

The Shopfront

YOUTH LEGAL CENTRE

Traffic Fact Sheet 3 – Driving without a licence

1 Driving without a licence

Driving without a valid licence is a serious offence, even if you are a safe driver.

You could get a hefty fine, and maybe even some time in prison.

You could also be disqualified from having a licence.

2 Important terms

The offences and penalties are different depending on whether you were unlicensed, never licensed, suspended, refused, disqualified or cancelled.

Unlicensed means that you simply don't have a licence – either you have never had one, or your licence has expired.

Suspended means that your licence has been taken away by the police or RMS (Roads and Maritime Services, formerly RTA), usually for one of the following reasons:

- exceeding your demerit points limit;
- driving as an unaccompanied learner;
- speeding more than 30km/h over the speed limit; or
- not paying your fines.

Usually, the suspension is for a fixed period (e.g. 3 months) and your licence is automatically given back to you at the end of the suspension period (unless it has expired or been cancelled in the meantime).

A fine default suspension is not for a fixed period, but will be lifted when you sort out your fines (e.g. by paying them, making some payments on a payment plan, starting a Work and Development Order, or getting them written off).

For more information see *Traffic Fact Sheet 4 - Licence suspension and appeals*.

Refused means that you have tried to apply (or re-apply) for your licence but have been stopped from doing so, e.g. because you have outstanding demerit points. Refusal is usually for 3 months, similar to a suspension.

Cancelled means that your licence is no longer valid and you will have to apply for a new one when you are eligible. Your licence can be cancelled if:

- your licence has already been suspended for 6 months due to unpaid fines and you still haven't sorted out your fines;
- the RMS thinks you are no longer a fit and proper person to hold a licence (e.g. if you suffer from a medical condition which makes it dangerous for you to drive);

- you are on a learner's licence and the RMS thinks you have an unsatisfactory driving record; or
- you have been disqualified and you have not re-applied for your licence at the end of the disqualification period.

Disqualified means that a court has convicted you of a driving offence and has ordered that you are not allowed to have a licence for a certain period of time.

Once your disqualification period is over, you must not start driving again until you have been to the RMS and got your licence back. Depending on how long you have been disqualified, you may have to do the knowledge test and/or the driving test again.

From 28 October 2017 onwards, certain disqualified drivers who have been of good behaviour can apply to the Local Court to remove outstanding disqualification periods (see *Traffic Fact Sheet 14 – Important changes to licence disqualification laws in 2017* for full list of criteria).

3 Driving while unlicensed

If you are driving unlicensed because your licence has expired, you will probably get a traffic infringement notice (on-the-spot fine). If you have to go to court, you can be fined but not sent to prison. The court has the power to disqualify you but it doesn't have to.

However, if you are caught driving unlicensed *and you have never had a licence or have not had a licence in the last 5 years*, the consequences can be serious. For a first offence, the court has the power to disqualify you but it doesn't have to. For a second or subsequent offence, you will be disqualified for between 3 and 12 months, and the court also has the power to sentence you to imprisonment for up to 6 months.

Before 28 October 2017, the penalties and disqualifications that could be imposed were harsher. See *Traffic Fact Sheet 14 – Important changes to licence Disqualification laws in 2017* for full details.

4 Driving while suspended, refused, cancelled or disqualified

If you drive while your licence is suspended, refused or cancelled, or while you are disqualified from having a licence, the penalties can be severe and can include a prison sentence if you are a repeat offender.

If the court records a conviction, you will also be *automatically disqualified* from having a licence. For a first offence, you will be *disqualified for at least 3 months* (unless you were driving while you were suspended due to fine default – in this case the minimum disqualification is *1 month*). For a second or subsequent offence, you will be *disqualified for at least 6 months* (unless you were driving while you were suspended due to a fine default – in this case you will be disqualified for at least 3 months).

Under the current law, if you are disqualified, the disqualification will usually start on the day you are dealt with in court – but the court may decide that it should start at a later date, for example, at the end of your existing suspension or disqualification.

Before 28 October 2017, the penalties and disqualifications that could be imposed were much harsher. Also, these disqualifications were *cumulative* upon any existing period of suspension or disqualification – that is, they started when your current suspension or disqualification ended. See *Traffic Fact Sheet 14 – Important changes to licence disqualification laws in 2017* for full details.

5 Penalties and disqualifications

This table summarises the penalties and disqualifications that may be imposed for offences involving driving without a licence.

For more information about how the courts deal with traffic offences, see *Traffic Fact Sheet 7 - Serious traffic offences and courts*.

These penalties took effect as of 28 October 2017. The penalties that could be imposed under the old laws were much harsher (see *Traffic Fact Sheet 14 – Important changes to licence disqualification laws in 2017*)

Unlicensed driving offences (Road Transport Act 2013)	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	\$5,500
	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	

6 Court discretion not to record a conviction

In special circumstances, the court can decide to dismiss your charge without a conviction (under section 10 of the *Crimes (Sentencing Procedure) Act* or, if you under 18, under the *Children (Criminal Proceedings) Act*).

This means there will be *no penalty and you will not be disqualified*.

The court might do this, for example, if it is your first offence and you really need your licence for work or other good reasons.

Another example is if you have been driving unlicensed or suspended because of unpaid fines. The court may adjourn your case to give you time to sort out the fines and get your licence back. If you show the court that you are serious about doing this, they may dismiss the matter and let you keep your licence. See our fact sheet on *Fines and their enforcement* or contact us about how to deal with your fines.

7 Habitual traffic offender declarations

Until 28 October 2017, the court could declare you a **habitual traffic offender** if you committed 3 serious traffic offences within a 5 year period. This meant you could be disqualified for an extra 5 years.

From 28 October 2017, you can no longer be declared a habitual traffic offender. If you are currently subject to a habitual traffic offender declaration under the old laws, this will stay in place, but you can apply to the Local Court for it to be quashed.

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

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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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