

## 76. Extraordinary licences

- (1) Subject to the provisions of this section, where under this or any other Act a person is disqualified from holding or obtaining a driver's licence, that person may apply to a court for an order directing the Director General to issue an extraordinary licence to him.
- (1aa) If under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* a licence suspension order is in force in respect of a person, no application under subsection (1) shall be made to, or heard by, any court in respect of that person.
- (1a) No application under subsection (1) shall be made to, or heard by, any court —
  - (a) within 4 months after the applicant has been disqualified under section 63(2)(b) or (c) or section 67(3)(b) or (c);
  - (b) within 3 months after the applicant has been disqualified pursuant to section 63(2)(a) or section 67(3)(a) where the applicant has previously been convicted of an offence against section 32AA of the repealed Act, or section 32B(9) of the repealed Act as in force after the coming into operation of the *Traffic Amendment Act (No. 2) 1968*<sup>6</sup> or section 64 or 67A of this Act or section 67 of this Act as in force before the coming into operation of section 16 of the *Road Traffic Amendment Act (No. 2) 1982*<sup>1</sup>;
  - (c) within 3 months after the applicant has been disqualified pursuant to section 64(2)(b) on conviction of an offence that is a third or subsequent offence for the purposes of section 64(2);
  - (d) within 3 months after the applicant has been disqualified pursuant to section 67A(3)(b) on conviction of an offence that is a third or subsequent offence for the purposes of section 67A(3);
  - (e) within 2 months after the applicant has been disqualified pursuant to section 64(2)(b) on conviction of an offence that is a second offence for the purposes of section 64(2);
  - (f) within 2 months after the applicant has been disqualified pursuant to section 64(2)(a) where the applicant has previously been convicted of an offence against section 67A;
  - (g) within 2 months after the applicant has been disqualified pursuant to section 67A(3)(b) on conviction of an offence that is a second offence for the purposes of section 67A(3); or
  - (h) within 21 days after the applicant has been disqualified in any case not referred to in paragraph (a), (b), (c), (d), (e), (f) or (g).
- (2)
  - (a) In the case of a disqualification imposed by the Supreme Court or The District Court of Western Australia any application under subsection (1) shall be made to the court by which the disqualification was imposed.
  - (b) In the case of a disqualification imposed by a court of petty sessions or which takes effect by operation of the provisions of this Act, any application under subsection (1) shall be made to the court by which the disqualification was imposed or to any court of petty sessions composed of a stipendiary magistrate except where the application is

a special application in which case the application may be made to the court by which the disqualification was imposed, any court of petty sessions composed of a stipendiary magistrate or The District Court of Western Australia.

- (3) Subject to subsection (3a), the court may if it thinks proper having regard to —
- (a) the safety of the public generally;
  - (b) the character of the applicant;
  - (c) the circumstances of the case;
  - (d) the nature of the offence or offences giving rise to the disqualification;
  - (e) the conduct of the applicant subsequent to the disqualification; and
  - (f) the degree of hardship and inconvenience which would otherwise result to the applicant and his family, if it refrains from making the order,

either make an order directing the Director General, on payment of the prescribed fee, to issue to the applicant an extraordinary licence under this section for such period not exceeding 12 months from the date on which it is issued as the court thinks fit, or refuse the application.

- (3a) Where a court of petty sessions hears a special application the court shall not make an order directing the issue of an extraordinary driver's licence unless it is satisfied that the application is attended by circumstances of extreme hardship, but nothing in this subsection authorises or requires the court to make such an order if, having regard to any of the matters referred to in subsection (3)(a), (b), (c), (d), or (e), it considers that the application should be refused.
- (3b) For the purposes of subsection (3a) an application is attended by circumstances of extreme hardship if the refusal of the application would —
- (a) deprive the applicant of the means of obtaining urgent medical treatment for an illness, disease or disability known to be suffered by the applicant or a person who is a member of his family;
  - (b) place an undue financial burden on the applicant or his family, by depriving him of his principal means of obtaining income; or
  - (c) deprive the applicant or a person who is a member of his family of the only practicable means of travelling to and from the place at which he or that person, as the case may be, is employed.
- (4) Where an application under subsection (1), not being a special application, is refused no further application under that subsection shall be heard if it is made within 6 months after the date of the refusal.
- (4a) Where a special application is refused no further special application shall be heard unless the first-mentioned application was refused by a court of petty sessions and the further application is made to The District Court of Western Australia.
- (5) (a) An order directing the issue of an extraordinary licence under this section may impose —

- (i) a condition requiring the applicant to comply with the requirements of section 42(2) before the extraordinary licence is issued to him;
    - (ii) such limitations and conditions as the court thinks proper subject to the observance of which the authority to drive pursuant to the licence may be exercised, including limitations and conditions as to the locality in which and roads on which the applicant is entitled to drive, the purposes for which the applicant is entitled to drive, the hours during which the applicant is entitled to drive, and the vehicle or class of vehicle that may be driven under the authority of the licence.
  - (b) The Director General shall give effect to the order according to its tenor and when issuing the licence shall specify therein any limitations and conditions imposed pursuant to paragraph (a)(ii).
- (6) The Director General shall from time to time, on payment of the prescribed fee, renew an extraordinary licence for any period not exceeding 12 months if during the currency of the licence the holder of the licence has not contravened any of the limitations and conditions which the court imposed when directing the licence to be issued and has otherwise complied with the provisions of this Act, and the renewal thereof shall be endorsed thereon by the Director General.
- (7) (a) The holder of an extraordinary licence (whether issued before or after the coming into operation of this section) may from time to time during the currency of the licence apply to a court for an order varying the limitations and conditions to which the licence is for the time being subject or cancelling those limitations and conditions and substituting other limitations and conditions.
- (b) The Director General may from time to time during the currency of an extraordinary licence (whether issued before or after the coming into operation of this section) apply to a court for an order —
- (i) varying the limitations and conditions to which the licence is for the time being subject or cancelling those limitations and conditions and substituting other limitations and conditions;
  - or
  - (ii) cancelling the licence.
- (8) (a) Any application under subsection (7) in relation to an extraordinary licence issued at the direction of the Supreme Court or The District Court of Western Australia shall be made to the court by which that direction was made.
- (b) Any application under subsection (7) in relation to an extraordinary licence issued at the direction of a court of petty sessions shall be made to the court by which that direction was made or to any court of petty sessions constituted by a stipendiary magistrate.
- (9) Where an application is made under subsection (7) —
- (a) if the court is of opinion that the limitations and conditions to which the extraordinary licence is then subject should be varied, or that those limitations and conditions should be cancelled and other limitations or conditions substituted, for the reason that the holder of the licence has changed his place of residence, place of employment

or hours of employment or for any other reason which the court considers sufficient, the court may order accordingly and when an order is so made, the Director General shall cause the limitations and conditions as so varied or substituted to be endorsed on the licence;

- (b) if the court is of the opinion that the holder of the extraordinary licence —
- (i) is addicted to alcohol or drugs to such an extent as to render him a danger to the public when in control of a motor vehicle on a road;
  - (ii) suffers from a mental disorder or from a physical disability that is likely to impair his ability to control a motor vehicle;
  - (iii) is no longer capable of controlling the class of motor vehicle which the licence authorises him to drive;
  - (iv) is not of good character; or
  - (v) should not, by reason of the number or nature of his convictions for offences incurred since the granting of the extraordinary licence, being offences under this Act or the regulations or offences under the law in force in any other State or in a Territory or other country of which the driving or using of a motor vehicle was an element, be the holder of a driver's licence,

the court may cancel the extraordinary licence.

- (10) An application under this section —
- (a) made to the Supreme Court or to The District Court of Western Australia shall be made in accordance with the rules of the court to which it is made;
  - (b) made to a court of petty sessions shall be made in accordance with regulations made under the *Justices Act 1902*.
- (10a) For the purposes of this section the Children's Court is a court of petty sessions.
- (11) The court may order the applicant to pay the whole or any part of the costs of an application made under this section.
- (12) A reference in this section to a special application is a reference to an application made under subsection (1) —
- (a) within 2 months after the applicant has been disqualified pursuant to section 63(2)(a) or 67(3)(a); or
  - (b) within one month after the applicant has been disqualified pursuant to section 64(2)(a) or 67A(3)(a).
- (12a) Nothing in subsection (12) shall be construed as enabling an application under subsection (1) to be made or heard at a time when the making or hearing of that application is prohibited by subsection (1a).
- (13) For the purposes of subsection (1a) and (12) —
- (a) any period during which the applicant was imprisoned shall not be taken into account in determining whether a period of time has elapsed; and
  - (b) **“disqualified”** means disqualified from holding or obtaining a driver's licence.

*[Section 76 amended by No. 48 of 1976 s. 4; No. 71 of 1979 s. 13; No. 105 of 1981 s. 19; No. 82 of 1982 s. 21; No. 49 of 1988 s. 53; No. 92 of 1994 s. 38; No. 76 of 1996 s. 20(3).]*