

Drive while suspended

July 2013

What do these words mean?

Words that are highlighted in **bold** are explained in our *What do these words mean?* fact sheet.

What is 'drive while suspended'?

Your **charge sheet** says that the police **charged** you with an **offence** of 'drive while **suspended**'. This means that the police have caught you driving after your licence was suspended. Your licence would have been suspended by the court, police, VicRoads or the sheriff.

Whether you are guilty depends on the exact facts and circumstances of your case. Look at the 'Details of the charge' in your charge sheet to see what the police officer wrote about your offence. The magistrate refers to this in the courtroom.

Note: if the sheriff suspended your licence for not paying fines, the court will treat the offence less seriously than other offences of drive while suspended.

What does the prosecution have to prove?

The **prosecution** has to prove that:

- you were driving on a highway, and
- your licence was suspended.

What can I do today?

Plead guilty

If you agree that you did break the law, tell the court staff that you are **pleading** guilty. Go into the courtroom. The police prosecutor reads out the **statement of alleged facts**. The magistrate finds you guilty and gives you a penalty.

If you plead guilty the magistrate treats your plea as a sign that you are co-operating and may give you a less severe penalty.

See our *Pleading guilty* fact sheet to help you work out what to say to the magistrate.

Plead not guilty

If you believe that you did not break the law or you disagree with what the **informant** says you did, you must tell the police prosecutor that you plan to plead not guilty. They will hold a **summary case conference** with you before your case is heard in court. After the conference, if you still wish to plead not guilty tell the magistrate. The magistrate **adjourns** your case for another day.

You will come back to court for a **contested hearing**. At this **hearing** the magistrate listens to **evidence** from you and the police before making a decision. You should have a **defence**. Saying that you did not know you were breaking the law will not be a good enough defence.

If you are pleading not guilty, get legal advice before the contested hearing. Also see our *Pleading not guilty* fact sheet.

Possible defences

You may have a defence if it was an honest and reasonable mistake that you thought you were allowed to drive. The magistrate will decide if they think you made a reasonable mistake.

Can I adjourn today's hearing?

You can ask the magistrate for an adjournment if you want to get a private lawyer. Adjournments are hard to get for any other reason. The magistrate may say no.

Could I get a penalty even if I am not guilty?

Yes. The magistrate can still suspend your licence even if they believe that you did not know about the suspension and find you not guilty. They can order you to **serve** the original licence suspension that you did not know about.

What are the penalties if I am found guilty?

Fines

The magistrate may give you a fine. You can get:

- up to 30 penalty units – a first offence of drive while suspended
- up to 240 penalty units – if you have been found guilty of driving while suspended before.

The maximum penalty for drive while suspended by the sheriff is a fine of ten penalty units.

One penalty unit is about \$145.

Losing your licence

The magistrate can choose to extend the suspension period.

Most magistrates will choose to do this and add an extra suspension period to your licence. This is because you have not taken your previous suspension order seriously.

The magistrate can also:

- **cancel** your licence or permit for a certain period of time
- make a **court order** that stops you from applying for a licence or permit for a certain amount of time.

If the magistrate **cancels** your licence for a period of time, you should not drive at all during this time. There are no exceptions. For example, you cannot drive to work or to pick up your children. There are no special licences that allow you to drive some of the time.

It is an offence to drive while **disqualified** or suspended. There are very serious penalties for driving when you are not supposed to.

Jail

The magistrate can choose to send you to jail instead of choosing to give you a fine. You can get up to:

- four months – for a first offence of drive while suspended
- two years – for a second offence or more of drive while suspended.

Other penalties

The magistrate can also choose to place you on a **community corrections order**.

How does the magistrate decide what penalties to give?

The magistrate looks at:

- how serious your offence is
- if you have been found guilty of similar offences before
- what else is happening in your life.

What else might happen if I am found guilty?

Criminal record

What happens in court goes into your **criminal record**. This includes:

- the finding of guilt
- a **conviction**, if there is one
- penalties.

The court and the police can see your criminal record. Sometimes they can let other people know what is in your criminal record. For example, a criminal record, especially with convictions, may make it harder for you to get some jobs or get visas to some countries.

See our *Criminal records* fact sheet.

Can I appeal the magistrate's decision?

Yes. If you do not agree with the decision you can appeal to the County Court. You have 28 days to do this. Get legal advice before you decide. You could get a higher penalty.

See our *Appealing a Magistrates' Court decision* fact sheet.

How do I pay a fine?

You can pay the fine at any Magistrates' Court. Go to the court counter and ask the staff for help.

Let the magistrate know if you might have trouble paying the fine. There are options. You can ask the magistrate to:

- make a plan for you to pay bit by bit
- give you community work instead of the fine.

If you do not pay, the court can issue a **warrant** for your arrest.

Where can I get help?

Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

Victoria Legal Aid

Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

Website

www.legalaid.vic.gov.au