



Are you going to lose your driver licence?

A guide to help you apply for a work licence
or special hardship order

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Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at July 2021 and does not accept responsibility for any errors or omissions.

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How can this guide help me?

This guide can help you if:

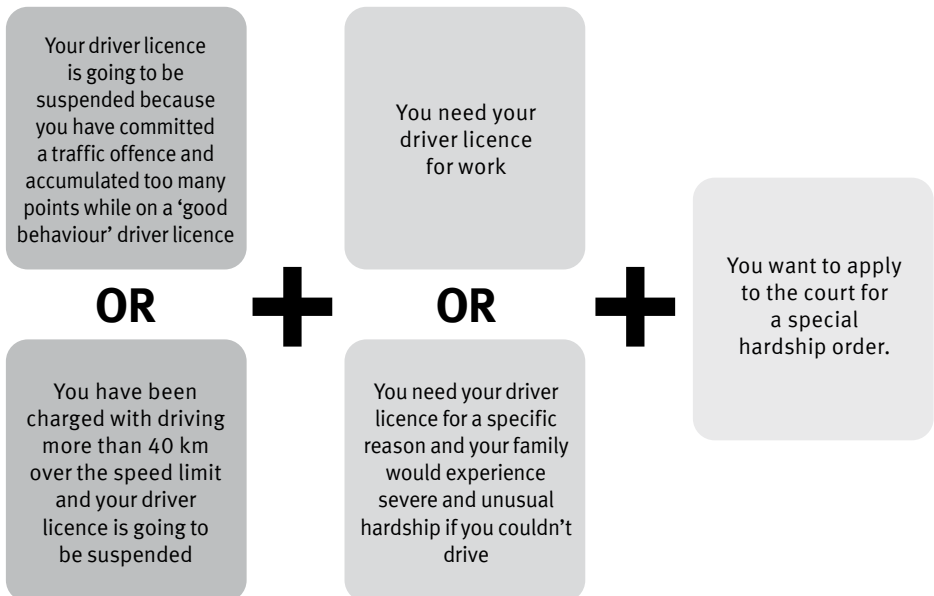
- you are going to lose your driver licence and
- you want to apply to the court for a work licence or special hardship order.

When should I use this guide?

Use this guide if:

- you have been charged with drink driving, fail to provide a sample of breath at the roadside, or driving with a relevant drug in the blood or saliva (but not driving under the influence of alcohol or drugs) and
- you are going to plead guilty and are going to lose your driver licence and
- you need your driver licence for work and
- you want to apply to the court for a work licence.

You can also use this guide if you meet the following criteria:



Get legal advice

You should use this guide along with legal advice. Never make any decisions without speaking to a solicitor first.

You can get legal advice from:

- Legal Aid Queensland – call 1300 65 11 88 (for the cost of a local call from a landline in Australia). Mobile phone users can call 07 3238 3444 (call costs may vary, check with your service provider).
- A community legal centre – go to www.legalaid.qld.gov.au or call 1300 65 11 88 to check services in your area
- A private solicitor – call the Queensland Law Society on 07 3842 5842 or visit www.qls.com.au for names of solicitors who can help.



Applying for a work licence

What is a work licence?

A work licence is a licence that lets you drive for work even though your normal driver licence has been cancelled because of drink driving or a similar offence. A work licence is officially called “a restricted licence under section 87 of the *Transport Operations (Road Use Management) Act 1995*”.

You need to apply to the court for an order for a work licence. If the magistrate gives you an order for a work licence, they can put conditions on the work licence, like the times and purposes for which you can drive – it is a restricted licence. You cannot automatically get a work licence because you need your licence for work. There are strict criteria and the magistrate can refuse your application if the magistrate is not satisfied that you are a fit and proper person to hold a restricted licence.

Am I eligible for a work licence?

You may be eligible for a work licence if:

- you have been charged with drink driving, fail to provide a sample of breath at the roadside, or driving with a relevant drug in the blood or saliva (but not driving under the influence of alcohol or drugs or fail to provide a specimen of breath at the police station) and
- you are going to plead guilty and are going to lose your driver licence and
- you need your driver licence for work.

You must be going to plead guilty to one of the following offences:

- drink driving
- being in charge of a vehicle while over the limit
- driving with cannabis, ecstasy or ice (these are referred to as a “relevant drug” in the legislation) in your saliva or blood

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- being in charge of a vehicle with a relevant drug in your saliva or blood
 - failing to supply a breath or saliva sample at the roadside (not at the police station).

You will not be eligible for a work licence if you have been charged with driving or being in charge of a vehicle while under the influence of drugs or alcohol, as these are more serious charges. A blood alcohol content of 0.15 percent or more is considered to be “under the influence.”

To apply for a work licence you must also be able to tick all the boxes below:

- You held a current Queensland open driver licence for the vehicle you were driving when you were caught for one of the offences listed on pages 4 and 5.
- You had a blood alcohol concentration level of less than 0.15 percent when you were caught for one of the offences listed on pages 4 and 5.
- You weren't driving for your job or already under a work licence when you were caught for one of the offences listed on pages 4 and 5.
- You weren't driving under a licence that required your blood alcohol concentration to be zero when you were caught for one of the offences listed on pages 4 and 5, eg a learner licence or provisional licence.
- You hold a current Queensland open driver licence when you apply for the work licence.
- You haven't been convicted anywhere of drink driving or a similar offence in the last five years.
- You haven't been convicted in Queensland of dangerous driving in the last five years.
- You haven't had your licence disqualified, suspended or cancelled in the last five years. (There are some exceptions to this, eg if the State Penalties Enforcement Registry suspended your licence because you didn't pay your fine, or your licence was suspended for 24 hours after you were charged).

Even if you have ticked all the boxes above, you must also:

- apply to the court at the time you are convicted and before the court orders that you are disqualified from driving
- show the court you are a ‘fit and proper person’
- show the court that you’ll lose your job (and your income) if you don’t get a work licence, which will cause extreme hardship to you or your family.

If you don’t need your driver licence once you get to your job, but you need it to travel to and from work (eg if there is no public transport available and no one is available to drive you to and from work), you may be eligible for a work licence.

You cannot get a work licence if:

- you’re unemployed, even if you’re looking for a job
- it’s more convenient to have a licence but you don’t need your licence for your job
- you need your licence for your current job, but you can easily get another job you don’t need a licence for, so you wouldn’t have money problems
- you’re the only driver in the family and you need to take your children to and from school, or take a relative to medical appointments etc.

It doesn’t matter how much you need a licence, or how good your reasons are, if you don’t need it to keep your job/s and your income, the court cannot give you any type of licence.

If you’re not sure if you’re eligible for a work licence, get legal advice.

How do I apply for a work licence?

If you want to apply for a work licence, you need to follow these three steps:

Step 1 – Go to court

Step 2 – Prepare your application for a work licence

Step 3 – The court hears your work licence application.

The following flowchart explains how to apply for a work licence:



Step 1. Go to court

If you have been charged with an offence you will have to go to the Magistrates Court and explain your situation to a magistrate.

There are three ways you could be made to go to court:

A. You could receive a Notice to appear

You might be given a *Notice to appear*. This is a written document that tells you what you have been charged with and where and when you have to go to court. The police can give you a *Notice to appear* when they charge you or they can send it to you in the mail.

B. You could receive bail and be ordered to go to court

Instead of being taken into custody by the police, you might be given bail and allowed to go home. To get bail you will need to sign a document promising you will go to court on a certain date to face the charges against you.

C. You could receive a fine notice

You might receive a fine notice in the mail, although this doesn't happen very often. You are more likely to receive a *Notice to appear* or be arrested and given bail. If you receive a fine notice, you won't be given a court date. You should get legal advice (before your 28 days to pay the fine ends), and then prepare your documents, file them with the court and receive a court date for your application.

You must go to court on the date set down in your *Notice to appear* or bail conditions or your application.

What if I don't go to court when I'm meant to?

If you don't go to court on the right date you could be charged with a further offence called 'failing to appear'. The court may issue a warrant for your arrest if you don't attend court on the correct date.

If you did not appear on a court date, you should get legal advice.

Going to court

Before you arrive:

- Find out the court's address and check the location on a map.
- Organise to arrive at court early. This will give you time to find out which courtroom your matter will be heard in. The duty lawyer will not be available to assist you because duty lawyers do not assist with work licence applications.
- You might be there all day depending on the number of matters before the court. You should plan to take the whole day off and organise child care if necessary.
- Dress neatly.
- Bring all of your paperwork, a pen and note paper.
- Organise to take a family member or friend to support you. They can come into the courtroom with you.

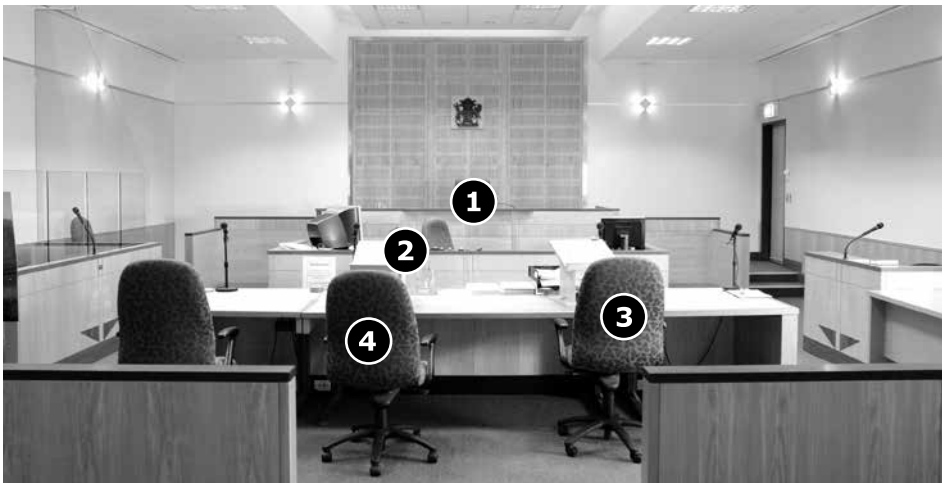
When you arrive:

- See the staff at the counter and:
 - tell them your name
 - ask for an interpreter if you need one; the court will arrange and pay for an interpreter
 - find out the courtroom your case will be in or check the daily law list, which is displayed on the notice boards or television screens in the foyers and waiting areas.
- If possible, see the police prosecutor before court starts and tell them you want to apply for a work licence.

- Wait for your turn. You can sit quietly at the back of the courtroom and watch other cases to get an idea of what happens.
- Otherwise, wait outside in the foyer. The court clerk will call your name when the magistrate is going to hear your matter.
- Turn off your mobile phone. Don't eat, drink or chew gum in court.

Who's who in the courtroom?

1. **Magistrate** — hears the case, decides if you are innocent or guilty and what penalty you should receive.
2. **Depositions clerk** — assists the magistrate and records proceedings.
3. **Police prosecutor** — explains your charges to the court and presents the police case against you.
4. **Defendant/Applicant** — the person who is defending themselves against criminal charges (you).



When you are called

- Stand when the clerk says “all rise” when the magistrate enters or leaves the courtroom.
- Bow your head to acknowledge the magistrate when you enter or leave the courtroom.
- Stand when you are being spoken to and address the magistrate as ‘Your Honour’. Call the police prosecutor ‘the prosecutor’.
- Speak clearly and follow the magistrate’s instructions. You can read from your notes.
- If you need an interpreter, ask the court for one on your first court date. The magistrate will adjourn your case to another date and the court will organise and pay for an interpreter.

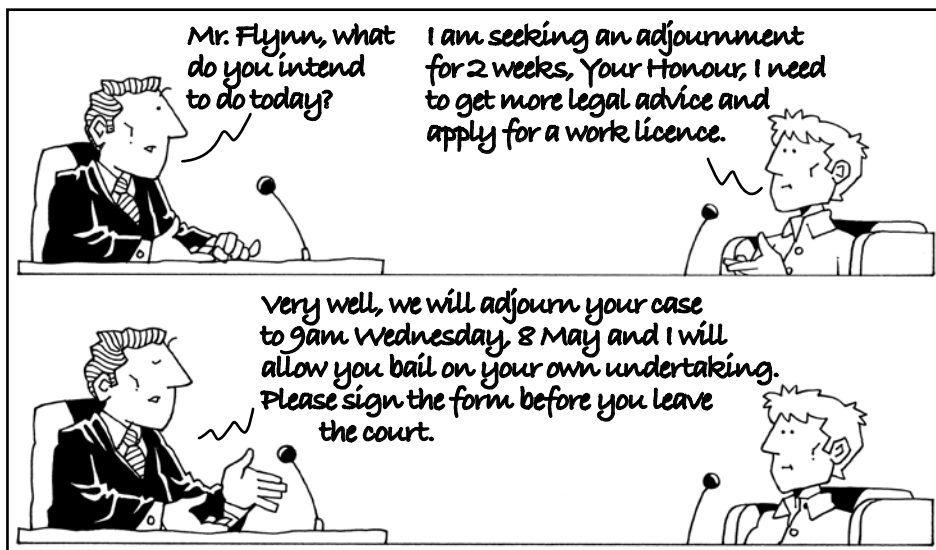
What will happen on my first mention date?

The first date you go to court is called the first mention date.

At your first mention, you need to tell the magistrate that you would like an adjournment so you can prepare a work licence application. An adjournment means that the matter is put off to another date. The magistrate will give you a new date to come to court, usually a few weeks later. This is when you will apply for a work licence and plead guilty to the offence you have been charged with.

What if I want to plead not guilty?

If you plead not guilty and the magistrate decides you’re not guilty, you won’t lose your normal driver licence, so you won’t need a work licence. If the magistrate finds you guilty, you can then apply for a work licence. If you plan to plead not guilty, you should prepare your work licence application and supporting documents and have these ready in case you’re found guilty. You should also try and get a copy of the QP9 (a written summary of the Police version of why you were charged and what happened) from Police Prosecutions. You should get legal advice.



Step 2. Prepare your application for a work licence

What documents do I need to prepare my application?

You will need:

1. an *Application for an Order directing the issue of a Restricted Licence (s87)* form (your application form)
2. your *Affidavit*
3. an *Affidavit* by your employer, ie your boss (unless you're self-employed)
4. your traffic history, which is a record of your traffic offences, ie any time you've been caught for breaking road rules, drink driving etc
5. your criminal history, which is a record of your criminal convictions (if you have one).

Where do I get the forms and documents?

Application form

You can get an application form from any Magistrates Court registry (it doesn't have to be the Magistrates Court you're applying to for the work licence).

Affidavits

An affidavit is a written statement to support your application and it is used as your evidence in court. You can get an *Affidavit* form from any Magistrates Court registry or you can download one from the Queensland Courts website www.courts.qld.gov.au (Form 46 under the *Uniform Civil Procedure Rules 1999*).

Traffic history

A copy of your traffic history should be included in the QP9 but if it is not, you need to fill in a *Driver's Record Information Request* form, which is available from any Department of Transport and Main Roads Customer Service Centre or on the department's website www.tmr.qld.gov.au. You also need to pay a fee. If you mail the form with the fee, you will need to provide proof of identity. Telephone the department for advice on how to prove your identity if applying for your traffic history by post.

Criminal history

If you know you have criminal convictions, or you're not sure, it's a good idea to get a copy of your criminal history. A copy of your criminal history should be included in the QP9 but if not, you need to fill in an *Application for Copy of Own Criminal History* form at your local police station and pay the fee. Ask at the police station what the current fee is.

What do I do when I have all the forms and documents?

There are several forms and paperwork you must prepare and sign. The following steps describe how to do this.

A. Complete the application form

The application should be clearly written in blue or black ink. You need to fill in your personal details, licence details, and a short description of the facts and circumstances to show that your application's refusal would cause extreme hardship and that you weren't driving for work when you were caught. You will need to include more details about this in your affidavit. Read the application carefully to make sure the information you have included is correct and then sign it.

See the sample *Application for an Order directing the issue of a Restricted Licence (s87)* form on page 39.

B. Prepare your affidavit

Your affidavit is a written statement to support your application and it is used as your evidence in court. It tells your story to back up your request for a work licence and is presented on an *Affidavit* form, which is almost completely blank – you have to write most of it.

The affidavit should:

- explain that you will lose your job if you have no driver licence
- show that you and your family could not live on the reduced income if you lost your job because you don't have a licence.

Your affidavit should include your:

- name, address and occupation
- family details, including if you have children or other people you help support or fully support
- job details –
 - your current job and how long you’ve had it
 - what your job usually involves and the hours you work
 - why you need a licence to keep your job (eg you need to drive for your job, you need to carry tools to and from your job, you can’t get to and from work by public transport so you have to drive)
 - how it is not possible for you to keep your job without a licence (eg no one else can do the driving for a while and you can’t be given a different job while you don’t have a licence, or if you can you would get less pay)
 - that if you don’t have your current job you won’t be able to pay your bills, or you would be offered less hours of work and you wouldn’t be able to live on the reduced income
 - that realistically you can’t just walk into another job that will pay your bills and for which you don’t need a licence
- family finances –
 - what you get paid each week for your job
 - any other family income, eg if your partner works, money from Centrelink for children
 - what you spend each week on the most important things, eg rent/ mortgage, food, transport, health, school fees
 - other things you think are important that you need or want to spend money on

-
- details about the offence you committed, which will lead to your licence being disqualified –
 - how you came to be picked up by the police, eg a random breath/drug test, you broke a road rule and were pulled over
 - that you weren't driving for work at the time
 - your reasons for breaking the law, ie how/why you were driving the way you were when you shouldn't have been
 - how you feel about breaking the law, eg you're sorry, and if you've done anything to make sure you won't do something similar again
 - details that you are a 'fit and proper person' that respects the safety of other road users and the public –
 - attach any sort of criminal history with an explanation
 - if you don't have a criminal history, say so
 - attach your traffic history with an explanation of what happened and why things are different now
 - if you don't have a traffic history, say so.

See the sample *Affidavit* on pages 40 to 43.

If you need to **attach** a document to your *Affidavit*, (eg your traffic history or criminal history), this document is called an 'exhibit'. You need to put a certificate of exhibit on the document or attached to the document, which is signed by the justice of the peace who witnesses your affidavit. A certificate of exhibit is a statement that confirms the document is the true copy of the document referred to in the affidavit. See the sample certificate of exhibit attached to a traffic history on page 51.

The affidavit must be sworn or affirmed in the presence of a commissioner of declarations, justice of the peace or solicitor. To find one near you, call 1300 301 147 or visit www.justice.qld.gov.au

C. Organise your employer's affidavit

If you're not self-employed, you must give the court an *Affidavit* by your employer confirming you will lose your job or a lot of your income if you don't have a driver licence.

If your employer is an organisation, eg a company, get your immediate boss or someone further up in the organisation to provide the employer's *Affidavit*. Whoever provides the employer's *Affidavit* must be able to truthfully say you'll lose your job if you don't have a licence or that you would get less work and therefore a lot less pay.

Your employer's *Affidavit* should include:

- your employer's name, address and position (or whoever is doing the affidavit for your employer)
- your job details (similar to your affidavit)
 - your current job and how long you've had it
 - what your job usually involves and the hours you work
 - why you need a licence to keep your job
 - that if you don't have a licence, you won't be able to keep your job or your hours would be reduced and you would get less pay.

See the sample employer's *Affidavit* on page 44.

The affidavit must be sworn or affirmed in the presence of a commissioner of declarations, justice of the peace or solicitor. To find one near you, call 1300 301 147 or visit www.justice.qld.gov.au

D. Prepare copies of your documents and file them with the court

You need to have four copies of all the documents:

1. the court will keep the original
2. a copy for the police prosecutor
3. a copy for you to take to court in case you need to look at it
4. a spare copy.

The original documents should be filed at the court registry before your court date if possible. If not, you can file them at the court registry when you arrive on your court date.

You should give a copy to the police prosecutor before your court date so they can check the information in your affidavit, let you know if they have questions for you that aren't covered in the affidavit, and tell you if your boss will need to come to court. If your boss isn't at court and the prosecutor wants to ask them questions, the matter may have to be adjourned until a later date.

You should mail or deliver a copy to the police prosecutor with a letter stating your name, the court date and that you're applying for a work licence. See the sample letter to the police prosecutor on page 45.

If you don't give a copy to the police prosecutor before your court date, you can give it to them when you arrive on your court date.

Step 3. The court hears your work licence application

You must go to court for your application to be heard.

Does my boss need to go to court?

If you have an affidavit from your employer, your boss should be at court if the prosecutor has told you your boss is needed. Many magistrates don't need the employer to be there if the affidavit covers all the information needed, but some do. If your boss can't come to court, make sure you have a number they can be contacted on. If the magistrate wants your boss to be in court and they're not there, the magistrate may adjourn the matter until a later date.

When you arrive

- Arrive 15 minutes before your hearing time and see the staff at the counter and:
 - tell them your name
 - ask for an interpreter if you need one; the court will arrange and pay for an interpreter
 - find out the courtroom your case will be in or check the daily law list, which is displayed on the notice boards or television screens in the foyers and waiting areas
- File your work licence application documents at the registry and give a copy to the police prosecutor if you haven't done this already. If you've already sent the police prosecutor a copy and they haven't received them, give them your spare copy.
- Wait for your turn. You can sit quietly at the back of the courtroom and watch other cases to get an idea of what happens. Your boss can wait in the courtroom too, or outside. Otherwise, wait outside in the foyer. The court clerk will call your name when the magistrate is going to hear your matter.
- Turn off your mobile phone. Don't eat, drink or chew gum in court.

When you are called

- Stand when the clerk says "all rise" when the magistrate enters or leaves the courtroom.
- Bow your head to acknowledge the magistrate when you enter or leave the courtroom.
- Address the magistrate as 'Your Honour' and call the police prosecutor 'the prosecutor'.
- Speak clearly and follow the magistrate's instructions. You can read from your notes.

The magistrate reads the charge

When your name is called you will stand at the bar table in front of the magistrate so you are facing the magistrate.

Tell the magistrate you are applying for a work licence and make sure the magistrate and police prosecutor have a copy of your application and affidavits. Tell the court your boss is there in the courtroom or outside, or that you have a phone number that your boss can be contacted on.

The magistrate then reads the charge and asks if you are pleading guilty or not guilty. You tell the magistrate you are pleading guilty.

The police prosecutor reads their version of events

The police prosecutor reads the police version of events. The police will tell the magistrate if you have any previous criminal convictions or a traffic history. You are entitled to see these if you want to.

You give your version of events

The magistrate will ask you if you have anything to say about the police version of events and if you think they are correct. If there is something you do not agree with that might affect the penalty, you should tell the magistrate.

Remember, if you are pleading guilty to the charge and you say something that suggests you don't believe you are guilty, the magistrate will not accept your guilty plea.

Tell the magistrate anything that may explain how or why you came to commit the offence. Remember, the magistrate does not want to hear excuses indicating that you hold others responsible for your own mistakes or things that are clearly untrue.

You need to:

- explain why you committed the offence
- give any information that might explain how or why you committed the offence (mitigating circumstances), eg you may have been under the influence of prescribed medication that affected your judgement or made you behave in a way you normally wouldn't
- say sorry for what you have done if you really mean it - eg you might say, "I realise I have acted stupidly and I apologise Your Honour".

All of this information should be in your affidavit, so you can read out the relevant particular paragraphs. If you have a criminal record or traffic history and there is something you do not agree with, tell the magistrate.

The magistrate decides your penalty

The magistrate listens to what you have to say, convicts you and decides on the penalty. This will usually include a fine.

The magistrate hears your work licence application

The magistrate may ask you and your boss to go into the witness box to give evidence. You will need to answer any questions about your work licence application and refer to your application and affidavits. The magistrate will then decide whether they will give you an order for a work licence, and the length of time your licence will be disqualified. The work licence will be in place for the disqualification period. The disqualification period may be up to twice the length of the disqualification period you would be likely to receive if you did not receive a work licence.

What happens if the magistrate gives me an order for a work licence?

If the magistrate gives you an order for a work licence, you will need to take the court order to a Department of Transport and Main Roads Customer Service Centre where you will be granted the work licence. You may need to pay a fee. You should read the work licence conditions very carefully and make sure you follow them. If you drive outside the work licence conditions, you are breaking the law and your work licence will be cancelled if you get caught.

Remember, if you do get a work licence your alcohol limit is zero. So if you drive or attempt to drive with a work licence with any alcohol in your system, you are breaking the law.

If your job circumstances change after a magistrate makes an order for a work licence, you can apply to the court to change the licence conditions. It is a similar process to applying for a work licence. Section 88 of the *Transport Operations (Road Use Management) Act 1995* explains the process for changing a work licence. You can read or download this Act from the Office of the Queensland Parliament Counsel website www.legislation.qld.gov.au

If you have questions about your work licence, get legal advice.

Remember: The court order is not a licence— it is an order saying you can have one. You still need to take the court order to the Department of Transport and Main Roads, so do not drive until you have taken the court order to the department and they have noted your licence. Even after that, you can only drive to the work licence conditions. If you drive from the courthouse to a Department of Transport and Main Roads Customer Service Centre, you are breaking the law. And if you drive even after the Department of Transport and Main Roads has noted your licence, you may still be breaking the law if you are driving outside the work licence conditions.

Applying for a special hardship order

What is a special hardship order?

A special hardship order is an order that lets you drive under special conditions even though your normal driver licence has been suspended.

You need to apply to the court in writing for a special hardship order. If the magistrate gives you an order, they can put conditions on the order, like the times and purposes for which you can drive. The order will apply until your licence suspension period ends.

You cannot automatically get a special hardship order because you say you need your licence for work, study or another reason. There are strict criteria and the magistrate can refuse your application if you meet the criteria to apply but the magistrate does not think you are a fit and proper person to hold a licence.

You can read about special hardship orders in Part 14 of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010*, available from www.legislation.qld.gov.au

Am I eligible for a special hardship order?

You may be eligible for a special hardship order if your licence has been (or is about to be) suspended because:

- you have been charged with driving more than 40 km over the speed limit (often referred to as a ‘high speed offence’) or
- more than one demerit point is allocated to your traffic history while you were driving during a 12 month good behaviour period or

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- you have been charged with driving more than 40km over the speed limit and you have more than one demerit point allocated to your traffic history while you were driving during a 12 month good behaviour period (dual suspension) and
 - you need your licence to either to do your job, or to get to and from work or study, or for another special reason.

If you fall into the dual suspension category, make sure you tick both types of suspensions on the *Application for a Special Hardship Order* form so that both suspensions can be dealt with at the one time. You can read more about the application form later in this guide.

If you are not already on a good behaviour driving period but have received both a Notice of Suspension for a high speed offence and also a Notice to Choose between a suspension or a 12 month good behaviour driving period, and you need your licence for at least one of the reasons mentioned above:

- apply to the court for a special hardship order for the high speed suspension and
- respond to the Notice to Choose by choosing the 12 month good behaviour driving period. Read the Notice very carefully to make sure you correctly choose the good behaviour period. Return the Notice to the Department of Transport and Main Roads as soon as possible so that they receive your choice by the date stated in the Notice. If you choose the suspension or do nothing at all by the date in the Notice, your licence will be suspended and you cannot apply for a special hardship order or any other special type of licence to drive for this suspension. Because of this suspension, you will not be eligible for a special hardship order for the high speed offence either.

To **apply** for a special hardship order you must also be able to tick all the boxes below:

- You held a current Queensland provisional or open driver licence immediately before the licence was suspended. If you held a foreign or interstate licence or did not hold a licence at all, you are not eligible to apply for a special hardship order.

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- ✓ You haven't had your Queensland licence suspended or cancelled, or been disqualified from holding or obtaining a Queensland licence in the last five years.
 - ✓ You haven't had your authority to drive on Queensland roads under a non-Queensland driver licence suspended in the last five years.
 - ✓ You haven't been convicted in Queensland of dangerous driving in the last five years.

If you have ticked all the boxes above, you must also:

- apply to the Magistrates Court in the district or division in which you live; you can apply on the day your licence is suspended, but not before that day
- bring your notice that you have received from the Department of Transport and Main Roads with you to present to the court staff
- show the court that you are a 'fit and proper person'
- show the court that if you don't get a special hardship order you or your family will suffer:
 - extreme hardship because you won't be able to work or
 - severe and unusual hardship for another reason other than because you won't be able to work.

You only need to meet one of these criteria, but if you meet both you should include them both in your application.

Note: It is important that you know what court division or district you live in. You can do this by checking with the court registry.

Remember: It doesn't matter how much you need a licence, or how good your reasons are, if you don't need it to keep your job and your income or for another special reason, the court will not give you a special hardship order. If you're not sure whether you're eligible for a special hardship order, get legal advice.

How do I apply for a special hardship order?

If you want to apply for a special hardship order, you need to follow these four steps:

Step 1 – Prepare your application for a special hardship order

Step 2 – Prepare copies of your documents and file them with the court

Step 3 – Give a copy of the documents to the Department of Transport and Main Roads

Step 4 – Go to the court for the hearing of your special hardship order application.

Step 1. Prepare your application for a special hardship order

What documents do I need to prepare my application?

You will need:

1. a *Special hardship order application* (your application form)
2. your *Affidavit*
3. an *Affidavit* by your employer, ie your boss, unless you're self-employed (if you need an order to keep your job)
4. a statutory declaration or other document that explains why you need an order for study, health or another special reason
5. your traffic history, which is a record of your traffic offences, ie any time you've been caught for breaking road rules, drink driving etc
6. your criminal history, which is a record of your criminal convictions (if you have any).

Where do I get the forms and documents?

Application form

You can get an application form from any Department of Transport and Main Roads Customer Service Centre. You can also get an application form from any Magistrates Court registry (it doesn't have to be the magistrates court you're applying to for the special hardship order).

Affidavits

An affidavit is a written statement to support your application and it is used as your evidence in court. You can get an *Affidavit* form from any magistrates court registry or you can download one from the Queensland Courts website www.courts.qld.gov.au (Form 46 under the *Uniform Civil Procedure Rules 1999*).

Statutory declaration or other supporting document

You can get a statutory declaration from a post office or the Department of Justice and Attorney General's website. If you don't have a statutory declaration, you may need another back up document to support your application for a special hardship order. The type of document you need, what the Statutory Declaration should say and who it is from will depend on why you need your licence. For example:

- If you are a student and you need a licence to attend your course, get a copy of your class timetable and something to prove you are enrolled.
- If you live out of town and you need to take your children to school or for extra tutoring due to learning difficulties, provide information about the hours, distance and location you need to drive them. You could get a statutory declaration/letter from the school or the tutor outlining the class times and explaining the need for the extra lessons (if applicable), and the bus/train timetable showing there is no suitable public transport in the location for the times you need it.

-
- If a relative needs to attend medical appointments and you are the only one who can take them, get a letter from the doctor explaining your relative's medical condition and the type of appointments they need to attend.
 - If you don't know what sort of supporting documentation is appropriate in your circumstances, seek legal advice.

Traffic history

To get your traffic history, you need to fill in a *Driver's Record Information Request* form, which is available from any Department of Transport and Main Roads Customer Service Centre or on the department's website www.tmr.qld.gov.au. You also need to pay a fee. If you mail the form to the Department of Transport and Main Roads with the fee, you will need to provide proof of identity. Telephone the department or visit the website to get a full list of acceptable proof of identity documents.

Criminal history

If you know you have criminal convictions, or you're not sure, it's a good idea to get a copy of your criminal history. To get a copy, you need to fill in an *Application for Copy of Own Criminal History* form at your local police station and pay a fee.

What do I do when I have all the forms and documents?

There are several forms and paperwork you must prepare and sign. The following steps describe how to do this.

A. Complete the application form

The application should be clearly written in blue or black ink. You need to fill in your personal details and licence details. Read the application carefully to make sure the information you have included is correct and then sign it. You need to attach any documents that support your application to this form.

See the sample *Special Hardship Order Application* form on page 46.

B. Prepare your affidavit

Your affidavit is a written statement to support your application and it is used as your evidence in court. It tells your story to back up your request for a special hardship order and is presented on an *Affidavit* form, which is almost completely blank – you have to write most of it.

Your affidavit should include your:

- name, address and occupation
- family details, including if you have children or other people you help support or fully support
- details about the offences you committed, which led to your licence being suspended –
 - your reasons for breaking the law, ie how/why you were driving the way you were when you shouldn't have been
 - how you feel about breaking the law, eg you're sorry, and if you've done anything to make sure you won't do something similar again
- details that you are a 'fit and proper person' that respects the safety of other road users and the public –
 - attach any sort of criminal history with an explanation
 - if you don't have a criminal history, say so
 - attach your traffic history and state if it's good or average; if it's not good, explain why things are different now.

If you need a special hardship order because you'll lose your job and will experience extreme hardship without a driver licence, your affidavit should also include:

- job details –
 - your current job and how long you've had it
 - what your job usually involves and the hours you work
 - why you need a licence to keep your job (eg you need to drive for your job, you need to carry tools to and from your job, you can't get to and from work by public transport so you have to drive)

-
- how it is not possible for you to keep your job without a licence (eg no one else can do the driving for a while and you can't be given a different job while you don't have a licence, or if you can you would get less pay)
 - that if you don't have your current job you won't be able to pay your bills, or you would be offered less hours of work and you wouldn't be able to live on the reduced income
 - that realistically you can't just walk into another job that will pay your bills and for which you don't need a licence
 - family finances –
 - what you get paid each week for your job
 - any other family income, eg if your partner works, money from Centrelink for children
 - what you spend each week on the most important things, eg rent/ mortgage, food, transport, health, school fees
 - other things you think are important that you need or want to spend money on.

If you need a special hardship order for study, health or another special reason (not related to losing your job or income) because you will experience severe and unusual hardship without a driver licence, your affidavit should also include:

- information about why you need your driver licence
- If you need it to attend a study course, you should include:
 - your course details and how long you've been studying
 - the hours you need to be at your school, TAFE, university, practical training etc
 - why you can't catch public transport (eg you need to carry bulky equipment, public transport is not available)
 - why someone else can't drive you to and from wherever you need to go or why you can't change the dates and times to a date or time someone else is available to drive you.

See the heading 'Statutory Declarations and other supporting documentation' above for guidance on what documents to **attach** to your affidavit.

See the sample *Affidavit* on page 47.

If you need to **attach** a document to your *Affidavit*, (eg your traffic history or criminal history), this document is called an ‘exhibit’. You need to put a certificate of exhibit on the document or **attached** to it, which is signed by the justice of the peace who witnesses your affidavit. A certificate of exhibit is a statement that confirms the document is the true copy of the document referred to in the affidavit. See the sample certificate of exhibit attaching a traffic history on page 51.

The affidavit must be sworn or affirmed in the presence of a commissioner of declarations, justice of the peace or solicitor. To find one near you, call 1300 301 147 or visit www.justice.qld.gov.au

C. Organise your employer’s affidavit if you are asking for a special hardship order for work

If you’re not self-employed, you must give the court an *Affidavit* by your employer confirming you will lose your job or a lot of your income if you don’t have a driver licence.

If your employer is an organisation, eg a company, get your immediate boss or someone further up in the organisation to provide the employer’s *Affidavit*. Whoever provides the employer’s *Affidavit* must be able to truthfully say you’ll lose your job if you don’t have a licence or that you would get less work and therefore a lot less pay.

Your employer’s *Affidavit* should include:

- your employer’s name, address and position (or whoever is doing the affidavit for your employer)
- your job details (similar to your affidavit) –
 - your current job and how long you’ve had it
 - what your job usually involves and the hours you work
 - why you need a licence to keep your job
 - that if you don’t have a licence, you won’t be able to keep your job or your hours would be reduced.

See the sample employer’s *Affidavit* on pages 52 to 53.

The affidavit must be sworn or affirmed in the presence of a commissioner of declarations, justice of the peace or solicitor. To find one near you, call 1300 301 147 or visit www.justice.qld.gov.au

Step 2. Prepare copies of your documents and file them with the court

You need to make three copies of all the documents:

1. a copy for the Department of Transport and Main Roads
2. a copy for you to take to court in case you need to look at it
3. a spare copy.

The original and two copies of the documents should be filed at the Magistrates Court registry in the court division or district where you live within 21 days after your licence has been suspended. You will need to pay the court's application fee. Check with the court to find out the current fee. The registry staff will stamp the documents and give you a hearing date. They will keep the original documents and give you back the two copies.

Step 3. Give a copy of the documents to the Department of Transport and Main Roads

You must give the Department of Transport and Main Roads a copy of your application and supporting documents as soon as possible, but at least seven days before your hearing date. If possible, take the documents to a Department of Transport and Main Roads Customer Service Centre yourself.

At the same time you should also give a letter to the Department of Transport and Main Roads prosecutor asking if your boss will need to come to court. If your boss isn't at court and the prosecutor wants to ask them questions, the matter may have to be adjourned until a later date.

See the sample letter to the police prosecutor on page 45, which will give you an idea about what to include in your letter to the Department of Transport and Main Roads prosecutor.

Once the Department of Transport and Main Roads gets a copy of your documents, your driver licence suspension will be temporarily lifted until the day before your court hearing. So if your suspension started on 1 June, your court date is 1 July and the Department of Transport and Main Roads gets the documents on 15 June, your licence is not suspended and you can drive without breaking the law from 15 June to 30 June. If you're not sure, ask a lawyer for legal advice.

Step 4. The court hears your special hardship order application

You must go to court for your application to be heard.

Does my boss need to go to court?

If you have an affidavit from your employer, your boss should be at court if the prosecutor has told you your boss is needed. Many magistrates don't need the employer to be there if the affidavit covers all the information needed, but some do. If your boss can't come to court, make sure you have a number they can be contacted on. If the magistrate wants your boss to be in court and they're not there, the magistrate may adjourn the matter until a later date.

When you arrive

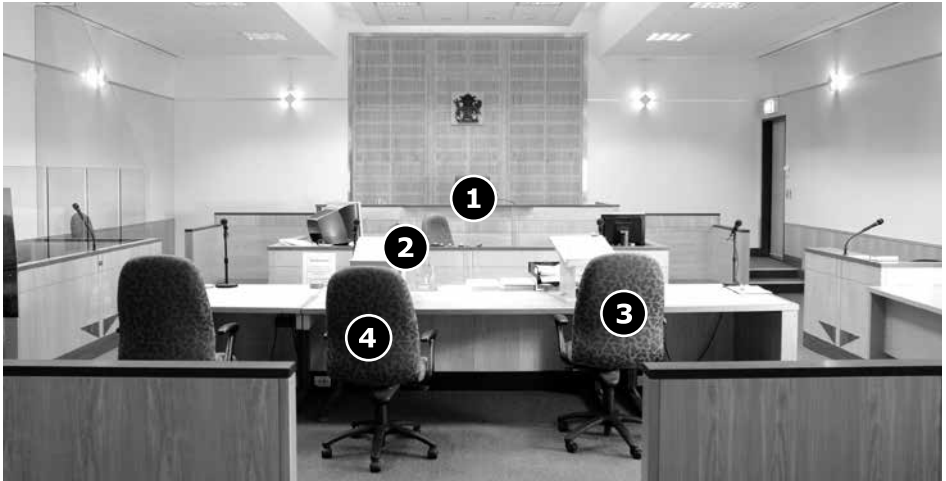
- Arrive 15 minutes before your hearing time and see the staff at the counter and:
 - tell them your name
 - find out the courtroom your case will be in or check the daily law list, which is displayed on the notice boards or television screens in the foyers and waiting areas.

-
- Look for the Department of Transport and Main Roads prosecutor in the courtroom and see if you can speak to them about your application (sometimes the police prosecutor will be there on behalf of the Department of Transport and Main Roads prosecutor). Make sure you're on the list to apply for a special hardship order and that they have a copy of your application and supporting documents. Give a copy of your documents to the prosecutor if you haven't done this already. If you've already given the prosecutor a copy and they haven't got it, give them your spare copy. If you haven't given the Department of Transport and Main Roads a copy of your application at least seven days before the court date, the prosecutor may ask the magistrate for the matter to be adjourned, or they may even ask them to dismiss your application because you haven't followed the rules.
 - Wait for your turn. You can sit quietly at the back of the courtroom and watch other cases to get an idea of what happens. Your boss can wait in the courtroom too, or outside. Otherwise, wait outside in the foyer. The court clerk will call your name when the magistrate is going to hear your matter.
 - Turn off your mobile phone. Don't eat, drink or chew gum in court.



Who's who in the courtroom?

1. **Magistrate** — hears your application for a special hardship order and decides whether or not an order will be issued.
2. **Depositions clerk** — assists the magistrate and records proceedings.
3. **Police prosecutor or the Department of Main Roads prosecutor** — acts as the respondent in the case and may make submissions for or against an order being issued.
4. **Applicant** — the person who is making the application (you).



When you are called

- Stand when the clerk says “all rise” when the magistrate enters or leaves the courtroom.
- Bow your head to acknowledge the magistrate when you enter or leave the courtroom.
- Address the magistrate as ‘Your Honour’ and call the Department of Transport and Main Roads or police prosecutor ‘the prosecutor’.
- Speak clearly and follow the magistrate’s instructions. You can read from your notes.

When your name is called you stand at the bar table in front of the magistrate so you are facing the magistrate.

Tell the magistrate you are applying for a special hardship order and make sure the magistrate and prosecutor have a copy of your application and affidavits. Tell the court your boss is there in the courtroom or outside, or that you have a phone number that your boss can be contacted on.

The magistrate hears your special hardship order application

The magistrate may ask you and your boss to go into the witness box to give evidence. You will need to refer to your application and affidavits and answer any questions from the prosecutor or the magistrate about your special hardship order application. In some country and regional courts, the prosecutor may not come to court but may send a letter to the court to let the magistrate know what the department thinks about your application. After hearing from you and the prosecutor, the magistrate will then decide whether they will give you a special hardship order. The special hardship order will be in place for the suspension period.

What happens if the magistrate gives me a special hardship order?

If the magistrate gives you a special hardship order, you will need to take the court order to a Department of Transport and Main Roads Customer Service Centre and apply for a replacement driver licence within 14 days of the court order being made. You should read the special hardship order conditions very carefully and make sure you follow them.

If you drive outside the special hardship order conditions, you are breaking the law and your order will be cancelled if you get caught. If this happens, you will be disqualified from driving for a period of time.

If your circumstances change after the magistrate makes a special hardship order, you'll need to apply to the court to change your order's conditions.

If you have questions about your special hardship order, you should get legal advice.

Remember: Unless your special hardship order allows you to drive to and from the Department of Transport and Main Roads Customer Service Centre to get your replacement licence (which is unlikely), if you do so, you will be driving outside the court ordered conditions.

Sample documents and forms

Work licence application

Sample 1 – *Application for an order directing the issue of a restricted licence (s87)* (Work licence application)

Sample 2 – *Applicant's Affidavit*

Sample 3 – *Employer's Affidavit*

Sample 4 – *Letter to Police Prosecutions*

Special hardship order application

Sample 5 – *Special hardship order application*

Sample 6 – *Applicant's Affidavit*

Sample 7 – *Certificate of exhibit*

Sample 8 – *Employer's Affidavit*

Note

- These are sample documents and forms to give you an idea of the information you might need to put in. Do not copy the information on the sample documents and forms word for word. Use them as a guide only and put in the information about your own situation.
- You will not need to use all these forms. Only use the ones that apply to you.
- If you need advice on how to fill in any of the forms, call Legal Aid Queensland on **1300 65 11 88**.
- Type your answers or write neatly in black or blue pen.
- Make sure the information you use is correct and always double-check the spelling of the names of other people involved.
- Include as much information as possible in your affidavit – it is better to include too much information than to leave out something important.

Sample 1 – Application for an order directing the issue of a restricted licence (s87)

Application for an Order directing the issue of a Restricted Licence (s87)



Queensland Government

Transport Operations (Road Use Management) Act 1995

- This form is to be used if you have been charged with a drink or drug driving offence under s79 (drink or drug driving) or s80(5A) (failing to supply specimen of breath or saliva for analysis) of the Transport Operations (Road Use Management) Act 1995 (the Act) and you are eligible to apply to a court for an order directing that you be issued with a restricted licence. You will need to complete this application before the court hearing and give the application to the Magistrate immediately after you have been found guilty and before the Magistrate disqualifies you from holding or obtaining a driver licence.
- This form may also be used if you have paid the monetary penalty on a Drink Driving Infringement Notice issued under s81 of the Act and you are eligible to apply to a court for an order directing that you be issued with a restricted licence. You will need to lodge this application with the Magistrates Court in the district where you reside prior to the expiry of the 28 day period commencing from the date of the issue of the infringement notice. You must also promptly deliver a copy of this application to the Department of Transport and Main Roads.

Eligibility to apply for a restricted licence (please read carefully)

- You are **ONLY** eligible to apply if, when you committed the drink or drug driving offence—
 - you held a Queensland (Qld) class C open licence and you were driving a class C motor vehicle; or
 - you held a Qld class RE open licence and you have held a class RE licence for at least 1 year in the last 5 years and you were riding a class RE motorbike; or
 - you held a Qld class R open licence and you were riding a class R motorbike.
- You are **NOT** eligible to apply if, within the last 5 years before making this application—
 - you have been previously convicted in Qld of an offence under the Act, s79 or s80(5A);
 - you have been previously convicted outside Qld of a drink or drug driving offence that would have been an offence under the Act, s79 or s80(5A), if it had been committed in Qld;
 - you have been previously convicted in Qld of an offence under the Criminal Code, s328A (dangerous driving of a vehicle);
 - you have had your provisional or open licence suspended or cancelled or you have been disqualified from holding or obtaining a Qld driver licence for a reason other than mentioned in the following note.

Note: Your eligibility to apply for a restricted licence is not affected by a suspension, cancellation or disqualification:

- that was set aside on appeal;
- in relation to which a special hardship order was granted;
- imposed because of a mental or physical disability;
- imposed because you did not pay a fine;
- imposed because you failed to appear in court to answer a charge of drink or drug driving;
- that was a 24 hour suspension imposed because of a drink or drug driving related matter;
- that was an immediate suspension imposed because of a charge for a middle alcohol limit offence.

- You are also **NOT** eligible to apply if, when you committed the drink or drug driving offence—
 - you held a non-Qld driver licence;
 - you held a Qld learner, provisional or probationary licence or you were not the holder of a valid driver licence;
 - you held a Qld restricted licence issued to you under a court order;
 - you were learning to drive the next higher class of licence under the authority of your Qld open licence;
 - you were not authorised under your Qld open licence to drive the motor vehicle (for example, you were riding a motorbike but you only held a class C licence);
 - you were using the motor vehicle in an activity directly connected with your means of earning a living;
 - you were driving a truck, tractor, specially constructed vehicle, bus (a motor vehicle built or fitted to carry more than 12 adults, including the driver), articulated motor vehicle, B-double, road train, taxi, limousine, tow truck (must be operating as a tow truck), pilot or escort vehicle escorting an oversized vehicle, a vehicle carrying a placard load of dangerous goods or a vehicle used by a driver trainer to give driver training;
 - the concentration of alcohol in your blood or breath was equal to or more than 0.15.

- You are also **NOT** eligible to apply if, immediately prior to being convicted of the drink or drug driving offence, you no longer hold a Qld open licence.

Important information

You must satisfy the court that you are a fit and proper person to hold a restricted licence, having regard to the safety of other road users and the public generally. You may be required to submit yourself as a witness to give evidence in respect of all matters relevant to this application and are liable to cross-examination with respect to that evidence.

Other persons may be called as witnesses to give evidence in respect to all matters relevant to this application and may be liable to cross-examination with respect to that evidence.

The court will not grant the application for an order directing the issue of a restricted licence to you unless you are able to satisfy the court that—

- you are an appropriate person to hold a restricted licence, having regard to the safety of other road users and the public generally; and
- a refusal to make the order would cause extreme hardship to you or your family by depriving you of your means of earning a living.

Personal details (please PRINT)

Family name
 TRAN

Given name/s
 BOSCA ALBERTO

Current residential address (number, street and suburb of town)
 26 LITTLE ST
 BROWNS PLAINS

Postcode 4118

Date of birth
 4 10 1979

Qld licence number
 6789112341

Licence class/es
 C

Licence expiry date
 1 10 2022

Occupation
 LANDSCAPE GARDENER

Application details

The facts and circumstances I am relying on to satisfy the court that this application should be granted are as follows—

1. I am required to travel to various places to do my work and need a licence to carry bulky equipment
 2. I was not working at the time of the offence

Note: If necessary, please provide additional information or supporting documents.

Declaration

I declare that I am eligible to make this application for an order directing that I be issued with a restricted licence. I declare that the information provided in this application is complete, true and correct in every detail. I understand that failure to provide complete, true and correct information may result in my application being refused. I understand that I may be prosecuted for giving or stating any false or misleading information or documents. I consent to the department taking, keeping and using my personal information and documents for the purposes associated with my driver licence as required under the Transport Operations (Road Use Management) Act 1995 or otherwise authorised by law.

Applicant's signature
 B A Tran

Date
 21 03 2022

Privacy Statement: The Department of Transport and Main Roads (the department) provides this form under the Transport Operations (Road Use Management) Act 1995 (the Act) so that you may apply to a court for an order directing that you be issued with a restricted licence. The information collected for the purpose of this application will be accessible by authorised representatives of the Department of Justice and Attorney-General, Queensland Police Service and the department, and may be disclosed to enforce driver licensing authorities as allowed under the Act. The department will not disclose your personal information or documents to any other third parties without your consent unless authorised or required by law.

Corporate Forms Area Form F3181 V01 Jul 2012

Original (White) - Retained by the Clerk of the Court

Duplicate (Blue) - Retained by the Applicant

Tripartite (Pink) - Retained by Queensland Police Service

Sample 2 – Applicant’s Affidavit

Magistrates Court OF QUEENSLAND

Registry: Brisbane
Number: M1234 of 2012

IN THE MATTER OF
section 87 of the Transport Operations
(Road Use Management) Act 1995

AFFIDAVIT OF BOSCA ALBERTO TRAN

BOSCA ALBERTO TRAN of 26 Little Street, Browns Plains in the State of Queensland, Landscape Gardener, states on oath:

1. I am the Applicant in this matter.
2. I am 31 years of age, married with 3 children that I support. My children are aged 11, 7 and 5.
3. My wife works one day per week at Cindy Kindy, Buranda and earns an average of about \$100 a week clear. She has tunnel vision and is not able to get a driver’s licence.
4. I am the holder of Queensland driver licence number 67891234 (Type O, Class C) which expires on 1 September 2012. Exhibit BAT1 is a copy of my licence.
5. I work as a landscape gardener for Beautiful Gardens, at 273 Logan Road, Buranda. I have been with that firm since I left school in 1998, and I’m now one of the most experienced employees.
6. Most of my work is not done at Buranda. My work entails looking after gardens that are already in existence and developing new gardens, including basic maintenance like lawn mowing, weeding, building retaining walls, rockeries, planting small and large plants etc. Beautiful Gardens has a number of regular clients as well as one-off jobs. As part of my daily duties, I am required to travel to the homes or business premises of these clients to do my work. I usually start the day at Buranda, drive one of the work trucks or utes to and from wherever I’m working on the day (as I need to take heavy equipment with me to and from the job site) and then come back to Buranda. Sometimes if the job goes for more than one day, to save time I take the work ute home and drive directly from my home to the work site the next day.

Page 1

Signed: _____ Taken by: _____

AFFIDAVIT OF BOSCA ALBERTO TRAN
Filed on behalf of the Applicant
Form 46 Rule 431

Bosca Alberto Tran
26 Little Street
BROWNS PLAINS QLD 4118
Tel: xxxx xxxx

Sample 2 – Applicant’s Affidavit continued

7. Sometimes other employees come with me from Buranda – it depends how big the job is and whether more than one person is needed. Often someone else drives as well and I am left to finish the job on my own.
8. My normal work hours are Mondays to Fridays from 6am to 3pm and on Saturdays from 6am to 11am. It is a condition of my employment that I am available to work at least one Sunday every two months from 6am to whenever the job finishes. I usually work every 4th Sunday. I rely on the extra money I get for this work.
9. I have spoken to my employer Roger Minty. Roger has said that if I don’t have a licence and can’t drive, even though he would like to keep me, he cannot provide another employee to drive me around to and from the various sites and therefore unfortunately there would not be a job for me at Beautiful Gardens.
10. I also need my licence to drive to and from work as there is no public transport that I could reasonably take to get to and from my work place at Buranda and my wife is unable to get a licence. Nor is there anyone else who could drive me to and from work and I cannot afford taxis. By car it usually takes me about an hour to drive to/from work at Buranda. As I mentioned, sometimes I take the work vehicle home from the site and drive back in it the next day. While there is a train station at Buranda, my work is about a 20 minute walk from that station. The nearest train station to me is not walking distance, and it doesn’t go through Buranda. I would need to catch a bus to the station, a train into the City and then a train back out. The trains and buses don’t start early enough for me to do this and be at work by 7am and certainly not at 6am. Nor could I carry the necessary equipment by public transport. It would also take me about 3 hours each way to catch public transport. My wife works at Buranda one day each week. She took the job there because I already worked at Buranda and could drive her to and from work. She would have the same problems catching public transport, so it would not be feasible for her to continue working. The \$100 she earns is necessary for us to keep to our commitments, with a small “safety net”.
11. So that I can do my job, I would need a licence to be able to leave home at about 4:45am and arrive home at about 5:30pm, earlier on Saturdays. I would also need a licence to be able to leave home at about 5am and arrive home at say 4pm on the Sundays that I work. I would need to be able to drive my car and the work vehicles.

Page 2

Signed:

Taken by:

Sample 2 – Applicant’s Affidavit continued

12. Four years ago my wife and I bought a house and we have a mortgage of \$100,000 owing. I am currently taking home about \$650 a week (excluding the money I get for when I work on Sundays) and my wife about \$100 per week. My wife also gets approximately \$150 a week family benefits from Centrelink.

My major weekly financial commitments are approximately as follows:

a) mortgage repayments	\$300.00
b) personal loan for car	\$100.00
c) petrol	\$ 50.00
d) electricity	\$ 50.00
e) telephone (incl mobiles)	\$ 20.00
f) food	\$250.00
Total	\$770.00

There are also other expenses such as doctors’ visits, medication, school expenses, clothing, registration, car repairs etc. We put aside as much as we can from the Centrelink benefits and my Sunday earnings to pay for these. It is still a pretty tight exercise.

13. Landscaping is the only work I know. I started doing it as a school based apprenticeship, and have been doing it ever since. I have worked very hard for Beautiful Gardens and I know that they would be happy to keep me on as long as I want to stay – provided I can do the job. Without a licence, I can’t do my job. While there are other jobs going in landscaping, all the ones I have seen advertised require a driver’s licence. There may be other jobs I could get, but I would earn a lot less as I don’t have experience in any other field. I need to earn at least what I’m getting now to be able to pay the mortgage. If we had to sell the house and rent, we would have to pay a lot more each week and we just couldn’t afford it.
14. I got caught for drink driving on the way home from a night out playing darts. I play darts once a week and I usually get a lift with Bob, another team member. On the evening in question Bob was sick so I drove. I was counting my drinks so that I would be ok to legally drive home. I arrived at about 7:30 and had three standard beers between 7:30 and 10:30 when the game finished. Our team won and the boys

Page 3

Signed:

Taken by:

Sample 2 – Applicant’s Affidavit continued

persuaded me to stay after the game and have “one for the road”. Stupidly I agreed and had another drink – and then a couple more. My wife rang wondering where I was so without thinking further I quickly finished my drink and drove home. There was a “booze bus” on the way home and I was one of the drivers pulled over and tested. I was found to be over the limit.

15. I regret having driven while over the legal limit. Had I left when I had originally intended, I am sure I would have been under the limit, having carefully counted my alcohol consumption. And if I had considered things properly I would have left the car and not have driven. I would not intentionally endanger myself or other road users, and previously I have never knowingly driven a vehicle when over the legal limit.
16. I got my licence on the very first day I could when I was 17 and I have been driving for 14 years. In that time I have never intentionally and would never put any other person’s life or my own in danger. I am not a heavy drinker, and am often the “designated driver” at social functions due to my habit of drinking ginger ale or tea when I am out and intending to drive home. I do not have any previous convictions for drink driving and have a good traffic history (one speeding conviction for driving 10 kms over the speed limit when I was 25). Exhibit BT1 is a copy of my traffic history which I obtained from Department of Transport and Main Roads. Should the court grant my application I will ensure that I do not drive if I have recently consumed alcohol or have any suspicion that I could be anywhere near the limit.
17. If the court refuses my application for a restricted licence I would lose my job and my wife would have to resign. Any Centrelink benefits we would get would not be sufficient to pay our regular commitments, let alone any unexpected expenses, and I believe we would lose our house. This would cause extreme hardship for me and my family.
18. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by Bosca Alberto Tran on the day of 2012, at in the presence of:

Deponent

A Justice of the Peace/Solicitor

Sample 3 – Employer’s Affidavit

Magistrates Court OF QUEENSLAND

Registry: Brisbane
Number: M1234 of 2012

IN THE MATTER OF
section 87 of the Transport Operations
(Road Use Management) Act 1995

AFFIDAVIT OF ROGER MINTY

ROGER MINTY of 78 Crescent Drive, Carina in the State of Queensland, Landscape Gardener, states on oath:

1. I am the owner of a small landscaping business trading as Beautiful Gardens. I employ six permanent employees and others on a casual basis as the need arises.
2. Bosca Alberto Tran is one of the six permanent employees. Bosca has worked for me for the past 12 years, starting while still at school in a school-based apprenticeship.
3. Beautiful Gardens is located at Buranda but most of the jobs Bosca does are at the homes or business premises of clients. He does both maintenance work on existing gardens and creation of new ones. As he is one of my most experienced employees, he often works alone from the beginning or stays behind to finish off after other employees have left. Depending on the job he is doing, he needs to take various tools and other equipment with him to the various sites where he works.
4. My business is not large enough to have the luxury of sending more than one employee to every job. Every employee, especially those who often work alone, has to be able to drive. Beautiful Gardens has five work vehicles which are in use daily by my employees. Sometimes they use their own vehicles and sometimes they take a work vehicle home.
5. I find Bosca to be a very reliable and responsible worker, and I would hate to lose him. However, unfortunately, if he has no licence he can't drive to the work sites and would not be able to do his work. I have no other work I can give him that doesn't require a licence, nor can I spare another employee to drive him around. If Bosca doesn't have a licence, unfortunately I would have to terminate his employment. I have several friends in this business looking for employees, but they all require those employees to have a licence for the same reasons.
6. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

Sworn by Roger Minty on the _____ day of 2012, at _____ in the presence of:

Deponent

AFFIDAVIT OF ROGER MINTY
Filed on behalf of the Applicant
Form 46 Rule 431

A Justice of the Peace/Solicitor

Bosca Alberto Tran
26 Little Street
BROWNS PLAINS QLD 4118
Tel: xxxx xxxx

Sample 4 – Letter to Police Prosecutions

The Officer-in-Charge
Police Prosecutions
240 Roma Street
BRISBANE QLD 4000
15 May 2010

Dear Officer

Re: Work Licence Application – Bosca Alberto Tran DOB 01.02.81

On 7 March 2012 I appeared in the Roma Street Magistrates Court on a drink driving charge. I told the magistrate I wanted to apply for a work licence and my application has been listed for 10 April 2012. On that date I intend to plead guilty to the drink driving charge and apply for the work licence.

I enclose a copy of each of the following:

1. my application for a work licence
2. my affidavit
3. the affidavit of my boss, Roger Minty.

Please confirm whether or not you require my employer Roger Minty in court on 10 April 2012. Roger is extremely busy and would prefer not to appear unless absolutely necessary. He is happy to speak with the Prosecutor on or before the court date or the court by telephone on the day if required.

Yours sincerely

B A Tran

Sample 5 – Special hardship order application

Special Hardship Order Application

Transport Operations (Road Use Management) Act 1995



Queensland Government

1. Personal Details

Family name (please PRINT)

PENNIE

Given name/s

CATHERINE DELIA

Date of birth

1 106 173

Town and Country of birth

Current residential address (number, street and suburb)

10 WISH STREET
WHOOP WHOOP

Qld driver licence number

9 156 110 2

Expiry date

1 106 1201

Driver licence type: (please tick box)

Provisional

Open

Note: If you do not have a Provisional or Open driver licence, you are not eligible to apply for a SHO.

Licence class/es

C

Occupation

NURSE

2. Is your driver licence currently suspended because you have gained two or more demerit points when driving during a Good Driving Behaviour Period?

No Yes

3. Is your driver licence currently suspended because of an offence of driving more than 40 km/h over the speed limit?

No Yes

4. Is your suspended driver licence a Qld learner or probationary licence or a non-Qld driver licence?

No Yes You are not eligible to apply for a SHO.

5. Does this application relate to the same licence class as your suspended Qld driver licence?

No You are not eligible to apply for a SHO. Yes

6. Prior to the current suspension:

a) has your Qld driver licence been suspended or cancelled in the last 5 years because of the accumulation of demerit points or a high speed offence?

No Yes You are not eligible to apply for a SHO.

b) has your authority to drive in Qld under an interstate or overseas licence been suspended, in the last 5 years, because of the accumulation of demerit points or a high speed offence?

No Yes You are not eligible to apply for a SHO.

c) have you been ineligible to apply for a Qld licence, in the last 5 years, because of the accumulation of demerit points or a high speed offence?

No Yes You are not eligible to apply for a SHO.

7. Have you been disqualified from holding or obtaining a Qld driver licence by a court in the last 5 years?

No Yes You are not eligible to apply for a SHO.

8. Have you been convicted of dangerous driving by a court in the last 5 years?

No Yes You are not eligible to apply for a SHO.

9. Have you attached the necessary supporting evidence? (see over page for meaning of 'supporting evidence')

Yes No

Note: You are required to give the court an affidavit containing information relevant to your circumstances.

10. Applicant's declaration

I declare that I have read all the answers I have given to the questions in this application and that the answers given by me are complete, true and correct in every detail. I understand that if I have stated anything in this application that is false or misleading, my application may be refused. I understand that I may be prosecuted for giving or stating any false or misleading information or documents. I consent to the department taking, keeping and using my personal information and documents for the purposes associated with my driver licence as required under the Transport Operations (Road Use Management) Act 1995 or otherwise authorised by law.

Applicant's signature

C D Pennie

Date

1 18 11 1201

11. Magistrates Courts Use Only

This application was filed in the Magistrates Court at:

on

_____ / _____ / _____

Notice of Hearing

This application will be heard in the Magistrates Court at:

on

_____ / _____ / _____

at

_____ : _____ am/pm

Clerk of the Court's signature

Date

_____ / _____ / _____

12. Department of Transport and Main Roads Use Only

A copy of this application was filed in the office of the Department of Transport and Main Roads (the department).

Authorised person's name (please PRINT)

Driver licence issuing centre

Authorised person's signature

Date

_____ / _____ / _____

Privacy Statement

The Department of Transport and Main Roads (the department) provides this form under the Transport Operations (Road Use Management) Act 1995 (the Act) so that you may apply to a court for a Special Hardship Order. The information collected for the purpose of this application will be accessible by authorised representatives of the Department of Justice and Attorney-General, Queensland Police Service and the department and may be disclosed to interstate driver licensing authorities as allowed under the Act. The department will not disclose your personal information or documents to any other third parties without your consent unless authorised or required by law.

Original (White) - Retained by Clerk of the Court Duplicate (Yellow) Retained by Applicant Triplicate (Green) Retained by the department

Corporate Forms Area Form F4401 V01 Mar 2012

Sample 6 – Applicant’s Affidavit

Magistrates Court OF QUEENSLAND

REGISTRY: Number: of 2010
IN THE MATTER of CATHERINE DELIA PENNIE
AND IN THE MATTER of an Application for a Special
Hardship Order pursuant to Chapter 10 of the Transport Operations
(Road Use Management - Driver Licensing) Regulation 2021

CATHERINE DELIA PENNIE, of 10 Wish Street, Whoop Whoop in the State of Queensland, Nurse, states on oath:

1. I am the Applicant in this matter.
2. I was born on 1 June 1973 and am 38 years of age. I am divorced with no children.
3. I am the holder of Queensland driver licence number 956102 (Type O, Class C) which expires on 1 June 2011. Exhibit CDP1 is a copy of my driver licence. My licence was suspended on 8 November 2010 pursuant to the Notice of Suspension dated 8th October 2010 Exhibit CDP2 is a copy of the Notice of Suspension.
4. My current position is with the We Care Hospital at Toowoomba. I joined We Care Hospital seven years ago, in November 2003. The hospital is about 45 minutes drive from my home at Whoop Whoop. Exhibit CDP3 is a copy of my current job description and Exhibit CDP4 is a copy of my Curriculum Vitae.
5. I work for a total of 37 hours per week over five days per week, with the days and hours changing according to the monthly roster. I am also on call for 24 hours straight approximately once every three months. At the moment my roster is from Tuesday to Saturday inclusive as follows:
 - Tuesday/Wednesday: 5am to 1:30pm (one hour lunch break)
 - Thursday/Friday: 8am to 4pm (half hour lunch break)
 - Saturday: 5am to 2pm (half hour lunch break).My next 24 hour on call period commences this coming Sunday.
6. My work is a combination of looking after patients at the hospital and visiting others at their homes. I drive my own vehicle to and from work and to and from the hospital for appointments at patients' homes. There is a small team of us on different rosters doing the same duties, and it is occasionally possible to swap appointments outside the hospital, but I have no ability to do this on a longterm basis. I go by myself to

Page 1

Signed: _____ Taken by: _____

AFFIDAVIT BY CATHERINE DELIA PENNIE
Filed on behalf of the Applicant
Form 46 Rule 431
Filed on behalf of the Applicant

CATHERINE DELIA PENNIE
10 Wish Street
WHOOB WHOOB QLD 4352
Tel: 07 3818 1234

Sample 6 – Applicant’s Affidavit continued

these appointments, often carrying quite bulky medical supplies (dressings etc) and sometimes aids like wheelchairs, shower chairs etc. There is nobody available to drive me to and from them. Also, sometimes I arrive there and find that particular supplies are necessary, and I then make a trip back to and from the hospital to obtain these.

7. There is no direct public transport from my home at Whoop Whoop to the hospital. The only public transport is by bus, and the bus service does not start until 6am on weekdays, 7am on Saturdays and 8am on Sundays and public holidays. The bus service finishes at 11pm on weekdays and 10pm on weekends and public holidays. There is no direct bus service from my home to the hospital. The nearest bus stop to my home is about a 15 minute walk. I would then need to catch the bus into the town centre and then a different bus from the city centre to the hospital. The trip into the town takes about 45 minutes depending on the time of day, and then another 30 minutes or so from the city to the hospital. There is a bus stop directly outside the hospital entrance. Altogether, to travel each way by bus would take me about an hour and a half, about double the time it takes by car. As well, there is no way I would be able to get to work in time to start any days with shifts commencing before 7:30am on weekdays, later on other days. I would have a similar problem at finishing time for the shifts when I finish late at night or very early morning and when I am on call.
8. I do not have anyone who could drive me to and from work on the days when I cannot catch the bus due to timing difficulties. There are no colleagues who work the same shifts who live anywhere near me, and I cannot afford to pay for taxis on these occasions. The position is the same for my calls on patients at their homes. Even if there were buses available to get to and from these appointments, on many occasions I need private transport to carry the supplies and equipment I take with me. While there is some flexibility with the timing of these appointments, there is not enough to be able to work in with the bus timetable.
9. I have outlined above the nature of my work duties and the hours of same at We Care Hospital and the work related need for me to have a driver’s licence. As is shown in my CV, since graduation from university my work experience has been solely in small private hospitals like We Care Hospital. Just as I would lose my current position with We Care Hospital if I do not have a driver’s licence, I could not gain employment elsewhere within the health industry without a driver’s licence because the type of work that I am qualified for by training and experience is invariably shift work, as well as being on call for 24 hour periods or more, with both of these including on weekends and public holidays, when public transport is often not available. To enable me to work in the profession for which I am qualified a driver’s licence is essential.

Page 2

Signed:

Taken by:

Sample 6 – Applicant’s Affidavit continued

10. As a divorced person my salary is my only means of supporting myself and servicing my mortgage and other necessities. While I have some savings, I do not have sufficient to live on for six months. My take home pay each week (excluding if I have an on call period) is \$1,154.00. My weekly commitments are approximately as follows:

i. Mortgage	\$325.00
ii. Car loan	\$104.00
iii. Petrol	\$200.00
iv. Car Registration /maintenance	\$ 30.00
v. Food	\$150.00
vi. Telephone (including mobile)	\$ 30.00
vii. Electricity	\$ 35.00
viii. Health insurance	\$ 60.00
ix. Superannuation/life insurance	\$ 40.00
Total	\$1084.00

I also try to put away \$100.00 per week to a savings fund for a “rainy day”. If I am unable to work for six months I will suffer extreme hardship.

11. Although I am divorced without children, I have family responsibilities in that my mother Delia Ethel Pennie has cancer and is currently undergoing chemotherapy and radiotherapy at Whoop Whoop Hospital, a public hospital. My father died some years ago and my mother does not drive. My brother Charlie, his wife Donna and I co-operate to ensure that my mother gets to her various treatment sessions. Both Charlie and Donna work fulltime and have two primary school age children to look after. I estimate that I take my mother for about half of her appointments, including waiting with her at the treatment and taking her home. Without a driver’s licence I would be unable to assist with my mother. As Charlie and Donna do not have the capacity to take over the times that I currently spend with my mother, my mother would be unable to attend for a lot of her treatments, and her prognosis would be much worse than if she is able to attend everything. I have obtained a letter from my mother’s specialist outlining her medical condition and the necessity for treatment appointments. Exhibit CDP5 is a copy of this letter.

Page 3

Signed:

Taken by:

Sample 6 – Applicant’s Affidavit continued

13. As well as my paid employment, I am a panelist on a radio station on the first Monday each month for an hour on health matters. While I do not receive payment for this other than an allowance to cover kilometres, I sign a contract annually which I have just renewed. The studio is about an hour’s travel from Whoop Whoop, and the only feasible method of transport is by car. To go by public transport it would mean a bus trip to the station, by train into the town centre and then back out again to the other side, taking about 2 hours each way. From Whoop Whoop by car I can cut straight across without going through the city. I have negotiated with We Care Hospital so that this commitment is always possible even with my shift work and on call work, but I have not allowed for the extra time it would take if I had to use public transport. Without a driver’s licence I would be unable to continue this commitment, and would be in breach of my contract.
14. In relation to my work as a panelist, exhibit CDP6 is a copy of a reference from Ms Jane Doe.
15. Since obtaining my licence some 17 years ago I have committed some relatively minor traffic offences. I went onto a 12 month Good Driving Behaviour period approximately 10 months ago as a result of an accumulation of points from a mixture of speeding, not wearing a seatbelt etc as shown on my traffic history, a copy of which is exhibit CDP7. Unfortunately, before the expiry of the 12 months, in early June, I was on my way to meet a friend at night, travelling just under the “normal” speed limit of 80 kms per hour. I did not notice that there was a reduced speed limit due to road works. I did not deliberately speed, but I am familiar with speed limits in the local area and I obviously did not pay proper attention to the change of speed limit in the area due to the changed circumstances. I have not committed any further traffic breaches since this breach.
16. I have never intentionally and would never put any other person’s life or my own in danger. The suspension of my driver’s licence has brought home to me the importance of being able to drive and on 29 October 2010 I completed a Defensive Driving Course at the Whoop Whoop Training Centre and annexed hereto and marked CDP8 is a copy of the Defensive Driving Certificate issued to me on 29th October 2010.
17. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by the deponent at Whoop Whoop this day of , 2010 at
in the presence of:

(Signature of Deponent)

A Justice of the Peace/Solicitor

Sample 7 – Certificate of exhibit

Magistrates Court OF QUEENSLAND

REGISTRY:
NUMBER: of 2010

Applicant: CATHERINE DELIA PENNIE

This is exhibit “CDP5” to the affidavit of Catherine Delia Pennie sworn 2010.

Deponent

A Justice of the Peace/Solicitor

CERTIFICATE OF EXHIBIT
Filed on behalf of the Applicant

CATHERINE DELIA PENNIE
10 Wish Street
WHOOOP WHOOOP QLD 4352
Tel: 07 3818 1234

Sample 8 – Employer’s Affidavit

Magistrates Court OF QUEENSLAND

REGISTRY: _____ Number: _____ of 2010
**IN THE MATTER of CATHERINE DELIA PENNIE
AND IN THE MATTER of an Application for a Special
Hardship Order pursuant to Chapter 10 of the Transport Operations (Road
Use Management - Driver Licensing) Regulation 2021**

AFFIDAVIT OF SANDY DENNY

SANDY DENNY of 15 Aged Circuit, Toowoomba in the State of Queensland, Director of Nursing, state on oath as follows:

1. I am the Director of Nursing at We Care Hospital in Toowoomba, which employs the applicant Catherine Delia Pennie as a full time nurse.
2. The hospital employs several nurses on a rotating shift basis. The rosters are done monthly in advance. Each full time position involves 37 hours per week over five days per week, with the days and hours changing according to the monthly roster. Each nurse is also required to be on call for 24 hours straight approximately once every three months.

Under the current roster for the month of June, Catherine is working from Tuesday to Saturday inclusive each week as follows:

- Tuesday/Wednesday: 5am to 1:30pm (one hour lunch break)
- Thursday/Friday: 8am to 4pm (half hour lunch break)
- Saturday: 5am to 2pm (half hour lunch break).

Her next 24 hour on call period commences this coming Sunday

Page 1

Deponent: _____
AFFIDAVIT BY SANDY DENNY
Filed on behalf of the Applicant
Form 46 Rule 431

Solicitor: _____
CATHERINE DELIA PENNIE
10 Wish Street
WHOOB WHOOB QLD 4352
Tel: xxxx xxxx

Sample 8 – Employer’s Affidavit continued

3. Catherine’s duties are a combination of looking after patients at the hospital and visiting others at their homes. The hospital does not provide a driver or a vehicle for these visits, it being part of Catherine’s conditions of employment that she has a driver’s licence and provides her own transport. There is a small team of nurses on different rosters doing the same duties, and nurses can swap shifts themselves, which happens sometimes when a nurse’s car is out of service, but this would not be possible on a long term basis. The appointments are scheduled fairly close together, and it is often necessary for the nurse to carrying quite bulky medical supplies (dressings etc) and sometimes aids like wheelchairs, shower chairs etc. Occasionally another health professional such as a physiotherapist goes with the nurse, but this is not frequent. It would not be possible to adhere to the appointments scheduled and carry any necessary equipment without private transport.
4. If I had to estimate the percentage of time Catherine spends on outside visits, I would say it is probably more than half of her total work hours, although it fluctuates depending on the needs of patients.
5. As previously mentioned, having a licence and one’s own vehicle are part of the nurses’ conditions of employment, and the hospital does not see itself as responsible to fill in if an employee for one reason or another no longer has a licence or a vehicle. If Catherine does not have a valid licence, she would not be able to fulfill a vital condition of her employment, and I would have no option but to terminate her employment with the hospital as there is no available job she can do for the hospital that does not require a driver’s licence. While there are other nurse positions based solely at the hospital, none of these are vacant at present, and I am not aware of any likely upcoming vacancies. In any event, these positions are also shift work, with starting/finishing times often outside the hours that public transport is available.
6. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by the deponent at Whoop Whoop this day of , 2010 at
in the presence of:

(Signature of Deponent)

A Justice of the Peace/Solicitor

Legal words and phrases explained

Adjournment — when your case is put off to another day.

Affidavit — a signed, written statement by a person to be used in court. The person who makes an affidavit must swear under oath or make an affirmation that the contents are true. It is signed by a justice of the peace, commissioner of declarations or a lawyer.

Affirm (affirmation) — a spoken declaration where you promise to tell the truth when giving information or evidence to the court or writing it in an affidavit. You can make an affirmation if you do not want to swear an oath on a Bible or other sacred book.

Applicant — a person who asks the court to do something by filing an application.

Bar table — the table in the courtroom where the police prosecutor, lawyers and defendants stand or sit when appearing before the magistrate.

Commissioner for statutory declarations — a person recognised by law as being able to witness legal documents such as affidavits and statutory declarations (similar to a justice of the peace, see below).

Defendant — a person who is defending themselves against legal action.

Evidence — the proof needed to support your side of the story. Evidence is usually given verbally in court, and also in affidavits.

Hearing — where evidence is given to the court from all people involved in a case and a decision is made.

Justice of the peace — a person recognised by law who (among other duties) helps with the legal process by witnessing documents. This is a person you can ask to witness you signing your affidavit.

Magistrate — the name for the decision maker in the Magistrates Court. You call the magistrate ‘Your Honour’.

Mention date — the different dates you have to go to court (other than a hearing).

Oath — ‘taking the oath’ means swearing on the Bible or other sacred book that you will or have told the truth. If you do not want to take the oath, you can make an affirmation.

QP9 — a written summary of the Police version of why you were charged and what happened.

Restricted licence — the formal name for a work licence.

Special hardship order — an order made by the court that lets you drive under special conditions even though your normal driver licence has been suspended.

Work licence — a court ordered licence that lets you drive for work even though your normal driver licence has been cancelled because of drink driving or a similar offence.

Your notes

Your local Legal Aid Queensland office

Brisbane

44 Herschel Street
BRISBANE Q 4000

Bundaberg

3rd Floor
WIN Tower
Cnr Quay & Barolin Streets
BUNDABERG Q 4670

Caboolture

Ground Floor
Kingsgate
42 King Street
CABOOLTURE Q 4510

Cairns

Level 2
Cairns Square Complex
42-52 Abbott Street
CAIRNS Q 4870

Inala

Level 1
Inala Commonwealth Offices
20 Wirraway Parade
INALA Q 4077

Ipswich

Level 7, 117 Brisbane Street
IPSWICH Q 4305

Mackay

Ground Floor
17 Brisbane Street
MACKAY Q 4740

Maroochydore

Ground Floor
M1 Building
1 Duport Avenue
MAROOCHYDORE Q 4558

Mount Isa

6 Miles Street
MOUNT ISA Q 4825

Rockhampton

Ground Floor
35 Fitzroy Street
ROCKHAMPTON Q 4700

Southport

Level 2
7 Bay Street
SOUTHPORT Q 4215

Toowoomba

1st Floor
154 Hume Street
TOOWOOMBA Q 4350

Townsville

3rd Floor
Northtown
280 Flinders Street
TOWNSVILLE Q 4810

Woodridge

1st Floor, Woodridge Place
Cnr Ewing Road and
Carmody Street
WOODRIDGE Q 4114



For more information about our services visit legalaid.qld.gov.au

or phone 1300 65 11 88 or 1300 650 143 (Indigenous Hotline)

