

Western Australia

**Road Traffic Amendment (Alcohol and Drug
Related Offences) Act 2011**

As at 25 May 2011

No. 14 of 2011

Extract from www.slp.wa.gov.au, see that website for further information

Road Traffic Amendment (Alcohol and Drug Related Offences) Act 2011

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2

Part 2 — *Road Traffic Act 1974* amended

3.	Act amended	3
4.	Section 42C amended	3
5.	Section 63 amended	3
6.	Section 64 amended	4
7.	Section 64AA amended	6
8.	Section 64A amended	7
9.	Section 64AAA replaced	10
	64AAA. Certain persons driving with any blood alcohol content	10
10.	Section 64AB amended	11
11.	Section 64AC amended	12
12.	Section 66 amended	12
13.	Section 67 amended	12
14.	Section 67AA amended	13
15.	Section 67AB amended	14
16.	Section 98 amended	14

Contents

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

17.	Act amended	16
18.	Section 109 amended	16



Western Australia

Road Traffic Amendment (Alcohol and Drug Related Offences) Act 2011

No. 14 of 2011

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

[Assented to 25 May 2011]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Road Traffic Amendment (Alcohol and Drug Related Offences) Act 2011*.

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.

Part 2 — Road Traffic Act 1974 amended

3. Act amended

This Part amends the *Road Traffic Act 1974*.

4. Section 42C amended

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

97(2)(b)

5. Section 63 amended

(1) In section 63(2):

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

18 PU

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

10 months;

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

42 PU

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

30 months; and

s. 6

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

42 PU

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

- (6) 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 64, 64AA, 64AB or 64AC; 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.

6. Section 64 amended

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

Table

Blood alcohol content (g/100ml)		First offence	Second offence	Subsequent offence
≥ 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

Blood alcohol content (g/100ml)		First offence	Second offence	Subsequent offence
≥ 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: \geq signifies of or above
 $<$ signifies less than

(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.

s. 7

7. Section 64AA amended

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

10 PU.

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

Table

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

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

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

- (3) 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 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

- (b) 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.

8. Section 64A amended

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

3 PU

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

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

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

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

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

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

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

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

- (6) For the purposes of subsection (5)(d) —
- gross combination mass** means the greatest possible sum of the maximum loaded mass of the motor vehicle and of any vehicles that may lawfully be towed by it at one time —
- (a) as specified by the motor vehicle's manufacturer; or
 - (b) as specified by the relevant authority if —
 - (i) the manufacturer has not specified the sum of the maximum loaded mass; or
 - (ii) the manufacturer cannot be identified; or
 - (iii) the motor vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate;
- relevant authority** means —
- (a) if the motor vehicle has never been licensed or registered but is used or is intended to be used in this State — the Director General; or
 - (b) if the motor vehicle was last licensed in this State — the Director General; or
 - (c) if the motor vehicle was last licensed or registered in another State or a Territory — the authority in that State or Territory whose functions most nearly correspond to those of the Director General.
- (7) A person charged with an offence against subsection (1) may, instead of being convicted of that offence, be convicted of an offence against section 64AAA(1).

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

9. Section 64AAA replaced

Delete section 64AAA and insert:

64AAA. Certain persons driving with any blood alcohol content

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

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

10. Section 64AB amended

In section 64AB(2):

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

18 PU

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

10 months; and

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

42 PU

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

30 months; and

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

42 PU

s. 11

11. Section 64AC amended

In section 64AC(2):

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

10 PU; and

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

10 PU or more than 20 PU;

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

6 months.

12. Section 66 amended

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

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

13. Section 67 amended

In section 67(3):

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

18 PU

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

10 months;

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

42 PU

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

30 months;

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

42 PU

14. Section 67AA amended

In section 67AA(3):

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

18 PU

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

10 months; and

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

42 PU

s. 15

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

30 months; and

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

42 PU

15. Section 67AB amended

In section 67AB(3):

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

10 PU; and

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

10 PU or more than 20 PU;

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

6 months.

16. Section 98 amended

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

that —

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

- (b) the vehicle to which the alleged offence relates was, at the time of the alleged offence, a motor vehicle to which section 64A(4) applied,

is to be taken to be proved in the absence of proof to the contrary.

**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;

=====