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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 February 2012 and does not accept responsibility for any errors or omissions.

We are committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you would like this publication explained in your language, please telephone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland. This is a free service.



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# How can this guide help me?

This guide can help you if:

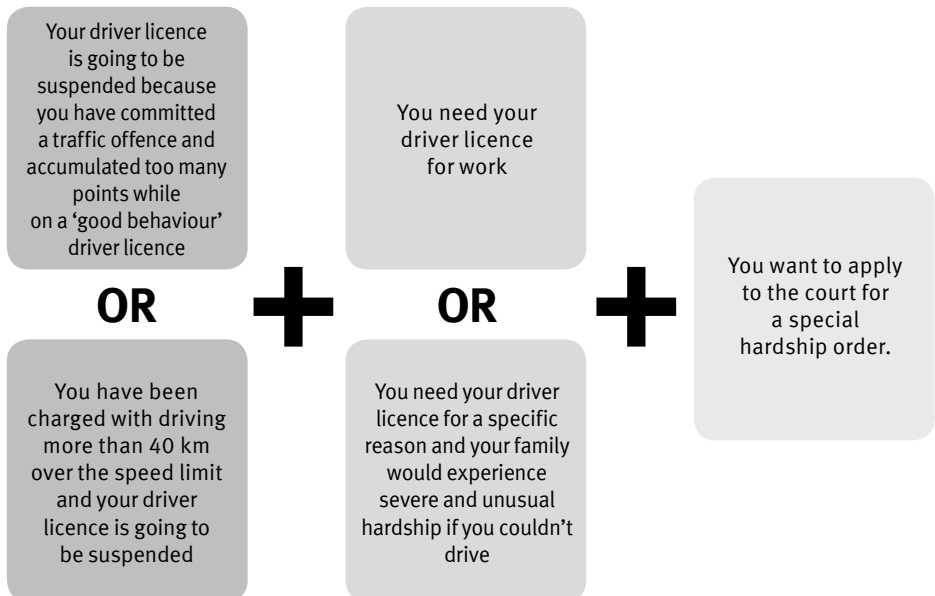
- you are going to lose your driver licence and
- you want to apply to the court for a work licence or special hardship order.

## 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:



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## 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 advice
- A community legal centre – go to [www.legalaid.qld.gov.au](http://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](http://www.qls.com.au) for names of solicitors who can help.



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# 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.” Provisional licence holders irrespective of age are not eligible to apply for a work licence. An exception might be if you have been charged under section 80(5A) *Transport Operation (Road Use Management) Act 1995* with the offence of failure to supply a specimen of breath at the road side. Please seek legal advice in this circumstance.

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).

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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.

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# How do I apply for a work licence?

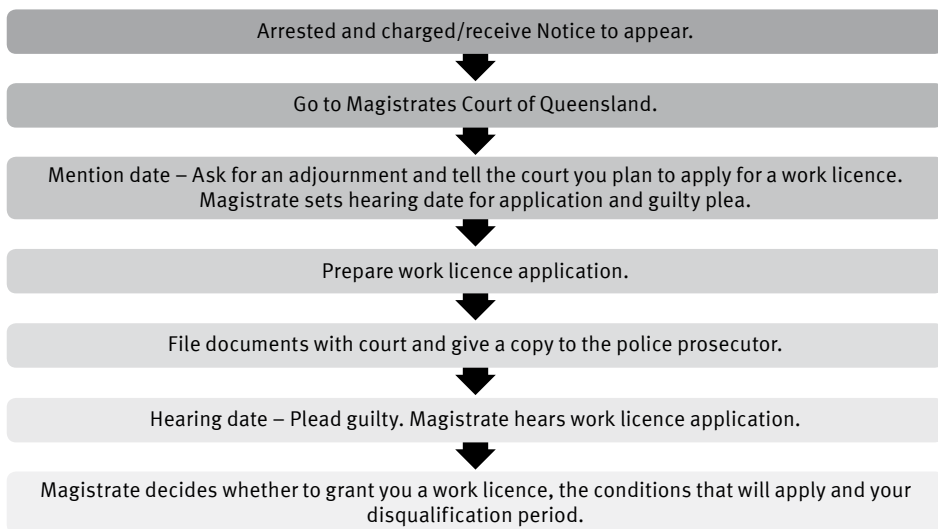
If you want to apply for a work licence, you need to follow these three steps:

**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:



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## 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.

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## 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.

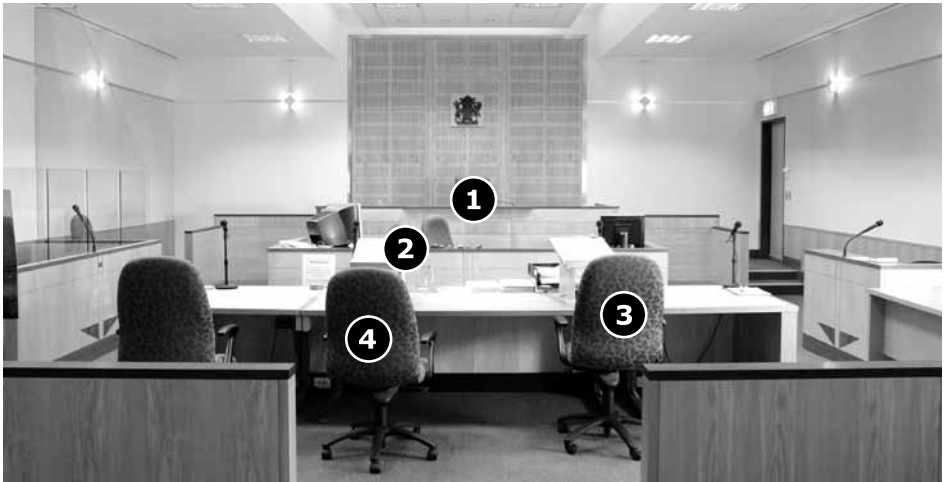
When you arrive:

- 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).



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## 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.

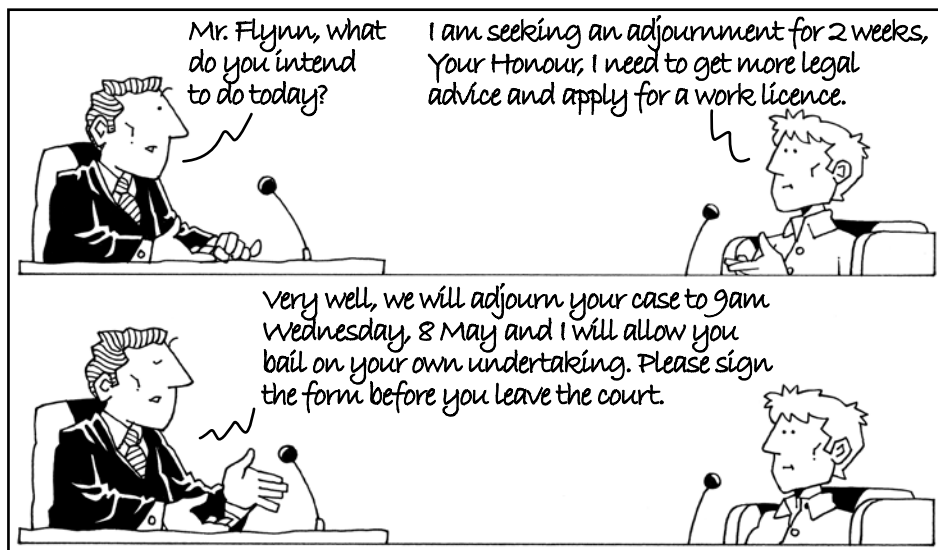
## What will happen on my first mention date?

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).

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## 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](http://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](http://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.

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## 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.

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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

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- 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](http://www.justice.qld.gov.au)

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## 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](http://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.

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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.

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## **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.

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## **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.

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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.

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## 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](http://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.

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# 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](http://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.

Even 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 within 21 clear days of your licence being suspended (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.

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# 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).

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## 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](http://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.

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- 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](http://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.

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## 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)

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- 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.

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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](http://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.

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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](http://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. 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.

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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.

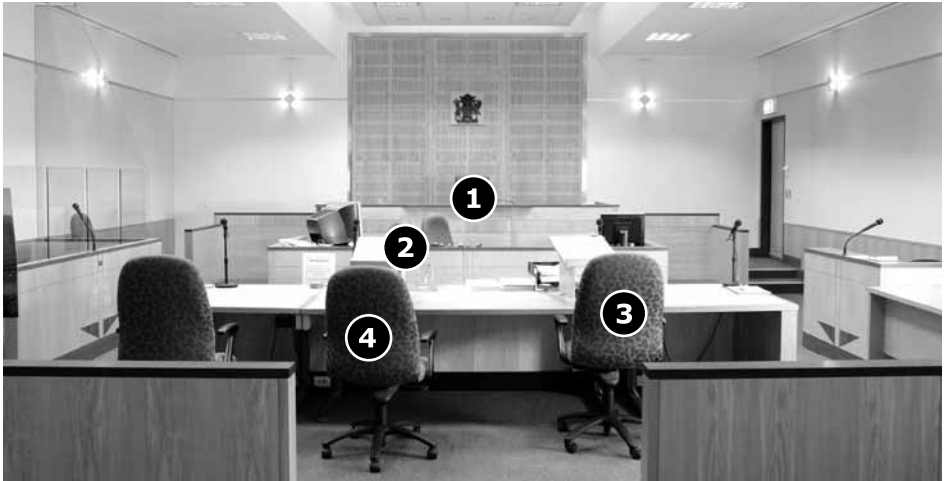
- 
- Look for the Department of Transport and Main Roads prosecutor in the courtroom and see if you can speak to them about your application (sometimes the police prosecutor will be there on behalf of the Department of Transport and Main Roads prosecutor). Make sure you're on the list to apply for a 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.



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## 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).



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## 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.

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## 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.

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# 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.