

# The Shopfront

## YOUTH LEGAL CENTRE

### Traffic Fact Sheet 13 Confiscation, impounding & forfeiture of vehicles

#### 1 Introduction

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The police can take away your car, motorbike or numberplates if they have reason to believe that your vehicle was involved in certain types of offences.

How long they can take it for, and how you can get it back, depends on a few factors such as the seriousness of the offence, your driving record, and whether anyone else relies on the vehicle.

#### 2 When can police impose sanctions?

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The power of the police to take away your vehicle or plates is called a “sanction”. Police can impose sanctions in different situations including:

##### 2.1 Sanctionable offences

Police can impose sanctions if they reasonably believe that a vehicle has (at any time in the last 10 days) been involved in a “sanctionable offence”.

These include offences involving police pursuits, speeding more than 45km/h over the speed limit, street racing, burnouts, wheelies and donuts.

From 3 December 2018, “sanctionable offences” also include:

- high range PCA,
- middle range PCA,
- refusing to submit to a breath analysis or provide a blood sample,

if the person has, in the five years before the current offence, been convicted of an “alcohol-related major offence”.

For “sanctionable offences”, the police can only take away your vehicle or numberplates if the offence was committed by an “offending operator” (that is, if you are the driver as well as the registered owner/operator of the vehicle).

##### 2.2 Disqualified or unlicensed driving

From 28 October 2017 onwards, the police may impose sanctions if they reasonably believe that a vehicle:

- is being driven by an “offending operator” (i.e. registered owner/operator) who:
  - is disqualified or has never been licensed; *and*
  - has, on 2 or more previous occasions in the past 5 years, been convicted for driving while disqualified or driving while never licensed; or
- is being driven by an “offending operator” who is disqualified *and* is exceeding the speed limit by more than 30km/h.

## 2.3 Other situations

Police may also impose sanctions in other situations, for example, if they reasonably believe that a vehicle is being driven:

- in breach of a production notice (a requirement to surrender the vehicle to a police officer within a set period of time);
- during a numberplate confiscation period; or
- by someone who has been charged with a numberplate offence.

## 3 What sanctions can be imposed?

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Police may confiscate your vehicle or your numberplates, or both. They may:

- immediately seize and take your vehicle;
- give you a “motor vehicle production notice” requiring you to produce the vehicle at a specified place within a specified time;
- immediately confiscate the numberplates from the vehicle; or
- give you a “numberplate production notice” requiring that you remove and produce the number plates to police within 5 business days.

Your vehicle or plates will be confiscated for 3 months (or 6 months if the sanction is being imposed for a “sanctionable offence” and the owner/driver is already disqualified from holding a licence). You can apply to a court to get them back early (see below).

During a numberplate confiscation period it is an offence to drive the vehicle, tamper with or remove the notice, drive with another numberplate or make false statements to have the numberplates or vehicle released. You could be fined up to \$3,300 for doing any of these things.

If you do not comply with a production notice to hand over your vehicle or numberplates, this is an offence and the maximum penalty is a fine of \$3,300. If you are found guilty at court, or if you are given a penalty notice and you don't challenge it, Roads and Maritime Services (RMS) may also suspend your registration for up to 3 months.

**Warning:** for “sanctionable offences” or for failing to comply with a production notice, repeat offenders could have their vehicle taken away forever. See “*Forfeiture of vehicle*” below.

## 4 Return of impounded vehicles or seized plates

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Your vehicle or numberplates will be automatically released at the end of the numberplate confiscation or impound period (3 or 6 months) unless:

- the court orders that your vehicle or plates be returned earlier (see below); or
- there are outstanding fees relating to movement, towing or storage of the vehicle. These must be paid before your vehicle is released. The fee will be either the actual cost of towing and storage or a set amount determined by law, whichever is the lower amount. It costs approximately \$20 per day the vehicle is kept in storage;
- your vehicle is forfeited, which means you will not get it back (see below).

## 5 How can I get an early release of my numberplates or my impounded vehicle?

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You can apply to the Local Court to get your car or numberplates back before the impound or confiscation period ends.

You do not need to be the registered owner of the vehicle to make the application but you will need to show the court that you need or use the vehicle.

There is a fee for lodging the application, but this can be waived if you are suffering from financial hardship.

However, a court *cannot* order that a vehicle or numberplate be released within 5 working days of the impounding or confiscation. In other words, you will have to wait at least 5 days (and possibly longer) to get your vehicle or plates back.

The court will consider:

- whether it is reasonably likely that the vehicle will be used for 'hoon' type offences again; or
- any extreme hardship caused to someone other than the registered owner because the vehicle or numberplates have been taken away.

## 6 Forfeiture of vehicle

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If you are found guilty by a court of:

- a "sanctionable offence", and you have previously been found guilty of a sanctionable offence within the last 5 years; or
- using a vehicle in connection with a numberplate offence; or
- failure to comply with a production notice, and you have previously been found guilty of a similar offence within the last 5 years;

your vehicle will be automatically forfeited, unless the court orders that it should not be.

If your car is forfeited, this means it will be taken away from you permanently. It may be sold by the police or used for crash testing.

At the time of making the guilty finding, the court *may* make an order that the car should *not* be forfeited, if satisfied that the forfeiture will cause extreme hardship to the offending operator or to any other person. Instead, the court may impound your vehicle or confiscate your numberplates for as long as the court thinks is appropriate.

If your vehicle is forfeited due to a finding of guilty, you can appeal against the forfeiture in the same way as you would appeal against a sentence or penalty. If your case was dealt with in the Local Court, this means you would lodge a severity appeal to the District Court.

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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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