

Joint Protocol between the Director of Public Prosecutions and Western Australia Police regarding issuing and handling of Letters of Recognition



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



Preamble

1. This Protocol relates to the issuing and handling of Letters of Recognition (also known as letters of comfort or letters of support) issued by the Western Australia Police (WAP) to a Western Australian Court in circumstances where an offender has provided information that has assisted the WAP and warrants the provision of a Letter of Recognition.
2. The Protocol has been developed and approved by the Office of the Director of Public Prosecutions, Western Australia (ODPP) and the WAP 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 arrangements for the issuing and handling of Letters of Recognition.
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 and WAP personnel regarding the principles and procedures to be followed.
6. This Protocol should be read in conjunction with existing policies and procedures within each agency, including:
 - 6.1. The ODPP Statement of Prosecution Policy and Guidelines - Convicted Persons Co-operation with Authorities; and
 - 6.2. The WAP Human Source Management Manual - Letters of Recognition Policy.

Guidelines

Issuing a Letter of Recognition

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.
12. A Letter of Recognition must be signed by an appropriate WAP Portfolio Head before being provided to the ODPP.

Timeframes

13. The WAP will use best endeavours to provide a Letter of Recognition to the ODPP at least three (3) clear days before the date of the offender's sentencing hearing, or such other hearing to which the Letter of Recognition is relevant.
14. The Director or Deputy Director will sanction a Letter of Recognition (by signing it) at the first available opportunity.
15. The ODPP will deliver the Letter of Recognition to the sentencing (or hearing) judge in a sealed envelope at the first available opportunity. The ODPP will use best endeavours to ensure that the letter is delivered two (2) days before the date of the hearing.

Form of Letter of Recognition

16. All Letters of Recognition provided by the WAP to the ODPP should be:
 - 16.1. Original documents on the WAP letterhead;
 - 16.2. Addressed to the court;
 - 16.3. Signed by the relevant WAP Portfolio Head;
 - 16.4. Include the following statement:

"This letter is prepared for presentation to the court at the sentence of [Full name of offender] on [Date of hearing] and any adjourned date(s). It may not be used for any other purpose."
17. Due to the sensitive nature of such a letter, the letter should be enclosed in a sealed envelope and delivered personally by a WAP representative to:
 - 17.1. The Legal Administrator for the Director; or, in his or her absence,
 - 17.2. The Executive Assistant to the Deputy Director.

Content of Letter of Recognition

18. All Letters of Recognition should set out:
 - 18.1. The nature of the offence(s) for which the offender is to be sentenced;
 - 18.2. The date of the offence(s);
 - 18.3. The background to the assistance including:
 - 18.3.1. How the assistance was offered (for example, whether the offender approached the WAP directly or through a solicitor);
 - 18.3.2. The timing of the offer (for example, immediately upon arrest, after the brief was served, after conviction);
 - 18.3.3. Details of the offender's actions in WAP custody (for example, had two records of interview; refused to make a statement; remained in WAP custody for X days to effect controlled delivery/make calls).
 - 18.4. Where applicable, the background of persons arrested as a consequence of the assistance provided by the offender including:
 - 18.4.1. Who was arrested;
 - 18.4.2. When they were arrested;
 - 18.4.3. Whether charges were laid;

- 18.4.4. The present position with respect to the prosecution of persons arrested as a consequence of the assistance provided;
 - 18.4.5. If the offender is to be a witness for the prosecution;
 - 18.4.6. Whether the WAP knew or suspected the persons who were arrested before the assistance was provided by the offender.
- 18.5. The assistance provided by the offender to date, including:
- 18.5.1. The number and dates of records of interview;
 - 18.5.2. The number and dates of any signed statements;
 - 18.5.3. Any other action by the offender (for example identification of voices or photos);
 - 18.5.4. A summary of the information provided by the offender.
- 18.6. An evaluation of the assistance provided by the offender, including:
- 18.6.1. The Grading of the Letter of Recognition (according to the levels set out in paragraph 10 of this Protocol);
 - 18.6.2. An assessment of the risk to the offender in providing the assistance;
 - 18.6.3. Whether the information was known to the police before the assistance was provided;
 - 18.6.4. If the information was known previously, whether the assistance provided any additional information or simply confirmed the information already held by the WAP;
 - 18.6.5. Whether the offender was forthcoming in the provision of information or whether he or she withheld information;
 - 18.6.6. The results of the assistance provided;
 - 18.6.7. An evaluation of the timing of the assistance (for example, if the information had been given immediately it may have resulted in arrests, but by the time it was received it was of limited value only);
 - 18.6.8. An evaluation of the genuineness of the assistance (for example, did the offender seek to find out what the authorities knew before providing the assistance).

Public Interest Determination by the WAP

19. 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 :
- 19.1. Jeopardise a current police investigation; and/or
 - 19.2. 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

20. 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:
- 20.1. A Letter of Recognition is to be provided to the court;
 - 20.2. 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; and
 - 20.3. 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.
21. 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

22. Authorisation to disclose the content of a Letter of Recognition to Defence Counsel must be:
- 22.1. In writing;
 - 22.2. Addressed to the Director of Public Prosecutions;
 - 22.3. Signed by the offender;
 - 22.4. 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."

23. 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

24. 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 that:

24.1. A Letter of Recognition has been received in relation to the offender;

24.2. Defence Counsel may attend at the ODPP to read the letter;

24.3. Such reading will be conducted in the presence of an officer of the ODPP; and

24.4. No copy of the letter is to be provided to Defence Counsel.

25. Where it is impracticable for Defence Counsel to attend at the ODPP to read a Letter of Recognition in person, for example:

25.1. If Defence Counsel is a country practitioner;

25.2. If there is insufficient time for Defence Counsel to attend at the ODPP to read the letter prior to sentencing; or

25.3. 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.

26. In the event that Defence Counsel produces notes (written or electronic) in relation to their review of a Letter of Recognition, Defence Counsel will be required to provide to the ODPP a written undertaking to destroy all notes made at the conclusion of the sentencing of the offender. The obligation to destroy any notes created will apply 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 police investigation may be jeopardised and/or the life of any person may be endangered

27. 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 Western Australia Police and the Office of the Director of Public Prosecutions in 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 16.12.2010

Director

Date

Western Australia Police



K. O'Callaghan 16.12.2010

Commissioner

Date