



# Removal of licence disqualification

Part 1 - Information kit



LEGAL AID  
WESTERN AUSTRALIA

32 St Georges Terrace  
PERTH WA 6000  
Infoline: 1300 650 579  
[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

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## Introduction

This kit will assist you if you want to know how to apply for the removal of your driver's licence disqualification.

Please note, there are two parts to this kit. This is **Part 1** which is the **Information kit**. It includes all the information about when and how you may apply and how to complete, file and serve the relevant forms and affidavits. **Part 2** includes the **Forms and affidavits** themselves, in Word format.

**It is important that you use both parts of the kit together.**

You can request a **hard copy** of this kit by contacting the **Legal Aid WA Infoline** on **1300 650 579** or any Legal Aid WA office. You can access an **electronic copy** of this kit online on the **Legal Aid WA website**: [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Resources > Self-help kits and guides > Removing old convictions or disqualifications > Applying to remove driver's licence disqualifications.

## How to find legislation

There are some references to legislation in this kit. You do not need to look up the legislation in order to use this kit, however, if you would like to access it, there is information here to help you.

You may access **WA Acts** or **Subsidiary legislation** from this website: [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au). If you are looking for an Act, click on the **In force** link under the heading **Acts**. Then select the alpha letter of the name of the Act, for example R for *Road Traffic (Authorisation to Drive) Act 2008 (WA)* and scroll to find this Act. You can choose to open the Act in different formats, but PDF format is recommended. If you are looking for a piece of subsidiary legislation, for example the *Rules of the Supreme Court 1971 (WA)* you click on the **In force** link under the heading **Subsidiary legislation**, and then follow the same process as you do for accessing an Act.

## Definitions and terms

Term	Definition
<b>Affidavit</b>	An affidavit is sworn or affirmed evidence in written form.
<b>Criminal history</b>	Also known as a <b>History for Court</b> , this is a certified document listing all of your WA criminal and traffic convictions, including non-disclosable outcomes such as spent convictions and convictions recorded when you were a young offender.
<b>Record of Traffic Infringement Notices</b>	A Record of Traffic Infringement Notices is a five-year history of your WA traffic infringements that you may have incurred from red light cameras, fixed and mobile speed cameras and hand written notices.
<b>Waiting period</b>	The length of time you must wait before you can make an application to get your licence back.

## What is an application to remove licence disqualification?

If you have been disqualified from holding or obtaining a driver's licence for more than three years you can apply to a court to get your licence back. This is called making an **application to remove the disqualification**.

You cannot apply to have a disqualification removed if it is for three years or less.

The procedure to make an application to remove your licence disqualification can be found in section 24 of the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* and Order 81C of the *Rules of the*

*Supreme Court 1971 (WA)*. Please see **How to find legislation** above if you wish to access these pieces of legislation but note that the law contained in this legislation has been summarised for you in this kit and it is not necessary to look up the legislation unless you wish to.

The parties to the application are yourself and the Chief Executive Officer (CEO) of the Department of Transport (CEO of Transport).

To make the application you are required to prepare various documents for the court and the CEO of Transport and appear in court to make your application.

### Who can apply?

You can apply to have your driver's licence disqualification removed if:

- you have been disqualified from holding or obtaining your driver's licence by a court for more than three years, or
- you have been permanently disqualified (disqualified for life) from holding or obtaining your driver's licence,

and the relevant waiting period has passed.

### *What waiting period applies?*

When you have been disqualified from holding or obtaining a driver's licence, you must wait a certain period of time before you can apply to get your driver's licence back. This is called a **waiting period**. The time you are required to wait depends on the length of your disqualification.

Disqualification	Waiting period
More than 3 years and up to and equal to 6 years	3 years
More than 6 years and up to and equal to 20 years	Half the disqualification period
More than 20 years, or permanently	10 years

The waiting period starts to run from the date on which the disqualification was imposed by the court and continues to run even if you spend time in custody after the disqualification was imposed.

### Multiple disqualifications

If you have more than one licence disqualification and each of them is longer than three years, and the disqualifications are **cumulative** on one another, you must apply to have each individual disqualification removed. You must serve a new waiting period between each application.

There is an **exception** to this if you have **more than one permanent disqualification**. Whether or not they are concurrent or cumulative on each other, you can ask to have all your permanent disqualifications lifted at the same time and in the same application form. You do not have to serve a new waiting period for each permanent disqualification. However, you must ensure that the waiting period for each of the permanent disqualifications included in your application has elapsed. If your application includes any disqualification for which the waiting period has not elapsed, the Court cannot consider lifting that disqualification.

In practice, this means if you have more than one permanent disqualification it is best for you to apply when the waiting period for your most recent permanent disqualification has elapsed. This allows the Court to consider lifting all your permanent disqualifications at one time. Note, the waiting

period for your most recent permanent disqualification commences when that disqualification takes effect, which in practice is the date when the disqualification was imposed.

If you have more than one licence disqualification and each of them is longer than three years, and the disqualifications are **concurrent** with each other you can ask to have all of them lifted at the same time and in the same application form. You do not have to serve a new application period for each disqualification.

If you have more than one disqualification that are each less than three years, even if together they add up to longer than three years, you cannot apply to have them removed. Only individual disqualifications of longer than three years can be removed.

### Subsequent (later) disqualifications

Even if you are successful in having a disqualification removed, this does not necessarily mean you can drive. If you have any other cumulative disqualifications on your record that were imposed after the disqualification that has now been removed, these subsequent (later) disqualifications will start to run from the date the court makes the order for removal.

Similarly, where multiple permanent disqualifications are removed with one application, any cumulative disqualifications imposed after any of the permanent disqualifications will still need to run from the date the court makes the order for removal.

If you are still subject to any other disqualification following a successful application for removal of certain disqualifications, you may wish to consider applying for an extraordinary driver's licence. Please see **Further information** at the end of this kit to find out where you can obtain information about extraordinary driver's licences.

Even if you are not subject to further disqualifications, you must still follow certain steps before you can get your licence back and be allowed to drive. These steps are explained towards the end of this kit under the heading: **What to do if the application is granted.**

### Extraordinary driver's licence cancelled when disqualification removed

If you have an extraordinary driver's licence attached to the disqualification you are asking to have removed and the court agrees to remove that disqualification, your extraordinary driver's licence will be cancelled as soon as the order is made to remove that disqualification.

To avoid being left with no licence, you can ask the court to delay making the order to remove the disqualification. This means you will be able to continue to use the extraordinary driver's licence while you apply to get your full licence.

If you have an extraordinary driver's licence at the time you are applying for removal of licence disqualification, you should get legal advice about the possible impact on you if you are successful.

### Factors for a successful application

Your application is more likely to succeed if you can satisfy the judge that:

- the public will not be endangered by you driving a vehicle
- you are of good character
- your case is one where you should be given your licence back
- the offences for which you were disqualified can be explained
- you have taken steps to rehabilitate yourself since you were disqualified
- you have done nothing wrong since then, and
- you have a need for a driver's licence.

You should include information about these things in your application, if you can. You will need to prove to the judge in court that these factors should be decided in your favour.

A lot of work needs to be done before you apply to remove your disqualification. This is particularly important if you have been disqualified because of a number of drink driving convictions.

## Before you apply

### Some things to consider

- Whether you are successful in your application or not, you may be ordered to pay legal costs to the solicitors for the CEO of Transport.
- It is recommended that you get legal advice before applying.
- Do not use this kit if you want to apply for an extraordinary driver's licence. An extraordinary driver's licence application is different from an application to remove a disqualification. Please see **Further information** at the end of this kit to find out where you can obtain information about applying for an extraordinary driver's licence.

## Step 1: Obtain a copy of your Criminal History and Record of Traffic Infringement Notices

### *Applying for a copy of your Criminal History (History for Court)*

When you make your application for removal of driver's licence disqualification the court will want a copy of your **Criminal History**. A Criminal History document is also called a **History for Court**. The court will want a copy of this document to know the type of prior convictions you have and whether you have any new convictions following your driver's licence disqualification.

A Criminal History does not include information about traffic infringements. A record of your traffic infringements will need to be obtained separately (see below).

You will need to obtain a copy of your Criminal History (History for Court) from the WA Police. To do this you will need to submit a form called **Application for Documents Outside of the Freedom of Information Act 1992** to the **WA Police Information Release Centre**. A copy of this Form may be downloaded from the WA Police website: [www.police.wa.gov.au](http://www.police.wa.gov.au) under Online services > Apply for Information > History for Court > Download form.

When you submit this Form you will need to provide a copy of photo identification (eg proof of age card or passport).

Once you have completed the Form and obtained a copy of your photo identification you will need to mail them to:

WA Police Information Release Centre  
Locked Bag 20  
PERTH BUSINESS CENTRE WA 6849

Alternatively, you can hand deliver them to:

WA Police Information Release Centre  
Level 5, Westralia Square  
141 St George's Terrace  
PERTH WA 6000

You cannot obtain a copy of your Criminal History from your nearest police station.

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There is **no fee payable** when you submit this Form.

Generally, it will take five business days to process this Form, however you should allow further time for postage.

If needed, you may contact the **WA Police Information Release Centre** on **(08) 6229 5900** or **IRC@police.wa.gov.au**.

#### *Applying for a Record of Traffic Infringement Notices*

A **Record of Traffic Infringement Notices** (Infringements Record) is a five year history of your WA traffic infringements that you may have incurred from red light cameras, fixed and mobile speed cameras and hand written notices. The court will need a copy of your Infringements Record when it is considering your application for removal of driver's licence disqualification.

To apply for your Infringements Record you will need to complete an **Authority to Release Record of Traffic Infringement Notices**. You can complete this Authority online through the WA Police website: [www.police.wa.gov.au](http://www.police.wa.gov.au) under Online services > Apply for Information > Record of Traffic Infringement Notices > Apply now.

Alternatively, you can download the Authority from the WA police website or collect a copy from your nearest WA police station. Once you have completed the Authority you may submit it by:

- attending your nearest WA Police Station, or
- posting it to the WA Police Information Release Centre at the mailing address provided above.

Alternatively, you may attend the WA Police Information Release Centre in person at the address provided above.

When you submit the Authority to Release Record of Traffic Infringement Notices you will need to provide a copy of **photo identification** (eg proof of age card or passport).

There is a **fee payable** when you submit the Authority. For the current fee payable please see the WA Police website: [www.police.wa.gov.au](http://www.police.wa.gov.au) under Online services > Apply for Information > Information Access Fees > Record of Traffic Infringement Notices.

Generally, it will take five business days to process this Authority, however you should allow further time for postage.

If needed, you may contact the **WA Police Information Release Centre** on **(08) 6229 5900** or **IRC@police.wa.gov.au**.

#### *Criminal History, traffic record and traffic infringements in another State or Territory*

Where you have a criminal history, traffic record or traffic infringements in another State or Territory then you should request copies of these records as well. Please check with the police department in the relevant State or Territory as to the procedure for obtaining these records.

## **Step 2: Obtain letters, references or reports in support of your application**

There are three types of people (witnesses) that you might like to obtain letters, references or reports from to support your application. These people are your doctor, your employer and people who know you well. Your witnesses can be friends or relatives but if possible it is best to have witnesses who are independent. The person must be willing to be a witness in court for you, although in practice this is not usually required. These witnesses should be prepared to speak about your character, your drinking habits (if you have been disqualified for drink driving), and anything else to do with your application.

This information must be in writing. All letters, references or reports should be:

- typed or neatly hand written
- include an acknowledgement that the writer has prepared the document in support of your application to have your driver's licence disqualification removed
- signed
- dated
- if appropriate, be on business letterhead
- be addressed to the District Court of Western Australia or the Supreme Court of Western Australia (depending on which court you are making your application to)
- the length of the letter should be 1 or 1½ A4 pages, however, a report can be a longer document, and
- only printed on a single sided A4 page.

Once a person has written a letter, reference or report it will need to be attached to the affidavit in support of your application. There is further information about your affidavit below.

#### *Liver function test and reports from your doctor*

If your driver's licence has been disqualified due to drink driving, the CEO of Transport will require you to provide the court with a recent (within the last three months) **liver function test** to show how much alcohol you currently drink. You will have to pay for this test. The results should be used in your application to prove that you do not drink to excess. This may help to prove that you are not a danger to the public if you get your driver's licence back.

If the results of your liver function test are normal, you will not need to provide a report from your doctor. However, if the results of your test are not within the normal range, the CEO of Transport will require you to provide the court with a report from your doctor about your drinking habits. These are commonly called **Reports** or **Medical Reports** and are sometimes hard to get.

Many doctors will not give reports to their patients in person, particularly if they are to be used in court. You should accept your doctor's decision if he or she cannot help you. Your doctor may be able to refer you to another doctor who is experienced in carrying out tests for court cases. Most doctors also charge a fee to prepare reports. Your doctor is unlikely to be required to appear in court.

If you can get a report from your doctor, it would normally be a lot shorter than those from other witnesses. It is recommended that the following information should be included in the report:

- how long the doctor has known you as a patient
- a general description of your health, illnesses or disabilities
- what is known of your drinking habits at the time you committed the offence that resulted in the loss of your licence
- what is known of your drinking habits over a period of time
- what is known of your drinking habits now
- if there have been tests, such as liver function tests, the results of those tests and what they mean using ordinary language
- anything else the doctor wants to say.

#### *Letters from other witnesses*

Ask people who know you well whether they would be prepared to write a character reference for you and if required, attend court in person to be a witness for you. Witnesses providing character references are not usually required to attend court in person. The references are to show that you

are of good character, have rehabilitated yourself and that there are good reasons for your disqualification to be removed.

A reference from a witness might include information about:

- how they know you, for example, as a member of the same community
- how long they have known you
- their observations of you over the years, particularly at the time you lost your licence
- if the reason you lost your driver's licence was alcohol or drug related, any observations they can make about your drinking or drug use at the time you lost your licence
- their observations of you now, particularly how often and how much you drink
- what they think of your character
- anything else they want to say that is relevant to the application.

### *References from your employer*

Ask your employer for something in writing about whether your work or job prospects are affected by not having a driver's licence.

This employer reference can cover the same things as a reference from another witness but should also include:

- how long you have worked for them and in what position
- what your income is
- what will happen to your job if you can't get a licence
- what will happen to your job if you get a licence, for example, could you be promoted and earn more money?
- anything else the employer wants to say.

### **Which court to apply to**

Most applications to remove a driver's licence disqualification are made to the District Court. However, if the Supreme Court disqualified you from holding a driver's licence you must apply to that court to remove the disqualification. In this case, you will need to ensure that your application documents refer to the Supreme Court rather than the District Court and the documents will need to be filed in the Supreme Court. There is information about how and where to file your documents later in this kit.

### *Regional applications*

If you are based in a region you can file an application for the removal of your driver's licence disqualification at your nearest District Court registry office. There is a list of regional registry offices under Contacts at the end of this kit.

If you file an application in a regional registry office you may nevertheless choose whether your application is heard in that region or in Perth. If your application is heard in the region it will be at the time of the next court circuit, which may be some months away. It may, therefore, be quicker for your application to be heard in Perth.

If you are applying in the region but you would like your application to be heard in Perth you must let the staff at the court registry know.

## How to apply

To make your application you must put together the following documents and file them at the applicable court:

- Form 104: Application for removal of licence disqualification (1 original and 2 copies)
- your affidavit including attached letters, reports or references (1 original and 2 copies).

See the information below about how to fill in the form and affidavits, and how to file them at the court.

## Where can I find the form and affidavits?

The form and affidavits are in Part 2 of this kit: **Removal of licence disqualification – Part 2 – Form and affidavits**. If you have access to a computer and the Internet, you can download a Word version of the form and affidavits from the Legal Aid WA website so that you may complete them electronically before printing. See: [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Resources > Self-help kits and guides > Removing old convictions or disqualifications > Applying to remove driver's licence disqualifications.

Alternatively, you may print the blank documents and complete them by hand, however, be aware that some parts of the affidavits must still be provided in typed format. Refer to the instructions for completing the affidavits below.

**You should use the information below when completing the form and affidavits.**

## How to complete the Form 104: Application for removal of disqualification

*District Court of Western Australia CIVO No.	Leave this number blank. Court staff will give the application form a number when you file it.
Applicant	Fill in your name, address, date of birth and occupation as the Applicant.
Details of order disqualifying applicant from holding or obtaining a driver's licence	Write in the court that made the order disqualifying you from holding or obtaining a driver's licence.
	Write in the date that order was made.
	Write in the length of the disqualification period imposed on you by this order.
	Write in the reason you were disqualified. You must state the offence for which you were disqualified and, if the offence was against the <i>Road Traffic Act 1974 (WA)</i> ss 63, 64, 67 or 67A, you must state whether the conviction was your first, second or subsequent for that offence.
	If disqualified for some other reason, you must give the details.
Grounds for this application	You must give your reasons for making this application. Try to address the "Factors for a successful application" referred to under that heading in this kit. Make sure that you number the paragraphs.
Signature of Applicant	Sign the form and date it.
Hearing details	Court Registry staff will fill in the date, time and place for the application hearing.

\*Note, most applications to remove a driver’s licence disqualification are made in the District Court. However, if the Supreme Court disqualified your driver’s licence you must make your application in the Supreme Court. In this case, reference to ‘District Court’ in the Form 104 must be changed to ‘Supreme Court’.

### How to complete your affidavit

An affidavit is like giving sworn or affirmed evidence in court but instead it is in written form. The solicitor for the CEO of Transport or the judge can ask you questions about anything in your affidavit. It is important that the content of your affidavit is true and accurate. **It is a criminal offence to swear or affirm something in an affidavit that you know is not true.**

You may use the first affidavit in Part 2 of this kit as a model. You may type the necessary information into the Word version of the affidavit. Alternatively, you may print off a hard copy and neatly print your details on the front page of the affidavit, however, the main part of the affidavit must be **typed**. Below are some instructions on how to fill out the affidavit.

After you have filled out the affidavit, you will need to take the affidavit and any annexures to an authorised witness to swear or affirm. Please see **Who can witness your affidavit?** below for a list of these people. Do not sign the affidavit until you are with the authorised witness.

#### Front page

Held at	Leave this blank. The court staff will put in the appropriate court location.
Number	Leave this blank. The court staff will put in the same number as they put on the Form 104 when you file it.
Between	Put in your full name as the Applicant. The Respondent is always the CEO of Transport.
Affidavit of	Put in your full name, because you are the person making out this particular affidavit.
Date of filing, Date of signing, Applicant’s name, Address, Telephone	Put in these dates, as well as your full name, address and telephone number.

Any annexures will need to be included in the table of annexures – see below for more information about annexures.

#### Page 2

After the word "I" put your full name. After the word "of" put your full address. In the space after the words "Western Australia" fill in your occupation. The introductory words then finish off with the phrase "being duly sworn make oath and say/do solemnly and sincerely declare and affirm as follows:" Cross out whichever one is not applicable to you.

The affidavit provided with this kit contains useful headings, which are designed to prompt you to put in relevant information. You can change them if you wish.

#### Each page

There are some formatting requirements for your affidavit. These formatting requirements are:

- your affidavit must be completed by neatly printing or typing the information in consecutive numbered paragraphs
- you must use white A4 paper, either blank or ruled sheets

- you can use as many pages as you need to set out all the information relating to your case however your affidavit should be printed on only one side of the paper
- each page of your affidavit, including any annexures, must be consecutively numbered in the top right hand corner
- each line of your affidavit must have a space of not less than 6mm between them
- the left hand margin of your affidavit must be at least 40mm wide
- your affidavit should be fastened only at the top left hand corner, and
- your affidavit must not have sheets folded.

Some things to remember when you are writing your affidavit are:

- your affidavit must be written in the first person, using words like **I** and **me**
- your affidavit must state where you live and your occupation
- your affidavit must be divided into numbered paragraphs
- dates, sums and other numbers must be expressed in figures and not words
- the information that you put in your affidavit should be within your own knowledge
- when creating your affidavit, keep in mind the things you must prove to the judge to succeed in your application.

#### *Last page*

The final part of the affidavit is the "swearing" clause. The authorised witness will fill this out, when your affidavit is signed.

Your affidavit must conclude with a statement that indicates:

- it is sworn or affirmed by you in the presence of an authorised witness, and
- where and when it is sworn or affirmed.

#### *Annexures (attachments)*

You should **attach the following documents** to your affidavit as annexures:

- a copy of your Criminal History
- a copy of your Record of Traffic Infringement Notices
- any other relevant documents, for example liver function test results, report from your doctor, extraordinary driver's licence, letter from your employer, character references.

When you attach copies of documents to your affidavit these are called **annexures**. In the content of your affidavit you must indicate what your annexure is, for example:

*3. Annexed to this Affidavit and marked with the letter "A" is a copy of my Criminal History.*

On your annexure you will need to put the consecutive letter in the top centre of the document. So in the example, on the copy of your Criminal History you would put the letter "A" in the top centre of that document.

On the front page of your affidavit is a table with the heading **Annexures**. Fill in the details of your annexures indicating the correct consecutive letter, a description of the document and on what page(s) the annexure is located, as shown in the following example:

<b>Annexures</b>		
	Description	Page No:
A	Criminal History	13 – 16
B	Record of Traffic Infringement Notices	17 – 18

*Who can witness your affidavit? (s 9(6) Oaths, Affidavits and Statutory Declarations Act 2005 (WA))*

An authorised witness for an affidavit that is made at a place within WA is:

- a Justice of the Peace
- an experienced legal practitioner (a person who has been a legal practitioner for at least 2 years) so long as they have not assisted you in preparing the affidavit or with the proceedings to remove your driver's licence disqualification
- a public notary within the meaning of the *Public Notaries Act 1979 (WA)*
- any registrar or clerk of a court and any mining registrar appointed under the *Mining Act 1978 (WA)*.

*Signing and witnessing an affidavit*

For your affidavit to be a legal document you will need to sign it in the presence of an authorised witness. It is important that you do not sign your affidavit until you are with the authorised witness.

Before signing the affidavit in the presence of an authorised witness, you will be required to say orally an oath or affirmation confirming:

- that you are the person named as the maker of the affidavit
- that the contents of the affidavit are true
- that the signature or mark is yours, and
- if necessary, that any attachment to the affidavit is the attachment referred to in the affidavit.

You should take your annexures with you when you go to sign your affidavit.

You will need to sign the bottom of every page of your affidavit as well as the swearing clause on the last page of your affidavit.

If you have made any handwritten changes to your affidavit you will need to sign or initial these changes.

Once you have signed your affidavit the authorised witness will:

- sign underneath the swearing clause, noting their name and qualification as an authorised witness
- sign every page of your affidavit
- sign or initial any handwritten changes that have been made to your affidavit.

**Filing your Form 104 and affidavit with the court**

Once you have completed the Form 104 and your affidavit, you must **file** (lodge) them at the applicable Court Registry. You must file the original and 2 copies of each document, unless you are using eLodgment.

If you are applying to the District Court, you may file these documents in one of the following ways:

- deliver by hand to the Court Registry
- post to the Court Registry
- use eLodgment.

The addresses for District Court Registries are listed under **Contacts** at the end of this kit.

If you are applying to the Supreme Court you must file your documents using eLodgment.

To use eLodgment you must first register to use eCourts Portal. To do this, go to <https://ecourts.justice.wa.gov.au/eCourtsPortal/> and click on Register at the top of the page.

There is information to assist you with eLodgment on the District Court website at [www.districtcourt.wa.gov.au/E/elodgment.aspx](http://www.districtcourt.wa.gov.au/E/elodgment.aspx) and on the Supreme Court website at [www.supremecourt.wa.gov.au/E/electronic\\_documents\\_system.aspx](http://www.supremecourt.wa.gov.au/E/electronic_documents_system.aspx).

Once the Court Registry receives your application it will be stamped and the case number and court hearing date will be inserted on the stamped copy. If dealing with hard copy documents, the Registry will keep the original form and affidavit and return the copies of these documents to you, either by handing them back to you at the time of filing or by posting them to you. If your documents were filed using eLodgment the Registry will make the documents available to you through the eCourts Portal.

The stamped Form 104 that you receive back from the Court Registry or which appears in the eCourts Portal will contain the time and date on which your case will be heard. **You must go to court on that day.** If it has not already been done, you should note the time and date on the remaining copy of the Form 104, which you should keep as a reminder and for your own records.

### *Filing fee*

There is a fee for filing your Form 104 application at the court. If you are filing your application in person you must pay at the Registry at the time of filing. If you are filing your application by post you must pay the fee by cheque included with your application. If you are filing your application using eLodgment you must pay online during the eLodgment process.

Please check the current fee by contacting the District Court Registry (or the Supreme Court Registry if applicable). The contact details for these courts can be found under **Contacts** at the end of this Kit.

You can apply for the fee to be waived by lodging a **Form 2: Application to Reduce Fees**.

If you are filing your Form 104 application in person or by post, you must complete a Form 2: Application to Reduce Fees to file together with your application. A hard copy of the Form 2 can be obtained from the District Court Registry (or the Supreme Court Registry if applicable) or downloaded from the District Court website [www.districtcourt.wa.gov.au](http://www.districtcourt.wa.gov.au) under Court Fees (or the Supreme Court website if applicable [www.supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au) under Forms and Fees > Civil Fees. You must provide a photocopy of your health care card or pension card with the Form 2.

If you are filing your application using eLodgment and you have a health care card or pension card, you do not need to complete the Form 2 to have the fee waived. Instead you should provide your health care card or pension card number under client details during the eLodgment process. This will mean the fee is automatically waived.

If you have any questions about making an application for the fee to be waived, please contact the District Court Registry, or if applicable, the Supreme Court Registry.

### **Serving the Form 104 and affidavit**

Once you have filed your Form 104 and affidavit and received the copies back from the Court or accessed the stamped copy from eCourts Portal, **within one day of receiving them** you must give the **stamped copy** of the Form 104 and affidavit to the CEO of Transport. This is called **servicing** the documents. You can serve them in one of the following ways:

- **Post to:** The Chief Executive Officer of the Department of Transport  
Legal and Legislative Services Division  
GPO Box R1290  
PERTH WA 6844



- **Email to:** [prosecutions@transport.wa.gov.au](mailto:prosecutions@transport.wa.gov.au) (either scan copies which include signatures or type the relevant name where a signature is required and file an undertaking stating that you have possession of signed copies and will keep them; if using eLodgment, download the documents from eCourts Portal in PDF format and attach to an email)
- **Fax to:** 6551 6942 with a cover page that is addressed to the CEO of Transport and states your name, postal address, telephone and fax number, and the total number of pages being sent (including the cover page)
- **In person:** at any Department of Transport Driver and Vehicle Services Centre **or** at the Department of Transport Reception, Level 2, 140 William Street, Perth.

Keep the remaining copy of the Form 104 and affidavit for your records.

#### *Affidavit of service*

After you have served the CEO of Transport you must complete an affidavit of service setting out how you served the application (eg by pre-paid post). An affidavit of service is contained in Part 2 of this kit. Once you have prepared this and signed it in front of an authorised witness you must **file** the signed affidavit at the court in person, by post or through the eLodgment process. You should keep a copy of this affidavit for your records.

#### **Tell your witnesses the date of the court hearing**

Tell all your witnesses (that is, the people who provided letters, reports or references annexed to your affidavit) the date of the court hearing. Tell them as soon as possible so that they can arrange to be available on that day, if required. Note, however, that witnesses are not usually required to attend court.

Remember that you must go to court on the day of the hearing.

#### **Checklist for preparation and filing of court documents**

- Obtained legal advice as to whether the waiting period has lapsed
- Obtained copies of your criminal history and record of traffic infringement notices
- Obtained letters, references and reports (if relevant) from:
  - anyone who knows you well and can provide information in support of your case
  - employer
  - doctor
- Checked that friends/relatives/employer/doctor who have provided letters/references /reports are willing to go to court, if required
- Completed Form 104 and signed it
- Completed your affidavit in support
  - annexures attached as required and table at front of affidavit completed
  - affidavit sworn in front of an authorised witness
- If filing in person or by post, made 2 copies of:
  - Form 104
  - your affidavit and annexuresso you have 3 copies in total of each document.

- Filed original and copy of each of the above documents with the registry office of the District Court (or Supreme Court if applicable), or uploaded each document using eLodgment
- Noted court date and time on your copy of the Form 104 (unless using eLodgment)
- Served stamped copies of Form 104 and your affidavit on the CEO of Transport within one day of filing
- Prepared and filed an affidavit of service explaining how you served the CEO of Transport
- Told any witnesses the court date and time

## Before the hearing

The solicitors for the Department of Transport will contact you if there is a problem with your application or if they intend to oppose your application.

If you have not heard from the solicitors for the Department of Transport and want to check if they intend opposing your application, contact the **Legal and Legislative Services Division** of the **Department of Transport** on **(08) 6551 7010**.

## At the hearing

Go to the court building on the date on which your case has been listed. Locate your courtroom.

### Solicitor may represent the CEO of Transport

A solicitor usually represents the CEO of Transport. The solicitor is entitled to oppose your application and submit to the judge that your application should not be granted. However, if the solicitor for the CEO of Transport does not oppose your application, he or she will inform the judge. The judge will then be more likely to grant the application and order that your disqualification be removed.

If the CEO of Transport opposes your application, your matter may be adjourned to another day for a hearing. At the hearing you will have to give spoken evidence. Your evidence will generally be the same as what you have said in your affidavit. The people who gave written evidence for you, by way of letters or references and reports attached to your affidavit, may also have to give spoken evidence.

You and the witnesses who give evidence for you can be questioned by the judge and by the solicitor for the CEO of Transport.

After hearing all the evidence, the judge will either:

- dismiss your application and order that you pay the legal costs of the CEO of Transport, or
- grant your application, and:
  - order that your disqualification be removed, and
  - order that you pay all or part of the legal costs of the CEO of Transport.

If you are **unable to pay the legal costs**, you should raise this with the judge at the time you are appearing in court, before any order for costs is made.

## Court etiquette

The following is a general guide to help you when you appear in court.

- **Be on time** – The time you must be in court should be written on your court papers. If you are not sure ring the court and check. If you are late for court or do not come at all things might happen in your absence, for example, your application might be dismissed without you having a say.
- **Dress neatly** – Take off any sunglasses or hats. You will not be allowed into court in a singlet or without shoes.
- **No mobile phones, food or drink** – Turn off all mobile phones and any other electronic devices before entering the court. Do not take any food or drink into court.
- **Court room behaviour** – When entering and leaving the courtroom you should bow towards the judge. Stand up when the judge enters and leaves the courtroom. Stand up when you are being spoken to or when you wish to speak, otherwise remain quietly seated. Address the judge as “Your Honour”.

## After the hearing

### What to do if the application is dismissed (refused)

If your application is not successful, you do not need to do anything immediately. If the judge has ordered that you pay the legal costs of the CEO of Transport, you should do this before leaving court, if possible. You will receive information from the solicitors for the CEO about where and how to pay.

If your application has been refused you **cannot make another application until one year after the date of refusal**.

### What to do if the application is granted

Even if your application is successful, you cannot automatically drive. You must follow the steps for your licence to be re-issued by the Department of Transport and you must be sure you have no other outstanding (cumulative) periods of disqualification, before you drive.

If you have any **cumulative disqualifications that were imposed after the licence disqualification that has been removed**, these will start to run from the date of removal and therefore, you will still be under disqualification and will not be allowed to drive. In these circumstances, you may wish to consider applying for an Extraordinary Driver's Licence. If you think this circumstance applies to you, it is recommended that you **get legal advice**.

If you **do not have any cumulative disqualifications** that were imposed after the licence disqualification that has been removed, you still cannot drive until you have followed these steps to have your licence re-issued by the Department of Transport:

1. A court officer will carry out a process called extracting the order. This means the court order is produced and signed by a Registrar of the court. A copy of the order is then sent to you by mail.
2. When you receive your copy of the extracted court order you must take it to any Department of Transport Driver and Vehicle Licensing Centre and ask for your driver's licence to be re-issued.
3. If the judge ordered that you pay the legal costs for the CEO of Transport you should do this before leaving court, if possible. You will receive information from the solicitors for the CEO about how to pay these costs. You may have to show proof that you have paid these legal costs before the Department of Transport will re-issue your licence.

If you had an Extraordinary Driver's Licence allowing you to drive while you were under disqualification, when that disqualification is removed and your licence is re-issued, the Extraordinary Driver's Licence will no longer apply.

### Reminder – when you can drive again

Remember, you cannot automatically drive once the court has removed your licence disqualification. You must follow the steps for your licence to be re-issued by the Department of Transport and you must be sure you have no other outstanding (cumulative) periods of disqualification, before you drive.

This is explained fully under the heading above: **What to do if the application is granted**.

### Further information

Legal Aid WA produces an information sheet about **Extraordinary Driver's Licences**, available from any Legal Aid WA office, by contacting the **Legal Aid WA Infoline** on **1300 650 579** or from the **Legal Aid WA website** [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Resources > Information sheets > Cars and driving > Driver's licences. There is also a Legal Aid WA webpage called Extraordinary Driver's Licence applications available on the **Legal Aid WA website** [www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au) under Find legal answers > Cars and driving > Driver's licences.

A range of other legal information is available on the Legal Aid WA website, under Find legal answers.

## Contacts

### District Courts

#### Perth District Court

500 Hay Street  
PERTH WA 6000  
Ph: (08) 9425 2178  
Fax: (08) 9425 2268

### Country courthouses with a District Court registry office

Albany  
184 Stirling Terrace  
ALBANY WA 6330  
Telephone: (08) 9845 5200  
Facsimile: (08) 9841 7920

Broome  
Hamersley Street  
BROOME WA 6725  
Telephone: (08) 9192 1137  
Facsimile: (08) 9192 1878

Bunbury  
3 Stephen Street  
BUNBURY WA 6230  
Telephone: (08) 9781 4200  
Facsimile: (08) 9721 8180

Busselton  
12 Stanley Street  
BUSSELTON WA 6280  
Telephone: (08) 9754 9666  
Facsimile: (08) 9752 4950

Carnarvon  
Cnr Robinson Street & Olivia Tce  
CARNARVON WA 6701  
Telephone: (08) 9941 1082  
Facsimile: (08) 9941 2779

Derby  
Loch Street  
DERBY WA 6728  
Telephone: (08) 9191 1406  
Facsimile: (08) 9193 1025

Esperance  
100 Dempster Street  
ESPERANCE WA 6450  
Telephone: (08) 9071 2444  
Facsimile: (08) 9071 2288

Geraldton  
Marine Terrace  
GERALDTON WA 6530  
Telephone: (08) 9921 3722  
Facsimile: (08) 9964 1864

Kalgoorlie  
Brookman Street  
KALGOORLIE WA 6430  
Telephone: (08) 9093 5300  
Facsimile: (08) 9021 2005

Karratha  
Balmoral Road  
KARRATHA WA 6714  
Telephone: (08) 9185 2922  
Facsimile: (08) 9185 2413

Kununurra  
Coolibah Drive  
KUNUNURRA WA 6743  
Telephone: (08) 9168 1011  
Facsimile: (08) 9168 1103

South Hedland  
Hawke Place  
STH HEDLAND WA 6722  
Telephone: (08) 9172 9300  
Facsimile: (08) 9172 9330

### Supreme Court

Level 11, David Malcolm Justice Centre  
28 Barrack Street  
PERTH  
Phone: (08) 9421 5333  
Fax: (08) 9421 5353

**Registry opening hours:** 9.00am – 4.00pm

**Registry telephone contact:** 8.00am - 5.00pm

### Chief Executive Officer (CEO) of the Department of Transport

The Chief Executive Officer of the Department of Transport  
Attention: Legal and Legislative Services Division  
GPO Box R1290  
PERTH WA 6844  
Ph: (08) 6551 7010

## Legal Aid WA

**TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)**

Infoline open Monday to Friday 9.00 am to 4.00 pm  
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450

National Relay Service (for hearing and speech impaired) 133 677

[www.legalaid.wa.gov.au](http://www.legalaid.wa.gov.au)

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**Perth Office**

32 St Georges Terrace  
Perth, WA 6000  
1300 650 579  
(08) 9261 6222

**Southwest Regional Office**

7<sup>th</sup> Floor, Bunbury Tower,  
61 Victoria Street  
Bunbury, WA 6230  
(08) 9721 2277

**West Kimberley Regional Office**

Upper Level, Woody's Arcade,  
15-17 Dampier Terrace,  
Broome, WA 6725  
(08) 9195 5888

**Great Southern Regional Office**

Unit 3, 43-47 Duke Street,  
Albany, WA 6330  
(08) 9892 9700

**Goldfields Regional Office**

Suite 3, 120 Egan Street,  
Kalgoorlie, WA 6430  
(08) 9025 1300

**Pilbara Regional Office**

28 Throssell Road,  
South Hedland, WA 6722  
(08) 9172 3733

**East Kimberley Regional Office**

98 Konkerberry Drive,  
Kununurra, WA 6743  
(08) 9166 5800

**Midwest & Gascoyne Regional Office**

Unit 8, The Boardwalk,  
273 Foreshore Drive,  
Geraldton, WA 6530  
(08) 9921 0200

**Indian Ocean Office**

Administration Building,  
20 Jalan Pantai, Christmas Island,  
Indian Ocean, WA 6798  
(08) 9164 7529

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This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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