

# Road Traffic Legislation Amendment Bill 2014

## Explanatory Memorandum

### Recommended changes to penalties for speeding and other traffic offences

The Road Safety Council (RSC) Penalty Review Working Group reviewed the penalties recommended by the Centre for Automotive Safety Research (CASR) that were outlined in their report *Review of penalties under the WA Road Traffic Code 2000 and management of recidivist speeding offenders* (2012).

Taking into account the RSC and CASR advice, a number of penalties are to be increased.

The penalties affected by changes may be broken down into eight broad groups of penalty categories:

1. Speeding offences
  - a. General
  - b. Heavy vehicles
2. Failure to give way offences
  - a. Failure to give way at intersections
  - b. Failure to give way to vulnerable road users
  - c. Other failure to give way offences
3. Disobeying access control signs
4. Failure to keep left and overtaking offences
5. Following too closely
6. Non-restraint use
7. Non-helmet use by motorcycle riders
8. In-vehicle distractions
9. Drink driving infringements
10. Preventing effective identification of number plates

To give effect to the revised penalties, amendments to the following pieces of legislation are required:

- *Road Traffic Act 1974* – s. 111(2)(k) & s. 102(8)(b) to increase maximum penalty and maximum modified penalty that can be prescribed under regulations
- *Road Traffic Code 2000* – modified penalties and demerit points for a range of offences
- *Road Traffic (Infringement) Regulations 1975* – schedule 1, modified penalties for s. 64AA and s. 64AAA, inclusion of obscuring number plate offences
- *Road Traffic (Licensing) Regulations 1975* – to increase penalty for obscuring number plate and create a new offence of altering a number plate to prevent identification
- consequential amendments to the *Road Traffic (Administration) Act 2008*, the *Road Traffic (Authorisation to Drive) Act 2008* and the *Road Traffic (Vehicles) Act 2012*

The majority of the recommended changes have been made by amending the above mentioned regulations using the existing heads of power within the *Road Traffic Act 1974*. Several of the recommended changes are above the maximum allowed in the Act and require amendments to be made.

## **SUMMARY OF THE LEGISLATIVE AMENDMENTS CONTAINED IN THE *ROAD TRAFFIC LEGISLATION AMENDMENT BILL 2014***

The *Road Traffic Act 1974* determines both the maximum penalty and maximum modified penalty that can be prescribed under regulations. As the proposed enhancements to some existing penalties are greater than the maximum allowed by the *Road Traffic Act 1974*, changes to this Act are required.

Further to this, given the impending commencement of the Compliance and Enforcement legislation, the *Road Traffic Legislation Amendment Bill 2014* includes consequential amendments to the *Road Traffic (Administration) Act 2008*, the *Road Traffic (Authorisation to Drive) Act 2008* and the *Road Traffic (Vehicles) Act 2012*.

In addition to the consequential amendments, the Bill updates reference to the proposed location of the definition of a 'novice driver' within the *Road Traffic (Authorisation to Drive) Act 2008*.

The *Road Traffic Legislation Amendment Bill 2014* presents the opportunity to update the amendment to the *Road Traffic Act 1974* proposed by the *Road Traffic Legislation Amendment Act 2012* and to do so before the proclamation of section 2(b) of the *Road Traffic (Administration) Act 2008*.

On that proclamation, the following legislation would also come into operation: the *Road Traffic (Authorisation to Drive) Act 2008*, the *Road Traffic (Vehicles) Act 2012* and the *Road Traffic Legislation Amendment Act 2012*.

### **Part 1 – Preliminary**

#### **1. Short title**

This clause provides that, when this Bill passes, it will be known as the *Road Traffic Legislation Amendment Act 2014*.

#### **2. Commencement**

This clause details when the provisions of this Bill will commence operation. Paragraph (b) will provide that the operative provisions of the Act will commence on the day after the day upon which the *Road Traffic Legislation Amendment Act 2014* receives the Royal Assent. The operative provisions require no administrative preparations prior to their commencement.

### **Part 2 – *Road Traffic Act 1974* amended**

#### **3. Act amended**

This clause provides that all of the provisions contained in Part 2 of the Bill will amend the *Road Traffic Act 1974*.

#### **4. Section 102 amended**

Section 102(8)(a) of the *Road Traffic Act 1974* provides that regulations may be made prescribing offences for the purpose of section 102. The effect of which is that a prescribed offence may be dealt with by way of a modified penalty via infringement. Section 102(8)(b) provides that prescribed penalties for prescribed offences may not exceed 20PU (\$1000).

The proposed increases to modified penalties for high level speeding and the offence of obscuring number plates have been recommended to carry modified penalties of 24PU (\$1200) which is in excess of the current maximum.

This clause amends Section 102(8)(b) of the *Road Traffic Act 1974* to increase the maximum penalty that may be prescribed to 40PU (\$2000).

#### **5. Section 111 amended**

Section 111(2)(k) of the *Road Traffic Act 1974* provides that regulations may impose maximum penalties of 24PU (\$1200) for a first offence and 48PU (\$2400) for any subsequent offence.

It is intended to increase the maximum penalty for speeding offences pursuant to regulation 17 of the *Road Traffic Code 2000* to 64PU (\$3200) and the maximum penalties for various restraint and motorcycle helmet use offences (Part 16 *Road Traffic Code 2000*) to 56PU (\$2800). These penalties are in excess of the existing regulation making power.

This clause amends section 111(2)(k)(a) to provide for a maximum penalty for regulations of 64PU (\$3200).

To maintain a distinction between the maximum penalty for a first offence and that for a subsequent offence, the penalty for a subsequent offence in section 111(2)(k)(b) is to be amended to provide for a maximum penalty of 96PU (\$4800).

### **Part 3 — *Road Traffic (Administration) Act 2008* amended**

#### **6. Act amended**

This clause provides that all of the provisions contained in Part 3 of the Bill will amend the *Road Traffic (Administration) Act 2008*.

#### **7. Section 85 amended**

Section 85 of the *Road Traffic (Administration) Act 2008* will, upon commencement of that Act, replace part of the existing section 102 of the *Road Traffic Act 1974*.

The effect of section 85 is that a prescribed offence may be dealt with by way of a modified penalty via infringement not exceeding 20PU (\$1000).

The proposed increases to modified penalties for high level speeding and the offence of obscuring number plates have been recommended to carry modified penalties of 24PU (\$1200) which is in excess of the current maximum.

This clause amends Section 85 of the *Road Traffic (Administration) Act 2008* to increase the maximum penalty that may be prescribed to 40PU (\$2000).

## **8. Section 143 amended**

Section 143 of the *Road Traffic (Administration) Act 2008* provides a head of power to make regulations for the purposes of the Act.

This clause amends section 143, inserting a head of power to provide that regulations may impose penalties not exceeding a fine of 64 PU (\$3200) for a first offence and a fine of 96 PU (\$4800) for any subsequent offence. This is consistent with the amendments to section 111(2)(k) of the *Road Traffic Act 1974*, pursuant to clause 5 of the Bill.

## **Part 4 — Road Traffic (Authorisation to Drive) Act 2008 amended**

### **9. Act amended**

This clause provides that all of the provisions contained in Part 4 of the Bill will amend the *Road Traffic (Authorisation to Drive) Act 2008*.

### **10. Section 61 amended**

Section 61 of the *Road Traffic (Authorisation to Drive) Act 2008* provides a head of power to make regulations for the purposes of the Act. Subsection (3)(a), provides that regulations may impose penalties not exceeding a fine of 24 PU (\$1200) for a first offence, and not exceeding a fine of 48 PU (\$2400) for any subsequent offence.

This clause amends section 61(3)(a) to provide that regulations may impose penalties not exceeding a fine of 64 PU (\$3200) for a first offence and a fine of 96 PU (\$4800) for any subsequent offence. This is consistent with the amendments to section 111(2)(k) of the *Road Traffic Act 1974*, pursuant to clause 5 of the Bill.

## **Part 5 — Road Traffic (Vehicles) Act 2012 amended**

### **11. Act amended**

This clause provides that all of the provisions contained in Part 5 of the Bill will amend the *Road Traffic (Vehicles) Act 2012*.

### **12. Section 132 amended**

Section 132 of the *Road Traffic (Vehicles) Act 2012* provides a head of power to make regulations for the purposes of the Act. Subsection (2)(i), provides that regulations may impose penalties not exceeding a fine of 24 PU (\$1200) for a first offence, and not exceeding a fine of 48 PU (\$2400) for any subsequent offence.

This clause amends section 132(2)(i) to provide that regulations may impose penalties not exceeding a fine of 64 PU (\$3200) for a first offence and a fine of 96 PU (\$4800) for any subsequent offence. This is consistent with the amendments to section 111(2)(k) of the *Road Traffic Act 1974*, pursuant to clause 5 of the Bill.

## **Part 6 — Road Traffic Legislation Amendment Act 2012 amended**

### **13. Act amended**

This clause provides that all of the provisions contained in Part 6 of the Bill will amend the *Road Traffic Legislation Amendment Act 2012*.

### **14. Section 11A inserted**

The compliance and enforcement suite of road traffic legislation is proposed to commence in early 2015. The definition of 'external licensing authority', currently in section 5(1) of the *Road Traffic Act 1974* (RTA), will be moved to section 3(1) of the *Road Traffic (Authorisation to Drive) Act 2008*, leaving no such definition in the RTA. Section 50A(1) of the RTA, however, will continue to reference the term after the amendment has been made.

This clause provides a definition for the only remaining reference to that term in the RTA once section 5 of that Act is replaced by the *Road Traffic Legislation Amendment Act 2012* section 6. The definition would be the same substantively.

### **15. Section 13 amended**

Section 13 of the *Road Traffic Legislation Amendment Act 2012* will (when proclaimed) amend sections 64A(2)(a) of the *Road Traffic Act 1974*. The *Road Traffic Act 1974* section 64A(2)(a) currently reads: "is a novice driver as defined in section 104(2)". This clause amends the definition to read: "is a novice driver as defined in the *Road Traffic (Authorisation to Drive) Act 2008* section 40(2)".

### **16. Section 14 deleted**

Section 14 of the *Road Traffic Legislation Amendment Act 2012* will (when proclaimed) seek to amend the definition of *novice driver* in section 64AAA of the *Road Traffic Act 1974*. As there is no longer any reference to the definition of a novice driver in section 64AAA, it is appropriate to delete section 14 of the *Road Traffic Legislation Amendment Act 2012*.