

## EXPLANATORY MEMORANDUM

### **Public Transport Authority Amendment Bill 2008**

#### **Purpose**

To provide strong penalties to support the Public Transport Banning Orders we introduced by way of regulation in February 2008, to combat violent and anti social behaviour on, and criminal damage to our public transport system..

#### **Background**

Western Australians have every right to use their world-class public transport system without being assaulted, threatened or subjected to offensive behaviour.

People who repeatedly deny them this right or wilfully damage an important community asset should not expect to be able to use it.

While repeat offenders are in the very small minority, we recognise that their actions of violent anti-social behaviour, graffiti and vandalism are regarded as serious issues by the community.

Banning repeat offenders from using public transport is an extra deterrent and could contribute to changing that type of behaviour.”

While the number of such offences is small when compared with the 35 million plus public transport journeys taken each year, the impact these very few offenders have on the perceptions and the actual experience of other customers is significant.

The Regulations referred to empower the chief executive officer of the PTA to issue a banning notice (called a “**prohibition order**”) in the following circumstances:

- a) if found guilty of or pleaded guilty to 2 relevant offences (relating to separate incidents) committed within a 12 month period – banned from public transport for up to one month;
- b) if found guilty of or pleaded guilty to 3 relevant offences (relating to separate incidents) committed within an 18 month period – banned from public transport for up to 3 months.

#### ***Relevant offences***

The relevant offences are:

- an assault committed on PTA property, conveyance or facility, whether common assault, assault occasioning bodily harm and serious assaults (including assaults on public officers and drivers.(sections 313, 317 and 318(1)(d) *Criminal Code*);
- wilful and unlawful damage to PTA property ( e.g. graffiti) (section 444 *Criminal Code*);

- violent or offensive behaviour on a PTA railway to the annoyance of others (section 43 (5) of the *Government Railways Act 1904*);
- obstructing a PTA authorised person or security officer in the course of their duties in relation to any PTA function (bus, train or ferry) (regulation 40 *Public Transport Authority Regulations 2003* (PTA Regulations)); and
- failing to comply with a refusal to travel direction by a PTA authorised person in circumstances where refusal is based on reasonable belief that a person poses a threat to the safety of the driver or master of, or a passenger on, a PTA bus, train or ferry (regulation 42 together with regulation 41(g) of PTA Regulations).

The amended Regulations, by their nature, can only impose a monetary penalty (refer section 69(5) *Public Transport Authority Act 2003 (Act)*).

This Bill currently before Parliament mirrors the prohibition order regime contained in the amended Regulations except that it changes the penalties for breaches of a prohibition order without reasonable excuse. The new penalties are:

- a term of imprisonment of up to 9 months as a maximum penalty (instead of a monetary penalty of up to \$2,000 as currently provided in the amended PTA Regulations);
- a minimum penalty of a Community Based Order, except that a further option is available in the case of juveniles;
- notwithstanding the *Sentencing Act* and the *Young Offenders Act*, the penalty of a fine would not be available; and
- referral, in the case of juveniles, to a juvenile justice team will be an option provided the PTA is accorded the status of “victim” for the purposes of the proceedings.

If the Bill is passed, the amended Regulations dealing with the prohibition order regime, will be removed.

A person in the position of, or similar to, a chief executive officer, has been given power to issue a banning notice in other WA legislation, notably the:

- *Casino Control Act 1984* – to the Commissioner of Police and authorized persons of the casino licensee; and
- *Alcohol and Drug Authority Regulations 1990* – to the chief executive officer of that Authority.

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

Clause 1: Short title.

Clause 2: This clause 3 sets out the commencement provisions.

Subclause (1) provides that the proposed sections 1 and 2 come into operation on the day the proposed Act receives the Royal Assent.

Subclause 2 provides that the rest of the proposed Act comes into operation on a day fixed by proclamation, and different days may be fixed for different provisions.

Clause 3: This clause states that this proposed Act amends the *Public Transport Authority Act 2003*.

Clause 4: This clause amends section 58 of the *Public Transport Authority Act*. Section 58 sets out the circumstances in which a security officer (an employee of the PTA appointed by the PTA's chief executive officer) or member of the Police Force may arrest an alleged offender.

This clause of the Bill adds an additional circumstance in which a security officer or member of the Police Force may arrest an alleged offender, namely when a person is found on a PTA conveyance (bus, train or ferry) or facility (e.g. bus station, railway station), without reasonable excuse, in contravention of a prohibition order given to that person.

The power to arrest a person who is found in breach of a prohibition order is considered necessary. It is a way to avoid the offender committing any further offences on the public transport system. It is fundamental to the Government's objective of keeping repeat violent offenders off the public transport system in order to provide a safer public transport system for all commuters.

The clause provides that once the alleged offender is arrested, he or she is to be taken to a police station or other place to be dealt with for the offence according to law (i.e. to be properly identified and charge laid).

Clause 5: This clause introduces the proposed new sections 64A and 64B into the *Public Transport Authority Act*.

The proposed section 64A has 8 subclauses.

The proposed section 64A (1) defines "conveyance" and "facility" for the purposes of the proposed section. These definitions are the same as the definitions for those terms as appear in the Regulations (regulation 3).

"Conveyance" is defined as a road bus, ferry or railway train involved in the provision of a public passenger transport service by the PTA.

"Facility" is defined as a place associated with the provision of a public passenger transport service provided by the PTA. This would include a bus station, bus interchange facility, bus stop, train station and ferry terminal from which the PTA operates its public passenger transport services.

The proposed section 64A (2) states that an offence is a “relevant offence” for the purposes of section 64A if it is specified in the proposed section 64A (3).

The proposed section 64A (3) lists the offences that are “relevant offences” for the purposes of the proposed section 64A, that trigger the ability for the PTA’s chief executive officer to issue a prohibition order. Those offences are:

- (a) an assault committed on PTA property, conveyance or facility, whether common assault, assault occasioning bodily harm and serious assaults (including assaults on public officers and drivers.(sections 313, 317 and 318(1)(d) *Criminal Code*);
- (b) wilful and unlawful damage to PTA property, a conveyance or facility (section 444 *Criminal Code*);
- (c) violent or offensive behaviour on a PTA railway to the annoyance of others (section 43 (5) of the *Government Railways Act 1904*);
- (d) obstructing a PTA authorised person or security officer in the course of their duties in relation to any PTA function (bus, train or ferry) (regulation 40 *Public Transport Authority Regulations 2003* (PTA Regulations); and
- (e) failing to comply with a refusal to travel direction by a PTA authorised person in circumstances where refusal is based on reasonable belief that a person poses a threat to the safety of the driver or master of, or a passenger on, a PTA bus, train or ferry (regulation 42 together with regulation 41(g) of PTA Regulations).

The proposed section 64A (4) requires the PTA’s chief executive officer to send to a repeat offender before a decision to issue a prohibition order is made, a notice to show cause why a prohibition order should not be issued to the offender, or if it is to be issued, any exceptions to that prohibition order that the PTA’s chief executive officer should consider before issuing a prohibition order. This “notice to show cause” is to give the offender at least 14 days to reply.

This allows the offender to put forward any particular circumstances of hardship that he or she may wish the PTA’s chief executive officer to take into account when deciding whether to issue a prohibition order, and if so, on what terms.

The proposed section 64A (5):

- empowers the PTA’s chief executive officer to issue a prohibition order against a repeat offender prohibiting the repeat offender (with or without conditions or exceptions) from using or travelling on the public transport system and being on PTA property or a facility; and
- specifies when a person is treated as a repeat offender, namely when they have pleaded guilty to or been found guilty of :
  - at least 2 relevant offences in a 12 month period; or
  - 3 or more relevant offences in an 18 month period; andthe offences do not arise from the same acts or circumstances and where the time periods are calculated from the date of the first relevant offence committed.

An offender that commits two relevant offences arising from the same set of circumstances (e.g. offensive behaviour on PTA railway and in the course of being arrested by a police officer or PTA transit officer for that offence, assaults the police officer or PTA transit officer) will only have those events count as one relevant offence for the purposes of the prohibition order regime to be established by this Bill.

When calculating the time period, the proposed Act is drafted to permit the PTA's chief executive officer to take into account a relevant offence committed by an offender before clause 5 of the Bill is proclaimed.

The proposed section 64A (6) provides the maximum periods of prohibition that PTA's chief executive officer may impose by prohibition order. In short, if the repeat offender has pleaded guilty to or been found guilty of:

- 2 relevant offences in a 12 month period , the maximum prohibition period is one month; and
- 3 relevant offences in an 18 month period, the maximum prohibition period is 3 months.

The proposed section 64A (7) clarifies that in calculating how many relevant offences have been committed in a 12 or 18 month period, if an offender has pleaded guilty to or been found guilty of more than one relevant offence at one hearing, those offences are to be counted as one relevant offence only, committed on the date on which the latest of those offences was alleged to have been committed. It is possible that a person commits 2 relevant offences (on separate occasions) in a 12 month period, but charges are heard together for those 2 relevant offences. In these circumstances, the Government has decided to treat those 2 offences as one relevant offence.

The proposed section 64A(8) provides that PTA's chief executive officer may, at any time on application from an offender that is subject to a prohibition order, revoke the order, make the order subject to an exception or amend any exception to which the order is subject. It is not possible for the chief executive officer to initiate any such action unilaterally.

The proposed section 64B creates an offence where a person who has a prohibition order issued against them, contravenes that prohibition order without reasonable excuse. The maximum penalty for this offence is 9 months imprisonment and the minimum penalty is subject to the statement below, a community based order. A monetary penalty is expressly excluded.

If a young offender is the person that has contravened a prohibition order and the matter is being dealt with by the juvenile justice team, the penalties above do not apply but the PTA is afforded the status of "victim" and can accordingly take part in the process conducted by the juvenile justice team under Part 5, Division 2 of the *Young Offenders Act 1994*.