

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.

Can I apply for an extraordinary licence while I have a licence suspension order?

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.

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

Yes, there are options for having the licence suspension order removed. They are slightly 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 for time to pay;
- give a notice to the Registrar that you live in a remote area;
- request that the Registrar cancel the order on medical, employment or family/personal responsibility grounds;
- apply to the Registrar to cancel the order for another good reason;
- elect to go to court to dispute the infringement notice; or
- apply to the court to have the order cancelled (set aside).

These options are considered in more detail below.

Pay the infringement notice

If you decide to pay the infringement, 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.

The licence suspension order will be lifted at the time of payment.

Apply for time to pay

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 can make a time to pay application online through the eCourts Portal, or by emailing an Application for Time to Pay Order Form (also available at all courthouses) to ferttp@justice.wa.gov.au or posting to GPO Box X2293, Perth, WA 6847, or by phoning the Registry on 1300 650 235.

As part of the time to pay application, the Registrar may require you to undergo a means test.

The Registrar must make a time to pay order and cancel the licence suspension order if satisfied that:

- you do not have the means to pay the unpaid infringement amount within 28 days of the application; and

- your offer to pay by regular instalments is reasonable; and
- either you have not previously breached a time to pay order issued by the Registrar, or you have a reasonable excuse for any such breach.

If the Registrar makes an order giving you time to pay and either you do not comply with the order or you do not comply with a request to undergo a means test, your licence may be put back under suspension and the time to pay arrangement may be cancelled.

Give notice that you live in a remote area

If you live in a remote area and you give the Registrar a notice stating that your current address is in a remote area, together with the required documentation or evidence, the Registrar must cancel the licence suspension order imposed for non-payment of the infringement.

‘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>).

Request cancellation for medical, employment or personal/family reasons

As long as you have not elected to go to court, you can request that the order be cancelled if it:

- stops you from being able to obtain urgent medical treatment for an illness, disease or disability which you or a member of your family have; or
- stops you obtaining income; or
- makes it seriously difficult for you to perform family or personal responsibilities.

If the Registrar is satisfied that one of the above applies to you, they must cancel the licence suspension order.

Apply for cancellation for other good reasons

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.

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.

Apply for order to be cancelled (set-aside) 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 the court to have each suspension cancelled.

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 for time to pay;
- give a notice to the Registrar that you live in a remote area
- request that the Registrar cancel the order on medical, employment or family/personal responsibility grounds
- apply to the Registrar to cancel the order for another good reason
- 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.

These options are considered in more detail below.

Note that the Registrar must remove a licence suspension order for non-payment of a fine as soon as possible after:

- a work and development permit (WDP) or fine expiation order is issued, or
- an order to attend for work and development is served, or
- an application for a warrant of commitment (WOC) inquiry is made.

Pay the fine

If you decide to pay the fine, payment must be made to the Fines Enforcement Registry and must be for the full amount registered as unpaid.

The licence suspension order will be lifted at the time of payment.

Apply for time to pay

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.

Note that you cannot make an application for time to pay if (in relation to the fine in question):

- an enforcement warrant is in place
- a work and development permit (WDP) is in place
- an ongoing fine expiation order is in place, or
- a warrant of commitment is in force.

You can make a time to pay application online through the eCourts Portal, or by emailing an Application for Time to Pay Order Form (also available at all courthouses) to ferttp@justice.wa.gov.au or posting to GPO Box X2293, Perth, WA 6847, or by phoning the Registry on 1300 650 235.

As part of the time to pay application, the Registrar may require you to undergo a means test.

The Registrar must make a time to pay order and cancel the licence suspension order if satisfied that:

- you do not have the means to pay the unpaid fine within 28 days of the application;
- your offer to pay by regular instalments is reasonable;
- there is no warrant of commitment inquiry process occurring in relation to you and the fine;
- either you have not previously breached a time to pay order made by the Registrar or you have a reasonable excuse for any such breach.

If the Registrar makes an order giving you time to pay and either you do not comply with the order or you do not comply with a request to undergo a means test, your licence may be put back under suspension and the time to pay arrangement can be cancelled.

Give notice that you live in a remote area

If you live in a remote area and you give the Registrar a notice stating that your current address is in a remote area, together with the required documentation or evidence, the Registrar must cancel the licence suspension order imposed for non-payment of the fine.

‘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>).

Request cancellation for medical, employment or personal/family reasons.

You can request that the order be cancelled if it:

- stops you from being able to get urgent medical treatment for an illness, disease or disability which you or a member of your family have; or
- stops you from getting income; or

- makes it seriously difficult for you to perform family or personal responsibilities.

If the Registrar is satisfied that one of the above applies to you, the licence suspension order must be cancelled.

Apply for cancellation for other good reasons

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

Apply to court to cancel (set-aside) licence suspension order

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 for which you received the fine, 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.

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.

Apply to court for a re-hearing of the original charge for which you were 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 should be asked to reconsider the fine it imposed on you.

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

The application for a re-hearing is under s 71 of the Criminal Procedure Act 2004 (WA).

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 the 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 a 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 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 a licence suspension order. What can I do?

In this case, you can:

- apply to have the licence suspension order 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 suspension order was imposed for failing to pay

a court fine (following the process outlined above)

- consider a defence of honest and reasonable mistake of fact.

What happens to the charge if I manage to get the licence suspension order 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 happens to the charge 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.

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