GILSHENAN & LUTON
LEGAL PRACTICE



Applications for a special hardship order after licence suspension

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If your driving licence is going to be suspended, in some circumstances, you may be able to apply to the Queensland Magistrates Court to obtain a “special hardship order” (‘SHO’) which may permit you to drive for certain purposes during the period of your licence suspension.

Demonstrating hardship to obtain a special hardship order

The rules governing the grant of a SHO are governed by Chapter 10 of the *Transport Operations (Road Use Management – Driver Licensing) Regulation 2021.*

To obtain an order for a special hardship licence, you must demonstrate to the court that you are a ‘fit and proper’ person to continue to drive, and a refusal to make an order would cause either or both of the following:

- Extreme hardship to you, or your family, by depriving you or your family of the means of earning a living; and
- Severe and unusual hardship to you or your family, in a way other than by depriving you of the means of earning a living.

There are several steps which you must take to make an application and to satisfy the court of the above test. This article examines that process.

Are you eligible to make a special hardship order application?

You are likely to be eligible for a SHO if your licence has been suspended or you have received a letter from the Department of Transport and Main Roads ('the Department') that confirms your licence will be suspended because:

- you have been charged with a 'high speed offence' (driving more than 40 km/h over the speed limit); or
- you have had more than one demerit point allocated to your traffic history while you were subject to a 12-month good behaviour period.

To make an SHO, you must hold a Queensland open or provisional licence, but you shall not be eligible to apply for a SHO if, within five years before your licence suspension:

- you have been disqualified from driving;
- your licence was suspended or cancelled;
- your authority to drive under a previous non-Queensland licence you held was suspended; or
- you have been convicted of dangerous driving.

If you are eligible to apply for a special hardship order, then you must then consider when to file your application and prepare evidence demonstrating why you should be granted a SHO.

Timing of your special hardship order application

It is only upon the acceptance of an infringement notice after a high-speed offence or exceeding your demerit points that you will be notified of your licence suspension in a separate letter from the Department. This letter is called a 'Notice of Suspension'.

The Notice of Suspension will state a date which your licence will be suspended from, (usually two to three weeks from the date of the letter). It is at this point, once you are suspended from driving that you will be able to make an application for a SHO.

If you wish to begin your licence suspension earlier, you must write to the Department or attend at one of their service centres and confirm this with them. They shall then provide you with a further letter confirming your immediate suspension, making you eligible to apply for a SHO at that time.

Evidence and filing of your affidavit in support of your special hardship application

In order to demonstrate that you require a SHO, you must prepare an affidavit in support of your application. This is a formal court document which you must swear or affirm is true.

In your affidavit, you must set out why you are a 'fit and proper person' to continue to drive and then how you will be deprived of earning your living or shall suffer severe and unusual hardship if you are unable to drive.

If you say both of these criteria apply, you should address each in turn. You will have to set out the exact journeys which shall cause you hardship if you are unable to complete them. For instance, you should state what day of the week and time you drive for the purposes of your employment.

It is essential to provide supporting documentary evidence in your affidavit. If you are unsure about how to prepare or what to include, including supporting documentation, obtaining legal advice may be essential.

24/7 legal advice: 07 3361 0222

Filing your application for a SHO can also be complicated. It involves attending at a Magistrates Court Registry, filing your application and then serving this on the Department. In our experience, obtaining the assistance of a lawyer in this process is helpful for SHO applicants.

Hearing your special hardship order application

Under the Regulations, the Department is entitled to appear and be heard at the hearing of your application. While it is ultimately the decision of the presiding Magistrate as to whether to grant a SHO, they are often influenced by the opinion of the Department's representative.

Once your matter is called in court, you will be asked to speak to the affidavit you have filed, and if deemed necessary, you may be subjected to cross examination by the Department's representative. It is also possible that the court or the Department will call other individuals to give evidence as to why you should or should not be granted an order.

Obtaining a special hardship order

If a court grants you a SHO, you must only drive for the limited purposes stated on the order and in compliance with any conditions it states.

Before you drive, you must also attend at the Department service centre again and obtain an 'X' type licence which you must keep on your person (along with a copy of the court's order) whenever you are driving.

Penalties for breaching the conditions of a special hardship licence

If you are convicted of an offence of failing to comply with a SHO, the court must disqualify you from holding a licence starting on the day of that conviction and ending on the day three months after the period your SHO was to finish. If this occurs, you will be unable to drive under any circumstances.

The court will also likely impose a significant fine on you.

Get help from a traffic lawyer

There are several factors which can complicate an application for a SHO. Obtaining legal advice can be of great assistance to SHO applicants.

Our lawyers regularly appear on behalf of individuals making applications for special hardship and can assist in preparing affidavits and making submissions to the Department's representatives and the court.

Contacting Gilshenan &Luton

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This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.