

# Driving Offences and Penalties

This article contains a discussion of driving offences and penalties in New South Wales, Australia.

## 1. Speeding Penalties

The New South Wales government can issue penalties and licence disqualifications for speeding offences under Regulation 154 of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999*. Speeding penalties are prescribed by the Roads and Traffic Authority, New South Wales (“RTA”). As at 1 July 2009, the speeding penalties for Light Vehicles (Ordinary cars) are as follows:

Exceed Speed Limit by:	Demerit Points*	Fine
Not more than 10 km/h	1	\$84.00
More than 10 km/h but not more than 20 km/h	3	\$197.00
More than 20 km/h but not more than 30 km/h	4	\$338.00
More than 30 km/h but not more than 45 km/h	5	\$647.00
More than 45 km/h	6	\$1,744.00

*\* On declared public holiday long week end periods in New South Wales, the demerit points for all speeding offences are doubled.*

Under Section 205 of the *Road Transport (General) Act 2005 No 11*, a police officer may immediately suspend the licence of a person who has exceeded a speed limit by more than 45 km/h. The suspension will apply for six months. A person driving more than 30 km/h but not more than 45 km/h above the speed limit may have their licence suspended or disqualified for three months. Since 1 July 2007 there is zero tolerance for first-year Provisional 1 drivers caught speeding.

Drivers should be aware that certain highways and expressways (eg. the M7) are now fitted with Point to Point Speed Devices. These devices calculate the time taken for a vehicle to travel between two points, based on photographs taken of cars as they pass E-Tag entrance and exit points.

## 2. Alcohol Offences

Section 9 of the *Road Transport (Safety and Traffic Management) Act 1999 No 20* describes the offences and penalties for the presence of prescribed concentrations of alcohol in a person’s blood. Blood Alcohol Concentration (“BAC”) is a measurement of the number of grams of alcohol found in every 100 millilitres of blood. Blood alcohol limits differ according to the type of licence one holds and the vehicle they drive. All Learner, Provisional 1 and Provisional 2 drivers have a blood alcohol limit of zero. A blood alcohol limit of 0.02 applies to drivers of vehicles carrying dangerous goods or heavy vehicles, and to drivers of public vehicles, such as buses and taxis. All other drivers not subject to a 0.02 or zero limit have a blood alcohol limit (or BAC limit) of 0.05.

Prescribed Concentration of Alcohol (“PCA”) Offence	Penalties (First Offence) (Heavier Penalties Apply for second or subsequent PCA offences)
Low Range PCA (BAC of 0.05 to less than 0.08)	<ul style="list-style-type: none"> <li>• Maximum fine: \$1,100.00</li> <li>• Disqualification: Minimum of 3 months with maximum of 6 months</li> </ul>
Mid Range PCA (BAC of 0.08 to less than 0.15)	<ul style="list-style-type: none"> <li>• Maximum fine: \$2,200.00</li> <li>• Maximum gaol term: 9 months</li> <li>• Disqualification: Minimum of 6 months with unlimited maximum</li> <li>• Possible immediate licence suspension</li> </ul>
High Range PCA (BAC of 0.15 or above)	<ul style="list-style-type: none"> <li>• Maximum fine: \$3,300.00</li> <li>• Maximum gaol term: 18 months</li> <li>• Disqualification: Minimum of 12 months with unlimited maximum</li> <li>• Possible immediate licence suspension</li> </ul>

Under Section 205(1)(b) of the *Road Transport (General) Act 2005 No 11*, a police officer may immediately suspend or confiscate a licence if a driver is detected with a mid or high range PCA.

### 3. Demerit Points Scheme and Licence Suspensions

The National Demerit Points Scheme allocates penalty points for driving offences. (While it is common to say that a person has 'lost' points, a driver who has not committed any offences has zero points and accumulates demerit points for each offence.) If a driver accrues a certain number of demerit points within 40 months, their licence may be suspended or application for renewal refused. Demerit points used towards a licence suspension cannot be counted toward future licence suspensions. However, offences and demerit points remain on a person's driving record regardless of the age of the offence.

The number of points resulting in licence suspension varies according to the type of licence one holds. Those with a full unrestricted licence can accumulate a maximum of 12 demerit points; Provisional 2 licence holders can gather seven; Provisional 1 licence holders can have four; and those on unrestricted licences with a good behaviour bond have a maximum of two points.

When a driver is suspended, all driving is prohibited until the period of disqualification or cancellation has expired. If the licence is still current, the driver can start driving as soon as their suspension period ends. A driver who holds an unrestricted licence and receives a Notice of Suspension due to the accumulation of demerit points can apply for a 12 month good behaviour period instead of serving a suspension. Drivers who accumulate two or more demerit points while serving a good behaviour bond will be suspended for double the original suspension time.

There is no right of appeal against the suspension or refusal of an unrestricted licence on the grounds of demerit points. However, a person who has had their licence immediately suspended and confiscated by a police officer has the right to appeal the suspension at a local court. The appeal must be lodged with a court within 28 days of being issued the notice.

Australian states and territories exchange traffic offence information. If a driver holding a New South Wales licence commits an offence in another state, the offence may attract demerit points in New South Wales. Similarly, if a driver holds a licence from another state or territory and commits a driving offence in New South

Wales, details of demerit point offence(s) will be sent to the home state and included in their driving record.

### 4. New Provisional Driver Restrictions

From 1 July 2007, red P plate (Provisional) drivers caught speeding will automatically lose their licence for at least three months. Provisional 1 ("P1") drivers will also be banned from all mobile phone use while driving, and P1 drivers under the age of 25 will be able to carry only one passenger under 21 between 11.00 pm and 5.00 am, with exemptions applying to particular P1 drivers.

### 5. Checking Your Driving Record

You can check the demerit points on your licence and request a copy of your driving record through the RTA website <http://www.rta.nsw.gov.au>. You can also run vehicle checks and submit a notice of disposal at this website.

### 6. Section 10 of the Crimes (Sentencing Procedure) Act 1999

It may be possible to avoid a criminal conviction being recorded in a person's file (driving records) when Section 10 of the *Crimes (Sentencing Procedure) Act 1999* ("Section 10") is pleaded by the driver, and the Court is convinced that the Section 10 is to be applied. The Court may order an outright, or a conditional dismissal of a driving charge. The Court will look at many factors, including driving record, character, age and mental condition of the driver, as well as the nature of the offence in deciding whether to give a Section 10.

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*Comasters has represented clients in defending driving charges against the NSW Police, and has appeared in various courts.*

**Important:** This is not advice. Clients should not act solely on the basis of the material contained in this paper. Our formal advice should be sought before acting on any aspect of the above information.

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