

# MAGISTRATES COURT FACT SHEET 40

## EXTRAORDINARY LICENCE

This fact sheet explains how to apply for an extraordinary licence.

What is an extraordinary licence?

To be eligible to obtain an extraordinary licence (“EDL”), you will first need an order from the court granting the extraordinary licence. An EDL is a licence that can be issued by the Department of Transport (or agent), only under an order of the court. It authorises the holder to drive in certain circumstances, even though they have been disqualified from driving by a court.

How to apply

You will need to lodge an application form (Form 5 - Application for Extraordinary Licence), together with an affidavit in support, and pay the prescribed fee at a registry of the Magistrates Court.

The Magistrates Court (General) Rules 2005 have been amended by the Magistrates Court (General) Amendment Rules 2019. The changes make it compulsory for an EDL application to be lodged with a supporting affidavit.

The application Form 5, affidavit and fees are available from any court registry or on the Magistrates Court website: please refer to the Quick Links page at the end of this document for details.

If the Court disqualification was imposed by the Supreme Court or the District Court an application for an EDL is to be made to the court by which the disqualification was imposed.

When an application cannot be made

You cannot apply for an EDL when you are:

1. serving a demerit point suspension;
2. serving the period of an immediate disqualification notice;
3. serving a fine suspension imposed by the Fines Enforcement Registry; and/or
4. if an application for an EDL has been refused by the court within six (6) months.

In relation to a demerit point suspension and immediate (roadside) disqualification; you must wait until the end of the period stated in the notice before you are eligible to make an application.

To lift a fine suspension you need to either pay all outstanding fines or make time-to-pay arrangements with the Fines Enforcement Registry. Your suspension will only be lifted if the fines are paid in full or your time-to-pay application is approved.

Grounds for granting an extraordinary licence

The court's decision is discretionary, and the court can only make orders to grant an EDL if without a licence the applicant will be:

1. unable to access urgent medical treatment for an existing illness, disease or disability suffered by the Applicant or a family member;
2. deprived of the principal means of obtaining income; or
3. deprived of the only practical means of travelling to and from a place of employment for Applicant or family member.

Time limits

Applications can only be made after a certain waiting period has elapsed. This waiting period will depend on the type of offence and any prior drink/drug-related traffic convictions you may have. The table attached to this fact sheet is provided to guide you in determining the required waiting period.

If you are unsure, you should seek legal advice to determine the time limit that applies to you.

Waiting period before application can be made

It is important to note that you cannot apply for an EDL during the period that any disqualification notice is in effect, or before the waiting period from court conviction has elapsed (as set out in the waiting period table below). Any waiting period specified below is subsequent to any term of imprisonment that may have been imposed (for example, the waiting period does not commence until the day of release from custody).

#### Waiting Period from Immediate (Roadside) Disqualification

An immediate disqualification notice may be issued by the police for an offence of Excess 0.08, Driving under the Influence, or refusing to comply with a requirement to provide a breath, blood or urine sample.

A disqualification notice, once served, immediately disqualifies a driver from driving. No application for an EDL may be made whilst a driver is disqualified.

For more information on disqualification notices, please refer to the website of the Office of Road Safety.

#### Waiting Period from Court Conviction

The period which you are required to wait before being eligible to apply for an EDL may be subject to;

- a) the type of offence;
- b) the number of previous convictions you have incurred;
- c) any term of imprisonment; and/or
- d) any period of fine suspension.

## The hearing

A hearing date will be set by the court at least fourteen (14) clear days from the day you lodge the application. This time period cannot be shortened. The hearing is before a magistrate. The court will serve a copy of the application on the Department of Transport. An officer from that department or a police officer will appear on the court date.

You must attend court on the hearing date and satisfy the court of your need for an EDL.

At the hearing you need to provide the court with sufficient information, documentation, or evidence in relation to your financial and or medical circumstances to enable the magistrate hearing your application to clearly understand how you are being affected by the loss of your driver's licence. Relevant documents may include bank statements, medical reports, foreclosure notices, letter from employer, proof of debts/ repayments etc. If you are unsure or require assistance, you should seek legal advice.

## Factors the court will consider

When deciding whether or not to grant an EDL the court will consider many factors, including:

1. The safety of the public generally.

Your previous driving history and traffic record.

2. The circumstances of the case.

You will need to satisfy the court on one or more of the following grounds:

- You cannot do your job without a licence;
- You will lose your job if you are not granted an EDL; and/or
- The licence is required for medical purposes.

3. The nature of the offence(s) giving rise to the disqualification.

This means the circumstances surrounding the offence for which you lost your licence.

4. The conduct of the applicant since the offence and disqualification.

The court will want to know such things as:

- Has your employment situation changed?
- Have your drinking habits changed since your offence?
- What are they now?
- Have there been any further convictions or charges laid against you?
- Have you undergone any alcohol or drug counselling?

Can conditions be attached to an extraordinary licence?

Yes, the court can attach any conditions it deems fit to an EDL. Some of the more common conditions include:

- the days and hours during which you can drive;
- the purposes for which you can drive (for example, to travel to or from work or medical reasons);
- the locality and the roads you can drive on;
- the vehicle or class of vehicle that you can drive; and/or
- the implementation of an alcohol interlock scheme.

Can I drive once I have obtained a court order?

No, the court may make an order that you can obtain an EDL. It is important to know that the order is not a licence to drive.

Upon being provided with the order by the court, you will need to present that order to a licensing branch of the Department of Transport. Upon payment of a fee, proof of identification and meeting any other Department of Transport requirements, the licence will be issued, comprising a paper document, with a plastic card to follow.

It is only when the licence is issued by the Department of Transport that you can resume driving and can only do so in accordance with the conditions of the EDL.

Alcohol Interlock System

An alcohol interlock is a device which, when installed in a motor vehicle, prevents the vehicle from being operated unless the driver's breath sample analysed by the device contains either no measurable concentration of alcohol, or not more than a particular concentration of alcohol<sup>1</sup>.

The WA Interlock Scheme aims to reduce the road safety risk posed by offenders, by separating drinking behaviours and driving behaviours.

For further information on alcohol interlock systems, please refer to the Department of Transport website.

Offences

It is an offence to drive contrary to any of the conditions of an EDL and you are liable to be charged, fined and your EDL cancelled.

If you drive prior to obtaining the licence from the Department of Transport you will also be liable for prosecution.

What if the application is refused?

If your application is refused, you cannot make another application for six (6) months.

Where the EDL application is refused, the EDL application fee is not refundable to the Applicant.

<sup>1</sup> Road Traffic (Authorisation to Drive) Act 2008 (WA), s5A.

Can an extraordinary licence be varied?

Yes, if at a later time, any of the conditions on your EDL need to be changed (such as your employment or class of licence) you may make an application to a registry of the court to vary those conditions.

The application will need to be considered by a magistrate in a similar way to the original application.

When you go to court, you will have to tell the magistrate what has changed. You will also have to provide sufficient information, documentation or evidence so that the magistrate can understand what has changed and why the EDL should be varied.

This is a guide only. The content is subject to change. If you are unsure about any of the information in this fact sheet, contact your nearest registry or seek legal advice.

## Quick Links

For application forms and further court information please refer to the Magistrates Court website: [www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au).

For more information on disqualification notices, please refer to the website of the Office of Road Safety:  
<http://www.ors.wa.gov.au>.

For further information on alcohol interlock systems, please refer to the Department of Transport website at:  
<https://www.transport.wa.gov.au/>

For legal advice and other legal queries please refer to the Legal Aid website at: <https://www.legalaid.wa.gov.au/>

## Waiting Period Table

This table is a guide only and it is the Applicant's responsibility to ensure correct compliance with Sections 25-31 of the Road Traffic (Authorisation to Drive) Act 2008		Current Offence causing your Disqualification						
		Excess 0.08% s64 RTA	DUI s63 RTA	Driving while impaired by drugs s64AB RTA	Failure to give sample or accompany police officer s67 RTA	Failure to comply with requirement to do driver assessment / provide blood or urine s67AA RTA	Failure to comply with requirement of a police officer s67A RTA	Any other offence leading to a licence disqualification
Previous Offences	No prior offences	21 days	21 days	21 days	21 days	21 days	21 days	21 days
	1 prior Excess 0.08% s64 RTA	2 months	3 months	3 months	3 months	3 months	2 months	21 days
	2 or more prior Excess 0.08% s64 RTA	3 months	3 months	3 months	3 months	3 months	3 months	21 days
	1 prior DUI s63 RTA	2 months	4 months	4 months	4 months	4 months	2 months	21 days
	2 or more DUI s63 RTA	3 months	4 months	4 months	4 months	4 months	3 months	21 days
	1 prior Driving while impaired by drugs s64AB RTA	21 days	4 months	4 months	21 days	4 months	2 months	21 days
	2 or more prior Driving while impaired by drugs s64AB RTA	21 days	4 months	4 months	21 days	4 months	3 months	21 days
	1 prior Failure to give sample or accompany police officer s67 RTA	2 months	4 months	4 months	4 months	4 months	2 months	21 days
	2 or more prior Failure to give sample or accompany police officer s67 RTA	3 months	4 months	4 months	4 months	4 months	3 months	21 days
	1 prior Failure to comply with requirement to do driver assessment / provide blood or urine s67AA RTA	21 days	4 months	4 months	21 days	4 months	2 months	21 days
	2 or more prior Failure to comply with requirement to do driver assessment / provide blood or urine s67AA RTA	21 days	4 months	4 months	21 days	4 months	3 months	21 days
	1 prior Failure to comply with requirement of a police officer s67A	2 months	3 months	3 months	3 months	3 months	2 months	21 days
	2 or more prior Failure to comply with requirement of a police officer s67A	2 months	3 months	3 months	3 months	3 months	3 months	21 days
Any other offence leading to a licence disqualification	21 days	21 days	21 days	21 days	21 days	21 days	21 days	

You cannot apply for an Extraordinary Licence (EDL) if:

- a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is in force against you (Fines suspension)
- a demerit point suspension is in force against you (including breaching the good behaviour period for a Double or Nothing)
- an immediate 2 month suspension under s71D of the Road Traffic Act 1974 (RTA) is in force against you (roadside disqualification)

**Waiting periods apply and depend on what you were disqualified from driving for, and what offences you have been previously disqualified from driving for.**

- The waiting periods applicable above are to be reduced by any period where the applicant was disqualified from driving by a disqualification notice by the police officer in relation to the same offence.
- For other offences, please speak with the Court staff regarding the wait period applicable under the Road Traffic Act 1974 and the Road Traffic (Authorisation to Drive) Act 2008.