

Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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Public transport and transit officers

Trains, fines and transit officers

For young people, public transport infringements are extremely common, especially railway offences. The problem is made much worse by a few over-enthusiastic transit officers who may single out vulnerable young people to hassle. This chapter will help you find out what transit officers can do, what they can't do and what you can do if they overstep the line.

Staff on trains and railways

It is easy to be confused about the different officers and staff on trains and stations in NSW. You may find:

- transit officers
- transit police
- ordinary police
- ticketing staff, and
- security guards.

Their powers and responsibilities depend on whether these people have been appointed *rail safety officers* or not.

Rail safety officers

All transit officers are appointed as rail safety officers by the Independent Transport Safety and Reliability Regulator (ITSRR), under the *Rail Safety Act 2008*.

Generally speaking, rail safety officers have the power to issue penalty notices (fines) to people who have committed railway offences. They also have related powers, including the power to demand your name and address if they suspect you have committed a railway offence.

Police officers (including transit police) are not rail safety officers but they have been authorised by the ITSRR to exercise the same powers as rail safety officers.

Security guards and ticketing staff are *not* rail safety officers.

Rail safety officers: powers and responsibilities

Transit officers

There are several hundred transit officers who regularly patrol trains in NSW. You can normally identify them by their blue and black uniform with RailCorp arm patch and yellow rank insignia on their shoulders.

What can transit officers do?

Transit officers are appointed as rail safety officers. They have the power to do a number of things, for example:

- ask you to show them your ticket
- ask to see your concession card (if you have one)
- confiscate a concession card that is incomplete, fake or being misused
- demand your name and address if they suspect on reasonable grounds that you have committed a railway offence or graffiti offence
- detain you for the length of time it takes to obtain this information (eg just your name and address)
- make a *citizen's arrest* and detain you until the police arrive, if you refuse to give your name and address (this would be an extreme measure)
- tell you to leave the train or station (and if necessary remove you) if they think that you are committing an offence
- issue penalty notices (on-the-spot fines) for railway offences
- arrest you if they catch you committing an offence. This is the same *citizen's arrest* power that security guards and people who are not police officers have. They should *not* arrest you unless a penalty notice or caution is totally inappropriate.

Special constables

A few transit officers have been appointed as *special constables*. Special constables are impossible to tell apart as they wear exactly the same uniform and badge as normal transit officers.

Special constables have the power to do everything a transit officer can do, as well as the same powers as NSW Police (see *Police officers* below). However, the powers of special constables are not generally relied upon by RailCorp, which means that even if a transit officer is a special constable, they normally will not use these extra powers.

What can't they do?

If the transit officer isn't a special constable, they cannot:

- arrest you simply because they suspect you have done something

- search you without your consent
- detain you, unless they are making a citizen's arrest after witnessing you committing an offence, or they suspect you have committed an offence and need to detain you for the purpose of asking your name and address.

Although failing to provide your correct name and address is an offence, transit officers have no legal basis to demand identification documents. Transit officers can ask to see your identification if they reasonably suspect that the name or address you have provided is false, but failure to produce ID is not an offence.

If you are arrested or detained by a transit officer who is not a special constable, they may have gone beyond their powers in doing so. If you think you might have been unlawfully imprisoned or assaulted by an officer, let your lawyer know because it may help in court. You may also wish to make a formal complaint.

Identification of a transit officer

When exercising any of their powers, a rail safety officer must produce their identification if you ask them.

Their identification will include a badge and an identity card with:

- a photograph of the rail safety officer
- an ID number, and
- an authorisation by the ITSRR Chief Executive.

If you think you have been unfairly picked out or unnecessarily hassled, it is a good idea to write down some of these details so that it makes it easier for you make a complaint later on.

Complaints about transit officers

If you want to complain about a transit officer you should get their name and/or badge number and contact RailCorp (see *Contacts* on page 417). If you are not happy with the way that RailCorp deals with your complaint, you should complain to the NSW Ombudsman.

Police officers

Transit police are part of NSW Police and can be easily spotted by their blue police uniforms. Sometimes, though, the police officers may be in plain clothes and can't be clearly identified.

Other police officers may also patrol trams and stations, including drug squad police and sniffer dogs (see *Police drug detection dogs* on page 117).

What can police officers do?

Transit police have all the powers of transit officers, as well as all the powers of the NSW Police. For example, they can:

- demand your name and address in some situations (see *Dealing with police on the street* chapter)
- give you a reasonable direction to move on if they reasonably believe you are obstructing, harassing, intimidating or likely to cause fear to other people, or are hanging around to buy or sell drugs (see *Police directions in public places* on page 93)
- search you if they have reasonable grounds to suspect that you are carrying drugs, stolen goods, weapons, etc (see *Police searches* chapter)
- ask for tickets and concession cards
- demand your name and address if they suspect you have committed a railway offence or graffiti offence
- issue fines or court attendance notices
- (if you are under 18) deal with you under the *Young Offenders Act 1997* (see *Young Offenders Act: warnings, cautions and conferences* chapter)
- arrest you if they have a warrant, or if they know or suspect on reasonable grounds that you have committed an offence or breached your bail conditions (see *Arrest and warrants* chapter).

Complaints about police

If you want to make a complaint about the transit police (or any other police officer), you should try to get their name or badge number and details of which police station they are from. You can complain to their Local Area Commander or to the NSW Ombudsman. See *Complaints and cooperation: working to improve police practices* chapter.

Security guards

Security guards are not rail safety officers, and do not have any powers under rail safety legislation. Nor do they have the same powers as police.

They have the power to make a citizen's arrest if they catch you committing an offence and they can also ask you to leave a train or railway property if you are offending or breaching any rules.

See *Security guards: what powers do they really have?* chapter.

Railway offences

One of the main functions of rail safety officers is to ensure that all passengers on the train system comply with the *Rail Safety Act 2008* and Regulations.

How offences are dealt with

In nearly all cases, offences are dealt with by issuing a penalty notice (on-the-spot fine).

Penalty notice (on-the-spot fine)

A rail safety officer or police officer will sometimes issue you with a penalty notice straight away, or will post it to you a few days later.

The amount of the fine is called the *prescribed penalty*. This is a set amount depending on what type of offence you are being fined for.

The *prescribed penalty* is usually a lot less than the *maximum penalty*, which is the maximum fine that may be imposed by a court if you choose to contest the matter in court.

If you do get a fine, don't ignore it! There are a number of ways to deal with it (see *Unpaid fines* chapter).

Caution

RailCorp used to have a strict policy which gave transit officers no discretion. Transit officers were required to issue a fine (or involve the police) every time they suspected a railway offence had been committed.

This policy has now been relaxed, and in fact transit officers are now able to issue cautions instead of fines in appropriate circumstances.

Following recent changes to the *Fines Act 1996*, transit officers and other officials now have formal guidelines for issuing cautions (see *Unpaid fines* chapter).

If you are under 18, the police (but not rail safety officers) also have the power to warn or caution you under the *Young Offenders Act 1997* (see *Young Offenders Act: warnings, cautions and conferences* chapter).

Court attendance notice

Sometimes you may be given a court attendance notice instead of a penalty notice. This may happen if the officer cannot verify your identity, or if they consider you to be a serious repeat offender.

If a transit officer wants to issue you a court attendance notice, they will have to get the police to do it. See *How the police deal with you for alleged offences* on page 147 and *Going to court* chapter.

Some common railway offences

Travelling without a valid ticket

It is an offence to travel without a valid ticket, unless you have a reasonable excuse. You could be up for an on-the-spot fine of \$100 (or \$50 if you are under 18).

You must have a valid ticket and carry it with you at all times. Even if you are not catching a train, you must have a ticket to enter certain restricted areas of the station, including the platform of most stations. If you have to go onto the platform to buy a ticket, this is OK, but you must buy a ticket straight away and are not allowed to hang around on the platform without one.

Under the Regulations, you do *not* have a reasonable excuse for not having a ticket just because:

- you were running late and would have missed your train if you had to buy a ticket, or
- you were planning to buy a ticket when you got to your destination.

However, it *is* a reasonable excuse if:

- it appeared to you, after looking around, that there were no facilities to purchase a ticket before getting on the train (eg if there were no station attendants and the ticket vending machines were out of order), or
- you took all the steps reasonably required to pay for the ticket before travelling on the train but were unable to do this due to circumstances outside your control. For example, you got to the station with plenty of time before your train was going to leave, but there were no station attendants so the line at the ticket vending machine was really long.

Travelling on a concession ticket to which you are not entitled

If you buy a concession ticket, you must have your concession card on you at all times. If you have lost your concession card, or left it at home, or it has expired, you are not allowed to travel on a concession ticket and must pay full fare. The prescribed penalty for this offence is \$100 (or \$50 if you are under 18).

Offence of failure to provide your name and address

A rail safety officer or a police officer may demand your name and address if they reasonably suspect you to be committing (or to have committed) a railway offence or a graffiti offence.

Failure to provide your name and address or providing false details, without a reasonable excuse, is an offence. The prescribed penalty (fine amount) is \$100 and the maximum penalty (what you could be up for if the matter went to court) is \$1650.

When demanding your name and address, the rail safety officer must identify themselves and warn you that a failure to comply is an offence.

A rail safety officer may ask for identification documents if they reasonably suspect the name or address you have provided is false. However it is *not* an offence to refuse to show documentary ID when requested.

Although you don't have to show ID, you do need to be careful if you refuse to comply with demands for details or ID. If a police officer or transit officer thinks you have committed an offence and wants to issue a fine or caution, they need to be sat-

ified of your identity. In this case it is a good idea to show your ID if you have any on you. If they are not satisfied of your identity, they may end up arresting you for the original offence, so you can be taken to the police station for your identity to be verified. You may end up with a lot more hassles than you started off with.

Other offences

There are many other offences on trains and railways. Some of these can get you a very hefty fine. For example:

- putting feet on seats (prescribed penalty \$100)
- smoking on train or in any enclosed or covered area (prescribed penalty \$400)
- drinking alcohol on a train or station – this includes having an opened container of alcohol even if you are not drinking from it (prescribed penalty \$400)
- graffiti or vandalism (prescribed penalty \$400)
- offensive language or behaviour (prescribed penalty \$400).

Offences and officers on buses and ferries

Authorised officers on buses and ferries

On the NSW bus and ferry systems, there are *authorised officers* appointed under the *Passenger Transport Act 1990* and Regulations. They often work in tandem with the police and are often called revenue protection officers.

What can an authorised officer do?

A *police officer* or *authorised officer* has the power to do various things including:

- require you to show your ticket or concession card
- direct passengers to leave (or not to enter) a bus or ferry if they are intoxicated, carrying luggage or clothing which may soil or damage the bus or ferry, or for any other reason
- demand your name and address if they suspect on reasonable grounds that you have committed an offence under the Act or Regulations;
- issue on-the-spot fines and caution notices for ticketing, safety, behavioural, property and compliance offences
- make a citizen's arrest if they catch you committing an offence and a caution or fine is not appropriate.

Offences on buses and ferries

How offences are dealt with

Penalty notice (on-the-spot fine)

A *penalty notice* is an on-the-spot fine issued by an authorised officer or police officer (see *Railway offences* on page 198 and *Unpaid fines* chapter).

Formal caution notice

While this does not require payment of a fine, it will be entered on a database and it will be taken into account if you are ever accused of a bus or ferry offence in the future. A caution notice is usually sent by mail to your home address.

Young Offenders Act options

If you are under 18, the police (but not authorised officers) also have the power to warn or caution you under the *Young Offenders Act 1997* (see *Young Offenders Act: warnings, cautions and conferences* chapter).

Court attendance notice

In nearly all cases offences are dealt with by issuing a penalty notice. If the issuing officer cannot verify your identity, or if they consider you to be a repeat offender, they may instead decide to ask the police to issue a court attendance notice.

Some common offences

Ticketing offences

As with trains, it is an offence to travel without a valid ticket, or to travel on a concession ticket if you don't have your concession card with you. The prescribed penalty (on-the-spot fine) for these offences is \$100.

Offence of failure to provide name and address

A police officer or authorised officer may demand your name and address if they reasonably suspect you to be committing (or to have committed) an offence under the Act or Regulations.

Failure to provide your name and address (or providing false details) is an offence, as long as the authorised officer has identified himself or herself and has warned you that failure to comply is an offence.

The maximum penalty for this offence is \$550, and is *not* a penalty notice offence (this means you will not be issued an on-the-spot fine but will probably have to go to court instead).

Other common offences

Some other common offences on buses and ferries include:

- smoking on a bus or ferry (prescribed penalty \$300)
- graffiti or vandalism (prescribed penalty \$300)
- offensive behaviour or language (prescribed penalty \$300)
- not vacating a disability seat when a person with a disability needs it (prescribed penalty \$100), and
- throwing things at or above a bus or ferry (prescribed penalty \$200).

Special provisions for under 18s

Young Offenders Act and police officers

If the *investigating officer* is a police officer, a public transport offence may be dealt with under the *Young Offenders Act 1997*. Instead of a fine or court proceedings you may receive a warning or caution (or even a youth justice conference, although this would rarely be appropriate).

Although rail safety officers (on trains) and authorised officers (on buses and ferries) can issue informal warnings or formal cautions under the *Fines Act 1996* to people of any age, they do not have the power to issue warnings and cautions under the *Young Offenders Act 1997*. However, they can call the police and ask them to consider dealing with the young person under the *Young Offenders Act 1997*.

For more information, see *Young Offenders Act: warnings, cautions and conferences* chapter.

Reduced penalty notice amounts

For ticketing offences on railways, where the prescribed penalty for adults is \$200, penalty notice amount for under 18s is \$50.

Unfortunately there does not appear to be a lower prescribed penalty for under 18s who commit ticketing offences on buses and ferries.

Of course if the matter goes to court, the court is not restricted to the prescribed penalty. The Children's Court may impose a fine of up to \$1100 or the maximum penalty for the offence, whichever is less.