
JUSTICE

JU302*

District Court of Western Australia Act 1969

District Court Amendment Rules 2011

Made by the Judges of the District Court.

1. CitationThese rules are the *District Court Amendment Rules 2011*.**2. Commencement**

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after the day on which these rules are published in the *Gazette*.

3. Rules amendedThese rules amend the *District Court Rules 2005*.**4. Rule 23A inserted**

At the end of Part 3 Division 4 insert:

23A. Affidavits, form of

An affidavit filed in the Court may be in the form of Form 1A.

5. Rule 61 amended

In rule 61(2)(b):

- (a) in subparagraph (iii) delete “Court.” and insert:

Court;

- (b) after subparagraph (iii) insert:

- (iv) the hearing of an application made under the *Prohibited Behaviour Orders Act 2010* section 5.

6. Part 10A inserted

After Part 9 insert:

**Part 10A — *Prohibited Behaviour Orders*
Act 2010 rules**

71A. Terms used

- (1) In this Part, unless the contrary intention appears —
Act means the *Prohibited Behaviour Orders Act 2010*;
section means a section of the Act.
- (2) If a term used in this Part is defined in the Act, it has the same meaning in this Part as it has in the Act, unless the contrary intention appears.

71B. Application under Act s. 5, how to make

- (1) Before making an application under section 5 for a PBO, the prosecutor must —
 - (a) complete a Form 4 in accordance with subrule (2); and
 - (b) submit the original and 2 copies of the completed Form 4 to a registry; and
 - (c) after the registry returns those documents bearing the hearing details and the Court's seal, retain them until the application is made under subrule (3).
- (2) An application for a PBO must state the following —
 - (a) the constraints the applicant wants the Court to specify in the PBO under section 10;
 - (b) the period of the PBO the applicant wants the Court to specify in the PBO under section 12.
- (3) To make an application under section 5 for a PBO, the prosecutor must —
 - (a) give the original of a sealed Form 4, completed in accordance with this rule, to the Judge presiding at the hearing at which the accused person (the *respondent*) is to be sentenced; and
 - (b) give a copy of that document to the respondent personally at that hearing.
- (4) As soon as practicable after an application made under section 5 is adjourned, a Registrar must give the respondent a copy of it in accordance with section 33.
- (5) Within 14 days after the date on which an application for a PBO is made, the applicant must file and serve an affidavit in support of the application.

- (6) Unless the Court permits otherwise, the supporting affidavit must state the following —
- (a) details of the respondent's convictions of relevant offences on which the applicant relies to allege the respondent is a person described in section 8(2)(a);
 - (b) if any such conviction is of a relevant offence that is not a prescribed offence, the material facts of the offence;
 - (c) details of the matters listed in section 9(3)(a), (c), (e) and (f);
 - (d) any other facts on which the applicant intends to rely in support of the application.
- (7) Unless the Court permits otherwise, the supporting affidavit must refer to and have attached to it each of these documents —
- (a) the respondent's criminal record;
 - (b) any order referred to in section 9(3)(d) that is in force against the respondent;
 - (c) any order listed in section 10(7) that is in force against the respondent.

71C. Application under Act s. 21, how to make

To make an application under section 21 to vary or cancel a PBO, a person must file the original and 2 copies of —

- (a) a completed Form 5; and
- (b) an affidavit in support of the application.

71D. Responding to applications

- (1) The respondent to an application made under section 5 or 21 may file an affidavit in response to the affidavit filed in support of the application.
- (2) Any such affidavit must be —
- (a) filed within 21 days after the date on which the respondent is served with the affidavit filed in support of the application; and
 - (b) served on the applicant at least 5 clear days before the hearing of the application.

71E. Corrected PBO, registrar's duties as to

If a PBO is corrected under section 25, a registrar must cause a copy of the corrected PBO to be given —

- (a) to each party to the PBO proceedings; and
- (b) to the Commissioner of Police.

7. Schedule 1 amended

(1) At the beginning of Schedule 1 insert:

1A. Affidavit (r. 23A)

District Court of Western Australia		Appeal No:
		Affidavit ¹
Parties		
Person making affidavit		
Date made		
Purpose ²		
Filed by	[Party]	
Index ³	Contents	Page
	1. <i>Affidavit of Vincent van Gogh</i>	1
	2. <i>Attachment VVG 1—M J Citizen's birth certificate</i>	7
	3. <i>Attachment VVG 2—Letter from J Smith to T Jones dated 3 March 1999</i>	8

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I, [name, address and occupation of person making the affidavit],
[insert words of oath or affirmation in accordance with the Oaths, Affidavits and Statutory Declarations Act 2005] as follows —

1. [insert content of affidavit in numbered paragraphs]
- 2.

This affidavit is [sworn/affirmed] by [name of person making the affidavit] in the presence of an authorised witness at [place] on [date].

[Signature of person making the affidavit]

[Signature of authorised witness]

Authorised witness

[Name of authorised witness]

[Qualification of authorised witness]⁵

Notes to Form 1A —

1. The affidavit must comply with the RSC Order 37.
2. Example: To support summons by plaintiff dated 1 May 2010 for summary judgment.
3. The index must comply with the RSC Order 37 rule 2(7).
Form 1A contains in italics an example of an index.
4. Page 1 must be on a separate sheet of paper from the above.
5. The *Oaths, Affidavits and Statutory Declarations Act 2005* Part 3 sets out the requirements for affidavits and who are authorised witnesses for affidavits.

(2) In Schedule 1 after Form 3 insert:

4. *Prohibited Behaviour Orders Act 2010* s. 5 application (r. 71B)

District Court of Western Australia	No:
<i>Prohibited Behaviour Orders Act 2010</i> s. 5	Application for prohibited behaviour order. Hearing notice

Applicant		
Respondent		
Application	The applicant applies under the <i>Prohibited Behaviour Orders Act 2010</i> section 5 for a prohibited behaviour order (PBO) against the respondent.	
Proposed PBO	The applicant applies for the following constraints in the PBO against the respondent — 1. The applicant applies for the PBO for a period of [<i>state period</i>]. ¹	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:
Hearing details ²	This application will be heard at this date, time and place — Date: _____ Time: _____ Place: _____	Court seal:

Note to Form 4 —

1. The period stated here must comply with the *Prohibited Behaviour Orders Act 2010* s. 12.
2. The Court will complete this row when the application is submitted.

5. *Prohibited Behaviour Orders Act 2010* s. 21 application (r. 71C)

District Court of Western Australia <i>Prohibited Behaviour Orders Act 2010</i> s. 21		No: Application to vary or cancel prohibited behaviour order. Hearing notice
PBO's details	Date made: Constrained person:	
Applicant		
Respondent		
Application	The applicant applies under the <i>Prohibited Behaviour Orders Act 2010</i> section 21 to ¹ vary/cancel the above PBO (prohibited behaviour order).	
Variation(s) wanted ²	1.	
Grounds for application ³	1.	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:
Hearing details ⁴	This application will be heard at this date, time and place — Date: _____ Time: _____ Place: _____	Court seal:

Notes to Form 5 —

1. Delete the inapplicable.
2. Omit this row if the application is to cancel a PBO.
3. Set out the grounds in numbered paragraphs.
4. The Court will complete this row when the application is filed.

Dated: 10 May 2011.

Judges' signatures:

Chief Judge P D Martino

Senior Judge M A Yeats

Judge H J Wisbey

Judge S M Deane (QC)

Judge P R Eaton

Judge P P McCann

Judge J A Wager

Judge A S Stavrianou

Judge T D Sweeney

Judge B J H Goetze

Judge R E Keen

Judge M J Bowden

Judge A M I Schoombee

Judge C P Stevenson

Judge S G Scott

Judge F C E Davis

Judge P B O'Neal

Judge S E Stone

Judge J G Staude

Judge R E Birmingham (QC)

Judge A S Derrick
