



ATSILS

Aboriginal and
Torres Strait Islander
Legal Service (Qld) Ltd

Legal Fact Sheet Driver Licences



Do you think you are at risk of losing your driver licence?

You should read this factsheet if you are going to lose your driver licence and:

- you want to apply for a work licence; or
- you want to apply for a special hardship licence; or
- you are losing your driver licence because of a State Penalties and Enforcement Register (SPER) debt.

ATSILS is a non-profit, Aboriginal and Torres Strait Islander community-based organisation with 25 locations across Queensland. We provide innovative and professional legal services covering criminal, civil and family law areas.

Freecall 24/7



1800 012 255

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1. Work Licences

1.1 What is a work licence?

A work licence is a special driver licence that lets you drive for work even though your regular driver licence has been cancelled. It is also known as a 'restricted licence'. You can get a work licence by applying to the Magistrates Court for an order allowing you to have a work licence.

1.2 Can you apply for a work licence?

You may be able to get a work licence if:

- (a) you have been charged with:
 - (i) drink or drug driving; or
 - (ii) you have been charged with failing to comply with a breath test on the side of the road;
- (b) you are going to plead guilty;
- (c) you are going to lose your driver licence; and
- (d) you need a driver licence for work.

You cannot get a work licence if:

- (a) you did not have a valid open driver licence when you committed the driving offence;
- (b) you were driving a vehicle you were not allowed to drive under your driver licence when you committed the driving offence (for example, driving a manual vehicle when you hold an automatic vehicle licence);
- (c) your blood alcohol content was 0.15 or greater when you committed the driving offence;
- (d) you were using a vehicle in connection with your work when you committed the driving offence;
- (e) your driver licence was suspended or cancelled in the last five years (but not because you failed to pay a fine or you failed to appear in court for a drink or drug driving charge);
- (f) you have been convicted of drug or drink or dangerous driving in the last five years;
- (g) you are unemployed, even if you are looking for a job that will require a licence;
- (h) you need a licence for your current job, but it would be easy for you to get a different job that does not require you to have a licence; or
- (i) you need a licence for reasons other than your job, such as taking children to and from school.

1.3 If you are eligible for a work licence, how do you apply for a work licence?

You must apply for a work licence at the time you are convicted of a driving offence and before the Magistrate makes an order disqualifying you from driving.

To be given a work licence, you must show the Magistrate that:

- (a) you are a 'fit and proper' person and would have regard to the safety of other road users and the public generally if you were given a work licence; and
- (b) you need a driver licence to earn your living and that not having a work licence would cause extreme hardship for you or your family.

To apply for a work licence, you must follow these steps:

- (a) At your mention hearing, ask the Magistrate for an adjournment. An adjournment means that the matter is moved to a later date. You should tell the Magistrate that you intend to apply for a work licence.
- (b) Once an adjournment has been granted, you must prepare your application for a work licence. To prepare your application you must:
 - (i) complete the form called *Application for an Order directing the issue of a Restricted Licence (s87)*. This form is available from the Magistrates Court registry;
 - (ii) complete an affidavit so that you can make a written statement supporting your application. Your affidavit will explain why you need your licence for work and that you or your family will suffer severe hardship if you lose your licence. A template affidavit is also available from the Magistrates Court registry;
 - (iii) have your employer provide an affidavit supporting your application by explaining why you need a licence for your job; and
 - (iv) get copies of your criminal and traffic history.
- (c) Once you have prepared your application, you must file it with the Magistrates Court registry and give a copy of your application to the police prosecutor. If you do not have the contact details for your police prosecutor, the Magistrates Court registry will be able to provide them to you.
- (d) You should plead guilty at your next hearing. The Magistrate will then hear your application for a work licence and decide whether to make an order allowing you to have a work licence.
- (e) If the Magistrate makes an order allowing you to have a work licence, you must take the order to a Department of Transport and Main Roads Customer Service Centre to be given the work licence.

1.4 What conditions will you have to comply with?

If you are granted a work licence, you must comply with the conditions of the work licence. The conditions will include that you can only use your work licence in specified circumstances relating to your work. The conditions may also include restrictions on the class of vehicle you may drive or the times at which you can drive

If you are granted a work licence you must:

- (a) carry your licence and the order allowing you to have a work licence with you when you drive, and show it to the police when asked;
- (b) comply with all the conditions of your work licence; and
- (c) have no alcohol in your system when you drive.

2. Hardship Licences

2.1 Can you apply for a special hardship licence?

You may be able to apply for a special hardship licence if having your licence suspended will cause extreme hardship to you or your family and either:

- (a) you have been convicted of driving more than 40km/h over the speed limit; or
- (b) you have accumulated more than one demerit point while on a good behaviour bond.

2.2 How do you apply for a special hardship licence?

You must apply for a special hardship licence within 21 days of the start of your licence suspension. To apply you must follow these steps:

- (a) Lodge an application and your supporting evidence with the Magistrates Court registry in the district where you live. A fee is payable for the application. Your application and supporting evidence will need to consist of the following documents:
 - (i) a *Special Hardship Order Application* form, which is available from the Department of Transport and Main Roads Customer Service Centres;
 - (ii) an affidavit so that you can make a written statement supporting your application that includes the following information:
 - (A) why you need to be able to drive;
 - (B) what hours you need to be able to drive;
 - (C) why there is no other reasonable means of transport available to you for the purposes you need (for example, taking a relative to medical appointments or driving to your job); and
 - (D) anything else you think is relevant that will demonstrate why you or your family will suffer extreme hardship if you did not have a work licence;
 - (iii) any evidence you need to demonstrate that you will suffer extreme hardship if you do not have a special hardship licence, such as an affidavit from your doctor or your employer explaining why you need a driver licence;
 - (iv) a copy of your *Notice of Driver Licence Suspension*; and
 - (v) a copy of your traffic and criminal history.

You will need three copies of all of these documents as well as the original copy. Template affidavits are available from the Magistrates Court registry.

- (b) Lodge a copy of your application, affidavit and supporting evidence with the Department of Transport and Main Roads within seven days of your hearing. You should also give a letter to the Department of Transport and Main Roads asking whether they require your employer to attend your Court hearing.
- (c) At your Court hearing the Magistrate may ask you to give evidence. The Magistrate will make a decision about whether you should be given a special hardship licence after hearing from you and the prosecutor. Your employer must be at the hearing if the Department of Transport and Main Roads has told you they must be there.
- (d) If the Magistrate gives you an order saying you can have a special hardship licence, you must take the order to a Department of Transport and Main Roads Customer Service Centre where you will be able to apply for a replacement licence.

2.3 What conditions will you have to comply with?

If you are given a special hardship licence, it is very important that you comply with the conditions of the order granted by the Magistrate. If you are caught breaking any of the conditions (for example, by driving when you are not allowed to be driving) you will be disqualified from holding a licence and may be fined more than \$2000.

3. State Penalties and Enforcement Registry (SPER) Debts

3.1 What is a SPER licence suspension?

SPER has the power to suspend your driver licence if you receive an enforcement order and do not take action within the time frame provided by SPER in the enforcement order.

Enforcement orders include:

- (a) infringement notice fines;
- (b) Queensland Court orders;
- (c) offender levies; and
- (d) offender debt recovery orders.

3.2 What is the suspension process?

SPER will send you a *Notice of Intention to Suspend Driver Licence* to your last known address.

This notice will give you 14 days to act before SPER will impose the driver licence suspension.

If your licence is suspended by SPER, you will not be able to legally drive. SPER can suspend restricted licences, such as work licences, in addition to provisional and open licences.

3.3 What are your options if your licence is suspended by SPER?

If your licence is suspended by SPER, you can:

- (a) apply for a work licence;
- (b) apply for a special hardship licence;
- (c) pay your SPER debt in full to have the suspension immediately lifted;
- (d) contact SPER to apply for a payment plan to pay off your debt in instalments; or
- (e) contact SPER to perform unpaid community service, but only if you are genuinely disadvantaged and cannot pay off your debt otherwise. Not all types of enforcement orders can be converted into unpaid community service, such as offender debt recovery orders.

4. Obtaining Legal Advice?

ATSILS provides innovative, professional and culturally competent legal service for Aboriginal and Torres Strait Islander people across Queensland.

Freecall 24/7  1800 012 255

We can be contacted toll free on **1800 012 255**, 24 hours a day, 7 days a week. We have 25 offices located across Queensland so you will be put in touch with the closest regional office that is able assist you with your legal needs. In some instances, ATSILS might have a conflict of interest and will not be able to provide you with legal advice. If this is the case, you may wish to try Legal Aid Queensland on their Indigenous Information line on **1300 65 01 43**.

This Factsheet is not intended to provide legal advice and has been provided for the purpose of providing information only. Whilst all reasonable care has been taken in the preparation of this information, no liability is assumed for any errors or omissions.