

# Justice and Community Safety Directorate

## Drink and drug driving laws for the ACT

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Driver impairment is a serious road safety issue. Impaired drivers are at a much higher risk of being involved in any crash than sober drivers and have a correspondingly higher rate of involvement in fatal crashes than other drivers.

Under section 19 of the ACT's *Road Transport (Alcohol and Drugs) Act 1977* it is an offence for a person to drive a motor vehicle on a public street or in a public place if the person has the prescribed concentration of alcohol or more in the person's breath or blood.

From 1 December 2010, under section 20 of the *Road Transport (Alcohol and Drugs) Act 1977* it is an offence for a person to drive a motor vehicle on a public street or in a public place if the person has a prescribed drug present in the person's blood or oral fluid. A 'prescribed drug' means the active ingredient in cannabis (delta-9-tetrahydrocannabinol), methamphetamine or MDMA (ecstasy).

Each year, more than 1500 people are caught drink driving in the ACT.

### The dangers of drink driving

It's fun to socialise with your friends, but if you are drinking, the safest options are to catch a bus or a taxi, get a lift with a sober friend, or stay overnight. Better still, if you plan to drive, don't drink.

Too many Canberrans are involved in alcohol-related crashes. Each year, alcohol contributes to about 25 per cent of road deaths in the ACT.

Alcohol affects your ability to be in control of your actions. If you drink then drive, you will be stopped!

Police conduct random breath testing to deter and detect drink drivers. ACT drivers can expect to be breath tested anywhere and at any time.

### Facts about alcohol

The effects of alcohol can:

- make it hard for you to concentrate on your driving
- slow down your reaction times

- reduce your ability to do more than one thing at a time
- affect your vision and hearing
- make you feel more confident, which may lead you to take more risks
- relax you, increasing your chances of falling asleep at the wheel
- make simple tasks more difficult

## What is blood or breath alcohol concentration (BAC)?

Blood or breath alcohol concentration is a measurement of the amount of alcohol in your body.

- Blood alcohol concentration is measured in grams of alcohol per 100mL of blood.
- A measurement of 0.05 BAC means your body contains 0.05g of alcohol per 100mL of blood or 210L of exhaled breath.
- As soon as you start drinking, your BAC begins to rise.
- It takes 30 to 60 minutes after you have stopped drinking for your BAC to reach its highest concentration.

Factors which can affect your BAC include:

- how much alcohol you drink
- the time period over which you consume alcohol
- your muscle to fat ratio
- how long since you have last eaten
- your weight
- the health of your liver
- whether you regularly drink
- the type of drink you consume

## How much can I drink and still keep below 0.05?

**As a general guide:**

**For men:** No more than two standard drinks in the first hour and one standard drink each hour after that.

**For women:** No more than one standard drink each hour, less for smaller women.

**Note:** Drivers restricted to a zero alcohol concentration should not drink any alcohol before driving.

## What is a standard drink?

Standard drinks all contain about the same amount (10 grams) of alcohol.

*Examples of standard drinks*

## Standard Drinks

A- 1 middy of full strength beer (285 ml)

B- 1 glass of fortified wine (60 ml)

C- Approx. 1 nip of spirits (30 ml)

D- 1 can (375 ml) of low alcohol beer

E- Approx. 1 small glass of table wine (100 ml)

F- Approx. 1 schooner of low alcohol beer (425 ml)

Remember, the only thing that will reduce your BAC is time. It takes your liver about one hour to process the alcohol in one standard drink. Therefore, after a heavy night's drinking it is quite possible to be 0.05 or over the next morning. Coffee, cold showers, mint confectionery, vitamins, vomiting or exercise will not reduce your BAC any sooner.

## What is my prescribed alcohol concentration?

- The prescribed alcohol concentration for ordinary drivers is 0.05g of alcohol in 100mL of blood or 210L of exhaled breath.
- The prescribed alcohol concentration for special drivers has been reduced from 0.02g of alcohol to zero.
- This means that it is an offence for a special driver to drive a motor vehicle if the person has any alcohol in his or her body.
- Higher penalties apply for different levels of alcohol concentration under the Act as people with a higher level of alcohol in their body pose a greater safety risk to themselves and other road users.

## Who is a special driver?

- the holder of a learner, provisional, probationary or restricted driver or rider licence
- the holder of a foreign driver or rider licence from certain countries (see note 3 for details)

- the driver of a public passenger vehicle including a taxi, bus, hire car and restricted hire car
- the driver of a dangerous goods vehicle
- the driver of a heavy vehicle that has a GVM or GCM of more than 15 tonnes
- a driver who is learning to drive a heavy vehicle over 4.5 tonnes GVM
- driver trainers while they are engaged in driver training (see note 4)
- an unlicensed driver

It's important to check whether you are a special driver, as special drivers are subject to a zero BAC.

**Please note:**

**1. The zero BAC only applies to heavy vehicle drivers when they are driving a heavy vehicle that has a GVM or GCM of more than 15 tonnes. So if they are driving their private car or some other private vehicle, they are subject to the same BAC of less than 0.05 that applies to other full licence holders.**

**2. The zero BAC only applies to public passenger vehicle drivers when they are driving a public passenger vehicle (a taxi, bus, hire car or restricted hire car). So if they are driving their private car or some other private vehicle, they are subject to the same BAC of less than 0.05 that applies to other full licence holders.**

**3. Drivers who hold a foreign driver or rider licence from a country that is not recognised by Austroads as having licences that correspond to Australian licences are 'special drivers'. The countries that are recognised by Austroads are: United States of America, Canada, United Kingdom, New Zealand, Japan, Singapore, Austria, Belgium, Denmark, Finland, France, Germany, Isle of Man, Greece, Ireland, Italy, Luxembourg, Netherlands, Croatia, Jersey, Norway, Portugal, Spain, Sweden, Switzerland, Guernsey and Malta. Drivers from recognised countries that hold the equivalent of an ACT full licence are not 'special drivers'.**

**4. 'Driver trainers' includes driving instructors, heavy vehicle driver assessors and any person who is supervising a learner driver (including parents and other unpaid persons).**

## **Can I be charged with a drink driving offence if I have consumed a cough mixture that contains alcohol or food that contains alcohol?**

It is unlikely that food or medicine, consumed in normal quantities, would produce a BAC reading above zero. However, the ACT's laws provide a specific defence for a person to whom a zero BAC applies, if the person registers a BAC below 0.02. The person can raise, as a defence, that the BAC reading is the result of the consumption of food, medicine etc.

## **When can I be breath tested?**

- The police can breath test drivers as part of random breath testing (RBT) at the roadside.
- They can test anyone in a car after an accident if it is not clear who was driving the car when the accident happened.
- They can also test people suspected of committing a culpable driving offence.
- If a breath screening test indicates the person has the prescribed alcohol concentration for that person, the police will take that person into custody for a breath analysis. This procedure is usually done at a police station.

## **When will I be asked to give a blood sample?**

- You may be required to give a blood sample if you cannot give a breath sample for health reasons, or because a breath analysis machine is not available.
- Blood samples must also be taken from people who are taken to hospital after traffic crashes unless a doctor or nurse believes that taking the sample would be harmful to the person.

## **What happens if I refuse to give a sample of breath or blood?**

- It is an offence to refuse to give a sample of breath or blood. The maximum penalty for a first offence is a fine of 30 penalty units and imprisonment for six months. The maximum penalty for a repeat offence is a fine of 30 penalty units and imprisonment for 12 months.

## **What happens if I am caught drink driving?**

- If your breath analysis result indicates you have the prescribed alcohol concentration (BAC), you may be arrested and charged or summonsed to appear in court to answer charges for a drink driving offence.
- If you have exceeded your limit by 0.05g of alcohol or more, the police must give you an **immediate licence suspension notice**.
- You may wish to obtain independent legal advice before your trial, as serious penalties, including imprisonment, can apply to drink driving offences.

## **What is an immediate licence suspension notice and how will it affect my driver licence?**

- If you commit a drink driving offence where you have exceeded the prescribed alcohol concentration that applies to you by 0.05g or more, or if you refuse a breath or blood test, you will be given an immediate licence suspension notice.
- If you are an ACT driver, the notice immediately suspends your licence for 90 days. You must surrender your licence to a police officer immediately and you cannot drive your vehicle anywhere while the suspension is in force.
- If you are an interstate driver, the notice immediately suspends your right to drive in the ACT (including the Jervis Bay Territory) while the notice is in force.

- It is an offence to drive your vehicle in contravention of the notice.
- The period of licence suspension must be deducted from any period of licence disqualification that a court may order as part of your sentence if you are convicted of a drink driving offence or refuse breath/blood test offence.
- You may apply to the Magistrates Court for a stay of the suspension notice.
- If the court grants a stay, your licence will no longer be suspended.

## I have a previous drink driving conviction - what will happen if I re-offend?

- Repeat drink drivers face higher penalties under the Act, including longer automatic disqualification periods.
- If you are caught drink driving on or after 1 December 2010 and you are a repeat offender you will not be eligible to apply for a restricted licence while you are disqualified.

## Levels of alcohol concentration

- level 1 less than 0.05g
- level 2 0.05g or more but less than 0.08g
- level 3 0.08g or more but less than 0.15g
- level 4 0.15g or more

## What penalties can a court impose for drink driving?

The table below summarises the penalties for drink driving offences.

### Penalties for drink driving in the ACT

	<b>Alcohol concentration (BAC)</b>	<b>Penalty</b>	<b>Minimum disqualification period</b>	<b>Default disqualification period</b>
<b>SPECIAL DRIVERS</b>	<i>Level 1</i> More than zero grams but less than .05 grams	<i>First offence</i> - Fine not exceeding \$700 <i>Repeat offence</i> - Fine not exceeding \$1400	<i>First offence</i> - 1 month <i>Repeat offence</i> - 3 months	<i>First offence</i> - 3 months <i>Repeat offence</i> - 12 months
<b>ALL DRIVERS</b>	<i>Level 2</i> .05 grams or more but less than .08 grams	<i>First offence</i> - Fine not exceeding \$700 <i>Repeat offence</i> - Fine not exceeding \$1400	<i>First offence</i> - 2 months <i>Repeat offence</i> - 3 months	<i>First offence</i> - 6 months <i>Repeat offence</i> - 12 months

	<b>Alcohol concentration (BAC)</b>	<b>Penalty</b>	<b>Minimum disqualification period</b>	<b>Default disqualification period</b>
<i>Level 3</i> .08 grams or more but less than .15 grams	<i>First offence</i> - Fine not exceeding \$1400 or imprisonment for a period not exceeding 6 months, or both <i>Repeat offence</i> - Fine not exceeding \$1400 or imprisonment for a period not exceeding 6 months, or both	<i>First offence</i> - 3 months <i>Repeat offence</i> - 6 months	<i>First offence</i> - 12 months <i>Repeat offence</i> - 3 years	
<i>Level 4</i> .15 grams or more	<i>First offence</i> - Fine not exceeding \$2100 or imprisonment for a period not exceeding 9 months, or both <i>Repeat offence</i> - Fine not exceeding \$2800 or imprisonment for a period not exceeding 12 months, or both	<i>First offence</i> - 6 months <i>Repeat offence</i> - 12 months	<i>First offence</i> - 3 years <i>Repeat offence</i> - 5 years	

**Note 1: For some offences, different penalties may apply to special drivers who are driver trainers.**

**Note 2: A level 1 Alcohol Concentration only applies to Special Drivers, such as taxi, bus, hire car, learner, provisional, probationary, restricted, heavy vehicle, dangerous goods vehicle etc.**

- In addition, under the *Crimes (Sentencing) Act 2005*, a court can make a good behaviour order or a reparation order.
- The court can order a person to undertake a rehabilitation program, such as the [Sober Driver Program](#) run by Karraliki (formerly ADFACT), as a condition of a good behaviour order.

**Karralika Programs Inc - formerly Alcohol and Drug Foundation of the ACT (ADFACT)**

**Postal address:** PO Box 2230, Tuggeranong ACT 2901

**Contact numbers:** Phone (BH) (02) 6163 0200

Fax (02) 6282 7777

**Website:** <http://karralika.org.au>

## **Where do I go if I need help to address my drinking and its effects on driving?**

- The ACT Department of Health's Alcohol and Drug Program 24 Hour Intake and Helpline can assist in referring drink drivers with alcohol dependence issues to treatment providers. Please click this link: [ACT Health](#)
- One phone call is all it takes to access help - the phone number is 6207 9977.

## **What about drug driving?**

- The ACT Legislative Assembly passed new laws to permit roadside drug testing of motorists for the presence of cannabis, methamphetamine and ecstasy.
- Police are now conducting random drug testing operations in the ACT.

## **What is the process for drug testing?**

- Drug testing is a three-step process. The first step is an oral fluid (saliva) screening test, usually conducted at the roadside using a disposable testing device.
- If this test is positive, you will be required to provide a sample of saliva for analysis. This sample will be divided into two parts.
- One part will be analysed immediately by an oral fluid analysis instrument and the other part will be sent to a laboratory for confirmatory analysis.
- If the laboratory analysis confirms that a drug is present, you will be prosecuted for a drug driving offence.
- If you cannot provide enough oral fluid for analysis, you may be required to give a blood sample for analysis.

## **What are the penalties for drug driving?**

- The maximum penalty for drug driving is a fine of 10 penalty units for a first offence, or 25 penalty units and up to 3 months imprisonment for a repeat offender.
- A court can also order a period of licence disqualification.
- It is an offence to leave the test area before testing is complete and it is also an offence to refuse a drug test.

## **Where do I go if I need help to address drug use and driving issues?**

- The ACT Department of Health's Alcohol and Drug Program 24 Hour Intake and Helpline can assist in referring drug drivers with drug dependence issues to treatment providers. Please click this link: [ACT Health](#)
- One phone call is all it takes to access help - the phone number is 6207 9977.