

# Drink driving charges and you



What to do if you are pleading guilty to a drink driving charge

This brochure explains what to do if you are **pleading guilty** to a drink driving charge.

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 analysis or blood sample, and
- dangerous driving involving alcohol.

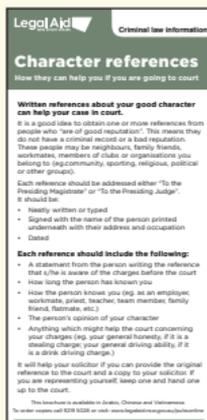
The law limits how much alcohol you can have in your blood when you drive. This is called the alcohol limit. The limit depends on the type of licence you have. For example, learners and P-plates have a lower limit than full licence holders.

The penalties you can get for breaking the law also depend on how much over the limit you are, so you can be charged with **low, middle** and **high-range** PCA offences.

## How should I prepare for court?

### Get character references

Written references from people who can talk about your good character may help your case. They 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 cover 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
- 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
- Why you will not commit more offences.

You should also explain:

- any special reason you were driving
- why you were driving after you'd been drinking alcohol
- why the court should accept that you won't 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, a disabled child or health problems. 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?

- You should not drive to court in case you lose your licence. 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 tell them that you are unrepresented and that you are pleading guilty. You can usually find them 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) and a copy of your driving record. Read these documents to make sure they really are yours. If you think there is wrong information on your criminal 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. Say you are pleading guilty and either 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, your penalty may be reduced. If you attend and complete the coursework your penalty will be reduced. If you want to do the program, ask the magistrate to refer you to one and adjourn your case so you have time to complete it.
- 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 they decide 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 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 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 will have to pass random breath tests, and
- all breath test results, a photograph of the person giving the sample and any attempts to tamper with the 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
- 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 about interlocks at **[www.rms.nsw.gov.au/interlock](http://www.rms.nsw.gov.au/interlock)**

An interlock order won't be made against you 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.

The court will instead make an 'interlock exemption order' which means you will get a longer disqualification period but no interlock licence period.

## What penalties can I get?

The penalties you may get if you have been charged with a drink driving are set out below. However, the law is complicated and this table may not cover your situation. You should get legal advice about your own case, especially if this is not your first offence.

### PENALTIES

#### First offence in 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

\* If you refuse or fail to have a breath test this is treated as seriously as if you had a high range PCA, and the same penalties will apply. This is the minimum period the court can impose. If you choose not to do the interlock program, or don't complete it, you can be disqualified for 5 years from the date you were convicted.

#### Second alcohol-related major offence in 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	24	9	12	48

#A second offence is if you have been convicted of another 'alcohol-related major offence' in the last 5 years. For example, if you are convicted of a low range PCA offence, and then 3 years later you are convicted of a mid range PCA offence, the penalties you could get will be for a mid-range 2nd offence in the table.

## 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.

- **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 fine (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.

Since October 2017, some people can apply to the Local Court to ask for their disqualification periods to be removed from their driver licence. To find out if you can do this see the Legal Aid NSW brochure, *Are you disqualified from driving?* If you can apply, you will need to show that you haven't committed any driving offences for either 4 years or 2 years—depending on what offences your licence was disqualified for. If you have ever been convicted of some serious driving offences, you won't be able to apply. You should get legal advice before you apply.

- **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](http://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](http://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](http://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 called *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. For more information about this see the Legal Aid NSW brochure called *Reviewing Local Court decisions*.

## 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](http://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 or look under 'Get legal help' at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au)

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](http://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](http://www.alsnswact.org.au)**

This publication 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**.

### **Roads and Maritime Services: 13 22 13**

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This brochure is also available in Arabic and Simplified Chinese.

For more information about Legal Aid NSW services:



### **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](http://www.relayservice.gov.au)

*Cover photo: Dylan Robinson*

