

**ROAD TRAFFIC AMENDMENT (ALCOHOL AND DRUG RELATED OFFENCES) BILL 2010**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Norman Moore (Leader of the House)**, read a first time.

*Second Reading*

**HON NORMAN MOORE (Mining and Pastoral — Leader of the House)** [5.14 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce legislation to the house that gives effect to the government's commitment to contribute to a reduction in drink and drug-related driving offences. The bill seeks to modify fines and licence disqualification periods for drink and drug-driving offences. In addition, the bill will introduce a zero blood alcohol concentration or BAC level for drivers of buses, taxis, heavy vehicles, small charter vehicles and vehicles carrying dangerous goods; and those covered under section 64A of the Road Traffic Act 1974, including provisional and extraordinary licence holders and recently disqualified drivers.

Background: In 2004, the Road Safety Council commissioned an independent review of penalties for drink and drug-driving in Western Australia. In 2009, the review was updated to consider recent changes to drug-driving offences and the introduction of novice driver provisions and to reflect parity with penalties in other jurisdictions. This research has formed the recommended penalties.

Issue: Alcohol is a major contributing factor to road crashes in Western Australia. In 2009, nearly a third—32 per cent—of fatal crashes involved a driver with a BAC greater than .05 per cent. The cost of alcohol-related road trauma is conservatively estimated to be more than \$190 million a year. In 2008–09, nearly 22 000 drivers tested by police were found to exceed the lawful limit. If the drink-driving problem in Western Australia is not addressed, this situation will continue unabated. The aim of penalties is to deter drivers from offending or reoffending. It is intended that the recommended changes in penalties will contribute to achieving that aim.

Drink-driving penalties in Western Australia have remained unchanged since 1997, despite the consumer price index showing inflationary increases in excess of 45 per cent since then. In comparison with other states such as Victoria and New South Wales, despite the differences in BAC ranges for enforcement purposes between jurisdictions, Western Australia's current penalties for drink-driving are significantly lower. Apart from having a relatively low drink-driving penalty regime compared with other jurisdictions, there is a pressing need to make penalties more relevant to the potential problems that breaches of the offences can cause. Research shows that consuming alcohol prior to driving increases one's crash risk. Findings indicate that compared with sober drivers, drivers who have consumed alcohol are twice as likely to crash with a BAC of .05; seven times as likely to crash with a BAC of .08; and 25 times as likely to crash with a BAC of .15. To reflect the relative risk of crashing at each BAC level, the proposed drink-driving penalties increase as BAC increases and recommended fines and disqualification periods are greater for second offences than for first offences. In recognition of the fact that excessively high fines often result in offenders being unable to pay, which can lead to unintended consequences, penalties for subsequent offences are the same as those for second offences.

There is also increasing concern regarding the incidence of drugs other than alcohol and their contribution to road trauma by impairing driving. These include legal prescribed and over-the-counter medications and illegal psychoactive substances. The incidence of illicit drugs detected in fatally injured drivers in Western Australia has increased over five years from 16 per cent in 2002 to 29 per cent in 2007. In 2003—the latest data available—therapeutic and other narcotic analgesic drugs were detected in 13 per cent of driver fatalities.

In October 2007, drug-driving reforms came into force that considerably strengthened WA's ability to tackle drugdriving from an enforcement perspective. The reforms addressed both random roadside screening of drivers for the presence of three illegal drugs—tetrahydrocannabinol, cannabis; methamphetamine; and methylenedioxymethamphetamine, ecstasy—and enhanced police capability in identifying and prosecuting drivers who are visibly impaired by drugs of any kind. It is intended that the penalties for these new drug driving-related offences be matched to relevant penalties for drink-driving.

Driving while impaired by a drug: The penalties associated with driving while impaired by a drug are equivalent to the penalties associated with the offence of driving under the influence of alcohol, which involves a BAC of .15 and above. Drivers are charged with driving while impaired by a drug when they are visibly impaired by drugs and their driving behaviour, observed by police, can be reasonably explained by an assessment of the drug levels found in their blood. Drivers who are visibly impaired by drugs are a considerable danger to themselves and other road users.

Penalties for failure to comply with a police requirement to undergo assessment for drug impairment are also equivalent to the penalties associated with the offence of driving under the influence of alcohol.

Driving with a prescribed illicit drug present: The penalties associated with driving with a prescribed illicit drug present are equivalent to the penalties associated with the lowest BAC range of .05 to less than .06. The penalty for the presence offence has been set at this level since the relationship between the presence of drugs in a driver, driver impairment and crash risk is extremely complex.

The presence of a drug does not reliably indicate impairment at the time of the crash. In a number of cases it is merely an indication that the substance was used at a time prior to the crash. Penalties for failure to comply with a police requirement to give oral fluid or blood for drug testing are also equivalent to the penalties associated with the lowest BAC range of .05 to less than .06. In the absence of a scientific method for determining relative levels of impairment between various drug types and combinations, it is not possible to have scales of penalties for drug-driving similar to those for drink-driving. Rather, penalties for drug-driving relate to whether an offence is a first, second or subsequent one and whether an offender refuses testing.

Penalties: The recommended amendments to the Road Traffic Act 1974 penalties for drink and drug-driving offences are summarised as follows. The following penalties will apply to learner and novice drivers; provisional licence holders; extraordinary licence holders and recently disqualified drivers; and drivers of heavy vehicles with a gross combination mass of 22.5 tonnes and more; vehicles carrying dangerous goods; buses carrying passengers whether for hire, reward or otherwise; and omnibuses and taxis when those vehicles are used to carry passengers for hire or reward. For a first, second or subsequent offence with a BAC of zero to less than .02, the penalty will be a fine with a minimum of three penalty units and a maximum of six penalty units, and a demerit point penalty of three points. An infringement option of two penalty units and three demerit points will also apply. For offences with a BAC of .02 to less than .05, the penalty will be a fine with a minimum of three penalty units and a maximum of six penalty units, and licence disqualification for a minimum period of three months. For offences with a BAC of .05 and above, it is proposed that these drivers receive the same penalty that is applied to all other drivers. It should be noted that when a provisional licence holder is convicted of certain traffic offences—including all drink-driving offences exceeding .02 BAC—or is disqualified, the licence is cancelled. For all other licence holders, a disqualification will result in a suspension. Monetary fines and disqualification periods applying to all drivers for offences of .05 BAC and above will be modified to better reflect the relative risk of each drink-driving offence, depending upon BAC level. The penalty for driving with a prescribed illicit drug present, and failure to comply with a police requirement to give oral fluid or blood for drug testing, is equivalent to the penalties associated with the .05 to less than .06 BAC range under section 64AA. The penalty for driving while impaired by a drug, and failure to comply with a police requirement for drug impairment assessment, is equivalent to the penalties associated with the offence of driving under the influence of alcohol in section 63, which involves a BAC of 0.15 and above. Monetary fines and disqualification periods applying to drivers who refuse to comply with drug-testing requirements will be modified to maintain parity with the corresponding drink-driving offences upon which they are modelled. Further, legislation will be amended so that consistent penalties apply for refusal to submit to both the preliminary screening test and subsequent testing.

Importantly, the bill also contains a provision that will ensure the state maintains its capability to respond to emergencies that arise, in which volunteers and other relevant persons are called out and required to drive buses and heavy vehicles. Under this bill, drivers of vehicles with a gross combination mass of greater than 22.5 tonnes will be required to have no blood alcohol content, as will drivers of buses carrying passengers. Under the provisions I referred to, the driver of a bus or heavy vehicle will not commit an offence if he or she has a blood alcohol content, provided it is less than .05 grams per 100 millilitres of blood, when the driver is a person of a class prescribed and is driving in the course of responding to an “incident” as defined in the Fire and Emergency Services Authority of Western Australia Act 1998—the FESA act. Examples of the classes of person it is intended the provisions should apply to are listed in the explanatory memorandum to this bill. They include various classes of volunteer under the FESA act, the Fire Brigades Act 1942 and the Bush Fires Act 1954.

Commencement: Finally, I recognise that there is a need to communicate these amendments to the public, in particular to those drivers who will now be subject to a zero BAC. The aim of the new penalties is to deter all motorists from offending or reoffending, for the safety of everyone on our roads. As such, I am conscious that time will be needed to effectively raise awareness amongst the driving public of the changes proposed. To this end, it is proposed that the legislation changes made under this bill not commence operation until a reasonable period after the bill’s passage to enable such communication to take place.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.