

Western Australia

**Road Traffic (Miscellaneous Amendments)
Act 2012**

As at 11 Dec 2012

No. 59 of 2012

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Road Traffic (Miscellaneous Amendments) Act 2012

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Western Australia

Road Traffic (Miscellaneous Amendments) Act 2012

No. 59 of 2012

An Act to amend —

- **the *Road Traffic Act 1974*; and**
- **the *Road Traffic (Administration) Act 2008*.**

[Assented to 11 December 2012]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Road Traffic (Miscellaneous Amendments) Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2, other than section 12 — on the day after assent day;
- (c) section 12 and Part 3 —
 - (i) if the *Road Traffic (Administration) Act 2008* section 44 (*section 44*) comes into operation on or before assent day — on the day after assent day; or
 - (ii) otherwise — when section 44 comes into operation.

Part 2 — Road Traffic Act 1974 amended

3. Act amended

This Part amends the *Road Traffic Act 1974*.

4. Section 49AB inserted

At the beginning of Part V Division 1 insert:

49AB. Circumstances of aggravation

- (1) For the purposes of this Division, a person commits an offence in *circumstances of aggravation* if at the time of the alleged offence —
 - (a) the person was unlawfully driving the vehicle concerned without the consent of the owner or person in charge of the vehicle; or
 - (b) the person was driving the vehicle concerned on a road at a speed that exceeded the speed limit applicable to the vehicle, or the length of road where the driving occurred, by 45 km/h or more; or
 - (c) the person was driving the vehicle concerned to escape pursuit by a member of the Police Force.
- (2) For the purposes of subsection (1)(c) it does not matter whether the pursuit was proceeding, or had been suspended or terminated, at the time of the alleged offence.

5. Section 53 amended

Delete section 53(1) and insert:

- (1) A driver of a vehicle who when required by a member of the Police Force to state his or her name and place of abode refuses to do so, or states a false name or place of abode, commits an offence.

Penalty:

- (a) for a first offence — a fine of 6 PU;
- (b) for a subsequent offence — a fine of 12 PU.

- (2A) A driver of a vehicle who refuses or fails to stop his or her vehicle when called upon to do so by a member of the Police Force commits an offence.

Penalty:

- (a) unless paragraph (b) applies —
 - (i) for a first offence — a fine of 24 PU;
 - (ii) for a subsequent offence — a fine of 48 PU;
- (b) if the offence is committed in the circumstance of aggravation referred to in section 49AB(1)(c) — imprisonment for 2 years, but the minimum penalty is a fine of 100 PU; and, in any event, the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

6. Section 59 amended

After section 59(3) insert:

- (4A) A court sentencing a person for an offence against this section committed in the circumstance of aggravation referred to in section 49AB(1)(c) must —
- (a) sentence the person to a term of imprisonment of at least 12 months; and
 - (b) not suspend the term of imprisonment.
- (4B) Subsection (4A) applies whether the person was convicted on indictment or summarily and despite the *Sentencing Act 1995* Part 5.

7. Section 59A amended

- (1) In section 59A(3):
- (a) in paragraph (a) delete “80” and insert:

180
 - (b) in paragraph (b) delete “160” and insert:

360
- (2) In section 59A(3a):
- (a) delete “7” and insert:

10

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- (b) in the Summary conviction penalty delete “18 months or a fine of 160” and insert:

3 years or a fine of 720

- (3) After section 59A(3a) insert:

- (4A) A court sentencing a person for an offence against this section committed in the circumstance of aggravation referred to in section 49AB(1)(c) must —

- (a) sentence the person to a term of imprisonment of at least 6 months; and
(b) not suspend the term of imprisonment.

- (4B) Subsection (4A) applies whether the person was convicted on indictment or summarily and despite the *Sentencing Act 1995* Part 5.

8. Section 59B amended

Delete section 59B(3) and (4).

9. Section 60 amended

- (1) Delete section 60(1c)(a)(i) and insert:

- (i) the driver is on official duty as a member of the Police Force and the driving is substantially in accordance with the Commissioner’s policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy or guideline; or

- (2) In section 60(3):
- (a) in paragraph (a) delete “40” and insert:

120
 - (b) in paragraph (b) delete “60” and insert:

180
 - (c) in paragraph (c) delete “80” and insert:

240
- (3) After section 60(3) insert:
- (4) If an offence against this section is committed in the circumstance of aggravation referred to in section 49AB(1)(c), the offence is a crime.
Penalty: imprisonment for 5 years.
Summary conviction penalty: imprisonment for 2 years.
- (5) A court sentencing a person for an offence against this section committed in the circumstance of aggravation referred to in section 49AB(1)(c) must —
- (a) sentence the person to a term of imprisonment of at least 6 months; and
 - (b) not suspend the term of imprisonment; and
 - (c) for a first or second offence — order that the offender is disqualified from holding or obtaining a driver’s licence for a period of not less than 2 years; and

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- (d) for a third or subsequent offence — order that the offender is permanently disqualified from holding or obtaining a driver's licence.
- (6) Subsection (5) applies whether the person was convicted on indictment or summarily and despite the *Sentencing Act 1995* Part 5.
- (7) A reference in subsection (5)(c) or (d) to an offence is a reference to an offence against this section whether or not committed in the circumstance of aggravation referred to in section 49AB(1)(c).

10. Section 61 amended

Delete section 61(3)(a) and (b) and insert:

- (a) unless paragraph (b) applies —
 - (i) for a first offence — to a fine of 60 PU;
 - (ii) for a subsequent offence — to a fine of 120 PU or to imprisonment for 9 months; and, in any event, the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 12 months;
- (b) if the offence is committed in the circumstance of aggravation referred to in section 49AB(1)(c) — to a fine of 720 PU or to imprisonment for 3 years; and, in any event, the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

11. Section 61A inserted

After section 61 insert:

61A. Reckless or dangerous driving — defence for police officers in certain circumstances

- (1) It is a defence to a prosecution for an offence against section 59(1)(b), 59A(1)(b), 60(1) or 61(1) if the accused satisfies the court that, at the time of the alleged commission of the offence —
 - (a) the accused was on official duty as a member of the Police Force; and
 - (b) the driving was substantially in accordance with the Commissioner’s policies and guidelines relating to driving, applicable at the time of the driving, and any direction given under such a policy or guideline; and
 - (c) having regard to all of the circumstances of the case, it was reasonable, and in the public interest, for the accused to have driven the motor vehicle in the manner that he or she did.
- (2) Subsection (1) does not affect the application of any other defence the accused may have.

12. Various references to “member of the Police Force” amended

In sections 49AB(1)(c), 53(1) and (2A), 60(1c)(a)(i) and 61A(1)(a) delete “member of the Police Force” and insert:

police officer

**Part 3 — Road Traffic (Administration) Act 2008
amended**

13. Act amended

This Part amends the *Road Traffic (Administration) Act 2008*.

14. Section 44 amended

In section 44 delete the Penalty and insert:

Penalty:

- (a) unless paragraph (b) applies — a fine of 100 PU;
- (b) if the person was given the direction under section 39 and the person was, at the time the direction was given, driving the vehicle so as to escape pursuit by a police officer — imprisonment for 2 years, but the minimum penalty is a fine of 100 PU; and, in any event, the court convicting the person must order that the offender is disqualified from holding or obtaining a driver's licence for a period of not less than 2 years.

