

Infringement notices

This information sheet is about infringement notices, including what will happen and what you can do if you fail to pay your infringement notice.

There is a separate information sheet about fines. To get a copy, ask at any Legal Aid WA office or contact the Legal Aid WA Infoline on 1300 650 579.

There is also information about infringement notices and fines on the Legal Aid WA website (www.legalaid.wa.gov.au) under Find legal answers > Crime > Fines and infringements.

What is an infringement notice?

An infringement notice is a notice issued by the police, local government authority or other prosecuting agency, alleging that you have breached a particular law and giving you the opportunity to pay a fixed amount of money rather than be prosecuted in court.

Infringement notices are generally issued for breaches of the law that are not as serious, such as minor traffic offences and parking offences. An infringement notice is often called a “ticket”, for example a “speeding ticket”.

Can an infringement be issued without my knowledge?

An infringement notice may be issued and served on you in person or through the post. If the prosecuting agency, such as the Department of Transport or the police, sends it by post to an address that is not current, it is possible an infringement may be issued without you realising it.

What is the difference between an infringement notice and a fine?

If you are convicted of an offence in court, you may be ordered to pay an amount of money as a penalty

for committing the offence. This is called a fine. A fine may be the whole penalty or just part of the penalty you receive for the offence.

The difference between a fine and an infringement is that a fine can only be imposed on you by a court.

Why do I need to know the difference between an infringement notice and a fine?

Different processes apply depending on whether you have received a fine or an infringement notice. There are different processes for:

- disputing payment
- seeking time to pay
- enforcing payment
- applying to have a licence suspension order set aside for non-payment.

Where can I find information about dealing with a fine?

See the **Legal Aid WA information sheet: Fines**. To find out how to obtain a copy and where to find other information about fines, go to the final heading in this sheet: **Where can I get more information?**

What should I do if I receive an infringement notice?

You may receive an infringement notice in person or by post. This is called being 'served'. Once you have been served with an infringement notice, you have **28** days in which to decide whether to pay the infringement notice, seek a review of the notice, or go to court to dispute the notice.

If you have any questions about the notice before you make your decision, you should contact the authority who issued it.

How do I pay the infringement?

If you do not dispute the infringement, you can pay it in full by following the instructions on the infringement notice.

For more information on how to pay a **traffic infringement**, there is helpful information on the **WA Police website** (www.police.wa.gov.au) under the Traffic tab and then under Infringements.

How can I check if I was the driver or if it was my vehicle?

If you receive a traffic infringement in your name but you are not sure whether you were the driver or whether it was your vehicle, you can check by viewing the photo taken by police and checking the vehicle registration number recorded in the infringement notice.

For information on how to **view the photo online**, go to the Traffic tab on the **WA Police website** (www.police.wa.gov.au) then go to Infringements, then View and pay infringement and then Traffic Infringement Notice (Individual). There is a 'View images' button that takes you to a search page to locate the image linked to your particular infringement notice.

What if I wasn't the driver when the traffic infringement occurred?

If you receive a traffic infringement notice and you know you were not the driver, you should not pay

the infringement. You should follow the instructions on the notice to provide police with the name and address of the person who was driving. Police will then re-issue the infringement notice against that person.

If you are the responsible person for the vehicle you must take reasonable steps to know who is using your vehicle so that if you were not the driver when an offence was committed, you can say who the driver was at that time.

If you do not know who was driving your vehicle when the offence occurred, you could be charged with an offence if police think you have not taken reasonable steps to know who was using your vehicle.

You may be charged with an offence if you give false or misleading information to police about who was driving.

If you pay the infringement when you were not the driver, the offence will be recorded against your name and any demerit points for the offence will be allocated to you.

If police become aware that you paid the infringement although you were not the driver, they may investigate whether you have done this for a dishonest or fraudulent reason. For example, to avoid the driver receiving demerit points. In this case, police may consider charging you with an offence of fraud.

What if I dispute the infringement notice?

If you believe that the offence alleged in the infringement notice did not occur or there is another reason to dispute it, you can seek to have the infringement notice **reviewed** by the authority that issued it, or you can choose to have the infringement notice **considered by a court**.

Either of these choices must be exercised **within 28 days** from the date when you were served with the infringement notice.

How do I seek a review?

To seek a review, you should write to the police or other authority that issued the notice and ask for the notice to be reviewed. In your letter you need to include the infringement notice number and explain why you believe you should not have received the notice. You should include as much detail as possible. You should also include your contact details so the authority can respond.

If you are seeking a review of a **traffic infringement**, your letter should be sent to **Infringement Management and Operations**, State Traffic Coordination and Enforcement Division, Locked Bag 40, Perth Business Centre, WA, 6849.

If the police or other authority accepts your argument, the infringement notice will be withdrawn and you will be informed by letter. If they do not accept your argument and decide to proceed with the notice, it will be re-issued, usually with an extension of time. You will then need to make another decision as to whether to pay the infringement or have the infringement considered by a court.

What if I still dispute the infringement after seeking a review?

If you still dispute the infringement, you can ask to have the infringement considered by a **court**.

To ask to go to court you must notify the police or other authority that issued the infringement notice, in accordance with the instructions on your infringement notice. You will then receive a prosecution notice detailing the charge and a court hearing notice informing you of the date when you should attend court.

What happens if I ask to have the infringement considered by a court?

If you ask to have the infringement considered by a court, you are in effect electing to be prosecuted through court for the offence. This means the offence will be considered by a magistrate.

When in court, you will be given an opportunity to explain to the magistrate why you think the infringement notice was incorrectly issued and the magistrate will make a decision as to whether you committed the offence or not.

If you are found guilty (convicted) of the offence, you may have to pay a penalty that is higher than the original amount specified in the infringement notice, together with court costs. In addition, the penalty is then a fine and if you do not pay it in time, the process for enforcement of a fine will apply.

Further, if you are convicted of the offence in court, it may be included in your criminal record. If the offence is dealt with by infringement notice outside of court, it generally will not be included on your criminal record.

What happens if I do not pay the infringement notice?

If you have not paid the infringement, sought a review or chosen to take it to court within 28 days of being served with the infringement notice, you will usually be sent a letter of final demand. You then have another 28 days to pay the original amount as well as the additional enforcement fees set out in the **final demand**, or elect to have the infringement considered by a court.

What if I do not pay within 28 days after the final demand?

If, after 28 days, you still have not paid the infringement penalty amount and enforcement fees, or elected to go to court, then the total amount will be lodged and registered with the **Fines Enforcement Registry**, which will handle the enforcement process. This Registry deals with the enforcement of infringements and court fines, however, the process of enforcement is different for each.

For infringements, once the Registry has taken over the enforcement process, the Registrar will issue you with an **order to pay or elect**, requiring you to

either pay the penalty and fees within 28 days, or elect to go to court.

Once the infringement notice has been registered with the Registry, but before the modified penalty and enforcement fees are paid in full or in part, and before a time to pay order is made and an enforcement warrant issued, the prosecuting authority can also elect to have the matter dealt with in court.

If you wish to avoid the matter ending up in court, it is important that you take steps to pay the penalty and fees.

What if I do not respond to the order to pay or elect within 28 days?

If, after 28 days from the date the order to pay or elect was issued, you still have not:

- paid the unpaid infringement amount, or
- elected to have the infringement dealt with in court,

then you will be issued with a **notice of intention to enforce**. This notice must state that if you do not pay the unpaid infringement amount or elect to go to court, by the date specified in the notice, then your driver's licence may be suspended and an enforcement warrant may be issued.

What if I do not respond to the notice of intention to enforce within 28 days?

If, after 28 days from the date the notice of intention to enforce was issued, you still have not:

- paid the unpaid infringement amount, or
- elected to have the infringement dealt with in court,

then the Fines Enforcement Registry may issue a **licence suspension order** or an **enforcement warrant**. It is also possible for the Registry to issue both a licence suspension order and an enforcement warrant together.

What is a licence suspension order?

A licence suspension order may be made even if an enforcement warrant has also been issued.

A licence suspension order applies to your driver's licence and prevents you from driving while the suspension order is in place. It is an offence to drive while you are subject to a licence suspension order.

The licence suspension will remain in force until the infringement and enforcement fees have been paid or the sum has been recovered under an enforcement warrant, or you have elected to dispute the infringement in court.

However, a licence suspension order cannot be made if:

- your address is in a 'remote area' or
- you have provided the Registrar with information which gives them reasonable grounds to believe that a licence suspension order would stop you or your family from being able to access urgent medical treatment or from doing your job or make it difficult for you to meet family or personal responsibilities.

'Remote area' does not include the metropolitan region. A list of WA remote areas is available from the WA government Fines Enforcement Registry (FER) web page

(<https://www.wa.gov.au/service/justice/administrative-law/fines-enforcement-registry-fer>).

Cancellation of licence suspension order – hardship and remote areas

If a licence suspension order has been made against you, you may apply to have it cancelled if you can show that not having a licence would:

- stop you from being able to access urgent medical treatment for an illness, disease or disability that you or a family member suffers from, or
- stop you from doing your job or getting a job, or
- make it very difficult for you to meet family or personal responsibilities.

If satisfied that one of these circumstances exist, the Registrar must cancel the licence suspension order.

The Registrar must also cancel a licence suspension order if you give them a notice stating that your current address is in a remote area. This notice must be in the required form (FER009), which can be accessed from the Fines Enforcement Registry (FER) web page

(<https://www.wa.gov.au/service/justice/administrative-law/fines-enforcement-registry-fer>) under the heading 'Application Forms, Factsheets and Publications'.

For more information about licence suspension orders, see **the Legal Aid WA information sheet: Licence suspension order for non-payment of a fine or infringement**.

What is an enforcement warrant?

An enforcement warrant may be issued even if a licence suspension order has also been made.

Once an enforcement warrant is issued, you can no longer elect to have the infringement considered in court.

An enforcement warrant allows the Sheriff to take certain actions to encourage payment of the outstanding fine.

Taking and selling property

The Sheriff can take and sell your personal property, which may include land, and use the proceeds of the sale to pay off the amount you owe.

Immobilising vehicles and removing number plates

The Sheriff may also:

- immobilise your vehicle or vehicles by putting wheelclamps on it or them, or
- remove the number plates from your vehicle and suspend your vehicle licence.

It is an **offence** to interfere with the wheelclamps or the immobilisation notice that the Sheriff puts on your vehicle. The wheelclamps will be removed on payment of the outstanding amount.

If your number plates are removed, the Sheriff must also suspend your vehicle licence. If the outstanding amount is still unpaid after 28 days, the Sheriff may **cancel your vehicle licence** and **disqualify** you from holding or obtaining a vehicle licence in respect of that vehicle.

It is an **offence** to interfere with the notice that the Sheriff puts on your vehicle about the removal of the number plates.

Garnishee orders

An enforcement warrant also allows the Sheriff to issue a garnishee order in relation to your earnings or your bank account. Such orders are issued either against your employer or your bank.

A garnishee order on earnings is an order that your employer take out a certain amount from your earnings and pay that amount to the Sheriff. However, if your earnings in a pay period are the same or less than a certain 'protected earnings' amount, no deduction will be made.

A bank account garnishee order is an order that your bank pay a certain amount to the Sheriff from your bank account(s). This may be a once-off payment or several payments. However, if the total amount in your bank account(s) is the same or less than a certain 'protected bank account' amount, the bank is not allowed to deduct anything. If the bank deducts anything from your bank account, it must tell you within 7 days.

If a bank account garnishee order is in place, it is an offence if you deliberately prevent the order from being carried out by closing the specified accounts, withdrawing or transferring money from them, or preventing money from being paid into them, so that no money can be deducted under the garnishee order.

You must notify the Sheriff if you close all of your accounts with the bank, or if someone who regularly deposits money into your account stops doing so. It is an offence not to notify the Sheriff in these circumstances.

You can apply to the Sheriff for a refund of any money taken from you under a garnishee order. The Sheriff may refund the money or a part of it if they think fit. The application form (FER011) is available

from the Fines Enforcement Registry (FER) web page:

(<https://www.wa.gov.au/service/justice/administrative-law/fines-enforcement-registry-fer>) under the heading 'Application Forms, Factsheets and Publications'.

Time to pay to avoid execution of enforcement warrant

If you enter into such an agreement, the Sheriff will hold off taking and selling your property, or clamping wheels or removing licence plates. If a garnishee order has been issued to your employer or bank and the garnishee order has not been cancelled, the Sheriff must notify your employer or bank that they should take no further action until further notice.

Can I ask the Registry for more time to pay the infringement?

Yes, you can apply for time to pay **at any time** after the infringement has been lodged with the Fines Enforcement Registry, however, you **cannot ask for time to pay if you have already elected to dispute the infringement in court.**

In your request for more time, you must make a reasonable offer to pay the penalty before a specified date, or by regular instalments.

The application must be in the approved form, which is available under 'Application Forms, Factsheets and Publications' on the FER webpage provided by the WA Department of Justice: Application for Time to Pay Order (or to amend existing) (<https://www.wa.gov.au/service/justice/administrative-law/fines-enforcement-registry-fer>).

If your request is accepted by the Registrar a **time to pay order** outlining the payment arrangements will be made. While there is a time to pay order in place, the Registrar will not suspend your licence. If your licence was already suspended, once the time to pay order is in place, your licence suspension will be cancelled.

If you do not comply with the time to pay order the Registrar may cancel the order.

The Sheriff may hold off executing the enforcement warrant if you enter into and follow an agreement with the Sheriff to pay the outstanding amount by an agreed date, or by instalments on or before certain dates.

Can I be made to do community work or be sent to jail for not paying an infringement?

No, to enforce payment of an infringement, it is **not an option** for the Registry to:

- convert your infringement amount to community work, or
- make you serve time in prison to cover the amount of the infringement.

These options are only available when the Registry is enforcing payment of a **fine** and even then, only in certain circumstances. For further information see the **Legal Aid WA information sheet: Fines.**

Where can I get more information?

Information sheets, available from any Legal Aid WA office (locations on back page) or by contacting the **Legal Aid WA Infoline on 1300 650 579:**

- Fines
- Licence suspension orders
- Appearing in court on a criminal charge

Web pages under Find Legal Answers on the **Legal Aid WA website** www.legalaid.wa.gov.au:

- Fines and Infringements
- Appearing in court

Legal Aid WA Infoline on 1300 650 579 for information and referral.

Fines Enforcement Registry on 1300 650 235 or **(08) 9235 0235** for eastern states/mobile callers or their **website:** <https://www.wa.gov.au/service/justice/administrative-law/fines-enforcement-registry-fer>.

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Great Southern Office

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(08) 9892 9700

Goldfields Office

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