

EXPLANATORY MEMORANDUM

Road Traffic (Vehicles) Amendment (Offensive Advertising) Bill 2022

At the Transport and Infrastructure Council (TIC) meeting on 2 August 2019, all Australian Transport Ministers committed to a national approach to dealing with offensive advertising on vehicles. The intent was to follow Queensland's approach, which provides a process for cancelling the registration of vehicles displaying advertising that have been deemed by the Ad Standards Community Panel, to breach the Australian Association of National Advertisers Code of Ethics (advertising code).

Western Australia agreed with the recommendation that all states and territories introduce regulatory measures, or other policy instruments, to address offensive advertising on vehicles. All other jurisdictions have now introduced legislative or policy measures to address offensive advertising on vehicles.

Offensive advertising includes advertising that uses obscene language, that is degrading, that deals inappropriately with sex or violence or, importantly, that discriminates against or vilifies any section of the community. It is important that the community, including children, are not subjected to sexist, discriminatory, or otherwise offensive advertising via this medium just as much as we wouldn't want the images or messaging to be broadcast on our televisions. This Bill recognises community concern about offensive advertising on vehicles.

The *Road Traffic (Vehicles) Act 2012* provides for the licensing and standards of vehicles. It does not cover matters of community offence or allow for cancellation, suspension, or to refuse to grant or transfer a vehicle licence, in circumstances where advertising featured on a vehicle is deemed offensive.

The Government is concerned that failure to implement necessary legislative measures to combat offensive advertising may result in vehicles, whose registration has been cancelled due to offensive advertising in another state or territory, being moved and licensed in WA.

This Bill has been developed and based on Queensland's approach, as this supports a nationally harmonised approach and has proven to be effective in addressing offensive advertising on vehicles.

Under this approach, the Department of Transport (DoT) will have no role in receiving complaints about offensive advertising from the public or in determining whether or not advertising on a vehicle is offensive. This will be the role of Ad Standards and the Ad Standards Community Panel, which consists of a broad range of people who are responsible for determining if advertising breaches the advertising code.

On receipt of a verified complaint about an advertisement on a Western Australian licensed vehicle, Ad Standards will notify DoT. DoT will confirm if the advertiser is the responsible person (licence holder) for the vehicle. Where the advertiser and responsible person for a vehicle are different persons, DoT will notify the vehicle licence holder of the complaint to ensure that the licence holder for the vehicle is made aware of the complaint and potential impacts on the vehicle licence. DoT will not disclose licence holder information to Ad Standards.

DoT's role is formally initiated on receipt of a Code Breach Notice from Ad Standards notifying DoT that it has considered the complaint and has subsequently determined that advertising on a vehicle breaches the advertising code. Ad Standards will only issue a Code Breach Notice to DoT when the Ad Standards thorough complaints and review process has been exhausted and the matter remains unresolved.

Once in receipt of a Code Breach Notice, the CEO of DoT may issue a licence warning notice to a responsible person for a vehicle advising that Ad Standards has notified the CEO that a determination has been made that an advertisement on the vehicle is in breach of the advertising code and that Ad Standards does not believe that the advertisement has been removed from the vehicle.

The licence warning notice will advise that unless the CEO is satisfied that the advertisement has been removed from the vehicle, the CEO may cancel the vehicle licence for the vehicle on or after a day specified in the notice. The day specified in the notice will be not less than 14 days after the day on which the CEO gives the notice to the responsible person.

It is intended that the CEO will make no consideration of whether an advertisement is offensive and will instead rely on the expertise of Ad Standards to make such determinations. Once Ad Standards notifies the CEO that an advertisement on a vehicle breaches the advertising code, the CEO may then act to cancel the vehicle licence, subject to procedural fairness. At this stage, the CEO will only consider whether the advertisement has been removed or not. No consideration will be made to any modifications to the advertisement.

Ad Standards processes provides opportunity for the modification or removal of an offensive advertisement prior to issuing notification to DoT which will trigger the issue of the licence warning notice by the CEO. Where the Code Breach Notice is withdrawn by Ad Standards or the responsible person has provided satisfactory evidence to the CEO that the advertisement has been removed, DoT will take no further action to cancel the vehicle licence.

An important distinction needs to be made in relation to 'advertising' and an individual's rights to freedom of expression. The Government does not seek to erode an individual's right to express themselves freely, and the powers introduced by this Bill will be limited to vehicles displaying 'advertising' that is deemed offensive.

The advertising code defines advertising as ‘any advertising, marketing communication or material which is published or broadcast using any medium or any activity which is undertaken by, or on behalf of an advertiser or marketer’:

- over which the advertiser or marketer has a reasonable degree of control, and
- that draws the attention of the public in a manner calculated to promote or oppose directly or indirectly a product, service, person, organisation or line of conduct.

The Bill would amend the *Road Traffic (Vehicles) Act 2012* to provide the CEO the power, on advice from Ad Standards, to cancel, suspend, or refuse to grant or transfer a vehicle licence, if the advertising displayed on a vehicle breaches the advertising code and the responsible person for the vehicle has failed to remove the advertisement in the prescribed time.

The main objectives of the Bill are to provide that:

1. The CEO may give a licence warning notice to a responsible person for a vehicle notifying that because of an Ad Standards determination that an advertisement on the vehicle breaches the advertising code, the vehicle licence may be cancelled on a stated date, unless the advertisement is removed from the vehicle.
2. The intended cancellation date must be at least 14 days after the licence warning notice is given to the responsible person for a vehicle.
3. The CEO may cancel a vehicle licence if an advertisement has been deemed offensive and it is not removed by the intended cancellation date.
4. A new licence cannot be granted where a vehicle’s previous licence was cancelled due to offensive advertising and the advertising has not been removed.
5. An owner cannot transfer a vehicle licence to another person to avoid or prolong licence cancellation if a licence warning notice is in force.
6. If a licence warning notice is in force, a responsible person for the vehicle must satisfy the CEO that the advertisement has been removed from the vehicle before the licence warning notice can be withdrawn.
7. The CEO can determine the method/s by which removal of the advertisement can be demonstrated.

The approach outlined in the Bill allows the CEO to cancel a vehicle licence if notified by Ad Standards that the advertising displayed on the vehicle breaches the advertising code. The legislative framework provided in the Bill builds on the Ad Standards processes that provide notice and opportunity for the advertisement to be modified or removed so that licence cancellation can be avoided.

In addition, the inconvenience and cost of re-licensing vehicles are further incentives to encourage compliance with Ad Standards final determinations to avoid vehicle licence sanctions.

Part 1 — Preliminary

1. Short title

Clause 1 provides that when this Bill is passed by Parliament and receives Royal Assent, it will be known as the *Road Traffic (Vehicles) Amendment (Offensive Advertising) Act 2022*.

2. Commencement

Clause 2 sets out when the provisions of the Act are proposed to commence operation.

Clause 2(a) would provide that sections 1 and 2 are proposed to commence operation on the day on which the Act receives Royal Assent and becomes an Act.

Clause 2(b) would provide that the rest of the Act would commence on a day fixed by proclamation.

The intent is that the rest of the Act will commence at a time that allows for appropriate communications materials and Departmental processes to be established.

Part 2 — *Road Traffic (Vehicles) Act 2012* amended

3. Act amended

Clause 3 provides that the Bill would amend the *Road Traffic (Vehicles) Act 2012*.

The Act provides for the licensing and standards of vehicles, amongst other matters relating to vehicles.

4. Section 3 amended

Section 3 of the *Road Traffic (Vehicles) Act 2012* provides the terms used in the Act.

Clause 4 would amend section 3 of the Act to insert a new definition for a 'licence warning notice' to have the meaning given in proposed section 19A(3) of the Act.

Proposed section 19A(3) of the Act would provide that on notification from Ad Standards that an advertisement on a vehicle is offensive and that the advertisement has not been removed, the CEO may give a licence warning notice to a responsible person for the vehicle stating that Ad Standards has notified the CEO of an advertisement on the vehicle that is in breach of the advertising code, and that unless the advertisement is removed, the CEO may cancel the vehicle licence on the day specified in the notice.

5. Part 2 Division 1 heading inserted

Part 2 of the *Road Traffic (Vehicles) Act 2012* provides for the licensing of vehicles.

Clause 5 would insert a new Division heading for sections 4 to 19 within Part 2 of the Act of 'Division 1 – General provisions about licensing', encompassing those sections that are dealing with general vehicle licensing and related matters.

This heading is necessary as a new Division heading of 'Division 2 – Offensive advertisements on vehicles' will be inserted by clause 9 for new proposed sections 19A and 19B of the Act.

6. Section 4 amended

This proposed amendment to section 4 of the *Road Traffic (Vehicles) Act 2012* is a drafting correction which does not change the meaning of section 4(6) of the Act and is not related to the objectives of this Bill.

Section 4 of the Act provides requirements for a vehicle licence and related offences.

Clause 6 would amend section 4(6) of the Act to provide a minor drafting correction when referencing the *Motor Vehicle (Third Party Insurance) Act 1943*. Namely the reference will be corrected from section 4(3)(a) to the correct reference of section 4(3A).

The drafting correction was identified by Parliamentary Counsel's Office and ensures that the provision operates as intended and does not change the meaning of section 4(6) of the Act.

7. Section 5 amended

Section 5 of the *Road Traffic (Vehicles) Act 2012* provides circumstances when an owner of a vehicle may apply for the grant, renewal, transfer or variation of a vehicle licence and sets out relevant requirements.

Section 5(3) of the Act provides that if an owner of a vehicle makes a vehicle licence application the CEO, in accordance with the regulations, must grant, renew, transfer or vary the vehicle licence if satisfied the circumstances described in paragraphs (a) to (j) have been met.

Clause 7(1) and 7(2)(a) would amend section 5(3) of the Act to provide a number of minor drafting changes to correct terminology or modernise language, specifically:

- clause 7(1) would correct two instances of 'a vehicle' to 'the vehicle'; and
- clause 7(2)(a) would modernise the language used in section 5(3) of the Act.

These minor drafting changes reflect contemporary drafting practice and do not change the meaning of the related provisions.

Clause 7(2)(b) would amend section 5(3)(j) of the Act to make a minor consequential amendment to insert a semicolon to allow the introduction of new proposed paragraphs (k) and (l) at the end of section 5(3) of the Act.

Clause 7(2)(c) would insert at the end of section 5(3) of the Act those new proposed paragraphs (k) and (l).

Proposed paragraph (k) would provide that for the application for the grant of a vehicle licence, if a licence warning notice is in force for that vehicle (meaning that Ad Standards have notified the CEO that an advertisement on the vehicle breached the advertising code), the CEO must be satisfied that the offensive advertisement has been removed from the vehicle before a new vehicle licence may be granted.

The policy intent for new paragraph (k) is that if a vehicle licence is cancelled because of an offensive advertisement, and a vehicle owner subsequently applies for the grant of a licence for the same vehicle, they must provide evidence to satisfy the CEO that the offensive advertisement has been removed from the vehicle.

It is intended that the CEO will have the flexibility to be satisfied that offensive advertising has been removed from a vehicle. This could be achieved by a visual check at the time a vehicle is inspected prior to the grant of a licence (in accordance with section 19 of the Act) or alternatively by providing a means for an applicant to declare that the offensive advertisement has been removed from the vehicle, along with providing supporting photographic evidence.

Proposed paragraph (l) would provide that for the application for the transfer of a vehicle licence, there is no licence warning notice in force for that vehicle.

The policy intent for new paragraph (l) is that a vehicle licence cannot be transferred if a licence warning notice is in force for that vehicle. The intent is to ensure that the responsible person for a vehicle cannot transfer the vehicle to another person to avoid or delay the licence cancellation.

8. Section 9 amended

Section 9 of the *Road Traffic (Vehicles) Act 2012* provides that the CEO may cancel or suspend a vehicle licence in certain circumstances.

Section 9(1) of the Act provides circumstances when the CEO may cancel a vehicle licence.

Clause 8(1)(a) would amend section 9(1)(d) of the Act to make a minor consequential amendment to insert a semicolon to allow the introduction of new proposed paragraph (e) at the end of section 9(1) of the Act.

Clause 8(1)(b) would insert at the end of section 9(1) of the Act the new proposed paragraph (e) which would provide that the CEO may cancel a vehicle licence if the CEO gives a licence warning notice to the responsible person for a vehicle, it is on or after the intended cancellation date provided in the notice, and the notice is in force.

Where proposed new section 9(1)(e) of the Act would provide circumstances when the CEO may cancel a vehicle licence, proposed new section 19A of the Act would provide procedural fairness for the person responsible for the vehicle to remove the offensive advertisement to avoid cancellation of their vehicle licence. Prior to the issue of the licence warning notice by the CEO, Ad Standards also provides opportunity for the advertiser to modify or remove an offensive advertisement.

Section 9(2) of the Act provides that in some of the circumstances that the CEO may cancel a vehicle licence in section 9(1) of the Act, the CEO may decide to instead suspend the vehicle licence.

Clause 8(2) would amend section 9(2) of the Act to insert new subsection (1)(e) of the Act so that for the circumstance when the CEO may cancel a vehicle licence in relation to offensive advertising, the CEO may decide to instead suspend the vehicle licence.

9. Part 2 Division 2 inserted

Part 2 of the *Road Traffic (Vehicles) Act 2012* provides for the licensing of vehicles.

Clause 9 would insert a new Division and related heading for new proposed sections 19A and 19B within Part 2 of the Act of 'Division 2 – Offensive advertisements on vehicles', encompassing those sections that are dealing with offensive advertisements on vehicles.

A similar amendment to insert a new Division heading of 'Division 1 – General provisions about licensing' would be inserted by Clause 5 for sections 4 to 19 within Part 2 of the Act, encompassing those sections that are dealing with general vehicle licensing and related matters.

Clause 9 would insert a new section 19A of the Act which will describe the application of licence warning notices within Part 2 Division 2.

Proposed section 19A(1) of the Act would provide new defined terms, 'Ad Standards' and 'advertising code'.

Ad Standards would mean the Australian Association of National Advertisers (AANA) ACN 003 179 673 carrying on business under the name Ad Standards.

Ad Standards, established by the AANA, manages the complaint resolution process of the advertising self-regulation system. It is intended that the CEO will make no consideration of whether an advertisement is offensive and will instead rely on the expertise of Ad Standards to make such determinations.

Advertising code would mean the AANA Code of Ethics, published by the AANA, as in force from time to time (pursuant to paragraph (a)), or another document prescribed by the regulations for the purposes of this definition to be an advertising code (pursuant to paragraph (b)).

Although the CEO will make no consideration of whether an advertisement is offensive and will instead rely on the expertise of Ad Standards to make such determinations, it is necessary to link the advertising code as the standard for which an advertisement on a vehicle will be assessed against by the Ad Standards community panel. This provides transparency to vehicle owners and an opportunity to self-assess whether an advertisement may breach the advertising code before it is placed on a vehicle.

Although the definition of advertising code allows for it to be changed from time to time, this does not impinge on the sovereignty of the WA Parliament, as the ultimate decision on whether to cancel a vehicle licence still remains with the CEO. The CEO will rely on advice and expertise from Ad Standards as to whether an advertisement breaches the advertising code and if so, is therefore considered offensive.

Paragraph (b) is necessary to provide assurance that the policy objective, to ban offensive advertising on vehicles, can still be achievable should the advertising code be repealed or replaced in the future.

Providing a mechanism to prescribe another document as an advertising code if required, will ensure the policy intent can be achieved without the need to amend the Act.

Proposed section 19A(2) of the Act would provide the circumstances when Ad Standards may give written notice to the CEO. Specifically, once Ad Standards finalise its complaint resolution process and determine that an advertisement on a vehicle is offensive as it breaches the advertising code (pursuant to paragraph (a)), it would notify the CEO of this and advise that the advertisement has not been removed from the vehicle (pursuant to paragraph (b)).

The Ad Standards determination in proposed paragraph (a) is necessary as the CEO will rely on the advice and expertise of Ad Standards as to whether an advertisement is offensive.

The Ad Standards advice that an advertisement has not been removed from a vehicle is necessary, as after the notification of an offensive advertisement from Ad Standards, the CEO will only be concerned whether the advertisement has been removed or not.

Proposed section 19A(3) of the Act would provide that on notification from Ad Standards that an advertisement on a vehicle is offensive and that the advertisement has not been removed, the CEO may give a licence warning notice to a responsible person for the vehicle stating that Ad Standards has notified the CEO of an advertisement on the vehicle that is in breach of the advertising code, and that unless the advertisement is removed, the CEO may cancel the vehicle licence on the day specified in the notice.

The intent is that the CEO will make no consideration of whether an advertisement is offensive and will instead rely on the expertise of Ad Standards to make such determinations. Once Ad Standards notifies the CEO that an advertisement on a vehicle breaches the advertising code, the CEO may then issue a licence warning notice, and subsequently act to cancel the vehicle licence, subject to procedural fairness. At this stage, the CEO will only consider whether the advertisement has been removed or not. No consideration will be made to any modifications to the advertisement. Prior to the issue of the licence warning notice by the CEO (that is before Ad Standards notify the CEO of an offensive advertisement on a vehicle), Ad Standards already provides opportunity for the advertiser to modify or remove an offensive advertisement.

Proposed section 19A(4) of the Act would provide that in the licence warning notice, the intended vehicle licence cancellation day, must not be less than 14 days after the issue of the licence warning notice. The intent of this timeframe is to ensure that the CEO provides procedural fairness to, and allows time for, the responsible person for the vehicle to remove the offensive advertisement from the vehicle or provide evidence to satisfy the CEO that the advertisement has already been removed before their licence may be cancelled.

Proposed section 19A(5) of the Act would provide that the licence warning notice will remain in force until withdrawn by the CEO (pursuant to paragraph (a)) or until the vehicle licence for the licence expires without being renewed, or is cancelled, and a new vehicle licence for the vehicle is granted (pursuant to paragraph (b)). Paragraph (b) is necessary to ensure that a licence warning notice does not unnecessarily remain on a vehicle licence after it has been cancelled and a new licence granted.

Proposed section 19B of the Act would provide the circumstances when the CEO may withdraw a licence warning notice and the relevant requirements.

Proposed section 19B(1) of the Act would provide that the withdrawal of a licence warning notice may occur if the CEO had given a licence warning notice to a responsible person for a vehicle (pursuant to paragraph (a)), that the vehicle licence has not since expired or been cancelled (pursuant to paragraph (b)) and the CEO is satisfied that the offensive advertisement has been removed from the vehicle (pursuant to paragraph (c)).

Proposed section 19B(2) of the Act goes on to provide that if the criterion in section 19B(1) of the Act are met, the CEO must by written notice to the responsible person for the vehicle withdraw the licence warning notice.

Proposed section 19B(3) of the Act goes on to provide that the written notice provided for in proposed section 19B(2) of the Act must state that the CEO cannot cancel the vehicle licence for the vehicle on the basis of the licence warning notice. The intent of this provision is to make it clear that the withdrawal of the licence warning notice is final, and the CEO cannot subsequently decide to cancel the vehicle licence based on the initial licence warning notice.

Proposed section 19B(4) of the Act would provide that for the purposes of proposed section 19B(1)(b) of the Act a vehicle licence that has expired and is then renewed, is taken not to have expired. This provision is necessary to capture vehicle licences that have expired but are subsequently renewed within the prescribed three month renewal period. Relevantly, Regulation 30 of the *Road Traffic (Vehicles) Regulations 2014* deals with the renewal of a vehicle licence as well as the licence expiry. Regulation 30(1) defines a renewal period being three months before expiry (paragraph (a)) and three months after expiry (paragraph (b)). Regulation 30(2) goes on to provide that the CEO must renew a licence if an application for renewal is received within the renewal period. This means that a vehicle licence may be renewed up to three months after the licence expiry.