

NEW PENALTY PROVISIONS FROM 1 OCTOBER 2009

Default Periods – maximum imprisonment in default of unpaid fine.

Old maximum is 6 months imprisonment in default. New maximums:

<u>Fine</u>	<u>Maximum default period</u>
Less than \$100	5 days
\$100 - \$200	10 days
\$200-\$500	20 days
\$500-\$700	30 days
\$700-\$1000	40 days
\$1000 - \$1500	2 months
\$1500 - \$2000	3 months
\$2000 - \$5000	6 months
\$5000+	6 months plus 6 months for every \$2000 Max period is 5 years

New maximum fines

<u>Penal code</u>		<u>Old max</u>	<u>New max</u>
SPREADING FALSE RUMOURS	s63	\$200	\$2000
Drunk and disorderly in public	s175	\$20	\$600
Shouting etc. in town	s180	\$10	\$1000
Sorcery	s190	\$40	\$2000
Unlawful use of vessel	s292	\$200	\$5000
Unlawful possession of suspicious property	s316(2)	\$100	\$5000
Corrupt practices	s374	\$600	\$2000

Traffic Act**Old max****New max**

		Old max	New max
Unlicensed vehicle	s 7(1)	\$500	\$5000
No ID plates	s 12	\$200	\$5000
Unlicensed driver	S 20(4)	\$200 or \$500 for 2 nd +	\$5000
Breach provisional licence	S 23(3)	\$150	\$2000
Reckless or dangerous driving – High Court	S 39(a)	\$1000	\$20 000
Reckless or dangerous driving – Mag Crt	S 39(b)	\$500 – 1 st \$600 – 2 nd +	\$5000 \$10 000
Careless driving	S 40 (1)	\$500 – 1 st \$700 – 2 nd	\$5000 \$7000
Drive while unfit – drink driving – High Court	S 43(1)(a)	\$2000	\$20 000
Drive while unfit – Drink Driving – Mag Crt	S 43(1) (b)	4400 – 1 st \$700 – 2 nd +	\$10 000 \$10 000
Improper condition or overloading	S 46(1)	\$200	\$5000
Taking vehicle without or authority – Mag Crt	S 59(1) (b)	\$200	\$3000
Fail to stop and report accident	S 63(4)	\$200 – 1 st \$300 – 2 nd +	\$2000 \$3000

Liquor Act**Old max****New max**

		Old max	New max
Make liquor or possess implement	S 50(2)	\$1200	\$30 000
Sell liquor without licence	S 57(1)(a) S 57(1)(b)	\$200 – 1 st \$400 or 12mths 2 nd +	\$2000 \$10 000
Carry or offer liquor for sale without licence	S 59(2)(a) S 59(2)(b)	\$200 1 st \$400 – 2 nd +	\$1500 \$10 000
Consume liquor in public place	S 65	\$200	\$2000
Consume liquor on licensed premises under 21yrs	S72(3)	\$200	\$10 000

Notes

- These penalties are not retrospective. They only apply to offences committed on or after 1 October 2009. Section 10(4) of the Constitution provides:

“No penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.”

- For offences before 1 October 2009, you may need to look at default periods and work out whether a new default period is more or less severe than an old default period. You may want to ask for the old maximum with the new default period.
- Maximum Penal Code s 178 (iii) has been increased from \$10 to \$1000. There seems to be a drafting error here. There is no s 178(iii). We should argue this provision does not apply to s178(a) to (t) – eg breach of the peace, obscene language.
- Drunk and incapable (s179) is still a max \$20 fine.

CAPACITY TO PAY A FINE

A fine should be within an offender’s capacity to pay. [R v Churchill and Ors [1966] 2 All ER 215, Sovita v Police [200] WSSC 2, Khan v The State [1994] FJHC 147, R v Belcher (1981) A Crim R 124, R v Rollo [1981] 2 NZLR 667]

You may need to refer to these authorities to keep fines within the reach of your client.