

The Shopfront

YOUTH LEGAL CENTRE

Traffic Fact Sheet 14 Important changes to licence disqualification laws (and how to get disqualifications lifted)

1 Introduction

Important changes to the law came into effect on 28 October 2017 under the *Road Transport Amendment (Driver Licence Disqualification) Act 2017*.

These changes:

1. Reduce the penalties and disqualification periods for some offences including driving while suspended, refused, cancelled or disqualified;
2. Allow some people who have been disqualified for long periods of time to get rid of their disqualifications and re-apply for their licence;
3. Abolish habitual traffic offender declarations;
4. Give police more powers to take action against serious and repeat offenders by confiscating number plates and impounding vehicles.

2 Reduced penalties and disqualifications for unlicensed driving offences

People who commit offences such as driving while unlicensed, suspended, cancelled or disqualified can face serious penalties.

Under the old law, the automatic disqualification periods were very harsh and could add up to many years off the road. Driving while suspended, cancelled or disqualified led to an automatic disqualification of either one or two years, on top of any existing suspension or disqualification.

Under the new law:

- The maximum penalties for most of these offences are reduced;
- The automatic (default) disqualification periods are also reduced;
- The court can reduce the disqualification even further, down to the minimum period; and
- The court can also decide when the disqualification will start. It won't automatically be cumulative on the existing suspension or disqualification.

This table summarises the *new* penalties and disqualifications for offences involving driving without a licence. These apply to offences dealt with in court after 28 October 2017 (even if the offence was committed before that date).

For more information about how the courts deal with these types of offences, see *Traffic Fact Sheet 3 – Driving without a licence* and *Traffic Fact Sheet 7 - Serious traffic offences and courts*.

Unlicensed driving offences (<i>Road Transport Act 2013</i>)	Penalties	First Offence	Second or Subsequent Offence
Driving while suspended due to fine default (section 54(5))	Max. court-imposed fine	\$3,300	\$5,500
	Max. prison term	Not applicable	6 months
	Minimum/automatic disqualification	1 month/3 months	3 months/12 months
Driving while disqualified, cancelled, suspended or refused (section 54(1)(3) or (4))	Max. court-imposed fine	\$3,300	\$3,300
	Max. prison term	6 months	12 months
	Minimum/automatic disqualification	3 months/6 months	6 months/12 months
Unlicensed driver (if driver has never been licensed or not held a licence in last 5 years) (section 53(3))	Traffic Infringement Notice	\$815	Not applicable (must go to court)
	Max. court-imposed fine	\$2,200	\$3,300
	Max. prison term	Not applicable	6 months
	Minimum/automatic disqualification	Court decision	3 months/12 months
Unlicensed driver (section 53(1))	Traffic Infringement Notice (if driver had a licence that expired less than 2 years before)	\$531	\$815
	Traffic Infringement Notice (if driver had a licence that expired 2 years or more before)	\$637	\$1,275
	Max. court-imposed fine	\$2,200	
	Max. prison term	Not applicable	
	Disqualification	Court decision	

3 Getting disqualifications lifted after a period of good behaviour

Under the new law, you may apply to the Local Court to have your disqualifications lifted early if:

- you have been of good behaviour (which means you have not been convicted of any traffic offences):
 - for at least 4 years, if at any time in the last 4 years you have been convicted of a “major offence” (eg drink- and drug-driving offences, dangerous driving) or for exceeding the speed limit by 30 km/h or more;

- for at least 2 years, if the disqualification is for another type of offence (eg driving while unlicensed, suspended or disqualified) or is due to a habitual traffic offender declaration; and
- you have *never* been convicted of a very serious driving offence (eg offences involving death or grievous bodily harm, driving dangerously while avoiding a police pursuit, failure to stop and assist after an impact causing death or grievous bodily harm, intentional menacing driving or predatory driving); and
- the disqualification does not relate to a “mandatory interlock order” (for drink-driving).

The Local Court must consider community safety in deciding whether it is appropriate to lift a disqualification period.

If the court orders your disqualifications to be lifted, you will then need to apply to the RMS to get your licence back.

4 Habitual traffic offender declarations abolished

A habitual traffic offender declaration was an extra 5 years’ disqualification that was imposed if someone committed 3 serious traffic offences within a 5-year period.

From 28 October 2017, habitual traffic offender declarations cannot be made any more.

If you have an existing habitual traffic offender declaration from before that date, you can apply to a Local Court for it to be quashed or you can apply to get it removed along with other disqualifications (see Part 3 of this document).

See *Traffic Fact Sheet 7 – Serious traffic offences and courts* for more information about habitual traffic offender declarations.

5 Vehicle sanctions

Under the new law, police have greater powers to impose on-the-spot vehicle sanctions. This includes the power to confiscate numberplates or vehicles for 3 or 6 months.

- Disqualified drivers who are caught exceeding the speed limit by more than 30km/h can have their numberplates confiscated or their vehicle impounded for *3 months*.
- Disqualified drivers or drivers who have been never licensed can have their numberplates confiscated or their vehicle impounded for *6 months* if they are repeat offenders, i.e. if they have two or more prior convictions for certain offences (eg driving while never licensed, suspended, cancelled or disqualified) within the past 5 years.

As with existing vehicle sanctions, the new sanctions only apply to “operating offenders” (i.e. a disqualified driver who is also the registered operator of the vehicle).

In cases where the offender is driving another person’s vehicle, the police will notify RMS of the incident, and RMS will then send the registered operator a suspension warning letter. Once a person has received a warning letter, suspension action may be taken against the vehicle if a further offence is committed in that vehicle.

A person can apply to the Local Court after five days to have their numberplates or vehicle returned, but they must be able to show “extreme hardship” to a person other

than the offender. This will enable a business owner, or a family, who relies on the vehicle to have it returned.

For more information about confiscation of vehicles, plates, etc, see *Traffic Fact Sheet 13 – Confiscation, forfeiture and impounding of vehicles*.

6 More information

For information from Legal Aid:

<https://www.legalaid.nsw.gov.au/publications/factsheets-and-resources/are-you-disqualified-from-driving>

For information from the RMS on the licence disqualification reforms (including links to application forms): <http://www.rms.nsw.gov.au/roads/safety-rules/demerits-offences/suspension-disqualification/reforms.html>

For a summary of the changes from the NSW Department of Justice:

<http://www.justice.nsw.gov.au/Pages/Reforms/driver-licence-disqualification.aspx>

For more information about the new Act and its progress through Parliament:

<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3433>

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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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