

Western Australia

Restraint of Debtors Regulations 1986

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Restraint of Debtors Regulations 1986

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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.

2A. Term used in these regulations

In these regulations —

“**section**” means section of the Act.

[Regulation 2A inserted in Gazette 28 Apr 2005 p. 1766.]

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;

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- (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 in the Schedule.

[Regulation 8 amended in Gazette 28 Apr 2005 p. 1766.]

9. Orders

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

[Regulation 9 amended in Gazette 28 Apr 2005 p. 1766.]

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 in the Schedule.

[Regulation 10 amended in Gazette 28 Apr 2005 p. 1767.]

11. Application for restraining order

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

[Regulation 11 amended in Gazette 28 Apr 2005 p. 1767.]

12. Money

- (1) Money received by a police officer shall be paid forthwith to the nearest clerk of courts.

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- (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. Fees

The fee to be paid in respect of the execution or attempted execution of a warrant is the fee set out in the *Magistrates Court (Fees) Regulations 2005* Schedule 1 Division 3 item 3(b).

[Regulation 13 inserted in Gazette 28 Apr 2005 p. 1767.]

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

Schedule

(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 is a compilation 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)		
<i>Restraint of Debtors Amendment Regulations 2005</i>	28 Apr 2005 p. 1766-7	1 May 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

- 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.