

ROAD TRAFFIC AMENDMENT (DRIVING OFFENCES) BILL 2018

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Environment)**, read a first time.

Second Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment) [8.37 pm]: I move —

That the bill be now read a second time.

The Road Traffic Amendment (Driving Offences) Bill 2018 strengthens Western Australia’s road safety laws and sends a strong message to drivers who cause irreparable or significant harm to other road users and their families. The bill introduces new circumstances of aggravation to the offences of dangerous driving causing death, grievous bodily harm or bodily harm under the Road Traffic Act 1974, and is known as “Charlotte’s Law”.

This important reform addresses inadequacies in the law, highlighted by the sentence handed down to Dylan James Adams, an outlaw motorcycle gang member, who killed 19-year-old Charlotte Pemberton in a traffic crash. Miss Pemberton was the passenger in a car turning right at traffic lights when Adams’ motorcycle, travelling above the speed limit, struck the passenger side, killing her. Police estimate that Adams was driving at around 40 kilometres an hour above the speed limit. It was subsequently found that Adams did not hold a motorcycle driver’s licence. Adams was convicted of dangerous driving causing death and no authority to drive. He was sentenced to four years and three months’ imprisonment, disqualified from driving for a period of three years and fined \$200 for driving without the appropriate class of driver’s licence. The maximum penalty for dangerous driving causing death is 10 years’ imprisonment. If this offence is committed in circumstances of aggravation, the maximum penalty doubles to 20 years’ imprisonment. Pursuant to section 49AB(1) of the Road Traffic Act 1974, a person commits an offence in circumstances of aggravation if the person was driving a stolen vehicle, the person was driving at 45 kilometres an hour or more above the speed limit, or the person was driving the vehicle to escape pursuit by a police officer. At the time of Miss Pemberton’s death, it could not be proved that Adams was driving at 45 kilometres an hour or more above the speed limit or that any of the other criteria applied, so he could not be charged with dangerous driving causing death in circumstances of aggravation. Our government believes that actions such as driving at excessive speed and without the appropriate licence deserve to attract a higher penalty. This bill gives the courts the ability to impose tougher penalties of imprisonment in such circumstances.

To achieve this, the Road Traffic Amendment (Driving Offences) Bill 2018 amends the Road Traffic Act 1974 relating to dangerous driving causing death, grievous bodily harm or bodily harm and the Road Traffic (Authorisation to Drive) Act 2008 to, firstly, introduce a new circumstance of aggravation of driving whilst not authorised to drive under the Road Traffic (Authorisation to Drive) Act 2008—“circumstance of aggravation—no authority to drive”; and, secondly, amend the existing circumstance of aggravation of driving at 45 kilometres an hour or more above the speed limit by reducing it to 30 kilometres an hour or more above the speed limit.

The new circumstance of aggravation—no authority to drive would apply if the driver: has never held a “prescribed authorisation to drive”—namely, a learner’s permit, an Australian driver’s licence, an extraordinary licence or a licence granted under the law of an external licensing authority, to drive the type of vehicle concerned; or had applied for, but had been refused, an Australian driver’s licence; or at the time of the commission of the offence, is disqualified from holding or obtaining an Australian driver’s licence; or ceased to hold an Australian driver’s licence most recently held other than if they had voluntarily surrendered the licence, or the licence had expired; or is required to drive a vehicle fitted with an alcohol interlock device and at the time of the offence is driving without the required authorisation to drive or is driving in breach of the alcohol interlock condition of their authorisation to drive; or holds a prescribed authorisation to drive, but their authorisation does not authorise them to drive the vehicle concerned; or holds a prescribed authorisation to drive that is an extraordinary licence and at the time of the offence the driver is driving in contravention of the requirements or conditions of the extraordinary licence. The criteria whereby the person holds a prescribed authorisation to drive but that authorisation does not permit them to drive the vehicle concerned, covers a wide range of situations—for example, a person who is authorised to drive a car, but at the time of the commission of the offence is found instead to be riding a motorcycle without the correct class of licence. The new circumstance of aggravation—no authority to drive would not apply in relation to a disqualification made under section 19 or 43 of the Fines, Penalties and Infringement Notices Enforcement Act 1994.

The intention of the bill’s amendments and associated tougher penalties reflects the level of criminal culpability and community expectations. The bill has been futureproofed to exclude certain situations from the circumstances of aggravation. To achieve this, the bill amends the Road Traffic (Authorisation to Drive) Act 2008 to enable exclusions to the new circumstance of aggravation—no authority to drive to be prescribed in the Road Traffic (Authorisation to Drive) Regulations 2014. This is because it is the Road Traffic (Authorisation to Drive) Regulations 2014 that determine the different kinds of authorisation to drive classes of vehicles that may be

conferred by a driver's licence. Prescribing the exclusion to the circumstance of aggravation—no authority to drive in the Road Traffic (Authorisation to Drive) Regulations 2014 ensures that any future changes made to classes of vehicles prescribed in the Road Traffic (Authorisation to Drive) Regulations 2014 can be considered for exclusion that applies for the purposes of the Road Traffic Act 1974.

This bill also provides that the minister administering the Road Traffic (Authorisation to Drive) Act 2008—the Minister for Transport—will consult with the minister administering the Road Traffic Act 1974 regarding proposed regulations excluding a person from the new circumstance of aggravation—no authority to drive. This ensures that any exclusions consider their effect on charges of dangerous driving causing death, grievous bodily harm and bodily harm under the Road Traffic Act 1974. I can inform the house that at this point, there is no need to make any such regulations to exclude any situations from the new circumstance of aggravation—no authority to drive.

Drivers who dangerously kill or cause serious injury on our roads while driving at excessive speed or without an appropriate licence should face the full weight of the law. The community expects nothing less, especially given the tragic consequences that those actions can have for other road users and their families.

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 the bill, to be known as “Charlotte’s Law”, to the house and table the explanatory memorandum.

[See paper 1648.]

Debate adjourned, pursuant to standing orders.