

ROAD TRAFFIC LEGISLATION AMENDMENT BILL (NO. 2) 2015

Introduction and First Reading

Bill introduced, on motion by **Mrs L.M. Harvey (Minister for Road Safety)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MRS L.M. HARVEY (Scarborough — Minister for Road Safety) [1.12 pm]: I move —

That the bill be now read a second time.

The State's road traffic legislation is under constant review in order to remain contemporary and to adapt in a manner that will meet the Liberal government's ongoing commitment to reducing the road toll. This bill amends the Motor Vehicle (Third Party Insurance) Act 1943, the Road Traffic Act 1974, the Road Traffic (Administration) Act 2008, Road Traffic (Authorisation to Drive) Act 2008 and the Young Offenders Act 1994 to implement a number of proposals that will deter errant drivers and resolve a number of technical administrative difficulties within our road traffic laws.

The most significant amendments contained in this bill are to the Road Traffic Act 1974. These are to establish the power to require compulsory blood testing of suspected drivers involved in a traffic crash that resulted in death or serious bodily harm; to create an offence of careless driving causing death, grievous bodily harm or bodily harm; and to create offences of providing driving instruction under the influence of alcohol or a prescribed illicit drug.

In relation to compulsory blood testing, the lack of adequate powers for police to require the compulsory blood testing of suspected drivers involved in a traffic crash that resulted in death or serious bodily harm was first identified by the findings of a 2004 coronial inquiry. This inquiry was into a crash in which two children who were passengers in a vehicle drowned after the vehicle was washed from a low-level river crossing. Police were not able to request the driver to provide a blood sample under section 66 of the RTA as the four-hour time limit for taking blood had elapsed. In his findings, the State Coroner stated —

Regrettably section 66 of the Road Traffic Act 1974 provides for very limited circumstances in which a member of the Police Service may require a driver to provide a sample of blood for analysis with a view to determining whether that driver has consumed medications or illegal drugs.

A later fatal vehicle crash in which intoxication may have been a factor led the State Coroner to comment —

In a case where there has been a fatal traffic crash, it is my view that police should be permitted to obtain a sample of blood for testing from each driver involved in the crash irrespective of whether or not the police officers present are in a position to make any determination as to intoxication or otherwise.

To implement both these recommendations by the State Coroner for mandatory blood testing, this bill amends section 66 of the RTA to provide that a police officer may request that a blood and/or urine sample be provided by the driver or suspected driver of a motor vehicle following an incident that involves a fatality, or when a person has been admitted to a hospital as a result of injuries sustained in the incident. If the driver or suspected driver is unable to consent to the taking of a blood sample, police will be empowered to authorise the taking of the sample. The time limit for taking blood and/or urine samples in circumstances in which there has been death or serious injury will be extended from four hours to 12 hours from the time of the incident.

As I previously stated, this bill establishes a new offence of careless driving causing death, grievous bodily harm or bodily harm. Members will be aware that at times there has been public disquiet about the perceived leniency of the small fine given to a driver of a vehicle involved in a crash that has resulted in a death. One of the reasons that this occurs is the court could not conclusively establish that the actions of the driver were dangerous rather than careless. Currently, there is a clear disparity in the penalties available to a court if death or serious injury results from careless driving rather than dangerous driving. A person convicted of careless driving in which death results can only be given a fine of up to \$600, whereas a person convicted of dangerous driving causing death can be given a penalty of 10 years' imprisonment and a mandatory driver's licence disqualification of two years. The distinction between what is considered driving in a "dangerous" manner and what is considered "careless" driving can be negligible. There are too many variables to enable specific definitions to be prescribed of what constitutes dangerous or careless driving, and as such the determination of whether the manner of driving is considered dangerous or careless is left to the discretion of the court to decide by relying upon the facts of the case and precedents.

The State Coroner identified this as a problem following a 2011 coronial inquiry into the death of Mr Jeremy Armstrong, who died as a result of being hit by a car on Ocean Drive in Bunbury. In addressing the leniency of the penalty that the driver of the vehicle received, the State Coroner called for an alternative charge

for driving that falls below the standard that is expected from a reasonably prudent driver and that causes death or serious injury. The State Coroner's comments were subsequently echoed in 2012 by Magistrate Colin Roberts in the Magistrates Court in Broome while presiding over a careless driving offence that resulted in the death of the passenger.

This bill addresses the disparity in penalties by establishing an offence of careless driving causing death or grievous bodily harm or bodily harm, with a maximum penalty of three years' imprisonment or a fine of \$36 000, and, irrespective of what other penalty is given, a mandatory driver's licence disqualification of not less than three months.

Rather than set differing graduated penalties, as currently applies to the related offences of dangerous driving causing death or grievous bodily harm and dangerous driving causing bodily harm, it was decided to set one broad penalty that allows the court discretion to impose an appropriate sentence based on the individual circumstances of the offence. It is envisaged that a court will set a penalty for this new offence within the scope provided by the bill that will be relative and appropriate, giving consideration to the level of negligence and the degree of injury and giving consideration to the current graduated penalties that are available in the act for the more serious offences of dangerous driving causing death or grievous bodily harm and dangerous driving causing bodily harm. This is reflected in the fact that careless driving causing death, grievous bodily harm or bodily harm is an alternative verdict to the more serious offences that involve the element of dangerous driving. In addition to creating the new offence, this bill also amends the maximum fine penalty for careless driving to a more realistic level of \$1 500.

In regard to the amendment contained in this bill to create offences for providing driving instruction under the influence of alcohol or a prescribed illicit drug, the need for this type of deterrent was identified by a review of national and international literature on young driver training, licensing and regulatory systems conducted by the Monash University Accident Research Centre. I think members would agree that it is reasonable to expect that people who are instructing learner drivers should not have blood alcohol limits that are more than they are legally permitted to have when they are driving. One of the recommendations of this review is to bring our state's road traffic legislation into line with other Australian jurisdictions by the establishment of a blood alcohol restriction on a person supervising a learner driver. In evaluating this proposal, the Office of Road Safety concluded that such a restriction should also apply to persons supervising a learner driver whilst under the influence of a prescribed illicit drug. This proposal was subsequently considered and supported by the Road Safety Council of Western Australia.

To implement this proposal, the bill amends the Road Traffic Act to establish two offences for providing driving instruction under the influence of alcohol or a prescribed illicit drug. The penalty for these offences will be a fine of not less than \$300 and not more than \$500. In most instances, a person who provides or attempts to provide driving instruction to a learner driver in a passenger or light commercial vehicle will not commit an offence unless they have a blood alcohol content of or above 0.05 grams of alcohol per 100 millilitres of blood. However, there will be a zero blood alcohol content restriction in some instances, including when the person providing instruction is the holder of an extraordinary licence; is a recently, within the previous three years, disqualified driver; or has recently, in the past three years, obtained a driver's licence after it was cancelled as a result of an order disqualifying the instructor from driving for specified alcohol or drug-driving offences; or is instructing a learner driver in a vehicle that has a gross combination mass exceeding 22.5 tonnes. In regard to the prescribed illicit drug offence, the presence of any detectable amount of the active ingredients of the drugs commonly known as cannabis, ice, speed or ecstasy in the oral bodily fluid or blood of a person providing or attempting to provide driving instruction to a learner driver will be an offence. These drugs are specified as they are believed to be the most common illicit drugs in use that impair a driver's abilities.

In addition to these significant amendments, this bill also makes lesser, but nonetheless important, amendments to our road traffic laws. I will not go into significant detail in relation to these and ask members to refer to the extensive explanatory memorandum for this bill, which explains these amendments in greater detail. These lesser amendments are to the RTA, the Road Traffic (Administration) Act 2008, the Road Traffic (Authorisation to Drive) Act 2008 and the Young Offenders Act 1994.

Specifically, this bill amends the Road Traffic Act to —

- provide for the resolution of an anomaly in the offence of driving without authorisation while under suspension or disqualification under section 49 of the RTA whereby a person who is disqualified by a court and did not at the time hold a licence because it had expired or had been surrendered is liable to a lesser maximum penalty than another who did not hold a licence because it was refused, suspended or cancelled;

- give drivers an option to report a crash to Western Australia Police online through the internet;

provide a mandatory disqualification of a driver's licence of two years for an offence under section 54, "Driver in incident occasioning bodily harm to stop, ensure assistance and give information", when death or grievous bodily harm results or 12 months in the case of bodily harm;

give the Commissioner of Police the power to certify a person as being competent to operate all types of breath-analysing equipment;

establish the power to issue infringement notices based on photographic evidence for the offence of using an unlicensed light vehicle;

repeal the superseded section 50 of the RTA;

remove an anomaly in section 67 of the RTA whereby a person who is required to accompany a police officer to a place in order to provide a sample of breath or allow a sample of blood to be taken for analysis cannot be arrested if they refuse to accompany the officer and is liable for a lesser penalty than if they refuse to provide a sample of breath or blood; and

correct drafting errors made in an earlier amendment to section 64A of the RTA so that drivers whose licences were cancelled under the now repealed section 75 will continue to be liable for the penalty under section 64A of the RTA if they drive with a BAC of 0.02 grams per 100 millilitres of blood or more, and drivers of vehicles having a gross combination mass of or exceeding 22.5 tonnes will be required to have a zero BAC.

The bill also amends the Road Traffic (Administration) Act 2008 to —

give the Commissioner of Police the power to disclose information about a motor vehicle incident that resulted in bodily harm to anyone or damage to property, to the Insurance Commission of Western Australia, to a person involved or suffering injury or damage in the incident and to a person the commissioner considers requires the information for road safety purposes;

update terminology relating to the use of speed and distance-measuring equipment;

correct the unintended establishment in the Road Traffic (Administration) Act 2008 of a statutory limitation on the initiation of a prosecution for an indictable offence under the RTA; and

give the Minister for Police the power to approve or revoke the types of apparatus and equipment used to measure speed and distance and to ascertain the presence of alcohol and drugs in samples of breath, blood, urine and oral fluid.

Further, the bill amends the Road Traffic (Authorisation to Drive) Act 2008 to remove an anomaly whereby a person who is convicted of an offence under the RTA and sentenced to imprisonment and also is disqualified from holding or obtaining a driver's licence will not be subject to the full consequences of their action because their period of disqualification will elapse while the person is in custody.

Finally, this bill amends the Young Offenders Act 1994 to add to schedule 1 of the act the RTA offences at section 61, "Dangerous driving", section 62, "Careless driving", section 62A, "Causing excessive noise or smoke from vehicle's tyres", and section 67A, "Failure to comply with other requirements of police officer", made under sections 66 to 66E as offences for which a caution cannot be given and which cannot be referred to a juvenile justice team; and to add to schedule 2 of the act the RTA offence at section 54, "Driver in incident occasioning bodily harm to stop, ensure assistance and give information", as an offence for which a caution cannot be given, which cannot be referred to a juvenile justice team, for which a conviction will normally be recorded and which may lead to the mandatory detention of an offender who repeatedly commits the offence.

I commend the bill to the house.

Debate adjourned, on motion by **Mr D.A. Templeman**.