

Western Australia

**Road Traffic Legislation Amendment
(Disqualification by Notice) Act 2010**

As at 08 Dec 2010

No. 51 of 2010

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Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Road Traffic Act 1974</i> amended		
3.	Act amended	3
4.	Section 6AA inserted	3
	6AA. Delegation of functions of Commissioner of Police	3
5.	Section 51 amended	4
6.	Section 64 amended	4
7.	Section 66 amended	5
8.	Section 66B amended	6
9.	Section 66E amended	6
10.	Section 67 amended	6
11.	Sections 71C to 71H inserted	6
	71C. Disqualification by member of Police Force	6
	71D. Consequences of disqualification notice	9
	71E. Revocation of disqualification notice by member of Police Force	9
	71F. Revocation of disqualification notice by court order	10
	71G. Revocation of disqualification on acquittal or dismissal of charge	11

Contents

	71H. Period of disqualification to be taken into account on conviction	11	
12.	Section 76 amended		11
13.	Section 98A amended		14
14.	Section 104K amended		14
15.	Section 106A amended		14
 Part 3 — Road Traffic (Administration) Act 2008 amended			
16.	Act amended		15
17.	Section 117 amended		15
 Part 4 — Road Traffic (Authorisation to Drive) Act 2008 amended			
18.	Act amended		16
19.	Section 17 amended		16
20.	Section 25 replaced		16
	25. Term used: application	16	
21.	Section 27 amended		17
22.	Section 28 amended		17
23.	Section 29 amended		17
24.	Section 30 amended		18
25.	Section 31 replaced		18
	31. When further application can be made	18	
26.	Section 36 amended		18
27.	Section 37 amended		18
28.	Section 52 amended		19
29.	Section 67 amended		19

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Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010

No. 51 of 2010

An Act to amend the *Road Traffic Act 1974*, the *Road Traffic (Administration) Act 2008* and the *Road Traffic (Authorisation to Drive) Act 2008*.

[Assented to 8 December 2010]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Road Traffic Legislation Amendment (Disqualification by Notice) Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) sections 3 and 6 to 10 — on the day after that day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — Road Traffic Act 1974 amended

3. Act amended

This Part amends the *Road Traffic Act 1974*.

4. Section 6AA inserted

After section 6 insert:

6AA. Delegation of functions of Commissioner of Police

- (1) The Commissioner of Police may delegate to —
- (a) a specified member of the Police Force; or
 - (b) a member of the Police Force of a specified class; or
 - (c) a person who is employed in the department of the Public Service principally assisting in the administration of the *Police Act 1892*,

any power or duty of the Commissioner under another provision of this Act other than a power delegated to the Commissioner under section 83(6).

- (2) The delegation must be in writing signed by the Commissioner of Police.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising or performing a power or duty that has been delegated to the person under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

s. 5

- (5) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or agent.

Note: The heading to section 6A is to be amended to read:

Delegation of functions of Director General

5. Section 51 amended

Delete section 51(4) and insert:

- (4A) If the holder of a driver's licence that is a provisional licence is disqualified from holding or obtaining a driver's licence —
- (a) by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; or
 - (b) by a disqualification notice given to the person under section 71C,

the provisional licence is, by operation of this subsection, suspended so long as the disqualification continues in force.

- (4) While a provisional licence is suspended under subsection (4A) it is of no effect, but this section does not operate so as to extend the period for which the licence may be valid or effective beyond the time when the licence would be due to expire.

6. Section 64 amended

In section 64(1) delete "offence." and insert:

offence, and the offender may be arrested without warrant.

7. Section 66 amended

- (1) In section 66(2) delete “(5), (6a), (7) and (8a),” and insert:

(5) and (6a),

- (2) In section 66(5) delete “nominated by the person to take a sample of his blood” and insert:

nominated by the member of the Police Force to take a sample of the person’s blood

- (3) In section 66(6a)(b) delete “nominated by the person”.

- (4) Delete section 66(7), (8), (8a) and (9).

- (5) In section 66(11):

- (a) delete “or (d), or pursuant to his own requirement made under subsection (7),” and insert:

or (d)

- (b) in paragraph (c) delete “nominated by the person to take a sample of his blood” and insert:

nominated by the member of the Police Force to take a sample of the person’s blood

- (c) in paragraph (d) delete “nominated by the person with a sample of his urine” and insert:

nominated by the member of the Police Force with a sample of the person’s urine

s. 8

- (6) Delete section 66(13), (14) and (15).

8. Section 66B amended

- (1) In section 66B(1)(d) and (e) delete “nominated by the person” and insert:

nominated by the member of the Police Force

- (2) Delete section 66B(5) and (6).

9. Section 66E amended

- (1) In section 66E(1) delete “nominated by the person” and insert:

nominated by the member of the Police Force

- (2) Delete section 66E(5) and (6).

10. Section 67 amended

In section 67(2) delete “offence.” and insert:

offence, and the offender may be arrested without warrant.

11. Sections 71C to 71H inserted

After section 71B insert:

71C. Disqualification by member of Police Force

- (1) This section applies if —
- (a) a member of the Police Force (the *member*), as a result of an analysis of a sample of a person’s breath or blood, has reason to suspect that the

person (the *alleged offender*) has committed an offence under section 63 or 64 (the *alleged offence*); or

- (b) a member of the Police Force (the *member*) has reason to suspect that a person (the *alleged offender*) has committed an offence against section 67 (the *alleged offence*).
- (2) If this section applies the member may give the alleged offender a notice that is in accordance with this section (a *disqualification notice*) by delivering the notice to the alleged offender personally.
 - (3) The disqualification notice must contain a statement to the effect that the alleged offender is disqualified from holding or obtaining a driver's licence for a period commencing on receipt of the notice and ending on the day that is 2 months after the day the notice is received unless before the expiry of that period the notice is revoked under section 71E, 71F or 71G.
 - (4) The disqualification notice must —
 - (a) identify the provision under which the notice is given; and
 - (b) specify the grounds on which the notice is given; and
 - (c) identify the time and date on which the alleged offence was committed; and
 - (d) identify where the alleged offence was committed; and
 - (e) describe the alleged offence with reasonable clarity; and
 - (f) identify the provision that creates the alleged offence.
 - (5) The disqualification notice must also include a statement to the effect that section 71F contains law

s. 11

about the circumstances in which the alleged offender may apply to a court for an order revoking the notice.

- (6) A disqualification notice cannot be given to an alleged offender —
- (a) if the alleged offence is an offence under section 63 or 64, more than 10 days after the later of —
 - (i) the day of the alleged offence; or
 - (ii) if a sample of the alleged offender's blood was taken under section 66 in connection with the alleged offence, the day on which a member of the Police Force receives an analysis result of the sample;
- or
- (b) if the alleged offence is an offence under section 67, more than 10 days after the day of the alleged offence.
- (7) If a member gives a person a disqualification notice the member must write on the notice the time and date when it was given and the time and date when the disqualification expires.
- (8) A member may, by written notice given to a person to whom a disqualification notice has been given, amend the disqualification notice to correct any error in the disqualification notice.
- (9) If a member gives a person a disqualification notice or a notice amending a disqualification notice in accordance with this section the member must, as soon as is practicable, cause particulars of the notice to be sent to the Director General.

71D. Consequences of disqualification notice

- (1) A person who is given a disqualification notice in accordance with section 71C is disqualified from holding or obtaining a driver's licence for the period set out in the notice unless the notice is sooner revoked.
- (2) The period of disqualification imposed under subsection (1) is concurrent with any other period for which the person is disqualified from holding or obtaining a driver's licence.

71E. Revocation of disqualification notice by member of Police Force

- (1) A member of the Police Force must immediately revoke a disqualification notice if —
 - (a) the member becomes aware that the breath analysing equipment used to analyse the sample of the person's breath provided in connection with the offence to which the notice relates was faulty at the time of the analysis; or
 - (b) a charge for the offence to which the notice relates has not been laid within 10 days after the time when the notice was given; or
 - (c) a charge for the offence to which the notice relates is discontinued.
- (2) If under this section a member of the Police Force revokes a disqualification notice the member must, as soon as is practicable, cause notice of the revocation to be given to —
 - (a) the person to whom the disqualification notice was given under section 71C; and
 - (b) the Director General.

71F. Revocation of disqualification notice by court order

- (1) A person to whom a disqualification notice is given under section 71C may apply to the Magistrates Court or, if the person is under 18 years of age, to the Children's Court, for an order directing the Commissioner of Police to revoke the notice.
- (2) An application made under subsection (1) must —
 - (a) be made in accordance with any applicable rules of court; and
 - (b) include particulars of the exceptional circumstances that the applicant alleges justifies the making of the order; and
 - (c) be served on the Commissioner of Police at least 14 days before it is heard and determined.
- (3) The Commissioner of Police is entitled to be heard on an application made under subsection (1).
- (4) The court may either make an order directing the Commissioner of Police to revoke the disqualification notice from the day specified in the order or refuse the application.
- (5) The court must not make an order directing the Commissioner of Police to revoke a disqualification notice unless it is satisfied that exceptional circumstances exist that justify the making of such an order.
- (6) If a court makes an order directing the Commissioner of Police to revoke a disqualification notice, the court is to cause a copy of the order to be sent to the Director General.

71G. Revocation of disqualification on acquittal or dismissal of charge

- (1) If a court —
 - (a) acquits a person of an offence to which a disqualification notice relates; or
 - (b) dismisses a charge for an offence to which a disqualification notice relates,the disqualification notice is revoked.
- (2) If under this section a disqualification notice is revoked, the court is to cause particulars of the revocation to be sent to the Director General.

71H. Period of disqualification to be taken into account on conviction

- (1) This section applies if a court convicts a person of the offence to which a disqualification notice relates.
- (2) If this section applies, the court is to take into account any period of disqualification imposed under section 71D(1) in respect of the disqualification notice when making an order disqualifying the person from holding or obtaining a driver's licence.

12. Section 76 amended

- (1) In section 76(1ac):
 - (a) before paragraph (a) insert:
 - (aa) under section 71D(1); or
 - (b) delete “paragraph (a)” and insert:

paragraph (aa), (a)

s. 12

- (2) In section 76(1a):
- (a) delete “No” and insert:

Subject to subsection (1B), no
 - (b) in paragraph (f) delete “64(2)(a)” and insert:

64(2)(b)
 - (c) after each of paragraphs (a) to (f) insert:

or
- (3) After section 76(1a) insert:
- (1B) A period referred to in subsection (1a) in relation to an offence is to be reduced by any period during which the applicant was disqualified from holding or obtaining a driver’s licence by a disqualification notice given to the applicant under section 71C in relation to the offence.
- (4) Delete section 76(2)(c).
- (5) In section 76(3):
- (a) delete “Subject to subsection (3a), the” and insert:

The
 - (b) in paragraph (e) delete “disqualification; and” and insert:

disqualification,

- (c) delete paragraph (f);
- (d) after each of paragraphs (a) to (d) insert:

and

- (6) Delete section 76(3a).
- (7) In section 76(3b):
 - (a) delete the passage that begins with “For” and ends with “hardship if” and insert:

Despite subsection (3), the court shall not make an order directing the grant of an extraordinary licence unless it is satisfied that

- (b) after paragraph (a) insert:

or

- (8) In section 76(4) delete “subsection (1), not being a special application,” and insert:

subsection (1)

- (9) Delete section 76(4a), (12) and (12a).
- (10) In section 76(13) delete “subsection (1a) and (12) —” and insert:

subsection (1a) —

s. 13

13. Section 98A amended

Delete section 98A(6) and (7).

14. Section 104K amended

- (1) Delete section 104K(2).
- (2) In section 104K(4) delete the passage that begins with “election,” and continues to the end of the subsection and insert:

election.

- (3) After section 104K(4) insert:

- (5A) The day stated in the notice as the day on which the period of disqualification is to commence is to be —
 - (a) a day that is after the notice is given; and
 - (b) if subsection (1)(b) applies, a day that is after the period of disqualification referred to in that paragraph has ended.

15. Section 106A amended

After section 106A(2) insert:

- (3) Despite subsection (2), a period for which the court must, in accordance with subsection (1), disqualify an offender for an offence is to be reduced by any period during which the offender was disqualified by a disqualification notice given to the offender under section 71C in relation to the offence.

**Part 3 — *Road Traffic (Administration) Act 2008*
amended**

16. Act amended

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

17. Section 117 amended

Delete section 117(10) and (11).

**Part 4 — Road Traffic (Authorisation to Drive)
Act 2008 amended**

18. Act amended

This Part amends the *Road Traffic (Authorisation to Drive) Act 2008*.

19. Section 17 amended

Delete section 17(1) and insert:

- (1) If the holder of a driver's licence that is a provisional licence is disqualified from holding or obtaining a driver's licence —
- (a) by a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; or
 - (b) by a disqualification notice given to the person under the *Road Traffic Act 1974* section 71C,

the provisional licence is, by operation of this subsection, suspended so long as the disqualification continues in force.

20. Section 25 replaced

Delete section 25 and insert:

25. Term used: application

In this Division —

application, except in sections 35, 36 and 37, means an application under section 27.

21. Section 27 amended

In section 27(3):

(a) after paragraph (a) insert:

(ba) under the *Road Traffic Act 1974*
section 71D(1); or

(b) delete “paragraph (a)” and insert:

paragraph (a), (ba)

22. Section 28 amended

(1) In section 28(2) delete “An” and insert:

Subject to subsection (3), an

(2) Delete section 28(3) and insert:

(3) A period referred to in subsection (2) in relation to an offence is to be reduced by any period during which the applicant was disqualified by a disqualification notice given to the applicant under the *Road Traffic Act 1974* section 71C in relation to the offence.

(3) In section 28(4) delete the passage that begins with “and” and ends with “25”.

23. Section 29 amended

Delete section 29(3).

24. Section 30 amended

- (1) In section 30(2):
- (a) in paragraph (e) delete “disqualification; and” and insert:

disqualification.
 - (b) delete paragraph (f).
- (2) Delete section 30(3).
- (3) In section 30(4) delete the passage that begins with “For” and ends with “hardship if” and insert:

Despite subsections (1) and (2), the court must not make an order directing the grant of an extraordinary licence unless it is satisfied that

25. Section 31 replaced

Delete section 31 and insert:

31. When further application can be made

If an application is refused no further application can be made within 6 months after the date of the refusal.

26. Section 36 amended

In section 36 delete “or that is a special application”.

27. Section 37 amended

In section 37 delete “or that is a special application”.

28. Section 52 amended

- (1) Delete section 52(2).
- (2) In section 52(4) delete the passage that begins with “election,” and continues to the end of the subsection and insert:

election.

- (3) After section 52(4) insert:

- (5A) The day stated in the notice as the day on which the period of disqualification is to commence is to be —
 - (a) a day that is after the notice is given; and
 - (b) if subsection (1)(b) applies, a day that is after the period of disqualification referred to in that paragraph has ended.

29. Section 67 amended

In section 67(4) delete “76(1), not being a special application,” and insert:

76(1)

