

Drink driving charges and you



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What to do if you are **pleading guilty** to a drink driving charge or have received a **penalty notice** for drink driving.

A drink driving charge can be:

- a 'prescribed concentration of alcohol' (PCA) offence
- a 'driving under the influence' (DUI) offence
- refusing or failing to give a breath or blood sample for analysis, and
- dangerous driving involving alcohol.

The law limits the amount of alcohol you are allowed to have in your blood when driving. This is called the alcohol limit. The limit depends on the type of licence you have. For example, learners and P-platers have a lower limit than full licence holders.

The penalties you can get for breaking the law also depend on how far over the limit you are. You can be charged with **low, middle, high, special and novice-range** PCA offences. For first time offenders with a blood alcohol reading in the lower ranges, instead of having to go to court, you might receive a penalty notice (fine) and an immediate suspension of your driver licence.

Combined alcohol and drug offences

NSW Police can drug test drivers who are under the influence of alcohol. If you are over the alcohol limit and test positive for drugs, you may be charged with a combined drug/alcohol offence. The penalties for the combined offences are much higher. For further information about penalties for the combined offences, see the penalty tables in this brochure.

For more information on drugs and driving see the Legal Aid NSW brochure [Drugs, driving and you](#).



I received a fine from police for drink driving

The police can give you an **on-the-spot fine** and suspend your licence immediately if:

- it is your first drink driving offence; and
- your blood alcohol reading was in the low, novice or special range.

If you admit the offence, you should pay the fine, or make arrangements to deal with the fine before the due date. If you do not pay the fine, Revenue NSW can take other action against you. This can include enforcement fees and a further suspension of your licence.

If you have received a fine and an immediate suspension of your licence, you must not drive during the period of the suspension. Once the period of suspension has ended, check that your licence has not expired and that there are no other issues impacting on your licence. If there are no issues, you can start driving again.

I received a fine, but I want to take the matter to court

You do have the option to ask for your matter to be heard by a court. The penalty notice gives you information on how to do this. If you are going to take the matter to court, you should do this before the due date of your fine. If you elect to have the matter heard in court, **your licence suspension will remain**. This means that you must not drive until the matter is heard or the period of suspension has ended.

You should get legal advice before asking to have your matter dealt with by the court. If you elect to go to court, once the Court Attendance Notice is issued you cannot change your mind. The Court Attendance Notice can be issued very quickly –

sometimes within 24 hours of the application. If you think you want to have your matter dealt with by the court, you need to consider:

- **The amount of your fine and the period of your suspension.** The court can increase the fine amount and length of time you are unable to drive. The court can also record a conviction for the offence.
- **The effect of a conviction and licence disqualification.** If the court convicts you of the driving offence, the conviction will appear on your criminal record and your licence will be disqualified. If your licence is disqualified you must re-apply and be issued with a driver licence before you can drive again. The suspension issued by the police does not require you to make an application to get your licence back.

Can I appeal the immediate suspension of my driver licence?

Yes. You can lodge an appeal against your suspension at the Local Court. If you appeal, you must lodge the appeal within 28 days of receiving notice of your licence suspension. There may be a fee for this appeal. If you are on a Centrelink benefit or experiencing financial hardship, ask if this fee can be waived. The court will not decide your appeal straight away. The appeal will be listed before the magistrate at least 28 days after you have lodged the appeal.

Will my immediate suspension be lifted until the court has determined my appeal?

No. The suspension will remain in place and you cannot drive. In exceptional circumstances the court could stay your suspension until your appeal is heard. When lodging your appeal you could ask that your appeal be listed for an application to 'stay the suspension'. This means you are asking

for your suspension to be lifted before the appeal is heard. When dealing with your appeal, the court can only lift or vary your suspension, or grant a stay if it is satisfied that there are exceptional circumstances.

Before you lodge an appeal, it is a good idea to get legal advice about whether or not your circumstances are exceptional. You can also get advice on how to prepare for your appeal.

If I go to court, how should I prepare?

Get character references

Written references from people who can talk about your good character may help your case. References should be addressed to the magistrate, and the people writing them should say they know about the charges you are in court for.

For more information about how to write a character reference for court, see the Legal Aid NSW brochure called [Character References](#).

Write down what you want to say to the court

Write a letter to the magistrate, or make notes of what you will say in court. The court will consider what you say when it decides what penalty to give you.

You should consider these things:

- If you believed you were over the limit when you drove.
- If you were stopped by a random breath test or because you were driving erratically or dangerously.
- How long you drove, or intended to drive, when you were stopped.
- How many people (passengers, members of the public) were put at risk by your driving.
- If there was an accident.

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ENTRY



NO SMOKING
No smoking in
this building.

- If not having a licence will affect your employment or other people who rely on you (for example, children, sick relative).
- If you don't have other transport you can use.
- How long you had a licence and what your overall driving record is like.

You should explain:

- Any special reason why you were driving.
- Why you were driving after consuming alcohol.
- Why the court should accept that you will not drink and drive in future.
- If you need a licence for work—get a letter from your employer to say what will happen to your job if you are disqualified from driving for a long time.
- If you have other reasons for needing a driver licence—for example, caring for a relative or health problems of your own. Have evidence to show this (like a doctor's certificate or report).
- What your weekly income and expenses are (this will help the court work out any fine it gives you).

What should I do at court?

- At the time you go to court, you will probably already be suspended from driving. The police immediately suspend your licence at the time of the offence. Even if you have not been suspended, you should not drive to court in case you lose your licence at court. Take your licence with you (unless the police have already taken it), because the court may tell you to hand it in.

- When you get to court, find the court officer and advise that you are unrepresented and if you will plead guilty or not guilty. You can usually find the court officer inside or just outside your courtroom.
- If you want legal advice, find the Legal Aid NSW duty lawyer at court or ask the court to adjourn your case so you can get legal aid advice. You should see the duty lawyer if you think you could go to gaol.
- The police will have a fact sheet which says why you were arrested. It may also say what the police say you told them about how many drinks you had. Make sure you read it.
- Also, check the certificate that states your blood alcohol level and the machine printout from the breath analysis machine to see that they match the time on the police fact sheet.
- If you disagree with what the police say happened, you should get legal advice before you plead guilty.
- The police prosecutor should also show you a copy of your previous criminal record if you have one. If you do not have a criminal record, the prosecutor might still have your bail history. If the prosecutor has your bail history you should ask to see it. You should also ask the prosecutor to show you a copy of your driving record. Read these documents carefully to make sure they really are yours. If you think there is wrong information on your criminal, bail or driving record, tell the magistrate when it is your turn to speak.
- Listen to what other people say to the magistrate while you wait for your name to be called. It can be helpful to sit in the courtroom and listen to other people presenting guilty pleas to give you a better idea of how to present yours.

- Speak to the magistrate when your name is called. If you are pleading guilty tell the magistrate and either ask to hand your letter to the magistrate or read from the notes you've made. Give the court any written references and documents that you have to support your case.
- Think about doing a Traffic Offender Program. If you attend the program and complete the coursework your penalty may be reduced. If you want to do the program, tell the magistrate and ask for your case to be adjourned so you have time to complete it. You will have to pay to do a Traffic Offender Program.
- If the police suspended your licence and took it away on the spot, ask the magistrate to take into account the time your licence has already been suspended when deciding how long you should be disqualified for.

What could happen to me?

If you are convicted, you will lose your licence for some time—the higher your alcohol reading, the longer you will lose your licence for.

The court can also fine you, or give you other penalties, like a gaol sentence for more serious offences.

For repeat or more serious drink driving convictions you will also have a **mandatory alcohol interlock order** made against you.

What are mandatory alcohol interlock orders?

An interlock is an electronic breath testing device that is connected to the ignition of a vehicle and stops it from starting if it detects alcohol.

If you are convicted of repeat or more serious drink driving offences the court will make

a mandatory interlock order against you. This means your licence will be disqualified for 5 years—unless you complete:

- a shorter period of disqualification (between 1 – 12 months), and then
- time in the interlock program (usually 1 – 4 years).

Participating in the interlock program means:

- you can only drive vehicles fitted with an interlock
- you must have an interlock fitted to your vehicle
- you must provide a breath sample in order to start your vehicle
- you will have to pass random breath tests while driving, and
- you, or anyone driving your vehicle, will be photographed each time a breath sample is provided (any breath samples that are positive for alcohol, or attempts to tamper with the interlock device, are recorded by the interlock and monitored by Roads and Maritime Services (RMS)).

If you try to drive after drinking alcohol, you could:

- get a warning letter
- be referred to a doctor
- have your interlock licence period extended, or
- have your licence suspended, cancelled or disqualified.

You will have to pay to have the interlock installed and maintained. It costs about \$2,200 a year. Some people can get a discount and if you are in 'severe financial hardship' you can ask the RMS for financial help.

You can find more information at:

www.rms.nsw.gov.au/interlock.

Interlock exemption orders

An interlock exemption order can only be made at the time the court convicts and sentences you. If you think you will be unable to fit an interlock device to your vehicle, you should ask the court to make an interlock exemption order. You will need to convince the court that an exemption order should be made.

If the court makes an 'interlock exemption order', you will get a longer disqualification period. However, you will not have any interlock period, which means you will not face the 5-year disqualification for failing to fit an interlock device when required.

An interlock exemption order may be made if you can prove to the court that you either:

- don't have 'access' to a vehicle in which an interlock can be installed, or
- have a medical condition that prevents you from using an interlock.

If you are convicted of a mid range PCA offence, and it is your first offence, in addition to the matters above, the court may also make an interlock exemption order if you can prove that:

- the order would cause you severe hardship, and
- an interlock exemption order is more appropriate in all the circumstances.

What penalties can I get?

The penalties you may get if you have been charged with a drink driving offence are set out on pages 16 – 19. However, the law is complicated and these tables may not cover your situation. You should get legal advice about your own case, especially if this is not your first offence or if you have been charged with a combined drink and drug driving offence.

If you have been given a fine and are not asking a court to deal with the matter, the fine and licence suspension will remain the same as what was given to you at the time of the offence.

If you are considering asking a court to deal with the offence, the tables over the page set out the maximum penalties the court may impose.

Your licence disqualification will be extended if you are in gaol

If you are sentenced to a term of imprisonment, your disqualification will be extended for as long as you are in gaol for that offence. This won't include any of the time you are released on parole.

You may not be able to use your vehicle

If police charge you with a serious drink driving offence that is also a 'second offence', they may impound your vehicle or confiscate the number plates.



Penalties

**Table 1: Drink driving first offence
(in the last 5 years)**

Offence	Maximum fine	Maximum gaol (months)	Automatic and minimum disqualification (months)*
Novice range PCA	\$2,200	N/A	Auto: 6 Min: 3
Special range PCA	\$2,200	N/A	Auto: 6 Min: 3
Low range PCA	\$2,200	N/A	Auto: 6 Min: 3
Mid range PCA	\$2,200	9	Auto: 12 Min: 6
High Range PCA	\$3,300	18	Auto: 36 Min: 12

Interlock Orders**

Offence	Minimum disqualification (months)**	Minimum Interlock period (months)
Novice range PCA	N/A	N/A
Special range PCA	N/A	N/A
Low range PCA	N/A	N/A
Mid range PCA	3	12
High Range PCA	6	24

Penalties

**Table 2: Drink driving second offence
(in the last 5 years)**

Offence	Maximum fine	Maximum gaol (months)	Automatic and minimum disqualification (months)*	
Novice range PCA	\$3,300	N/A	Auto: 12 Min: 6	
Special range PCA	\$3,300	N/A	Auto: 12 Min: 6	
Low range PCA	\$3,300	N/A	Auto: 12 Min: 6	
Mid range PCA	\$3,300	12	Auto: 36 Min: 12	
High Range PCA	\$5,500	24	Auto: 60 Min: 24	

Interlock Orders**

Offence	Minimum disqualification (months)**	Minimum Interlock period (months)
Novice range PCA	1	12
Special range PCA	1	12
Low range PCA	1	12
Mid range PCA	6	24
High Range PCA	9	48

Penalties

Table 3: Combined drink and drug – first offence

Penalties	1st offence Mid-range + illicit drug presence	1st offence High-range + illicit drug presence
Immediate licence suspension	Yes	Yes
Max court fine	\$3300 (30 penalty units)	\$5500 (50 penalty units)
Max prison term	18 months	24 months
Min disqualification	12 months	18 months
Max disqualification	Unlimited	Unlimited
Auto disqualification	2 years	4 years
Min interlock period	12 months	2 years
Vehicle sanctions	No	Yes

Table 4: Combined – 2nd and subsequent offence

Penalties	Low, novice or special range + illicit drug presence	Mid-range + illicit drug presence	High-range + illicit drug presence
Immediate licence suspension	Yes	Yes	Yes
Max court fine	\$5500 (50 penalty units)	\$6600 (60 penalty units)	\$11000 (100 penalty units)
Max prison term	18 months	2 years	2 years
Min disqualification	18 months	2 years	3 years
Max disqualification	Unlimited	Unlimited	Unlimited
Auto disqualification	2 years	4 years	6 years
Min interlock period	12 months	2 years	4 years
Vehicle sanctions	Yes	Yes	Yes

Notes on drink driving penalty tables

- * If an interlock period is listed in the table for the offence, these are the disqualification periods that will apply. The Automatic and Minimum periods listed will only apply if there is no interlock period listed for the offence, or an 'interlock exemption order' is made at the time the court convicts you of the offence. If an interlock order is made and you do not obtain an interlock licence—your licence will remain disqualified for 5 years. Mandatory interlock orders are further explained in this brochure.*

- ** The law also provides a maximum period of disqualification in cases where an interlock order is made, however these periods do not appear in this table.*

If you refuse or fail to provide a breath test, this is treated as seriously as if you had a high range PCA, and the same penalties will apply.

Notes on the combined offences penalty tables

- *Interlock periods are consistent with the current interlock periods for drink driving offences.*
- *Vehicle sanctions are currently applicable to repeat mid and high range PCA offenders.*
- *Vehicle sanctions may apply for a mid range combined first offence if the driver has been convicted of an alcohol related major offence in the last five years.*

What should I do after the court's decision?

If there is something you don't understand about the court's decision, ask the magistrate to explain. If you don't get time to ask the magistrate, ask court staff at the registry to explain.

■ **Don't drive while disqualified**

If you have been disqualified from driving, you must hand in your licence. If you drive you can go to gaol for up to 6 months or be fined \$3,300 (or both). If it is not your first offence, you could go to gaol for up to 12 months and be fined \$5,500.

You will also be disqualified from driving for at least 3 months (or 6 months if this is not your first offence) when you are convicted for driving while disqualified. Police can take away your vehicle for 6 months if you drive while disqualified three or more times in a 5-year period.

Some people can apply to the Local Court to ask for their existing disqualification periods to be removed from their driver licence after 2 or 4 years without a driving offence. To find out if you can do this see the Legal Aid NSW brochure, [*Are you disqualified from driving?*](#) You should get legal advice before you apply. You won't be able to apply if you have an uncompleted interlock order.

■ **Re-apply for your licence**

When your disqualification period is over, you must re-apply for your licence. You will not get it back automatically. If you drive before you do this you could be charged with 'driving while cancelled'. Contact Roads and Maritime Services (RMS) on **13 22 13** or visit www.rms.nsw.gov.au to find out how to get a new licence.

■ Pay your fine

If the court gives you a fine and you think you will have trouble paying it in the 28 days you have to pay it, speak to court staff before you leave about making a ‘time to pay’ arrangement.

If you don’t pay the fine in the time you are told to pay it, Revenue NSW can take other action against you. If you need help to manage your fines debt, contact Revenue NSW on **1300 655 805** or www.revenue.nsw.gov.au

You may be able to get a Work and Development Order (WDO) which allows you to clear up to \$1,000 a month off your fines through approved activities or treatment programs. For more information visit www.legalaid.nsw.gov.au/wdo

Can I appeal the court’s decision?

You can appeal to the District Court if you are not happy with the magistrate’s decision, but you should get legal advice before you do this. You have 28 days from the date of the magistrate’s decision to lodge your appeal. You will also have to pay a fee. If you are on a Centrelink benefit or experiencing financial hardship—ask if the fee can be waived.

For more information about how to appeal, see the Legal Aid NSW brochure, [Appealing to the District Court](#). Also, if you had good reason for not being in court when the magistrate made the decision, you can apply to have the decision reviewed.



Where can I get legal help?

LawAccess NSW

A telephone helpline that gives free legal information, referrals to other services and legal advice in some cases. Call **1300 888 529** or visit www.lawaccess.nsw.gov.au

Legal Aid NSW

You can get free legal advice, and in some cases, representation in court from Legal Aid NSW. To find your closest office call **1300 888 529** visit <https://www.legalaid.nsw.gov.au/contact-us>. Legal Aid NSW will only represent you in some cases. We look at:

- what you earn and what assets you own, and
- if there is a real possibility that you could go to gaol, or
- if there are ‘exceptional circumstances’. (You can find out what this means by looking at 1.13 of our Guidelines—see Policy Online at www.legalaid.nsw.gov.au)

If this is the first time you have been charged with a PCA offence it is not likely you will go to gaol. However, gaol is more likely if you:

- are charged with a high range PCA offence that involves a very high reading, an accident or dangerous driving, or
- have been charged with many, or serious driving offences before.

Aboriginal Legal Service (ALS)

If you are Aboriginal or Torres Strait Islander you can also contact the ALS for free legal advice. To find your closest ALS office call **1800 765 767** or visit www.alsnswact.org.au

This brochure is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing. However it may change. For more information contact LawAccess NSW on **1300 888 529**.

The brochure is also available in Arabic, Chinese (Sim) and Vietnamese.



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Do you need help to contact us?



If you need an interpreter, call the Translating and Interpreting Service (TIS National) on **131 450** (9am – 5pm) and ask for LawAccess NSW.



If you find it hard to hear or speak, call the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit www.relayservice.gov.au