

Western Australia

Road Traffic Act 1974

Road Traffic (Miscellaneous) Regulations 2008

As at 20 Feb 2013

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Road Traffic (Miscellaneous) Regulations 2008

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Defined Terms

Western Australia

Road Traffic Act 1974

Road Traffic (Miscellaneous) Regulations 2008

Part 1 — Preliminary

1. Citation

These regulations are the *Road Traffic (Miscellaneous) Regulations 2008*.

2. Commencement

These regulations come into operation as follows:

- (a) Part 1 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Road Traffic Amendment Act 2006* section 6 comes into operation.

3. Terms used in these regulations

In these regulations —

novice driver (type 1A) has the meaning given in the *Road Traffic (Authorisation to Drive) Regulations 2008* regulation 4(3).

Part 2 — General

4. Caution for certain unauthorised driving offences

The form set out in Schedule 1 is prescribed under section 49A(3) of the Act.

5. Defence for failing to report minor damage

The amount prescribed for the purpose of section 56(6) of the Act is \$3 000.

6A. Classes of person prescribed for s. 64A and 64AAA of Act

(1) In this regulation —

contractor, to the FES Department, an emergency services organisation or a local government, means —

- (a) a person who is engaged by the chief executive officer of the FES Department, the emergency services organisation or the local government under a contract for services; or
- (b) a person who is employed or engaged by a person referred to in paragraph (a);

emergency services organisation means any of the following —

- (a) a FES Unit as defined in the FES Act section 3;
- (b) an SES Unit as defined in the FES Act section 3;
- (c) a VMRS Group as defined in the FES Act section 3;
- (d) a bush fire brigade as defined in the *Bush Fires Act 1954* section 7(1);
- (e) a private fire brigade as defined in the *Fire Brigades Act 1942* section 4(1);
- (f) a volunteer fire brigade as defined in the *Fire Brigades Act 1942* section 4(1);

FES Act means the *Fire and Emergency Services Act 1998*;

FES Department means the department of the Public Service principally assisting in the administration of the FES Act.

- (2) The following classes of person are prescribed for the purposes of sections 64A(4A)(a) and 64AAA(2A)(a) of the Act —
- (a) a person who is an officer or member of an emergency services organisation;
 - (b) a person who is employed by a local government under the *Local Government Act 1995* section 5.36;
 - (c) a person who is a contractor to the FES Department, an emergency services organisation or a local government;
 - (d) a person who is acting under the direction of a person referred to in paragraph (a), (b) or (c).

[Regulation 6A inserted in Gazette 30 Aug 2011 p. 3513-14; amended in Gazette 19 Feb 2013 p. 996.]

6B. Classes of motor vehicle prescribed for s. 64A of Act

The following classes of motor vehicle are prescribed for the purposes of section 64A(5)(e) of the Act —

- (a) a motor vehicle that is a placarded vehicle as defined in the *Dangerous Goods Safety (Explosives) Regulations 2007* regulation 107(1);
- (b) a motor vehicle transporting a load of dangerous goods that is required to be placarded under the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007* regulation 110.

[Regulation 6B inserted in Gazette 30 Aug 2011 p. 3514.]

Part 3 — Demerit point scheme

6. Demerit point offence in WA

- (1) An offence is a demerit point offence in WA if it is an offence under a section of the Act identified in column 1 of Schedule 2, being an offence described in column 2 of that Schedule, and the number of demerit points applying to the offence is the number indicated in column 3.
- (2) In Schedule 2 —
holiday period has the meaning given in regulation 7.
- (3) An offence that involves the driving or use of a motor vehicle is a demerit point offence in WA if it is an offence under the *Road Traffic Code 2000* for which a penalty is expressed as a number of points, and the number of demerit points applying to the offence is that number of points.
- (4) An offence against the *Road Traffic (Vehicle Standards) Regulations 2002* regulation 66(1) (failure to comply with a compliance notice) is a demerit point offence in WA, and the number of demerit points applying to the offence is 3.

7. What is regarded as a holiday period

- (1) In this regulation —
public holiday means a day specified, or appointed under the power, in the *Public and Bank Holidays Act 1972* Second Schedule to be a public holiday.
- (2) If a public holiday falls on a Monday, the period of 4 days beginning with the last Friday before that Monday and ending with that Monday is a holiday period.
- (3) If a public holiday falls on a Friday, the period of 4 days beginning with the Thursday before that Friday and ending with the next Sunday after that Friday is a holiday period.

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- (4) Despite subregulations (2) and (3), the period of 5 days beginning with the Thursday before Good Friday and ending with Easter Monday is a holiday period.
- (5A) Despite subregulations (2), (3) and (4), in 2011, the period of 6 days beginning with the last Thursday before Good Friday and ending with ANZAC Day holiday (the Tuesday after Easter Monday) is a holiday period.
- (5) Despite subregulations (2) and (3), the period of 17 days beginning with the last Friday before Christmas Day is a holiday period.

[Regulation 7 amended in Gazette 18 Mar 2011 p. 927.]

8. Some consequences of removing demerit points from register

- (1) In this regulation —
removed means removed or required to be removed.
- (2) This regulation applies if under section 104O(3) or (4) of the Act demerit points are removed from the demerit points register.
- (3) A notice under section 104I(1) of the Act ceases to have effect if the giving of the notice required the cancellation of the demerit points that are subsequently removed but the notice has not resulted in —
- (a) a period of disqualification commencing before the day on which the demerit points are removed; or
 - (b) a person making a section 104J election.
- (4) If the giving of a notice under section 104I(1) of the Act required the cancellation of the demerit points that are subsequently removed and, when the demerit points are removed, the notice has not resulted in a period of disqualification commencing but has resulted in a person making a section 104J election, the notice and the election each cease to have effect.

r. 8

- (5) In circumstances described in subregulation (3) or (4), any demerit points that were cancelled as a result of the notice, except any subsequently removed, have the effect, if any, that they would have if they had not been cancelled.
- (6) Subregulation (7) applies if —
- (a) the giving of a notice under section 104I(1) of the Act required the cancellation of any demerit point subsequently removed; and
 - (b) at the time of removal —
 - (i) the notice has resulted in a period of disqualification; or
 - (ii) the notice has resulted in a person making a section 104J election and a period of disqualification under section 104K has resulted from a notice given under section 104K(1) for an offence during the section 104J election period.
- (7) In circumstances described in subregulation (6) —
- (a) if a notice under section 104I(1) would not have been given if each demerit point removed had never been recorded —
 - (i) the period of disqualification ceases at the time of removal if it has not already expired; and
 - (ii) any demerit points that were cancelled as a result of the notice, except any removed or under subregulation (8) credited as served, have the effect, if any, that they would have if they had not been cancelled;
- and
- (b) if a notice under section 104I(1) would have been given even if each demerit point removed had never been recorded —
 - (i) the period of disqualification, whether or not it has already expired, is adjusted, if required, to

what it would have been if the points removed had never been recorded; and

- (ii) if a greater period of disqualification has already been served than the adjusted period (in which case the difference is called the *excess period served*), the number of current demerit points, if any, then recorded against the person is to be reduced by cancelling one or more points according to subregulation (9).
- (8) In the circumstances in which subregulation (7)(a) applies, a whole number of demerit points are to be credited as served, the number being at least the same proportion of the number of points that were cancelled as the period of disqualification served represents of the full period of the disqualification under section 104I or 104K, as the case requires.
- (9) In the circumstances in which subregulation (7)(b)(ii) applies, the number of points to be cancelled cannot be more than the number of current demerit points the person then has, but otherwise is the lowest whole number that is not less than N in the following formula —

$$N = (4 * d) / 30$$

where —

d is the number of days in the excess period served.

- (10) Neither subregulation (3), (4) nor (7)(a)(i) prevents a further notice from being given under section 104I(1).

9. Alternative to giving certain notices personally

A notice referred to in section 104R of the Act may be given to a person by a form of mail that involves the person taking personal delivery of the notice and acknowledging in writing having taken delivery of it.

10. Transitional matters

- (1) In this regulation —
transition day means the day on which the *Road Traffic Amendment Act 2006* section 31 comes into operation.
- (2) Nothing in this regulation is intended to exclude any provision of the *Interpretation Act 1984* Part V.
- (3) Points recorded against a person under the *Road Traffic Act 1974* section 103 are not to be regarded as currently recorded for the purposes of the *Road Traffic Amendment Act 2006* section 36 if, before the transition day, they counted towards an aggregate number of points the accumulation of which resulted in a notice of disqualification being served on the person under that section.
- (4) Subregulation (3) does not affect the continuation of any disqualification to which the person is subject immediately before the transition day.
- (5) Even if disqualification because of a notice of disqualification served under the *Road Traffic Act 1974* section 103 before the transition day has not taken effect before that day, the disqualification takes and has effect as specified in the notice and that section applies to the disqualification as if it had not been repealed.
- (6) The reference in the *Road Traffic Act 1974* section 76(1ac) to a person being disqualified under Part VIA does not include a person disqualified by a notice of disqualification served under the *Road Traffic Act 1974* section 103 before the transition day.
[Regulation 10 amended in Gazette 24 Apr 2009 p. 1388.]

Part 4 — Repeal

11. Repeal

The *Road Traffic (General) Regulations 2008* are repealed.

Schedule 1 — Form of caution

[r. 4]

CAUTION (Penalty Enforcement Suspension)
 Section 49A of the *Road Traffic Act 1974* (Unauthorised driving)

You are cautioned for driving while a licence suspension order applies for unpaid fines.

Driver:	DOB: / /
Address:	Phone:
Driver's licence details:	MDL No.: Issued in: Expiry: / /
Vehicle:	Reg. No.: Make / Model:
Time and date stopped:	hrs on / /
Location stopped:	
Driver's signature:	Time signed:
Police officer issuing caution:	Signature: Name: Rank/Reg: Station: Phone No.:
Licence suspension details:	Start date: Case No.:

RESTRICTED PERMIT TO DRIVE / TRAVEL

Driving / travel is authorised only until:	hrs on / /
Journey is only authorised as mentioned:	Travel from to by shortest practicable route.
Conditions:	

Unless authorised by the above restricted permit you are unable to drive a motor vehicle until after you have resolved all outstanding licence suspension orders made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* with Fines Enforcement Registry, Ground Floor, May Holman Centre, 32 St Georges Terrace, Perth. Telephone 9235 0235.

WARNING: Driving contrary to a time, destination or condition specified on this form by the issuing officer will result in an offence of unauthorised driving. Any alteration, deletion or addition made to any details in this form, other than by the issuing officer, may amount to committing further offences. A permit will be granted only if it appears to the apprehending officer that to immediately cease driving would be impracticable or may jeopardise the safety of any person. The officer will have regard to such matters as the remoteness of the location and the absence of persons (other than police personnel) who can assist and lawfully drive.

Entered on Frontline IMS.

Schedule 2 — Demerit point offences in WA

[r. 6]

<i>column 1</i>	<i>column 2</i>	<i>column 3</i>
provision	description of offence	points
49(1)	A first offence of driving while not authorised if the driving is by a novice driver (type 1A) and between midnight and the following 5 a.m., other than if s. 49(3) of the Act applies	2
61	A first offence of dangerous driving	6
62	Careless driving	3
62A	Causing excessive noise, smoke	3
64AA	A first offence of driving or attempting to drive a motor vehicle while having a blood alcohol content —	
	(a) of or above 0.05 g but less than 0.06 g of alcohol per 100 mL of blood —	
	(i) during a holiday period	6
	(ii) other than during a holiday period	3
	(b) of or above 0.06 g but less than 0.07 g of alcohol per 100 mL of blood —	
	(i) during a holiday period	8
	(ii) other than during a holiday period	4
	(c) of or above 0.07 g of alcohol per 100 mL of blood —	
	(i) during a holiday period	10
	(ii) other than during a holiday period	5
64AAA	Driving or attempting to drive a motor vehicle while having any blood alcohol content	3
64AC	A first offence of driving or attempting to drive a motor vehicle while a prescribed illicit drug is present in the person's oral fluid or blood —	
	(a) during a holiday period	6
	(b) other than during a holiday period	3
67AB	A first offence of failing to comply with a requirement under section 66D or 66E by either	

<i>column 1</i>	<i>column 2</i>	<i>column 3</i>
provision	description of offence	points
	failing to provide a sample of oral fluid for drug testing, or failing to allow a medical practitioner or registered nurse to take a sample of blood for analysis —	
	(a) during a holiday period	6
	(b) other than during a holiday period	3

[Schedule 2 amended in Gazette 27 Jun 2008 p. 3124; 30 Aug 2011 p. 3515.]

Notes

- ¹ This is a compilation of the *Road Traffic (Miscellaneous) Regulations 2008* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Road Traffic (Miscellaneous) Regulations 2008</i>	10 Jun 2008 p. 2431-47	r. 1 and 2: 10 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Jun 2008 (see r. 2(b) and <i>Gazette</i> 10 Jun 2008 p. 2471)
<i>Road Traffic Amendment (Novice Driver Penalties) Regulations 2008</i> Pt. 4	27 Jun 2008 p. 3119-24	r. 1 and 2: 27 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2008 (see r. 2(b) and <i>Gazette</i> 27 Jun 2008 p. 3117)
<i>Road Traffic (Miscellaneous) Amendment Regulations 2009</i>	24 Apr 2009 p. 1388	24 Apr 2009
<i>Road Traffic (Miscellaneous) Amendment Regulations 2011</i>	18 Mar 2011 p. 926-7	r. 1 and 2: 18 Mar 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 19 Mar 2011 (see r. 2(b))
<i>Road Traffic (Miscellaneous) Amendment Regulations (No. 2) 2011</i>	30 Aug 2011 p. 3513-15	r. 1 and 2: 30 Aug 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Oct 2011 (see r. 2(b) and <i>Gazette</i> 30 Aug 2011 p. 3503)
<i>Road Traffic (Miscellaneous) Amendment Regulations 2012</i>	19 Feb 2013 p. 995-6	r. 1 and 2: 19 Feb 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 20 Feb 2013 (see r. 2(b))

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
contractor	6A(1)
emergency services organisation.....	6A(1)
excess period served	8(7)
FES Act.....	6A(1)
FES Department.....	6A(1)
holiday period	6(2)
novice driver (type 1A).....	3
public holiday	7(1)
removed	8(1)
transition day.....	10(1)