

Western Australia

Prohibited Behaviour Orders Act 2010

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Prohibited Behaviour Orders Act 2010

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Western Australia

Prohibited Behaviour Orders Act 2010

An Act to enable courts to make orders that constrain offenders who have a history of anti-social behaviour and for related purposes.

Part 1 — Preliminary

1. Short title

This is the *Prohibited Behaviour Orders Act 2010*¹.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

- (1) In this Act, unless the contrary intention appears —

adult means a person who has reached 18 years of age;

anti-social behaviour, by a person, means behaviour that causes or is likely to cause —

- (a) harassment, alarm, distress, fear or intimidation to one or more persons; or
- (b) damage to property;

child means a person under 18 years of age;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

constrained person means a person on whose lawful activities and behaviour constraints are imposed by a PBO;

firearm has the meaning given in the *Firearms Act 1973* section 4;

firearm licence means a Firearms Act Extract of Licence or permit, issued under the *Firearms Act 1973*, entitling a person to be in possession of a firearm;

hearing notice means a notice in writing that specifies the date, time and place of a hearing of PBO proceedings and the terms of the PBO being sought;

party, to PBO proceedings, means —

- (a) the prosecutor; or
- (b) the person against whom the PBO is sought;

PBO proceedings means proceedings in which the court makes, varies or cancels a PBO against a person or considers doing any of those things;

prescribed means prescribed in regulations made under section 39;

prohibited behaviour order or **PBO** means an order made under this Act imposing constraints of the kind referred to in section 10 on a person;

prosecutor, in relation to PBO proceedings, means —

- (a) if the related prosecution was in the Supreme Court, the District Court or the Children's Court exercising jurisdiction under *Children's Court of Western Australia Act 1988* section 19B(4) — the authorised officer (as defined in the *Criminal Procedure Act 2004* section 80) who commenced the prosecution or another such authorised officer; or
- (b) if the related prosecution was in a court of summary jurisdiction — the person referred to in the *Criminal Procedure Act 2004* section 20(3) who commenced the prosecution or another such person;

registrar means a registrar of the relevant court;

related prosecution, in relation to PBO proceedings, means the prosecution that gave rise to the PBO proceedings;

related sentence, in relation to a PBO, means the sentence referred to in section 6(2) after which the PBO is considered or made by a court, as the case requires;

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relevant offence means an offence involving anti-social behaviour;

wellbeing has the meaning given in the *Children and Community Services Act 2004* section 3;

youth means a person who has reached 16 years of age but who is under 18 years of age.

- (2) A prescribed offence is to be taken to involve anti-social behaviour in the absence of proof to the contrary.

4. Constrained persons to be natural persons

A constrained person must be a natural person.

Part 2 — Prohibited behaviour orders

Division 1 — Making PBOs, general

5. Application for PBO

- (1) A prosecutor in criminal proceedings may make an application for a PBO against the accused person at any time —
 - (a) after the court has convicted the person; and
 - (b) before the court has sentenced the person.
- (2) The application must be made in accordance with rules of court.

6. Court may make PBO after sentencing

- (1) In this section —
sentence —
 - (a) imposed on an adult, means a sentence imposed under the *Sentencing Act 1995* section 39(2); and
 - (b) imposed on a youth, means a sentence imposed under the *Young Offenders Act 1994*.
- (2) Subject to subsection (4) and section 17, a court that has sentenced a person for an offence may, after imposing the sentence, make a PBO against the person.
- (3) The PBO may be made —
 - (a) on the application of the prosecutor under section 5; or
 - (b) on the initiative of the court.
- (4) A court must not make a PBO against a person unless —
 - (a) the court is satisfied that there are grounds for making the PBO under section 8; and
 - (b) the court has had regard to the matters set out in section 9 and, if applicable, section 19; and
 - (c) the person has reached 16 years of age; and

- (d) the person —
 - (i) is present when the PBO is made and has been given an opportunity to be heard on the question of whether or not the court should make the PBO; or
 - (ii) has personally been given a hearing notice at least 7 days before the PBO proceedings.

7. Hearing of PBO proceedings

- (1) A court considering the question of whether to make a PBO against a person may —
 - (a) proceed to hear the question after passing the related sentence; or
 - (b) adjourn the question to a hearing.
- (2) If PBO proceedings in relation to a person are adjourned to a hearing under subsection (1)(b), a registrar must give a hearing notice to each party to the PBO proceedings.
- (3) If a party is given the hearing notice but does not attend the hearing, the court may, as it thinks fit —
 - (a) proceed with the hearing; or
 - (b) if the party is an applicant under section 5 and the court is satisfied that he or she was given the hearing notice — dismiss the application; or
 - (c) adjourn the hearing.
- (4) A court hearing PBO proceedings adjourned under this section is not required to be constituted in the same manner as the court that imposed the related sentence.

8. Grounds for PBO

- (1) In this section —

conviction —

 - (a) includes a finding or admission of guilt despite the fact that a conviction is not recorded under the *Young Offenders Act 1994* section 55; and

- (b) does not include a conviction that has been set aside or quashed.
- (2) Grounds for making a PBO exist if —
 - (a) the person —
 - (i) committed and was convicted of a relevant offence; and
 - (ii) during the period of 3 years after that conviction again committed, and was convicted of, a relevant offence;
 - and
 - (b) unless constrained from certain otherwise lawful activities and behaviour, the person is likely to commit another relevant offence; and
 - (c) granting a PBO to impose the constraints is appropriate in the circumstances.
- (3) For the purposes of subsection (2)(a)(i), it does not matter if the relevant offence was committed before, on or after the day on which this section came into operation.

9. Matters to be considered by court

- (1) When considering whether to make a PBO against a person, a court must have regard to —
 - (a) the desirability of protecting other persons and property from acts that constitute relevant offences; and
 - (b) the degree of hardship that may be caused to the person if the PBO is made.
- (2) A court must have regard to the matter set out in subsection (1)(a) as being of primary importance.
- (3) When considering whether to make a PBO against a person, a court may have regard to all or any of the following —
 - (a) other current legal proceedings involving the person;
 - (b) any criminal record of the person;

- (c) any sentence to which the person is subject;
- (d) any order, made under a written law, that applies to the person or, if the person is a youth, a person responsible for the care, welfare or development of the person;
- (e) any previous behaviour of the person that is similar to the behaviour in relation to which the PBO is being considered by the court;
- (f) the extent to which the person complied with any previous PBO;
- (g) other matters the court considers relevant.

10. Constraints imposed by PBO

- (1) In this section —
specified, in relation to a PBO, means specified in the PBO.
- (2) In making a PBO a court may impose such constraints on otherwise lawful activities and behaviour of a person as the court considers reasonably necessary to reduce the likelihood of the person committing a relevant offence.
- (3) Without limiting the constraints that may be imposed under subsection (2), a court may constrain the person from doing all or any of the following —
 - (a) entering or remaining on, or being near, specified premises or a specified locality or place;
 - (b) engaging in behaviour of a specified kind, either at all or in a specified place, at a specified time or in a specified manner;
 - (c) approaching within a specified distance of a specified person;
 - (d) communicating, or attempting to communicate, (by a specified means or by whatever means) with a specified person;
 - (e) being in possession of a specified thing or a specified class of thing;

- (f) causing another person to engage in conduct of a type referred to in paragraphs (a) to (e).
- (4) A constraint may be imposed on the person absolutely or on such terms as the court considers appropriate.
- (5) A PBO may constrain a person from entering or remaining on premises or in a place, or otherwise restrict the person's access to the premises or place, even if the constrained person has a legal or equitable right to be on the premises or in the place.
- (6) A PBO is of no effect to the extent that it requires the constrained person to consent to an act by another person that is not lawful.
- (7) A PBO is of no effect to the extent that it conflicts with or duplicates any of the following that applies to the constrained person —
 - (a) a restraint imposed by a restraining order made under the *Restraining Orders Act 1997*; or
 - (b) a limitation or condition imposed by an extraordinary licence granted under the *Road Traffic Act 1974* section 76; or
 - (c) a requirement of a conditional release order made under the *Sentencing Act 1995* Part 7; or
 - (d) a requirement of a community based order made under the *Sentencing Act 1995* Part 9; or
 - (e) an obligation of an intensive supervision order made under the *Sentencing Act 1995* Part 10; or
 - (f) a condition of conditional suspended imprisonment under the *Sentencing Act 1995* Part 12 Division 1; or
 - (g) a condition of a youth community based order made under the *Young Offenders Act 1994* Part 7 Division 6; or
 - (h) a condition of an intensive youth supervision order made under the *Young Offenders Act 1994* Part 7 Division 7.

11. When PBO comes into force

If a court makes a PBO, it comes into force —

- (a) if the related sentence is not a term of imprisonment, or is a term of imprisonment that is suspended —
 - (i) at the conclusion of the proceedings in which the PBO is made; or
 - (ii) if a later time is specified in the PBO — at that time;
- (b) if the related sentence is a term of imprisonment that is not suspended —
 - (i) when the constrained person is released from custody in respect of the sentence or any other sentence of imprisonment the constrained person has to serve concurrently or cumulatively with that sentence; or
 - (ii) if a later time is specified in the PBO — at that time.

12. Duration of PBO

- (1) In this section —

community based sentence means —

- (a) a community based order made under the *Sentencing Act 1995* Part 9; or
- (b) an intensive supervision order made under the *Sentencing Act 1995* Part 10; or
- (c) conditional suspended imprisonment imposed under the *Sentencing Act 1995* Part 12 Division 1; or
- (d) a youth community based order made under the *Young Offenders Act 1994* Part 7 Division 6; or
- (e) an intensive youth supervision order made under the *Young Offenders Act 1994* Part 7 Division 7;

specified, in a PBO, includes specified in a PBO that has been varied under section 24(1)(b) or made under section 24(2).

- (2) Subject to section 13, the period of a PBO is —
- (a) the period specified in the PBO; or
 - (b) if no period is specified, the shorter of —
 - (i) if the related sentence is a community based sentence — the period of the sentence; or
 - (ii) otherwise, 6 months from the day the PBO came into force.
- (3) If a period is specified in a PBO it must be —
- (a) if the related sentence is a community based sentence — not longer than the period of the sentence; or
 - (b) otherwise — at least 6 months and not more than 2 years.

13. PBO ceases to have force if conviction set aside or quashed

If a PBO is made against a person and the person's conviction for the related offence is set aside or quashed, the PBO ceases to be in force at the conclusion of the proceedings in which the conviction is set aside or quashed.

14. Explanation about PBO to be given

- (1) A court that makes a PBO must explain to the constrained person —
- (a) the purpose, terms and effects of the PBO; and
 - (b) the consequences that might follow if the constrained person contravenes the PBO; and
 - (c) that the PBO may be varied, cancelled or extended; and
 - (d) if the PBO imposes constraints relating to the possession of a firearm or to holding or obtaining a firearm licence, the effects of sections 30 and 31 relating to firearms and firearm licences.

- (2) The court must give the explanation —
 - (a) if the constrained person is present — orally or in writing; or
 - (b) if the constrained person is not present — in writing.
- (3) If a constrained person does not readily understand English, or the court is not satisfied that the constrained person understood the explanation, the court must, as far as practicable, arrange for the explanation to be given to the constrained person in a way that the constrained person can understand.
- (4) A PBO is not invalid merely because the constrained person was not given the explanation.

15. Registrar to give copies of PBOs

After a court makes a PBO, a registrar must cause a copy of it to be given to each party to the PBO proceedings and, if the Commissioner of Police is not a party to the PBO proceedings, to the Commissioner of Police.

Division 2 — Making PBOs against youths

16. Term used: youth-related PBO proceedings

In this Division —

youth-related PBO proceedings means PBO proceedings relating to making, varying or cancelling a PBO against a youth.

17. No PBO where court refrains from imposing punishment on youth

A PBO cannot be made against a youth if the related sentence involves the exercise of a power under the *Young Offenders Act 1994* Part 7 Division 2, 3 or 4.

18. Child welfare laws not affected

(1) In this section —

child welfare law means any of these written laws —

- (a) the *Adoption Act 1994*;
- (b) the *Children and Community Services Act 2004*;
- (c) the *Family Court Act 1997*;
- (d) the *Young Offenders Act 1994*;
- (e) another written law providing for —
 - (i) the imprisonment, detention or residence of a child; or
 - (ii) the care, treatment and protection of a child who has a mental illness.

(2) Nothing in this Act, and no PBO made under this Act, affects —

- (a) the jurisdiction of a court or the power of an authority, under a child welfare law, to make an order, or to take any other action, as a consequence of which a child is placed under the control, supervision or care (however described) of a person; or
- (b) any such order made or action taken; or
- (c) the operation of a child welfare law in relation to a child.

(3) If it appears to a court hearing youth-related PBO proceedings that another court or an authority proposes to make an order, or to take any other action, of the kind referred to in subsection (2)(a) in relation to the youth, the court may adjourn the youth-related PBO proceedings until that order is made or action is taken, as the case requires.

19. Court to take into account certain principles and considerations

When a court hears youth-related PBO proceedings, the *Young Offenders Act 1994* section 46(1) and (2) apply as if references to the court disposing of the matter were references to the court hearing and determining the youth-related PBO proceedings.

20. Responsible adult to attend

In youth-related PBO proceedings, the *Young Offenders Act 1994* section 45 applies as if the youth-related PBO proceedings were proceedings for an offence.

Division 3 — Varying or cancelling PBOs

21. Application

- (1) An application to vary or cancel a PBO may be made at any time while the PBO is in force by —
 - (a) the prosecutor; or
 - (b) the constrained person.
- (2) An application to vary or cancel a PBO must be made in accordance with rules of court.

22. Registrar to fix hearing and notify parties

- (1) If an application is made under section 21, a registrar must give a hearing notice and a copy of the application to each party to the PBO proceedings.
- (2) If a party is given the hearing notice but does not attend the hearing, the court may, as it thinks fit —
 - (a) proceed with the hearing; or
 - (b) if the party is an applicant under section 21 and the court is satisfied that he or she was given the hearing notice — dismiss the application; or
 - (c) adjourn the hearing.

23. Applications to extend period of PBOs

If an application is made to vary a PBO by extending the period of the PBO and the constrained person has been given a copy of the application, then, despite anything else in this Act —

- (a) the PBO does not expire until the application is determined; and
- (b) the period of the PBO is extended until that time.

24. Variation or cancellation

- (1) At a hearing of an application under section 21 the court may make an order —
 - (a) dismissing the application; or
 - (b) varying the PBO; or
 - (c) cancelling the PBO.
- (2) If the court decides to vary the PBO it may, instead of making an order under subsection (1)(b) —
 - (a) make an order cancelling the PBO; and
 - (b) make a new PBO that has the effect the cancelled PBO would have had if varied under subsection (1)(b).
- (3) If the court makes an order under subsection (1)(b) or (c), or if it makes a new PBO under subsection (2), a registrar must cause a copy of the order or PBO to be given —
 - (a) to each party to the PBO proceedings; and
 - (b) if the Commissioner of Police is not a party to the PBO proceedings — to the Commissioner of Police.
- (4) A cancellation of a PBO has effect —
 - (a) if a new PBO is made when the original PBO is cancelled — at the time the new PBO comes into force; or
 - (b) otherwise — at the conclusion of the hearing at which the PBO is cancelled.

25. Correcting minor errors in PBOs

- (1) If a PBO contains —
- (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material mistake in the description of any person, thing or matter referred to in the PBO,

a registrar may correct the PBO, or the court, on an application by or on behalf of the prosecutor or the constrained person, may make an order correcting the PBO.

- (2) Subsection (1) does not apply if the correction would adversely affect the interests of the public or the constrained person.

Division 4 — PBO proceedings

26. Evidence in PBO proceedings

- (1) A court considering whether to make a PBO against a person may take evidence as to —
- (a) the behaviour of the person in committing —
 - (i) the offence for which the person received the related sentence; and
 - (ii) any other relevant offence of which the person was convicted before committing the offence referred to in subparagraph (i);
- and
- (b) whether the PBO should be made in order to reduce the likelihood of the person committing a relevant offence.
- (2) A court considering whether to vary or cancel a PBO against a person may take evidence relevant to whether —
- (a) the PBO should be varied in order to reduce the likelihood of the constrained person committing a relevant offence; or

- (b) the PBO should be varied to alleviate undue hardship imposed on the constrained person by the PBO; or
 - (c) the PBO should be varied or cancelled because the likelihood of the constrained person committing a relevant offence has significantly decreased.
- (3) Without limiting subsection (1) or (2), a court in PBO proceedings may —
- (a) admit as evidence any record as defined in the *Criminal Procedure Act 2004* section 3 that was —
 - (i) disclosed to the person in accordance with the *Criminal Procedure Act 2004* section 35, 42, 61, 62, 95 or 96; or
 - (ii) otherwise admitted into evidence, in the course of the prosecution referred to in paragraph (b) or (d); and
 - (b) admit as evidence any evidence given in the related prosecution, and hear any evidence given during the related prosecution; and
 - (c) admit as evidence —
 - (i) the criminal record of the person, subject to the *Criminal Procedure Act 2004* section 168 (which applies with any necessary changes); or
 - (ii) any criminal record of the person admitted in the related prosecution;and
 - (d) admit any evidence relating to the circumstances of an offence specified on a criminal record admitted under paragraph (c); and
 - (e) admit as evidence the transcript of the proceedings of any prosecution referred to in paragraph (b) or (d).

27. PBO proceedings, general provisions about

- (1) PBO proceedings are taken to be civil proceedings for all purposes.
- (2) The rules of evidence applicable in civil proceedings apply in PBO proceedings.
- (3) The rules of evidence applicable only in criminal proceedings do not apply in PBO proceedings.
- (4) A question of fact to be decided by a court in PBO proceedings is to be decided on the balance of probabilities.
- (5) Except in relation to an offence under this Act, a rule of construction that is applicable only in relation to the criminal law does not apply in the interpretation of this Act.

28. Practice and procedure

- (1) Unless otherwise prescribed, the practice and procedure to be followed in PBO proceedings are —
 - (a) in the Magistrates Court — the practice and procedure applying in that court under the *Magistrates Court (Civil Proceedings) Act 2004*; or
 - (b) in the Children’s Court — the practice and procedure applying in the non-criminal jurisdiction of that court under the *Children’s Court of Western Australia Act 1988*; or
 - (c) in the District Court or Supreme Court — the practice and procedure of those courts when exercising their civil jurisdiction.
- (2) Despite subsection (1), a court cannot order a party to PBO proceedings to pay another party’s costs of or relating to the PBO proceedings except in exceptional circumstances.

Part 3 — Firearms constraints in PBOs

29. Application of this Part

This Part applies if a court makes a PBO under which the constrained person is prohibited from —

- (a) being in possession of a firearm; or
- (b) holding or obtaining a firearm licence.

30. Constrained person to give up possession of firearms and licences

- (1) The constrained person must give up possession of all firearms and firearm licences held by the constrained person —
 - (a) to a prescribed person; and
 - (b) in a prescribed manner; and
 - (c) within a prescribed period after the making of the PBO.
- (2) A firearm or firearm licence given up under subsection (1) must be dealt with in the prescribed manner.
- (3) If the constrained person —
 - (a) was lawfully in possession of a firearm or firearm licence before the PBO was made; and
 - (b) gives up possession of the firearm or firearm licence under subsection (1),

the constrained person does not breach the PBO only because he or she is in possession of the firearm or firearm licence for the period necessary to comply with subsection (1).

- (4) When making a PBO the court may shorten the prescribed period within which the constrained person must give up possession of firearms and firearm licences.

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31. Seizure of firearms

- (1) Subject to the *Criminal Investigation Act 2006* section 31, if a constrained person does not give up possession of a firearm or firearm licence in accordance with section 30 of this Act, a police officer may, without a warrant, enter a place where —
 - (a) a firearm that is, or is reasonably suspected to be, in the possession of the constrained person; or
 - (b) a firearm licence held by the constrained person,is reasonably suspected to be, and search for and seize the firearm or firearm licence.
- (2) In order to exercise a power under subsection (1), a police officer may use any force against any person or thing that it is reasonably necessary to use in the circumstances.
- (3) A firearm or firearm licence seized under subsection (1) must be given to the Commissioner of Police and dealt with in the prescribed manner.

32. Notification of co-licensees and responsible persons

- (1) In this section —

co-licensee, in relation to a constrained person who holds a firearm licence for a firearm, means another person who holds a firearm licence for the same firearm;

responsible person, in relation to a constrained person who uses or has access to a firearm in the course of the constrained person's usual occupation, means the person who holds a firearm licence (or the equivalent under a law of another State or a Territory) for that firearm or, if there is no such person —

 - (a) if the constrained person is a police officer or a member of an armed force — the officer in command of the police or armed force in the State or Territory where the constrained person is based; or
 - (b) if the constrained person is employed or engaged by an employing authority, as defined in the *Public Sector*

Management Act 1994, (or an equivalent body under a law of another State, a Territory or the Commonwealth corresponding to that Act) — that employing authority (or equivalent body); or

- (c) in any other case — the person by whom the constrained person is employed or engaged.
- (2) As soon as practicable after receiving a copy of a PBO under section 15 or 24(3), the Commissioner of Police must instruct a police officer to —
- (a) ask the constrained person whether the constrained person uses or has access to any firearms in the course of the constrained person's usual occupation and if so —
 - (i) the name and business address of the responsible person; and
 - (ii) the name and address of any co-licensee;and
 - (b) complete the relevant part of the copy of the PBO in accordance with the response given by the constrained person to those questions; and
 - (c) tell the constrained person that the responsible person and any co-licensee will be given written notice that the PBO has been made.
- (3) A constrained person who fails to answer, or gives a false answer to, a question asked under subsection (2)(a) commits an offence.
- Penalty: a fine of \$6 000 or imprisonment for 9 months or both.
- (4) As soon as possible after receiving the copy of the PBO completed under subsection (2)(b), the Commissioner of Police must give written notice to the responsible person and any co-licensee named in the copy —
- (a) that a PBO has been made in relation to the constrained person; and

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- (b) that the PBO prohibits the constrained person from —
 - (i) being in possession of a firearm; or
 - (ii) being in possession of a firearm other than on the conditions specified in the PBO,as the case requires; and
 - (c) of the period of the PBO; and
 - (d) that it is an offence for the responsible person or co-licensee to allow the constrained person to use or have access to a firearm in contravention of the PBO.
- (5) A responsible person or co-licensee given written notice under subsection (4) who allows the constrained person to use or have access to a firearm, except as permitted under the PBO, commits an offence.

Penalty:

- (a) in the case of a responsible person — a fine of \$12 000;
- (b) in the case of a co-licensee — a fine of \$12 000 or imprisonment for 12 months or both.

Part 4 — General

33. Giving of documents

- (1) If under this Act a document must be given to a person, the document must be —
 - (a) given to the person personally; or
 - (b) sent by ordinary prepaid post to the person at the person's last known place of residence or business.
- (2) If under this Act a person must be given a hearing notice —
 - (a) if it is given personally — the notice must be given at least 7 days before the hearing date; or
 - (b) if it is given by post — the notice must be posted at least 14 days before the hearing date.

34. Publication of details of constrained people

- (1) In this section —

CEO means the chief executive officer of the Department;
Department means the department of the Public Service principally assisting in the administration of this Act.
- (2) Unless ordered otherwise by a court, the CEO must publish on a website the following in relation to a constrained person —
 - (a) the name of the constrained person;
 - (b) a photograph of the constrained person;
 - (c) the town or suburb where the constrained person lives;
 - (d) the constraints imposed by the PBO on the activities and behaviour of the constrained person.
- (3) Subsection (2) does not permit the publication of —
 - (a) anything that identifies, or is capable of identifying, a child other than the constrained person; or
 - (b) the exact address of the constrained person; or

- (c) anything that identifies, or is capable of identifying, an offence of which the constrained person was convicted in the Children's Court.
- (4) A court making a PBO may, on its own initiative or on an application by a party to the PBO proceedings, order that all or any of the things referred to in subsection (2) must not be published if, in the opinion of the court, there are circumstances justifying the making of such an order.
- (5) In determining whether there are circumstances justifying an order being made under subsection (4) in relation to a PBO against a youth, the court must have regard to the wellbeing of the youth.
- (6) For the purposes of subsection (2)(b) the CEO may request the Commissioner of Police to provide to the CEO the most recent photograph of the constrained person in the Commissioner's possession.
- (7) The Commissioner of Police is to comply with a request made under subsection (6) as soon as practicable after it is received.
- (8) A person may republish in any manner something that has been published under subsection (2).

35. Breach of PBO

- (1) A constrained person who breaches the PBO under which the person is constrained commits an offence.

Penalty:

- (a) if the PBO was made by the Children's Court — a fine of \$2 000 or imprisonment for 2 years or both;
- (b) if the PBO was made by the Magistrates Court — a fine of \$6 000 or imprisonment for 2 years or both;
- (c) if the PBO was made by the Supreme or District Court — a fine of \$10 000 or imprisonment for 5 years or both.

- (2) Proceedings for a breach of a PBO are to be brought —
- (a) if the alleged offender is a youth — in the Children’s Court; or
 - (b) if the alleged offender is an adult — in the Magistrates Court.

36. Defence

- (1) In this section —
- legal practitioner* means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3.
- (2) It is a defence to a charge under section 35 for the constrained person to satisfy the court that in carrying out the act that constituted the offence, the constrained person was —
- (a) using a process of family dispute resolution, as defined in the *Family Court Act 1997*; or
 - (b) instructing, or acting through, a legal practitioner or a person acting under the *Aboriginal Affairs Planning Authority Act 1972* section 48, or using conciliation, mediation or another form of consensual dispute resolution provided by a legal practitioner; or
 - (c) acting in accordance with an action taken by a person or authority under a written law; or
 - (d) acting on the medical advice of a person with medical qualifications as defined in the *Civil Liability Act 2002* section 5AB; or
 - (e) acting as the result of such an emergency that an ordinary person in similar circumstances would have acted in the same or a similar way.

37. Appeals

- (1) A person aggrieved by the decision of a court in PBO proceedings may appeal against that decision in accordance with this section.
- (2) If the decision was made by the Magistrates Court, the appeal is to be made in accordance with the *Magistrates Court (Civil Proceedings) Act 2004* Part 7.
- (3) If the decision was made by the Children's Court when constituted so as not to consist of or include a judge, the appeal is to be made in accordance with the *Children's Court of Western Australia Act 1988* section 41 as if the decision were a decision referred to in that section.
- (4) If the decision was made by the Children's Court when constituted so as to consist of or include a judge, the appeal is to be made to the Court of Appeal in accordance with the *Children's Court of Western Australia Act 1988* section 43 as if the decision were a decision referred to in subsection (4) of that section.
- (5) If the decision was made by the District Court, the appeal is to be made to the Court of Appeal and the *District Court of Western Australia Act 1969* section 79 (with any necessary changes) applies as if the decision were a final judgment of the District Court.
- (6) If the decision was made by a judge of the Supreme Court, the appeal is to be made to the Court of Appeal in accordance with the *Supreme Court Act 1935* section 58.

38. Protection from liability for wrongdoing

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

39. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed to give effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made in relation to any or all of these matters —
 - (a) the manner in which firearms and firearm licences are to be —
 - (i) given up by a constrained person; and
 - (ii) delivered to, and dealt with by, a prescribed person;
 - (b) facilitating the effective operation of PBOs that prohibit or restrict a person from being in possession of a firearm.

40. Review of Act

- (1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 3 years from the commencement of this section.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Part 5 — Amendments to other Acts

Division 1 — *Children's Court of Western Australia Act 1988* amended

41. Act amended

This Division amends the *Children's Court of Western Australia Act 1988*.

42. Section 3 amended

In section 3(1) in the definition of *child*:

(a) after paragraph (c) insert:

(d) a boy or girl dealt with under section 20(3)(b);

(b) after each of paragraphs (a) and (c) insert:

and

43. Section 20 amended

After section 20(2) insert:

(3) Subject to this Act, the Court has exclusive jurisdiction to hear PBO proceedings under the *Prohibited Behaviour Orders Act 2010* relating to —

(a) a person who is under 18 years of age; or

(b) a person who has reached 18 years of age but who committed the relevant offence referred to in the *Prohibited Behaviour Orders Act 2010* section 8(2)(a)(ii) while he or she was under 18 years of age.

44. Section 35 amended

- (1) In section 35(1) delete “section 36A,” and insert:

section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34,

- (2) In section 35(3) delete “section 36A,” and insert:

section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34,

45. Section 36 amended

- In section 36(1) delete “section 36A.” and insert:

section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34.

Division 2 — *Criminal Investigation Act 2006* amended

46. Act amended

This Division amends the *Criminal Investigation Act 2006*.

47. Section 69A inserted

After section 68 insert:

69A. Searching people for things relevant to prohibited behaviour orders

If an officer reasonably suspects that a person in a public place is prohibited by a PBO made under the *Prohibited Behaviour Orders Act 2010* from having

something in his or her possession (a *prohibited thing*) in that place, the officer —

- (a) may do a basic search of the person, whether or not the officer suspects the person is in possession of a prohibited thing; and
- (b) may, subject to section 146, seize any prohibited thing that the officer finds; and
- (c) may do a forensic examination on the prohibited thing, whether or not the officer seizes it.

Division 3 — *Criminal Investigation (Identifying People) Act 2002* amended

48. Act amended

This Division amends the *Criminal Investigation (Identifying People) Act 2002*.

49. Section 73 amended

After section 73(1)(m) insert:

- (na) for the purposes of the *Prohibited Behaviour Orders Act 2010* section 34;

Division 4 — *Sentencing Act 1995* amended

50. Act amended

This Division amends the *Sentencing Act 1995*.

51. Section 124B inserted

At the end of Part 17 insert:

124B. Prohibited behaviour orders

For the purposes of section 123, a prohibited behaviour order made against an offender under the *Prohibited Behaviour Orders Act 2010* is taken to be an order made under this Part.

Notes

¹ This is a compilation of the *Prohibited Behaviour Orders Act 2010*. The following table contains information about that Act ^{1a}.

Compilation table

| Short title | Number and year | Assent | Commencement |
|---|------------------------|---------------|--|
| <i>Prohibited Behaviour Orders Act 2010</i> | 59 of 2010 | 8 Dec 2010 | s. 1 and 2: 8 Dec 2010 (see s. 2(a)) Act other than s. 1 and 2: 23 Feb 2011 (see s. 2(b) and <i>Gazette</i> 23 Feb 2011 p. 633) |

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|---|------------------------|---------------|--|
| <i>Road Traffic Legislation Amendment Act 2012</i> Pt. 4 Div. 43 ² | 8 of 2012 | 21 May 2012 | Operative on commencement of the <i>Road Traffic (Administration) Act 2008</i> (see s. 2(d)) |
| <i>Criminal Organisations Control Act 2012</i> s. 180 ³ | 49 of 2012 | 29 Nov 2012 | To be proclaimed (see s. 2(b)) |

² On the date as at which this compilation was prepared, the *Road Traffic Legislation Amendment Act 2012* Pt. 4 Div. 43 had not come into operation. It reads as follows:

Division 43 — *Prohibited Behaviour Orders Act 2010* amended

164. Act amended

This Division amends the *Prohibited Behaviour Orders Act 2010*.

165. Section 10 amended

Delete section 10(7)(b) and insert:

- (b) a condition which a court imposed when directing an extraordinary licence, as defined in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1), to be granted; or

³ On the date as at which this compilation was prepared, the *Criminal Organisations Control Act 2012* s. 180 had not come into operation. It reads as follows:

180. Prohibited Behaviour Orders Act 2010 amended

- (1) This section amends the *Prohibited Behaviour Orders Act 2010*.
- (2) Before section 10(7)(a) insert:
 - (aa) a condition of an interim control order or a control order under the *Criminal Organisations Control Act 2012*; or

Defined Terms

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined Term | Provision(s) |
|-------------------------------------|---------------------|
| adult | 3(1) |
| anti-social behaviour | 3(1) |
| CEO | 34(1) |
| child | 3(1) |
| child welfare law | 18(1) |
| co-licensee | 32(1) |
| Commissioner of Police | 3(1) |
| community based sentence | 12(1) |
| constrained person | 3(1) |
| conviction | 8(1) |
| Department | 34(1) |
| firearm | 3(1) |
| firearm licence | 3(1) |
| hearing notice | 3(1) |
| legal practitioner | 36(1) |
| party | 3(1) |
| PBO | 3(1) |
| PBO proceedings | 3(1) |
| prescribed | 3(1) |
| prohibited behaviour order | 3(1) |
| prosecutor | 3(1) |
| registrar | 3(1) |
| related prosecution | 3(1) |
| related sentence | 3(1) |
| relevant offence | 3(1) |
| responsible person | 32(1) |
| sentence | 6(1) |
| specified | 10(1), 12(1) |
| wellbeing | 3(1) |
| youth | 3(1) |
| youth-related PBO proceedings | 16 |