

CONSUMER LAW
ALERT

NOVEMBER2006

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JAY WALKING

What Is Jay Walking?

Jay walking is the act of illegally or recklessly walking across the street with no regard to traffic regulations.

The Law

Jay walking is governed by the rules pertaining to pedestrians, as outlined in Part 14 of the Transport Operations (Road Use Management – Road Rules) Regulation 1999.

Crossing a road at pedestrian lights

Section 231 of the Regulation provides that whilst crossing at pedestrian lights, a pedestrian is prohibited from crossing unless the pedestrian lights change to green. If whilst crossing, the light changes to flashing red or red, the pedestrian must not stay on the road for longer than necessary to cross safely.

Crossing a road at traffic lights with no pedestrian lights

Section 232 of the Regulation provides that a pedestrian must not cross the road or intersection unless the traffic lights change to green or flashing yellow or there is no red traffic light showing. If whilst crossing the traffic lights change to yellow or red, the pedestrian must not stay on the road for longer than necessary to cross safely.

Crossing a road on or near a crossing for pedestrians

Section 234 of the Regulation provides that a pedestrian must not cross a road within **20 metres** of a crossing, except for at the crossing, unless the pedestrian is exempt under the Regulations.

The requirement that a pedestrian must cross at a crossing where the pedestrian is within **20 metres** of that crossing applies to a pedestrian who is within **20 metres** of an intersection with or without pedestrian lights.

The word 'crossing' in this section includes a children's crossing, a marked foot crossing and a pedestrian crossing.

The Penalty

The penalty for jay walking is \$30.00.

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Option To Contest Fine

A pedestrian who incurs a penalty for jaywalking may dispute the offence by electing to have the matter dealt with by a Court of Law. The pedestrian may take advantage of this option by completing the relevant section on the reverse side of the infringement notice and sending this notice to Queensland Transport. In doing so, the pedestrian acknowledges that they will be issued with a summons.

Relevant Cases

An examination of case law shows that a pedestrian, who illegally crosses a road and gets injured as a consequence, may bear part of the responsibility for the incident.

The case of *Cook -v- Hawes* [2002] NSWCA 79 involved a respondent who was injured when he hurriedly moved against a red 'Don't Walk' signal at a pedestrian crossing controlled by lights. On his own admission, the respondent had failed to look to the right as he proceeded against the road. The appellant, who was driving his van along that street at the time, saw the respondent and braked, but failed to prevent the van from hitting the respondent. It was held that the respondent's responsibility for the accident was substantially greater than that of the appellant. As a result, the respondent's contributory negligence was held to be 75%.

Additionally, the case of *Clarke v Freund* [1999] NSWCA 197 involved a pedestrian who chose to cross a road without the benefit of a pedestrian crossing, though one was nearby. The Court held that in doing so, the pedestrian placed herself in a dangerous position and that there was a high degree of culpability on her part. The appellant was apportioned responsibility for the accident at two-thirds.

The case of *Sung v Patterson* [2001] NSWCA 210 is a further example that a pedestrian walking against a pedestrian 'Don't walk' sign may bear responsibility for an incurring accident. In this instance, the Court held that the appellant was entirely at fault as the pedestrian ran against the lights and into the path of a motor vehicle, the driver of which having no opportunity to avoid him.

Pedestrian Obligations When Approached By Police Officer

When approached by a police officer, the pedestrian is obligated to stop and listen to the police officer. Additionally, the pedestrian must answer any questions that the police officer may ask with honesty. It is the pedestrian's obligation to treat the police officer with respect,

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thereby acknowledging the officer as an officer of the law. A pedestrian is obligated to provide identification to the police officer upon request.

A pedestrian who incurs penalty for jaywalking will be issued with an on-the-spot fine by a police officer. If the pedestrian fails to co-operate with the police officer, the police officer may arrest the pedestrian in accordance with powers prescribed under section 365 of the *Police Powers and Responsibilities Act 2000*. This section empowers police officers to arrest an adult without warrant if the police officer reasonably suspects the adult has committed or is committing an offence and if it is reasonably necessary for one or more of a number of reasons, including, but not limited to, the following:-

- to prevent the continuation or repetition of an offence or the commission of another offence;
- to make inquiries to establish the person's identity;
- to ensure the person's appearance before a court;
- to prevent a person fleeing from a police officer or the location of an offence.

In making an arrest, the police officer will often issue a Notice to Appear in the Magistrates Court, where it is likely that the Magistrate will issue the pedestrian with a monetary fine for failure to obey a police officer.

Section 377 of the Police Powers and Responsibilities Act 2000 allows a police officer to discontinue an arrest at the earliest reasonable opportunity in circumstances where the reason for arresting a person no longer exists or it is unlikely to happen again if the person is released; and either:-

1. The person is arrested for an offence that is an infringement notice offence; or
2. It is more appropriate to take the person before a court by notice to appear or summons and the notice to appear or summons has been served on the person.

This section does not apply to an adult who is arrested to prevent the person fleeing from a police officer or the location of an offence.

Recommendations On Conversing With Police On Such A Matter

Whilst conversing with a police officer, it is recommended that pedestrians remain calm and carefully listen to the officer. Pedestrians should not get agitated and react aggressively to the officer, but instead, respond to the officer with courtesy and respect.

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