

# The Shopfront

## YOUTH LEGAL CENTRE

### Traffic Fact Sheet 8 – Drugs, alcohol and driving

#### 1 Introduction

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There are several types of offences relating to drugs, alcohol and driving:

- **Prescribed concentration of alcohol** offences (PCA): there are limits on the amount of alcohol you are allowed to have in your blood when driving, depending on what type of licence you have. Penalties will depend on your licence type and the amount you exceed your PCA limit.
- **Driving with an illicit drug present** in oral fluid, blood or urine: this offence focuses on the presence of a drug in the driver's system (including cannabis, speed and ecstasy). It will apply regardless of the level of drug detected, so you can commit the offence even if you are no longer affected by the drug.
- **Driving under the influence** (DUI): this offence focuses on actual impairment. It requires evidence that the driver was affected by alcohol or drugs to some degree.
- **Other offences** such as failing to stop for a random breath test, refusing a breath analysis, etc.

#### 2 Driving with a prescribed concentration of alcohol (PCA) in your system

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It is an offence to drive or ride a motor vehicle on a road or road-related area with a "prescribed concentration of alcohol" (PCA) in your blood above the legal limit.

There are 5 PCA limits:

- **Novice range PCA (0.00- 0.02)**: applies to all learner drivers, P1 drivers, P2 drivers and interlock drivers.
- **Special range PCA (0.02 – 0.05)**: applies to all learner drivers, P1 drivers, P2 drivers and interlock drivers; also applies to drivers of heavy vehicles, vehicles carrying dangerous goods, and taxi or bus drivers.
- **Low range PCA (0.05-0.08)**: applies to all drivers.
- **Mid-range PCA (0.08 – 0.15)**: applies to all drivers.
- **High range PCA (0.15 and above)**: applies to all drivers.

### 3 Driving with drugs in your system

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It is an offence to drive or ride a motor vehicle on a road or road-related area with a “prescribed illicit drug” (cannabis, speed ecstasy or cocaine) present in your “oral fluid” (saliva), blood or urine.

It is also an offence to have morphine (which can include heroin) in your blood or urine, unless you were using a morphine-based drug for medicinal reasons.

If you have traces of these drugs in your system, you will be committing this offence, even if you are no longer under the influence of the drug and your driving has not been affected.

### 4 Driving under the influence of alcohol or drugs

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It is also an offence to drive any vehicle (*including a non-motorised vehicle such as a pushbike*) on a road or road-related area whilst under the influence of alcohol or any drugs.

Unlike PCA charges, police are not required to provide any drug or alcohol test result. Driving under the influence (DUI) charges may be based on police observations about your driving and your actions that may suggest you were under the influence.

Police may charge you with DUI where they suspect you are affected by prescription medication or other drugs that cannot be tested, or if you are a cyclist and they can't require you to do a RBT or oral fluid test.

### 5 Random breath testing and roadside drug testing

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#### 5.1 Random breath testing

In NSW, police have the power to randomly stop drivers of motor vehicles for an alcohol breath test. They may also breath test licence holders who are supervising learner drivers.

If you are found over the limit you may be arrested and taken to the police station where your alcohol levels will be tested again. If you fail this test, you will be charged.

It is an offence to refuse a breath test, and the penalties for doing so are often as severe as a drink-driving offence.

#### 5.2 Roadside drug testing

Police in NSW now have the power to carry out roadside drug testing on any driver, rider or supervising licence holder of a motor vehicle in NSW.

The “oral fluid” drug test will test for the presence of:

- Delta-9-tetrahydrocannabinol (THC- the active component in cannabis);
- Methylamphetamine (speed, ice, crystal meth);
- Methylenedioxymethamphetamine (MDMA or ecstasy);
- (from 1 July 2018) Cocaine.

This will require you to lick the test pad of a device through the window of your vehicle.

If a positive sample is detected, you will have to provide a second sample which will be run through another oral screening device. If a second positive test is found, a sample of your saliva will be taken and sent to a laboratory for confirmation.

You will not be charged at this stage, *although police may suspend you from driving for 24 hours*. If the laboratory results are positive, you will usually receive a court attendance notice or a penalty notice within a few weeks.

Just like a breath test, it is an offence to refuse to submit to a roadside drug test.

### **5.3 Bicycle riders**

In NSW, police do not have the power to stop a rider of a bicycle for a Random Breath Test or Random Oral Fluid Test. Also, cyclists can't be charged with PCA and drive "with illicit drug present" offences.

However, cyclists *can* be charged with driving under the influence (DUI). Police may charge you with DUI based on their own observations about your actions or your riding. Also, in the event of an accident where a bicycle rider is taken to hospital, a doctor has a duty to take a blood sample from the rider. If the sample indicates a presence of alcohol or drugs, a cyclist can then be charged.

For details please see Traffic Fact Sheet 12 – *Pushbikes and non-motorised vehicles*.

## **6 Immediate licence suspension and other police powers**

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### **6.1 Immediate licence suspension**

Police may suspend your licence on the spot if you are charged with (or given a penalty notice for) certain offences including:

- a mid-range or high range PCA offence;
- (from 1 July 2018) driving under the influence of drugs or alcohol;
- (from 20 May 2019) a special, low or novice range PCA offence;
- refusing to submit to a breath analysis or to the taking of a blood sample, preventing the taking of a blood sample, or wilfully doing anything to alter the concentration of alcohol in your breath or blood.

For more information, see *Traffic Fact Sheet 4 – Licence suspension and appeals*.

### **6.2 Powers to stop you from driving**

A police officer also has the power to prohibit you from driving if they are of the opinion that you are under the influence of alcohol or any other drug, or if you fail or refuse an oral fluid test (or, from 1 July 2018, if you refuse or fail to pass a sobriety assessment).

They can direct you not to drive, require you to hand over your keys, or immobilise or detain your vehicle. They can stop you from driving until you sober up (or, in some situations, for up to 24 or even 48 hours). If you don't comply with these requirements you could be guilty of an offence and fined up to 10 penalty units (\$1,100).

### **6.3 Vehicle sanctions**

From 3 December 2018, some repeat offenders may also incur vehicle sanctions, e.g. having a vehicle or numberplates confiscated. See *Traffic Fact Sheet 13 – Confiscation, impounding and forfeiture of vehicles*.

## 7 What are the penalties for these offences?

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### 7.1 On-the-spot fines

Most drink-driving or drug-driving offences must be dealt with by a court.

From 20 May 2019, police can issue penalty notices (on-the-spot fines) for:

- novice range, special range or low range PCA
- drive with prescribed illicit drug in oral fluid/blood/urine (first offence)

A penalty notice can only be issued if you have not been convicted of, or issued with a penalty notice for, a similar offence within the previous 5 years.

The fine amount is \$561. As with all fines, you may elect to take it to court.

If you *don't* take it to court, you will *not* get a criminal conviction. However, it will still be considered a previous offence when determining whether a new offence is a "second or subsequent offence".

### 7.2 Licence suspension with on-the-spot fines

If you get a penalty notice for a PCA offence, the police may also suspend your licence on the spot for 3 months.

You won't get an on-the-spot suspension for a "drive with prescribed illicit drug" offence, but the RMS may suspend your licence for 3 months *after* you pay the fine (or the time to court-elect has passed and you haven't paid the fine).

If you want to appeal against the suspension, this is different from court-electing on the fine. You will have to file a separate licence suspension appeal. See *Traffic Fact Sheet 4 – Licence suspension and appeals*.

### 7.3 Court

If you are dealt with by a court, the penalty you receive will depend on a few factors such as how badly affected you were, how dangerous or harmful your driving was, the type of licence you hold, and whether you have a previous record for similar offences.

In most cases, you will have to pay a fine. In serious cases you could go to prison.

Traffic offences involving alcohol and drugs also carry an automatic disqualification. This means that a person who is convicted of one of these offences will be disqualified from having a licence for the *automatic* period set out by the law, unless the court decides to make a different order.

Instead of imposing the automatic disqualification, the court may:

- reduce the disqualification, but not below the minimum period set out by the law; or
- increase the disqualification period (this is rare); or
- in special cases, the court may decide not to convict the offender at all, but to deal with the matter under section 10 of the *Crimes (Sentencing Procedure) Act* (or an equivalent law for juveniles). This means that there will be no penalty, no conviction and no disqualification.

## 8 Penalties and disqualifications for offences dealt with in court

This table outlines the penalties and disqualifications for drug and alcohol related offences. See the RMS website for a full list: <http://www.rms.nsw.gov.au/roads/safety-rules/demerits-offences/drug-alcohol/drug-alcohol-offences.html>.

		Fine (max)	Prison term (max)	Disqualification (automatic)	Disqualification (minimum)	Mandatory alcohol interlock
High range PCA (0.15 or higher)	First offence	\$3,300	18 months	3 years	12 months	Y
	Second offence	\$5,500	2 years	5 years	2 years	Y
Mid range PCA (0.08 – 0.15)	First offence	\$2,200	9 months	12 months	6 months	Y (from 3 Dec 2018)
	Second offence	\$3,300	12 months	3 years	12 months	Y
Low range PCA (0.05 - 0.08)	First offence	\$2,200 (from 20 May 2019)	-	6 months	3 months	N
	Second offence	\$3,300 (from 20 May 2019)	-	12 months	6 months	Y
Special range PCA (0.02 – 0.05) (Provisional or Learner driver)	First offence	\$2,200 (from 20 May 2019)	-	6 months	3 months	N
	Second offence	\$3,300 (from 20 May 2019)	-	12 months	6 months	Y
Novice range PCA (0.00 – 0.02) (Provisional or Learner driver)	First offence	\$2,200 (from 20 May 2019)	-	6 months	3 months	N
	Second offence	\$3,300 (from 20 May 2019)	-	12 months	6 months	Y
Driving with illicit drug present in saliva, blood or urine	First offence	\$2,200 (from 20 May 2019)	-	6 months	3 months	N
	Second offence	\$3,300 (from 20 May 2019)	-	12 months	6 months	N
Driving under the influence of alcohol or another drug	First offence	\$3,300	18 months	3 years	12 months	Y (from 3 Dec 2018 – alcohol only)
	Second offence	\$5,500	2 years	5 years	2 years	Y (from 3 Dec 2018 – alcohol only)
Refusing a breath analysis/drug test	First offence	\$ 3,300	18 months	3 years	12 months	Y (refusing breath analysis only)

		<b>Fine (max)</b>	<b>Prison term (max)</b>	<b>Disqualification (automatic)</b>	<b>Disqualification (minimum)</b>	<b>Mandatory alcohol interlock</b>
	Second offence	\$5,500	2 years	5 years	2 years	Y ( <i>refusing breath analysis only</i> )

## 9 Alcohol interlock program

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### 9.1 What is the alcohol interlock program?

Alcohol interlocks are electronic breath testing devices linked to the ignition system of a vehicle. The driver must pass a breath test before their vehicle will start, as well as randomly-timed tests during a journey. If the interlock detects alcohol on the driver's breath, the ignition system will be disabled.

### 9.2 When can the court make an interlock order?

From 1 February 2015 onwards, people convicted of certain repeat or serious drink-driving offences have to complete a period of participation in the Alcohol Interlock Program. More offences have been added from 3 December 2018.

Offences subject to mandatory interlock orders include:

- high range PCA;
- mid-range PCA (until 3 December 2018, it was only second or subsequent offences; now it also applies to first offences);
- any other PCA offence, if the offender has previously been convicted of an alcohol-related driving offence;
- driving or attempting to drive under the influence of alcohol (until 3 December 2018, it was only second or subsequent offences; now it also applies to first offences);
- failure or refusal to provide breath analysis or blood sample.

The court *may* also make an interlock order for someone convicted of dangerous driving causing death or grievous bodily harm, if the offender was under the influence of alcohol at the time.

### 9.3 The interlock order

If an interlock order is made, you will first be disqualified from driving for a specified period of time.

This will be followed by a minimum 12-month interlock period (longer interlock periods apply for more serious offences).

During the interlock period you will be allowed to drive only if you have an interlock device fitted in your vehicle (you are responsible for the installation and the cost of this – see below).

For a table showing the minimum and maximum disqualification periods as well as the minimum interlock periods for different offences, see: [http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol\\_act/rta2013187/s211.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/nsw/consol_act/rta2013187/s211.html)

## 9.4 Exemptions

A Court may grant an interlock exemption, but **only in exceptional circumstances** and **only at the time of sentencing**. The offender must prove, to the court's satisfaction:

- that they do not have access to a vehicle in which to install an interlock device; or
- that they have a medical condition diagnosed by a registered medical practitioner that prevents them from providing a sufficient breath sample to operate an approved interlock device and it is not reasonably practicable for an interlock device to be modified to enable the offender to operate the device.

Exemptions on the basis of financial grounds, work necessity or refusal of an employer to install an interlock device on a vehicle will not be granted.

If an exemption is granted, the offender will still be disqualified from holding a licence for the relevant period set out in the above table, but will not then have to participate in the interlock program.

## 9.5 If you have an interlock order and don't install an interlock device

**A person who receives an interlock order and does not enter the interlock program will be disqualified** from holding a licence (other than a learner or interlock licence) for **5 years** from the date of their conviction.

If you do not have access to a car or have a medical condition, **you must ask for an exemption at the time of sentencing**. RMS or the court *do not* have any power to exempt an offender after they have received an interlock order. So if you need an exemption be sure to ask for it early.

## 9.6 Costs of the program

The interlock program operates on a user-pay basis so you are required to pay all the costs of the program. The costs include installation, maintenance and removal of the interlock device, and a program admin fee to RMS. The cost is around \$2,200 a year.

For participants with a valid concession card, a concession rate will apply and the offender will receive a 35% discount off standard fees.

In the case of financial hardship, the participant must apply for a financial hardship assessment. This is done by the Salvation Army (call 1300 371 288).

## 9.7 More information

For more information about the alcohol interlock program, see the RMS website: <http://www.rms.nsw.gov.au/roads/safety-rules/demerits-offences/drug-alcohol/interlock-program.html>

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*The information in this fact sheet contains a basic summary of the law in New South Wales. It is not legal advice. If you need legal advice, you should speak to a lawyer.*

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