

## Road Traffic Amendment Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

## **Road Traffic Amendment Bill 2006**

**A Bill for**

**An Act to amend the *Road Traffic Act 1974* and as a consequence to amend the *Criminal Property Confiscation Act 2000*.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Road Traffic Amendment Act 2006*.

### **2. Commencement**

5 (1) This Act comes into operation on a day fixed by proclamation.

(2) Different days may be fixed for different provisions.

Note: Under section 22 of the *Interpretation Act 1984*, this section and section 1 come into operation on the day on which this Act receives the Royal Assent.

### 10 **3. The Act amended**

The amendments in this Act other than those in section 26 are to the *Road Traffic Act 1974*\*.

[\* *Reprint 9 as at 10 March 2006*.

15 *For subsequent amendments see Western Australian Legislation Information Tables for 2005, Table 1, and Gazette 26 May 2006 p. 1885-8.]*

## **Part 2 — Amendments**

### **Division 1 — High speed driving offences**

**4. Section 78A amended**

5       Section 78A is amended in the definition of “impounding  
offence (driving)” as follows:

- (a) in paragraph (a), by deleting “60” and inserting  
instead —  
“ 60(1) ”;
- (b) in paragraph (b), by inserting after “against” —  
10       “ section 60(1a) or (1b) or ”.

### **Division 2 — Removing special rule for when suspicion reasonably held**

**5. Section 5 amended**

Section 5(6) is repealed.

15       **Division 3 — Release of impounded vehicles**

**6. Section 79D amended**

Section 79D(3) is repealed.

**7. Section 79E replaced**

20       Section 79E is repealed and the following section is inserted  
instead —

“

**79E. Liability for section 79 or 79A impounding expenses**

25       If a vehicle is impounded under section 79 or 79A and  
a person is convicted of the offence for which the  
vehicle was impounded, that person is liable to pay to  
the Commissioner an amount specified by the

5 Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle unless the Commissioner has required the payment of, and has been paid, the amount described in section 80IB(1) for expenses of the impounding.

”.

**8. Section 80H amended**

Section 80H(2) is repealed.

10 **9. Sections 80IA and 80IB inserted**

After the heading to Part V Division 4 Subdivision 4 the following sections are inserted —

“

**80IA. Release of vehicle that was impounded**

- 15 (1) When a vehicle has been impounded under section 79 or 79A or on an order under section 80(1), 80B(1) or 80CA(1) and the impounding period ends, the Commissioner is to ensure that the vehicle is released if the responsible person applies in an approved manner for its release.
- 20 (2) Subsection (1) does not prevent the Commissioner from refusing under subsection (3) or section 80IB or 80I(1) to release the vehicle.
- 25 (3) The Commissioner may refuse to release the vehicle until the place where it is stored is open to the public.

**80IB. Payment for impounding expenses before vehicle released**

- 30 (1) When a vehicle has been impounded under section 79 or 79A or on an order under section 80(1), 80B(1) or 80CA(1) and the impounding period ends, the Commissioner may refuse to release the vehicle until the Commissioner has been paid an amount specified

by the Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle.

- 5           (2) Subsection (1) applies even if the person seeking the release of the vehicle is not the person suspected of having committed, or found to have committed, the offence for which the vehicle was impounded.
- 10           (3) The Commissioner may release the vehicle without requiring payment of the amount described in subsection (1) if the Commissioner considers it appropriate in the circumstances to do so.
- 15           (4) If payment of the amount described in subsection (1) is made for the release of the vehicle, that payment extinguishes any liability under section 79E or 80H, as the case requires, to pay the Commissioner for expenses of the impounding even though the payment may not have been made by the person who was liable under that section.
- 20           (5) In the case of a vehicle impounded under section 79 or 79A the Commissioner has to refund, to the person who made the payment, an amount described in subsection (1) that was paid to the Commissioner for the release of the vehicle if —
- 25               (a) no charge of committing the offence for which the vehicle was impounded is laid during the period of one year after the day on which the offence is suspected to have been committed; or
- 30               (b) during the period described in paragraph (a) a person is charged with committing the offence but the person is not convicted of that offence within that period or within an extension of that period ordered by the court.

”.

**10. Section 80J amended**

Section 80J(7) is amended as follows:

- (a) in each of paragraphs (c) and (d), by deleting all of the paragraph after “79E” and inserting instead a semicolon;
- 5 (b) in each of paragraphs (e) and (f), by deleting all of the paragraph after “80H” and inserting instead a semicolon.

**Division 4 — Meaning of “senior officer”**

**11. Section 78A amended**

10 Section 78A is amended in the definition of “senior officer” by deleting all of the definition after “higher than that of inspector” and inserting instead a semicolon.

**Division 5 — Road rage**

**12. Part V Division 4 heading amended**

15 The heading to Part V Division 4 is amended by deleting “driving” and inserting instead —  
“ **certain** ”.

**13. Section 78A amended**

Section 78A is amended as follows:

- 20 (a) in the definition of “impounding period”, in paragraph (b), by deleting “or 80B(1),” and inserting instead —  
“ , 80B(1) or 80CA(1), ”;
- (b) by inserting in their appropriate alphabetical positions —  
25 “  
“**road rage circumstances**” accompany the commission of an offence if —  
(a) the offence is committed on a road; and



(b) the offence is committed as a reaction to, and is to a substantial extent motivated by, an occurrence that takes place on a road while —

- 5                   (i) the offender is driving a vehicle on a road; and
- (ii) a victim of the offence is using the same road, whether as the driver of, or a passenger in, another vehicle or otherwise;
- 10

**“road rage offence”** means an offence the commission of which is accompanied by road rage circumstances, but only if it is —

- 15           (a) an offence of which it is an element that the offender —
- (i) assaults a victim; or
- (ii) damages property in the possession of, or under the control of, a victim;
- or
- 20           (b) an offence against section 60 in circumstances that involve the offender driving in a manner that is dangerous to a particular victim;

”.

25   **14. Section 78C amended**

Section 78C is amended as follows:

- (a) in subsection (2), by deleting “or 80C(1)” and inserting instead —
- “ , 80C(1), 80CA(1) or 80CB(1) ”;
- 30           (b) in subsection (3)(b), by deleting “or 80C(1)” and inserting instead —
- “ , 80C(1), 80CA(1) or 80CB(1) ”;

- (c) in subsection (4)(a), by deleting “or 80C(1)” and inserting instead —  
“ , 80C(1), 80CA(1) or 80CB(1) ”;
- 5 (d) in subsection (6)(a), by deleting “or 80C(1);” and inserting instead —  
“ , 80C(1), 80CA(1) or 80CB(1); ”.

**15. Section 78D amended**

Section 78D(a) is amended by deleting “or 80C(1);” and inserting instead —

10 “ , 80C(1), 80CA(1) or 80CB(1); ”.

**16. Sections 80CA and 80CB inserted**

After section 80C the following sections are inserted —

“

**80CA. Impounding of vehicles for road rage offences**

- 15 (1) A court that convicts a person of a road rage offence may, by order, impound the vehicle that the offender was using for a period starting on the date on which —
- (a) the vehicle is surrendered; or
- (b) under section 78C, the vehicle is conveyed to
- 20 the place where it is to be stored,
- and being of the duration, not exceeding 3 months, specified in the order.
- (2) In subsection (1) —
- 25 “**vehicle that the offender was using**” means the vehicle referred to in paragraph (b)(i) of the definition of “road rage circumstances” in section 78A.

**80CB. Confiscating of vehicles for road rage offences**

(1) A court that convicts a person of a road rage offence may, by order, confiscate the vehicle that the offender was using.

5 (2) In subsection (1) —

“**vehicle that the offender was using**” means the vehicle referred to in paragraph (b)(i) of the definition of “road rage circumstances” in section 78A.

10 ”.

**17. Section 80D amended**

Section 80D(1) is amended by deleting “or 80C(1)” and inserting instead —

“ , 80C(1) or 80CB(1) ”.

15 **18. Section 80E amended**

Section 80E is amended as follows:

(a) in subsection (1), by deleting “or 80C(1)” and inserting instead —

“ , 80C(1), 80CA(1) or 80CB(1) ”;

20 (b) in subsection (2) —

(i) by deleting “or 80C(1)” and inserting instead —

“ , 80C(1) or 80CB(1) ”;

(ii) by deleting “or 80B” and inserting instead —

“ , 80B or 80CA ”.

25 **19. Section 80F amended**

Section 80F is amended by deleting “or 80C(1)” and inserting instead —

“ , 80C(1), 80CA(1) or 80CB(1) ”.

**20. Section 80G amended**

Section 80G is amended as follows:

- (a) in subsection (1), in the definition of “order”, by deleting “or 80C(1).” and inserting instead —  
5 “ , 80C(1), 80CA(1) or 80CB(1). ”;
- (b) in subsection (2)(b)(i), by deleting “of the impounding offence (driving) or the impounding offence (driver’s licence), as is applicable to the case;” and inserting instead —  
10 “ as is required for the order to be made; ”;
- (c) in subsection (5)(a), by deleting “the impounding offence (driving) or the impounding offence (driver’s licence), as is applicable to the case,” and inserting instead —  
15 “  
the conviction because of which the order is sought is for an offence that  
”.

**21. Section 80H amended**

- 20 Section 80H(1) is amended by deleting “or 80B(1), the person who is convicted of the impounding offence (driving) or the impounding offence (driver’s licence) in respect of which” and inserting instead —  
“  
25 , 80B(1) or 80CA(1), the person because of whose conviction  
”.

**22. Section 80I amended**

- 30 Section 80I(1) is amended by deleting “or 80B(1)” and inserting instead —  
“ , 80B(1) or 80CA(1) ”.

**23. Section 80J amended**

Section 80J is amended as follows:

- (a) in subsection (1) —
  - (i) in the definition of “confiscated vehicle”, by deleting “or 80C(1);” and inserting instead —  
     “ , 80C(1) or 80CB(1); ”;
  - (ii) in the definition of “uncollected vehicle”, by deleting “or 80B(1)” and inserting instead —  
     “ , 80B(1) or 80CA(1) ”;
- (b) in subsection (3)(b), by deleting “or 80C(1)” and inserting instead —  
     “ , 80C(1), 80CA(1) or 80CB(1) ”;
- (c) in subsection (7) —
  - (i) in paragraph (b), by deleting “in impounding” and inserting instead —  
     “ consequent on the confiscation of ”;
  - (ii) by deleting paragraph (j) and inserting instead —  
     “  
     (j) the balance, in the case of a confiscated vehicle —  
         (i) if the vehicle was confiscated under section 80A(1) or 80C(1), to the Treasurer of the State for the public uses of the State;  
         (ii) if the vehicle was confiscated under section 80CB(1), to the credit of the Confiscation Proceeds Account established in accordance with the *Criminal Property Confiscation Act 2000* section 130;  
     ”.

**24. Section 80K amended**

Section 80K is amended as follows:

- (a) by deleting “in impounding and selling the vehicle” and inserting instead —

5

“

consequent on the confiscation of the vehicle and the expenses incurred in selling it

”;

10

- (b) by deleting “the person who is convicted of the impounding offence (driving) or the impounding offence (driver’s licence) in respect of which” and inserting instead —

“ the person because of whose conviction ”.

**25. Section 80L amended**

15

Section 80L(1) is amended by deleting “or 80C(1)” and inserting instead —

“ , 80C(1) or 80CB(1) ”.

**26. *Criminal Property Confiscation Act 2000* amended in consequence**

20

- (1) The amendments in this section are to the *Criminal Property Confiscation Act 2000*\*.

[\* *Reprint 1 as at 9 December 2005.*]

- (2) Section 131(1) is amended as follows:

25

- (a) by deleting the full stop at the end of paragraph (c) and inserting instead a semicolon;

- (b) by inserting at the end of the subsection —

“

30

- (d) money that the *Road Traffic Act 1974* section 80J(7)(j)(ii) requires to be paid to the credit of the account.

”.

**Division 6 — Onus of responsible person**

**27. Section 102B amended**

- 5 (1) Section 102B(4) is amended by deleting “of 28 days after the day specified in the notice (being the day of the service of the notice or a subsequent day)” and inserting instead —
- “ for complying defined in subsection (4a) ”.
- (2) After section 102B(4) the following subsection is inserted —
- “
- 10 (4a) In subsection (4) —
- “**period for complying**” means —
- 15 (a) if the traffic infringement notice enclosing photographic evidence is served under subsection (1), the period of 28 days after the day specified in the notice (being the day of the service of the notice or a subsequent day);
- 20 (b) if the traffic infringement notice enclosing photographic evidence is served under subsection (3), the period of 14 days after the day specified in the notice (being the day of the service of the notice or a subsequent day).
- ”.

**28. Section 102C amended**

- 25 (1) Section 102C(1)(b) is amended by inserting after “requesting” —
- “
- 30 the responsible person to, within the period for complying defined in subsection (1a), supply to an officer specified in the notice
- ”.

(2) After section 102C(1) the following subsection is inserted —

“

(1a) In subsection (1) —

**“period for complying”** means —

- 5                   (a) if the notice is served under subsection (1)  
without enclosing the photographic evidence  
referred to in section 102B(1)(b), the period  
of 14 days after the day specified in the  
notice (being the day of the service of the  
10 notice or a subsequent day);
- (b) if the notice is served under subsection (1)  
enclosing the photographic evidence referred  
to in section 102B(1)(b), the period of  
28 days after the day specified in the notice  
15 (being the day of the service of the notice or  
a subsequent day).

”.

(3) Section 102C(2) is amended by inserting before the full stop at  
the end of the subsection —

20 “

but in the further notice the period specified for  
complying with the request is to be the period of  
14 days after the day specified in the further notice  
(being the day of the service of the further notice or a  
25 subsequent day)

”.

(4) Section 102C(3) is amended by deleting “of 14 days after the  
day specified in the notice (being the day of the service of the  
notice or a subsequent day)” and inserting instead —

30 “ specified in the notice for complying with the request, ”.

(5) Section 102C(5) is amended by deleting “referred to in  
subsection (2) or (3) respectively” and inserting instead —

“ specified in the notice for complying with the request ”.



- (6) Section 102C(8) is amended by deleting “served under subsection (2)” and inserting instead —

“

enclosing photographic evidence served under  
subsection (1) or (2)

”.

**29. Section 102D amended**

Section 102D(2) is amended by deleting “is served under section 102C(2)” and inserting instead —

“

enclosing photographic evidence is served under  
section 102C(1) or (2)

”.

**Division 7 — Other amendments**

**30. Section 78A amended**

Section 78A is amended by deleting the definition of “licence holder”.

**31. Certain references to vehicle’s licence holder replaced**

- (1) The Act is amended in each place described in the Table to this section by deleting “vehicle’s licence holder” and inserting instead —

“ responsible person ”.

**Table**

s. 79B(1) (in both places)	s. 79C(3)
s. 80F	s. 80G(3)(b)
s. 80J(4)(a)	

- (2) Section 79C(3) is amended by deleting “licence holder” and inserting instead —

“ responsible person ”.

**32. Section 80G amended**

Section 80G(7) is amended by inserting before the full stop at the end of the subsection —

“ if the vehicle is licensed ”.

5 **33. Section 80L amended**

Section 80L(1) is amended by inserting after “If a” at the beginning of the subsection —

“ licensed ”.

=====