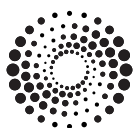


# **The Law Handbook**

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# Driving and Traffic Law

Nic Angelov – Barrister

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# Introduction

**[20.10]** The laws governing the licensing of drivers and the use of motor vehicles on roads can be found in the road transport legislation. The primary legislation is the *Road Transport Act 2013* (NSW) (RTA) and its associated regulations, which include the *Road Rules 2014* (NSW) (RR), the *Road Transport (General) Regulation 2013* (NSW) (RTGR), the *Road Transport (Driver Licensing) Regulation 2017* (NSW) (RTDLR), the *Road Transport (Vehicle Registration) Regulation 2017* (NSW) and the *Motor Vehicles Taxation Act 1988* (NSW).

The use of heavy vehicles on roads is regulated by the *Heavy Vehicle National Law* (NSW) (HVNL). There is also legislation dealing with specific areas of vehicle use such as passenger transport and the tow truck industry. This chapter will focus on the generally applicable road transport

legislation with the driver of a car for private purposes in mind.

## Abbreviations

<i>Crimes (Sentencing Procedure) Act 1999</i>	CSPA
<i>Road Transport Act 2013</i>	RTA
<i>Road Rules 2014</i>	RR
<i>Road Transport (General) Regulation 2013</i>	RTGR
<i>Road Transport (Driver Licensing) Regulation 2017</i>	RTDLR
<i>Road Transport (Vehicle Registration) Regulation 2017</i>	RTVRR
<i>Motor Vehicles Taxation Act 1988</i>	MVTA
Roads and Maritime Services	RMS

# Driver licensing

## [20.20] Types of licences

For car drivers, there is a graduated licensing scheme from novice driver to a full licence holder. It is an offence to drive without an appropriate licence (RTA, s 53). Below is a brief overview of the novice driver licences and some of the conditions that are attached to the licences.

### Learner licence

Learner drivers cannot have any alcohol in their system. A person with a full licence must be seated next to a learner driver when driving. Mobile phone use is banned. The upper speed limit is 90 km/h (and any lower limit must be observed). L plates must be clearly displayed outside on the back and front of the vehicle. A demerit point suspension will be incurred after reaching four or more demerit points during a three-year period.

### Provisional P1 licence

Provisional P1 drivers cannot have any alcohol in their system. Mobile phone use is banned. The upper speed limit is 90 km/h (and any lower limit must be observed). P plates (red P on white

background) must be clearly displayed outside on the back and front of the vehicle. P1 drivers are prohibited from driving certain vehicles and there are passenger restrictions. Exemptions from these prohibitions can be sought, for example if employment responsibilities require the driving of a prohibited vehicle or the carrying of more than the number of permissible passengers. A demerit point suspension will be incurred after reaching four or more demerit points. Any speeding offence will incur a licence suspension of at least three months.

### Provisional P2 licence

Provisional P2 drivers cannot have any alcohol in their system. Mobile phone use is banned. The upper speed limit is 100 km/h (and any lower limit must be observed). P plates (green P on white background) must be clearly displayed outside on the back and front of the vehicle. P2 drivers are prohibited from driving certain vehicles and there are passenger restrictions. Exemptions from these prohibitions can be sought, for example if employment responsibilities require the driving of a prohibited vehicle and the carrying of more than

the number of permissible passengers. A demerit point suspension will be incurred after reaching seven or more demerit points. A speeding offence will incur a minimum of four demerit points.

### [20.30] Demerit point system

The RMS maintains a register of demerit points. It is a program that allocates penalty (demerit) points for a range of driving offences. The points are recorded on a licence holder's driving record (also known as a traffic record report) as at the date of the offence. The number of demerit points recorded can vary depending on the date the offence is committed (ie, double demerit points on public holidays), the area and time of day the offence is committed (a school zone) or the type of licence held (eg, for exceeding the speed limit by not more than 10 km/h, an unrestricted licence holder incurs one demerit point or two on public holidays, a P2 licence holder incurs four demerit point for the same offence or eight on public holidays).

Once the threshold number of demerit points is reached within a three-year period, counting back from the date of the most recent offence, the RMS will suspend the person's driver licence.

Drivers can check their driving record online through the RMS website.

### [20.40] Suspension and cancellation of driver licence

#### Demerit point suspension for unrestricted licence holders

The RMS must give a notice of licence suspension to the holder of an unrestricted driver licence who incurs 13 or more demerit points (or in the case of a professional driver 14 or more demerit points) within a three-year period (RTA, s 33).

A professional licence holder is the holder of an unrestricted licence who is a motor vehicle driver that transports goods or an authorised bus, taxi or hire car driver. Driving that is incidental to a person's primary work (eg, tradesperson, vehicle repairer or salesperson) does not qualify a person as a professional driver (RTDLR, cl 126). The RMS may seek further information (eg, a statutory declaration) from a driver before it decides whether to consider the person a professional driver (RTA, s 61).

If a person has accumulated exactly 13 points and believes he or she qualifies as a professional driver, that person needs to make contact with the RMS before the suspension period begins and complete a professional driver declaration form.

When a person's driver licence is suspended, all demerit points as at the date of the notice of licence suspension are taken to be deleted (RTA, s 37).

As an alternative to serving the suspension, the driver can elect to be of good behaviour (RTA, s 36). This is a voluntary option open to the driver. If this election is made, then for 12 months (commencing on the day the suspension would have commenced), the driver must be of good behaviour. If the driver incurs two or more demerit points during the period of good behaviour, the driver will be given a notice of suspension for double the period of the initial suspension.

There is no application or appeal to a court against the decision to suspend the licence of an unrestricted licence holder. The voluntary option to avoid suspension is electing to be of good behaviour. If that option is taken and the conditions of good behaviour are breached, the driver's options have been exhausted and the person must serve (the now doubled) period of suspension. For that reason, the good behaviour option should be seen as an opportunity to change driving behaviour rather than as a lifeline. If it is treated as the latter, there is a fair chance the driver will incur two or more demerit points within the 12-month period and be placed in a worse position.

#### Demerit point suspension for learner or provisional licence holders

If the holder of a learner licence or a provisional licence incurs the threshold number of demerit points within the three-year period, the RMS may issue a notice of suspension (RTA, ss 39, 40).

The decision to suspend a learner or provisional licence does not have the good behaviour option but it can be appealed to the Local Court (see Appellable decisions at [20.40]).

#### Other suspension or cancellation of licence by RMS

The RMS may vary, suspend or cancel a person's driver licence on a number of grounds (RTDLR, cl 65). For example, if a person is not a fit and proper person to hold a driver licence, has failed a required medical examination or has failed to

comply with a condition of the licence. The RMS will also suspend a driver licence for non payment of fines.

A driver who speeds more than 45 km/h over the speed limit will be suspended for six months. Speeding over 30 km/h but less than 45 km/h incurs a suspension of three months. If the matters are dealt with at court and a conviction results, the driver will be disqualified for at least the same periods (RR, r 10-2).

A licence is automatically cancelled upon a person being disqualified from driving (see section on disqualification).

### Accumulation of suspensions

If a person commits an offence for which that person will be automatically suspended, such as driving 45 km/h over the limit, and the demerit points incurred for that offence also take the driver over the threshold of demerit points, each suspension will be imposed and served one after the other.

### Suspension by police

The police can suspend a driver's licence for up to 14 days if, of the opinion, the person is an incompetent, reckless or careless driver, or is found under the influence of liquor. The police can recommend to the RMS that the period be increased or the licence be cancelled (RTA, s 223).

A police officer may give a driver an immediate suspension notice in certain circumstances, including if charged for certain offences, such as any PCA offence or speeding over 45 km/h (or 30 km/h for a learner or provisional licence holder) (RTA, s 224). Depending upon the basis for the suspension, it remains in place for a specified period or until the charge is dealt with at court.

## Offences generally

**[20.50]** The main criminal sanctions to enforce the safe use of vehicles are available under RR, RTA and other road transport legislation and under the regulations associated with these Acts. Sanctions relating to heavy vehicles are dealt with under HVNL. Other specified commercial vehicle uses (such as passenger transport and tow trucks) have particular legislation. There are also sanctions in specific contexts covered by

If the driver is convicted, this suspension counts towards the period of disqualification imposed (RTA, s 206B; RR, r 10-2(4)). A police suspension is a decision that may be appealed to the Local Court (see below).

### Appellable decisions

Licences that are suspended or cancelled by RMS decision or an immediate licence suspension by police are appellable decisions (RTA, ss 266–270). The appeal must be lodged within 28 days of being notified of the decision to suspend a licence. In certain cases, once the appeal is filed, there is a stay of the decision until the appeal is heard (RTGR, cl 135). There is no stay on an immediate suspension by police unless the court decides there are exceptional circumstances (RTGR, cl 135A). Nor is there a stay if the RMS suspends the licence on grounds of medical unfitness or incompetence. Only if there is a stay can the person continue to drive until the matter is heard at court.

The Local Court can set aside the RMS decision (in which case no suspension is served), vary the decision (ie, it can reduce the period of suspension) or dismiss the appeal (which means the RMS decision stands). If the appeal is dismissed, the suspension commences immediately unless otherwise ordered (RTGR, cl 135), so it is prudent for the appellant not to drive to court. The decision on the merits of the appeal is final (RTA, s 270).

### Driving while suspended or cancelled – offence

Driving while suspended or cancelled is serious offences that is dealt with by charge at court and carry a maximum penalty of imprisonment as well as disqualification from holding a licence (RTA, s 54).

other relevant legislation, such as when police are exercising their powers (*Law Enforcement (Powers and Responsibilities) Act 2002* (NSW)) or vehicle noise and emissions covered by environmental legislation.

Commonly encountered words in the various offence provisions are defined in the RTA (for defined terms generally, see RTA, s 4). They include:

## Road

For most offences, an element of the offence is that it is committed on a road, although this is not always the case, for example PCA offences (although in practice this offence would be difficult to detect other than on a road) or dangerous driving occasioning death or grievous bodily harm.

A road is “an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles”. It generally includes a road related area (RTA, s 5). The definition of a road related area includes a footpath or nature strip adjacent to a road and an area that is not a road that is open to or used by the

public for driving, riding or parking vehicles (eg, a shopping centre car park).

## Drive

The definition of “drive” includes to “be in control of the steering, movement or propulsion of a vehicle”, towing a trailer and riding a vehicle.

## Motor vehicle/vehicle

A “motor vehicle” is “a vehicle that is built to be propelled by a motor that forms part of the vehicle”. A “vehicle” is any description of vehicle on wheels or a tracked vehicle (eg, a bulldozer), unless used on a railway or tramway.

# Penalty notice offences

**[20.60]** There are specified road transport legislation offences that can be dealt with by way of penalty notice (see RTA, s 195; RTGR, cl 122 and Sch 5). Breaches of RR are typically dealt with by issuing a penalty notice (fine and demerit points where applicable). The Rules deal with the control and right of way of vehicles, including speed limits, making turns, change of direction and stop signals, traffic lights, giving way, stopping and parking. Many other road transport legislation offences can also be dealt with in the same way.

Sometimes the penalty notice will be given to a driver on the spot (eg, the driver was pulled over by a police officer who detected the vehicle speeding). With the increasing use of camera detection devices, the fine will be sent to the registered owner of the vehicle. By going to the Revenue NSW website, the fine recipient can view online the images and other details of the offence.

The penalty notice will explain available options. Also, consult the *Fines Act 1996* (NSW) for the law on penalty notices. Upon receiving a penalty notice, a person can:

### Pay the fine

The fine must be paid within the time allowed in the notice, although Revenue NSW usually sends a reminder notice. No further proceedings can be brought against any person for the offence once the fine is paid. Payment of the fine is not an admission of liability for the purpose of any civil proceedings.

If it was sent to the person as the registered owner (the RTA uses the term “responsible person” which

is defined in s 10) of the vehicle and that person was not the driver, the owner must send in the form naming the driver (RTA, s 186) otherwise the owner will be taken to have committed the offence (RTA, s 184). The person has 21 days to supply the name and address. Companies that own vehicles, often multiple vehicles with multiple drivers, need to have a system in place to record vehicle usage as the penalties for corporations for failing to nominate the driver are high and directors or individuals involved in the management of the company can be pursued personally (s 182).

### Request a review

Requesting a review must be done before the time for payment expires. The relevant instructions and forms can be accessed on the Revenue NSW website. Be aware that Revenue NSW publishes document titled “Review Guidelines” and “Review Assist” on its website. The Justice Department also publishes “Caution Guidelines and Internal Review Guidelines under the Fines Act 1996”. For some offences, leniency will not be considered and for others it will only be considered in certain circumstances. Some reviews require supporting documentation as specified in the guidelines. These guidelines should be read before deciding whether to request a review. If a review is requested, use of the appropriate form and following the instructions is important – otherwise persons may prejudice their chances for a successful review.

Unless advised otherwise, Revenue NSW places a fine on hold until it conducts the review.

The Internal Review Guidelines state that one of the purposes of the guidelines is consistency in decision making. In practice, this means that unless the basis for review of a fine fits the published criteria, it is unlikely to get a favourable response. If in doubt, a person should seek legal advice. The result of the review will be either that the penalty notice stands, a caution is issued instead (no fine is imposed and no demerit points are recorded, but if it was a demerit point offence, the caution will be recorded on the person's driving record) or the penalty notice is cancelled (if the evidence shows that there has been some error and the penalty notice should not have been issued).

### Elect to take it to the Local Court

A person may elect to take a penalty notice to court for two reasons. First, the person is not guilty of the offence and intends to plead not guilty and defend the charge. Second, the person committed the offence and intends to plead guilty, but seeks the court to impose a lesser penalty, for example a smaller fine, or for the court not to record a conviction (which would have the consequence of the driver not losing demerit points).

If the person pleads not guilty, the matter will not be heard on the day of the first court date. Instead, it will be adjourned to another date (typically within a few months) for a hearing at which the prosecution will call its witnesses and the defendant and his or her witnesses also have the opportunity to give evidence. After hearing the evidence and submissions, the magistrate will either find the defendant not guilty, in which case the charge is dismissed, or guilty, in which case a conviction may be recorded and a penalty imposed, although where leniency is warranted the court can proceed to dismiss the charge after a finding of guilt without proceeding to conviction (*Crimes (Sentencing Procedure) Act 1999* (NSW), s 10 (CSPA)).

If the person pleads guilty, the court will be prepared to hear the defendant's submissions on the first court date, so he or she should be ready to tender any documents that support submissions for leniency. If no conviction is recorded pursuant to s 10, no demerit points will be recorded on the person's driving record. The imposition of any other penalty, even if it is a conviction with no fine or a reduced fine, will see a conviction for the offence recorded, court costs and a victim's

compensation levy imposed, and the demerit points will be recorded on the person's driving record.

### Important considerations before making a court election

There are important considerations before a court election is made, whatever the intention might be in taking it to court. Seek the advice of a practising lawyer and be wary of websites and other forums of dubious authority that purport to offer failsafe advice on beating a traffic charge or argue that a driver should always take a penalty notice to court. Although the penalty notice relates to a criminal offence, payment of the fine treats it essentially as a regulatory, rather than criminal matter. Although the offence is entered on the person's driving record, a penalty notice is not a criminal charge and there is no recording of a conviction. Payment of the fine ends the matter and the person is not otherwise liable at law.

By electing to take the matter to court, the matter will proceed by way of a criminal charge. The person will be sent a court attendance notice. Any result other than acquittal leaves the person exposed to a higher penalty (the maximum penalty available to a court is always higher than the penalty notice amount), court costs, and the matter being entered as a court appearance and conviction.

Be aware also that courts do not extend leniency merely for the purpose of assisting a driver to avoid a consequence that would result from a conviction, that is, the driver wants a s 10 because the recording of demerit points for the offence will lead to suspension of licence. The court will look at the objective seriousness of the offence, the driving and any criminal record, and any mitigating or subjective circumstances, which can include means to pay a fine and need for a licence, before deciding the appropriate penalty.

### Failure to respond – enforcement order and action

If a person does not take any of the options above, the person will be sent an enforcement order. A fine enforcement order can be annulled in certain circumstances. An application will need to be made to Revenue NSW. A successful annulment will see the matter listed before a Local Court to be dealt with. If annulment is refused, that decision can be appealed to the Local Court.



If no action is taken by the person at the enforcement order stage, the matter will proceed to enforcement action, which includes suspension

of licence, cancellation of registration and a property seizure order.

## More serious, including charge only, offences

[20.70] Some of the more serious traffic offences, many classified as “major offences” under the RTA, are considered too serious to be dealt with by penalty notices. Most carry a maximum penalty of imprisonment. These more serious matters are dealt with at court as a criminal charge. All such offences under road transport legislation are summary offences that are dealt with in the Local Court (proceedings can be commenced in the summary jurisdiction of the Supreme Court but this is rare; it has been used on occasion for heavy vehicle offences). Some offences under the *Crimes Act 1900* (NSW) can be dealt with in the Local Court but others are strictly indictable which means they are dealt with in the District or Supreme Court.

Sometimes with road transport legislation offences that can be dealt with by a penalty notice, such as negligent driving or unlicensed driving, police will choose to proceed by way of charge. The police make an assessment of the seriousness of the offence and whether there are associated charges in deciding whether to issue a penalty notice or a court attendance notice for such an offence. With a few exceptions, a court attendance notice needs to be issued within six months of the date of the offence.

Some driving offences are more serious still and are dealt with in the *Crimes Act 1900*. Of those offences in the *Crimes Act 1900*, some can be dealt with in the Local Court and others are strictly indictable offences that must be dealt with in the District or Supreme Court.

A selection of the more commonly encountered charge offences is dealt with below. Where the matter may also be dealt with by penalty notice, that will be noted.

### [20.80] Drink driving

#### Prescribed content of alcohol offences – s 110 of the RTA

Driving with the prescribed concentration of alcohol is an offence. The concentration is

expressed as being either the grams of alcohol in 210 litres of breath (this measure is used when the concentration has been obtained using a breath analysis machine) or the grams in 100 millilitres of blood (if the concentration has been obtained by way of a blood test). The concentration is the same whichever method is used.

The minimum concentration at which an offence is committed depends on the category of driver. There are generally three categories, an applicable driver licence holder (which would include an unrestricted licence), a novice driver and a special category driver. The definitions can be found at s 107 of the RTA.

#### General – driver holding unrestricted licence

A person holding an unrestricted licence who (1) drives a motor vehicle, or (2) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, or (3) occupies the seat in a motor vehicle next to a learner driver who is driving the vehicle, while there is present in the person’s breath or blood the prescribed concentration of alcohol (PCA) commits an offence.

The offence can be committed in three categories depending on the concentration of alcohol in the person’s system. A person with a concentration of 0.05 or more, but less than 0.08 commits the offence of low range PCA. A low range PCA offence can be dealt with by penalty notice (if the person has not been fined or convicted for an alcohol or other drug related driving offence in the previous five years). A person with a concentration of 0.08 or more, but less than 0.15 commits the offence of middle range PCA. A person with a concentration of 0.15 or more commits the offence of high range PCA. The higher the range, the higher the penalties.

There is a guideline judgment for sentencing in high range PCA matters (*Re Attorney-General’s Application (No 3 of 2002)* (NSW) [2004] NSWCCA 303; (2004) 61 NSWLR 305).

## Special category drivers

A special category driver includes a person who is not authorised to drive (ie, because the person's licence has been suspended or cancelled), or is driving a public passenger vehicle for hire or reward (eg, taxi, hire car), a coach, a vehicle that has a gross vehicle mass (GVM) over 13.9 tonnes, or a vehicle carrying dangerous goods.

A special category driver with a concentration of 0.02 or more, but less than 0.05 commits the offence of special range PCA. A reading of 0.05 or higher would lead to one of the other three charges described above according to the reading.

This offence can be dealt with by penalty notice (if the person has not been fined or convicted for an alcohol or other drug related driving offence in the previous five years).

## Novice drivers

A novice driver includes someone holding a learner or provisional licence. A novice driver with a concentration of zero or more, but less than 0.02 commits the offence of novice range PCA. A reading of 0.02 or higher would lead to one of the other four charges described above according to the reading.

This offence can be dealt with by penalty notice (if the person has not been fined or convicted for an alcohol or other drug related driving offence in the previous five years).

It is a defence to this charge if the defendant proves that the prescribed concentration was not caused by the consumption of an alcoholic beverage (eg, the alcohol was in food or medicine) and that if it was consumed through another substance, such as food or medicine, it was not taken for the purpose of consuming alcohol. The one exception where consumption as an alcoholic beverage is permitted is where it was consumed for the purposes of religious observances (ie, communion).

## [20.90] Procedure (Sch 3 of the RTA)

### Breath testing

A person driving, attempting to drive or sitting next to a learner driver who is driving is required to submit to a breath test if required by a police officer. The breath test is administered with a handheld device. It is an offence to fail or refuse to undergo a breath test.

## Breath analysis

If the driver fails the breath test, the driver will be arrested and taken to a nearby police station (or a "booze bus" if one is present at the scene) and required to submit a breath sample into a breath analysis instrument. If the reading is under the limit, the person will be released. If over the limit, the driver will be charged (or can be given a penalty notice for a low range PCA offence) and given paperwork, including a printout from the breath analysis instrument, and a court attendance notice with a date to appear at court. The driver will also be given an immediate notice of suspension for any drink driving offence.

Refusing or failing to submit to a breath analysis is an offence. The breath analysis instrument allows three attempts. The penalties for this offence are the same as high range PCA, that is, the highest available PCA penalty.

## Sobriety assessment

If the person passes the breath test but the police officer has a reasonable belief that the person is under the influence of a drug, the officer can ask the driver to submit to a sobriety assessment at or near the place the breath test took place. There is no formal procedure for a sobriety assessment. It may involve asking the driver to walk in a straight line, or count backwards. Common tests are the "one leg stand", the "walk and turn" and "horizontal gaze nystagmus" (testing the driver's eyes for jerkiness when following a moving object).

If the driver fails to submit or does not pass the assessment, the driver can be arrested for the purpose of providing a blood or urine sample.

## Accidents – blood and urine test

In most circumstances, a person over 15 years of age admitted to hospital for examination or treatment after an accident is required to provide a blood sample. Others involved in an accident where a death has occurred or is likely to occur can be arrested for the purpose of providing a blood or urine sample.

## When breath testing/analysis or blood/urine sample taking not permitted

Breath testing or analysis is not permitted in certain circumstances (RTA, Sch 3, cl 2). For example, it is not permitted at the person's home (which can include common areas of strata title property, eg,

the driveway of a block of units), if the person has been admitted to hospital for medical treatment (unless the treating doctor has been advised and has no objection) or if two hours have passed from the event giving rise to the police officer's entitlement to require a breath test.

A blood/urine sample cannot be taken after four hours have passed from the accident or four hours from the time of the event where the person was required to submit to the sobriety assessment.

### How much can a driver safely drink?

There is no mathematical formula, and rates of elimination of alcohol from the body vary from person to person. Factors such as metabolism, age, weight, gender, fatigue and medication can affect how the body will process alcohol. On average, it will take a male about one hour to eliminate each standard drink consumed. For a female, the average is one and a half to two hours to eliminate each standard drink consumed. The gender difference applies even when comparing a woman and man of the same height and weight.

Websites such as Drinkwise Australia provide standard drinks calculators. These are educational guides for the reasons stated above. Further, alcohol is often not served in standard measures. A standard drink is one containing 10 grams of alcohol. Some myths include "high tolerance" (the body will still need the same time to clear alcohol from the system as someone with a lower tolerance), eating before or after drinking (although not drinking on an empty stomach is a wise idea as lack of food will cause alcohol to be absorbed faster, food in the stomach will not trap or divert alcohol from entering the body).

Be aware that police regularly detect drivers over the limit the morning after a night of drinking, even though the drivers feel fine and think that they have "slept it off".

### When does a driver have a defence?

The prosecution is allowed to rely on a certificate that records the result of the breath analysis. That certificate will be taken as proof of the alcohol concentration, unless the driver can prove, on the balance of probabilities, that the result recorded on the certificate is incorrect. A driver should seek legal advice on any possible defences.

An example of a circumstance where there might be a defence is if a driver has a borderline

reading, particularly if the alcohol in the system is in the absorption stage (ie, its presence is rising, not falling at the time of the offence). It may be that the alcohol concentration at the time of the driving is lower than at the time of the breath analysis. This could see a charge downgraded (eg, high range to middle range) or a finding that a person has committed no offence (eg, low range to under the limit).

The onus is on the driver to prove the actual reading. This would typically require expert pharmacological evidence.

## [20.100] Illicit drug offences – s 111 of the RTA

### Prescribed illicit drug – cannabis, methylamphetamine (speed), MDMA (ecstasy) and cocaine

A person who (1) drives a motor vehicle, or (2) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, or (3) occupies the seat in a motor vehicle next to a learner driver who is driving the vehicle, while there is present in the person's oral fluid, blood or urine any prescribed illicit drug commits an offence.

This offence can be dealt with by penalty notice (if the person has not been fined or convicted for an alcohol or other drug related driving offence in the previous five years).

The RTA prescribes the following drugs: cannabis, methylamphetamine (speed), MDMA (ecstasy) and cocaine. The offence is committed simply by having the illicit drug present in the driver's bodily system. There is no requirement to prove the driver was under its influence.

The NSW Centre for Road Safety website states that the length of time illicit drugs can be detected by an oral fluid test depends on the amount taken, frequency of use and other factors that vary between individuals. Cannabis can typically be detected up to 12 hours after use and stimulants for one or two days. However, a number of cases have been before the courts where the driver had consumed cannabis days or even a week before detection by an oral fluid test. Drivers who use an illicit drug need to be aware that the drug consumed may stay in their system for some time and that days (perhaps even many days) later they can be charged with this offence.

## Morphine

A person who (1) drives a motor vehicle, or (2) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, or (3) occupies the seat in a motor vehicle next to a learner driver who is driving the vehicle, while there is present in the person's blood or urine any morphine commits an offence.

It is a defence to this offence if the presence of morphine was caused by the consumption of a substance for medicinal purposes (ie, is prescribed and taken in accordance with the prescription or an over-the-counter codeine-based product taken according to the manufacturer's instructions).

## Procedure (Sch 3 of the RTA)

### Oral fluid testing

A person driving, attempting to drive or sitting next to a learner driver who is driving is required to submit to an oral fluid test if required by a police officer. It is an offence to fail or refuse to undergo an oral fluid test. Police conduct Mobile Drug Testing (MDT) similar to Random Breath Testing for alcohol.

### Oral fluid analysis

If the test indicates the presence of a prescribed illicit drug, the driver will be arrested and taken to a nearby police station or roadside testing bus and required to supply another oral fluid sample which will be used for the purpose of conducting an oral fluid analysis. The sample is sent to a laboratory for analysis. Refusing or failing to submit a sample is an offence.

### When oral fluid testing/sample or blood/urine taking not permitted

Oral fluid testing/sample taking is not permitted in certain circumstances (RTA, Sch 3, cl 2). For example, it is not permitted at the person's home (which can include common areas of strata title property, eg, the driveway of a block of units), if the person has been admitted to hospital for medical treatment (unless the treating doctor has been advised and has no objection) or if two hours have passed from the event giving rise to the police officer's entitlement to require an oral fluid test.

A blood/urine sample cannot be taken after four hours from the time of the event that required the person to submit to an oral fluid test.

### Driving under the influence of alcohol or any other drug – s 112 of the RTA

In some cases, a PCA or illicit drug charge cannot be laid because, for any number of reasons, a

breath or blood analysis or oral fluid or urine test could not be undertaken, or the drug in question is not of a category covered by the specific drug charge.

A person who (1) drives a motor vehicle, or (2) occupies the driving seat of a motor vehicle and attempts to put the motor vehicle in motion, or (3) occupies the seat in a motor vehicle next to a learner driver who is driving the vehicle, while under the influence of alcohol or any other drug commits an offence.

The expression "under the influence" is not defined in the RTA but it has been considered by courts over many years. If the result of the consumption of the alcohol or drug is that the driver's mental or physical faculties are so affected as to no longer be in a normal condition, that would be sufficient to prove this element of the offence. The quantity of substance consumed is not relevant. There is no requirement to prove the driver is under the influence to the extent of being "drunk" or "stoned".

A drug is defined to include prohibited drugs within the meaning of the *Drug Misuse and Trafficking Act 1985* (NSW) and substances listed in Sch 3 of the RTGR. It includes drugs such as amphetamines, cannabis, barbituates, heroin and sedatives such as Serapax and Valium.

The prosecution usually relies on circumstantial evidence. That evidence is usually given by a police officer who has made observations of the driver, such as smelling alcohol or cannabis on the driver's breath or observing glazed eyes, a staggering gait and slurred speech. In addition, the officer may have made observations about the manner of driving, although as with PCA offences the driver may not have exhibited any adverse driving behaviour and was stopped by police at random.

The penalties for a person who commits this offence by either driving a motor vehicle, or occupying the driving seat of a motor vehicle and attempting to put the motor vehicle in motion are the same as for a middle range PCA.

## [20.110] Manner of driving offences – RTA

### Street/drag racing – ss 115 and 116 of the RTA

Taking part in a race between vehicles on a road is an offence (RTA, s 115). Racing would typically be

evidenced by observations of vehicles on a road accelerating and jostling for position, changing lanes without indicating, trying to get around one another and travelling at speeds well in excess of the speed limit. Upon conviction, the person will be automatically disqualified from holding a driver licence for 12 months, although the section provides for the court ordering a shorter or longer period if it thinks fit.

Other conduct associated with drag racing, such as causing the vehicle to undergo a sustained loss of traction, putting oil on the road beneath a vehicle's tyre, or even participating in a group activity involving such conduct or photographing or filming it is an offence (RTA, s 116). For those categories involving the driver committing an offence, the driver upon conviction is automatically disqualified from holding a driver licence for 12 months, although the court can order a shorter or longer period if it thinks fit. A burnout (s 116(1)) can be dealt with by way of penalty notice.

### Negligent driving – s 117 of the RTA

It is an offence to drive a motor vehicle on a road negligently (RTA, s 117(1)). This offence can be dealt with by penalty notice if the negligent driving does not occasion death or grievous bodily harm. The offence carries higher maximum penalties (and cannot be dealt with by penalty notice) if the negligent driving occasions grievous bodily harm or death. Negligence is not defined in the RTA. The courts have held that negligent driving is established where the person drives a motor vehicle in a manner departing from the standard of care for other users of the road to be expected of the ordinary driver in the circumstances.

The section provides that grievous bodily harm includes any permanent or serious disfigurement.

In considering whether an offence has been committed, s 117(3) requires the court to have regard to all the circumstances of the case, including the nature, condition and use of the road, the amount of traffic that was on the road or might reasonably be expected to be on the road and any obstructions or hazards on the road.

### Driving furiously, recklessly or at a speed or in a manner dangerous to the public – s 117(2) of the RTA

Driving a motor vehicle on a road furiously, recklessly, or at a speed or in a manner dangerous to the public is an offence (RTA, s 117(2)). Each

of these four descriptors is a separate charge. The most common charges are either drive in a manner dangerous or drive at a speed dangerous to the public. "Manner" is a broad term that can encompass all aspects of driving, including the other three categories of this charge. For example, if a person was speeding in a manner dangerous, the police could choose to charge that person with speed manner dangerous or drive manner dangerous.

Furious driving has been found to be driving of the type that endangers the life or limb of a passenger or any person who might be expected to be on the road. Reckless driving has often been described by contrasting it to negligent driving. A negligent driver might neglect his or her duty as a driver by being forgetful or inattentive, whereas a reckless driver knowingly disregards his or her duties as a driver, or drives in way that creates a serious and obvious risk to others without giving any thought to the risk.

Driving at a speed dangerous to the public needs to be considered in the circumstances. Whether it is dangerous must be judged objectively. It must in reality, not speculatively, be actually or potentially a danger to persons on or in the vicinity of the road where the driving takes place. The applicable speed limit is only one factor and it is a factor that can point either way. For example, driving at 100 km/h in an 80 km/h speed limit zone on a four-lane divided freeway, although a breach of the road rules against driving over the speed limit, might not be regarded as being objectively dangerous in the sense of constituting a danger to the public in all the circumstances. On the other hand, a driver may be keeping within the speed limit but still be driving at a dangerous speed if the particular area of road, for example, a hairpin bend, made it unsafe to travel at the speed limit at that location.

Driving in a manner dangerous requires the question of dangerous to be considered as discussed above. It is judged objectively. It must in reality, not speculatively, be actually or potentially a danger to persons on or in the vicinity of the road where the driving takes place. "Manner" includes all matters connected with the management and control of a motor vehicle when it is being driven.

As with negligent driving, s 117(3) also applies to these offences (see discussion above).

Dangerous driving that occasions death or grievous bodily harm is dealt with under the *Crimes Act 1900* (see [20.120]).

### Menacing driving – s 118 of the RTA

A person driving a motor vehicle on a road in a manner that menaces another person with the intention of menacing the other person commits an offence. The driver also commits an offence if the driver ought to have known the other person might be menaced (RTA, s 118). The menace can be a threat of personal injury or damage to property and the other person or property does not need to be on the road. A person cannot be convicted of both this charge and a charge under s 117 of the RTA if the offence arises out of a single incident.

An example of menacing driving could include tailgating or approaching the rear of another vehicle at high speed with either lights glaring or loud sounding of the horn.

There are two similar offences, s 11H of the *Summary Offences Act 1988* (NSW) (intimidatory use of vehicles) and s 51A of the *Crimes Act 1900* (predatory driving).

### Failing to stop and assist after an impact causing injury – s 146 of the RTA

If a vehicle driven by a person is involved in an impact occasioning death or injury to another person, and knows or ought reasonably to know that the vehicle has been involved in such an impact, and fails to stop and give any assistance that may be necessary and that is in the person's power to give, that person commits an offence.

A driver could be "involved" in an impact even if the driver's vehicle has not directly been physically impacted, as the concept of involvement includes a connection or association with an accident. If the driver is also injured, that may be a circumstance where the person is not in a position to render any assistance to another.

There are two similar offences, r 287 of the RR (duties of a driver involved in a crash) and s 52AB of the *Crimes Act 1900* (failing to stop and assist after vehicle impact causing death or grievous bodily harm).

## [20.120] Dangerous driving and other major offences under the Crimes Act 1900

### Predatory driving – s 51A

A driver of a vehicle who, while in pursuit of or travelling near another vehicle, engages in

a course of conduct that causes or threatens an impact involving another vehicle and intends by that course of conduct to cause a person in the other vehicle actual bodily harm is guilty of an offence (s 51A).

### Police pursuits (Skye's Law) – s 51B

The driver of a vehicle who knows, ought reasonably to know, or has reasonable grounds to suspect that police officers are in pursuit of the vehicle and that the driver is required to stop the vehicle, and who does not stop the vehicle, and who then drives the vehicle recklessly or at a speed or in a manner dangerous to others, commits an offence (s 51B).

### Dangerous driving occasioning death or grievous bodily harm – s 52A

If the vehicle driven by the person is involved in an impact (1) occasioning the death of another person, or (2) occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle: under the influence of intoxicating liquor or of a drug, or at a speed dangerous to another person or persons, or in a manner dangerous to another person or persons, the driver commits an offence (s 52A(1), 52A(3)).

It is an aggravated form of the above offences if at the time of the impact the person had the prescribed concentration of alcohol present, was travelling more than 45 km/h over the speed limit, was driving to escape pursuit by a police officer or whose ability to drive was substantially impaired by a drug other than alcohol or a combination of drugs.

There is a guideline judgment for sentencing offenders under this section (*R v Whyte* [2002] NSWCCA 343; (2002) 55 NSWLR 252).

### Fail to stop and assist after vehicle impact causing death or grievous bodily harm – s 52AB

An offence is committed where a vehicle being driven by the person is involved in an impact (1) occasioning the death of another person or (2) occasioning grievous bodily harm to another person, and the person knows, or ought reasonably to know, that the vehicle has been involved in an impact occasioning the death of, or grievous bodily harm to, another person, and the person fails to stop and give any assistance that may be

necessary and that is in his or her power to give (s 52AB(1), 52AB(2), respectively).

### Furious driving – s 53

A person in charge of a vehicle, who, by wanton or furious riding, or driving, or racing, or other misconduct, or by wilful neglect, does or causes to be done to any person any bodily harm is guilty of an offence.

“Wanton” means an unrestrained disregard for the consequences of one’s actions. Wilful neglect requires a conscious breach of the necessary standard of care.

### Other

Other offences under the *Crimes Act 1900* that might be committed by someone driving a vehicle include murder (s 18), manslaughter (s 18), wounding or grievous bodily harm with intent (s 33), reckless grievous bodily harm or wounding (s 35) and causing grievous bodily harm (s 54) and such offences, if they involve a motor vehicle driven by the offender, are considered “major offences” under the RTA.

## [20.130] Repeat offending

### Repeat offending – generally

Many road transport legislation offence provisions carry a higher penalty if the driver commits the same offence a second or subsequent time. In most cases, the re-offending is considered second or subsequent if it occurs within five years of the conviction for the first offence. The terms “first offence” and “second or subsequent offence” and applicable re-offending periods are defined in s 9 of the RTA.

If a penalty notice is received for an alcohol- or drug-related offence, it can count towards a further offence being considered a second offence.

### Repeat offending – major offences

Some offences that a driver can be charged with are classified as “major offences”. Major offences are defined in s 4 of the RTA.

Repeat offending for major offences gives rise to longer disqualification. For example, having committed one major offence, if a driver then commits a second or further major offence within five years, the driver is liable to longer automatic and minimum disqualification periods.

Drivers convicted of two drink-driving offences in a five-year period must pass the RMS Driver Knowledge Test before they are again licensed to drive.

## [20.140] Disqualification

### General power to disqualify

Subject to any mandatory disqualification provisions, a court that convicts a person of an offence against the road transport legislation may, at the time of the conviction, order the disqualification of the person from holding a driver licence for such period as the court specifies (RTA, s 204).

### Mandatory disqualification

A driver is subject to mandatory disqualification if convicted of an offence against s 53 (unlicensed driving), s 54 (disqualified, suspended, cancelled driving) (see RTA, s 205A), s 115 (racing etc) or s 205 (certain major offences).

Section 205 deals with disqualification for certain major offences for an automatic period (or for a minimum period). The periods of disqualification differ depending on whether or not the person has previous convictions for a major offence during the period five years before the conviction. If there is such a conviction, higher automatic and minimum periods apply. Once the driver has been convicted, a disqualification is imposed for the automatic period, without the need for any order by the court. The automatic period is not a maximum and a court may impose a disqualification higher than the automatic period. If it thinks fit, the court can reduce the disqualification to a shorter period, but not shorter than the minimum period specified.

The disqualification is of the person, not the licence (unlike a suspension or cancellation which operates on the licence). The consequence for any licence held by the disqualified person is that it is automatically cancelled. If it is not already in the possession of the police (eg, it was seized by police at the time of the offence), it must be surrendered to the court. At the end of the disqualification period, the driver will need to apply for a new licence.

Disqualification follows only upon conviction. If the person is found guilty but the court does not proceed to convict (CSPA, s 10), the person is not disqualified from holding a driver licence. Section 203 of the RTA provides that s 10 is not applicable in certain circumstances. If a person

who is appearing before the court for an applicable offence has within the previous five years received a s 10 for another applicable offence, s 10 is not available to the court as a sentencing option. Applicable offences include PCA offences (RTA, s 110), negligent driving occasioning death or grievous bodily harm and driving furiously or recklessly or at a speed or in a manner dangerous (RTA, s 117).

If the drivers licence was immediately suspended, the period of that suspension must be taken into account by the court when making the disqualification order (RTA, s 206B).

Disqualification commences from the date of conviction unless the Court orders it begins on a later date (RTA, s 207A). This means that, unless otherwise ordered, a disqualification order runs concurrently with any existing periods of disqualification and does not accumulate.

### Driving while disqualified – offence

Driving while disqualified is a serious offence that is dealt with by charge at court and carries a maximum penalty of imprisonment as well as further disqualification from holding a licence (RTA, s 54). Because a licence is automatically cancelled upon disqualification, a person who drives after a disqualification ends, but before the person obtains a licence, will be charged with driving while cancelled.

### Mandatory Alcohol Interlock Program – ss 208–215B of the RTA

The Alcohol Interlock Program is a mandatory program (exemptions may be granted in limited circumstances) that restricts the driving of those convicted of serious drink driving offences to vehicles with alcohol interlock devices for a period of time when they return to driving. The interlock order applies to a person convicted of a “mandatory interlock offence” (see RTA, ss 208, 209) such as a person convicted of a mid or high range, repeat or other serious drink driving offence.

When ordered to participate in the interlock program, the person has a period of disqualification imposed. Depending on the offence, the disqualification compliance period (ie, the disqualification that must be served before the driver can obtain the interlock licence) can be from one to 12 months. Thereafter, the person is required to have an alcohol interlock device, with

the minimum interlock periods varying from 12–48 months (see table at s 211 for the periods applicable to each offence). This is in addition to any other penalty for the offence.

An exemption must be sought at the time of sentencing. The RMS has no power to exempt a participant after an order has been made. The court may only make an exemption order if the offender “proves to the court’s satisfaction” that the offender:

- does not have access to a vehicle in which to install an interlock device;
- has a medical condition diagnosed by a medical practitioner that prevents the offender from providing a sufficient sample of breath to operate an interlock device, and it is not reasonably practicable for an interlock device to be modified to enable the offender to operate the device;
- is convicted of a mid-range PCA that is a first offence where the making of the interlock order would cause severe hardship and the exemption order is more appropriate in all the circumstances (s 212).

The legislation does not allow exemptions solely based on certain grounds (eg, financial grounds) (s 212(5)). An exempted driver serves the disqualification order made pursuant to s 205, and the RMS will also require the person to complete a drink driver rehabilitation program before applying for a licence.

An offender exempted from the interlock program whose circumstances change (eg, obtains access to a vehicle) can choose to enter the program at a later time by contacting the RMS directly. An application to a court is not required (s 213).

The interlock is an electronic breath testing device connected to the ignition. Unless the driver passes the breath test, the vehicle will not start. Driving with only a zero blood alcohol concentration is a condition of the interlock licence. Failed attempts to start are recorded and the data are monitored. Repeat fail attempts can result in counselling or cancellation of the program.

Further information can be obtained from the Alcohol Interlock Program – Participant Guide available on the RMS website.

### [20.150] Habitual traffic offenders

The Habitual Traffic Offender (HTO) scheme (RTA, ss 216–221) was abolished on 28 October



2017. Any existing HTO declarations remain valid and in place.

Transitional provisions in the RTA preserve the right to apply to the Local Court (under s 220 as it was in force prior to its repeal) to quash a Habitual Traffic Offender declaration (RTA, Sch 4, cl 65). Instead of relying on the transitional provisions, a habitual offender may also be eligible to apply to have the disqualification removed under the driver disqualification removal scheme introduced as part of the same reforms to the RTA (ss 221A–221E).

## [20.155] Driver disqualification removal

Sections 221A–221E of the RTA provide for disqualified drivers to make an application to the Local Court for the removal of licence disqualifications. Under the scheme, disqualified drivers who have observed an offence-free period, can apply to the Local Court for the removal of their existing periods of disqualification.

Convictions for certain offences preclude a person from ever applying for removal of licence disqualifications. Such offences include a *Crimes Act* 1900 offence which involves causing death, grievous bodily harm or wounding by use of a motor vehicle, predatory driving or police pursuits, RTA offences such as negligent driving which causes death or grievous bodily harm and intentional menacing driving (for a complete list of offences, see RTA, s 221D(1)).

The offence-free period is either four years or two years, depending on the driver's convictions. It is the longer period, if within the period of four years before the determination of the application, the driver has been convicted of a major offence, exceeding the speed limit by more than 30 kph, street racing, an aggravated burnout or driving at a speed/in a manner dangerous. It is the shorter period if all the remaining disqualifications are habitual offender disqualifications, or the disqualification is for another offence not specified in the definition (RTA, s 221A).

To be considered offence-free, the person must not have been convicted of any driving offence throughout the relevant period up to and including the date the court determines the matter. For that reason, an applicant must obtain an up-to-date traffic record with a specific RMS letter stating the person is eligible to make an application. The relevant forms are on the RMS website.

The court hearing the application must take into account certain matters in determining whether it is appropriate to grant the application, such as the safety of the public, the applicant's driving record and relevant subjective circumstances, for example the need for a licence for family or work reasons (RTA, s 221B).

There is no other party to the proceedings. Neither the RMS nor police appear or make submissions. If an application is successful, all periods of disqualification are removed (except a mandatory interlock order, RTA, s 221D(2)). If an application is refused, there is no right of appeal. However, assuming the person remains eligible, another application can be made after 12 months from the court's decision.

If an application is successful but the RMS has reason to believe the person has committed a driving offence during the relevant offence-free period that would have precluded the disqualification removal order, it can defer any application for a driver licence and notify the Local Court of the alleged offence for the purpose of the court re-hearing and re-determining the application (RTA, s 221E).

A person serving habitual offender disqualifications may need to consider his or her options as to whether to apply under the transitional provisions or the new scheme. If the person is serving court ordered disqualifications at the same time, then, if eligible, consideration should be given to applying under the new scheme because a successful application will result in the removal of all disqualifications (whereas an application under the transitional provisions will only deal with the HTO disqualification).

However, some circumstances can make an application under the transitional provisions the preferred or only option. For example, the only remaining disqualifications are HTO disqualifications (the application process is simpler than under the new scheme), or the person is ineligible under the new scheme due to prescribed convictions.

Further information can be obtained from the Driver Disqualification Reforms Legal Practitioners' Handbook published by Legal Aid NSW on its website.

## [20.160] Other sanctions

A court that convicts a person can order compensation for an expense incurred as a consequence of the offence (RTA, s 227).

Sanctions can also be imposed concerning vehicles (RTA, ss 236–255). A vehicle can be impounded and even forfeited if a person is found guilty of certain offences, known as sanctionable offences, for a second time within a five-year period. Sanctionable offences include high range speeding (travelling 45 km/h or over the speed limit but not a camera detected offence), a second or subsequent mid or high range PCA (RTA, s 110(4) or s 110(5)), racing (RTA, s 115), drag racing (RTA, s 116(2)) and police pursuits (*Crimes Act 1900*, s 51B).

Only if a court finds “extreme hardship” will be occasioned might the court commute the forfeiture to a period of impounding. Financial loss, difficulty in carrying out employment or in travelling to the place of employment or study does not constitute extreme hardship (RTA, s 246).

## [20.170] Information that must be given to police on request

Road transport legislation has specific exemptions to the general right to remain silent when questioned by the police. In the following instances, information must be provided, and it is an offence if the provisions are not complied with.

A driver has to exchange particulars (driver’s name and address, vehicle owner’s name and address, vehicle registration number) when involved in an accident. The required particulars must also be given to a police officer in certain circumstances, including if requested by the police officer (RR, r 287).

Authorised officers exercising their powers under the road transport legislation can request drivers to produce their driver licence and state name and home address (RTA, s 175). The same request can be made of a passenger (s 176).

An owner of a vehicle or a person having custody of it, where a driver is alleged to have committed an offence against the road transport legislation, must if required immediately, give an authorised officer the name and home address of the driver and any other information that could lead to the identification of the driver (s 177).

## [20.180] Driver education programs

There are driver education programs that can be completed before sentencing or as part of

a sentence. The interlock program has been discussed at [20.140].

## Traffic Offenders Intervention Program (TOIP)

A person appearing before the court pleading guilty to a traffic offence can seek to be referred to the Traffic Offenders Intervention Program (TOIP) before being sentenced. Eligibility and other requirements of the program are dealt with in cll 96–108 of the *Criminal Procedure Regulation 2017* (NSW). The case will then be adjourned for sufficient time to allow the course to be completed. Often, it will be of benefit to enrol before the first court date so that the driver might be ready to proceed to sentence on the first court date or otherwise knows the end date of the course so that the case can be adjourned to after the course completion date. Only approved courses are recognised. The Local Court website provides a list (TOIP List of Registered Providers) of approved course providers.

There is no guarantee that successful completion of the program will lead to a more lenient sentence (and in some cases the driver’s offending may be so persistent that the court finds that there is no benefit in referring the person to the program). As a general proposition, successful completion is looked upon favourably. It demonstrates that the driver has the motivation to change his or her driving behaviour and will be less likely to commit a similar offence in the future. Such factors may point towards leniency being exercised (in some contexts that may mean a successful s 10 application or an otherwise lesser penalty).

More information and a list of program providers can be found at the Local Court TOIP link on the Department of Justice website.

## Sober Driver Program

The Sober Driver Program is for serious or repeat drink driving offenders who are subject of a court based order for a drink driving offence or a driving offence where alcohol use was a contributing factor. It is a nine week educational program delivered by the Community Corrections division of Corrective Services NSW. Attendance can be a condition of a community-based sentencing order imposed by the court.

More information can be found in the Compendium of Offender Behaviour Change Programs in NSW on the Corrective Services NSW website.

# Penalties tables

## [20.190] Selected penalties under Road Transport Legislation

Note that the penalties listed in these tables are those that may be imposed by a Court. Some

of the offences can be dealt with by a Penalty Infringement Notice. Some attract Demerit Points. For complete information on all available penalties for a particular offence, consult the Lawcodes database published on the Judicial Commission of NSW website.

### Licence offences (RTA, Pt 3.4)

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>	<b>Disqualification second offence</b>
Obtain/attempt to obtain or possess/renew licence by false statement	49(1)(a), 49(1)(b)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Unlawful possession of driver licence or fake driver licence	50(a), 50(b)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Alter licence to deceive	51(1)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Produce altered licence	51(2)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Forge or fraudulently alter/use or fraudulently lend/allow other to use licence	51(3)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>	<b>Disqualification second offence</b>
Fail/refuse to provide signature specimen – seized suspected unlawful licence	52(2)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Unlicensed driver	53(1)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Never licensed driver (or unlicensed driver who has not been licensed for five years or more)	53(3), 53(5)	20 penalty units	30 penalty units and/or six months imprisonment	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	12 months automatic; three months minimum; s 205A
Drive, or make deceptive application for licence, while disqualified	54(1)(a), 54(1)(b)	30 penalty units and/or six months imprisonment	50 penalty units and/or 12 months imprisonment	Six months automatic; three months minimum; s 205A	Two years automatic s 54(8), 54(9)(b)
Drive, or make deceptive application for licence, while licence suspended (other than for non-payment of fine)	54(3)(a), 54(3)(b)	30 penalty units and/or six months imprisonment	50 penalty units and/or 12 months imprisonment	Six months automatic; three months minimum; s 205A	Two years automatic s 54(8), 54(9)(b)
Drive, or make deceptive application for licence, after licence refused or cancelled (other than for non-payment of fine)	54(4)(a), 54(4)(b)	30 penalty units and/or six months imprisonment	50 penalty units and/or 12 months imprisonment	Six months automatic; three months minimum; s 205A	Subsection 4(a): two years automatic s 54(8), 54(9)(b)

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>	<b>Disqualification second offence</b>
Drive, or make deceptive application for licence, after licence cancelled or suspended (for non-payment of fine)	54(5)(a), 54(5)(b)	30 penalty units; Court must take into account s 54(6) – effect on employment and ability to pay fine	50 penalty units and/ or six months imprisonment; Court must take into account s 54(6) – effect on employment and ability to pay fine	Three months automatic; one month minimum; s 205A; Court must take into account s 54(6) – effect on employment and ability to pay fine	12 months automatic; three months minimum; s 205A; Court must take into account s 54(6) – effect on employment and ability to pay fine

**Registration offences (Pt 4.2)**

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>	<b>Disqualification second offence</b>
Use unregistered registrable vehicle	RTA, 68(1)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	
Use, or cause or permit or suffer other to use, uninsured vehicle	MV(TPI) A, 7(1)	Five penalty units	-	-	-

**Alcohol and drug offences (Pt 5.1)**

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second or subsequent offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Novice driver drive or attempt to drive with novice range PCA (over zero, less than 0.02) M	110(1)	20 penalty units	30 penalty units	Six months automatic three months minimum s 205(2)(a)	12 months automatic six months minimum s 205(3)(a)

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second or subsequent offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Special category driver drive or attempt to drive or sit next to learner driver with special range PCA (over 0.02, less than 0.05) M	110(2)	20 penalty units	30 penalty units	Six months automatic three months minimum s 205(2)(a)	12 months automatic six months minimum s 205(3)(a)
Drive or attempt to drive or sit next to learner driver with low range PCA (over 0.05, less than 0.08) M (a) or (b)	110(3)	20 penalty units	30 penalty units	Six months automatic three months minimum s 205(2)(a)	12 months automatic six months minimum s 205(3)(a)
Drive or attempt to drive or sit next to learner driver with middle range PCA (over 0.08, less than 0.15) M (a) or (b)	110(4)	20 penalty units and/or nine months imprisonment	30 penalty units and/or 12 months imprisonment	12 months automatic six months minimum s 205(2)(b)	Three years automatic 12 months minimum s 205(3)(b)
Drive or attempt to drive or sit next to learner driver with high range PCA (over 0.15) M (a) or (b)	110(5)	30 penalty units and/or 18 months imprisonment	50 penalty units and/or two years imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Drive or attempt to drive or sit next to learner driver with prescribed illicit drug M	111(1)	20 penalty units	30 penalty units	Six months automatic three months minimum s 205(2)(a)	12 months automatic six months minimum s 205(3)(a)
Drive or attempt to drive or sit next to learner driver with morphine M	111(3)	20 penalty units	30 penalty units	Six months automatic three months minimum s 205(2)(a)	12 months automatic six months minimum s 205(3)(a)

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second or subsequent offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Drive or attempt to drive or sit next to learner driver of vehicle while under the influence of alcohol or other drug M (1) (a) or (b)	112(1)	30 penalty units and/or 18 months imprisonment	50 penalty units and/or two years imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic; two years minimum s 205(3)(d)
Fail to comply with request or signal by police officer to stop	Sch 3, cl 6	10 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Refuse or fail to submit to breath/oral fluid test, sobriety assessment	Sch 3, cl 16(1) (a)(c)(d)	10 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Refuse or fail to submit to breath analysis M	Sch 3, cl 16(1) (b)	30 penalty units and/or 18 months imprisonment	50 penalty units and/or two years imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Refuse or fail to submit to taking of blood/oral fluid/urine sample M	Sch 3, cl 17(1)	Blood sample following arrest (Sch 3, cl 9) or oral fluid sample: 30 penalty units; any other case: 30 penalty units and/or 18 months imprisonment	Blood sample following arrest (Sch 3, cl 9) or oral fluid sample: 50 penalty units and/or 18 months imprisonment; any other case: 50 penalty units and/or two years imprisonment	Three years automatic six months minimum s 205(2)(c)	Five years automatic 12 months minimum s 205(3)(c)

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second or subsequent offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Prevent sample taker from taking blood sample under Sch 3, cl 11 (person other than secondary participant in accident) M	Sch 3, cl 17(2)	30 penalty units and/ or 18 months imprisonment	50 penalty units and/ or two years imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Prevent sample taker from taking blood sample under Sch 3, cl 11 (secondary participant in accident) M	Sch 3, cl 17(3)	30 penalty units	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Wilful introduction or alteration of concentration or amount of alcohol or other drugs (person other than secondary participant in accident) M	Sch 3, cl 18(1)	Subclause (1) (a), (b), (e), (f) or (g): 30 penalty units and/ or 18 months imprisonment subclause (1) (c) or (d): 30 penalty units	Subclause (1) (a), (b), (e), (f) or (g): 50 penalty units and/ or two years imprisonment subclause (1) (c) or (d): 50 penalty units	Three years automatic six months minimum s 205(2)(c)	Five years automatic 12 months minimum s 205(3)(c)
Wilful introduction or alteration of concentration or amount of alcohol or other drugs (secondary participant in accident) M	Sch 3, cl 18(2)	30 penalty units	-	Three years automatic six months minimum s 205(2)(c)	Five years automatic 12 months minimum s 205(3)(c)
Hinder or obstruct police officer (oral fluid test or sample) or sample taker (blood or urine)	Sch 3, cl 19(1), 19(2)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	



<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second or subsequent offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Sample taker refuse or fail to take sample	Sch 3, cl 20(1)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	
Destroy or interfere or tamper with sample	Sch 3, cl 28	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	
Fail to comply with sample handling procedures	Sch 3, cl 29	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	
Intentional or reckless use of sample for non-drug testing purposes	Sch 3, cl 30	30 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	

**Speeding and other manner of driving offences (Pt 5.2)**

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Organise or promote or take part in race etc	115(1)	30 penalty units and 12 months automatic disqualification (if in relation to a motor vehicle or trailer), discretion to reduce or increase (subs (4))	30 penalty units and/or 9 months imprisonment and 12 months automatic disqualification (if in relation to a motor vehicle or trailer), discretion to reduce or increase (subs (4))	See subs (4)	See subs (4)

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Cause vehicle to undergo sustained loss of traction	116(1)	10 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Drag racing (various sub-categories)	116(2) (a)–(g)	30 penalty units and if 2(a)(b)(c) or (d): 12 months automatic disqualification, discretion to reduce or increase (subs (7))	30 penalty units and/or 9 months imprisonment and if 2(a)(b)(c) or (d): 12 months automatic disqualification, discretion to reduce or increase (subs (7))	See subs (7)	See subs (7)
Drag racing associated conduct prescribed by statutory rules	116(4)	Five penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Negligent driving occasioning death M	117(1)(a)	30 penalty units and/or 18 months imprisonment	50 penalty units and/or two years imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Negligent driving occasioning grievous bodily harm M	117(1)(b)	20 penalty units and/or nine months imprisonment	30 penalty units and/or 12 months imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Negligent driving	117(1)(c)	10 penalty units	-	No automatic or minimum period; general power to disqualify under s 204(1)	-
Drive furiously or recklessly or at a speed or in a manner dangerous to the public M	117(2)	20 penalty units and/or nine months imprisonment	30 penalty units and/or 12 months imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)

<b>Offence (M=major offence)</b>	<b>Section RTA</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Menacing driving with intent to menace another person M	118(1)	30 penalty units and/or 18 months imprisonment	50 penalty units and/or two years imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Menacing driving where driver ought to have known that the other person might be menaced M	118(2)	20 penalty units and/or 12 months imprisonment	30 penalty units and/or 18 months imprisonment	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)

**Vehicle use and traffic safety (Pt 5.4)**

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>	<b>Disqualification second offence</b>
Knowingly fail to stop and give assistance following impact causing death or injury	146(1)	30 penalty units and/or 18 months imprisonment	50 penalty units and/or two years imprisonment	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-

**ID offences (Pt 7.2)**

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>
Driver refuse to produce licence, state name or home address to authorised officer	175(2)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)
Passenger of learner driver fail/refuse to produce licence, state name or home address to authorised officer	176(1)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)
Responsible person/custodian of vehicle fail/refuse to supply name and home address of driver	177(1)(a)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)

<b>Offence</b>	<b>Section</b>	<b>Max penalty first offence</b>	<b>Max penalty second offence</b>	<b>Disqualification first offence</b>
Other person fails to give information that may identify driver	177(1)(b)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)
Failure of charged person to produce licence to court	178(2)	20 penalty units	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)

**Road rule speeding offences that carry disqualification (RR, r 10-2; RTA, s 59; RTDLR, cl 67)**

<b>Offence</b>	<b>Rule</b>	<b>Max penalty</b>	<b>Disqualification</b>
Exceed speed limit by more than 45 kph	10-2(3)	30 penalty units (50 penalty units for heavy vehicle or coach)	Six months automatic (less can be imposed only to the extent suspension is taken into account) r 10-2(3)(b), 10-2(4)
Exceed speed limit by more than 30 kph	10-2(5)	20 penalty units	Three months automatic r 10-2(5)(b)

**Crimes Act 1900 (Pt 3 offences against the person)**

<b>Offence (M=major offence)</b>	<b>Section</b>	<b>Max penalty first offence (jurisdictional limit if summary disposal available)</b>	<b>Max penalty second offence (jurisdictional limit if summary disposal available)</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Murder (involving motor vehicle) M	18, 19A	Life	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Manslaughter (involving motor vehicle) M	18, 24	25 years	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Predatory driving M	51A(1)	Five years (two years and / or 100 penalty units)	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)

<b>Offence (M=major offence)</b>	<b>Section</b>	<b>Max penalty first offence (jurisdictional limit if summary disposal available)</b>	<b>Max penalty second offence (jurisdictional limit if summary disposal available)</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Police pursuit – does not stop and then drives recklessly or at speed or in manner dangerous M	51B(1)	Three years (two years)	Five years (two years)	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Dangerous driving occasioning death	52A(1)	10 years	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Aggravated dangerous driving occasioning death	52A(2)	14 years	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Dangerous driving occasioning grievous bodily harm	52A(3)	Seven years (two years and/ or 100 penalty units)	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Aggravated dangerous driving occasioning grievous bodily harm	52A(4)	11 years (two years and/ or 100 penalty units)	-	No automatic or minimum period; general power to disqualify under RTA, s 204(1)	-
Fail to stop and assist after impact causing death M	52AB(1)	10 years (two years and/ or 100 penalty units)	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Fail to stop and assist after impact causing grievous bodily harm M	52AB(2)	Seven years (two years and/ or 100 penalty units)	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)

<b>Offence (M=major offence)</b>	<b>Section</b>	<b>Max penalty first offence (jurisdictional limit if summary disposal available)</b>	<b>Max penalty second offence (jurisdictional limit if summary disposal available)</b>	<b>Disqualification if no major offence in previous five years minimum and automatic</b>	<b>Disqualification if major offence in previous five years minimum and automatic</b>
Cause bodily harm by furious etc driving M	53	Two years (two years and/ or 100 penalty units)	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)
Cause grievous bodily harm by unlawful or negligent act/omission (involving motor vehicle) M	54	Two years (two years and/ or 100 penalty units)	-	Three years automatic 12 months minimum s 205(2)(d)	Five years automatic two years minimum s 205(3)(d)

#### “Major Offence” Table (RTA, s 4)

<i>Act</i>	<i>Offence (including an offence of aiding, abetting, counselling or procuring, or being an accessory before the fact)</i>
<i>Crimes Act 1900</i>	Sections 18 (murder or manslaughter), 33, 35, 53, 54 or any other provision of the <i>Crimes Act</i> if it is in respect of death or bodily harm involving motor vehicle driven by offender, ss 51A, 51B or 52AB
RTA	Section 110(1), (2), (3)(a) or (b), (4)(a) or (b), 5(a) or (b), ss 111, 112(1)(a) or (b), ss 117(1) (occasioning death or grievous bodily harm), 117(2), 118, s 146, Sch 3, cll 16(1)(b), 17 or 18
Other	Any other crime or offence that, at the time it was committed, was a major offence for the purposes of the RTA, the <i>Road Transport (General) Act 2005</i> (NSW), the <i>Road Transport (General) Act 1999</i> (NSW) or the <i>Traffic Act 1909</i> (NSW)

#### Demerit point suspension of licence – unrestricted licence holder – s 33 of the RTA

<i>Number of demerit points incurred within the previous three years</i>	<i>Period of licence suspension</i>
13 (or 14 in the case of a professional driver) to 15	Three months
16–19	Four months
20 or more	Five months

#### Demerit point suspension of licence – learner and provisional licence holder – s 39 of the RTA

<i>Licence</i>	<i>Number of demerit points incurred within the previous three years</i>	<i>Period of licence suspension</i>
Learner or P1	Four or more demerit points	Three months
P2	Seven or more demerit points	Three months

## Contact points

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**[20.200]** If you have a hearing or speech impairment and/or you use a TTY, you can ring any number through the National Relay Service by phoning **133 677** (TTY users, chargeable calls) or **1800 555 677** (TTY users, to call an 1800 number) or **1300 555 727** (Speak and Listen, chargeable calls) or **1800 555 727** (Speak and Listen, to call an 1800 number). For more information, see [www.communications.gov.au](http://www.communications.gov.au).

Non-English speakers can contact the Translating and Interpreting Service (TIS National) on **131 450** to use an interpreter over the telephone to ring any number. For more information or to book an interpreter online, see [www.tisnational.gov.au](http://www.tisnational.gov.au).

Changes are expected to the websites for many NSW government departments that were not available at the time of printing. See [www.service.nsw.gov.au](http://www.service.nsw.gov.au) for further details.

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### Drinkwise Australia

[www.drinkwise.org.au](http://www.drinkwise.org.au)  
ph: (03) 9682 8641

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### National Heavy Vehicle Regulator

[www.nhvr.gov.au](http://www.nhvr.gov.au)  
ph: 1300 696 487

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### NSW Centre for Road Safety

[www.roadsafety.transport.nsw.gov.au](http://www.roadsafety.transport.nsw.gov.au)

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### NSW Civil and Administrative Tribunal

[www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)  
ph: 1300 006 228

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### NSW Department of Justice

The online gateway to law and justice information in NSW  
[www.justice.nsw.gov.au](http://www.justice.nsw.gov.au)

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### LawAccess NSW

[www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)  
ph: 1300 888 529

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### Lawcodes

[www.judcom.nsw.gov.au/lawcodes/](http://www.judcom.nsw.gov.au/lawcodes/)

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### Revenue NSW

[www.revenue.nsw.gov.au](http://www.revenue.nsw.gov.au)

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### NSW Police Force

[www.police.nsw.gov.au](http://www.police.nsw.gov.au)  
ph: 131 444

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### Personal Property Securities Register

[www.ppsr.gov.au](http://www.ppsr.gov.au)  
ph: 1300 007 777 (National Service Centre)

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### Roads and Maritime Services

[www.rms.nsw.gov.au](http://www.rms.nsw.gov.au)  
ph: 13 22 13 (Roads)

