

Driving offences are classified into two categories; ones that are major and are generally dealt with by the court only, and minor offences which carry fines and demerit points. This article will focus on how to dispute minor driving offences.



There are legislated laws that enforce the safe use of motor vehicles on the roads. When these laws are broken, the driver has committed a driving offence and if caught, will be issued a penalty notice.

### **A. TYPES OF PENALTY NOTICES**

A penalty notice for committing a driving offence is generally issued “on the spot” to the driver of the offence or issued to the owner of the motor vehicle by post.

There are two types of penalty notices you can receive. Each have different consequences.

A) A penalty notice that issues a fine and does not carry any loss of demerit points or licence. This type will result in no record on your Australian driving record. The matter will come to an end when the fine is paid as you are admitting guilt and accepting the penalty.

It would generally not be advisable to dispute this type of notice as the legal costs associated with disputing this notice will outweigh the fine you will need to pay.

B) A penalty notice that issues a fine and carries a licence loss, suspension or a loss in demerit points. In this instance, the conviction will be recorded on your Australian driving record and consequences will be imposed.

If you wish to dispute this type of notice it is important that you object to the notice within 28 days of which the notice was issued. It is also important that you do not pay the fine as that would mean admitting guilt and accepting the penalty.

### **B. SHOULD I OBJECT TO THE PENALTY NOTICE?**

You should object to the penalty notice in the following circumstances:

- a) If you want to object to having your licence cancelled or suspended;
- b) If you want to object to incurring a loss of demerit points;
- c) If you believe you did not commit the offence and do not want to be unjustly penalised;
- d) If you want to seek leniency for the penalty to what is stated on the penalty notice; or
- e) If you believe an error has been made and there were special circumstances which contributed to the offence.



## C. HOW SHOULD I DISPUTE MY PENALTY NOTICE?

### REQUEST A REVIEW OF YOUR PENALTY

If you wish to object the penalty notice, then you may request for a review of your penalty. It is important to note a review cannot be conducted if you have already requested to have the matter decided in court.

The first step is to write a letter and either post or lodge it online to the State Debt Recovery Office (SDRO). Your letter should reference the penalty notice number and include the date of the offence and any relevant or supporting evidence that may help you in disputing your penalty notice.

If you have a 10-year clear Australian driving record, your clear record can be taken into consideration when determining the outcome of your dispute. SDRO already has access to your driving record and therefore do not require you to supply evidence of your driving record when you are requesting a review of your penalty notice.

### TAKING THE MATTER TO COURT

If the review was unsuccessful, you have the option to dispute the penalty further by requesting that the matter be heard in court. You will need to request this within 28 days of receiving the results of your review.

To do this, you will need to lodge a request online to SDRO. Once they have received your request, SDRO will send you a Court Attendance Notice (CAN) which will include details of your court listing for the mention.

At the same time, you will receive a Written Notice of Pleading, asking you to plead either guilty or not guilty. If you cannot get to the court of the mention, you can submit the Written Notice of Pleading in writing in advance of the date of mention or you can enter your plea at the court on the day.

If you decide to plead guilty, you will be admitting that you have committed the offence and therefore you can only ask for a leniency of the penalty. Your plea cannot try to prove that you did not commit the offence as you have already admitted it by pleading guilty. Instead, you will need to provide some mitigating circumstances to try and convince the Magistrate that you deserve a lesser

penalty. This will include providing evidence that you are remorseful, along with your account of the incident and any reasons why the offence was committed, an explanation of any prior convictions, character references, your financial situation and if you are facing a licence suspension, why you need your licence.

Pleading not guilty means that you disagree with the facts alleged by the prosecution and you are alleging that you did not commit a crime. The court matter will then generally be adjourned for up to 6 weeks to allow time for the Police prosecutor to compile and prepare a brief of evidence against you, which contains all the evidence that the Police intend to rely upon at the hearing of the matter.

If you want to plead not guilty you will normally have to attend court on another two separate occasions. By the first occasion, the 'reply date', the Police would have submitted to you their brief of evidence against you. You will be allowed to choose if you still want to plead not guilty. If so, the second court date is for the 'hearing' which will give you a chance to present your case and any witnesses to prove your innocence.

## D. WHAT ARE THE POSSIBLE OUTCOMES IN COURT?

A judgment can be given on the same day or sometimes the court can be adjourned to a future date to allow the Magistrate to consider the decision.

The court may find that you were either:

- Guilty - in which the Magistrate will impose a sentence for your offence committed. There are various sentences which can be imposed such as fines, good behavior bonds and imprisonment depending on the crime committed; or
- Not Guilty - in which your case will be dismissed by the Magistrate with no fines or penalty imposed.

Comasters can assist you in requesting a review of your penalty notice and/or taking the matter to court.

## CONTACT US