

Joint Protocol between the Office of the Director of Public Prosecutions and the Law Society of Western Australia regarding circumstances in which Letters of Recognition will be made available to Defence Counsel



Government of **Western Australia**
Office of the **Director of Public Prosecutions**

The Law  **Society**
— OF WESTERN AUSTRALIA —
The voice of the legal profession in Western Australia

Preamble

1. Whereas agreement has been reached between the Western Australia Police (WAP) and the Office of the Director of Public Prosecutions, Western Australia (ODPP) regarding the issuing and handling of Letters of Recognition (also known as letters of comfort or letters of support) where an offender has provided information that has assisted the WAP and warrants a Letter of Recognition, this Protocol governs the circumstances in which Letters of Recognition will be made available to Defence Counsel by the Office of the Director of Public Prosecutions, Western Australia (ODPP).
2. This Protocol has been developed and approved by the ODPP and the Law Society of Western Australia in response to a request from the Western Australian Strategic Criminal Justice Forum that a practical and consistent approach be identified and implemented in relation to the management of Letters of Recognition.

Objective

3. The objective of this Protocol is to establish standard operating procedures for when Letters of Recognition will be made available to Defence Counsel.
4. The Protocol relates to the prosecution of any offence in Western Australia, whether indictable or not, and whether on indictment or not.
5. This Protocol applies to all ODPP personnel and members of the Law Society regarding the principles and procedures to be followed.
6. This Protocol should be read in conjunction with existing policies and procedures of the ODPP and the Law Society, including:
 - 6.1. The ODPP Statement of Prosecution Policy and Guidelines - Convicted Persons Co-operation with Authorities.

Guidelines

7. On occasions an offender will have rendered significant assistance to the WAP. In these circumstances the WAP may determine that the assistance warrants a Letter of Recognition from the WAP to the Court advising the nature of the assistance.
8. As a Letter of Recognition may have a substantial mitigating effect on sentence, such a letter may only be presented to the court when sanctioned by the Director of Public Prosecutions (the Director) or the Deputy Director of Public Prosecutions (the Deputy Director).
9. The WAP is responsible for assessing the level of cooperation provided by an offender, and the value of the assistance rendered to the investigation, to determine whether a Letter of Recognition is warranted in the circumstances.

10. The level of assistance provided by an offender will be graded by the WAP according to grades of support. The three grades of support identified by the WAP are:
 - 10.1. Grade 1
 - 10.1.1. Provided significant information on a serious criminal offence (high level); and/or
 - 10.1.2. Performed an active role in assisting authorities; and/or
 - 10.1.3. Provided a witness statement or has given/will give evidence.
 - 10.2. Grade 2
 - 10.2.1. Provided significant information on a serious criminal offence (mid to high level); and/or
 - 10.2.2. Performed tasks to assist authorities; and/or
 - 10.2.3. Provided a witness statement or has given/will give evidence.
 - 10.3. Grade 3
 - 10.3.1. Provided information on a criminal offence; and/or
 - 10.3.2. Performed tasks to assist authorities.
11. The WAP is responsible for determining the content of a Letter of Recognition.

Public Interest Determination by the WAP

12. At the time of preparation of a Letter of Recognition the WAP will determine whether making the Letter of Recognition available to Defence Counsel may:
 - 12.1. Jeopardise a current police investigation; and/or
 - 12.2. Endanger the life of any person,and will convey that decision to the ODPP by separate correspondence (in writing) at the time of delivery of the Letter of Recognition to the ODPP.

Offender to Authorise a Letter of Recognition to be made available to Defence Counsel

13. At the time of preparation of a Letter of Recognition, if the WAP are of the opinion that it will not jeopardise a current police investigation and/or endanger the life of any person, the WAP will inform an offender that:
 - 13.1. A Letter of Recognition is to be provided to the court;

- 13.2. If the offender would like his or her Defence Counsel to know the content of the letter, the offender must provide authorisation in writing for his or her Defence Counsel to view the letter at the offices of the ODPP;
- 13.3. If the offender would like to see the content of the letter, but does not want the content to be made known to his or her Defence Counsel, the offender should liaise directly with the WAP.
14. If an offender does not wish to authorise his or her Defence Counsel to know the content of a Letter of Recognition, the WAP will inform the offender that, notwithstanding this, the ODPP will advise the offender's Defence Counsel that a Letter of Recognition has been provided in relation to the offender, but will not reveal the contents of the Letter of Recognition.

Content of Authorisation

15. Authorisation to disclose the content of a Letter of Recognition to Defence Counsel must be:
 - 15.1. In writing;
 - 15.2. Addressed to the Director of Public Prosecutions;
 - 15.3. Signed by the offender; and
 - 15.4. Include the following statement:

"I, [Full name of offender] of [Address of offender], authorise the Director of Public Prosecutions to make available to my Defence Counsel, [Name of Defence Counsel], the content of the letter prepared by the WAP for presentation to the court at my sentencing on [Date of hearing] and any adjourned date(s). It may not be made available for any other purpose."
16. The written authorisation should be obtained by the WAP before the Letter of Recognition is provided to the ODPP and should be delivered to the ODPP by the WAP in the same sealed envelope as the Letter of Recognition.

Where written authorisation is received from an offender and a police investigation will not be jeopardised and the life of any person will not be endangered

17. Where the ODPP has received a written authorisation from an offender to make the content of a Letter of Recognition available to his or her Defence Counsel, and the WAP have advised that doing so will not jeopardise a current police investigation and will not endanger the life of any person, the ODPP will notify Defence Counsel at least two working days prior to sentencing that:
 - 17.1. A Letter of Recognition has been received in relation to the offender;

- 17.2. Defence Counsel may attend at the ODPP to read the letter;
- 17.3. Such reading will be conducted in the presence of an officer of the ODPP; and
- 17.4. No copy of the letter is to be provided to Defence Counsel.
18. Where it is impracticable for Defence Counsel to attend at the ODPP to read a Letter of Recognition in person, for example:
- 18.1. If Defence Counsel is a country practitioner;
- 18.2. If there is insufficient time for Defence Counsel to attend at the ODPP to read the letter prior to sentencing; or
- 18.3. If the letter relates to a Circuit Sentencing Hearing, the ODPP Sentencing Counsel or the ODPP file manager, upon being satisfied as to the identity of the relevant Defence Counsel, may read the letter to Defence Counsel over the telephone. No copy of the letter is to be provided to Defence Counsel in these circumstances.
19. Where Defence Counsel creates notes (handwritten or electronic) as a result of his/her:
- 19.1. Inspection of a Letter of Recognition pursuant to Clause 17; or
- 19.2. As a result of a telephone conversation pursuant to Clause 18,
- of this Protocol, Defence Counsel must provide to the ODPP a written undertaking to destroy all notes of the contents of a Letter of Recognition at the conclusion of the sentencing of the offender. This applies even if the prosecution or the offender wishes to consider commencing an appeal in relation to the sentence.

Where written authorisation is received from the offender and a current police investigation may be jeopardised and/or the life of any person may be endangered

20. Where the WAP advise the ODPP that making the content of a Letter of Recognition available to an offender's Defence Counsel may jeopardise a current police investigation and/or may endanger the life of a person, and notwithstanding that the ODPP has received a written authorisation from the offender to make the content of a Letter of Recognition available to his or her Defence Counsel, the ODPP will confirm to the offender's Defence Counsel that a Letter of Recognition has been provided in relation to the offender, but will not reveal the contents of the Letter of Recognition.

This Protocol is endorsed on behalf of the Office of the Director of Public Prosecutions in Western Australia and the Law Society of Western Australia by:

Office of the Director of Public Prosecutions Western Australia



Government of **Western Australia**
Office of the **Director of Public Prosecutions**

J McGrath

28.01.2011

Director

Date

The Law Society of Western Australia



H.Quail

28.01.2011

President

Date