

The Shopfront

YOUTH LEGAL CENTRE

Traffic Fact Sheet 4 – Licence suspension and appeals

1 What is licence suspension?

Licence suspension means you cannot drive for a period of time. Once the suspension period has ended, your licence is automatically reinstated (unless it expired during your suspension or has been suspended or cancelled for some other reason).

Suspension is different from disqualification and cancellation (see *Traffic Fact Sheet 3 – Driving without a licence* for an explanation of the difference).

Usually, if your licence is suspended, you will be notified by a letter from Roads & Maritime Services (RMS). For some driving offences, police also have the power to suspend your licence on the spot.

Driving while suspended is a serious offence, so you must not drive if your licence is suspended (see *Traffic Fact Sheet 3 – Driving without a licence*). It is better to appeal against the suspension if you can.

2 When can Roads & Maritime Services suspend my licence?

Roads & Maritime Services (RMS, previously called the RTA) may suspend your licence in a range of situations.

2.1 Demerit points

If you get too many demerit points, RMS may suspend your licence, usually for 3 months.

Drivers on their unrestricted (or “full”) licence can accumulate up to 13 demerit points in a 3-year period. For learner (L) and provisional (P1) drivers, the demerit point limit is only 4 points, and for P2 drivers it is 7 points.

See *Traffic Fact Sheet 5 – Demerit points* for more information.

Second demerit point suspension

If you have had your licence suspended for demerit points twice in the last 5 years, before you can get your licence back the RMS can require you to do a Driver Knowledge Test or driver education course, or both.

If you are a P1 or P2 licence holder and have had your licence suspended for demerit points twice (it doesn't matter how long between suspensions), the RMS can require you to do a Driver Knowledge Test before you can get your licence back.

For information on preparing for and sitting a Driver Knowledge Test and the associated fees, see *Traffic Fact Sheet 1 – Getting a Driver Licence in NSW*.

2.2 Speeding

If you have been given a penalty notice (on-the-spot fine) for certain speeding offences, then when you pay the fine (or when the time to pay it expires), the RMS may suspend your licence.

- For exceeding the speed limit by more than 30km/h but less than 45km/h, the suspension period is 3 months.
- For exceeding the speed limit by more than 45km/h, the suspension period is 6 months.

However, your licence might have already been suspended on the spot by the police when you were given the penalty notice (see part 3 below for more information on when police may immediately suspend your licence).

Speeding offences also incur demerit points, which could mean an extra period of suspension.

See *Traffic Fact Sheet 6 – Speeding* for more information.

2.3 Driving with illicit drugs in your system

From 20 May 2019, you may be issued with a penalty notice (on-the-spot fine) for a first offence of driving with illicit drugs in your system.

If you have been given a penalty notice for this offence, then when you pay the fine (or when the time to pay it expires), the RMS may suspend your licence for 3 months.

Please note that the police may initially suspend your licence for 24 hours when you first test positive for drugs (see part 3.4 of this fact sheet).

2.4 Unpaid fines

If you have overdue fines, even for offences unrelated to driving such as train fines, Revenue NSW (formerly State Debt Recovery) can refer them to the RMS for your licence to be suspended.

The suspension will be lifted if you pay your fines, make a few payments on a payment plan, or make another arrangement such as a Work and Development Order.

If the fines are still unpaid after 6 months, your licence may be *cancelled*. This means you will not automatically get your licence back when you have sorted out your fines, but will have to re-apply.

If you can't pay your fines, there are a few other options. See our fact sheet on *Fines and their enforcement* at <http://www.theshopfront.org> or the Revenue NSW website at <http://www.revenue.nsw.gov.au/fines>.

2.5 Other reasons

The RMS has the power to vary, suspend or even cancel your licence for other reasons, including if: you are generally unfit or unskilled to hold a licence, your licence was issued in error, you have failed to pay the fees for the licence, or you otherwise become ineligible to hold a licence.

The RMS may also suspend a provisional or learner's licence if you have committed almost *any* driving offence. However, this is not automatic like speeding and demerit point suspensions.

3 When can the police suspend my licence?

Sometimes the police can suspend your licence on the spot. This means that someone else will probably have to collect your vehicle as you cannot drive.

3.1 Speeding more than 45km/h over the speed limit

If you are caught speeding more than 45km/h over the speed limit, the police may suspend your licence on the spot (or within 48 hours of issuing a penalty notice):

- If you are given a penalty notice, you will be suspended for 6 months.
- If you court-elect on the penalty notice, you will be suspended for 6 months or until the case is finalised in court, whichever is sooner.
- If you are charged and have to go to court, you will be suspended until your case is finalised in court. If you are convicted and disqualified by the court, the court must take into account the period you have been suspended when imposing the disqualification period.

3.2 Speeding more than 30km/h over the speed limit (L and P drivers)

If you are a *learner or provisional driver* and you are caught speeding more than 30km/h over the speed limit, the police may suspend your licence on the spot (or within 48 hours of issuing a penalty notice).

In this situation the suspension period is 3 months (if you are given a penalty notice) or until the charge is finalised in court (if you are charged).

3.3 Unaccompanied learner

If you are a learner driver, and you are caught driving without being accompanied by a fully licensed driver the police may suspend your licence on the spot.

In this situation the suspension period is 3 months (if you are given a penalty notice) or until the charge is finalised in court (if you are charged).

3.4 Drink-driving or drug driving

Police may suspend your licence on the spot if you are charged with:

- a mid-range or high-range PCA (drink-driving) offence;
- refusing to submit to a breath analysis, refusing to submit to the taking of a blood sample, preventing the taking of a blood sample or wilfully doing anything to alter the concentration of alcohol in your breath or blood;
- (from 1 July 2018) driving under the influence of drugs or alcohol; or
- (from 20 May 2019) a low, novice or special range PCA offence.

You will be suspended until your case is finalised in court. If you are convicted and disqualified by the court, the court must take into account the period you have been suspended when imposing the disqualification period.

From 20 May 2019, police have power to issue penalty notices (instead of a court attendance notice) for low, novice or special range PCA offences. If they give you a penalty notice for one of these offences, they can suspend your licence on the spot for 3 months.

From 20 May 2019, police can also issue penalty notices for driving with illicit drugs present in your system. In this situation they can suspend your licence for 24 hours after the initial positive drug test. You may be suspended for 3 months later on, after you have paid the fine or the matter has been dealt with in court (see part 2.3 of this fact sheet).

Traffic Fact Sheet 8 – Drugs, alcohol and driving for more information.

3.5 Other offences

Police may suspend your licence on the spot if you are charged with:

- causing death or grievous bodily harm by the use of a motor vehicle;
- racing or attempting to break speed records;
- aggravated “burnout” offences.

You will be suspended until your case is finalised in court. If you are convicted and disqualified by the court, the court must take into account the period you have been suspended when imposing the disqualification period.

3.6 Incompetent, reckless or careless driver

If the Commissioner of Police believes you are an incompetent, reckless or careless driver or you are driving under the influence of alcohol, they may suspend your licence for up to 14 days.

4 Can I appeal against an RMS suspension?

4.1 Demerit points

Unrestricted licence holders

If you have a unrestricted (full) licence, you cannot appeal against a demerit point suspension. However you may choose to go on a good behaviour licence for 12 months.

If you incur 2 or more demerit points while on a good behaviour licence, your licence will be suspended for twice the period that it would have been. This is a serious consequence, so you need to think carefully before applying for a good behaviour bond. If you choose to do so, lodge your application at <http://www.rta.nsw.gov.au/myrta/licence/elect-good-behaviour.html>.

Provisional and learner licence holders

If you are on your provisional or learner licence, you may appeal against a demerit point suspension. There is no good behaviour licence option. The appeal must be lodged at a Local Court within 28 days of you receiving the suspension notice.

4.2 Speeding

If your licence has been suspended by the RMS because you were given a penalty notice for exceeding the speed limit by more than 30 (or 45) km/h, you may appeal to the Local Court within 28 days of receiving the suspension notice.

4.3 Unpaid fines

If the RMS has suspended your licence because of unpaid fines, then you can't appeal, but there are a few ways you can deal with your fines and get the suspension lifted.

See fact sheet on *Fines and their enforcement* at <http://www.theshopfront.org> or the Revenue NSW website at <http://www.revenue.nsw.gov.au/fines>

4.4 Suspension for other reasons

You can appeal to the Local Court against suspension notices issued for other reasons, eg. because the RMS claims you are generally unfit to hold a licence, or if you have failed a medical examination.

5 Can I appeal against a police suspension?

Generally, you can appeal against a police suspension of your licence. However, the law says that there must be “*exceptional circumstances*” for the court to allow your appeal (see part 8.4 of this fact sheet).

To appeal against a police suspension of your licence, you need to lodge a notice of appeal at the Local Court. You will need to do this within 28 days.

6 How do I appeal against a licence suspension?

6.1 Lodging the appeal at the Local Court

You must appeal within 28 days of receiving the suspension notice.

Simply take the suspension notice to the court and lodge the appeal over the counter. Alternatively, you can download the appeal form and take or send the completed form to the court: http://www.localcourt.justice.nsw.gov.au/Pages/forms_fees/forms.aspx

To appeal against a decision of the RMS to suspend your licence, use the *Application Notice - Appeal against decision of RMS (Licence appeal)*. There is no specific form to use for an appeal against a police suspension, but we suggest you use the *Application Notice - Appeal against decision of RMS (Licence appeal)* or *Application Notice to the Local Court - General*.

6.2 Fees

There is a fee (currently \$93) but this can be waived or deferred if you are suffering from financial hardship.

6.3 Listing of appeal and stay of suspension

When you lodge your appeal, the Local Court will list the appeal and advise you of the court date.

If you are appealing against a RMS suspension, and you lodge your appeal before the suspension commences, the suspension will not start until the court has dealt with your appeal. This is called a *stay* and it means that you can keep on driving (unless your licence has been suspended or cancelled for some other reason).

If you have been suspended on the spot by the police, you will not get an automatic stay when you lodge your appeal. Your licence will remain suspended until the court has dealt with your appeal or granted a stay.

6.4 Further information and assistance

See the LawAccess “*Appealing the suspension – Step by step guide*” at: http://www.lawaccess.nsw.gov.au/Pages/representing/lawassist_fines/lawassist_licence_fine/lawassist_appealingsuspension_fine.aspx

If you still need help to lodge your appeal, you may be able to get assistance from a legal service such as a community legal centre (or the Shopfront Youth Legal Centre if you are aged 25 or under).

7 The difference between court-electing on a fine and appealing against a suspension

There is a difference between court-electing on a penalty notice and appealing against a licence suspension.

If you have received a penalty notice but you believe you are not guilty of the offence, you should think about court-electing.

Suspension appeals proceed on the basis that you are guilty of the offence(s) that led to the suspension. When dealing with a licence suspension appeal, the court will not usually listen to any arguments about you being innocent of the offence(s).

7.1 Court-electing on a penalty notice

If you have been given a penalty notice (on-the-spot fine) for a traffic offence, and you think you are not guilty, you can submit a “court election” form. You might also want to court-elect if you agree you are guilty but you think the fine is too heavy or there are some special circumstances.

You can court-elect at any time until the fine is referred for enforcement (this is usually 21 days from the date of the penalty notice, plus another 28 days after you receive a reminder notice).

If you have paid the fine but then you decide you want to challenge it in court, you can court-elect any time before 90 days after the date of the penalty notice.

If you have not court-elected by the time the fine has been referred for enforcement, Revenue NSW will send you an “overdue fine” (also known as an “enforcement order”). If you still want to challenge the fine in court, you will have to apply to annul (cancel) the overdue fine. This is not always easy and there is a fee involved. For more information see *Fines and their enforcement* at www.theshopfront.org.

If you court-elect on a fine you will be sent a Court Attendance Notice (CAN). At court you will have to plead guilty or not guilty to the offence. If you plead not guilty, the matter will go to hearing and the magistrate will decide whether you are guilty or not.

- If you are found *not guilty*, the charge will be dismissed, you will not have to pay a fine, and no demerit points will be recorded against you.
- If you plead guilty or if you are found *guilty*, the magistrate will decide on a penalty, which will usually be a fine. The relevant number of demerit points will automatically be recorded against you. If the points lead to a licence suspension, you can then appeal against the suspension.

- If you are found guilty and the magistrate thinks the offence is very minor or there are special circumstances, the charge may be dismissed without a conviction (under section 10 of the *Crimes (Sentencing Procedure) Act*, or if you are under 18, under the *Children (Criminal Proceedings) Act*). In this situation no demerit points will be recorded.

7.2 Appealing against a suspension

If you accept that you are guilty of the offence and you don't want to challenge the fine but you want to appeal against your licence being suspended, you will need to:

- pay the fine or wait until it goes to Revenue NSW for enforcement;
- wait until you receive a suspension letter from RMS; and
- appeal against the suspension within 28 days of receiving the letter.

8 Appearing in court for your appeal

8.1 Legal assistance

Unfortunately, Legal Aid is not usually available for licence suspension appeals.

If you are disadvantaged you may be able to get some help from a community legal centre, or to find a lawyer who will act for you pro bono (free of charge) or for a reduced fee.

Otherwise you may need to represent yourself in court.

It is always helpful to bring along some references or support letters to hand to the magistrate, especially letters from employers or other people who can say why it's important for you to keep your licence.

8.2 What sort of things will the court take into account?

Some key things the magistrate will usually want to know are:

- why your licence was suspended;
- the circumstances of the offence(s) that led to the suspension. This means explaining what happened, how serious the offence was and why you did it. But remember *you cannot say in a suspension appeal that you are innocent* of the offence(s);
- your driving history, how long you have been driving, and any other offences you have committed in the past and why;
- why you need your licence;
- what problems you will face without your licence, including if there is a risk of losing your job if you lose your licence; and
- whether there is other transport you could use (e.g. public transport, getting a lift).

8.3 Orders the court can make

The magistrate may:

- confirm the suspension; or
- quash the suspension completely; or

- vary the amount of time that your licence is suspended (this usually means the suspension period is reduced, but the court actually has power to increase the suspension period as well).

8.4 Appeals requiring “exceptional circumstances”

Appeals against a police decision to suspend your licence on the spot are more difficult than other suspension appeals. This is because the Local Court cannot vary or set aside the police suspension unless it is satisfied that there are *exceptional circumstances* justifying a lifting or variation of the suspension.

In deciding whether there are exceptional circumstances, the court cannot take into account the circumstances of the offence(s) that led to the police suspending your licence (e.g. why you did it, how serious the offence was).

The court may take into account other factors including:

- how much evidence the police have against you for the offence that led the police to suspend you;
- your need for a licence (e.g. to keep your job); and
- any personal hardship as a result of the suspension.

8.5 If your appeal is successful

If you have appealed against a suspension and the suspension is *quashed*, the demerit points recorded against you will not be deleted. This means that if you get one more demerit point, you might exceed your points limit and have your licence suspended again.

However, if your demerit point suspension period is *reduced* on appeal, all of your demerit points will be wiped and you will start again with a clean slate.

8.6 If your appeal is not successful

If the appeal is not successful, you cannot appeal to a higher court and your licence stays suspended.

However, if it was a demerit point suspension, all of your demerit points will be wiped and you start off with a clean slate at the end of the suspension period.

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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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