

ROAD TRAFFIC AMENDMENT (DRIVING OFFENCES) BILL 2018

EXPLANATORY MEMORANDUM

OVERVIEW

The purpose of the *Road Traffic Amendment (Driving Offences) Bill 2018* is to amend the *Road Traffic Act 1974* and *Road Traffic (Authorisation to Drive) Act 2008* to address issues in relation to the circumstances of aggravation applying to the offences of dangerous driving causing death, grievous body harm or bodily harm.

The Bill introduces new circumstances of aggravation, namely “no authority to drive”, or driving whilst unlicensed, suspended or disqualified in appropriate circumstances; and driving at 30 kilometres per hour over the speed limit, (which amends the existing ‘circumstance of aggravation’ of driving at 45 kilometres per hour over the speed limit).

CLAUSE 1 – SHORT TITLE

Sets out the name of the Act.

CLAUSE 2 – COMMENCEMENT

This clause provides that the Act comes into operation as follows —

- a) Part 1 – on the day on which this Act receives Royal Assent;
- b) the rest of the Act [Parts 2 and 3] – on a day fixed by proclamation, and different days may be fixed for different provisions.

Part b) of Clause 2 is necessary, as various agencies, such as the Director of Public Prosecutions, WA Police Prosecuting Branch and members of the judiciary need to be notified of the amendments. It is anticipated that Parts 2 and 3 of the Act will be proclaimed on the same day.

CLAUSE 3 – ACT AMENDED

This clause provides that Part 2 of Bill amends the *Road Traffic Act 1974* (RTA).

CLAUSE 4 –SECTION 49AB AMENDED

Section 49AB of the RTA outlines a range of “circumstances of aggravation” that apply to the offences of dangerous driving causing death or grievous bodily harm (s.59 RTA) and dangerous driving causing bodily harm [s.59A RTA).

These circumstances of aggravation are subject to higher maximum penalties for the above offences if:

- a) the person was driving a stolen vehicle; or
- b) the person was driving at 45 km/h or more above the speed limit; or
- c) the person was driving the vehicle to escape pursuit by a police officer.

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Section 49AB of the RTA is proposed to be amended to:

- (1) insert a new subsection (1AA) which provides a definition of “prescribed authorisation” for the purpose of providing clarity for the new circumstances of aggravation this Bill creates in section 49AB(1) of the RTA;

A “prescribed authorisation” means —

- (i) a learner’s permit; or
- (ii) an Australian driver licence; or
- (iii) a licence or authorisation granted under the law of an external licensing authority as defined in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1);

and

includes an extraordinary licence as defined in 19 the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1).

- (2) create the following new circumstances of aggravation in section 49AB(1) of the RTA;

- (aa) the person has never held a prescribed authorisation;
- (ab) the person has held a prescribed authorisation but is a person described in section 49(3)(a), (b), (ca), (c) or (da);

The persons described in sub sections 49(3) (a), (b), (ca), (c) (da) are a person:

- (a) who has applied for, but has been refused, an Australian driver licence of a kind required;
- (b) who, at the time of the commission of the offence, is disqualified from holding or obtaining an Australian driver licence of a kind required, other than a person who 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 a corresponding law of another jurisdiction, whether or not the person has ever held an Australian driver licence of the kind required;
- (ca) 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 —

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- (i) because the person had, before the time of the commission of the offence, voluntarily surrendered the licence most recently held; or
 - (ii) because the licence expired; or
 - (iii) because the person 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 a corresponding law of another jurisdiction;
- (c) whose authority to drive, whether under an Australian driver licence or otherwise, is for the time being suspended other than a person who 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 a corresponding law of another jurisdiction;
- (da) who because of a previous alcohol interlock offence, 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;
- (ac) the person holds a prescribed authorisation but the prescribed authorisation does not authorise the person to drive a vehicle of the kind concerned;
- (ad) the person holds a prescribed authorisation 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 licence.

Further information, in respect of paragraph (ac) above, in relation to the classes of Western Australian drivers licences and the vehicles that may be driven under those classes, is provided at Attachment 1.

- (3) amend the existing speed related circumstance of aggravation at section 49AB(1)(b) to reduce the speed above the speed limit at which the circumstance of aggravation will apply down from 45 km/h to 30km/h.
- (4) insert a new subsection (2A) which provides that subsection (1)(ac) does not apply to a person who is member of a class of persons prescribed for the purposes of the subsection by regulations made under the *Road Traffic (Authorisation to Drive) Act 2008* section 4(7).

The regulations made under section 4(7) will enable exclusions to be prescribed for persons holding a specified class of authorisation or driving a specified kind of vehicle for that class of authorisation.

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CLAUSE 5 – ACT AMENDED

This clause provides that Part 3 of Bill amends the *Road Traffic (Authorisation to Drive) Act 2008*.

CLAUSE 6 – SECTION 4 AMENDED

Clause 6 amends section 4 of the *Road Traffic (Authorisation to Drive) Act 2008* to insert new subsections (7) and (8).

Section 4 of the *Road Traffic (Authorisation to Drive) Act 2008* enables Regulations to be made under that Act to establish a driver licensing scheme under which the Director General of Transport grants people licences to drive motor vehicles and keeps a driver's licence register to record information about drivers' licences, and the identification of people driving motor vehicles under the authority of those licences is facilitated

Proposed new subsection (7) enables exclusions to the new circumstance of aggravation – no authority to drive (proposed under clause 4(1) and (2) of the Bill) to be prescribed in the *Road Traffic (Authorisation to Drive) Regulations 2014*.

This power is required because the classes of authorisation to drive that may be conferred by a driver's licence are prescribed in the *Road Traffic (Authorisation to Drive) Regulations 2014*. 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 amendments made to the classifications of authorisations to drive in the regulations, can then be considered for the exclusion that applies to the new circumstances of aggravation for the purposes of the *RTA*

Proposed new subsection (8) provides that the Minister administering the *Road Traffic (Authorisation to Drive) Act 2008*, the Minister for Transport, will be required to consult with the Minister administering the *Road Traffic Act 1974*, in regard to regulations amended or repealed, to avoid any unintended consequences to certain circumstances of aggravation.

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Attachment 1

CLASSES OF DRIVER'S LICENCES – WESTERN AUSTRALIA

Driver's licence class	Motor vehicle description	Other motor vehicles licence holder is entitled to drive
R	A motor cycle or a motor carrier	
C	A motor vehicle, other than a motor cycle or motor carrier, that has a GVM of 4.5 t or less and that is equipped to seat not more than 12 adults including the driver	A moped
LR	A motor vehicle, other than a motor cycle or motor carrier, that — (a) has a GVM of 4.5 t or less and that is equipped to seat more than 12 adults including the driver; or (b) has a GVM of more than 4.5 t but not more than 8 t	A motor vehicle of class C or a moped
MR	A motor vehicle, other than a motor cycle or motor carrier, that has 2 axles and a GVM of more than 8 t	A motor vehicle of class LR or C or a moped
HR	A motor vehicle, other than a motor cycle or motor carrier, that has at least 3 axles and a GVM of more than 8 t	A motor vehicle of class MR, LR or C or a moped
HC	A motor vehicle that is attached to — (a) a semi-trailer; or (b) a trailer that has a GVM of more than 9 t	A motor vehicle of class HR, MR, LR or C or a moped
MC	Any other motor vehicle	A motor vehicle of class HC, HR, MR, LR or C or a moped