

# Road Traffic (Miscellaneous Amendments) Bill 2012

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Western Australia

LEGISLATIVE ASSEMBLY

**Road Traffic (Miscellaneous Amendments)  
Bill 2012**

**A Bill for**

**An Act to amend —**

- **the *Road Traffic Act 1974*; and**
- **the *Road Traffic (Administration) Act 2008*.**

The Parliament of Western Australia enacts as follows:

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**Part 1 — Preliminary**

**1. Short title**

This is the *Road Traffic (Miscellaneous Amendments) Act 2012*.

**2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2, other than section 12 — on the day after assent day;
- (c) section 12 and Part 3 —
  - (i) if the *Road Traffic (Administration) Act 2008* section 44 (*section 44*) comes into operation on or before assent day — on the day after assent day; or
  - (ii) otherwise — when section 44 comes into operation.

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**Part 2 — Road Traffic Act 1974 amended**

**3. Act amended**

This Part amends the *Road Traffic Act 1974*.

**4. Section 49AB inserted**

At the beginning of Part V Division 1 insert:

**49AB. Circumstances of aggravation**

- (1) For the purposes of this Division, a person commits an offence in *circumstances of aggravation* if at the time of the alleged offence —
  - (a) the person was unlawfully driving the vehicle concerned without the consent of the owner or person in charge of the vehicle; or
  - (b) the person was driving the vehicle concerned on a road at a speed that exceeded the speed limit applicable to the vehicle, or the length of road where the driving occurred, by 45 km/h or more; or
  - (c) the person was driving the vehicle concerned to escape pursuit by a member of the Police Force.
- (2) For the purposes of subsection (1)(c) it does not matter whether the pursuit was proceeding, or had been suspended or terminated, at the time of the alleged offence.

1   **5.       Section 53 amended**

2           Delete section 53(1) and insert:

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4           (1)   A driver of a vehicle who when required by a member  
5               of the Police Force to state his or her name and place of  
6               abode refuses to do so, or states a false name or place  
7               of abode, commits an offence.

8               Penalty:

9               (a)   for a first offence — a fine of 6 PU;

10              (b)   for a subsequent offence — a fine of 12 PU.

11          (2A)  A driver of a vehicle who refuses or fails to stop his or  
12              her vehicle when called upon to do so by a member of  
13              the Police Force commits an offence.

14              Penalty:

15              (a)   unless paragraph (b) applies —

16              (i)   for a first offence — a fine of 24 PU;

17              (ii)  for a subsequent offence — a fine of  
18                 48 PU;

19              (b)   if the offence is committed in the  
20                 circumstance of aggravation referred to in  
21                 section 49AB(1)(c) — imprisonment for  
22                 2 years, but the minimum penalty is a fine of  
23                 100 PU; and, in any event, the court  
24                 convicting the person must order that the  
25                 offender is disqualified from holding or  
26                 obtaining a driver's licence for a period of  
27                 not less than 2 years.

28

1   **6.       Section 59 amended**

2           After section 59(3) insert:

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4           (4A)   A court sentencing a person for an offence against this  
5                section committed in the circumstance of aggravation  
6                referred to in section 49AB(1)(c) must —

7                (a)   sentence the person to a term of imprisonment  
8                of at least 12 months; and

9                (b)   not suspend the term of imprisonment.

10          (4B)   Subsection (4A) applies whether the person was  
11                convicted on indictment or summarily and despite the  
12                *Sentencing Act 1995* Part 5.

13

14   **7.       Section 59A amended**

15          (1)   In section 59A(3):

16               (a)   in paragraph (a) delete “80” and insert:

17

18                       180

19

20               (b)   in paragraph (b) delete “160” and insert:

21

22                       360

23

24          (2)   In section 59A(3a):

25               (a)   delete “7” and insert:

26

27                       10

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**s. 8**

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- 1 (b) in the Summary conviction penalty delete “18 months or  
2 a fine of 160” and insert:  
3  
4 3 years or a fine of 720  
5
- 6 (3) After section 59A(3a) insert:  
7
- 8 (4A) A court sentencing a person for an offence against this  
9 section committed in the circumstance of aggravation  
10 referred to in section 49AB(1)(c) must —  
11 (a) sentence the person to a term of imprisonment  
12 of at least 6 months; and  
13 (b) not suspend the term of imprisonment.
- 14 (4B) Subsection (4A) applies whether the person was  
15 convicted on indictment or summarily and despite the  
16 *Sentencing Act 1995* Part 5.  
17

18 **8. Section 59B amended**

19 Delete section 59B(3) and (4).

20 **9. Section 60 amended**

- 21 (1) Delete section 60(1c)(a)(i) and insert:  
22
- 23 (i) the driver is on official duty as a  
24 member of the Police Force and the  
25 driving is substantially in accordance  
26 with the Commissioner’s policies and  
27 guidelines relating to driving, applicable  
28 at the time of the driving, and any  
29 direction given under such a policy or  
30 guideline; or  
31



- 1           (2) In section 60(3):
- 2                 (a) in paragraph (a) delete “40” and insert:
- 3
- 4                         120
- 5
- 6                 (b) in paragraph (b) delete “60” and insert:
- 7
- 8                         180
- 9
- 10                (c) in paragraph (c) delete “80” and insert:
- 11
- 12                        240
- 13
- 14           (3) After section 60(3) insert:
- 15
- 16               (4) If an offence against this section is committed in the
- 17                        circumstance of aggravation referred to in
- 18                        section 49AB(1)(c), the offence is a crime.
- 19                        Penalty: imprisonment for 5 years.
- 20                        Summary conviction penalty: imprisonment for
- 21                                2 years.
- 22               (5) A court sentencing a person for an offence against this
- 23                        section committed in the circumstance of aggravation
- 24                        referred to in section 49AB(1)(c) must —
- 25                           (a) sentence the person to a term of imprisonment
- 26                                of at least 6 months; and
- 27                           (b) not suspend the term of imprisonment; and
- 28                           (c) for a first or second offence — order that the
- 29                                offender is disqualified from holding or
- 30                                obtaining a driver’s licence for a period of not
- 31                                less than 2 years; and

**s. 10**

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- 1 (d) for a third or subsequent offence — order that  
2 the offender is permanently disqualified from  
3 holding or obtaining a driver’s licence.
- 4 (6) Subsection (5) applies whether the person was  
5 convicted on indictment or summarily and despite the  
6 *Sentencing Act 1995* Part 5.
- 7 (7) A reference in subsection (5)(c) or (d) to an offence is a  
8 reference to an offence against this section whether or  
9 not committed in the circumstance of aggravation  
10 referred to in section 49AB(1)(c).  
11

12 **10. Section 61 amended**

13 Delete section 61(3)(a) and (b) and insert:  
14

- 15 (a) unless paragraph (b) applies —  
16 (i) for a first offence — to a fine of 60 PU;  
17 (ii) for a subsequent offence — to a fine of  
18 120 PU or to imprisonment for  
19 9 months; and, in any event, the court  
20 convicting the person must order that  
21 the offender is disqualified from holding  
22 or obtaining a driver’s licence for a  
23 period of not less than 12 months;
- 24 (b) if the offence is committed in the circumstance of  
25 aggravation referred to in section 49AB(1)(c) — to  
26 a fine of 720 PU or to imprisonment for 3 years;  
27 and, in any event, the court convicting the person  
28 must order that the offender is disqualified from  
29 holding or obtaining a driver’s licence for a period  
30 of not less than 2 years.  
31

1   **11.     Section 61A inserted**

2           After section 61 insert:

3

4           **61A.    Reckless or dangerous driving — defence for police**  
5                   **officers in certain circumstances**

6           (1) It is a defence to a prosecution for an offence against  
7                   section 59(1)(b), 59A(1)(b), 60(1) or 61(1) if the  
8                   accused satisfies the court that, at the time of the  
9                   alleged commission of the offence —

10                   (a) the accused was on official duty as a member of  
11                         the Police Force; and

12                   (b) the driving was substantially in accordance  
13                         with the Commissioner’s policies and  
14                         guidelines relating to driving, applicable at the  
15                         time of the driving, and any direction given  
16                         under such a policy or guideline; and

17                   (c) having regard to all of the circumstances of the  
18                         case, it was reasonable, and in the public  
19                         interest, for the accused to have driven the  
20                         motor vehicle in the manner that he or she did.

21           (2) Subsection (1) does not affect the application of any  
22                   other defence the accused may have.

23

24   **12.     Various references to “member of the Police Force”**  
25                   **amended**

26           In sections 49AB(1)(c), 53(1) and (2A), 60(1c)(a)(i) and  
27                   61A(1)(a) delete “member of the Police Force” and insert:

28

29                   police officer

30

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

3 **13. Act amended**

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

5 **14. Section 44 amended**

6 In section 44 delete the Penalty and insert:

7

8

Penalty:

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- (a) unless paragraph (b) applies — a fine of 100 PU;
- (b) if the person was given the direction under section 39 and the person was, at the time the direction was given, driving the vehicle so as to escape pursuit by a police officer — imprisonment for 2 years, but the minimum penalty is a fine of 100 PU; and, in any event, the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

