



Western Australia

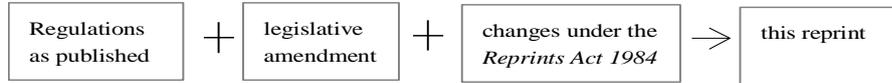
Restraint of Debtors Act 1984

Restraint of Debtors Regulations 1986

Reprint 1: The regulations as at 12 December 2003

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Restraint of Debtors Regulations 1986

CONTENTS

1.	Citation	1
2.	Commencement	1
3.	Application for warrant	1
4.	Warrant	1
5.	Summons	2
6.	Endorsement of summons	2
7.	Certain notice to be given by applicant	2
8.	Notice on release	3
9.	Orders	3
10.	Revocation of order for release	3
11.	Application for restraining order	3
12.	Money	3
13.	Fee	4
14.	Offence and penalty	4
	Schedule	5
	Notes	
	Compilation table	14



Reprinted under the
Reprints Act 1984 as
at 12 December 2003

Western Australia

Restraint of Debtors Act 1984

Restraint of Debtors Regulations 1986

1. Citation

These regulations may be cited as the *Restraint of Debtors Regulations 1986*¹.

2. Commencement

These regulations shall take effect on the coming into operation of the *Restraint of Debtors Act 1984*¹.

3. Application for warrant

An application for a warrant to issue for the arrest of a debtor under section 5, shall be in the form of Form 1 in the Schedule.

4. Warrant

A warrant issued in accordance with section 6 shall be in the form of Form 2 in the Schedule and shall —

- (a) require the person executing the warrant to forthwith take the debtor to the nearest police station;

r. 5

- (b) require the officer in charge of the police station in which a debtor is lodged to cause the debtor to be dealt with in accordance with section 12;
- (c) set out conditions on which the debtor may be released from custody in accordance with section 13.

5. Summons

A summons issued in accordance with section 6 shall be in the form of Form 3 in the Schedule and shall —

- (a) advise the debtor named in the application that failure to attend in response to the summons may result in a warrant being issued for the arrest of the debtor;
- (b) set out the manner in which appearance on the summons may be avoided in accordance with section 10.

6. Endorsement of summons

The copy of a summons lodged in the registry of a court in accordance with section 8 shall be endorsed to the effect —

- (a) that the summons was served personally on the debtor named in the summons on a specified date being not less than 7 days before the day he is summoned to appear; and
- (b) that the summons was accompanied by a copy of the application upon which the summons was issued and every affidavit in support of the application.

7. Certain notice to be given by applicant

- (1) Where a debtor tenders, or gives security for the payment of, the amount of money specified in a summons issued under section 6 before the time so specified for his appearance, the applicant shall give notice to that effect to the court specified in the summons, in the form of Form 4 in the Schedule.

- (2) Where a debtor tenders or gives security for the payment of the amount of money specified in a warrant that has not been executed the applicant shall give written notice to that effect to the officer in charge of the police station to whom the warrant had been delivered.

8. Notice on release

An officer in charge of a police station who releases a debtor from custody under section 13 shall notify the court specified in the warrant in the form of Form 5.

9. Orders

An order by a court under sections 14, 16, 18, 19, 20 or 22 may be in the form of Form 6 with such alterations as are appropriate to the case.

10. Revocation of order for release

Where a court revokes an order pursuant to which a debtor was released, the order of revocation may be in the form of Form 7.

11. Application for restraining order

An application for a restraining order under section 17 shall be in the form of Form 8.

12. Money

- (1) Money received by a police officer shall be paid forthwith to the nearest clerk of courts.
- (2) The clerk or registrar of the court with whom money has been deposited under the Act shall retain the money in a trust account or transmit it to the accountant, Crown Law Department².
- (3) The clerk or registrar, upon production of such documents and orders as may be required, and being satisfied that it is proper to do so, may pay, or authorise the accountant to pay, the money to the appropriate party.

13. Fee

The fee to be paid in respect to enforcement proceedings under these regulations (i.e. the issue of a summons, or the execution or attempted execution of a warrant) is the fee set out in Part II of the Appendix to the *Local Court Rules 1961* under the heading "Table of Court Fees".

[Regulation 13 inserted in Gazette 28 Aug 1998 p. 4757.]

14. Offence and penalty

A person who contravenes or fails to comply with any of these regulations, commits an offence.

Penalty: \$200.

Schedule

Form 1

Restraint of Debtors Act 1984

[Sections 5 and 7]

APPLICATION FOR WARRANT

- To* — (a) a judicial officer of the Supreme/District Court.
- (b) a magistrate/justice.

I,
of
the undersigned applicant say that
of
(hereinafter described as the debtor) is indebted to me in the sum of \$.....,
and ask that a warrant be issued preventing the said debtor from leaving the
State.

Attached hereto is my affidavit in support of this application.

If a warrant is issued I undertake to notify the court forthwith upon payment of the claim or provision of security for the payment of the claim.

.....
Applicant

.....
Date

*See section 5 and delete that which is not applicable.

Schedule

Form 2

Restraint of Debtors Act 1984

[Sections 6, 7 and 15]

WARRANT FOR ARREST OF DEBTOR

To all non-commissioned officers and constables in the Western Australian Police Force.

WHEREAS
of
(hereinafter described as the debtor) appears to be indebted to
of
(hereinafter described as the applicant) in the sum of \$....., for debt and \$..... for costs and the applicant has applied under section for a warrant for the debtor to be arrested and brought before the court specified hereunder.

YOU are hereby required —

- (a) to arrest the said debtor, and to lodge him in the custody of the officer in charge of the nearest police station;
- (b) to serve the debtor with a copy of this warrant and where the warrant was issued under section 6 or 7 a copy of the application upon which the warrant was issued and any further affidavit in support of the application.

This warrant further requires you the officer in charge of that police station to cause the debtor (unless he may otherwise be lawfully released) to be brought before the specified court within 24 hours of receiving the debtor into custody or as soon as is practicable thereafter.

The debtor shall be forthwith released from custody —

- (a) if he —
 - (i) tenders to the applicant, in a form acceptable to the applicant, the amount of money specified above and the costs so specified;
 - (ii) gives security to the satisfaction of the applicant for the payment of the moneys in this warrant; or

(iii) pays to the officer in charge of the police station for deposit with the specified court the amount of money specified in this warrant to abide the determination of the claim; or

(b) if —

- (i) the applicant consents in writing to the release of the debtor; or
- (ii) a court directs the release of the debtor.

Specified court

Dated at _____ on _____ 20 .

.....
 Judicial Officer
 Magistrate
 Justice

Endorsement.

This warrant was executed by me at _____ am/pm on _____ 20 , at _____ .

Signed

Police number

Schedule

Form 3

Restraint of Debtors Act 1984

[Section 6]

SUMMONS

To
of

WHEREAS it has been alleged by
..... of
..... (hereinafter described as the
applicant) that you are indebted to him in the sum of \$....., and the sum of
\$....., for costs, and that you are about to leave the State *and* an
application has been made for a warrant to issue for the purpose of preventing
you from leaving the State:

YOU ARE hereby summoned to attend the court specified below on the date
and at the time indicated to answer the allegation.

If you fail to attend in response to this summons a warrant may issue for your
arrest.

However, you are not required to appear if —

- (a) you have tendered to the applicant the amount of money specified
above; or
- (b) you have given security to the satisfaction of the applicant for the
payment of the money so specified; or
- (c) you have deposited with the court specified herein the amount of
money referred to above, to abide the determination of the claim.

At the hearing the court may with your consent, and that of the applicant, hear
and determine the claim for the alleged debt whether it otherwise has
jurisdiction or not, or decline to hear it, or make an order for costs.

The place, date and time of attendance are
court 20 , am/pm.

Signed at on 20 .

.....
Judge, Magistrate, Justice

Form 4

Restraint of Debtors Act 1984

[Section 10]

NOTICE

To * the Registrar Supreme/District Court
Clerk of Local Court/Court of Petty Sessions
at

In the matter of (applicant)
and (hereinafter described
as the debtor).

WHEREAS a summons pursuant to section 6 was issued to the debtor requiring
his appearance in your court
on
at

NOTICE is hereby given that the debtor has —

* (a) tendered to me in an acceptable form the amount of money specified;

* (b) given security to my satisfaction for the amount specified.

Dated 20 .

.....
Applicant

*delete as appropriate.

Schedule

Form 5

Restraint of Debtors Act 1984

[Section 13]

RETURN TO WARRANT WHERE DEBTOR RELEASED

In the matter of applicant
and (hereinafter described
as the debtor.)

Whereas the debtor has been detained in my custody pursuant to a warrant
issued under section and dated 20 ,
and whereas —

*(a) the debtor has —

*(i) tendered to the applicant;

*(ii) given security to the applicant; or

*(iii) paid to me for deposit with the court,

the sum of \$ (being the amount claimed plus costs); or

*(b) the applicant has consented in writing to the release of the debtor,

the debtor is entitled to be released from custody, and has accordingly been
released from custody.

To Registrar, Clerk
Court

.....
Signature
Officer in charge
Police Station

*delete as appropriate.

Form 6

Restraint of Debtors Act 1984

[Sections 14, 16, 18, 19, 20 and 22]

ORDER

Whereas
of
(hereinafter described as the debtor) has been brought before me pursuant to the
application of
of
(hereinafter called the applicant) under section
and having heard the parties,

It is ordered

Dated at on 20

.....
Judge, Magistrate, Justice

Schedule

Form 7

Restraint of Debtors Act 1984

[Section 16(4)]

TO: The Officer in charge of police at
and all other non-commissioned officers and constables in the Western
Australian Police Force.

Whereas
of
(hereinafter described as the debtor) was on
..... released from custody pursuant to an order
made under section 14 or Part V.

That order for release having now been revoked by me, the debtor is to be
detained in custody until he can again be taken before the court.

.....
Judge, Magistrate, Justice

Form 8

Restraint of Debtors Act 1984

[Section 17]

APPLICATION FOR RESTRAINING ORDER

To * Court

*(a) being the court where proceedings in respect of the alleged debt to which the application relates have been commenced;

*(b) in any other case, being a court in which proceedings might be commenced in respect of the alleged debt to which the application relates.

(Insert appropriate court and delete (a) or (b) as the case may be)

I, of (hereinafter described as the applicant) say that of (hereinafter described as the debtor) is indebted to me in the sum of \$, and hereby apply for an order:

- (a) restraining the transfer of being property of the debtor that is situated in the State; or
(b) restraining the removal from the State of being property of the debtor that is situated in the State.

Attached hereto is my affidavit in support of this application.

Applicant

Date

Notes

- ¹ This reprint is a compilation as at 12 December 2003 of the *Restraint of Debtors Regulations 1986* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Restraint of Debtors Regulations 1986</i>	4 Jul 1986 p. 2286-90	11 Jul 1986 (see r. 2 and <i>Gazette</i> 11 Jul 1986 p. 2333)
<i>Restraint of Debtors Amendment Regulations 1998</i>	28 Aug 1998 p. 4756-7	28 Sep 1998 (see r. 2 and <i>Gazette</i> 28 Aug 1998 p. 4754)
Reprint 1: The <i>Restraint of Debtors Regulations 1986</i> as at 12 Dec 2003 (includes amendments listed above)		

- ² Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference to the Crown Law Department is to be read and construed as a reference to the Department of Justice.