

Having your fisheries penalty notice decided at court

Fisheries Compliance Unit, Fisheries Branch

Why did I receive a fisheries penalty notice?

You received a penalty notice because a fisheries officer (or other authorised person) had reason to believe you committed a fisheries offence for which a penalty notice may be issued and it was appropriate, given the circumstances known to the officer.

For example, if the fisheries officer has reason to believe you had not paid the fishing fee when required to do so, or were not exempt from the requirement to pay the fishing fee, you may be issued with a penalty notice under section 34J(1) of the *Fisheries Management Act 1994*.

Other examples of where a penalty notice may be issued in NSW for a fisheries offence include:

- Section 16(1), Possess prohibited size fish
- Section 14(1), Take fish in contravention of a fishing closure
- Section 18(2), Possess more than maximum quantity of fish
- Section 24(1), Unlawfully use net or trap for taking fish
- Section 25(1)(a), Possess fishing gear when such gear prohibited
- Section 34J(2), Fail to have fishing fee receipt in immediate possession

For more information on fisheries rules speak to your local fisheries officer, or visit the NSW Department of Primary Industries (NSW DPI) website <http://www.dpi.nsw.gov.au/fisheries>

What can I do to finalise the matter?

Within 21 days of the date of the penalty notice being issued, you should either:

1. **Pay the penalty** - choose from the 'Payment Options' on the payment slip included with the penalty notice, or
2. **Elect to have the matter heard at court** - select the 'Court Election' option provided with the penalty notice and send it to the address provided on the 'Court Election' page.

If you pay the penalty within the timeframe provided the matter is finalised and no criminal conviction is recorded against you.

If you elect to have the matter heard in court, you may receive a Court Attendance Notice (CAN). The CAN will show the attendance date and the Local Court location in NSW closest to where the alleged offence occurred.

There is no fee to have a penalty notice decided in court if you decide to court elect within the timeframe provided. However, the court may order you to pay court costs when the matter is determined and order you to pay the Department's legal costs and witness expenses.

What happens at court?

At court, you will be asked to enter a plea of either 'guilty' or 'not guilty'. The information sent with the CAN explains this in more detail.

Depending on the number and complexity of matters listed at the court, your matter may come up for first mention at any time during the day, or be adjourned for some later date.

If you plead guilty, the matter may be dealt with on that first day depending on the court. If you plead not guilty, a further hearing date will be set for you to attend court to present your case and any witnesses. The Department will also present evidence and any witnesses relating to the alleged offence.

What are the possible outcomes at court?

When the matter is heard, the court may determine that you are:

- 'guilty' – which means you may be required to pay a fine and will receive a criminal record. The court will also inform you of any additional costs it may impose (such as court costs, witness costs and professional legal costs)
- 'guilty' – but under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, record a conviction against you. In such circumstances the court may dismiss the charge, it may require you to enter into a good behaviour bond or it may require you to agree to participate in an intervention program. The court may still impose costs (such as court costs, witness costs and professional legal costs)
- 'not guilty' – which means no fine will be imposed and no conviction will be recorded against you.

You have the choice of attending court or not. If you do not wish to attend court, you should complete and submit the written notice of pleading sent to you with your CAN. That notice should be received by the court at least seven days prior to the court date.

If you or your legal advisor do not attend court on the initial date or adjourned date of hearing and have not sent a written notice of pleading to the court, the matter may be heard in your absence or a warrant for your arrest may be issued.

If the court hears the matter in your absence it will send a notice telling you the result including if there is a fine and how to pay. If you missed your court date for some reason, you can speak with the court where it was listed or seek legal assistance about your options.

What if I decide to retract a court election?

If you made a court election and a CAN has not been issued you can retract your court election and pay the fine. For more information on this contact NSW DPI on (02) 6042 4206.

If the CAN has been issued, it is generally too late to withdraw the matter from court determination. However, if you have received the CAN but wish to retract your court election and pay the fine call DPI NSW Legal Services Branch to discuss your options using the contact details that came with the letter accompanying the CAN.

What if I don't pay the penalty notice?

The Fines Division of the State Debt Recovery Office (SDRO) is the NSW Government department that manages the enforcement of penalty notices on behalf of NSW DPI. Please read the 'Having Your Enforced Fine Decided in Court' fact sheet available from the SDRO website <http://www.sdrow.nsw.gov.au>.

Obtaining assistance

You can get help:

- with legal information or referral to legal advice – from LawAccess NSW, a free service on 1300 888 529 or at www.lawaccess.nsw.gov.au
- if you are under 18 – from the Legal Aid Youth Hotline on 1800 101 810 (freecall)
- if you are Aboriginal or Torres Strait Islander – from the Aboriginal Legal Service NSW / ACT (02) 8303 6699
- about court procedures – from staff at the local court

If you do not understand the CAN, you should seek independent legal advice to have it explained to you. If you need an interpreter, contact the staff at the local court before your scheduled court date or you can phone the Translating and Interpreting Service (TIS) on 131 450.

Useful websites include:

www.sdrow.nsw.gov.au/publications.html for information and SDRO contact details.

www.legalaid.nsw.gov.au – for 'Going to court: A Handy Guide to the Local Court for Defendants'

www.lawlink.nsw.gov.au – for information about local courts.

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 2011). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

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