



Demerit Points Scheme

Nearly everyone who hold a drivers licence and drives regularly have at some point committed a traffic offence that has resulted in a fine and loss of Demerit Points.

Earlier this year changes were made to the Demerit Points Scheme which has resulted in the increase in the demerit points threshold.

About the Demerit Points Scheme

The Demerit Points Scheme is a national program that allocates penalty points (demerits) for a range of driving offences. The scheme is designed to encourage safe and responsible driving. Along with financial penalties, demerit points provide a strong incentive to drive within the law.

In January 2011, the demerit points threshold for unrestricted licence holders in NSW increased from 12 to 13 points. This means if you have an unrestricted NSW Driver Licence (not a learner's or provisional licence), and you accumulate 13 demerit points, you will face a licence suspension.

Professional drivers (ie those who drive for a living, such as taxi and heavy vehicle drivers) are also able to claim an additional demerit point and their threshold increased from 12 to 14 demerit points. The change recognizes the additional time professional drivers spend on the roads but the extra point can only be claimed once the driver has accumulated exactly 13 demerit points and has received a suspension notice. They will then need to visit an RTA motor registry before the suspension starts, to prove their status as a professional driver.

Accumulating Points

A Driver who has not committed any offences has zero points. When an offence that carries demerit points is committed, the points are added to the licence holder's driving record. If the licence holder incurs the threshold number of demerit points within a **three-year period**, a licence suspension or refusal is applied. The thresholds are presently as follows:-

- Unrestricted licence – 13 points.
- Professional drivers – 14 points.
- Provisional P2 licence – 7 points.
- Provisional P1 licence – 4 points.
- Learner licence – 4 points.
- Unrestricted licence with a good behavior period – 2 points within the term of the good behavior period.



Suspension and refusal periods

Reaching or exceeding the demerit points limit results in licence suspension or refusal. The RTA will send a Notice of Suspension or Refusal to a licence holder who reaches or exceeds the number of points available for their type of licence, or who commits an excessive speed offence. A Notice of suspension or refusal will specify the date the licence suspension or refusal is to begin. The imposition of a licence suspension or refusal period relies on the RTA serving a Notice.

For unrestricted licence holders, the period of suspension depends on the number of points accumulated as follows:-

- 13 to 15 points – three months.
- 16 to 19 points – four months.
- 20 or more points – five months.

For provisional and learner holders, the suspension period is three months.

Good behavior period

Unrestricted licence holders who receives a Notice of Suspension due to the accumulation of demerit points can apply for a 12 month good behavior period **instead of** serving the suspension. This option is not available to provisional or learner licence holders or those already serving a good behavior period.

A good behavior election must be made **before** the suspension begins. If the election is not made before the required date, then the suspension will be enforced. The relevant legislation does not give the RTA the discretion to reissue the suspension notice with a new date or to change a suspension to good behavior after the suspension period has begun.

Licence holders who accumulate 2 or more demerit points while serving a good behavior period will be suspended for double the original suspension time.

Refusal of a licence

The RTA may refuse to renew a licence for a driver who has exceeded their demerit points threshold or has committed a serious speeding offence. The periods that a licence may be refused are the same as those that apply for suspensions. The RTA will issue a Notice of Refusal.

Only after attending a motor registry and applying for a licence or licence renewal will a formal refusal be applied and a refusal notice given.

Appeals

There is no right of appeal against the suspension or refusal of an unrestricted licence on the grounds of demerit points for unrestricted licence holders however there is a right of appeal for Provisional licence holders.

Double demerit points

Double demerit points apply for speeding, seatbelt and motorcycle helmet offences during all holiday periods such as long weekends, Christmas, New Year and Easter.



School zones

Certain driving and parking offences attract an additional demerit point if committed in an operating school zone. Double demerit points can also apply when school zones are in operation during holiday periods. If you commit a speeding, seatbelt or helmet offence during this combined period, the demerit point value applying for the school zone will be doubled.

Immediate licence suspension and disqualification periods for speeding

Licence holders may also be disqualified or have their licence suspended for the following serious speeding offences:

- Driving more than 45km/h above the speed limit – six months.
- Driving more than 30km/h but not more than 45km/h above the speed limit – three months.

In addition to the suspension and disqualification periods, these offences also carry demerit points which are added to the licence holder's record. If these demerit points cause the licence holder to reach or exceed their demerit points limit, then an additional suspension or refusal period may apply under the Demerit Points Scheme.

Licence suspension for any speeding offence for a learner or a provisional P1 licence holder

Holders of a learner or a provisional licence will receive a minimum of 4 demerit points for any speeding offence. This means that both learners and provisional P1 licence holders will have their licence suspended or refused for at least three months for any speeding offence. A fine may also be payable.

Demerit Point offences that are heard in court

If the court rules that a person is not guilty of a demerit point offence, it is the end of the matter. There are no fines to pay or demerit points to be recorded.

If a court finds a person guilty of the offences and convicts the person, the court usually orders a fine. In this case the offence will be recorded on the offender's traffic record and the RTA must apply the relevant number of demerit points. If a court finds a person guilty of the offences and dismisses the offence under Section 10(1) of the *Crimes (Sentencing Procedure) Act 1999*, the demerit points related to the offence will not be recorded. This applies for court rulings made on and after 31 January 2011.

At Bateman Battersby we have a number of experienced Lawyers who specialise in Traffic Offences. If you need help or wish to discuss any of the matters addressed above, please feel free to contact Oliver Hagen or Ken Gray on (02) 4731 5899 or email us at litigation@batemanbattersby.com.au.