



Northern Territory **Legal Aid** Commission

~~DRINK DRIVING~~

Pleading Guilty?

If you are charged

If you are charged with drink or drug driving you will usually be able to represent yourself in a plea of guilty at court, but you should seek legal advice first. You can do this at court for free by asking the duty lawyer to help you.

You should get a lawyer to represent you in court if any of these apply:

- **you have been found guilty of drink driving more than once before**
- **you are charged with a high range drink driving offence**
- **there was a crash**
- **you are charged with driving while disqualified.**

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Disclaimer: This content is provided as an information source only and is not legal advice. It is correct at the time of publication but laws change. If you have a legal problem, you should seek legal advice from a lawyer.

What happens in court?

If you are thinking of representing yourself in a drink driving case, first ask the duty lawyer at court to get you a copy of the documents which the prosecutor intends to rely on in court. These documents are:

- the Complaint or Charge (which lists the offence(s) you have been charged with)
- the '**Precis**' (which sets out the alleged facts of the case)
- your criminal record (both NT and interstate), if any.

Ask the duty lawyer to check these documents with you and to advise:

- whether or not to plead guilty
- what penalty to expect
- what the applicable minimum period of licence disqualification is
- whether you should admit all of the alleged facts and your criminal record.

If you do not admit all the alleged matters, the prosecutor may agree to change them so that your case can be finalised on the day. If the dispute is more complex or serious, or if you are thinking of pleading not guilty, you should ask the duty lawyer to get your case adjourned so that further attempts can be made to settle your case. If your case can not be settled by agreement, it must be set for a contested hearing of the evidence. It usually takes at least several weeks before the court has time to conduct a hearing of this type.

When you represent yourself in a guilty plea, the police prosecutor will read out the charge/s, to which you should say, when asked, 'guilty'. The police prosecutor will then read out the alleged facts, to which you should say, when asked, '***I admit the facts***'. The prosecutor will then hand the magistrate your criminal record, to which you should say, when asked, '***I admit the record***'. (You do not have to tell the court about any prior convictions that the prosecutor has not alleged.)

You can then tell the magistrate something about yourself and the circumstances of the offending. Politely answer any questions the magistrate asks you.

If relevant and helpful, mention the following matters, which may all be taken into account by the court in deciding your penalty:

- Your reason for driving on that occasion.
- Whether your control of the vehicle was impaired, and the risk this posed to other road users.
- Whether there was an accident, injury or loss (including any injury or loss suffered by you).
- Your co-operation with police.
- Your prior character, criminal record and driving record.
- Whether you have pleaded guilty at the first opportunity.
- Your attitude to the offending and sense of remorse.
- Whether the loss of your licence would cause you hardship.
- Whether the recording of a conviction against you would cause you hardship.
- Your financial circumstances and capacity to pay a fine.

You can use notes to help you when talking to the magistrate, who you should call '**Your Honour**'. It is also helpful to give the court signed and dated character references addressed '**To the Presiding Magistrate**'. In addition to commenting on your general character, the references should specifically mention your offending. Before entering your plea, hand a copy of the references to the prosecutor, to check that the prosecutor will agree to you using them.

What are the penalties?

In imposing sentence, magistrates must apply (among other laws) the ***Traffic Act*** (NT), which imposes compulsory licence disqualification for most drink driving offences committed in the Northern Territory.

If your licence is disqualified in the Northern Territory, there is no provision for getting a 'special licence' for work.

However, you should tell the court if the loss of your licence will cause hardship, as this may persuade the magistrate not to disqualify you longer than for the minimum period required by law.

If you drive while disqualified you are likely to receive a prison sentence.

Home detention or prison is not usually imposed for a first or second drink or drug driving offence, but is quite likely for a third or subsequent offence, or if your offending was particularly serious. **If home detention or prison is likely, you should arrange for a lawyer to represent you in court.**

Drink-Driver Education Courses

If you are disqualified from driving by the court, you will not be able to get your licence back until your disqualification period has finished AND you have completed a Drink-Driver Education Course. You can do the Drink-Driver Education Course during your disqualification period. Check with the Motor Vehicles Registry for details of what you have to do before you can get your licence back.

Categories of offences

There are six broad categories of drink and drug driving offences

1. LOW RANGE: Exceed 0.05% but under 0.08% blood alcohol content

This is the only category of drink driving offence which can be dealt with by a traffic infringement notice. If police issue you with one of these, you can pay a fine and avoid going to court or losing your licence. This charge does not usually go to court unless you are also charged with other offences or you have received a traffic infringement notice for drink driving within the last 3 years. If it does go to court, the following penalties apply:

FIRST OFFENCE:

Maximum \$765 fine and/or up to 3 months prison; licence disqualification is not compulsory.

SECOND OR SUBSEQUENT OFFENCE:*

Maximum \$1,147.50 fine and/or up to 6 months prison. For a second offence, the minimum disqualification period is 3 months. For a third or subsequent offence, the minimum disqualification period is 6 months.

2. MEDIUM RANGE: Exceed 0.08% but under 0.150% blood alcohol content

FIRST OFFENCE:

Compulsory licence disqualification for a minimum of 6 months; maximum \$1,147.50 fine and/or up to 6 months prison; must complete driver education course prior to re-licensing.

SECOND OR SUBSEQUENT OFFENCE:*

Compulsory licence disqualification for minimum of 24 months (or 12 months plus 12 months with an Alcohol Ignition Lock (AIL) licence (see Page 11)); maximum \$3,060 fine and/or up to 12 months prison.

3. HIGH RANGE*: Exceed 0.150% blood alcohol content; Refusing or Failing a Breath Analysis; or Refusing a Blood Test

FIRST OFFENCE:

Maximum \$1,530 fine and/or up to 12 months prison; compulsory licence disqualification for a minimum of 12 months.

SECOND OR SUBSEQUENT OFFENCE:

Maximum \$3,060 fine and/or up to 12 months prison AND:

Where more than 3 years since last relevant conviction:

Compulsory licence disqualification for minimum of 30 months (or 18 months plus 12 months with AIL licence).

Where less than 3 years since last relevant conviction:

Compulsory licence disqualification for minimum of 5 years.

4. ZERO BLOOD ALCOHOL

The law requires that people in these categories must not have any alcohol in their blood when driving:

- A learner's licence (L plate) or provisional licence (P plate) driver;
- An unlicensed driver (except through failure to renew your licence);
- Anyone under 18;
- Anyone under 25 who has not held a licence continuously for 3 years;
- A 'trade-related driver', by which we mean:
 - A professional driving instructor who is instructing someone how to drive;
 - A driver of a vehicle having a maximum loaded mass of more than 15 tonnes;
 - A driver of a commercial passenger vehicle;
 - A driver of a vehicle carrying dangerous goods;
 - A driver of a vehicle carrying people in a space designed for the carriage of goods; or
 - A driver of a vehicle carrying or capable of seating more than 11 passengers.

FIRST OFFENCE:

Maximum \$765 fine and/or up to 3 months prison AND

- Compulsory licence disqualification for a minimum of 3 months if you are:
 - An “L” or “P” plate driver.
 - Under 18; or
 - Unlicensed (except through a failure to renew your licence):
- Licence disqualification at the discretion of the Magistrate if you are:
 - A licensed driver over 18 and under 25 who has not held a licence for a continuous period of 3 years, and is not a L or P plate driver; or
 - A ‘trade-related’ driver (see Page 7):

SECOND OR SUBSEQUENT OFFENCE:*

Maximum \$1,147.50 fine and/or up to 6 months prison AND

- 12 months (or 6 months plus 6 months with AIL licence) compulsory licence disqualification if you are:
 - An “L” or “P” plate driver;
 - Under 18; or
 - Unlicensed (except through a failure to renew your licence).
- The following compulsory licence disqualification periods apply if you are:
 - A licensed driver over 18 and under 25 who has not held a licence for a continuous period of 3 years, and is not a “L” or “P” plate driver; or
 - A ‘trade-related’ driver (see Page 7) other than a professional driving instructor:
FOR A SECOND OFFENCE: 9 months (or 3 months plus 6 months with AIL licence).
FOR A THIRD OR SUBSEQUENT OFFENCE: 12 months (or 6 months plus 6 months with AIL licence).
- If you are a professional driving instructor, the minimum compulsory licence disqualification periods are:
FOR A SECOND OFFENCE: 3 months.
FOR A THIRD OR SUBSEQUENT OFFENCE: 6 months.

5. Drug driving

There are two categories of prohibited drugs.

1. DRUGS THAT ARE PROHIBITED COMPLETELY

Includes: Cannabis; methyl amphetamines; ecstasy; heroin and cocaine.

2. DRUGS THAT ARE PROHIBITED, UNLESS YOU CAN SHOW THAT YOU TOOK THE DRUG AS DIRECTED BY YOUR DOCTOR

Includes: Morphine; methadone and amphetamines.

The police do not need to prove that your ability to drive was impaired to prove this offence. Police may deal with a first drug driving offence by issuing a Traffic Infringement Notice, in which case you can pay a fine and avoid going to court or losing your licence.

If your case goes to court, the following penalties apply.

FIRST OFFENCE:

Maximum \$765 fine and/or up to 3 months prison; licence disqualification is discretionary.

SECOND OFFENCE:*

Compulsory licence disqualification for minimum of 3 months; maximum \$1,147.50 fine and/or up to 6 months prison; must complete driver education course and/or treatment course prior to re-licensing.

THIRD OR SUBSEQUENT OFFENCE:*

Compulsory licence disqualification for minimum of 6 months; maximum \$1,147.50 fine and/or up to 6 months prison; must complete driver education course and/or treatment course prior to re-licensing.

6. Driving Under the Influence of Alcohol and/or Drug (DUI)

If the police can not prove you were over the limit, but can still prove you were incapable of exercising effective control of your vehicle, you may be charged with this offence. Erratic driving, failing to stay in the lane of traffic, the smell of alcohol on your breath, unsteadiness on your feet or having bloodshot eyes may provide police with evidence that you were driving under the influence of alcohol and/or a drug.

FIRST OFFENCE:

Maximum \$1,530 fine and/or up to 12 months prison; compulsory licence disqualification for a minimum of 6 months.

SECOND OR SUBSEQUENT OFFENCE:*

Maximum \$3,060 fine and/or up to 12 months prison; AND

- **IF YOU WERE UNDER THE INFLUENCE OF ALCOHOL:** compulsory licence disqualification for minimum of 24 months (or 12 months plus 12 months with AIL licence).
- **IF YOU WERE UNDER THE INFLUENCE OF DRUGS, BUT NOT ALCOHOL:** compulsory licence disqualification for minimum of 12 months.

*For these offences Police can immediately disqualify you from driving. Driving while disqualified is a serious offence which usually attracts a prison sentence. If you were immediately disqualified by police, and a court later finds you guilty of a drink or drug driving offence, your disqualification will in effect be backdated to start on the date the police disqualified you. Otherwise, your disqualification period must start on the date the court orders you be disqualified.

Additional Penalties

For P platers:

Upon conviction for any traffic offence the Court may order that the “provisional” period of the licence be extended by up to 12 months.

For truck or commercial passenger vehicle drivers:

Upon conviction for DUI, driving with a medium or high range blood alcohol content or refusing a breath test, the driver is disqualified from holding their special purpose licence for a minimum of 5 years.

What is ‘a Second or Subsequent Offence’?

This is a complex matter beyond the scope of this brochure and you should seek legal advice if you think it may apply to you. In most cases, past offences which were dealt with by way of a Traffic Infringement Notice count as a prior offence for this purpose.

Alcohol Ignition Lock licences

The law provides that in some circumstances second or subsequent drink or drug driving offenders may be permitted to drive during the final part of their disqualification period under an Alcohol Ignition Lock (AIL) licence. AIL licensed drivers may only drive a vehicle fitted with an AIL, a device which prevents a vehicle being started unless the driver has blown into it and obtained a blood alcohol reading of less than .02%. Depending on the type of offence, the court can impose an AIL licence period of between 6 months and 3 years. The driver must pay for the cost of installing and regularly servicing the AIL and these costs are significant, although a Low Income Earner Subsidy is available. If the court imposes a disqualification period which includes an AIL licence period, it is up to you whether to get an AIL licence or to just serve the whole disqualification period.

Drive While Disqualified

While you are disqualified from holding a licence for a period, you are not allowed to:

- Obtain a licence; or
- Drive a motor vehicle on a public street or public place.

PENALTY:

Driving while disqualified is a serious offence, and the courts usually impose a sentence of imprisonment, even for first offenders. The maximum penalty is 12 months imprisonment. In some cases the sentence of imprisonment is suspended on condition the offender undergo home detention. Your disqualification period may also be extended.

It is an offence to drive in the Northern Territory while you are disqualified interstate. There are similar laws in other parts of Australia. If you are disqualified from driving in the Northern Territory, do not drive anywhere else in Australia without getting legal advice from that State first.

If you drive while disqualified, you are likely to receive a prison sentence.

Need more help?

If you need more help in finding the best place for you to get some legal advice or representation, or if you would like contact details for the Drink Driver Education Courses please call our toll free Legal Information Service on 1800 019 343 any time between 9.00am and 4.00pm, Monday to Friday.

www.ntlac.gov.au