

Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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Driving: rules and traffic offences

Licensing

Once you're on the road and driving with all the other motorists, you're driving by the same rules and breaking the rules will affect you in the same way it affects everyone else. Right? Not quite!

Take note – there are different kinds of licences and it's important to remember that the type of licence you have can affect what you can do on the road and the penalties you get for breaking the law.

Getting a licence

How does the licensing system work?

To get a full licence it can take you up to 4 years. To get a licence to drive a car, there are four major steps involved:

- First you must get a learner licence – your 'Ls'. You can apply for one when you turn 16. A learner licence is valid for 3 years but you must hold it for at least 6 months before progressing to the next step.
- From Ls, you go up to a provisional P1 licence, which you hold for at least 12 months.
- From P1, you progress to a provisional P2 licence, which you must hold for at least 24 months.
- Finally, from P2, you go to a full licence.

Special rules for learner drivers

While on your Ls, you must obey these rules:

- Be supervised at all times by a full Australian licensed driver.
- Display 'L' plates on the front and back of the car. Plates must be displayed on the outside of the car.
- Never drive above 80km/h.

- Don't drink *any* alcohol before driving.
- Don't tow any other vehicle.
- Don't supervise another L driver.
- Don't use any mobile phone while driving, whether hand-held or hands-free.

Special rules for P1 drivers

As a P1 driver, you must obey these rules:

- Display 'P' plates on the front and the back of the car. Plates must be displayed on the outside of the car.
- Never drive above 90km/h.
- Don't drink *any* alcohol before driving.
- Don't get 4 or more demerit points (note that you will get at least 4 points for *any* speeding offence).
- Don't supervise a learner driver.
- Obey towing restrictions (you are only allowed to tow light trailers up to 250 kilograms unloaded weight, and you must always display a P plate on the back of the trailer).
- Don't use *any* mobile phone while driving, whether hand-held or hands-free.
- If you are on your P1s and are under 25, you must not drive at any time between 11pm and 5am with more than one passenger under the age of 21, unless you are driving an emergency vehicle. You may apply for an exemption from the passenger restrictions if there are exceptional circumstances (eg you have to drive your younger siblings around and there is no one else who can do this).
- If you have been *disqualified* for a driving offence (on or after 11 July 2005) and your P1 licence is *reissued*, you will only be allowed to carry one passenger for the first 12 months.
- If you got your P1 licence for the first time or had it reissued after 11 July 2005, you are not allowed to drive certain types of high-performance cars. A list of these vehicles is on the RTA website, and you must check this site to see if your car is listed. As a general guide, high-performance vehicles are cars that have eight or more cylinders, a turbocharged or supercharged engine, or substantial engine performance modifications.

Special rules for P2 drivers

As a P2 driver, most of the above rules for P1 drivers also apply to you. There are some differences:

- The speed limit for P2 drivers is 100km/h.
- The demerit point limit for P2 drivers is 7 points.
- You are allowed to use a mobile phone while driving, as long as it is hands-free.

Motorcycle licences

To get a motorbike licence, the procedure is a bit different.

- First, you have to do a pre-learner training course. You must be aged 16 years and 6 months to do this.
- You can get your Ls when you are aged 16 years and 9 months.
- Before you go for your Ps, you must do a pre-provisional training course.
- You stay on your Ps for 12 months before progressing to a full licence. There are no separate P1 and P2 licences for motorbikes.

Losing your licence

There are many ways in which you can lose your licence. These are discussed further on in this chapter and include:

- being suspended by the RTA for incurring too many demerit points
- being suspended by the RTA for a serious speeding offence
- being suspended for not paying fines
- being disqualified by a court for committing an offence.

Driving without a licence

Driving without a licence is a very serious offence, and can lead to long periods of *disqualification* from driving (see *Disqualification* on page 207).

Traffic offences

How are offences dealt with?

Depending on how serious the offence, and how many times this has been dealt with before, you may receive a penalty notice or you may have to go to court.

Penalty notice

A *penalty notice* (also known as an *infringement notice* or *on-the-spot fine*) may be given to you on the spot by a police officer, or sent out to you later on.

Dealing with your penalty notice

You have several options, including:

- Pay the fine. Unlike pleading guilty at court, paying a penalty notice is not an admission of guilt and does not get you a conviction. However, it will be recorded on your traffic record, which may cause you problems down the track, and you may also incur demerit points or a suspension, so don't pay the fine if you think you are not guilty.
- If you received a penalty notice for a parking offence or a camera detected offence (eg speeding), and you were not the driver at the time, complete and send to the RTA a *statutory declaration* form with the name and address of the driver or the person responsible for the car.
- Send in the *court election* form on the back of the penalty notice, if you wish to say you are not guilty or ask the court for a more lenient penalty (if you were not the driver or person responsible for the car, you should instead send in a statutory declaration).
- Do nothing about it. This is not a recommended option because it will result in the fine being referred to the State Debt Recovery Office (SDRO) for enforcement and your licence could be suspended.

Demerit points

If you pay your penalty notice, or if it is referred to the SDRO for enforcement, you may incur demerit points (for more information see *Demerit points* on page 213).

Suspension

If you are given a penalty notice for speeding more than 30km/h over the speed limit, or for driving as an unaccompanied learner, your licence will automatically be suspended. Sometimes it is suspended by the police on the spot, and sometimes the suspension does not start until after the penalty notice is paid or referred to the SDRO for enforcement. For more information see *Speeding* on page 211 and *Unlicensed driving* on page 208.

Court

Some offences such as drink driving, dangerous driving and driving while suspended, cancelled or disqualified cannot be dealt with by a penalty notice and must go to court. A court can impose serious penalties, including imprisonment for some offences. For more details see *Going to court for traffic offences* on page 215.

Disqualification

If you are dealt with by a court for a traffic offence, you may be disqualified from driving for a period of time. Many types of traffic offences carry automatic disqualification periods which the court must impose. For more information see *Going to court for traffic offences* on page 215.

Unlicensed driving

Driving without a licence is a serious offence. Even if you are a good and safe driver, driving while unlicensed could get you a hefty fine, and maybe even some time in prison. You could also be disqualified from driving for a very long period of time.

The penalties for unlicensed driving are different according to whether you were unlicensed, never licensed, suspended, disqualified or cancelled. There are also serious penalties for driving as an unaccompanied learner.

Some important terms

Suspended means that your licence has been taken away by the RTA, usually for one of the following reasons:

- exceeding your demerit points limit
- driving more than 30km/h over the speed limit, or
- not paying your fines.

Your licence is automatically given back to you at the end of the suspension period (unless it has expired in the meantime).

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 RTA thinks you are no longer a fit and proper person to hold a licence (eg if you suffer from a medical condition which makes it dangerous for you to drive), or
- you are on a learner's licence and the RTA thinks you have an unsatisfactory driving record.

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 RTA and reapplied for your licence. Depending on how long you have been disqualified, you may have to do the licence test again.

Driving while unlicensed

If you are caught driving while unlicensed and have not had a licence in the last 5 years, you won't automatically be disqualified for a first offence, but if you are convicted of a second offence the court *must* disqualify you for 3 years.

Driving while suspended, cancelled or disqualified

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

If you are convicted, the court will also disqualify you from driving. For a first offence, you will be disqualified for 12 months (or 3 months if you are convicted of driving while suspended and the suspension was due to unpaid fines). For a second or subsequent offence, you will be disqualified for at least 2 years.

These disqualifications are *cumulative* upon any existing period of suspension or disqualification – that means they start when your current suspension or disqualification ends. People can quite easily end up being disqualified for several years because they kept on driving without a licence.

Driving as an unaccompanied learner

The penalties for unaccompanied learners have increased significantly in the last couple of years.

An unaccompanied learner may be given a penalty notice (to the tune of about \$600) and may have their licence suspended on the spot for 3 months.

An unaccompanied learner who is dealt with by a court can face heavy fines and an automatic 3 months' disqualification.

Drugs, alcohol and driving

What are the prescribed alcohol concentration (PCA) limits for driving?

When someone drives with a *prescribed concentration of alcohol* in their blood above the legal limit, they are committing an offence.

There are three blood-alcohol limits, depending on the type of driver:

- If you are a P1 or P2 driver, you must have *zero* alcohol in your bloodstream.
- If you are driving a heavy vehicle, a vehicle carrying dangerous goods, a taxi or a bus, the blood-alcohol limit is 0.02.
- For all other drivers, the blood-alcohol limit is 0.05.

Drink-driving (PCA) offences

There are five categories of drink-driving offence, depending on the concentration of alcohol in the driver's bloodstream:

- novice range (zero-0.02): applies to learner, P1 and P2 drivers
- special range (0.02-0.05): applies to learner, P1 and P2 drivers, drivers of heavy vehicles, vehicles carrying dangerous goods, taxis and buses

- low range (0.05-0.08)
- mid range (0.08-0.15)
- high range (0.15 or higher).

Random breath testing

In NSW, police have the power to randomly stop drivers for an alcohol breath test. If you are found over the limit you will be arrested and taken to the police station where your alcohol levels will be tested again. If you fail this test, you will be charged. It is an offence to refuse a breath test in NSW and the penalties for doing so are often as severe as a drink-driving offence.

What about driving with drugs in your system?

It is an offence to drive under the influence of alcohol or any other drug.

It is also an offence to drive with a *prescribed illicit drug* (cannabis, speed or ecstasy) present in your saliva, blood or urine. It is also an offence to have cocaine or morphine (which can include heroin) in your blood or urine, unless you were using a morphine-based drug for medicinal reasons.

Roadside drug testing

Police in NSW now have the power to carry out roadside drug testing on any driver, rider or supervising licence holder in NSW. The *oral fluid* drug test will test for the presence of THC (cannabis), Methylamphetamine (speed, ice, crystal meth) and MDMA (ecstasy). This will require the driver to lick the test pad of a device through the window of their vehicle.

If a positive sample is detected, you will be required to provide a second sample which will be run through another oral screening device. If a second positive test is found, a sample of your saliva will be taken and sent to a laboratory for confirmation. You will not be charged at this stage, although you will be prohibited from driving for 24 hours. It is an offence to refuse to submit to a roadside random drug test.

What are the penalties for drink-driving or driving with drugs in your system?

The penalty and disqualification will depend on the type of licence you hold and whether it is your first offence.

In most cases, you will have to pay a fine. In serious cases you could go to prison.

Driving offences involving alcohol and drugs also 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. For more information see *Going to court for traffic offences* on page 215.

Alcohol interlock program

The *alcohol interlock program* is a partial alternative to licence disqualification for certain alcohol-related driving offences and can be ordered by the court for suitable applicants.

The alcohol interlock device is an electronic breath-alcohol analyser which can be wired into a vehicle's ignition system. The aim of this is to require the driver of the vehicle to test the alcohol in their breath every time they start the ignition, and if their blood-alcohol level exceeds 0.02 the ignition will lock.

Once driving, the interlock device also requires retests at various intervals. If the driver fails one of these tests the car's horn will begin to sound and the lights will flash until the driver pulls over and turns the car off.

Speeding

What are the penalties for speeding?

If a police officer or a speed camera detects you speeding, you will usually receive a penalty notice (also called a traffic infringement notice or a *ticket*).

If you are caught speeding more than 45 km/h over the speed limit, you will usually have to go to court instead of being given a penalty notice.

As well as a fine, you will also get demerit points. Demerit points for speeding can be increased if you are on your Ps, speeding in a school zone, or speeding during a long weekend or public holiday period.

Some speeding offences also result in an automatic suspension (by the RTA) or disqualification (by a court).

What if I think I am not guilty of a speeding offence?

If you get a penalty notice for a speed camera offence and you were not driving the car at the time, you must send a statutory declaration to the RTA before the due date on the penalty reminder notice. In your statutory declaration you must give the name and address of the person who was driving or in charge of the vehicle. If you do not know this information, you must supply as much information as possible.

If you don't provide a statutory declaration within the time limit, you will be held responsible for the offence. This means you will have to cop the fine, the demerit points and possibly a suspension.

In other situations (eg if you are booked for speeding by the police) if you think you are not guilty, or if the fine is too much, you can send in the court election form on the penalty notice.

Licence suspension and disqualification for speeding offences

If you are given a penalty notice for speeding more than 30km/h over the limit, your licence will be suspended by the RTA for 3 months. After you have paid the fine or

let it go to the SDRO for enforcement, the RTA sends you a suspension notice telling you when the suspension will start.

If (instead of being dealt with by penalty notice) you are convicted by a court for this offence, the court must disqualify you for at least 3 months.

If you are doing more than 45km/h over the limit, the suspension (or disqualification) period increases to 6 months. Also, if the police catch you doing more than 45km/h over the speed limit, they may suspend and confiscate your licence on the spot.

In addition to the suspension and disqualification periods, speeding offences also carry demerit points which are added to your traffic record. If you exceed your demerit points limit, these points may contribute to an additional suspension period (see *Demerit points* on page 213).

Your licence may also be suspended if you don't pay your fines on time (see *Unpaid fines* chapter).

Appealing against a speeding suspension

If your licence has been suspended for a speeding offence, you may appeal to a Local Court. The appeal must be lodged within 28 days after you receive the suspension notice.

The Local Court may confirm the suspension or overturn it. The court also has power to vary the period of the suspension (this usually means the suspension period is reduced, but in theory the court actually has power to increase the suspension period).

When dealing with a licence suspension appeal, the court will *not* listen to any arguments about you being innocent of the offence that led to the suspension. If you think you are not guilty of the speeding offence, you will need to plead not guilty to the offence at court. This means that, if you were given a penalty notice for the offence, you will need to send in the court election form. If it is too late to do this or you are not sure what to do, you should get legal advice.

If you have been suspended due to demerit points, your appeal rights are different (see *Demerit points* on page 213).

Driving and mobile phone use

Whether you can drive and use your mobile phone at the same time depends on whether you are using a hand-held mobile phone or a hands-free phone. It also depends on what kind of licence you hold.

Hand-held mobiles

While you are driving, you *must not* use a hand-held mobile. This applies to all licence holders. This means that you cannot hold your mobile phone and:

- talk on the phone
- make a call or answer the phone
- send or read text messages
- take photos or play games, or
- turn the phone on or off.

It is also against the law to do any of these things even if your vehicle is stopped but not parked. For example, when you are stopped in a traffic jam, at a stop sign or at the traffic lights.

Using a hand-held mobile phone while driving will get you a heavy fine and demerit points.

Hands-free mobiles

Learner and P1 drivers are not allowed to use *any* mobile phone, even hands-free, while driving. This includes being stopped but not parked (eg at a red light or in a traffic jam).

If you have a P2 or full licence you may use a hands-free phone, only if you are sure that you can talk *and* have proper control of your vehicle at the same time. If you cannot keep control of your vehicle, you could be charged with negligent driving or a similar offence.

Demerit points

What are demerit points?

Everyone has a certain number of *points* on their licence, with the number of points depending on the type of licence you have. Learner, P1 and P2 licence holders have fewer points than fully licensed drivers.

If you commit some types of driving offences such as speeding, going through a red light, tailgating, negligent driving or not displaying L or P-plates, you will get demerit points.

If you get any demerit points, they will go on your traffic record. The points stay on your licence for 3 years after the date of the offence.

What offences attract demerit points?

Virtually all driving offences attract demerit points. The more serious the offence, the higher the number of points. You can see the full list of offences on the RTA website.

During Christmas, New Year, Easter and long weekends, *double demerit points* apply for all speeding, seatbelt and helmet offences.

What if I want to contest the penalty or demerit points for a traffic offence?

If you receive a penalty notice for a driving offence, the notice will tell you the amount of the fine and the number of demerit points you have received.

If you think you are not guilty, you can send in the *court election* form and have the matter decided by the court. If the court finds you not guilty, you will not have to pay the fine and there will be no points recorded.

You may also elect to take the matter to court if you agree you are guilty but disagree with the penalty. The court may reduce the fine (or decide not to fine you at all) but, if you are guilty of the offence, the court has no power to get rid of the demerit points.

If you have received a penalty notice for a camera-detected offence, and you were not driving the car at the time, you should send in the statutory declaration form instead of the court election form (see *What if I think I am not guilty of a speeding offence?* on page 211).

What happens if I receive too many demerit points?

Once you get a certain number of demerit points, your licence will be automatically *suspended* by the RTA. The number of demerit points you are allowed to get before this happens depends on the type of licence you hold. The limit for each licence type is as follows:

- full (unrestricted) licence: 12 demerit points in a 3-year period
- provisional P2 licence: 7 points in a 3-year period
- provisional P1 licence: 4 points in a 3-year period
- learner licence: 4 points in a 3-year period.

How long are the suspension periods?

If you incur all of your points, your licence will be suspended for a period of time. Suspension periods vary according to the type of licence and the number of demerit points accumulated.

For a Learner, P1 or P2 licence, your licence will be suspended for 3 months.

For a full (unrestricted) licence:

- 12 to 15 points: 3 months
- 16 to 19 points: 4 months
- 20 or more points: 5 months.

Good behaviour option for full licence holders

If you have a full licence, you can apply for a *12-month good behaviour licence* instead of serving the suspension.

If you get two or more demerit points during the good behaviour period, you will be suspended for double the original suspension time. There is no right of appeal.

If you have a P1 or P2 licence, or if you are already serving a good behaviour period, you cannot apply for a good behaviour licence.

Appealing against demerit point suspension for L, P1 and P2 licence holders

Full licence holders have no right of appeal against a demerit point suspension. The only way to avoid the suspension is to choose a good behaviour licence.

Learner or provisional licence holders may appeal to the Local Court against a demerit point suspension. The Local Court may confirm the suspension or overturn it. The court also has power to vary the period of the suspension (this usually means the suspension period is reduced, although the court actually has power to increase the suspension period).

When dealing with a licence suspension appeal, the court will *not* listen to any arguments about you being innocent of the offence(s) that got you the demerit points. If you think you are not guilty of a traffic offence, you will need to send in the statutory declaration form (for camera-detected offences where you were not the driver) or the court election form. If it is too late to do this or you are not sure what to do, you should get legal advice.

At the end of the suspension or good behaviour period

If you serve a suspension or a good behaviour period for demerit points, all those points are wiped off your licence and you start with a clean slate.

When your suspension or good behaviour period is up, you will automatically get your licence back, as long as it hasn't expired or been cancelled in the meantime. If it has expired you will need to reapply.

Going to court for traffic offences

Although most types of traffic offences can be dealt with by a penalty notice, there are some more serious offences which are always dealt with by a court.

Traffic offences dealt with by courts

Traffic offences which must be dealt with by a court include:

- driving whilst disqualified, cancelled or suspended
- a second or subsequent offence of driving when you have not held a licence in the last 5 years
- exceeding the speed limit by more than 45km/h

- driving at a speed, or in a manner, dangerous to the public
- driving with a prescribed concentration of alcohol in your blood (PCA)
- driving under the influence of alcohol or drugs
- dangerous or negligent driving causing death or grievous bodily harm
- failing to stop and give assistance in an accident involving death or grievous bodily harm.

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.

However, 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 a motorbike), or
- you are going to the Children's Court for a related criminal offence (eg 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.

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.

Maximum penalties

The maximum penalty for most traffic offences depends upon whether it is the person's *first offence* or their *second or subsequent offence*.

An offence is termed a *second or subsequent offence* if the person has been convicted of the same offence, a similar offence, or another serious traffic offence within the past 5 years.

Sentencing options

Over 18s

The Local Court can impose the same types of penalties for traffic offences as for other offences (see *Outcomes in Local Court* on page 331).

The most common type of penalty is a fine, but people can (and do) go to jail for traffic offences, particularly if they have been caught several times for drunk or unlicensed driving.

Under 18s in Children’s Court

The Children’s Court can impose the same types of penalties for traffic offences as for other offences (see *Outcomes in Children’s Court* on page 325).

Under 18s in Local Court

The Local Court has the choice of using adult sentencing options *or* the Children’s Court sentencing options in the *Children (Criminal Proceedings) Act 1987*. The only limit on using adult options is that the magistrate can’t sentence you to imprisonment – if you are going to be locked up, a control order is the only way (see *Control order (locked up) – section 33(1)(g)* on page 328).

Factors the court takes into account in sentencing

When sentencing you for a traffic offence, the court looks at the circumstances of the offence. Did you drive dangerously or were you picked up on a random breath test? Was anyone injured or put at serious risk?

The court also takes into account factors such as your prior record, your character and whether you pleaded guilty.

With most other offences, being young will usually get you a more lenient penalty. With traffic offences, *being young is a disadvantage*. This is because the courts give credit to people who have built up a good driving record over the years. Some magistrates also believe they have to impose tough penalties on young people to deter them and other young people from driving dangerously.

Traffic offender programs

Some courts refer people to traffic offender programs (see *Other special programs* on page 319). This is not a sentencing option in itself, but if you successfully complete the program, you may receive a more lenient penalty.

Will I be disqualified from driving?

Court’s power to disqualify

In addition to whatever penalty it imposes, the court has the power to disqualify you from driving for a period of time. Disqualification means your licence (if you have one) is cancelled and you are not able to drive or apply for a licence while the disqualification is in force. It is a very serious offence to drive while disqualified.

Automatic disqualification

Many traffic offences carry an *automatic disqualification*. This means that a person convicted of one of these offences will be disqualified from driving for the automatic period set out by the law. These automatic disqualification periods can be very long – eg 12 months or 2 years for driving while disqualified; 5 years for high-range PCA.

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), or
- in special cases, dismiss the charge without conviction, which means the automatic disqualification does not apply.

Court discretion not to disqualify you

In special circumstances, the court can decide to dismiss your charge without a conviction (under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, or an equivalent sentencing option for juveniles). This means you will not be disqualified.

Sometimes the court will do this 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 fine and get your licence back. If you show the court that you are serious about doing this, they may dismiss the matter without a conviction and let you keep your licence. It is important to know that you can do something about your unpaid fines and you can get your licence back without paying them in full. For more information on how to deal with fines, see *Unpaid fines: What can you do about it?* on page 398.

Disqualification of children

When a court uses Children's Court sentencing options, conviction does not automatically go with penalty. The court has a discretion whether or not to record a conviction against a child aged 16 or over, and has no power to record a conviction against someone under 16.

Although there was some disagreement for some time on this point, the issue was resolved a few years ago by the Supreme Court, which held that the court *does* have the power to disqualify a child for a traffic offence, even where there is no conviction recorded.

What is a habitual traffic offender?

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

A person who is declared a habitual traffic offender will be automatically disqualified from driving for 5 years, on top of any disqualification the person is already serving, 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.

The court has power to *quash* a habitual traffic offender declaration (which means get 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 for young people.

Police powers and vehicles

The police have a variety of powers when it comes to drivers and motor vehicles. Drivers also have duties to provide information in many situations.

What is a vehicle?

The word *vehicle* has an extremely broad meaning. It includes anything on wheels that can be used as transport (but not a train or tram carriage). This means that, legally, a vehicle can be anything from a truck to a car, scooter or bicycle.

Information and warnings

In most situations a police officer must provide certain information and warnings when exercising their powers. They *must*:

- warn you that they are police officers
- give their names and place of duty
- tell you the reason for the exercise of power, and
- (if relevant) warn you that failure to comply with their request may be an offence.

For more information see *Safeguards relating to police powers* on page 107.

Giving your name, address and other information

Name and address

You *must* give police your name and address if:

- you are riding or driving a vehicle or are accompanying a learner driver in a vehicle (in this case you must also provide your driver's licence)
- you are the owner, driver or passenger of a vehicle, and police reasonably suspect that the vehicle was used in a crime (eg an accident that injures people or damages property or has been involved in a robbery, or for drug dealing), or
- you refuse a breath test while driving or sitting in the driver's seat (unless you have a medical condition which would make it dangerous for you to undertake a breath test).

The requirement to give your name and address (but not your licence) also applies if you are riding a pushbike or other non-motorised vehicle.

What other information must you provide?

You may also be required to provide other information.

For example, if police suspect on reasonable grounds that a motor vehicle is being (or may have been) used in connection with an indictable offence, they may require the driver or passenger to tell them who was driving the vehicle at a particular time.

If there has been a traffic accident, resulting in injury to a person or damage to property, the drivers, passengers and witnesses must give information about the crash if asked by police.

Providing false information or failing to provide information

Failure to provide your name, address, licence or other information is an offence, but only if:

- it is a situation where you are required by law to provide information, and
- the police have told you that failure to provide information is an offence.

The most common penalty is a fine. However, if the vehicle has been used in connection with a serious offence, failure to provide information could land you in prison.

Police vehicle stop, entry, search and roadblock powers

Even where the police do not have a warrant, police can stop and search a motor vehicle (and not just your particular vehicle but a whole class of vehicles on a particular road or road-related area) if they suspect on reasonable grounds that:

- the vehicle (or a vehicle of the specified class) is being (or was or may have been) used in connection with the commission of a relevant offence
- circumstances exist in a public place or school that are likely to give rise to a serious risk to public safety and that the exercise of the powers may lessen the risk, or
- the driver or passenger is a person who the police have power to arrest, detain or search (eg if there is a warrant out for the person's arrest).

Roadblocks

A senior police officer may authorise the erection of a roadblock to ensure that the power to stop, search and seize vehicles is effective against a whole class of vehicles which might be travelling on a particular road or road-related area.

If you are a driver of a motor vehicle facing a roadblock, and you refuse to stop or fail to comply with any other direction given by a police officer, you are committing an offence.

Special police powers for large-scale public disorders

Under the special police powers for controlling large-scale public disorders, similar search and seizure powers apply within *target areas* and *target roads*, except that no reasonable suspicion is necessary.

Further, police may seize anything (including a vehicle) if they think this will assist in preventing or controlling the public disorder. They may detain the vehicle for up to 7 days (the Local Court can extend this for another 14 days, and can extend the time limit more than once).

See *Special police powers and large-scale public disorder* on page 99.

Inspecting vehicles

A police officer (or someone from the RTA) may inspect a registrable vehicle for the purpose of deciding its identity, condition or the status of any registration or permit relating to the vehicle.

If the vehicle is found to be defective, the police or RTA may issue a warning or defect notice, impose conditions on the use of the vehicle, or prohibit you from using the vehicle until the defect has been fixed.

The police or RTA may seize any device, plate or document in or on the vehicle if it is suspected on reasonable grounds that the device, plate or document is being used in committing an offence (eg fake numberplates).

Traffic accidents

If you are unfortunate enough to be involved in a traffic accident, there are a few very important things you need to remember.

Stop immediately!

It doesn't matter how small the accident looks, you must stop. If your car or motorcycle is involved in the accident, the law requires you to give whatever necessary help you are able to give to anyone who has been injured. So remember, if you are involved in an accident: STOP and HELP!

Do I need to call the police to the accident scene?

You don't always have to call the police in the event of an accident, but there are certain occasions where you do. You must call the police if:

- someone has been killed or injured
- there looks like more than \$500 of damage to property (including animals)
- the driver of a vehicle involved doesn't stop or won't exchange details

- the driver appears to be on drugs or drunk, or
- a vehicle needs to be towed.

If for some reason police are not called to the accident, but someone was killed or injured or there was more than \$500 worth of property damage, you must report the accident to the closest police station within 24 hours. You do not have to make this report if you cannot do so due to injuries suffered in the accident.

Do I need to exchange information?

If you are the driver or rider of a vehicle (including a non-motorised vehicle such as a pushbike) involved in an accident, and someone has been injured or killed or another vehicle has been damaged, you are legally required to give certain information to the other driver, to anyone who has been injured, and to anyone whose property has been damaged. You also have the right to ask for certain information from the other drivers.

The information you are required to give includes:

- your name and address
- your licence details
- your vehicle's registration number, and
- if the vehicle is not yours, the name and address of the owner.

If you cannot provide this information because of injuries suffered in the accident, that's OK. The information you give must be truthful. It is an offence to give false information.

Do I need to call the police?

You don't always have to call the police in the event of an accident, but there are certain occasions when you do. If you are the driver or rider of a vehicle (including a non-motorised vehicle such as a pushbike) involved in an accident, you must provide details to the police within 24 hours if:

- someone has been killed or injured;
- a vehicle needs to be towed;
- the driver of another vehicle involved doesn't stop or won't exchange details;
- you haven't already provided your details to the other people involved; or
- the police ask you for information.

The details you have to provide are the same as you are required to give the other people involved in the accident, plus an explanation of the circumstances of the crash.

If you do not provide these details within 24 hours, you could be guilty of an offence, unless you are unable to provide details due to injuries suffered in the accident.

Will I be fined or charged?

If you are responsible for an accident, the police may give you a penalty notice or court attendance notice for negligent driving or another traffic offence.

If someone is killed or injured, you may be charged with *negligent* or *dangerous driving occasioning death or grievous bodily harm*. The penalties for these offences can be severe and can include prison sentences (see *Going to court for traffic offences* on page 215).

You can also be up for serious penalties if you are involved in an accident in which someone is killed or injured, and you fail to stop and give assistance.

The cops have impounded my car!

When can the police impound a vehicle?

A police officer can *impound* (confiscate) a motor vehicle (which includes a car or a motorbike) if they reasonably believe that the vehicle has been used or is being used (on that day or in the past 10 days) to commit one of the following offences:

- street racing, which includes speed trials on public streets (unless you have permission from the Commissioner of Police)
- wheelies, burnouts and donuts (this is defined in the law as ‘using a vehicle in a way that causes sustained loss of traction by the wheels’).

When the police impound a vehicle, they give the driver a *notice of confiscation of motor vehicle*. This notice says why the police are taking the vehicle, where they will keep it, the condition of the vehicle and the name of the impounding police officer.

At that time or later you also get a *penalty notice* (fine) for the offence. For more information on how to deal with fines, see *Traffic offences* on page 206 and *Unpaid fines* chapter.

How long can the police keep a vehicle?

The police can keep the vehicle until the offence has been dealt with by a court or until the maximum period set out in the law has expired.

For a first offence, the vehicle can be automatically impounded for 3 months. For a second or subsequent offence, the vehicle is automatically *forfeited* (this means taken away for good).

How do you get a vehicle back?

If you dispute the offence

If you think you are not guilty of the offence, you can choose to take your case to court for a hearing. To do this, you fill out and send in the *court election notice* on the back of the infringement notice. However, it might take up to 3 months or more before the case comes before the court for a full hearing, and in that time you don't have a vehicle.

In the meantime, you can apply to the Local Court to try to get your vehicle back. A lawyer can help you do this. The Local Court can release the vehicle if they consider it appropriate to do so. The court might take into account any hardship you are suffering from being without a vehicle, any danger to the public that might be caused by releasing the vehicle and anything else that is relevant.

If the owner of the vehicle was not driving it at the time

If you are the owner and you were not driving the vehicle at the time of the offence, you can apply to the Commissioner of Police to have the vehicle returned. Write a letter explaining that:

- you were not driving the car, and
- you didn't know that the car was being used to commit an offence.

To release the vehicle the Commissioner must accept your statements on these two points. If the Commissioner refuses to release the vehicle, you can apply to the Administrative Decisions Tribunal to have it released. A lawyer can help you do this.

If the driver admits the offence, or the offence is proven in court

If the driver admits the offence or is found guilty in court, the magistrate still has the power to release the vehicle or reduce how long it is impounded for. The magistrate can do this if they think that impounding the vehicle is causing hardship to someone or if it causes some other injustice.

Other powers of confiscation

Police can also confiscate cars in other situations including:

- to stop you driving while intoxicated
- if your car has been left in a tow-away area
- if you are using (including parking) an unregistered vehicle on a road.