meeting or speed test; and
- (b) does not include an event that is a public meeting or procession under the *Public Order in Streets Act 1984*;

order means an order granted under this Part;

road includes part of a road.

[Section 81A inserted by No. 64 of 1988 s. 4; amended by No. 70 of 2004 s. 82.]

81B. Application for order

- (1) A person who, or body which, proposes to hold an event on a road, or to conduct an event which will proceed through a road, and wishes that road to be closed for the duration of the event, may make written application in the prescribed manner and form to the Commissioner of Police setting out the proposal and applying for an order in respect of a road closure for that event.
- (2) An application referred to in subsection (1) —
 - (a) shall be made not later than the prescribed time before the date of the proposed event or within such shorter period as may be agreed by the Commissioner of Police; and
 - (b) may be required to be verified in a manner acceptable to the Commissioner of Police.

[Section 81B inserted by No. 64 of 1988 s. 4; amended by No. 76 of 1996 s. 20(2).]

81C. Order

- (1) The Commissioner of Police shall have regard to the information furnished in any application made under section 81B and any other information available to it in relation to the proposed event and may —
 - (a) subject to subsection (2), make an order directing the road to be closed; or
 - (b) refuse to make an order directing the road to be closed.
- (2) The Commissioner of Police shall not make an order for a road closure unless —
 - (a) the Commissioner of Police is satisfied that the prescribed conditions relating to an application for a road closure have been met; and
 - (b) the approval of the local government of each district within which the road is situated has been obtained; and
 - (c) where the road is vested in the Commissioner of Main Roads, the approval of the Commissioner has been obtained.
- (3) An order made by the Commissioner of Police shall be subject to such conditions and limitations as are specified by the Commissioner of Police.
- (4) A copy of an order made by the Commissioner of Police shall be forwarded to —
 - (a) the applicant for the order; and
 - (b) the local government of each district within which the road concerned is situated; and
 - (c) where a road to which the order relates is vested in the Commissioner of Main Roads, the Commissioner of Main Roads.

[Section 81C inserted by No. 64 of 1988 s. 4; amended by No. 14 of 1996 s. 4; No. 76 of 1996 s. 20(2).]

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81D. Road closure

A road closure under this Part shall be effected by the erection by the local government for the district within which the road concerned is situated of such barriers, signs and other equipment as are prescribed.

[Section 81D inserted by No. 64 of 1988 s. 4; amended by No. 14 of 1996 s. 4.]

81E. Effect of order

- (1) Subject to —
- (a) any directions given by a member of the Police Force under section 9A of the *Public Order in Streets Act 1984*; and
 - (b) the provisions of subsection (2),

where the holding or conduct of an event on a closed road substantially conforms with the terms of the order relating to it, a person participating in that event who observes such conditions and limitations as are specified in the order may position himself in, or proceed over, any road referred to in the order and is not, by reason of any thing done or omitted to be done by him for the purposes only of his participating in that event, guilty of any offence against the provisions of this Act or any other enactment regulating the movement of traffic and pedestrians, or relating to the obstruction of a street.

- (2) An order made under this Part shall be deemed to contain a condition requiring persons participating in the event on the closed road to which it relates not to obstruct the free passage of any ambulance, fire brigade vehicle or police vehicle, and where any person contravenes that condition the holding and conduct of that event shall be taken not to have conformed with the order.

- (3) Subject to the provisions of this Part and any order granted in relation to a road, a road closed pursuant to this Part remains a “road” for the purposes of this Act and any other enactment.

[Section 81E inserted by No. 64 of 1988 s. 4; amended by No. 70 of 2004 s. 82.]

81F. Offences

- (1) Where a person at, or in relation to, an event held on a road closed pursuant to an order under this Part —
- (a) obstructs the free passage of any ambulance, fire brigade vehicle or police vehicle or, otherwise than in the manner or to the extent authorised by the order relating to the road closed for that event, impedes or disrupts the use by members of the public in general of that road; or
 - (b) otherwise than in the manner or to the extent authorised by the order relating to the road closed for that event, drives, takes or uses any vehicles on to or on that road; or
 - (c) incites any other person so to do,

commits an offence.

Penalty: 12 PU.

- (2) Where, in any proceeding for an offence against subsection (1), it is alleged in the charge that —
- (a) an order had been granted under this Part to a person or body named in the order; or
 - (b) a road was closed pursuant to an order,

it shall not be necessary for the prosecutor to prove the facts so alleged in the absence of evidence to the contrary.

- (3) When in any proceedings for an offence against this Act or any other enactment regulating the movement of traffic or pedestrians or relating to the obstruction of a road, the accused satisfies the court that a road closure was authorised under this

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Part by an order purporting to relate to it, it shall be presumed, in the absence of evidence to the contrary, that —

- (a) no irregularity occurred on, or in relation to, the grant of the order; and
- (b) the road closure substantially conformed with the terms of the order.

[Section 81F inserted by No. 64 of 1988 s. 4; amended by No. 50 of 1997 s. 13; No. 84 of 2004 s. 80 and 82.]

Part VI — Miscellaneous

82. Substitution of vehicle in certain circumstances

- (1) A vehicle licence for an omnibus shall during any time that the omnibus is under repair, authorise the holder of the licence, with the previous consent of the Director General, to substitute another vehicle for the omnibus under repair, and to operate the same during such period as the first-mentioned omnibus is under repair and not being operated.
- (2) The consent in writing of the Director General referred to in subsection (1), shall only be given on payment by the licensee to the Director General of a fee of \$1.

[Section 82 inserted by No. 93 of 1975 s. 7; amended by No. 71 of 1981 s. 5; No. 105 of 1981 s. 19; No. 76 of 1996 s. 20(3); No. 39 of 2000 s. 37.]

82A. Motor vehicle pools and insurance

- (1) For the purposes of any contract of insurance, a motor vehicle shall be deemed not to be used for the carriage of passengers for hire, fare or reward by reason only of the carriage of passengers if the carriage is pursuant to a motor vehicle pooling arrangement.
- (2) For the purposes of subsection (1), a carriage of passengers is pursuant to a motor vehicle pooling arrangement if the carriage is —
 - (a) incidental to the main purpose of the journey; and
 - (b) not the result of touting for passengers by the driver or any other person on any road; and
 - (c) pursuant to an arrangement for the carriage of the passengers for a consideration limited to —
 - (i) an undertaking by or on behalf of the passenger to carry the driver or a member of the driver's family on a similar journey; or

- (ii) the payment of an amount which does not contain any element of profit in respect of the operation of the motor vehicle or the motor vehicle pool or any recompense for the time of the driver.

[Section 82A inserted by No. 48 of 1980 s. 6.]

83. Temporary suspension of written law

- (1) Whenever any number of persons, or any club or clubs, for the purpose of enabling a race meeting or speed test to take place, request the Minister to temporarily suspend the operation of any provisions of, or regulations made under, this Act, the Minister may —
 - (a) refuse to suspend those provisions or regulations for such purpose; or
 - (b) subject to subsection (2), by notice published in the *Gazette* temporarily suspend those provisions or regulations for such purpose.
- (2) The Minister shall not temporarily suspend the operation of any provisions or regulations unless he has first obtained the consent of the local government for the district within which the race meeting or speed test will be held.
- (3) Any temporary suspension of provisions or regulations under this section shall be subject to such conditions and limitations as are specified by the Minister.
- (4) Where a person fails to observe a condition or limitation under which a provision or regulation is temporarily suspended under this section, that provision or regulation shall be taken to be in operation in relation to that person.
- (5) Notwithstanding subsection (4), a person who fails to observe a condition or limitation under which a provision or regulation is temporarily suspended under this section commits an offence.

Penalty: For a first offence, 6 PU.

For a subsequent offence, 12 PU.

- (6) The Minister may delegate to the Commissioner of Police or any member of the Police Force specified in the instrument of delegation of all or any of the powers conferred upon the Minister under subsection (1).

[Section 83 inserted by No. 64 of 1988 s. 5; amended by No. 78 of 1995 s. 147; No. 14 of 1996 s. 4; No. 76 of 1996 s. 20(1); No. 50 of 1997 s. 13.]

84. Liability for damage to roads etc.

- (1) Each responsible person for a vehicle shall be jointly and severally liable in damages to a road authority for any expense or loss incurred by that road authority because of damage or injury to a road caused by, or happening as a result of —
- (a) the use of the vehicle on the road; or
 - (b) the passage along the road of the vehicle or of anything carried, drawn, or propelled by the vehicle,

and those damages may be recovered by proceedings in a court of competent jurisdiction.

- (2) If any damage or injury referred to in subsection (1) is caused to any bridge or culvert, the person in charge of the vehicle shall, if the damage or injury has caused the bridge or culvert to be hazardous to other vehicles or pedestrians, immediately place a conspicuous warning mark or sign on or near the bridge or culvert, and shall, in any event, forthwith inform the officer in charge of the nearest police station of the damage or injury.
- (3) In any proceedings for the recovery of damages under this section a certificate of the kind referred to in section 98(2b) is evidence for the purposes of proving who is a responsible person for the vehicle as though the proceedings were proceedings for an offence under this Act.
- (4) In this section —
- road** has the meaning set out in the definition of road in section 6 of the *Main Roads Act 1930* and, without limiting that

definition, includes trees, plants and shrubs appurtenant to a road;

road authority means a local government or the Commissioner of Main Roads.

[Section 84 amended by No. 77 of 1975 s. 4; No. 105 of 1981 s. 19; No. 95 of 1984 s. 6; No. 11 of 1988 s. 15; No. 14 of 1996 s. 4; No. 39 of 2000 s. 38.]

[Section 84. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

85. Power of local government to recover expenses of damage caused by heavy or extraordinary traffic

- (1) Where it appears to a local government which is liable or authorised or has undertaken to repair any road that, having regard to the average expense of repairing roads in the neighbourhood, extraordinary expenses have been incurred by such local government in repairing such road by reason of the damage caused by heavy traffic passing along the same, or extraordinary traffic thereon, such local government may recover in any court of competent jurisdiction from any person by or in consequence of whose order such traffic has been conducted, the amount of such expenses as may be proved to the satisfaction of the court having cognisance of the case to have been incurred by such local government by reason of the damage arising from such traffic as aforesaid.
- (2) Any person against whom expenses are or may be recoverable under this section may enter into an agreement with such local government as is mentioned in this section for the payment to it of a composition in respect of such traffic, and thereupon the person so paying the same shall not be subject to any proceedings under this section.
- (3) For the purposes of this section the Minister shall be deemed the local government which is liable or authorised or has

undertaken to repair any Government road, and he may in his name of office bring an action for recovery of expenses under this section accordingly: provided that any moneys recovered by him shall be credited to the Consolidated Account.

- (4) Proceedings for the recovery of any expenses hereunder shall be commenced within 12 months of the time when the damage has been done, or where the damage is the consequence of any particular building contract or work extending over a long period, shall be commenced not later than 6 months after the completion of the contract or work.

[Section 85 amended by No. 6 of 1993 s. 11; No. 14 of 1996 s. 4; No. 49 of 1996 s. 64; No. 77 of 2006 s. 4.]

86. No unauthorised parking in certain areas

- (1) In this section, ***prescribed area*** means —
- [(a) deleted]*
 - (b) any area defined for the purposes of this section by the Governor by notice published in the *Gazette*.
- (2) No person shall, within a prescribed area, park a vehicle on land which is not a road, unless he has been authorised to do so by the owner, or person in possession of that land.
- Penalty: 5 PU.
- (3)(a) Where a person parks a motor vehicle on land contrary to the provisions of subsection (2), and where the vehicle causes or is likely to cause an obstruction, or danger to traffic, a member of the Police Force or the owner, or the person in possession of the land, or an employee of the owner, or person in possession of the land, may —
- (i) direct the driver or person in charge of the vehicle to remove the vehicle from the place where it is parked; and
 - (ii) where no person appears to be in immediate charge of the vehicle, himself remove the vehicle from the place

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where it is parked and may move the vehicle either to a place where parking of vehicles is permitted, or the police station nearest to the land.

- (b) Where a person in exercise of the power conferred on him by paragraph (a) removes and parks a vehicle, he shall forthwith give particulars to a member of the Police Force at the police station nearest to the place where he has parked the vehicle, of his name and address, the registered number of the vehicle, the place where the vehicle was parked, and the time that he removed the vehicle.
- (4) A person who disobeys or fails to comply with a direction made pursuant to subsection (3) commits an offence.
Penalty: 3 PU.
- (5) Where a person in exercise of the power conferred by subsection (3)(a) incurs costs in removing a vehicle, that person may recover those costs in a court of competent jurisdiction.
- (6) In any proceedings for a penalty under this section, the court, in addition to imposing a penalty, may award to a person any costs incurred by that person in the exercise of a power conferred on him by this section.

[Section 86 amended by No. 105 of 1981 s. 13 and 19; No. 11 of 1988 s. 24; No. 50 of 1997 s. 13; No. 16 of 1999 s. 7(4); No. 74 of 2003 s. 105(3); No. 59 of 2004 s. 141.]

[Section 86. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

86A. Member of Police Force or warden may drive vehicle used in offence

Where a member of the Police Force or warden —

- (a) has reason to believe that a vehicle has been used in connection with an offence; or

- (b) has charged a person with an offence an element of which is the use or driving of a vehicle,

he may drive or convey the vehicle to any police station or other place for safe custody.

[Section 86A inserted by No. 89 of 1978 s. 15; amended by No. 105 of 1981 s. 19.]

[Section 86A. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

87. Confusing lights affecting traffic on roads

- (1) For the purposes of this section —

Commissioner means the Commissioner of Main Roads;

light includes any fire, lamp, light, illuminated sign, street light, or other mechanical manufactured or constructed illumination, and also the glow from any such light;

owner includes the owner, lessee, tenant, purchaser, hirer, or other person in possession or entitled to the possession of a light, and, in the case of a street light, means the local government of the district in which such street light is erected or installed.

- (2) Where any light is used, kept, burnt, or exhibited at any place or in such a manner as in the opinion of the Commissioner to be likely to confuse or create circumstances or conditions likely to interfere with adversely or to cause risk of danger to the traffic of persons or vehicles on any road, the Commissioner may by notice in writing require the owner of or the person in charge of such light or the occupier of the place or premises where such light is used, kept, burnt, or exhibited within a time specified in the notice to take effectual means —

- (a) to extinguish the light; or
(b) to remove the light entirely or to some other position; or

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- (c) to modify the light or to alter its character or colour, or to screen the light to such an extent and in such manner as the Commissioner may direct; or
 - (d) to refrain from using, keeping, burning, or exhibiting the light either entirely or for such period or during such hours as the Commissioner may direct; or
 - (e) to do or refrain from doing such other act, matter, or thing in relation to using, keeping, burning, or exhibiting the light as the Commissioner may direct and in accordance with his directions.
- (3) Any notice under subsection (2) may be served, either personally or by delivery, at the place of abode of the person to be served, or by affixing it in some conspicuous place on or near the place or premises upon or in which the light to which the notice relates is used, kept, burnt, or exhibited.
- (4) It shall be the duty of the owner or occupier or other person served with a notice under subsection (2) to comply with such notice.
- (5) Every owner, occupier, or other person on whom a notice is served under subsection (2) who fails without reasonable cause (proof whereof shall lie upon him) to comply in all respects with the directions contained in the notice shall be guilty of an offence against this Act.
- Penalty: 8 PU, and, in addition, a daily penalty of 1 PU for every day or part of a day during which the directions contained in the notice are not complied with after the time specified in the notice for the compliance therewith.
- (6) If any owner, occupier, or other person served with a notice under subsection (2) fails in any respect to comply with the directions of such notice within the time specified in the notice for such compliance, the Commissioner or any person authorised in writing by the Commissioner may enter upon the place or premises whereon the light to which the notice relates is used, kept, burnt or exhibited, and forthwith take effectual

means (but doing no unnecessary damage) to carry out and otherwise give effect to the directions contained in the notice which have not been complied with as aforesaid.

- (7) Any expense incurred by the Commissioner or the person authorised by the Commissioner under subsection (6) shall be a debt owing to the Commissioner by the person upon whom the notice was served and shall be recoverable at the suit of the Commissioner in any court of competent jurisdiction.
- (8) If the owner, occupier, or other person upon whom the notice under subsection (2) has been served, or any other person obstructs or hinders, prevents, or interferes with or attempts to obstruct, hinder, prevent, or interfere with the Commissioner or the person authorised by the Commissioner in the exercise of the power conferred by subsection (6), he shall be guilty of an offence against this Act.
Penalty: 8 PU.
- (9) Where any owner, occupier, or other person upon whom a notice under subsection (2) has been served has failed within the time specified in such notice to comply with the directions of such notice, and by reason of such non-compliance and by reason of the light to which the said notice relates confusing or creating circumstances or conditions which interfered with adversely or caused risk of danger to the traffic of persons, animals, or vehicles on a road, any person suffers injury to the person or damage to his property, the non-compliance with the said notice shall, for the purpose of enabling the person who has suffered such injury or damage to recover compensation or damages in respect of the injury or damage suffered, be deemed to be a tort in the nature of a nuisance committed by the owner, occupier, or other person upon which an action for damages may be instituted.
- (10) The omission on the part of the Commissioner to give any notice under subsection (2), or the failure on the part of the Commissioner to exercise the power conferred by subsection (6)

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shall not make the Commissioner in any respect responsible or liable for any injury to the person or damage to property suffered as the result of any light confusing or creating circumstances or conditions which interfered with adversely or caused risk of danger to the traffic of any person or vehicle on a road.

[Section 87 amended by No. 11 of 1988 s. 24; No. 14 of 1996 s. 4; No. 50 of 1997 s. 13.]

[88. Deleted by No. 50 of 1997 s. 10.]

[89. Deleted by No. 70 of 2004 s. 82.]

90. Unlawful interference with mechanism of motor vehicles

Any person who unlawfully interferes with the mechanism or parts of any motor vehicle shall be guilty of an offence under this Act.

Penalty: For a first offence, 8 PU.

For a subsequent offence, 16 PU.

[Section 90 amended by No. 11 of 1988 s. 24; No. 78 of 1995 s. 147; No. 50 of 1997 s. 13; No. 50 of 2003 s. 92(3).]

[91. Deleted by No. 50 of 1997 s. 11.]

92. Roads may be closed

- (1) The Minister may, if he considers any road unsafe for public traffic, cause the same to be closed for such period as he considers necessary.
- (2) A local government for a period of one month may exercise a similar power with regard to any road under its control, but the exercise of such power shall not extend beyond such period, except with the approval in writing of the Minister.
- (3) No person shall drive, take, or use any vehicle on to or on any road while such road is closed under this section.

[Section 92 amended by No. 14 of 1996 s. 4.]

93. Production of licences at hearings

A person who is the holder of a driver's licence shall, whenever he is charged with an offence under this Act, produce his licence on demand to the court hearing the charge.

[94-96. Deleted by No. 76 of 1996 s. 18.]

97. Offences

(1) In this section —

label means a label issued under a regulation mentioned in section 27AA or 40(ea).

(2) A person shall not —

- (a) while disqualified from obtaining any particular licence apply for or obtain such a licence;
- (b) wilfully mislead a person in any particular likely to affect the discharge of that person's duty under this Act;
- (c) forge or fraudulently alter any licence, number plate or label;
- (d) use any forged or fraudulently altered licence, number plate or label, or use any licence, number plate or label to which he is not entitled;
- (e) fraudulently permit his licence, number plate or label to be used by any other person;
- (f) drive any vehicle or cause or permit any vehicle to be driven on any road while it has on it —
 - (i) any forged or fraudulently altered number plate or label; or
 - (ii) any replica or imitation of a number plate or label; or
 - (iii) any number plate or label other than one issued for that vehicle;
- (g) without lawful excuse have in his possession a licence or any article resembling a licence or a label or any article resembling a label, and calculated to deceive;

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- (h) lend or allow to be used by any other person any licence or any number plate or label.

[Section 97 amended by No. 71 of 1979 s. 14; No. 81 of 1980 s. 9; No 39 of 2009 s. 8.]

98. Proof of certain matters

- (1) In any prosecution or proceedings for an offence against this Act an averment in the prosecution notice that any person is or was an owner of, or a responsible person for, a vehicle or became an owner of, or a responsible person for, a vehicle on any date or that any person is or was not the holder of any particular licence (either personal or in respect of any vehicle), or that the vehicle was driven or used on a road or any place to which the public is permitted, whether on payment of a fee or otherwise, to have access shall be deemed to be proved in the absence of proof to the contrary.
- (1a) In any prosecution or proceedings for an offence under this Act an averment in the prosecution notice that —
 - (a) the alleged offender was, at the time of the alleged offence, a person to whom section 64A(1) applied; or
 - (b) the vehicle to which the alleged offence relates was, at the time of the alleged offence, a motor vehicle to which section 64A(4) applied,is to be taken to be proved in the absence of proof to the contrary.
- (1b) For the purposes of any prosecution or proceedings for an offence under this Act or verifying the accuracy of information provided under Part IVA to another Australian driver licensing authority, the Director General or a person authorised by the Director General may issue a certificate stating that a fact specified in the certificate appears in or is derived from the driver's licence register under Part IVA or another record kept by the Director General under this Act.

- (1c) A certificate purporting to be issued under subsection (1b) or under a law in force in another jurisdiction that corresponds to that subsection is evidence of any fact stated in the certificate.
- (2) For the purposes of any prosecution or proceedings for an offence the Director General or any person authorised by the Director General for that purpose may issue a certificate which states —
 - (a) that on any date or during any period —
 - (i) a vehicle was registered; or
 - (ii) a vehicle was not registered,under this Act in the name of any person specified in the certificate; or
 - (b) that as at any date or during any period a person specified in the certificate was —
 - (i) registered as the holder of a vehicle licence under this Act in respect of; or
 - (ii) nominated pursuant to section 5(4) as the owner of,
a vehicle specified in the certificate.

[(2a) deleted]

- (2b) In any prosecution or proceedings for an offence —
 - (a) a certificate issued or purporting to be issued pursuant to subsection (2) is evidence of the facts stated in the certificate;
 - (b) a certificate or other document issued or purporting to be issued pursuant to a law of a State or Territory of the Commonwealth (being a law in respect of which a declaration under section 5(5) is in force) which states that on any date or during any period —
 - (i) a vehicle was registered in the name of any person specified in the certificate or document; or

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- (ii) a vehicle was not registered in the State or Territory in respect of which the certificate or other document is issued,
is evidence of the facts stated in the certificate or other document.
- (2c) In subsections (2) and (2b) **offence** means an offence against this Act or any other Act or against any regulation, local law, by-law or rule made under an Act.
- (3) In any proceedings for an offence against this Act —
- (a) an averment in the prosecution notice that the person by whom the proceedings were instituted is authorised to institute the proceedings shall be deemed to be proved in the absence of proof to the contrary.
- [(b) deleted]*
- (4) In any prosecution under this Act an averment in the prosecution notice that an offence was committed within a local government district or any part of the State therein specified shall be deemed to be proved in the absence of proof to the contrary.
- (5) If, in a prosecution notice for an offence against this Act, the name of the accused is that given by the alleged offender at the time of, or immediately following, the occurrence giving rise to the charge, there is a presumption, rebuttable by evidence to the contrary, that the accused is the alleged offender.

[Section 98 amended by No. 71 of 1979 s. 15; No. 105 of 1981 s. 14; No. 13 of 1992 s. 13; No. 14 of 1996 s. 4; No. 76 of 1996 s. 20(3); No. 57 of 1997 s. 106(2); No. 39 of 2000 s. 40; No. 84 of 2004 s. 80; No. 54 of 2006 s. 26; No. 39 of 2007 s. 39; No. 14 of 2011 s. 16.]

98A. Certain measuring equipment

- (1) In this section —
authorised person means —

- (a) in relation to distance measuring equipment —
 - (i) a member of the Police Force; or
 - (ii) a person certified by the Commissioner of Police as being competent to use the equipment;
- (b) in relation to speed measuring equipment —
 - (i) a member of the Police Force; or
 - (ii) a person certified by the Commissioner of Police as being competent to use the equipment;

distance measuring equipment means apparatus of a type approved by the Minister pursuant to subsection (2a);

speed measuring equipment means apparatus of a type approved by the Minister pursuant to subsection (2).

- (2) The Minister may, from time to time, by notice published in the *Government Gazette*, approve of types of apparatus for the purpose of ascertaining the speed at which a vehicle is moving and may, by notice so published, revoke any such approval.
- (2a) The Minister may, from time to time, by notice published in the *Government Gazette*, approve of types of apparatus for the purpose of ascertaining distances on roads and may, by notice so published, revoke any such approval.
- (3) In any proceeding for an offence against this or any other Act or the regulations evidence may be given of the use of speed measuring equipment by an authorised person in relation to a vehicle and of the speed at which that vehicle was moving as ascertained by the use of that equipment, and that evidence is prima facie evidence of the speed at which that vehicle was moving at the time of the use of that equipment in relation to that vehicle.
- (3a) In any proceeding for an offence against this or any other Act or the regulations evidence may be given of the use of distance measuring equipment by an authorised person on a road, of the distance between 2 identified points on the road as ascertained by the use of that equipment and of the ascertainment of the

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speed at which a vehicle was moving by the measurement of the time taken by that vehicle to travel that distance, and that evidence is prima facie evidence of the speed at which that vehicle was moving when it travelled that distance.

- (4) In any proceeding such as is mentioned in subsection (3), evidence by an authorised person that apparatus used by him was speed measuring equipment within the meaning of this section is prima facie evidence of that fact.
- (4a) In any proceeding such as is mentioned in subsection (3a), evidence by an authorised person that apparatus used by him was distance measuring equipment within the meaning of this section is prima facie evidence of that fact.
- (4b) In any proceeding such as is mentioned in subsection (3) or (3a), a certificate purporting to be signed by the Commissioner of Police certifying that a person named in the certificate is, or was at the material time, a person certified by the Commissioner as being competent to use distance measuring equipment or to use speed measuring equipment is prima facie evidence of the matters in the certificate, without proof of the signature of the person purporting to have signed it or proof that the purported signatory was the Commissioner.
- (5) Nothing in this section shall be construed as precluding or restricting the introduction of any competent evidence, whether in addition to, or independent of, any evidence for which provision is made by this section, bearing on the question of whether a person was or was not guilty of an offence against this or any other Act or the regulations.

[(6), (7) deleted]

[Section 98A inserted by No. 135 of 1976 s. 3; amended by No. 105 of 1981 s. 19; No. 82 of 1982 s. 24; No. 37 of 1996 s. 4; No. 50 of 1997 s. 12; No. 39 of 2007 s. 16; No. 51 of 2010 s. 13.]

99. Savings

Nothing in this Act shall take away or diminish any liability of the driver of, an owner of, or a responsible person for, a vehicle by virtue of any other Act or at common law.

[Section 99 amended by No. 39 of 2000 s. 41.]

100. Application of Act to Crown and local governments

- (1) This Act applies to persons and vehicles in the public service of the Crown, or of any local government, but does not apply to any extent to a vehicle for the personal use of the Governor nor to a person in charge of the vehicle while carrying out the Governor's personal directions; and does not apply to any other vehicle or class of vehicle or person or class of person to the extent of such exemption as may from time to time be declared by the Governor by Order in Council, which the Governor may from time to time vary or cancel by further Order in Council, and section 78 of the *Criminal Procedure Act 2004* applies in respect of charges of offences against this Act as if the charges negated exemptions under this section.
- (2) Notwithstanding the provisions of subsection (1), where the licence of a vehicle licensed in the name of and used by the State Government (except vehicles used by Ministers of the Crown or heads of State Boards and departments) is renewed, the provisions of this Act requiring the renewal of the licence or the issue of a label shall not apply to such vehicle, but this subsection shall not render lawful the driving of a vehicle upon any road without having the prescribed number plates affixed thereto.

[Section 100 amended by No. 14 of 1996 s. 4; No. 39 of 2000 s. 42; No. 28 of 2001 s. 21; No. 59 of 2004 s. 141; No. 84 of 2004 s. 78 and 80; No. 5 of 2008 s. 131; No 39 of 2009 s. 9.]

101. Protection of Minister, the Director General and officers

- (1) No matter or thing done or omitted to be done by the Minister, the Director General, or any warden, inspector, or other person

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authorised to carry out the provisions of this Act in good faith under or for the purposes of this Act, or purportedly under or for the purposes of this Act shall subject the Crown, the Minister, or any person hereinbefore referred to, to any liability in respect thereof.

- (2) Subsection (1) does not relieve a contractor of any liability that the contractor might otherwise have for anything done or omitted to be done, as described in that subsection, by the contractor or another person.
- (3) In subsection (2) —

contractor means a person who has entered into a contract with the Commissioner of Police under section 78D.

[Section 101 amended by No. 105 of 1981 s. 15 and 19; No. 64 of 1988 s. 6; No. 76 of 1996 s. 20(1); No. 42 of 1999 s. 9; No. 5 of 2002 s. 15; No. 10 of 2004 s. 14.]

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

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

- (ii) grant a driver's licence or learner's permit to another person; or
- (iii) vary, or not to vary, another person's driver's licence or learner's permit.

[Section 101A inserted by No. 54 of 2006 s. 27.]

102. Traffic infringement notices

- (1) Where a member of the Police Force or warden has reason to believe that a person has committed any such offence against this Act as is prescribed for the purposes of this section, he may serve on that person a notice, in the prescribed form, (a ***traffic infringement notice***) informing the person that, if he does not wish to be prosecuted for the alleged offence in a court, he may pay to an officer specified in the notice, within the time therein specified, the amount of the penalty prescribed for the offence, if dealt with under this section.
- (2) A traffic infringement notice may be served on an alleged offender personally or by posting it to his address as ascertained from him, at the time of, or immediately following, the occurrence giving rise to the allegation of an offence, or as ascertained pursuant to an inquiry made under section 58.
- (2a) If the offence against section 24(2d) is prescribed for the purposes of this section a traffic infringement notice issued for an alleged offence against that section, in addition to specifying the prescribed penalty for that offence, may specify —
 - (a) the prescribed transfer fee; and
 - (b) the amount payable under a taxation Act, as defined in the *Taxation Administration Act 2003* Glossary, in respect of the transfer of the licence,

and, for the purposes of subsections (1), (4), (5), (6), (7) and (7a) and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, a reference to the prescribed penalty is to be taken as being a reference to the sum of the prescribed penalty and those 2 other amounts.

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(2b) A traffic infringement notice issued for an alleged offence against section 24(2d) may be served on the alleged offender personally or by posting it to the alleged offender's address as ascertained from a person under section 24(1) or otherwise.

[(3) deleted]

(4) A person who receives a traffic infringement notice may decline to be dealt with under the provisions of this section and, where he fails to pay the prescribed penalty within the time specified in the notice or within such further time as may, in any particular case, be allowed, he is deemed to have declined to be dealt with under those provisions.

(5) A traffic infringement notice may, whether or not the prescribed penalty has been paid, be withdrawn by the sending of a notice, in the prescribed form, signed by a prescribed officer, to the alleged offender at his last known place of residence or business, advising the alleged offender that the traffic infringement notice has been withdrawn; and, in that event, the amount of any prescribed penalty that has been paid shall be refunded.

(5a) In subsection (5) —
alleged offender, in relation to a traffic infringement notice served on a responsible person under section 102A or 102B, means the responsible person.

(6) Where a prescribed penalty has been paid pursuant to a traffic infringement notice and the notice has not been withdrawn as provided by subsection (5), proceedings shall not be brought against any person with respect to the offence alleged in the notice.

(7) The payment of the whole or a part of a penalty pursuant to a traffic infringement notice shall, for the purposes of sections 51(1)(a) and 76(9)(b), constitute a conviction of an offence, but shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil

claim, action or proceeding arising out of the occurrence by reason of which the traffic infringement notice was given.

- (7a) Subsection (7) applies even if the payment is made by means of a dishonoured cheque.
- (8) The Governor may make regulations for any purpose for which regulations are contemplated or required by this section and, in particular, may make regulations —
- (a) prescribing offences for the purposes of this section, not being offences punishable by imprisonment or offences in respect of which a court is required to disqualify the offender from holding or obtaining a driver's licence, by setting out the offences or by reference to the provision creating the offence or by reference to all or any offences in any one Part of any regulations made under this Act; and
 - (b) prescribing penalties not exceeding 20 PU for any prescribed offence or class of prescribed offence and prescribing different penalties for the one offence, according to the circumstances by which the offence is attended.

[Section 102 amended by No. 89 of 1978 s. 16 (as amended by No. 82 of 1982 s. 30); No. 105 of 1981 s. 19; No. 11 of 1988 s. 24; No. 60 of 1990 s. 5; No. 13 of 1992 s. 14; No. 92 of 1994 s. 39; No. 57 of 1995 s. 7; No. 50 of 1997 s. 13; No. 24 of 1999 s. 10; No. 39 of 2000 s. 43; No. 84 of 2004 s. 80; No. 54 of 2006 s. 28; No. 12 of 2008 Sch. 1 cl. 33(4).]

102A. Traffic infringement notices left on vehicles

- (1) Where —
- (a) an offence against this Act, of which the standing, parking or leaving of a vehicle is an element, is alleged to have occurred; and

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- (b) the identity of the driver or person in charge of the vehicle is not known and cannot immediately be ascertained,

a traffic infringement notice for the alleged offence may be addressed to the responsible person for the vehicle, without naming the person or stating the person's address, and may be served on the responsible person by leaving it in or upon, or attaching it to, the vehicle.

- (2) If a traffic infringement notice is served on a responsible person under subsection (1) and there is more than one responsible person, the notice is to be regarded as having been served on —
 - (a) if not more than one responsible person responds to the notice, that responsible person; or
 - (b) in any other case, not more than one responsible person chosen by the Commissioner of Police.
- (3) If a traffic infringement notice is served on a responsible person under subsection (1), the responsible person is to be presumed to have committed the offence alleged in the notice unless, within the period of 28 days after the day specified in the notice (being the day of the service of the notice or a subsequent day) —
 - (a) the penalty prescribed under section 102(1) for the alleged offence is paid; or
 - (b) the responsible person informs an officer specified in the notice that the responsible person was not the driver or person in charge of the vehicle at the time of the alleged offence and supplies to the officer —
 - (i) the name and address of the driver or person in charge of the vehicle at that time; or
 - (ii) information showing that the vehicle was stolen or unlawfully taken or used at that time.

- (4) The presumption under subsection (3) applies even if the responsible person is not an individual.
- (5) A traffic infringement notice served under subsection (1) must contain or be accompanied by a statement explaining the operation of subsections (3) and (4).

[Section 102A inserted by No. 39 of 2000 s. 44.]

102B. Traffic infringement notices issued on photographic evidence

- (1) Where —
 - (a) an offence against this Act of which the driving or being in charge of a vehicle is an element is alleged to have occurred; and
 - (b) the belief referred to in section 102(1) is based on photographic evidence; and
 - (c) the name and address of the driver or person in charge of the vehicle are not known and cannot immediately be ascertained; and
 - (d) the identity of the vehicle can be ascertained from the photographic evidence; and
 - (e) a responsible person for the vehicle is an individual,a traffic infringement notice for the alleged offence may be addressed to the responsible person and may be served on the responsible person, personally or by post.
- (2) If there is more than one responsible person referred to in subsection (1), a traffic infringement notice under that subsection may be addressed to and served on not more than one of those persons chosen by the Commissioner of Police.
- (3) If a traffic infringement notice is served on a responsible person under subsection (1) without enclosing the photographic evidence referred to in subsection (1)(b) and, at the end of the

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period of 14 days after the day specified in the notice (being the day of the service of the notice or a subsequent day) —

- (a) the penalty prescribed under section 102(1) for the alleged offence has not been paid; and
- (b) the responsible person has not informed an officer specified in the notice that the responsible person was not the driver or person in charge of the vehicle at the time of the alleged offence and supplied to the officer —
 - (i) the name and address of the driver or person in charge of the vehicle at that time; or
 - (ii) information showing that the vehicle was stolen or unlawfully taken or used at that time,

a further traffic infringement notice may be served on the responsible person enclosing the photographic evidence.

- (4) If a traffic infringement notice enclosing photographic evidence is served on a responsible person under subsection (1) or (3), the responsible person is to be presumed to be the driver or person in charge of the vehicle at the time of the offence alleged in the notice unless, within the period for complying defined in subsection (4a) —
 - (a) the penalty prescribed under section 102(1) for the alleged offence is paid; or
 - (b) the responsible person informs an officer specified in the notice that the responsible person was not the driver or person in charge of the vehicle at the time of the alleged offence and supplies to the officer —
 - (i) the name and address of the driver or person in charge of the vehicle at that time; or
 - (ii) information showing that the vehicle was stolen or unlawfully taken or used at that time; or
 - (iii) a statutory declaration that the responsible person did not know, and could not reasonably have

ascertained, the name and address of the driver
or person in charge of the vehicle at that time.

(4a) In subsection (4) —

period for complying means —

- (a) if the traffic infringement notice enclosing photographic evidence is served under subsection (1), the period of 28 days after the day specified in the notice (being the day of the service of the notice or a subsequent day);
 - (b) if the traffic infringement notice enclosing photographic evidence is served under subsection (3), the period of 14 days after the day specified in the notice (being the day of the service of the notice or a subsequent day).
- (5) A traffic infringement notice enclosing photographic evidence served under subsection (1) or (3) must contain or be accompanied by a statement explaining the operation of subsection (4).
- (6) A statutory declaration under subsection (4)(b)(iii) must be contained in or accompanied by the traffic infringement notice to which it relates and must be posted to an officer specified in the notice or delivered personally to the officer or the officer in charge of a police station.
- (7) In this section —

photographic evidence means —

- (a) a photograph; or
- (b) a cinematographic or other type of film, or video tape, video disc, slide or digital, electronic or other form of recording, from which a visual image can be produced.

[Section 102B inserted by No. 39 of 2000 s. 44; amended by No. 4 of 2007 s. 27.]

[Section 102B. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

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102C. Notices requesting information

- (1) If a traffic infringement notice could be addressed to and served on a responsible person under section 102B but for there not being any individual who is a responsible person for the vehicle, a member of the Police Force or warden may serve a notice on a responsible person for the vehicle —
- (a) describing the offence that is alleged to have been committed; and
 - (b) requesting the responsible person to, within the period for complying defined in subsection (1a), supply to an officer specified in the notice the name and address of the driver or person in charge of the vehicle at the time of the offence so described.
- (1a) In subsection (1) —
- period for complying*** means —
- (a) if the notice is served under subsection (1) without enclosing the photographic evidence referred to in section 102B(1)(b), the period of 14 days after the day specified in the notice (being the day of the service of the notice or a subsequent day);
 - (b) if the notice is served under subsection (1) enclosing the photographic evidence referred to in section 102B(1)(b), the period of 28 days after the day specified in the notice (being the day of the service of the notice or a subsequent day).
- (2) If a notice is served on a responsible person under subsection (1) without enclosing the photographic evidence referred to in section 102B(1)(b) and, at the end of 14 days after the day specified in the notice (being the day of the service of the notice or a subsequent day), the responsible person has not supplied to an officer specified in the notice —
- (a) the name and address of the driver or person in charge of the vehicle at the time of the offence described in the notice; or

- (b) information showing that the vehicle was stolen or unlawfully taken or used at that time,

a further notice of the kind described in subsection (1) may be served on the responsible person enclosing the photographic evidence but in the further notice the period specified for complying with the request is to be the period of 14 days after the day specified in the further notice (being the day of the service of the further notice or a subsequent day).

- (3) A responsible person on which a notice enclosing photographic evidence is served under subsection (1) or (2) commits an offence unless, within the period specified in the notice for complying with the request, the responsible person supplies to an officer specified in the notice —
 - (a) the name and address of the driver or person in charge of the vehicle at the time of the offence described in the notice; or
 - (b) information showing that the vehicle was stolen or unlawfully taken or used at the time of the offence described in the notice; or
 - (c) a statutory declaration that the responsible person did not know, and could not reasonably have ascertained, the name and address of the driver or person in charge of the vehicle at the time of the offence described in the notice.

Penalty: Double the amount of the fine provided under this Act for the offence described in the notice or, if more than one amount is so provided, double the lower or lowest of those amounts.

- (4) If a person is charged with an offence against subsection (3) the person may be convicted of an offence against section 58A.
- (5) A notice served on a person under subsection (1) or (2) may be withdrawn at any time before the end of the period specified in the notice for complying with the request by sending a notice to that effect, in the prescribed form and signed by a prescribed

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officer, to the person at the person's last known place of business.

- (6) If the amount of the modified penalty referred to in section 102D has been paid before a notice is withdrawn under subsection (5), any amount so paid is to be refunded.
- (7) Subsections (5) and (6) do not affect the operation of section 102(5) in relation to a notice when it is regarded under section 102D(2) as a traffic infringement notice.
- (8) A notice enclosing photographic evidence served under subsection (1) or (2) must contain or be accompanied by a statement explaining the operation of subsection (3) and section 102D.
- (9) A statutory declaration under subsection (3)(c) must be contained in or accompanied by the notice to which it relates and must be posted to an officer specified in the notice or delivered personally to the officer or the officer in charge of a police station.

[Section 102C inserted by No. 39 of 2000 s. 44 (as amended by No. 84 of 2004 s. 80); amended by No. 4 of 2007 s. 28.]

[Section 102C. Modifications to be applied in order to give effect to Cross-border Justice Act 2008: section altered 1 Nov 2009. See endnote 1M.]

102D. Notice under s. 102C may become traffic infringement notice

- (1) An offence against section 102C(3) is prescribed for the purposes of section 102 and the penalty for that offence if dealt with under section 102 (the **modified penalty**) is an amount of double the penalty prescribed under section 102(1) for the offence described in the notice under section 102C(1).
- (2) If a person on which a notice enclosing photographic evidence is served under section 102C(1) or (2) fails to comply with the notice, the notice is to be regarded as also being a traffic

infringement notice served on the person for the offence against section 102C(3) constituted by that failure to comply.

- (3) For the purposes of section 102(1) and (4) and any other enactment, the specified time for the payment of the modified penalty is the period of 14 days after the end of the period referred to in section 102C(3).
- (4) Subject to section 102C(5), if the amount of the modified penalty has been paid before the day on which a notice is to be regarded under this section as a traffic infringement notice, the amount may be held until that day and then treated as an amount received in payment of the modified penalty.
- (5) Despite section 102(7), the payment of the modified penalty does not constitute a conviction of an offence for any purpose.

[Section 102D inserted by No. 39 of 2000 s. 44; amended by No. 4 of 2007 s. 29.]

103. Confidentiality of information

- (1) A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of information obtained under this Act except —
 - (a) for a purpose related to the administration or enforcement of this Act; or
 - (b) as required or authorised under this Act or another written law; or
 - (c) with the consent of the person to whom the information relates; or
 - (d) in circumstances prescribed by the regulations.

Penalty: a fine of 100 PU or imprisonment for 12 months.

- (2) Subsection (1) does not prevent the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

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[Section 103 inserted by No. 18 of 2011 s. 12.]

[103A, 103B. Deleted by No. 54 of 2006 s. 30.]

Part VIA — Demerit points

[Heading inserted by No. 54 of 2006 s. 31.]

Division 1 — Preliminary

[Heading inserted by No. 54 of 2006 s. 31.]

104. Terms used

(1) In this Part —

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

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

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

demerit point action means the action described in section 104G;

demerit point offence means —

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

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

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

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

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

excessive demerit points (novice driver) notice means an excessive demerit points (novice driver) notice under section 104IA(2);

infringement notice means a notice issued to a person —

- (a) under this Act; or
- (b) under a law of another jurisdiction,

alleging the commission of a demerit point offence and offering the person an opportunity, by paying an amount of money, to have the matter dealt with out of court;

national demerit point offence means —

- (a) an offence under this Act; or
- (b) an offence under the law of another jurisdiction,

that is specified in the national demerit point offence schedule;

national demerit point offence schedule means the national demerit point offence schedule referred to in section 104B;

novice driver has the meaning given in subsection (2);

novice driver (type 1) means a novice driver who is not a novice driver (type 2);

novice driver (type 2) means a novice driver who has, for a period of at least 1 year or periods adding up to at least 1 year, held —

- (a) an Australian driver licence; or

- (b) a licence or other authorisation granted to the person by an external licensing authority authorising the person to drive a motor vehicle other than solely for the purpose of learning to drive it;

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

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

- (2) For the purposes of this Part a person is a novice driver unless the person has, for a period of at least 2 years or periods adding up to at least 2 years, held —
 - (a) an Australian driver licence; or
 - (b) a licence or other authorisation granted to the person by an external licensing authority authorising the person to drive a motor vehicle other than solely for the purpose of learning to drive it.
- (3) When deciding whether a person is a novice driver, or which type of novice driver a person is, a period for which the person held an Australian driver licence or other authorisation is to be regarded as not including any period for which the person, although holding an Australian driver licence or other authorisation, was excluded by law from driving under that authorisation.

[Section 104 inserted by No. 54 of 2006 s. 31; amended by No. 39 of 2007 s. 26.]

104A. Demerit point offences in WA

- (1) The regulations may prescribe an offence under this Act as a demerit point offence in WA, and specify the number of demerit points applying to the offence.
- (2) An offence cannot be a demerit point offence in WA unless it involves the driving or use of a motor vehicle.

- (3) Regulations referred to in subsection (1) may distinguish between offences according to the circumstances in which they are committed.

[Section 104A inserted by No. 54 of 2006 s. 31.]

104B. National demerit point offence schedule

- (1) The regulations may prescribe a national demerit point offence schedule for the purposes of this Act specifying —

- (a) certain offences under this Act; and
- (b) certain offences under the laws of other jurisdictions.

- (2) The national demerit point offence schedule —

- (a) cannot specify an offence under this Act unless it is a demerit point offence in WA; and

- (b) cannot specify an offence under the law of another jurisdiction unless —

- (i) the offence involves the driving or use of a motor vehicle; and

- (ii) under a law of that jurisdiction corresponding to this Part, points may be recorded against a person committing that offence who holds an Australian driver licence under the law of that jurisdiction.

- (3) The number of demerit points applying under this Act to an offence under the law of another jurisdiction that is a national demerit point offence is the number of points applying to that offence under the law of that other jurisdiction.

- (4) Regulations referred to in subsection (1) may distinguish between offences according to the circumstances in which they are committed.

[Section 104B inserted by No. 54 of 2006 s. 31.]

104C. Demerit point registry jurisdiction

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

[Section 104C inserted by No. 54 of 2006 s. 31.]

Division 2 — Incurring demerit points

[Heading inserted by No. 54 of 2006 s. 31.]

104D. Demerit point action after conviction

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

- (ii) an Australian driver licence granted to that person under the law of that jurisdiction is suspended.

[Section 104D inserted by No. 54 of 2006 s. 31.]

104E. Demerit point action after infringement notice

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

[Section 104E inserted by No. 54 of 2006 s. 31.]

104F. No demerit point action against body corporate

Demerit point action can be taken only against an individual.

[Section 104F inserted by No. 54 of 2006 s. 31.]

104G. What demerit point action is to be taken

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

the offence to the Australian driver licensing authority for that jurisdiction as if it had sought that information under section 9.

- (4) If the offence is an offence under this Act that is a national demerit point offence and it appears to the Director General that the person against whom demerit point action is required to be taken usually resides in a jurisdiction other than this State that is not the demerit point registry jurisdiction for the person, the Director General is to provide information about the offence to the Australian driver licensing authority for that jurisdiction as if it had sought the information under section 9.
- (5) This section does not prevent the Director General from providing information under section 9 in other circumstances.

[Section 104G inserted by No. 54 of 2006 s. 31; amended by No. 18 of 2011 s. 13.]

Division 3 — Consequences of demerit points

[Heading inserted by No. 54 of 2006 s. 31.]

104H. Expiry of demerit points

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

[Section 104H inserted by No. 54 of 2006 s. 31.]

104I. Excessive demerit points notice

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

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

[Section 104I inserted by No. 54 of 2006 s. 31.]

104IA. Excessive demerit points (novice driver) notice

- (1) In this section —
- post-commencement demerit points*** means current demerit
points other than those recorded for an offence committed

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before the day on which the *Road Traffic Amendment Act (No. 2) 2007* section 27 comes into operation¹.

- (2) If the number of post-commencement demerit points recorded in the demerit points register against a novice driver (type 1) reaches at least 4, or against a novice driver (type 2) reaches at least 8, the Director General is to give the novice driver, in accordance with section 104R, an excessive demerit points (novice driver) notice stating —
 - (a) the day on which that number of post-commencement demerit points was reached; and
 - (b) the number of post-commencement demerit points reached on that day; and
 - (c) that the period of disqualification is 3 months; and
 - (d) that the period of disqualification will commence on the day after the notice is given or a later day specified in the notice.
- (3) Post-commencement demerit points recorded against the person in the demerit points register on or before the day on which, according to the notice, the stated number of demerit points was reached are cancelled.
- (4) The person to whom the notice is given is disqualified from holding or obtaining a driver's licence for the period of 3 months specified in the notice.
- (5) Nothing in this section prevents the day on which the period of disqualification commences from being postponed under section 104M.
- (6) Regulations referred to in section 104O(7) may provide for all or some of the post-commencement demerit points cancelled under subsection (3) to be again recorded against the person.
- (7) Nothing in this section prevents section 104I from applying to a novice driver.

[Section 104IA inserted by No. 39 of 2007 s. 27.]

104J. Making a s. 104J election

- (1) A person who is given an excessive demerit points notice may, unless prevented by subsection (2) from doing so, avoid being disqualified from holding or obtaining a driver's licence because of the notice by making an election under this section for the year commencing when, having regard to section 104M, the period of disqualification specified in the notice would have commenced.
- (2) In order to be able to make a section 104J election a person must hold a driver's licence other than a provisional licence and must not be a novice driver.
- (3) By making a section 104J election the person elects not to commit, during the year for which the election is made —
 - (a) an offence for which 2 or more demerit points can be recorded under this Part against the person; or
 - (b) offences for which a total of 2 or more demerit points can be recorded under this Part against the person; or
 - (c) an offence for which the court convicting the person is required by law to disqualify the person from holding or obtaining a driver's licence; or
 - (d) an offence the conviction of which results in the person being disqualified by operation of this Act from holding or obtaining a driver's licence.
- (4) The election is to be made in writing, in the form approved by the Director General, and given to the Director General within 21 days after the day on which the Director General gave the excessive demerit points notice.
- (5) A section 104J election applies for the period ending at the end of the year for which it is made or, if the period ends earlier under this Part, until the earlier end of the period.

[Section 104J inserted by No. 54 of 2006 s. 31; amended by No. 39 of 2007 s. 28.]

104K. Double disqualification after s. 104J election

(1) If —

- (a) the Director General records in the demerit points register a total of 2 or more demerit points for an offence or offences committed or allegedly committed by a person during a section 104J election period; or
- (b) a court convicts a person of an offence committed during a section 104J election period as a result of which conviction —
 - (i) the court is required by law to disqualify the person from holding or obtaining a driver's licence but the disqualification is not required to be permanent; or
 - (ii) the person is disqualified by operation of this Act from holding or obtaining a driver's licence,

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

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

(3) The notice is to state —

- (a) if it is given under subsection (1)(a) —
 - (i) the number of demerit points because of which the notice is given; and
 - (ii) the day on which each offence to which any of those points relates was committed or allegedly committed;
- (b) if it is given under subsection (1)(b) —
 - (i) the conviction because of which the notice is given; and

- (ii) the day on which the offence of which the person was convicted was committed;
 - (c) the period of disqualification fixed under subsection (4) and the day on which that period commences.
- (4) The period of disqualification to be stated in the notice is to be double the period of disqualification that was stated in the excessive demerit points notice that led to the person making the section 104J election, and any day after the notice under this section is given may be stated as the day on which the period is to commence.
- (5) The person to whom the notice is given is disqualified from holding or obtaining a driver's licence for the period of disqualification stated in the notice.
- (6) Nothing in this section prevents —
 - (a) the commencement of the period of disqualification under a notice under this section from being postponed under section 104M; or
 - (b) the commencement of a period of disqualification referred to in subsection (1)(b) from being postponed under section 104N.
- (7) When the notice is given —
 - (a) if it is given under subsection (1)(a), demerit points recorded against the person in the demerit points register for the offences specified in the notice are cancelled; and
 - (b) in any case, the period for which the section 104J election applies ends even though the year for which the election was made may not have elapsed.
- (8) Regulations referred to in section 104O(7) —
 - (a) may provide for all or some of the demerit points cancelled under subsection (7)(a) to be again recorded against the person;

- (b) may provide for the period for which the section 104J election applies to be reinstated.

[Section 104K inserted by No. 54 of 2006 s. 31.]

104L. Permanent disqualification ends s. 104J election period

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

[Section 104L inserted by No. 54 of 2006 s. 31.]

104M. Cumulative effect of demerit points disqualification

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

the commencement of the disqualification period is postponed, and the disqualification under this Part does not have effect, until the time described in subsection (2) as the postponed commencement time.

- (2) The postponed commencement time is when —
 - (a) any disqualification that has already commenced when the disqualification period would otherwise have commenced, or that commences subsequently, has ended; and
 - (b) any section 104J election period that has already commenced when the disqualification period would

otherwise have commenced, or that commences subsequently, has ended.

- (3) Postponing the commencement of the disqualification period does not reduce the disqualification period.
- (4) For the purposes of subsections (1) and (2), a person is to be taken to be disqualified from holding or obtaining a driver's licence during any time for which —
 - (a) the person is disqualified from holding or obtaining a driver's licence; or
 - (b) a driver's licence held by the person is suspended.

[Section 104M inserted by No. 54 of 2006 s. 31.]

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

- (1) In this section —
demerit period means —
 - (a) a period for which a person is disqualified under this Part from holding or obtaining a driver's licence; or
 - (b) a section 104J election period relating to a person.
- (2) If —
 - (a) because of an offence that was not committed during a section 104J election period, a person is disqualified by a court or by operation of this Act, otherwise than under this Part, from holding or obtaining a driver's licence and the disqualification is not permanent; or
 - (b) a licence suspension order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* disqualifying a person from holding or obtaining a driver's licence,

and the commencement of the period of disqualification, or the taking effect of the licence suspension order, as the case may be, (the ***starting time***) would occur during a demerit period or at the same time as a demerit period commences, the starting time is,

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despite any other enactment, postponed until the end of the demerit period.

[Section 104N inserted by No. 54 of 2006 s. 31.]

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[Heading inserted by No. 54 of 2006 s. 31.]

104O. Demerit points register

- (1) The Director General is required to maintain a demerit points register in accordance with this Act.
- (2) The demerit points register is to contain details of —
 - (a) each person against whom demerit points are recorded under this Act; and
 - (b) each offence for which demerit points are recorded against that person and the day on which the offence was committed or allegedly committed; and
 - (c) the number of demerit points recorded against the person for the offence; and
 - (d) the day on which an excessive demerit points notice was given, and the number of demerit points and period of disqualification stated in it; and
 - (da) the day on which an excessive demerit points (novice driver) notice was given, and the number of demerit points and period of disqualification stated in it; and
 - (e) the day on which a section 104J election, if any, was received; and
 - (f) the day on which a notice, if any, disqualifying a person from holding or obtaining a driver's licence was given under section 104K, and the period of disqualification stated in it; and
 - (g) the day on which demerit points —
 - (i) expire through the passing of time; or

- (ii) are cancelled,
and the number of points that expire or are cancelled;
and
 - (h) anything else prescribed in the regulations.
- (3) If a conviction is quashed, the Director General is to cause any demerit points recorded because of the conviction to be removed from the demerit points register, and they are to be taken to have never been recorded.
- (4) If, after an alleged offence has been dealt with by infringement notice the Director General is satisfied that —
 - (a) the infringement notice has been withdrawn; or
 - (b) proceedings under Part 3 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the infringement notice have been withdrawn; or
 - (c) the matter has come before a court for determination,the Director General is to cause any demerit points recorded because the alleged offence has been dealt with by infringement notice to be removed from the demerit points register, and they are to be taken to have never been recorded.
- (5) Subsection (4) does not prevent the points removed from being again recorded if the alleged offender is convicted of the alleged offence.
- (6) Regulations may specify circumstances in which an infringement notice issued under a law of another jurisdiction is to be treated, for the purposes of subsection (4), as having been withdrawn.
- (7) Regulations may —
 - (a) provide for the adjustment of the demerit points register;
or
 - (b) make any other provision necessary or convenient to be made,to deal with consequences of subsection (3) or (4) in a case in which, before the demerit points are removed from the demerit

points register, anything has been done on the basis that the demerit points were recorded.

- (8) The Director General must ensure that, when information in the demerit points register about a national demerit point offence recorded against a person for whom this State is not the demerit point registry jurisdiction is altered or removed, notice of the alteration or removal is provided to each Australian driver licensing authority that was provided with information about the offence under section 104G(3) or (4).

[(9) deleted]

[Section 104O inserted by No. 54 of 2006 s. 31; amended by No. 30 of 2007 s. 29; No. 18 of 2011 s. 14.]

104P. Obtaining Australian driver licence elsewhere

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

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

[Section 104P inserted by No. 54 of 2006 s. 31.]

104Q. Holder of licence in another jurisdiction applying

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

[Section 104Q inserted by No. 54 of 2006 s. 31.]

104R. How certain notices are to be given

- (1) This section applies to —
 - (a) an excessive demerit points notice; or
 - (aa) an excessive demerit points (novice driver) notice; or
 - (b) a notice under section 104K disqualifying a person from holding or obtaining a driver's licence.
- (2) The notice is given in accordance with this section if it is given to the person to whom it is addressed either personally or in any other way prescribed in the regulations that ensures that it is received by that person and results in a written record of that person having received the notice.

[Section 104R inserted by No. 54 of 2006 s. 31; amended by No. 30 of 2007 s. 30.]

104S. Regulations about certain transitional matters

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

- (a) matters concerning the transition from the provisions applying before the commencement of section 29 of the *Road Traffic Amendment Act 2006* to the provisions of this Part, or regulations made under this Part, applying after that commencement;
- (b) transitional matters related to this Part that arise from a change in the jurisdiction that is a person's demerit point registry jurisdiction.

[Section 104S inserted by No. 54 of 2006 s. 31.]

104T. Regulations adapting to schemes of other jurisdictions

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

- (2) Regulations made for that purpose may modify the operation of this Part.

[Section 104T inserted by No. 54 of 2006 s. 31.]

Part VII — Offences and penalties

[104. Deleted by No. 54 of 2006 s. 32.]

105. Limitation on period for which previous offences taken into account

Where —

- (a) a person is convicted of an offence (in this section referred to as the *present offence*) against this Act; and
- (b) the penalty or penalties which may or shall be imposed for the present offence vary according to whether the person has been convicted previously of an offence against this Act,

any such previous offence the conviction for which was recorded more than 20 years before the commission of the present offence shall not be taken into account for the purposes of determining the penalty or penalties to be imposed for the present offence.

[Section 105 amended by No. 54 of 2006 s. 33.]

106. Sentencing for certain offences

- (1) In this section —
minimum fine means a pecuniary penalty provided for or in relation to an offence that is expressed to be a minimum penalty, whether by the use of the expression “minimum penalty” or “not less than” or another like expression.
- (2) Without limiting the *Sentencing Act 1995*, and despite any other written law, a minimum fine in this Act is irreducible in mitigation.
- (3) A court sentencing a person who has been convicted of —
 - (a) a first offence against section 63 or 67; or

- (b) an offence against section 64 or 67A,
may, instead of imposing a fine —
 - (c) order the release of the person and impose a community based order under Part 9 of the *Sentencing Act 1995* with at least a community service requirement as a primary requirement of the order; or
 - (d) if the offender is a young person under the *Young Offenders Act 1994*, subject to sections 50, 50A and 50B of that Act, make a youth community based order under that Act imposing at least community work conditions on the offender.

- (4) If a court sentencing a person who has been convicted of —
 - (a) an offence against section 49 committed in the circumstances mentioned in section 49(3); or
 - (b) a second or subsequent offence against section 63 or 67,orders the release of the offender and imposes a community based order or an intensive supervision order under the *Sentencing Act 1995*, the court must impose at least a community service requirement as a primary requirement of the order.

- (5) If a court sentencing a person who has been convicted of —
 - (a) an offence against section 49 committed in the circumstances mentioned in section 49(3); or
 - (b) a second or subsequent offence against section 63 or 67,orders the release of the offender and imposes a youth community based order or an intensive youth supervision order under the *Young Offenders Act 1994*, the court must impose community work conditions on the offender as part of the order.

- (6) A court sentencing a person who has been convicted of an offence against section 64AB must order a pre-sentence report about the offender under the *Sentencing Act 1995* Part 3 Division 3.

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- (7) A court sentencing a person who has been convicted of a first offence against section 64AB or 67AA must, instead of or in addition to imposing a fine —
- (a) order the release of the person and impose a community based order under the *Sentencing Act 1995* with at least a programme requirement as a primary requirement of the order; or
 - (b) if the offender is a young person under the *Young Offenders Act 1994*, subject to sections 50, 50A and 50B of that Act, make a youth community based order under that Act imposing at least attendance conditions on the offender.
- (8) A court sentencing a person who has been convicted of a second or subsequent offence against section 64AB or 67AA must, instead of or in addition to imposing a fine —
- (a) order the release of the person and impose a community based order under the *Sentencing Act 1995* with at least a supervision requirement and a programme requirement as primary requirements of the order; or
 - (b) order the release of the person and impose an intensive supervision order under the *Sentencing Act 1995* with at least a programme requirement as a primary requirement of the order; or
 - (c) if the offender is a young person under the *Young Offenders Act 1994*, subject to sections 50, 50A and 50B of that Act, make a youth community based order, or an intensive youth supervision order, under that Act imposing at least attendance conditions and supervision conditions on the offender.
- (9) Subsections (7) and (8) apply despite the *Sentencing Act 1995* section 39(3) and (4) and the *Young Offenders Act 1994* section 74.

- (10) Subsection (8) does not apply if the court imposes a custodial sentence on the offender.

[Section 106 inserted by No. 50 of 2003 s. 28; amended by No. 74 of 2003 s. 105(4); No. 54 of 2006 s. 34; No. 6 of 2007 s. 21.]

106A. Mandatory disqualification

- (1) If this Act requires a court to disqualify an offender from holding or obtaining a driver's licence —
- (a) for a specific period provided in relation to the offence concerned (including permanent disqualification); or
 - (b) for a period not less than a minimum period provided in relation to the offence concerned; or
 - (c) for a period not less than a minimum period, and not more than a maximum period, provided in relation to the offence concerned,

the requirement is irreducible in mitigation and, irrespective of any sentence the court imposes on the offender, the court must disqualify the offender —

- (d) for that period; or
 - (e) for a period not less than that minimum period; or
 - (f) for a period not less than that minimum period and not more than that maximum period.
- (2) Subsection (1) has effect despite any other written law.

[Section 106A inserted by No. 50 of 2003 s. 28.]

107. Offences generally

- (1) Any person who contravenes a provision of this Act commits an offence.
- (2) Any person who commits an offence against this Act for which no other penalty is provided is liable to a penalty of 32 PU.

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- (3) Proceedings for an offence against the traffic regulation provisions of this Act may be instituted by —
- (a) a member of the Police Force; or
 - (b) a warden appointed by the Commissioner of Police; or
 - (c) a person authorised in that behalf by the Commissioner of Police.
- (3a) Proceedings for an offence against the licensing provisions of this Act may be instituted by —
- (a) a member of the Police Force; or
 - (b) a warden appointed by the Director General; or
 - (c) a person authorised in that behalf by the Director General.
- (4) A prosecution for an offence under section 24, 49(1)(a), 53, 97 or 103(1) must be commenced within 2 years after the date on which the offence was allegedly committed.

[Section 107 amended by No. 71 of 1979 s. 16; No. 105 of 1981 s. 16 and 19; No. 82 of 1982 s. 27; No. 11 of 1988 s. 24; No. 76 of 1996 s. 19; No. 50 of 1997 s. 13; No. 84 of 2004 s. 80; No. 18 of 2011 s. 15.]

Part VIII — Transitional provisions

108. Savings

Without affecting the application of the *Interpretation Act 1918*², and particularly of sections 15 and 16 thereof, to the repeal and re-enactment by this Act of the provisions of the *Traffic Act 1919*, it is hereby declared that any regulation, by-law, order, vehicle licence, driver's licence, extraordinary driver's licence, permit or other document in force under any provision of the *Traffic Act 1919* repealed by this Act shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when it was made or done, and it is hereby further declared that any suspension, disqualification or cancellation of a driver's licence ordered or made by or under the *Traffic Act 1919* or *The Criminal Code* shall continue and have effect as if it had been ordered or made by or under the provisions of this Act and as if this Act had been in force when it was ordered or made.

109. Powers of traffic inspectors

Where any provision of this Act is proclaimed to come into operation prior to the date fixed under section 4 for the repeal of section 22 of the *Traffic Act 1919*, any reference in the first-mentioned provisions of this Act (other than section 13) to a member of the Police Force shall, until section 22 of the *Traffic Act 1919* is repealed, be construed as including a reference to a traffic inspector or assistant inspector appointed under that section.

[Section 109 amended by No. 105 of 1981 s. 19.]

110. Powers of certain traffic inspectors preserved

- (1) The provisions of this section apply to such districts as are from time to time specified by notice under subsection (2).

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- (2) The Minister may from time to time by notice published in the *Gazette* —
- (a) specify the districts to which the provisions of this section apply; and
 - (b) vary or revoke any such notice.
- (3) In any district to which the provisions of this section apply —
- (a) the appointment of any person as a traffic inspector or assistant inspector under section 22 of the *Traffic Act 1919* which appointment was in force immediately prior to the repeal of that section shall, subject to paragraph (b), continue in force and effect; and
 - (b) the local government for the district may appoint and dismiss traffic inspectors and assistant inspectors as if section 22 of the *Traffic Act 1919* had not been repealed,

and any such traffic inspector or assistant inspector may, throughout the district of the local government by which he was appointed, exercise any power conferred by this Act or section 27 of the *Motor Vehicle Dealers Act 1973* on a member of the Police Force, and any reference in this Act or in section 27 of the *Motor Vehicle Dealers Act 1973* to a member of the Police Force shall be construed as including a reference to such a traffic inspector or assistant inspector.

[Section 110 amended by No. 105 of 1981 s. 17; No. 14 of 1996 s. 4.]

Part IX — Regulations

111. Regulations etc.

- (1) The Governor may make regulations for any purpose for which regulations are contemplated or required by this Act and may make all such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act, for the licensing, equipment and use of vehicles and for the regulation of traffic, generally.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations —
 - (a) empowering an authority therein named to —
 - (i) prohibit, and to authorise and regulate, processions;
 - (ii) restrict or prohibit the use of such roads, for such periods, as it may specify;
 - (iii) erect traffic signs and traffic control signals and similar devices;
 - (iiia) authorise any person or body or class of person or body to erect traffic signs and traffic control signals and similar devices, or any class or type thereof, in accordance with the instrument of authorisation;
 - (iv) seize, remove and detain obstructing or abandoned vehicles;
 - (aa) regulating or prohibiting stock on roads;
 - (b) relating to the duties, obligations, conduct and behaviour of owners, responsible persons, persons in charge, drivers and passengers of vehicles or of any class of vehicle;
 - (c) requiring the drivers and passengers of —
 - (i) motor vehicles; and

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- (ii) 2-wheeled or 3-wheeled vehicles that are designed to be propelled through a mechanism operated solely by human power; and
- (iii) 2-wheeled or 3-wheeled vehicles that are power assisted pedal cycles,
to wear prescribed items of equipment, whether or not the items are items required to be fitted to the vehicles;
- (d) prescribing standards or other requirements in respect of vehicles, including standards or requirements relating to —
 - (i) the design, construction, efficiency and performance of, and the equipment to be carried on, vehicles; and
 - (ii) the attachment of operational or safety devices; and
 - (iii) limits on the mass and dimensions of vehicles and their loads, the distribution of the mass over vehicle components, and how to measure the mass, dimensions or mass distribution; and
 - (iv) roadworthiness; and
 - (v) safety, emissions and noise; and
 - (vi) the coupling of trailers and motor vehicles; and
 - (vii) the identification of vehicles or components of vehicles; and
 - (viii) loading and unloading and securing of loads; and
 - (ix) security of vehicles and the equipment to be fitted to vehicles for the purposes of security; and
 - (x) the keeping and production of records;
- (da) providing for the examination and testing of vehicles and without restricting the generality of the foregoing —
 - (i) empowering the Director General to authorise persons to examine and test vehicles and to cancel any such authorisation;

- (ii) requiring the payment of fees for the examination and testing of vehicles pursuant to any regulation;
- (iii) empowering any person who is authorised to examine and test vehicles to issue or to refuse to issue a certificate of inspection in relation to the inspection of a vehicle;
- (iv) empowering persons to control, prohibit or restrict the use of a vehicle that does not conform to any regulation or does not fit the purpose for which the vehicle is desired to be licensed;
- (e) prohibiting or regulating the manufacture, sale or supply of —
 - (i) replicas or imitations of number plates; or
 - (ii) articles similar to number plates,and providing for the confiscation and disposal of such replicas, imitations or articles;
- [(f) deleted]*
- (g) enabling vehicles to be driven and tested;
- (h) regulating or prohibiting the parking or standing of vehicles;
- (i) prescribing a minimum age at which an individual may apply for the grant or transfer of a vehicle licence and providing for the applicant to provide proof of age and identity;
- (j) prescribing matters for or in respect of which fees shall be charged or charges shall be made and prescribing the amounts of such fees or charges;
- (k) imposing penalties not exceeding 24 PU for a first offence, and not exceeding 48 PU for any subsequent offence, against any regulation made under this section, not being an offence referred to in paragraph (l) or (m);

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- (l) imposing for offences against regulations made pursuant to paragraph (d)(iii) or (viii) not being an offence referred to in paragraph (m) —
 - (i) minimum penalties not exceeding from 1 PU to 48 PU irreducible in mitigation notwithstanding the provisions of any other Act; and
 - (ii) maximum penalties not exceeding 120 PU, in accordance with a scale so prescribed according to the nature of the offences and the circumstances by which they are attended;
- (m) requiring the driver or person in charge of a vehicle to comply with any reasonable direction given by a member of the Police Force —
 - (i) for the purpose of determining the mass of a vehicle and the load carried thereon and on any component thereof including a direction that the vehicle be taken to a police station or other suitable place specified by the member of the Police Force; and
 - (ii) to remove or adjust the load carried by a vehicle, on any component of a vehicle or both by the vehicle and on any component thereof so that the load carried thereon does not exceed the maximum mass that is permitted to be carried under the regulations by a vehicle of that kind and on any component thereof,and imposing with respect to any offence against any such regulations —
 - (iii) penalties not exceeding 24 PU for a first offence; and
 - (iv) for any subsequent offence a minimum penalty irreducible in mitigation, notwithstanding the provisions of any other Act, of 48 PU and

maximum penalties not exceeding 144 PU for
any subsequent offence;

- (n) defining the previous offences that shall be taken into account in determining whether an offence is a first or subsequent offence for the purpose of the regulations.
- (2a) The circumstances referred to in subsection (2)(1) may include a reference to the amount, calculated as a percentage or otherwise, by which the mass of a vehicle and the load carried by a component thereof exceeds the maximum mass that is permitted to be carried by a vehicle of that kind or a component thereof or both under regulations made pursuant to subsection (2)(d)(iii) or (viii).
- (2b) Regulations made pursuant to subsection (2)(d)(iii) or (viii) may provide that where a person drives, stands or uses a vehicle or permits a vehicle to be driven, stood or used, in contravention of a provision of those regulations, a responsible person for that vehicle shall be deemed to have also contravened that provision.
- (2c) The regulations may make it an offence to contravene a condition imposed by or under the regulations, but this subsection does not limit the other consequences that the regulations may attach to a contravention.
- (3) The regulations may in respect of any fee or charge (whether prescribed by the Act or by the regulations) provide for —
- (a) exemptions from the requirement to pay the fee or charge; or
 - (b) the fee or charge to be reduced or refunded (in whole or in part); or
 - (c) the payment of the fee or charge to be deferred.
- (4) The regulations may provide that the exemption, reduction, refund or deferral —
- (a) only applies in specified circumstances or in respect of specified classes of persons or vehicles; or

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- (b) is at the discretion of the Director General or a specified person; or
 - (c) applies subject to specified requirements being satisfied; or
 - (d) applies subject to conditions —
 - (i) specified in the regulations; or
 - (ii) imposed by the Director General or a specified person and specified in a licence or permit.
- (5) Without limiting subsection (4)(c), the regulations may require a matter to be verified by statutory declaration.

[Section 111 amended by No. 17 of 1976 s. 4; No. 89 of 1978 s. 19; No. 71 of 1979 s. 17; No. 81 of 1980 s. 10; No. 71 of 1981 s. 6; No. 105 of 1981 s. 18 and 19; No. 82 of 1982 s. 28; No. 95 of 1984 s. 8; No. 11 of 1988 s. 17 and 24; No. 46 of 1991 s. 3; No. 92 of 1994 s. 40; No. 21 of 1995 s. 12; No. 76 of 1996 s. 20(3); No. 50 of 1997 s. 13; No. 57 of 1997 s. 106(3); No. 52 of 1998 s. 5; No. 39 of 2000 s. 46; No. 27 of 2001 s. 5; No. 28 of 2001 s. 23(1); No. 39 of 2007 s. 40.]

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

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

[Section 111AA inserted by No. 54 of 2006 s. 35(1).]

111AB. Power to grant exemptions from specified regulations

- (1) The regulations may provide for the Minister to declare, in writing in accordance with the regulations, that a specified requirement of the regulations does not apply to a specified person or vehicle.

- (2) The regulations may provide for the Director General to grant exemptions from regulations made under section 111(2)(d).
- (3) The regulations may provide for the Commissioner of Main Roads —
 - (a) to grant exemptions in respect of vehicles with a gross vehicle mass exceeding 4.5 tonnes from regulations made under section 111(2)(d)(iii) or (viii); and
 - (b) to delegate to an officer of the Commissioner or a police officer the power to grant those exemptions.
- (4) In this section —

gross vehicle mass means the maximum loaded mass of a vehicle —

- (a) as specified by the manufacturer; or
- (b) as specified by the relevant authority if —
 - (i) the manufacturer has not specified a maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;

relevant authority, in relation to a vehicle, means —

- (a) if the vehicle has never been licensed or registered but the vehicle is used or is intended to be used in this State — the Director General; or
- (b) if the vehicle was last licensed in this State — the Director General; or
- (c) if the vehicle was last licensed or registered in another State or a Territory — the authority in that State or Territory whose functions most nearly correspond to those of the Director General.

[Section 111AB inserted by No. 54 of 2006 s. 35(1).]

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111A. Adoption of other laws, codes etc.

- (1) Regulations made under section 111(2)(d) may adopt the text of any published document specified in the regulations, being a document relating to vehicle standards or other requirements in respect of vehicles or their loads.
- (2) The text may be adopted —
 - (a) wholly or in part;
 - (b) as modified by the regulations.
- (3) The text may be adopted as it exists when, or any time before, the regulations take effect.
- (4) In addition, the text may be adopted as it may be amended from time to time if the document is —
 - (a) a national standard determined under the *Motor Vehicle Standards Act 1989* of the Commonwealth; or
 - (b) any of the standards, rules, codes or specifications of the body known as Standards Australia or a similar body specified in the regulations.

[Section 111A inserted by No. 27 of 2001 s. 6.]

112. Liability of director etc. of a body corporate that is owner of a vehicle

- (1) In this section *director*, in relation to a body corporate, includes any person occupying the position of director of the body corporate by whatever name called and includes a person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act.
- (2) Where a corporation is a responsible person for a vehicle any reference in a regulation made pursuant to section 111(2)(f)³ to a responsible person for such a vehicle shall be construed as including a reference to every person who is a director of that corporation.

- (3) Where any person has, by reason only of being director of a corporation been required under this Act to discharge any obligation to pay any sum of money that the corporation was obliged to pay, whether pursuant to a judgment or order of a court or not, that person —
- (a) is entitled to recover from the corporation any amount so paid as a civil debt due to the person by the corporation; and
 - (b) when any amount so paid cannot be recovered from the corporation, is entitled to recover contribution from any other director of the corporation who would have been liable in respect of the amount so paid except that the amount which may be recovered by a director from any other director shall not exceed that proportion of the total amount that he has paid as one bears to the total number of directors of that corporation.
- (4) Where pursuant to the provisions of subsection (2) more than one director is liable as a responsible person for a vehicle, any obligation imposed upon a responsible person by or under this section shall be deemed to have been discharged, if the obligation is performed by any one of those directors.

[(5), (6) deleted]

- (7) Nothing in this section affects the liability of a corporation that is a responsible person for a vehicle to pay any amount to the Director General in accordance with any of the provisions of this Act.

[Section 112 inserted by No. 89 of 1978 s. 20; amended by No. 105 of 1981 s. 19; No. 10 of 1982 s. 28; No. 95 of 1984 s. 9; No. 76 of 1996 s. 20(3); No. 39 of 2000 s. 47.]

s. 113

113. Schemes for optional number plates

- (1) The regulations may provide for schemes under which the Director General —
 - (a) allocates number plates (in this section called *optional number plates*) to persons wishing to reserve the right to use those number plates instead of number plates that would otherwise be issued under this Act;
 - (b) supplies and, if necessary, replaces optional number plates;
 - (c) permits the transfer from one person to another of the right to use optional number plates;
 - (d) gives directions as to which vehicle optional number plates are to be used on;
 - (e) is given the power to cancel, with or without compensation, a person's right to use optional number plates if charges due and payable in respect of that right remain unpaid for a period prescribed in the regulations.
- (2) The rights may be for a specified period or otherwise.
- (3) A scheme may be designed to be operated commercially but —
 - (a) the sale of the rights allocated is to be —
 - (i) by public auction or public tender; or
 - (ii) if the Treasurer authorises the sale to be by private treaty or any other means, by the means authorised;
 - and
 - (b) any other charge under a scheme is to be prescribed in the regulations.
- (4) The amount of a charge that may be prescribed under subsection (3)(b) is not limited to the amount needed to recover costs even though it is for a matter for which only a fee could be prescribed if the number plates were not optional number plates.

- (5) The regulations may deal with matters that it is necessary or convenient to deal with for the purposes of, or in connection with, schemes relating to optional number plates.

[Section 113 inserted by No. 6 of 2004 s. 5.]

[First and Second Schedule deleted by No. 28 of 2001 s. 22.]

Notes

¹ This is a compilation of the *Road Traffic Act 1974* and includes the amendments made by the other written laws referred to in the following table ^{1M, 1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Road Traffic Act 1974</i>	59 of 1974	3 Dec 1974	s. 4: 3 Dec 1974 (see s. 2(2)); s. 6-10 and 12: 21 Feb 1975 (see s. 2(1) and <i>Gazette</i> 21 Feb 1975 p. 633); Act other than s. 4, 6-10 and 12: 1 Jun 1975 (see s. 2(1) and <i>Gazette</i> 29 May 1975 p. 1442)
<i>Road Traffic Act Amendment Act 1975</i>	77 of 1975	14 Nov 1975	1 Jul 1976 (see s. 2 and <i>Gazette</i> 12 Dec 1975 p. 4481)
<i>Road Traffic Act Amendment Act (No. 2) 1975</i>	93 of 1975	20 Nov 1975	20 Feb 1976 (see s. 2 and <i>Gazette</i> 20 Feb 1976 p. 445)
<i>Road Traffic Act Amendment Act 1976</i>	17 of 1976	3 Jun 1976	21 Aug 1976 (see s. 2 and <i>Gazette</i> 6 Aug 1976 p. 2658)
<i>Road Traffic Act Amendment Act (No. 2) 1976</i>	48 of 1976	10 Sep 1976	Act other than s. 3 and 4(a)-(f) and (h): 10 Sep 1976 (see s. 2(1)); s. 3 and 4(a)-(f) and (h): 1 Jun 1977 (see s. 2(2) and <i>Gazette</i> 20 May 1977 p. 1490)
<i>Road Traffic Act Amendment Act (No. 3) 1976</i>	135 of 1976	9 Dec 1976	9 Dec 1976
<i>Road Traffic Act Amendment Act 1977</i>	4 of 1977	29 Aug 1977	29 Aug 1977
<i>Road Traffic Act Amendment Act 1978</i> ⁴	89 of 1978 (as amended by No. 82 of 1982 s. 30 and 31)	8 Nov 1978	Act other than s. 16(a), (b) and (c), 18 and 23: 25 May 1979 (see s. 2 and <i>Gazette</i> 25 May 1979 p. 1377); s. 18: 1 Jan 1980 (see s. 2 and <i>Gazette</i> 7 Dec 1979 p. 3770)
<i>Acts Amendment and Repeal (Road Maintenance) Act 1979 Pt. II</i>	9 of 1979	18 May 1979	1 Jul 1979 (see s. 2(2))

Short title	Number and year	Assent	Commencement
<i>Road Traffic Act Amendment Act 1979</i>	10 of 1979	18 May 1979	18 May 1979
<i>Road Traffic Act Amendment Act (No. 2) 1979</i>	71 of 1979	27 Nov 1979	Act other than s. 4, 5, 8-11, 13, 14 and 18: 27 Nov 1979 (see s. 2(1)); s. 8-11, 13, 14 and 18: 1 Feb 1980 (see s. 2(2) and <i>Gazette</i> 1 Feb 1980 p. 284); s. 4: 15 Feb 1980 (see s. 2(2) and <i>Gazette</i> 15 Feb 1980 p. 456); s. 5: 2 May 1980 (see s. 2(2) and <i>Gazette</i> 2 May 1980 p. 1405)
Untitled regulations published in <i>Gazette</i> 6 Jun 1980 p. 1671-2			6 Jun 1980
Reprint of the <i>Road Traffic Act 1974</i> approved 22 Jul 1980 (includes amendments listed above)			
<i>Road Traffic Amendment Act 1980</i>	42 of 1980	12 Nov 1980	Act other than s. 3-6, 8, 9(a) and 10: 12 Nov 1980 (see s. 2(1)); s. 3-6, 8, 9(a) and 10: 1 Jan 1981 (see s. 2(2))
<i>Acts Amendment (Motor Vehicle Pools) Act 1980 Pt. II</i>	48 of 1980	19 Nov 1980	19 Nov 1980
<i>Road Traffic Amendment Act (No. 2) 1980</i> ⁵	81 of 1980	5 Dec 1980	5 Dec 1980
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1981</i> published in <i>Gazette</i> 29 May 1981 p. 1611-18			29 May 1981
<i>Road Traffic Amendment Act 1981</i>	39 of 1981	25 Aug 1981	25 Aug 1981
<i>Road Traffic Amendment Act (No. 2) 1981</i>	71 of 1981	30 Oct 1981	1 Aug 1982 (see s. 2 and <i>Gazette</i> 23 Jul 1982 p. 2842)
<i>Road Traffic Amendment Act (No. 4) 1981</i>	105 of 1981	4 Dec 1981	2 Feb 1982 (see s. 2 and <i>Gazette</i> 2 Feb 1982 p. 393)
<i>Companies (Consequential Amendments) Act 1982</i> s. 28	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079)

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Motor Vehicle Fees) Act 1982</i> Pt. III	25 of 1982	27 May 1982	1 Jul 1982 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1982</i> published in <i>Gazette</i> p. 1728-34		28 May 1982	
<i>Road Traffic Amendment Act 1982</i>	60 of 1982	24 Sep 1982	Act other than s. 3 and 6(a): 1 Oct 1982 (see s. 2 and <i>Gazette</i> 1 Oct 1982 p. 3885); s. 3 and 6(a): 1 Nov 1982 (see s. 2 and <i>Gazette</i> 1 Oct 1982 p. 3885)
<i>Road Traffic Amendment Act (No. 2) 1982</i> ⁶	82 of 1982	11 Nov 1982	Act other than s. 5, 7, 9, 11-14, 15(d), (e), (g), (j), (l) and (n), 16, 17, 18(a)(ii), (b), (d) and (e), 19, 20(a)-(c) and (e), 21(1), 25 and 26: 11 Nov 1982 (see s. 2(1)); s. 5, 7, 9, 11-13, 14(b), 15(d), 16, 20(a)-(c) and (e), 21(1), 25 and 26: 9 Dec 1982 (see s. 2(2)); s. 14(a), 15(e), (g), (j), (l), and (n), 17, 18(a)(ii), (b), (d) and (e) and 19: 1 Mar 1983 (see s. 2(3) and <i>Gazette</i> 25 Feb 1983 p. 638)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1983</i> published in <i>Gazette</i> p. 1525-32			20 May 1983
Reprint of the Road Traffic Act 1974 approved 9 Jul 1983 (includes amendments listed above)			
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1984</i> published in <i>Gazette</i> p. 1741-51			28 Jun 1984
<i>Road Traffic Amendment Act 1984</i>	95 of 1984	7 Dec 1984	4 Jan 1985
<i>Acts Amendment and Repeal (Credit) Act 1984</i> Pt. VII	102 of 1984	19 Dec 1984	31 Mar 1985 (see s. 2 and <i>Gazette</i> 8 Mar 1985 p. 867)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment and Repeal (Transport Co-ordination) Act 1985 Pt. VI</i>	54 of 1985	28 Oct 1985	1 Jan 1986 (see s. 2 and <i>Gazette</i> 20 Dec 1985 p. 4822)
<i>Road Traffic Amendment Act 1985</i>	89 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1986</i> published in <i>Gazette</i> 30 May 1986 p. 1769-75 (erratum 13 Jun 1986 p. 1979)			30 May 1986
<i>Road Traffic Amendment Act (No. 2) 1986</i>	78 of 1986	4 Dec 1986	4 Dec 1986 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1987</i> published in <i>Gazette</i> 29 May 1987 p. 2263-73			29 May 1987
<i>Road Traffic Amendment Act (No. 2) 1987</i> ^{7,8}	121 of 1987 (as amended by No. 84 of 2004 s. 80 cl. 123 and No. 8 of 2009 s. 112)	24 Dec 1987	s. 1 and 2: 24 Dec 1987; s. 3-6, 8-10: 24 Dec 1987 (see s. 2 and <i>Gazette</i> 24 Dec 1987 p. 4561); s. 7: 1 Oct 1988 (see s. 2 and <i>Gazette</i> 30 Sep 1988 p. 3967); s. 11(a): 21 Dec 1990 (see s. 2 and <i>Gazette</i> 21 Dec 1990 p. 6212)
<i>Road Traffic Amendment Act 1988</i> ⁹	11 of 1988	6 Sep 1988	s. 1 and 2: 6 Sep 1988; s. 3, 20, 21 and 23: 28 Oct 1988 (see s. 2 and <i>Gazette</i> 28 Oct 1988 p. 4274); s. 8(a) and (b): 4 Nov 1988 (see s. 2 and <i>Gazette</i> 4 Nov 1988 p. 4365); s. 4-7, 9-17, 19, 22 and 24: 16 Nov 1988 (see s. 2 and <i>Gazette</i> 16 Nov 1988 p. 4517); s. 8(c) and 18 (other than paragraph (b)): 21 Jul 1989 (see s. 2 and <i>Gazette</i> 21 Jul 1989 p. 2212); s. 18(b): 19 Sep 1989 (see s. 2 and <i>Gazette</i> 21 Jul 1989 p. 2212)

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Short title	Number and year	Assent	Commencement
<i>Road Traffic Amendment (Random Breath Tests) Act 1988</i> ¹⁰	16 of 1988 (as amended by No. 46 of 1989 s. 4; No. 76 of 1996 s. 41 and No. 39 of 2000 s. 67)	9 Sep 1988	s. 1 and 2: 9 Sep 1988; Act other than s. 1, 2 and 5: 1 Oct 1988 (see s. 2 and <i>Gazette</i> 30 Sep 1988 p. 3967)
<i>Road Traffic Amendment Act (No. 3) 1988</i>	32 of 1988	24 Nov 1988	s. 1 and 2: 24 Nov 1988; Act other than s. 1 and 2: 21 Jul 1989 (see s. 3 and <i>Gazette</i> 21 Jul 1989 p. 2212)
<i>Road Traffic Amendment Act (No. 2) 1988</i>	57 of 1988	8 Dec 1988	s. 1 and 2: 8 Dec 1988; Act other than s. 1 and 2: 1 Feb 1989 (see s. 2 and <i>Gazette</i> 23 Dec 1988 p. 4937)
<i>Acts Amendment (Events on Roads) Act 1988 Pt. 2</i>	64 of 1988	8 Dec 1988	1 Feb 1991 (see s. 2 and <i>Gazette</i> 1 Feb 1991 p. 511)
<i>Acts Amendment (Children's Court) Act 1988 Pt. 7</i>	49 of 1988	22 Dec 1988	1 Dec 1989 (see s. 2 and <i>Gazette</i> 24 Nov 1989 p. 4327)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1989</i> published in <i>Gazette</i> 11 Aug 1989 p. 2695-704			11 Aug 1989
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1989</i> published in <i>Gazette</i> 22 Sep 1989 p. 3463			22 Sep 1989
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 3) 1989</i> published in <i>Gazette</i> 17 Nov 1989 p. 4161-5 (erratum 8 Dec 1989 p. 4463)			17 Nov 1989
<i>Acts Amendment (Chemistry Centre (WA)) Act 1990 Pt. 3</i> ¹¹	19 of 1990	24 Jul 1990	9 Aug 1991 (see s. 2 and <i>Gazette</i> 9 Aug 1991 p. 4101)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1990</i> published in <i>Gazette</i> 29 Aug 1990 p. 4383-90 (erratum 7 Dec 1990 p. 6051)			29 Aug 1990
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1990</i> published in <i>Gazette</i> 23 Nov 1990 p. 5850-1			23 Nov 1990

Short title	Number and year	Assent	Commencement
<i>Road Traffic Amendment Act (No. 3) 1990</i>	60 of 1990	17 Dec 1990	s. 1 and 2: 17 Dec 1990; Act other than s. 1 and 2: 21 Dec 1990 (see s. 2 and <i>Gazette</i> 21 Dec 1990 p. 6212)
Reprint of the Road Traffic Act 1974 as at 4 Apr 1991 (includes amendments listed above except those in the <i>Acts Amendment (Chemistry Centre (WA)) Act 1990</i>)			
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1991</i> published in <i>Gazette</i> 23 Aug 1991 p. 4417-22			23 Aug 1991
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1991</i> published in <i>Gazette</i> 22 Nov 1991 p. 5958-9			22 Nov 1991
<i>Criminal Law Amendment Act 1991</i> s. 6(2) and 21 ¹²	37 of 1991	12 Dec 1991	s. 6(2): 12 Dec 1991 (see s. 2(1)); s. 21: 10 Feb 1992 (see s. 2(2) and <i>Gazette</i> 31 Jan 1992 p. 477)
<i>Road Traffic (Bicycle Helmets) Amendment Act 1991</i>	46 of 1991	17 Dec 1991	17 Dec 1991 (see s. 2)
<i>Road Traffic Amendment (Power Assisted Pedal Cycles) Act 1991</i>	50 of 1991	17 Dec 1991	s. 1 and 2: 17 Dec 1991; Act other than s. 1 and 2: 24 Dec 1991 (see s. 2 and <i>Gazette</i> 24 Dec 1991 p. 6395)
<i>Criminal Law Amendment Act 1992</i> Pt. 3	1 of 1992	7 Feb 1992	9 Mar 1992 (see s. 2)
<i>Road Traffic Amendment Act 1992</i>	13 of 1992	16 Jun 1992	16 Jun 1993 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1992</i> published in <i>Gazette</i> 21 Aug 1992 p. 4162-6			21 Aug 1992
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1992</i> published in <i>Gazette</i> 13 Nov 1992 p. 5591-2			13 Nov 1992
<i>Financial Administration Legislation Amendment Act 1993</i> s. 6 and 11	6 of 1993	27 Aug 1993	s. 11: 1 Jul 1993 (see s. 2(1)); s. 6: 27 Aug 1993 (see s. 2(2))
<i>Acts Amendment (Vehicles on Roads) Act 1994</i> Pt. 3	13 of 1994	15 Apr 1994	17 May 1994 (see s. 2 and <i>Gazette</i> 17 May 1994 p. 2065)
<i>Taxi Act 1994</i> s. 48	83 of 1994	20 Dec 1994	10 Jan 1995 (see s. 2 and <i>Gazette</i> 10 Jan 1995 p. 73)

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 Pt. 19</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2(1) and <i>Gazette</i> 30 Dec 1994 p. 7211)
Reprint of the Road Traffic Act 1974 as at 1 Jun 1995 (includes amendments listed above)			
<i>Road Traffic Amendment Act 1995</i>	21 of 1995	13 Jul 1995	s. 1 and 2: 13 Jul 1995; Act other than s. 1 and 2: 25 Nov 1995 (see s. 2 and <i>Gazette</i> 24 Nov 1995 p. 5390)
<i>Acts Amendment (Vehicle Licences) Act 1995 Pt. 2</i>	57 of 1995	20 Dec 1995	20 Dec 1995 (see s. 2)
<i>Sentencing (Consequential Provisions) Act 1995 Pt. 71 and s. 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1996</i> published in <i>Gazette</i> p. 2181-9			24 May 1996
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Consumer Credit (Western Australia) Act 1996 s. 13</i>	30 of 1996	10 Sep 1996	1 Nov 1996 (see s. 2)
<i>Road Traffic Amendment (Measuring Equipment) Act 1996</i>	37 of 1996	27 Sep 1996	27 Sep 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 27(3) and 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2)
<i>Road Traffic Amendment Act 1996</i> ^{13, 14}	76 of 1996 (as amended by No. 49 of 1996 s. 27(4); No. 54 of 2006 s. 43(2))	14 Nov 1996	s. 1 and 2: 14 Nov 1996; Act other than s. 1, 2 and 8(3): 1 Feb 1997 (see s. 2 and <i>Gazette</i> 31 Jan 1997 p. 613)
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1996</i> published in <i>Gazette</i> p. 7014-15			17 Dec 1996

Short title	Number and year	Assent	Commencement
Reprint of the Road Traffic Act 1974 as at 25 Mar 1997 (includes amendments listed above)			
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1997</i> published in <i>Gazette</i> p. 2344-9			13 May 1997
<i>Road Traffic Amendment Act 1997</i> ¹⁵	50 of 1997	12 Dec 1997	s. 1 and 2: 12 Dec 1997; Act other than s. 1 and 2: 1 Jan 1998 (see s. 2 and <i>Gazette</i> 23 Dec 1997 p. 7400)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 106	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1998</i> published in <i>Gazette</i> p. 2799-800			15 May 1998 (see r. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1998</i> published in <i>Gazette</i> p. 3603-4			3 Jul 1998 (see r. 2)
<i>Road Traffic Amendment Act 1998</i>	52 of 1998	7 Dec 1998	7 Dec 1998 (see s. 2)
<i>Perth Parking Management (Consequential Provisions) Act 1999</i> s. 7(4)	16 of 1999	19 May 1999	7 Aug 1999 (see s. 2 and <i>Gazette</i> 6 Aug 1999 p. 3727)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 1999</i> published in <i>Gazette</i> p. 2070-1			25 May 1999 (see r. 2)
<i>Revenue Laws Amendment (Assessment) Act 1999</i> Pt. 3	24 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(3))
Reprint of the Road Traffic Act 1974 as at 17 Sep 1999 (includes amendments listed above)			
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Acts Amendment (Police Immunity) Act 1999</i> s. 9	42 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 2000</i> published in <i>Gazette</i> p. 2421-3			31 May 2000 (see r. 2 and <i>Gazette</i> 17 May 2000 p. 2426)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 39 and 55	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)

Road Traffic Act 1974

Short title	Number and year	Assent	Commencement
<i>Road Traffic Amendment Act 2000 Pt. 2</i> ¹⁶⁻¹⁹	39 of 2000 (as amended by No. 5 of 2002 s. 15; No. 45 of 2002 s. 28(2); No. 84 of 2004 s. 80 (cl. 124))	10 Oct 2000	s. 3, 17(1), 34-37 and 47(3): 30 Jan 2001 (see s. 2 and <i>Gazette</i> 30 Jan 2001 p. 615); s. 18, 23, 24, 27, 29 and 48 and Sch. 1 (except cl. 3 and 5): 5 Feb 2001 (see s. 2 and <i>Gazette</i> 30 Jan 2001 p. 615); s. 19-22, 25, 26, 28 and 45 and Sch. 1 cl. 3 and 5: 7 May 2001 (see s. 2 and <i>Gazette</i> 23 Mar 2001 p. 1665); Proclamation of 9 Feb 2001 p. 767 revoked (see <i>Gazette</i> 23 Mar 2001 p. 1665); s. 6 deleted by No. 5 of 2002 s. 15; s. 4, 5, 7-16, 17(2), 30-33, 38-44, 46, 47(1), (2) and (4): 1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6244-5)
<i>Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000 Pt. 3</i>	51 of 2000	28 Nov 2000	5 Feb 2001 (see s. 2 and <i>Gazette</i> 30 Jan 2001 p. 615)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 2001</i> published in <i>Gazette</i> p. 3247			29 Jun 2001 (see r. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 2001</i> published in <i>Gazette</i> p. 4256-8			14 Aug 2001 (see r. 2)
Reprint of the Road Traffic Act 1974 as at 19 Oct 2001 (includes amendments listed above except those in the <i>Road Traffic Amendment Act 2000</i> s. 4-16, 17(2), 30-33, 38-44, 46, 47(1), (2) and (4))			
<i>Road Traffic Amendment Act 2001</i>	27 of 2001	21 Dec 2001	s. 1 and 2: 21 Dec 2001; Act other than s. 1 and 2: 10 Aug 2002 (see s. 2 and <i>Gazette</i> 9 Aug 2002 p. 3853-4)
<i>Road Traffic Amendment (Vehicle Licensing) Act 2001 Pt. 2</i>	28 of 2001 (as amended by No. 45 of 2002 s. 29(2))	21 Dec 2001	4 Dec 2006 (see s. 2 and <i>Gazette</i> 28 Nov 2006 p. 4889)

Short title	Number and year	Assent	Commencement
<i>Road Traffic (Fees for Vehicle Licenses) Regulations 2002</i> published in <i>Gazette</i> 17 May 2002 p. 2558-60			17 May 2002 (see r. 2)
<i>Motor Vehicle Dealers Amendment Act 2002</i> s. 72	4 of 2002	4 Jun 2002	1 Sep 2002 (see s. 2 and <i>Gazette</i> 13 Aug 2002 p. 4151)
<i>Road Safety Council Act 2002</i> s. 15	5 of 2002	4 Jun 2002	1 Jul 2002 (see s. 2(1) and <i>Gazette</i> 1 Jul 2002 p. 3205)
<i>Machinery of Government (Planning and Infrastructure) Amendment Act 2002</i> Pt. 7 ²⁰	7 of 2002	19 Jun 2002	1 Jul 2002 (see s. 2 and <i>Gazette</i> 28 Jun 2002 p. 3037)
<i>Taxation Administration (Consequential Provisions) Act 2002</i> s. 27 ²¹	45 of 2002	20 Mar 2003	1 Jul 2003 (see s. 2(1) and (2) and <i>Gazette</i> 27 Jun 2003 p. 2383)
<i>Nurses Amendment Act 2003</i> Pt. 3 Div. 7	9 of 2003	9 Apr 2003	9 Apr 2003 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 2003</i> published in <i>Gazette</i> 20 May 2003 p. 1804-6			31 May 2003 (see r. 2)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> Pt. 3 and s. 92	50 of 2003	9 Jul 2003	Pt. 3: 30 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833); s. 92: 15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 105 ²²	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 2004</i> published in <i>Gazette</i> 28 May 2004 p. 1843-5			31 May 2004 (see r. 2)
<i>Road Traffic Amendment Act 2004</i>	6 of 2004	10 Jun 2004	10 Jun 2004 (see s. 2)
<i>Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2004</i>	10 of 2004	23 Jun 2004	s. 1 and 2: 23 Jun 2004; Act other than s. 1 and 2: 4 Sep 2004 (see s. 2 and <i>Gazette</i> 3 Sep 2004 p. 3849)

Road Traffic Act 1974

Short title	Number and year	Assent	Commencement
Reprint 8: The Road Traffic Act 1974 as at 16 Jul 2004 (includes amendments listed above except those in the <i>Road Traffic Amendment Act 2000</i> s. 4, 5, 7-16, 17(2), 30-33, 38-44, 46, 47(1), (2) and (4), <i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i> and the <i>Road Traffic Amendment (Impounding and Confiscation of Vehicles) Act 2004</i>)			
<i>Road Traffic Amendment (Dangerous Driving) Act 2004</i> ²³	44 of 2004	9 Nov 2004	s. 1 and 2: 9 Nov 2004; Act other than s. 1 and 2: 1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7132)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141 ²⁴	59 of 2004 (as amended by No. 2 of 2008 s. 77(13))	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 115 ²⁵	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78, 80 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 2004</i> published in <i>Gazette</i> 24 Dec 2004 p. 6255			1 Feb 2005 (see r. 2)
<i>Road Traffic (Fees for Vehicle Licences) Regulations 2005</i> published in <i>Gazette</i> 27 May 2005 p. 2306-8			31 May 2005 (see r. 2)
Reprint 9: The Road Traffic Act 1974 as at 10 Mar 2006 (includes amendments listed above except those in the <i>Road Traffic Amendment (Vehicle Licensing) Act 2001</i>)			
<i>Road Traffic (Fees for Vehicle Licences) Regulations 2006</i> published in <i>Gazette</i> 26 May 2006 p. 1885-8			31 May 2006 (see r. 2)
<i>Nurses and Midwives Act 2006</i> Sch. 3 cl. 20	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)

Short title	Number and year	Assent	Commencement
<i>Road Traffic Amendment Act 2006 Pt. 2 (s. 3-35)</i> ²⁶⁻²⁸	54 of 2006	26 Oct 2006	s. 27: 7 Jul 2007 (see s. 2 and <i>Gazette</i> 6 Jul 2007 p. 3385); s. 19: 11 Oct 2007 (see s. 2 and <i>Gazette</i> 11 Oct 2007 p. 5475); Pt. 2 (other than s. 19 and 27): 30 Jun 2008 (see s. 2 and <i>Gazette</i> 10 Jun 2008 p. 2471)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Road Traffic Amendment Act 2007</i>	4 of 2007	11 Apr 2007	s. 1 and 2: 11 Apr 2007; Act other than s. 1 and 2: 1 May 2007 (see s. 2 and <i>Gazette</i> 27 Apr 2007 p. 1831)
<i>Road Traffic Amendment (Drugs) Act 2007 Pt. 2</i>	6 of 2007	23 May 2007	12 Oct 2007 (see s. 2 and <i>Gazette</i> 11 Oct 2007 p. 5475)
<i>Chemistry Centre (WA) Act 2007 s. 43</i>	10 of 2007	29 Jun 2007	1 Aug 2007 (see s. 2(1) and <i>Gazette</i> 27 Jul 2007 p. 3735)
<i>Road Traffic Amendment Act (No. 2) 2007 Pt. 2 (s. 3-35)</i>	39 of 2007	21 Dec 2007	Div. 6: 22 Dec 2007 (see s. 2(j)); s. 3-16 (other than s. 6(2)(b)(ii), 19-24, 27-30: 15 Mar 2008 (see s. 2(b)-(j) and <i>Gazette</i> 14 Mar 2008 p. 829); s. 6(2)(b)(ii): 15 Mar 2008 (see s. 2(c)); s. 17, 18 and 25: 30 Jun 2008 (see s. 2(d)-(f)); s. 26 and Div. 5: 1 Jul 2008 (see s. 2(g)-(i) and <i>Gazette</i> 27 Jun 2008 p. 3117); Div. 4 (other than s. 26): 1 Dec 2010 (see s. 2(g) and <i>Gazette</i> 12 Nov 2010 p. 5659)
<i>Acts Amendment (Justice) Act 2008 s. 131</i>	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Duties Legislation Amendment Act 2008 Sch. 1 cl. 33</i>	12 of 2008	14 Apr 2008	1 Jul 2008 (see s. 2(d))

Road Traffic Act 1974

Short title	Number and year	Assent	Commencement
<i>Medical Practitioners Act 2008</i> Sch. 3 cl. 51	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<i>Road Traffic Amendment Act 2008</i>	24 of 2008	13 Jun 2008	s. 1 and 2: 13 Jun 2008 (see s. 2(1)(a)); Act other than s. 1, 2 5(a) and 8: 19 Jul 2008 (see s. 2(1)(b) and <i>Gazette</i> 18 Jul 2008 p. 3329); s. 5(a) and 8: 1 Jul 2009 (see s. 2(1)(b) and (2) and <i>Gazette</i> 23 Jun 2009 p. 2423)
<i>Criminal Law Amendment (Homicide) Act 2008</i> s. 38	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and <i>Gazette</i> 22 Jul 2008 p. 3353)
Reprint 10: The Road Traffic Act 1974 as at 3 Oct 2008 (includes amendments listed above except those in the <i>Medical Practitioners Act 2008</i> , <i>Road Traffic Amendment Act (No. 2) 2007</i> Pt. 2 Div. 4 (other than s. 26) and the <i>Road Traffic Amendment Act 2008</i> s. 5(a) and 8) (Correction in <i>Gazette</i> 19 Oct 2010 p. 5202)			
<i>Road Traffic Amendment (Hoons) Act 2009</i> Pt. 2	23 of 2009	6 Oct 2009	1 Jan 2010 (see s. 2(1)(b) and (2) and <i>Gazette</i> 31 Dec 2009 p. 5421)
<i>Road Traffic Legislation Amendment (Registration Labels) Act 2009</i> Pt. 2	39 of 2009	3 Dec 2009	1 Jan 2010 (see s. 2(b))
<i>Credit (Commonwealth Powers) (Transitional and Consequential Provisions) Act 2010</i> s. 12	14 of 2010	25 Jun 2010	1 Jul 2010 (see s. 2(b) and <i>Gazette</i> 30 Jun 2010 p. 3185)
<i>Standardisation of Formatting Act 2010</i> s. 51	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Road Traffic Amendment Act 2010</i>	20 of 2010	7 Jul 2010	s. 1 and 2: 7 Jul 2010 (see s. 2(a)); Act other than s. 1 and 2: 1 Sep 2010 (see s. 2(b) and <i>Gazette</i> 27 Aug 2010 p. 4105)
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 45	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)

Short title	Number and year	Assent	Commencement
<i>Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010</i> Pt. 2 (other than s. 5, 11, 12(2)(c), (5)(d) and (7)(b), 14 and 15)	51 of 2010	8 Dec 2010	s. 3 and 6-10: 9 Dec 2010 (see s. 2(b)); s. 4 and 13: 9 Apr 2011 (see s. 2(c) and <i>Gazette</i> 8 Apr 2011 p. 1281); s. 12 (other than 12(2)(c), (5)(d) and (7)(b)): 4 Jul 2011 (see s. 2(c) and <i>Gazette</i> 20 May 2011p. 1837)
Reprint 11: The Road Traffic Act 1974 as at 28 Jan 2011 (includes amendments listed above, except the <i>Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010</i> s. 4 and 13)			
<i>Road Traffic Amendment (Alcohol and Drug Related Offences) Act 2011</i> Pt. 2	14 of 2011	25 May 2011	1 Oct 2011 (see s. 2(b) and <i>Gazette</i> 30 Aug 2011 p. 3503)
<i>Road Traffic Legislation Amendment (Information) Act 2011</i> Pt. 2 (other than s. 9)	18 of 2011	2 Jun 2011	30 Jun 2011 (see s. 2(b) and <i>Gazette</i> 29 Jun 2011 p. 2611)
<i>Personal Property Securities (Consequential Repeals and Amendments) Act 2011</i> Pt. 12 Div. 3	42 of 2011	4 Oct 2011	30 Jan 2012 (see s. 2(c) and Cwlth Legislative Instrument No. F2011L02397 cl. 5 registered 21 Nov 2011)

^{1M} Under the *Cross-border Justice Act 2008* section 14, in order to give effect to that Act, this Act must be applied with the modifications prescribed by the *Cross-border Justice Regulations 2009* Part 3 Division 19 as if this Act had been altered in that way. If a modification is to replace or insert a numbered provision, the new provision is identified by the superscript 1M appearing after the provision number. If a modification is to replace or insert a definition, the new definition is identified by the superscript 1M appearing after the defined term.

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Road Traffic Legislation</i>	51 of 2010	8 Dec 2010	To be proclaimed (see s. 2(c))

Amendment

(Disqualification by Notice)

Act 2010 s. 5, 11, 12(2)(c),
(5)(d) and (7)(b), 14 and
15²⁹

Road Traffic Legislation 18 of 2011 2 Jun 2011 To be proclaimed (see s. 2(b))

Amendment (Information)

Act 2011 s. 9³¹

Manslaughter Legislation 58 of 2011 30 Nov 2011 To be proclaimed (see s. 2(b))

*Amendment Act 2011 Pt. 3*³²

² Repealed by the *Interpretation Act 1984*.

³ Section 111(2)(f) of this Act has been deleted.

⁴ The *Road Traffic Amendment Act (No. 2) 1982* s. 30 and 31 deleted the *Road Traffic Act Amendment Act 1978* s. 16(a), (b) and (c) and 23.

⁵ The *Road Traffic Amendment Act (No. 2) 1980* s. 10(2) reads as follows:

- (2) A traffic sign or traffic control signal or similar device purported to have been erected for the purposes of the principal Act and the regulations made thereunder before the coming into operation of this section shall be and always have been a valid and effective traffic sign, traffic control signal, or device for those purposes.

⁶ The *Road Traffic Amendment Act (No. 2) 1982* s. 21(2) is a transitional provision that is of no further effect.

⁷ The *Road Traffic Amendment Act (No. 2) 1987* s. 10(2) reads as follows:

- (2) A certificate that was in force under section 72(3)(b) of the principal Act immediately before the commencement of subsection (1)(d) shall have effect after that commencement as if it certified the person named in the certificate as being competent to operate all types of breath analysing equipment.

⁸ The *Road Traffic Amendment Act (No. 2) 1987* s. 11(b) had not come into operation when it was deleted by the *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 112.

⁹ The *Road Traffic Amendment Act 1988* s. 17(2) and (3) read as follows:

- (2) In subsection (3) ***the relevant regulations*** means any regulations purporting to have been made under the principal Act before 1 July 1984 that would have been authorised under section 43(7)

or (8) of the *Interpretation Act 1984* if they had been made on or after 1 July 1984.

- (3) The principal Act as enacted from time to time before 1 July 1984 is deemed to have authorised the making of the relevant regulations and those regulations shall be deemed to have taken effect and had the force of law accordingly.

¹⁰ The *Road Traffic Amendment (Random Breath Tests) Act 1989* s. 4 and the *Road Traffic Amendment Act 1996* s. 41 amended the *Road Traffic Amendment (Random Breath Tests) Act 1988* s. 5 which was deleted by the *Road Traffic Amendment Act 2000* s. 67.

¹¹ The *Acts Amendment (Chemistry Centre (WA)) Act 1990* s. 9 and 10 read as follows:

9. Saving of certificates and labels

A certificate or label issued under the principal Act that purports to have been signed by the director of the Government Chemical Laboratories or prepared by the Government Chemical Laboratories before the commencement of this Act shall continue to have effect as if this Act had not come into operation.

10. Validation

Every act or thing purporting to have been done by the Director or any other officer of the Chemistry Centre (WA) under the principal Act before the commencement of this Act that would have been lawful if this Act had been in force at the time when it was done is hereby validated and declared to have been lawfully done.

¹² The *Criminal Law Amendment Act 1991* it. 1(2) of Pt. A of the Sch. reads as follows:

- (2) Notwithstanding subclause (1), section 59(2), as it was immediately before the commencement of this clause, continues to apply in relation to —
- (a) any death that occurred before the commencement of this clause; and
 - (b) any death that occurs after the commencement of this clause if the driving which directly or indirectly causes the death occurs not less than a year and a day before the commencement of this clause.

¹³ The *Road Traffic Amendment Act 1996* s. 52 reads as follows:

52. Actions of delegates validated

- (1) Anything done before the commencement of this section by a person acting under any delegation purporting to have been made by the Traffic Board under any written law, is as valid and has the same force and effect, and is to be regarded as having always been as valid and had the same force and effect, as if it had been done by the Traffic Board.
- (2) In subsection (1) —
Traffic Board means the Traffic Board constituted under section 6 of the *Road Traffic Act 1974* as it was before the commencement of this Act.

¹⁴ The *Road Traffic Amendment Act 1996* s. 8(3) was deleted by the *Road Traffic Amendment Act 2006* s. 43(2).

¹⁵ The amendment to s. 20(2) referred to in the *Road Traffic Amendment Act 1997* s. 13 did not come into operation because of an error in the reference to the provision to be amended.

¹⁶ The *Road Traffic Amendment Act 2000* s. 48, which gives effect to Sch. 1, reads as follows:

48. Savings and transitional

Schedule 1 has effect.

Schedule 1 reads as follows:

Schedule 1 — Savings and transitional

[s. 48]

1. Interpretation

In this Part —

commencement day means the day on which this Act comes into operation under section 2.

2. Section 18 amendments have no effect in relation to certain applications

The amendments made by section 18 have no effect in relation to an application for a driver's licence by a person who holds a permit issued under section 48C of the *Road Traffic Act 1974* before the commencement day.

3. Licences to drive vehicles formerly classified by reference to use

If —

- (a) immediately before the commencement day, a person was the holder of a driver's licence authorising the person to drive a motor vehicle classified under section 43(2) by reference to the purpose for which or manner in which it is being used; and
- (b) on and after the commencement day the purpose or manner is prohibited by regulations under section 43(1)(aa) of the *Road Traffic Act 1974*,

the licence, or any new class of licence held by the person under section 43(1)(e) of the *Road Traffic Act 1974*, is to be regarded as having been endorsed to confer the authority to drive for that purpose or in that manner.

4. Section 23 amendments have effect only in relation to licences issued after commencement

The amendments made by section 23 have effect only in relation to a driver's licence issued after the commencement day.

5. Duplicate licences

If —

- (a) after the commencement day a person applies for a duplicate of a driver's licence under section 48B of the *Road Traffic Act 1974*; and
- (b) the licence was issued before the commencement day without the photograph and signature of the licence holder,

then section 42B of the *Road Traffic Act 1974* applies to the issue of the duplicate as if it were the issue of a driver's licence.

¹⁷ The amendment in the *Road Traffic Amendment Act 2000* s. 16(2) to amend s. 25(2) is not included because the subsection it sought to amend had been deleted by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 1062(2).

¹⁸ The amendment in the *Road Traffic Amendment Act 2000* —
s. 33 to amend s. 59(1a) is not included because the subsection it sought to amend had been deleted by the *Criminal Code Amendment Act 2004* Sch. 3 cl. 27(3);

s. 33 to amend s. 59(3) is not included because the subsection it sought to amend had been amended by the *Road Traffic Amendment (Dangerous Driving) Act 2004* s. 5(3).

¹⁹ The amendment in the *Road Traffic Amendment Act 2000* s. 39 to amend s. 89 is not included because the section it sought to amend had been deleted by the *Criminal Law Amendment (Simple Offences) Act 2004* s. 82.

²⁰ The *Machinery of Government (Planning and Infrastructure) Amendment Act 2002* s. 67-69 read as follows:

67. Agreements under former *Transport Co-ordination Act 1966* section 15C

- (1) To the extent that, immediately before the commencement of this Act, an agreement under the former section 15C made provision about the performance of functions of the former Director General under a relevant Act, the agreement continues, when this Act comes into operation, as an agreement under the new provision of the relevant Act.
- (2) To the extent that the agreement continues under subsection (1), it applies as if —
 - (a) instead of being made by the Minister referred to in the former section 15C, the agreement had been made by the Director General referred to in the new provision of the relevant Act; and
 - (b) instead of providing for the performance of functions of the former Director General, the agreement made similar provision for the performance of the corresponding functions of the Director General referred to in the new provision of the relevant Act.
- (3) In this section —

former Director General means the Director General of Transport under the *Transport Co-ordination Act 1966* section 8 as in force before it was repealed by this Act;

former section 15C means the *Transport Co-ordination Act 1966* section 15C as in force before it was repealed by this Act;

new provision means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978* section 4B;
- (b) the *Motor Vehicle Drivers Instructors Act 1963* section 4A;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943* section 3QA; or

- (d) the *Road Traffic Act 1974* section 6B;

relevant Act means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978*;
- (b) the *Motor Vehicle Drivers Instructors Act 1963*;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943*; or
- (d) the *Road Traffic Act 1974*.

68. Delegations under former *Transport Co-ordination Act 1966* section 18

- (1) To the extent that, immediately before the commencement of this Act, a delegation under the former section 18 applied to the performance of functions or powers of the former Director General under a relevant Act, the delegation continues, when this Act comes into operation, as a delegation under the new provision of the relevant Act.
- (2) To the extent that the delegation continues under subsection (1), it applies as if —
 - (a) instead of being made by the former Director General, the delegation had been made by the Director General referred to in the new provision of the relevant Act;
 - (b) instead of delegating the performance of functions of the former Director General, the performance of the corresponding functions of the Director General referred to in the new provision of the relevant Act were delegated; and
 - (c) any Ministerial approval that would have been required in order for the delegation to be made under the new provision of the relevant Act had been given.
- (3) In this section —

former Director General means the Director General of Transport under the *Transport Co-ordination Act 1966* section 8 as in force before it was repealed by this Act;

former section 18 means the *Transport Co-ordination Act 1966* section 18 as in force before it was amended by this Act;

new provision means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978* section 4A;
- (b) the *Motor Vehicle Drivers Instructors Act 1963* section 4;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943* section 3QB;

- (d) the *Rail Safety Act 1998* section 57A;
- (e) the *Road Traffic Act 1974* section 6A; or
- (f) the *Transport Co-ordination Act 1966* section 18;

relevant Act means —

- (a) the *Control of Vehicles (Off-road Areas) Act 1978*;
- (b) the *Motor Vehicle Drivers Instructors Act 1963*;
- (c) the *Motor Vehicle (Third Party Insurance) Act 1943*;
- (d) the *Rail Safety Act 1998*;
- (e) the *Road Traffic Act 1974*; or
- (f) the *Transport Co-ordination Act 1966*.

69. Regulations about transitional matters

- (1) If there is no sufficient provision in this Act for dealing with a transitional matter, regulations under an Act amended by this Act may include any provision that is required, or is necessary or convenient, for dealing with the transitional matter.
- (2) In subsection (1) —
transitional matter means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the Acts amended by this Act as in force before this Act comes into operation to the provisions of those Acts as in force after this Act comes into operation.
- (3) Regulations including a provision described in subsection (1) may be expressed to have effect before the day on which they are published in the *Gazette*.
- (4) To the extent that a regulation including a provision described in subsection (1) may have effect before the day of its publication in the *Gazette*, it does not —
 - (a) affect in a manner prejudicial to any person (other than the State or an agency of the State), the rights of that person existing before the day of its publication; or
 - (b) impose liabilities on any person (other than the State or an agency of the State) in respect of anything done or omitted to be done before the day of its publication.

²¹ The *Taxation Administration (Consequential Provisions) Act 2002* s. 30 and 32 will not come into operation (see s. 2(2)).

²² The amendment in the *Statutes (Repeals and Minor Amendments) Act 2003* s. 105(4) is not included because the section it sought to amend had been replaced by the *Sentencing Legislation Amendment and Repeal Act 2003* s. 28.

²³ The *Road Traffic Amendment (Dangerous Driving) Act 2004* s. 12 reads as follows:

12. Review

- (1) The Minister is to carry out a review of the operations and effectiveness of the amendments made to the *Road Traffic Act 1974* by this Act as soon as is practicable after the expiry of 18 months from the commencement of the *Road Traffic Amendment (Dangerous Driving) Act 2004*.
- (2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause that report to be laid before each House of Parliament as soon as practicable.

²⁴ The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 46 was deleted by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

²⁵ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

²⁶ The amendment in the *Road Traffic Amendment Act 2006* —
s. 15(a) to amend the Table to s. 64(2) is not included because the subsection it sought to amend had been amended by the *Road Traffic Amendment Act (No. 2) 2007* s. 6.
s. 22(9) to amend s. 76 is not included because the subsection it sought to amend had been amended by the *Road Traffic Amendment (Vehicle Licensing) Act 2001* s. 23.

²⁷ The *Road Traffic Amendment Act 2006* s. 35(2) and Pt. 3 read as follows:

35. Sections 111AA and 111AB inserted and saving

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

Part 3 — Transitional provision

36. Existing demerit points

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

²⁸ The *Road Traffic Amendment Act 2006* Pt. 4 Div. 4 will not be included because the *Road Traffic Amendment (Vehicle Licensing) Act 2001* has already commenced (see s. 45-48).

²⁹ On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010* s. 5, 11, 12(2)(c), (5)(d) and (7)(b), 14 and 15 had not come into operation. They read as follows:

Part 2 — Road Traffic Act 1974 amended

5. Section 51 amended

Delete section 51(4) and insert:

- (4A) If the holder of a driver's licence that is a provisional licence is disqualified from holding or obtaining a driver's licence —
- (a) by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; or
 - (b) by a disqualification notice given to the person under section 71C,

the provisional licence is, by operation of this subsection, suspended so long as the disqualification continues in force.

- (4) While a provisional licence is suspended under subsection (4A) it is of no effect, but this section does not operate so as to extend the period for which the licence may be valid or effective beyond the time when the licence would be due to expire.

11. Sections 71C to 71H inserted

After section 71B insert:

71C. Disqualification by member of Police Force

- (1) This section applies if —
 - (a) a member of the Police Force (the *member*), as a result of an analysis of a sample of a person's breath or blood, has reason to suspect that the person (the *alleged offender*) has committed an offence under section 63 or 64 (the *alleged offence*); or
 - (b) a member of the Police Force (the *member*) has reason to suspect that a person (the *alleged offender*) has committed an offence against section 67 (the *alleged offence*).
- (2) If this section applies the member may give the alleged offender a notice that is in accordance with this section (a *disqualification notice*) by delivering the notice to the alleged offender personally.
- (3) The disqualification notice must contain a statement to the effect that the alleged offender is disqualified from holding or obtaining a driver's licence for a period commencing on receipt of the notice and ending on the day that is 2 months after the day the notice is received unless before the expiry of that period the notice is revoked under section 71E, 71F or 71G.
- (4) The disqualification notice must —
 - (a) identify the provision under which the notice is given; and
 - (b) specify the grounds on which the notice is given; and
 - (c) identify the time and date on which the alleged offence was committed; and
 - (d) identify where the alleged offence was committed; and
 - (e) describe the alleged offence with reasonable clarity; and
 - (f) identify the provision that creates the alleged offence.
- (5) The disqualification notice must also include a statement to the effect that section 71F contains law about the circumstances in which the alleged offender may apply to a court for an order revoking the notice.
- (6) A disqualification notice cannot be given to an alleged offender —
 - (a) if the alleged offence is an offence under section 63 or 64, more than 10 days after the later of —
 - (i) the day of the alleged offence; or

- (ii) if a sample of the alleged offender's blood was taken under section 66 in connection with the alleged offence, the day on which a member of the Police Force receives an analysis result of the sample;
 - or
 - (b) if the alleged offence is an offence under section 67, more than 10 days after the day of the alleged offence.
- (7) If a member gives a person a disqualification notice the member must write on the notice the time and date when it was given and the time and date when the disqualification expires.
- (8) A member may, by written notice given to a person to whom a disqualification notice has been given, amend the disqualification notice to correct any error in the disqualification notice.
- (9) If a member gives a person a disqualification notice or a notice amending a disqualification notice in accordance with this section the member must, as soon as is practicable, cause particulars of the notice to be sent to the Director General.

71D. Consequences of disqualification notice

- (1) A person who is given a disqualification notice in accordance with section 71C is disqualified from holding or obtaining a driver's licence for the period set out in the notice unless the notice is sooner revoked.
- (2) The period of disqualification imposed under subsection (1) is concurrent with any other period for which the person is disqualified from holding or obtaining a driver's licence.

71E. Revocation of disqualification notice by member of Police Force

- (1) A member of the Police Force must immediately revoke a disqualification notice if —
 - (a) the member becomes aware that the breath analysing equipment used to analyse the sample of the person's breath provided in connection with the offence to which the notice relates was faulty at the time of the analysis; or
 - (b) a charge for the offence to which the notice relates has not been laid within 10 days after the time when the notice was given; or
 - (c) a charge for the offence to which the notice relates is discontinued.

- (2) If under this section a member of the Police Force revokes a disqualification notice the member must, as soon as is practicable, cause notice of the revocation to be given to —
 - (a) the person to whom the disqualification notice was given under section 71C; and
 - (b) the Director General.

71F. Revocation of disqualification notice by court order

- (1) A person to whom a disqualification notice is given under section 71C may apply to the Magistrates Court or, if the person is under 18 years of age, to the Children's Court, for an order directing the Commissioner of Police to revoke the notice.
- (2) An application made under subsection (1) must —
 - (a) be made in accordance with any applicable rules of court; and
 - (b) include particulars of the exceptional circumstances that the applicant alleges justifies the making of the order; and
 - (c) be served on the Commissioner of Police at least 14 days before it is heard and determined.
- (3) The Commissioner of Police is entitled to be heard on an application made under subsection (1).
- (4) The court may either make an order directing the Commissioner of Police to revoke the disqualification notice from the day specified in the order or refuse the application.
- (5) The court must not make an order directing the Commissioner of Police to revoke a disqualification notice unless it is satisfied that exceptional circumstances exist that justify the making of such an order.
- (6) If a court makes an order directing the Commissioner of Police to revoke a disqualification notice, the court is to cause a copy of the order to be sent to the Director General.

71G. Revocation of disqualification on acquittal or dismissal of charge

- (1) If a court —
 - (a) acquits a person of an offence to which a disqualification notice relates; or
 - (b) dismisses a charge for an offence to which a disqualification notice relates,the disqualification notice is revoked.

- (2) If under this section a disqualification notice is revoked, the court is to cause particulars of the revocation to be sent to the Director General.

71H. Period of disqualification to be taken into account on conviction

- (1) This section applies if a court convicts a person of the offence to which a disqualification notice relates.
- (2) If this section applies, the court is to take into account any period of disqualification imposed under section 71D(1) in respect of the disqualification notice when making an order disqualifying the person from holding or obtaining a driver's licence.

12. Section 76 amended

- (2) In section 76(1a):
 - (c) after each of paragraphs (a) to (f) insert:

or
- (5) In section 76(3):
 - (d) after each of paragraphs (a) to (d) insert:

and
- (7) In section 76(3b):
 - (b) after paragraph (a) insert:

or

14. Section 104K amended

- (1) Delete section 104K(2).
- (2) In section 104K(4) delete the passage that begins with "election," and continues to the end of the subsection and insert:

election.

(3) After section 104K(4) insert:

- (5A) The day stated in the notice as the day on which the period of disqualification is to commence is to be —
- (a) a day that is after the notice is given; and
 - (b) if subsection (1)(b) applies, a day that is after the period of disqualification referred to in that paragraph has ended.

15. Section 106A amended

After section 106A(2) insert:

- (3) Despite subsection (2), a period for which the court must, in accordance with subsection (1), disqualify an offender for an offence is to be reduced by any period during which the offender was disqualified by a disqualification notice given to the offender under section 71C in relation to the offence.

³⁰ Footnote no longer applicable.

³¹ On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment (Information) Act 2011* s. 9 had not come into operation. It reads as follows:

Part 2 — Road Traffic Act 1974 amended

9. Section 43A inserted

At the end of Part IVA Division 3 insert:

43A. Matters to do with identity

- (1) In this section —
destroyed includes damaged so as to be unusable;
photograph includes a negative or an image stored electronically.
- (2) The Director General cannot issue a learner's permit until the applicant has provided, in support of the application, any evidence

required by the regulations to establish the applicant's identity and residential address in this State.

- (3) Except as prescribed in the regulations, the Director General cannot issue a learner's permit unless the applicant has provided the Director General with —
- (a) a photograph taken at the time of the application; and
 - (b) a signature made at the time of the application,
- for use on the learner's permit document and, in the circumstances described in subsection (5), on a driver's licence document issued to the applicant.
- (4) The photograph and signature are to be provided in a manner and form approved by the Director General.
- (5) A photograph or signature provided under this section may be used on a driver's licence document for a driver's licence granted or renewed within 10 years of the application for the learner's permit.
- (6) The Director General must ensure that any photograph or signature provided under this section is destroyed if it, or a copy of it, has not been used on —
- (a) a learner's permit document for a learner's permit issued in the preceding 10 years; or
 - (b) a driver's licence document for a driver's licence granted or renewed in the preceding 10 years.
- (7) A person who, other than for the purposes of this Part, possesses a photograph or signature provided under this section that is not on a learner's permit document or a driver's licence document commits an offence.
Penalty: Imprisonment for 2 years.
- (8) Subsection (7) does not apply to a person who possesses a photograph provided under this section as a result of its disclosure under Division 4A.
- (9) A person employed or engaged in connection with any aspect of the production of learner's permit documents or driver's licence documents or otherwise concerned in the administration of this Part, who, otherwise than in the administration of this Part —
- (a) reproduces, by any means, a photograph or signature provided under this section; or
 - (b) causes or permits another person to do so,
- commits an offence.
Penalty: Imprisonment for 2 years.

³² On the date as at which this compilation was prepared, the *Manslaughter Legislation Amendment Act 2011* Pt. 3 had not come into operation. It reads as follows:

Part 3 — Road Traffic Act 1974 amended

5. Act amended

This Part amends the *Road Traffic Act 1974*.

6. Section 59 amended

- (1) In section 59(1) in the Summary conviction penalty delete “penalty:” and insert:

penalty in a case in which the incident does not occasion the death of another person:

- (2) After section 59(1) insert:

- (2A) For an offence against this section that was committed before the day on which the *Manslaughter Legislation Amendment Act 2011* section 6(1) came into operation amending subsection (1), subsection (1) applies as if that amendment had not been made.

7. Section 67 amended

- (1) In section 67(3a) in the Summary conviction penalty delete “penalty:” and insert:

penalty in a case in which the incident does not occasion the death of another person:

- (2) After section 67(3a) insert:

- (3B) For an offence against this section that was committed before the day on which the *Manslaughter Legislation Amendment Act 2011* section 7(1) came into operation amending subsection (3a), subsection (3a) applies as if that amendment had not been made.

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
a surrender alternative vehicle notice	79BCD(2)
alleged offender	79BCA(1), 79BCD(1), 79D(2), 79D(2), 79D(2), 79D(2), 79D(6), 102(5a)
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