
MOTOR VEHICLES, ACCIDENTS AND ALCOHOL

**Do the right thing –
see your lawyer first**



NEW ZEALAND
LAW SOCIETY

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1. | Motor vehicles, accidents and alcohol

This pamphlet offers a guide to what you must and should do if you:

- are involved in a motor accident;
- have dealings with a police officer involving a motor vehicle;
- are required to undergo breath or blood testing procedures; or
- are charged with an offence relating to driving.

It also notes driver licence requirements.

2. | Accidents

If you are the driver of a vehicle involved in an accident and whether you are in the right or in the wrong, you **must**:

1. **Stop**, get out and **look** to see if anyone is injured and **assist** any injured person. Remember to look inside any other vehicle for injured people. Keep calm and, where appropriate, seek help from emergency services or bystanders. Your actions may help save a life. Failure to **stop, look or assist** is a serious offence.
2. If a person is injured, you must **report the accident to the police** as soon as practicable and not more than 24 hours after the accident, unless you are incapable of doing so because of injuries you have sustained in the accident.
3. If there is **damage** to another vehicle or property (such as fences, power poles, traffic signs, etc), you must either **notify** the owner of the vehicle or property or **report** the accident to the police within 48 hours of the accident.

You should also:

- Write down the name and address of any other driver or witness, the registration number of any other vehicle and the company insuring any other vehicle.
- Write down the name and number of any police officer who attends the accident.

- Provide your name and address and the registration number and insurance company of your vehicle.
- As soon as practicable, make a note of what occurred and draw a sketch plan of the accident to help you remember what occurred.
- Report the accident to your insurance company promptly.

It is best not to admit liability for any accident, especially at the scene. It could affect your insurance cover. Causes can be less simple than at first appear and more than one driver can contribute to an accident.

Personal injury in an accident

If you are injured in an accident, you should:

- See a registered medical practitioner.
- Report it to the Accident Compensation Corporation.

Property damage in an accident

If you are the owner of property damaged in an accident, you should try to obtain the name and address of the driver and owner of any vehicle involved, together with registration numbers and insurance companies.

If you are insured, report the accident to your insurance company promptly. Make sure you answer all questions on the insurance form fully and truthfully - particularly those about drinking alcohol before the accident. An untruthful or incorrect answer may mean that the insurance company does not have to pay under your policy.

A lawyer can assist you to make an insurance claim and recover any uninsured loss (such as hiring an alternative vehicle or paying an excess).

3. | **Contact with police officers**

- Be satisfied that the person is, in fact, a police officer. If you are in any doubt, you should request proof of identity as a police officer.
- Be very careful that what you say to or write for a police officer is exactly what you mean - it could be important to you or other people. Don't lie.
- It won't help if you argue with a police officer. State clearly what you have to say and leave it at that.
- If a friend is arrested or spoken to by a police officer, it is usually better to get help from a lawyer or from your friend's family than to interfere personally.

Powers of police officers

Under the Transport Act:

- A driver must stop when signalled to stop by a police officer in uniform or who is wearing a cap, hat or helmet that identifies him or her as a police officer. A driver must also stop on being followed by a vehicle displaying flashing blue and red lights or sounding a siren.
- A driver must give their name, address and date of birth when requested by a police officer.
- A driver may be prohibited from driving and must surrender ignition keys when requested by a police officer.
- A driver must identify the owner of the vehicle when requested by a police officer.
- A driver must have their driver licence with them whenever they are driving and be able to produce it on request.
- Car owners must identify the driver if requested.

You do not need to say anything more or supply any further information to a police officer. However, you may be asked to explain your driving behaviour and it may be in your interests to do so. Make a note of what you say to a police officer.

Arrest

You may be arrested for a number of matters associated with driving, including:

- driving under the influence of alcohol or drugs;
- failing to or refusing to accompany an officer for a breath test or blood test, whether or not you were the driver;
- failing to remain until the result of a breath screening test or evidential breath test is ascertained;
- driving with excess breath or blood alcohol;
- refusing to supply blood;
- failing to surrender ignition keys when asked;
- failing or refusing to give your own or the vehicle owner's name and address;
- assaulting an officer;
- causing death or injury by dangerous, reckless or careless driving;
- failing to stop when asked;
- dangerous or reckless driving;
- driving while disqualified;
- driving outside the terms of a limited licence.

Complaints about police officers

If you have a complaint about a police officer, it is important to act quickly. You can:

- see a lawyer for advice;
- discuss your complaint with the senior police officer of the area;
- make a formal complaint to the police;
- make a formal complaint to the Police Complaints Authority, PO Box 5025, Lambton Quay, Wellington 6145, tel 0800 503 728, fax (04) 499 2053, www.pca.govt.nz;
- in appropriate cases, make a claim in court.

Find out the name or number of the police officer involved and write this down as soon as possible, together with a description of what happened (including the time and place) in the incident you want to complain about. If your complaint is serious, you will want a lawyer to help you and this statement will be important and valuable. See the lawyer as soon as you can.

For more detail, see our pamphlet *You and the police*.

4. | **Breath and blood alcohol level tests**

You may be required to undergo tests authorised by the Transport Act to find out your breath or blood alcohol levels, including:

- A **passive breath test** in which you have to speak into a device that detects the presence of alcohol. If the result is positive, you may be asked to undergo a breath screening test, which registers the presence of alcohol in the breath rather than measuring its level;
- A **breath screening test** in which you are required to breathe into a device to provide a sample of breath for analysis. If the test is negative, you are usually allowed to go. However, an officer who thinks you are incapable of driving may still forbid you to do so. He or she can also arrest you for driving under the influence of alcohol or drugs. If the breath screening test is positive or if you fail it or refuse to take it, the police officer will require you to undergo an evidential breath test, a blood test or both. It is at this stage that you should be advised of your rights to consult and instruct a lawyer (see below);
- An **evidential breath test**, which uses an electronic device to measure the alcohol in your breath. **If you are aged 20 or older** and the test shows that the level of alcohol in your breath is over **400 micrograms per litre of breath**, it is considered positive and will be used in evidence in court. If a conclusive evidential breath testing device such as an Intoxilyser 5000 is used and the level is between 400 and 600, you are allowed 10 minutes to decide whether to request a blood test. If you think the test is wrong, ask for a

blood test. If the evidential breath test is carried out by a machine not classed as a 'conclusive evidential breath testing device' and the level is over 400, you also have the option of requesting a blood test. If the alcohol level in your breath is **400 or less**, the test is considered negative – but you may still be considered incapable of driving and be forbidden to do so. **If you are under 20 years of age**, the legal breath alcohol limit is **150 micrograms of alcohol per litre of breath**. The above provisions still apply, but substitute 150 for 400.

- **blood tests**, which may be required to permit a blood specimen to be taken if:
 - you fail or refuse to undergo an evidential breath test;
 - no evidential breath testing device is available;
 - you have been arrested for suspected driving under the influence of alcohol or drugs and a doctor has examined you and believes that you are under such influence;
 - you have refused to be examined by a doctor for an assessment of driving under the influence of drink or drugs.

A blood test must be taken by a doctor or, in some circumstances, by an authorised nurse. If you are in hospital as a result of a motor vehicle accident, breath tests are not permitted but blood samples may be taken whether you consent or not, or when you are incapable of giving consent (unconscious). Normally the blood sample is divided into two parts and you may subsequently request an independent analysis of one of those samples.

The blood alcohol limit for driving is 80 milligrams of alcohol per 100 millilitres of blood.

Co-operation with testing procedures

If you do not comply with the requirements of the Transport Act relating to the testing procedures, you may commit an offence and be liable to the same penalties as if your breath or blood alcohol level exceeded the permissible levels. In some instances this may even lead to **indefinite** disqualification. You cannot avoid the consequences by

refusing to take the tests. The best course at the police station is to consult a lawyer (see below). Otherwise you should:

- co-operate with the testing procedures;
- give your consent to a blood test, if required;
- note the names (and numbers) of the police officers and doctors involved, the various tests and anything else you think relevant.

Right to consult a lawyer

If you have been arrested or detained, you have the right to consult and instruct a lawyer without delay and in private. The police must tell you about this right. You can either ring your own lawyer or have the police provide you with a list of lawyers and their phone numbers, and the opportunity to call one of them. There is no cost to you at this stage for using a lawyer from this list.

Breath and blood alcohol charges

If you are charged with an offence relating to exceeding the permissible levels of alcohol in your breath or blood, you should see a lawyer who can check that the correct testing procedures have been followed. Also, the lawyer can put forward on your behalf any unusual or special circumstances. In some cases, this may result in the court either not disqualifying you or reducing the usual term of disqualification.

5. | Other traffic offences

Minor offence notices

Many traffic offences are dealt with by way of minor offence notices. A District Court will send the notice to you. Read the notice carefully and decide whether you want to deny the charge.

If you are not sure, see a lawyer or talk to the Registrar of your local District Court.

Minor traffic offences are usually dealt with by way of fines but can involve disqualification from driving.

If you are pleading guilty, you can often do this by letter so that you do not have to appear in court. You will then be advised of the penalty by letter.

More serious offences

For more serious offences, you will be summoned to the District Court. Such offences usually carry penalties involving:

- fines;
- disqualification from driving;
- a term of imprisonment.

A District Court may also order you to undertake a defensive driving course.

Drivers caught committing a serious driving offence (drink-driving at more than double the legal alcohol limit, refusing to supply a blood sample or speeding at more than 40kph above the permanent posted speed limit), have their **licence suspended** instantly for 28 days.

If you are charged with a more serious offence, a lawyer will be able to help you. They can check whether you have a defence to the charge, assist in the presentation of any defence and explain to the court any unusual or special circumstances that apply to you.

Limited licences

In certain circumstances, it is possible for people who have been disqualified to apply for a limited licence or for the disqualification to be removed. A lawyer can advise you when these provisions may apply.

Vehicle forfeiture

The second conviction within four years for certain offences (driving while disqualified, drink driving, driving under the influence of drugs, dangerous or reckless driving and failure to comply with breath or blood testing, amongst others) means the court must consider confiscating your vehicle. It would be unwise to go to court on a second offence without having consulted a lawyer.

Speeding & demerit points

Speeding fines increase progressively for speeds in excess of 10kph over the limit, with a maximum fine of \$630 for speeds up to 50kph over the limit.

Demerit points are given for all speeding infringements other than speed camera offences. If you get a total of 100 or more within two years, you will be suspended from driving for three months. The number of demerit points ranges from 10 to 50 and depends on the degree to which you exceeded the speed limit.

6. | Driver licences

All drivers on New Zealand roads, even those learning to drive, must be licensed.

Driving without a valid licence or while disqualified or suspended can result in being fined, prevented from driving until the driver has a valid licence and even (for repeat offenders) having a vehicle impounded instantly. It can also affect insurance cover. A vehicle can be impounded even if the driver is not the owner.

Anyone wishing to learn to drive in New Zealand must be aged at least 15 and must first obtain a **learner's licence**, for which they must pass a written theory test on New Zealand's road rules. They must hold this licence for at least six months, be accompanied at all times by a supervisor who has held a full licence for at least two years and must display "L" signs when driving.

After six months, a learner driver can apply for a **restricted licence**, which requires passing a practical test. With this licence, they can drive on their own except between 10pm and 5am, when they can drive only with a supervisor who has held a full licence for at least two years. They may not carry passengers other than their spouse and their own or their spouse's dependants, unless a supervisor is present. **Drivers aged 25 or more** must hold the restricted licence for at least six months, though this can be reduced to three months on passing an approved advanced driver skills course. **Drivers aged under 25** must hold the restricted licence for at least 18 months; this may be reduced to 12 months on passing an approved advanced driver skills course – which they cannot take until they have held the restricted licence for at least six months. If a restricted licence test is taken in a car with automatic transmission, then the driver can drive only automatic cars during the restricted licence period.

Once the restricted licence requirements have been met, drivers need to pass a further practical test to get their **full licence**. They can then drive without restrictions.

Some extra licence requirements apply to **older drivers**. From 4 December 2006, drivers will need to renew their licence at ages 75, 80 and each two years after that. To do this, they will need to present a medical certificate indicating fitness to drive. Drivers aged 80 or more will usually no

longer have to sit a practical test. However, for any driver aged 75 or more, the doctor providing the medical certificate may recommend licence conditions or restrictions (such as no night driving or a distance restriction) and will be able to refer the driver for an optional on-road safety test if the doctor is uncertain about the driver's ability to drive safely.

People from **overseas** can drive in New Zealand on their overseas licence for up to 12 months, after which they will need a New Zealand licence.

All drivers must have their driver licence with them whenever they are driving.

Photo driver licences must be renewed by their expiry date. Generally, if a licence is not renewed within 12 months of it expiring, the driver will have to re-sit the theory and practical tests to get a new licence.

For more information on driver licensing, contact Land Transport New Zealand, email info@landtransport.govt.nz, call 0800 822 422 or write to PO Box 2840, Wellington 6140.

7. | Do the right thing – see your lawyer first

Lawyers deal with many personal, family, business and property matters and transactions. No one else has the training and experience to advise you on matters relating to the law. If your lawyer can't help you with a particular matter, he or she will refer you to another specialist. Seeing a lawyer before a problem gets too big can save you anxiety and money.

Like other professional people, your lawyer charges for time, experience and skill in looking after your affairs. Ask at the beginning about the likely cost or tell your lawyer that you don't want to spend more than a certain sum without the lawyer checking with you. If you are on a low income and there is the possibility of court proceedings, ask whether you might qualify for legal aid. Our pamphlet *Seeing a lawyer* will provide you with more information.

Choose your own lawyer for independent advice. You do not have to use the same lawyer as your partner or anyone else involved in the same legal matter. In fact, sometimes you must each get independent legal advice. Your lawyer should act for **you**.

Your lawyer will:

- treat your business as completely confidential;
- give you independent advice;
- use his or her skills for your benefit; and
- give value for what you have to pay.

If you don't have a lawyer:

- ask friends or relatives to recommend one to you;
- look in the Yellow Pages under 'lawyers' or 'barristers and solicitors';
- inquire at a Citizens Advice Bureau or Community Law Centre;

- check these websites:
 - www.familylaw.org.nz
 - www.propertylawyers.org.nz
 - www.adls.org.nz
 - www.wellaw.co.nz
 - www.odls.org.nz

- contact your local district law society:

Auckland (including Northland, South Auckland, Coromandel)	(09) 303 5270
Waikato Bay of Plenty (including Taupo)	(07) 838 0264
Gisborne	(06) 867 1562
Hawke's Bay	(06) 835 1254
Taranaki	(06) 758 3238
Wanganui	(06) 345 7092
Manawatu	(06) 356 2214
Wellington (including Wairarapa)	(04) 472 8978
Nelson	(03) 545 2613
Marlborough	(03) 578 7269
Canterbury	(03) 366 9184
Westland	(03) 768 7454
Otago	(03) 477 0596
Southland	(03) 218 8778

Law Awareness Programme

The New Zealand Law Society (NZLS) publishes this pamphlet as part of its Law Awareness Programme to inform you of your legal rights, the law and how lawyers can help you. The current titles are:

- Seeing a lawyer
- Buying or selling a property
- Over the fence ... are your neighbours
- Domestic violence
- What happens to your children when you part?
- Dividing up relationship property
- What happens when your relationship breaks up?
- Living together
- The family trust
- Making a will and estate administration
- Powers of attorney
- Motor vehicles, accidents and alcohol
- You and the police
- Giving evidence
- Going into business

Copies of these pamphlets may be obtained from the New Zealand Law Society, PO Box 5041, Lambton Quay, Wellington 6145, tel (04) 472 7837, fax (04) 473 7909, email pamphlets@lawyers.org.nz or from most district law societies or legal offices. They will be supplied free to individuals and non-profit community service organisations and at a small charge to others. The full text of all the pamphlets available in the *Law Awareness* series can be accessed through the NZLS website - www.lawyers.org.nz/pubaboutlaw.asp

All information in this pamphlet is to the best of the knowledge of the NZLS true and accurate as at the date below. However, no liability is assumed by the NZLS for any losses suffered by any person relying directly or indirectly on information in this pamphlet.

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