

## Motor Vehicle Registry Information Bulletin

# L40 - Body Corporate Responsibility Regarding Certain Demerit Points Offences

This Information Bulletin applies to a body corporate – e.g., a corporation, a Pty Ltd company or an incorporated association – that is the registered owner or nominated operator of a motor vehicle. It deals with what happens when;

- (a) a vehicle under the control of a body corporate is involved in a camera detected offence such as speeding or running a red light; and
- (b) a Traffic Infringement Notice (TIN) is issued to the body corporate.

**Speeding and running a red light are demerit points offences.** When a driver is found to be responsible for one of these offences, demerit points are recorded against the driver licence.

If the body corporate does not identify the driver when it receives the TIN (by returning the completed Driver/Ownership Statement Section) the following may happen:

- A significantly higher infringement penalty applies (five times the amount applying to an individual).
- Additionally, it is an offence for a body corporate to fail to identify the driver of a vehicle, under the control of the body, more than twice within three years, maximum penalty \$2200. This is the offence of *facilitating the avoidance of demerit points*.

## Body Corporate Responsibility

If an offence is committed and the name of the offender is not ascertained at the time of issuing the infringement notice relating to the offence, the owner of the vehicle, in this case the body corporate, at the time the offence occurs is to be taken to have committed the offence whether or not the owner in fact committed the offence.

To avoid this, it is the responsibility of the body corporate to take all reasonable steps to ensure it would be able to identify the driver of a vehicle under its control. In identifying the responsible driver the body corporate must deliver to an appropriate place, as stated on the TIN, a statutory declaration made by the owner. For convenience a Driver/Ownership Statement Section has been provided on the rear of the Traffic Infringement Notice to nominate that some other person was in control of the vehicle at the time the offence was committed.

Failure to do so (e.g. simply handing the body corporate's infringement notice to the driver) may result in the driver paying the higher fine (i.e. \$500 instead of \$100).

Failure to identify the driver may mean that the body corporate has facilitated the avoidance of demerit points by the responsible driver. In a prosecution for the offence of *facilitating the avoidance of demerit points*, it is a defence if the body corporate establishes it had taken reasonable steps to be in a position to identify the driver, but failed to do because of exceptional circumstances.

## Body Corporate May be Asked to Provide Reasons

If the Registrar of Motor Vehicles becomes aware that a body corporate has failed more than twice within a three year period to identify the driver, the Registrar may write to the body corporate (a *Provide Reasons* letter), asking it to set out the steps it had taken to ensure it could identify the driver. The Registrar may ask the body to provide reasons why the Registrar should not prosecute it for the offence of *facilitating the avoidance of demerit points*. If the Registrar is not satisfied that the body corporate took all reasonable steps and there were exceptional circumstances, the Registrar may proceed to prosecution.

## Responding to the Registrar

The body corporate should respond in writing to the Registrar's *Provide Reasons* letter. The body corporate is encouraged to attach as many additional pages or other supporting information or documentation as it considers necessary for the Registrar to take into account. The Registrar wants to be satisfied on two grounds:

1. That the body corporate took all reasonable steps to ensure it would be in a position to identify a driver.
2. That the circumstances that prevented identification of a driver were exceptional.

## Reasonable Steps

Examples of reasonable steps may include but are not limited to: relevant policies, vehicle logbooks and car dealers' records of persons doing test drives. If the records are inaccurate, or the steps cannot identify the actual driver of a vehicle that was under the control of the body corporate at offence time, the Registrar may not be satisfied that they are reasonable.

## Exceptional Circumstances

Note that the offence of *facilitating the avoidance of demerit points* is triggered on the third occasion the body corporate fails to identify an offending driver (*failed driver ID*). If the submitted exceptional circumstances have occurred more than once, or were foreseeable, the Registrar may not be satisfied that they were exceptional.

## Registrar's Decision

If the Registrar is satisfied of reasonable steps and exceptional circumstances or does not proceed to prosecution, the body corporate will be advised in writing. However, the advice may state that up to two of the occasions of *failed driver ID* may still, in future, be taken into account as the basis of a prosecution for a future failure.

### Important

This Information Bulletin is a guide only and contains general information and requirements. The Information Bulletin should not be used as a reference to a point of law.

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