



Government of **Western Australia**  
Department of the **Attorney General**

# Handbook for Justices of the Peace



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# Introduction

## 1. How to use this handbook

*The Justices of the Peace Handbook* (6th ed) has been written to provide information to you about the various tasks you may be called on to perform as a JP. It is essential that JPs familiarise themselves with the responsibilities of their office and understand the legal significance of the duties they perform. This handbook is to be used to remind you of your duties and obligations, answer some queries that may arise and assist you in recalling some aspects of your training.

The Attorney General has issued a [Code of Conduct for JPs](#) which sets out the standards of conduct that you are expected to uphold, and this is reprinted at page 13 of this handbook.

This handbook acts as a guide outlining the practice and procedure that you should follow. It is not designed to cover each area comprehensively, so at times you will need to refer to the individual pieces of legislation when questions arise or you are dealing with matters in a court.

As changes to legislation occur, updates to this handbook will be made to the online version of this handbook. At all times you can find Acts on line at [www.slp.wa.gov.au](http://www.slp.wa.gov.au), which is the website of the official publisher of Western Australian legislation and statutory information. Legislation does change; and it is important that you ensure you are referring to and using up-to-date law. Courts in which you sit will usually have up-to-date legislation, but you should ensure you take note of amendments to this handbook.

## 2. What if you need further assistance to perform your JP duties?

### Personal assistance

Your work as a JP is supported by:

- The JP branch of the Department of the Attorney General (DotAG). The branch keeps the official State register of all Western Australian JPs .
- The branch officers are there to answer your questions. They are located at Level 16, International House, 26 St Georges Terrace, Perth WA 6000; and can be contacted on 9425 2827 or 9425 2896 or email [jps@justice.wa.gov.au](mailto:jps@justice.wa.gov.au).
- Magistrates, Clerks of the Court (Registrars) and Deputy Registrars throughout the State are available to support and assist JPs in their judicial duties. (See attachment 1 for a list of contact details for Clerks of the Court across the State.)
- The Royal Association of Justices (RAJWA) – The RAJWA is an independant member Association that works to promote and ensure a high level of administrative and judicial service to the WA Community.
- The Registrar of RAJWA is located at Level 15, Central Law Courts, 501 Hay Street, Perth WA 6000; and can be contacted on 9425 2823 or email [registrar@rajwa.org.au](mailto:registrar@rajwa.org.au).

### Website

An important tool that can help you is the JP section of the DotAG ‘Court & Tribunal Services’ website. The address is [www.dotag.wa.gov.au](http://www.dotag.wa.gov.au). On the left-hand side is a link; click on ‘Justice of the Peace’

On it you will find the following:

- a link to update your contact information
- a link to update your change of name
- a link to a JP Resignation Form
- an email link to send messages to the JP Branch
- a link to the JP handbook
- a link to the JP Code of Conduct
- a link to the Royal Association of Justices of Western Australia
- information on how to witness documents
- a link to the [\*Oaths, Affidavits and Statutory Declarations Act 2005\*](#).

### 3. Abbreviations used in this handbook

Abbreviation/term	Meaning
CCWA	<i>Criminal Code of WA</i>
CPA	<i>Criminal Procedure Act (WA) 2004</i>
JP Act	<i>Justices of the Peace Act (WA) 2004</i>
RTA	<i>Road Traffic Act (WA) 1974</i>
S Act	<i>Sentencing Act (WA) 1995</i>
PN	Prosecution notice
VRO	Violence restraining order
RO Act	<i>Restraining Orders Act (WA) 1997</i>
Mag Court Act	<i>Magistrates Court Act (WA) 2004</i>
JP	Justice of the Peace
CC Act	<i>Children's Court of Western Australia Act (WA) 1988</i>
YO Act	<i>Young Offenders Act (WA) 1994</i>
JJT	Juvenile Justice team
CIA	<i>Criminal Investigation Act (WA) 2006</i>
PSR	Pre Sentence Report
VIS	Victim Impact Statement
CRO	Community Release Order
CBO	Community Based Order
YCBO	Youth Community Based Order
Juvenile CRO	Juvenile Community Release Order (also often referred to in Children's Court as a Good Behaviour Bond)
GBB	Good Behaviour Bond (referred to above, properly known as a Juvenile Community Release Order)

## 4. JPs: their origin and history in WA

The office of Justice of the Peace is an old and esteemed institution going back to medieval England. At a time when the Crown in England had established the practice of common law throughout the country to ensure uniformity of laws, justices were appointed to all counties to administer those laws. The functions that justices exercised were to arrest suspects and conduct initial inquiry into offences – hence the reference to the office as ‘Justice of the Peace’ (JP). As time progressed, JPs were given powers which enabled them to appoint juries, conduct criminal cases and sentence offenders in minor crimes, as well as to judge minor civil disputes. For more serious crimes a magistrate was sent to a county or district to preside. Later, with the growth in population and the acceptance of common law throughout England, permanent courts were established in different counties and magistrates appointed to deal with minor offences. Higher courts were established with judges presiding over more serious matters.

When Captain James Stirling founded the colony of Western Australia in 1829, he appointed eight JPs, originally referred to as ‘conservators of the peace’. Captain Stirling gave Western Australian JPs the same powers as their UK counterparts, who had helped uphold the law under the JPs Act since 1361. This important Act gave JPs the power to try offenders without a jury, and formed the basis of the WA Court of Petty Sessions (which is now part of the Magistrates Court).

WA’s first JPs were also required to carry out a wide range of administrative duties. These included organising searches for lost children and establishing the whereabouts of absconding seamen. They were also required to try civil disputes between ‘master and servant’.

Until 1852, JPs in WA, like those in the UK, were expected to control the local police, with constables required to ‘wait upon justices and exercise their warrants. The management of constables also fell on the shoulders of magistrates, who were always sworn in as JPs to act as agents of the Government in passing on official instructions to settlers. Magistrates supervised the work of other JPs in their districts and presided over non-capital criminal trials – a practice that continued in some parts of WA until the introduction of the 1970 *District Court Act*.

The office of Justice of the Peace is an old and esteemed institution going back to medieval England.

Today the powers of JPs are more limited. However, in the criminal jurisdiction of the Magistrate’s Court, Magistrates and JPs do share some powers and preside in similar fashion over the court. The *Justices of the Peace Act 2004* defines the jurisdiction of JPs in our State. Although the authority and powers of a JP are more regulated by legislation today than in the past, it is still a position with considerable responsibility. The duties of JPs are inter-linked with the operations of police and lower courts. JPs consider the legal merit of judicial documentation and/or matters before them. In order to maintain judicial independence JPs must always conduct themselves in a manner that ensures that justice is seen to be done and is carried out and law and order maintained.

## 5. Code of conduct for Justices of the Peace

### General behaviour

- We will maintain and promote such standards of conduct that uphold the integrity and independence of our office in both our public and professional lives.
- We will respect and comply with the law and conduct ourselves in a way that promotes public confidence in the integrity and independence of our office.
- We will always act impartially, not allowing conduct in our role to be influenced by political, business, family or social interests.
- We will remain arbitrarily independent in relation to the law and politics.
- We will not convey, or permit others to convey, the impression that we are in a special position of influence.

### Judicial responsibilities

- We will give due precedence to our judicial and administrative duties without causing undue detriment to our personal or business life.
- We will perform judicial duties without bias or prejudice.

### Confidentiality

- We will respect the confidentiality of all who appear before us or use our services and not disclose information of a private, confidential or commercially sensitive nature received in the course of our duties.

### Conflict of interest

- We will disqualify ourselves from any proceedings in which our impartiality might reasonably be questioned.
- If it is seen that a conflict may arise, we will disclose all actual and potential conflicts of interest known to us.

### Legal advice

- We will not give legal advice to any person.

### Financial dealings

- We will not accept any payment or gift in the course of our duties.
- We will not use our office to advance our personal or business interests.

### Training

- Whenever possible, we will participate in training offered and approved by DotAG to increase our knowledge and professionalism in relation to our role.

### Mandatory notification

- We will advise the Department of the Attorney General within 30 days if we:
  - a) change our name, address, contact details including phone and email address
  - b) are convicted of any offence
  - c) become an insolvent under administration.

## 6. Obligations of a Justice of the Peace

### General

As a JP you have agreed to ‘perform conscientiously, responsibly and in accordance with the law, the duties the law imposes on JPs and to assist in the administration of justice and in the maintenance of peace, order and good government.’

Although voluntary, the appointment of JP comes with obligations and responsibilities.

Section 4(1)(a) of the JP Act provides that a JP has and may perform the functions conferred on a JP by laws that apply in Western Australia, including this Act and other written laws.

These functions include administrative and judicial functions that provide an integral link in the judicial system. In simple terms it means in-court and out-of-court functions. As a JP you are obligated to perform both functions.

As well as presiding in the Magistrates Court, JPs are regularly called upon by the WA Police and other authorities to sign search warrants and authorise the issuing of summonses. The administrative tasks include witnessing affidavits and documents such as wills and statutory declarations.

JPs are expected to perform their duties consistently and be available to the public and the court whenever possible. There is a genuine need for JPs to assist with court duties, at document witnessing centres and other places.

Every decision made by a JP has the potential to affect a person’s life. Witnessing a document incorrectly or taking an oath or affirmation incorrectly can affect the validity of documents. Issuing a warrant without reasonable cause being shown, remanding a person in custody incorrectly or granting bail incorrectly can have an adverse affect on people, including victims. JPs are expected to be impartial and careful in making these decisions, ensuring that correct practice and procedure are followed.

To assist you perform these functions correctly, it is a requirement you attend training sessions coordinated by the JP Branch of the Department of the Attorney General, usually in the form of annual seminars, workshops and information sessions.

### Specific obligations

As a JP you have some specific obligations:

#### *Mandatory Reporting*

Under section 16 of the JP Act you are obligated to notify the department within 30 days after the event, if you:

- [change your name or address](#),
- are convicted of any offence or
- become an insolvent under administration.

To administer the Act the department keeps a register of all your contact details.

Therefore it is essential that you notify the department of any:

- other contact details e.g. email and phone numbers, or
- circumstances that will affect your ability to carry out the duties of a JP e.g. extended illness, travel or moving abroad

Failure to notify the department of any of the above circumstances may result in your appointment as a JP being terminated.

### *Resigning*

The need to appoint JPs to a location is determined by the number of active JPs within the population. An active JP is one who is on a court or signing centre roster, and/or is consistently available to the community for the purpose of witnessing documents.

While there are sufficient numbers of JPs in some geographical locations, it has been found that some do not make themselves available to assist in the duties expected of them. JPs who do not make themselves available to perform these duties may prevent enthusiastic and available people from becoming JPs because of the perception that there are sufficient JPs.

If you are no longer readily available to carry out your duties, or no longer interested in being actively involved as a JP, you should tender your resignation.

Such [resignation advice](#) should be in writing and addressed to the JP Branch of the Department of the Attorney General or emailed to [jps@justice.wa.gov.au](mailto:jps@justice.wa.gov.au). A Resignation Form is located on the DotAG website.

### *Not giving legal advice*

While presiding over a matter in court or assisting with documents, you may be asked to give your opinion or advice on whether or not a person should proceed in a certain manner. Under no circumstances should you give legal advice of the kind that is the concern of solicitors.

Be careful not to take sides, or to be sympathetic one way or the other, or to offer an opinion as to possible grounds of legal action or the likely success of such an action. Instead, you should recommend that the person contact a solicitor, or refer them to the relevant government agency.

Do not refer or recommend anyone to a specific private solicitor.

### *Sitting as a JP*

Section 7(6) of the [Magistrates Court Act 2004](#) governs the manner in which JPs can preside over a court.

Specifically it states that if the court is to be constituted by two JPs, both must be present at all times when dealing with the case.

[Regulation 8 \(1\)](#) states that a JP must not constitute a country court, either alone or with another JP, unless he or she has been requested to do so by:

- a) a registrar; or
- b) a deputy registrar who has been directed by a magistrate or a registrar to make the request.



Section 5(1) of the Justices of the Peace Act 2004 states that JPs over the age of 70 cannot constitute a court or act as Visiting Justices. The Minister may give written permission under subsection (3) to extend this, however permission cannot be extended above the age of 75 years.

Restrictions to JP functions are further defined in Section 5(2) which states JPs who have reached the age of 75 years may not perform any functions of a JP under any of the following Acts: Bail Act 1982; Criminal Investigation (Identifying People) Act 2002; Criminal Property Confiscation Act 2000; Misuse of Drugs Act 1981; or issue any warrant or other document that authorises, or includes an authorisation for arrest, apprehension or detention of a person; the entry or search of a place; the apprehension, detention, entry or search of an aircraft, vehicle or vessel; or the seizure of anything.

### *Disputes between JPs*

Occasionally two JPs sitting in court may not agree to the disposal of a matter. When this occurs it is essential that the JPs act professionally. Quiet discussion in the courtroom is fine, but if you can't agree and the discussion is escalating into an argument, take a brief adjournment so that you can discuss the matter in chambers.

Don't get into a verbal argument in the courtroom. By adjourning you will save embarrassing yourself and your fellow JP and you will maintain the integrity of the court.

If an agreement cannot be reached you have two options:

1. the matter should be adjourned, preferably to be heard in future by a magistrate
2. the decision falls to the senior JP, being the one who was first appointed as a JP (section 7(6)(b) *Magistrates Court Act*).

## **7. Protection of Justices of the Peace**

Section 19 of the *Justice of the Peace Act* protects you from personal liability for anything that you do as a JP in the performance or purported performance of a function of a JP, unless you act corruptly or maliciously.

As long as you act justly and fairly and without malice or favour, you are protected against criminal or civil proceedings for any mistake you may make or any decision you may give which contains an error.

Common errors include:

- incorrect penalties under the *Road Traffic Act*
- incorrect disqualification periods and whether they are cumulative or concurrent
- no order for half annual licence fees
- no order for destruction of prohibited drugs or utensils
- incorrect community based orders in relation to period of the order and community service hours.

If a JP makes a mistake in court the matter can be brought back before the court at the court's own volition, or an application can be made for the matter to be brought back before the court to correct a sentence.

As a JP, you are liable only if in the course of performing your function as a JP you:

- act corruptly by accepting bribes (s.121 [CCWA](#))
- wilfully, perversely, without reasonable excuse and in abuse of your office refuse bail (s.122 CCWA)
- wilfully and perversely exercise jurisdiction in a matter in which you have a personal interest (s.139 CCWA) (See 'Individual conflicts of interest').

If either the prosecution or the defence disagree with a decision made by a JP they can lodge an appeal with the Supreme Court.

## 8. Independence and conflict of interest

### Introduction

'Independence' in relation to court proceedings can mean two things:

1. The greater concept of 'judicial independence' i.e. the judiciary acting independently of those with legislative and executive powers.
2. 'Individual independence' acting in a manner free from self-interest while performing court or any other function of a JP.

### The wider concept of independence of the judiciary

Independence of the judiciary is important in the administration of justice. It is the main principle under which JPs make decisions whilst performing their duties. In simple terms it means that JPs interpret and apply legislation without interference or influence from government, parliament or other agencies such as police or prosecuting bodies.

Under both the Commonwealth and State Constitutions there are three types of power:

1. legislative
2. executive
3. judicial.

The independence of the judiciary and its separation from the legislative and executive arms of government is taken seriously in Australia, and it is taken for granted that judges, in interpreting and applying the law, act independently of the government. JPs' duties straddle the administrative and judicial divide. Requirements on each side of the divide vary and are mostly prescribed by relevant legislation.

#### *1. Legislative power*

Parliament, both Federal and State, has the power to make laws, through implementing or amending legislation in the form of acts, rules and regulations.

Some other bodies, such as local councils, can make by-laws. Legislation is binding on those who apply it, and cannot be overridden or disobeyed.

## 2. Executive power

Executive power is the power to administer the laws Parliament has put in place, and to carry out the business of government.

Examples of bodies that have such power are:

- government departments, such as the Department of the Attorney General
- the police, including police prosecutors
- the Office of the Director of Public Prosecutions
- statutory authorities such as:
  - the Australian Taxation Office
  - trade boards such as the WA Building Commission and the Real Estate Board of WA
  - customs and quarantine
  - the defence force
  - Centre link.

## 3. Judicial power

Judicial power is the power exercised by the courts. It allows courts to:

- interpret and apply the laws made by the legislative bodies, including punishing those who offend against those laws
- adjudicate disputes which have their basis in law between private citizens and between any body with executive power and a private citizen
- make decisions in relation to such things as bail and whether warrants or other documents prepared have complied with the relevant laws and regulations
- conclusively determine whether a person has contravened a law of parliament.

Judicial power can result in a different type of law being made, sometimes called 'precedent' or 'common law'. From time to time superior courts are called to consider the meaning of words and phrases in legislation. When that occurs, their judgement or decision creates an authority for other lower courts to follow. Judgements by the Supreme and High Court can be used by the lower courts to assist them in applying the law.

Although courts are independent of government, they may be bound by decisions made by higher courts. A court constituted by two JPs need not follow the decision of a court constituted by two other JPs or a magistrate; but it *is* bound by a decision of the District Court, the Supreme Court, the Court of Appeal or the High Court of Australia.

It is important that courts are seen to act independently.

This can mean:

- listening to both sides of the argument.

JPs must make informed decisions that comply with legislation. As a JP you would not remand a person in custody simply because the prosecutor requested it, or issue a warrant because a police officer wanted one, or release a person on bail because defence counsel requested

that person's release. In each of these situations you must make a decision upon the reasons presented to you, and make any such order in line with legislation.

- not performing an action simply because a citizen or someone from a statutory authority or government department says you should. You must check the relevant laws and authorities before you act.
- informing yourself of the facts of a matter, the relevant law and the arguments for and against a particular course of action or interpretation.

The parties to a case in a dispute, whether criminal or otherwise, or those requiring documents signed or witnessed, are there only to assist you to come to your own decision.

Before you take a course of action you must have independently satisfied yourself that, according to the relevant law and circumstances, it is the correct action to take.

For example:

- you would not sign a warrant a police officer asked you to sign, even if he assured you he had complied with a relevant law and completed all sections – it is up to you to assess the document yourself AND the law it is governed by
- you would not grant bail to someone because a defence lawyer or accused asked for their release – instead, you would assess the allegations against the person, listen to them or their lawyer about why they should be granted bail, and listen to the opinion of the prosecution
- similarly, you would not refuse bail simply because you had been asked to by a prosecutor
- you would not sign a document or take any other action because the local member of parliament or a council member suggested it would be a good idea to do so.

In each of these situations a court or JP must make a decision based on all the factors before them.

However:

- you can not ignore or override legislation because you think that it is unfair or inconvenient to apply it in a particular situation, especially where penalty matrixes are set out, such as in the [Road Traffic Act](#)
- You must follow decisions of superior courts unless it is a decision based on legislation or a factual scenario which is quite different to the one before you. The prosecution or the defence may try to persuade you that a particular precedent may not be relevant in a case that is currently before the court, if for example it was based on a factual scenario that was quite different to the one before you, or on a different piece of legislation to the one you are being asked to apply.

The result of the requirement of independence is that:

- each person in court receives what our society would consider a fair hearing
- the community can be assured that processes that have the power to affect rights such as privacy, confidentiality and liberty are not used for the purposes of abuse, to advance the self- interest of particular people or agencies, or without due consideration of their impact.

The adversarial system allows you to take into account cultural or other differences in offenders' backgrounds. It also adds flexibility and adaptability to the outcome of court proceedings.

## Individual conflicts of interest

Following the broad concept of judicial independence, every judicial officer must be seen to be independent, in that they do not exercise their office to influence a dispute they are a party to or in some way have some interest in, or perform a function of their office in a matter that they are involved in or in which they have an interest in the outcome.

### *What is a conflict of interest?*

As a JP, conflict of interest involves conflict between your duty as a public officer and your personal or private interests. Many of you will come across conflict at some time – it is how these conflicts are identified and managed that is important.

Threats to your perceived independence can arise if you, for example:

- witness an affidavit for a family member or for a family business
- witness property development documents regarding land you or your family are interested in purchasing
- issue a warrant on a business competitor or someone you have a personal connection with
- perform a function as a JP where you have prior knowledge of the matter – such as witnessing the event, or
- preside in court where you have personal knowledge of the defendant or the victim – family member, friend, work colleague etc – especially when the information you may know may not be before the open court.

### *How can you determine if you have a conflict of interest?*

When considering whether a conflict of interest exists, ask the following questions:

- have I assisted this person in the past?
- do I know the person before me?
- do I have personal or private interests that may conflict, or be perceived to conflict with my public duty?
- could there be benefits for me now, or in the future, that could cast doubt on my objectivity?
- how will my involvement in the decision/action be viewed by others?
- what would be the consequences if my involvement was questioned publicly?  
and/or
- does my involvement in the decision appear fair and reasonable in all the circumstances?

Section 4(3) of the JP Act states that a JP is not disqualified from performing a function of a JP by reason only of being a ratepayer or being interested in common with the public.

### *What do you do if you think you have a conflict of interest, or it has been suggested you may have one?*

Simply knowing someone does not automatically preclude you from dealing with a matter. It is possible, especially in smaller locations, that the defendant or victims are known to you, or that you have dealt with them in court before; or they may be a well-known sport person or community member. In these situations you need to ask:

- Does my knowledge of this defendant affect my ability to make a just and fair decision without malice or favour?
- How will my involvement be viewed by others?
- Where you perceive that there is a conflict of interest you may ask the person to find, or help them to find, another JP. In the case of a matter before the court you should advise the court officer prior to court commencing. If the identification of conflict arises during court you should inform the court, record the disclosure of the conflict of interest and remove yourself from the matter altogether.

## 9. Cultural awareness as a JP

As part of your training course you will undergo cultural awareness training. It is essential that JPs refer to the reference material provided to understand the importance of cultural awareness in our courts.

Courts acknowledge that Aboriginal Australians and immigrants to Australia have their own cultural heritage. This is evident through the use of various oaths recognising different religious backgrounds and the use of interpreters to break down language barriers. Although JPs are required to apply the law correctly and fairly, there is an expectation by society that JPs will do so with an awareness of the cultural diversity within the community.

In any matter before the court you must be satisfied that the defendant understands why they are there. This can be achieved by breaking down legal jargon into simple English and asking questions to determine their understanding. Avoid using jargon, abbreviations and shorthand versions of words, phrases or sentences; speak clearly; speak in short sentences and do not shout.

During this process you need to be aware of cultural differences in body language, language and background. For instance, in English culture remaining silent or not making eye contact can be seen as an indication of guilt; but in Aboriginal culture and some other ethnic communities this is not the case.

If a person does not have a comprehensive understanding of the English language, you should exercise your discretion to use an interpreter or adjourn the matter to enable the availability of a suitable and qualified interpreter. If required, the court will organise the interpreter and pick up the cost. If for any reason an interpreter is not available, a friend of the offender who shares the language may be used if you are satisfied of their ability to do so competently and impartially. However this is a risky approach as while a friend may have a reasonable grasp of English for everyday conversation they may lack the vocabulary and/or concepts required in a judicial setting. Guidance to help determine the need for an interpreter can be found in the [WA Languages Services Policy 2008](#).

Today it is acknowledged that Indigenous people have the right to retain their own identity and culture. Familiarity with a person's background and the facets that affect their lives will greatly enhance sensitivity when dealing with Aboriginal people or those from culturally diverse backgrounds.

Many Aboriginal people who have regular contact with the law come from a background in which family members were forcibly removed from their families as children. Other facets of Aboriginal struggles include loss of spirituality, parenting difficulties, identity crisis, loss of land rights,

recognition of customary law, over-representation in the criminal justice system and deaths in custody.

People from diverse cultural backgrounds such as immigrants and Aboriginal people usually try to apply their own perceptions and experience to make sense of what is happening to them in the judicial setting. They also battle with fear, confusion and anxiety about a system that is significantly alien to them. Survivors of torture and trauma may be significantly affected and intimidated by the daunting spectacle of a courtroom. Such people are considered to be particularly vulnerable in a courtroom environment and their ability to give evidence may be affected by fear of possible repercussions and fear of reprisals.

Other reference material addressing cultural awareness such as the [\*Equality Before the Law Bench Book\*](#) can be found in most courthouse libraries.



## Chapter 1

# Witnessing documents and administering oaths and affirmations

### 1.1. General

As a JP you will be called on frequently to witness documents as an ‘authorised witness’.

The relevant legislation is the [Oaths, Affidavits and Statutory Declarations Act 2005](#) (OASD Act).

The following documents amongst others need an authorised witness:

1. Affidavit
2. Statutory declaration
3. Certified copy
4. Warrant
5. Prosecution notice
6. Enduring power of attorney.

Wills and deeds do not need an authorised witness.

When witnessing a signature you must identify yourself as the person witnessing it. It is not necessary to be present when the signing is done, but it is necessary that you state that it is your signature and your identity is verified.

If the document is presented already signed, you can request the person signing to sign again on another piece of paper so that the signatures can be compared.

No fee can be charged for these services.



## 1.2. Oaths and affirmations

### The difference between an oath and affirmation

As a JP you will be called upon to administer an oath or affirmation either when witnessing certain documents or when sitting in court.

The [OASD Act](#) provides that an oath requires a person to swear an oath to 'Almighty God', the religious deity they recognise, or 'according to the religion and the beliefs they profess'. The Act also allows that where an oath is to be taken a person is entitled to affirm instead.

The fact that at the time of taking an oath a person has no religious belief does not affect the validity of the oath as long as you are satisfied that the oath will bind the person's conscience and the person understands the consequences of taking an oath.

A person who chooses to affirm instead may do so. An affirmation made instead of an oath has the same force and effect as an oath.

A person making an oath or affirmation is known as a 'deponent'.

#### 1.2.1 Administering an oath or affirmation in court

An oath or affirmation is required by any person who is to give spoken evidence before a court. Generally you will only administer the oath or affirmation at a violence restraining order application ex parte hearing, or on very rare occasions at a hearing in relation to simple *Road Traffic Act 1974* (RTA) offences in regional courts

When you administer an oath or affirmation the following steps should be taken:

##### Step 1: prior to taking an oath or affirmation

- Determine their identity
- Determine whether they want to make an oath or affirmation
- If an oath, determine the type of oath they wish to make.

##### Step 2: administering an oath

- The deponent will be asked to enter the witness box, and while standing, raise their hand and swear an oath.
- They will be handed a card to read or they can be asked to repeat after you the oath commencing with one of the following choices:
  - I swear by Almighty God...
  - I swear by [name of deity recognised by their religion]...
  - I swear, according to the religion and the beliefs I profess...

and concluding with:

...that the evidence I shall give in this case will be the truth, the whole truth and nothing but the truth.

- The deponent is now sworn in and can be seated.

### Step 3: administering an affirmation

- The deponent will be asked to enter the witness box, stand and raise one of their hands.
- They will be handed a card to read or they can be asked to repeat after you the following:
  - I sincerely declare and affirm that the evidence I shall give will be the truth, the whole truth and nothing but the truth.
- The deponent is now sworn in and can be seated.

#### *Important points*

- The deponent can raise either hand to make the oath.
- A deponent in a wheelchair can be wheeled next to the witness box to make the oath or affirmation.

## 1.2.2 Administering an oath or affirmation on affidavits

### 1. The affidavit itself

Various statutes require an oath or affirmation by a deponent in the form of an affidavit.

An affidavit is a written statement, sworn or affirmed before a JP. Affidavits are evidence on oath, and may be tendered as evidence in court proceedings.

The purpose of this swearing is to verify and attest to the authenticity of the materials being sworn.

Evidence given under oath in an affidavit is as binding as evidence given under oath in any court proceedings. It is important to remember that the deponent making a false statement in an affidavit is committing perjury.

Unless another written law provides otherwise, an affidavit for any purpose in this State must be made in accordance with the [Oaths Affidavits and Statutory Declarations Act 2005](#).

An affidavit can be presented to you either signed or unsigned. If an affidavit is presented to you already signed, it is still acceptable because the deponent will be stating when they take the oath, that this is their true name and their signature.

Under the general rules an affidavit does not have to be read by the JP before whom it is sworn, but you should ask the deponent if the document has been read by them and is true and correct.

### 2. Family Law documents

There are several types of documents involved in applications filed in the Family Court. The most important ones are the affidavits – the procedure for the swearing of Family Law affidavits is set out in [Rule 15.09 of the Family Law Rules 2004](#) and is essentially the same as for the OASD Act (above) and must be followed.

### 3. Applications for probate

In certain circumstances, applications are made for probate, and an affidavit is required to support the application.

When you witness the affidavit, ensure that in addition to the normal requirements for administering an affidavit and marking an annexure, the will is produced and signed on the back by both you and the deponent of the affidavit.

### 1.2.3

#### **There are several steps that must be followed when administering the oath or affirmation on an affidavit**

##### **Step 1: prior to taking the oath or affirmation**

- Determine their identity
- Determine whether they want to make an oath or affirmation
- If an oath, determine the type of oath they wish to make.

##### **Step 2: ensure that the document is prepared and signed correctly**

- The affidavit must be in the approved format
- The name of the deponent must be shown in full
- Their address must be shown, and must be spelt correctly
- The deponent must have read or had read to them the contents of the affidavit
- The affidavit must be fully completed and signed
- Each page of the affidavit must be signed from where affidavit begins with "1".
- Any alteration, such as an insertion or erasure, must be initialled by the deponent
- If there are any blank sections, cross them through.

The affidavit is now complete.

##### **Step 3: administering the oath or affirmation**

- Ask the deponent to raise their hand
- Hand them a card to read or ask them to repeat after you the oath commencing with one of the following choices:
  - I swear by Almighty God...
  - I swear by [name of deity recognised by their religion]...
  - I swear, according to the religion and the beliefs I profess...
- and concluding with
  - that they are the person named as the maker of the affidavit
  - that the contents of the affidavit are true
  - that the signature or mark is theirs
  - that any attachment to the affidavit is attached and referred to in it.

- If the deponent wishes to swear by affirmation ask them to raise their hand and follow the same procedure, beginning with:
  - I sincerely declare and affirm...
 followed by the four concluding points listed above.

#### Step 4: witness the affidavit

After the person has given the oral oath or affirmation, you must:

- Indicate on the last page whether it is sworn or affirmed
- Enter on the last page where and when it was sworn
- Sign each page of the affidavit
- Initial any alteration in the affidavit that has been initialled by the deponent
- Clearly write your name and qualification as a witness on the last page. A rubber stamp containing this information may be used.

#### Step 5: annexure or attachments

- Where an affidavit refers to annexure or attachments, you must endorse the first page and initial each page of the attachments or annexure. This prevents any substitution later on. If you are called to court to testify to the document it will be easy to check the initials on each page.
- Endorse the front of any annexure with the following, and initial each page:
  - This is annexure marked ‘...’ referred to in the affidavit of (deponent’s name) sworn/affirmed this ...day of...month 20...

#### Step 6: check the affidavit

Before handing back the completed affidavit check that:

- each page is signed, including annexure and attachments
- the document is dated
- your full name, title and JP number are on the document.

#### Important points

- All affidavits will have a heading including the court to which they apply, the name of each party involved, and the action number given to the case. The paragraphs will be numbered and the pages will also be numbered.
- You do not need to be concerned with the accuracy or truthfulness of the affidavit. You are simply administering the oath or affirmation. A JP, despite having suspicions that an affidavit is untrue, does not have the power to refuse to sign it.
- NEVER SIGN A BLANK FORM.

It is good practice to rule a diagonal line across any blank space to ensure nothing is added at a later date.

- You do not have to witness the signing of the affidavit. When they take the oath the deponent will be stating that it is their true name and their signature.

- All pages are to be signed from where affidavit begins with "1".
- Rubber stamp signatures must not be used. However, a rubber stamp of your name and qualification as a witness is acceptable.
- The validity of an affidavit is not affected by the fact that the procedure is not followed exactly, as long as the procedures have been substantially complied with.
- There is an example of an affidavit at the end of this chapter.

### 1.3. Statutory declarations

With some documents there is no requirement to swear on oath, and a more simple procedure of making a declaration is sufficient.

Part 4 of the OASD Act states how a statutory declaration shall be made. It must be in the form of Schedule 1 of the Act .

How to witness a statutory declaration

#### Step 1: ensure that the document is prepared and signed correctly

- The declaration must be in the [approved format](#).
- The declaration must be fully completed and signed.
- Any alteration, such as an insertion or erasure, must be initialled.

#### Step 2: take an oral declaration

You must ask the person to declare orally

- that they are the person who made the declaration
- that the contents of the declaration are true
- that the signature is theirs
- if necessary, that any attachment to the declaration is the attachment referred to in it.

#### Step 3: witness the statutory declaration

After the person has given the oral declaration, you must:

- sign the declaration
- sign or initial any alteration that has been made
- clearly write your name and qualification as a witness. A rubber stamp containing this information may be used.

#### *Important points*

- As a witness, you do not need to be concerned with the accuracy or truthfulness of the declaration. You are simply witnessing the declaration of the maker. A Justice of the Peace, despite having suspicions that a declaration is untrue, does not have the power to refuse to sign it.

- NEVER SIGN A BLANK FORM.  
It is a good practice to rule a diagonal line across any blank space to ensure nothing is added at a later date.
- You do not have to witness the signing of the declaration. This is because the person orally declares that the signature is his or hers.
- Rubber stamp signatures must not be used. However, a rubber stamp with your name and qualification as a witness is acceptable.
- The validity of a statutory declaration is not affected by the fact that the procedure is not followed exactly, as long as the procedures have been substantially complied with.
- A statutory declaration relating to a law of the Commonwealth must be made on the [approved form](#) under the [Statutory Declarations Act 1959](#) (a Commonwealth Act). An authorised witness for Western Australia may also witness a Commonwealth statutory declaration, as long as they are in Western Australia at the time of witnessing.
- Should a statutory declaration not occupy a full page it is good practice to rule a diagonal line across the remainder of the page before you sign it, to ensure nothing is added at a later date.
- No fee can be charged for these services.

### Procedure for affidavits or statutory declarations – blind, illiterate or mentally ill people

If the person making an affidavit or statutory declaration is blind or illiterate or mentally ill the JP must in addition to the procedures outlined in this handbook:

- Prior to administering the oath or affirmation or taking a declaration:
  - read the document aloud to the person, or
  - cause the document to be read aloud to the person in the JP's presence
  - be satisfied that the person understood what was read aloud.
- When witnessing the document certify on the document:
  - that the document was read aloud to the person; and
  - that you are satisfied that the person understood what was read aloud.

### Procedure for affidavits or statutory declarations – non-English speaking people

If the person making an affidavit or declaration is not sufficiently conversant with English to be able to make the affidavit or declaration in English, they may make the affidavit or declaration in another language.

The non-English affidavit or declaration is not admissible in a court or by a person acting judicially unless it is translated into written English.

The translator must complete an affidavit or declaration and the translated document must be attached to the original document.

In addition to the procedures outlined in this handbook, you must ensure that the translator makes an affidavit or declaration that:

- sets out their qualifications as a translator
- states that the English translation is accurate
- has both the English translation and original document attached to it.

It should be noted that the deponent can swear the affidavit in the language of their choice, which the translator will translate.

The affidavit, the translator's affidavit and the translation are filed together.

## 1.4. Witnessing other documents: enduring power of attorney (EPA)

The *Guardianship and Administration Act 1990* established a system to protect the interests of people who are not able to make reasoned decisions for themselves.

While a person still has the capacity to make decisions, they can appoint another person or agency to manage their property and financial affairs. JPs may be asked to witness these documents.

An EPA must be witnessed by two authorised people.

The role of the witnesses is to:

- be satisfied as to the identity of the donor
- verify that the donor signed the document on the date specified.

You must not witness the declaration if you are in a position of potential conflict of interest with the donor.

Unlike a normal statutory declaration you can decline to witness an EPA if:

- there is any doubt as to the donor's capacity to understand what is being signed
- the donor appears to be signing the EPA under duress or influence.

The only variation to the procedure for taking a declaration is that if the EPA is to be registered with Landgate you must state your occupation.

## Witnessing wills

Great care must be taken to correctly witness a will as there can be serious repercussions if the correct procedure is not followed.

At the time of *witnessing a will*:

- there must be two witnesses, together with the person making the will (testator), in each other's presence
- witnesses must not be beneficiaries of the will
- the testator must indicate that the signature is theirs and that it is their will
- the will must be dated

- each page of the will must be signed by both witnesses and the testator using the same pen
- the addresses of the witnesses must be shown under their signatures on the last page in case they are required later for verification
- rule a diagonal line across any blank areas of the page before you sign it, to ensure nothing is added at a later date
- there is no requirement for the contents of the will to be revealed to the witnesses.
- do not give advice for the wording of a will as it is not the function of a JP. If advice is required, legal assistance should be sought.

## 1.5. Certifying copies of documents

### What is a certified copy?

Often people are asked to supply documents to support applications, such as for birth certificates, academic qualifications or a change of name. Rather than supply the original, they can make a copy and ask for it to be certified as a true copy of the original.

### Who can certify a copy?

There is no legislation in Western Australia that stipulates either how to certify a copy of a document or who can do it. However, it is usual for documents to be certified by a person who is authorised as a witness for statutory declarations under the [OASD Act](#). Sometimes the institution requiring the certified copy will provide a list of persons they will accept as being able to so certify.

### How do you certify a copy?

Before certifying a document, you must ensure that the copy to be certified is an identical copy of the original. A suggested wording for the certification is as follows:

- I certify that this appears to be a true copy of the document produced to me on (date).

Sign it, then enter your name, position and JP number and the date.

*It should be noted that you are not authenticating the original document. You are simply certifying that the copy is a true copy of the original produced.*

### Documents in languages other than English

Only certify a document in a language other than English if you can be sure that the original and the copy are identical. A solution to this is to have the original photocopied in your presence.

### Multiple page documents

If the original is a multiple page document, each page must be checked against the copy to ensure that it is correct. You can then proceed as follows:

- sign or initial each page
- number each page of the copy as 'page 1 of 40', 'page 2 of 40' and so on



- certify the last page as follows:
  - I certify that this (number) page document, each page of which I have numbered and signed, appears to be a true copy of the document produced to me on (date)
- sign it, then enter your name, position, JP number and the date.

## 1.6. Deeds of agreement

A deed is a signed document that outlines the terms of an agreement, especially one that details a change in ownership of property.

As long as you don't have a potential conflict of interest you can witness a deed as a JP.

As with most documents that you will witness, you do not need to be concerned as to the contents of the deed. The key parts to note are:

- it must state on its face that it is a deed, using wording like 'This deed...' or 'executed as a deed'
- it must indicate that the instrument itself conveys some privilege or thing to someone
- it must be executed by the party before a witness.

As with other documents, you need to:

- be satisfied as to the identity of the person signing the deed
- ask them if they have read the document
- ensure the document is signed by them
- sign it, then enter your name, position, JP number and the date.

You would witness an agreement in the same way.

## 1.7. Landgate

Landgate is the agency responsible for land titles and records in Western Australia. The [Transfer of Land Act 1893](#) (Section 145) requires witnesses to the signature of parties to the document to sign their name, using their usual signature. It is a general requirement under the [Land Titles Registration Practice Manual](#) that the full name, address and occupation of the witness are included within the attestation.

This aids communication when Landgate needs to contact the witness if there is an issue regarding the execution of the form by either the witness or the person signing the form.

It is a general requirement that full witness details are to be included on the form. Generally speaking, each approved form has a note on the back page setting out the witnessing requirements.

## 1.8. Commonwealth, interstate and overseas documents

Your appointment as a JP is made under Western Australian legislation by virtue of the *Justices of the Peace Act 2004*, and your powers apply to all matters within the State of Western Australia.

Commonwealth legislation recognises that your appointment as a JP under State legislation authorises you as a witness for Commonwealth documents. This means that you may witness Australian Commonwealth documents anywhere in Australia or overseas.

Unless a particular document specifically allows it, you do not have the authority to deal with documents coming under the legislation of other States or other countries.

Unless the document specifies otherwise, international documents must be witnessed by Notaries Public, Consular or Embassy Officials.

You may not witness interstate documents while you are outside Western Australia.

However, some states have legislation authorising JPs from other States to witness certain documents in their particular State. Before agreeing to witness an interstate document while you are outside Western Australia, you should seek advice from the agency responsible for the document in that state.

In some circumstances, you are able to witness interstate documents while you are in Western Australia. It would be entirely up to the court or authority where the document is to be lodged whether you are acceptable as a witness. In this case the onus is on the person requesting you to be a witness to check before signing.

You can witness Western Australian documents outside of Western Australia.

This means that you may perform your functions as a witness in another State or territory, or indeed internationally, provided that the document in question is to be used in Western Australia.

Witnessing Commonwealth documents or interstate warrants is completed in the normal manner, earlier described in this chapter.

A statutory declaration relating to a law of the Commonwealth must be made on the [approved form](#) under the *Statutory Declarations Act 1959* (a Commonwealth Act), a copy of which is printed at the end of this chapter.

**IN THE SUPREME COURT OF  
WESTERN AUSTRALIA**

**PROBATE DIVISION**

Application no. 937/10

In the Estate of **Elizabeth Mary Citizen**

Late of Unit 1, 153 Karridale Road, Perth WA 6330 formerly of 56 Gun Barrell Road, Shell Harbour, Perth in the State of Western Australia, Cook, deceased.

**Affidavit of Joe Farmer  
sworn the 22nd Day of October 2003**

Date of document 21 October 2010

Date of filing

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*JM JF* I JOE FARMER of <sup>27</sup> ~~17~~ Fowler Drive, Perth in the State of Western Australia  
*JM JF* ~~Customer Service~~ Senior Court Officer, make oath and say as follows:

- ① 1. I refer to paragraph 5 of my Affidavit sworn 7 November 2010 where I stated that I was appointed executor of my mother's will. My Uncle RONALD ARTHUR CITIZEN was named as executor and I was named as substitute executor.
2. My Uncle died on the 7<sup>th</sup> July 2010. Annexed hereto and marked with the letter "A" is a certified copy of his death certificate.

JP and Deponent's initials in lefthand margin adjacent to each correction.

Sworn by the deponent )  
at Perth in the State of )  
Western Australia this )  
22<sup>nd</sup> day of November 2010 )

*Joe Farmer*



Deponent's Signature

*Jeff Melwood* JP



JP'S Signature



Jeff Melwood  
Justice of the Peace  
WA Reg no 29461



JP'S full name and  
registration number.  
(or stamp showing these details)

Note: where there is an exhibit this should accompany and forms part of the Affidavit.  
In this instance 'ex A' has not been included in handbook.

WESTERN AUSTRALIA

## OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

## STATUTORY DECLARATION

I, John Citizen  
21 Short Place, Kewdale, Engineer  
 {name, address and occupation of person making declaration}

Paragraphs  
numbered

sincerely declare as follows:-

➔ 1) The photocopy annexed hereto and marked with a letter "A" is the true and  
JE correct copy of the original invoice no. <sup>2742</sup>~~2744~~ for welding safety equipment  
 purchased on 2 October 2010 from Acme Welding Company.

JE 2) This account <sup>was</sup>~~is~~ paid in full on <sup>6th</sup>~~2nd~~ October 2010.



JP and  
Declarant's  
initials in lefthand  
margin adjacent  
to each  
correction.

{insert content of the statutory declaration; use numbered paragraphs if content is long}

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

at Perth  
 {place}  
10 October 2010  
 {date}

in the presence of JE Jeff Melwood JP

{Signature of authorised witness}  
Jeff Melwood

Justice of the Peace  
WA Reg. no 29461

{Name of authorised witness and qualification as such a witness}

Declarant's Signature

JE  
 {Signature of person making the declaration}

JP's Signature

JP's full name and  
registration number.  
(or stamp showing these details)



Always print  
the name of the  
authorised  
witness,  
qualification and  
if they are a JP,  
their registration  
number

**\*Important** This Declaration must be made before any of the following persons:-

Academic (post-secondary institution), Accountant, Architect, Australian Consular Officer, Australian Diplomatic Officer, Bailiff, Bank Manager, Chartered secretary, Chemist, Chiropractor, Company auditor or liquidator, Court officer (Judge, magistrate, registrar or clerk), Defence Force officer (Commissioned, Warrant or NCO with 5 years continuous service), Dentist, Doctor, Electorate Officer (State) Engineer, Industrial organisation secretary, Insurance broker, Justice of the Peace, Lawyer, Local government CEO or deputy CEO, Local government councillor, Loss adjuster, Marriage Celebrant, Member of Parliament (State or Commonwealth), Minister of religion, Nurse, Optometrist, Patent Attorney, Physiotherapist, Podiatrist, Police officer, Post Officer manager, Psychologist, Public Notary, Public Servant (State or Commonwealth), Real Estate agent, Settlement agent, Sheriff or deputy Sheriff, Surveyor, Teacher, Tribunal officer, Veterinary surgeon

Or,

Any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a Statutory Declaration may be made.

**IMPORTANT INFORMATION:**

AS OF 1 JANUARY 2006 THERE IS NO PROVISION FOR COMMISSIONERS FOR DECLARATIONS IN THE STATE OF WESTERN AUSTRALIA

## Annexure A

**Invoice 2742**

June 12, 2012

**Acme Welding Company**

33 Ironwood Drive  
MALAGA, WA 6090  
(08) 9422 3353 «\_PhoneFax»  
«\_EmailAddress»: acmeweldingco@weldbest.com



To:  
**John Citizen Engineering Ltd**  
21 Short Place  
KEWDALE, WA 6105

Ship to (if different address):  
**Attention John Citizen**  
21 Short Place  
KEWDALE, WA 6105

Line Item	Description	Part Number	Amount
1	Welding goggles	2314AQW23	214.95
2	Leather safety gloves	335487PRZ12	20.00
			0.00
			0.00
			0.00
			0.00
			0.00
<b>Subtotal</b>			234.95
<b>Tax</b>			<b>21.35</b>
<b>Total Due</b>			256.30

**Make all cheques payable to: Acme Welding Company**  
**THANK YOU FOR YOUR BUSINESS!**

This is the annexure ranked "A" referred to in the statutory declaration declared by John Citizen on 3 October 2010.

*Jeff Melwood* JP

Jeff Melwood  
Justice of the Peace  
WA Reg. no 29461

Commonwealth of Australia  
STATUTORY DECLARATION  
*Statutory Declarations Act 1959*

1 *Insert the name, address and occupation of person making the declaration*

I, <sup>1</sup>

make the following declaration under the *Statutory Declarations Act 1959*:

2 *Set out matter declared to in numbered paragraphs*

<sup>2</sup>

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 *Signature of person making the declaration*

<sup>3</sup>

4 *Place*

Declared at <sup>4</sup>

on <sup>5</sup>

of <sup>6</sup>

5 *Day*

6 *Month and year*

Before me,

7 *Signature of person before whom the declaration is made (see over)*

<sup>7</sup>

8 *Full name, qualification and address of person before whom the declaration is made (in printed letters)*

<sup>8</sup>

*Note 1* A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

*Note 2* Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

A statutory declaration relating to a law of the Commonwealth must be made on the [approved form](#) under the *Statutory Declarations Act* (a Commonwealth Act). An authorised witness for Western Australia may also witness a Commonwealth Statutory Declaration.

**A statutory declaration under the *Statutory Declarations Act 1959* may be made before—**

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
 Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)  
 Bailiff  
 Bank officer with 5 or more continuous years of service  
 Building society officer with 5 or more years of continuous service  
 Chief executive officer of a Commonwealth court  
 Clerk of a court  
 Commissioner for Affidavits  
 Commissioner for Declarations  
 Credit union officer with 5 or more years of continuous service  
 Employee of the Australian Trade Commission who is:  
     (a) in a country or place outside Australia; and  
     (b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and  
     (c) exercising his or her function in that place  
 Employee of the Commonwealth who is:  
     (a) in a country or place outside Australia; and  
     (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and  
     (c) exercising his or her function in that place  
 Fellow of the National Tax Accountants' Association  
 Finance company officer with 5 or more years of continuous service  
 Holder of a statutory office not specified in another item in this list  
 Judge of a court  
 Justice of the Peace  
 Magistrate  
 Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*  
 Master of a court  
 Member of Chartered Secretaries Australia  
 Member of Engineers Australia, other than at the grade of student  
 Member of the Association of Taxation and Management Accountants  
 Member of the Australasian Institute of Mining and Metallurgy  
 Member of the Australian Defence Force who is:  
     (a) an officer; or  
     (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or  
     (c) a warrant officer within the meaning of that Act  
 Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants  
 Member of:  
     (a) the Parliament of the Commonwealth; or  
     (b) the Parliament of a State; or  
     (c) a Territory legislature; or  
     (d) a local government authority of a State or Territory  
 Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*  
 Notary public  
 Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public  
 Permanent employee of:  
     (a) the Commonwealth or a Commonwealth authority; or  
     (b) a State or Territory or a State or Territory authority; or  
     (c) a local government authority;  
     with 5 or more years of continuous service who is not specified in another item in this list  
 Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made  
 Police officer  
 Registrar, or Deputy Registrar, of a court  
 Senior Executive Service employee of:  
     (a) the Commonwealth or a Commonwealth authority; or  
     (b) a State or Territory or a State or Territory authority  
 Sheriff  
 Sheriff's officer  
 Teacher employed on a full-time basis at a school or tertiary education institution

Reverse side of Commonwealth Statutory Declaration form.







## Chapter 2

### Authorising warrants

#### 2.1. What is a warrant?

A warrant is a document that allows the person mentioned to carry out certain acts that, without the warrant, may be unlawful.

The issue of a warrant is a serious matter, because it authorises interference with the privacy, rights and liberty of the individual.

The High Court of Australia in *George v Rockett* (1990) 170 CLR 104, at page 110, said:

A search warrant thus authorises an invasion of premises without consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property.... Against that background, the enactment of conditions which must be fulfilled before a search warrant can be lawfully issued and executed is to be seen as a reflection of the legislature's concern to give a measure of protection to these interests. To insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation...

Whilst the Court in *George v Rockett* was concerned with the lawful issue of a search warrant, its observations and instructions should be applied to all warrants. JPs must be careful when exercising the judicial discretion to issue warrants, and strict guidelines must be followed.

**NEVER ATTEND THE EXECUTION OF A WARRANT EVEN IF REQUESTED.**

**A JP CANNOT ISSUE A WARRANT IN THE FIRST INSTANCE TO ARREST A PERSON FOR AN ALLEGED OFFENCE.**

JPs might expect applications for the issue of warrants under the following legislation:

*Criminal Investigation Act 2006*

- (1) Search warrants
- (2) Forensic procedure warrants
- (3) Orders to produce business records.

*Criminal Investigation (Identifying People) Act 2002*

- (4) Identifying persons warrants

*Misuse of Drugs Act 1981*

- (5) Search warrants
- (6) Holding and destruction orders

*Criminal Property Confiscation Act 2000*

- (7) Search warrants
- (8) Freezing notice

*Firearms Act 1973*

- (9) Search warrants

*Weapons Act 1999*

- (10) Search and seizure warrant

*Commonwealth warrants*

## **2.2. Criminal Investigation Act 2006**

### **2.2.1. Applications by telephone, fax, email or radio**

The relevant legislation is the [Criminal Investigation Act 2006](#) (CIA) (Part 1, Section 13, sub sections 4 to 8).

An application for a warrant should be made by the applicant in person; however, if the warrant is needed urgently and a JP is not available within a reasonable distance of the applicant, then a warrant may be applied for by phone, fax, email or radio.

You must not grant the application unless satisfied that the warrant can't be applied for in person.

The applicant must prepare a written application and send it by fax or email to you.

- If a written application can't be sent, the applicant may apply by phone or radio, giving all the necessary details
- If it is not practicable for the application to be made under oath, the applicant may make the application and give information supporting the application in an unsworn form.

If the application is made by phone or radio, you must make a written record of the date and time, and the information provided.

If an applicant makes an unsworn application or gives you unsworn information and you issue a warrant, the applicant must send you an affidavit verifying the application or containing the information as soon as practicable after the warrant is issued.

If the application is made by remote communication and you issue the warrant, then if it is:

- reasonably practicable to send a copy of the warrant to the applicant by remote communication, you must immediately do so
- not reasonably practicable to so send a copy of the warrant:
  - you must immediately give the applicant by remote communication any information that is required to be set out in the warrant
  - the applicant must complete a form of the warrant with the information given by you
  - the applicant must give you a copy of the completed form as soon as practicable after the warrant is issued
  - you must attach the copy of the completed form to the original warrant issued by you plus any affidavit received from the applicant in support of the application, and make them available for collection by the applicant.

If either you or the applicant fails to follow the correct procedure, any evidence obtained by the warrant will not be admissible in court.

Note that you may be required to attend court to prove the warrant was duly authorised and give evidence as to the circumstances under which the urgent warrant was issued. Taking notes at the time can assist your recollection.

### 2.2.2. Search warrants (*Criminal Investigation Act 2006*, sections 41 & 42)

Search warrants are one of the most important processes available to the police. Issuing a search warrant authorises the police to enter the privacy of a person's home or business, and to interfere with their liberty.

It involves interference with the rights of the individual. **You must carefully exercise judicial discretion in issuing search warrants, and adhere to strict guidelines.**

A police officer or other authorised officer can apply to a JP for a search warrant. Police policy states that if the applicant is not of the rank of sergeant or higher, the application must be countersigned by such a ranking officer.

Applications for a search [warrant under section 41\(3\)](#) of the CIA must:

- (a) state the applicant's full name and official details
- (b) state the offence that is suspected to have been committed, or that is suspected may be committed, in relation to which a search warrant is wanted
- (c) state the grounds on which the applicant suspects that the offence has been or may be committed
- (d) describe the place that it is desired to enter and search
- (e) if it is desired to search the place for a thing relevant to the offence, describe the thing or class of thing
- (f) if it is desired to search the place for a person, provide the name or description of the person
- (g) state the grounds on which the applicant suspects one or more of the following:
  - i. that the thing or class of thing is a thing relevant to the offence and that it is in the place
  - ii. that a person against whom an offence may have been, or may be being, committed is in the place.
- (a) state, to the best of the applicant's knowledge, whether an application for a search warrant for the same place has been made to any other JP within the previous 72 hours, and if so, whether a warrant was issued or not
- (b) include any other information that is prescribed.

By section 13(6) of the CIA an application must be made on oath. There is no prescribed or approved form of application, but the police have drawn up a standard form of application which allows some provision for each of the matters required by section 41(3) to be recorded on oath before the JP ([see attached Section 41 application for search warrant](#)).

You may issue a search warrant for a place if you are satisfied (upon the evidence on oath found in the application or recorded otherwise) that, in respect of each of the matters in section 41(3) that the applicant suspects, there are reasonable grounds for the applicant to have that suspicion.

Section 4 of the CIA provides a meaning for the phrase 'reasonably suspects' as:

For the purposes of this Act, a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.

Warrants granting police powers to search must define with reasonable particularity the:

- premises to be searched
- things liable to be seized
- offences which were committed or suspected to have been committed.

The things liable to be seized must be evidence related to the offence alleged on the warrant; however, if in the course of the search an officer finds a thing which is not a target thing but which is a thing relevant to an offence, the officer may seize it.

The search warrant should be sufficiently specific that both the person executing the warrant and the occupier of the premises searched should know whether the documents on the premises satisfy the description shown on the face of the warrant.

For the person executing the warrant, this is necessary so that the interference with the rights of the subject brought about by the warrant can be confined by reference to the documents relating to the specific offences named in the warrant.

A search warrant **must** be executed between 6am and 9pm **unless** the officer executing it reasonably suspects that if it were, the safety of any person, including the officer, might be endangered or the effectiveness of the proposed search might be jeopardised; section 43(6).

A warrant can remain in force for 30 days.

### 2.2.3 Warrants to search premises/person (check list)

#### Step 1: ensure that the document is prepared and signed correctly

- A request for search warrant will come in two parts the:
  - application which will have an affidavit contained within it or attached
  - search warrant.
- Ensure that the correct form has been used.
- Check that the application has been completed and signed, with all sections filled out.
- If the affidavit has not been witnessed, administer the oath or affirmation.

#### Step 2: consider the application

- Regarding a thing (property) or class of thing, does the application satisfy the following:  
There are reasonable grounds for the applicant to have suspicion that:
  - a) an offence has been committed with respect to the item sought; or
  - b) the item sought will afford evidence as to the commission of an offence; or
  - c) the item sought is intended to be used for the commission of an offence; and
  - d) the item or items sought are actually in the place to be searched.
- Regarding a search warrant for a named or described person, and mindful that it authorises a search of the place for a person and the taking of any action that is reasonably necessary to stop or prevent any offence being committed against that person, does the application satisfy the following:  
There are reasonable grounds for the applicant to have a suspicion that:
  - a) an offence may have been committed against the named or described person
  - b) an offence may be being committed against the named or described person
  - c) that the named or described person is in the place to be searched.

### Step 3: issue the warrant

- If satisfied, complete and sign the search warrant.
- Nominate which of the grounds for the issue of the warrant you were satisfied with.
- Ensure that the search warrant contains the following information:
  - the applicant's full name and official details
  - the suspected offence to which the warrant relates
  - the place that may be entered and searched under the warrant
  - a description of the thing or class of thing to be sought
  - if a person is the object of the search, the name or a description of the person
  - the period, not exceeding 30 days, during which the warrant may be executed
  - the name of the JP who issued it
  - the date and time when it was issued.
- If the police officer applying for the warrant thinks that firearms may be used in the execution of the warrant, that must be stated on the form, including the reasons for this belief.

Compliance with the CIA (sections 13, 41 & 42) when issuing a search warrant is essential as you may be called as a witness in a court proceeding to satisfy the court that the warrant was issued correctly.

#### 2.2.4. Forensic procedure warrants

Relevant legislation is sections 99 & 100 of the CIA.

This Act authorises a forensic procedure on a person for the purpose of searching for a thing or evidence of a thing that is relevant to an offence that is reasonably suspected to have been committed and the existence or absence of which on or in the body of the person is relevant to the investigation of the offence.

A forensic procedure must not be done for the purpose of obtaining an identifying particular of the person.

Section 99 enables a JP to grant a warrant that authorises an intimate or internal forensic procedure to be conducted on an adult suspect who has not consented or who has withdrawn consent for the procedure.

An intimate forensic procedure may include any or all of the following:

- take a swab, or use other means, to detect a relevant thing on the person's external private parts
- remove a relevant thing attached physically to those external private parts
- take a sample of a relevant thing on those external private parts
- take an impression of a relevant thing on those external private parts
- take a sample of blood from the person.

An internal forensic procedure may include any or all of the following:

- search the person's internal parts for a relevant thing using x-rays, ultrasound or similar means
- search the person's orifices, other than the mouth, for a relevant thing
- take a swab, or use other means, to detect a relevant thing in those orifices
- remove a relevant thing from, or take a sample of a relevant thing in, any such orifice.

A JP cannot approve an application for a forensic procedure warrant (FP warrant) that applies to a protected person. A protected person means a person who is a child or an incapable person.

The written material presented to you in support of the FP warrant must:

- give the applicant's full name and official details
- give the name of the suspect to whom it relates
- state whether the suspect is a protected person
- state the offence alleged
- state the ground for suspecting that an offence has been committed
- state whether it is for an intimate or internal forensic procedure
- state, if the warrant is wanted for an internal forensic procedure, what kind
- state what thing or evidence will be sought
- state the grounds on which the applicant suspects that the thing being sought is a relevant thing
- give the details of the relevant thing to be searched for.

### 2.2.5. Issuing a forensic procedure warrant

#### Step 1: ensure that the document is prepared and signed correctly

- Ensure that the correct form has been used.
- Ensure that the application has been completed and signed with all required information supplied.
- If the affidavit has not been witnessed, administer the oath or affirmation.

#### Step 2: consider the application

In order to issue a forensic procedure warrant you must:

- be satisfied there are reasonable grounds for the applicant to suspect an offence
- be satisfied that the interests of justice justify doing the procedure
- take into account the seriousness of the offence.



### Step 3: issue the warrant

- Ensure that the following are included on the warrant:
  - the applicant's full name and official details
  - the name of the suspect to whom it relates
  - the offence to which it relates
  - whether it relates to an intimate or internal forensic procedure
  - if it relates to an internal forensic procedure, the kind of internal forensic procedure that may be done on the suspect
  - the relevant thing to be searched for during the forensic procedure.
- Ensure the warrant includes:
  - the period, not exceeding 14 days, during which the warrant may be executed
  - your name
  - the date and time when it was issued.
- If satisfied, complete and sign the forensic procedure warrant.

#### 2.2.6 Orders to produce business records

The relevant legislation is sections 50 to 53 of the CIA.

A police officer may apply to a JP for an order to produce business records.

The application must state:

- the applicant's full name and official details
- the offence that is suspected to have been committed
- the grounds on which the applicant suspects that the offence has been committed
- the name of the person to whom the order will apply
- that the person is not suspected of having committed the offence
- with reasonable detail the business record wanted
- the grounds on which the applicant suspects the business record is relevant to the offence
- whether the original or a copy is required
- whether a paper, electronic or other version of the record is required
- any other information that is prescribed.

You may issue the order if satisfied there are reasonable grounds for the applicant's suspicion.

The order will be an order for:

- the person to produce the records
- where the records are to be produced
- the date on which the order must be obeyed (it must allow a reasonable length of time for the records to be found and produced)
- your name
- the date and time of issue.

An order to produce may be served by personal service, post, email or fax.

If you don't believe you should issue the warrant, you must record on the application the reasons for your refusal.

## 2.3. Criminal Investigation (Identifying People) Act 2002

### 2.3.1. Identifying Persons warrants

Relevant legislation is sections 15, 45 & 46 of the [Criminal Investigation \(Identifying People\) Act 2002](#).

This Act authorises an identifying procedure to be done on a suspect for the purpose of obtaining an identifying particular of the suspect that is reasonably suspected will afford evidence of whether or not the suspect committed a serious offence that they are reasonably suspected of having committed. Applications for an identifying persons warrant must be made in person, but section 15 allows for applications to be made by remote communication in the same manner as previously indicated under CIA.

A suspect means a person who is reasonably suspected of having committed a serious offence but who has not been charged with the offence.

Section 45 enables you to grant a warrant that authorises an intimate identifying procedure to be conducted on an adult suspect who has not consented or who has withdrawn consent for the procedure.

An intimate identifying procedure under the provisions of section 56 may be:

- photographing an identifying feature of the person on their private parts
- taking a sample of the person's pubic hair
- taking a sample of blood from the person
- taking a dental impression of the person.

You cannot approve an application for an identifying procedure warrant (IP warrant) that applies to a protected person. A protected person means a person who is a child or an incapable person.

An application for an IP warrant must:

- name the suspect in respect of whom the warrant is wanted
- state the offence that the suspect is suspected of having committed

- specify the identifying particular that is sought and the identifying procedure by which it is to be obtained
- state the grounds on which the applicant suspects:
  - that the suspect has committed the offence
  - that the identifying particular sought will afford evidence of whether or not the suspect committed the offence.

You may issue an IP warrant if you are satisfied:

- that there are reasonable grounds for the applicant to have suspicion
- that the interests of justice justify obtaining the identifying particular specified in the application.

### 2.3.2. Issuing an identifying procedure warrant

#### Step 1: ensure that the document is prepared and signed correctly

- Ensure that the correct form has been used.
- Ensure that the application has been completed and signed, with all required information supplied.
- If the affidavit has not been witnessed, administer the oath or affirmation.

#### Step 2: consider the application

In order to issue an IP warrant you must be satisfied:

- there are reasonable grounds for the applicant to suspect an offence has been committed by the person
- that the interests of justice justify doing the procedure.

#### Step 3: issue the warrant

- Ensure that the following are included on the warrant:
  - the official details of the applicant
  - the name of the suspect to whom it relates
  - the offence to which it relates
  - the identifying particular to be obtained
  - the identifying procedure by which it is to be obtained.
- Ensure the warrant includes:
  - the period, not exceeding 14 days, during which the warrant may be executed
  - your name
  - the date and time when it was issued.
- If satisfied, complete and sign the IP warrant.

## 2.4. Misuse of Drug Act 1981

### 2.4.1. Issuing a Misuse of Drugs Act warrant

Section 24 of the *Misuse of Drugs Act* (MDA) enables you to grant a search warrant if you are satisfied that there are reasonable grounds to suspect that any thing whatsoever:

- may be or has been used with respect to which an offence has been or is suspected to have been or may have been committed
- which has been, or is suspected to have been or may have been used for the purpose of committing an offence
- may provide evidence in respect of an offence.

#### Step 1: ensure that the document is prepared and signed correctly

- Ensure that the correct form has been used – [MD 7](#).
- Ensure that the application has been completed and signed, with all required information supplied.
- If the affidavit has not been witnessed, administer the oath or affirmation.

#### Step 2: consider the application

In order to issue a MDA warrant you must be satisfied:

- EITHER that there are reasonable grounds the property is possessed or has been obtained directly or indirectly, as a result of or for the purposes of the commission of an offence
- OR that there are reasonable grounds to suspect the property is possessed or has been obtained as or for the consideration for the commission of an offence
- AND that there are reasonable grounds to suspect that any connected property may be in a vehicle, premises or place.

#### Step 3: issue the warrant

- Ensure that the following are included on the warrant:
  - the premises to be searched
  - the things liable to be seized
  - the offences which are suspected to have been committed.
- Ensure the warrant includes:
  - the period, not exceeding 30 days, during which the warrant may be executed
  - your name
  - the date and time when it was issued.
- If satisfied, complete and sign the warrant.

## 2.5. Criminal Property Confiscation Act 2000

### 2.5.1. Search warrant

A police officer may apply to a JP for, and a JP may issue, a search warrant under Section 74 of the [Criminal Property Confiscation Act](#).

The police officer has to satisfy the JP by information on oath or affirmation that there are reasonable grounds for suspecting that any property or any property tracking documents capable of being confiscated:

- is or are in or on a vehicle, premises or place
- will be in or on the vehicle, premises or place within next 72 hours.

A search warrant can be executed at any time of the night or day and continues in force for 30 days from the day on which it was issued.

### Forms

No forms are prescribed under the Regulations, but the police will provide forms designed for the purpose of the Act.

### 2.5.2. Freezing notices

The relevant legislation is the [Criminal Property Confiscation Act 2000](#), Section 34.

A freezing order relates to property suspected of being acquired as result of criminal activity or property used for criminal activity.

The DPP or a police officer may apply to a JP for the issue of a freezing notice.

You can issue a freezing notice on any property on the basis that there are reasonable grounds for suspecting that the property is crime-used or crime-derived.

A freezing notice can be issued for:

- land
- money in a bank account
- property that was used in connection with a crime or derived from money obtained from a crime
- property that is or was used for storing property that was acquired unlawfully.

A freezing notice is issued in relation to a specific item of property.

Property owned by two or more people, whether jointly or as tenants in common, is 'crime-derived' if any part of the share of any of the owners is crime derived.

JPs are authorised to freeze all or some of the property owned by a person, provided that that person has been charged or is likely to be charged with an offence within the next 21 days or could be declared a drug trafficker.

A confiscation offence is defined as:

- an offence against a law in force anywhere in Australia that is punishable by imprisonment for two years or more notwithstanding that if dealt with summarily the penalty which could be imposed is less than two years
- any other offence that is prescribed
- no offence has been prescribed.

When considering an application for a freezing notice (on any grounds) you must consider:

- each matter that is alleged by the applicant as a ground for issuing the freezing notice
- if you decide to issue the freezing notice, set out in the notice each ground that you find is a ground on which the notice may be issued.

This is important because if an objector wants to have the freezing notice set aside they must satisfy the requirements in relation to *each* ground upon which the property was frozen.

A freezing notice must:

- describe the property covered by the notice
- include an estimation of the value of the property
- state where, when and from whom the property was taken if it has been removed from the place in which it was found
- summarise the effect of the notice
- advise the recipient that the property under the notice may be confiscated unless an objection is filed with 28 days of the notice
- inform the alleged offender that they have the right to file an objection.

A freezing notice also applies to property outside the State if the offence was committed in WA or the owner of the property lives in WA.

### **Property protected from freezing**

The following property cannot be seized, frozen or confiscated unless the property is crime-used property:

- family photographs
- family portraits
- necessary clothing
- ordinary tools of trade
- professional instruments
- reference books.

## 2.6. Firearms Act 1973

### 2.6.1. Search warrants

Section 26 of the [Firearms Act 1973](#) is the section relevant to the issue of a search warrant, but it is rarely used, possibly because section 24(2a) authorises a police officer to, **without warrant**, enter and search any premises on which, in the opinion of the police officer, there are reasonable grounds to suspect that any firearm or ammunition may be found in the possession of a person and that the possession of it may result in harm being suffered by any person; or the person is not at the time a fit and proper person to be in possession of it.

Under [section 26\(1\)](#), where you are satisfied on oath that there are reasonable grounds for suspecting that there is in any place any firearm or ammunition or any document or other thing:

- (a) with respect to which under any written law an offence, involving a firearm, ammunition, silencer or other contrivance used in conjunction with a firearm, has been or is suspected, on reasonable grounds, to have been committed, or
- (b) will afford evidence as to the commission of any such offence
- (c) is intended to be used for the purposes of committing any such offence, you may issue to a police officer a warrant authorising the police officer to enter and search, and to seize the same or other things found.

You may, under section 26(2), also issue a search warrant in the circumstances contemplated in section 24(2a) and referred to above.

Regulation 22 of the [Firearms Regulations 1974](#) prescribes a form for each application and search warrant to be used for section 26(1) and 26(2) applications. You need to ensure the correct forms are used .

## 2.7. Weapons Act 1999

### 2.7.1. Search and seizure warrants

Under section 14 of the [Weapons Act 1999](#) a JP may grant a search and seizure warrant in relation to a place if satisfied that there are reasonable grounds for suspecting that there is located in a place:

- (a) any weapon relating to a offence
- (b) anything else that will afford evidence as to the commission of an offence.

The warrant authorises any police officer with such assistance as he/she thinks necessary and with such force as is reasonably necessary for the execution of the warrant:

- (a) to enter the place at any time
- (b) to search the place
- (c) to stop, detain and search anyone at that place

(d) to seize:

- i. any weapon that the police officer suspects on reasonable grounds relates to an offence or
- ii. anything else that the police officer suspects on reasonable grounds will afford evidence as to the commission of an offence.

There is presently no form of application or warrant prescribed by the regulations, and one can only presume that if a warrant was sought from you pursuant to section 14 that the police office would draft an application supported by evidence on oath (affidavit) as to their suspicion, and a prepared warrant. You need to ensure that the warrant states the grounds supporting its grant and in particular:

- the place to be searched
- the authority to stop, detain and search anyone in that place
- the things liable to be seized
- the offences which have been committed.

## 2.8. Commonwealth legislation

WA JPs have jurisdiction under Part IAA, Division 1 of the [Crimes Act 1914](#).

### *Search warrants*

Section 3C of the Act defines ‘issuing officers’ as magistrates or JPs or other person employed in a court of a State or Territory who are authorised to issue search warrants. In WA no employees of a court are authorised to issue search warrants.

Pursuant to section 3E of the Act a JP has an obligation to ensure that they are satisfied that the preconditions for the issue of a search warrant have been fulfilled. It is not enough for the JP to ensure that a police officer considers that there is a proper basis for a search warrant. You must form your own opinion on the issue. In summary, section 3E of the [Crimes Act 1914](#) provides that a JP may issue a warrant

if satisfied that there are reasonable grounds for suspecting that there is, or will be within the next 72 hours, any evidential material at premises or in the possession of a person to be searched.

If the person applying for the warrant is a federal police officer and the officer has previously applied for a warrant in respect of the same person or premises, the officer is required to state in the information provided to the JP the particulars and outcome of the previous application.

### *Arrest warrants – Federal and State*

#### *Federal*

JPs can issue a warrant of arrest for federal offences but only if the requirements of s.3ZA of the [Crimes Act 1914](#) are met.



Section 3ZA requires the informant to swear information on oath and, except where the warrant is to extradite a person from a foreign country, the informant must provide an affidavit setting out the reasons why the warrant is sought, including:

- the reasons why it is believed that the person committed the offence
- the reasons why it is claimed that proceedings by summons would not achieve one or more of the purposes set out in paragraph 3W (l) (b).

The purposes set out in paragraph 3W (l) (b) are:

- ensuring the appearance of the person before a court in respect of the offence
- preventing a repetition or continuation of the offence or the commission of another offence
- preventing the concealment, loss or destruction of evidence relating to the offence
- preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence
- preserving the safety or welfare of the person.

You are not to issue the warrant unless there are reasonable grounds for doing so, and you must write on the affidavit those reasons specified in the affidavit, and any other reasons, you have relied upon in issuing the warrant.

### **State**

The requirements in respect of warrants for arrest are quite different to issuing warrants for state offences. In WA, only a magistrate has the power to issue a warrant of arrest in first instance for a WA state offence. Regional JPs can issue a warrant when an accused on bail does not attend court, but this is not a 'warrant in the first instance'. Metropolitan JPs cannot issue either.

## **2.9. Execution of warrants and other processes out of the State**

The [\*Service and Execution of Process Act \(Cth\) 1992\*](#) provides for execution of warrants and other processes in each state and outside Australia. Complaints and summons made in Western Australia can be served in another state (section 24).

Under section 112 (1), JPs can issue a warrant of apprehension in the prescribed form for non-payment of a fine imposed by a court for execution in another state. The power to issue warrants in relation to non-payment of fines does not extend to persons who the Justice of the Peace has reason to believe is under the age of 18 years (section 123).

## **2.10. Refusing an application for a warrant or order**

Throughout this chapter you have been advised of the need to justify why you grant an application. The same applies when you refuse an application.

When refusing an application you must endorse on the application your decision and your reasons for refusal. You must sign under your endorsement, then enter your name, JP number and the time and date of your decision.

<i>Criminal Investigation Act 2006</i> s. 42		<b>Search warrant</b>	
To <sup>1</sup>	All police officers.		
Application	The applicant has applied under the <i>Criminal Investigation Act 2006</i> s. 41 to me, a Justice of the Peace, for a search warrant.		
Applicant's details <sup>2</sup>	Name of officer	Shaun Patrick O'HEHIR	
	Office held	Detective Senior Constable	Registered No. 9364
	Station/squad	Joondalup Detectives Office	
Suspected offence(s)	Burglary & Commit s401 Criminal Code Stealing s378 criminal Code		
Warrant	This warrant authorises you to search the place described below for the person described below, or for the thing(s) or class of thing described below, using the powers in the <i>Criminal Investigation Act 2006</i> ss. 43 and 44. This warrant must be executed in accordance with ss. 43 to 45 of that Act.		
Place to be searched <sup>3</sup>	1A Timewell Street, Joondalup, Western Australia 6027		
Person or thing(s) to be searched for <sup>4</sup>	1x TEAK Black Television, Model no. JL110, serial no. 395876 1x Loan transaction receipt from Cash Converters Joondalup. Contract number 678676 dated 16 March 2010, in name of Bruce Wayne SMITH for \$200.00 1x silver Panasonic stereo system, serial no. DWOJF04898. Three hundred and fifty dollars Australian currency. 1x Black jeans 1x White T-shirt, v-neck		
Execution period <sup>5</sup>	This warrant must be executed within ...30..... days after the date it is issued.		
Issuing details	Name of JP	Justice PEACE	
	Date	18\03\A.2010.....	Time 11:00am
JP's signature	Issued by me on the above date and at the above time.  .....J PEACE..... Justice of the Peace		
Execution details	Start	Date: .....	Time: .....
	End	Date: .....	Time: .....
	Occupier present? Yes/No Search audiovisually recorded? Yes/No		
	Other place entered under s. 44(2)(a)? Yes/No If yes, official details of senior officer who approved the entry:		
Officer in charge of execution <sup>2</sup>	Person found/Thing(s) seized? Yes/No		
	Name		
	Office held	Registered No.	
	Station/squad		

## Notes to Form —

1. If the applicant is a public officer, include a reference to the officers who can execute the warrant (see the Act s. 43(5)).
2. This must comply with the Act s. 42(2)(a) read with s. 3(1) "official details".
3. State the address or geographical location of the place to be searched. If a vessel, vehicle or aircraft is to be searched, describe it and give the address or geographical location of it.
4. Describe the person or the thing(s) or class of things to be searched for.
5. This period must not exceed 30 days (see the Act s. 42(2)(f)).

**A statutory declaration under the *Statutory Declarations Act 1959* may be made before—**

(1) a person who is currently licensed or registered under a law to practise in one of the following occupations:

Chiropractor	Dentist	Legal practitioner
Medical practitioner	Nurse	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trade marks attorney	Veterinary surgeon

(2) a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or

(3) a person who is in the following list:

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public  
 Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)  
 Bailiff  
 Bank officer with 5 or more continuous years of service  
 Building society officer with 5 or more years of continuous service  
 Chief executive officer of a Commonwealth court  
 Clerk of a court  
 Commissioner for Affidavits  
 Commissioner for Declarations  
 Credit union officer with 5 or more years of continuous service  
 Employee of the Australian Trade Commission who is:  
     (a) in a country or place outside Australia; and  
     (b) authorised under paragraph 3 (d) of the *Consular Fees Act 1955*; and  
     (c) exercising his or her function in that place  
 Employee of the Commonwealth who is:  
     (a) in a country or place outside Australia; and  
     (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and  
     (c) exercising his or her function in that place  
 Fellow of the National Tax Accountants' Association  
 Finance company officer with 5 or more years of continuous service  
 Holder of a statutory office not specified in another item in this list  
 Judge of a court  
 Justice of the Peace  
 Magistrate  
 Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*  
 Master of a court  
 Member of Chartered Secretaries Australia  
 Member of Engineers Australia, other than at the grade of student  
 Member of the Association of Taxation and Management Accountants  
 Member of the Australasian Institute of Mining and Metallurgy  
 Member of the Australian Defence Force who is:  
     (a) an officer; or  
     (b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or  
     (c) a warrant officer within the meaning of that Act  
 Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the National Institute of Accountants  
 Member of:  
     (a) the Parliament of the Commonwealth; or  
     (b) the Parliament of a State; or  
     (c) a Territory legislature; or  
     (d) a local government authority of a State or Territory  
 Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*  
 Notary public  
 Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office supplying postal services to the public  
 Permanent employee of:  
     (a) the Commonwealth or a Commonwealth authority; or  
     (b) a State or Territory or a State or Territory authority; or  
     (c) a local government authority;  
     with 5 or more years of continuous service who is not specified in another item in this list  
 Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made  
 Police officer  
 Registrar, or Deputy Registrar, of a court  
 Senior Executive Service employee of:  
     (a) the Commonwealth or a Commonwealth authority; or  
     (b) a State or Territory or a State or Territory authority  
 Sheriff  
 Sheriff's officer  
 Teacher employed on a full-time basis at a school or tertiary education institution

<b>Section 41</b> <i>Criminal Investigation Act 2006</i>		<b>APPLICATION FOR SEARCH WARRANT</b>	
Applicant s 41(3)(a)	Full name	Shaun Patrick O'HEHIR	
	Rank	Detective Senior Constable	Registered No. 9364
	Police Station	Joondalup Detectives Office	
Application	I apply for a search warrant to be issued under s 42 of the <i>Criminal Investigation Act 2006</i> .		
Offence in relation to which the search warrant is wanted s 41(3)(b)	Burglary & Commit Stealing	401(2)(a) 378 Section	Criminal Code Criminal Code Act
Grounds on which the applicant suspects that the offence has been or may be committed s 41(3)(c)	<p>On Tuesday 16 March 2010, the complainant Melanie JOYCE, advised police that her residence, located at 23 Smith Street Joondalup was broken into and electrical items valued at \$3000.00 were stolen. Entry was gained by smashing the toilet window. Incident Report number 16031015009534 refers.</p> <p>I inquired into this information and believe the complaint to be true.</p>		
Place to be entered and searched s 41(3)(d)	1A Timewell Street, Joondalup, Western Australia 6027		
Describe thing(s), or class of thing(s), relevant to the offence or name or describe the person, to be searched for s 41(3)(e) & (f)	<p>1x TEAK Black Television, Model no. JL110, serial no. 395876</p> <p>1x Loan transaction receipt from Cash Converters Joondalup. Contract number 678676 dated 16 March 2010, in name of Bruce Wayne SMITH for \$200.00</p> <p>1x silver Panasonic stereo system, serial no. DWOJF04898.</p> <p>Three hundred and fifty dollars Australian currency.</p> <p>1x Black jeans</p> <p>1x White T-shirt, v-neck</p>		
Grounds on which it is suspected that: (i) the thing or class of thing is a thing relevant to the offence and is in the place; and/or (ii) a person against whom an offence may have been, or may be being, committed is in the place. s 41(3)(g)	<p>I, Shaun O'Hehir, whose signature appears on the face of this complaint, swear;</p> <p>1. I am a Detective Senior Constable currently attached to the Joondalup Detectives Office.</p> <p>2. On Tuesday 16 March 2010, investigators received a complaint from Melanie JOYCE (JOYCE) who stated that she returned to her home at 23 Smith Street, Joondalup 6027 at about 1.00pm to discover the rear toilet window of her house broken and numerous electrical items removed from inside the house.</p> <p>3. JOYCE advised police the following items were stolen from her home: 1x TEAK Black Television, Model no. JL110, serial no. 395876; 1x silver Panasonic stereo system, serial no. DWOJF04898; 1x AKAI video recorder serial number VS-G242EA; and \$350.00 in Australian currency.</p>		

JP to Initial and date each page:....JP..... 18./03./2010... Page 1 of 3

4. I spoke to Joanne RESID (RESID), a neighbour of JOYCE, who advised that at about 9:00am on 16 March, 2010 she observed a vehicle parked near the cycleway between their two houses.

5. Joanne RESID described the motor vehicle as a white Holden Commodore sedan. RESID observed that the number plate consisted of 1ABC followed by three digits which she did not remember.

6. At about 9.25am RESID heard the motor vehicle start.

7. At 2.00pm, 16 March 2010 I interviewed RESID and obtained a statement from her regarding her observations and I believe her account to be accurate and truthful.

8. At 3.25pm, 16 March 2010 I received Information Report number 20070541 from Linked crime unit detailing a loan transaction by Bruce Wayne SMITH of 1A Timewell Street, Joondalup, valued at \$200 for an AKAI video recorder serial number VS-G242EA at Cash Converters Joondalup on 16 March 2010 at 2.00pm, contract number 678676.

9. I conducted inquiries on the Western Australia Police Incident Management System (IMS) database and confirmed that Bruce Wayne SMITH is listed as residing at 1A Timewell Street, Joondalup 6027. He is the registered owner of a white Holden Commodore 2006 model, registration number 1ABC234. This vehicle is registered to 15 Timewell Street, Joondalup, 6027.

10. Further checks of the IMS database revealed Smith with prior convictions for Burglary and Stealing in 2003, 2004, 2006 and 2007. In each instance entry was gained by smashing the toilet window.

11. At 9.00am, 17 March 2010 I conducted a drive past of 15 Timewell Street, Joondalup and observed that it was a vacant block. I drove past 1A Timewell Street Joondalup and observed a white Holden Commodore parked in the driveway, registration number 1ABC234.

12. I believe there are reasonable grounds to suspect that the items stolen would be evidence related to the offences of Burglary s401 *Criminal Code* and Stealing s378 *Criminal Code*.

13. I further submit that there is reasonable suspicion that the listed items are situated in the house at 1A Timewell Street, Joondalup.

I therefore seek your search warrant for the address at 1 Timewell Street, Joondalup 6027 WA to enter and search for search for evidence relating to the above mentioned offence against the Criminal code and to seize the above mentioned property.

Disclosure of prior application s 41(3)(h)	To the best of the applicant's knowledge, has an application for a search warrant been made to any other JP within the previous 72 hours in relation to the place to be searched? <del>Yes</del> /No If yes, was the warrant issued? Yes/No (Provide explanation for your answer):
Independent reviewing officer	I.....Steve JONES.....Registered No 6278 of ...Joondalup Police Station ..... having been informed by ...Shaun O'Hehir..... believe that there are sufficient grounds to seek the issue of this search warrant. Signature <i>S JONES Det SGT 6278</i> Date/Time <i>18/03/2010 1030 hours</i>
Oath/Affirmation	I swear by Almighty God/sincerely declare and affirm that the contents of this application are true and correct to the best of my knowledge and belief.  <i>S O'HEHIR Det S/C 9364</i> <i>Applicant</i>
JP to complete the following sections:	
JP's signature	The applicant made this application on oath before me on 20/04/2010 at..... <i>Joondalup</i> .....(place where application is made)  <i>J PEACE 11011</i>  JP
s 42(4)	Application <input checked="" type="checkbox"/> Granted <input type="checkbox"/> Refused (If refused JP must record reasons for refusal) Reasons for refusal: ..... ..... .....
Date and time of grant/refusal	

JP to Initial and date each page:....JP..... ...18./03../2010... Page 3 of 3

**25. Application for search warrant (Act s. 26(1))**

Western Australia <i>Firearms Act 1973 s. 26(1)</i>		<b>Application for search warrant</b>		
Applicant's details	Name	Darryl John FORWARD		
	Office held	Detective Senior Constable	Reg. No.	9925
	Station/squad	North West Metropolitan Detectives Office		
Suspected offence(s)	Date 1 January 2010 Place Havana Street, Joondalup Act name and section 1. Firearms Act s23(3)(a) 2. Firearms Act s19(1)(c) Description 1. Possess Unlicensed Firearm (Handgun) 2. Possess Unlicensed Ammunition			
Thing(s) to be searched for	Description of any firearm, ammunition, silencer etc. involved. 1. White metal 0.25 calibre pistol approximately 10 centimetres long 2. 0.25 calibre Winchester ammunition.			
Place to be searched	Description Address 9 Smith Street, Clarkson			
Grounds	I suspect the above thing(s) — were involved in the above offence; will afford evidence of the commission of the above offence; <del>will be used to commit the above offence.</del> I suspect the above thing(s) are at the above place. My grounds for suspecting these matters are-  <b>See reverse side for details of grounds</b>			
Application	I apply for a search warrant to be issued under the Act s. 26(1) to search the above place for the above things. I swear by Almighty God that the information in this application is true to the best of my knowledge and belief. Signed DJ FORWARD Det S/C 9925 Date 01 January 2010			
Witness's details	Name Justice PEACE Office Justice of the Peace Signature J PEACE Date 01 January 2010			

### Hereunder State Grounds for Issue of Search Warrant:

I, Darryl John FORWARD, make oath and say:-

1. I am a Detective Senior Constable currently attached to the North West Metropolitan Detectives Office.
2. On Saturday 1 January 2010 I received a complaint from John BROWN (BROWN), who is the head of security at the Dusk Nightclub which is situated on Havana Street, Joondalup.
3. BROWN stated that at about 1.00am that day he was on duty at the Havana Street Nightclub and as a result of an altercation inside the nightclub he ejected a male person, the person of interest (POI).
4. A short time after the POI was ejected a white Holden Commodore drove past the front door area of the Havana Nightclub. BROWN was working at the front door area of the nightclub and recognised the driver of the vehicle as the POI. As the POI drove past BROWN observed the POI to lean his arm out the window and point a white metal coloured pistol at BROWN. BROWN states that the pistol was approximately 10 centimetres long.
5. The POI fired two to three times at BROWN and sped off. None of the bullets hit BROWN or any of the other members of the public. As the vehicle drove away BROWN noted the registration number of the vehicle as 7PW421.
6. A forensic examination was conducted of the area, including ballistic experts. As a result of the examination two 0.25 calibre Winchester shell casings and bullet fragments were located. The bullet fragments are consistent with coming from a 0.25 calibre bullet.
7. A review of the Havana Nightclub CCTV footage corroborates BROWN's account of what occurred.
8. I conducted a search on intelligence databases held by the Western Australia Police (WAPOL) and can state that the registration number 7PW421 is recorded as being registered to a white 1990 Holden Commodore sedan in the name of David Michael ADAM (ADAM) date of birth 01 March 1980 of 9 Smith Street, Clarkson.
9. A search of WAPOL intelligence databases in relation to ADAM revealed that the description of ADAM, held by WAPOL databases, is similar to the description by BROWN of the POI and of the CCTV footage. ADAM is recorded as residing at 9 Smith Street, Clarkson. ADAM is known to WAPOL and has convictions for property and firearm related offences. ADAM is not recorded as being the holder of a firearms licence within Western Australia.
10. I therefore submit that there is sufficient evidence that the offences of possess unlicensed firearm s23(3)(a) Firearms Act and possess unlicensed ammunition s19(1)(c) Firearms Act s19(1)(c) did occur.
11. I therefore submit that there is sufficient evidence that the white coloured metal 0.25 calibre pistol approximately 10 centimetres long and 0.25 calibre Winchester ammunition is relevant to the offences of possess unlicensed firearm s23(3)(a) Firearms Act and possess unlicensed ammunition s19(1)(c) Firearms Act s19(1)(c).



12. I therefore submit that there is sufficient evidence to believe that the white coloured metal 0.25 calibre pistol approximately 10 centimetres long and 0.25 calibre Winchester ammunition is at 9 Smith Street, Clarkson.

I therefore seek issuance of your warrant.

Independent reviewing officer	<p>I, Detective Sergeant Peter ALLAN, Registered No 7661 of North West Metropolitan Detectives Office having been informed by Detective Senior Constable FORWARD 9925 believe that there are sufficient grounds to seek the issue of this search warrant.</p> <p>Signature P ALLAN Det Sgt 7661 Date/Time 01 January 2010 at 1030 hours.</p>
----------------------------------	--

DJ FORWARD Det S/C 9925  
**Signed**

J PEACE 11011  
**Justice of the Peace**

Western Australia <i>Firearms Act 1973</i> s. 26(1)			<b>Search warrant</b>		
To	All police officers				
Application	The applicant has applied under the <i>Firearms Act 1973</i> s. 26(1) to me, a Justice of the Peace, for a search warrant.				
Applicant's details	Name	Darryl John FORWARD			
	Office held	Detective Senior Constable	Reg. No.	9925	
	Station/squad	North West Metropolitan Detectives Office			
Suspected offence(s)	Date 1 January 2010 Place Havana Street, Joondalup Act name and section 1.Firearms Act s23(3)(a) 2.Firearms Act s19(1)(c) Description 1. Possess Unlicensed Firearm (Handgun) 2. Possess Unlicensed Ammunition				
Warrant	This warrant authorises you to enter and search the place described below for the thing(s) described below, and to seize any such thing found and take it before a Justice of the Peace to be dealt with according to law.				
Thing(s) to be searched for	1. White metal 0.25 calibre pistol approximately 10 centimetres long 2. 0.25 calibre Winchester ammunition.				
Place to be searched	Description Address 9 Smith Street, Clarkson				
Issuing details	Name of JP	J PEACE			
	Date	01 January 2010	Time	11.30 am	
JP's signature	Issued by me on the above date and at the above time. J PEACE 11011 Justice of the Peace				
Execution details	Start	Date	Time	End	Date Time
	Occupier present? Yes/No				
	Search audiovisually recorded? Yes/No				
	Thing(s) seized? Yes/No				
Officer in charge of execution	Name				
	Office held		Reg. No.		
	Station/squad				

Western Australia <i>Firearms Act 1973</i> s. 26(1)		<b>Search warrant</b>			
To	All police officers				
Application	The applicant has applied under the <i>Firearms Act 1973</i> s. 26(1) to me, a Justice of the Peace, for a search warrant.				
Applicant's details	Name	Darryl John FORWARD			
	Office held	Detective Senior Constable	Reg. No.	9925	
	Station/squad	North West Metropolitan Detectives Office			
Suspected offence(s)	Date 1 January 2010 Place Havana Street, Joondalup Act name and section 1.Firearms Act s23(3)(a) 2.Firearms Act s19(1)(c) Description 1. Possess Unlicensed Firearm (Handgun) 2. Possess Unlicensed Ammunition				
Warrant	This warrant authorises you to enter and search the place described below for the thing(s) described below, and to seize any such thing found and take it before a Justice of the Peace to be dealt with according to law.				
Thing(s) to be searched for	1. White metal 0.25 calibre pistol approximately 10 centimetres long 2. 0.25 calibre Winchester ammunition.				
Place to be searched	Description Address 9 Smith Street, Clarkson				
Issuing details	Name of JP	[REDACTED]			
	Date	01 January 2010	Time	11.30 am	
JP's signature	Issued by me on the above date and at the above time. [REDACTED] Justice of the Peace				
Execution details	Start	Date	Time	End	Date Time
	Occupier present? Yes/No				
	Search audiovisually recorded? Yes/No				
	Thing(s) seized? Yes/No				
Officer in charge of execution	Name				
	Office held		Reg. No.		
	Station/squad				

## NOTICE TO OCCUPIER

This document is a copy of a search warrant which has been executed on these premises on \_\_\_\_/\_\_\_\_/20 .

Items have / have not been seized pursuant to this warrant.

An inventory of any property seized is available on request.

Enquiries regarding any property seized should be directed to the undersigned, at, North West Metropolitan Detectives Office.

Telephone: 94000876

\_\_\_\_\_  
OFFICER IN CHARGE OF SEARCH

WESTERN AUSTRALIA  
*MISUSE OF DRUGS ACT 1981*  
*MISUSE OF DRUGS REGULATIONS 1982*  
INFORMATION ON OATH FOR SEARCH WARRANT

I, Peter Michael ALLAN, of North West Metropolitan Detectives Office, being a Detective Senior Constable, do swear by Almighty God\*~~/solemnly, sincerely and truly declare~~\* that I suspect that the following thing plants, drugs, implements, documents and/or money is a thing referred to in section 23(1)(a), (b) or (c) of the *Misuse of Drugs Act 1981* and that it may be ~~in or on the following vehicle\*~~ ~~[insert particulars of vehicle]~~ /in or on the following premises or other place\* 68 Burnham Way, Girrawheen on the following grounds —

**See reversed side for details of grounds**

Sworn~~/affirmed~~\* before me Justice PEACE, being a justice of the peace, on 1 January 2010 at Joondalup.

..J PEACE.....  
Signature of justice of the peace.

\* Please delete inapplicable alternative.

I am satisfied that the following provide reasonable grounds for requesting the issue of a search warrant.

Detective Sergeant SUPERVISOR  
SUPERVISING OFFICER

13:30  
Time

01/01/2010  
Date

Detective Senior Constable ALLAN is hereby authorised to approach a Justice of the Peace and seek the issue of a search warrant for the following premises or place 68 Burnham Way, Girrawheen on the following grounds;

I, Peter Michael ALLAN, whose signature appears on the face of this complaint, swear:

1. On 1 January, 2010 police received an anonymous letter indicating that the occupants from 26 Barwon Heads Connolly were selling cannabis. The only name given was "Joe".
2. The letter also stated that this person also had another house in Girrawheen or Koondoola area that he was using to grow the cannabis and the package it up for sale.
3. Inquiries by police have revealed that the owner of 26 Barwon Heads Connolly is a Yussef MONKTON, also known as Joe. Further inquiries revealed that he also owns the premises situated at 68 Burnham Way, Girrawheen.
4. Subsequent Western Power checks of 68 Burnham Way, Girrawheen indicate a high usage of electricity over the February to April period.
5. Surveillance of the premises situated at 68 Burnham Way, Girrawheen revealed that there was very little activity at the premises. The windows are all blacked out and the premises appear to be vacant.
6. The subscriber for Western Power at 68 Burnham Way, Girrawheen is listed as Joseph WALKER, who is not listed with police.
7. MONKTON does not have a criminal history with police.
8. I am of the opinion that the large amount of electricity being used at 68 Burnham Way is due to the hydroponic growing of cannabis.
9. I thereby request this warrant to search said premises for the mentioned items.

P M ALLAN Det S/C 7661  
Signed

J PEACE  
Justice of the Peace

WESTERN AUSTRALIA  
*MISUSE OF DRUGS ACT 1981*  
*MISUSE OF DRUGS REGULATIONS 1982*  
 SEARCH WARRANT

I, Justice PEACE, of Perth, being a justice of the peace and being satisfied by information on oath furnished by Detective Senior Constable ALLAN that there are reasonable grounds to suspect that the following thing referred to in section 23(1)(a), (b) or (c) of the *Misuse of Drugs Act 1981* plants, drugs, implements, documents and/or money may be ~~in or on the following vehicle\*~~ ~~[insert particulars of vehicle]~~ in or on the following premises or other place\* 68 Burnham Way, Girrawheen, hereby grant to the following police officer Detective Senior Constable ALLAN this search warrant authorising a police officer at any time or times within 30 days from the date of this search warrant to enter that vehicle, or those premises or that other place, and, subject to section 24 of that Act, to search that vehicle or those premises or that other place and any person and any baggage, package or other thing of any kind whatsoever found therein or thereon, using such force as is reasonably necessary and with such assistance as the police officer acting under this search warrant considers necessary.

Granted on 01 January 2010 at Joondalup.

.....J PEACE.....

Signature of justice of the peace  
granting search warrant.

\* Please delete inapplicable alternative.

O.C.O. Ref: **Insert Operation name or IR reference**

WARRANT EXECUTED BY : \_\_\_\_\_ DATE : \_\_\_\_/\_\_\_\_/19\_\_

OFFICERS ASSISTING : \_\_\_\_\_

DRUGS / PROPERTY SEIZED : \_\_\_\_\_

**ALL PERSONS PRESENT DURING EXECUTION OF WARRANT**

*Please complete ALL details*

1. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

2. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

3. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

4. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

5. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

6. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

7. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

8. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_

9. NAME \_\_\_\_\_ DOB \_\_\_\_/\_\_\_\_/\_\_\_\_ CHARGED : Y / N  
ADDRESS \_\_\_\_\_



WESTERN AUSTRALIA  
*MISUSE OF DRUGS ACT 1981*  
*MISUSE OF DRUGS REGULATIONS 1982*  
SEARCH WARRANT

I, [REDACTED], of Perth, being a justice of the peace and being satisfied by information on oath furnished by Detective Senior Constable ALLAN that there are reasonable grounds to suspect that the following thing referred to in section 23(1)(a), (b) or (c) of the *Misuse of Drugs Act 1981* plants, drugs, implements, documents and/or money may be ~~in or on the following vehicle\*~~ ~~[insert particulars of vehicle]~~/in or on the following premises or other place\* 68 Burnham Way, Girrawheen, hereby grant to the following police officer Detective Senior Constable ALLAN this search warrant authorising a police officer at any time or times within 30 days from the date of this search warrant to enter that vehicle, or those premises or that other place, and, subject to section 24 of that Act, to search that vehicle or those premises or that other place and any person and any baggage, package or other thing of any kind whatsoever found therein or thereon, using such force as is reasonably necessary and with such assistance as the police officer acting under this search warrant considers necessary.

Granted on 01 January 2010 at Joondalup.

.....  
Signature of justice of the peace  
granting search warrant.

COPY

## NOTICE TO OCCUPIER

This document is a copy of a search warrant which has been executed on these premises on \_\_\_\_/\_\_\_\_/2010 .

Items have / have not been seized pursuant to this warrant.

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Enquiries regarding any property seized should be directed to the undersigned, at the North West Metropolitan Detectives Office Telephone: 94000967

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OFFICER IN CHARGE OF SEARCH





## Chapter 3

# Bail and Surety Documentation

### 3.1. Introduction

Bail is the procedure by which a person who has been charged with a criminal offence is released from police or the court's custody.

In this chapter we explore the three main documents relating to bail:

- bail undertaking
- undertaking by responsible person
- surety undertaking

### 3.2. Bail undertaking form

#### What is the bail undertaking form?

The relevant legislation is the [Bail Act 1982](#) and the [Bail Regulations 1988](#).

A bail undertaking form is the written record of a defendant's release to bail. It is an important court record and its completion should be clear, precise and accurate.

The document is numbered [Form 6 – Bail Act – Bail Undertaking](#) and is in triplicate.

One bail undertaking may be completed for an accused facing multiple charges; however, a separate undertaking is required if an accused is being released to bail to different times/dates or different courts.

## How should it be filled out ?

Generally the document will be completed by a police officer or court officer, but if you are required to complete the document you should follow the following rules:

- write clearly
- the accused's current residential address only is to be used
- 'time and place of appearance' should nominate the full address of the court location
- any conditions of bail must be entered
- the last paragraph in the undertaking should only be completed if the accused is required to forfeit a specified amount; otherwise it should be deleted as per the marginal note
- make sure you make the necessary deletions to reflect whether the accused read the undertaking/ you read it to them/ you had it translated to them
- sign and stamp or clearly print your name
- the top copy is for the court, the second copy for lockup/prison and the third copy for the accused.

Failure to correctly complete the form can result in the accused remaining in custody.

## What should you say to the accused?

To ensure that the accused understands their responsibility you should ask them:

'Do you understand that by signing this undertaking you are required to appear at the XX Court on the XX date at XX time? If you fail to appear a warrant may be issued for your arrest and you will be liable to be charged with the further offence of breach of bail.'

If there is also a requirement to forfeit a specified amount of money, add the following:

'You will also be required to forfeit and pay the sum of XX.'

If there is a requirement to abide by conditions while on bail, they should be explained.

## 3.3. Undertaking by responsible adult

### When is a responsible adult undertaking needed?

A juvenile must have either a responsible person or a surety to be released to bail, unless the child is over the age of 17 years.

### What is the Responsible Person Undertaking Form?

A responsible person undertaking is a written record of a child's release to bail. It is an important court record and must be completed clearly, precisely and accurately. The document is numbered [Form 12 – Undertaking by Responsible Person](#), and is in duplicate. One undertaking may be completed for an accused facing multiple charges, but a separate undertaking is required if an accused is being released to bail to different times/dates or different courts.

### How should it be filled out?

The top half of the document is used to record the particulars of the accused, the charges, the date and time of appearance and any bail conditions.

The undertaking records the particulars of the responsible person.

Generally the document will be completed by a police officer or court officer, but if you are required to complete the document you should follow the rules as per the bail undertaking (above), but with the following differences:

- the undertaking is by the responsible person, not the accused
- the top copy is for the court, the second copy for the responsible person.

Failure to correctly complete the form can result in the accused remaining in custody.

### What should you say to the responsible person?

To ensure that the responsible person understands their responsibility, you should ask them:

‘Do you understand that by signing this undertaking you are taking responsibility to ensure that the accused will appear at the XX Court on the XX Date at XX time?’

If bail conditions are set you should add:

‘and that the accused will observe and abide by the bail conditions.’

## 3.4. Surety undertaking

### When is a surety undertaking needed?

If it has been decided that a surety is required to ensure that the accused complies with his bail obligations, then the surety must also sign an undertaking.

### What is the surety undertaking form?

A surety undertaking is the written record of:

- the surety application
- the approval or refusal of surety
- if approved, the surety undertaking.

One document may be completed for an accused facing multiple charges, but a separate document is required if an accused is being released to bail to different times/dates or different courts.

It is an important court record and must be completed clearly, precisely and accurately.

## How should it be filled in?

It is essential that the Surety Undertaking Form is completed correctly as incorrect documents can result in the state being unable to take enforcement action when appropriate.

The document consists of three parts:

- **Part A is the Notice to Surety** as to terms of bail. This part of the form will be completed with the same information as the bail undertaking for the accused.
- **Part B is the Declaration by Proposed Surety** and includes the JP's decision to approve or refuse the surety.
- **Part C is the Surety Undertaking** and also incorporates an endorsement as to the certificate to authorise the release of the accused.

Generally Part A of the document will be completed by a police officer or court officer, but if you are required to complete the document you should follow the following rules:

- write clearly
- the current residential address of the accused only should be used
- the time and place of appearance should nominate the full address of the court location
- any conditions of bail must be entered
- you must sign and stamp or clearly print your name.

Part B is completed by the surety applicant. Prior to completing this part, Form 9, Information for Proposed Surety, should be given to the applicant. If using a self carbonating form, remove pages 2 and 3.

When the applicant has completed Part B ensure that:

- they have signed the declaration
- they have indicated by necessary deletions whether
  - it is the intention to act as surety for the next appearance only, or for all future appearances
  - if going surety for future appearances, whether or not notice is required of such future appearances
- you make your decision regarding approval or refusal of the surety and complete and sign the form (stamp or print name also)
- if you refuse surety, enter your reasons for refusal.

If approved, Part C is completed by you by:

- writing clearly
- inserting the full name and current residential address of the surety
- inserting the amount of the surety obligation
- reading, translating or giving the undertaking to the surety to read and then getting them to sign the undertaking and reflect such method on the undertaking

- signing and stamping or clearly printing your name
- handing the copy of the undertaking to the surety and getting them to sign the acknowledgement.

Once the surety has been completed you must complete the certificate under section 11 (2), Authorisation to Release, which is found on the bottom of the Bail Undertaking copy for the lockup/prison. Once that is completed, you must then complete the bottom of Part C of the surety undertaking.

This certificate, as well as the surety undertaking, should be transmitted to the place where the accused is in custody so that their release can be arranged.

### What should you say to the surety?

To ensure that the surety understands their responsibility you should ask them:

‘Do you understand that by signing this undertaking you are agreeing to forfeit and pay to the State the sum of XX if the accused fails to appear in court as required?’ You should also add:

‘You must notify the court of any change of your address.’

## 3.5. Forms

Below is a list of all forms used under the Bail Act and Regulations. Although you will not have contact with many of these forms, it is essential that those you do use are fully and accurately completed.

Failure to correctly complete the forms can result in the accused remaining in custody.

Form 1	Information for the Accused
Form 2	Information Given by the Accused
Form 4	Notice to Appear where Bail is Dispensed with by the Court
Form 5	Bail Record Form
Form 6	Bail Undertaking
Form 7	Notice to Accused
Form 8	Part A – Notice to Surety as to Terms of Bail
	Part B – Declaration by Proposed Surety (delete ‘I do/do not’ where applicable)
	Part C – Surety Undertaking
Form 9	Information for the Surety
Form 10	Notice to Accused/Surety of Different time and Place for Appearance
Form 11	Warrant to Arrest Accused whose Bail Subject to a Home Detention Condition has been Revoked.
Form 12	Undertaking by Responsible Person
Form 14	Application to Cancel Surety/Responsible Person Undertaking
Form 15	Application for Forfeiture of Money under Surety Undertaking



Below is an indication of which forms go to whom.

Forms for the accused: 1 – 2 – 4<sub>1</sub> – 5 – 6<sub>3</sub> – 7 – 10<sub>1</sub>

Forms for the surety: 8 – 9 – 10<sub>2</sub> – 14<sub>2</sub>

Forms for the court: 4<sub>3</sub> – 6<sub>1</sub> – 10<sub>3</sub> – 12<sub>1</sub> – 14<sub>1</sub>

Forms for the police: 4<sub>2</sub> – 11 – 14<sub>3</sub>

Forms for the lockup/prison: 6<sub>2</sub>

Form for the responsible person: 12<sub>2</sub>

The smaller numbers shown above indicate what pages of these forms should be given out to the accused.

### 3.6. General information : particulars and restrictions of note

The relevant legislation is the [Bail Act \(WA\) 1982](#) and [Bail Regulations 1988](#).

The grant of bail enables a person who is in custody charged with a criminal offence, awaiting sentence or the outcome of an appeal, to be released from custody pending future appearance in court.

The *Bail Act* uses undertakings whereby a person charged may be released from custody upon entering into a bail undertaking. This may be with or without certain conditions, which may include that an accused is also required to have one or more persons prepared to enter into a surety undertaking. One of the undertakings is always that they will appear at the next court appearance.

A surety is required to undertake to forfeit a specified sum of money if the accused fails to attend court as required. The requirement for a surety undertaking will often be imposed when an accused is charged with a serious offence.

JPs will be asked to make decisions about releasing accused persons on bail.

Under the JP Act, once you reach 70 years of age you are no longer able to convene a court; once you reach 75 years of age you are no longer able to consider bail or surety applications.

### 3.7. Principles of bail

An adult accused is entitled to have bail ‘considered’ (section 5 *Bail Act*), and once bail is granted, has a right to be released as soon as is practicable.

A juvenile has a ‘qualified’ right to bail. Bail in relation to juveniles is outlined later in this chapter.

An accused person has the right for their release on bail to be considered ‘as soon as practicable’. This means that an arresting police officer will grant bail or will bring an accused before a court.

Bail must be considered whether or not the accused applies for bail (see section 7 *Bail Act*).

An accused is entitled to have bail considered each time they appear in court, but a JP does not have the right to overturn a fellow judicial officer’s decision unless there are new facts or information.

You can reconsider bail if the police or the accused want to change the terms and conditions.

The onus is on the police to prove that bail should not be granted; however, if the alleged offence was committed while the accused was on bail for other serious offences (see Schedule 2 of the *Bail Act*), the accused can be denied bail, and the onus is on them to show exceptional circumstances as to why they should be released.

The accused can initially be bailed for up to 30 days before having to reappear in court.

### 3.8. JPs' jurisdiction to grant bail

You can:

- consider bail for the initial appearance by an accused in, or in connection with, proceedings for an offence
- consider bail for an appearance in any court before a judicial officer by an accused when you adjourn proceedings for an offence, except for a committal of the charge to a higher court
- consider bail where a police officer has refused bail or where an accused has been arrested on an arrest warrant
- dispense with bail in the case of very trivial offending (Section 7A)
- if you are a country JP, consider bail for an accused who commits a serious offence whilst already on bail for a serious offence. Bail can only be granted in these circumstances where the accused shows you that there are exceptional circumstances as to why they should be released
- if you are a country JP, consider bail for an accused charged with a breach of restraining order
- if you are a JP, issue an arrest warrant when an accused fails to comply with their undertaking.

You cannot

- consider bail for an offence such as murder or wilful murder – such power rests with a judge of the Supreme Court or, if the accused is a child, the president of the Children's Court.
- overturn a fellow judicial officer's decision, unless there are new facts or information. The second justice only has power to reconsider and grant bail or vary conditions previously set if satisfied some new fact or facts are established or new circumstances have arisen which were not known or present when the original bail decision was made.

### 3.9. Dispensing with bail – what to consider

Where an accused appears before you in custody, you must consider bail whether an application is made or not.

In the case of a simple offence or an indictable offence where the offence is not a serious offence, you may dispense with the requirement for bail for an appearance in court by an accused.

A serious offence is an offence contained in Schedule 2 of the *Bail Act*, or an offence against section 51(2a) of the *Bail Act*.

You may dispense with bail:

- in respect of an appearance in court before the accused is convicted of an offence
- if it appears to you that bail would be granted, and that in the circumstances the completion of bail papers is an unnecessary imposition.

You should consider whether:

- the presence of the accused when the charge is dealt with is likely to be necessary for any reason or for sentencing purposes
- there are reasonable grounds to suspect the accused will not appear without the requirement of a bail undertaking.

Where bail has been dispensed with, the accused has a right to be at liberty until required to appear before a court for that offence.

### 3.10. Granting bail – what to consider

Is it likely that the accused:

- will fail to appear if released on bail
- could commit an offence while on bail
- is a danger to the safety of the community
- may interfere with witnesses
- needs to be held for their own protection?

In addition:

- is there a strong prosecution case
- is the conduct of the trial likely to be prejudiced
- is there the likelihood of a gaol term if found guilty
- is there any condition, including a surety, which could reasonably be imposed that could address any of the above?

Does the accused require an interpreter?

If an accused has difficulty reading or understanding English, then you should consider using an interpreter. You must use this service if you have any doubts about the accused's ability to understand proceedings if you are at a:

- police station, the police will assist you by ringing the telephone interpreter service
- DotAG or Mining Registrar court, the court staff will assist.

This service is always available.

If you have asked for an interpreter, do not proceed with a bail application without one assisting you.

### 3.11. Other considerations and requirements

- Section 26 (1) requires you to complete a Form 5 – Bail Record Form. This is essential when refusing bail so that another judicial officer can see the reasons for refusal.

The accused and the prosecutor are entitled to a copy of the Form 5.

- An accused case for bail can be deferred for up to 30 days to enable the gathering of information. An accused may be detained while photographs, fingerprints, a search or personal examination are taken.
- Any court officer, not just a judicial officer, can endorse an accused undertaking where a different time and place of hearing is recorded.
- Section 27 requires you to transmit all relevant papers to the court before which the accused is required to appear. This is not usually a problem as the paperwork is generally completed at a police station, lockup or courthouse where there are set procedures in place to convey paperwork to the court.

### 3.12. Bail conditions

When deciding to grant bail you are required to consider any conditions to be imposed to ensure the accused:

- attends at court appearances
- does not interfere with witnesses or evidence
- does not prejudice the proper conduct of the trial
- does not commit further offences while awaiting court appearances while they are subject to a bail undertaking.

There may be other important considerations particular to a matter. You have a wide range of requirements you can impose.

Conditions as to forfeiture and giving security may be imposed on the accused, including sureties. You may impose one or more conditions under this clause if you consider it will ensure the accused appears at the next court date.

Conditions imposed when granting bail must not be any more onerous on the accused than the judicial officer or authorised officer considers is required in the public interest, having regard to the nature of the offence for which the accused is in custody and the circumstances of the accused.

When releasing an accused on bail with conditions, you must ensure that the accused understands all of the conditions.

Conditions that you can impose include:

- a condition that the accused agrees to forfeit a specified amount of money if they fail to comply with any requirement of their bail undertaking
- a condition that a surety or sureties, usually no more than two, enter into an undertaking where they agree to forfeit a specified amount of money if the accused fails to comply with any requirement of the bail undertaking
- a condition that the accused and/or another provides security by way of a cash deposit
- a curfew
- an order to reside at a certain place
- an order for the surrender of the accused's passport
- reporting conditions

- home detention
- restricted access to certain areas or businesses, such as town sites, CBD or liquor outlets.

You can also impose protective conditions.

Protective conditions include:

- imposing a 'no contact with victim order', or an exclusion zone around an alleged victim's home or place of work
- imposing a condition that the accused is not to approach, contact or attempt to contact witnesses.

See Schedule 1 Part D [Bail Act](#) for a full list of possible conditions.

In addition to the above, conditions relating to juveniles can include:

- any person whom the child is not to associate or communicate with
- any place that the child is not to frequent
- the attendance by the child at a school or other educational institution.

### 3.13. Juvenile bail and the responsible person

Young offenders have what is called a 'qualified' right to bail. This means that unless there is a very strong reason not to, there is an assumption that an accused young person should be released on bail and not be held in custody.

They lose this qualified right if they commit a 'serious offence' (see Schedule 2 [Bail Act](#)) whilst on bail for other offences.

When considering bail, the same considerations as mentioned above for adults apply. However, where a juvenile is under the age of 17 the grant of bail is conditional upon a responsible person entering into an undertaking to ensure that the child complies with any requirement of bail.

A responsible person means a parent, relative, or employer or the person who in your opinion is in a position to both influence the conduct of the child and to provide the child with support and direction.

If the young offender is over the age of 17 and you think has sufficient maturity to live independently, then the requirement for a responsible person to sign their bail papers is not needed.

### 3.14. Accused fails or refuses to sign undertaking

Section 33 of the [Bail Act](#) addresses the situation when an accused fails or refuses to sign a bail undertaking. A JP has the power to order the accused to enter into the undertaking within a specified time; and at the expiry of that time if the accused still fails or refuses to sign, the same JP may deem by further order that the undertaking was entered into.

It is unlikely that an accused will refuse to sign the undertaking if you have clearly explained the terms and conditions of the bail and the accused has agreed to the undertaking. It is more

likely that this situation may occur where an accused leaves the court without signing their bail undertaking.

You can only exercise jurisdiction under this section if you:

- have informed the accused of the terms and effect of the order to enter into the undertaking and
- are satisfied that an accused is capable of entering into and complying with the undertaking.

### 3.15. Accused fails to comply with undertaking

Where an accused fails to comply with their undertaking, the court before which they were required to appear may issue a warrant to arrest them and bring them before that court or a court of like jurisdiction. JPs can issue such a warrant in regional courts, but not in metropolitan courts.

### 3.16. Bail procedure

Before considering bail you must ensure that the accused is able to understand and take part in proceedings. If the accused appears to be under the influence of drugs or alcohol the matter should be stood down until they are fit to appear.

If at any time you are unsure of what to do, order a short adjournment and discuss the matter in chambers with your fellow justice. You can also contact your local magistrate to seek advice.

Generally, the steps you should take in relation to bail are:

#### Step 1:

- Determine whether you have jurisdiction to consider bail (7.3).
- Determine whether the offence is a simple offence, an indictable offence or a serious offence.
- Determine whether there is to be an application for bail.
- Determine whether the prosecution has any objection to bail.

#### Step 2:

- Hear the application by the defence and ask the accused questions about their personal circumstances.
- Ask the prosecution for their arguments about granting bail and any conditions they would seek.

#### Step 3:

- Consider the application, taking into account the considerations outlined in (7.5 & 7.6).

#### Step 4:

Make a determination by:

- dispensing with bail (7.4)
- granting bail on the undertaking of the accused only
- granting bail on the accused's undertaking and with conditions on the accused

- granting bail on the accused's undertaking, with conditions and with a surety
- refusing bail (go to Step 7).

#### Step 5:

- Determine the conditions of bail if any (7.7).
- Make the conditions very clear to the accused and clearly state your reasons out loud so they will be recorded on the transcript of proceedings.

#### Step 6:

- Ensure that the accused understands the conditions of bail.

#### Step 7: Refusing bail

- If you decide to refuse bail you must complete Form 5 outlining your reasons for refusing bail.
- Ensure that you clearly state your reasons out loud so they will be recorded on the transcript of proceedings.
- Both JPs will be required to sign a remand warrant.

If you grant bail without a surety, ask the accused to wait in the back of the court until the paperwork is completed by the JSO.

If you order a surety, advise the accused that they will remain in custody until a surety has been approved. Both JPs will be required to sign a remand warrant.

## 3.17. Surety approvals

### Approving sureties

You will be called upon to approve the person who undertakes surety for an accused.

Part 5 of the [Bail Act](#) deals with sureties and surety undertakings. Section 35 describes what a surety is, section 39 explains how to determine if an applicant is suitable and the rest of the sections outline what should be done or taken into consideration when dealing with surety applications.

A surety must:

- be over the aged of 18 years
- have assets valued at more than the amount of the sum liable to be forfeited
- not be indemnified by the accused against any forfeiture caused by the failure of the accused to appear (this is a criminal offence).

The person applying to act as surety has to be given:

- [Form 9](#): information in writing regarding their rights, obligations and liabilities
- [Part A of Form 8](#): details of the terms and conditions of the bail order
- [Part B of Form 8](#): a signed declaration form that discloses to the JP all relevant information.

To determine if someone can go surety for an accused, you need to consider:

- the character and antecedents of the proposed surety
- the surety's connection with the accused
- the surety's ability to pay the amount liable to be forfeited without excessive hardship.

If you decide not to approve the proposed surety, you need to record why and inform the applicant and the accused.

Your decision is final. An applicant can re-apply to be surety if there are new facts or circumstances, or if they failed to adequately present their case at the previous application.

If you approve a person as surety, your duties as a JP in regard to sureties include:

- before signing the undertaking, ensuring that the surety has read, had read to them or had translated the completed Part A of Form 8, Form 9 and the undertaking.
- before signing the undertaking, ensuring all conditions that are required have been complied with by the surety
- after signing the undertaking, ensuring the surety is provided with a copy of the undertaking.

Time should be taken to ensure that the surety understands the terms and conditions of the surety and whether the surety can be extended until the matter is concluded or requires the signature of the surety at each appearance of the accused.

### Interstate sureties

JPs can approve interstate sureties using electronic communication or video links:

- the proposed surety can send/receive documents to/from the relevant official by electronic communication such as fax or email
- the documents will be considered signed if the full names of the proposed surety and the relevant officer appear in the appropriate place
- a receipt slip indicating that the paperwork has been received can be generated and a copy kept.

### Important points when considering a surety

The person signing a surety undertaking is making a declaration. If this declaration is false then that is a matter for the courts, not the JP witnessing the declaration.

Some JPs refuse to use a vehicle as an asset when considering an application, stating that if bail is breached and the vehicle is seized it may cause hardship. However, if a person applying to be a surety would like to use their vehicle, they can. If the accused does not appear in court then it is up to the magistrate to decide the consequence for the surety.

You are not required to check if a surety has outstanding fines, pending charges or a criminal record. They have made a declaration. All you need to do is inform the surety of the consequences of swearing a false declaration.



Give thought to the stability of the surety and their standing in the community: are they employed? If someone would like to enter into a surety undertaking for \$1,000 and they have lived in the same country town for the past 30 years and have been employed at the same place for the past 20 years, you should take this into account, even though it is not a physical asset.

The surety should be advised that if an accused fails to appear as required by his bail undertaking, the court shall summon the surety and may order forfeiture of the amount provided in the surety undertaking.

There may be instances where a JP has concerns in respect to aspects of the surety application. In these instances the JP may make any enquiries which he/she thinks desirable to make a decision, either to approve or not to approve the surety application.

If the JP does not approve of the applicant as a surety, it is important the JP record the reason in writing for refusal on the surety application and inform the applicant of those reasons.

### **Withdrawal of surety**

A surety may apply to an appropriate judicial officer for cancellation of his undertaking.

Upon application, the judicial officer shall cause the accused to appear before him or another officer, and may issue a warrant or summons for that purpose.

Upon appearance of the accused, the court may cancel the surety undertaking and either revoke bail and remand the accused in custody or grant fresh bail.

The surety is not relieved of his obligations until the accused is brought before the court for the review of bail.

## INFORMATION FOR ACCUSED

*BAIL ACT 1982 Section 8(1)(a)*

### Form 1

**NOTE: If an accused has difficulty reading English he may require that this form be translated for him.**

<b>1. Summary</b>	This form contains a summary of the main provisions of the <i>Bail Act 1982</i> relating to your bail rights. Only the general effect of those provisions is stated.
<b>2. Bail information form</b>	<p>You must be given a form (Information Given by Accused) which can be filled in by you to let the officer or court have sufficient information to make a decision on bail. In straight forward cases where bail is likely to be granted and sufficient information is held, the court or officer may advise you that you need not fill in the form.</p> <p>You do not have to complete any form or supply any information to an officer or court that is considering bail. However, if you do not do so, the decision may be delayed.</p> <p>Information supplied cannot be used against you at your trial.</p>
<b>3. At time of arrest</b>	<p>Upon your arrest, unless you are to be detained in custody for some other offence or reason, bail must be considered as soon as is reasonably practicable whether or not you apply for bail. If you are not released on bail, you must be taken before a court as soon as is reasonably practicable.</p> <p>Certain police officers, and for children only, certain community services officers, may deal with bail at this stage, except –</p> <ul style="list-style-type: none"> <li>(a) for the offence of murder;</li> <li>(b) where the arrest is made under a warrant;</li> <li>(c) where the arrest is made in an urban area (as defined) for a serious offence (as defined) alleged to have been committed while you were - <ul style="list-style-type: none"> <li>(i) on bail for another serious offence; or</li> <li>(ii) at liberty under an early release order in respect of another serious offence;</li> </ul> </li> </ul> <p>or</p> <li>(d) for an offence that involves breach of a violence restraining order.</li> <p>A justice may also deal with bail at this stage except -</p> <ul style="list-style-type: none"> <li>(a) for the offence of murder;</li> <li>(b) where the arrest is made in an urban area (as defined) for a serious offence (as defined) alleged to have been committed while you were - <ul style="list-style-type: none"> <li>(i) on bail for another serious offence; or</li> <li>(ii) at liberty under an early release order in respect of another serious offence; or</li> </ul> </li> <li>(c) for an offence that involves breach of a violence restraining order.</li> </ul>
<b>4. On appearance in court</b>	<p>For every later appearance in court unless you are to be detained in custody for some other offence or reason, bail must be considered afresh whether or not you apply for bail. However, this does not apply if you are charged with murder and have been refused bail by a judge of the Supreme Court unless –</p> <ul style="list-style-type: none"> <li>(a) there has been a change of circumstances; or</li> <li>(b) you did not present your case properly at the time when bail was refused.</li> </ul> <p>If you are in custody during a trial that extends beyond one day, a judicial officer need not consider your case for bail, however, you may apply for bail.</p>
<b>5. Warrant cases</b>	If you have been arrested under a warrant you must as soon as is practicable be taken either before a justice to consider bail or before the court which issued the warrant.
<b>6. Where charge is murder</b>	<p>If you are an adult charged with murder, an application for bail may be made by you or on your behalf to a judge of the Supreme Court.</p> <p>If you are a child charged with murder, you are to be taken before a judge of the Children's Court as soon as is practicable for consideration of bail, whether or not an application for bail is made by you or on your behalf.</p>
<b>7. Decision may be delayed</b>	A decision on bail may be delayed for up to 30 days if information has to be obtained or checked, but, on arrest, you must still be taken before the court as soon as is practicable.

This form should always be provided  
to the accused before they enter  
into a bail undertaking

<b>8. How decision to be made – adult</b>	<p>Bail for an adult accused, before conviction, is at the discretion of the court or officer who must take into account the points set out in clause 9(a) and (b) below.</p> <p>However, bail must be refused if the case comes within clause 8B below.</p>
<b>8A. How decision to be made – child</b>	<p>A child cannot be released on bail unless a responsible person gives a written undertaking to see that the child does what is required by the bail undertaking. The only exception to this is where the child is over 17 and is able to live independently without supervision.</p> <p>A child, before conviction, has a right to bail unless –</p> <ul style="list-style-type: none"> <li>(a) no such undertaking is entered into by a responsible person;</li> <li>or</li> <li>(b) the points in clause 9(a) and (b) below disclose a reason why bail should be refused; or</li> <li>(c) the case comes within clause 8B below.</li> </ul>
<b>8B. Where serious offence committed while on bail for another serious offence</b>	<p>In Schedule 2 to the <i>Bail Act 1982</i> there is a list of serious offences. You cannot be granted bail for one of these offences if it is alleged to have been committed while you were on bail for another serious offence, unless there are exceptional reasons why you should not be kept in custody.</p>
<b>9. Points to be considered</b>	<p>The main points to be taken into account in the bail decision are –</p> <ul style="list-style-type: none"> <li>(a) Before trial <ul style="list-style-type: none"> <li>(i) Whether you might fail to appear in court, or whether you might commit an offence, or endanger persons or property or interfere with witnesses.</li> <li>(ii) Whether you need to be kept in custody for your own protection.</li> <li>(iii) In the case of an adult, whether the prosecutor has put forward reasons for refusing bail.</li> </ul> </li> </ul> <p>In considering the points in (i) above the main factors to be taken into account are the seriousness of the offence, the strength of the prosecution case, your personal background and circumstances and whether you have failed to answer bail in the past.</p> <ul style="list-style-type: none"> <li>(b) During trial <p>Whether, in addition to the above, there is reason to believe that the trial may be adversely affected if you are not kept in custody.</p> </li> <li>(c) After conviction <p>If you have been imprisoned, bail may be granted for an appeal from a decision of the Magistrates Court or the Children's Court or, in exceptional circumstances, from a decision of a superior court.</p> <p>If you are awaiting sentence, bail may be granted at the discretion of an appropriate judicial officer.</p> <p>In either case the criteria in (a) above must be considered.</p> </li> </ul>
<b>10. Conditions</b>	<p>Bail conditions must be fair and reasonable in the circumstances of each case. The most common conditions are that there be an approved surety or sureties, and that the accused and any surety pay an amount of money to the State if the accused does not answer bail.</p> <p>In the case of a child, it is always a condition of bail that a responsible person give a written undertaking to see that the child does what is required by the bail undertaking. The only exception is where the child is over 17 and is able to live independently without supervision.</p>
<b>11. Accused to receive copy of bail decision form or court record</b>	<p>If your case for bail has been considered by a justice, a police officer, or a community services officer and –</p> <ul style="list-style-type: none"> <li>(a) you have been refused bail; or</li> <li>(b) you have been granted bail after having previously been refused;</li> <li>(ca) you have been granted bail for a serious offence while on bail for another serious offence; or</li> <li>(c) you notify the decision-maker that you are dissatisfied with any condition that has been imposed;</li> </ul> <p>a bail record form will be completed and you must, upon request, be given a copy of the form as soon as is reasonably practicable.</p> <p>If your case for bail has been considered by a magistrate or a judge you must, upon request, be given a copy of the court record showing the decision made and the reasons.</p>

<b>12. Bail undertaking</b>	<p>Before you are released on bail you must sign an undertaking to appear in court at the required time and to comply with other conditions which may be imposed; and, where applicable, must agree to pay the amount fixed by the authorised officer, justice or court if you do not appear.</p> <p>You must be given a copy of your bail undertaking and a form setting out your obligations and the consequences of a failure to comply with them. You may require that those documents be read or translated to you.</p>
<b>13. Release from custody</b>	<p>As soon as all papers have been completed and pre release conditions complied with, you must be released, but this can be delayed, if necessary, for such things as the taking of fingerprints, photographs or DNA profile.</p>
<b>14. Reconsideration of decision</b>	<p>If after arrest, a police officer (or, in the case of a child, a community service officer) refuses bail, you can ask a justice to reconsider bail. However, if a justice refuses bail before your initial appearance in court, another justice cannot grant bail.</p> <p>If on or after your initial appearance in court bail is refused, you may re-apply for bail only if you think that new facts have arisen, circumstances have changed or you did not present your case adequately.</p>
<b>15. Application to judge</b>	<p>If dissatisfied with a decision of an authorised officer, justice or magistrate, you may make an application to a judge to exercise the power to grant bail. However once you have made such an application you cannot make another unless –</p> <p>(a) new facts have been discovered or there has been a change of circumstances; or</p> <p>(b) you failed to present your case properly on the first application.</p>
<b>16. Sureties</b>	<p>There is a form which a person must complete before he can be approved as a surety.</p> <p>Each surety must also sign an undertaking which sets out his liabilities.</p>
<b>17. False information</b>	<p>If you knowingly or recklessly give false information in connection with bail, you are liable to a fine of up to \$1 000 or imprisonment for up to 12 months, or both.</p>
<b>18. Offence to compensate surety</b>	<p>It is an offence for you or any other person to compensate, or agree to compensate, a surety or a proposed surety for any liability which falls, or may fall on him, under the <i>Bail Act 1982</i>. The surety or the proposed surety and any person who is a party to the agreement also commits an offence. The penalty is a fine of up to \$1 000, or imprisonment for up to 12 months, or both.</p>

## Form 6

[reg. 6]

ORIGINAL

Bail Act 1982

Section 28(2)

### BAIL UNDERTAKING

Details of accused:

Surname: JONES Other names: Paul James

Date of birth: 9 / 9 / 1969

Address: 53 Black Road, JARRAHDALE

Telephone No. 08 9447 5858 Fax No. N/A Email address: pauljones@hotmail.com

Charge(s)/appeal/proceedings:

Possession of heroin, possession of smoking implement, steal M/V

Court Nos.

PE 3456-7/00, PE 2563/00

Time and place of appearance:

Perth Magistrates Court, 501 Hay Street, PERTH

(name and location of court)

on Mon day the 4th day of February 01 at 4.30 p.m.

Conditions to be observed during bail:

Personal undertaking \$5000 x \$5000 JP approved surety

To reside at 53 Black Road, JARRAHDALE

Curfew between 8pm and 7am. To report daily to Armadale Police Station.

### UNDERTAKING

I, the abovenamed accused —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- (c) that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

(1) Strike out if not applicable

(1) AGREE to forfeit \$ 5000 to the State if I am convicted of the offence of failing to appear as required.

ACCUSED

### CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

The above undertaking was entered into by the accused before me after I had <sup>(2)</sup> been informed by him that he had read the undertaking/read the undertaking to him/had the undertaking transmitted to him.

Signature: Jeff Melwood Official Designation: Justice of the Peace - WA Reg no 29461

Date: 8 January 2001

I acknowledge that I have been given a copy of the above bail undertaking and the form Notice to Accused on the reverse of that copy.

ACCUSED

COURT COPY

Accused must sign here

JP must print name and reg # or use a stamp

Accused must sign here

Marginal notes are important. Where not applicable, the text should either be struck through or deleted.

JP must sign here

This form is sent to the lockup/prison where the accused is being held, as soon as it is completed.



## Form 6

[reg. 6]

DUPLICATE

Bail Act 1982

Section 28(2)

### BAIL UNDERTAKING

Details of accused:

Surname: JONES Other names: Paul James

Date of birth: 9 / 9 / 1969

Address: 53 Black Road, JARRAHDALE

Telephone No. 08 9447 5858 Fax No. N/A Email address: pauljones@hotmail.com

Charge(s)/appeal/proceedings:

Possession of heroin, possession of smoking implement, steal M/V

Court Nos.

PE 3456-7/00, PE 2563/00

Time and place of appearance:

Perth Magistrates Court, 501 Hay Street, PERTH

(name and location of court)

on Monday the 4th day of February 2010 at 10 a.m.

Conditions to be observed during bail:

Personal undertaking \$5000 x \$5000 JP approved surety

To reside at 53 Black Road, JARRAHDALE

Curfew between 8pm and 7am. To report daily to Armadale Police Station.

### UNDERTAKING

I, the abovenamed accused —

UNDERTAKE —

- to appear at the time and place and to comply with the conditions set out above;
- that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

Marginal notes are important. Where not applicable, the text should either be struck through or deleted.

(1) Strike out if not applicable

(1) AGREE to forfeit \$ 5000 to the State if I am convicted of the offence of failing to appear as required

ACCUSED



Accused must sign here

### CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

The above undertaking was entered into by the accused before me after I had <sup>(2)</sup> been informed by him that he had read the undertaking/read the undertaking to him/had the undertaking translated to him.

Signature: Jeff Melwood Official Designation: Justice of the Peace - WA Reg no 29461

Date: 8 January 2010

I acknowledge that I have been given a copy of the above bail undertaking and the form Notice to Accused on the reverse of that copy.

ACCUSED



Accused must sign here

### CERTIFICATE TO AUTHORISE RELEASE

I certify for the purposes of section 11(3) of the Act that the accused is entitled to be at liberty on bail as provided in section 11 of the Act.

Signature: Jeff Melwood Official Designation: Justice of the Peace - WA Reg no 29461

### COPY FOR LOCKUP/PRISON

JP must sign here



This is the authority to release the prisoner, if this is not signed then the prisoner will not be released, even if everything else is signed.



JP must sign here

## Form 6

[reg. 6]

TRIPPLICATE

Bail Act 1982

Section 28(2)

### BAIL UNDERTAKING

Details of accused:

Surname: **JONES** Other names: **Paul James**

Date of birth: **9 / 9 1969**

Address: **53 Black Road, JARRAHDALE**

Telephone No. **08 9447 5858** Fax No. **N/A** Email address: **pauljones@hotmail.com**

Charge(s)/appeal/proceedings:

**Possession of heroin, possession of smoking implement, steal M/V**

Court Nos.

**PE 3456-7/00, PE 2563/00**

Time and place of appearance:

**Perth Magistrates Court, 501 Hay Street, PERTH**

(name and location of court)

on **Monday** the **4th** day of **February** 20**01** at **10 a.m.**/p.m.

Conditions to be observed during bail:

**Personal undertaking \$5000 x \$5000 JP approved surety**

**To reside at 53 Black Road, JARRAHDALE**

**Curfew between 8pm and 7am. To report daily to Armadale Police Station.**

### UNDERTAKING

I, the abovenamed accused —

UNDERTAKE —

- (a) to appear at the time and place and to comply with the conditions set out above;
- (b) that if I am notified by a judicial officer or court official of a different time, or a different time and place, for my appearance, I will appear at the time, or at the time and place, so notified;
- (c) that if I fail to appear in court as required I will as soon as is practicable appear at the court when it is sitting;

(1) Strike out if not applicable

(1) AGREE to forfeit \$**5000** to the State if I am convicted of the offence of failing to appear as required.

*Paul Jones*

ACCUSED

### CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

The above undertaking was entered into by the accused before me after I had <sup>(2)</sup> been informed by him that he had read the undertaking/read the undertaking to him/had the undertaking translated to him.

Signature: *Jeff Melwood* Official Designation: *Justice of the Peace - WA Reg no 29461*  
Date: *8 January 2001*

I acknowledge that I have been given a copy of the above bail undertaking and the form Notice to Accused on the reverse of that copy.

ACCUSED

### TO THE ACCUSED

THE NOTICE ON THE REVERSE OF THIS FORM SETS OUT YOUR OBLIGATIONS AND THE CONSEQUENCES OF YOUR FAILURE TO COMPLY WITH THEM. YOU SHOULD READ THE NOTICE OR REQUIRE THE PERSON WHO TAKES YOUR BAIL UNDERTAKING TO READ IT TO YOU OR HAVE IT TRANSLATED TO YOU.

Marginal notes are important. Where not applicable, the text should either be struck through or deleted.

JP must sign here

Accused must sign here

Accused must sign here

## NOTICE TO ACCUSED

**BAIL ACT 1982 PART V Section 28(2)**

### Form 7

#### 1. Appearance in court

You must appear at the time and place mentioned in your undertaking and surrender yourself into the custody of the court. You must then remain in custody until you are entitled to be released.

#### 2. Bail Conditions

While you are on bail you must also observe the conditions set out in your undertaking.

If you fail to comply with a condition set out in your undertaking imposed for the purposes mentioned in clause 2(2)(c) or (d) of Part D of Schedule 1 to the Act you commit an offence. The penalty for the offence is a fine up to \$10,000 or imprisonment for up to 3 years, or both.

#### 3. Notification Of Later Time / Place

If you are notified either by a judicial officer or by a court official of a different time, or a different time and place, for your appearance, then you must appear at the time, or at the time and place, so notified. Such notification may be given to you by a judicial officer at a hearing. If a notification is given to you by a court official it must be in writing handed to you personally, or sent to you by post or electronic communication.

#### 4. Failure to Attend

Should you fail to appear in court as required you must as soon as is practicable appear at the court when it is sitting.

#### 5. Consequences Of Non-Appearance

If, without reasonable cause, you do not appear in court as mentioned in paragraph 1 or 3 above, you commit an offence. If you do not appear as mentioned in paragraph 4 above you commit a further offence. The penalty for each offence is a fine of up to \$10,000 or imprisonment for up to 3 years, or both.

You will also be liable to an order to pay the amount of money, if any, referred to in your bail undertaking.

If your non-appearance continues for more than 1 year that amount will be automatically forfeited.

You may also be ordered to pay some or all the cost of your return to custody.

In addition, any surety will be liable to an order to pay the amount of money referred to in his/her surety undertaking.

#### 6. Change of Address etc.

You must, in writing, notify the court at which you are to appear of any change of residential address. It is an offence not to do so, without reasonable cause.

The maximum penalty for the offence is fine up to \$1000.

#### 7. When Court May Reconsider Bail

Your bail may be interrupted and you may be brought before the court for reconsideration of bail in the following situations:

- a) if your surety or a police officer reasonably believes that:
  - (i) you are not likely to appear in court as required; or
  - (ii) a bail condition is being, has been or is likely to be broke by you,
- b) if a police officer reasonably believes that the court should reconsider your surety or the security (*if applicable*)
- c) if your bail is for an appeal and a police officer reasonably believes that you have been guilty of delaying the hearing of the appeal; or
- d) if your surety applies to the court for cancellation of his/her surety undertaking.

In case of urgency where your surety reasonably believes that you are not likely to appear in court as required or that you have broken any bail conditions, he/she may arrest you and hand you over to a police officer to be taken before the court for reconsideration of bail.

**In the case of an accused who is a child, the references to 'surety' in this part of the form includes the 'responsible person'.**

#### 8. Interruption Of Bail On Application By Responsible Person

If you are a child and the responsible person wants to have his or her undertaking cancelled, you may be taken into custody until the application is dealt with by a police officer and another responsible person takes over.

**Footnote:** A responsible person is a person who gives an undertaking under clause 2(3)(c) of Part C of Schedule 1 to ensure that a child does what is required by his/her bail undertaking.



The rear of the third copy of Form 6 (when using the pre-carboned copies) includes Form 7.

Computer generated copies of the forms will have a separate sheet to cover Form 7.

**Make sure that the accused is aware of the conditions stated on this form.**

You don't need to read out every clause but you should reinforce areas relating to non-appearance and change of address.



## PART A — NOTICE TO SURETY AS TO TERMS OF BAIL

1. NAME AND ADDRESS OF ACCUSED  
 JONES ..... Paul James .....  
 Surname ..... Other Names .....  
 53 Black Road, JARRAHDALE .....  
 Address .....
2. CHARGE(S)/APPEAL/PROCEEDINGS  
 Possession of heroin, possession of smoking implement, steal M/V .....  
 .....
3. COURT AND CHARGE NOS.  
 PE 2458-9/00, PE 2564/00 .....  
 .....
4. WHERE AND WHEN ACCUSED REQUIRED TO APPEAR  
 Perth Magistrates Court, 501 Hay Street, PERTH .....  
 Name and location of court .....  
 ON Monday the 4th DAY OF February, 201 ..... AT 10 AM PM .....  
 .....
5. BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.  
 .....  
 .....  
 .....



SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

 Jeff Melwood  
 Justice of the Peace - WA Reg. no 29461

## PART B — DECLARATION BY PROPOSED SURETY

## Warning

It is an offence punishable by a fine of up to \$1 000 or imprisonment for up to 12 months, or both, to knowingly or recklessly give false information for the purpose of obtaining approval as a surety.

1. Proposed Surety ..... Personal undertaking \$5000 x \$5000 JP approved surety.  
 To reside at 53 Black Road, JARRAHDALE. Curfew between 8pm and 7am. To report daily to Armadale Police Station.  
 Surname JONES ..... Other names ..... Donna Jane .....
2. Date of birth 7 June 1984 .....
3. Occupation Hairdresser .....  
 Employer details Fred's Hair Salon .....
4. Address 12 Hyde Terrace, JARRAHDALE .....  
 Telephone No. (08) 9447 5858 ..... Fax No. N/A .....  
 Email address N/A .....
5. (a) Relationship <sup>(1)</sup> to accused .....  
 Wife .....  
(1) e.g. parent, friend, employer.  
 (b) Period for which known defendant .....  
 Six years .....

(See reverse.)

JP must  
sign and  
print name/  
JP Reg no  
here

6. Financial position

<b>Assets</b>	Value (\$)
Real estate (address) .....	.....
Vehicle(s) (make, model and reg.no) <b>2004 Nissan Pulsar 1BF 449</b> .....	<b>\$13000</b>
Electrical equipment (TV, stereo, DVD etc) .....	<b>\$10000</b>
Furniture (excluding white goods) .....	<b>\$23000</b>
Bank accounts <b>ANZ account 025 325 - 52356845</b> .....	<b>\$8000</b>
Shares .....	.....
Other (please state) .....	.....


  

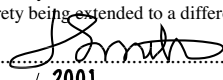
<b>Liabilities</b>	Value (\$)
Mortgage(s) (specify financial institution) .....	.....
Fines (including fines registered with the Fines Enforcement Registry) .....	.....
Credit cards .....	<b>\$2000</b>
Loans .....	.....
Other (please state) .....	.....

7. Character

Do you have any convictions, or are any criminal proceedings pending against you? (tick appropriate box)  
☐ YES ☒ NO  
 If yes, give details .....

8. Have you been, or are you at present, a surety for any person? (tick appropriate box)  
☒ YES ☐ NO  
 If yes, give details **previously surety for husband** .....

9. I, **Donna Jane Smith** ....., hereby apply for approval of myself as a surety.  
 (full name)  
 I DECLARE THAT —  
 (a) the above particulars relating to me are true;  
 (b) I have not received any money or other compensation, or promise of money or other compensation, to cover any liability I may incur as a surety.  
 I ACKNOWLEDGE that I have been given —  
 (a) Part A of Form 8 (Notice to Surety as to Terms of Bail) duly completed; and  
 (b) Form 9 (Information for Proposed Surety).  
 I STATE that —  
 (a) ☒ do not \* agree to my obligations as a surety being extended to any time, or time and place, appointed for the accused's appearance which is different from that shown in paragraph 4 of the notice.  
 (b) ☒ do not \* require notice to be given to me of any such different time or time and place.  
 (c) ☒ do not \* agree to my obligations as a surety being extended to a different time substituted during trial.   
 \* show which

Signature of applicant  .....


Date **2** / **1** / **2001** .....


**NOTICE TO PROSECUTOR**  
 Prosecutor notified of application orally/in writing  
 Date ....., Time ....., Name of person notified .....,  
 Signature .....,  
 Designation .....

Response by prosecutor (if any):

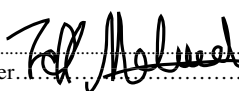
JP must delete approved or not approved as appropriate

**DECISION**

Applicant approved/not approved 

Reasons for refusal to approve:  If refused JP must write brief details why refused here and inform applicant

Applicant informed of reasons:

Signature and designation of surety approval officer:  **Jeff Melwood**  
 Justice of the Peace - WA Reg. no. 29461

One "do/not" MUST be selected. If an option is not selected at (c) the accused may spend time in custody after their next appearance unnecessarily.

## Form 8

[reg. 6]

Bail Act 1982

Sections 35 and 37(1)(a) &amp; (c)

## PART A – NOTICE TO SURETY AS TO TERMS OF BAIL

1. NAME AND ADDRESS OF ACCUSED  
 JONES ..... Paul James .....  
 Surname ..... Other Names .....  
 53 Black Road, JARRAHDALE .....  
 Address .....
2. CHARGE(S)/APPEAL/PROCEEDINGS  
 Possession of heroin, possession of smoking implement, steal M/V .....
3. COURT AND CHARGE NOS.  
 PE 3458-9/00, PE 2564/00 .....
4. WHERE AND WHEN ACCUSED REQUIRED TO APPEAR  
 Perth Magistrates Court, 501 Hay Street, PERTH .....  
 Name and location of court .....  
 ON Monday the 4th day of February 2011 at 10 AM .....  
 AT 10 AM .....
5. BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.  
 Personal undertaking \$5000 x \$5000 JP approved surety.  
 To reside at 53 Black Road, JARRAHDALE .....  
 Curfew between 8pm and 7am. To report daily to Armadale Police Station. ....

## SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

## PART C

## SURETY UNDERTAKING

(1) For an explanation see Form 9.

(2) Delete (b) if surety's obligations are not to cover this.

(3) Delete words in brackets if notice is not required.

(3A) Delete (d) if surety's obligations are not to cover this.

(4) Delete as appropriate.

I, Donna Jane Smith, 53 Black Road, JARRAHDALE, .....

undertake and agree, to forfeit \$5000 ..... to the State, in terms of section 49 of the *Bail Act 1982* <sup>(1)</sup>, if the abovenamed accused.

- (a) fails to appear at the time and place specified in Part A above; or
- (b) <sup>(2)</sup> fails to appear at a different time, or time and place, at which he is duly required to appear (provided that I have been notified of such time, or time and place) <sup>(3)</sup>; or
- (c) upon a failure to so appear, also fails to appear as soon as is practicable thereafter at the court when it is sitting; or
- (d) fails to appear at a different time substituted during his trial (3A).

Under section 44(4) of the Act the undertaking in (d) applies despite an amendment to the bail conditions if a statement that the amendment is of a minor nature has been made under section 31A(4) of the Act.

I acknowledge that before entering into this undertaking <sup>(4)</sup> I read/had read to me/had translated to me Part A of this form duly completed, Form 9, and this undertaking.

Signature of Surety.....

Surety must sign here

The above undertaking was entered into by the abovenamed, before me after I had <sup>(4)</sup> been informed by him that he had read/read to him/had translated to him Part A of this form duly completed, Form 9 and this undertaking; and after I had ensured that he had complied with all conditions imposed on him.

Signature..... Jeff Melwood Justice of the Peace - WA Reg no 29461  
 Official Designation..... Date 2 / 1 / 2011

I acknowledge that I have been given a copy of the above undertaking as completed

Signature of Surety..... Date 2 / 1 / 2011

## ENDORSEMENT UNDER SECTION 45(3)

I certify that on Friday 1 February 2011 I required the accused to appear at Perth Magistrates Court Monday the 4th day of February 2011 at 10 AM p.m. and that, under section 45(1)(a) of the Act, I orally notified the surety thereof.

Signature..... Jeff Melwood Justice of the Peace - WA Reg no 29461  
 Official Designation..... Date 2 / 1 / 2011

Authorised Officer who is to issue certificate under section 11(3) of the Act advised (show date, time, place and name of person advised)..... Jeff Melwood

Signature..... Jeff Melwood Justice of the Peace - WA Reg no 29461

Marginal notes are important. Where not applicable, the text should either be struck through or deleted.

JP must sign and print name/JP Reg no here

Surety must sign here

JP should complete showing date lockup/prison advised, time and place e.g. Hakea Prison and person advised (name and position e.g. Bail coordinator)

JP must sign and print name/JP Reg no here

## Form 8

[reg. 6]

Bail Act 1982

Sections 35 and 37(1)(a) &amp; (c)

## PART A — NOTICE TO SURETY AS TO TERMS OF BAIL

1. NAME AND ADDRESS OF ACCUSED  
 Surname JONES Other Names Paul James  
 Address 53 Black Road, JARRAHDALE
2. CHARGE(S)/APPEAL/PROCEEDINGS  
Possession of heroin, possession of smoking implement, steal M/V
3. COURT AND CHARGE NOS.  
PE 3458-9/00, PE 2564/00
4. WHERE AND WHEN ACCUSED REQUIRED TO APPEAR  
Perth Magistrates Court, 501 Hay Street, PERTH  
 Name and location of court  
 ON Monday the 4th day of February 2001 at 10 AM PM
5. BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.  
Personal undertaking \$5000 x \$5000 JP approved surety.  
To reside at 53 Black Road, JARRAHDALE.  
Curfew between 8pm and 7am. To report daily to Armadale Police Station.

SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

## PART C

## SURETY UNDERTAKING

(1) For an explanation see Form 9.

(2) Delete (b) if surety's obligations are not to cover this.

(3) Delete words in brackets if notice is not required.

(3A) Delete (d) if surety's obligations are not to cover this.

I, Donna Jane Smith 53 Black Road, JARRAHDALEundertake and agree, to forfeit \$ 5000 to the State, in terms of section 49 of the *Bail Act 1982* <sup>(1)</sup>, if the abovenamed accused.

- (a) fails to appear at the time and place specified in Part A above; or
- (b) <sup>(2)</sup> fails to appear at a different time, or time and place, at which he is duly required to appear (provided that I have been notified of such time, or time and place) <sup>(3)</sup>; or
- (c) upon a failure to so appear, also fails to appear as soon as is practicable thereafter at the court when it is sitting; or
- (e) fails to appear at a different time substituted during his trial (3A).  
*Under section 44(4) of the Act the undertaking in (d) applies despite an amendment to the bail conditions if a statement that the amendment is of a minor nature has been made under section 31A(4) of the Act.*

I acknowledge that before entering into this undertaking <sup>(4)</sup> I read/had read to me/had translated to me Part A of this form duly completed, Form 9, and this undertaking.Signature of Surety 

Surety must sign here

Marginal notes are important. Where not applicable, the text should either be struck through or deleted.



You must make sure that the surety understands the consequences if the accused does not attend court.

## Form 9

### *BAIL ACT 1982*

#### Sections 37 (1) (b)

NOTE: If a proposed surety has difficulty with reading English he may ask to have this form translated to him

**1. Contents of this form**

This form contains a summary of the main provisions of the *Bail Act 1982* which relate to sureties for bail. Only the general effect of those provisions is stated.

**2. Meaning and function of surety**

A surety, or a number of sureties, may be required as a condition of the release of an accused on bail.

The intention is to have someone to make sure that the accused appears in court when required.

It is the duty of a surety to do this.

A person becomes a surety by agreeing in writing to pay an amount of money to the State if the accused does not appear. This agreement is called a surety undertaking (see Part C of Form 8).

It may also be a bail condition that a surety deposit cash or other security to cover the amount referred to.

**3. Information to be given to surety**

As well as this form, a proposed surety must be given a form (Part A of Form 8) showing details of the accused's bail. The proposed surety must read the forms or have them read to him.

**4. Application for approval**

A proposed surety must apply for approval and be approved by an authorised official. He must complete a form (Part B of Form 8) for this purpose

**5. Disqualified persons**

A person cannot be approved as a surety if:

- a) he is under 18 years of age; or
- b) his net financial worth is less than the amount he would have to pay if the accused were to default, except where security is provided; or
- c) it appears that the accused or some other person will be compensating the surety for any loss he incurs.

**6. Points to be Considered**

Whether a person is suitable to be a surety depends mainly on:

- a) his character and past history;
- b) his connection with the accused;
- c) his ability to pay, without severe hardship, if the accused were to default.

Reasons for not approving a proposed surety must be given by the official concerned.

JP must always provide this form to person applying to be a surety

**7. Reconsideration**

A person may re-apply for approval of himself as a surety to the officer who made the decision, or someone acting in his stead, only if he thinks that circumstances have changed or that he did not put his case properly.

**8. Copy of Surety Undertaking**

A surety must be given a copy of his surety undertaking.

**9. Remands etc. of accused to later date**

A surety undertaking will refer to the time and place of the accused's appearance. If his case is to be dealt with at a different time, or a different time and place, the surety will not be liable for the accused's non-appearance at such time and place unless the surety undertaking expressly says so. In that event, the surety may insist on being notified of the different time, or time and place.

**10. Change of address.**

A surety must, in writing, notify the court where the accused is to appear of any change to the surety's residential address. It is an offence not to do so without reasonable cause. The penalty is a fine of up to \$1,000.

**11. Action by surety where accused likely to default**

A surety who reasonably believes that:

- a) the accused is not likely to appear in court; or
- b) a bail condition is being, has been or is likely to be broken;

should notify the prosecutor or a police officer in writing and that person may have the accused brought before the court. However the surety's obligations continue until the accused is brought before the court.

In cases of urgency where the surety reasonably believes that the accused is not likely to appear in court or that he has broken any bail conditions, he has the power to arrest the accused. The surety must hand him over as soon as is practicable to a police officer who is required to take the accused before the court.

Once the accused has been so taken before the court the surety undertaking will not be continued in force without the surety's consent.

**12. Cancellation of surety undertaking**

A surety may apply to an appropriate judicial officer for cancellation of his surety undertaking. The application must be made before the time for the accused's appearance. However, the surety's obligations continue until the accused is brought before the court and an order is made cancelling the surety undertaking.

**13. Enforcing payment by surety**

Where an accused fails to appear in court, a surety will be summoned before the court and an order for payment of the amount of his undertaking will be made against him unless he shows that the accused had a reasonable cause for failing to appear.

If such an order is made, but at a later date the surety learns that there was a reasonable cause for the accused's failure, he may apply to the Governor for a refund.

**14. Cases for hardship**

If excessive hardship would result from ordering payment by a surety, and it would not be removed by allowing time to pay or meeting payment from a security given by the surety, the court may decline to order payment by the surety or may reduce the amount to be paid. However, the hardship must be due to a change of circumstances since the surety undertaking was entered into.



The main difference between this form and the surety undertaking is that the responsible person guarantees performance and appearance where as the surety only guarantees appearance.

**UNDERTAKING BY RESPONSIBLE PERSON**  
**BAIL ACT 1982**  
*Schedule 1, Part C, clause 2(3)(c)*  
**Form 12**

<b>1. Accused Details</b>	<b>Full Name</b>	Pamela Lee JONES		
	<b>Address</b>	15 Smith Street ARMADALE	<b>Date of Birth</b>	12 May 1988
	<b>Email Address/ Fax No.</b>	jones@hotmail.com	<b>Telephone No/s</b>	9200 4658
<b>2. Charge(s)/ Appeal (s)/ Proceeding</b>	(Insert brief particulars)			
	Disorderly conduct, false name, resist arrest			
<b>Court Ref No/s</b>	JO 1234-6/07			

<b>3. Time &amp; Place of of Appearance</b>	On	Monday the 20th day of March	20 08	at	10 am/pm	
	Court:	Joondalup Magistrates Court				
	No: 21	Street:	Reid Promenade			
	Suburb: Joondalup	Postcode:				

<b>4. Conditions to be observed during bail</b>	Curfew from 7pm - 8am. Must reside at 41 Atwell Street ARMADALE
---	--

**UNDERTAKING**

<b>5. Applicant details</b>	<b>Full Name</b>	Sullivan Paul STORAGE	<b>Date of Birth</b>	1 July 1973
	<b>Relationship to accused</b>	Uncle	<b>Period known accused</b>	20 years
<b>6. Address</b>	41 Atwell Street ARMADALE			

I, (full name) Sullivan Paul Storage

Give the following undertakings:

- a) I will ensure that the accused appears at the time and place specified above.
- b) if under section 31(3) of the Act, the accused is required to appear at a different time, or a different time and place, I will ensure that the accused, appears at that time and place if I have been notified in writing of the different requirement.
- c) If the accused fails to appear as required, I will ensure that the accused, as soon as is practicable, appears at the court at which the accused was required to appear when that court is sitting.
- d) I will ensure that the accused complies with the bail conditions.

Signature of Responsible Person:

*[Signature]*



Responsible  
person  
must sign

Date: 10 March 2008

**CERTIFICATE AS TO UNDERTAKING**

The above undertaking was entered into by the responsible person before me after I had been informed by him/her that he/she:

Tick [✓] appropriate box

- ☒ had read the undertaking
- ☐ had the undertaking read to him/her
- ☐ had the undertaking translated to him/her

Signature:

*[Signature]*

Jeff Melwood  
Justice of the Peace  
WA Reg. no 29461

Date: 10 March 2008

Judicial Officer / Justice / Registrar / Authorised Officer

I acknowledge that I have been given a copy of the above undertaking.

Signature of Responsible Person:

*[Signature]*



Responsible  
person  
must sign

Date: 10 March 2008

**Court Copy**

JP must sign  
and print  
name and  
JP no



**UNDERTAKING BY RESPONSIBLE PERSON****BAIL ACT 1982***Schedule 1, Part C, clause 2(3)(c)***Form 12**

<b>1. Accused Details</b>	<b>Full Name</b>					
	<b>Address</b>		<b>Date of Birth</b>			
	<b>Email Address/ Fax No.</b>		<b>Telephone No/s</b>			
<b>2. Charge(s)/ Appeal (s)/ Proceeding</b>	(Insert brief particulars)					
<b>Court Ref No/s</b>						
<b>3. Time &amp; Place of of Appearance</b>	On	day the	day of	20	at	am/pm
	Court:					
	No:		Street:			
	Suburb:				Postcode:	
<b>4. Conditions to be Observed during Bail</b>						
<b>UNDERTAKING</b>						
<b>5. Applicant Details</b>	<b>Full Name</b>		<b>Date of Birth</b>			
	<b>Relationship to Accused</b>		<b>Period known accused</b>			
<b>6. Address</b>						
I, (full name)						
Give the following undertakings:						
a) I will ensure that the accused appears at the time and place specified above.						
b) if under <i>section 31(3)</i> of the Act, the accused is required to appear at a different time, or a different time and place, I will ensure that the accused, appears at that time and place if I have been notified in writing of the different requirement.						
c) If the accused fails to appear as required, I will ensure that the accused, as soon as is practicable, appears at the court at which the accused was required to appear when that court is sitting.						
d) I will ensure that the accused complies with the bail conditions set out above.						
Signature of Responsible Person:						
<b>CERTIFICATE AS TO UNDERTAKING</b>						
The above undertaking was entered into by the responsible person before me after I had been informed by him/her that he/she:						
<i>Tick [✓] appropriate box</i> <input type="checkbox"/> had read the undertaking <input type="checkbox"/> had the undertaking read to him/her <input type="checkbox"/> had the undertaking translated to him/her						
Signature:			Date:			
Judicial Officer / Justice / Registrar / Authorised Officer						
I acknowledge that I have been given a copy of the above undertaking.						
<b>Responsible Person Copy</b>						

This is a duplicate copy and must always be provided to Responsible Person.







## Chapter 4

# Court documentation – notifying the accused of the charges and first court appearance

All accused are provided with a prosecution notice, which describes what they are entitled to know before they attend court. If the accused has been arrested they will be either brought before the court as soon as practicable, or bailed to appear at a specific time and court.

If the accused is not arrested, they will be served with either a summons or a court hearing notice, as well as the prosecution notice.

In this chapter we explore these documents, which may come before you when you are in court or which you may be required to complete and sign.

### 4.1. Prosecution notices

All criminal proceedings start in the Magistrates Court commence by way of a [prosecution notice \(PN\)](#).

A PN is a form that contains:

- the charge or charges, both in written form and the specific section of the relevant statute under which the person is charged
- the date on and the place at which the offence is said to have taken place
- the name, address and birth date or other identifying features of the accused
- the arresting officer's details.

A PN must be in the correct form.

A PN is drawn up by a police officer, an authorised person ([defined in section 20 \(1\) of the CPA](#) – meaning a person from another prosecuting authority) or the staff of the Attorney General, the Solicitor General or the Director of Public Prosecutions.

A PN can be signed by:

- If the representative of the prosecuting authority is an 'authorised investigator', that person alone (CPA s23(3)(a)(i) and (iii))
- A representative of the prosecuting authority or the person commencing the prosecution  
AND
- Either a JP or a prescribed court officer, who is to witness the signature of the representative of the prosecuting authority (CPA s23(3)(a)(ii) and (b)).

A PN must be witnessed by you or a court officer when:

- the representative of the prosecution authority is not an authorised investigator
- the PN is to accompany an arrest warrant for the alleged offender.

Where the PN is being witnessed by you:

- the PN must be signed in your presence
- it should not be filled in by you.

However, if a PN is to be attached to a warrant for the accused's arrest, you may be asked to witness the PN under oath. There are also occasions where another written law requires a PN to be witnessed.

You cannot issue the arrest warrant, but you can administer the oath and witness the PN.

There should only ever be one originally signed PN.

When asked to witness a PN, you should check any limitation of time for making a prosecution notice relating to some cases. For example, section 21(2) of the CPA states that in the case of a simple offence the prosecution notice must be commenced within 12 months of the date on which the offence was allegedly committed.

## 4.2. Summons to appear

If a defendant is not under arrest or otherwise in custody and the PN alleges one or more indictable offences, the prosecutor must personally issue a summons to appear (if they are an authorised investigator) or apply to a JP to issue the summons.

A summons to appear requires the accused person to appear in court.

You will only sign one original PN; however, the prosecutor may request that you sign more than one court hearing notice or summons.

A JP must not sign and issue a summons unless:

- it is in a prescribed form
- if issued in the first instance, it is attached to a copy of the PN
- if issued after service of the PN, it identifies the charges in the PN
- it states when and where the court will deal with the prosecution notice
- it requires the accused to appear at that time and place
- it contains any other information that may be prescribed.

### 4.3. Court hearing notice

If a defendant is not under arrest or otherwise in custody and the PN alleges one or more simple offences, the prosecutor must personally issue a court hearing notice (if they are an authorised investigator) or apply to a JP to issue the notice.

If the accused is a corporation, irrespective of whether the alleged offences on the PN are indictable or simple, the prosecutor must personally issue a court hearing notice (if they are an authorised investigator) or apply to a JP to issue the notice.

You must not issue a court hearing notice unless:

- it is in a prescribed form
- if issued in the first instance, it is attached to a copy of the PN
- if issued after service of the prosecution notice, it identifies the charges in it
- it states when and where the court will deal with the prosecution notice
- it contains information for the accused as outlined in section 33(2) of the [Criminal Procedure Act 2004](#)
- it contains any other information that may be prescribed.
- An accused who is the subject of a court hearing notice:
  - does not have to appear
  - can plead guilty or not guilty to the charges by written notice
  - can, on a plea of guilty, explain in writing why they committed the offence and provide information to the court that it may use when imposing a sentence for the offence.

When dealing with a PN where a court hearing notice has been served, you can, without the attendance of the accused:

- accept an endorsed plea of guilty via the paper work
- impose a sentence
- accept a plea of not guilty via paper work, and adjourn the matter to a magistrate for a trial to be listed.

Before a court hearing notice can be issued it must be signed by a JP or prescribed court officer, or by an authorised investigator.

### 4.4. Other court documentation

More common documents that you will encounter when sitting in court include:

- [Applications for violence restraining orders](#).
- Arrest warrants.
- Remand warrants.
- Form 6 applications.

Each of these is explained in more detail in later chapters.

## 4.5. Recording court proceedings on prosecution notices

A PN is a record of the court, and it is the responsibility of any judicial officer to endorse any orders they make whether of granting or refusing bail, adjourning a matter, convicting or acquitting an accused or imposing a sentence.

The judicial officer must ensure that the information is clear, legible and precise. JPs need to be aware that a matter may go before a different judicial officer, and it is essential that that officer can see what has occurred in court previously.

On the bottom of the PN is a section titled 'For Court Use Only'. This section is broken into three parts:

- Record of court proceedings – this part is extended onto the back page of the PN
- Recording of plea or conviction
- Penalty and other orders.

The record of court proceeding is a record of any proceedings of the court that are not final orders. For example, if an accused appears before the court and requests an adjournment for legal advice, you would record the date that they appeared, whether they were represented and by whom, the date to which the proceeding is adjourned and, if the accused is on bail, that the bail is renewed. Both JPs initial this order on the same line.

It is essential that where possible you use one line only. Magistrates Court uses a number of [abbreviations or acronyms \(see attachment 2\)](#) to assist. The entry for the above instance would be – 'adj LA 10/10/10 BRST'. The only exception is bail conditions, which need to be endorsed in their entirety.

The plea section is only used when an accused is entering a plea. The date of plea is only required if the matter is not finalised on the same day.

The penalty section is only completed when the matter is finalised. If a person appears before you and wishes to plead guilty and you impose a sentence, you would complete all three sections. In the record of court proceedings you would enter the date, whether the accused appeared, whether they were represented and by whom, and that the charge was read to the accused and understood (CRU). In the plea section you would circle the plea of guilty, and in the penalty section you would endorse the penalty and both JPs would sign and date the order.

An arrest warrant for non appearance is not a final order and should be recorded in the record of proceedings as 'NAD AWTI'

Common mistakes that are made are:

- JPs signing the penalty section when adjourning matters
- JPs entering the penalty in the record of proceedings
- JPs not writing within the lines
- JPs not using the acronyms
- pleas not recorded.

If you are unsure, please speak to the magistrate, registrar or deputy registrar for your location.

<b>MAGISTRATES COURT of WESTERN AUSTRALIA</b> <b>PROSECUTION NOTICE</b> <i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Regulations 2005 - Form 3</i>		Court number		0000/11
		Magistrates court at		Perth
		Date lodged		9 January 2011
<b>Details of alleged offence</b> <i>[This description must comply with the CPA Schedule 1 clause 5.]</i>	Accused	Jimmy JONES		
	Date or period	29 December 2010		
	Place	Subiaco		
	Description	Was disorderly by creating a disturbance in Silence Avenue.		
	Written law	Section 74A Criminal Code		
<b>Notice to accused</b>	You are charged with the offence described above, or the offences described in any attachment to this notice. The charge(s) will be dealt with by the above court.			
<b>Accused's Details</b> <i>[This description must comply with the CPA Schedule 1 clause 4.]</i>	Date of birth	20 February 1970	male	
	Address	1 Smith Street Subiaco		
	<b>Prosecutor</b> <i>[Identify the prosecutor in accordance with the CPA Schedule 1 clause 3.]</i>			
<b>Person issuing this notice</b>	Full name	John Brown	Official title	Police Constable
	Work address	60 Beaufort Street, Perth	Work telephone	(08) 9222 0000
	Signature	John Brown (PC 123456)		
	Witness's signature	<i>[A witness may not be needed. See the CPA section 23.]</i>  Justice of the Peace or Prescribed Court Officer		
<b>Date</b>	This prosecution notice is signed on: 9 January 2011			
<b>For Court Use Only</b>				
Date	Appearance by accused	Counsel	Record of court proceedings	Judicial officer
	Y / N			
	Y / N			
	Y / N			
	Y / N			
	Y / N			
<b>Plea</b>	<b>Guilty / not guilty</b>	Penalty and other orders Fine Costs Other		
<b>Date of plea</b>				
<b>Judgment</b>	<b>Convicted / acquitted</b>			
<input type="checkbox"/> Victim impact statement available				
		Judicial officer		Date:

[illegible]



## Chapter 5

# Magistrates Court of WA

### 5.1. Introduction

The Magistrates Court of Western Australia was established in May 2005 following proclamation of the [Magistrates Court Act 2004](#).

JPs play an important major judicial role in the court including dealing with bail and sentencing in the Magistrates Court Criminal and VRO ex parte hearings in the Magistrates Court Civil jurisdiction.

In this chapter we shall look at the jurisdiction of JPs within the Magistrates Court as well as registries and registrars of the Magistrates Court. It is important that you understand when and where you can sit and what type of matters you can deal with.

The functions and responsibilities of JPs differ between metropolitan and country JPs.

#### Terms used in this chapter

**Simple offence:** A criminal offence which can only be dealt with in the Magistrates Court. A charge described as ‘an offence’ in legislation is a simple offence. ([section 67 Interpretation Act](#))

**Indictable offence:** A criminal offence that can be dealt with in the District or Supreme Court. Any offence that is designated a ‘crime’ in the charging legislation is an indictable offence.

**Summary offence/offence heard summarily:** A criminal offence that can be dealt with in the Magistrates Court, even if it is an indictable offence ([section 67 Interpretation Act](#))



**Either way offence:** Some indictable offences, or crimes, also provide a summary penalty option. This means that the assumption is that the charge will be dealt with in the Magistrates Court unless the prosecution or the accused make an application that it be dealt with in the District Court, or the court of its own volition feels that the matter should be so dealt with. The application and determination are made under section 5 of the CCWA.

**Summary penalty:** The part of the charging section which provides the penalty available to a Magistrates Court dealing with a crime. If a summary penalty is not given, either in the charging section or in another section of the legislation in which the charge is defined or associated, then the matter must not be dealt with by the Magistrates Court.

## 5.2. Registries and registrars of the Magistrates Court of WA

The *Magistrates Court Act* provides that the court is to have registries at which courts are conducted. Each registry has a designated courtroom where court is to be held and JPs are not authorised to constitute a court outside of those designated rooms. Some remote locations such as Balgo, Exmouth, Leeman and Yalgoo have a designated courtroom offsite from the registry.

Registries are located throughout the State, including Perth, major suburban and regional centres and smaller country towns. In the metropolitan area magistrates are based in Armadale, Fremantle, Joondalup, Mandurah, Midland, Perth and Rockingham. In the regional area magistrates are based at Albany, Broome, Bunbury, Carnarvon, Geraldton, Kalgoorlie, Kununurra, Northam and South Hedland.

Due to the size of WA, registries are located in places where staff are employed by DotAG, Mines Department and the Police Department. DotAG Court and Mines Department-operated court registries are managed by a registrar, and police-operated court registries are managed by a deputy registrar. Some larger registries will have more than one registrar.

DotAG registrars appointed to the major country centres assume responsibility for managing the operation of courts at police-manned registry locations.

The registry in major regional centres (Albany, Broome, Bunbury, Geraldton and Kalgoorlie) assumes a regional coordinating role for other registries within the region. These major regional centres and some larger towns will have one or more resident magistrate, with smaller registry locations being serviced by circuit sittings of the magistrate.

Magistrates are accessible to JPs, and less experienced JPs and new appointees are particularly encouraged to make arrangements to sit with the magistrate when he or she is on circuit at or near their location.

### 5.3. Jurisdiction and powers of the Magistrates Court of WA

The jurisdiction and powers of the Magistrates Court is set out in Part 3 of the [Magistrates Court Act](#) and gives the court both a criminal and civil jurisdiction.

The Magistrates Court is a court of summary jurisdiction, meaning that its criminal jurisdiction is to:

- hear and determine a charge of a simple offence
- hear and determine a charge of an indictable offence that can be dealt with summarily
- commit a person charged with an indictable offence that is to be dealt with on indictment to the District Court or the Supreme Court for trial or sentence
- commit a person charged with an indictable offence that has been tried in the Magistrates Court to the District Court or the Supreme Court for sentence
- deal with any case that, under a written law, is to be dealt with by a court of summary jurisdiction.

The jurisdiction also extends to bail applications for all charges other than murder.

The Act provides that this jurisdiction is to be exercised subject to:

- the [Criminal Code](#)
- the [Criminal Procedure Act 2004](#)
- the [Children's Court of WA Act 1988](#)
- any other written law that confers jurisdiction to deal with a charge of an offence on a court of summary jurisdiction.

### 5.4. Jurisdiction of JPs in the Magistrates Court of WA

Although the general jurisdiction of the court is set out above, there are restrictions within that jurisdiction on what JPs can do.

#### *What gives power to JPs to sit?*

The power for JPs to preside over matters in the Magistrates Court is granted by the [Magistrates Court Act](#), specifically section 7(2), which says that in circumstances prescribed by the Regulations, one or two JPs may constitute and preside over a Magistrates Court, and the Magistrates Court Regulations 2005, which set out a list of what a single JP can do, what two JPs can do and what regional and metropolitan JPs can do.

#### *How is it determined when and where a JP sits?*

The Chief Magistrate determines when a court can sit at a registry of the Magistrates Court. The Chief Magistrate has instructed that courts cannot sit on Sundays, Christmas Day or Good Friday. The constitution of JPs sitting in court is left to the magistrate responsible for the location, who must work within the [Magistrates Court Act](#) and the Regulations.

The Magistrates Court Regulations empower the resident magistrate to determine the times and days a court, constituted by JPs within their area of their responsibility, can sit.

At each registry the registrar or deputy registrar has a written delegation that says when a JP-constituted court can be conducted. That delegation may vary from location to location. It is recommended that you contact your local registrar or deputy registrar to obtain a copy of the delegation, which you should include in this handbook. An example of a delegation is attached to this handbook at Attachment 3.

## 5.5. Specific powers of JPs in the Magistrates Court

### 5.5.1 Metropolitan JPs

The authority for JPs in the metropolitan area is covered by [Part 2 of the Regulations](#).

A JP must not constitute a court unless a magistrate has made a direction and the registrar or deputy registrar makes the request to the JP.

#### *Civil jurisdiction*

The powers of JPs sitting in metropolitan courts are limited to one function. Two JPs can hear an ex parte interim application for a violence restraining order, which is the first hearing of an application when the respondent is not present.

#### *Criminal jurisdiction*

##### *One JP*

A JP sitting alone may constitute a court in criminal cases to deal with:

- applications for bail under the [Bail Act 1982](#), other than bail for an initial appearance in the Magistrates Court, and murder
- an application for adjournment where the accused has not been convicted
- an adjournment where:
  - on the first court date, the court is in receipt of a written plea of not guilty and the accused does not appear
  - neither the prosecutor nor the accused appears and there is no plea
  - neither the prosecutor nor the accused appears and there is a plea.

##### *Two JPs*

Two JPs may constitute a court in criminal cases to deal with:

- the same matters that one JP can deal with
- a 'simple offence' charge under the [RTA](#) if the accused has been served with a summons or court hearing notice, and has not turned up to court but either:
  - has entered a written plea of guilty, in which case sentencing will take place, or
  - has not entered a written plea, in which case a hearing will take place, and
  - in either case, the matter is one that can only be dealt with in the Magistrates Court.

- a prosecution of a case, whether sentencing or a hearing, for a charge under the RTA, if both the accused and the prosecutor consent to the JPs' hearing the case and the matter is an offence that can only be dealt with in the Magistrates Court.

### 5.5.2 COUNTRY JPs

The authority for JPs in the country area is covered by [Part 3 of the Regulations](#).

A JP must not constitute a court unless a magistrate has made a direction and the registrar or deputy registrar makes the request to the JP.

#### *Civil jurisdiction*

Like metropolitan JPs, regional JPs' powers are limited to one function. Two JPs can hear an ex parte interim application for a violence restraining order, which is the first hearing of an application when the respondent is not present.

#### *Criminal jurisdiction*

##### *One JP*

One JP sitting alone may constitute a court in criminal cases to deal with:

- applications for bail under the [Bail Act 1982](#), except for bail for an initial appearance in the Magistrates Court or murder
- issuing warrants for an accused who fails to appear or to notify the court of their non-appearance as required under section 59B of the [Bail Act 1982](#) (Magistrates Court Regulations 11(2)(b))
- an application for adjournment where the accused has not been convicted
- an adjournment where:
  - on the first court date, the court is in receipt of a written plea of not guilty and the accused does not appear
  - neither the prosecutor nor the accused appears and there is no plea
  - neither the prosecutor nor the accused appears and there is a plea.

##### *Two JPs*

Two JPs may constitute a court in criminal cases to deal with:

- the same matters that one JP can deal with
- a charge of an offence, whether simple or indictable, being heard summarily, if the accused:
  - is present in court
  - and prosecutor consent to the two JPs dealing with the prosecution
  - and pleads guilty.
- a charge of any simple offence if the accused is not present in court and either:
  - the court has received a written plea of guilty, in which case sentencing will take place
  - it has not received a written plea, in which case a hearing will take place.

### What JPs in country courts cannot do

A country court constituted by two JPs must not, when dealing with a charge of an indictable offence:

- deal with proceedings, or make an order, under [CCWA](#) section 5 in respect of the charge (commit an either way offence to the District Court or determine that it can be dealt with summarily)
- deal with proceedings, or make an order, under the [CPA](#) section 138 in respect of the charge – being disclosure requirements
- determine (as that term is defined in the [CPA](#)) the charge – that is to have a hearing and convict, acquit or enter judgement
- under the [CPA](#), dismiss the charge for want of prosecution.

## 5.6. Comparison between country and metropolitan JPs

Below is a table that outlines what a JP can do.

Authority	Metropolitan		Country	
	1 JP	2 JPs	1 JP	2 JPs
Interim violence restraining order applications		✓		✓
Application for bail (other than for a first appearance)	✓	✓	✓	✓
Application for adjournment (where the accused has not been convicted)	✓	✓	✓	✓
Adjourn a charge of a simple offence (where a written plea and accused does not appear or neither the prosecution nor accused appear)	✓	✓		✓
Hear and determine or sentence a simple offence under the Road Traffic Act 1974 (accused served with summons or notice to attend but not present/written plea of guilty or no plea received)		✓		✓
Issue warrant for non-appearance on bail			✓	✓
Sentence on a charge of any offence that can be and is being dealt with summarily (accused present and pleads guilty and both the accused and prosecutor consent to the JP dealing with matter)				✓
Sentence on a charge of a simple offence (accused not present/ court has received written plea of guilty or has not received a written plea)				✓



## Chapter 6

### Court protocols and procedure

In this chapter we explore court protocols and procedures which are essential in the operation of a court.

#### 6.1. Court protocols

##### 6.1.1 Professional conduct

As a JP, you must:

- ensure that you will be sitting in a designated courtroom at a registry of the Magistrates Court with the appropriate direction
- dress appropriately in semi-formal clothing
- act professionally, maintaining the integrity of the court
- not use first, given or nick names
- not leave the courtroom unless the court is adjourned or finalised
- ensure you do not sit if you have a conflict of interest in the case.

##### 6.1.2 General considerations

The Magistrates Court is an open court. The public is entitled to have access. The only exception to this rule relates to hearing violence restraining order applications, which are to be heard in a closed court.

At the commencement of the court people within the court will be requested to stand as the JPs enter and the court is declared open.

Generally within the court room:

- hats and sunglasses should not be worn
- mobile phones should be turned off
- no food or chewing gum is allowed
- no alcohol or smoking is allowed.

In DotAG-operated courts the proceedings will be recorded.

Generally JPs will be assisted by a court officer known as a judicial support officer.

A police prosecutor, DPP solicitor or representative of another prosecutorial body will be present in the court.

An accused can be represented by a solicitor who should introduce themselves, although not all accused will be represented.

The order of matters is generally

- in custodies
- Children's Court
- adults court
- VRO ex parte.

The order of matters can be altered where solicitors appear, as there is a protocol in the order they are called – senior to junior.

Representatives from Youth Justice, Community Justice Services, Department of Child Protection, Victim Mediation, Victim Support Services or the Drug & Alcohol Office may be in attendance.

Any person must stand when addressing the bench.

Any person addressing you should refer to you as Your Honour, Sir, or Ma'am.

## 6.2. The role of the prosecutor

### 6.2.1 General

The role of the prosecutor, whether a police officer, DPP lawyer or representative of any other agency, is to produce all the evidence needed to prove all the elements of the offence charged when there is a hearing. This means that if the accused has pleaded not guilty, or a hearing is required for another reason, the prosecutor will call witnesses, lead them through their evidence, cross examine any defence witnesses and address you in relation to any relevant law.

### 6.2.2 How can a prosecutor help you?

The prosecutor should be able to tell you:

- whether the accused has had bail considered, and, if so, whether it has been granted or refused, and on what terms

- if the accused was already on bail when arrested for the current offence, and whether they are a 'Schedule 2 offender' (See Bail)
- the court history of the accused, and whether the accused has been convicted of a similar offence previously
- what documents have been provided to the accused
- the material facts of the case against the accused
- whether the offence is a simple, either way or strictly indictable offence
- the evidence against the accused, including whether the accused made any admissions to police
- the available penalties for the offence with which the accused is charged, including disqualifications.

## 6.3. The role of the lawyer

### 6.3.1 General

If an accused or party to a VRO application is represented, then their lawyer will generally speak on their behalf, except if the accused is to give evidence.

A lawyer may not mislead the court, assert their innocence when the client has confessed to them, or permit the court to operate under a misapprehension.

A lawyer has a duty to show courtesy and consideration towards the court, however constituted, just as you have a similar duty towards the lawyer.

### 6.3.2 How can a lawyer help you?

The role of lawyers is to assist the court to come to its decision, and this duty overrides the individual duty lawyers owe to their clients. Some lawyers are paid privately by their client, and others are paid by Legal Aid or Aboriginal Legal Service (ALS). Often lawyers from Legal Aid or ALS will have more than one client, and may be the duty lawyer, available to represent any one who attends the court on that day.

A lawyer will:

- tell you of their client's intended plea
- confirm to you that the accused understands the charge, the nature of the proceedings and the consequences of their plea (although you should still be satisfied an accused understands the plea and the effect of it, even when represented by counsel. – [See s39 CPA](#))
- discuss any queries you may have of the accused with their client
- if there is a plea of guilty, or the accused has been convicted, outline the reasons for the accused committing the offence and their personal circumstances
- suggest a suitable penalty
- if there is a plea of not guilty, cross examine the prosecution witnesses and lead evidence from defence witnesses, and address you on points of law
- if from Legal Aid or ALS, at your request, speak to and possibly represent an accused who you suggest needs to see a lawyer before they enter a plea.



## 6.4. Court procedure – offences

### 6.4.1 Classification of offences

Offences come in three categories:

1. A **summary or simple offence**, which can be heard and finalised in the Magistrates Court. The description of the offence in the relevant legislation will say that the charge is a ‘simple’ or ‘summary’ offence, or just an ‘offence’.
2. A charge described in the relevant legislation as a ‘crime’ means that the charge is an **indictable offence**. This means that the offence can be dealt with in the District or Supreme Court, ‘on indictment’.
3. An **‘either way offence’**, which can be treated either as a simple offence to be dealt with in the Magistrates Court, or an indictable offence. The relevant legislation will say that the charge is an indictable offence, but will provide, after the penalty provision, a ‘summary conviction penalty’ provision.

Under section 5(2) of the [Criminal Code of WA](#) where the words ‘summary conviction penalty’ appear in connection with an offence, the assumption is that the offence is to be dealt with in the Magistrates Court.

Sometimes there are preconditions that affect whether a summary conviction can apply. However, the prosecutor or the accused can apply for the charge to be heard on indictment, or the magistrate can decide that the charge should be heard on indictment.

### 6.4.2 What can a JP deal with in court?

#### *Types of offences*

Metropolitan JPs can only deal with simple offences under the [Road Traffic Act](#). Country JPs can deal with all simple offences.

Generally, police charging someone with an indictable offence will exercise their discretion under the Bail Act and bail the accused direct to a magistrate.

An accused charged with an indictable offence that is brought before you will not enter a plea at their initial appearance and will request the matter to be adjourned for legal advice. If the accused is in custody you will be required to determine whether bail should or can be granted.

JPs should remand a charge to a magistrate if they do not feel that the charge is one that they are capable of dealing with, or if they feel the charge, as a matter of public policy, should be dealt with by a magistrate.

#### *Amendments to prosecution notices*

Prosecution notices may be amended from time to time.

The prosecution may move to amend the PN, and, unless the defence is totally taken by surprise, amendment should be allowed on the principle that it is important that the true criminality of the alleged act is put before the court.

Section 132 of the CPA provides that a court, on application of the prosecutor, may amend a charge. The accused must be given notice of the amended charge.

The court may refuse to amend a charge if the amendment is material to the merits of the case against the accused and would prejudice the accused in the conduct of his case.

JPs are empowered to allow an adjournment of the charge so that the accused can reconsider their case when an amendment has been made.

### 6.4.3 What can a JP not deal with?

You cannot:

- determine whether an either way offence should be tried on indictment
- determine whether an accused charged by indictable offence should be convicted or acquitted, whether it is an either way offence or not
- make an order on disclosure on an indictable offence, whether it is an either way offence or not
- dismiss an indictable offence for lack of prosecution, whether it is an either way offence or not.

You must remand a charge to a magistrate if the charge is one in which you have no jurisdiction.

What is the procedure for simple offences?

The procedure to follow depends on the means that the matter is brought before you. The possibilities are that the accused has come to court by way of:

- arrest, in which case they will either be on bail or in custody
- summons, in which case they will either be on bail or there will be no bail applicable
- court hearing notice, in which case there will be no bail requirements, and there will either be an appearance by the accused or no appearance; and either an endorsed plea on the court hearing notice or no endorsed plea.

### 6.4.4 Checklist before a matter is dealt with

You must ensure before proceeding that the:

1. accused has a copy of the prosecution notice containing the charge.
2. accused has had time to consider the notice or seek legal advice about it.
3. prosecutor has served the accused with any relevant material.
4. charge is understood:
  - the guiding principle is that the accused should be given as much information as will adequately allow them to prepare for the trial
  - it is the duty of the court to ensure that the charge is understood, and an unmistakable plea entered. Until this is done the court cannot proceed
  - you must ensure that any person with limited English understanding is offered the services of an interpreter

- if there is any doubt, even where the accused answers 'Yes', then explain to the accused the general substance and nature of the proceedings and the charge, whichever seems unclear, and ask the accused to explain it back to you if necessary
- use simple language and do not be patronising or use childish language or tone.

5. That the plea given is clear and accepted:

- if the accused appears to be undecided or confused, you should recommend that they seek legal advice before making a plea
- there is one clear rule in all cases: the plea of guilty must not be accepted if there is any doubt of the genuineness of the plea
- quite frequently an accused will respond 'Guilty, but with an explanation'. This is the time to mention the effect of such a plea if you have not already done so, or to explain it more carefully if it is not understood
- where an accused indicates to the court that they really deny the charge but want to plead guilty for the sake of convenience, you must refuse to enter a plea of guilty and recommend the accused seek legal advice, no matter how the accused reacts.

#### 6.4.5 What happens on the day of court?

##### *Pre-court procedure*

The court will make available the PNs for the day's court in chambers well before the start time.

Read through the PNs and look up any relevant legislation, including penalties.

Look for matters you cannot deal with, whether because of conflict, or because they must be adjourned to a magistrate.

Decide who will act as chairperson for the proceedings. Often the more senior takes this role, but if there are a number of cases you may choose to take turns.

##### *6.4.5.1 Scenario 1 – accused appears*

##### **Step 1: Begin**

- The prosecutor will identify himself/herself.
- The court officer will call the first case, giving the name and case number.
- The court officer will call the accused.
- The accused will stand behind the bar table, with their lawyer if they have one.
- In the case of country JPs, if the accused is subject to bail and has not appeared, order an arrest warrant if the bail is in order.

##### **Step 2: Establish that the accused is present**

- Ask the accused their name or to answer to their name.
- Determine if they are represented.
- Record the appearance of the accused and their legal representative on the PN.

### Step 3: Ensure that the accused is fully informed about the alleged offence

- Read the charge from the prosecution notice.
- Ask the accused if they understand the nature of the proceedings and the charge.
- If you are satisfied that the proceedings and charge are both understood, you can proceed to the next stage, which is to take the plea.

### Step 4: No plea entered

- The accused may request an adjournment for legal advice.
- If the accused is on bail, adjourn the matter to the next magistrates listing day and, if there are no objections by prosecution or requests to amend the bail conditions by the defence, renew the bail on the same terms.
- If the accused is in custody, determine from the defence whether there is to be a bail application. If the response is no, still consider bail; if you decide to refuse, remand the accused to the next sitting of the magistrate within your region.
- If there is an application, follow the procedures detailed in the Bail chapter of this handbook (chapter 3).
- If the accused is on a summons or court hearing notice, bail is not required.

### Step 5: Plea of not guilty

- Ask the accused, 'Do you plead guilty or not guilty to the charge?'
- Upon a plea of not guilty being entered, record the plea on the PN.
- Consider any request for the prosecution to provide the accused with further or better particulars of the alleged offence.
- Follow Step 4 for bail.
  - Ask each party for number of witnesses and availability
  - Determine length of hearing (in hours)
  - Obtain date from JSO and list for hearing

### Step 6: Plea of guilty

- Ask the accused, 'Do you plead guilty or not guilty to the charge?'
- Explain that a plea of guilty means that the accused is admitting all the matters that the prosecution has read out, and that the accused will have an opportunity to make any explanation afterwards.
- When dealing with unrepresented offenders, you should advise the accused that the court will deal with the matter on the prosecution's version of the facts.
- Once the plea is clearly made and is accepted by you, then the plea, together with the recording of a conviction for the offence, should be endorsed on the prosecution notice.
- The prosecutor will then read out the 'statement of material facts' that outlines the case against the offender.
- Ask the offender if they agree with the statement of material facts.

- If they answer yes, a copy of the offender's record will be handed to the accused who will acknowledge that the record is theirs; then it will be handed to you.
- The defence will outline any mitigating circumstances, explanation and personal background information.
- You then proceed to the sentencing stage.
- If the accused disputes the facts the matter must be adjourned to the magistrate.

#### 6.4.5.2 Scenario 2: endorsed plea or no appearance with no plea

##### Step 1:

- The prosecutor will identify himself/herself.
- The court officer will call the first case, giving the name and case number.
- If a written plea has been filed the court officer will hand it to the bench.

##### Step 2: Endorsed plea of guilty

- A written plea of guilty should be signed by the accused, their lawyer or, if a corporation, by their representative.
- Determine the charge as if the accused had pleaded guilty in person.
- Record the non-appearance and endorsed plea on the PN.
- The prosecutor will read the facts and hand up the offender's record.
- Proceed to sentencing.
- If the written explanation of the accused differs to the material facts, the plea should be struck out and the matter adjourned to a magistrate.

##### Step 3: Endorsed plea of not guilty

- The written plea of not guilty should be signed by the accused, their lawyer or, if a corporation, by their representative.
- Record the non-appearance and endorsed plea on the PN.
- Obtain number of witnesses and availability from prosecution
- Get date from the JSO for hearing
- Adjourn the matter until the hearing date and request notice be sent to the accused.

##### Step 4: No plea and or no appearances by either party

- Record the non-appearance and no plea on the PN.
- If the prosecutor does not appear, adjourn the matter to the magistrate.
- If the prosecutor appears and there is no appearance or plea by the accused, you may, if satisfied that the accused was served with the notice, either adjourn the matter or determine the matter.
- If you decide to determine the matter, follow points 4 & 5 in Step 2.



## Chapter 7

# Children's Court and Juvenile Justice

### 7.1 General information

Juvenile Justice is a separate system designed by government to address young people's offending behaviour.

The justice, and corrective service agencies have business areas specifically designated to deal with juveniles:

- in the court system it is the Children's Court, and
- in the Department of Corrective Services it is the Youth Justice Services.

Special rules apply to children and they are to be treated according to those rules.

#### Legislative framework

The *Children's Court of Western Australia Act 1988* (CC Act) and the *Young Offenders Act 1994* (YO Act) tell the court how to deal with young offenders.

The YO Act was enacted in 1994. It set out the procedures of the Children Court and applicable punishment for offences. It also establishes Juvenile Justice Teams (JJT's). A young offender can be referred to a JJT for minor offences,. The JJT convenes a family group meeting with police, victims and other services. Together they formulate an action plan which addresses the young persons offending behaviour.

The CC Act established the Children's Court. Under Section 6(1) of the Act, a Children's Court can be made up of two Justices of the Peace, or one Magistrate. Although there is no need for a Magistrate to have a JP sitting with him or her, this often happens in regional WA if the local Magistrate wishes to provide JPs with experience in sitting in Court. This is specifically allowed by Section 6(2) of the Act. Section 6(2)(b) provides that a court constituted by a single JP can only adjourn proceedings.

Under section 6A of the CC Act JPs constituting a Children's Court are given protection and immunity in the performance of their functions.

## What is a 'child'?

Defined by the CC Act, sections 9 and 19(2) and the YO Act, a child is a person under the age of 18 years.

Under Section 29 of the Criminal Code, children under the age of 10 years are not criminally responsible. This means that they cannot be charged with criminal offences.

For children aged between 10 and 14 years, the prosecution has to prove beyond reasonable doubt that the child had the capacity to know what they were doing was wrong.

A Children's Court when constituted by 2 JP's cannot sentence a child to imprisonment or detention (S21 (4) of the CC Act).

## Confidentiality

It is an important principle of juvenile justice that the identity of an offender remains confidential so as not to adversely affect their rehabilitation.

Children's Court is an open court. Any member of the public is entitled to be present in court. However, the presiding officer (president, magistrate or JP) can clear the court if it is in the interest of the child concerned.

Members of the media can attend court and can report on Children's Court proceedings as long as their report does not identify the offender.

It is an offence to disclose any information that may lead to the identification of a child involved in Children's Court proceedings (s36 CC Act)

## 7.2. Justices of the Peace and Children's Court

As a Children's Court made up of 2 JPs, your authority to deal with children is limited.

- JPs cannot sentence a child to imprisonment or to detention. (Section 21 (4) of the *Children's Court Act*).
- JPs can only deal with pleas of guilty to simple offences.
- JPs cannot conduct trials.
- JPs can deal with offences that do not carry imprisonment or detention as a sentencing option. For example, in stealing cases where the value of the property is less than \$1,000, no-one, not even an adult, can be sentenced to a custodial penalty. In such cases JPs have the same sentencing powers as a Magistrate or a Judge.

If a child is charged with a serious or 'indictable' offence, they can either stay in the Children's Court to be dealt with or decide ("elect") to go before the Supreme or District Court for a jury trial. Section 19B of the *Children's Court Act* deals with this situation.

In the case of an indictable offence, JPs will most often be required adjourn so that the child can get legal advice on the decision as to where to be tried. As in any other situation when a case is adjourned, JPs will then be required to rule on bail for the young person.

**IMPORTANT:** If you do not feel comfortable in dealing with a serious matter you can request the matter be referred to the local magistrate where they may be located, by audio or video link if necessary. If the matter cannot be referred to a local magistrate, the Perth Children's Court has 3 courtrooms equipped with facilities, and arrangements can be made with the audio/visual co-ordinator at that Court for the matter to be listed before a magistrate there.

## 7.3 Bail

The principle contained in section 7(h) of the YO Act and Schedule 2 part C clause 2 of the [Bail Act 1982](#) is that detention should only be used as a last resort. As a consequence, young offenders have what is called a 'qualified' right to bail.

This means that unlike an adult, who only has a right to have bail considered, a child has the right to be released on bail unless it is likely that they:

- will fail to appear if released on bail;
- could commit an offence while on bail; or
- need to be held for their own protection;

and if there are no conditions you could impose that would overcome these concerns.

A child loses their qualified right to bail if:

- they are charged with another serious offence while already on bail; or
- they are charged with a serious indictable offence such as murder.

A child appearing in court should have with them a responsible adult, such as a parent or relative. If a responsible adult is not present, you can adjourn the matter and order that a responsible adult attend court. In many locations this problem is alleviated by a Youth Justice Services officer who will attend court to assist and advise you.

You can ask if the responsible adult believes a curfew is necessary.

If you refuse bail, it is a requirement that police must arrange, where possible, for the child to be brought before the magistrate responsible for the location by audio or video link prior to transporting the child; otherwise the matter must be brought before the magistrate at the next sitting at the court where the magistrate is based.

### 7.3.1 Alternatives to court proceedings

You should be aware of the principle of diverting young offenders from the court's criminal justice system, which is observed by officers of the law. Part 5 of the YO Act provides for two diversionary schemes: police cautioning and the Juvenile Justice team.

### 7.3.2 Police Cautions

The police cautioning provisions stipulate that a police officer, before starting a proceeding against a young person for an offence, must first consider whether, in all the circumstances, it would be more appropriate to take no action or to administer a caution.



### 7.3.3 Juvenile Justice Teams

Another option for police and the court is diverting the young person to the Juvenile Justice teams (JJT). The JJT bring together the offenders and their family, the victims, and some government officials to decide appropriate methods of dealing with offending behaviours.

The JJT process involves the offender, his family and the victim deciding how the young person should make amends for their offence. The process also provides an opportunity for the victim to let the offender know about the impact of their offence, and for the victim to be involved in establishing a plan that will address the victim's concerns and make amends.

Parents are required to attend with their child and be involved in the supervision of the plan. If the young person does not comply with the plan, the matter will be sent back to the referring agency.

You can send young people who have committed minor offences or offences that are not part of a well established pattern of offending to the JJT. You can refer a young offender to the JJT before a plea is taken or after a plea of guilty, but before a recording of a conviction. Discretion to refer matters to the JJT should be exercised in favour of a first offender. Note that a matter cannot be referred to JJT if the offence is listed in Schedule 1 or 2 of the YO Act.

Young people appearing before the JJT are not considered to have a criminal record.

## 7.4. Dealing with offences

JPs must be satisfied that the young person is fully aware of and understands why they are in court and what offences they are accused of.

If the young person is not represented the court must explain to the child the nature of the charge against them and its legal implications, and the elements of the offence.

The court may request reports from Youth Justice Services of any information that it requires in order to deal with a matter.

The court procedure is otherwise the same as Chapter 6.

## 7.5. Sentencing the young offender

Once you are satisfied that the young person understands the charge and you have accepted their plea of guilty, there are a number of options available to you and a number of enquiries you should make.

### 7.5.1 Before considering the appropriate penalty

Before sentencing a juvenile offender it will be helpful to take the following steps:

#### *Determine the age of the offender*

If the offender is under the age of 17 years, the sentencing options under the YO Act 1994 apply.

If the offender is between the age of 17 and 18 years, the sentencing options from the adult act can be applied (the [Sentencing Act 1995](#)) or options from the YO Act.

If the offender is over the age of 18 years, the adult *Sentencing Act* 1995 must be applied.

Guidance is found in Sections 50, 50A and 50B of the YO Act 1994.

### *Determine whether a report is required*

For serious matters, you may consider ordering a pre-sentence report to be prepared by the Youth Justice Services that will give detailed personal information about the child, and will offer sentencing options. It may take between 3 and 6 weeks for a report to be prepared (time may vary between regions of the state).

A report by Youth Justice Services is required before certain orders are made against an offender (see sentencing options).

You may need to get information from the Department of Child Protection if the child is in care or you feel that there are serious welfare concerns that need to be addressed.

If you feel that the young person is suffering from some form of mental or nervous disorder, they may be remanded, not to exceed 21 days, for the preparation of a report on their condition and recommendations for future treatment.

Before the remand is ordered, a responsible adult, if present in court, is entitled to make any relevant comments to the court with regard to the young person (section 49 YO Act.)

Prior to determining matters in relation to a breach of a youth community based order, intensive youth supervision order or conditional release order, you must have a report regarding the circumstances of the breach of the order.

### *Determine whether the responsible adult must be present*

You cannot make a youth community based order or intensive youth supervision order, or impose a custodial sentence, unless a responsible adult is present.

An order can be made in the absence of responsible adult if you consider there is sufficient reason to make the order (section 51 YO Act).

### *Determine that you have the authority to hand down the sentence you intend (see sentencing options)*

### *Determine whether the record includes any disregarded offences*

Section 189 of the YO Act provides for certain recorded convictions to be not regarded as convictions. This means that after a period of two years from the date of conviction, the discharge of any sentence imposed or the successful completion of an order, the particular conviction is deemed no longer to exist.

This does not apply to, or in relation to, a person convicted of murder, attempt to murder or manslaughter.

It does not apply when determining the period of disqualification under the RTA.

## 7.5.2 When you are ready to sentence

### *General considerations*

Section 46 of the YO Act directs the court to observe a number of prescribed criteria when dealing with a young person who has been found guilty of an offence. You should:

- take into account the general principles of juvenile justice as enunciated in section 7 of the YO Act;
- consider any information including the nature and seriousness of the offence, the offender's history of previous offences, the cultural background of the offender, any existing court order, the extent to which any person was affected as a victim;
- impose the sentence in proportion to the seriousness of the offence and consistent with the treatment of other young offenders;
- consider how young the offender is as a mitigating factor, especially in deciding the appropriate degree of severity to be used;
- have regard to the fact that the rehabilitation of an offender is facilitated by the participation of the offender's family and opportunities to engage in education and employment;
- give primary consideration to the protection of the community ahead of all other principles and matters when dealing with a young person who repeatedly commits serious offences (section 46(6), read together with section 125).

Sentencing considerations include:

- the age of the offender;
- the seriousness of the charge;
- the need for reports required for certain orders;
- the need for a responsible adult to be present before certain orders can be made;
- an explanation of an order;
- copies of court orders if necessary.

Limitations on sentencing powers include that:

- children under age 12 cannot be sentenced to a community work order;
- community work orders for young offenders are limited to between 10 and 100 hours of work;
- children placed on a community work order must be given a set time to attend before a Juvenile Justice officer;
- if a child breaches an order they are to be dealt with under section 83 of the YO Act.

## Specific considerations

### 7.5.3 Offender is under 17 at time of sentencing

When the offender is under the age of 17 at the time of sentencing, the only options available are those in the *Young Offenders Act* itself. They are as follows:

- No punishment
- No punishment--with conditions
- Good Behaviour Bond
- Responsible Adult Good Behaviour Bond
- Youth Community Based Order
- Intensive Youth Supervision Order
- Conditional Release Order
- Detention

JPs cannot impose detention because of the provisions of section 21(4) of the *Children's Court Act*. JPs cannot impose a conditional release order for the same reason, because a Conditional Release Order is considered to be a sentence of detention. A Conditional Release Order in the *Young Offenders Act* is like a suspended imprisonment order and has a different meaning from a Conditional Release Order in the *Sentencing Act*

### 7.5.4 Offender is 17 at time of sentencing

When the offender is between 17 and 18 years of age at the time of sentencing, the options available are a combination of those in the *Young Offenders Act* itself, and some of the options available for adults under the *Sentencing Act*. The options are as follows:

- The options referred to above under the *Young Offenders Act* as if the offender was under 17;
- Adult Community Based Orders under the *Sentencing Act*
- Adult Intensive Supervision Orders under the *Sentencing Act*

### 7.5.5 Offender is 18 Years at time of sentencing

When the offender is 18 years of age at the time of sentencing, the only options available are those as for adults under the *Sentencing Act*. They are as follows:

- Release without sentence;
- Conditional Release Order;
- Fine;
- Community Based Order;
- Intensive Supervision Orders;
- Imprisonment;
- Suspended imprisonment

JPs cannot impose imprisonment because of the provisions of section 21(4) of the Children's Court Act. JPs cannot impose suspended imprisonment for the same reason, because suspended imprisonment is considered to be a sentence of imprisonment. A Conditional Release Order in the Sentencing Act is like a Good Behaviour Bond and therefore has a different meaning from a Conditional Release Order in the Young Offenders Act

### **7.5.6 Sentencing Options – Young Offenders Act**

Some of the options available in the *Young Offenders Act* are expressed in old terminology. The sentencing process (and terms and forms) was modernised in 1995 with the introduction of the *Sentencing Act*. Adults are dealt with under that Act. The *Young Offenders Act* was not modernised at the same time. JPs should be aware of this because there is a potential for confusion.

#### **Refer to the Juvenile Justice Team – Section 28**

The discretion to refer a young person to the JJT should be in favour of using this option for a first offender. Offences listed in Schedule 1 and Schedule 2 cannot be referred to the JJT.

#### **No Punishment – Section 66.**

JPs can consider using this option when the minor nature of the offence permits it. This option may be used repeatedly for the same child and can be used for more than two offences, if the JPs are satisfied that the multiple offences were part of one incident.

#### **No Punishment but Conditions Imposed – Sections 67 & 68**

If the JPs are satisfied that punishment has already been carried out outside of the court process, or will be carried out, they can impose no punishment in the sentencing process. The JPs can use section 68, which specifically allows for there to be an adjournment for that purpose. The punishment can then be carried out and the outcome reported back to the court. The court may impose no further punishment if they are satisfied that the child has already spent some time in custody.

#### **No Punishment but Security or Recognisance – Sections 69 and 70**

A bond, a security, and a recognisance are all the same thing, described by a different word. Instead of imposing a punishment, JPs can require the child to enter into a good behaviour bond for up to a year with or without a surety (section 69). JPs could also impose no punishment and require a responsible adult to enter into a bond that the child will be of good behaviour for up to a year (section 70).

#### **Fine instead of Punishment- sections 71 and 72**

A fine is available for any offence which is punishable by imprisonment, but the maximum is \$2000 (section 71). JPs can also impose a fine for any offence which itself is punishable by a fine. JPs must ensure that the young offender is able to pay the fine, either on demand or by instalments (section 72).

**Youth Community Based Order – section 73**

JPs can make an order that includes attendance, community work, supervision and other appropriate conditions on an offender. A report is needed from the Youth Justice Services. The young offender must agree to the conditions, which will include an order that he or she does not commit any other offences for the term of the order.

**Intensive Youth Supervision Order – section 98**

This type of order requires a greater degree of supervision and attendance of the offender upon the Juvenile Justice Officer assigned to them. A report must be obtained from Youth Justice Services.

**Conditional Release Order – section 101**

JPs cannot impose a conditional release order because it is a sentence of detention

**Detention – section 118**

JPs cannot impose detention

**Recording a conviction – section 55**

The JPs must decide whether or not to record a conviction. To record a conviction means the same as to convict. It is also sometimes referred to as the young offender getting a criminal record. Pleading guilty is different from being convicted.

Imposing a punishment is different from recording a conviction. Not imposing a punishment is different from not recording a conviction.

Most offenders, including young offenders, do not wish to have a conviction recorded. The consequences are longer term and greater than the actual punishment imposed. In most cases, the most important part of the sentencing process from the young offender's point of view is whether or not the JPs will record a conviction.

If the JPs do not impose a punishment, under section 66 or 67, they must not record a conviction.

The law requires that the JPs must record a conviction for young offenders guilty of a schedule 1 or schedule 2 offence (section 55(1)). Equally, the JPs must not record a conviction for young offenders when the offences are not in schedule 1 or schedule 2 (section 55(2)). In both cases exceptional reasons are required to depart from the general rule.

**After sentence**

For any order that requires the consent of the accused, the court must explain in language likely to be understood by the young person:

- the purpose and effect of the order;
- the consequences of failing to comply with the order or any requirement under the Act; and
- any right the person may have to seek a review of the order, or to appeal.

Following the making of an order, upon finding a young person guilty of an offence, the court must produce the order in writing and give a copy to the young person, a copy to the responsible adult and a copy to Juvenile Justice.

If a monetary penalty is ordered against a young person the court must provide them with a notice stating the amount to be paid and the options available to pay the penalty.

### Review of a sentence

Section 40 of the CC Act allows the president, whether by their own motion or upon the application of the child, the Juvenile Justice Division or the prosecutor, to reconsider any order or penalty imposed and either confirm it or discharge it and substitute any other order that the court, if it had been constituted by the president, could have made in relation to the offence.

## 7.5.7 Other Matters

### Mental illness

- If the JPs are made aware that the young person is suffering from a mental illness so that they do not understand what is going on in court, the JP's should take appropriate action. Section 49 of the Young Offenders Act provides that the young person can be remanded for a period not exceeding 21 days to be placed in some suitable place for a report to be prepared.
- The provisions of the [Criminal Law \(Mentally Impaired Accused\) Act 1996](#) may apply in certain circumstances.
- If you have concerns about the mental health of a young person you should attempt to locate the local Magistrate who will be better placed to deal with the issue.

## 7.6. Re-hearings

Section 28 of the CC Act provides that where the court has made an order against a young person for an offence, an application to the President of the Children's Court to have the matter re-heard may be made.

If the President orders a rehearing, the rehearing cannot be before JP's alone.

## 7.7. Enforcement

### Fines

If the court has made an order for the payment of a fine, court costs or forfeiture, and the young offenders fails to pay such order, the court Registry is to start enforcement action.

- If the young offender is under the age of 18, the Court Registry will issue a "Notice to Attend Court" to the person
- When the person appears in court, JPs can give them the opportunity to perform community work instead of paying the money ([section 65A Young Offenders Act](#))
- A 'Community Work Order' is different to a Youth Community based order and an Intensive Youth Supervision order, which can't be imposed in lieu of fine payments. Further, young people who agree to a s65A Community Work Order should be made aware that if they do not do the work hours they will be liable to serve a period of detention.
- If the offender is 18 or over at the time of the default, and they have not applied to the court for an order for community work in lieu of the penalty, the matter is to be registered with the Fines Enforcement Registry.

- Once registered, the young person is not able to request community work or additional time to pay from the court

### Supervised orders

When a YCBO or IYSO has not been complied with, an officer from Youth Justice Service will take breach action.

The young person will be called back to court to answer to the allegation of the breach. If they agree that they have breached the order, the JPs have a number of options:

- reinstate the existing order;
- amend the existing order;
- cancel the existing order and substitute a new order;
- cancel the existing order and substitute a different penalty

Breaches of a Community Based Order supervised by adult community corrections staff results in a *Prosecution Notice to Attend* being lodged with the court. Breaches of adult orders are then handled in the same way as breaches of a juvenile order (ie reinstated, amended or cancelled).







## Chapter 8

### Sentencing – adults

JPs, particularly in country regions, will be called on to pass sentences on offenders who have been convicted on their own admission. Even if you are not called upon to pass sentence in a particular matter, you may be called upon to look at previous penalties imposed on a particular accused or in general. It is therefore important that you know the powers and possibilities associated with sentencing offenders.

It is strongly recommended that you adopt a regular format or checklist when considering a sentence to ensure you consider each matter carefully and that the sentence imposed is correct.

#### 8.1. The structure of sentencing in WA

Some decisions of sentence will be more or less straightforward but others will involve a very large range of considerations. There will often be more than one way of dealing with a particular offender and it will be necessary to make a careful choice.

You should be aware that although you can impose a penalty of imprisonment, any such order must be reviewed by a magistrate. Generally, if you are considering imprisonment you should remand the person in custody to the magistrate for sentencing.

##### 8.1.1 Relevant legislation

Sentencing of adults in WA is governed by two types of legislation:

1. The principal Act governing sentencing is the [Sentencing Act 1995](#) (S Act). This Act contains the general principles involved in determining the appropriate sentence, the options available to a sentencer and administrative provisions to assist in the passing of a sentence.
2. Individual Acts provide penalties for offences, which are generally fines and imprisonment.

Where you will find penalties

- in the section under which the person is charged
- in some acts a penalty for a number of offences may be the same. The penalties may appear in a separate section from the one that describes the offence to which that penalty applies.

For example, in the *Misuse of Drugs Act 1981* the penalties for certain offences are detailed in section 34.

- other Acts such as the *Road Traffic Act 1974* will have prescribed penalties outlining a minimum and maximum penalty and penalties for subsequent offences. In these cases, unless the act allows for discretion the penalty prescribed must be imposed. The penalties start at a first offence, then increase in severity for each subsequent offence.

In some acts there is a requirement for additional orders which must be imposed, such as disqualification of driver's licence and destruction of drugs. The prosecutor should alert you to the orders required, but you must be aware of the orders available.

### 8.1.2 Previous cases

It is important that the law is seen to be fair and consistent. To that end, courts are bound to follow:

- statutory maximums and minimums
- penalties or guidelines set down by higher courts.

In addition, courts should endeavour to impose penalties that are, as far as the facts allow, consistent from case to case. If an accused appears on a charge with a very similar background to a previous accused on the same charge, and the facts on both are similar, then the court should impose a similar penalty.

If an incorrect sentence is imposed, section 37 of the Act enables the matter to be brought back before the court to be rectified.

## 8.2. Principles of sentencing

In addition to taking into account the requirements of legislation, when sentencing you must keep in mind the general principles of sentencing.

### 8.2.1 The general aims of sentencing

The ultimate aim of any sentencing court is to pronounce a just penalty in the circumstances of a particular offender committing a particular offence.

Generally, the aim of sentencing is to:

- protect the public
- punish and/or rehabilitate the offender
- deter the accused from committing further offences
- deter the public from committing offences.

### 8.2.2 Specific principles involved in sentencing

Section 6 of the S Act provides for principles of sentencing. When determining the appropriate penalty for a specific offender, you must consider if the sentence imposed is commensurate with the seriousness of the offence (section 6(1) S Act)

The ‘seriousness of an offence’ must be determined by taking into account:

- the statutory penalty for the offence (obtained from the charging Act, as described in 9.1)
- the circumstances of the commission of the offence (as described to you by both the prosecutor and the accused or his legal representative)
- any aggravating factors (see 9.3 below)
- any mitigating factors (see 9.3 below).

While the sentence must be commensurate with the seriousness of the offence, this does not prevent the reduction of a sentence where any mitigating factors apply.

## 8.3. Aggravating and mitigating factors

Both aggravating and mitigating factors relevant to the offence and the offender must be considered when determining a sentence.

### 8.3.1 Aggravating factors

Aggravating factors are those, which in the court’s opinion, increase the culpability of the offender. Usually these will be obvious to the court when the facts are read out, or when the prosecutor addresses the court.

*Aggravating circumstances include the:*

- planned or premeditated offence
- offender being a ringleader or instigator
- use of a weapon
- effect of drugs and/or alcohol
- offence being part of a system aimed at making profit
- victim suffering personal harm, loss or damage to property
- victim coming from a particularly vulnerable group, such as the aged or infirm
- offence involving a breach of confidence or trust
- offender having been convicted of similar offences in the past
- offence being prevalent in the locality.

*Aggravating circumstances DO NOT INCLUDE THE:*

- fact that the accused pleaded not guilty and had a hearing to determine his guilt, or initially pleaded not guilty but then changed his plea to guilty
- accused not participating in an interview with an investigator
- existence of a criminal record (unless specifically provided for in the charging legislation, such as the RTA)
- fact that a previous sentence did not achieved the purpose for which it was imposed.

### 8.3.2 Mitigating factors

Mitigating factors are those which, in the court's opinion, decrease the culpability of the offender or decrease the extent to which the offender should be punished. Usually these will be put to you:

- by the offender or his legal representative
- as character references provided to you by the offender
- as medical or community corrections reports, whether ordered by the court or provided by the offender
- by the prosecutor, who may tell you, for example, that the offender assisted the police in investigations into other offenders or offences.

If the offender is unrepresented it is strongly recommended that you always ask them if there is anything that the court should know about the offence, the reasons they committed the offence or their personal circumstances.

#### *Mitigating factors include:*

- that the offence was unplanned or spontaneous
- that the offender was only a minor participant
- that the offender was provoked or under some form of duress, although not enough to constitute a defence
- that the offender was very young or very old
- the previous good character or record of the offender
- the effect of alcohol and drugs
- that the offender had suffered a personal crisis previous to the offence: emotional, health, or financial
- the offender's cultural background (if it relates to the offence)
- the offender's remorse or contrition, shown by a plea of guilty, by anything the offender may tell you and any actions the offender has taken to atone for his offence, such as repaying money
- a promise of or actual restitution or reparation from the offender to the victim
- that the offender has assisted the authorities, co-operated or provided information
- that the offender already suffers hardship of some type, for example, physical injury or incapacity
- that conviction will affect the offender's employment or prospects of employment or will cancel or suspend a driver's licence, trader's licence etc, or trigger the possibility of deportation
- that an early plea of guilty is a mitigating factor the earlier in the proceedings it is made or indication is given that it will be made, the greater the mitigation.

The court has wide discretion to determine what factors will decrease the blameworthiness of the offender in connection with the commission of the offence.

If, because of a mitigating factor, a court reduces the sentence it would otherwise have imposed, it must state that fact in court.

### 8.3.3 Prior to sentence

Prior to determining the appropriate sentence, the court must look at a number of considerations.

### 8.3.4 Aggravating and mitigating circumstances

See above.

### 8.3.5 The offender's record

Before you pass sentence, an inquiry should always be made into whether the offender has any previous convictions. In the Magistrates Court the court usually receives a criminal record of the offender provided by police.

The offender is shown the record and must agree that it is correct. Generally the record is accurate, and the fact of previous convictions is established by the offender's admission.

If an offender denies the record of convictions produced by the prosecution, the prosecutor should be given the opportunity to call evidence to prove the convictions. You cannot take into account previous convictions when the offender has not been given the chance to challenge the record.

You can take into account the offender's prior record in coming to an appropriate sentence. There is no principle of sentencing that demands that penalties be applied with greater severity to repeat offenders,

Apart from statutory requirements, such as those set out in the RTA, a person should not be made to suffer again for a prior offence by having a sentence for a later crime increased merely because of the earlier offence. Once any sentence for a crime has been served, that person is regarded as having paid the penalty in full.

The theory is that an adverse record should not necessarily increase a sentence but it may deprive an offender of any credit for good character and record. Therefore, as noted above, it cannot be taken as an aggravating factor that the accused has a record of previous convictions unless the charging section specifically says so: for example some RTA offences, and the provisions for burglaries on dwellings in section 400 CCWA.

When sentencing you must take into account the circumstances of the offence and the character of the offender. The record assists in the second part in that you can assess the offender's response to previous supervision in the community, their rehabilitation prospects and their general attitude towards complying with the law. It can also assist if the accused claims it was an aberration in character, or a 'one-off'.

### 8.3.6 Reports and statements

When considering sentencing you can adjourn a matter in order to allow pre-sentence or other reports to be submitted before handing down sentencing decisions.

These reports and statements may include a:

- pre-sentence report (PSR)
- victim impact statement (VIS)
- mediation report
- mental health assessment

**A Pre-sentence report** is prepared by a qualified officer from Community Justice Services and can be given orally or in writing. If the court requires a written report you must allow not less than 21 days for the preparation of the report. An oral PSR can be given immediately, and so the use of an oral report can expedite sentencing.

The PSR may include reports as to the physical or mental condition of the offender, their performance on any previous orders made by the court, their suitability for programs and their personal circumstances.

**A victim impact statement** can be given orally or in writing, and is provided by the victim unless they are incapable; then it is provided by some other person considered appropriate. In a number of locations victims are assisted by an officer of the Victim Support Services in preparing the statement.

The VIS may provide particulars of any injury/loss and the effect of an offence on the victim; however, no reference is to be made in the statement to how, or how much, the victim would wish an offender to be sentenced. If such a statement is contained in a VIS you are given, then you should ignore that statement but not the rest of the VIS.

While a court may seek particulars from a victim, the victim is not obliged to provide a court with any particulars or with a VIS at all.

**A mediation report** is a written or oral report by a mediator about any mediation or attempted mediation between the offender and a victim. An officer from the Victim Mediation Unit will prepare the report.

It reports on the attitude of an offender to the victim and the effects of an offence on the victim. It also provides for the outcome of any mediation, including whether any agreement on reparation has been reached.

There is no obligation on either an offender or a victim to participate in mediation.

**A mental health assessment** can be requested if it appears to the court that an offender before you is suffering from any mental illness. You may adjourn and ask for an assessment by the Forensic Mental Health Service, either in person or by video. Should the report confirm the mental illness, a hospital order should be made for a period of seven days.

No hospital order should be made by the court without an initial assessment from the Forensic Mental Health Service. These reports may be oral or in writing.

### 8.3.7 Important general considerations and actions before you sentence

1. Before you turn your mind to the sentencing decision, it is imperative that you understand the nature of the offence to which the offender pleaded guilty. The prosecution notice will state the offence and the section of the relevant act. You look at the legislation to determine the penalty range.
2. If the offender is unrepresented and appears to admit the charge or charges without the benefit of legal advice, be sure to explain the proceedings fully. Advise the offender of the penalty range, and that unless they wish to contradict any of the facts surrounding the charge, you are obliged to deal with the matter on the prosecution's version of the facts.

This may result in the offender deciding to seek legal representation.

3. The seriousness of the offence has to be assessed and placed in proper perspective. The actual assessment of the seriousness of any offence is a matter of judgment.

Most serious offences are those that:

- involve personal violence or safety
- reveal criminal activity or organised crime
- are against property or public order
- involve weapons.

Least serious offences are miscellaneous regulatory offences.

The assessment is made by hearing the material facts, if agreed by the offender, and any mitigating circumstances offered by the defence.

4. As well as considering the circumstances of the offence, it is important to take into account the offender's particular circumstances.

Everyone who is convicted in a court will have a different background, age, upbringing, education, employment, condition of health, etc. Some or all of these factors may combine to affect the type of sentence you impose.

5. Be aware of the range of penalties available. When you are considering the appropriate penalty, determine whether:

- it is a prescribed penalty
- there are any options available
- whether the higher courts have given any guidance as to the limit of the penalty which applies to this type of offence.

6. The court must consider the offender's rehabilitation, the need to protect the community, and personal and general deterrence.

A sentence should be:

- a punishment which is just and real
- not excessive
- consistent with other punishments for similar offences
- one that encourages the rehabilitation of the offender and the restitution of any property
- not primarily concerned with deterrence.

7. If considering imposing a fine, check on the offender's means and ability to pay.
8. Imprisonment should not be imposed unless it is the only option justified by the seriousness of the offence, and the protection of the community requires it.



## 8.4. Sentencing options

Section 39 of the S Act sets out the range of sentencing options that a court may impose against an offender who is a natural person (as opposed to a corporate body). The range is a hierarchy in ascending order, concluding with the sentence of last resort: imprisonment.

Section 39(3) makes it obligatory for a court to consider each of the sentencing options in ascending order, and prohibits a court from moving on to consider an option unless it is satisfied that it is not appropriate to use an option listed before it.

Unless a penalty specifies otherwise, a court must not use more than one sentencing option.

The ascending order of consideration when determining if a sentencing option for a natural person is appropriate:

- no sentence with or without a spent conviction order
- conditional release order with or without a spent conviction order with or without recognisance or conditions
- fine with or without a spent conviction order
- community based order with or without a spent conviction order
- intensive supervision order
- suspended imprisonment order
- conditional suspended imprisonment order
- imprisonment.

Sentences for a body corporate (section 40):

- impose no sentence
- impose a fine.

**Release without sentence:** This option may be ordered where the court considers that the circumstances of the offence are trivial or technical, having regard to the offender's character, antecedents, age, health, and mental condition and any other matter that the court thinks is proper to consider (section 46). A Reparation Order can be made by the court even if the offender is released without sentence.

**Conditional release order (CRO):** Two criteria must be met before a CRO may be imposed. First there need to be reasonable grounds for expecting that the offender will not reoffend during the term of the CRO; and secondly the offender must not need supervision by a community corrections officer during any such term.

A court may make a CRO subject to any requirement considered necessary to secure the good behaviour of the offender, other than the offender being supervised, directed or instructed by a community corrections officer.

Section 51 provides that to ensure compliance with a CRO, a court may order that the offender not be released until the offender or a surety or both have given a written undertaking to pay an amount of money, or have deposited an amount of money set by the court.

If the CRO is breached in some way, then the court may deal with the offender afresh for the offence for which the CRO was imposed in the first place. In the event that an offence is committed during the CRO, any recognisance can be ordered to be paid.

**Fine:** In deciding the amount of a fine, a court must as far as practicable take into account the means of the offender and the extent to which payment of the fine will burden the offender.

Section 56 provides that if a court convicts a person of an offence involving assault on another and fines the offender, then it may order that the whole or part of the fine be paid to the person assaulted.

You are not empowered to imprison an offender until a fine is paid, under any circumstances.

**Global monetary penalty:** A court sentencing an offender for two or more offences that are founded on the same facts or form, or are part of a series of offences of the same or similar kind, may impose a single fine for all of the offences. The single fine must not be more than the sum of the fines provided by the statutory penalties for each of the offences.

**Community based orders (CBO):** A CBO may be imposed without a pre-sentence report being provided to the court. It is recommended that if according to the record an offender has been or currently is on an order, an oral PSR be obtained.

The term of a CBO is fixed by the court and must be of at least 6 months' and not more than 24 months' duration.

At least one of the three primary requirements: a supervision requirement, a programme requirement, and a community service requirement, must be imposed.

**Supervision requirement:** The purpose of this requirement is to allow for the offender to be monitored in the community.

**Programme requirement:** The purpose of this requirement is to facilitate the assessment and treatment of an offender to address their criminal behaviour. It is recommended that a PSR as to their suitability be obtained.

**Community Service Requirement:** The purpose of this requirement is for the offender to complete unpaid community work. Any single CBO may only provide a community service requirement for a minimum of 10 hours and not more than 120 hours.

If an offender is to be subject to a multiple number of CBOs subject to a community service requirement, then at any one time the total number of hours of work yet to be done must not exceed 240.

**Intensive supervision orders:** An Intensive Supervision Order is a more intensive version of a CBO. The supervision requirement is mandatory and the court may impose a curfew requirement. It cannot be imposed unless a court has received a pre-sentence report.

**Suspended imprisonment:** Suspended imprisonment is only available as an option if a court sentences an offender to a term of imprisonment or to an aggregate of terms of imprisonment of 60 months or less; you may order that the whole of the term or terms be suspended for a period set by the court but not more than 24 months.

Suspended imprisonment is not to be imposed if the offence was committed when the offender was subject to an early release order, or if the offender is serving or is yet to serve a term of imprisonment that is not suspended.

**Conditional suspended imprisonment:** This sentence is not available to JPs. It is essentially a suspended imprisonment order with the requirements of an Intensive Supervision Order.

**Imprisonment:** This is the sentence of last resort and cannot be imposed unless it is found that all of the other sentencing options are not appropriate.

An order for a term of imprisonment cannot be for six months or less.

Section 35 obliges JPs who decide to sentence an offender to a term of imprisonment, or an aggregate of terms of imprisonment, of 12 months or less, to give written reasons why no other available sentencing option was appropriate. Care should be taken to document the reasons properly as these written reasons are to be kept as records of the court.

Generally, if you are considering imprisonment you should remand the person in custody to the magistrate for sentencing.

**Costs:** The court may impose costs in any of the sentencing options other than imprisonment options. In the case of a global monetary penalty only one amount of costs is to be ordered.

## 8.5. Explaining the sentence

You must explain to an offender personally present in court the nature of the sentence and any order in addition to the sentence you decide to impose.

In a language likely to be understood by the offender, you must outline the effect of the sentence, including the orders if any, and the obligations of the offender under them. Further, you must clearly state the consequences of not complying with the sentence and the orders.

## 8.6. Correction of sentences

The S Act provides that if a court sentences an offender in a manner that is not in accordance with the Act or the written law under which the offence was committed, the court may, on its own initiative or on application by the offender or the prosecutor made in accordance with the regulations, recall the order and correct it.

If the mistake in the order is merely clerical or arises from an accidental slip or omission, the court may correct it at any time on its own initiative without recalling the order.

## 8.7. Other orders available at sentencing

### 8.7.1 Spent conviction order

A spent conviction order is an order that the conviction is a spent conviction for the purposes of the [Spent Convictions Act \(WA\) 1988](#). The *Spent Convictions Act* provides for circumstances whereby a conviction by reason of it being a spent conviction need not be disclosed or cannot be the subject of consideration, with some exceptions. In other words, a spent conviction order does not 'wipe' a conviction for all purposes.

A court sentencing an offender is not to make a spent conviction order unless:

- it considers that the offender is unlikely to commit such an offence again
- having regard to:
  - the fact that the offence is trivial
  - the previous good character of the offender.
  - it considers the offender should be relieved immediately of the adverse effect that the conviction might have on the offender.

Section 45(5) of the [Spent Convictions Act](#) makes it clear that if a court when sentencing makes a spent conviction order, that does not affect the right or duty of the court to disqualify the offender from holding or obtaining a driver's licence under the RTA 1974 or from imposing a disqualification pursuant to section 105 of the S Act.

### 8.7.2 Reparation order

A reparation order is a compensation or restitution order.

A court can make a reparation order under Part 16 of the S Act in addition to any sentencing option that it imposes; but it cannot be used as a condition of a community order or conditional release order.

A sentence must not be reduced because a reparation order is made; however, it can be used for the mitigation of a sentence in a case where an offender agrees to make good loss or damage resulting from the offence, or is otherwise contrite.

A compensation order is an order that the offender must pay an amount of money set by the court to the victim as compensation for the loss of, or damage to, the victim's property; and any expense reasonably incurred by the victim as a direct or indirect result of the commission of the offence.

The court may make a compensation order in favour of a third party. This is an order that the offender must pay an amount of money set by the court to the third party as compensation for the property that the third party is required to give to the victim by reason of the restitution order made against the third party; and any expense reasonably incurred by the third party in connection with complying with the restitution order.

A restitution order is an order by the court for the return of property that the offender (or a third party, if a third party is in possession of the property) must give to the victim within a period set by the court.

### 8.7.3 Work and development order

A court imposing a fine may make a fine enforcement order and order the offender to report to a community corrections centre within seven days, to be served with a work and development order (WDO) in respect of the fine, pursuant to section 57A of the S Act.

A WDO can only apply if a court fines an offender and does not also impose a term of imprisonment; and if the offender at the time is not in custody serving a sentence of imprisonment.

The court must not make a fine enforcement (WDO) order unless the offender is personally present in court and the court is satisfied by evidence on oath from the offender that the offender:

- does not have the means to pay the fine, either within 28 days or pursuant to a time to pay order
- is not the holder of a vehicle licence
- does not have any personal property that could be seized under a warrant of execution issued under the [Fines, Penalties and Infringement Notices Enforcement Act 1994](#) to satisfy, wholly or partly, the fine
- is unlikely to have the means to pay, or personal property that could be so seized, within a reasonable time after the fine is imposed
- is mentally and physically capable of performing the requirements of a WDO;
- is the holder of a driver's licence but is disqualified from holding or obtaining such a licence; or is not the holder of driver's licence.
- In addition the court must be satisfied that the issue of a licence suspension order under the [Fines, Penalties and Infringement Notices Enforcement Act 1994](#) would be unlikely to result in the fine being paid within a reasonable time after the fine is imposed.

A fine enforcement (WDO) order may only be made during the sentencing proceedings, and not afterwards.

#### 8.7.4 Other orders available

The Sentencing Act provides for particular disqualifications to be made in addition to a sentence. For example, section 105 gives the court power to disqualify a person from driving for a particular time even if the penalty for the offence itself does not provide disqualification.

The court may do this if the offender has used a motor vehicle in the commission of the offence, or to aid or facilitate the offence (section 105(ca)).

Similarly, the court can make orders in relation to:

- firearms licences (section 106)
- marine qualifications (section 107).

### 8.8. Sentencing checklist

#### Step 1 – Prior to plea:

- Does the offender understand the charge?
- Are they represented?
- If not have you explained the process?
- Are you satisfied with the plea of guilty?

#### Step 2 – The offence:

- Do you know the exact nature of the offence?
- Do you know the range of penalties for the offence?

**Step 3 – Circumstances of the offence:**

- Is it a serious offence?
- Did the offence occur over an extended period of time?
- Did it result in injury or loss to the victim?
- Is it prevalent in the community?
- Did it display a breach of trust?
- Was there a degree of planning involved?

**Step 4 – The offender:**

- Has the offender agreed to the statement of material facts?
- Do the facts suggest the offender may suffer from some form of mental incapacity or drug or alcohol dependency?
- Are there aggravating factors?
- Are there mitigating factors?
- Does the offender have a criminal record or is this a first offence?
- What sentence if any has the defence recommended?

**Step 5 – Sentencing:**

- Have you considered the sentencing options?
- Is a report required?
- What orders other than the sentencing options are required?
- Is a spent conviction order appropriate?

Is the sentence:

- A punishment which is just and real?
- Not excessive?
- Consistent with other punishments for similar offences?
- One that encourages the rehabilitation of the offender and the restitution of any property?
- Not primarily concerned with deterrence?

If a fine:

- Does the offender have the means and ability to pay?
- Is a global monetary penalty an option?
- Has a WDO been considered?

**Step 6 – Post sentence:**

- Has the sentence been explained to the offender?
- Has the PN been completed correctly?





## Chapter 9

# Restraining Orders

### 9.1. General

The relevant legislation is the [Restraining Orders Act 1997](#) (the RO Act).

The RO Act provides for three categories of restraining orders:

- violence restraining orders (VRO)
- misconduct restraining orders
- police orders.

The [Magistrates Court Regulations 2005](#) provide that the only time that two JPs can hear and determine an application is an interim application for a VRO in the absence of the respondent.

The breach of any VRO, including a police order, faces a penalty of \$6,000 or imprisonment of two years. A breach of a misconduct restraining order carries a penalty of \$1,000.

### 9.2. What is a violence restraining order?

A VRO is an order by a court that imposes restraints on the lawful activities and behaviour of a respondent to prevent the respondent:

- committing an act of abuse against the person seeking to be protected
- if the person seeking to be protected by the order is a child, exposing the child to an act of abuse committed by the respondent or
- behaving in a manner that could reasonably be expected to cause fear that the respondent will commit such an act.



## 9.3 Who can apply for a violence restraining order?

### 9.3.1 General

Any person may make an application for a VRO who:

- believes that another person, being the respondent, has committed an act of abuse against them and is likely to commit such an act against them again
- seeks to be protected
- applies for the order on behalf of another person, reasonably fearing that the respondent will commit an act of abuse against the person seeking to be protected
- believes that obtaining a violence restraining order is appropriate in the circumstances.

The person protected by an order and the person bound by the order under this Act must be natural persons.

The RO Act contains the power for a Court to make a VRO during other proceedings, including when a judicial officer is considering a case for bail. A VRO made at such time is a final order.

### 9.3.2 People in family and domestic relationships with the person they are seeking an order against

A person applying for a restraining order where the person to be protected and the respondent are or were in a family and domestic relationship as defined by section 4 of the RO Act can only apply for a VRO, and not any other type of order.

A court is not to make a misconduct restraining order unless it is satisfied that the person seeking to be protected by the order and the person bound by the order are not in a family and domestic relationship with each other.

Where the application relates to a family and domestic relationship, (refer to sections 3, 4 and 6 of the RO Act) the court may make a VRO if it is satisfied that unless restrained, the respondent is likely to:

- behave in a manner that could reasonably be expected to be intimidating or offensive to the person seeking to be protected and would, in fact, intimidate or offend the person seeking to be protected
- cause damage to property owned by, or in the possession of, the person seeking to be protected
- behave in a manner that is, or is likely to lead to, a breach of the peace.

In respect to a VRO relating to a family and domestic relationship, a court can impose restraints, in addition to the three mentioned above, on the lawful activities and behaviour of a respondent to prevent them:

- behaving in a manner that could reasonably be expected to be intimidating or offensive to the person seeking to be protected and that would, in fact, intimidate or offend the person seeking to be protected
- causing damage to property owned by, or in the possession of, the person seeking to be protected

- behaving in a manner that is, or is likely to lead to, a breach of the peace.

### 9.3.3 Children

A person under the age of 18 cannot apply for a VRO. A police officer, parent, guardian or child welfare worker may apply on the child's behalf.

If the respondent or person seeking to be protected is a child, section 25(3)(a) of the *Restraining Orders Act 1997* provides that the application for a VRO must be made in a Children's Court.

Children can be protected by Section 11A or 11B of the RO Act, where a VRO may be made for a child facing family and domestic violence. The court must be satisfied that:

- the child has been exposed to family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship, and the child is likely again to be exposed to such an act
- the applicant, the child or a person with whom the child is in a family and domestic relationship, reasonably fears that the child will be exposed to an act of family and domestic violence committed by or against a person with whom the child is in a family and domestic relationship.

#### **Making a violence restraining order is appropriate in the circumstances.**

Section 25(3) of the *Restraining Orders Act 1997* does not remove the ability to extend orders pursuant to section 68 of that act, and a condition protecting the child can be included in the protected person's order without application of the child.

## 9.4. The application

The application for and hearing of an interim VRO can occur in three ways:

- when a person seeking a VRO applies in writing on the prescribed form with or without a supporting affidavit
- when, considering bail for an accused, JPs place a VRO on the accused at their own volition or at the request of the prosecution
- when the court initiates a restraining order during other court proceedings (section 63 of the Act).

An application for a VRO made in person is to be applied for in the Children's Court if the respondent is a child, or in the Magistrates Court otherwise.

On an application in person for a VRO, the court may dismiss the application, grant the application for an interim order, or adjourn the matter to a mention hearing.

If adjourned to a mention hearing, the court will summon the respondent to attend court before the matter is considered further.

The applicant may elect to have a first hearing in the absence of the person who is bound by the order, or not to have a first hearing; in which case the court will summon the other party to appear.

If the applicant elects to have a hearing in the absence of the person who is bound by the order, then that hearing must be held in the absence of the person who is bound by the order.

The applicant may file an affidavit in support of the application; and if filed, the applicant need not attend the first hearing. The court must determine the application on the basis of the affidavit filed. Generally the applicant will attend the first hearing.

If the applicant does not attend the hearing and does not file an affidavit, then the court, if satisfied the applicant was notified of the hearing, is to dismiss or adjourn the application.

## 9.5. General provisions relating to children

No restraining order can be made against children less than 10 years of age.

A restraining order against a child cannot exceed 6 months' duration.

The Chief Executive Officer (CEO) of Child Welfare is to be notified before a court makes a violence restraining order where the respondent is a child who has not attained the age of 16 years and the person seeking to be protected is the parent, guardian, or person responsible for the day-to-day care of the child.

In any proceedings under this Act that affect, or may affect, the wellbeing of a child, the court hearing the proceedings may request the CEO (child welfare) to intervene in the proceedings.

Where the respondent is a child the responsible adult is to attend court, but not for the first hearing.

At the interim hearing a child is not to give oral evidence: evidence from the applicant is sufficient to determine the application.

A representation made by a child about a matter that is relevant to proceedings under this Act is admissible as evidence in those proceedings, despite the rule against hearsay.

## 9.6. The hearing

### 9.6.1 General

An application for VRO is to be heard in a closed court.

In deciding to issue a VRO, the burden of proof is on balance of probabilities not beyond reasonable doubt. In other words, the applicant must convince the court on the balance of probabilities that the order is warranted. This is because the RO Act is civil enactment, and not criminal. The Act uses the word 'satisfy', so it is the applicant who must satisfy you of the need for the order.

Hearsay evidence is accepted at the interim hearing.

At the hearing, the person seeking to be protected is entitled to have with them a person, or more than one person, to provide support. The support person must be approved by the court and is not to be a person who is a witness in, or a party to, the proceedings.

An applicant must advise the court whether there is any family order, or any pending application for a family order, in relation to Family Court proceedings. A family order includes a residence order, contact order, custody or guardianship order, access order or anything dealing with the persons or persons with whom a child is to live.

The court may not make a VRO that conflicts with a family court order, and so all orders should be made 'subject to any family court order'.

JPs do not have jurisdiction to adjust a family order, and so may not make any order that conflicts with a family order.

### 9.6.2 Matters to be taken into account when hearing the application

The court must consider, with the first four points being of primary importance:

- the need to ensure that the person seeking to be protected is protected from acts of abuse
- the need to prevent behaviour that could reasonably be expected to cause fear that the person seeking to be protected will have an act of abuse committed against them
- the need to ensure that children are not exposed to acts of family and domestic violence
- the welfare of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order
- the accommodation needs of the respondent and the person seeking to be protected
- the past history of the respondent and the person seeking to be protected with respect to applications under this Act, whether in relation to the same act or persons as are before the court or not
- the hardship that may be caused to the respondent if the order is made
- any family orders
- other current legal proceedings involving the respondent or the person seeking to be protected
- any criminal record of the respondent
- any previous similar behaviour of the respondent, whether in relation to the person seeking to be protected or otherwise
- other matters the court considers relevant.

### 9.6.3 Court procedure

#### *Pre-court procedure*

- The court will make available the applications and affidavits for the day's court in chambers well before the start time.
- Read through the documents and look up any relevant legislation.
- Check the affidavit to determine whether the person bound knows where the person to be protected lives. If the answer is no, the address should not be referred to in any part of the proceedings.
- Decide who will act as chairperson for the proceedings: although the more senior often takes this role, if there are a number of cases you may take turns.

### **Step 1: Commencement of court**

- The clerk will call you when the court is ready to start.
- You should close the court to all those not directly involved. Applications in this court will only be heard ex parte. Other than court personnel only the applicant, protected person and support person are allowed.
- The court officer will then call the first case giving the name and case number.
- The applicant will stand behind the bar table.
- If the applicant has a support person, determine that they are not a witness or a party to the proceedings.
- If the applicant does not attend and no affidavit has been filed, dismiss or adjourn the application.

### **Step 2: Applicant appears, affidavit filed and no further evidence required**

- If you have read the affidavit and are satisfied that a VRO should be granted, advise the applicant and proceed to Step 6.

### **Step 3: Applicant does not appear; affidavit filed but does not support the application**

- If you have read the affidavit and are not satisfied that a VRO should be granted, proceed to Step 7.

### **Step 4: Applicant appears, affidavit filed but further evidence required**

- You can ask for further evidence from the applicant.
- Have the applicant sworn in by court staff before asking any questions.
- You can allow hearsay evidence.
- Ask the applicant their name.
- Check that the respondent's name and address is correct.
- Ask the applicant questions relating to the affidavit that need clarification or further evidence.
- Consider the merits of the application and once a decision has been made proceed to Step 6 or 7 depending on your decision.

### **Step 5: Applicant appears, no affidavit or an inadequate affidavit filed**

- Have the applicant sworn in by court staff before asking any questions.
- You can allow hearsay evidence.
- A pre-printed form is available which sets out many of the relevant questions that need to be asked to proceed with the application.
- Ask the applicant their name – check the spelling.
- Ask whether the respondent knows where they live – if no, do not refer to the address during the proceedings.
- Check that the respondent's name and address is correct.
- Establish the relationship between the applicant and the respondent.

- Ask the applicant to explain the circumstances that caused them to appear before the court seeking the order.
- Make notes on the evidence taken (the notes should be attached to the file).
- Consider the merits of the application and once a decision has been made proceed to Step 6 or 7 depending on your decision.

### Step 6: Granting the application

- Once you have jointly arrived at a decision you should announce the name and application number of the case and state that you are prepared to grant the application for a violence restraining order, which will have conditions attached.
- Outline your reasons for the decision so that it will be captured by the transcript of the proceedings.
- Determine whether there is any family order, or any pending application for a family order.
- Determine whether a child should be included in the order.
- Use the approved form as a guide as to what restraints need to be applied to ensure that the applicant is protected.
- Read each of the conditions out for the benefit of the applicant and for the transcript.
- When completed, ask the applicant if they have any questions.
- Provide an explanation of the process as outlined in section 10.8 (below).
- Advise the applicant that if the proceedings are to be undertaken in the Family Court, or if any orders from the Family Court already exist, then such orders will over-ride any decisions made here today.
- Once again ask the applicant if they understand everything that has happened in court. If they agree, tell them they can stand down and are free to leave.

### Step 7: Refusing to grant the application

- If you are not satisfied that a VRO should be granted you may dismiss the application or adjourn the application for a mention hearing.
- Outline your reasons for the decision so that it will be captured by the transcript of the proceedings.
- You should advise the applicant that although the court at this time is not satisfied that an order should be granted that if there are any further incidents involving the respondent the applicant should apply for a fresh application.

**Note:** The appearance or non-appearance of the applicant, and any decision made by the court, must be recorded on the back page of the application form. If an interim order is granted or dismissed, both JPs should sign and record the time and date of making the order.

## 9.7. Conditions of the order

Having considered all these matters, if you are satisfied that it is appropriate you may grant the VRO.

In the order you must specify:

- the name of the person for whose benefit the order is made, that is, the person to be protected;
- the name of the person whose behaviour is restrained by the order
- the restraints to which the respondent is bound.

[Attachment 4](#) of this handbook outlines restraints that you can include. It is important to remember that the restraints imposed must be appropriate to prevent the person who is bound by the order from committing a violent personal offence or behaving in a manner that could reasonably be expected to cause the applicant to fear them.

The restraints can be imposed absolutely, or on such terms as the court considers appropriate. The terms of any order must be clear and unambiguous. Not only must the person who is bound by the order understand what the terms of the order prohibit, but others must also understand.

The law requires that where a person is required to refrain from doing an act by way of injunction or like order, that person must be notified with clarity what they are required not to do.

In situations where the address of the protected person is known to the person bound, orders can be structured to clearly notify the person bound where they are not allowed to go. In situations where the whereabouts of the person protected by the order is unknown to the person bound, the address is not to be included in the order.

Section 14 provides that every VRO automatically includes a restraint prohibiting the person who is bound by the order from being in possession of a firearm or firearms licence or obtaining a firearms licence; and that they must surrender their firearms forthwith.

In the order you can specify a period for which the restraining order remains in force – in the case of an adult not to exceed two years and in the case of a child not to exceed six months. If a period is not included, the order when finalised will automatically default to the maximum period.

## 9.8. Explanation of process after order

Once you have completed the order you must explain to the applicant in full the terms and conditions of the order. The person bound by the order is entitled to a transcript of the proceedings, so you must ensure that you are clear and precise. Section 8 of the RO Act requires the court to explain the purpose, terms and effects of the order.

If a person to whom an explanation is to be given does not readily understand English, or the court is not satisfied that the person understood the explanation, the court is, as far as practicable, to arrange for someone else to give the explanation to the person in a way that the person can understand.

You must also explain:

- The court will arrange for a copy of the interim order to be served on the person who is bound by it. The police will serve a copy of the order to the person who is bound. The person bound is required to indicate within 21 days whether they oppose the order becoming a final order.
- The person who is bound by the order may file consent to the order becoming a final order; if they fail to file an objection or consent within 21 days, then the order automatically becomes a final order.
- If the person who is bound by the order returns the endorsement copy showing that they wish to oppose the order, then the court will set the matter down for final hearing.
- A VRO comes into force when it is served on the person bound by the order, or, if a later time is stated in the order, at that time.
- The duration of the order can vary depending on the type of application and the type of order:
  - an interim order remains in force until a final order is made except if otherwise specified or the interim order is cancelled
  - A final VRO remains in force for the period specified in the order, or if no period is specified, for two years for an adult or six months for a child from the date the order came into force, unless it is varied or cancelled.
- If the person bound by the order breaches the order, the person protected should contact police and the person bound may be arrested and charged for breaching such order.
- The consequences of inviting or causing the person bound to breach the order.
- An application to vary or cancel the order is required if the applicant and person bound wish to have contact or reconcile.
- The order can be registered in another state or territory in Australia.

At the conclusion ask the applicant whether they understand all that you have explained.



A1.RO

*Restraining Orders Act 1997 s.25 (2)*

## Violence Restraining Order Application

Number	
Jurisdiction	MAGISTRATES COURT
	30 St George's Terrace
Location	PERTH

<b>Person to be Protected</b>	<i>Family Name</i>		<i>Date of Birth</i>		
	<i>Other Names</i>				
	<i>Address</i> <i>Street</i>				
	<i>Suburb</i>		<i>Postcode</i>		
		<i>Phone</i> <i>Home</i>		<i>Work</i>	
<b>Applicant</b>	Are you: <input type="checkbox"/> the person to be protected <input type="checkbox"/> the parent or guardian of a child who is to be protected				
	<input type="checkbox"/> a police officer <input type="checkbox"/> the legal guardian of the person to be protected				
	<i>Family Name</i>		<i>Date of Birth</i>		
	<i>Other Names</i>				
	<i>Address</i> <i>Street</i>				
	<i>Suburb</i>		<i>Postcode</i>		
		<i>Phone</i> <i>Home</i>		<i>Work</i>	
<b>Respondent</b>	<i>Family Name</i>		<i>Date of Birth</i>		
	<i>Other Names</i>				
	<i>Home Address</i> <i>Street</i>				
	<i>Suburb</i>		<i>Postcode</i>		
			<i>Phone</i>		
	<i>Work Address</i> <i>Street</i>				
	<i>Suburb</i>		<i>Postcode</i>		
		<i>Phone</i>			
<b>Grounds for Application</b>	Why do you need a violence restraining order? Because the Respondent is likely to:				
	<input type="checkbox"/> committing an act of abuse against the person seeking to be protected				
	<input type="checkbox"/> behaving in a way that could reasonably be expected to cause fear that a person seeking to be protected will have an act of abuse committed against him or her				
	<input type="checkbox"/> exposing a child to an act of family and domestic violence				
	<input type="checkbox"/> behaving in a way that could reasonably be expected to cause fear that a child will be exposed to an act of family and domestic violence.				
<b>Family Orders</b>	Are there any current family orders relating to the respondent's rights in relation to children who may be affected by a restraining order?		<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
	Are there any current family proceedings in which such orders are being sought?		<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
<b>Firearms</b>	Does the respondent have a firearm or firearms licence?		<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
	Does the respondent have access to a firearm at work?		<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Unknown
<b>First Hearing</b>	Do you want the respondent to be present at the first hearing?		<input type="checkbox"/> Yes	<input type="checkbox"/> No	
<b>Applicant</b>	<i>Signature</i>			<i>Date</i>	
<b>Signature</b>	<i>Signature of Clerk</i>				
<b>Hearing</b>	PERTH MAGISTRATES COURT		<i>Date</i>		<i>Time</i> 9.30am
<b>Notification</b>	I certify that on ...../...../..... at .....am/pm at PERTH .				<i>Signature of Clerk</i>
	I notified the applicant of the hearing date				

Court Copy

A1.RO

## Record of Court Proceedings

Date	Attendance		Representation		Adjournments
	Applicant	Respondent	Applicant	Respondent	

## Orders

**Judicial Officer** **Date** **Time**

### Clerk's Record


A1.RO

*Restraining Orders Act 1997 s.25 (2)*

## Violence Restraining Order Application

Number	
Jurisdiction	<b>MAGISTRATES COURT</b>
	<b>30 St George's Terrace</b>
Location	<b>PERTH</b>

<b>Person to be Protected</b>	<i>Family Name</i>		<i>Date of Birth</i>	
	<i>Other Names</i>			
	<i>Address</i> <i>Street</i>			
	<i>Suburb</i>		<i>Postcode</i>	
	<i>Phone</i> <i>Home</i>		<i>Work</i>	
<b>Applicant</b>	Are you: <input type="checkbox"/> the person to be protected <input type="checkbox"/> the parent or guardian of a child who is to be protected			
	<input type="checkbox"/> a police officer <input type="checkbox"/> the legal guardian of the person to be protected			
	<i>Family Name</i>		<i>Date of Birth</i>	
	<i>Other Names</i>			
	<i>Address</i> <i>Street</i>			
	<i>Suburb</i>		<i>Postcode</i>	
<i>Phone</i> <i>Home</i>		<i>Work</i>		
<b>Respondent</b>	<i>Family Name</i>		<i>Date of Birth</i>	
	<i>Other Names</i>			
	<i>Home Address</i> <i>Street</i>			
	<i>Suburb</i>		<i>Postcode</i>	
	<i>Phone</i>			
	<i>Work Address</i> <i>Street</i>			
	<i>Suburb</i>		<i>Postcode</i>	
<i>Phone</i>				
<b>Grounds for Application</b>	Why do you need a violence restraining order? Because the Respondent is likely to:			
	<input type="checkbox"/> committing an act of abuse against the person seeking to be protected			
	<input type="checkbox"/> behaving in a way that could reasonably be expected to cause fear that a person seeking to be protected will have an act of abuse committed against him or her			
	<input type="checkbox"/> exposing a child to an act of family and domestic violence			
	<input type="checkbox"/> behaving in a way that could reasonably be expected to cause fear that a child will be exposed to an act of family and domestic violence.			
<b>Family Orders</b>	Are there any current family orders relating to the respondent's rights in relation to children who may be affected by a restraining order? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			
	Are there any current family proceedings in which such orders are being sought? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			
<b>Firearms</b>	Does the respondent have a firearm or firearms licence? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			
	Does the respondent have access to a firearm at work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown			
<b>First Hearing</b>	Do you want the respondent to be present at the first hearing? <input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>Applicant</b>	<i>Signature</i>			<i>Date</i>
<b>Signature</b>	<i>Signature of Clerk</i>			
<b>Hearing</b>	<b>PERTH MAGISTRATES COURT</b>		<i>Date</i>	<b>Time 9.30 am</b>

Where to attend Court



When to attend Court



If you do not attend the hearing, your application may be dismissed

Applicant's Copy

03.RO		COURT _____		RO NUMBER _____	
APPLICANT		_____			
PERSON SEEKING TO BE PROTECTED		_____			
RESPONDENT		_____			
<b><u>VIOLENCE RESTRAINING ORDER</u></b>					
R1	<input type="checkbox"/>	This Order is made for the benefit of _____ (“person protected”)			
R2	<input type="checkbox"/>	This Order imposes restraints on the lawful activities and behaviour of _____ (“person who is bound”)			
R3	<input type="checkbox"/>	The duration of this Order is _____			
R4	<b>SAVE AND EXCEPT</b>				
R5	<input type="checkbox"/>	When instructing or acting through an Australian legal practitioner as defined in the <i>Legal Profession Act 2008</i> or a person acting under section 48 of the <i>Aboriginal Affairs Planning Authority Act 1972</i> or using conciliation, mediation or another form of consensual dispute resolution provided by an Australian legal practitioner, or			
R6	<input type="checkbox"/>	when participating in family dispute resolution as defined in section 51 of the <i>Family Court Act 1997</i> , or			
R7	<input type="checkbox"/>	as provided for in a “Family Order” as defined in the <i>Restraining Orders Act 1997</i> , or			
R8	<input type="checkbox"/>	for the purpose of attending and participating in any court proceedings in which the person who is bound is a party or a witness or instructing a process server or bailiff to serve any legal process requiring service.			
R9	<b>THE PERSON WHO IS BOUND SHALL NOT:</b>				
R10	<input type="checkbox"/>	communicate or attempt to communicate by whatever means with the person protected,			
R11	<input type="checkbox"/>	enter or remain upon _____ or any other premises where the person protected lives or works or be within _____ metres of the nearest external boundary of such premises,			
R12	<input type="checkbox"/>	approach within _____ metres of the person protected			
R13	<b>THE PERSON WHO IS BOUND SHALL NOT:</b>				
R14	<input type="checkbox"/>	Prevent or hinder the person protected from obtaining and using:			
R15	<input type="checkbox"/>	cause or allow any other person to engage in conduct of the type referred to in any of the preceding paragraphs of this order.			
R16	<input type="checkbox"/>	The person protected/person who is bound may recover personal and other prescribed property from _____ in accordance with the procedures set out in the <i>Restraining Orders Regulations 1997</i> in the following manner			
R17	<input type="checkbox"/>	<b>OTHER ORDER:</b>			
R18	<input type="checkbox"/>	Pursuant to Section 68 of the <i>Restraining Orders Act 1997</i> this order extends to:			
			<i>Judicial Officer/s</i>		
			<i>Date</i>		
R19	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>Section 14(1) of the <i>Restraining Orders Act 1997</i> provides that every violence restraining order includes a restraint prohibiting the person who is bound by the order from – (1) being in possession of a firearm or firearms licence and (b) obtaining a firearms licence unless the Court has made an order permitting such possession pursuant to section 14(5).</li> </ul>			
R20	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>The Applicant has indicated the person who is bound has possession of or access to a firearm.</li> </ul>			
R21	<input type="checkbox"/>	<ul style="list-style-type: none"> <li>The Applicant has indicated that firearms may be located at _____</li> </ul>			

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# Attachment 1:

## Court Locations & Contacts

The Magistrates Court has a number of registries located around the State to deal with:

- Criminal - offence-based matters and for the payment of court imposed fines; and
- Civil - claims for debt or damages and non-offence-based matters

### Magistrates Court of WA

#### Central Law Courts

501 Hay Street  
PERTH WA 6000

Standard courthouse hours are 8.30am-4.30pm Monday to Friday.

#### Criminal Matters

Telephone: (08) 9425 2222

Facsimile: (08) 9425 2777

Criminal Listings Enquiries: (08) 9425 2497 / (08) 9425 2261

Criminal Registry Enquiries and for the payment of court imposed fines: (08) 9425 2265 / (08) 9425 2266

Restraining Order Enquiries: (08) 9425 2398 / (08) 9425 2353

Time To Pay Enquires: (08) 9425 2144

#### Civil Matters

Telephone: (08) 9425 2222

Facsimile: (08) 9425 2777

Civil Listings Enquiries: (08) 9425 2750

Civil Registry Enquiries: (08) 9425 2247 / (08) 9425 2248 / (08) 9425 2249

### Metropolitan Courts

Standard courthouse hours are 8.30am-4.30pm Monday to Friday.

#### Armadale Courthouse

109 Jull Street ARMADALE 6112

Telephone: (08) 9399 0700

Facsimile: (08) 9497 1488

#### Fremantle Courthouse

8 Holdsworth Street FREMANTLE

Telephone: (08) 9431 0300

Facsimile: (08) 9430 4464

#### Joondalup Courthouse

21 Reid Promenade JOONDALUP 6027

Telephone: (08) 9400 0700

Facsimile: (08) 9300 2005

#### Midland Courthouse

24 Spring Park Road MIDLAND 6056

Telephone: (08) 9250 0200

Facsimile: (08) 9274 6676

#### Rockingham Courthouse

Whitfield Street ROCKINGHAM 6168

Telephone: (08) 9527 6433

Facsimile: (08) 9592 3077

#### Mandurah Courthouse

333 Pinjarra Road MANDURAH 6210

Telephone: (08) 9581 4000

Facsimile: (08) 9581 1842

## Regional Courts

Standard court hours are 9am - 4pm. Locations marked with an asterisk also act as District Court registries for the commencement of civil actions.

### **Albany Courthouse \***

184 Stirling Terrace ALBANY 6330  
Telephone: (08) 9845 5200  
Facsimile: (08) 9841 7920

### **Broome Courthouse \***

#### **Hamersley Street BROOME 6725**

Telephone: (08) 9192 1137  
Facsimile: (08) 9192 1878

### **Bunbury Courthouse \***

3 Stephen Street BUNBURY 6230  
Telephone: (08) 9781 4200  
Facsimile: (08) 9721 8180

### **Busselton Courthouse \***

12 Stanley Street BUSSELTON 6280  
Telephone: (08) 9754 9666  
Facsimile: (08) 9752 4950

### **Carnarvon Courthouse \***

Robinson St CARNARVON 6701  
Telephone: (08) 9941 1082  
Facsimile: (08) 9941 2779

### **Cocos (Keeling) Islands Courthouse**

c/- Police Station  
Cocos (Keeling) Islands, INDIAN OCEAN 6799  
Telephone: (08) 9162 6600

### **Collie Courthouse**

Wittenoom Street COLLIE 6225  
Telephone: (08) 9734 2061  
Facsimile: (08) 9734 1817

### **Derby Courthouse \***

Loch Street DERBY 6728  
Telephone: (08) 9191 1406  
Facsimile: (08) 9193 1025

### **Esperance Courthouse \***

Dempster Street ESPERANCE 6450  
Telephone: (08) 9071 2444  
Facsimile: (08) 9071 2288

### **Geraldton Courthouse \***

Marine Terrace GERALDTON 6530  
Telephone: (08) 9921 3722  
Facsimile: (08) 9964 1864

### **Kalgoorlie Courthouse \***

Brookman Street KALGOORLIE 6430  
Telephone: (08) 9093 5300  
Facsimile: (08) 9021 2005

### **Karratha Courthouse \***

Balmoral Road KARRATHA 6714  
Telephone: (08) 9185 2922  
Facsimile: (08) 9185 2413

### **Katanning Courthouse**

Clive Street KATANNING 6317  
Telephone: (08) 9821 1177  
Facsimile: (08) 9821 2210

### **Kununurra Courthouse \***

Coolibah Drive KUNUNURRA 6743  
Telephone: (08) 9168 1011  
Facsimile: (08) 9168 1103

### **Manjimup Courthouse**

Mount Street MANJIMUP 6258  
Telephone: (08) 9771 1316  
Facsimile: (08) 9777 1252

### **Merredin Courthouse**

Mitchell Street MERREDIN 6415  
Telephone: (08) 9041 1064  
Facsimile: (08) 9041 2604

### **Moora Courthouse**

Dandaragan Street MOORA 6510  
Telephone: (08) 9651 1407  
Facsimile: (08) 9651 1375

### **Narrogin Courthouse**

Fortune Street NARROGIN 6312  
Telephone: (08) 9881 1722  
Facsimile: (08) 9881 3344

### Northam Courthouse

Wellington Street NORTHAM 6401  
Telephone: (08) 9622 1035  
Facsimile: (08) 9622 1234

### Roebourne Courthouse

Hampton Street ROEBOURNE 6718  
Telephone: (08) 9182 1281  
Facsimile: (08) 9182 1191

### South Hedland Courthouse \*

Hawke Place STH HEDLAND 6722  
Telephone: (08) 9172 9300  
Facsimile: (08) 9172 9330

## Other Registry Locations

### Mining Registries

Mining Registries have similar powers to court registries.

### Coolgardie

40 Bayley St  
Telephone: (08) 9026 6066  
(08) 9026 6204

### Meekatharra\*

Main St  
Telephone: (08) 9981 1008  
(08) 9981 1482

### Leonora

Cnr Rochester & Tower St  
Telephone: (08) 9037 6106  
Facsimile: (08) 9037 6248

### Mount Magnet

Richardson St  
Telephone: (08) 9963 4040  
Facsimile: (08) 9963 4488

### Marble Bar

Bohemia Rd  
Telephone: (08) 9176 1044  
Facsimile: (08) 9176 1048

### Norseman

Princep St  
Telephone: (08) 9039 1082  
Facsimile: (08) 9039 1657

### Southern Cross

Canopus St  
Telephone: (08) 9049 1107  
Facsimile: (08) 9049 1431

## Police registries

Only certain civil cases, such as applications for extraordinary drivers licences and violence restraining orders, can be commenced where registry functions are performed by police officers.

Location	Phone	Fax	Exmouth	(08) 9949 2444	(08) 9949 2883
Augusta	(08) 9758 1575	(08) 9752 7812	Fitzroy Crossing		
Balgo	(08) 9168 8978	(08) 9168 8978		(08) 9191 5000	(08) 9191 5245
Bencubbin	(08) 9685 1220	(08) 9685 1372	Gascoyne Junction		
Beverley	(08) 9646 1000	(08) 9646 1447		(08) 9943 0508	(08) 9943 0598
Boddington	(08) 9883 9001	(08) 9883 8002	Gingin	(08) 9575 2244	(08) 9575 2371
Boyup Brook	(08) 9765 1100	(08) 9765 1257	Gnowangerup		
Bridgetown	(08) 9761 2336	(08) 9761 1666		(08) 9827 1438	(08) 9827 1202
Brookton	(08) 9642 1000	(08) 9642 1330	Goomalling	(08) 9629 1396	(08) 9629 1200
Bruce Rock	(08) 9061 1480	(08) 9061 1035	Halls Creek	(08) 9168 6206	(08) 9168 6000
Carnamah	(08) 9951 1222	(08) 9951 1258	Harvey	(08) 9782 4111	(08) 9782 4142
Corrigin	(08) 9063 2200	(08) 9063 2428	Jurien	(08) 9652 1017	(08) 9652 1502
Cranbrook	(08) 9826 1102	(08) 9826 1183	Kalbarri	(08) 9937 1006	(08) 9937 1633
Cue	(08) 9963 1050	(08) 9963 1228	Kalumburu	(08) 9161 4295	(08) 9161 4295
Cunderdin	(08) 9635 1000	(08) 9635 1150	Kambalda	(08) 9027 1555	(08) 9027 1562
Dalwallinu	(08) 9661 1202	(08) 9661 1321	Kellerberrin	(08) 9045 4142	(08) 9045 4104
Dampier	(08) 9183 1144	(08) 9183 1018	Kojonup	(08) 9831 1333	(08) 9831 1652
Denmark	(08) 9848 1311	(08) 9848 2062	Kondinin	(08) 9889 1100	(08) 9889 1225
Dongara	(08) 9927 1122	(08) 9927 1937	Koorda	(08) 9684 1241	(08) 9684 1056
Donnybrook	(08) 9731 1126	(08) 9731 2030	Kulin	(08) 9880 1205	(08) 9880 1071
Dowerin	(08) 9631 1100	(08) 9631 1303	Lake Grace	(08) 9865 1007	(08) 9865 1429
Dumbleyung	(08) 9863 4143	(08) 9863 4220	Lancelin	(08) 9655 1144	(08) 9655 1234
Dwellingup	(08) 9538 1057	(08) 9538 1267	Laverton	(08) 9031 1000	(08) 9031 1087
Eucla	(08) 9039 3470	(08) 9039 3490	Location	Phone	Fax
Location	Phone	Fax	Leeman	(08) 9953 1355	(08) 9953 1453



<b>Leinster</b>	(08) 9037 9000	(08) 9037 9 467	<b>Tambellup</b>	(08) 9825 1003	(08) 9825 1213
<b>Margaret River</b>			<b>Three Springs</b>		
	(08) 9757 2222	(08) 9757 3430		(08) 9954 1370	(08) 9954 1016
<b>Menzies</b>	(08) 9024 2042	(08) 9024 2126	<b>Tom Price</b>	(08) 9189 1344	(08) 9189 1203
<b>Mingenew</b>	(08) 9928 1103	(08) 9928 1270	<b>Toodyay</b>	(08) 9574 2212	(08) 9574 2451
<b>Morawa</b>	(08) 9971 1205	(08) 9971 1365	<b>Trayning</b>	(08) 9683 1004	(08) 9683 1126
<b>Mount Barker</b>	(08) 9851 2010	(08) 9851 1122	<b>Wagin</b>	(08) 9861 1211	(08) 9861 1939
<b>Mukinbudin</b>	(08) 9047 1005	(08) 9047 1049	<b>Warburton</b>	(08) 8956 7639	(08) 8956 7639
<b>Mullewa</b>	(08) 9961 1104	(08) 9961 1217	<b>Waroona</b>	(08) 9733 1230	(08) 9733 2040
<b>Nannup</b>	(08) 9756 1000	(08) 9756 3001	<b>Wickepin</b>	(08) 9888 1100	(08) 9888 1204
<b>Narembeen</b>	(08) 9064 7016	(08) 9064 7350	<b>Williams</b>	(08) 9885 1100	(08) 9885 1204
<b>Newman</b>	(08) 9175 1201	(08) 9175 1245	<b>Wiluna</b>	(08) 9981 7024	(08) 9981 7009
<b>Northampton</b>	(08) 9934 1530	(08) 9934 1103	<b>Wongan Hills</b>	(08) 9671 1144	(08) 9671 1628
<b>Onslow</b>	(08) 9184 6000	(08) 9184 6270	<b>Wundowie</b>	(08) 9573 6244	(08) 9572 7630
<b>Pannawonica</b>	(08) 9184 1022	(08) 9184 1222	<b>Wyndham</b>	(08) 9161 1055	(08) 9161 1222
<b>Paraburdoo</b>	(08) 9189 5044	(08) 9189 5401	<b>Wyalkatchem</b>	(08) 9681 1431	(08) 9681 1333
<b>Pemberton</b>	(08) 9776 1202	(08) 9776 1683	<b>Yalgoo</b>	(08) 9962 8032	(08) 9962 8060
<b>Perenjori</b>	(08) 9973 1040	(08) 9973 1016	<b>Yarloop</b>	(08) 9733 5001	(08) 9733 5419
<b>Pingelly</b>	(08) 9887 1008	(08) 9887 1401	<b>York</b>	(08) 9641 1400	(08) 9641 1697
<b>Quairading</b>	(08) 9645 1000	(08) 9465 1377			
<b>Location</b>	<b>Phone</b>	<b>Fax</b>			
<b>Ravensthorpe</b>	(08) 9838 1226	(08) 9838 1004			
<b>Shark Bay</b>	(08) 9948 1201	(08) 9948 1255			

## Attachment 2: Court Acronyms

ADJ	Adjourned
ALS	Aboriginal Legal Service
AWI	Arrest warrant to issue
BRST/BE	Bail renewed same terms/ Bail extended
CBO	Community based order
CC	Children's Court
CMD/DCH	Committal mention date/ Disclosure committal hearing
CNR	Charge not read
COMP	Compensation
CONC	Concurrent
CRO	Conditional release order
CRU	Charge read understood
CSO/ HRS	Community service order/ number of community service work hours
CUM	Cumulative
D/CT	District Court
DISQ	Disqualified
DL	Duty lawyers
FORFT	Forfeiture
HD	Hearing date
IP	In person
ISO	Intensive supervision order
JP	Justice of the Peace
LAC	Legal Aid Commission
MDL	Motor drivers licence
MO	Mention only
NAD	No appearance accused/ Defendant
NG	Not guilty
NO s5 SJ	No application section 5-SJ
NPR	No prior record
OFD	Order for destruction
OFF	Order for forfeiture
ORTO	Order return to owner
PG	Pleads guilty
s5 REF	Criminal Code section 5 application made but refused

s.5 GRANTED	Criminal Code section 5 application made and granted
SMF	Statement of material facts
PSR	Pre-Sentence report
PU	Personal undertaking
REM	Remand
REST	Restitution
SIO	Suspended imprisonment order
SUP CT	Supreme Court
VM	Victim mediation
WDO	Work and development order
YR	Year(s)

# Glossary

**Accused** A person charged with an offence.

**Act** A Law Passed by Parliament

**Adjournment** This means the case is only part heard and is being put off to another time or date.

**Adversarial** A system in civil law where two sides argue their case

**Affidavit** Written statement sworn or affirmed by a person (the deponent or affirmant) before a person who has authority to administer an oath or affirmation. Affidavits are used as written evidence in legal proceedings.

**Affirm** Make a legally binding promise to a court that the contents of a document are true.

**Affirmation** A declaration or solemn promise that the evidence to be given in court is the truth - made instead of taking a religious oath

**Applicant** A Person who applies for a court order including a violence restraining order or misconduct restraining order or family court order. Also applicable when police officer applies for a warrant.

**Arrest Warrant** An Arrest Warrant allows the police to arrest the person and bring them before the court. If a person has been summonsed to court and fails to attend, a Bench Warrant can be ordered.

**Assets** An asset is an item which:

- has some economic value to its owner
- may be money or
- can be converted into money for the owner's benefit

An example of an asset is a bank account, a house, a car etc.

**Attest** Bear witness to, affirm the authenticity of, to certify, to ask a person to make an oath or solemn declaration.

**Attest or witness the execution of a document (instrument)** Sign a legal document to verify that it has been completed according to law in your presence.

**Attest or witness a signature** Sign a document to certify that it was signed by another person in your presence.

**Attorney** Person who accepts the legal authority to act on another's behalf.

**Bail** A written promise (undertaking) that the accused will appear in court on the date required.

**Balance of probabilities** Level of proof needed in civil law cases to decide which version of events is more likely to have happened.

**Bench** Area where the magistrate or justice/s of the peace sits in court.

**Breach** To break a law or court order.

**By-law** A law made by an authority that only has legal effect within the boundaries of that authority's jurisdiction. e.g. a council by-law.

**Committal Mention** When an accused pleads not guilty to a serious (indictable offence) in the Magistrates Court a committal mention date is set. On this date the prosecution must show the court and the accused what evidence they have.

**Common law** Law made through judgments made in court/precedent.

**Compensation** Paying money for the damage or hurt done.

**Complainant** The person who has complained to the police i.e. the victim.

**Concurrent** When the court orders that two or more sentences be served at the same time.

**Costs** This is the money claimed by the successful side at the end of a case for costs incurred in going to court or for part of a court case.

**Cumulative** When the court orders that two or more sentences be served one after the other.

**Custody** Confinement in a police station, prison or remand centre.

**Declarant** Person who makes a statutory declaration.

**Default** To fail to comply with an order of the court eg fine, good behaviour bond.

**Defendant** A person against whom a complaint has been made.

**Deponent** Person who makes an oath or affirmation on an affidavit or deposition.

**Donor** Person who gives another person legal authority to act on his or her behalf.

**Executed** Carried out, performed, making (legal instrument) valid by signing.

**Executor** An executor organises for the deceased to be buried or cremated according to the deceased's wishes and to collect the assets of the deceased, pay the debts and distribute the property as set out in the deceased's Will.

**Family Court** WA court which deals with children's issues, divorce and property settlement for married couples, and children's issues and in some cases property settlement for defacto couples.

**Indictable Offence** An offence that is dealt with by judge and jury in a District or Supreme Court. Some indictable offences can be dealt with summarily (by a magistrate in a lower court) at the accused's request or the magistrates' discretion.

**Injunction** An order from a court that prevents a person doing something, eg leaving the State with children, selling property, coming into contact with someone. It can also be an order that makes a person do something.

**Instrument** Legal document such as a will, a mortgage or power of attorney.

**Intensive youth supervision order** A sentence for young offenders which can be made with or without detention and may involve going to a rehabilitation centre or course, doing supervised unpaid community work, reporting in to a Juvenile Justice Officer.

**Judges** The judicial officers who decide outcomes of cases in the intermediate and superior courts.

**Judgement** A decision by the court.

**Judicial Support Officer** A court officer who sits in front of the magistrate justice/s of the peace in court and records exhibits, arranges adjournment dates.

**Judiciary** The system of courts of justice and the personnel, such as judges, who are involved in making judgments.

**Jurisdiction** The extent of authority to make judgments and administer justice.

**Lawyer** A person with legal training, who mainly advises clients, prepares cases and briefs barristers. They also can appear in court.

**Legislation** Law made by the parliament.

**Liabilities** A liability is something a person:

- is obliged to do or
- is responsible for

An example of a liability is a mortgage or debt.

**Magistrate** A judicial official who makes judgments in the Children's Court, the Magistrates Court, and the Family Court of WA.

**Mediation** A system using a neutral person to help two parties in a dispute to come to an agreement or settlement without going to court.

**Mention** The name given to a court appearance when a plea of guilty or not guilty has not yet been entered.

**Oath** A sworn acknowledgment to speak the truth in court.

**Order** A command or direction by a court.

**Personal undertaking (Bail)** The accused signs an undertaking or promise that they will return to court on the required date. Sometimes an amount of money is attached to the promise. If the accused should fail to appear in court on the next date, they must pay the set amount of money to the court.

**Precedent** A prior decision which serves as an example or justification for later decisions.

**Preside** To occupy the position of authority or control and to hear and determine the matter brought before the court.

**Prosecutor** The person who is representing the Crown (Commonwealth) or State and trying to prove the case.

**Public Notary (or Notary Public)** Witness for overseas documents, particularly those for use in non-Commonwealth countries (may be likened to an international J.P.).

**Statutory declaration** Written statement made [in the form prescribed](#) and located in schedule 1 *Oaths, Affidavits and Statutory Declarations Act 2005*.

**Recognisance/Bail** While waiting to appear in court for the first time, or while waiting to come back to court, a person can remain at liberty after signing an undertaking or bail agreement.

The only requirement may be to appear in court at a certain date.

Sometimes bail conditions may be imposed which limits a person's movements or associations with other people.

**Registrar (also known as a clerk of courts)** The officer in charge of the courthouse and administration.

**Remand** The accused is in custody after having been refused bail or if bail cannot be considered (e.g. if the accused is a sentenced prisoner).

Is often used in Magistrates Court instead of the word "adjournment" and simply means that the matter is put off until another date and the accused remains on bail.

**Respondent** A person named by an applicant as the other party in a court case including the person against whom a violence restraining order or misconduct restraining order is sought.

**Restraining Order** An order which a court may issue to prevent a person from doing a particular act.

**Restitution** This is the payment of money equal to the value of what has been stolen or damaged and is ordered to be paid by the child or adult. Restitution can be apportioned to several co-accused in criminal cases.

**Return of Property** Police retain property that has been recovered until after the court case, in case it should be required for evidence. They then ask the court for an order to return the property to the complainant.

**Revoke** Withdraw or cancel.

**Solicitor** Another name for a lawyer.

**Stand Down** Magistrate has finished dealing with the case, accused is free to leave or can be removed by police escort.

**Statute** A law passed by parliament.

**Summary/simple offence** A minor criminal offence triable before a magistrate or justices of the peace without a jury.

**Summons** A document requiring a person to appear in court on a charge. It states the charge and the date and place of the court appearance.

**Supreme Court** The Supreme Court is the State's highest court, with responsibility for both criminal and civil matters. It deals with serious criminal charges, such as wilful murder, murder, armed robbery and serious breaches of Commonwealth drug enforcement laws. Generally, it hears civil cases where the amount involved is more than \$750,000. It is also the main appeal court in Western Australia.

**Surety** A third party required to promise to pay to the Crown an amount fixed by the court to ensure the accused's appearance at court on the required date.

**Swear** When a person swears on a Bible, Koran or other religious book that something is true.

**Undertaking** a promise to the court to do or not to do certain things

**Warrant** A document conferring on the person to whom it is issued the power to carry out the directions in the document (e.g. to search premises and seize certain goods found or to apprehend and arrest a person).

**Will** A legal document which people use to leave property as a gift when they die.

**Witness** A person who gives evidence in court.

**Your Honour** This term is used when addressing a judge, a magistrate or a justice of the peace, in court.

**Youth Community Based Order** A sentence for youth offenders which may involve going to a rehabilitation centre or course, or doing supervised unpaid community work.

## Further Reading

Aboriginal Benchbook for Western Australian courts

<http://www.aija.org.au/online/ICABenchbook/Intro.pdf>

Equality before the Law Bench Book

[http://www.supremecourt.wa.gov.au/publications/pdf/equality\\_before\\_the\\_law\\_benchbook.pdf](http://www.supremecourt.wa.gov.au/publications/pdf/equality_before_the_law_benchbook.pdf)

Language Services Policy

[http://www.omi.wa.gov.au/omi\\_language.cfm](http://www.omi.wa.gov.au/omi_language.cfm)

## Useful Websites:

Provided below are a list of websites for government departments and other organisations that may be useful to you for your information, or as a referral guide to persons that approach you seeking information.

### Court based information:

Children's Court of Western Australia at: [www.childrenscourt.wa.gov.au](http://www.childrenscourt.wa.gov.au)

Coroner's Court of Western Australia at: [www.coronerscourt.wa.gov.au](http://www.coronerscourt.wa.gov.au)

District Court of Western Australia at: [www.districtcourt.wa.gov.au](http://www.districtcourt.wa.gov.au)

Family Court of Western Australia at: [www.familycourt.wa.gov.au](http://www.familycourt.wa.gov.au)

Magistrates Court of Western Australia at: [www.magistratescourt.wa.gov.au](http://www.magistratescourt.wa.gov.au)

State Administrative Tribunal at: [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au)

Supreme Court of Western Australia at: [www.supremecourt.wa.gov.au](http://www.supremecourt.wa.gov.au)

### Other websites

Australasian Legal Information Institute (Austlii) at: [www.austlii.edu.au](http://www.austlii.edu.au)

Central Institute of Technology: [www.central.wa.edu.au/Pages/default.aspx](http://www.central.wa.edu.au/Pages/default.aspx)

Commonwealth of Australia Law (ComLaw) at: [www.comlaw.gov.au](http://www.comlaw.gov.au)

Department of the Attorney General at: [www.dotag.wa.gov.au](http://www.dotag.wa.gov.au)

Department of Indigenous Affairs:

[www.dia.wa.gov.au/en/Heritage-and-Culture/Aboriginal-culture/Aboriginal-languages/](http://www.dia.wa.gov.au/en/Heritage-and-Culture/Aboriginal-culture/Aboriginal-languages/)

Justice of the Peace Search (Other States):

[www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice\\_JusticesofthePeace](http://www.ag.gov.au/www/agd/agd.nsf/Page/Legalsystemandjustice_JusticesofthePeace)

Legal Aid – Western Australia: <http://www.legalaid.wa.gov.au/asp/home.aspx>

Office of Public Advocate: [www.publicadvocate.wa.gov.au/](http://www.publicadvocate.wa.gov.au/)

Public Notary Locator: [www.notarylocator.com.au](http://www.notarylocator.com.au)

Register of Birth Deaths & Marriages (WA): [www.bdm.dotag.wa.gov.au/](http://www.bdm.dotag.wa.gov.au/)

Royal Association of Justices (WA) Inc: [www.rajwa.org.au/](http://www.rajwa.org.au/)

State Law Publisher at: [www.slp.wa.gov.au/](http://www.slp.wa.gov.au/)

State Library of WA, Law Information Gateway at: [www.liswa.wa.gov.au](http://www.liswa.wa.gov.au)



