

ROAD TRAFFIC LEGISLATION AMENDMENT BILL (NO. 2) 2015

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [2.10 pm]: I move —

That the bill be now read a second time.

The state's road traffic legislation is under constant review in order to remain contemporary and to adapt in a manner that will meet the Liberal government's ongoing commitment to reducing the road toll. This bill amends the Road Traffic Act 1974, the Road Traffic (Administration) Act 2008, the Road Traffic (Authorisation to Drive) Act 2008 and the Young Offenders Act 1994 to implement a number of proposals that will deter errant drivers and resolve a number of technical and administrative difficulties within our road traffic laws.

The most significant amendments contained in this bill are to the Road Traffic Act 1974. These are to establish the power to require compulsory blood testing of suspected drivers involved in a traffic crash that resulted in death or serious bodily harm; to create an offence of careless driving causing death, grievous bodily harm or bodily harm; and to create offences of providing driving instruction while under the influence of alcohol or a prescribed illicit drug.

With respect of compulsory blood testing, the lack of adequate powers for police to require the compulsory blood testing of suspected drivers involved in a traffic crash that resulted in death or serious bodily harm was first identified by the findings of a 2004 coronial inquiry. This inquiry was into a crash in which two children who were passengers in a vehicle drowned after the vehicle was washed from a low-level river crossing. Police were not able to request the driver to provide a blood sample under section 66 of the Road Traffic Act 1974 as the four-hour time limit for taking blood had elapsed. In his findings, the State Coroner stated —

Regrettably section 66 of the Road Traffic Act 1974 provides for very limited circumstances in which a member of the Police Service may require a driver to provide a sample of blood for analysis with a view to determining whether that driver has consumed medications or illegal drugs.

A later fatal vehicle crash in which intoxication may have been a factor led the State Coroner to comment —

In a case where there has been a fatal traffic crash, it is my view that police should be permitted to obtain a sample of blood for testing from each driver involved in the crash irrespective of whether or not the police officers present are in a position to make any determination as to intoxication or otherwise.

To implement both these recommendations by the State Coroner for mandatory blood testing, this bill amends section 66 of the Road Traffic Act 1974 to provide that a police officer may request that a blood and/or urine sample be provided by the driver or suspected driver of a motor vehicle following an incident that involves a fatality, or when a person has been admitted to a hospital as a result of injuries sustained in the incident. If the driver or suspected driver is unable to consent to the taking of a blood sample, police will be empowered to authorise the taking of the sample. The time limit for taking blood and/or urine samples in circumstances in which there has been death or serious injury will be extended from four hours to 12 hours from the time of the incident.

As I stated previously, the bill establishes a new offence of careless driving causing death, grievous bodily harm or bodily harm. Members will be aware that at times there has been public disquiet about the perceived leniency of the small fine given to a driver of a vehicle involved in a crash that has resulted in a death. One of the reasons that this occurs is the court could not conclusively establish that the actions of the driver were dangerous rather than careless. Currently, there is a significant disparity in the penalties available to a court if death or serious injury results from careless driving rather than dangerous driving. A person convicted of careless driving that results in death can only be given a fine of up to \$600, whereas a person convicted of dangerous driving causing death can be given a penalty of 10 years' imprisonment and a mandatory driver's licence disqualification of two years. The distinction between what is considered driving in a "dangerous" manner and what is considered "careless" driving can be negligible. There are too many variables to enable specific definitions to be prescribed of what constitutes dangerous or careless driving, and as such the determination of whether the manner of driving is considered dangerous or careless is left to the discretion of the court to decide by relying upon the facts of the case and precedents.

The State Coroner identified this as a problem following a 2011 coronial inquiry into the death of Mr Jeremy Armstrong, who died as a result of being hit by a car on Ocean Drive in Bunbury. In addressing the leniency of the penalty that the driver of the vehicle received, the State Coroner called for an alternative charge

for driving that falls below the standard that is expected from a reasonably prudent driver and that causes death or serious injury. The State Coroner's comments were subsequently echoed in 2012 by Magistrate Colin Roberts in the Magistrates Court in Broome while presiding over a careless driving offence that resulted in the death of the passenger.

This bill addresses the disparity in penalties by establishing an offence of careless driving causing death or grievous bodily harm or bodily harm, with a maximum penalty of three years' imprisonment or a fine of \$36 000, and, irrespective of what other penalty is given, a mandatory driver's licence disqualification of not less than three months.

Rather than set differing graduated penalties, as currently applies to the related offences of dangerous driving causing death or grievous bodily harm and dangerous driving causing bodily harm, it was decided to set one broad penalty that allows the discretion of the court to impose an appropriate sentence based on the individual circumstances of the offence. It is expected that a court will set a penalty for this new offence within the scope provided by the bill that will be relative and appropriate, giving consideration to the level of negligence and the degree of injury and to the current graduated penalties that are available in the Road Traffic Act for the more serious offences of dangerous driving causing death or grievous bodily harm and dangerous driving causing bodily harm. The new offence of careless driving causing death, grievous bodily harm or bodily harm is an alternative verdict to the more serious offences that involve the element of dangerous driving. In addition to creating the new offence, the bill also amends the maximum fine penalty for careless driving to a more realistic level of \$1 500.

In regard to the amendment contained in this bill to create offences for providing driving instruction while under the influence of alcohol or a prescribed illicit drug, the need for this type of deterrent was identified by a review of national and international literature on young driver training, licensing and regulatory systems conducted by the Monash University Accident Research Centre. I think members would agree that it is reasonable to expect that people who are instructing learner drivers should not have blood alcohol limits that are more than they are legally permitted to have when they are driving. One of the recommendations of the review is to bring our state's road traffic legislation into line with other Australian jurisdictions by the establishment of a blood alcohol restriction on a person supervising a learner driver. In evaluating this proposal, the former Office of Road Safety, now the Road Safety Commission, concluded that such a restriction should apply also to persons supervising a learner driver while under the influence of a prescribed illicit drug. The proposal was subsequently considered and supported by the Road Safety Council of Western Australia.

To implement this proposal, the bill amends the Road Traffic Act to establish the two offences of providing driving instruction while under the influence of alcohol, and providing driving instruction while under the influence of a prescribed illicit drug. The penalty for these offences will be a fine of not less than \$300 and not more than \$500. In most instances, a person who provides or attempts to provide driving instruction to a learner driver in a passenger or light commercial vehicle will not commit an offence unless they have a blood alcohol content of, or above, 0.05 grams of alcohol per 100 millilitres of blood. However, there will be a zero blood alcohol content restriction in some instances, including when the person providing instruction is the holder of an extraordinary licence; is a recently, within the previous three years, disqualified driver; has recently, in the past three years, obtained a driver's licence after it was cancelled as a result of an order disqualifying the instructor from driving for specified alcohol or drug-driving offences; or is instructing a learner driver in a vehicle that has a gross combination mass exceeding 22.5 tonnes. In regard to the prescribed illicit drug offence, the presence of any detectable amount of the active ingredients of the drugs commonly known as cannabis, ice, speed or ecstasy in the oral bodily fluid or blood of a person providing or attempting to provide driving instruction to a learner driver will be an offence. These drugs are specified as they are believed to be the most common illicit drugs in use that impair a driver's abilities.

The bill also amends the Road Traffic (Administration) Act 2008 to enable the use of point-to-point speed enforcement in Western Australia. This will be an integral component of the expansion of the automated speed enforcement program in order to be comparable on a population basis to the best performing jurisdictions in speed enforcement in Australia. Currently, point-to-point speed enforcement has been implemented in New South Wales, Victoria, Queensland and South Australia, and preliminary evaluations suggest that these systems have the capacity to reduce speeding transgression rates to a lower level than that achieved by overt fixed speed cameras. International research also shows that point-to-point speed enforcement promotes reductions in vehicular speed over longer road sections, minimises speed variability, decreases the rates of high-range speeding and achieves greater network-wide effects than cameras that simply measure instantaneous speeds. Importantly, point-to-point systems can reduce casualty crashes by up to one-third along the whole route on which they are installed.

Currently, the speed cameras in Western Australia determine only the speed at which a vehicle is travelling at a particular point in time. In contrast, point-to-point speed enforcement involves the installation of a series of cameras at multiple locations along a road section. Licence plate recognition determines the time that a vehicle passes between two or more of these fixed points to calculate whether the average speed travelled between the points would have exceeded the speed limit. If the average speed exceeds the speed limit for that road section, image and offence data are transmitted to a central processing unit from the local processor via a communication network. Validated offences are subsequently issued with an infringement notice.

This type of technology does not fit into the current definition of speed or distance-measuring equipment articulated in the Road Traffic (Administration) Act 2008. Consequently, this bill contains amendments to the definition of speed and distance-measuring equipment, which will be necessary to enable the enforcement of point-to-point infringements. Other amendments to give effect to point-to-point operations include the definition of average speed; the provision for ministerial approval of the types of devices and/or systems to ascertain the average speed of a vehicle between two points; the definition for the calculation of average speed over both a single speed zone and multiple speed zones; the deeming that average speed is to be proof of actual speed in an average speed zone; the provision for evidentiary certificates to be issued relating to aspects of installation, testing and operation of average speed measuring and recording equipment; provision for a surveyor's certificate verifying that the distance between two cameras is the shortest distance; and, to provide that all drivers are able to be held liable for the average speed offence in situations in which drivers swap within an average speed location.

In addition to the significant amendments for compulsory blood testing, the creation of a new careless driving offence, alcohol and drug restrictions for the supervisors of learner drivers and the introduction of point-to-point speed enforcement, this bill also makes lesser, but nonetheless important, amendments to our road traffic laws. I will not go into significant detail in relation to these and ask members to refer to the extensive explanatory memorandum for this bill, which explains these amendments in greater detail. These lesser amendments are to the Road Traffic Act 1974, the Road Traffic (Administration) Act 2008, the Road Traffic (Authorisation to Drive) Act 2008 and the Young Offenders Act 1994.

Specifically, this bill amends the Road Traffic Act 1974 to —

- provide for the resolution of an anomaly in the offence of driving without authorisation while under suspension or disqualification under section 49 whereby a person who is disqualified by a court and did not at the time hold a licence because it had expired or had been surrendered is liable to a lesser maximum penalty than another who did not hold a licence because it was refused, suspended or cancelled;

- give drivers an option to report a crash to Western Australia Police online;

- provide a mandatory disqualification of a driver's licence of two years for an offence under section 54, "Driver in incident occasioning bodily harm to stop, ensure assistance and give information", when death or grievous bodily harm results or 12 months in the case of bodily harm;

- give the Commissioner of Police the power to certify a person as being competent to operate all types of breath-analysing equipment;

- establish the power to issue infringement notices based on photographic evidence for the offence of using an unlicensed light vehicle;

- repeal the superseded section 50;

- remove an anomaly in section 67 whereby a person who is required to accompany a police officer to a place in order to provide a sample of breath or allow a sample of blood to be taken for analysis cannot be arrested if they refuse to accompany the officer and is liable for a lesser penalty than if they refuse to provide a sample of breath or blood; and

- correct drafting errors made in an earlier amendment to section 64A so that drivers whose licences were cancelled under the now repealed section 75 will continue to be liable for the penalty if they drive with a blood alcohol content of 0.02 grams per 100 millilitres of blood or more, and drivers of vehicles having a gross combination mass of or exceeding 22.5 tonnes will be required to have a zero blood alcohol content.

The bill also amends the Road Traffic (Administration) Act 2008 to —

- give the Commissioner of Police the power to disclose information about a motor vehicle incident that resulted in bodily harm to anyone or damage to property, to the Insurance Commission of Western Australia, to a person involved or suffering injury or damage in the incident or to a person the commissioner considers requires the information for road safety purposes;

update terminology relating to the use of speed and distance-measuring equipment;
correct the unintended establishment of a statutory limitation on the initiation of a prosecution for an indictable offence under the Road Traffic Act 1974; and
give the Minister for Police the power to approve or revoke the types of apparatus and equipment used to measure speed and distance and to ascertain the presence of alcohol and drugs in samples of breath, blood, urine and oral fluid.

Further, the bill amends the Road Traffic (Authorisation to Drive) Act 2008 to remove an anomaly whereby a person who is convicted of an offence under the Road Traffic Act 1974 and sentenced to imprisonment and also is disqualified from holding or obtaining a driver's licence will not be subject to the full consequences of their action because their period of disqualification will elapse while the person is in custody.

Finally, this bill amends the Young Offenders Act 1994 to add to schedule 1 the Road Traffic Act 1974 offences at section 61, "Dangerous driving", section 62, "Careless driving", section 62A, "Causing excessive noise or smoke from vehicle's tyres", and section 67A, "Failure to comply with other requirements of a police officer", made under sections 66 to 66E as offences for which a caution cannot be given, which cannot be referred to a juvenile justice team and for which a conviction will normally be recorded. In addition, schedule 2 of the Young Offenders Act 1994 will be amended to incorporate the Road Traffic Act 1974 offences at section 54, "Driver in incident occasioning bodily harm to stop, ensure assistance and give information" and the new section 59BA, "Careless driving causing death, grievous bodily harm or bodily harm", as offences for which a caution cannot be given, which cannot be referred to a juvenile justice team, for which a conviction will normally be recorded and which may lead to the mandatory detention of an offender who repeatedly commits the offence.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend this bill to the house and table the explanatory memorandum.

[See paper 4459.]

Debate adjourned, pursuant to standing orders.