THE DEFINITIVE HANDBOOK to prepare for NAJOR TRAFFIC OFFENCES

DISCOVER THE ANSWERS TO YOUR BURNING QUESTIONS IN OUR **FREE GUIDE**

A RESOURCE COURTESY OF





Your traffic offence court appearance is something to take very seriously. You face the possibility of losing your license and getting a criminal record with serious penalties. It's critical that you seek legal advice as soon as possible. This document is not legal advice.

Most of the cases will be handled by the Local Court. However, if you are charged with indictable offences, you must go through a different process, including a committal hearing. Indictable offences are finalised in the District Court or Supreme Court.

Be sure to speak to a lawyer before going to court

The court will expect that you have sought professional legal counsel before appearing in court. Your lawyer will explain your options and shed some light on the details of your case. In the end, you will have solid advice about what the charges mean, what your plea options are, and how to prepare for the hearing.

Going to Court

A traffic offence means you're facing a criminal charge. You may choose to represent yourself because your charges are minor, or a duty lawyer is unable to represent you and you do not have a private lawyer.

If you cannot get a lawyer to help you in court, you can still get legal advice and information about:

- your charges and if you have a defence
- how to prepare for court
- what needs to be brought to court
- How to speak to the magistrate

What to say about the charges in court

You can plead either:

<u>Guilty</u> (say you did break the law).

Not guilty (say you did not break the law, or disagree with what the prosecutor says you did). The prosecutor is a lawyer who is presenting evidence against you.

Pleading guilty

To plead "guilty", you need to accept what the prosecutor says you did. It is important to be clear about what you are agreeing to, as there can be serious consequences. So, even if you want court to be over as quickly as possible, talk to a lawyer first.

If you plead guilty your case may go ahead on the same day. Your case may be put off to another day (adjourned) if the charges are serious and you need more time to prepare.

Pleading not guilty

If you plead "not guilty" you will be given a hearing date. At this hearing the prosecutor will present evidence to try and prove your guilt. You (or your lawyer) can also present evidence to prove you are not guilty to that you have a defense. The magistrate will then make a decision.

Tips for talking to the magistrate

It is important to be respectful and polite when you are talking to the magistrate. Here are some tips:

- Stand up when the magistrate speaks to you
- Call the magistrate 'Your Honour'
- Do not interrupt the magistrate when they talk; the magistrate will ask for more information if they need it
- Speak clearly and loudly
- Look at the magistrate when you speak (if you have notes you can read from your notes and look up and down).

Preparing to plead not guilty

The decision to plead not guilty is up to you. Think about:

- what advice you got from your lawyer (if you got advice)
- if the prosecution has a strong case against you. The prosecutor will need to prove beyond reasonable doubt that you are guilty
- your chances of being found not guilty.

Usually you will need a defence against the charge. Saying that you did not know you were breaking the law is not a good enough defence.

If you plan to plead not guilty, find out the police case. To do this, get the brief of evidence:

• After you have pleaded not guilty, the magistrate will set a date (usually 4 weeks later) for the prosecution to serve the brief of evidence on you. The police will usually serve it personally but sometimes may post, email or fax it, or possibly have you collect it from the police station.

This helps you to work out what the police know and what they might say at your hearing.

Carefully read the brief of evidence. Note the evidence the police have. Use this to prepare your defence.

You may need to think about the penalties for the offence. For some offences the only way to avoid the penalty is to plead not guilty and win. On the other hand, if you plead guilty, the court will see that you are accepting responsibility for what happened. You might get a less severe penalty.ed

What should I do at court?

When you arrive at court there will usually be a court list on the wall or notice board. Check this list and make a note of what number your case is and which courtroom your case will be heard in.

Take a seat in the courtroom and if it is full take a seat outside. Do not leave the court building and stay close enough to the courtroom that you can hear your name called by the court officer. Your court time may be later than the time provided to you so just wait quietly until your name is called.

Before entering the courtroom turn off your mobile phone, stop eating, drinking or chewing gum, remove your hat and sunglasses. When entering the courtroom make sure you bow your head to the magistrate as a sign of respect, take a seat near the back to wait your turn and remain respectful and quiet while other cases are being heard.

When your name is called, go stand at the opposite end of the bar table from the prosecutor. Tell the magistrate how you will be pleading. If you plead not guilty then the magistrate will adjourn your case for a hearing on another day which is called a Defended Hearing. If you plead guilty your case will be dealt with on the day.

Changing your plea

If you feel that the prosecution has a strong case you can change your plea. If you are charged with more than one offence, the prosecution may drop some charges if you plead guilty to an offence. If you want to change your plea from not guilty to guilty you can do so at anytime before or on your hearing date but you should do it as soon as possible, so that the prosecution does not organise witnesses to come to court. If you change your mind and decide to plead guilty, your case can still go ahead on that day. If you plead guilty and wish to change your plea to not guilty there needs to be exceptional circumstances such as that you were pressured to plead guilty, that you did not understand what the charges were or that you did not receive legal advice. You can only change your plea from guilty to not guilty after you enter your plea but before you are sentenced.

How to prepare for your Defended Hearing court date:

- Get legal help. You may decide to get a lawyer to speak for you in court. Legal Aid lawyers can only represent you in a defended hearing if your case is of a certain level of seriousness or if there are exceptional circumstances.
- Ask the court to arrange an interpreter if you or your witnesses need one. Do this at least five days before your case. If the court arranges the interpreter for you there will be no fee.
- Organise your witnesses. Witnesses must be at court for the defended hearing. Tell them when they have to come to court. You might need to get a witness subpoenas if your witness will not come or if their employer wants proof that they need to be in court.
- Think about what you want to say to the magistrate in case they find you guilty. See Pleading guilty.
- Organise your support letters and any paperwork to do with your finances. The magistrate may need to know about your weekly wage and things you have to pay for.
- Visit the court again so you know what to expect.

Penalties

If you get a fine, the court will generally give you 28 days to pay. You can pay the fine through credit card over the phone (1300679272), through credit card online on the NSW Online Registry website, cheque or money order or you can ask to pay through EFTPOS at the court.

Let the magistrate know if you might have trouble paying the fine. There are options. You can ask the magistrate to:

- make a plan for you to pay bit by bit
- grant an extension on the due date
- apply to have the payments deducted from your Centrelink benefit

How to appeal the Local Court's Decision

If you don't agree with the decision you can appeal to the District Court. You have 28 days to do this. Get legal advice before you decide. You could end up with a higher penalty. An appeal is a procedure that allows someone to challenge a decision made by a court.

If a magistrate heard your charges and you disagree with their decision, you can appeal. You do this in a higher court, such as the District Court.

You can appeal to the District Court against the:

- conviction the magistrate's decision to find you guilty
- sentence the penalty or other sentencing order the magistrate gave you.

The appeal involves:

- lodging paperwork
- paying the filling fee (currently \$121 for a single offence or \$189 for multiple offences)
- going to the District Court for an appeal hearing

Get legal advice before lodging an appeal. A lawyer can advise you on whether your sentence was appropriate. The decision might feel really unfair but this does not mean that you will definitely get a better result if you appeal. It is possible that you will get a heavier penalty.

Time limits

You only have 28 days from when the magistrate sentences you to appeal.

You need the District Court's permission if you want to appeal after 28 days. You must show the judge that:

- there was some exceptional circumstance or reason why you did not appeal in time
- the prosecution's case will not be harmed by the delay

What paperwork is involved?

See the court registry staff at the Local Court and fill out a 'Notice of appeal to the District Court' form. You can do this:

- on the day your case was heard
- get the paperwork at any Local Court within 28 days of the magistrate sentencing you
- you can only file your appeal at the court where you were sentenced

After you file your appeal

After you have filed the paperwork your penalty will be delayed until your appeal is decided on by the District Court. The only exceptions to this is if you were sentenced to a term of imprisonment. However, you can apply for bail - you should seek legal advice. If your license was disqualified you will need to contact Transport NSW (previously known as Roads and Maritime Services or RMS) in order to find out if you can drive and get a new license. Do not drive without a license.

What can I do about the paperwork if I am in jail?

Get legal advice before you appeal. Speak with your lawyer if you have one. If you want to go ahead with your appeal, staff at the prison can help you get the 'Notice of Appeal form'.

What happens to the magistrate's orders when I lodge a notice of appeal?

When you appeal, most of the magistrate's orders are delayed until the appeal is heard. That means the orders are put on hold. For example, if the magistrate ordered you to pay a fine or follow a community corrections or-der you do not have to follow these orders.

If the magistrate sentenced you to jail, you can ask the magistrate for bail until the appeal hearing.

Ask your lawyer for help in getting ready to ask the magistrate for bail.

When will I go to the District Court for the appeal hearing?

The court registry staff at the Local Court will give you the date for the District Court appeal hearing when you lodge the notice of appeal. Be ready to go ahead with your hearing on that date. Get legal advice well before then.

What happens at the appeal hearing?

The hearing to appeal conviction involves a District Court judge looking at the documents and transcripts from your hearing at the Local Court. The judge will make a decision after reading all the documents and hearing to the legal arguments from the solicitor, prosecutor and you.

You may only call witnesses with the judges permission. You will have to explain why they did not attend Local Court and give evidence there. To do this you will need to apply for leave through filing a Notice of Motion and an Affidavit explaining why the witness was not called in the Local Court.

In a hearing to appeal the severity of punishment the judge will read the papers from the Local Court. Yourself or someone else can give evidence about you. You may want to enter into evidence medical certificates to prove health issues, a report from a rehabilitation centre or counsellor if you have been participating in drug or alcohol rehabilitation; a psychological or psychiatric report if that is relevant or character references. Make sure you provide these documents to the prosecutor prior to the hearing so they can confirm they are genuine. The prosecutor will tell the judge the decision that was made in the Local Court and the maximum penalty for the offence. You then get to speak as to why you believe your punishment is too severe. The judge then makes their decision. The judge must warn you if they are thinking of giving you a more severe penalty. This will give you the chance to drop your appeal and take the penalty decided in Local Court.

The judge can give you:

- a lighter sentence
- **II** a more severe sentence
 - the same sentence the magistrate gave you.

Can I put off the appeal hearing to a later date?

Only if there is a good reason why you cannot go ahead with the appeal hearing. A good reason might be you or a member of your immediate family are in hospital.

You must contact the District Court as soon as you can. You will have to go into court to ask a judge to put the hearing off until a later date.

Can I drop my appeal hearing completely?

Yes. You can drop (abandon) your appeal at any time, even on the day of your appeal hearing. If you want to do this, get legal advice immediately.

You need to go to the District Court and lodge a form stating that you are abandoning your appeal. However, if you drop your appeal on the day of the appeal hearing you will still have to go before a judge.

Once you have dropped your appeal you have to follow the original sentence the magistrate gave. If the magistrate sentenced you to jail and you are on bail, you will go straight into custody.

What happens if I do not go to the appeal hearing at all?

The judge can:

- throw out the appeal
- put the appeal hearing off to another date
- If your appeal is thrown out, the original sentence of the magistrate applies

If the judge throws out your appeal because you did not go to the hearing, you can ask the District Court to cancel that order and allow the appeal to go ahead. You must have a good reason for why you did not show up at court.

You need to fill in and lodge a form with the District Court, so get legal advice quickly.

Does the prosecution have to pay my legal costs if I win the appeal?

The judge may order the prosecution to pay your legal costs, if the judge finds you not guilty. If you had a NSW Legal Aid lawyer for the appeal, the prosecution will pay costs to NSW Legal Aid. You will not get costs if your appeal was only against your sentence.

Will I have to pay the prosecution's costs?

The judge can order you to pay the prosecution's legal costs for getting ready and coming to the appeal hearing. This could happen if you:

- had no real grounds or basis for the appeal
- did not go to your appeal hearing
- abandoned your appeal.

If you want to abandon your appeal, do so as soon as you can. This will reduce any of the prosecution's costs you might have to pay. These services have agreed to provide legal services free or at reduced costs. The scheme covers only certain matters, including criminal cases, wills and estates and immigration law.

Legal Assistance Referral Scheme

The Legal Assistance Referral Scheme (LARS is run by the New South Wales Bar Association. It refers people on low incomes to barristers or mediators who may be able to give advice, appear for you or settle your matter.

Court-based pro bono assistance

You may be able to get referral to pro bono assistance through the district or supreme courts if you have been unable to get other legal help.

Get Free Legal Aid

LawAccess NSW 1300 888 529

LawAccess NSW is a free government telephone service that provides legal assistance for people who have a legal problem in NSW. They can provide you with information about your legal problem and contact details for services that might be able to assist you.

If you are calling from outside Australia you can contact LawAccess NSW by calling +61 1300 888 529 between 9am and 5pm, Monday to Friday, Australian Eastern Standard Time (AEST or Australian Eastern Daylight Time (AEDT.

Legal Aid NSW has a number of specialist services that provide help over the phone.

Youth Hotline 1800 10 18 10 Child Support Service 02 9633 9916 (Sydney or 1800 451 784 (regional Mental Health Advocacy Service 02 9747 6155 Veteran's Advocacy Service 02 9219 5148 Prisoners Legal Service 02 8688 3888 Call the Telephone Interpreter Service on 131450 if you need an interpreter.

A lawyer will give you one-off free legal advice about your issue. They will also tell you wheth-er you may be eligible for further assistance or a grant of legal aid for a lawyer to represent you.



Law Society of New South Wales

The Law Society provides an online search to help you find a qualified lawyer suitable for your needs. You will need to pay fees for the lawyer.

See the Law Society of NSW Solicitor Referral Service.

Pro bono or free legal representation

Pro bono is a Latin term meaning 'for the public good' and when it comes to the legal profession, it describes work undertaken voluntarily by lawyers in the interests of society.

Law Society of New South Wales Pro Bono Scheme

The Law Society of New South Wales may be able to do a pro bono referral to a solicitor if you have been turned down by legal aid and cannot afford legal fees.

The Law Society of NSW Pro Bono Scheme refers eligible people to private solicitors who

in your case. They might be able to provide help with simple documents if you do not have a lawyer. They will not be able to help you with complex legal documents.

Bring any paperwork that is relevant to your legal problem, such as court papers and letters.

Work out what you want help with to make best use of your time with the lawyer. It might help to write down the main points of what has happened.



You are asking a friend or colleague for a character reference to help the magistrate decide your fate in court. A character reference is a letter and includes their opinion of you.

The magistrate or judge will read the character reference before deciding what penalty to give.

The reference will be more helpful if you have known the person for a long time or you have had lots of contact with them. They must also be of good character and not have been in serious trouble with the police before.

What to include in the reference

The tone of the reference

Your character reference should be formal but speaks honestly about you.

The contents of the reference

Below are questions that the magistrate or judge usually wants to know about. They do not have to answer every question in your reference. Only have them comment on things they actually know about you.

Who they are

• Introduce themselves, say what their job is and include any qualifications they hold.

Their relationship to you

How do they know you, for how long, how often do they see or call you?

Their knowledge of the your charges

• Has your reference talked with you about the charges and why you are going to court?

- Have you expressed to them how you feel about what you've done?
 - That you're sorry for what you did?
 - Did they see you were stressed or upset?
 - Did you go to counseling and let them know about it?
 - Have you paid for any damages?
- Also let them know about any hardship or damages you've experienced based on your actions
 - Was your reputation damaged?
 - Do you feel disgraced in their community or among family and friends?

Your knowledge of what is going on in the person's life

- What do you know of the person's background and any hardship in their life?
- Are there any personal problems that may have played a part in what they did? For example, drug or alcohol use, financial issues, mental illness. What are they doing to overcome these problems?

Their opinion of your character

- What is your general character and reputation in the community?
- What sort of person are your? Is it out of character that you committed the offence? Why do they think this?
- Do you have prior convictions? If so, does this affect their opinion of the you?
- Have you contributed to your community by doing voluntary work, or had special achievements in their job or schooling, or sporting activities?

How to set out the reference

They should write the reference like a letter. Type it up and put it on a letterhead if you have one.

Tips

- Put the date at the top of the reference.
- For cases being heard in the Local Court, address the reference to 'The Presiding Magistrate, [court location]'. For cases in the Distriuct or Supreme Court, address it to 'The Presiding Judge'.
- Start all references with 'Your Honour'.
- Sign the reference at the end.

Where to send the reference

Give the reference to the person going to court. Do this well before the court date. Or send it to their lawyer. You can also call the lawyer to discuss the reference.

Example character reference

29 January 2020

The Presiding Magistrate, Wollongong Local Court

Your Honour,

[Who you are]

My name is Bob Welch of 123 High Street, executive.

[Their relationship to you]

I have known Sarah Suspected of 456 Main Street, New South Wales, poultry salesperson, for five years. We used to engage in competitive knitting together.

[Your knowledge of the person's charges]

I understand that Sarah Suspected has to attend court about a PCA offence. She is very upset about the charge and I believe she is sorry for what she has done.

[Your knowledge of what is going on in the person's life]

She has been under stress due to her recent illness. Even though she has been charged with the PCA Offence I believe Sarah will not be a repeat offender .

[Your opinion of the person's character]

I can say that in all the time I have known her, Sarah Suspected has been a decent, hardworking and trustworthy person. I believe any behaviour she displayed that caused her to be charged with theft was a one-off event.

Yours faithfully, [Signature] Bob Welsh



Court or tribunal staff can provide you with certain information relating to your matter, but they cannot give legal advice.

The court staff can:

- explain and answer questions about how the particular court or tribunal works
- give you general information about court or tribunal rules, procedures and practices
- give information about providers of free legal advice
- provide or direct you to court lists
- provide information about how to get a case listed
- give you some information about your case file
- give you the court, tribunal or registry forms that are available
- answer questions about where to access court decisions

The court staff cannot:

- give you legal advice only a legal practitioner can give you legal advice
- tell you whether or not you should bring your case to a court or tribunal
- give you an opinion on what will happen if you bring your case to a court or tribunal
- advise you on the division of a court or tribunal in which to commence an action
- tell you what words to use in your court or tribunal papers
- tell you what to say in a court or tribunal
- talk to the judge, magistrate or commissioner on your behalf
- let you talk to the judge, magistrate or commissioner outside of court
- change an order signed by a judge, magistrate or commissioner



For some types of proceedings, the court or tribunal can arrange interpreters. The court or tribunal can also bear the costs of interpreters.

To request an interpreter, contact the relevant registry. If possible, do this at least one week before the date you need to attend court. If you are in court or in a tribunal, tell the judicial officer that you need an interpreter. An interpreter will be arranged for your next court or tribunal appearance.

If you need documents translated for a court or tribunal matter, you can arrange a translator through the NSW Community Relations Commission Language Services Unit, or any accredited independent translator.

The Department of Social Services provides a free translation service for non-English speaking people settling permanently in Australia. This service can be used only by eligible people in the

first two years after entry to Australia.

If you or someone you know needs an interpreter when you contact a court or tribunal, use the free Translating and Interpreting Service (TIS). Call 131 450 and tell them the telephone number you need to contact. An interpreter will call the number while you are on the phone and translate what the person on the line says to you.

How to act and dress in court

What to organise before going to court

Paperwork

Before you go to court it can help to organise:

- character references from your employer, family or people who know you well
- reports from doctors or counsellors you have seen
- certificates or awards for work, courses or other things you have done
- a receipt, if you had to pay for any damages you caused
- details of your financial situation, in case you get a fine.

You can give these to the magistrate hearing your case. It can take people time to prepare these for you, so give them as much time as you can.

Character references and witnesses

A character reference is a letter from someone who knows about you going to court, and can write about your background and achievements, why you offended and your response to the charge.

If you want a character witness to speak about you in court, such as a support worker or your employer, make sure they can come on the hearing day and know where to go.

Interpreters

Let the court know if you or any of your witnesses need an interpreter, at least a week before court.

What to do on the day of the hearing

On the day you go to court:

- **dress well** wear something neat and tidy, like you would wear to a job interview
- **be on time** be at court at least 30 minutes before the time on your notice to appear or summons
- **be prepared to wait** court may take all day
- arrange childcare, or for someone to collect your children after school
- **take what you need** bring your references, reports and other materials relevant to the charges

Do not drive if your licence might be suspended or cancelled.

When you are at court

- Tell the court you are there
- When you get there, report to the court coordinator at the counter and to find out what courtroom you are in.

Wait to be called

Sit in the court room or just outside. The clerk will call your name in court and over the loud speaker when the magistrate is ready to hear your case.

In the courtroom

Showing respect helps. This includes your behaviour as well as how you speak. For example, before going into court take off your sunglasses and hat, and turn off your mobile phone. When you enter, nod to the magistrate.

While you are in court do not:

- talk with anyone else in the courtroom
- smoke, eat or chew gum
- listen to music, even with headphones
- read the newspaper
- use your mobile phone.



If you are going to court to plead guilty to a driving or criminal charge, the police prosecutor will give the magistrate some information to take into consideration before sentencing you.

- Police Facts Sheet
- Criminal record or history
- Driving record

Police Facts Sheet

What is a Police Facts Sheet?

The Police Facts Sheet is a document that tells the version of events according to the police. It is usually attached to the Court Attendance Notice (CAN).

The police write the facts sheet based on what they saw and heard and what the victim or witnesses say they saw and heard.

If you plead guilty, the police prosecutor will hand up (give to) the magistrate the facts sheet. The magistrate will read it before deciding what sentence to give you.

Sample police facts sheet This is a sample. The Facts Sheet you receive will contain the information about your case. If you need more help get legal advice New South Wales Police H 678441 CAN FACTS SHEET Offender: Junes KEMP 12 Pambula Street. Address. Wellington NSW 2820 Nationality: Anstalion D.O.B: 31 January 1959 CNI No. 599218 Occupation Delivery driver Seq No. Offences: Low Range PCA Law Part: 79154 1. Road Transport Act (2013) Act Section 110(3)(a) ARRESTING OFFICER Constable Shelly Backeti Name Wellington Station: INFORMANT Constable Shelly Hackett Name: Station Wellington ACCEPTING OFFICER Name Sargent Marganet Khan Station; Wellington Date: 12 October 2013 COURT Court Name: Wellington Local Court Court Date: 22 October 2013 WITNESSES Police Witnesses: -2 Civilian Witnesses: 0. Sample only. This is not legal advice

Sample: Sample Police Facts Sheet.

Sample police facts sheet

This is a sample. The Facts Sheet you receive will contain the information about your case. If you need more help get legal advice.

BAIL

Bail Type: N/A

Sample only. This is not legal advice.

Sample police facts sheet

This is a sample. The Facts Sheet you receive will contain the information about your case. If you need more help get legal advice.

New South Wales Police

FACTS SHEET con't Defendant: Kemp, James

ANTECEDENTS

The accused is currently employed as a delivery man. He resides with his two teenage sons. The accused has a previous conviction for drive while licence suspended.

FULL FACTS

On Saturday 12 October 2013, police established a roadside random breath test on the Mitchell High way on the southern approach to Wellington.

At approximately 9:25 pm, the police flagged down a red Toyota Corolla hatchback 375 GHR which was travelling in a northerly direction. The vehicle stopped and Constable Hackett approached the driver's side of the vehicle and indicated to the accused to wind down his window. Constable Hackett observed two people in the vehicle, the accused and a passenger.

Constable Hackett asked the accused if he had consumed any alcohol that evening. The accused replied "I've drunk about four beers". Constable Hackett observed that the accused's eyes were bloodshot.

Constable Hackett requested the accused to produce his driver's licence. After checking the licence details, Constable Hackett administered a breath test on the accused. The reading was .06 grams of alcohol in 210 litres of breath. The accused was placed under arrest and was conveyed to Wellington Police Station where the accused submitted to a breath analysis. The reading was 0.058 grams of alcohol in 210 litres of breath. Constable Hackett gave the accused a print out of the reading.

The road conditions were dry and there was light traffic in both directions.

The accused was charged with Drive with low range Prescribed Concentration of alcohol.

All safeguards of the Law Enforcement (Powers and Responsibilities) Act 2002 were adhered to.

The accused was charged with the matter now before the court.

Sample only. This is not legal advice.

Reading the Police Facts Sheet

It is important that you read the facts sheet carefully before you enter a plea of guilty. As you read it, you should think about whether the police facts sheet:

- accurately describes what happened
- has irrelevant information
- is missing any relevant information
- contains information about you that unfairly or untruthfully makes you look bad
- contains information that makes the offence look worse than it is
- contains information about you or the offence that 'mitigates' the offence (puts you and the offence in a better light).

If you disagree with the facts sheet, you can write to the police before you go to court or ask them to change it on the day of court. For more information, see Negotiating with the police.

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When you enter a plea of guilty the police prosecutor will hand up (give to) the magistrate your criminal record (if you have a record).

What is the difference between my criminal record and my criminal history?

A criminal record is a record of convictions against you. It will also include any offences for which you received a dismissal under section 10 of the Crimes (Sentencing Procedure) Act.

A criminal history includes everything on your criminal record, but also includes details of all court matters, apprehended violence orders, and whether you have been convicted or not.

Check with the prosecutor whether they are handing up your criminal record or your criminal

history. They should hand up your record, not your history. A criminal history is usually handed up when you make an application for bail. The criminal history will not assist you and may be prejudicial. Check again before it is handed up to the magistrate to make sure it is not a document that includes offences you were charged with but never found guilty of. If the prosecutor has handed up the wrong document, just ask them to change it. Only raise an objection if they insist on handing up the wrong document.

Why is my criminal record relevant?

The magistrate may consider your criminal record when sentencing you.

Where can I get a copy of my criminal record?

The prosecutor will have a copy of your criminal record. You can contact them before court and ask for a copy or you can ask the prosecutor to see it at court before your matter is called. If your matter is called before you have had a chance to review it, you can ask for your matter to be 'stood in the list' so you can review this material.

How do I read my criminal record?

You should read your criminal record carefully. Make sure that everything on it is correct. If you have a long criminal record look for any recent 'gaps' that show you did not commit any criminal offences for a period of time and point these out to the magistrate when you are being sentenced.

If you are having trouble understanding your criminal record, you should get legal advice.

What if my criminal record is wrong?

Sometimes there may be a mistake on your criminal record, such as a conviction being incorrectly recorded. You can contact the Criminal Records Section of NSW Police or fill out and send a Disputing Criminal Record Information form.

For more information, see Criminal History Check on the NSW Police website.

If you don't have time to do this before court, you could tell the prosecutor you disagree with it. You may also need to ask the magistrate to adjourn your case to give you time to contact NSW Police and try to get the record corrected.

For information about how having a criminal record can impact on you, see Driving and criminal records.



What is a driving record?

Your driving record is kept by Service NSW. It contains information about:

- when you got your licence and the type of licence
- traffic offences you have been charged with or convicted of
- fines
- licence suspensions
- court-ordered licence disqualification
- Habitual Traffic Offender declarations.

It may also be referred to as a traffic record.

Where can I get a copy of my driving record?

You can get a copy of your driving record from Service NSW through using your MyServiceNSW Account connected to Roads or you can ask the prosecutor to see it at court before your matter is called.

If your matter is called before you have had a chance to review it, you can ask for your matter to be 'stood in the list' so you can review the record.

Why is my driving record relevant?

The magistrate will consider your driving record when considering how to sentence you for the offence. Your driving record will tell the magistrate:

- if the offence is a first offence or a second or subsequent offence
- any penalties the court has previously imposed
- whether you have committed any other offences that mean a Habitual Traffic Offender declaration will be made.

How do I read my driving record?

It can be difficult to read your driving record but it is important to carefully read it. Look at each offence listed. Do you remember going to court for that offence? Is the penalty listed the same as the penalty you actually received from the court?

If you are having trouble understanding your criminal record, you should get legal advice.

What if my driving record is wrong?

If you believe your driving record is incorrect, you should contact Roads and Maritime Services (RMS) and try to have your records corrected.

For information about having personal details held by RMS corrected, see the Access to information on the RMS website. If you do not have time to do this before court, you could tell the prosecutor you disagree with it. You may also need to ask the magistrate to adjourn your case to give you time to contact RMS and try to get the record corrected.

For information about how having a driving record can impact on you, see Driving and criminal records.

What to do once the court makes a decision

After the court has made a decision, you may need to sign documents at the court office. Before you leave, check with the court officer in the courtroom whether you need to sign an order.

You will need to make sure that you comply with any judgments or decisions.

Paying a fine in criminal cases

If you have received a fine or order to pay costs in criminal proceedings, you will generally have 28 days to pay. If you do not think you will be able to pay by then, there are some options available.

You can apply to:

- pay by installments
- ask for an extension to the payment due date
- apply to have payments deducted from your Centrelink benefit

Victims Support Levy

The Victims Support Levy or VSL (formerly Victims Compensation Levy - VCL) is an amount levied on people who are found guilty of offences in NSW courts. The VSL is not a penalty imposed by a court or judicial officer; it is imposed automatically by legislation when a person is convicted of an offence by a court.

A victims compensation levy needs to be paid within 28 days of the court finalising the case.

Court Costs Levy

From 13 May 2013, people who are found guilty of offences in summary proceedings before a local court may have to pay a Court Costs Levy (CCL). The CCL is not a penalty imposed by a court or judicial officer; it is imposed automatically by legislation when a person is convicted of an offence by the local court.

A court costs levy needs to be paid within 28 days of the court finalising the case.

What happens if you do not pay your fine?

If you do not pay the fine on time or make other payment arrangements, the outstanding amount will be referred to the Revenue NSW which will take further action.

The types of action Revenue NSW can take include:

- suspending or cancelling your driver's licence or vehicle registration known as RMS restrictions
- issuing a garnishee order to take money from your bank account or wages

- ordering you to do community service
- issuing a property seizure order that authorises the Office of the Sheriff to seize and sell your property.

In certain circumstances, you may be able to apply to Revenue NSW to perform unpaid community work or undergo treatment. See the Revenue NSW publication Work and Development Order. If the fine was ordered for a commonwealth offence, other types of enforcement action may be taken against you.



Drink Driving Offences

No matter where you are in Australia, drink driving is treated as a serious offence and any person who is found to be operating a vehicle in excess of the blood alcohol concentration (BAC) of 0.05, may face penalties that range from the suspension, disqualification or cancellation of their licence, loss of demerit points, fines, or imprisonment for more serious drink driving offences.

The sad reality is that a significant amount of road deaths in Australia is caused by drink driving, so it is essential that the penalties reflect the gravity of the offence, and this article will cover the general penalties for a person driving over the limit in New South Wales.

Drink driving laws

Before delving deeper into the penalties that a person operating a vehicle at a BAC of 0.05 or over will attract, we should perhaps cover the general laws associated with driving while over the limit.

First, anyone who is holding a learner or probationary licence, no matter where in Australia they are, must have a zero BAC, while for holders of a full licence, it's 0.05.

One of the things to be aware of when talking about drink driving is that the laws also extend to private property, and a person under certain circumstances may still be penalised for operating a vehicle over the blood alcohol concentration.

Additionally, it's also an offence for a person to refuse to undergo a breathalyser test for either alcohol or drugs if so requested by a member of the police force. Furthermore, we should add that a person who is accompanying a learner driver must also not be over 0.05 BAC.

What are some of the drink driving offences and the associated penalties?

Initial offences may attract an infringement notice (and only for a first offence, subsequent offences will be treated more seriously) depending on the laws of the jurisdiction. However, we should note that a person may still be required to appear before the courts even if it is for a first offence.

New South Wales

The categories of the prescribed concentration of alcohol (PCA) offences are broken down into low range, mid range and high range PCA.

Low range (including novice and special range) PCA: for low range PCA, a BAC of 0.05 but less than 0.08, will attract a maximum penalty of \$2,200 for a first offence, and \$3,300 for any subsequent offence. It may come as a relief for low range PCA offenders that there is no gaol

time initially.

In regards to a novice driver, there must be no alcohol in their system, while for special range PCA, it's 0.02.

In terms of suspension of a person's licence who is a novice driver and a first time offender, the minimum penalty is the disqualification of the person's licence for three months for a first of-fence or a maximum of six months.

Any subsequent offences will result in a minimum time period of a six month disqualification of the novice drivers' licence, and the maximum penalty that can be imposed is the disqualification of the person's licence for an unlimited time period. Furthermore, in absence of a specific court order, the automatic penalty that will be imposed is the disqualification of a person's licence for six months at the minimum, and 12 months as the maximum penalty.

Finally, special range PCA drivers will face an immediate suspension of their licence if they are found to be over the prescribed BAC.

Mid range PCA: for a mid range PCA, a person who is found to have a BAC of 0.08 but less than 0.15, the court can impose a maximum fine of \$2,200 for a first offence and \$3,300 for any subsequent offences, whilst having their licence immediately suspended. However, it is important to be aware that a driver found to be within a mid range PCA can also be imprisoned for a maximum of nine months for a first offence, and 12 months for any further offences.

High range PCA or refusal to undergo a breath test: any person found to be in operation of a vehicle at 0.15 BAC or above, may attract a maximum fine of \$3,300 for a first offence and \$5,500 for any further offences. In addition, like mid range PCA, the person's licence will be immediately suspended and a term of imprisonment of 18 months for a first offence, and two years for a subsequent offence can also be imposed for high range PCA.

In instances where a person refuses to undergo a breathalyser test, a driver can face a minimum disqualification period of 12 months for a first offence, and two years for any further offences.

Driving Offences

You may lose your licence if you commit a serious offence, if you are caught speeding, if you lose all your demerit points or if you don't pay your fines.

You may lose your licence on the spot after you are stopped by police or you may get a Notice of Suspension from Transport for NSW (TfNSW) (formerly known as Roads and Maritime Services or RMS) that states the date on which you will lose your licence.

A suspension is different to a disqualification. A suspension can only be imposed by the Police or TfNSW, but a disqualification is imposed by the court. You may be disqualified if you are convicted by a court of a serious driving offence. If you have been disqualified from driving, this section does not apply to you. If you have been disqualified, you will need to reapply for a licence at the end of the disqualification. For more information about your options after your licence has been disqualified by the court, see After court.

On the spot suspensions

If you commit a serious driving offence, the police can charge you, give you a Court Attendance Notice (CAN) and suspend your licence on the spot. Some examples of serious driving offences include:

- negligent driving, where someone is seriously injured or dies
- serious speeding offences
- some offences involving driving and drugs or alcohol
- street racing and burnout offences
- if you breach your licence conditions, for example if you are a learner driver and you drive without a supervising driver.

If the police have not suspended you on the spot, TfNSW can suspend you following a notice of suspension.

Transport for NSW suspensions for speeding

TfNSW can suspend your licence if you are photographed driving more than 30 km/hr over the speed limit by a speed camera. The amount of time your licence is suspended will depend on how fast you were going. For example:

- over 30 km/hr and up to 45 km/hr over the speed limit, your licence will be suspended for 3 months
- over 45 km/hr over the speed limit, your licence will be suspended for 6 months.

TfNSW will send you a letter suspending you from driving. The letter will tell you when the suspension will start and how long it will last. TfNSW may send you a letter suspending you from driving:

- after you pay a speeding fine, or
- when the deadline for electing to go to court has passed, if you did not pay the speeding fine or elect to go to court.

Your licence can also be suspended because of demerit points or unpaid fines. For more information, see Licence suspensions in the Fines section of this website.

When can you drive again?

If your licence is suspended, you will not be able to drive until:

- the end of the suspension period for the offence,
- you have appealed the suspension to the local court and had your suspension lifted,
- you go to court and defend the offence and are found not guilty, or
- you go to court and are found guilty but the court records no conviction.

There are serious penalties for driving while you are suspended, including licence disqualification, large fines and imprisonment. If your licence has been suspended and you are caught driving, you should get legal advice.

You do not need to re-apply for your licence at the end of the suspension period. You can start driving again straight away, as long as you still have your licence and it hasn't expired.

If the police took your licence, you must contact TfNSW to replace your licence before you start driving again.

If your licence expired while you were suspended, you must renew it before you start driving again.

Appealing the suspension

If your licence has been suspended on the spot or for a camera speeding offence, it is possible to appeal to the local court against the suspension. The court will consider:

- your need for a licence and
- whether there are exceptional circumstances justifying lifting the suspension.

The court will not look at your guilt or innocence for the offence at that stage.

You must file your appeal within 28 days of the date you were suspended. If you do not file your appeal within 28 days, even if the court accepts your application, the magistrate may not hear your case.

What are "mandatory alcohol interlock orders?"

In NSW, courts are required to make Mandatory Interlock Orders upon conviction of certain drink drive and traffic offences. If you commit one of the offences on or after 1 February 2015 and are convicted, you will be disqualified from driving and ordered to install an interlock device in your car, motorbike or truck.

WHAT IS AN INTERLOCK ORDER?

An interlock order is an order made by the court when you are sentenced for certain offences. It is a court order that disqualifies you from driving and, after that disqualification period ends, requires you to obtain an 'interlock drivers licence' and participate in the interlock program for a specified time. Participation in the interlock program means that you must:

- Go to your GP for an assessment to get a Drink-less medical certificate. This must be done within the last 4 weeks of your disqualification period;
- Get an interlock device installed in your car by an approved provider;
- Blow into the device and register a nil alcohol reading to start your car;
- Blow into the device and register a nil alcohol reading at random times while you are driving your car; and
- Drive no other car for the duration of the program.

If the device detect alcohol on your breath, the car's engine will turn off and you won't be able to re-start the car. The device also keeps a log of when this occurs which can be viewed by Police and can lead to further charges.

Limited exemptions apply to the program. If you are not granted an exemption by the court and you cannot or do not comply with the interlock order then you will be disqualified from driving for 5 years.

WHAT OFFENCES WILL ALWAYS RESULT IN A MANDA-TORY INTERLOCK ORDER?

The court must make a Mandatory Interlock Order if you are convicted of certain serious driving and alcohol related offences, including:

- Refuse or fail to provide a sufficient sample for analysis;
- Drive with Mid Range PCA;
- Drive with High Range PCA;
- The court may make a Mandatory Interlock Order if you are convicted of:
- Dangerous driving occasioning death;
- Dangerous driving occasioning GBH;
- Aggravated dangerous driving occasioning death; or
- Aggravated dangerous driving occasioning GBH.

The court must also make a Mandatory Interlock Order for some offences if you have been convicted of a certain other offence within 5 years.

When else will a court impose a mandatory interlock order?

The court must make an order if you are convicted of any of the following offences:

- Drive with Novice Range PCA;
- Drive with Special Range PCA;
- Drive with Low Range PCA;
- Drive with Mid Range PCA; or
- Drive under the influence of alcohol or other drug

AND in the previous 5 years you were also convicted of any of the following offences:

- Drive with Novice Range PCA;
- Drive with Special Range PCA;
- Drive with Low Range PCA;
- Drive with Mid Range PCA;
- Drive with High Range PCA;
- Drive under the influence of alcohol or other drug; or
- Refuse or fail to provide a sufficient sample for analysis.

HOW LONG ARE THE INTERLOCK ORDERS FOR?

The table below outlines the length of time you must be on the interlock program:

Offence	Minimum time off the road	Maximum time off the road	Minimum time in interlock program
Novice Range, Special Range or Low Range (second offence)	1 months	3 months	12 months
Mid Range	3 months	6 months	12 months
Mid Range (second of- fence)	6 months	9 months	24 months
High Range	6 months	9 months	24 months
High Range (second offence)	9 months	12 months	48 months
DUI (alcohol related)	6 months	9 months	24 months
DUI (alcohol related) (second offence)	9 months	12 months	48 months
Refuse/fail to provide sample	6 months	9 months	24 months
Refuse/fail to provide sample (second offence)	9 months	12 months	48 months

WHAT HAPPENS IF I TRY TO DRIVE THE CAR AFTER I'VE BEEN DRINKING?

All drivers on the interlock program are treated as 'novice' drivers. This means they are the equivalent of provisional licence holders and must have zero alcohol in their breath when driving a car.

The interlock device will take a photograph and store data of any attempt to drive with alcohol in your breath. This data is reviewed by the RMS and the RMS may take further action. The RMS can issue warning letters, require you to undertake further medical assessments, require you to complete a fitness to drive assessment, extend the interlock program or suspend your licence.

The police may also charge you with a further offence if there is sufficient evidence.

WHEN IS THE INTERLOCK ORDER MADE?

The Interlock Order is made when you are being sentenced for the offence.

ARE THERE ANY EXEMPTIONS?

Yes, but only where very strict requirements are met.

WHAT IS AN EXEMPTION ORDER?

An "Exemption Order" is an order that exempts you from having to have an interlock device in your vehicle.

WHAT DO I NEED TO PROVE TO GET AN EXEMPTION?

The test for an Exemption Order depends on what offence you have been charged with. If you have been charged with a Mid Range PCA first offence or second or subsequent offence, then the test differs.

Exemption test for Mid Range PCA, you must prove that:

- That the making of a mandatory interlock order would cause severe hardship to the offender; and
- That the making of an interlock Exemption Order is more appropriate in all the circumstances than the making of a mandatory interlock order.

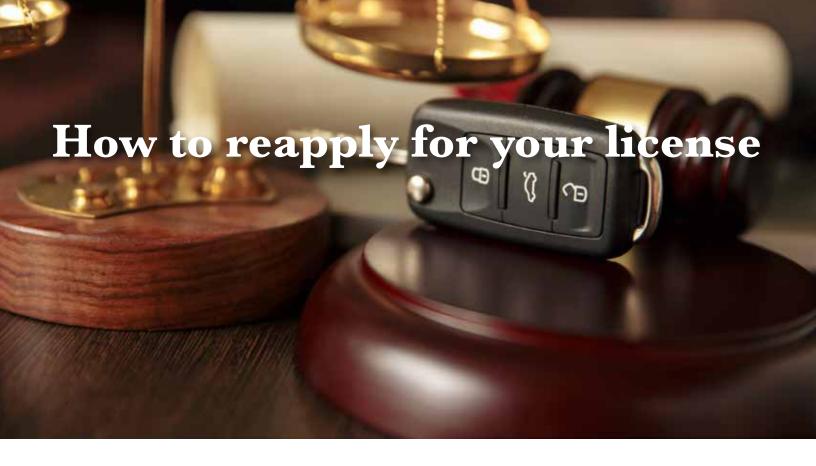
Exemption test for all other offences, you must prove that:

- You do not have access to a car; or
- You have a medical condition preventing you from providing a sufficient sample of breath AND the interlock device cannot be reasonably modified.

To prove that you do not have access to a car you must show that:

- You are not a registered operator of a car;
- You are not an owner or part owner;
- You do not share a car with a registered operator;
- You do not share a car with an owner or part owner; or
- If you are any of the above, that it is unreasonable to install a device.

You are only granted an exemption from the interlock program. You will still have to serve the disqualification period if the exemption is granted.



Driver licence disqualification reforms

Reforms have been introduced to keep repeat and dangerous offenders off our roads. At the same time, they have been designed to provide those who comply with their disqualification(s) with a road back to lawful driving.

From 28 October 2017, if you have complied with your disqualification period for a minimum of two or four years (depending on your case) and have no convictions for driving offences involving death or grievous bodily harm, then you may be eligible to have your disqualification lifted.

Eligibility

If you have had your licence disqualified and have been offence free for two to four years, you may be eligible. This will, of course, depend on your case.

You cannot apply if you have ever been convicted of one of these serious driving offences:

- Murder or manslaughter caused by the use of a motor vehicle
- An offence under the Crimes Act that caused the death, grievous bodily harm or wounding by a motor vehicle
- Predatory Driving or Police Pursuits (under the Crimes Act)
- Negligent driving causing death or grievous bodily harm
- Intentional menacing driving
- Failing to stop and assist after impact causing death or grievous bodily harm.

Before you apply

Download and read the Legal Aid NSW <u>Are you disqualified from driving brochure</u> or visit any <u>NSW Legal Aid Office</u>.

This will provide you with more information on eligibility and the application process. It will also help you to decide if you need legal assistance.

How to apply

You must follow in order these 4 steps:

- Complete a Driving record application for disqualification removal order form you can also request this form at any service centre.
- Send by post or email your completed disqualification removal order form to either:
- DisqualificationRemovalOrders@rms.nsw.gov.au
- Roads and Maritime Services at Disqualification Removal Orders, Locked Bag 14, Grafton NSW 2460

After Roads and Maritime receive your completed form, a review of your driving record will be conducted to determine your eligibility. A copy of your driving record with a Roads and Maritime covering letter will be sent to your preferred return email or postal address. The letter will provide a recommendation on your court application eligibility.

- After receipt of your Roads and Maritime eligibility status letter and you have decided to continue with your application, you will need to complete the Local Court Application to remove driver licence disqualification form (you must attach the Roads and Maritime issued driving record and covering letter to your application). To assist your application please ensure you include details about why the application is important to you.
- Lodge all three documents at a Local Court there will be a fee (If you are on a Centrelink benefit or experiencing financial hardship, you can ask to have the fee waived).

Please note: A driving record issued other than one received after lodging your <u>Driving record</u> <u>application for disqualification removal order form</u> will be rejected by the Court. You MUST have a certified driving record issued from Roads and Maritime along with a covering letter.

The <u>Driving record application for disqualification removal order form</u> can be completed online by clicking the link above or you can request it from a <u>Service Centre</u>

Should your disqualification removal order application be rejected by the local court, you may not be able to make another application for 12 months. You may wish to seek legal advice before re-applying.

Returning to lawful and regulated driving

The local court will decide if your disqualification can be lifted and when the order will come into effect.

If your local court disqualification removal application is successful, do not begin driving until you have applied to have your licence re-issued. To reapply for your licence, first attend a <u>Service Centre</u> and provide your <u>Proof of Identity</u> documents. Roads and Maritime require you to pass a standard knowledge and driving test before being re-issued a licence to begin driving again.

If you currently have outstanding fines, you may have licence or vehicle sanctions preventing you from getting your licence. For information about your outstanding fines, contact <u>Revenue</u> <u>NSW</u> on 1300 655 805 to discuss your payment options. This may allow you to re-apply for your licence.

If you are caught driving without a licence after your disqualification is lifted, you may be charged with an unauthorised driving offence.

More information on the reforms

Police have greater powers to impose on-the-spot vehicle sanctions. This includes the ability to confiscate (for three to six months) number plates or vehicles of repeat offenders and those who commit certain serious driving offences. Certain drivers who have complied with their disqualification period for at least two years have the opportunity to apply to a Local Court to have their disqualification lifted early.

For more information about how the reforms work in practice go to <u>NSW justice website</u>.



Your next choice will have a huge impact on the outcome of your case.

Discover the one thing you can do right now that can totally change your outcome for the best...

...something 90% of serious traffic offenders have done before going in front of the magistrate...

...a giant leap in the right direction that you can start right here, right now...

How to complete the traffic offenders program successfully

TRAFFIC OFFENDERS REHABILITATION PROGRAM

You've made a mistake. It happens. And if you've been tested, this is not debatable. What the Magistrate wants to know moving forward, above all else? Will you be a repeat offender? Is this the only time you'll be seen in court, or will it be a regular occurrence for you?

Signing up for the NSW Traffic Offenders program voluntarily before your court date is a huge sign to the Magistrate that you've taken the matter seriously, you're being proactive, and upon completing the course, you'll have the education and tools you need to avoid a repeat offence.

As it happens, you're in the right place. TORP is the lead provider of the NSW Traffic Offenders Program

We are the only online approved provider of TORP

What does that mean? It means for a small investment in yourself, you can get started not next month, not next week – not even tomorrow. You can begin that giant leap forward right this second.

We will help you turn this one time driving error into a learning experience, and most importantly, demonstrate this to the Magistrate.

And you can do it risk free:

We offer a 100% money back guarantee if you do not gain any benefits from our program in your court case, with the RMS or personally.

Secure your driving future and sign up now.



http://trafficoffendersprogram.org.au