

# Traffic – Part 2: Common offences and penalties

This information will help you if you are charged with a particular traffic offence. It describes some common offences and the penalties you can receive for them. It will help you understand how serious your offence is and whether you should get legal advice.

## About this information sheet

This information aims to help you understand more about the traffic offence you have been charged with and the penalty you could get.

Knowing the possible penalty helps you understand how serious your situation is and whether you should get legal advice. For example, if the maximum penalty for your offence is a fine only and no disqualification, it is less serious. However, if you can be given imprisonment as your penalty, it is more serious.

The more serious your offence, the more important it is to get advice from a lawyer before you enter any plea and have your charge dealt with.

There is another Legal Aid WA information sheet: **Traffic - Part 1: How to deal with your traffic offence** which includes information about pleading guilty or not guilty and where to get legal help.

It gives information about dealing with infringements and going to court and describes the general types of penalties and other consequences from traffic offences.

Please consider both information sheets together to better understand your traffic charge.

## How to use this resource

This information sheet refers to many different traffic offences. However, you may only need

information about one of them and may want to go straight to that information.

If you access this information in electronic format you can use the navigation and search functions to find what you are looking for.

For example, you can use the bookmarked headings in the navigation pane to jump to a particular section of the resource, or do a search for a section number or description of the offence you have been charged with.

Before you do this, please read the general information about traffic offences and penalties on this page and page 2. It will help you understand the information included later about particular offences and penalties.

## What types of traffic offences are there?

There are many different traffic offences.

Some are about how you drive, such as speeding, driving under the influence of alcohol or drugs, or driving dangerously or recklessly.

Others are about your responsibilities as a driver, such as failing to report an accident.

Many offences relate to whether you are authorised to drive, such as driving without a driver's licence or when you are disqualified.

There are also offences related to your vehicle registration such as driving an unregistered vehicle.

This resource includes some of the more common traffic offences and makes it clear whether the offence must be dealt with in court, or can be dealt with by infringement notice.

## What types of penalties are there for traffic offences?

Every traffic offence has a penalty set by law.

If a traffic offence can be dealt with by infringement and does not go to court, the penalty is an amount of money fixed by law, and may include demerit points.

If a traffic offence is to be dealt with in court, the penalty options for the court depend on what penalty is set by law for that offence. The options can include a fine, suspended fine, demerit points, disqualification from driving, a community order, suspended imprisonment or immediate imprisonment, or a combination of these.

The actual penalty you receive from a court will depend on the type of penalty set by law, any minimum penalty set by law, the facts and seriousness of your offence, your prior history of offending, and your personal circumstances.

### Penalty set by law and minimum penalty

For some traffic offences, the law gives the court different penalty options and the court can choose the most appropriate type of penalty for you, up to the maximum penalty set for that offence. For example, the law may specify imprisonment is an option, in which case the court can give you any penalty up to and including imprisonment. This includes giving you a fine, community order or suspended imprisonment order.

For some other offences, the law says the court must give you the minimum penalty specified for that offence, up to the maximum penalty specified. For example, the law may specify a minimum and maximum fine which means the court must give you at least the minimum fine as your penalty. Similarly, the minimum penalty may be a set period of imprisonment which means the court must send you to prison for at least this amount of time.

For many traffic offences, the law says the court must give you a higher penalty if you have been

previously convicted of the same or a similar offence. For example, the law may say that for a first offence you must pay a minimum fine but for a second offence, you must pay a higher minimum fine and you can also be disqualified from driving.

### Will I get the penalty included here?

In this information sheet, where an offence must be dealt with in court, the penalty included for each offence is the possible penalty available to the court when dealing with that offence. It may not be the penalty you actually receive, but it will give you an idea of how serious your offence is, and whether you should get legal help.

A lawyer can help you understand the penalty you might actually receive from the court.

In this information sheet, where an offence can be dealt with by infringement, the infringement penalty is provided and this is the penalty you will receive, unless you choose to have the offence dealt with in court. Once in court, the court penalty may apply instead of the infringement penalty.

### More information about types of penalties

In the Legal Aid WA information sheet: **Traffic – Part 1: How to deal with your traffic offence**, there is more information about the range of penalties available for traffic offences.

There is also information about court costs and other consequences from a traffic offence, such as automatic cancellation of your provisional licence or impounding or confiscation of your vehicle.

Please consider both information sheets together to better understand the penalty and any other consequences from your traffic offence.

Some common offences are covered below.

## Driver's licence offences

There are a range of common traffic offences related to your driver's licence.

## Driving with no licence or expired licence

If you drive when you do not have a licence or your licence is expired, you can be charged with an offence under s49(1)(a) *Road Traffic Act 1974* (WA).

The penalty is a maximum fine of \$300 that increases to a maximum of \$600 if you have committed this offence before. There is no minimum fine.

There is also generally no disqualification. However, if the only licence that you could get if you applied for one is a provisional licence, you are automatically disqualified from driving for 3 months. The court may not mention this disqualification when it deals with your offence so it is important to check whether your licence is valid before you drive again.

## Driving in breach of licence or permit condition

If you have a licence, it will have certain conditions attached to it. For example, if you have a C class licence, you can drive a car, but not a truck.

If you drive contrary to a condition of your licence, you are committing an offence. The exact offence may depend on the type of licence or permit you hold.

If you have a **learner's permit** and you breach a condition of your permit (other than the requirement to have an instructor with you), you are committing an offence under regulation 48(2) *Road Traffic (Authorisation to Drive) Regulations 2014* (WA). The penalty is a fine only. This offence can be dealt with by infringement notice instead of in court.

If you have a learner's permit and you breach the condition of your permit that says you must have an instructor with you, it may be charged as the more serious offence of driving without a licence under s49(1)(a) *Road Traffic Act 1974* (WA), referred to above. The penalty is a fine and you will be automatically disqualified from driving for 3 months.

If you have an **extraordinary licence** and you breach any condition of it, you are committing an offence under s38 *Road Traffic (Authorisation to Drive) Act 2008* (WA). The penalty is a maximum fine of \$1,200 and your extraordinary licence will be cancelled, unless there are special reasons for not cancelling it.

## Driving while disqualified by a court

If you drive while you are under disqualification from a court, you are committing a serious offence under s49(1) and (3)(b) *Road Traffic Act 1974* (WA).

Police can impound your vehicle at the time you commit this offence, before it is dealt with in court. They can impound your vehicle for 28 days and you will have to pay an impounding fee to get it back.

The penalty for a first offence is a minimum fine of \$400 up to a maximum of \$2,000 and prison is an option. For any further offence the minimum fine is \$1,000 up to a maximum of \$4,000 and prison is an option.

As prison is an option, the court can consider any penalty option up to imprisonment, including a fine, suspended fine, a community order or a suspended imprisonment order. If the court gives you prison, it can be up to a maximum of 12 months for a first offence, or a maximum of 18 months for a further offence.

If the court gives you a community order, a suspended imprisonment order or sends you to prison, it can also give you at least the minimum fine. If the court gives you a community order, it must include community service work.

The court must also disqualify you from driving for at least 9 months, which must be on top of (cumulative on) any other disqualification or licence suspension you already have.

If you have committed offences like this before, the court may also be able to impound or confiscate the vehicle you were driving.

If you are a provisional licence holder, your licence is also automatically cancelled and you cannot

apply to get your licence back until your disqualification time from the court finishes.

### Driving under a fines suspension order

If you drive while your licence is under a licence suspension order for not paying your fines or infringements, you are committing an offence under s49(1) and (3)(d) *Road Traffic Act 1974* (WA).

The penalty is a minimum fine of \$200 up to a maximum of \$1,500, but prison is also an option. Again, this means all other penalty options are available. If the court gives you a community order, it must include community work.

The court can also disqualify you from driving for up to 3 years, but it does not have to. If it does, the disqualification must be on top of (cumulative on) any other disqualification or licence suspension you already have.

Even if the court does not order disqualification, if you are a provisional licence holder and you are still under the licence suspension order when the court gives you your penalty, you will be automatically disqualified from driving for 3 months or for any longer period of disqualification the court may have given you. This means that you should try to pay your fine and get the licence suspension order lifted, before you go to court and receive your penalty for this offence.

## Driving offences

There are some common offences related to how you drive and your responsibilities as a driver.

### Failing to stop, move or leave vehicle when directed

When you are driving, police can direct you to stop driving, or move or leave your vehicle. If you do not follow the direction, you can be charged with an offence under s44(a) *Road Traffic (Administration) Act 2008* (WA).

The penalty is a fine to a maximum of \$5,000 and there is no disqualification.

However, if you are a provisional licence holder and you have committed an offence of failing to stop

when asked, your licence will be automatically cancelled and you will have to wait for 3 months before you can apply to get it back.

If you **fail to stop when escaping pursuit by police**, it is a more serious offence, under s44(b) *Road Traffic (Administration) Act 2008* (WA).

The penalty is a minimum fine of \$5,000, at least 2 years disqualification from driving, and you can be sent to prison for up to 2 years. Because prison is an option, it means you can be given at least the minimum fine, or a suspended fine, a community order, a suspended imprisonment order, or be sent straight to prison.

### Refusing to give details or giving false details

When you are driving or in control of a vehicle, police can ask you for your personal details, which means your full name, date of birth and address (including where you are living, where you usually live and your business address if you have one). If you refuse, or give false details, you are committing an offence under s32(4) *Road Traffic (Administration) Act 2008* (WA).

The penalty is a fine to a maximum of \$2,500 and there is no disqualification.

However, if you are a provisional licence holder, your licence will be automatically cancelled and you will have to wait for 3 months before you can apply to get it back.

### Failing to report incident involving damage

If the vehicle you are driving is involved in an incident where there is damage to property that is worth more than \$3,000, you must report it to police. If you don't, you are committing an offence under s56(4) *Road Traffic Act 1974* (WA).

You have a defence if you can prove that it was reasonable for you to believe the damage was not more than \$3,000 and the owner of the property or someone representing the owner, was there at the time the damage happened, or straight after it happened.

The penalty is a minimum fine of \$400 for a first offence or \$800 for a further offence and there is no disqualification.

However, if you are a provisional licence holder, your licence will be automatically cancelled and you will have to wait for 3 months before you can apply to get it back.

### Failing to stop after incident causing injury or death

If the vehicle you are driving is involved in an incident where there is injury or death to someone, you must stop and make sure each victim gets the help, including medical aid, that is necessary and possible in the circumstances. If you do not stop and help, you can be charged with a serious offence under s54 *Road Traffic Act 1974* (WA).

If the injury is serious or permanent (called 'grievous bodily harm') or a person dies, the offence must be dealt with in the District Court. The penalty is up to 14 years in prison if there was grievous bodily harm, or up to 20 years in prison if a person died. The court must also disqualify you from driving for at least 2 years.

If the injury is less serious (called 'bodily harm'), the penalty is up to 3 years in prison if you are dealt with in the Magistrates Court and up to 10 years in prison if the offence is dealt with in the District Court. Either court must also disqualify you from driving for at least 12 months.

These offences are serious. Although the court can choose to give you a less serious penalty, immediate imprisonment is a real possibility. You should get legal advice as soon as possible if you are charged with any of these offences.

### Driving with radar detector fitted to vehicle

If you drive with a radar detector in, on, or fitted to your vehicle, you are committing an offence under s81G(2) *Road Traffic Act 1974* (WA). The penalty is a fine to a maximum of \$3,200 for a first offence and a maximum of \$4,800 for further offences.

This offence can be dealt with by infringement instead of in court. The infringement penalty is

\$1,200 (or \$1,500 if you are driving a heavy vehicle).

Whether you are dealt with in court or by infringement, you will get 7 demerit points (or 14 points if it is during a holiday period).

### Using mobile phone while driving

If you use a mobile phone when driving in any way that is not allowed by regulation 265 of the *Road Traffic Code 2000* (WA), it is an offence.

Generally, regulation 265 *Road Traffic Code* says you must not use a mobile phone if the vehicle you are driving is moving, or is 'stationary but not parked'. 'Stationary but not parked' means the vehicle's engine is running but it is not in park and the handbrake is not on.

However, regulation 265 says you are allowed to use a mobile phone to:

- make, receive or end a voice call without touching the phone,
- make, receive or end a voice call by touching the phone, as long as it is secured in a mounting fixed to the vehicle,
- use the phone display for navigation without touching the phone, as long as it is secured in a mounting fixed to the vehicle.

Regulation 265 also allows you to use a mobile phone in certain circumstances if you are driving an 'on-demand vehicle', such as a taxi.

Even so, you can only do these things if it is safe. If you use a phone in these ways and it is unsafe, you could be charged with a more serious offence, such as careless, dangerous or reckless driving.

An offence under regulation 265 is dealt with by infringement. The infringement penalty depends on how you used the phone.

If you used the phone to text, email, use social media, watch videos or access the internet while the vehicle was moving, or was stationary but not parked, the infringement amount is \$1000 and 4 demerit points (or 8 demerit points if it was during a holiday period).

If you used the phone in any other way that is not allowed by regulation 265, the infringement amount is \$500 and 3 demerit points (or 6 demerit points if it was during a holiday period).

There is more information in the Legal Aid WA information sheet: **Driving with mobile phones and visual display units.**

### Careless driving

If you drive without proper care and attention, you are committing an offence of careless driving under s62 *Road Traffic Act 1974* (WA).

This offence can be dealt with by infringement notice or charged and dealt with in court.

The infringement penalty is \$300 and 3 demerit points. The penalty in court is a fine of up to \$1,500. There is no disqualification, but you will get 3 demerit points.

If you are a provisional licence holder, instead of demerit points, your licence will be automatically cancelled and you will have to wait for 3 months before you can apply to get it back. This applies whether the offence is dealt with in court or by infringement.

### Causing excessive noise or smoke

If you deliberately drive in a way that causes your tyres to smoke too much or make too much noise, you can be charged with an offence under s62A *Road Traffic Act 1974* (WA).

Police can impound your vehicle at the time you commit this offence, before it is dealt with in court. They can impound it for 28 days if it is your first offence or for 3 months if you have committed similar offences before. You will have to pay an impounding fee to get it back.

The penalty is a fine to a maximum of \$1,500. There is no disqualification, but you will get 3 demerit points. In some cases, the court may be able to impound or confiscate the vehicle you were driving.

If you are a provisional licence holder, instead of demerit points your licence will be automatically

cancelled and you will have to wait for 3 months before you can apply to get it back.

### Driving causing grievous bodily harm or death

There are a number of very serious offences under s59 *Road Traffic Act 1974* (WA) such as Dangerous driving resulting in death or grievous bodily harm and Driving under the influence of alcohol or drugs resulting in death or grievous bodily harm. Grievous bodily harm means a bodily injury that is permanent or life threatening.

These offences have penalties that include long maximum periods of imprisonment and at least 2 years disqualification from driving.

If you commit these offences **when escaping pursuit by police**, the court must give you **immediate imprisonment for at least 12 months** and must disqualify you from driving for at least 2 years.

Always get legal advice as soon as possible if you are charged with this type of offence.

### Driving causing bodily harm

There are a number of serious offences under s59A *Road Traffic Act 1974* (WA) such as Dangerous driving resulting in bodily harm and Driving under the influence of alcohol or drugs resulting in bodily harm. Bodily harm means an injury which interferes with health or comfort.

These offences have similar but slightly lower penalties than the driving offences that result in death or grievous bodily harm under s59.

If you commit these offences **when escaping pursuit by police**, the court must give you **immediate imprisonment for at least 6 months** and must disqualify you from driving for at least 18 months if you are dealt with in the Magistrates Court, or 2 years if you are in the District Court.

Always get legal advice as soon as possible if you are charged with this type of offence.

## Dangerous driving

If you drive in a way that is dangerous to any person, even if you do not think it is dangerous or you do not intend it to be dangerous, you are committing an offence of dangerous driving under s61 *Road Traffic Act 1974* (WA).

For a first offence, the penalty is a fine to a maximum of \$3,000. There is no disqualification, but you will get 6 demerit points.

If you have committed this offence or another dangerous or reckless driving type offence before, it is more serious. The penalty is a fine to a maximum of \$6,000 or imprisonment which means the court can give you any penalty including immediate imprisonment. It must also disqualify you from driving for at least 2 years.

## Reckless driving and driving at reckless speed

If you deliberately drive in way that is dangerous, you are committing an offence of **reckless driving** under s60 *Road Traffic Act 1974* (WA).

If you drive at or over 155 km per hour or at 45km per hour or more over the speed limit, you can be charged with an offence of driving at **reckless speed** under s60A *Road Traffic Act 1974* (WA).

For both these offences, police can impound your vehicle at the time you commit the offence, before it is dealt with in court. They can impound it for 28 days if it is your first offence or for 3 months if you have committed similar offences before. You will have to pay an impounding fee to get it back.

For both these offences, the penalty in court is a fine of up to \$6,000 for a first offence, up to \$9,000 for a second offence and up to \$12,000 for a further offence. Alternatively, the court can send you to prison for up to 9 months for a first or second offence and up to 12 months for a further offence. It is therefore important to get legal advice before you are dealt with for these offences.

Also for these offences, you must be disqualified from driving for at least 6 months for a first

offence, at least 12 months for a second offence and for life for a further offence.

In some circumstances, the court may be able to impound or confiscate the vehicle you were driving.

If you drive recklessly or at reckless speed **when escaping pursuit by police**, the court must give you **immediate imprisonment for at least 6 months**. It must also disqualify you from driving for at least 2 years for a first or second offence, or for life for a further offence. It may also be able to impound or confiscate the vehicle you were driving, depending on the circumstances.

## Speeding

If you drive over the speed limit, usually you are committing an offence under regulation 11 *Road Traffic Code 2000* (WA), which is dealt with by **infringement** notice.

If you drive at or over 155 km per hour or at 45km per hour or more over the speed limit, you can be charged with the much more serious offence of driving at reckless speed under s60A *Road Traffic Act 1974* (WA), referred to under the last heading.

The penalty if you receive an infringement notice for speeding is payment of an amount of money and you may get demerit points. The amount and number of points depends on how much over the speed limit you were.

For example, if you were less than 9 km per hour over the limit, you must pay \$100 but will not get any demerit points. If you were more than 19 but less than 29 km per hour over the limit, you must pay \$400 and you will get 3 demerit points. If you were more than 40 km per hour over the limit you must pay \$1200 and you will get 7 demerit points.

If these speeding infringements were during a holiday period, you will get double the number of demerit points. This means if you drive just once at a speed of over 40km per hour during a holiday period, you will get 14 demerit points. This is more than the 12 point limit for normal licence holders so you will get a demerit point suspension for 3 months, unless you elect 'double or nothing' to avoid the licence suspension.

There is information about demerit point licence suspensions in the Legal Aid WA information sheet: **Traffic – Part 1: How to deal with your traffic offence.**

## Drink driving offences

Drink driving offences are alcohol related traffic offences. You might commit a drink driving offence because you have too much alcohol in your body when you are driving, or because you refuse to take a breath or blood test to check how much alcohol you have in your body when you are driving.

There is a limit to the amount of alcohol you are allowed to have in your body when you drive. The limit depends on the type of driver that you are.

Alcohol limits for driving are set by the percentage of alcohol in a person's blood. This is called the **'blood alcohol content' or 'BAC'**.

There is information below about the BAC limit that applies to different types of drivers.

There is also information below about some of the drink driving offences that a person can be charged with if they drive when they are over the BAC limit that applies to them.

The offence a person is charged with depends on how much alcohol they have in their blood. The more they have, the more serious the offence and the higher the penalty.

### What are the blood alcohol content limits?

**Some types of drivers have a 0.00 BAC limit** which means they are not allowed to drive or attempt to drive with any alcohol in their body. The types of drivers who have a 0.00 BAC limit are explained below.

**Every other driver has a 0.05 BAC limit** which means they are only allowed to drive if they have less than 0.05% alcohol in their blood.

If you are not sure which limit applies to you, it is safest to drive without any alcohol in your body to avoid committing an offence.

### Who has a 0.00 BAC limit?

If a 0.00 blood alcohol content (BAC) limit applies to you, it means you are not allowed to drive or attempt to drive with any alcohol in your body.

You have a **0.00 BAC limit** if:

- you are an **'alcohol offender'**, that is, you have been convicted of an **'alcohol interlock offence'** that you committed on or after 24 October 2016 (see heading below **'What is an alcohol interlock offence?'**);
- you are a **'novice driver'** (see definition below);
- you are a **'recently disqualified driver'** (see definition below);
- you hold an **extraordinary driver's licence**;
- you are **under disqualification for Driving under the influence (DUI), Failing to comply or a second or subsequent Excess 0.08 offence**;
- your **driver's licence has been cancelled as a result of** a conviction for DUI, Driving impaired by drugs, Failing to comply or Refusing a driver assessment and you have been previously convicted of any one of these offences; or
- your **driver's licence has been cancelled as a result of** a conviction for Excess 0.08, where you have previously been convicted of DUI, Excess 0.08, Driving impaired by drugs, Failing to comply or Refusing a driver assessment, in the five years before the conviction for Excess 0.08.

**Novice driver** means you have held a licence for a period of less than two years or a period adding up to less than two years. In calculating how long you have held a licence, you can include any period of time you have held an overseas or interstate licence, but you cannot include:

- any period when you were stopped from driving by law, or
- any period when you were driving under a learner's permit (L-plates).

If you have a learner's permit for the first time, or you have a provisional licence, you may be a **'novice driver'** and a 0.00 BAC limit may apply to you.



**Recently disqualified driver** means:

- within the last three years you stopped being under disqualification for an offence of Driving under the influence or Failing to comply;
- within the last three years you stopped being under disqualification for a second or subsequent Excess 0.08 offence; or
- you were re-issued a driver's licence after 1 January 1998, and your licence had previously been cancelled for drink driving offences.

You also have a **0.00 BAC limit** if you drive a motor vehicle that:

- can carry more than 12 adults (including the driver) and at the time you are carrying passengers
- is an omnibus and you are carrying passengers for hire or reward
- is a taxi (with taxi plates or a taxi licence) and at that time you are carrying passengers for hire or reward
- has a gross combined mass exceeding 22.5 tonnes, or
- is a specific vehicle carrying dangerous goods.

### Excess 0.00 offence

If a 0.00 BAC limit applies to you and you drive with up to or including an amount of 0.02 BAC, you can be charged with an 'Excess 0.00' offence under s64AAA Road Traffic Act 1974 (WA).

The penalty for this offence in court is a minimum fine of \$400 to a maximum of \$650 and 3 demerit points, but no disqualification.

This offence can be dealt with by infringement instead of being charged and sent to court. The infringement penalty is \$400 and 3 demerit points.

### Excess 0.02 offence

If a 0.00 BAC limit applies to you and you drive with more than 0.02 BAC, you can be charged with an 'Excess 0.02' offence under s64A Road Traffic Act 1974 (WA).

The penalty is a minimum fine of \$400 to a maximum of \$650 and the court must disqualify you from driving for at least 3 months.

### Excess 0.05 offence

If a 0.00 or 0.05 BAC limit applies to you and you drive with 0.05 BAC or more, but less than 0.08 BAC, you can be charged with an 'Excess 0.05' offence under s64AA Road Traffic Act 1974 (WA).

The penalty for a first offence of Excess 0.05 is a fine to a maximum of \$1,250 and demerit points. The number of demerit points is 3, 4 or 5 depending on your BAC reading.

For a first offence, police can give you an **infringement** to pay \$1,000 instead of charging you and taking you to court. You will still get the same number of demerit points, depending on your BAC reading.

Any further offence must be dealt with in court. The penalty is then a minimum fine of \$1,250 up to a maximum of \$2,000. For a second offence, the court must disqualify you from driving for at least 6 months. For a further offence, it must disqualify you for at least 8 months.

### Excess 0.08 offence

If a 0.00 or 0.05 BAC limit applies to you and you drive with 0.08 BAC or more, but less than 0.15 BAC, you can be charged with an 'Excess 0.08' offence under s64 Road Traffic Act 1974 (WA).

The penalty is a minimum fine and disqualification. These increase according to your BAC reading and whether it is your first, second or subsequent offence.

For a first offence with the lowest BAC reading for this charge, there is a minimum fine of \$750 up to a maximum of \$2,250 and 6 months disqualification. At the other end of the scale, for a third or more offence with the highest BAC reading for this charge, there is a minimum fine of \$2,400 up to a maximum of \$4,500 and 30 months disqualification.

## Driving under the influence (DUI) alcohol

If you drive with 0.15 BAC or more, or you are under the influence of alcohol to such an extent that you cannot have proper control of your vehicle, you can be charged with the more serious offence of 'Driving under the influence' of alcohol under s63(1)(a) *Road Traffic Act 1974* (WA). This offence is often called 'DUI alcohol'.

The penalty for a first offence is a minimum fine of \$1,700 up to a maximum of \$3,750, but the court can give you community work instead. It must disqualify you from driving for at least 10 months.

For a second offence, the penalty is a fine but imprisonment for up to 9 months is an option. The court must disqualify you from driving for at least 30 months. For a subsequent offence, the penalty is a fine but imprisonment for up to 18 months is an option. The court must disqualify you from driving for life.

For a second or subsequent offence, if the court gives you a community order, it must include community service work.

If you have a full licence, extraordinary licence or L permit, it is automatically cancelled when you are convicted of this offence, because it is an alcohol interlock offence.

## DUI alcohol resulting in death or injury

It is a serious offence under s59 or s59A *Road Traffic Act 1974* (WA) to drive under the influence of alcohol resulting in injury or death.

These offences are described on page 6 above, under the headings 'Driving resulting in death or grievous bodily harm' and 'Driving resulting in bodily harm'.

## Learner instructor with excess 0.05

If you have a BAC of 0.05 or more when you are instructing a learner driver, you can be charged with an offence under s62B(1) *Road Traffic Act* .

The penalty is a minimum fine of \$750 up to a maximum of \$1,250. There is no disqualification.

This offence can be dealt with by infringement instead of being charged and sent to court. The infringement penalty is \$750.

## Failing to comply with alcohol test

If a police officer asks you to give a sample of your breath or blood to check for alcohol and you refuse or fail to give the sample, you can be charged with the serious offence of 'Failing to comply' under s67(2) *Road Traffic Act 1974* (WA).

The penalty for a first offence is a minimum fine of \$2,050 up to a maximum of \$5,650 and you must be disqualified from driving for at least 15 months. The fine and disqualification time increase if you have been convicted of this type of offence before.

## Failing to comply with alcohol test when death or injury

It is a much more serious offence, under s67(3) *Road Traffic Act 1974* (WA), if you fail to give a sample after your vehicle was involved in an incident resulting in death or serious injury.

The penalty includes long maximum periods of imprisonment and disqualification from driving.

Always get legal advice as soon as possible if you are charged with this offence.

## Alcohol interlock offence

An alcohol interlock offence is an offence listed in regulation 3 *Road Traffic (Authorisation to Drive) Regulations 2014* (WA). The offences listed are all alcohol related. For example, Driving under the influence (DUI) alcohol under s63(1)(a) *Road Traffic Act* is listed as an alcohol interlock offence.

If you are convicted of an alcohol interlock offence by a court and the court disqualifies you from driving, your licence will be **automatically cancelled**. You may apply to get your licence back after your disqualification period has finished, but it will be subject to alcohol interlock conditions for at least 6 months. You may be able to apply for an extraordinary licence during the period of disqualification, but if granted, it will also be subject to alcohol interlock conditions.

**Alcohol interlock conditions** include that you must:

- have an 'I' condition included on your licence
- have an alcohol interlock fitted, maintained and removed at your own cost, and
- provide randomly timed breath tests while driving.

The 'I' condition will only be removed if you have shown satisfactory performance continuously for 6 months leading up to the condition being removed.

If you drive contrary to these 'I' conditions, it is an offence under s49(1) and (3)(da) *Road Traffic Act 1974 (WA)*. The penalty is a minimum fine, prison is an option and the court must disqualify you from driving for at least 12 months for a first offence, or at least 18 months for a further offence.

For more information about the Alcohol Interlock Scheme go to the Department of Transport website at [www.transport.wa.gov.au](http://www.transport.wa.gov.au) under Licensing/My Driver's Licence/Driver rules, penalties and infringements/[Alcohol Interlock Scheme](#).

## Drug driving offences

Just like drink driving offences, there are offences related to using drugs when driving. Some of the more common offences are included here.

### Driving while impaired by drugs

If you drive with an illegal drug in your body, certain prescription drugs or any drug that interferes with your normal mental or physical abilities, and as a result you would not have proper control of your vehicle, you are committing a serious offence of 'Driving while impaired by drugs' under s64AB *Road Traffic Act 1974 (WA)*.

For a first offence the court must put you on a community order with a program requirement to get counselling or other help. It can also give you a fine on top of this order. The minimum fine is \$1,700 up to a maximum of \$3,750. The court must also disqualify you from driving for at least 10 months.

For a second offence, there is a higher minimum fine, imprisonment for up to 9 months is an option, and the court must disqualify you from driving for at least 30 months. For a further offence after that, there is an even higher minimum fine, imprisonment for up to 18 months is an option, and the court must disqualify you from driving for life.

For a second or further offence, if you are not sent to prison, the court must give you a community order with a program requirement to get counselling or other help. You can also be given a fine on top of this order.

### Driving under the influence (DUI) drugs

If you drive under the influence of an illegal drug, or certain prescription drugs or any drug that stops your normal mental or physical abilities, so that you are incapable of having proper control of your vehicle, you can be charged with the more serious offence of 'Driving under the influence of drugs' under s63(1)(b) *Road Traffic Act 1974 (WA)*. This offence is often called 'DUI drugs'.

If you are under the influence of a prescribed or medically administered drug and could not reasonably be expected to know the effect of the drug on your driving, you may have a defence to this charge and should get legal advice.

The penalty for a first offence is a minimum fine of \$1,700 up to a maximum of \$3,750 and the court must disqualify you from driving for at least 10 months. Instead of a fine, the court can give you a community order. If it does, this order must include community work.

For a second offence, the penalty is a fine but imprisonment for up to 9 months is an option. The court must disqualify you from driving for at least 30 months. For a subsequent offence, the penalty is a fine, but imprisonment for up to 18 months is an option. The court must disqualify you from driving for life.

For a second or subsequent offence, if the court gives you a community order, it must include community service work.

If you have a full licence, extraordinary licence or L permit and you have a prior conviction for an alcohol related driving offence, your licence or permit is automatically cancelled.

If you are a provisional licence holder, when the court disqualifies you from driving, your licence is automatically cancelled and you cannot apply to get your licence back until your disqualification time ends.

### DUI drugs resulting in death or injury

It is a serious offence under s59 or s59A *Road Traffic Act 1974 (WA)* to drive under the influence of drugs resulting in injury or death to a person.

These offences are described on page 6 above, under the headings 'Driving resulting in death or grievous bodily harm' and 'Driving resulting in bodily harm'.

### Driving with drug in oral fluid or blood

If you drive with cannabis, methylamphetamine or MDMA in your body, you are committing an offence under s64AC *Road Traffic Act 1974 (WA)*.

The penalty for a first offence is a maximum fine of \$1,250 and 3 demerit points. There is no minimum fine.

For further offences the penalty is a minimum fine of \$1,250 up to a maximum of \$2,000 and the court must disqualify you from driving for at least 6 months. If you are a provisional licence holder, when the court disqualifies you from driving, your licence is automatically cancelled and you cannot apply to get your licence back until your disqualification time ends.

### Failing to comply with drug impairment assessment

If you do not comply with a request to do a driver assessment to see if you are impaired by drugs in a way that affects your ability to drive, it is an offence under s67AA *Road Traffic Act 1974 (WA)*.

For a first offence the court must put you on a community order with a program requirement to get counselling or other help. It can also give you a fine on top of this order. The minimum fine is \$1,700 up to a maximum of \$3,750. The court must also disqualify you from driving for at least 10 months.

For a second offence, there is a higher minimum fine, imprisonment for up to 9 months is an option, and the court must disqualify you from driving for 30 months. For a further offence after that, there is an even higher minimum fine, imprisonment for up to 18 months is an option, and the court must disqualify you from driving for life.

For a second or further offence, if you are not sent to prison, the court must give you a community order with a program requirement to get counselling or other help. You can also be given a fine on top of this order.

### Fail to comply with request for drug sample

If a police officer asks you to give a sample of your oral fluid or blood to check for drugs and you refuse or fail to give the sample, it is an offence under s67AB *Road Traffic Act 1974 (WA)*.

For a first offence, the penalty is a fine and 3 demerit points (or 6 points if it is during a holiday period). For further offences the penalty is a fine and at least 6 months disqualification.

If you are a provisional licence holder, when the court disqualifies you from driving, your licence is automatically cancelled and you cannot apply to get your licence back until your disqualification time ends.

### Learner instructor with drugs

If you have cannabis, methylamphetamine or MDMA in your body while you are instructing a learner driver, you can be charged with an offence under s62C *Road Traffic Act 1974 (WA)*.

The penalty is a fine, but no disqualification.

## Driving with drink and drugs

### Excess BAC and drugs

If you drive with more than the limit of alcohol that applies to you and at the same time you have certain illicit drugs in your body, that is cannabis, methylamphetamine or MDMA, you are committing an offence of drink and drug driving.

The offence you are charged with, and the penalty, will depend on the alcohol limit that applies to you and your blood alcohol content (BAC) reading.

If a 0.05 limit applies to you, your BAC is over 0.05 but less than 0.08, and you have cannabis, methylamphetamine or MDMA in your body, you can be charged with an offence under s64B(1) *Road Traffic Act 1974* (WA). If you have these drugs in your body while your BAC is over 0.08 but less than 0.15, you can be charged with an offence under s64B(3) *Road Traffic Act 1974* (WA).

The penalties for these two offences include a fine and disqualification. The penalties increase the more alcohol you have in your body.

If a 0.00 BAC limit applies to you and you drive with up to a 0.05 BAC, you can be charged with an offence under s64C(1) *Road Traffic Act 1974* (WA). The penalty is a fine and disqualification.

For all three offences, if you are a provisional licence holder, when the court disqualifies you from driving, your licence is automatically cancelled and you cannot apply to get your licence back until your disqualification time ends.

### Driving under the influence (DUI) alcohol and drugs

If you drive when you have a BAC of 0.15 or more while you also have any illicit drug in your body, or certain prescription drugs or any drug that stops your normal mental or physical abilities so that you are incapable of having proper control of your vehicle, you can be charged with the more serious offence of 'Driving under the influence of alcohol and drugs', under s63(2) *Road Traffic Act 1974* (WA).

For a first offence, the penalty is a minimum fine of \$2,050 up to a maximum of \$5,650 and you must be disqualified from driving for 15 months. You cannot be sent to prison, but instead of a fine you can be given a community based order that must include community service work.

For a second offence, the minimum fine is higher, you can be sent to prison for up to 9 months and you must be disqualified from driving for at least 42 months.

For a further offence after that, the minimum fine is \$4,570 up to a maximum of \$11,250, you can be sent to prison for up to 18 months and you must be disqualified from driving for life.

If you are given a community order for a second or further offence, it must include community service work.

If you have a full licence, extraordinary licence or L permit, it is automatically cancelled when you are convicted of this offence, because it is an alcohol interlock offence.

If you have a provisional licence, it is automatically cancelled when the court disqualifies you from driving and you cannot apply to get your licence back until your disqualification time ends.

### Driving under the influence (DUI) alcohol and fail to comply with request for drug sample

If you drive when you have a BAC of 0.15 or more and you refuse or fail to give a sample of your oral fluid or blood to check for drugs when asked, you can be charged with the more serious offence of 'Driving under the influence of alcohol and fail to comply drugs', under s67AD(6) *Road Traffic Act 1974* (WA).

The penalty and other consequences for this offence are the same as for an offence of DUI alcohol and drugs, under s63(2) *Road Traffic Act 1974* (WA), referred to under the heading immediately above.

# Vehicle offences

## Driving unregistered vehicle

If you drive a vehicle that is not registered, it is an offence under s4(2) *Road Traffic (Vehicles) Act 2012 (WA)*.

The penalty is a minimum fine plus half the annual licence fee for the vehicle you were driving.

## Further information

### Road Safety Commission

The WA government's Road Safety Commission website has information about some [Drink and drug driving penalties](#).

### Legal Aid WA

Legal Aid WA has information related to traffic offences on its website [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Find Legal Answers:

- [Traffic offences](#)


- [Driver's licences](#)
- [Going to court for a criminal charge](#)
- [Fines and infringements](#)


Legal Aid WA also has other information sheets relevant to traffic offences available on its website [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Education and Resources/[Infosheets/Crime](#):

- Traffic – Part 1: How to deal with your traffic offence
- Driving with mobile phones and visual display units
- Appearing in court for a criminal charge
- Fines
- Infringement Notices
- Licence Suspension Orders

For other information and referral, you can call Legal Aid WA's **Infoline** on **1300 650 579**, or **Legal Yarn** on **1800 319 803** for Aboriginal and Torres Strait Islander callers.

## LEGAL AID WA CONTACTS

 **Infoline:** 1300 650 579

 **Legal Yarn:** 1800 319 803 (for First Nations callers)

 **Website/InfoChat:** [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

Interpreting and relay services to help you contact us:

 **Translating & Interpreting Service:** 131 450

 **National Relay Service:** 133 677

### Perth office

32 St Georges Terrace,  
PERTH WA 6000  
1300 650 579  
(08) 9261 6222

### Goldfields Office

Suite 3, 120 Egan Street,  
KALGOORLIE WA 6530  
(08) 9025 1300

### Midwest & Gascoyne Office

Unit 8, The Boardwalk,  
273 Foreshore Drive,  
GERALDTON WA 6530  
(08) 9921 0200

### East Kimberley Office

98 Konkerberry Drive,  
KUNUNURRA WA 6743  
(08) 9166 5800

### West Kimberley Office

Upper Lvl, Woody's Arcade,  
15 – 17 Dampier Terrace,  
BROOME WA 6725  
(08) 9195 5888

### Southwest Office

7<sup>th</sup> Floor, Bunbury Tower,  
61 Victoria Street,  
BUNBURY WA 6230  
(08) 9721 2277

### Great Southern Office

Unit 3, 43 – 47 Duke Street,  
ALBANY WA 6330  
(08) 9892 9700

### Pilbara Office

28 Throssell Road  
SOUTH HEDLAND WA 6722  
(08) 9172 3733

### Indian Ocean Office

Administration Building,  
20 Jalan Pantai,  
Christmas Island,  
INDIAN OCEAN WA 6798  
(08) 9164 7529

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