



GUIDE TO TRAFFIC OFFENCES AND BREATH TESTING PROCEDURES

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Govett Quilliam
THE LAWYERS



NEW PLYMOUTH

1 Dawson Street | Private Bag 2013 | New Plymouth 4342
Phone (06) 768-3700 | Fax (06) 768-3701



INGLEWOOD

92 Rata Street | PO Box 28 | Inglewood 4330
Phone (06) 756-8118 | Fax (06) 768-3701



www.thelawyers.co.nz

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INTRODUCTION

Many of you will know someone who has been caught DIC. Maybe you have had to blow in the bag yourself at some stage?

DIC stands for “drunk in charge”. In New Zealand this offence is more properly known now as EBA being “excess breath or blood alcohol”. It means the same thing - you are over the legal limit for driving, will be charged, will have to appear in court and will lose your licence.

The following pages are a general guide to the breath testing procedures and some related areas of Transport law. We offer some practical advice about what you should and should not do if you find yourself pulled over at a checkpoint. We tell you about Police powers and the sorts of penalties the Courts impose.

While we believe the advice is both accurate and up to date, we cannot possibly cover every scenario or specific case in this guide. There are many exceptions and exceptions to exceptions with most areas of law, and particularly in the case of Transport law.

At Govett Quilliam we deal with all areas of Transport law and are confident that we can help you. If you have a problem or question please do not hesitate to contact these lawyers who have particular experience with and interest in Transport Law:

SUMMARY OF BREATH TEST PROCEDURE

Passive Breath Test

A preliminary test known commonly as the “sniffer” and often used by Police at random check points. The sniffer is a breath alcohol sensing device. The Police Officer will hold it near your mouth and ask you to say something, for instance your name and address or where you have been. The sniffer ascertains whether there is any alcohol in your breath.

Very simply it weeds out the drivers who have not been drinking and who are then free to go. A positive test will usually mean you are then required to undergo a breath screening test.

There is no requirement that the Officer have good cause to suspect alcohol consumption or that he/she has witnessed bad driving. It is enough if an Officer sees you driving or attempting to drive *or* if he/she has good cause to suspect that you have recently committed an offence that involves driving. In other words, the requirement to co-operate can be totally random.

Evidential Breath Test

If the breath screening test is positive or if you fail or refuse to undergo it, the Police Officer will then require you to accompany him/her to the nearest police station for an evidential breath test. These days with the advent of “booze buses” (Police vehicles that contain evidential breath test machines), these tests can be done at or near the roadside too.

You are at this point being “detained” by the Police (different to being arrested, although if you do not co-operate you may be arrested) and your rights under the New Zealand Bill of Rights Act are triggered. In particular, your right to consult and *instruct* a lawyer without delay and in private arises. We suggest that you take up this right should you ever find yourself in this situation. The Police will provide you with a telephone and a list of lawyers and their telephone numbers. It does not cost you anything to ring a lawyer and don’t be concerned about waking your lawyer in the middle of the night. Lawyers on these lists or who specialise in traffic law are used to these calls! It is part of the job. It is also more important that you get the advice you need.

The evidential breath test machine is an electronic device which measures conclusively the alcohol in your breath. The machine requires a minimum of two breaths and produces two numerical readings (being micrograms of alcohol per litre of breath), the lower of which is your result. If your reading is over 400 micrograms per litre of breath you are over the legal limit and will be charged with EBA (excess breath alcohol).

Note that for drivers under the age of 20 years the limit is only 150, i.e. less than half the adult limit.

For an adult, if the evidential breath test reading is 400 or less the test is considered negative and you will then be free to go. It is possible however that the Police may still consider you incapable of driving and forbid you to do so for a period of time (normally 12 hours). In these circumstances you must comply with the Officer’s direction. Even though you are under the legal limit it is an offence to fail to comply with an Officer’s direction forbidding driving.

Blood Test

If you refuse or cannot complete an evidential breath test or if Police do not have an evidential breath test machine available you will be required to permit a blood specimen to be taken.

The blood specimen must be taken by a Medical Practitioner or a Medical Officer. There is no ability to refuse a blood test not even if you have a fear of needles or have what you think is some other “reasonable” excuse for not consenting to a blood test. Refusing to permit blood to be taken is also a qualifying offence for indefinite disqualification. (See page 7).

For an adult “the limit” is 80 milligrams of alcohol per 100 millilitres of blood and for drivers under 20 the limit is 30 milligrams of alcohol per 100 milligrams of blood.

Where you are just over the limit on an evidential breath test (a reading of between 400 and 600 micrograms per litre of breath) you have the option of electing a blood test. We are not doctors and do not pretend to know how the body processes alcohol, but it is possible to be just over the limit on a breath test and yet under the limit on a subsequent blood test. Factors such as how long ago you stopped drinking will have an effect on the test result. In those circumstances (which we stress are highly unusual) you are given the benefit of the lesser reading and would not be charged.

It may therefore be worth electing a blood test where the Police advise you this option is available following an evidential breath test (i.e. when the breath test result is between 400 and 600). Be aware though that in this case if the blood test is positive, you will be required to pay for it - approximately \$150.00 medical expenses (for the doctor) and approximately \$95.00 analysts fees.

Cooperation

We recommend to anyone required to go through breath testing procedures to co-operate with the Police. Being difficult, smart or refusing to comply is very likely to make matters worse and may well result in you being charged with an offence.

Technically you can refuse to talk into a “sniffer” device. You would then be required to accompany the Officer to a Police Station or booze bus for an evidential breath test and it *is* an offence to refuse to accompany the officer. You would then be arrested.

It is not an offence to refuse an evidential breath test once at the station or booze bus but as already stated, it is an offence to refuse a blood test.

At the end of the day you cannot avoid the consequences or get out of it by refusing to take the tests. If the refusals are continued eventually they lead to a requirement for a blood test from which there is no escape.

Unfortunately, we have seen people make matters much, much worse and be charged with all sorts of further offences by being silly and trying to get away and get out of the procedures. For instance people have taken off from the check point and not stopped for the Police car who chased them and then been charged with dangerous driving and failing to stop. People have been charged with obstruction, obscene language, assault on Police and similar offences for their abusive/aggressive behaviour whilst going through breath test procedures. Obviously that sort of behaviour does not impress a Judge and only stiffens the resulting sentence. On the other hand, confirmation from the Police that you were co-operative throughout the procedures goes in your favour.

PENALTY

The following is a general guide only as to the sorts of penalty Courts are currently imposing for EBA offences.

Firstly, there is mandatory disqualification for a minimum of 6 months for adults. For drivers under 20, when the limit is only 150 micrograms of alcohol per litre of breath the disqualification is 3 months minimum. A driver under 20 years of age can be charged as an adult if their breath/blood alcohol level is above the adult limit. When this occurs they are then subject to the same minimum period of disqualification as an adult, being 6 months.

Roadside licence suspension for 28 days now comes into force for drivers who are found to have a breath alcohol level above 650 micrograms of alcohol per litre of breath or a blood alcohol level above 130 milligrams per 100 millilitres of blood. Previously the levels were 800 micrograms and 150 milligrams. This suspension is in addition to any court imposed penalty.

For a first offence a Judge is likely to leave the disqualification at 6 months (i.e. the minimum he/she can impose) *provided* your reading was not too high and if there are no other aggravating features. For instance, if you were charged with careless or dangerous driving from the same incident or obstruction or assault then in those circumstances the disqualification imposed would almost certainly be longer.

Certain combinations of offences also trigger what the Court terms “indefinite disqualification”, this being disqualification for a minimum of one year one day. We have already talked about two of those offences - failing to accompany an enforcement Officer and refusing to permit a blood specimen to be taken. This provision also applies where you have two EBA convictions within five years and one of them was a very high reading - more than 1000 on a breath test or more than 200 on a blood test (i.e. 2½ times the legal limit).

Apart from the mandatory disqualification there will also be a fine or other more punitive penalty imposed. For EBA offences the maximum fine is \$4,500.00 although courts rarely go anywhere near that high. A basic rule of thumb for first offences is that the Judge will transfer your evidential breath test reading into dollars, for example, if your reading was 550 micrograms you could expect a fine of \$550.00 or thereabouts *plus* court costs (currently \$132.33) which are imposed in every case. This could be less if you are able to pay the fine in full on the day of sentencing.

For a second offence Judges usually impose Community Work and a third offence, particularly within a short space of time (i.e. less than five years) will very likely result in imprisonment.

The penalties for a third or subsequent offence have gone up as from 1 March 1999. For a first or second offence the maximum term of imprisonment is three months but for a third (or worse) offence the maximum fine has been increased to \$6,000.00 and the maximum term of imprisonment is now two years. Minimum disqualification is one year one day and so requiring anyone caught under this to re-sit and pass the practical driving test before they can drive again.

Parliament and the Courts are most definitely getting tougher and tougher on drunk drivers. The Courts these days have very little sympathy for those caught over the limit - no excuses are accepted.

“THREE STRIKES AND YOU’RE OUT” SCHEME

The Act has been recently amended so as to provide for tougher penalties for repeat offenders.

For the first offence there are the current Court imposed penalties. For a second offence there is an immediate road side licence suspension for 28 days for drivers who have had one previous drink driving conviction in the past four years. Their breath or blood alcohol level is irrelevant. This is in addition to Court imposed penalties.

For a third or subsequent offence committed by a driver who has two previous drink driving convictions in the past four years (in addition to any Court imposed penalties) there is an immediate vehicle impoundment for 28 days. The driver will also face an immediate suspension of licence for 28 days.

The message loud and clear and which we endorse is do not drink and drive! A taxi home or an agency such as “Pro-drive” is obviously much, much cheaper and less stressful and embarrassing than being apprehended and charged with EBA.

Remember, it is legally impossible to obtain name suppression in a drink driving case.

CONFISCATION

For many years the Court has had a discretionary power to confiscate the motor vehicles of offenders convicted of EBA offences.

Confiscation is now mandatory on a second ‘driving offence’ where the second offence (be it EBA, refusing to supply a blood specimen, driving while disqualified, dangerous driving or one of the other listed offences) is committed within four years of the first, unless confiscation will result in extreme hardship to the offender or other persons, e.g. family.

Where a vehicle is confiscated the offender loses the actual car and it is sold. The net sale proceeds are returned to the offender but the sale price is inevitably lower with a forced sale and the costs of sale and any outstanding money owed to the Ministry of Justice are also deducted from the sale proceeds.

POWERS OF POLICE - YOUR RIGHTS AND OBLIGATIONS

Have you ever been required by Police to go through the breath test procedures? Have you wondered what your rights and obligations are should a Police Officer pull you over?

The following are some useful things to know and remember:

- Firstly, you do have to stop when signalled to pull over by a Police Officer or when being followed by a vehicle displaying flashing blue or blue and red lights or sounding a siren.
- If asked, you must give your name, address and date of birth.

- Similarly, if asked, you must identify the owner of the vehicle you are driving.
- You now have to carry your drivers licence with you. It must be produced without delay for inspection if a Police Officer asks to see it.
- You can be prohibited from driving for a certain period and required to surrender your car keys where an Officer believes on reasonable grounds that you are for the time being “incapable of having proper control of your vehicle”. As stated earlier this can occur even when a breath test has confirmed that you are under the legal limit.
- When you are given the right to telephone a lawyer, (which arises when the Police require you to accompany them for purposes of an evidential breath test or blood test), do it. Ring your lawyer and check with them your rights and obligations.

We want you to be aware of your rights and obligations but again repeat that it will be in your best interests to co-operate with the Police. Think damage control - don't make matters any worse.

Don't lie to Police, you are unlikely to gain anything by getting smart!

If you are charged and told to appear in Court consult us. We can advise you about the process, and will check that the correct testing procedures were followed. We will appear with you in Court and speak on your behalf to the Judge ensuring that all relevant and/or special circumstances are put forward.

DUTIES IN CASE OF AN ACCIDENT

Ever been a driver involved in an accident or wondered what your legal obligations as a driver in an accident are?

Common-sense stuff really but whether you are in the right or wrong:

- Stop your car and don't just stop but get out and look to see if anyone is injured or requires assistance. Failing to stop is an offence and so is failing to ascertain injury or render all practicable assistance to an injured person. These offences carry a mandatory penalty of one year disqualification in addition to other penalties imposed (e.g. a fine/community work/term of imprisonment).
- If a person is injured in an accident including any passengers in the vehicle, the driver must report the accident to the Police as soon as reasonably practicable, and in any case not later than 24 hours after the time of the accident, unless the driver is incapable of doing so by reason of injuries sustained in the accident.
- If no one is injured but there is damage to property, e.g. another vehicle, a fence, road sign or power pole, etc., you must notify the owner of that property within 48 hours of the accident or if the owner is not readily contactable or identifiable report the accident to the Police within 60 hours.

LIMITED LICENCES

A limited licence enables someone who is disqualified from driving to drive for a specified purpose, normally work purposes. Not everyone can apply for a limited licence as the Land Transport Act 1998 sets out who can and who cannot.

In order to obtain a limited licence you need to show that if you do not obtain a limited licence you will face suffering either “extreme undue hardship” and/or someone else will face suffering “undue hardship.”

Extreme undue hardship normally means the loss of your job and the financial flow on effects from that. Mere inconvenience is not itself enough. For you to be able to show undue hardship to someone else it is normally the flow on effects of the financial hardship which you will suffer. This can include financial hardship to a partner or employer if you are unable to drive and have to resign from your job.

You also need to show that you are not a risk to public safety as this is a noted ground on which an application can be refused. If you do have previous drinking convictions we can assess your situation and advise you on your chances of obtaining a limited licence. We have applied successfully for clients who have had their applications opposed by Police on this basis.

If you are convicted of some offences including excess breath blood alcohol there is a mandatory 28 day stand down period from the date of conviction before you can apply for a limited licence. We would prepare your application in that period and have it ready to be heard at the end of that time.

For other disqualifications such as excess demerit points or careless driving there is no stand down period and you can apply immediately. We are happy to discuss with you whether you will be eligible for a limited licence and the likely terms and conditions of that. We would prepare the actual application, liaise with Police and appear for you in Court. Just give us a call.

DEMERIT POINTS DISQUALIFICATION

You will be aware that these days you incur “demerit points” with every speeding ticket received (except in the case of speed camera tickets which do not give rise to demerit points).

The number of demerit points incurred depends on the extent of your speeding as set out below.

Speeding Offences	No. Of Demerit Points
Exceeding limit by up to 10 km/hr	10
Exceeding limit by 11-20 km/hr	20
Exceeding limit by 21-30 km/hr	35
Exceeding limit by 31-35 km/hr	40
Exceeding limit by more than 36 km/hr	50

Other “tickets” also attract demerit points - for instance passing on a no passing line, failing to observe give way rules or failing to stop at a stop sign, following another vehicle too closely. Similarly, minor traffic offences attract demerit points, e.g. careless driving.

Where you accumulate 100 or more demerit points in any two year period your drivers licence is suspended for three months. In other words you are disqualified and are unable to drive any vehicle for three months. Breaching this suspension is punishable by the same penalties as driving while disqualified.

You are however eligible to apply for a limited licence immediately. The normal one month stand-down period that applies to disqualifications for drink-driving offences does not apply to demerit points disqualifications. That means that with a bit of forethought (i.e. if you contact us when you receive the ticket that takes you over 100 demerit points), we can prepare and arrange to have your limited licence ready to kick in as soon as your licence is formally suspended. (Normally it takes a few weeks after your getting the final ticket before the Land Transport New Zealand in Wellington record the demerit points and get around to suspending your licence).

SPEEDING FINES

As from 1 March 1999 the fines for speeding have been increased and are now as follows:

Speed	Fine
Exceeding limit by up to 10 km/hr	\$ 30.00
Exceeding limit by 11-15 km/hr	\$ 80.00
Exceeding limit by 16-20 km/hr	\$ 120.00
Exceeding limit by 21-25 km/hr	\$ 170.00
Exceeding limit by 26-30 km/hr	\$ 230.00
Exceeding limit by 31-35 km/hr	\$ 300.00
Exceeding limit by 36-40 km/hr	\$ 400.00
Exceeding limit by 41-45 km/hr	\$ 510.00
Exceeding limit by 46-50 km/hr	\$ 630.00

Exceeding the permanent posted speed limit by more than 40 km/hr will result in your drivers licence being suspended immediately for 28 days and often in a Court prosecution, for driving at dangerous speed where a further disqualification and a hefty fine are likely.

HOW WE CAN HELP YOU

Govett Quilliam is Taranaki's largest law firm. We have the people, the experience and the resources to assist you, whatever your case may be.

We have prepared this guide as a guideline to traffic offences and breath testing procedures. If you require further information, or have any questions about this guide please contact us.

Our specialist partner with experience in traffic offences and breath testing procedures is:



Andrew Laurenson
Partner

DDI: (06) 768-3711
Andrew.Laurenson@gqlaw.co.nz

Please call our office if you would like further information on any guides prepared by our firm. Copies are also available on our website.

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