

Department of Justice

Justice of the Peace Handbook



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Introduction

1 How to use this Handbook

The Justices of the Peace Handbook has been written to provide information to you about tasks you may be called on to perform as a JP.

It is essential that JPs familiarise themselves with the responsibilities of this appointment and fully understand the legal significance of the duties they perform.

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 Code is reprinted in 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 relevant legislation (Acts and Regulations) when issues arise.

Access legislation at <https://www.legislation.wa.gov.au/> which is the official website for Western Australian legislation. Paste this link into a web browser like Google Chrome or Edge to access relevant WA Acts and Regulations.

Do not rely on hard copies of legislation or use legal websites to access legislation which can be outdated and often contain inaccurate information.

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

2.1 Personal assistance

Your work as a JP is supported by:

- The JP branch at the Department of Justice. The JP branch maintains the official Register of all training completed by WA JPs.
- The JP branch officers are there to answer your questions. They can be contacted on 08 9425 2525 or email jps@justice.wa.gov.au.
- Magistrates, Clerks of the Court (Registrars) and Deputy Registrars throughout the State are available to support and assist JPs.
- Independent Justice of the Peace (JP) Member Associations have been established to promote and support the status and interests of JPs and to assist in providing a high level of JP services to the WA community.
- JP associations advance and encourage the important role that JPs play in the justice system and supports networking opportunities for their members. Membership of JP associations is voluntary but is encouraged.

2.2 Website

An important tool that can help you is the JP section of the Dept. of Justice website. The web address is www.wa.gov.au. Search 'Justice of the Peace' on this website to locate relevant links.

You will find links for the following:

[Justice of the Peace – Change of address and contact details \(www.wa.gov.au\)](http://www.wa.gov.au)

[Justice of the Peace – Change of name \(www.wa.gov.au\)](http://www.wa.gov.au)

[Justice of the Peace, Resignation \(www.wa.gov.au\)](http://www.wa.gov.au)

[Justice of the Peace - Handbook 8th Edition \(www.wa.gov.au\)](http://www.wa.gov.au)

[CTS-jp-code-of-conduct.pdf \(www.wa.gov.au\)](http://www.wa.gov.au)

<https://www.wa.gov.au/organisation/departments-of-justice/become-justice-of-the-peace#justice-of-the-peace-member-associations>

[Information fact sheets](#) on various topics including witnessing documents, bail sureties and search warrants. Please check under Training for Justices of the Peace (show more).

[the JP Training Calendar](#)

3 Abbreviations used in this Handbook

Abbreviation/term	Meaning
CCWA	<i>Criminal Code of WA 1913</i>
CIA	<i>Criminal Investigation Act (WA) 2006</i>
CPA	<i>Criminal Procedure Act (WA) 2004</i>
JP	Justice of the Peace
JP Act	<i>Justices of the Peace Act (WA) 2004</i>
Mag Court Act	<i>Magistrates Court Act (WA) 2004</i>
MDA	<i>Misuse of Drugs Act (WA) 1981</i>
PN	Prosecution notice
RTA	<i>Road Traffic Act (WA) 1974</i>
S Act	<i>Sentencing Act (WA) 1995</i>
ODPP	Office of the Director of Public Prosecutions
OTP	Order to Produce

4 JPs their origin and history in WA

The office of Justice of the Peace is an 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 an 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 hear 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](#).

Today the powers of JPs are more limited.

The [Justices of the Peace Act 2004](#) defines the jurisdiction of JPs in WA. Although the authority and powers of a JP are more regulated by legislation today than in the past, it is still a position with responsibility.

JPs witness documents like Statutory Declarations and Affidavits, and certify various documents such as certificates and academic transcripts.

In regard to judicial documentation, JPs assess bail surety applications, and also issue search warrants. Types of warrants that may be issued by JPs include - a warrant to search premises for drugs (MDA warrant); a warrant to search premises for evidence in relation to an alleged criminal offence (CIA warrant); a warrant to Produce Business Records in relation to an investigation or alleged offence (CIA warrant). Warrants are covered in more detail in a separate chapter.

In order to maintain judicial independence JPs must always conduct themselves in a manner that ensures that justice is seen to be done to maintain law and order.

5 Code of conduct for Justices of the Peace

General behaviour • We will maintain and promote, in both our public and professional lives, standards of conduct that uphold the integrity and independence of our office. • 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 at all times separate the functions of our office from any personal or political interests. • We will not convey, or permit others to convey, the impression that we are in a special position of influence.	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.
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.	Training • Whenever possible, we will participate in training offered to increase our knowledge and professionalism in relation to our role.
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.	Mandatory notification • We will advise the Department of Justice within 30 days if we: a) change our name or address b) are convicted of any offence c) become an insolvent under administration

6 Obligations of a Justice of the Peace

6.1 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 a voluntary judicial appointment, being a JP comes with obligations and responsibilities.

WA legislation provides that a JP has and may perform the functions conferred on a JP by laws (Acts and Regulations) that apply in Western Australia.

These functions provide an integral link and support the judicial system. JPs are often called upon by the WA Police and other authorities to issue search warrants.

Other tasks include witnessing affidavits and documents such as statutory declarations, certifying documents and assessing bail surety applications.

JPs are expected to perform their duties consistently and be reasonably available to the public and WA Police and other authorities whenever possible. 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 legal validity of documents.

For example, issuing a warrant without reasonable cause being shown, may have an adverse effect on parties. JPs are expected to be impartial and careful in making decisions, ensuring that correct practices and procedures are always followed.

To assist you to perform these functions correctly, **it is a requirement you attend post-appointment training sessions** coordinated by the JP branch, in the form of face-to-face seminars and/or online training.

Check the Department of Justice website/ JP Training Calendar which gives details of face to face information sessions (usually held in Perth) and online training.

6.2 Specific obligations

As a JP you have some specific reporting obligations:

Mandatory Reporting

Under the JP Act you are obliged to notify the department within 30 days after the event, if a JP:

- changes their name or address
- are convicted of any offence, **or**
- become insolvent under administration (bankruptcy).

Note: The Department of Justice maintains a Register of JP contact details.

Therefore, it is essential that you notify the JP branch if your:

- Contact details eg email and phone numbers change, **or**
- Circumstances change such that it will affect your ability to carry out the duties of a JP - eg extended illness, long term travel or relocating interstate.

Failure to notify the Department of the any of the above changes may result in your appointment as a JP being **terminated** due to the Department of Justice being unable to make contact.

6.2.1 Appointment

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 signing centre roster, and/or is consistently available to the community for the purpose of witnessing documents and to authorities (police and government agencies) to issue warrants and assess bail surety applications if requested by a court officer.

While there are sufficient numbers of JPs in some geographical locations, it has been found that some do not make themselves reasonably available to assist in the duties expected of them.

6.2.2 Resigning

JPs who do not make themselves reasonably 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 Justice. A Resignation Form is located on the Department of Justice website/JP links.

6.2.3 Giving legal advice

You may be asked to give your opinion or legal advice on whether or not a person should proceed in a certain manner.

Under no circumstances should you give legal advice.

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. Do not refer or recommend anyone to a specific lawyer.

You can recommend that a person call the Law Society of WA, who offer a referral service to lawyers for specific queries – for example, contesting a Will or a personal injury claim. Private law firms may offer a no obligation/free appointment. At this initial appointment a person can normally ascertain their legal rights/options.

Refer them to a relevant government agency such as Legal Aid WA which has a call centre for general legal queries. Assistance from a Legal Aid lawyer may be available.

Other avenues to obtain legal advice include the Citizens Advice Bureau, the Youth Legal Service (both in the Perth CBD) and community legal centres in suburban Perth and regional centres. Lawyers sometimes provide legal advice at these centres on a pro bono (no fee) basis.

7 Protection of Justices of the Peace

The Justice of the Peace Act 2004 (WA) protects JPs from personal liability when performing your duties as a JP, unless you have shown to have acted corruptly or maliciously.

As long as you perform your duties 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.

As a JP, you could be found **liable** if in the course of performing your function as a JP you:

- act corruptly by accepting bribes
- wilfully, perversely, without reasonable excuse, abuse your office

- wilfully and perversely exercise jurisdiction in a matter in which you have a personal interest.

7.1 Independence

‘Independence’ can mean:

1. The greater concept of ‘judicial independence’ is the judiciary acting independently of those with legislative and executive powers.
2. ‘Individual independence’ acting in a manner free from self-interest while performing the functions of a JP.

7.2 The wider concept of independence of the judiciary

Independence of judicial officers 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.

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 judicial officers, in interpreting and applying the law, act independently of the government.

7.2.1 Legislative power

Parliaments, at both Federal and State level, have 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.

7.2.2 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 Justice
- the police, including Police Prosecutors
- the Office of the Director of Public Prosecutions (ODPP)
- federal government agencies such as the Australian Taxation Office and the Department of Home Affairs.

7.2.3 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/breach those laws

- adjudicate disputes which have their basis in law between private citizens and between any entity 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 legislation
- conclusively determine whether a person has contravened a law of parliament.

Judicial power can result in a different type of laws 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 in the same jurisdiction to follow. Judgements by the Supreme Court, the WA Court of Appeal and the High Court of Australia can be used by the lower courts to assist them in applying the law.

It is **important** that judicial officers are seen to **act independently**.

This can mean:

- Being **independent**.

JPs must make informed decisions that comply with legislation, not performing an action simply because a citizen or someone from a statutory authority or government department urges you to do so.

- Informing yourself of the facts of a matter, the relevant law and the arguments for and against a particular course of action or interpretation.

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.

Examples:

- You would not sign a warrant a police officer asks you to issue, even if the officer assured you they have complied with relevant legislation and the officer has completed all sections – **it is your role to assess the document yourself and make a decision**.
- You would not approve a surety as a matter of course. Look at what information the surety applicant has provided and make enquiries to confirm information on the form and check for any missing information, so that you are satisfied that the proposed surety can pay the amount of the surety if required to do so.
- However, **be practical and apply common sense!**
- If the surety is for say \$2,000.00 and the surety applicant does not own many assets, but the applicant has regular employment, then the applicant should be able to meet the financial obligation of \$2,000.00.
- You **would not** witness/sign a document or take any other action because a Member of Parliament, or a Councillor suggested it would be a good idea to do so.
- You **would not** witness/sign a document if a Signing Centre Coordinator/another JP suggested it would be a good idea to do so.

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

However:

- You cannot ignore or override legislation because you think that it is unfair or inconvenient to apply it in a particular situation.

The result of the requirement of independence is that:

- 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.

7.3 Individual conflicts of interest

Following the broad concept of judicial independence, every judicial officer must be seen to be independent. They should 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.

7.3.1 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 documents for land you or your family are interested in purchasing
- issue a search warrant on a business competitor or someone with whom you have a personal connection
- perform a function as a JP where you have prior knowledge of the matter – such as witnessing an alleged criminal offence.

7.3.2 How can you determine if you have a conflict of interest?

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

- Is there a relationship between myself and the person before me?
- Do I have personal/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 in the general community?
- What would be the consequences if my involvement was questioned publicly by the media on a news report, on social media or in a formal enquiry/investigation?
- Does my involvement in the decision appear fair and reasonable in all the circumstances?

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.

7.3.3 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 regional centres/country towns, that a person is known to you, or that you have dealt with them before; or they may be a **well-known sportsperson or local community leader**.

In these situations, you need to consider:

- 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 in the general community**?
- Where you perceive that there is a conflict of interest it may be **prudent** to ask the person to seek the services of another JP.
- Often JPs are pressured to witness certain documents as people in the community wrongly believe that a JP witnessing a document will give the document additional authority.
- There are many occupations/professions that are 'Authorised Witnesses' under the legislation including Pharmacists, Teachers, Nurses, etc.
- Magistrates are also authorised to issue warrants – so, if limited JPs are available in a country town local Magistrates can issue a warrant.

8 Cultural awareness as a JP

It is essential that JPs understand the importance of cultural awareness.

Courts acknowledge that Aboriginal people and immigrants to Australia have their own cultural heritage. This is evident through the use of various oaths recognising different religious beliefs and the use of registered/qualified interpreters to assist people where English is not their first language.

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 existing within the community.

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.

If for any reason an interpreter is not available, a friend of the accused who shares the language may be used if you are satisfied of their ability to do so competently and impartially. However, this is **not the preferred** approach as while a friend may have a reasonable grasp of English for conversation it may not be sufficient in a court or legal setting.

It is acknowledged that Aboriginal 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 people from culturally diverse backgrounds.

Many people who have regular contact with the law may come from a background in which there are domestic violence issues, mental health issues, financial issues and difficulties securing long term secure housing.

Other factors may 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 may apply their own perceptions and experience to make sense of what is happening to them in the judicial setting.

They may also battle with anxiety about a system that is significantly alien and unfamiliar to them.

Many of us in the community have had the privilege of travelling abroad. Some people may have had interactions with foreign police/authorities eg - with customs or police. Besides language issues it is unlikely that we are familiar with the local laws and justice systems in other countries.

Imagine how someone may feel if they have only been residing in Australia for a short period of time and there is an interaction with a police officer?

9 What is court etiquette?

WA JPs no longer sit in the Magistrates court (JPs previously sat in metropolitan courts hearing restraining order applications and sat in country/regional courts to sentence offenders for summary criminal matters and traffic offences, **but this function was removed from JPs on 1 August 2020**).

If you are asked to attend a courthouse to witness a Prosecution Notice, assess bail surety applications or for any other matter, it is good to have an awareness of court etiquette.

9.1 Dress code for court in Western Australia

In Western Australian courts, the dress code is tidy and conservative.

The following recommendations of what to wear to court is generally acceptable as proper court etiquette in WA courts:

- A suit, although this is not essential;
- Collared shirt buttoned up to an appropriate point;
- Closed in shoes.

The following are examples of what would not be acceptable in court:

- Open toe shoes such as thongs or sandals
- Sunglasses
- Hats or caps, using a mobile phone (but remember legal practitioners are allowed to use electronic devices in a courtroom).

10 Entering and leaving the courtroom

When you enter and leave the courtroom, it is customary and good court etiquette in WA for you to bow at the coat of arms behind the judicial officers as a sign of respect to the Crown.

11 Standard of behaviour in the courtroom

Court etiquette in WA also requires a certain standard of behaviour to be followed.

This standard of behaviour in the courtroom should be followed in court as it is a place of formality. The following are examples of the standards of behaviour expected in the courtroom:

- Sit silently unless called upon by the Magistrate or Judge (judicial officer);
- Follow the judicial officer's instructions;
- Address the judicial officer as 'Your Honour';
- Turn off all audio and/or mobile devices;
- Refrain from eating or drinking;
- Refrain from recording or publishing any part of the proceeding.

Chapter 1

Witnessing Documents and Administering Oaths and Affirmations

12 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 need an authorised witness:

1. Affidavits (restricted to JPs, the chief judicial officer of the Court, appointed court officers listed in Section 6.2 of the Act, experienced legal practitioners and public notary)
2. Statutory declarations
3. Warrants (restricted to JPs and Magistrates)
4. Prosecution notices (restricted to certain court officers, JPs and Magistrates)
5. Enduring powers of attorney, Enduring powers of guardianship and Advance health directives.

When witnessing a signature, you must identify yourself as the person witnessing it. If the document is presented already signed, you can request the person signing to sign again on another piece of paper so that the signature can be verified.

No fee can be charged for witnessing/issuing any of these documents.

13 Oaths and affirmations

13.1 The difference between an oath and affirmation

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

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 legal 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’.

14 Administering an oath or affirmation on affidavits

14.1 The affidavit

Legislation requires an oath or affirmation by a deponent when making an affidavit.

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

The purpose of this swearing/affirmation is to verify and attest to the authenticity of the statement and any annexures/exhibits forming part of the affidavit.

Evidence given under oath in an affidavit is as binding as oral evidence given under oath in court proceedings. It is important to remember that the deponent making a false statement in an affidavit is committing perjury which is a criminal offence, under the CCWA.

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.

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.

14.2 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 the Family Law legislation and can vary from those covered by the OASD Act.

14.3 Applications for probate

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

Probate applications can be complex and technical in nature involving wills and the administration of deceased estates.

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.

15 Steps that must be followed when administering the oath or affirmation on an affidavit

15.1 Step 1: Prior to taking the oath or affirmation

- Verify their identity (while this is not a legislative requirement, it is considered good practice.)
- Determine whether they want to make an oath or affirmation

15.2 Step 2: Ensure that the document is prepared and signed correctly

- The affidavit must be in the approved format – eg, the use of numbered paragraphs, details of the court and a jurat.
- The name of the deponent must be shown in full.
- Their (physical not postal) address must be shown, and must be spelt correctly and include the postcode.
- The deponent must have read or had read to them the contents of the affidavit.
- The affidavit must be completed and signed.
- Any alteration, such as an insertion or erasure, must be initialled.
- If there are any blank sections, cross them through.
- White out is not to be used.

15.3 Step 3: Administering the oath

- Ask the deponent to raise their hand (not for an affirmation)
- 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 referenced in the affidavit.
- If the deponent wishes to make an **affirmation** follow the same procedure, beginning with:
 - I sincerely declare and affirm...
 - followed by the four concluding points listed above.

15.4 Step 4: Witness the affidavit

After the deponent has sworn or affirmed the affidavit, you must:

- At the beginning of the document:
- Initial the deponent's preference to either swear or affirm.
- Enter the date sworn or affirmed.
- Complete the "Date of the document" if not pre-filled.
- "Date of filing" should be left blank as the court will enter the date.

In the body of the document:

- Ensure all alterations have been initialled by the deponent.
- Initial any alteration that has been initialled by the deponent.
- It is considered good practice to rule a diagonal line across any blank space or pages to ensure nothing is added later. (Both JP and deponent must initial this alteration)

At the end of document (Jurat):

- Enter the place where the affidavit was sworn. (This should be a unique location such as "Perth WA", or a full residential address etc. It is considered good practice to include the state and even the postcode to ensure the location is unique.)
- Enter the date when the affidavit was sworn or affirmed.
- Have the deponent sign the affidavit.
- Clearly write your name and JP number as the witness. (A rubber stamp containing this information may be used).
- Lastly sign the document. (A rubber stamp must not be used)

15.5 Step 5: Attachments to Affidavits

If an attachment is mentioned in an affidavit, a copy must be attached to the back of the affidavit. If multiple attachments are included, each must be identified by a unique identifier, either a letter, number, or combination of each.

Each attachment must have a statement signed by an authorised person identifying the annexure as the document referred to in the affidavit.

This is the attachment marked "..."
referred to in the affidavit of
(Deponent Name) Sworn/Affirmed
this (Day) of (Month) 20..

The statement must be signed at the same time as the affidavit and by the same authorised person.

Alternatively, some jurisdictions mandate that an index of attachments be included on the first page of an affidavit with one or more attachments. The index lists each attachment, its page number, and a short description of the attachment.

If the attachments are not with the affidavit, the affidavit is incomplete and should not be signed.

15.6 Step 6: Check the affidavit

Before handing back the completed affidavit check that:

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

Check that: you and the deponent have completed the affidavit in accordance with the guidelines of the relevant court who is receiving the affidavit.

15.7 Important points

- All affidavits will have a **heading** detailing 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.**

- **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. This needs to be initialled by the deponent and JP.

- You do not have to witness the signing of the affidavit except where either Family Court and Federal circuit court Rules of Evidence require the deponent to sign the affidavit in your presence.
- When they take the oath the deponent will be stating that it is their true name and their signature.
- **Rubber stamp signatures must not be used.** However, a rubber stamp of your name and qualification as a witness is acceptable.
- There is an example of an affidavit at the end of this chapter.

16 Statutory declarations

With a statutory declaration there is no requirement to swear or affirm. A simpler 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.

16.1 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.

16.2 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.
- **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.
- **Rubber stamp signatures must not be used.** However, a rubber stamp with your name and qualification as a witness is acceptable.
- 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 be less than 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.

16.3 Procedure for affidavits or statutory declarations – blind or illiterate

If the person making an affidavit or statutory declaration is blind or illiterate 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.

16.4 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.

17 Witnessing other documents: Enduring Power of Attorney (EPA), Enduring Power of Guardianship (EPG) and Advance Health Directive(AHD)

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/EPG/AHD must be witnessed by two people:

- one of whom must be an authorised witness.
- the second witness is anyone aged 18 years and over, and with legal capacity (sound mind, not a bankrupt etc)

The role of the witnesses is to:

- be satisfied as to the identity of the donor
- verify that the donor signs the document in their presence.

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/EPG/AHD if:

- there is any doubt as to the donor's mental capacity to understand what is being signed
- the donor appears to be signing the EPA/EPG/AHD under duress, coercion, undue influence.

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

18 Certifying copies of documents

18.1 What is a certified copy?

Often people are asked to supply documents to support applications, such as for birth certificates, academic qualification transcripts 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.

18.2 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 practice for documents to be certified by a person who is authorised as a witness for statutory declarations under the OASD Act.

Sometimes the institution (for example a Superannuation fund) requiring the certified copy will list particular persons they will accept as being able to certify particular documents.

18.3 How do you certify a copy?

Before certifying a document, you must ensure that the copy to be certified is a true 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, title, 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.

Comply with instructions (if any) of the intended recipient of the certified copies. For example: Government agencies, APHRA etc. The onus is on the applicant to determine the specific requirements.

18.4 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.

18.5 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, title, JP number and the date.

18.6 Certifying photographs

If the document contains a photograph (eg passport, driver's licence):

- The original document must be presented to you, along with the copy/ies;
- Write/stamp the following: 'I have sighted the original document and certify this appears to be a true copy of the original.' For documents with more than one page, initial every page then write/stamp the statement on the last page.

For a physical/original photograph,

- Visually confirm the person presenting the photograph is the person pictured in the photograph. If so, then;
- write/stamp the following on the back (unless there are specific instructions): '*I certify that this photograph is a true likeness of (insert name)*'. You must also include:
 - your signature
 - your full name
 - "JP" and identification number
 - the date

18.7 Certifying documents in digital format?

Increasingly, members of the public are presenting documents to JPs requesting that a document printed from a website, or an emailed attachment (Word, PDF etc) be certified or authenticated.

Remember there is no legislation in WA that stipulates how to certify a copy of a document or who can do it.

The general rule in respect to certifying a document as a true copy is that a **person authenticating** the document must **sight the original and the photocopy at the same time**. This is not possible in respect to documents printed from a web page. Two options are suggested:

1. **Certification of web based documents from the owner of the website** – if the document is printed from the website of an organisation such as a bank, training provider, government department, corporate body – the printed copy should be presented to an authorised officer from that organisation for certification.
2. **Authenticate the web based document by swearing/affirming a Statutory Declaration** – so, make a Statutory Declaration before an authorised witness, declaring that the document appears to be a true copy of the document displayed on the website.

For further details access Information Fact Sheet 4 Certifying Documents Printed from a Website from the [Department of Justice website](#).

19 Landgate – Carefully read to ensure you are entitled to witness the document

Landgate is the agency responsible for land titles and property records in Western Australia. The [Transfer of Land Act 1893](#) 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.

20 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 (for example Queensland) 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. The onus is on the person requesting you to be a witness to check for authorised witnesses before approaching a WA JP.

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

Application no. 937/10

PROBATE DIVISION

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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SC JF
SC JF

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

I JOE FARMER of 17 Fowler Drive, Perth in the State of Western Australia ~~Senior~~
~~Court~~ Officer, make oath and say as follows:

Customer Service

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 7th July 2010. Annexed hereto and marked with the letter "A" is a certified copy of his death certificate.

Sworn by the deponent
at Perth in the State of
Western Australia this
22nd day of November 2010
Before me

Joe Farmer

Deponent's Signature

Sarah Citizen JP

Sarah Citizen
Justice of the Peace
WA Registration Number 36854

JP's Signature

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, the letter 'A' has not been included in the handbook.

WESTERN AUSTRALIA

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

STATUTORY DECLARATION

Paragraphs numbered

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

sincerely declare as follows:-

1. The photocopy annexed hereto and marked with
the letter "A" is a true and correct copy of the
original invoice No. ²⁷⁴²~~2741~~ welding safety equipment
Purchased on 2nd October 2010 from Acme Welding Co.

2. This account was paid in full on the ^{6th}~~3rd~~ October 2010
(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)

10th October 2010
(date)

in the presence of -

Jeff Melwood JP
(Signature of authorised witness)

Jeff Melwood
Justice of the Peace
WA Registration Number 97854
(Name of authorised witness and qualification as such a witness)

by John Citizen
(Signature of person making the declaration)

Declarant's Signature

JP's Signature

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

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

JM JC

JM JC

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

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

Full descriptions of these professions are available via the following website link
[Authorised Witnesses for Statutory Declarations](#)

Or

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

Any authorised witness for the State of Western Australia may also witness a Commonwealth Statutory Declaration, as long as they are in Western Australia at the time of witnessing - Schedule 2, item 231 of the *Statutory Declarations Regulations 1993 (Commonwealth)*.

Further information on witnessing documents is available at
www.courts.justice.wa.gov.au.

Annexure "A"

Invoice 2742

September 28, 2010

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
Subtotal			234.95
Tax			21.35
Total Due			256.30

Make all cheques payable to: Acme Welding Company

THANK YOU FOR YOUR BUSINESS!

JP's Writing

This is the annexure marked "A" referred to in the statutory declaration declared by John Citizen on the 10th October 2010

Jeff Melwood JP

JP's Signature

Jeff Melwood
Justice of the Peace
WA Registration Number 97854

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

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

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

I, ¹

make the following declaration under section 9 of the *Statutory Declarations Act 1959*:

- 2 Set out matter declared to in numbered paragraphs

²

I believe that the statements in this declaration are true in every particular, and 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*, the punishment for which is imprisonment for a term of 4 years.

- 3 Signature of person making the declaration

³

- 4 Email address or telephone number of person making the declaration

- ⁵ Place

Declared at ⁵

on ⁶

of ⁷

- ⁶ Day

- ⁷ Month and year

Observed by me,

- 8 Signature of person observing the declaration being made

⁸

- 9 Full name, qualification and address of person observing the declaration being made

⁹

- 10 Email address and/or telephone number of person observing the declaration being made

¹⁰

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 section 9 of the *Statutory Declarations Act 1959* may be made before—
a person who is currently licensed or registered under a law to practise in one of the following occupations:

Architect	Chiropractor	Dentist
Financial adviser	Financial Planner	Legal practitioner
Medical practitioner	Midwife	Migration agent registered under Division 3 of Part 3 of the <i>Migration Act 1958</i>
Nurse	Occupational therapist	Optometrist
Patent attorney	Pharmacist	Physiotherapist
Psychologist	Trademarks attorney	Veterinary surgeon

(1) 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

(2) person who is in the following list:

(3) Accountant who is:

- a) a fellow of the National Tax Accountants' Association; or
- b) a member of any of the following:
 - i. Chartered Accountants Australia and New Zealand;
 - ii. the Association of Taxation and Management Accountants;
 - iii. CPA Australia;
 - iv. the Institute of Public Accountants

Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public

APS employee engaged on an ongoing basis with 5 or more years of continuous service who is not specified in another item in this list

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 a Commonwealth authority engaged on a permanent basis with 5 or more years of continuous service who is not specified in another item in this list

Employee of the Australian Trade and Investment 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 the employee's function at that place

Employee of the Commonwealth who is:

- (a) at a place outside Australia; and
- (b) authorised under paragraph 3 (c) of the *Consular Fees Act 1955*; and
- (c) exercising the employee's function at that place

Engineer who is:

- a) a member of Engineers Australia, other than at the grade of student; or
- b) a Registered Professional Engineer of Professionals Australia; or
- c) registered as an engineer under a law of the Commonwealth, a state or territory; or
- d) registered on the National Engineering Register by Engineers Australia

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

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 the Australian Defence Force who is:

- a) an officer
- b) a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service
- c) a warrant officer within the meaning of that Act

Member of the Australasian Institute of Mining and Metallurgy

Member of the Governance Institute of Australia Ltd

Member of:

- a) the Parliament of the Commonwealth
- b) the Parliament of a state
- c) a territory legislature
- d) a local government authority

Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*

Notary public, including a notary public (however described) exercising functions at a place outside

- a) the Commonwealth
- b) the external territories of the Commonwealth

Permanent employee of the Australian Postal Corporation with 5 or more years of continuous service who is employed in an office providing postal services to the public

Permanent employee of

- a) a state or territory or a state or territory authority
- b) a local government authority

with 5 or more years of continuous service, other than such an employee who is specified in another item of 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 employee of a Commonwealth authority Senior executive employee of a State or Territory

SES employee of the Commonwealth Sheriff

Sheriff's officer

Teacher employed on a permanent full-time or part-time basis at a school or tertiary education institution

Reverse side of Commonwealth Statutory Declaration form

Chapter 2

Search Warrants

21 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 (carrying out) of a warrant even if requested to do so.

JPs issue 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

Weapons Act 1999

9. Search and seizure warrant

Commonwealth warrants [Crimes Act 1914 \(Cth\)](#)

10. Search warrants

11. Arrest warrants

21.1 Criminal Investigation Act 2006 - Applications by telephone, 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, 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 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 in your **Log Book/Diary**, 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 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.

21.2 Search warrants (*Criminal Investigation Act 2006*, sections 41 and 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 (for example – Council Rangers, Fisheries Officers, Dept. of the Environment officers) can apply to a JP for a search warrant under their respective Acts.

WA Police (WAPOL) policy requires all warrants to be reviewed by a senior officer (Sergeant or above) prior to being presented to the JP.

Where a Misuse of Drugs Act (MDA) warrant involves a “**covert**” operation, the rank of the reviewing officer must be an Inspector or above.

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

- a) state the applicant's full name and official details (eg police PD number)
- b) state the offence(s) that is suspected to have been committed, or that is suspected may be committed, in relation to which a search warrant is to be granted.
- 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 (for MDA warrants, a ‘thing’ could be an implement for the manufacture of drugs, a set of scales, etc.).
- 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 who has committed or is committing an offence, is in the place.
- h) 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
- i) 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
- offence(s) 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.

A warrant will remain in force for the period specified on the warrant to a maximum of 30 days. The JP, in consultation with the officer, will determine the duration except in the case of a warrant issued under the *Misuse of Drugs Act* where the duration is automatically set to 30 days.

22 Warrants to search premises/person (check list)

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

- A request for search warrant will come in two parts the:
 1. Sworn application
 2. Search warrant (Original and copy).
- Ensure that the correct form has been used.
- Check that the application has been completed and signed, with all sections filled out.
- Administer the oath or affirmation.

22.2 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.

22.3 Step 3: issue the warrant

- If satisfied, complete and sign the search warrant.
- 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.

Compliance with the CIA (sections 13, 41 and 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.

23 Forensic procedure (FP) warrants

Relevant legislation is sections 99 and 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 grounds 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.

24 Issuing a forensic procedure (FP) warrant

24.1 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.
- Administer the oath or affirmation.

24.2 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.

24.3 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.

25 Orders to Produce (OTP) 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(s)** 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 OTP 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, or email. If you don't believe you should issue the warrant, you must record on the application the reasons for your refusal.

26 Criminal Investigation (Identifying People) Act 2002

26.1 Identifying Persons warrants

Relevant legislation is sections 15, 45 and 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 person's 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.

The IP Warrant must only pertain to the 'suspect' not an involved person.

27 Issuing a warrant under the *Criminal Investigation (Identifying People) Act 2002*

27.1 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.
- Administer the **oath** or **affirmation**.

27.2 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.

27.3 Step 3: issue the warrant

- Ensure that the following details 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.

28 *Misuse of Drugs Act 1981*

28.1 Issuing a Misuse of Drugs Act 1981 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 anything 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.

28.2 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.
- Administer the **oath** or **affirmation**.

28.3 Step 2: consider the application

In order to issue an MDA warrant you must be satisfied there are reasonable grounds to suspect:

- that an offence has been committed or is suspected to have been committed.
- the items are suspected to have been used or may be used to commit an offence.
- that the items will provide evidence in respect of the offence.
- the things are in the possession of the suspected person.

28.4 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:

- your name
- the date when it was issued.

If satisfied, complete and sign the warrant.

29 *Criminal Property Confiscation Act 2000*

29.1 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 2000](#).

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.

29.2 Forms

The police or public officer will provide forms designed for the purpose of the relevant legislation.

30 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 ODPP or a police officer may apply to a JP for the issue of a freezing notice.

A JP 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 | • ordinary tools of trade |
| • family portraits | • professional instruments |
| • necessary clothing | • reference books |

Note: The contact details of the JP **cannot be redacted** and your details will **become known** to the accused.

31 Firearms Act no longer used for JPs to issue Search Warrants

31.1 Firearms Act 2024

The *Firearms Act 1973*, which enabled a JP to issue and authorise a Firearms Search Warrant, was repealed by the *Firearms Act 2024* on 31 March 2025.

The *Firearms Act 2024* addresses modern firearm developments and contemporary legislative practices in line with the recommendations of the Law Reform Commission of Western Australia.

The *Firearms Act 2024* section 346, permits the application for and issuance of a search warrant under the [Criminal Investigation Act 2006](#), Part 5 - Entering and searching places and vehicles.

The [Criminal Investigation Act 2006](#), Part 5, applies if:

- Possession of a firearm or related item by a person in circumstances that justify its seizure constitutes an offence and
- A firearm or related item in a person's possession in a situation that justifies seizure is pertinent to that offence.

As the search warrant is requested under the Criminal Investigation Act, it requires the authority of a Justice of the Peace to issue. The application will be made in the proper format, utilising the Criminal Investigation Act search warrant application and warrant, with the JP's consideration based on the requirements of the Act.

32 Weapons Act 1999

32.1 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 an 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.

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.

33 Commonwealth legislation

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

33.1 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.

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.

34 Arrest warrants – Federal and State

34.1 Federal Arrest Warrants

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.

34.2 State Arrest Warrants

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.**

35 Execution of warrants and other processes out of the State

The [Service and Execution of Process Act 1992](#) (Cth) 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).

36 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** (write) 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.

Example of Search Warrants

Section 41	<i>Criminal Investigation Act 2006</i>		Application for Search Warrant Ref:154034	
Applicant s41(3)(a)	Full Name	SHAUN PATRICK O'HEHIR		
	Rank	Det.Snr Constable.	Registered No.	PD9634
	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)	Offence	Section	Act	
	Burglary & Commit Stealing	s401,s378	Criminal Code Act	
Grounds on which he applicant suspects that the offence has been or may be committed s 41(3)(c)	On Tuesday 16 March 2024, 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. I inquired into this information and believe the complaint to be true.			
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)	I, Shaun O'Hehir, whose signature appears on this complaint affirm; 1. I am a Detective Senior Constable currently attached to the Joondalup Detectives Office. 2. On Tuesday 16 March 2024, 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. 3. JOYCE advised police the following items were stolen from her home: 1x TEAK Black Television, Model no. JL110, serial no. 395876; 1 x silver PANASONIC stereo system, serial no. DWOJF04898; 1 x AKAI video recorder serial number VS-G242EA; and \$550.00 in Australian currency.			

JP to initial and date each page:


20 Apr 2024

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)	4. I Spoke to Joanne RESID (RESID), a neighbour of JOYCE, who advised that at about 9:00am on 16 March, 2024 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 2024 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 2024 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 2024 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 1A Timewell Street, Joondalup, 6027 10. Further checks of the IMS database revealed Smith with prior convictions for Burglary and Stealing in 2019, 2020, 2022 and 2023. In each instance entry was gained by smashing the toilet window. 11. At 9.00am, 17 March 2024 I conducted a drive past of 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 1A 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.

JP to initial and date each page:


20 Apr 2024

Disclosure of prior applications 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? ☐ Yes ☒ No	
	If yes, was the warrant issued? ☐ Yes ☐ No (Provide explanation for your answer)	
Independent reviewing officer	I, <u>Snr Sgt Steve Jones</u> Registered No. <u>PD 6278</u> of, <u>Joondalup Police Station</u> having <u>being</u> informed by <u>Shaun O'Hehir</u> believe that there is sufficient factual evidence to seek the issue of this warrant. Signature <u>Steve Jones</u> Date/Time <u>20/04/2024 09:00</u>	
Oath/Affirmation SO	I swear by Almighty God/sincerely declare and affirm that the contents of this application are true and correct. SO <u>S O'hehir</u> PD9364 Applicant to sign in presence of JP	
JP to complete the following sections:		
JP's decision s 42(4)	The applicant made this application on oath before me on <u>20 Apr 2024</u> (insert date) at <u>Joondalup Courthouse</u> (place where application is made). The application is: Granted ☒ Refused: ☐ If refused JP must record reasons for refusal: _____ _____ _____ _____ Date and time of grant/refusal: <u>JP.</u> <u>20/4/2024 15:30</u>	
JP's signature	<u>J Peace</u> JP Justice Peace Justice of the Peace WA Reg. No. 5656	

Criminal Investigation Act 2006		s. 42		Search warrant	
1 To	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.				
2 Applicant's details	Name of Officer	SHAUN PATRICK O'HEHIR			
	Office held	Det. SNR Constable.	Registered No.	PD9364	
	Station/squad	JOONDALUP DETECTIVES' OFFICE			
Suspected offence(s)	Offence	Section		Act	
	Burglary & Commit Stealing	s401, s378		Criminal Code Act	
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.				
3 Place to be searched	1A Timewell Street, Joondalup, Western Australia 6027				
4 Person or thing(s) to be searched for	1 x TEAK Black Television, Model no. JL110, serial no. 395876; 1 x silver PANASONIC stereo system, serial no. DWOJF04898; 1 x AKAI video recorder serial number VS-G242EA; and \$550.00 in Australian currency.				
5 Execution period	This warrant must be executed within30..... days after the date it is issued.				
Issuing details	Name of JP	Justice Peace			
	Date	20/4/2024	Time	15:30	
JP's signature	Issued by me on the above date and at the above time. J Peace Justice of the Peace Justice Peace Justice of the Peace WA Reg. No. 5658				
2 Execution details	Start	Date:.....	Time:.....	End	Date:.....
	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:				
	Person found/Thing(s) seized? Yes/No				
Officer in charge of execution	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)).

EXECUTION DETAILS (Officer in charge of executing warrant must complete in addition to the execution details on the warrant)

IF THE PERIOD OF EXECUTION IS NOT BETWEEN 6AM and 9PM, DETAIL WHY THE WARRANT HAD TO BE EXECUTED AT THIS TIME: (tick at least one)

It is reasonably suspected that if the warrant were executed between 6am and 9pm:

☐ the safety of a person may be endangered; or

☐ the effectiveness of the search may be jeopardised.

Explain why:

Signed (OIC Search)

Signed _____ No. _____ Rank _____

_____ Date/Time _____

Audiovisual recording of search:

If the search was not audio visually recorded, provide reasons why it was not reasonably practicable to make an audiovisual recording of the search: s 45(2)

Occupier supplied with a copy of warrant

☐ Copy of this warrant handed to (occupier)

☐ Copy of this warrant left in a prominent position in the place that was entered-

(Describe where copy is left)

Signed _____ No: _____ Rank: _____

Date/Time: _____

Criminal Investigation Act 2006 s. 42		Search warrant	
1. To	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.		
2. Applicant's details	Name of Officer	SHAUN PATRICK O'HEHIR	
	Office held	Det. SNR Constable.	Registered No. PD9384
	Station/squad	JONNDALUP DETECTIVES' OFFICE	
Suspected offence(s)	Offence	Section	Act
	Burglary & Commit Stealing	s401, s378	Criminal Code Act
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.		
3. Place to be searched	1A Timewell Street, Joondalup, Western Australia 6027		
4. Person or thing(s) to be searched for	1 x TEAK Black Television, Model no. JL110, serial no. 395876; 1 x silver PANASONIC stereo system, serial no. DWOJF04898; 1 x AKAI video recorder serial number VS-G242EA; and \$550.00 in Australian currency.		
5. Execution period	This warrant must be executed within <u>30</u> days after the date it is issued.		
Issuing details	Name of JP	[REDACTED]	
	Date	20/4/2024	Time 15:30
JP's signature	Issued by me on the above date and at the above time. [REDACTED] Justice of the Peace		
2. 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:		
	Person found/Thing(s) seized? Yes/No		
Officer in charge of execution	Name	[REDACTED]	
	Office held	[REDACTED]	Registered No. [REDACTED]
	Station/squad	[REDACTED]	

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)).

NOTICE TO OCCUPIER

Pursuant to s 31(5) of the Criminal Investigation Act 2006, you are hereby notified that these

premises were entered under a search warrant, which was executed on / /
between am/pm and am/pm.

A copy of the search warrant is attached to this notice.

In addition, note that items were/were not seized pursuant to the search warrant. An inventory of any property seized is available on request to the undersigned-

Officer in charge of executing the search: No Rank

at the Police Station/Squad

Telephone Ext

Signed _____

OFFICERS ASSISTING IN SEARCH

OCCUPANTS PRESENT DURING SEARCH

Signed (OIC Search) _____ No. _____ Rank _____

Date/Time _____

Seizure Schedule

The following things were seized under warrant executed on the ____ day of ____ 20____
____ am/pm, at _____

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Interim Rec No. _____ I.M.S. Rec No _____

Signed (OIC Search) _____ No. _____ Rank _____

Date/Time _____

Disposal Schedule

[illegible]

¹: Return to person/defaced or destroyed/forfeited or other (Detail authority to dispose)

Signed (OIC Search) _____ No. _____ Rank _____

WESTERN AUSTRALIA

MISUSE OF DRUGS ACT 1981

MISUSE OF DRUGS REGULATIONS 1982

INFORMATION ON OATH FOR SEARCH WARRANT

Perth Detectives

I, Peter Michael Allen of, Perth Detectives being a Detective Snr Const,
do solemnly, sincerely and truly declare
that I suspect that the following thing:

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

/ in or on the following premises or other place

68 Burnham Way, Girrawheen, WA 6064.

on the following grounds –

See reverse of Information on Oath for Search Warrant for detailed grounds.

Sworn before me *Justice Peace JP 5656* being a

Justice of the Peace, on 20/4/2024 at Northbridge.

J Peace

.....
Signature of Justice of the Peace.

Justice Peace Justice of the Peace WA Reg. No. 5656

Hereunder state grounds for issue of Search Warrant.

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

1. On 15 April 2024 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.

SIGNATURE of Complainant *Peter M Allen PD7661*

J Peace

I, Snr.Sgt.SUPERVISOR PD7888 of Perth Police Centre
(RANK, NAME and NUMBER) (SECTION)

having been informed by Peter Michael ALLEN believe that there is sufficient factual evidence to seek the issue of this warrant.

I concur with that view.

Approval to seek issuance granted

at 20/4/2024 14:40

(TIME AND DATE)

SIGNATURE I A Supervisor
.

I, Justice Peace JP 5656 , JP having heard the said evidence of as recorded above, hereby believe there are sufficient grounds for the issue to Peter Micheal ALLAN
of my warrant to search the said premises.

SIGNATURE J Peace

(Date) 20/4/2024

Justice Peace Justice of the Peace WA Reg. No. 5656

WESTERN AUSTRALIA
MISUSE OF DRUGS ACT 1981
 MISUSE OF DRUGS REGULATIONS 1982

SEARCH WARRANT

I, **Justice Peace JP 5656**

of, **Perth** being a justice of the peace and being satisfied by information on oath furnished by 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*.

may be in or on the following vehicle

/ in or on the following premises or other place

68 Burnham Way, Girrawheen. WA. 6064

hereby grant to the following police officer Peter Michael Allen 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.....**20/4/2024**.....

at.....**Northbridge**.....

J Peace

Signature of Justice of the Peace
granting search warrant.

Justice Peace
Justice of the Peace
WA Reg. No. 5656

MISUSE OF DRUGS ACT 1981
MISUSE OF DRUGS REGULATIONS 1982

SEARCH WARRANT

I, [REDACTED]

[REDACTED], being a justice of the peace and being satisfied by information on oath furnished by that there are reasonable grounds to suspect that the following thing referred to in paragraph (a), (b) or (c) of Section 23 (1) of the Misuse of Drugs Act 1981

may be in or on the following vehicle

/ in or on the following premises or other place

68 Burnham Way, Girrawheen WA
6064

hereby grant to the following police officer 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.....20/4/2024.....

at.....Northbridge.....

[REDACTED]

Signature of Justice of the Peace
granting search warrant.

This warrant executed by me at

.....
(Address of search)

on the day of at a.m. /p.m.

The following things were seized:
.....

A copy of this warrant was handed to:

.....
(Name of occupier)

Signed:

.....
(Officer in charge of search)

Officers assisting:

All persons present during execution of warrant

Name:..... D.O.B: Charged: Y / N

Address: APW / VIS

Name:..... D.O.B: Charged: Y / N

Address: APW / VIS

Name:..... D.O.B: Charged: Y / N

Address: APW / VIS

Name:..... D.O.B: Charged: Y / N

Address: APW / VIS

Name:..... D.O.B: Charged: Y / N

Address: APW / VIS

Name:..... D.O.B: Charged: Y / N

Address: APW / VIS

Please complete all **details**

WESTERN AUSTRALIA

FORM M.D. 8

NOTICE TO OCCUPIER

This document is a copy of a search warrant which has been executed on these premises on

_____ / _____ / _____ at _____ a.m. / p.m.

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:

Detective/Senior/Sergeant/Constable _____

at the _____ Police Station / Squad.

Telephone _____ Ext: _____

(Signed) _____

Officer in charge of search.

Chapter 3

Bail and Surety Applications

37 Introduction

What is bail?

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.

The term '**bail**' is not defined in legislation but the WA Legal Aid website provides a definition – 'Bail is a written promise (known as a bail undertaking) that the accused will come to court at a particular time and date and must comply with certain conditions'.

Examples of bail **conditions** may include – a curfew, reporting to a police station, not to approach a certain person or place, etc.

In this chapter we explore the **main documents** relating to bail and sureties:

- bail undertaking
- surety undertaking.

38 Bail undertaking form

38.1 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.

- the top copy is for the court, the second copy for lockup/prison and the third copy for the accused.

39 Surety undertaking

39.1 When is a surety undertaking needed?

If it has been decided (by a Magistrate or Judge) that a surety is required to ensure that the accused complies with his bail undertaking to appear at a certain court, then the surety must also sign an undertaking.

39.2 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.**

39.3 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.

39.4 What should a JP state 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.’

Legislation and Forms

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

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 – 4₁ – 5 – 6₃ – 7 – 10₁

Forms for the surety: 8 – 9 – 10₂ – 14₂

Forms for the court: 4₃ – 6₁ – 10₃ – 12₁ – 14₁

Forms for the police: 4₂ – 11 – 14₃

Forms for the lockup/prison: 6₂

Form for the responsible person: 12₂

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

40 General information: particulars and restrictions of note

40.1 Bail Undertakings

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(s) in court.

The *Bail Act* uses **undertakings** whereby a person charged may be released from custody upon entering into a bail undertaking. An undertaking is a 'legal promise' made by the accused to appear at a certain court at a particular date/time. So, the main **undertaking** is always that an accused will appear at the next court appearance.

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.

40.2 Role of Surety?

A surety is required to undertake to forfeit a specified sum of money if the accused fails to attend court as required.

41 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.

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*).

41.1 Approving sureties

You may 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 of the Act 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 age 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, a JP needs to consider:

- the character and antecedents (a person's past history 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.

41.2 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 assessing 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, it is up to the Magistrate to decide the consequence for the surety.

You are **required to check** if a surety has outstanding fines (registered with FER?), pending charges or a criminal record. You need to inform the surety of the consequences of swearing a false declaration.

Give thought to the stability of the surety: are they employed?

If someone would like to enter into a surety undertaking for \$1,000.00 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.

41.3 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.

1. Summary	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.
2. Bail information form	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. 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. Information supplied cannot be used against you at your trial.
3. At time of arrest	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. Certain police officers, and for children only, certain community services officers, may deal with bail at this stage, except – (a) for the offence of murder; (b) where the arrest is made under a warrant; (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 - (i) on bail for another serious offence; or (ii) at liberty under an early release order in respect of another serious offence; or (d) for an offence that involves breach of a violence restraining order. A justice may also deal with bail at this stage except - (a) for the offence of murder; (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 - (i) on bail for another serious offence; or (ii) at liberty under an early release order in respect of another serious offence; or (c) for an offence that involves breach of a violence restraining order.
4. On appearance in court	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 – (a) there has been a change of circumstances; or (b) you did not present your case properly at the time when bail was refused. 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.
5. Warrant cases	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.
6. Where charge is murder	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. 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.
7. Decision may be delayed	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

8. How decision to be made – adult	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. However, bail must be refused if the case comes within clause 8B below.
8A. How decision to be made – child	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. A child, before conviction, has a right to bail unless – (a) no such undertaking is entered into by a responsible person; or (b) the points in clause 9(a) and (b) below disclose a reason why bail should be refused; or (c) the case comes within clause 8B below.
8B. Where serious offence committed while on bail for another serious offence	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.
9. Points to be considered	The main points to be taken into account in the bail decision are – (a) Before trial (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. (ii) Whether you need to be kept in custody for your own protection. (iii) In the case of an adult, whether the prosecutor has put forward reasons for refusing bail. 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. (b) During trial 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. (c) After conviction 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. If you are awaiting sentence, bail may be granted at the discretion of an appropriate judicial officer. In either case the criteria in (a) above must be considered.
10. Conditions	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. 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.
11. Accused to receive copy of bail decision form or court record	If your case for bail has been considered by a justice, a police officer, or a community services officer and – (a) you have been refused bail; or (b) you have been granted bail after having previously been refused; (ca) you have been granted bail for a serious offence while on bail for another serious offence; or (c) you notify the decision-maker that you are dissatisfied with any condition that has been imposed; 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. 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.

12. Bail undertaking	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. 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.
13. Release from custody	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.
14. Reconsideration of decision	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. 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.
15. Application to judge	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 – (a) new facts have been discovered or there has been a change of circumstances; or (b) you failed to present your case properly on the first application.
16. Sureties	There is a form which a person must complete before he can be approved as a surety. Each surety must also sign an undertaking which sets out his liabilities.
17. False information	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.
18. Offence to compensate surety	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.

FORM 6
BAIL ACT 1982
Sections 28(2)
BAIL UNDERTAKING

[Reg. 6]
ORIGINAL

Details of accused:

Surname: JONES Other names: Paul James...

Date of birth: 9/9/1969

Address: 53 Black Road, JARRAHDAL

Telephone No: 08 9447 5858 Mobile No: XXXX -XXX -XXX

Email address: pauljones@hotmail.com

Charge(s)/appeal/proceedings:

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

Matter/Charge numbers:

Charge numbers PE3456-7/00, PE2563/00

Time and place of appearance:

Magistrates Court of Western Australia, Perth. 501 Hay Street PERTH WA 6000

On **Wednesday** the **29th** of **August 2018** at **09:15 AM**.

Conditions to be observed during bail:

Bail Conditions: \$5000JP approved surety. To reside at 59 Black Road, JARRAHDAL

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.

Signed

PJ Jones



Accused must sign here

ACCUSED

The Department will send electronic notifications in relation to court appearances mentioned in this form. If you **do not** wish to receive electronic notifications, please tick the box below.

☐ I do not wish to receive electronic notifications.

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

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

Jeff Melwood
Justice of the Peace
WA Reg No. 29461



JP must print name and reg # or use stamp

JP must endorse /circle text

Signature: *Jeff Melwood*

Official Designation:

Date: 8 January 2001

JP must sign here



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

Signed

PJ Jones



Accused must sign here

ACCUSED

COURT COPY

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



FORM 6
BAIL ACT 1982
Sections 28(2)
BAIL UNDERTAKING

[Reg. 6]
DUPLICATE

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** Mobile No: **xxxx XXX XXX** Email address: **pauljones@hotmail.com**

Charge(s)/appeal/proceedings:

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

Matter/Charge numbers:

Charge numbers **PE3456-7/00, PE2563/00**

Time and place of appearance:

Magistrates Court of Western Australia, Perth. 501 Hay Street PERTH WA 6000
On Wednesday the 29th of August 2018 at 09:15 AM.

Conditions to be observed during bail:

Bail Conditions: **\$5000JP approved surety. To reside at 59 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.

Signed

PJ Jones



Accused must
sign here

ACCUSED

The Department will send electronic notifications in relation to court appearances mentioned in this form. If you **do not** wish to receive electronic notifications, please tick the box below.

☐ **I do not wish to receive electronic notifications.**

CERTIFICATE AS TO UNDERTAKING

(2) delete as
appropriate

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

JP must endorse /
circle text

Jeff Melwood

Jeff Melwood
Justice of the Peace
WA Reg No. 29461



JP must
print name
and reg #
or use
stamp

Signature:.....

Official Designation:.....

Date: **8 January 2001**

JP must
sign here



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

Signed

ACCUSED

PJ Jones



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 (1) of the Act.

Jeff Melwood

Signature:.....

Official Designation:.....

Jeff Melwood
Justice of the Peace
WA Reg No. 29461

JP must sign here

COPY FOR LOCKUP/PRISON

FORM 6
BAIL ACT 1982
Sections 28(2)
BAIL UNDERTAKING

[Reg. 6]
TRIPLICATE

Details of accused:

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

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

Address: **53 Black Road, JARRAHDAL**

Telephone No: **08 9447 5858** Mobile No: **xxxx XXX XXX** Email address: **pauljones@hotmail.com**

Charge(s)/appeal/proceedings:

Charge Details: Possession of heroin, possession of smoking implement, steal M/V

Matter/Charge numbers:

Charge numbers PE3456-7/00, PE2563/00

Time and place of appearance:

Magistrates Court of Western Australia, Perth. 501 Hay Street PERTH WA 6000

On **Wednesday** the **29th** of **August 2018** at **09:15 AM**.

Conditions to be observed during bail:

Bail Conditions: **\$5000JP approved surety. To reside at 59 Black Road, JARRAHDAL**

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.

Signed

PJ Jones



Accused must sign here

ACCUSED

The Department will send electronic notifications in relation to court appearances mentioned in this form. If you **do not** wish to receive electronic notifications, please tick the box below.

☐ I do not wish to receive electronic notifications.

CERTIFICATE AS TO UNDERTAKING

(2) delete as appropriate

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

JP must sign here



Signature: *Jeff Melwood*

Official Designation:

Jeff Melwood
Justice of the Peace WA
Reg No. 29461

JP must endorse/ circle text

Date: **8 January 2001**

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

Signed

PJ Jones



Accused must sign here

ACCUSED

TO THE ACCUSED:

THE NOTICE ATTACHED TO/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.

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 you 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

Bail Act 1982

Sections 35 and 37(1)(a) & (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, JARRAHD**
 Address

2. CHARGE(S)/APPEAL/PROCEEDINGS

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

3. COURT AND CHARGE NOS.

PE3458-9/00, PE2564/00

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.

JP must sign and print
name/
JP Reg no. here



Jeff Melwood

Jeff Melwood
Justice of the Peace – WA Reg No. 29461

SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

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

\$5000 JP Approved surety. To reside at 53 Black Road, JARRAHD
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,**
JARRAHD

Telephone No..... **(08) 9447 5858** Fax No..... **N/A**

Email address..... **N/A**

5. (a) Relationship ⁽¹⁾ to accused

Wife

⁽¹⁾ eg parent, friend, employer.

(b) Period for which known defendant

Six years

(See reverse.)

6. Financial position

Assets	Value (\$)
Real estate (address).....	
Vehicle(s) (make, model and reg.no)..... 2004 Nissan Pulsar 1BFF 449	\$13000
Electrical equipment (TV, stereo, DVD etc).....	\$10000
Furniture (excluding white goods)	
Bank accounts..... ANZ account 025 325 – 52356845	
Shares	
Other (please state).....	
Liabilities	Value (\$)
Mortgage(s) (specify financial institution).....	
Fines (including fines registered with the Fines Enforcement Registry	
Credit cards	\$2000
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;  Applicant to initial (a) and (b)
- (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)  JP to ensure (a) and (b) are complied with
- (b) Form 9 (Information for Proposed Surety).

I STATE that —

- (a) I do/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) I do/do not * require notice to be given to me of any such different time or time and place.
- (c) I do/do not* agree to my obligations as a surety being extended to a different time substituted during trial.

* show which

Signature of applicant.....DSmith

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

One "do"/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

NOTICE TO PROSECUTOR

Prosecutor notified of application orally/in writing

Date.....Time.....Name of person notified

Signature.....

Designation.....

Response by prosecutor (if any):

DECISION

Applicant approved/not approved 

JP must delete approved or not approved as appropriate

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

Jeff Melwood
Justice of the Peace –
WA Reg No. 29461

Bail Act 1982**Sections 35 and 37(1)(a) & (c)****PART A — NOTICE TO SURETY AS TO TERMS OF BAIL**

- NAME AND ADDRESS OF ACCUSED
JONES Paul James.....
Surname Other Names
53 Black Road, JARRAHDAL
Address
- CHARGE(S)/APPEAL/PROCEEDINGS
Possession of heroin, possession of smoking implement, steal M/V
- COURT AND CHARGE NOS.
PE3458-9/00, PE2564/00
- WHERE AND WHEN ACCUSED REQUIRED TO APPEAR
Perth Magistrates Court, 501 Hay Street, PERTH
Name and location of court
ON MONDAY DAY THE 4th DAY OF February 2001 AT 10 AM/PM
- BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.

Jeff Melwood

Jeff Melwood
Justice of the Peace –
WA Reg No. 29461



JP must
sign and print name/
JP Reg no. here

SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

(1) For an
explanation see
Form 9.

PART C
SURETY UNDERTAKING

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

I, Donna Jane JONES of 12 Hyde Terrace, JARRAHDAL
undertake and agree, to forfeit \$5000 to the State, in terms of section 49 of the Bail
Act 1982 (1), if the abovenamed accused.

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

- (a) fails to appear at the time and place specified in Part A above; or
(b) (2) 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) (3); 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.

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

**MUST be
selected. and
endorsed by JP**



acknowledge that before entering into this undertaking (4) 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

DSmith

(4) Delete as
appropriate.



The above undertaking was entered into by the abovenamed, before me after I had (4) 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.

**JP must sign
and print name/
JP Reg no. here**



Signature *Jeff Melwood* Justice of the Peace
WA Reg No. 29461 Date: 2 / 1 / 2001
Official Designation

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

Signature of Surety *DSmith* Date 2 / 1 / 2001

ENDORSEMENT UNDER SECTION 45(3)

I certify that on I required the accused to appear at on
day the day of 20 at a.m./p.m. and that, under
section 45(1)(a) of the Act, I orally notified the surety thereof.

Signature
Official Designation Date

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

Signature

Bail Act 1982
Sections 35 and 37(1)(a) & (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, JARRAHDAL
 Address

2. CHARGE(S)/APPEAL/PROCEEDINGS

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

3. COURT AND CHARGE NOS.

PE3458-9/00, PE2564/00

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

**1. BAIL HAS BEEN GRANTED TO THE ACCUSED TO APPEAR AS
 ABOVEMENTIONED, ON THE FOLLOWING TERMS AND CONDITIONS.**

JP must sign and print
 name/JP Reg no here



SIGNATURE AND DESIGNATION OF SURETY APPROVAL OFFICER

Jeff Melwood

Jeff Melwood
 Justice of the Peace – WA Reg No. 29461

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.

MUST be selected.
 and endorsed by
 applicant



I, Donna Jane JONES of 12 Hyde Terrace, JARRAHDAL
 undertake and agree, to forfeit \$,5000 to the State, in terms of section 49 of the
Bail Act 1982 (1), if the abovenamed accused.

- (a) fails to appear at the time and place specified in Part A above; or
 (b) ⁽²⁾ 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) ⁽³⁾; 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 (4) 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 DSmith

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.

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.

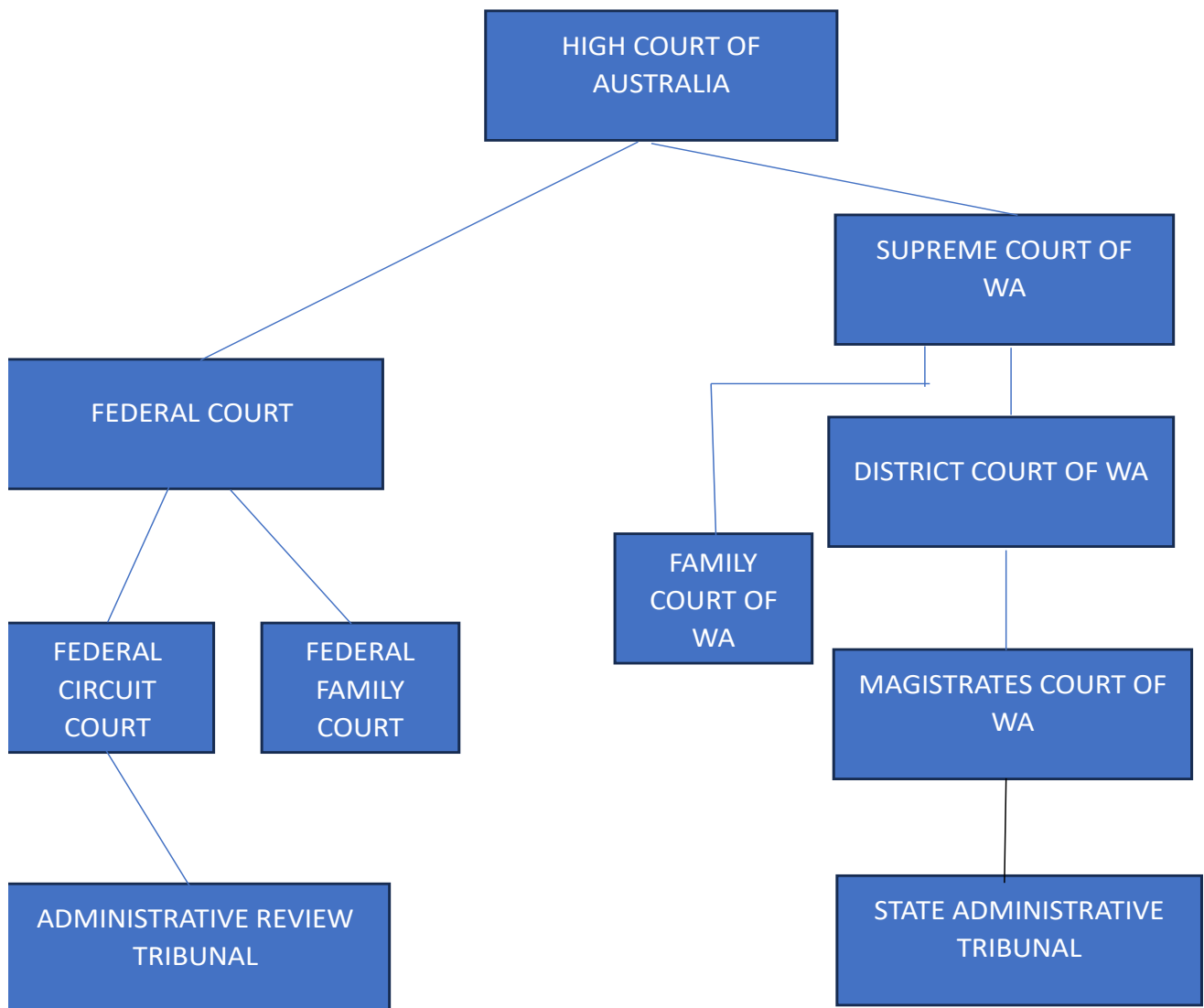
15. Surety becoming unsuitable

The prosecutor or a police officer may have the accused brought before the court and apply to have bail cancelled or changed if he reasonably believes (among other things) that a surety is no longer suitable or security given by a surety is no longer sufficient.

16. Offence to compensate surety

It is an offence for a person to compensate, or agree to compensate, a surety or a proposed surety for any liability which he incurs, or may incur, under the Bail Act 1982. 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.

Federal and State Court System Hierarchy in Australia



Warrants and Orders – What can a JP Grant?

JP's authority to Grant Warrants, Notices and Orders			
Act	Reference	Warrant / Order	JP Grant?
<i>Agricultural and Related Resources Protection Act 1976</i>	s.84 (2)	Search Warrant	YES
<i>Criminal Investigation Act 2006</i>	s.58 (2)	Data Access Order	NO
<i>Criminal Investigation Act 2006</i>	s.89 (2)	Forensic Procedure (involved person)	NO
<i>Criminal Investigation Act 2006</i>	s.99 (2) (a)	Forensic Procedure (suspect) (where the suspect is an adult)	YES
<i>Criminal Investigation Act 2006</i>	s.99 (2) (b)	Forensic Procedure (suspect) (where the suspect is a protected person)	NO
<i>Criminal Investigation Act 2006</i>	s.52 (2)	Order to produce business records	YES
<i>Criminal Investigation Act 2006</i>	s.41 (2)	Search Warrant	YES
<i>Criminal Procedure Act 2004</i>	s.31 (1) (f)	Arrest in the first instance	NO
<i>Criminal Property Confiscation Act 2000</i>	s.34 (1)	Freezing Notice	YES
<i>Criminal Property Confiscation Act 2000</i>	s.74 (2)	Search Warrant	YES
<i>Dog Act 1976</i>	No reference authorising	Destruction Order	NO
<i>Dog Act 1976</i>	s.12 (3)	Enter and inspect	YES
<i>Dog Act 1976</i>	s.17 (4)	Seize	YES
<i>Dog Act 1976</i>	s.29 (5a)	Seize attack dog	YES
<i>Energy Operators (Powers) Act 1979</i>	s.46 (7)	Entry on or into any land, premises or thing	YES
<i>Fish Resources Management Act 1994</i>	s.187 (1)	Enter and search	YES
<i>Gaming and Wagering Commission Act 1987</i>	s.25 (1)	Enter	YES
<i>Gaming and Wagering Commission Act 1987</i>	s.25 (2)	Search, arrest and seize	YES
<i>Local Government Act 1995</i>	s.3.33 (1)	Enter any land, premises or thing	YES
<i>Misuse of Drugs Act 1981</i>	s.24 (1)	Search Warrant	YES
<i>Water Agencies (Powers) Act 1984</i>	s.72 (6)	enter upon the land, premises or thing	YES
<i>Weapons Act 1999</i>	s.14 (1)	Search and seizure	YES