

ROAD TRAFFIC AMENDMENT (DRUGS) ACT 2007

QUESTIONS AND ANSWERS

The following questions and answers aim to help people understand recent changes to drug driving laws in Western Australia.

Note: In the drug driving legislation the term 'prescribed drugs' is used. This is a legal term and relates to those drugs prescribed in the regulations. The term should not be confused with prescription drugs such as drugs prescribed by a doctor.

Where the term 'prescribed drugs' is used in this document it refers to THC (the active ingredient in cannabis), methylamphetamines (eg 'speed' or 'ice') and MDMA (eg 'ecstasy').

While the new legislation uses the term oral fluid where appropriate the more familiar term saliva is used in this document.

1. Why are drug driving laws being changed in Western Australia?

New laws are being introduced in Western Australia to reduce the incidence of drug driving and the number of people killed and seriously injured as a result of drug driving.

Although research consistently shows that alcohol is the major problem in relation to impaired driving, there is increasing concern regarding the incidence of other drugs and their contribution to road deaths and serious injury. There are a range of drugs other than alcohol that affect driving performance, increase crash risk and negatively impact on road safety. Studies have shown that drugs that are capable of impairing driver skills have been found in significant numbers of drivers who have been injured or killed on our roads. The drugs of major concern from a road safety perspective are THC (the active ingredient in cannabis) and amphetamine type stimulants including methylamphetamine ('speed' or 'ice') and MDMA ('ecstasy').

2. What are the main changes that will result from the new drug driving laws being introduced?

Essentially, the new drug driving laws make provision for two new offences:

- Driving with the presence of a prescribed illicit drug in oral fluid or blood; and
- Driving while impaired by a drug.

The new drug driving laws also allow random roadside drug testing to be introduced and drivers stopped by police may be required to provide a saliva sample to be tested for drugs. Random drug testing will focus on identifying the presence of a prescribed illicit drug in the saliva or blood of a driver and does not attempt to quantify any level of impairment.

Random drug testing is focused on the detection of recent use of prescribed illicit drugs: THC (the active ingredient in cannabis), methylamphetamine ('speed' or 'ice') and MDMA ('ecstasy').

The new laws for impaired driving will focus on driver impairment and are concerned with identifying and prosecuting drivers who are visibly impaired by drugs.

In the first instance, the impaired driving legislation relies on visual evidence of possible driver impairment by a police officer, followed by standardized assessment procedures. Where drug impairment is suspected, a blood and urine sample is collected. The police report and the blood/urine tests results are then reviewed and, where expert opinion supports the police and toxicological evidence, a drug impaired driving charge will result.

3. Why is random roadside drug testing being introduced?

Random roadside saliva testing for prescribed drugs is part of the Western Australian Government's commitment to improving road safety, reducing road trauma and associated costs to the community.

The rationale for random roadside drug testing is to increase the detection of drivers that may pose a potential risk on the road and prevent them from driving for a period of time. Similar to random breath testing, random drug testing provides a visible form of deterrence to those that may choose to drive after using a prescribed illicit drug and institutes appropriate penalties to act as a future deterrence to drug driving.

4. Has the experience gained from similar regimes in Australia been taken into account?

In 2003, Victoria was the first place in the world to trial random roadside drug testing. South Australia followed in 2005, Tasmania in 2006 and NSW in 2007. The experience gained in the other states has informed and helped shape the new drug driving laws in Western Australia and information will continue to be shared between the states into the future.

5. Will the new drug driving legislation be reviewed?

Yes. The legislation requires a review to be conducted after 12 months operation to assess the effectiveness of the initiative and whether there is a need for any additional legislative or operational changes. The review must be tabled in Parliament. The Government will also continue to closely monitor developments in other states in regard to drug testing of drivers.

6. What drugs are proposed to be detected by roadside saliva tests?

Random roadside saliva testing will focus on the detection of THC (the active component in cannabis) and methylamphetamines (including MDMA), which are, after alcohol, the drugs of greatest concern in relation to road safety.

7. How long after consuming cannabis, methylamphetamine or MDMA can these drugs be detected in saliva?

THC (the active ingredient in cannabis) can be detected in saliva for up to four hours after use, but is dependent on the amount and potency of the cannabis, on the individual's metabolism and the method of use. THC residue from using cannabis in previous days or weeks will not be detected.

Methylamphetamines, including MDMA, can be detected for approximately 24 hour after use. Extremely large doses, a person's metabolism and whether other drugs were taken at the same time may affect the duration of the effects of these drugs.

8. Will THC be detected if inhaled from passive smoking be detected?

Having THC (the active ingredient in cannabis) in saliva as a result of passive smoking would be very unlikely and if it was evident it would be at extremely low levels that would not be detected by the screening devices.

9. What about testing for other drugs?

Random saliva testing will only be used to detect the presence of THC (the active ingredient in cannabis) and methylamphetamines, including MDMA.

Drivers found to be impaired by drugs will be prosecuted for the new and more serious offence of driving while impaired by a drug. This will apply in instances where a police officer witnesses driving behaviour that indicates that a driver's ability to drive is impaired and where that suspicion is confirmed following driver assessment and blood tests.

10. Will prescription medications be detected by roadside saliva tests?

Saliva tests will only detect THC (the active ingredient in cannabis) and methylamphetamines, including MDMA.

The tests will not detect the presence of prescription drugs or common over the counter medications, such as cold and flu tablets, sinus medication (eg Sudafed), asthma and ADHD medication.

11. Who will be required to undertake a roadside saliva test?

Any driver in Western Australia may be required to undertake a roadside saliva test for recent consumption of cannabis and methylamphetamines, including MDMA.

12. Why are saliva samples being used to test for drugs?

Saliva samples are relatively easy to collect and can be screened easily using a quick and accurate method to detect the presence of the prescribed drugs. Taking a saliva sample is less intrusive than other sampling techniques (such as taking a blood sample).

13. How will roadside saliva tests be conducted?

Before undertaking a roadside drug test, drivers will be required to complete an alcohol breath test. Drivers may also be requested to provide a saliva sample for drug testing by placing an absorbent swab in their mouth or touching it on their tongue until a sample is collected.

The saliva sample will be screened at the roadside, with the result determined within about five minutes. If a positive result is determined, a second sample will be required for further analysis. This process will require the driver to leave the vehicle and accompany the police officer to the Bus or other place which may take around 30 minutes.

Drivers who return a negative saliva and alcohol test will not be detained further.

Penalties apply where drivers refuse or fail to undertake a drug test when required to do so by a police officer.

14. How reliable is saliva testing for THC and methylamphetamines?

Saliva testing is an accurate and reliable method for detecting the recent consumption of THC and methylamphetamines including MDMA. The drug testing devices used must meet rigorous standards of accuracy.

No charges against the driver will be laid until the presence of the prescribed drugs has been confirmed by a full laboratory analysis of the second saliva sample or a blood sample.

15. Who is authorised to conduct roadside saliva tests?

Only police officers who have been specially trained both in the use of the testing equipment and testing procedures will be permitted to administer roadside saliva testing.

16. Where will roadside saliva testing be conducted?

Roadside saliva testing may be conducted anywhere in Western Australia.

17. How long will a roadside saliva test take?

A roadside saliva screening test will take around five minutes. Where a positive result is obtained, the driver will be required to undertake a second saliva test or provide a blood sample to confirm the presence of the prescribed drug. In most cases, the confirmatory saliva test will take around 30 minutes.

18. Will a driver be required to leave their vehicle to undertake a roadside saliva test?

The roadside saliva screening test can be conducted through the driver's window, in a similar way to alcohol testing. However, for safety and other reasons, police can require a driver to exit their vehicle to undergo a preliminary breath test or roadside saliva test.

A driver who returns a positive result to the initial saliva test will be required to leave their vehicle and accompany the police officer and provide a second saliva or blood sample for further testing.

19. Can a driver refuse to undertake a roadside saliva test?

Under the legislation a driver will be required to undertake the drug test and penalties for refusal will apply.

20. What if a driver is unable to provide a saliva sample?

A driver who is unable to supply the required saliva sample because of a medical or physical condition may supply a blood sample instead. Taking of blood samples can only be conducted by approved and suitably qualified professionals.

21. If a driver tests positive for a roadside saliva test, will a further test be required?

Yes. A driver who tests positive will be required to undertake a confirmatory saliva test or provide a blood sample for further analysis. Similar to current drink driving legislation, drivers will be given a part of the saliva or blood sample to have their own analysis done if they wish.

22. What happens after the second saliva or blood sample is taken to the laboratory?

Police will inform drivers within a few weeks of the results of the laboratory analysis. Before any charge can be laid, the presence of THC, methylamphetamines or MDMA must be confirmed. If the laboratory analysis confirms the presence of these drugs the driver will be charged with driving with the presence of a prescribed illicit drug in oral fluid (saliva) or blood.

23. Will a driver who tests positive for a roadside oral fluid test be allowed to drive before the results of the laboratory analysis are known?

A driver who tests positive to THC or methylamphetamine (including MDMA) will be advised by police not to drive until the drug is no longer in their system (up to 24 hours). If they attempt to drive away they may be arrested on suspicion of attempting to drive with a prescribed drug in their system.

Legislation is also being introduced that will provide the power for police to confiscate vehicle keys in circumstances where they believe that the driver is at risk of continuing to drive the vehicle.

24. Under the new drug driving laws, what offences can a driver be charged with?

A driver can be charged with the new offence of:

- driving with a prescribed illicit drug in oral fluid or blood; or
- driving while impaired by a drug.

25. Will evidentiary saliva blood and urine samples be destroyed and can they be used for DNA testing?

Under the legislation all saliva and blood samples must be destroyed following the conclusion of all prosecution proceedings and appeals. Saliva and blood samples collected for the purpose of roadside drug testing will not be used for DNA testing.

26. What are the penalties?

The following penalties will apply under the new drug driving legislation:

Drug related offences: Random roadside drug testing using oral fluid

A person who drives a motor vehicle or is in charge of a motor vehicle with the presence of a prescribed illicit drug in oral fluid or blood commits an offence. Penalties are as follows:

Offence	Minimum fine	Maximum fine	Other penalties
First		\$200	3 demerit points
Second or subsequent	\$250	\$500	Minimum 3 months licence suspension

A person who fails to comply with a requirement of a member of the Police Force to —

- provide a sample of oral fluid for drug testing; or
- allow a medical practitioner or registered nurse to take a sample of his blood for drug testing, commits an offence. Penalties are as follows:

Offence	Minimum fine	Maximum fine	Other penalties
First		\$200	3 demerit points
Second or subsequent	\$250	\$500	Minimum 3 months licence suspension

Drug related offences: Driving while impaired by a drug

A person who drives a motor vehicle or is in charge of a motor vehicle while impaired by a drug commits an offence. Penalties are as follows:

Offence	Minimum fine	Maximum fine	Disqualification period
First	\$800	\$2500	Minimum 6 months
Second	\$1500*	\$3500*	Minimum 24 months
Third or subsequent	\$2000**	\$5000**	Life

* Nine months imprisonment is an option to fines.

** Eighteen months imprisonment is an option to fines.

Drug related offences: Driving while impaired by a drug

A person who fails to comply with a requirement of a member of the Police Force to —

- undergo a driver assessment as part of a drug impairment assessment;
- allow a medical practitioner or registered nurse to take a sample of his blood for drug impairment testing; or
- provide a sample of urine for drug impairment testing, commits an offence.

Penalties are as follows:

Offence	Minimum fine	Maximum fine	Disqualification period
First	\$800	\$2500	Minimum 6 months
Second	\$1500*	\$3500*	Minimum 24 months
Third or subsequent	\$2000**	\$5000**	Life

* Nine months imprisonment is an option to fines.
 ** Eighteen months imprisonment is an option to fines.

Mandatory Sentencing of Drug Impaired Driving Offenders

Mandatory assessments will be required for all offenders charged with a drug impaired driving offence and a treatment condition will be imposed for those convicted of driving while impaired by a drug. Specifically:

- A court sentencing a person convicted of a driving while impaired by a drug must order a pre-sentence report.
- A court sentencing a person convicted of a first or subsequent offence must, instead of or in addition to a fine, impose either:
 - a community based order that has a program requirement as a primary requirement of the order; or
 - a youth community based order that imposes attendance conditions, if the person is a young offender.
- A court sentencing a person convicted of a second or subsequent offence must, instead of or in addition to a fine, impose either:
 - a community based order that has a supervision and program requirement or an intensive supervision order with a program requirement (these sentences won't apply if the court imposes a custodial sentence); or
 - a youth community based order or intensive youth supervision order that imposes attendance and supervision conditions, if the person is a young offender (these sentences won't apply if the court imposes a custodial sentence).

Confiscation of Vehicle Keys

A member of the Police Force may require a person to hand over the keys to their vehicle in cases where the officer has reason to believe that the person is at risk of continuing to drive while impaired by alcohol or drugs (i.e. against sections 63, 64, 64AA, 64A or 64AB). A person who does not comply with the police order or obstructs the Police officer is liable to a penalty of \$400.