

Random alcohol and drug testing

When can police stop me for a random breath or drug test?

Police can stop any car for a random breath or drug test. They don't need to suspect that you have been drinking or taking drugs to test you.

How is the test carried out?

For a random breath test, the police will ask you to either blow, count or speak into a machine.

For a drug test, you will be asked to wipe a test stick down your tongue. The results will usually take a few minutes.

You have to wait until any test is clear and police confirm this, before driving away.

What drugs will the drug test pick up?

Drug tests can pick up ecstasy, cannabis, cocaine and methamphetamine (including speed and ice).

Your prescription medicine may mean you test positive for these substances. If you are taking prescription medicine, talk to your doctor about whether it is safe to drive while taking the medicine. You should keep a copy of the prescription or box of the prescription medicine in your car, to show the police if you test positive.

Can I say no to a breath or drug test?

It is an offence to refuse to take a breath or drug test. If you refuse, police may take you to a police station, hospital or other place for a breath or drug test. You may also be charged with an offence.

What happens if I blow over or drugs are detected?

If you are an L or P driver, you are not allowed to have any alcohol in your system while driving.

If the roadside test is positive, police may take you to a police station to test you again. If you test positive again, you will be required to provide a sample of your saliva which will be tested in a lab. You will be suspended from driving for up to 24 hours while that test is done.

Fines and police licence suspensions

If the lab results are positive for alcohol and it is your first offence, you will usually receive a police issued fine and have your licence suspended by police for 6 months.

If it is your second offence, you will usually receive a fine and have your licence suspended for 12 months.

If you are fined, you can:

- pay the fine
- organise a payment plan
- add to an existing payment plan
- apply for a 50% reduction if you are on Centrelink
- ask for an internal review (appeal)
- elect to appeal the matter to the Local Court (get legal advice first)
- apply for a Work and Development Order (WDO)

If your licence is suspended, you can't drive for the period of the suspension.

Once the period of suspension has ended, check that you are allowed to drive again by calling Service NSW or going to a Service NSW service centre.

Going to court

You can ask for your fine and/or suspension to be heard by a court.

The police may also choose to take your matter to court rather than just fine you and suspend your licence. They usually do this by sending you a notice to attend court (called a 'court attendance notice').

A court attendance notice is usually sent to you in the mail.

If you are thinking about taking your matter to court or you have to go to court because you've received a court attendance notice, it is very important that you get legal advice.

If you choose to take your matter to court or the police take you to court, the court can:

- decrease or increase the fine amount
- increase or decrease length of time you are unable to drive
- record a conviction for the offence

If the court convicts you of the driving offence, it will go on your criminal record and your licence will be disqualified.

If your licence is disqualified, you must re-apply for a driver licence before you can drive again.

The penalties you may get if you have been charged with a drink driving offence depend on whether it is your first, second, third etc offence and how much alcohol or drugs were in your system.

If the offence is very serious you may get sentenced to prison.

Can police test my passengers?

Police can test passengers if they are supervising a learner driver or if they believe the passenger has been driving the car (e.g. if they saw them swap seats).

Produced by Redfern Legal Centre.

This factsheet is not a substitute for legal advice. If you have a problem, please contact Redfern Legal Centre at www.rlc.org.au/contact or phone 02 9698 7277.