

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

Explanatory Memorandum

This Bill implements recommendations of the Road Safety Council in relation to the penalties for drink and drug driving by amending the *Road Traffic Act 1974* (“the Act”) to:

- Increase the monetary penalties and suspension and disqualification periods for drink and drug driving offences in Western Australia; and
- Extend the application of the zero blood alcohol content (“BAC”) limit currently applying to novice drivers to include drivers of buses, taxis, heavy vehicles, small charter vehicles, vehicles carrying explosives and dangerous goods and drivers currently subject to section 64A of the Act including recently disqualified drivers and persons driving on an extraordinary driver’s licence.

The intention of the increased penalties is to deter drivers from driving while affected by alcohol or drugs. To reflect the relative risk of crashing at each BAC level and the seriousness of an offence, the proposed drink driving penalties increase as the BAC increases and the proposed monetary penalties are higher for second and subsequent offences than for first offences.

The extension of the zero BAC limit to certain driver categories in addition to novice drivers recognises the increased risk that those drivers pose to passengers and other road users when driving with alcohol or drugs in the blood and will bring Western Australia’s drink and drug driving laws into line with similar laws operating in other jurisdictions.

Clause 1 – Short Title

A formal clause titling the Act.

Clause 2 – Commencement

Part I of the Act comes into operation on the day on which the Act receives Royal Assent and the balance of the Act commences on a day or days to be fixed by proclamation.

Clause 3 – The Act amended in Part 2.

This clause states that the amendments in this Part of the Act are to the *Road Traffic Act 1974* (clause 18 in Part 3 amends the *Road Traffic (Amendment) Act 2008*).

Clause 4 - Section 42C amended

Clause 4 corrects a typographical cross referencing error in section 42C(1) of the Act.

Clause 5 - Section 63 amended

Section 63 makes it an offence to drive or attempt to drive a motor vehicle whilst under the influence of alcohol or drugs.

Subclause (1) will amend section 63(2) of the Act to increase the penalties for an offence against the section.

For a first offence where the person has no previous conviction against section 64 of the Act, the monetary penalty will be increased from a fine of not less than 16PU or more than 50PU to a fine of not less than 18PU or more than 50PU. The Minimum period of mandatory driver's licence disqualification will be increased from 6 months to 10 month.

For a second offence the monetary penalty will be increased from a fine of not less than 30 PU or more than 70PU to a fine of not less than 42PU or more than 70PU and the minimum period of mandatory driver's licence disqualification will be increased from not less than 2 years to not less than 30 months.

For a third or subsequent offence the monetary penalty will be increased from a fine of not less than 40PU or more than 100PU to a fine of not less than 42PU or more than 100PU. The mandatory permanent driver's licence disqualification remains unchanged.

Section 63(6) of the Act provides that a person charged with an offence against section 63 may instead be convicted by a court of an alternative drink or drug driving offence. Subclause (2) inserts a new section 63(6) as a consequence of proposed amendments to other drink and drug driving provisions in the Act.

Clause 6 – Section 64 amended

Section 64 makes it an offence to drive or attempt to drive a motor vehicle with a BAC of or above 0.08 grams of alcohol per 100 mls of blood.

Subclause (1) will amend section 64(2) of the Act to increase the penalties provided for offences against the section. The proposed monetary penalties and period of mandatory driver's licence disqualification increase in line with a person's BAC.

Section 64(4) of the Act provides that a person charged with an offence against section 64 may instead be convicted by a court of an alternative drink driving offence. Subclause (2) inserts a new section 64(4) required as a consequence of proposed amendments to sections 64A, 64AA and 64AAA of the Act.

Clause 7 – Section 64AA amended

Section 64AA(1) makes it an offence to drive or attempt to drive a motor vehicle with a BAC of or above 0.05 grams of alcohol per 100mls of blood.

Subclauses (1) and (2) will amend sections 64AA(2) and 64AA(2a) of the Act to increase the penalties for offences against the section.

For a first offence against section 64AA(1) the monetary penalty will be increased from a fine of not more than 4PU to a fine of not more than 10PU.

For a second offence where a person's BAC is at or greater than 0.05 but less than 0.07 the monetary penalty will be increased from a fine not less than 5PU or more than 10 PU depending on the actual BAC to a fine not less than 10 PU or more than 20 PU. The minimum period of driver's licence disqualification will be increased from 3 to 6 months.

For a second offence where a person's BAC is at or greater than 0.07 the monetary penalty will be increased from a fine of not less than 7 PU or more than 10PU to a fine of not less than 12PU or more than 20PU. The Minimum period of driver's licence disqualification will be increased from 3 months to 8 months

For a subsequent offence where a person's BAC is at or greater than 0.05 but less than 0.07 the monetary penalty will be increased from a fine not less than 5PU or more than 10 PU depending on the actual BAC to a fine not less than 10 PU or more than 20 PU. The minimum period of driver's licence disqualification will be increased from 3 to 8 months.

For a subsequent offence where a person's BAC is at or greater 0.07 the monetary penalty will be increased form a fine of not less than 7PU or more than 10 PU to a fine of not less than 12 PU or more than 20PU. The minimum period of driver's licence disqualification will be increased from 3 months to 10 months

Section 64AA(3) of the Act provides that a person charged with an offence against section 64AA(1) may instead be convicted by a court of an alternative offence against section 64A or section 64AAA.

Subclause (3) deletes section 64AA(3) and inserts new section 64AA(3) required due to proposed amendments to section 64A and section 64AAA of the Act and provides that a person charged with an offence against section 64AA(1) may instead be convicted of an offence against one of those sections.

Clause 8 – Section 64A amended

Section 64A(1) of the Act makes it an offence for a person to whom the section applies to drive or attempt a motor vehicle with a BAC at or above 0.02g of alcohol per 100mls of blood.

Section 64A(1) of the Act currently applies to the holders of provisional and extraordinary driver's licences, persons who if they could be granted a licence could only obtain a provisional licence, recently disqualified drivers and persons not holding a driver's licence because it has been cancelled following disqualification for a prescribed offence.

Subclause (1) amends section 64A(1) of the Act to increase the monetary penalty for an offence against the section from a fine of not less than 2PU or more than 6PU to a fine of not less than 3PU or more than 6PU.

Subclause (2) amends section 64A(2) of the Act by deleting paragraphs (a) and (b) which will become redundant due to the inclusion of paragraph (g) in the section and which provides that the section applies to a person who is a novice driver as defined in section 104(2) of the Act.

Subclause (3) deletes section 64A(4) and inserts a new sections 64A(4), (5), (6), (7) and (8).

Proposed section 64A(4) will create a new offence to drive or attempt to drive a motor vehicle to which the section applies with a BAC at or above 0.02% g of alcohol per 100 mls of blood.

Proposed section 64A(5) specifies the motor vehicles to which proposed section 64A(4) applies.

Proposed section 64A(6) defines terms used in proposed section 64A(5(d)).

Proposed sections 64A(7) and (8) provide that a person charged with an offence against section proposed 64A(1) or proposed section 64A(4) may instead be convicted by a court of alternative offences against section 64AAA(1) and section 64AAA(2) respectively.

Clause 9 – Section 64AAA replaced

This clause deletes and replaces section 64AAA which currently makes it an offence for a novice driver to drive or attempt to drive a motor vehicle with any BAC with a new section 64AAA which imposes a zero BAC limit on the classes of driver to which section 64A(1) applies in addition to novice drivers.

Proposed section 64AAA(1) will make it an offence for a person to whom section 64A(1) will apply to drive or attempt to drive a motor vehicle with any BAC.

Proposed section 64AAA(2) will make it an offence for a person to drive or attempt to drive a motor vehicle to which section 64A(4) applies with any BAC. Vehicles to which section 64A(4) applies include, prescribed classes of

omnibuses, taxis, buses, heavy vehicles and vehicles carrying dangerous goods.

Proposed section 64AAA(3) retains the defence currently available to persons charged with an offence against section 64AAA.

Clause 10 – Section 64AB amended

Section 64AB(1) of the Act makes it an offence for a person to drive or attempt to drive a motor vehicle while impaired by drugs.

Clause 10 amends section 64AB(2) to increase the penalties for an offence against section 64AB(1).

For a first offence the minimum fine will be increased from 16PU to 18PU and the minimum period of driver's licence disqualification will be increased from 6 months to 10 months.

For a second offence the monetary penalty will be increased from a fine of not less than 30PU or more than 70 PU to a fine of not less than 42PU or more than 70PU and the minimum period of driver's licence disqualification will be increased from 2 years to 30 months.

For a third or subsequent offence the monetary penalty will be increased from a fine of not less than 40PU or more than 100PU to a fine of not less than 42PU or more than 100PU while the mandatory permanent disqualification of driver's licence for a third or subsequent offence remains unchanged.

Clause 11 – Section 64AC amended

Section 64AC(1) makes it an offence for a person to drive or attempt to drive a motor vehicle with a prescribed illicit drug in the person's oral fluid or blood.

Clause 11 amends section 64AC(2) to increase the penalties for an offence against section 64AC(1).

For a first offence the fine will be increased from 4PU to 10PU.

For a second or subsequent offence the monetary penalty is increased from a fine not less than 5PU or more than 10PU to a fine of not less than 10PU or more than 20PU. The minimum period of driver's licence disqualification will be increased from 3 to 6 months.

Clause 12 – Section 66 amended

Section 66(1) of the Act gives a member of the Police Force certain powers in relation to a person suspected of drink driving including the power to require a person to submit a sample of breath or blood for analysis.

Clause 12 makes a consequential amendment to section 66(2) of the Act as a result of the proposed amendments to sections 64A and 64AAA.

Clause 13 – Section 67 amended

Section 67(2) of the Act provides that a person who fails to comply with a requirement of a member of the Police Force made pursuant to section 66 of the Act commits an offence.

Clause 13 amends section 67(3) of the Act to increase the penalties for an offence against section 67(2).

For a first offence where the person does not have a prior conviction for an offence against section 64 of the Act the monetary penalty will be increased from a fine of not less than 16PU or more than 50PU to a fine of not less than 18PU or more than 50PU. The minimum period of driver's licence disqualification will be increased from 6 months to 10 months.

For a second offence the monetary penalty will be increased from a fine of not less than 30PU or more than 70PU to a fine of not less than 42PU or more than 70PU. The minimum period of driver's licence disqualification will be increased from 2 years to 30 months.

For a subsequent offence the monetary penalty will be increased from a fine of not less than 40PU or more than 100PU to a fine of not less than 42PU or more than 100PU. The mandatory permanent driver's licence disqualification for a subsequent offence remains unchanged.

Clause 14 – Section 67AA amended

Section 67AA(2) makes it an offence to fail to comply with a requirement of a member of the Police Force to undergo a driver assessment or provide a sample of blood or urine for analysis under section 66A or section 66B of the Act.

Clause 14 amends section 67AA(3) of the Act to increase the penalties for an offence against section 67AA(2).

For a first offence the monetary penalty will be increased from a fine of not less than 16PU or more than 50PU to a fine of not less than 18PU or more than 50PU. The minimum period of driver's licence disqualification will be increased from 6 months to 10 months.

For a second offence the monetary penalty will be increased from a fine of not less than 30PU or more than 70PU to a fine of not less than 42PU or more than 70PU. The minimum period of driver's licence disqualification will be increased from 2 years to 30 months.

For a subsequent offence the monetary penalty is increased from a fine of not less than 40PU or more than 100PU to a fine of not less than 42PU or more than 100PU. The mandatory permanent driver's licence disqualification for a subsequent offence remains unchanged.

Clause 15 – Section 67AB amended

Section 67AB(2) of the Act makes it an offence for a person to fail to comply with a requirement of a member of the Police Force to provide a sample of oral fluid or blood for testing or analysis under section 66D or 66E of the Act.

Clause 15 amends section 67AB(3) of the Act to increase the penalties for an offence against section 67AB(2).

For a first offence the penalty will be increased from 4PU to 10PU. For a second or subsequent offence the monetary penalty of a fine of not less than 5 PU or more than 10 PU will be increased to a fine of not less than 10 PU or more than 20PU. The minimum period of driver's licence disqualification for a subsequent offence will be increased from a period of not less than 3 months to not less than 6 months.

Clause 16 – section 98 amended

Section 98 of the Act is an evidentiary provision and provides that in a prosecution for an offence against the Act, an averment in a prosecution notice of certain facts is taken to be proved in the absence of proof to the contrary.

Clause 16 makes consequential amendments to section 98(1a) of the Act as a result of proposed amendments to section 64A and section 64AAA.

Clause 17 – The *Road Traffic (Administration) Act 2008* amended by Part 3

Clause 17 provides that the *Road Traffic (Administration) Act 2008* is amended by Part 3.

Clause 18 – Section 109 amended

Section 109 of the *Road Traffic (Administration) Act 2008* is an evidentiary provision and provides that in a prosecution for an offence against a road law, an averment in a prosecution notice of certain facts is taken to be proved in the absence of proof to the contrary.

Clause 17 makes consequential amendments to section 109(1) of the *Road Traffic (Administration) Act 2008* as a result of the proposed amendments to section 64A and section 64AAA of the Act.
