

Licence suspension

You can lodge an appeal within 28 days of the date of the issue date of the suspension notice against the decision at the Local Court. The following decisions of the RTA and police can be appealed

- A decision by the RTA for exceeding the speed limit by more than 30 kph (Provisional) or 45 kph (Unrestricted)
- A decision by the RTA to suspend a P1 or P2 licence for loss of demerit points
- An on the spot immediate suspension by the police for exceeding the speed limit by 45 kph

The Court may

- Allow your appeal and overturn the suspension, allowing you to keep your licence
- Disallow your appeal, where your licence will be suspended for the time set.
- Make an order as the court sees fit, which may include Section 10 dismissal of penalty.

To successfully appeal a licence suspension you must show exceptional circumstances to lift or vary the suspension, the court will take into account the following

- The strength of the prosecution's evidence
- Your need for a licence
- The potential impact on the community if the order is made
- Any other matter the Local Court considers being relevant.

The following suspensions cannot be appealed

- A RTA decision to suspend an unrestricted licence due to loss of demerit points
- A RTA decision to suspend an Interlock driver's licence

Information to help your appeal

- The circumstances of the offence
- Your traffic record and character
- Your need for a licence

Drive while Suspended

If you plead guilty, or are found guilty by the court, the court still has the discretion under section 10 not to record a conviction. If this is not allowed, then the following penalties apply.

PENALTIES	FIRST OFFENCE	SECOND OR SUBSEQUENT OFFENCE
Maximum court imposed fine	\$3,300	\$5,500
Maximum gaol term	18 months	2 years
Minimum disqualification	12 months	2 years
Maximum disqualification	Unlimited	Unlimited
Disqualification in the absence of a specific court order (automatic period)	12 months	2 years

Licence Disqualification

This is different to suspension, where disqualification follows a court order in relation to the penalty for an offence. Where the penalty handed down exceeds the minimum penalty prescribed by the legislation, we can argue in order to reduce the penalty, or argue for section 10 dismissal of the conviction, thereby meaning no disqualification will occur.

Drive while disqualified

PENALTIES	FIRST OFFENCE	SECOND OR SUBSEQUENT OFFENCE
Maximum court imposed fine	\$3,300	\$5,500
Maximum gaol term	18 months	2 years
Minimum disqualification	12 months	2 years
Maximum disqualification	Unlimited	Unlimited
Disqualification in the absence of a specific court order (automatic period)	12 months	2 years

Reckless Driving

If you have been charged with reckless driving, this is considered a serious offence, and attracts requisite penalties.

PENALTIES	FIRST OFFENCE	SECOND OR SUBSEQUENT OFFENCE
Maximum court imposed fine	\$2,200	\$3,300
Maximum gaol term	9 months	12 months
Minimum disqualification	12 months	2 years
Maximum disqualification	Unlimited	Unlimited

Disqualification in the absence of a specific court order (automatic period)	3 years	5 years
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Negligent Driving

Negligent driving is the least serious of these driving offences, often charged by Police if you are at fault for an accident. The maximum penalty for this charge is a \$1,100 fine, and demerit points applied. This may lead to licence suspension, and lead you to defend this charge if it may cause a loss of licence.

Negligent Driving occasioning GBH or Death are indictable offences, and extremely serious charges.

Negligent Driving Occasioning GBH (Grievous Bodily Harm)		
PENALTIES	FIRST OFFENCE	SECOND OR SUBSEQUENT OFFENCE
Maximum court imposed fine	\$2,200	\$3,300
Maximum gaol term	9 months	12 months
Minimum disqualification	12 months	2 years
Maximum disqualification	Unlimited	Unlimited
Disqualification in the absence of a specific court order (automatic period)	3 years	5 years
Negligent Driving Occasioning Death		
PENALTIES	FIRST OFFENCE	SECOND OR SUBSEQUENT OFFENCE
Maximum court imposed fine	\$3,300	\$5,500
Maximum gaol term	18 months	2 years

Minimum disqualification	12 months	2 years
Maximum disqualification	Unlimited	Unlimited
Disqualification in the absence of a specific court order (automatic period)	3 years	5 years

Assault Offences

Assault offences are one of the most commonly charged offences in NSW. Being charged with such an offence must be taken seriously as severe penalties can be imposed, such as imprisonment, weekend detention and community service orders. It is important to realise that assault does not necessarily require physical contact, but can also include threats of violence or harm.

Below are some of the most common assault offences:

- **Common Assault**
- **Assault Occasioning Actual Bodily Harm**
- **Attempts to Choke**
- **Reckless Grievous Bodily Harm or Wounding**
- **Assault Police**
- **Intent to Cause Grievous Bodily Harm**
- **Assault during Public Disorder**
- **Legal Defence for Assault Charges**

Drug Offences

The primary piece of legislation in relation to drug offences is the Drug Misuse and Trafficking Act 1985 (NSW). The Act indicates that there are higher penalties for larger quantities of drugs, and where children are exposed to the mechanisms, ingredients, prohibited drugs, supply or supply process. However, there are also lower penalties in situations where the drug in question is cannabis. The intent of the offender is also an important consideration when determining the guilt of the accused charged with an offence.

If you are charged with an offence, you will not automatically receive the maximum penalty - there are a variety of matters a court looks at to determine your sentence. You can, however, get an indication as to how serious the courts consider the offence by referring to its maximum penalty.

Apprehended Violence Orders

What is an AVO?

The AVO itself is not a criminal record or conviction – merely an Order of the Court. Sometimes people think that, since the AVO is simply an Order, there is no harm or risk in consenting to the AVO being made. This is not the case.

In fact, the granting of an AVO can have drastic implications. If you believe the AVO was unnecessary, obtained by a false complaint, or obtained for some advantage, such as preventing one parent from seeing their children, it's important that you seek legal advice. What is to stop the person who took out the AVO from alleging that it has been breached, causing you to face criminal prosecution?

Apprehended Violence Orders (AVO's) are meant to exist to prevent physical violence, stalking, harassment and intimidation of a person (the PINOP – person in need of protection) by another - usually involving people from a prior or current domestic relationship, but may involve unrelated people who do not have a domestic relationship, such as neighbours.

What are the Penalties for Breaching an Apprehended Violence Order?

It is a criminal offence for the defendant to knowingly breach an interim or final Apprehended Violence Order. The maximum penalty on conviction is a \$5,500 fine or two years imprisonment or both. If the breach constitutes an act of violence and the defendant is at least 18 years of age, it is likely that the defendant will be sentenced to a period of imprisonment.

Actions to take

Successfully defending an application for an AVO sought by your spouse or former partner can be difficult for a number of reasons. Firstly, applications need only be proved on the balance of probabilities, rather than the higher criminal standard of beyond a reasonable doubt. Secondly, applications are often taken out by police on the behalf of the alleged 'PINOP' so you may already find yourself in a position where your spouse or former spouse is legally represented by a police prosecutor and you are not. Thirdly, most allegations occur where there are no witnesses, and so it is your word against that of someone else.

Often orders will be sought that are called 'interim' orders, which apply between your first court date and the date of hearing. These orders can be opposed.

Drink Driving Penalties

If you have been arrested and charged with a drink driving offence, this is considered a serious offence and attracts heavy fines, licence suspension and/or jail sentence. TW Legal may be able to help reduce any penalties handed down by the Court. A Section 10 dismissal is possible, but generally only for low or mid range PCA levels, and depending on the circumstances.

How to defend a PCA Charge

A certain level of "Prescribed Alcohol Content" allows police to charge you with drink driving, regardless of whether you are seen to be "under the influence" of alcohol.

High Range PCA: 0.15 or higher

Mid Range PCA: 0.08 - 0.15

Low Range PCA: 0.05 - 0.08

Novice Range PCA: 0.00 - 0.02

Special Range PCA: 0.02 - 0.05

Fine	Imprisonment	Automatic	Minimum
Drink Driving / DUI: High Range PCA (0.15 or more)			
First Offence			
\$3300	18 months	3 years	12 months
Subsequent Offences*			
\$5500	2 years	5 years	2 years
Drink Driving / DUI: Mid Range PCA (0.08-0.15)			
First Offence			
\$2200	9 months	12 months	6 months
Subsequent Offences*			
\$3300	12 months	3 years	12 months
Drink Driving / DUI: Low Range PCA (0.05-0.08)			
First Offence			
\$1100	nil	6 months	3 months
Subsequent Offences*			
\$2200	nil	12 months	6 months
Drink Driving / DUI: Special Range PCA (0.02-0.05)			
First Offence			
\$1100	nil	6 months	3 months
Subsequent Offences*			
\$2200	nil	12 months	6 months
Drink Driving / DUI: Novice Range PCA (0.00-0.02)			
First Offence			
\$1100	nil	6 months	3 months
Subsequent Offences*			
\$2200	nil	12 months	6 months
Refuse a Breath Test (not major offence) - section 13 (2)			
\$1100	nil		
Refuse Breath Analysis (major offence) - willfully altering blood alcohol concentration - preventing taking of blood sample			
First Offence			

\$3300	18 months	3 years	12 months
Subsequent Offences*			
\$5500	2 years	5 years	2 years
Driving Under the Influence (Major) - Section 12 (1)			
First Offence			
\$1100	nil	6 months	3 months
Subsequent Offences*			
\$2200	nil	12 months	6 months