



Western Australia

Transport Legislation Amendment (Identity Matching Services) Act 2022

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Transport Legislation Amendment (Identity Matching Services) Act 2022

No. 8 of 2022

An Act to amend the *Road Traffic (Administration) Act 2008*, the *Road Traffic (Authorisation to Drive) Act 2008* and the *Western Australian Photo Card Act 2014* to give effect to an intergovernmental agreement on identity matching services, and for related purposes.

[Assented to 14 April 2022]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Transport Legislation Amendment (Identity Matching Services) Act 2022*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**Part 2 — *Road Traffic (Administration) Act 2008*
amended**

3. Act amended

This Part amends the *Road Traffic (Administration) Act 2008*.

4. Section 4 amended

In section 4 insert in alphabetical order:

photograph includes an electronic record of a
photograph;

signature includes an electronic record of a signature;

5. Section 11 amended

In section 11(5A):

- (a) delete “information” (1st occurrence);
- (b) delete “information” (2nd occurrence) and insert:

disclosure

- (c) in paragraph (e) delete “information.” and insert:

information;

- (d) after paragraph (e) insert:

- (f) photographs and signatures provided to the
CEO under the *Road Traffic (Authorisation to
Drive) Act 2008* Part 2.

6. Sections 16B and 16C inserted

After section 16A insert:

16B. Disclosure of information with consent

The CEO may disclose information about a person obtained in the administration of a road law to another person with the consent of the person to whom the information relates.

16C. Disclosure by means of automated system

- (1) If the CEO is authorised to disclose a photograph, signature or information under a road law, the disclosure may, subject to the regulations, be made by means of an automated system.
- (2) The automated system must comply with any requirements set out in the regulations.
- (3) The automated system may, subject to the regulations, allow relevant persons to retrieve data in the system and to be sent alerts about data that has been modified or added to the system.

7. Section 36 amended

In section 36(2) after each of paragraphs (a) and (ba) insert:

or

Part 3 — *Road Traffic (Authorisation to Drive) Act 2008* amended

8. Act amended

This Part amends the *Road Traffic (Authorisation to Drive) Act 2008*.

9. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

related Act means —

- (a) the *Western Australian Photo Card Act 2014*;
or
- (b) an Act prescribed by the regulations.

- (2) In section 3(1) in the definition of *provisional licence* delete “granted.” and insert:

granted;

10. Section 9 amended

- (1) Delete section 9(1).
- (2) In section 9(3) delete “regulations,” and insert:

regulations or as authorised by subsection (5),

- (3) Delete section 9(4A).

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- (4) Delete section 9(5) to (8) and insert:
 - (5) The CEO is authorised to use on a driver's licence document a photograph or signature provided by the applicant under section 11A, or a related Act, within the period of 10 years before the application.

11. Section 11A amended

- (1) Delete section 11A(1).
- (2) In section 11A(3) delete “regulations,” and insert:

regulations or as authorised by subsection (6),
- (3) In section 11A(5) delete “10 years of” and insert:

the period of 10 years after
- (4) Delete section 11A(6) to (9) and insert:
 - (6) The CEO is authorised to use on a learner's permit document a photograph or signature provided by the applicant under this Act, or a related Act, within the period of 10 years before the application.

12. Part 2 Division 3A replaced

Delete Part 2 Division 3A and insert:

Division 3A — Information management

11B. Terms used

(1) In this Division —

identifying information means —

- (a) a photograph of a person provided to or used by the CEO under this Part; or
- (b) a signature of a person provided to or used by the CEO under this Part; or
- (c) information associated with such a photograph or signature to facilitate identification of the person;

intergovernmental agreement means the Intergovernmental Agreement on Identity Matching Services between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory made on 5 October 2017, as in force from time to time.

(2) A reference in this Division to a photograph or signature provided to or used by the CEO under this Part is a reference to a photograph or signature provided to or used by the CEO under this Part whether before or after the day specified in the *Transport Legislation Amendment (Identity Matching Services) Act 2022* section 2(b).

11C. Disclosure of identifying information to prescribed person

(1) In this section —

authorised purpose means —

- (a) the purpose of performing functions under a written law or a law of the Commonwealth, another State or a Territory; or
- (b) a purpose related to the administration or enforcement of a written law or a law of the Commonwealth, another State or a Territory; or
- (c) a purpose, prescribed by the regulations for the purposes of this definition, that is related to a purpose set out in clause 1.2 of the intergovernmental agreement; or
- (d) the purpose of developing and testing computer systems that connect to the National Driver Licence Facial Recognition Solution (as defined in clause 3.1 of the intergovernmental agreement);

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

- (2) The CEO may disclose identifying information to a prescribed person if the CEO considers that the information is required by the person for an authorised purpose.
- (3) The following persons must not use disclosed identifying information for a purpose other than the authorised purpose for which it was disclosed —
 - (a) a person to whom the information is disclosed under subsection (2);

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

Penalty for this subsection: imprisonment for 2 years or a fine of 480 PU.

11D. Disclosure of identifying information with consent

The CEO may disclose identifying information to another person with the consent of the person to whom the information relates.

11E. Disclosure of photographs to police, ASIO and law enforcement officials

- (1) In this section —

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 of a class prescribed, by the regulations for the purposes of this section;

police official means —

- (a) the Commissioner of Police; or

- (b) a police officer 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.
- (2) The CEO must disclose photographs provided to or used by the CEO under this Part to a police official for the purposes of the performance of the police official's functions under a road law or another written law.
- (3) The CEO must disclose photographs provided to or used by the CEO under this Part 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.
- (4) The CEO may, with the prior approval of the Commissioner of Police, disclose photographs provided to or used by the CEO under this Part to a law enforcement official if the CEO considers that the photographs are required for the purposes of the performance of the law enforcement official's functions under a written law or a law of another jurisdiction.

11F. Disclosure of photographs to executor or administrator

If the person shown in a photograph provided to or used by the CEO under this Part has died, the CEO may disclose the photograph to an executor or administrator of the person's estate.

11G. Disclosure to CEO (road passenger services)

- (1) In this section —
CEO (road passenger services) means the CEO as defined in the *Transport (Road Passenger Services) Act 2018* section 4(1).
- (2) The CEO may disclose photographs provided to or used by the CEO under this Part to the CEO (road passenger services) for the purposes of the performance of the functions of the CEO (road passenger services) under the *Transport (Road Passenger Services) Act 2018*.

11H. Possession and reproduction of photographs and signatures

- (1) A person must not, other than for the purposes of this Part or a related Act, possess a photograph or signature provided to or used by the CEO under this Part that is not on a driver's licence document or learner's permit document.
Penalty for this subsection: imprisonment for 2 years or a fine of 480 PU.
- (2) Subsection (1) does not apply to a person who possesses a photograph or signature as a result of its disclosure under this Division.
- (3) A person employed or engaged in connection with any aspect of the production of driver's licence documents, learner's permit documents or otherwise concerned in the administration of this Part must not, other than for the purposes of this Part, a related Act or the *Transport (Road Passenger Services) Act 2018* Part 7 —
 - (a) reproduce a photograph or signature provided to or used by the CEO under this Part by any means; or

- (b) cause or permit another person to reproduce a photograph or signature provided to or used by the CEO under this Part by any means.

Penalty for this subsection: imprisonment for 2 years or a fine of 480 PU.

11I. No subpoena or orders for disclosure of identifying information

Identifying information is not to be compelled to be produced or disclosed in civil proceedings by subpoena or otherwise, except in proceedings under the following Acts —

- (a) the *Criminal Organisations Control Act 2012*;
- (b) the *Criminal Property Confiscation Act 2000*;
- (c) the *High Risk Serious Offenders Act 2020*.

11J. Annual report in relation to identifying information

- (1) In this section —

Department means the department of the Public Service principally assisting in the administration of this Act;

Entity has the meaning given in clause 3.1 of the intergovernmental agreement;

Face Matching Services has the meaning given in clause 3.1 of the intergovernmental agreement.

- (2) Within 3 months after the end of the financial year, the CEO must give to the Minister a report containing the following information for that financial year —
 - (a) the name of each Entity with which the Department had an arrangement that allowed for identifying information to be shared with the Entity through the Face Matching Services;

- (b) details of any loss of, or unauthorised access to or disclosure of, identifying information that is likely to result in serious harm to a person to whom the information relates;
 - (c) any other information that the Minister requests the CEO to include in relation to identifying information.
- (3) The report may form part of the annual report submitted to the Minister under the *Financial Management Act 2006* section 63(2)(a).
- (4) If the report does not form part of that annual report, the Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of the House after the Minister receives it.

11K. Tabling amendments to intergovernmental agreement

If the intergovernmental agreement (other than a Schedule that does not relate to this State) is amended, the Minister must cause a copy of the amendment to be laid before each House of Parliament within 14 sitting days of the House after the amendment is made.

**Part 4 — *Western Australian Photo Card Act 2014*
amended**

13. Act amended

This Part amends the *Western Australian Photo Card Act 2014*.

14. Section 3 amended

- (1) In section 3 delete the definition of *photograph*.
- (2) In section 3 insert in alphabetical order:

photograph includes an electronic record of a photograph;

related Act means —

- (a) the *Road Traffic (Authorisation to Drive) Act 2008*; or
- (b) a prescribed Act;

signature includes an electronic record of a signature.

- (3) In section 3 in the definition of *prescribed* delete “regulations.” and insert:

regulations;

15. Section 6 amended

- (1) In section 6(3) and (4)(b) delete “Act.” and insert:

Act or a related Act.

(2) After section 6(4) insert:

(5) The CEO is authorised to use on a photo card a photograph or signature provided by the applicant under this Act, or a related Act, within the period of 10 years before the application.

16. Section 10 amended

In section 10(3) in the Penalty delete “Penalty:” and insert:

Penalty for this subsection:

17. Section 11 amended

(1) At the end of section 11(1) insert:

Penalty for this subsection: a fine of \$2 500.

(2) At the end of section 11(2) insert:

Penalty for this subsection: a fine of \$2 500.

(3) At the end of section 11(3) insert:

Penalty for this subsection: a fine of \$2 500.

(4) At the end of section 11(4) insert:

Penalty for this subsection: a fine of \$2 500.

- (5) At the end of section 11 delete the Penalty and insert:

Penalty for this subsection: a fine of \$2 500.

18. Section 12 replaced

Delete section 12 and insert:

12. Terms used

- (1) In this Part —

identifying information means —

- (a) a photograph of a person provided to or used by the CEO under this Act; or
- (b) a signature of a person provided to or used by the CEO under this Act; or
- (c) information associated with such a photograph or signature to facilitate identification of the person;

intergovernmental agreement means the Intergovernmental Agreement on Identity Matching Services between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory made on 5 October 2017, as in force from time to time.

- (2) A reference in this Part to a photograph or signature provided to or used by the CEO under this Act is a reference to a photograph or signature provided to or used by the CEO under this Act whether before or after the day specified in the *Transport Legislation Amendment (Identity Matching Services) Act 2022* section 2(b).

12A. Disclosure by means of automated system

- (1) If the CEO is authorised to disclose a photograph, signature or information under this Part, the disclosure may, subject to the regulations, be made by means of an automated system.
- (2) The automated system must comply with any requirements set out in the regulations.
- (3) The automated system may, subject to the regulations, allow relevant persons to retrieve data in the system and to be sent alerts about data that has been modified or added to the system.

19. Section 14 amended

- (1) In section 14(1) in the definition of *authorised purpose* delete paragraph (c) and insert:
 - (c) in relation to photo card information — a purpose prescribed for the purposes of this paragraph; or
 - (d) in relation to identifying information —
 - (i) the purpose of developing and testing computer systems that connect to the National Driver Licence Facial Recognition Solution (as defined in clause 3.1 of the intergovernmental agreement); or
 - (ii) a purpose, prescribed by the regulations for the purposes of this paragraph, that is related to a purpose set out in clause 1.2 of the intergovernmental agreement;

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- (2) In section 14(2) and (3) before “photo” insert:

identifying information or

- (3) In section 14(3) delete the Penalty and insert:

Penalty for this subsection: imprisonment for 2 years or
a fine of \$24 000.

Note: The heading to amended section 14 is to read:

**Disclosure of identifying information or photo card information to
prescribed person**

20. Section 14A inserted

After section 14 insert:

**14A. Disclosure of identifying information or photo card
information with consent**

The CEO may disclose identifying information or
photo card information to another person with the
consent of the person to whom the information relates.

21. Section 15 amended

In section 15(2), (3) and (4) after “disclose photographs” insert:

provided to or used by the CEO under this Act

22. Section 16 amended

In section 16 after “photograph” (1st occurrence) insert:

provided to or used by the CEO under this Act

23. Section 17 amended

(1) Delete section 17(1), (2) and (3) and insert:

(1) A person must not, other than for the purposes of this Act or a related Act, possess a photograph or signature provided to or used by the CEO under this Act that is not on a photo card.

Penalty for this subsection: imprisonment for 2 years or a fine of \$24 000.

(2) Subsection (1) does not apply to a person who possesses a photograph or signature as a result of its disclosure under this Part.

(2) In section 17(4):

(a) delete “Act —” and insert:

Act or a related Act —

(b) in paragraph (a) delete “signature; or” and insert:

signature provided to or used by the CEO under this Act; or

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- (c) delete the Penalty and insert:

Penalty for this subsection: imprisonment for 2 years or
a fine of \$24 000.

Note: The heading to amended section 17 is to read:

Possession and reproduction of photographs and signatures

24. Sections 17A to 17C inserted

At the end of Part 3 insert:

17A. No subpoena or order for disclosure of identifying information

Identifying information is not to be compelled to be produced or disclosed in civil proceedings by subpoena or otherwise, except in proceedings under the following Acts —

- (a) the *Criminal Organisations Control Act 2012*;
- (b) the *Criminal Property Confiscation Act 2000*;
- (c) the *High Risk Serious Offenders Act 2020*.

17B. Annual report in relation to identifying information

- (1) In this section —

Entity has the meaning given in clause 3.1 of the intergovernmental agreement;

Face Matching Services has the meaning given in clause 3.1 of the intergovernmental agreement.

- (2) Within 3 months after the end of the financial year, the CEO must give to the Minister a report containing the following information for that financial year —
 - (a) the name of each Entity with which the Department had an arrangement that allowed for identifying information to be shared with the Entity through the Face Matching Services;
 - (b) details of any loss of, or unauthorised access to or disclosure of, identifying information that is likely to result in serious harm to a person to whom the information relates;
 - (c) any other information that the Minister requests the CEO to include in relation to identifying information.
- (3) The report may form part of the annual report submitted to the Minister under the *Financial Management Act 2006* section 63(2)(a).
- (4) If the report does not form part of that annual report, the Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of the House after the Minister receives it.

17C. Tabling amendments to intergovernmental agreement

If the intergovernmental agreement (other than a Schedule that does not relate to this State) is amended, the Minister must cause a copy of the amendment to be laid before each House of Parliament within 14 sitting days of the House after the amendment is made.

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25. Section 20 amended

In section 20(5):

- (a) after “disclose” insert:

photographs and signatures provided to the CEO under
this Act and

- (b) delete “information” (2nd occurrence) and insert:

disclosure

26. Section 21 amended

In section 21(1) delete the Penalty and insert:

Penalty for this subsection: imprisonment for one year
or a fine of \$12 000.
