

Licence suspension order for non-payment of a fine or infringement



Your driver's licence can be suspended if you do not pay a court fine or an infringement notice. This information sheet tells you how you may be able to get the suspension order removed and what you can do if you have been charged with driving under suspension and you did not know your licence had been suspended.

What is a licence suspension order?

A licence suspension order may be made by the Fines Enforcement Registry if you have failed to pay:

- any infringement notice, or
- any fine handed down by a court in a criminal matter.

A licence suspension order is often called a 'fines suspension'. It removes your right to use your driver's licence for the duration of the order.

It is an **offence** to drive while your licence is under a licence suspension order.

Can I apply for an extraordinary licence?

No, if you are under a licence suspension order for failing to pay a fine or infringement, you cannot apply for an extraordinary driver's licence.

When can I drive again?

You can drive again when you are no longer subject to a licence suspension order and you have nothing else affecting your authority to drive, such as a court imposed disqualification or a demerit point suspension.

Be sure to check the status of your licence before you drive.

You can check if your licence is subject to a licence suspension order for an unpaid fine or infringement by going to the [Department of Justice website](#) or by contacting the Fines Enforcement Registry on **1300 650 235** (Eastern States callers (08) 9235 0235).

You can check if your licence is under another form of disqualification or suspension by going to the [Department of Transport website](#).

You should allow at least two working days for the information on these websites to be updated.

Can I have the fines suspension removed?

Yes, there are options for having the licence suspension order removed. They are different depending on whether you have failed to pay an **infringement** or a court **fine**.

If you are unsure whether your licence suspension order is for non-payment of a fine or an infringement, call the Fines Enforcement Registry on **1300 650 235** (Eastern States callers (08) 9235 0235).

What are the options to remove a licence suspension order imposed for non-payment of an infringement?

For an infringement, to have the licence suspension order removed your options are to:

- pay the infringement notice;
- apply to the Fines Enforcement Registrar to have the order cancelled;
- elect to go to court to dispute the infringement notice; or
- apply to the court to have the order cancelled (set aside).

What happens if I pay the infringement notice?

If you decide to pay the infringement, the licence suspension order will be lifted at the time of payment. Payment must be made to the Fines Enforcement Registry and must be for the full amount of the infringement together with any enforcement fees that have been added on.

When can the order be cancelled by the Fines Enforcement Registrar?

The Registrar may cancel your licence suspension order for non-payment of an infringement if you can show good reasons why it should be cancelled.

Alternatively, you can apply to the Registrar for time to pay your infringement in certain circumstances and if the Registrar grants your application, your licence suspension order will be cancelled.

You may apply for time to pay where the licence suspension order is seriously hindering you in performing family or personal responsibilities, or will stop you from being able to:

- get urgent medical treatment for an illness, disease or disability suffered by you or a member of your family, or
- earn an income with which to pay the infringement.

If the Registrar makes an order giving you time to pay and you do not comply with the order your licence may be put back under suspension and the time to pay arrangement can be cancelled.

What happens if I elect to go to court to dispute the infringement notice?

At any time after you have received a licence suspension order but before any enforcement warrant has been issued, you can elect to go to court to dispute the infringement notice. This election is given to the Registrar of the Fines Enforcement Registry who will arrange for you to be served with a prosecution notice and a court hearing notice. You will then have to attend court on the date provided.

You cannot elect to have the infringement dealt with in court if you have already entered into a time

to pay agreement with the Fines Enforcement Registry.

Once you elect to go to court to dispute the infringement, the licence suspension order must be cancelled.

When can I have my suspension order for non-payment of an infringement cancelled by a court?

You can apply to the court to have the licence suspension order cancelled (set aside) if an infringement notice was sent to you but you did not receive any of the following:

- the infringement notice
- a final demand for payment
- an order to pay or elect
- a notice of intention to suspend licence, or
- a notice confirming licence suspension.

During the application, you will have to give evidence on oath or affirmation confirming the points listed above.

Even if the court grants your application and the licence suspension order is cancelled, you will still have to pay the original infringement.

If you are subject to more than one licence suspension order for failing to pay infringements, you will need to apply to have each suspension cancelled.

How do I apply to have my suspension order for non-payment of an infringement cancelled by a court?

Your application is under s 101 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA).

You can make the application by completing and submitting a [Form 3: Application to cancel licence suspension order made in respect of infringement notice](#). An electronic version is available from the [Magistrates Court website](#) under Magistrates Court (General) Rules 2005 Forms. A hard copy is available from a Magistrates Court Registry.

The form must be submitted at the Registry together with payment of the required fee.

After you have submitted the form, the Registry will list your application to be heard by the court

on a particular day. At the hearing of the application, you can represent yourself or choose to be represented by a private lawyer. A Legal Aid WA duty lawyer cannot represent you at the hearing.

What are the options to remove a licence suspension order imposed for non-payment of a fine?

For a fine, to have the licence suspension order removed your options are to:

- pay the fine
- apply to the Fines Enforcement Registrar to have the order cancelled
- apply to the court to have the order set aside, or
- in the case of a fine that was imposed in your absence, apply for a re-hearing of the charge in court.

What happens if I pay the fine?

If you decide to pay the fine, the licence suspension order will be lifted at the time of payment. Payment must be made to the Fines Enforcement Registry and must be for the full amount registered as unpaid.

When can the order be cancelled by the Fines Enforcement Registrar?

The Registrar may cancel your licence suspension order for non-payment of a fine if you can show good reasons for the cancellation.

The Registrar will automatically cancel a licence suspension order imposed for non-payment of a fine where a work and development order (WDO) is made.

You may apply to the Registrar for time to pay your fine in certain circumstances and if the Registrar grants your application, your licence suspension order will be cancelled.

You may apply for time to pay where the licence suspension order is seriously hindering you in performing family or personal responsibilities, or will stop you from being able to:

- get urgent medical treatment for an illness, disease or disability suffered by you or a member of your family, or
- earn an income with which to pay the infringement.

If the Registrar makes an order giving you time to pay and you do not comply with the order your licence may be put back under suspension and the time to pay arrangement can be cancelled.

When can I have my suspension order for non-payment of a fine cancelled by a court?

You can apply to the court to have the licence suspension order cancelled (set aside) if a court imposed a fine on you but you:

- did not receive a summons or court hearing notice to attend court in respect of the particular charge, and
- were not present in court when the fine was imposed, and
- did not receive a notice of intention to enforce the fine, and
- did not receive the notice confirming licence suspension.

To make the application, you must appear in court to give evidence on oath or affirmation confirming the points listed above.

Even if the court grants your application and the order is cancelled, you will still have to pay the original fine.

If you are subject to more than one licence suspension order for failing to pay fines, you will need to apply to have each suspension cancelled.

How do I apply to have my suspension order for non-payment of a fine cancelled by a court?

Your application is under s 101A of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA).

You can make the application by completing and submitting a [Form 4 – Application to cancel licence suspension made in respect of fine](#). An electronic version is available from the [Magistrates Court website](#) under Magistrates Court (General) Rules 2005 Forms. A hard copy is available from a Magistrates Court Registry.

The form must be submitted at the Registry together with payment of the required fee.

After you have submitted the form, the Registry will list your application to be heard by the court on a particular day. At the hearing of the application, you can represent yourself or choose to be represented by a private lawyer. A Legal Aid WA duty lawyer cannot represent you at the hearing.

When can I apply for a re-hearing of the original charge for which I was fined?

A re-hearing is only possible if you received a court fine, not an infringement notice.

You may apply for a re-hearing if you were not in court when the fine was imposed and you:

- did not receive notice of the court date; or
- did not receive notice of the court date in enough time to enable you to appear on the court date; or
- did receive notice of the court date within enough time to attend, but did not appear for a good reason.

The purpose of a re-hearing is to give you another chance to appear before the court to answer the charge that originally led to you being fined. This means that you should only apply for a re-hearing if:

- you were not in court when the charge was heard, and if you had been in court you would have pleaded not guilty because you have a defence to the charge, or
- you were not in court when the charge was heard, and if you had been in court you would have pleaded guilty, but there are good reasons why the court may not have imposed that fine on you.

You should get legal advice before you apply for a re-hearing.

How can I apply for a re-hearing of the original charge for which I was fined?

The application for a re-hearing is under s 71 of the *Criminal Procedure Act 2004 (WA)* and must be made within 21 days of the decision.

You can make the application by submitting a [Form 7 – Application to set aside a decision](#) together with an [affidavit](#) in support. Electronic versions are available from the [Magistrates Court website](#) under Criminal Matter Forms. Hard copies are available from a Magistrates Court Registry.

The completed form and affidavit must be submitted at the Magistrates Court Registry together with payment of the required fee.

What is the effect of a re-hearing of the original charge?

If you successfully apply for a re-hearing of the original charge, then the fine will be removed and you will no longer have to pay it. As a result, the licence suspension order that was imposed as result of your failure to pay that fine will be cancelled.

As part of the re-hearing, the court will determine whether you are guilty of the offence and if so, a new penalty will then be considered and imposed. If this includes a fine, you are responsible for paying it, in the usual way.

Can I apply for a re-hearing even if I have applied to have my licence suspension order cancelled?

Yes, any application you may make to have your fines suspension cancelled, does not affect your right to apply to the court for a re-hearing of the original charge that led to the fine.

I have been charged with driving under suspension, but did not know that I was under fines suspension. What can I do?

In this case, you can:

- apply to have the fines suspension cancelled (following the processes outlined above for either a fine or an infringement notice)
- apply for a re-hearing of the charge if the licence was suspended for failing to pay a court fine (following the process outlined above)
- consider a defence of honest and reasonable mistake of fact.

What if I manage to get the fines suspension cancelled?

If you are successful in your application to have your licence suspension order cancelled, the charge of driving under suspension may be withdrawn by the police. The police do not have to withdraw the charge and if they do not, you may need to consider whether you have a defence of honest and reasonable mistake of fact.

What if the licence suspension order is cancelled after a re-hearing?

If you are successful in applying for a re-hearing of the charge that resulted in you getting a fine and then a suspension order, your licence suspension order will be cancelled. As a result of this the charge of driving under suspension may be withdrawn by police. The police do not have to withdraw the charge and if they do not, you may need to consider whether you have a defence of honest and reasonable mistake of fact.

What is an honest and reasonable mistake of fact?

An honest and reasonable mistake of fact is a defence to a criminal charge. If you have a defence such as this, it means you can plead not guilty to the charge and go to a trial, where the court will hear evidence and decide if you are guilty or not guilty.

In the case of a charge of driving under suspension, you may have a defence of honest and reasonable mistake of fact if:

- you drove while honestly believing that your licence was not suspended, and
- it was reasonable for you to believe this.

If you think you may have this defence, you should get legal advice to confirm your position before you enter your plea. You may be able to get legal advice from a Legal Aid WA duty lawyer in the Magistrates Court on the morning of court, or from your own private lawyer.

If you do have a defence, you can choose to plead not guilty and go to a trial. A Legal Aid WA duty lawyer cannot represent you at your trial. If you wish to be represented, you will need to engage a private lawyer. You should arrange this well before your trial date.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

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

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

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

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

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

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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