

Western Australia

**Road Traffic Amendment (Dangerous Driving)  
Act 2004**

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As at 09 Nov 2004

No. 44 of 2004

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Western Australia

# **Road Traffic Amendment (Dangerous Driving) Act 2004**

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Western Australia

# **Road Traffic Amendment (Dangerous Driving) Act 2004**

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**No. 44 of 2004**

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**An Act to amend the *Road Traffic Act 1974*.**

[Assented to 9 November 2004]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Road Traffic Amendment (Dangerous Driving) Act 2004*.

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**2. Commencement**

This Act comes into operation on a day fixed by proclamation.

**3. The Act amended**

The amendments in this Act are to the *Road Traffic Act 1974*\*.

[\* Reprinted as at 19 October 2001.

*For subsequent amendments see Western Australian  
Legislation Information Tables for 2003, Table 1, p. 338 and  
Acts Nos. 50 of 2003 and 4 of 2004.]*

**4. Section 51 amended**

Section 51(1)(a)(iii) is amended by inserting before “61” —  
“ 59A, ”.

**5. Section 59 amended**

- (1) Section 59(1) (other than the summary conviction penalty) is repealed and the following is inserted instead —

“

- (1) If a motor vehicle driven by a person (the “**driver**”) is involved in an incident occasioning the death of, or grievous bodily harm to, another person and the driver was, at the time of the incident, driving the motor vehicle —
- (a) while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle; or
  - (b) in a manner (which expression includes speed) that is, having regard to all the circumstances of the case, dangerous to the public or to any person,

the driver commits a crime and is liable to the penalty in subsection (3).

”.

(2) Section 59(2) is amended as follows:

- (a) by deleting paragraph (a);
- (b) in paragraph (c), by deleting “ when a person causes grievous bodily harm to another person and that other person receives surgical or medical treatment, and death results either from the harm or the treatment, he is deemed to have caused the death of that other person” and inserting instead —

“

when an incident occasions grievous bodily harm to a person and that person receives surgical or medical treatment, and death results either from the harm or the treatment, the incident is deemed to have occasioned the death of that person

”.

(3) Section 59(3)(a) is amended by deleting “ if at the time of the offence the motor vehicle was unlawfully being driven without the consent of the owner or person in charge of the motor vehicle” and inserting instead —

“

if the offence is against subsection (1)(a), or the offence is against subsection (1)(b) and is committed in circumstances of aggravation

”.

**6. Section 59A amended**

- (1) Section 59A(1) is repealed and the following subsection is inserted instead —

“

- (1) If a motor vehicle driven by a person (the “**driver**”) is involved in an incident occasioning bodily harm to another person and the driver was, at the time of the incident, driving the motor vehicle —
- (a) while under the influence of alcohol, drugs, or alcohol and drugs to such an extent as to be incapable of having proper control of the vehicle; or
  - (b) in a manner (which expression includes speed) that is, having regard to all the circumstances of the case, dangerous to the public or to any person,

the driver commits an offence.

”.

- (2) Section 59A(2)(a) is deleted.
- (3) Section 59A(3) is amended by deleting “A” and inserting instead —

“ Subject to subsection (3a), a ”.

- (4) After section 59A(3) the following subsection is inserted —

“

- (3a) In the case of an offence under subsection (1)(a), or an offence under subsection (1)(b) committed in circumstances of aggravation, the offence is a crime and a person convicted of it is liable to a fine of any amount and imprisonment for 7 years and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver’s licence for a period of not less than 2 years.



Summary conviction penalty: imprisonment for 18 months or a fine of 160PU and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 18 months.

”.

**7. Section 59B inserted**

After section 59A the following section is inserted —

“

**59B. Section 59 and 59A offences: ancillary matters and defence**

- (1) For the purposes of sections 59 and 59A, the circumstances in which a motor vehicle is involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, a person include those in which the death or harm is occasioned through —
  - (a) the motor vehicle overturning or leaving a road while the person is being conveyed in or on the motor vehicle (whether as a passenger or otherwise);
  - (b) the person falling from the motor vehicle while being conveyed in or on it (whether as a passenger or otherwise);
  - (c) an impact between any object or thing and the motor vehicle while the person is being conveyed in or on the motor vehicle (whether as a passenger or otherwise);
  - (d) an impact between the person and the motor vehicle;
  - (e) an impact of the motor vehicle with another vehicle or an object or thing in, on or near which the person is at the time of impact;

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- (f) an impact with any object on or attached to the motor vehicle; or
  - (g) an impact with any object that is in motion through falling from the motor vehicle.
- (2) For the purposes of sections 59 and 59A, a motor vehicle is also involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, a person if the death or harm is occasioned through the motor vehicle —
  - (a) causing an impact between other vehicles or between another vehicle and any object, thing or person;
  - (b) causing another vehicle to overturn or leave a road; or
  - (c) causing a person being conveyed in or on another vehicle to fall from that other vehicle.
- (3) For the purposes of sections 59 and 59A a person commits an offence in “**circumstances of aggravation**” if at the time of the alleged offence —
  - (a) the person was unlawfully driving the vehicle concerned without the consent of the owner or person in charge of the vehicle;
  - (b) the person was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road; or
  - (c) the person was driving the vehicle concerned to escape pursuit by a member of the Police Force.
- (4) For the purposes of subsection (3)(c) it does not matter whether the pursuit was still proceeding, or had been suspended or terminated, at the time of the alleged offence.

- (5) In any proceeding for an offence against section 59 or 59A a person who had at the time of the alleged offence a percentage of alcohol in his blood of or exceeding 0.15% shall be deemed to have been under the influence of alcohol to such an extent as to be incapable of having proper control of a motor vehicle at the time of the alleged offence.
- (6) In any proceeding for an offence against section 59 or 59A it is a defence for the person charged to prove that the death, grievous bodily harm or bodily harm occasioned by the incident was not in any way attributable (as relevant) —
  - (a) to the fact that the person charged was under the influence of alcohol, drugs, or alcohol and drugs; or
  - (b) to the manner (which expression includes speed) in which the motor vehicle was driven.

”.

**8. Section 65 amended**

Section 65 is amended by inserting before “sections” —  
“ section 59B(5) and ”.

**9. Section 66 amended**

- (1) Section 66(2) is amended by inserting after paragraph (c) —  
“
  - (ca) a member of the Police Force —
    - (i) has reasonable grounds to believe that an offence against section 59(1)(a) or 59A(1)(a) has been committed; and
    - (ii) does not know, or has doubt as to, who was the driver of the motor vehicle concerned,

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but has reasonable grounds to believe that a person may have been the driver of the motor vehicle; or

”.

- (2) Section 66(6a)(a), (8a)(a) and (b) and (11) are amended by inserting after “(2)(c)” —

“ , (ca) ”.

**10. Section 67 amended**

- (1) Section 67(3) is amended by deleting “A” and inserting instead —

“ Subject to subsection (3a), a ”.

- (2) After subsection 67(3) the following subsection is inserted —  
“

- (3a) If when a requirement is made a member of the Police Force —

- (a) advises the person concerned that the member of the Police Force believes that the motor vehicle of which the person was, or is believed to have been, the driver has been involved in an incident occasioning the death of, or grievous bodily harm or bodily harm to, another person; and
- (b) explains to the person the consequences under this subsection of failure to comply with the requirement,

an offence against this section of failing to comply with that requirement is a crime and a person convicted of it is liable to a fine of any amount and imprisonment for 14 years and in any event the court convicting the person shall order that the person be disqualified from

holding or obtaining a driver's licence for a period of not less than 2 years.

Summary conviction penalty: imprisonment for 18 months or a fine of 160PU and in any event the court convicting the person shall order that he be disqualified from holding or obtaining a driver's licence for a period of not less than 18 months.

”.

**11. Section 72 amended**

Section 72(1) is amended by inserting before “sections” —  
“ section 59B(5) and ”.

**12. Review**

- (1) The Minister is to carry out a review of the operations and effectiveness of the amendments made to the *Road Traffic Act 1974* by this Act as soon as is practicable after the expiry of 18 months from the commencement of the *Road Traffic Amendment (Dangerous Driving) Act 2004*.
- (2) The Minister is to prepare a report based on the review carried out under subsection (1) and is to cause that report to be laid before each House of Parliament as soon as practicable.

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