

# Road Traffic Amendment (Alcohol and Drug Related Offences) Bill 2010

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Western Australia

LEGISLATIVE ASSEMBLY

*(As amended during consideration in detail)*

**Road Traffic Amendment (Alcohol and Drug  
Related Offences) Bill 2010**

**A Bill for**

**An Act to amend the *Road Traffic Act 1974* and to make  
consequential amendments to the *Road Traffic (Administration)  
Act 2008*.**

The Parliament of Western Australia enacts as follows:

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**Part 1 — Preliminary**

**1. Short title**

This is the *Road Traffic Amendment (Alcohol and Drug Related Offences) Act 2010*.

**2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

1 **Part 2 — Road Traffic Act 1974 amended**

2 **3. Act amended**

3 This Part amends the *Road Traffic Act 1974*.

4 **4. Section 42C amended**

5 In section 42C(1) delete “97(b)” and insert:

6

7 97(2)(b)

8

9 **5. Section 63 amended**

10 (1) In section 63(2):

11 (a) in paragraph (a)(ii) delete “16 PU” and insert:

12

13 18 PU

14

15 (b) in paragraph (a)(ii) delete “6 months;” and insert:

16

17 10 months;

18

19 (c) in paragraph (b) delete “30 PU” and insert:

20

21 42 PU

22

23 (d) in paragraph (b) delete “2 years; and” and insert:

24

25 30 months; and

26

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1 (e) in paragraph (c) delete “40 PU” and insert:

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3

42 PU

4

5 (2) Delete section 63(6) and insert:

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7 (6) A person charged with an offence against this section  
8 may, instead of being convicted of that offence, be  
9 convicted of —

10 (a) an offence against section 64, 64AA, 64AB or  
11 64AC; or

12 (b) an offence against section 64A(1) or 64AAA(1)  
13 if, at the time of the alleged offence, the person  
14 was a person to whom section 64A(1) applied;  
15 or

16 (c) an offence against section 64A(4) or 64AAA(2)  
17 if, at the time of the alleged offence, the motor  
18 vehicle concerned was a motor vehicle to which  
19 section 64A(4) applied.  
20

21 **6. Section 64 amended**

22 (1) In section 64(2) delete the Table and the note after it and insert:

23

24

**Table**

<b>Blood alcohol content (g/100ml)</b>		<b>First offence</b>	<b>Second offence</b>	<b>Subsequent offence</b>
$\geq 0.08$ but $< 0.09$	Min: Max: Disq:	10 PU 30 PU 6 months	12 PU 30 PU 8 months	12 PU 30 PU 10 months

<b>Blood alcohol content (g/100ml)</b>		<b>First offence</b>	<b>Second offence</b>	<b>Subsequent offence</b>
≥ 0.09 but < 0.11	Min: Max: Disq:	11 PU 30 PU 7 months	18 PU 30 PU 10 months	18 PU 30 PU 13 months
≥ 0.11 but < 0.13	Min: Max: Disq:	13 PU 30 PU 8 months	24 PU 40 PU 14 months	24 PU 40 PU 17 months
≥ 0.13	Min: Max: Disq:	15 PU 30 PU 9 months	32 PU 50 PU 18 months	32 PU 60 PU 30 months

Note: ≥ signifies of or above  
 < signifies less than

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(2) Delete section 64(4) and insert:

- (4) A person charged with an offence against this section may, instead of being convicted of that offence, be convicted of —
- (a) an offence against section 64AA; or
  - (b) an offence against section 64A(1) or 64AAA(1) if, at the time of the alleged offence, the person was a person to whom section 64A(1) applied; or
  - (c) an offence against section 64A(4) or 64AAA(2) if, at the time of the alleged offence, the motor vehicle concerned was a motor vehicle to which section 64A(4) applied.

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1 **7. Section 64AA amended**

2 (1) In section 64AA(2) delete “4 PU.” and insert:

3

4 10 PU.

5

6 (2) In section 64AA(2a) delete the Table and the note after it and  
7 insert:

8

9

**Table**

<b>Blood alcohol content (g/100ml)</b>		<b>Second offence</b>	<b>Subsequent offence</b>
$\geq 0.05$ but $< 0.07$	Min: Max: Disq:	10 PU 20 PU 6 months	10 PU 20 PU 8 months
$\geq 0.07$	Min: Max: Disq:	12 PU 20 PU 8 months	12 PU 20 PU 10 months

10

Note:  $\geq$  signifies of or above  
 $<$  signifies less than

11

12

13 (3) Delete section 64AA(3) and insert:

14

15 (3) A person charged with an offence against this section  
16 may, instead of being convicted of that offence, be  
17 convicted of —

- 18 (a) an offence against section 64A(1) or 64AAA(1)  
19 if, at the time of the alleged offence, the person  
20 was a person to whom section 64A(1) applied;  
21 or



- 1 (b) an offence against section 64A(4) or 64AAA(2)  
2 if, at the time of the alleged offence, the motor  
3 vehicle concerned was a motor vehicle to which  
4 section 64A(4) applied.  
5

6 **8. Section 64A amended**

- 7 (1) In section 64A(1) in the Penalty delete “2 PU” and insert:

8

9 3 PU

10

- 11 (2) Delete section 64A(2)(a) and (b) and insert:

12

- 13 (a) is a novice driver as defined in section 104(2);  
14 or

15

- 16 (3) Delete section 64A(4) and insert:

17

- 18 (4) A person who drives or attempts to drive a motor  
19 vehicle to which this subsection applies while having a  
20 blood alcohol content of or above 0.02g of alcohol per  
21 100ml of blood commits an offence.

22 Penalty: not less than 3 PU or more than 6 PU; and, in  
23 any event, the court convicting a person shall order  
24 that the person be disqualified from holding or  
25 obtaining a driver’s licence for a period of not less  
26 than 3 months.

- 27 (4A) Subsection (4) does not apply to a person who drives or  
28 attempts to drive a motor vehicle described in  
29 subsection (5)(a) or (d) if the person —

- 30 (a) is a person of a class prescribed by the  
31 regulations for the purposes of this paragraph;  
32 and

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- 1 (b) is driving or attempting to drive the vehicle in  
2 the course of responding to an incident as  
3 defined in the *Fire and Emergency Services*  
4 *Authority of Western Australia Act 1998*  
5 section 3.
- 6 (5) Subsection (4) applies to a motor vehicle —
- 7 (a) that is equipped to seat more than 12 adult  
8 persons (including the driver), if, at the relevant  
9 time, the vehicle is carrying passengers,  
10 whether or not the passengers are being carried  
11 for hire or reward; or
- 12 (b) that is an omnibus as defined in the *Transport*  
13 *Co-ordination Act 1966* section 4(1), but is not  
14 a vehicle referred to in paragraph (a), if, at the  
15 relevant time, the vehicle is carrying passengers  
16 for hire or reward; or
- 17 (c) on which taxi plates issued under the *Taxi*  
18 *Act 1994* are being used, or in respect of which  
19 a taxi-car licence has been issued under the  
20 *Transport Co-ordination Act 1966* Part IIIB, if,  
21 at the relevant time, the vehicle is carrying  
22 passengers for hire or reward; or
- 23 (d) that has a gross combination mass exceeding  
24 22.5 tonnes; or
- 25 (e) that is of a class prescribed by the regulations  
26 for the purposes of this paragraph, if, at the  
27 relevant time, the vehicle is being used to  
28 transport dangerous goods as defined in the  
29 *Dangerous Goods Safety Act 2004* section 3(1).

- 1 (6) For the purposes of subsection (5)(d) —  
2 **gross combination mass** means the greatest possible  
3 sum of the maximum loaded mass of the motor vehicle  
4 and of any vehicles that may lawfully be towed by it at  
5 one time —  
6 (a) as specified by the motor vehicle’s  
7 manufacturer; or  
8 (b) as specified by the relevant authority if —  
9 (i) the manufacturer has not specified the  
10 sum of the maximum loaded mass; or  
11 (ii) the manufacturer cannot be identified;  
12 or  
13 (iii) the motor vehicle has been modified to  
14 the extent that the manufacturer’s  
15 specification is no longer appropriate;  
16 **relevant authority** means —  
17 (a) if the motor vehicle has never been licensed or  
18 registered but is used or is intended to be used  
19 in this State — the Director General; or  
20 (b) if the motor vehicle was last licensed in this  
21 State — the Director General; or  
22 (c) if the motor vehicle was last licensed or  
23 registered in another State or a Territory — the  
24 authority in that State or Territory whose  
25 functions most nearly correspond to those of  
26 the Director General.  
27 (7) A person charged with an offence against  
28 subsection (1) may, instead of being convicted of that  
29 offence, be convicted of an offence against  
30 section 64AAA(1).

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- 1 (8) A person charged with an offence against  
2 subsection (4) may, instead of being convicted of that  
3 offence, be convicted of an offence against  
4 section 64AAA(2).  
5

6 **9. Section 64AAA replaced**

7 Delete section 64AAA and insert:  
8

9 **64AAA. Certain persons driving with any blood alcohol**  
10 **content**

- 11 (1) A person to whom section 64A(1) applies who drives  
12 or attempts to drive a motor vehicle while having any  
13 blood alcohol content commits an offence.  
14 Penalty: not less than 3 PU or more than 6 PU.
- 15 (2) A person who drives or attempts to drive a motor  
16 vehicle to which section 64A(4) applies while having  
17 any blood alcohol content commits an offence.  
18 Penalty: not less than 3 PU or more than 6 PU.
- 19 (2A) Subsection (2) does not apply to a person who drives or  
20 attempts to drive a motor vehicle described in  
21 section 64A(5)(a) or (d) if the person —
- 22 (a) is a person of a class prescribed by the  
23 regulations for the purposes of this paragraph;  
24 and
- 25 (b) is driving or attempting to drive the vehicle in  
26 the course of responding to an incident as  
27 defined in the *Fire and Emergency Services*  
28 *Authority of Western Australia Act 1998*  
29 section 3.

- 1 (3) It is a defence to a charge of an offence against  
2 subsection (1) or (2) for the accused to prove that the  
3 accused's blood alcohol content was not to any extent  
4 caused by any of the following —  
5 (a) the consumption of an alcoholic beverage  
6 (otherwise than for the purposes of religious  
7 observance);  
8 (b) the consumption or use of any other substance  
9 (for example, food or medicine) for the purpose  
10 of consuming alcohol.  
11

12 **10. Section 64AB amended**

13 In section 64AB(2):

- 14 (a) in paragraph (a) delete "16 PU" and insert:  
15  
16 18 PU  
17  
18 (b) in paragraph (a) delete "6 months; and" and insert:  
19  
20 10 months; and  
21  
22 (c) in paragraph (b) delete "30 PU" and insert:  
23  
24 42 PU  
25  
26 (d) in paragraph (b) delete "2 years; and" and insert:  
27  
28 30 months; and  
29  
30 (e) in paragraph (c) delete "40 PU" and insert:  
31  
32 42 PU  
33

**s. 11**

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1 **11. Section 64AC amended**

2 In section 64AC(2):

3 (a) in paragraph (a) delete “4 PU; and” and insert:

4

5 10 PU; and

6

7 (b) in paragraph (b) delete “5 PU or more than 10 PU;” and  
8 insert:

9

10 10 PU or more than 20 PU;

11

12 (c) in paragraph (b) delete “3 months.” and insert:

13

14 6 months.

15

16 **12. Section 66 amended**

17 In section 66(2)(a)(ii) delete “or 64AAA applies;” and insert:

18

19 applies or that the motor vehicle  
20 concerned is a motor vehicle to which  
21 section 64A(4) applies;

22

23 **13. Section 67 amended**

24 In section 67(3):

25 (a) in paragraph (a)(ii) delete “16 PU” and insert:

26

27 18 PU

28

- 1 (b) in paragraph (a)(ii) delete “6 months;” and insert:  
2  
3 10 months;  
4  
5 (c) in paragraph (b) delete “30 PU” and insert:  
6  
7 42 PU  
8  
9 (d) in paragraph (b) delete “2 years;” and insert:  
10  
11 30 months;  
12  
13 (e) in paragraph (c) delete “40 PU” and insert:  
14  
15 42 PU  
16

17 **14. Section 67AA amended**

18 In section 67AA(3):

- 19 (a) in paragraph (a) delete “16 PU” and insert:  
20  
21 18 PU  
22  
23 (b) in paragraph (a) delete “6 months; and” and insert:  
24  
25 10 months; and  
26  
27 (c) in paragraph (b) delete “30 PU” and insert:  
28  
29 42 PU  
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1 (d) in paragraph (b) delete “2 years; and” and insert:

2

3 30 months; and

4

5 (e) in paragraph (c) delete “40 PU” and insert:

6

7 42 PU

8

9 **15. Section 67AB amended**

10 In section 67AB(3):

11 (a) in paragraph (a) delete “4 PU; and” and insert:

12

13 10 PU; and

14

15 (b) in paragraph (b) delete “5 PU or more than 10 PU;” and  
16 insert:

17

18 10 PU or more than 20 PU;

19

20 (c) in paragraph (b) delete “3 months.” and insert:

21

22 6 months.

23

24 **16. Section 98 amended**

25 In section 98(1a) delete the passage that begins with “that the  
26 alleged offender” and continues to the end of the subsection and  
27 insert:

28

29 that —

30 (a) the alleged offender was, at the time of the  
31 alleged offence, a person to whom  
32 section 64A(1) applied; or



- 1                   (b) the vehicle to which the alleged offence relates  
2                   was, at the time of the alleged offence, a motor  
3                   vehicle to which section 64A(4) applied,  
4                   is to be taken to be proved in the absence of proof to  
5                   the contrary.  
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**Part 3 — *Road Traffic (Administration)*  
*Act 2008* amended**

**17. Act amended**

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

**18. Section 109 amended**

In section 109(1):

(a) in paragraph (f) delete “or 64AAA”;

(b) after paragraph (f) insert:

(ga) that the vehicle to which the alleged offence relates was, at the time of the alleged offence, a motor vehicle to which the *Road Traffic Act 1974* section 64A(4) applied;

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