

# Drink driving charges and you



What to do when  
pleading guilty to a  
drink driving charge

# Have you been charged with drink driving?

## There are things you must know.

Most drink driving charges are prescribed concentration of alcohol (PCA) offences. There are also various other drink driving offences such as driving under the influence (DUI); refusing or failing to provide a breath analysis or blood sample; and cases of dangerous driving involving alcohol.

The law limits the amount of alcohol you are allowed to have in your blood when driving. The limit varies according to the type of licence you have. For example, learners and P-plates have a lower limit than full licence holders.

The penalties you face for breaking the law also depend on the degree by which you exceed your limit and so there are different categories of offence for **low**, **middle** and **high range** PCA offences.

## Are you eligible for assistance from Legal Aid NSW?

Legal aid representation is only available for traffic offences if you meet the Legal Aid NSW means test (which depends on your income, expenses and assets) **and** if there is a real possibility of a gaol penalty or there are exceptional circumstances. If this is the first time you have been charged with a prescribed concentration of alcohol (PCA) offence, it is unlikely you will get a gaol sentence.

However, if:

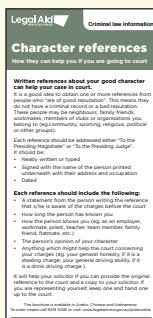
1. you are charged with a high range PCA offence and if it involves aggravating features such as a very high reading, an accident and/or dangerous driving; or
2. you have previously been charged with numerous or serious drink driving offences – a gaol penalty is more likely and you may therefore be eligible for legal aid. In those situations, you should apply for legal aid before your first court appearance.

In addition, everyone can get free legal advice from Legal Aid NSW. Make an appointment to see a lawyer at your local Legal Aid NSW office. Legal Aid NSW can provide an interpreter for the appointment if you need one.

## How should you prepare for court?

Get references and prepare a letter to the Magistrate or written notes of what you will say.

It may be helpful to get written references from people who can talk about your good character. These references should be addressed to the Magistrate and refer to the current charges. Ask for the Legal Aid information card about **Character References**.



**Legal Aid** Central law information

### Character references

How they can help you if you are going to court

**Written references about your good character can help your case in court.**  
It is a good idea to obtain one or more references from people who "are of good reputation". This means they do not have a criminal record or a bad reputation. These people may be neighbour, family friends, workmate, members of clubs or organisations you belong to (eg community, sporting, religious, political or other groups).

Each reference should be addressed either "To the Presiding Magistrate" or "To the Presiding Judge". It should be:

- Neatly written or typed
- Signed with the name of the person printed underneath with their address and occupation
- Dated

**Each reference should include the following:**

- A statement from the person writing the reference that s/he is aware of the charges before the court
- How long the person has known you
- How the person knows you (eg, as an employer, workmate, friend, teacher, team member, family friend, flatmate, etc.)
- The person's opinion of your character. Anything which might help the court concerning your charges (eg, your general honesty, if it is a drinking charge, your general driving ability, if it is a drink driving charge)

It will help your solicitor if you can provide the original reference to the court and a copy to your solicitor. If you are representing yourself, keep one and hand one up to the court.

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The court will consider a number of factors in deciding the appropriate penalty and disqualification. These include:

- whether you believed you were over the limit when you drove;
- any particular reason as to why you chose to drive;
- whether you were detected by Random Breath Test or as a result of erratic or dangerous driving;
- the length of the journey/intended journey;
- the number of people put at risk by the driving (passengers, members of the public etc)
- any collision that occurred;
- any significant effect that licence disqualification may have on you, your employment or other people who rely on you (children, sick relative, etc.);
- if there are no other forms of transport you can use;
- how long you have held a licence and what your overall traffic record is like;
- your likelihood of reoffending.

Either prepare a short letter in your own words to give to the Magistrate, or prepare written notes. Include any explanation that relates to the factors set out above. In particular, address:

- 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;

- whether you need a driver licence for work. Make sure you have a letter from your employer to say what will happen to your job if you are disqualified from driving for a long time;
- whether you have other reasons for needing a driver licence, for example a disabled child or health problems. Make sure you have evidence, for example a doctor's certificate or report from another treating health practitioner to support this;
- what your weekly income and expenses are. This assists the court in calculating any fine to be imposed.

## What should you do at court?

You should not drive to court in case you lose your licence. Bring your licence with you unless the police have already taken it, as the court may require you to surrender it.

When you get to court, find the court officer and tell them that you are unrepresented and that you are pleading guilty.

### **Check the police fact sheet and certificate.**

The police will have a fact sheet which says why you were arrested. It may also refer to what the police say you told them about how many drinks you had.

Make sure you read the fact sheet.

Also, check the certificate which 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 may tell the Magistrate when it is your turn to speak.

The police prosecutor should also show you a copy of your previous criminal record if you have one and a copy of your driving history. Read these documents to make sure they really are yours. You should dispute any incorrect information on your criminal or traffic record.

## What could happen to you?

If you are convicted, you will lose your licence for some time – the higher your alcohol reading, the longer the period. You may also have to pay a fine. For repeat or serious drink driving convictions you will also be subject to a mandatory alcohol interlock order.

Other penalties can also be imposed, including a gaol sentence for more serious offences. If you are likely to go to gaol and you satisfy the Legal Aid means test, you may be able to get legal aid representation. See the duty solicitor at court.

## Mandatory alcohol interlock orders

If you are convicted of repeat or serious drink driving offences the court will impose a **mandatory interlock order**.<sup>1</sup>

The effect of these orders is that you will have your licence disqualified for 5 years unless you complete a shorter period of disqualification (ranging between 1-12 months) and then a period of participation in the interlock program (usually for 1-4 years).

<sup>1</sup>There are two exceptions to this rule. If you can prove to the court that you:

- (a) do not have "access" to a vehicle in which to install an interlock; or
- (b) have a medical condition that prevents you from using an interlock.

In this case the court will make an 'interlock exemption order' which will result in a longer disqualification period but no interlock licence period.

After these periods are complete you must apply for a new unrestricted licence. The shorter disqualification and interlock periods can vary in length according to the offence you are charged with and the discretion of the court.

Participating in the interlock program means that you will only be licensed to drive vehicles fitted with an interlock. Also, you must have an interlock fitted to a vehicle you use.

An interlock is an electronic breath testing device connected to the ignition of a vehicle. It stops the vehicle from starting if alcohol is detected. Randomly timed breath tests must also be passed while driving.

While you are on the interlock program you will be monitored by Roads and Maritime Services (RMS). All breath test results, a photograph of the person providing the sample and any attempts to tamper with the device are recorded by the interlock and monitored by RMS.

Possible consequences if you try to drive after consuming alcohol include warning letters, referrals for health interventions, extension of your interlock licence period, suspension or cancellation of your licence or fresh charges and disqualification.

RMS has estimated that the cost of installing and maintaining an interlock is about \$2,200 per year but this is subject to the rates offered by suppliers and may change over time. You must pay this cost.

There are concession rates (discounted by 35%) for full-rate pensioners, health care card holders and some veterans. If you are in 'severe financial hardship' you can apply to the RMS for short term financial assistance. For more information: [www.rms.nsw.gov.au/interlock](http://www.rms.nsw.gov.au/interlock)

## What to do in court

### **Listen to other people and then make your submissions in court.**

Wait for your name to be called. It can be helpful to sit inside the courtroom and listen to other people presenting guilty pleas to give you a better idea of how to present yours.

When you are called, enter a plea of guilty and either hand your letter to the Magistrate or read from prepared notes.

Give the court your written references, letter from your employer, and any other supporting documents. You may also wish to consider completing a Traffic Offender Program.

Generally, if you attend the program and complete the assignments your penalty will be reduced. If you want to do the program, ask the Magistrate to refer you and adjourn your case so you have time to complete the program.

If you were charged with mid range or high range PCA, your licence should have been suspended and taken away on the spot by the police. If this is the case, ask the Magistrate to take into account the time your licence has already been suspended when determining how long you should be disqualified.



## The penalties

The table on page 9 shows the penalties you may face if you have been charged with a PCA offence. However, the law in this area is complicated and this table does not capture all the possible situations nor all the range of drink driving offences.

The table is no substitute for getting legal advice about your particular case and it is strongly recommended that you seek legal advice about the penalties you face, especially if this is not your first offence.

### After the court's decision: What can you do?

If there is something you don't understand about the court's decision, ask the Magistrate to explain. Remember to do the following:

#### **1. Do not drive while disqualified**

If you have been disqualified from driving for a period of time, you must hand in your licence. The maximum penalty for driving while disqualified is 18 months gaol and/or a \$3,300 fine (or 2 years gaol and a \$5,500 fine if it is a second or subsequent offence).

There is also an automatic minimum disqualification for an additional 12 months (or two years if it is a second or subsequent offence) when you are convicted for driving while disqualified.

#### **2. Re-apply for your licence**

Once your disqualification period is over, you have to re-apply for your licence as you will not get it back automatically.

## PENALTIES

### First offence within 5 years#

Offence	Max. fine	Max. gaol (months)	Min. disq. (months)	Max. disq. (months)	Interlock period † (months)
Novice range PCA	\$1,100	N/A	3	6	N/A
Special range PCA	\$1,100	N/A	3	6	N/A
Low range PCA	\$1,100	N/A	3	6	N/A
Mid range PCA	\$2,200	9	6	12	N/A
High range PCA*	\$3,300	18	6	9	24

#An offence is a 2nd offence if you have been convicted for another 'alcohol-related major offence' within the previous 5 years. 'Alcohol-related major offences' include all PCA offences, DUI offences and some other alcohol related driving offences. So, if you are convicted for a low range PCA offence and then 3 years later a mid range PCA offence, you will face the penalties for a mid range PCA 2nd offence in the table.

### Second offence within 5 years

Offence	Max. fine	Max. gaol (months)	Min. disq. (months)	Max. disq. (months)	Interlock period † (months)
Novice range PCA	\$2,200	N/A	1	3	12
Special range PCA	\$2,200	N/A	1	3	12
Low range PCA	\$2,200	N/A	1	3	12
Mid range PCA	\$3,300	12	6	9	24
High range PCA*	\$5,500	18	9	12	48

\*If you refuse or fail to provide a breath analysis for testing it is considered equally serious to a high range PCA and the same disqualification and interlock periods apply.

†This is the minimum interlock period the court may impose – a longer period could be imposed. If you choose not to do the interlock program for whatever reason, or if you do not complete it, then a 5 year disqualification period will apply, dating from the time of your conviction.

**You will be a cancelled driver until you reapply for your licence (it is an offence to drive whilst cancelled).**

### 3. Paying your fine

If you think you will have trouble paying your fine within 28 days, speak to court staff before you leave about making a 'time to pay' arrangement.

If you do not pay the fine within the time set, State Debt Recovery (SDR) can impose a range of penalties against you. For more information call SDR on 1300 655 805.

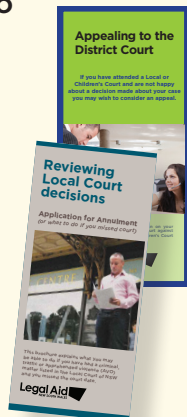
### Can you appeal?

You can appeal to the District Court if you are not satisfied with the Magistrate's decision. You should seek legal advice before lodging any appeal. The appeal must be lodged within 28 days. There is a fee payable. However, it is possible to apply for fee relief if you are a low income earner.

For more information about how to appeal, ask for our brochure **Appealing to the District Court**

Alternatively, if, for good reason, you were not present in court when the Magistrate made the decision, you can apply to have the decision reviewed.

For more information about this see Legal Aid NSW's brochure **Reviewing Local Court decisions.**



# More information

This publication is intended as a general guide to the law in NSW. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.




At the time of printing, the information shown is correct but may be subject to change. This brochure is available in Arabic, Simplified Chinese and Vietnamese.

- ◆ If you need more help, contact LawAccess NSW on **1300 888 529** for legal information, referrals and in some cases advice.
- ◆ LawAssist is a website that explains Local Court procedures as well as alternatives to Court. Visit: **[www.lawaccess.nsw.gov.au/lawassist](http://www.lawaccess.nsw.gov.au/lawassist)**
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If you are hearing/speech impaired, you can communicate with us by calling the National Relay Service (NRS) on 133 677.



If you need an interpreter, call TIS and ask to be put through to LawAccess NSW on **1300 888 529**.

*Cover photo: Dylan Robinson*