

# Explanatory memorandum

## ***Road Safety Council Amendment Bill 2011***

The *Road Safety Council Act 2002* (“the Act”) establishes the Road Safety Council (“the Council”). It confers functions upon the Council and powers upon the Minister for the advancement of road safety and the reduction of road trauma in Western Australia.

The Council’s functions include:

- identifying measures that will improve the safety of roads in Western Australia and measures that will reduce deaths, injuries and property damage resulting from incidents on Western Australian roads; and
- recommending to the Minister how money in the Road Trauma Trust Account, established under the Act, should be spent to implement those measures.

Section 12 of the Act establishes the Road Trauma Trust Account (“the Account”). It provides for a proportion of specified fine revenue to be paid into the Account and empowers the Minister to determine how money credited to the Account should be spent, taking into consideration the recommendations made to the Minister by the Council.

This Bill contains two key initiatives.

- i. It will provide for two, staged increases in the proportion of specified fine revenue that is to be paid into the Account.
- ii. It will empower the Minister to refer to the Council a funding proposal for a measure relating to the advancement of road safety or the reduction of road trauma, and to direct the Council to consider the proposal and to make a recommendation regarding whether or not the proposal should be funded.

Presently, the Council identifies measures that will improve road safety or that will reduce road trauma and makes recommendations to the Minister concerning the funding of those measures.

This amendment will enable the Minister to have the Council consider relevant measures that the Minister has identified.

### **1. Short title**

This clause will provide that, when this Bill has been passed by the Parliament and has received the Royal Assent, it will be known as the *Road Safety Council Amendment Act 2011*.

## **2. Commencement**

This clause sets out when the provisions of the Bill will commence operation.

Clauses 1 and 2 will commence operation on the day on which the Bill receives the Royal Assent.

The remainder of the Bill will commence operation on 1 July 2011.

## **3. Act amended**

This clause confirms that the provisions of this Bill will amend the *Road Safety Council Act 2002*.

## **4. Section 5 amended**

This clause will amend section 5 of the *Road Safety Council Act 2002* ("the Act").

Section 5 sets out the functions of the Road Safety Council, which is established under section 4 of the Act.

Paragraph (a) of this clause will amend paragraph (f) of section 5 so as to enable the insertion of a proposed new paragraph (g).

Paragraph (b) of this clause will insert proposed new paragraph (g) in section 5.

Proposed paragraph (g) is necessary because of clause 5, which will insert proposed section 6A in the Act.

Proposed section 6A will empower the Minister to direct the Road Safety Council to consider, and to make a recommendation regarding, a funding proposal that the Minister has identified as being a measure that will improve the safety of roads in Western Australia or a measure that will reduce deaths, injuries and property damage resulting from incidents on Western Australian roads.

Proposed paragraph (g) will provide that it is an additional function of the Road Safety Council to make recommendations to the Minister in accordance with proposed section 6A.

Paragraph (c) of this clause will make formatting amendments to section 5, providing for the insertion of the word "and" after each paragraph in section 5. This conforms with current formatting conventions that are applied in every Western Australian statute.

## **5. Section 6A inserted**

This clause will insert a new section 6A in the *Road Safety Council Act 2002* ("the Act").

Section 4 of the Act establishes the Road Safety Council. Section 5 sets out the Council's various functions.

These include:

- the identification of measures that will improve the safety of roads in Western Australia and measures that will reduce deaths, injuries and property damage resulting from incidents on Western Australian roads; and
- recommending to the Minister how money in the Road Trauma Trust Account, established under section 12, should be spent to implement those measures.

Proposed section 6A(1) will empower the Minister to direct the Road Safety Council to:

- consider a proposal relating to such a measure that the Minister has identified; and
- make a recommendation regarding whether or not money in the Road Trauma Trust Account should be spent to implement that proposal.

Proposed section 6A(2) will require the Road Safety Council to give effect to the Minister's direction. It will also provide that the Road Safety Council's recommendation may be that the proposal should be funded, that a modified version of the proposal should be funded, or that the proposal should not be funded at all.

In order to maintain transparency, proposed section 6A(3) will require the Minister to lay a copy of any direction the Minister makes under proposed section 6A(1) before each House of Parliament within 14 days of the Minister giving the direction.

## **6. Section 12 amended**

This clause will amend section 12 of the *Road Safety Council Act 2002* ("the Act").

Section 12 establishes the Road Trauma Trust Account ("the Account"). It also sets out what money is to be credited to the Account and how money in the Account may be spent.

Section 12(2)(a) provides that one third of the fine revenue paid, in the case of infringement notices issued where the alleged offence has been detected via photographic evidence, is to be credited to the Account.

Subclause (1) will delete the existing section 12(2)(a) and insert a replacement section 12(2)(a) that will provide for an increase in the proportion of fine revenue that is to be credited to the Account, in two stages.

The first staged increase is described in replacement section 12(2)(a) proposed paragraph (i).

Proposed paragraph (i) will provide that during the “prescribed period”, the proportion of relevant fine revenue that is to be credited to the Account is to increase from one third to two thirds.

Subclause (2) will insert a definition of the term “prescribed period” in section 12(3), providing that:

- if the provisions of this Bill commence operation prior to or on 1 July 2011, the prescribed period is to be from 1 July 2011 until 30 June 2012; or
- if the provisions of this Bill commence operation after 1 July 2011, the prescribed period is to be from the day on which the Bill's provisions commence operation until 30 June 2012.

Because it is intended that, between 1 July 2011 and 30 June 2012, two-thirds of fine revenue be credited to the Account, in the event that the provisions of the Bill commence operation after 1 July 2011, clause 7 will insert a new section 16.

The proposed section 16 will authorise the crediting, once the Bill's provisions commence operation, of an amount representing the outstanding one-third of fine revenue for the period from 1 July 2011 to the day before the day on which the Bill's provisions commence.

The second staged increase is described in replacement section 12(2)(a) paragraph (ii).

Proposed paragraph (ii) will provide that from 1 July 2012, the proportion of relevant fine revenue that is to be credited to the Account is to be the total amount of that fine revenue.

Subclause (3) is required as a consequence of subclause (2), which will provide for the insertion of the definition of the term “prescribed period” in subsection 12(3). Presently, the definition of the term “prescribed penalty” is the last definition in section 12(3).

Subclause (3) will provide for the definition of the term “prescribed period” to be inserted after the definition of the term “prescribed penalty”.

Subclause (4) will amend section 12(6), which sets out the process via which expenditure from the Account is permitted to be made.

Under section 12(6):

- money standing to the credit of the Account may be spent upon measures that will improve the safety of roads in Western Australia and that will reduce deaths, injuries and property damage resulting from incidents on Western Australian roads; **and**
- expenditure from the Account may be authorised by the Minister, who is to make determinations regarding expenditure in response to recommendations made by the Road Safety Council.

Subclause (4) will amend section 12(6) to make it clear that the Minister is empowered to make a determination regarding the expenditure of money from the Account, following the making of a recommendation by the Road Safety Council, that differs from what is recommended.

## **7. Section 15 replaced**

This clause is necessary because of clauses 5 and 6.

Clause 5 will insert a new section 6A in the *Road Safety Council Act 2002* ("the Act").

Proposed section 6A(1) will empower the Minister to direct the Road Safety Council to:

- consider a proposal relating to a measure, that will improve road safety or that will reduce road trauma, that the Minister has identified; and
- make a recommendation regarding whether or not money in the Road Trauma Trust Account should be spent to implement that proposal.

In order to maintain transparency, proposed section 6A(3) will require the Minister to lay a copy of any direction the Minister makes under proposed section 6A(1) before each House of Parliament within 14 days of the Minister giving the direction.

This clause will insert a replacement section 15 in the Act.

The replacement section 15 will set out the process that is to apply, in order to enable the Minister to fulfil his or her obligations under proposed section 6A(3), relating to the tabling of directions, where the Parliament is in recess at the time any of those obligations arises.

The section 15 that is to be replaced is now obsolete. It provided, at the time the *Road Safety Council Act 2002* was first passed, for the consequential amendment of a number of Acts.

This clause will also insert a new section 16 in the Act, which is necessary as a consequence of subclauses 6(1) and (2).

Subclauses 6(1) and (2) will amend section 12 of the Act, which establishes the Road Trauma Trust Account (“the Account”) and sets out what money is to be credited to the Account and how money in the Account may be spent.

Section 12(2)(a) provides that one third of the fine revenue paid, in the case of infringement notices issued where the alleged offence has been detected via photographic evidence, is to be credited to the Account.

Subclause 6(1) will delete the existing section 12(2)(a) and insert a replacement section 12(2)(a) that will provide for an increase in the proportion of fine revenue that is to be credited to the Account, in two stages.

The first staged increase is described in replacement section 12(2)(a) proposed paragraph (i).

Proposed paragraph (i) will provide that during the “prescribed period”, the proportion of relevant fine revenue that is to be credited to the Account is to increase from one third to two thirds.

Subclause (2) will insert a definition of the term “prescribed period” in section 12(3), providing that:

- if the provisions of this Bill commence operation prior to or on 1 July 2011, the prescribed period is to be from 1 July 2011 until 30 June 2012; or
- if the provisions of this Bill commence operation after 1 July 2011, the prescribed period is to be from the day on which the Bill's provisions commence operation until 30 June 2012.

Because it is intended that, between 1 July 2011 and 30 June 2012, two-thirds of fine revenue be credited to the Account, in the event that the provisions of the Bill commence operation after 1 July 2011, this clause will insert a new section 16.

The proposed section 16 will authorise the crediting, once the Bill's provisions commence operation, of an amount representing the outstanding one-third of fine revenue for the period from 1 July 2011 to the day before the day on which the Bill's provisions commence.

