



ATSILS
Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Legal Fact Sheet Drink Driving



Do you need help with issues related to Drink Driving and Driver Licences?

Laws exist making it illegal for a person to be in charge of, or drive or attempt to put into motion a vehicle whilst under the influence of alcohol, prescription drugs, or illegal drugs.

This fact sheet outlines:

- The definition of a “vehicle”
- A person considered “Under the influence”
- Police procedures
- Consequences of being charged
- Replacement licences
- Consequences of driving under the influence
- Work (Restricted) licences
- How to obtain legal advice?

ATSILS is a non-profit, Aboriginal and Torres Strait Islander community-based organisation with 25 locations across Queensland. We provide innovative and professional legal services covering criminal, civil and family law areas.

Freecall 24/7



1800 012 255

Last Updated: *February 2023*



1. Vehicle

The definition of “**vehicle**” is very wide and includes:

- a motor vehicle
- a hand cart or barrow
- a bicycle
- a boat or jet ski
- a wheelchair
- It is also illegal to drive or be in charge of an animal (e.g.: a horse) whilst under the influence of alcohol or drugs.

2. Under the influence?

A person is considered to be under the influence:

- If under the age of 25 and a holder of a provisional licence, the person's blood alcohol concentration (BAC) exceeds 0%.
- If unlicensed and their BAC exceeds 0%.
- if a driver of a truck, a bus, articulated vehicle, road train, a vehicle carrying dangerous goods, a tow truck, pilot vehicle, taxi or driving instructor vehicle and their BAC exceeds 0%.
- all other drivers (with an open licence), where their BAC equals or exceeds 0.05%.
- where a person is under the influence of illegal drugs.
- where a person is under the influence of prescription drugs.
- a person refuses to provide a specimen of breath or blood for analysis.

3. Terminology (definitions)

No Alcohol Limit	means a zero percentage alcohol reading
General Alcohol Limit	means a reading of 0.05% or above (50 mg alcohol per 100 mL blood)
High Alcohol Limit	means a reading of 0.15% or above.

4. In charge of the vehicle

It is illegal whilst under the influence to:

- drive, or
- attempt to put a vehicle into motion, or
- be in charge of a vehicle (including being found asleep in the front seat of the car and in the car with keys in the ignition).

5. Police procedures

Police can require a person to, (if suspicious that a person is under the influence):

- give their name and address;
- show their driver's licence;
- submit to a road side breath test. This test must be carried out within two hours of the person driving or being in charge of the vehicle; and
- submit to a blood test.

Police regularly carry out random breath tests. Refusing to provide your name and address or failing to submit to a breath or blood test is an offence.

6. Consequences of being charged

If you are the holder of a Queensland driver's licence, your licence is **immediately suspended** if you fall into one of the following categories:

- You are charged with the more serious offence of being on or over the "high alcohol limit" of 0.15%;
- You are charged with "Failing to Provide" a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test;
- You are charged with a "general alcohol limit" offence (BAC 0.05% or above) whilst another such offence is still before the courts;
- You are charged with a "general alcohol limit" offence (BAC 0.05% or above) whilst being the holder of a "replacement licence" (see below); or
- You are charged with dangerous operation of a motor vehicle (dangerous driving) whilst adversely affected by an intoxicating substance.

In addition, if your authority to drive on a Queensland road was pursuant to a **non-Queensland driver's licence** – then your authority to drive in Queensland is **immediately suspended**. Further, should you not be the holder of a driver's licence (and any of the above circumstances apply to you), then you are **immediately disqualified** from holding or obtaining a Queensland driver's licence.

The suspension/disqualification in question continues until the matter is dealt with by the court (or is withdrawn/discontinued), or, for a suspension, a "replacement licence" is issued.

Note: for charges which do not carry the automatic on-going suspension – a 24 hour suspension would still apply.

7. "Replacement Licences"

Relevant Regulations allow an "eligible" person who has had their licence so suspended to bring an Application (in a prescribed Form) before a court and seek the issuing of a "replacement licence" – allowing them to drive in stated circumstances.

So who is "eligible"?

At the time of the Application, the applicant must hold an open or provisional licence that would have been valid but for the suspension. The Court (which would be the Magistrate's Court relating to the jurisdiction where the Applicant resides), would then look at the following criteria:

- Is the Applicant a fit and proper person to continue to drive – having regard to the Applicant's traffic history and the safety of other road users and the public generally? And

Would a refusal of the Application:

- Cause Extreme hardship to the Applicant or the Applicant's family by depriving the Applicant of the means of earning a living? Or
- Otherwise cause severe and unusual hardship to the Applicant or the Applicant's family?

Practical consideration: in many circumstances there might be little point in bring such an application where the underlying charge itself will lead to an automatic disqualification period. Such would not be the case of course for contested charges (with merit).

8. Consequences of driving under the influence

If convicted by the court of such an offence you will face serious consequences, including:

- Your Queensland driver's licence will be cancelled.
- You will be disqualified from holding or obtaining a further Queensland driver's licence for a stated period (ranging from 6 months to "absolutely" – depending upon the circumstances).
- You will be fined (often significantly so) as well as possibly jailed.

- **Mandatory Imprisonment:** If a person has been convicted of three major offences (i.e.: where their BAC was equal to or exceeded 0.15% or the person has failed to provide a specimen) within a five year period, then the Magistrate must impose a term of imprisonment as part of the sentence.

Driving course

In addition to the above options, a magistrate may make a probation order requiring a person to attend an approved driving course at their own expense. This may be accompanied by a reduction in the fine and/or the period of disqualification.

Common Myth: I can reduce my alcohol level by sleeping, chewing gum, drinking coffee, having a shower or exercising.

Truth: The only thing that reduces your alcohol level is time. The majority of alcohol is broken down in your liver. It takes at least one hour to break down (metabolize) the alcohol content of a single standard drink.

Note: it is not uncommon for people to be over the legal limit the day after they've been drinking (e.g. even after a night's sleep).

9. Tips to avoid drink driving

The most basic tip would be: if you're planning to drink, plan not to drive. Plan alternative travel – catch a taxi or public transport, get a lift from someone (who is sober), or plan to stay overnight.

Note: as expensive as taxis might seem at times, they are a lot less expensive than the cost of a court fine, let alone possible imprisonment, mandatory loss of licence, and possible fatalities.

Discourage friends or family from driving when they have been drinking. Hide their car keys if necessary!

Nominate a designated driver.

Serve non-alcoholic and low alcohol drinks at parties. Let people ask for a refill rather than continually topping up their drinks (as they can then lose count of how much they've consumed).

Do not mix drugs and alcohol – as such can have a multiplier (synergistic) effect.

10. Work (Restricted) Licences

A work licence (also called a day licence or a restricted licence) allows a person convicted of a drink driving or failing to provide a specimen of breath offence, to drive for employment purposes if they meet strict conditions.

The conditions which are required to be met are, that the person must:

- Hold a current Queensland provisional or open driver's licence for the vehicle they were driving, at the time of the offence and at the time that they make the application for the work licence.
- Have had a blood alcohol level of less than 0.15 %.
- At the time of the offence not have been driving for their job and not driving under a work licence.
- At the time of the offence not have been driving under a licence that required a nil alcohol reading e.g. if they were under 25 (with a learners or provisional licence), or a class of licence such as truck, bus, tow truck, pilot vehicles, taxi, driving instructor.
- In the last five years not have been convicted anywhere of a drink driving or related offence, and not have been convicted of dangerous driving in Queensland, or had a licence suspended or cancelled (other than due to a mental or physical disability, or through non-payment of a penalty, or if set aside on appeal).
- Show that failure to obtain a work licence will result in extreme financial hardship, i.e. applicant's livelihood will be seriously affected, e.g. loss of job.

Such a licence can only be applied for to enable a person to earn a living and cannot be applied for in cases of people with medical problems needing a licence.

11. Procedure

The Application must be made at the time the conviction is recorded and before the court makes an order disqualifying you from holding a driver's licence. The application will not be dealt with on the first court date and a hearing date for the application is set. An application form must be completed and lodged in the court. The following documents must also be lodged:

- an affidavit by the person seeking the work licence which sets out the circumstances of why the licence is required; and
- an affidavit by the person's employer setting out how the person's job will be affected if the licence is lost.

When the application is heard, the person must attend court and might be required to give evidence. The employer might also be required at court.

If after a court grants a work licence and the circumstances of the person's job subsequently change, they can make an application to the Magistrate's Court to vary the restrictions imposed by the work licence.

An Application Form must be completed and lodged in the court together with:

- an affidavit by the person granted the work licence setting out the circumstances of change requiring the restrictions of the work licence to be altered; and
- an affidavit by the person's employer setting out how a person's employment is or has been altered requiring the restrictions of the work licence to be changed. When the application is to be heard, the applicant must attend court and might be required to give evidence. The employer might also be required at court.
- A person holding a work licence must have a zero blood alcohol concentration level when driving, in charge of, or attempting to put in motion a motor vehicle. A Work Licence - Charged or on-the-spot self-help kit is available free of charge from Legal Aid Queensland to assist with applying for a work licence.

12. Obtaining Legal Advice?

ATSILS provides innovative, professional and culturally competent legal service for Aboriginal and Torres Strait Islander people across Queensland.

Freecall 24/7  1800 012 255

We can be contacted toll free on **1800 012 255**, 24 hours a day, 7 days a week. We have 28 offices located across Queensland so you will be put in touch with the closest regional office that is able assist you with your legal needs. In some instances, ATSILS might have a conflict of interest and will not be able to provide you with legal advice. If this is the case, you may wish to try Legal Aid Queensland on their Indigenous Information line on **1300 65 01 43**.

This Factsheet is not intended to provide legal advice and has been provided for the purpose of providing information only. Whilst all reasonable care has been taken in the preparation of this information, no liability is assumed for any errors or omissions.