

The Shopfront

YOUTH LEGAL CENTRE

Traffic Fact Sheet 7 – Serious traffic offences and courts

1 Penalty notice offences

Most types of traffic offences can be dealt with by penalty notice (an on-the-spot fine). The police can choose whether to give you a penalty notice or send you to court.

If you receive a penalty notice, you may choose to have it dealt with by a court if you think you are not guilty or the amount of the fine is too high. You can do this by sending in the “court election” form on the back of the penalty notice or available online at http://www.sdro.nsw.gov.au/lib/docs/forms/sdr_pn_020.pdf (see Traffic Fact Sheet 4 – *Licence Suspension and Appeals*).

2 Traffic offences dealt with by courts

There are some traffic offences that cannot be dealt with by penalty notice and are always dealt with by a court. These include:

- driving while disqualified, cancelled, suspended, or refused;
- driving when you have not held a licence in the last 5 years;
- driving at a speed, or in a manner, dangerous to the public;
- drink-driving or drug-driving offences;
- dangerous or negligent driving causing death or grievous bodily harm;
- failing to stop and give assistance in an accident involving death or injury to another person; and
- police pursuit “Skye’s law” offences.

3 Which court will I go to?

Nearly all traffic offences are dealt with by the Local Court, even for people who were under 18 at the time of the offence.

The Children’s Court will deal with a traffic offence if you are too young to have a licence (this means under 16 for a car or 16 and 9 months for motorbike), or if you are going to the Children’s Court for a related criminal offence (e.g. driving a stolen car).

Very serious offences such as manslaughter or dangerous driving causing death or grievous bodily harm will usually go to the District Court.

4 What are the penalties?

Penalties for traffic offences are tough and may include heavy fines, imprisonment and disqualification from driving. Even tougher penalties are imposed for second or subsequent offences.

Immediate roadside licence suspension may also apply for drink-driving and speeding offences, or offences that cause serious injury or death.

5 Will I be disqualified from driving?

Many traffic offences carry an automatic disqualification. This means that a person who is convicted of one of these offences will be disqualified from driving for the *automatic* period set out by the law, unless the court decides to make a different order.

Instead of imposing the automatic disqualification, the court may:

- Reduce the disqualification to the *minimum* period set out by the law; or
- Increase the disqualification period (there is no upper limit on the disqualification period. However the court must specify a period; it can't simply disqualify a person for life).
- In special cases, the court may decide not to convict the offender at all, but to deal with the matter under section 10 of the *Crimes (Sentencing Procedure) Act* (or an equivalent law for juveniles). This means that there will be no penalty, no conviction and no disqualification.

6 Penalties and disqualifications for common traffic offences

For offences involving driving without a licence see *Traffic Fact Sheet 3 – Unlicensed Driving*. For offences involving alcohol or drugs see *Traffic Fact Sheet 8 – Drugs, alcohol and driving*.

Offence		Fine (max)	Prison term (max)	Disqualification (automatic)	Disqualification (minimum)
Dangerous driving occasioning death	First offence	n/a	10 years	3 years	12 months
	Second offence	n/a	10 years	5 years	2 years
Aggravated dangerous driving occasioning death	First offence	n/a	14 years	3 years	12 months
	Second offence	n/a	14 years	5 years	2 years
Dangerous driving occasioning GBH	First offence	n/a	7 years	3 years	12 months
	Second offence	n/a	7 years	5 years	2 years
Aggravated dangerous driving occasioning GBH	First offence	n/a	11 years	3 years	12 months
	Second offence	n/a	11 years	5 years	2 years
Negligent driving	First Offence	\$3,300	18 months	3 years	12 months

Offence		Fine (max)	Prison term (max)	Disqualification (automatic)	Disqualification (minimum)
occasioning death	Second or subsequent offence	\$5,500	2 years	5 years	2 years
Negligent driving occasioning grievous bodily harm	First Offence	\$2,200	9 months	3 years	12 months
	Second or subsequent offence	\$3,300	12 months	5 years	2 years
Furious or reckless driving, or driving in a manner dangerous to the public	First Offence	\$2,200	9 months	3 years	12 months
	Second or subsequent offence	\$3,300	12 months	5 years	2 years
Failing to stop and give assistance in accident involving death or injury (but note you can be charged with a more serious offence if death or GBH is caused)	First Offence	\$3,300	18 months	3 years	12 months
	Second or subsequent offence	\$5,500	2 years	5 years	2 years
Failing to stop and give assistance in accident involving death	First offence	n/a	10 years	3 years	12 months
	Second or subsequent offence	n/a	10 years	5 years	2 years
Failing to stop and give assistance in accident involving grievous bodily harm	First offence	n/a	7 years	3 years	12 months
	Second or subsequent offence	n/a	7 years	5 years	2 years
Exceed speed limit by more than 30km/h but not more than 45km/h		\$2,200	n/a	3 months	3 months
Exceed speed limit by more than 45 km/h		\$2,530	n/a	6 months	6 months

7 What is a habitual traffic offender declaration?

“Habitual traffic offenders” are drivers who are found guilty of 3 serious traffic offences (committed on separate occasions) within 5 years.

A habitual traffic offender declaration is automatically imposed by RMS. It means an extra 5 years’ disqualification from having a licence, unless a court makes a different ruling.

If a court makes a different ruling, the disqualification period can range anywhere from the minimum period, which is 2 years, to the maximum, which is disqualification for life. This disqualification period is in *addition* to any disqualification period the person is already serving.

The court has power to *quash* a habitual traffic offender declaration (which means getting rid of it altogether) if the magistrate thinks it is “a disproportionate and unjust consequence having regard to the total driving record of the person and the special circumstances of the case”. Magistrates are often willing to quash habitual traffic offender declarations, especially for young people.

You can apply to the Local Court to have a habitual offender declaration quashed at the time of conviction or at a later time. You can find the application form at http://www.localcourt.justice.nsw.gov.au/Pages/forms_fees/forms.aspx.

There is no right of appeal to a higher court if your application is refused, but you may be able to make another application to the Local Court at a later date.

New: some changes to the law will take effect on 28 October 2017. These changes will abolish habitual traffic offender declarations (see *Traffic Fact Sheet 14 – Important Changes to Licence Disqualification Laws in 2017*).

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The information in this fact sheet contains a basic summary of the law in New South Wales. It is not legal advice. If you need legal advice, you should speak to a lawyer.

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