

# Minor traffic offence

## Failure to wear a seatbelt

July 2013

### What do these words mean?

Words that are highlighted in **bold** are explained in our *What do these words mean?* fact sheet.

### What is 'failure to wear a seatbelt'?

Your **charge sheet** says that the police **charged** you with the **offence** of 'failure to wear a seat belt'. This means the police **allege** that you did one of these things:

- you were the driver and you did not wear seatbelt in a moving or stationary car (a stationary car does not include a parked car)
- you were the driver and your passenger was over 16 years old and they were not wearing a seat belt
- you were the passenger and you were over 16 years old and you were not wearing seatbelt
- you were the driver and you had children in your car who were 16 years or younger and not properly restrained.

Whether you are guilty depends on the exact facts and circumstances of your case. Look at the 'Details of the charge' in your charge sheet to see what the police officer wrote about your offence. The magistrate refers to this in the courtroom.

### What can I do today?

#### Plead guilty

If you agree that you did break the law, tell the court staff that you are pleading guilty. Go into the courtroom. The police **prosecutor** reads out the **statement of alleged facts**. The magistrate finds you guilty and gives you a **penalty**.

If you plead guilty the magistrate treats your **plea** as a sign that you are co-operating and may give you a less severe penalty.

See our *Pleading guilty* fact sheet to help you work out what to say to the magistrate.

#### Plead not guilty

If you believe that you did not break the law or you disagree with what the **informant** says you did, you must tell the police prosecutor that you plan to plead not guilty. They will hold a **summary case conference** with you before your case is heard in court. After the conference, if you still want to plead not guilty tell the magistrate. The magistrate **adjourns** your case for another day.

You will come back to court for a **contested hearing**. At this **hearing** the magistrate listens to **evidence** from you and the police before making a decision. You should have a **defence**.

Saying that you did not know you were breaking the law will not be a good enough defence.

If you are pleading not guilty, get legal advice before the contested hearing. Also see our *Pleading not guilty* fact sheet.

### Possible defences

You may have a defence to the charge if:

- you could not wear a seatbelt for medical reasons, and
- at the time of the offence you had a medical certificate saying why you could not wear it and for how long.

### Can I adjourn today's hearing?

You can ask the magistrate for an adjournment if you want to get a private lawyer. Adjournments are hard to get for any other reason. The magistrate may say no.

### What are the penalties if I am found guilty?

#### Demerit points

**VicRoads** adds three demerit points to your licence from the date the offence happened, not the date you went to court. The magistrate cannot change this.

See our *Demerit points* fact sheet.

#### Losing your licence

The magistrate may **cancel** or **suspend** your licence for a period of time. If this happens you should not drive at all during this time. There are no exceptions. For example, you cannot drive to work or to pick up your children. There are no special licences that allow you to drive some of the time. There are serious penalties for driving when you are not supposed to.

#### Fines

The magistrate may give you a fine. You can get up to 10 penalty units for an offence of failure to wear a seatbelt.

One penalty unit is about \$145.

#### Other penalties

The magistrate may also place you on an **undertaking** to behave well for a certain amount of time.

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## How does the magistrate decide what penalties to give?

The magistrate looks at:

- how serious your offence is
- if you have been found guilty of similar offences before
- what else is happening in your life.

## What else might happen if I am found guilty?

### Criminal record

What happens in court goes on your **criminal record**.

This includes:

- the finding of guilt
- a **conviction**, if there is one
- penalties.

The court and the police can see your criminal record. Sometimes they can let other people know what is in your criminal record. For example, a criminal record, especially with convictions, may make it harder for you to get some jobs or get visas to some countries.

See our *Criminal records* fact sheet.

## Can I appeal the magistrate's decision?

Yes. If you do not agree with the decision you can **appeal** to the County Court. You have 28 days to do this. Get legal advice before you decide. You could end up with a higher penalty.

See our *Appealing a Magistrates' Court decision* fact sheet.

## How do I pay a fine?

You can pay the fine at any Magistrates' Court. Go to the court counter and ask the staff for help.

Let the magistrate know if you might have trouble paying the fine. There are options. You can ask the magistrate to:

- make a plan for you to pay bit by bit
- give you community work instead of the fine.

If you do not pay, the court can issue a **warrant** for your arrest.

## Where can I get help?

### Law Institute of Victoria

Referral to a private lawyer

Tel: 9607 9550

### Victoria Legal Aid

#### Legal Help

Free legal help by telephone and information about Victoria Legal Aid services

Tel: 9269 0120 or 1800 677 402 (country callers)

#### Website

[www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)