



## Judge Heemi Taumaunu

Chief District Court Judge for New Zealand  
Te Kaiwhakawā Matua o Te Kōti-ā-Rohe o Aotearoa

### PRACTICE NOTE APPLICATIONS FOR A LIMITED LICENCE

1. This practice note seeks to promote greater consistency in how applications for a limited licence under the Land Transport Act 1998 are dealt with in the District Court. It is issued for the guidance of Police and members of the legal profession. This practice note replaces the *Memorandum – Limited Licence Applications* dated September 2005.

#### Filing requirements

##### *Court imposed disqualification*

2. Under s 105(5) of the Act, an application relating to a court-imposed disqualification must be filed in the registry of the court where the disqualification was imposed. However, a registrar or a Judge may transfer the application to another registry for hearing.
3. Despite s 104(1) of the Act (which provides the issue of a limited licence is to be delayed in certain cases for 28 days from the date of the disqualification order), an application may be filed at any time after the disqualification was imposed.

##### *Demerit points suspension*

4. An application relating to a demerit points suspension is not to be filed until after the suspension notice has been served on the applicant. A copy of the notice should be filed with the application (preferably annexed to the applicant's affidavit).

#### Affidavits in support

5. An affidavit in support of the application should address the following matters (using appropriate headings):
  - a. how the disqualification or suspension has resulted in or will result in:
    - i. extreme hardship to the applicant (whether in relation to employment or otherwise); or
    - ii. undue hardship to a person other than the applicant (whether in relation to employment or otherwise).
  - b. **any** previous driving-related convictions (not just those within the previous five years).
  - c. arrangements made during the stand-down period (if applicable)
  - d. arrangements made for payment of any fine imposed for the offence for which the applicant was disqualified (if applicable)
  - e. The requirement for a licence for home to work driving (if applicable)

6. Affidavits should state facts, not assertions. (For example, deponents should not simply assert the disqualification will cause them extreme hardship; they should set out the relevant factual circumstances considered to justify the Court coming to that conclusion.)
7. Any letter containing information relevant to an application should be annexed as an exhibit to an affidavit sworn by the writer of the letter confirming its contents as true.
8. Unless the writer of a letter is unavailable to swear an affidavit, or the Police consent, the Judge may decide not to read any letter which is filed with an application, or which is annexed to an affidavit by a deponent other than the writer. If such a letter is read, the fact that it has not been confirmed on oath by its author may affect the weight which is given to its contents.
9. If the application is based on hardship in relation to employment (whether to the applicant or person other than the applicant), an affidavit by the person's employer should be filed. (A letter from the employer filed with the application or annexed to the applicant's affidavit will generally be regarded as insufficient – see paragraphs 7-8).
10. An affidavit by a self-employed applicant should include sufficient financial information (such as income and expenditure, etc) to enable the Court to assess whether the disqualification will cause the applicant extreme hardship. Financial statements or accounts are prima facie unnecessary but may be required if the information which is provided is challenged or considered to be insufficient.
11. Under s 104(4) of the Act, every person who has made an affidavit filed in support of the application must appear before the Court for examination on the contents of his or her affidavit, unless the parties agree an appearance by the deponent is not required. The parties should endeavour to inform the Court of any deponent(s) who will not be appearing prior to the hearing.

#### **Draft order**

12. Conditions should be granted in such a way as to facilitating reasonable enforcement of the order.

#### *Mandatory conditions*

13. The draft order must specify:
  - a. the purpose for which the limited licence is issued;
  - b. the particular vehicle or the type of vehicle which may be driven;
  - c. the days of the week and times at which that vehicle may be driven;
  - d. the conditions considered necessary to limit the order to alleviating the hardship.

#### *Geographical conditions*

14. The area within which the applicant is to be entitled to drive should be clearly and unambiguously defined in the draft order (by reference to either a route or an area with clear boundary points; not by using a radius from a central point). If a map is attached to the order, it should be of an appropriate scale, with the route(s) or limits clearly shown. If the area is defined in the draft order and a map is also attached, there must be no conflict between the draft order and the map.

### *Further conditions*

15. Conditions must be both case-specific and enforceable. "Blanket" conditions, such as not driving if there is another licensed driver in the vehicle, complying with speed limits, and not consuming alcohol prior to driving, are generally not appropriate. Rather, the conditions should be expressed as:
  - The applicant is not to drive if there is another licensed driver in the vehicle, unless for road safety, driving hours, medical or insurance reasons it is unsafe or impracticable for that other licensed driver to drive.
  - The applicant must comply with applicable speed limits at all times. (Any breach of such a condition would be both a speeding offence and an offence against section 32(1)(b)).
16. The latter condition should be included only if the applicant's driver licence has been suspended because of demerit points for speeding offences. Any such condition must not provide that the limited licence is deemed to be cancelled if a speeding infringement notice is issued.
17. If a log-book condition is included, it should be framed in appropriate terms.

### *Amended draft orders*

18. If an amended draft order is filed, it should clearly be described as such, and the amendments should be identified (e.g. in italics).

### **Hearing of application**

19. An application must be heard in open court if:
  - the application is contested.
  - a deponent is required for examination.
  - a judge is not prepared to grant the application on the papers.
20. Parties may request that the matter be heard in open court if they consider it appropriate.
21. Unopposed applications may be dealt with in chambers at the discretion of the Judge.
22. All decisions on the application should record whether leave to be heard in court was sought and whether the decision was made in court or in chambers.



Heemi Taumaunu  
**Chief District Court Judge**

24 May 2024