

---

**JUSTICE**

---

JU302\*

District Court of Western Australia Act 1969

**District Court Amendment Rules 2011**

Made by the Judges of the District Court.

**1. Citation**

These 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 amended**

These 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:
		<b>Affidavit</b> <sup>1</sup>
Parties		
Person making affidavit		
Date made		
Purpose <sup>2</sup>		
Filed by	[Party]	
Index <sup>3</sup>	Contents	Page
	1. Affidavit of Vincent van Gogh	1
	2. Attachment VVG 1—M J Citizen's birth certificate	7
	3. Attachment VVG 2—Letter from J Smith to T Jones dated 3 March 1999	8

Page 1<sup>4</sup>

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]<sup>5</sup>

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 <i>Prohibited Behaviour Orders Act 2010 s. 5</i>	No:
	<b>Application for prohibited behaviour order. Hearing notice</b>

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> ]. <sup>1</sup>	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:
Hearing details <sup>2</sup>	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: <b>Application to vary or cancel prohibited behaviour order. Hearing notice</b>
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 <sup>1</sup> vary/cancel the above PBO (prohibited behaviour order).	
Variation(s) wanted <sup>2</sup>	1.	
Grounds for application <sup>3</sup>	1.	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:
Hearing details <sup>4</sup>	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

Judge M J Bowden

Senior Judge M A Yeats

Judge A M I Schoombee

Judge H J Wisbey

Judge C P Stevenson

Judge S M Deane (QC)

Judge S G Scott

Judge P R Eaton

Judge F C E Davis

Judge P P McCann

Judge P B O'Neal

Judge J A Wager

Judge S E Stone

Judge A S Stavrianou

Judge J G Staude

Judge T D Sweeney

Judge R E Birmingham (QC)

Judge B J H Goetze

Judge A S Derrick

Judge R E Keen

---