

Prisoner Handbook

Your rights, the law and other information



LEGAL AID
WESTERN AUSTRALIA

Legal advice

You should always seek legal advice about your individual situation. The information contained in this publication is correct as at the date of review listed below, however the law may change at any time. The contents of this publication do not constitute legal advice about individual situations but contain only general information about the law. No person should rely on this publication as legal advice regarding a particular claim or individual case.

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Warning

This handbook may contain images of Aboriginal and Torres Strait Islanders who have passed away.

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Table of Contents

	Introduction	2			
1	Prison: an overview.....	5	10	Family issues.....	73
2	Moving prisons.....	11	11	Other legal problems.....	95
3	Basics	15	12	Aboriginal prisoners.....	123
4	Prison officer powers.....	21	13	Young prisoners.....	129
5	Programs	27	14	Release	133
6	Health	33	15	After release	137
7	Complaints.....	47	16	Legal help.....	145
8	Outside contact.....	55	17	Contacts.....	153
9	Criminal law issues.....	61	18	Legal words explained.....	161

Introduction

1. Purpose of the handbook

This Legal Aid WA Prisoner Handbook is designed to help you know your basic rights while in prison, and what resources are available to help deal with issues you may have in prison.

Legal Aid WA provides a wide range of services to the public.

You can get help from Legal Aid WA in three main areas:

- » **Criminal law** – You may have a criminal law issue if:
 - » You are being investigated by the police.
 - » You have been charged with a criminal offence.
 - » You want to appeal against a decision in relation to a criminal offence.
- » **Family law** – You may have a family law issue if, for example:
 - » You have a dispute with your former partner that involves children and/or property.
 - » Your family is involved with the Department of Communities, Child Protection and Family Support.
- » **Civil law** – You may have a civil law issue if your legal problem is not a criminal law or family law issue. Some examples of civil law issues include: debt, housing, tenancy, social security, personal injury, criminal injuries compensation or motor vehicle accidents.

The services that Legal Aid WA provides are different according to the legal problems that people have.

Legal Aid WA cannot deal with or help everyone who has a legal problem. Instead, it aims to help people who are most in need where the legal problems are more complicated and where help from a lawyer is most needed.

If Legal Aid WA cannot help you with a legal problem, you may be referred to a different service such as a community legal centre, family relationship centre or private lawyer.

Resources referred to

If you would like a copy of any of any of the information sheets, kits or other publications referred to in this handbook you can call Legal Aid WA's Infoline on 1300 650 097 for free from your prison phone.

2. Feedback

If you have feedback about this handbook please call **Legal Aid WA's Infoline**.



3. The law covering prisons

The WA prison system is primarily covered by the following:

- » *Prisons Act 1981* (WA) [PA].
- » *Prisons Regulations 1982* (WA) [PR].
- » *Adult Custodial Rules* [ACR]: these are made with the Minister for Corrective Services' approval, pursuant to section 35 of the *Prisons Act 1981* (WA).
- » Policy directives: these are made without the Minister for Corrective Services' approval.
- » Standing orders: these can be issued by a Superintendent.
- » Local orders.
- » Administrative instructions.

4. Common abbreviations used in this handbook

ALS	Aboriginal Legal Service
CCC	Corruption and Crime Commission
CCPFS	Department of Communities, Child Protection and Family Support
DJCS	Department of Justice, Corrective Services
DPP	Director of Public Prosecutions
FDR	Family Dispute Resolution
FDRP	Family Dispute Resolution Practitioner
TOMS	Offender Management System
PBO	Prohibited Behaviour Order

If you need more help after looking at any part of this handbook, or if your legal problem is not covered here, you can call Legal Aid WA's Infoline for information or referral.



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PART 1

Prison: an overview

This part covers:

1. Entering inside
2. Intake and assessment
3. Your particulars
4. Mental health and care
5. Your property
6. Sentence plan
7. Concerns about your safety
8. Enquiries about your sentence
9. Transsexual prisoners



Prison: an overview

1. Entering inside

New prisoners are processed by the reception area of the prison. During this process:

- » The prison staff will check whether you are the person who has been ordered to be in prison, and that you are being legally held.
- » Your personal items will be taken and listed. You will be asked to sign this list of your property. The Prison Superintendent (“the Superintendent”) may allow you to keep some property in your cell. Your photograph will be taken.
- » You must remove all personal clothing and take a shower. Your clothing will be placed in a bag or washed if it is dirty.
- » You will be strip searched. For more details on searches see under the heading below **Strip searches** on page 23. A prison officer will complete an admission checklist. You will receive prison clothing.
- » You will be allocated a cell.
- » You will attend a medical examination as soon as possible.

2. Intake and assessment

When you are brought into custody, you will go through an assessment to work out:

- » the appropriate security rating for you
- » if you need to be protected from other prisoners
- » if you have any health issues (see **Health and medical treatment – assessment** on page 35), and
- » what work, education or rehabilitation programs would be helpful.

You are encouraged to have your say during the assessment.

Your security rating is decided at intake and reviewed at scheduled times. You should be classified at the lowest level of security necessary to ensure:

- » your continuing custody
- » the good order and security of the prison, and
- » the safety and protection of the general public, officers and other prisoners.

The appropriate security rating is decided using checklists and a scoring system.

Security ratings

There are three security ratings:

- » **Maximum:** if you present a high risk of escape or a high risk to the safety of the public if you escape.
- » **Medium:** if you cannot be trusted in an open prison, but do not present as having the resources or will to make a determined escape attempt.
- » **Minimum:** if you need a low degree of supervision and control within the prison.



3. Your particulars

The prison may obtain the following information and samples from you when you get to the prison and at any other time considered necessary to help medical, dental or investigative requirements:

- » Name
- » Date of birth
- » Usual place of residence
- » Next of kin details
- » Height
- » Weight
- » A photograph including records of identifying features (eg tattoos, scars)
- » Fingerprints
- » Blood sample, and
- » An impression of your teeth.

4. Mental health care

Your mental health is assessed when you enter prison.

For more information see **Psychiatric and mental health care** on page 40.

The Mental Health Service can assess you for court and the Prisoners Review Board.

There are other services that can provide support if you have a mental health issue. See under the heading **Visitors and services** on page 57.

5. Your property

When you are admitted to a prison, a list must be made of all property in your possession. Any property kept by the prison must be stored safely and given to you on your release.

The exceptions to this are:

- » Any property which is perishable, dangerous or unhygienic may be destroyed or dealt with as directed by the Superintendent.
- » The Superintendent has discretion to refuse to store your property.
- » Property that is unclaimed for a period of three months after your release can be disposed of (for more detail and exceptions to this see under the heading **Getting your property from the prison** on page 139).

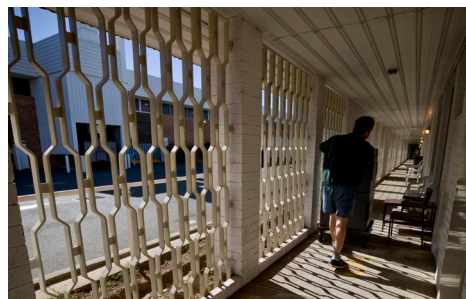
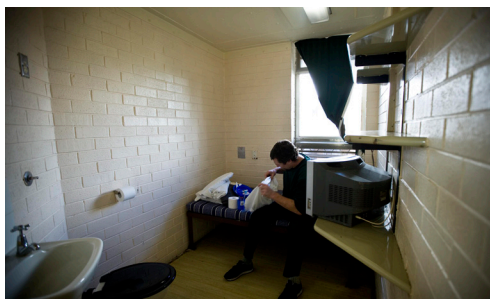
Every prison has standing orders setting out the procedures for dealing with property. For example, they must provide a procedure for lost property, prison transfers and disposal. You can find out what the procedure is in your prison by asking your Unit Officer.

You are issued with prison clothing when you enter prison. However, you have a right to wear your own clothing if you attend court or other legal proceedings.

6. Sentence plan

If you are serving a sentence longer than six months you will receive an in-depth assessment from which an individual management plan (IMP) will be developed.





The IMP outlines how you will be managed in custody and provides information about the following areas:

- » your behaviour in custody
- » your security rating and placement
- » the details for any outstanding court events
- » your care and wellbeing
- » your family and social contacts
- » industry or vocational skills you can offer
- » any programs or training that may be suitable for you
- » parole issues, and
- » your rehabilitation and reintegration.

There should be regular reviews of your IMP to make sure that the plan remains relevant to you.

7. Concerns about your safety

You have the right to expect to be safe and properly treated in prison. You should not be subjected to cruel, inhumane or degrading treatment or punishment.

If you feel that you are in need of protection in prison, you should tell a prison officer or the Superintendent as soon as possible.

8. Enquiries about your sentence

If you have a query about your sentence, you should firstly contact the Sentence Management section at your prison. If you want to dispute how your sentence has been calculated or have more detail on your sentence, you should contact the Sentence Information Unit. You can contact this unit by writing to the Manager, Sentence Information Unit, Department of Justice, Corrective Services, Locked Bag 22 Cloisters Square WA 6850 or ring (08) 9264 1967.

9. Transsexual prisoners

Initial placement will be facilitated according to the usual policy. Your gender will be determined by the gender on the paperwork authorising your imprisonment.

If you are transsexual, or where staff identify you as transsexual, you will be put in a single cell with a separate shower and washing facilities until a decision is made about where you will be placed based on the assessment and sentence management processes set out in *Adult Custodial Rule 18*.

You have the right of one appeal against only the security and placement components of both a Management and Placement Checklist decision and an initial Individual Management Plan decision.



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PART 2

Moving prisons

This part covers:

1. Transfers within WA
2. Interstate transfers
3. Moving to an overseas prison
4. Prisoner transport



PART 2

Moving prisons

1. Transfers within WA

If you want to be transferred to another prison in WA, you should raise this with the Sentence Management section of your prison.

2. Interstate transfers

There is a national scheme of legislation that permits prisoners to be transferred between States and Territories.

If you ask to be transferred to another prison interstate, the following applies:

1. The WA Minister for Corrective Services decides whether or not you should be transferred, considering:
 - » your welfare
 - » the administration of justice
 - » the security and good order of any prison, and
 - » the protection of the community.
2. If the WA Minister decides that you should be transferred, they will write to the corresponding Minister in the State you want to go to.
3. If the corresponding Minister consents to receiving you, the WA Minister can issue an order for your transfer.

Decisions made under the scheme cannot be reviewed by a court or tribunal.

What form do I need?

If you want to apply for an interstate transfer, you should ask your Unit Officer for the relevant form (Form 1).

Your request must include statements about:

- » your family support and access to accommodation in the State you want to go to
- » family or other social circumstances that may be good for your welfare while in prison or on release in the other State
- » medical reasons (if any) in support
- » your prospects of getting a job on release, and
- » anything else you can put in support of your request.

3. Moving to an overseas prison

If you want to transfer to a prison overseas you will have to contact the **International Transfer of Prisoners Unit** at the **Commonwealth Attorney General's Department** on (02) 6141 6666.

4. Prisoner transport

You are transported around the State in secure air conditioned vehicles under the supervision of uniformed officers. Coaches and air travel arrangements are also in place for long journeys.



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PART 3

Basics

This part covers:

1. Minimum entitlements
2. Food
3. Religion
4. Health
5. Health education
6. Clothing
7. Finance and money management
8. Supervision and privileges
9. Prison offences
10. Attendance at funerals and visiting dangerously ill person/s
11. Artwork produced in prison



PART 3

Basics

1. Minimum entitlements

Your minimum entitlements in prison include the following:

- » to be provided with food of nutritional value at the usual hours that is adequate for your health and well being
- » to have time out of cell hours and access to recreation facilities and leisure programs
- » to receive visitors
- » to access a telephone
- » to send and receive mail
- » to have access to the materials necessary to keep regularly informed of news and current affairs
- » to keep property in your cell
- » to have access to a library and writing material
- » to practice religion or spiritual beliefs, and
- » to a certain standard of personal hygiene.

2. Food

You are to be provided with nutritionally balanced and varied meals that meet your individual dietary needs. You must be provided with adequately nutritious and healthy food, and fresh drinking water to maintain health and wellbeing. You should receive special food if you require it for medical reasons, or to meet established cultural or religious needs.

3. Religion

When you get to prison you are given a chance to state your religion or denomination and have it noted.

Subject to security, good order and management of the prison, you may:

- » practise religious rites
- » go to services in prison, and
- » receive religious guidance and visits from a member of your religious denomination.

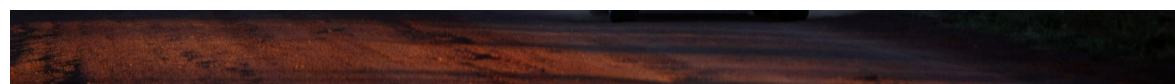
4. Health

You are to be provided with access to appropriate health services and programs. You are entitled to access health programs appropriate to your age, gender and culture. The Chief Executive Officer (CEO) of the Department of Justice, Corrective Services (DJCS) must make sure that you get medical care and treatment.

For more information see under the heading **Health and medical treatment – assessment** on page 35.

5. Health education

Education and health awareness programs are available to you, including drug and alcohol programs. See under the heading **Substance abuse or dependency** on page 40.



6. Clothing

You are given prison clothing on entering prison. However, you have a right to wear your own clothing if you go to court or other legal proceedings.

7. Finance and money management

Do I get an income in prison?

You are paid a nominal daily amount. The only exception to this is if your income is suspended as punishment. In this situation you are in "Category 6". You receive no income until you are returned to Category 1-5.

How is my money held?

- » You are not allowed to possess cash unless authorised by the Superintendent.
- » You have a Private Cash Account, which is administered and managed pursuant to the *Financial Management Act 2006* (WA). You can't get interest on this account.
- » Family and friends can put money into your account but there is a limit on the amount you can receive.
- » You must authorise payments from your account unless restitution has been ordered. There is a limit on how much you can spend.

Gratuity earnings

Prisoners earn "gratuities" if they are working in the prison. A gratuity is payment for work done but is not actually money.

- » Gratuity earnings are not deposited into Private Cash Accounts. They are managed using a computerised system called GPS.
- » You must authorise payments from the gratuity earnings.
- » You can spend your gratuities inside the prison. Expenditure can be recorded by any officer with access to GPS.
- » You must submit a written request to spend money outside the prison.

External accounts

You can open external accounts that get interest with the approval of the Assistant Superintendent of Prisoner Management. You are not allowed to make business transactions on these accounts while you are in prison. There is an exception to this in some cases if you are on an absence permit or working outside the prison.

What happens to my money when I am released?

When you are released, all of your accounts are reconciled and you receive the balance.

8. Supervision and privileges

The prison system is designed to give you incentives for behaving well in custody. Essentially, good behaviour is rewarded by a lower level of supervision and a higher level of privileges.

Supervision

There are four levels of supervision:

1. **Close supervision:** if you would jeopardise the security and good order of the prison if you continue to mix with the general prison population.
2. **Basic supervision:** if you show poor or inappropriate standards of behaviour. With this level

of supervision you will stay resident in your cell when possible.

3. **Standard supervision:** if you are a new prisoner you will generally start on this level of supervision.
4. **Earned supervision:** if you show appropriate behaviour.

If your supervision level is increased, the officer authorising the action must tell you the reason why, the behaviour expected and the procedures for progression back to the same level. You can request review of a decision to increase your supervision in accordance with *Adult Custodial Rule 5*.

Privileges

Under *Adult Custodial Rule 3*, a Superintendent can:

- » grant privileges to prisoners that are above their minimum entitlements
- » withdraw privileges, or
- » suspend entitlements provided by legislation and common law, for the purpose of maintaining the good order and security of the prison.

Granting privileges

The following matters are not minimum entitlements and are available to be granted as privileges:

- » accommodation
- » movement and restrictions
- » external activity absences
- » canteen access
- » town spends
- » access to recreation, musical, hobby and sporting equipment
- » employment, and
- » gratuities.

In addition to these privileges, the Superintendent can increase your minimum entitlements.

Withdrawing privileges

Under *Adult Custodial Rule 3*, a privilege can be withdrawn from you if:

- » you have misused it
- » you have breached a lawful order
- » it constitutes a threat to, or breach of good order and the security of the prison, or
- » it can also be withdrawn for any other reason approved by the Superintendent.

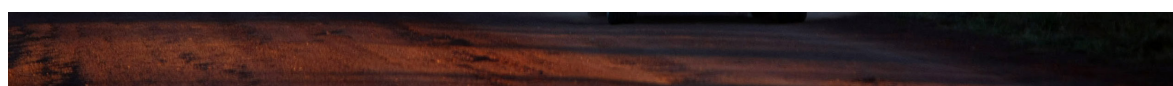
Before a privilege is withdrawn:

- » an incident report must be written
- » you must be notified, and
- » you must be interviewed.

You can request review of a withdrawal in accordance with *Adult Custodial Rule 5*.

9. Prison offences

For information on dealing with offences allegedly committed while in prison see the **Legal Aid WA Prison Offences Information Kit**. You can get a copy of any of this kit by calling **Legal Aid WA's Infoline**.



10. Attendance at funerals and visiting dangerously ill person/s

You can apply to leave the prison on compassionate grounds. This includes going to a funeral or visiting a very ill person who has only been given a short time to live. You will always be with an officer on this leave. Other types of compassionate leave will only be considered in exceptional circumstances.

The following factors are relevant to whether your application will be accepted:

- » The significance of the relationship between you and the deceased or very ill person (an immediate family member or the relationship is exceptional, eg primary carer)
- » Security concerns
- » Victim issues, and
- » How easy it is for the prison to arrange your leave.

11. Artwork produced in prison

Art and creativity are strongly encouraged - and often rewarded - in prisons all over Australia. The Department of Justice, Corrective Services (DJCS) has a detailed policy about the production, display, sale and disposal of prisoner artwork known as *Policy Directive 46 - Art Produced by Prisoners* (PD 46).¹ Art covers drawings, paintings, carvings, sculpture, plays, music, dance and choreography, poetry, books and drama scripts.

Will I own the artwork I create in prison?

The PD 46 sets out that DJCS recognises the intellectual property held by you in relation to work you have produced and agrees not to reproduce your work without your clear written permission. Intellectual property is about your ownership of the art you have made and the rights that you have in relation to that art, for example, about copying it.

Under this policy, artwork produced in art classes using government materials becomes the property of the state. However, you may - subject to the decision of your Superintendent - choose to buy artwork you have produced by paying for the cost of materials. Alternatively, if the artwork is produced using materials you purchased, then the Department will consider the artwork to be owned by you.

Can I sell my artwork?

If you exhibit your work, as set out under s 5.1.1 of the PD 46, you can still sell it later. The proceeds of the sale of your artwork are for your benefit, subject to a 10 percent administration charge being deducted to cover the cost of the exhibition. The same charge applies if you win a cash prize for your artwork. You may also accept commission work with the approval of your Superintendent.

Can I donate my artwork?

Prison art you own may be donated to charities or similar organisations where the Assistant Commissioner Custodial Services has granted prior approval.

Can my artwork be destroyed without my permission?

The policy does give your Superintendent the power to dispose of or recycle prison art in accordance with the *Prisons Regulations 1982*. However, it is unclear in what situations this power will be exercised. It appears to occur only in situations where storage space is required.

For more detailed information ask to see a copy of Policy Directive 46.

¹ *Arts Law Centre of Australia, 'Recognising Artists in prison: a review of the law and policy in Australia'.*

PART 4

Prison officer powers

This part covers:

1. Who can search me and when?
2. Strip and rub down searches
3. Restraints
4. Confinement
5. Force and weapons



PART 4

Prison officer powers

1. Who can search me and when?

- » The Superintendent can direct that you be searched on “such other occasions and in such manner as may be considered necessary”.
- » A prison officer can search you if ordered to do so by the Superintendent.
- » There are special procedures for searches of prisoners for medical reasons, for searching of religious headwear, for searching of prisoners with injuries or disabilities and for searching residential babies and children.
- » Each prison has a Searching Strategy developed in accordance with *Policy Directive 26 Searches - Procedures - Searches of Prisoners*.

During a search

- » A prison officer can take anything that was not issued or kept with approval of the Superintendent.
- » A prison officer can use any force that is reasonably necessary.
- » The search must be conducted with regard to decency and self-respect.

Can my mail be searched?

All mail to and from you can be opened and read, except for mail from certain complaints bodies.

Can my property be searched?

Yes. Any property issued to or kept by you can be searched by a prison officer and taken apart for that purpose.

Can my cell be searched?

Yes. Each prison’s Search Strategy will contain standards depending on the security rating for searching cells and common areas. However, *Policy Directive 26* states that:

- » at least 15% of all cells must be searched each week, and
- » every cell has to be checked once a fortnight for compliance with design standards.

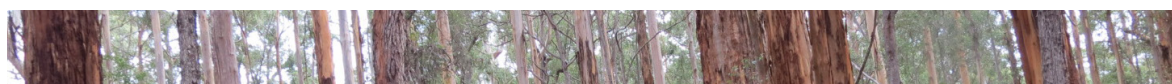
Do I have to give a body sample?

You may have to provide a sample of your blood, sweat, saliva or urine. The Superintendent may direct an officer to take random samples. An officer can also take a sample if the officer or the Superintendent has reasonable grounds for suspecting that you have committed an aggravated drug or alcohol offence. An aggravated drug or alcohol offence is where you:

- » use or possess drugs not lawfully issued to you
- » use drugs in a way not prescribed, or
- » consume or possess alcohol not lawfully given to you.

2. Strip and rub down searches

You must be strip searched before you are admitted to a prison, placed in a cell for observation or punishment, discharged from a prison, or before doing urine testing.



You will also be searched each time you enter or leave the prison, for example, when you leave prison to go to court and on your return. This search can be by way of rub down or strip search depending on the prison's searching strategy.

Aside from this, you cannot be strip searched unless this is ordered by the Superintendent or it is specified by the Superintendent in the prison's searching strategy.

The following rules apply to strip searches:

- » A prison officer involved in a strip search must make a written report of the search to the Superintendent.
- » You must not be strip searched in the sight or presence of a person of the opposite sex, unless they are a medical officer.
- » Where practicable, you should not be strip searched in front of other prisoners.

Rub down searches are to be carried out by a prison officer of the same gender as you. A second officer will be present.

All searches are to be recorded on the electronic database used by the Department of Justice, Corrective Services (DJCS) (TOMS Total Offender Management Solution).

3. Restraints

When can I be restrained?

The Superintendent can authorise your restraint if this is necessary to prevent injury or escape or medical grounds on the advice of a doctor. If the restraint continues for more than 24 hours, the circumstances must be reported to the CEO of the DJCS.

4. Confinement

When can I be confined?

The CEO can order that a prisoner be placed in separate confinement for the purpose of "maintaining good government, good order or security in a prison". The confinement may be up to 30 days.

Separate confinement can also be ordered if you commit a prison offence.

According to *Adult Custodial Rule 1: Management of prisoners in confinement*:

- » You can be placed in separate confinement in your sleeping quarters or a punishment cell.
- » You must be told why you are in confinement and how long you will be in confinement.
- » You must be held in a ventilated and well lit cell. You must have access to daily exercise, adequate clothing, food, water and sanitation facilities, however if your behaviour makes it necessary, your prisoner issue clothing may be removed and replaced with a non-tear disposable equivalent.
- » You must be visited once each shift by the Unit Manager to check on your health and welfare.
- » The prison officer responsible must write a report about the incident that led to you being confined.





5. Force and weapons

When can force be used on me?

The CEO of the DJCS may order the use of force against you if:

- » a serious breach of the good order or security of a prison has occurred or is about to happen, and
- » there are no other reasonable means of control available.

This includes force which may cause death or serious injury.

The use of firearms

Firearms are not routinely carried by prison officers. Firearms can only be used if someone is attempting to:

- » escape from the prison
- » break into the prison, or
- » assault any person in a manner that is apparently dangerous to life or likely to cause serious injury.

Other weapons

The weapons that prison officers routinely carry depend on their role and where they are working. Prison officers can carry chemical agents, batons and handcuffs. Emergency Support Group Officers do use tasers and it is an option available to prison staff in exceptional circumstances.



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PART 5

Programs

This part covers:

1. Overview of services and programs
2. Rehabilitation programs
3. Education
4. Work



PART 5

Programs

1. Overview services and programs

The CEO of the Department of Justice, Corrective Services (DJCS) can arrange for the provision of services and programs for your wellbeing and rehabilitation. In practice, this is done through the Education and Vocational Training Unit (EVTU).

The programs may:

- » promote health and wellbeing
- » enable you to acquire knowledge and skills
- » assist you with integrating with the community
- » maintain and strengthen supporting relationships
- » provide opportunities for you to constructively use your time in custody
- » provide counselling services
- » provide work and leisure activities, and
- » allow you to make reparation for your offences.

You cannot be forced to participate in these programs.

However, you can be forced to work if you are sentenced and medically fit.

Doing these education or rehabilitation programs is considered a “constructive activity”. If you do them you are paid gratuities (see page 18) as if you were engaged in work requiring average skill or carefulness.

2. Rehabilitation programs

You can do programs that target the causes of your offending. All programs are delivered in groups.

The needs of specific groups such as Aboriginal prisoners, women and those who have struggled at school are addressed through certain programs.

Some programs include:

- » Pathways: an intensive 21 week program that helps you focus on reducing reoffending and substance abuse.
- » Sex offending: covers a range of issues, including victim empathy, and critical reasoning.
- » Violent offending: looks at the causes of violent offending. It helps you develop positive behaviour and attitudes.
- » Family violence: focuses on you accepting responsibility for your actions.
- » General offending: helps you get a better understanding of why you offended using a range of treatment methods including problem solving, relapse prevention and safety planning.
- » Cognitive skills: improves your problem solving and skills in mixing with other people. It helps you understand your personal beliefs and values.
- » Building on Aboriginal Skills is available in many regional prisons: if you want to reconnect with your land and culture while learning cognitive skills and positive behaviour.



What are the main benefits?

Completion of treatment programs is an important factor when you are considered for release by the Prisoners Review Board. The programs also help your transition back into the community and reduce the risk of re-offending.

3. Education

You will be encouraged to get involved in a wide range of education and vocational training programs while you are in custody. Education programs are managed by the EVTU. They aim to help you get a job while in prison and after your release.

These programs are available to all prisons through internal and external service providers, including TAFE and other colleges. The courses include adult basic education, driver education and training, secondary and higher education, employability and life coping skills, pre-release and the Prison Employment Program (PEP).

Qualifications are nationally recognised and courses started in prison can be continued in the community after you are released.

4. Work

Unless you are on remand, you are required to work while in prison. Labour performed by you may be classified as level 1 (the most skilled) to level 5 (the least skilled).

You are allocated levels of labour to perform and credited gratuities to the prison's gratuity account accordingly.

A gratuity is a payment for work done, but is not actual money. You may spend amounts in the gratuity account if the Superintendent authorises it.

If you refuse to work, you may be charged with a prison offence and will not be credited with gratuities. If you are undergoing punishment you are also not credited with gratuities. If you are sick, you will still be credited with the same rate of gratuities. If you are serving a sentence at a lock-up you are not credited with gratuities.

Getting work inside

Sentenced prisoners who are able to work may be employed as the Superintendent directs. In practice, if you are sentenced you generally need to apply for work as though you are applying for a job.

If you want to work while you are on remand, you must apply to the Superintendent in writing.

Prison work is classified into five levels, which have a corresponding gratuity rate. For example:

- » Level 1 involves work that requires exceptional skill, special aptitude and carefulness.
- » Level 5 involves "duties of a general nature".

Work outside the prison – Prison Employment Program (PEP)

- » The PEP is available to you if you are a minimum security prisoner who is within 12 months of your earliest eligibility date. Some categories of prisoner are ineligible to apply, for example, any prisoner who is being deported.
- » The program introduces you to paid employment, education or work experience outside the prison, with the hope that you will continue it after release.



- » Paid employment may only occur in the last six months prior to your potential release date. Payment from employers is held in a secure account for you until you are released.
- » You must submit a PEP application form, which is assessed in relation to the aim of reintegration, your good conduct and the merits of the application.

Work outside the prison - absence permits

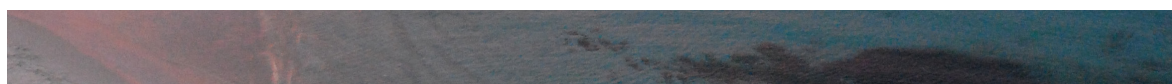
In some circumstances you are allowed to work outside a prison with an absence permit. You can also be confined in a facility outside the prison to engage in work.

Work camps

There are several work camps in WA, which house small groups of low risk prisoners who are nearing release. The work camps allow you to improve your work skills and contribute to community projects. The work that prisoners at the work camps have been involved in includes:

- » tree planting
- » coastal regeneration
- » maintenance of national parks, and
- » restoring heritage sites.

Prisoners in work camps are generally subject to the same rules as other prisoners.



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PART 6 Health

This part covers:

1. Health and medical treatment – assessment
2. Treatment
3. Medication
4. Substance abuse and dependency
5. Psychiatric and mental health care
6. Aboriginal and Torres Strait Island prisoners
7. Programs and other services
8. Access to information
9. Common complaints about medical treatment
10. Who to complain to about medical treatment while in custody



PART 6

Health

1. Health and medical treatment – assessment

Will I receive regular check ups?

When you first come into prison, a nurse will assess you and you will have compulsory urine and blood tests. A medical officer will conduct a routine check-up within 28 days. You will also receive annual health assessments on your birthday. If you are feeling unwell, you must request an appointment.

Am I eligible for Medicare or the Pharmaceutical Benefits Scheme (PBS) while in prison?

No, because Medicare and PBS are federally funded. As prisons are state funded, the costs for your health care are covered by state prison services or state health services. However, you may not be covered for elective surgery or for things like reading glasses beyond the basic type.

2. Treatment

What health care treatment is available to me in prison?

Health care is provided to all prisoners state-wide by a team of doctors, nurses, mental health and addiction specialists, and by visiting health and allied health specialists including psychiatrists, dentists, podiatrists and physiotherapists. Specialist hearing tests are conducted outside the prison services. Chronic disease co-ordinators (nurses) are available in some facilities for individual consultation on diabetes and asthma. Comprehensive immunisation programs are available in the prisons.

A number of preventative health programs are also on offer.

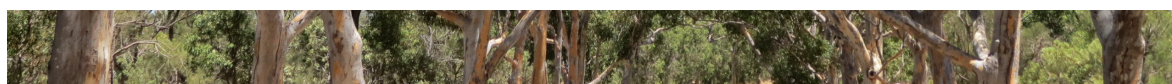
What standard are these services provided at?

Prisoners receive the same care as that received by the general public under the WA public health system. They are subject to the same public wait lists as others in the general community. A prisoner's medical needs are most important. The only time a conflict arises between being a patient and being a prisoner is where a prisoner behaves in a dangerous manner and must be restrained before they receive medical attention.

Can I refuse medical treatment?

You should not be forced to have unwanted medical treatment (unless the examination/treatment is undertaken pursuant to sections 46 and 95D of the *Prisons Act 1981* (WA), see below for these exceptions) and you should be told of the following:

- » the nature of your condition
- » the nature of proposed investigations or treatments, the risks and benefits
- » alternatives to proposed investigations or treatments
- » the likely outcome if you refuse the investigations or treatments
- » whether the treatment is reversible
- » the time involved in the treatment
- » the likely recovery period, and



- » the burden of your period of recovery and rehabilitation.

Failure of the practitioner, for example, a doctor, to disclose this information to you before you decide whether to have medical treatment may result in a finding that the practitioner has acted negligently towards you and that there has been a breach of the duty of care owed to you. For more information on negligence see under the heading **Personal injury – if you have been injured in prison or before you went to prison** on page 111.

The information should be given to you in a language and in such a way that you can understand it and in enough detail for you to make decisions about your treatment.

Generally, no health procedure can be done without your informed consent (see exceptions to this below). Your right to decide for yourself about medical care is not taken away because you are in prison.

- » Your consent must be voluntary with no coercion (force) by the practitioner.
- » Your consent may be implied, oral or written.
- » Your consent may be gained by facial expression, a nod of the head or allowing the procedure to continue.
- » Your written consent should be obtained for invasive procedures such as minor operations and incisions.
- » Your consent must cover the procedure and treatment performed.
- » When needed an interpreter should be provided to confirm consent. If one is not available a second independent practitioner should examine you and document their opinion.
- » If you cannot read or write or cannot sign a consent form but are not mentally incompetent, intellectually impaired or requiring emergency treatment, then no form is required. You can give verbal consent. A witness should be present at the time of consent.

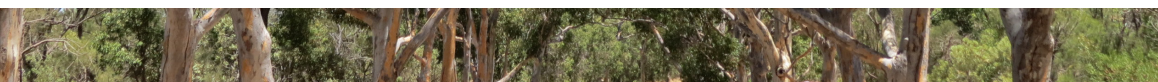
In the case of an emergency where a procedure is necessary to save your life or prevent serious harm to you, if you are not able to consent to the required treatment at the time (because you are unconscious) consent is deemed by law to have been given for treatment.

You can withdraw consent at any time.

Consent will usually remain valid until withdrawn.

Sections 46 and 95D of the *Prisons Act 1981* (WA) provides for the examination and treatment of prisoners against their will. Such a power must only be used in the following circumstances:

- » Section 46 allows for an imposed medical examination to collect evidence. Where there are reasonable grounds for believing that a medical examination of you will provide evidence about an offence having happened, a medical officer acting at the request of the Superintendent or delegated officer/practitioner can do a medical examination of you as is reasonably necessary. They may use such force as is reasonably necessary for the purpose. An example of this may be where another prisoner claims they have been assaulted by you. However, this section is not applied very often. Generally sufficient evidence to support a complaint is voluntarily provided by the other prisoner or alternatively, witnesses to the assault are able to confirm the incident occurred.
- » Section 95D gives the prison authorities the power to conduct medical examinations and provide treatment to you in certain circumstances, such as:
 - » Where you refuse to undergo a medical examination by a medical officer:





- » when admitted to a prison
- » when required by the Superintendent
- » when a medical officer considers it necessary, or
- » when a medical officer is of the opinion that your life or health or any other persons is likely to be endangered by your refusal.
- » Where a medical officer and any person acting in good faith may, under the direction of the medical officer, undertake the medical examination or administer the medical treatment and use force.
- » Where you are required to be force fed or have forced psychiatric treatment.

Approval would need to be obtained from the Superintendent and the senior medical officer.

Some people are not able (“competent”) to give consent such as:

- » mentally ill or impaired patients, or
- » unconscious patients.

Where a person has a psychiatric illness or intellectual disability and they do not understand the nature and purpose of the treatment then the *Guardianship and Administration Act 1992* (WA) [GAA] is to be followed. The GAA allows for the appointment of a guardian for prisoners who are unable to make reasonable judgements about matters relating to themselves. A guardian may consent to any treatment of the represented person other than psychiatric treatment as defined in the *Mental Health Act 2014* (WA) section 4 or sterilisation.

Can I see a private medical practitioner, hospital or health specialist on the outside?

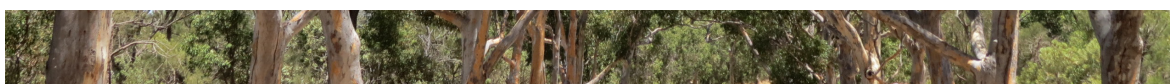
Under section 83 of the *Prisons Act 1981* (WA) authorised absences from the prison can be obtained for several purposes including so that prisoners’ medical or health requirements can be met.

First you see a prison doctor. The doctor will work out the medical condition and if a specialist is required. You are then referred by the prison doctor to a specialist on the outside. It is up to the specialist to confirm their availability. When an appointment is available the prison health services receive notification and it is booked on the TOMS (Offender Management System). A movements officer makes all the arrangements for you to get to your appointment. A risk assessment is undertaken, any potential issues are identified and recommendations are made about security and escort arrangements.

Examples include:

- » mothers attending a medical appointment with a child who lives with them
- » appointments for dental, hearing, eyes, or other related health services, or
- » hospital appointments for non urgent surgery.

Prison clinics: Crisis Care units and infirmary



- » An infirmary is provided at Casuarina prison
- » Infirmary services are provided to patients who:
 - » are not in need of hospitalisation
 - » require inpatient bed care with registered nurse supervision
 - » have an illness that requires limited observation or management, or
 - » require ongoing care not available in the general prison system through outpatient appointments
- » Crisis care units are for prisoners at risk, or at risk of self harming.

What happens if I require non-lifesaving surgery? Is it performed in the prison?

If you need non-lifesaving surgery such as a joint replacement you are placed on the public waiting list. Appropriate transport is arranged to take you to hospital if your surgery date comes up while you are still serving your sentence.

What happens if I need urgent medical attention in hospital?

If an assessment carried out by prison health staff shows you require hospitalisation, appropriate transport will be arranged.

Can I request to see a male or female doctor?

All State prisons attempt to provide both female and male doctors, however your request may not be able to be granted.

Are contraceptives, eg, the pill, provided to female prisoners?

Yes. Sex is prohibited in all WA prisons but if you are already on the contraceptive pill when entering prison, you may continue using the contraceptive if your external doctor agrees. If so, the prescription is given to prison staff from your doctor.

Do pregnant prisoners give birth in prisons?

At full term, all pregnant prisoners are transferred to hospital.

At what age can children stay with their mothers in prison?

At Bandyup Women's Prison, children can live with their mothers up until the age of one. At Boronia Pre-release Centre for Women, children can live with their mothers up until the age of four. Children under 12 can apply for overnight stays or extended day stays.

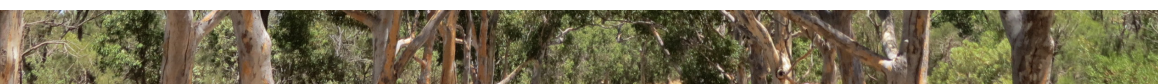
Are condoms and dental dams provided to prisoners?

Condoms are provided to help reduce the spread of infections and blood-borne viruses and the transmission of infections and blood-borne viruses when prisoners are released back into the community. Condoms can be obtained from a vending machine at no cost. Dental dams are available free to prisoners. Exit kits which include public health information and condoms are also given to you when you're released.

Isolation due to medical reasons

Occasionally the behaviour or medical condition of a prisoner warrants their placement in an observation or medical observation cell. The placement is designed to minimise the opportunity for self-harm and to help with closer supervision. Placement is never to be used as punishment or in a punitive manner. Circumstances where placement may occur are:

- » where there is considered a high risk of self harm



- » as an interim measure until a full assessment is done, or
- » to monitor a prisoner's medical or psychological condition/welfare.

It should not be the first step taken. Placement in an observation cell is authorised by the Superintendent after a recommendation from health staff. If you request, the Superintendent will where practicable, immediately notify your family (or significant others) of the placement. A doctor will work out further placement or removal. Your visits are to go on as normal.

Can I get special dietary food?

Special dietary food must be provided where it is established that such food is medically prescribed for health reasons.

Can I be charged for my medical treatment?

Access to health care is provided at no cost subject to medically assessed need, how acute your illness is and the availability of appointments on the public health system wait list.

Where there is a genuine need for dental, vision and hearing services these will be provided. Treatment of a solely cosmetic nature will not be provided. You will have to pay for the cost of non-standard treatment or services, and should pay the cost of loss or damage to items, resulting from careless or deliberate behaviour. Non-standard treatment or services may include:

- » Dental: special prosthetic or orthodontic treatment such as cosmetic treatment crowns, bridges and wires.
- » Vision: special optical supply/treatment such as special frames, tinting, contact lenses beyond basic standard.

3. Medication

Do I get to keep my medication prescribed by my doctor before coming to prison?

No.

Can family members bring in prescription medicine for me?

No.

How do I get approved to receive medication?

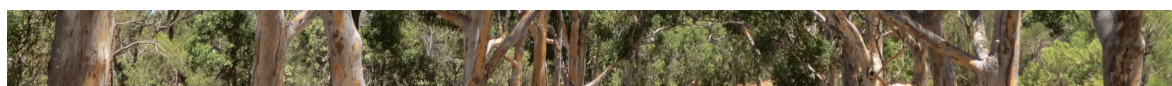
Medication must be given to each unit by a nurse. The nurse labels medication with your name, the time for giving the medication and whether it is essential. Prison officers cannot give medication to you unless it has been provided by a nurse.

Who will provide me with the medication?

The Department of Justice, Corrective Services' (DJCS) pharmacy is responsible for the supply and dispensing of medication to prisoners. If you are already on medication when you enter the prison, prison health staff will contact your treating doctor and will request a prescription for the medication. Prison health staff issue the medication either daily or, depending on the condition, the medication is kept with you.

4. Psychiatric and mental health care

DJCS manages prisoners with a mental illness as part of a process of assessment, diagnosis and ongoing treatment.



Mental health care is available at each prison site from mental health nurses, addiction specialist and consultant forensic psychiatrists.

Specialist services such as crisis care units are available at Bandyup Women's Prison, Casuarina and Hakea prisons and are staffed seven days a week by mental health specialists. These units are acute psychiatric wards within the prison. They:

- » identify prisoners with mental illness
- » liaise with external agencies and individuals who have cared for prisoners or who will care for prisoners upon exit from prison
- » assess prisoners, including assessment for the courts, the Mentally Impaired Accused Review Board and the Prisoner Review Board
- » treat prisoners, and
- » provide education services.

The only specialist facility available for the treatment of mentally ill prisoners is the Frankland Unit, at the Graylands Hospital complex. This is a forensic psychiatric in-patient service. The centre mainly provides for:

- » accused persons referred from the courts for psychiatric assessment
- » prisoners with a mental illness referred from prisons across the state, and
- » patients unfit to plea due to reasons of insanity.

It is very difficult for you to get placed in the Frankland Unit at Graylands Hospital unless you have an acute illness.

The Mental Health Service can assess you for court and the Prisoners Review Board.

There are other services that can provide support if you have a mental health issue. See under the heading **Visitors and services** on page 59.

5. Aboriginal and Torres Strait Islander prisoners

Aboriginal health workers are available within the prison system however they are mainly employed in regional prisons.

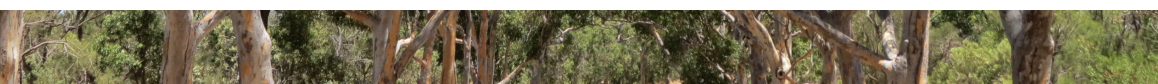
6. Substance abuse or dependency

Wandoo Rehabilitation Prison is the first alcohol and drug rehabilitation prison for women in custody. It offers dedicated, intensive trauma-informed treatment within a therapeutic community. Women at Wandoo are supported by multi-disciplinary case management to reduce addiction, improve mental and physical health and reduce the chances of re-offending.

Women at Wandoo will be offered transitional and post-release support for their ongoing rehabilitation and abstinence.

Drug-related support for prisoners at other prisons includes:

- » drug treatment units
- » drug-free living units
- » brief intervention support
- » offender programs in prisons and in the community
- » health interventions
- » drug and alcohol withdrawal treatments, and
- » Community Pharmacotherapy Opiate Program (CPOP).



If you:

- » Enter prison and are already on methadone or buprenorphine you may continue to receive this therapy through a replacement program for opiate addictions.
- » Were on a program while in the community then your medication will be continuous. The prison takes over the program and can work out increases or decreases in medication. When you leave the prison you are transferred back into the community program.

or

- » Enter prison and have an opiate addiction and you want to go onto the program, you can ask to go on the wait list. Conditions apply to entry to this program. Nurses are available in every prison to administer medication under this program.

7. Programs and other services

What programs and services can I attend?

- » HIP HOP (Health in Prison, Health Outta Prison)
- » Co-morbidity service: clinical nurses are available to assist prisoners who have more than one disease process present, for example, a person with diabetes and a heart condition
- » Mental health and drug or alcohol programs
- » Health education and promotion to prisoners whose medical condition is identified. This includes:
 - » information, clinical consultations providing preventative health checks, education, referrals, and
 - » therapeutic support groups.

8. Access to information

How confidential is my medical record?

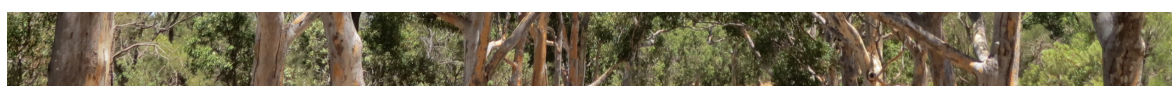
Health information is stored on a medical file, which is then used to record any subsequent medical consultations or treatment.

Your health is essentially a matter between you and the health personnel and should remain confidential unless non-disclosure may jeopardise your care and well-being. Health staff will take care during consultations and treatment to maintain the privacy of conversations and examination.

- » Each important contact is documented in your medical file, which is strictly confidential and only accessible to health staff (unless requested by others, see below).
- » The medical file moves location when you do. Files are transferred in sealed envelopes with a "Privacy and Confidential – Medical in Confidence" sticker.
- » Medical records are the property of the DJCS and are released in accordance with legal requirements or to authorised personnel.
- » Medical records are subject to the prison health services Retention and Disposal Schedule RD 200001 approved by State Records Office in July 2000. Since 2009 all medical records have been electronically stored. Generally, the CS has a policy of not destroying medical records either in paper or electronic format.

Who can access my medical file?

Medical records are confidential. Information and records should not be released to unauthorised persons.

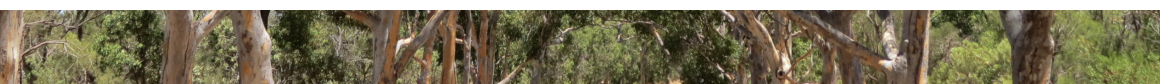


Consent should be in writing where practicable and this will be filed in the medical record. Copies of medical records must be authorised by the Director Health Services and arranged through Central Medical Records.

Responsibility for requests for information from your medical file depends on who is asking and what they are asking for. This will also determine whether your consent is required.

Requests can be made to access your medical file by the following:

Who is requesting my medical file?	Is my consent required?
Health care providers such as your GP who you will see on your release from prison	Usually requires written consent from you
Court requests or subpoenas	Does not require your consent
Lawyers acting for you	Requires written consent from you
Lawyers acting for past or present health staff	No written consent from you required. The Director Health Services will seek advice from the State Solicitor's Office. A GP nominated and paid for by the lawyer and approved by the Director Health Services can be given access to the medical record to look at and extract relevant information.
State Solicitor's Office	Requests dealt with by the Director Health Services
Police or Officers of DJCS Internal Investigations Branch	Requests dealt with by the Intelligence and Analysis Section. Written consent required except where consent is not available but the release of information is in the public interest
Ombudsman or HaDSCO	Requests coordinated through Central Medical Records. The Ombudsman will normally check whether you have any objection to them seeing your medical record. HaDSCO will obtain a signed authorisation from you.
The Office of the Inspector of Custodial Services	Section 28(1)(g) of the <i>Inspector of Custodial Services Act 2003</i> (WA) the inspector or their authorised delegate has free and unrestricted access to documents including patients' medical records.
Community-Based Corrections	Written consent required for the release of information
Psychiatrists engaged by the DJCS	May be granted access and consent is not required
Prison counselling service engaged by the DJCS	May be granted access and consent is not required
Researchers	Access for research purposes requires written authorisation from the Director Health Services.
Religious representative	Written consent required
Prison workplace	Information released by a senior nurse or medical officer at their discretion having regard for the health status of prisoners and staff



How do I access my medical file?

To access your prison medical file you will need to make a request for access by completing a Freedom of Information (FOI) application under the *Freedom of Information Act 1992 (WA)* and provide it to a nominated officer at the prison. (See page 49 for information on how to do this.) There are some documents/records that can be requested outside of the FOI process. Copies of medical records must be authorised by the Director Health Services and arranged through Central Medical Records.

To access your GP or specialist medical file you will need to provide the prison with a signed release of information form for the prison to access this information. Without your consent the prison cannot obtain your medical history from community health services.

Can the prison administration access my medical record?

Information gathered by the prison health personnel in relation to your health is not accessible to the general prison administration. It remains confidential unless not disclosing it puts your care and wellbeing at risk. A request can be made by one of the individuals or groups listed in the table on page 42.

Can my doctor get my medical record once I am released?

Your doctor can call the DJCS dedicated telephone line on 1800 077 735, 24 hours a day, seven days a week, to access medical information about patients who are ex-prisoners.

Once you leave prison, a summary of the medical treatment that you received while in prison can be supplied by the DJCS to your health service providers. This is to make sure you receive appropriate continuing care.

Can I get my medical records once I am released?

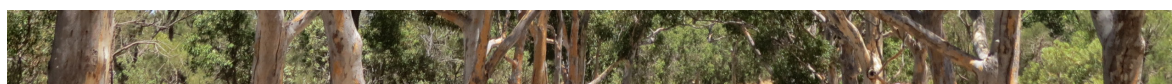
The DJCS provides all prisoners with a written summary of their medical records when they are released from custody.

After release from prison you can access your medical records by making a request through the Prison Medical Officer, Nurse Manager or Supervisor, Central Medical Records.

There are a number of health related documents available to you (and your legal representatives) outside the freedom of information process. A letter of request to the Director, Health Services should be enough to access these records.

Can my family or friends access information about my health or get copies of my medical records?

- » Information cannot be released to a third party without your consent.
- » Family and friends can write to the Minister for Corrective Services (CS) or the Commissioner for CS to seek information about your health.
- » You must first provide them with consent to access this information.
- » DJCS requests that your family member or friend get a signed letter from you stating that:
 - » you give consent for the release of this information, and
 - » you name the person who you agree can access your information.
- » A prison officer can witness you signing your letter of consent.



Sample letter authorising access to information

Commissioner for Corrective Services
Department of Justice, Corrective Services
David Malcolm Justice Centre
GPO Box F317
PERTH WA 6841

Hon [insert name of current minister] MLA
Minister for Corrective Services
Level 10 Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister/Commissioner

My name is [put in your name]. I am a prisoner in [put in the name of the prison].

I consent to information about my health/medical records [put in which you are authorising the release of] being released by you to [put in the name of the person you are allowing to get access to information about your health/medical records].

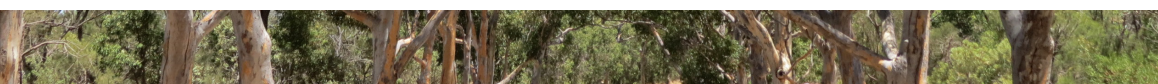
Yours faithfully
Sign your name
[print your name under your signature]

Witnessed by: [signature of prison officer who witnesses you signing it]
[the name of the prison officer should be printed below]

9. Common health related complaints

The types of complaints that many prisoners raise about their health include:

- » Complaints about the quality of care received. Treatment problems arise if there has been inadequate treatment or delays in treatment. Here are some examples:
 - » My medication is not working well and the doctor will not change it or I have been given the wrong medication.
 - » I have not been receiving appropriate treatment for my medical issue.
 - » I have not received the medical treatment that was recommended by my specialist before coming into prison.
 - » The prison will not approve my leave to see a specialist on the outside. What can I do?
 - » I have been on the public wait list to see a specialist and I am in extreme pain. The prison will not approve the pain medication while I wait to go to a private clinic.
- » Complaints about the level of communication provided including feeling like not enough information is given about treatment or options. Sometimes prisoners can feel like they are not listened to by the prison.



- » Complaints about access to treatment and services including the accessibility of services, for example, when a prisoner is refused treatment. Another example may be where a prisoner wants to go to Graylands Hospital and not stay in the prison.
- » Complaints about the effect medical treatment can have on other aspects of your imprisonment. For example: a prisoner who has been transferred from a minimum security prison to a maximum security prison for medical treatment may lose their home visit permit because of the move to a higher security prison.

10. Who to complain to about medical treatment while in custody

You can lodge a complaint with:

1. an authority within the prison
2. the Administration of Complaints Compliments and Suggestions (ACCESS)
3. the Western Australian Ombudsman
4. the Health and Disability Services Complaints Office (HaDSCO)
5. the Office of Inspector of Custodial Services.

The same type of complaint letter can be used when complaining to anyone of the above. This complaint letter will help you to provide the necessary information about your complaint and any supporting documents.

An authority within the prison

You should always make your complaint to your Unit Officer first. If this is unsuccessful, you can write to a more senior officer or the Prison Superintendent.

The Administration of Complaints Compliments and Suggestions (ACCESS)

If you do not get a satisfactory outcome from an authority within the prison, you can then make a complaint to ACCESS. ACCESS is the DCS complaints administration centre.

Contact:

Private and Confidential – ACCESS
PO Box Z5124
St Georges Terrace
PERTH WA 6831

Telephone: **1300 306 922**, free call to prisoners. You can ask for a brochure on ACCESS to be sent to you.

If your complaint is not resolved to your satisfaction then you have a number of options to consider. Listed below are complaint bodies that are outside the prison system. They are independent and will investigate your complaint if it is made in writing.

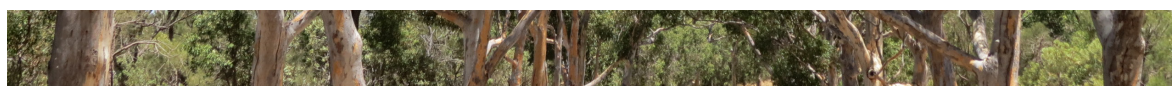
Western Australian Ombudsman

See under Part 7 - **Complaints**. The Ombudsman can receive your complaint, however he will refer the complaint to HaDSCO given their experience in dealing with health related complaints.

The Health and Disability Services Complaints Office (HaDSCO)

HaDSCO:

- » is an independent statutory body working to improve the delivery of health and disability services provided within WA



- » offers an accessible and impartial service for the resolution of complaints
- » undertakes investigations and makes service improvement recommendations
- » provides advice to users on the making of complaints to registration boards and other avenues available for dealing with complaints
- » is governed by the *Health and Disability Services (Complaints) Act 1995* (WA) and the *Disability Services Act 1993* (WA)
- » will accept complaints lodged by you or a family member or friend against individuals (doctors, medical staff) or an organisation (the prison), and
- » generally cannot deal with disputes that are more than two years old or that have already been determined by a court, registration board or tribunal.

Contact:

Health and Disability Services Complaints Office (HaDSCO)
PO Box B61, Perth, Western Australia, 6838

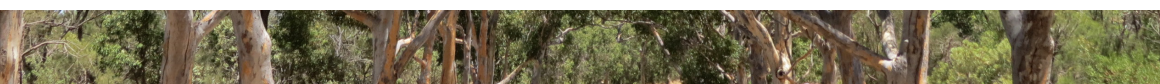
Complaints line: **(08) 6551 7600**.

You can ask to be sent an information sheet: *Helpful hints: raising a complaint*.

HaDSCO have an automated call centre system which enables prison calls to be prioritised in the queue.

The Office of Inspector of Custodial Services

See page 52 under this heading for information on the role of the Office and how to contact the Office.



PART 7

Complaints

This part covers:

1. How do I make a complaint?
2. Getting information from the prison
3. Freedom of information requests to the Department of Justice, Corrective Services
4. The Inspector of Custodial Services
5. Ombudsman WA
6. Corruption and Crime Commission



PART 7

Complaints

1. How do I make a complaint?

If you have a matter that needs to be resolved you could:

- » consider raising the matter with the senior officer in your unit
- » raise the matter with the **Administration of Complaints Compliments and Suggestions (ACCESS)** which is the part of Department of Justice, Corrective Services (DJCS) which deals with complaints and feedback. You can make a free call to **ACCESS** on **1300 306 922** from the prisoner telephone system, or
- » raise the matter with the Superintendent, a prison visitor, the Director or the Ombudsman WA.

See also under **Health and medical treatment – assessment** on page 35 for information on complaints about medical treatment.

2. Getting information from the prison

Policy Directive 6 Access to Information covers your access to personal information and disclosure of prisoner information to third parties. You are permitted to receive information about your warrants, sentence calculating and your property if you request it.

You may request other information, such as prison-based records, community based correction records and offender medical records.

3. Freedom of information requests to the DJCS

You need to check if you want **personal** information or **non-personal** information.

Personal information can be factual or routine information, such as date of birth or opinions or evaluations, such as records of interviews.

Fees are payable as indicated below. To find out current fees call **Freedom of Information - Department of Justice** on **(08) 9264 9538** or **(08) 9264 1124**.

FOI requests – Personal information

Step 1: Get the application form

- » Ask for the library to get you a copy of an “Application for access to documents” Form which is available on the internet.
- » If you cannot get a form from the library you can call **Freedom of Information - Department of Justice** on **(08) 9264 9538** or **(08) 9264 1124** to ask if they can post you a form.

Step 2: Complete the application form:

To complete the application form please follow these instructions:

1. Fill out the **applicant details** section with your personal information
 - » Surname – write in your last name
 - » Given names – write in your first and middle names
 - » Date of birth – you can put in your birth date but you do not have to



- » Title – write in whether you are a Mr, Mrs, Miss, Ms
 - » If you have an agent or representative put their name here
 - » Australian postal address: write in your address at prison
 - » Contact number: write in your phone number at prison
 - » Reference number: you don't have to complete this part.
2. Fill out the **details of request** section by following these steps:
- » Tick the box that states "Personal Documents".
 - » Describe what documents you want to access to. You need to be very clear and give as much information about the documents as you can. You can do this by putting in information about:
 - » dates of the documents
 - » location of the documents
 - » subject matter of the documents
 - » any other information which would help identify the document
 - » if you know the name of the document that would help
 - » you can give a reason why you want access to the documents – but you don't have to.
3. Fill out the form of access part by ticking either:
- » **"inspect the documents"** which means just having a look at the documents but not keeping a copy
 - » **"require a copy of the documents"** which means you will be given a copy of the documents to keep.
4. After you have done all the steps above you have completed the application form.

Step 3: Lodge your application with the Department of Justice

By post addressed to:
Freedom of Information
Department of Justice
GPO Box F317
PERTH WA 6841

By fax: (08) 9481 8504

It can take up to 45 days to hear back from the Department about your request.

FOI requests – Non-personal information

Step 1: Get the application form

- » Ask for the library to get you a copy of an "Application for access to documents" Form which is available on the internet.
- » If you cannot get a form from the library you can call **Freedom of Information - Department of Justice** on **(08) 9264 9538** or **(08) 9264 1124** to ask if they can post you a form.

Step 2: Complete the application form:

To complete the application form please follow these instructions:

1. Fill out the **applicant details** section with your personal information
 - » Surname – write in your last name



- » Given names – write in your first and middle names
 - » Date of birth – you can put in your birth date but you do not have to
 - » Title – write in whether you are a Mr, Mrs, Miss, Ms
 - » Australian postal address: write in your address at prison
 - » Contact number: write in your phone number at prison
 - » Reference number: just leave this part blank.
2. Fill out the **details of request** section by following these steps:
- » Tick the box that states “Non-personal documents”.
 - » Describe what documents you want to access to. You need to be very clear and give as much information about the documents as you can. You can do this by putting in information about:
 - » dates of the documents
 - » location of the documents
 - » subject matter of the documents
 - » any other information which would help identify the document
 - » if you know the name of the document that would help
 - » you can give a reason why you want access to the documents – but you don’t have to.
3. Fill out the form of access part by ticking either:
- » **“inspect the documents”** which means just having a look at the documents but not keeping a copy
 - » **“require a copy of the documents”** which means you will be given a copy of the documents to keep.
 - » fill out the fees and charges part. As you are in prison you can apply to get a 25% reduction in charges (financially disadvantaged).
4. After you have done all the steps above you have completed the application form.

Step 3: Lodge your application with the Department of Justice with the application fee:

By post addressed to:

Freedom of Information
Department of Justice
GPO Box F317
PERTH WA 6841

By fax: (08) 9481 8504

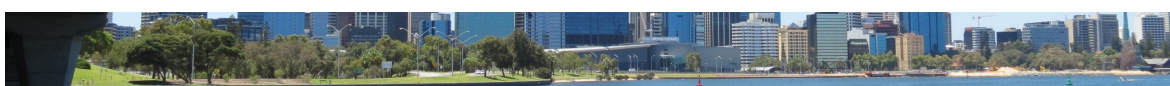
It can take up to 45 days to hear back from the Department of Justice about your request.

Are there any charges for processing your freedom of information request?

You do not have to pay a fee or charge for your own application for personal information. You can be charged for processing a non-personal freedom of information request: There is a \$30 application fee which must be lodged with your application.

The Department of Justice can charge the below amounts when processing your application.

- » charge per hour for staff time taken dealing with the application
- » charge per hour for access time supervised by staff
- » charges of \$30 per hour for staff time and 20 cents per copy for photocopying



- » charges per hour for staff time transcribing information from a tape or other device
- » charge for duplicating a tape, film or computer information - actual cost, and
- » charge for delivery, packaging and postage - actual cost.

Given this you should try to limit your request to only the information you need.

Notice of decision

You will receive in writing, notice of the Department of Justice's decision relating to your request for information. The notice will include the below information:

- » date of the decision
- » name and title of the decision maker
- » reasons for deleting any matter
- » reasons for deferring access
- » arrangements for giving access
- » reasons for refusing access to any matter
- » the amount and basis for any charges, and
- » the rights of review and procedures followed.

If you are unhappy with your decision you have a right of review

- » Your right of review must be done **within 30 days** after being given notice of the decision.
- » The review is held by a different person than that who made the original decision.
- » The agency must give you written notice of the decision **within 15 days**.
- » There are no fees involved.

If you are still unhappy with the decision after your review you can:

Make a written complaint to the Office of the Information Commissioner within 60 days after the internal (first) review decision.

The Commissioner's decision is final unless an appeal is made to the Supreme Court on a question of law.

Where can I get more information?

For more information and the forms you need contact the Department of Justice or ask your Unit Manager for a form.

4. The Inspector of Custodial Services

The Office of the Inspector of Custodial Services (the Office) is an independent statutory body that provides external scrutiny of the standards and operational practices of custodial services in Western Australia.

The Office covers all public and private sector prisons and youth detention centres, court custody centres, prescribed lock ups, and contracted prisoner transport and support services in Western Australia.

The Inspector of Custodial Services does inspections of any prison service and considers custody related matters. The main focus is on:

- » the treatment of and conditions for persons in custody
- » the effects of custody on particular groups of persons in custody



- » a prison service, or any aspect of a prison service, and
- » any other matter of significance.

The Office cannot deal with complaints or grievances relating to an individual. Where appropriate these matters are referred to the appropriate department or agency. However many complaints received by the Office actually raise system wide questions about custodial services which impact on a number of prisoners.

The Office can be contacted on **(08) 6551 4200**.

5. Ombudsman WA

The Western Australian Ombudsman is an officer of parliament, who is independent and who has the power to investigate complaints made against a Western Australian State Government agency (eg, the DJCS and a statutory authority (a prison)).

The Ombudsman WA tries to resolve complaints about the decision making of public authorities and tries to improve the standard of public administration.

The Ombudsman's services are free and available to everyone.

Below is a summary of what the Ombudsman can look into and do for you as a prisoner and the process for doing this.

- » You can complain about any decision, action or inaction by any prison or the Department, only if the complaint is related to a matter of administration such as decision making practices and the matter affects you personally.
- » If you want a family member or your lawyer to make the complaint for you then they will need to complete an Authority to Act Form.
- » The Ombudsman cannot investigate complaints more than 12 months old or complaints that can be taken to court or a tribunal.
- » Complaints must be in writing but a phone call can be made to discuss your complaint.
- » The Ombudsman can only make recommendations to agencies. They cannot direct that action be taken. However, public authorities generally accept and implement their recommendations.
- » Any documents sent or received from the Ombudsman cannot be used in any legal proceedings.
- » **They will not look at the complaint until you have tried to deal with it at a unit level, prison level or departmental level.**

A review of the Ombudsman's decision is possible. The decision to undertake a review is not automatic. You must give enough evidence to persuade the Ombudsman a review is justified.

The WA Ombudsman's office can send you information sheets on different aspects of the complaints process including how to make a complaint to a State Government agency and how to complain to the Ombudsman.

Contact the **WA Ombudsman** on **(08) 9220 7555** or **1800 117 000 (free from landlines)** or write to:

Ombudsman Western Australia
PO Box Z5386
St Georges Terrace
PERTH WA 6831



6. Corruption and Crime Commission

The Corruption and Crime Commission (CCC) accepts and can investigate allegations of misconduct by WA public officers, including police officers and prison officers.

What is misconduct?

Misconduct occurs when a public officer abuses their authority for personal gain, or to cause detriment to another person, or acts contrary to the public interest.

How do I make a complaint?

If you think this has been happening in the prison, for information on how to make a complaint about misconduct contact the CCC on **(08) 9215 4888** or **1800 809 000**.



PART 8

Outside contact

This part covers:

1. Mail
2. Telephone
3. Faxes
4. Photocopiers, computers and the internet
5. Other forms of communication
6. In person visits
7. Video – link visits
8. Arranging contact with your children
9. Visitors and services



PART 8

Outside contact

1. Mail

You are allowed to send a reasonable number of standard letters free of charge, which depends on your circumstances. Extra expenses are paid by you.

You may not send:

- » any photograph unless approved by the Superintendent, or
- » mail addressed to a protected person or third party, in breach of the terms of a restraining order or an approved request from a recipient not to receive communications from you. This includes mail addressed to a third party, which is intended to result in contact with a protected person under a restraining order.

2. Telephone

You have access to a shared telephone, but the way you use the telephone is restricted. You are permitted to make telephone calls by entering your pin number through the Prisoner Telephone System. Prisoner telephone calls are recorded.

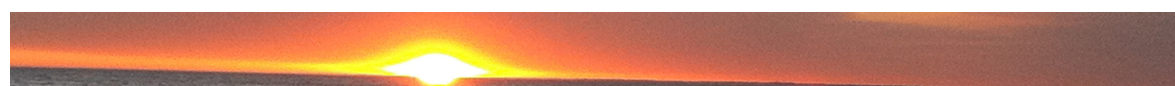
You cannot:

- » make reverse charge telephone calls, or
- » receive incoming telephone calls. If a call is received for an urgent matter (eg, family emergency) the receiving officer shall seek information from the caller, attempt to verify the information before passing it on and then pass the message to you as soon as practicable.

If you are from a remote area, or otherwise geographically isolated, each prison is to provide for additional needs to overcome the disadvantage, subject to certain conditions.

You can make the following calls for free:

Legal Aid WA (Freecall)	see free to call list	20 mins
Ombudsman (State)	08 9220 7555	10 mins
Health and Disability Services Complaints Office	08 6551 7635	10 mins
Crimestoppers in Prison	1800 333 000	10 mins
Quit Line	137 848	10 mins
Samaritans	135 247	15 mins
Aboriginal Legal Service (ALS)	1800 019 900	20 mins
Aboriginal Visitors Scheme (AVS)	1800 282 428	10 mins
Prisoner ACCESS Line	1300 887 269	10 mins
Alcohol & Drug Support Line	08 9442 5000	10 mins
Australian Taxation Office (ATO) Non English	131 450	10 mins
Australian Taxation Office (ATO) Indigenous Clients	131 030	10 mins



Other calls

Aside from calling the numbers listed above, you can only make a phone call if:

- » the relevant phone number is already stored in your phone system, and
- » you have phone credit.

To get a number stored, you must ask a prison officer. The officer will call the number and ask whether the person is prepared to accept your calls. Prisoners report that it can take weeks for a number to be stored. You can follow this up with your Unit Officer.

It is up to you to decide how much to put on your phone from your Personal Cash Account. You can also have money credited directly to your phone system by family or friends. If you are on remand you are allocated a small amount per week for phone calls and if you are isolated from family due to the location of the prison you are in you are allocated more per week for phone calls.

You will be allowed to make at least one call daily to approved social contacts.

Recordings of calls

The phone system records the call data and the call audio, which can then be listened to by prison staff if this is considered necessary. If the phone number is approved as being "legal", the call data will be recorded, but the call audio will not.

3. Faxes

You can ask your Unit Officers to send faxes for you if the fax is for a legal purpose.

4. Photocopiers, computers and the internet

You can access photocopiers for legal purposes.

Computer equipment can be made available to you if you are undertaking approved educational courses.

You must not be granted direct access to the internet.

Some prisoners are allowed to have computers in their cells. This is a privilege.

5. Other forms of communication

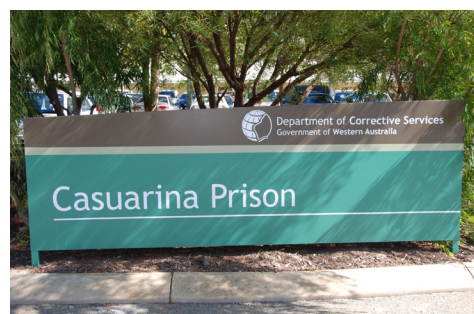
You may be allowed to use other communications, such as email or video-conferencing under whatever conditions and arrangements the Superintendent believes reasonable.

6. In-person visits

You are allowed to receive visits in prison. These should be booked at least 24 hours in advance. No more than three adult visitors are allowed for each visit.

You are entitled to receive visits from your lawyer in an area where prison officers cannot hear, but can observe, conversations.

Children under the age of 18 may only visit while with an adult, unless the Superintendent approves otherwise. A child who is 16 or 17 years of age may be able to visit you with the approval of the child's parent or guardian or if there are exceptional circumstances.



Generally, if you have been charged or convicted of an offence involving a child then you cannot be visited by children. However if you want to be visited by a specific child, you may apply to the Assistant Superintendent Prison Management at your prison. If your application is denied, you may request a review of the decision.

You may be allowed to receive visits by a prisoner from another prison, especially if the relationship between the prisoners is important, for example marriage relationships (including de facto) and blood relationships. If you are significantly isolated from your normal community or country you may also be allowed visits with other prisoners from that region.

The Superintendent can refuse a visitor from visiting prisoners but must give reasons.

Let your visitors know they must bring a valid form of identification, such as a driver's licence, passport or an ID (with a photo) issued by a government organisation. Visitors may also use a combination of credit cards, Medicare cards and electricity, gas or telephone bills as identification.

In special circumstances, a visitor who has not provided sufficient proof of identity will still be allowed to visit you. This is particularly true if the visitor is from a remote Aboriginal community.

If you cannot leave the infirmary, visitors will be allowed to visit you in the infirmary.

7. Video-link visits

You may make or receive a visit to another prisoner by video-link if necessary. If a visit by video-link is approved, if you requested the video-link you will be charged for each visit. Each visit is 20 minutes. You may also receive a video visit from friends or family. You are charged for the visit. Each visit is 20 minutes. Interstate video visits will cost more than local video visits.

If the Superintendent decides that there is an exceptional circumstance, they can allow a free video visit for you. The Superintendent will determine how often you can have video-visits. If you are unhappy with a decision, you may appeal against the decision. There is only one appeal.

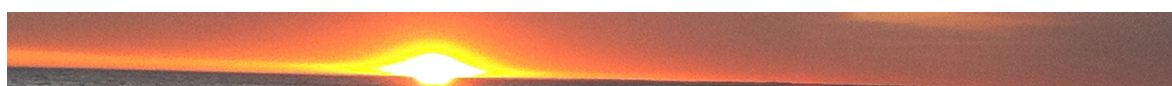
8. Arranging contact with your children

See **Part 11 – Family issues** on page 73.

9. Visitors and services

The following visitors and services are available to prisoners:

- » Legal Aid WA (see under the heading **Legal Aid WA** on page 147).
- » Aboriginal Legal Service (ALS).



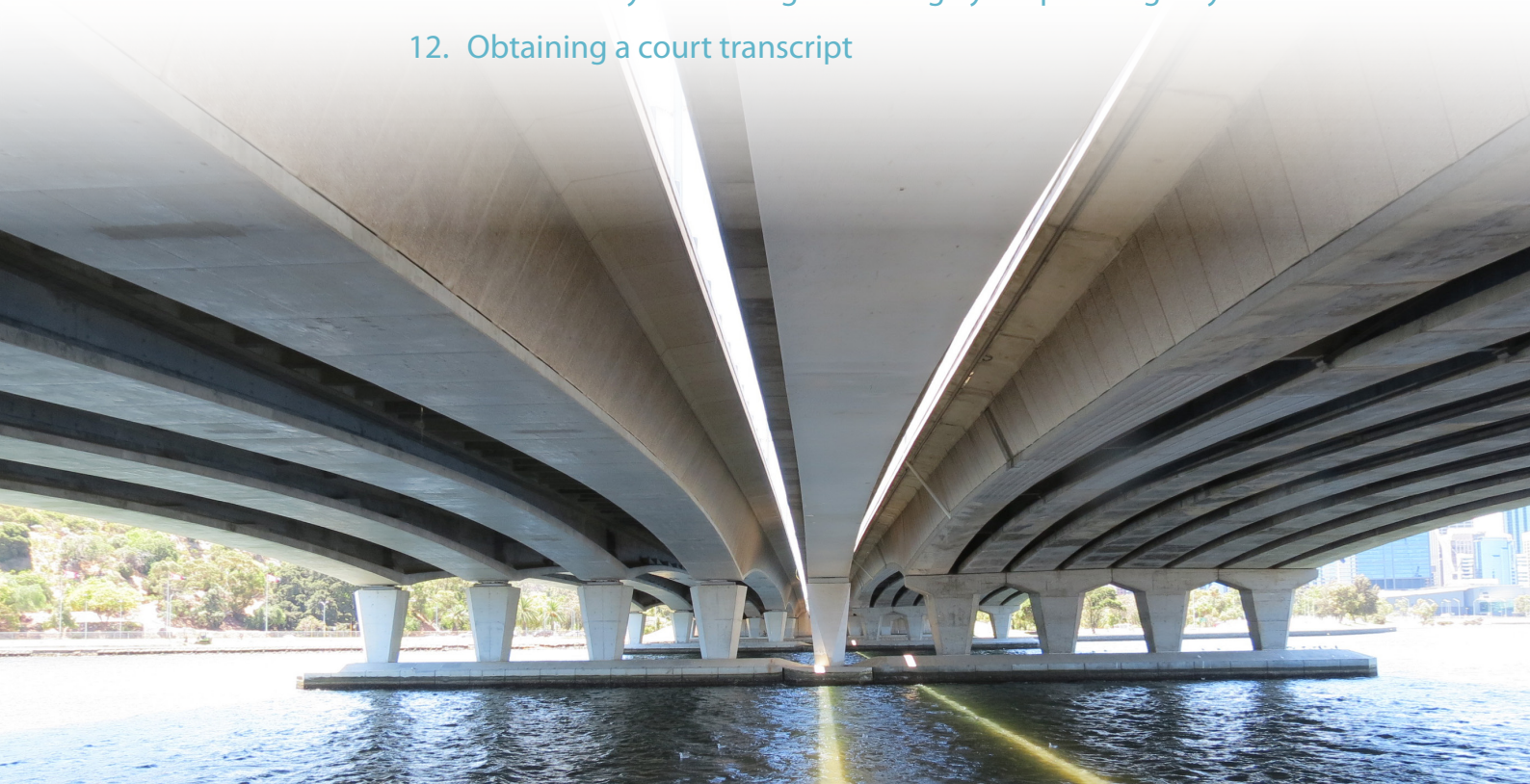
- » Aboriginal Visitors Scheme (AVS): Aboriginal staff who provide support and culturally appropriate advice to prisoners.
- » Bail Coordinators.
- » Centrelink.
- » Chaplain service: you can meet with spiritual leaders from your chosen religion for services, pastoral visits, religious instruction and private counselling. Access to recognised spiritual or tribal elders is provided to Aboriginal and Torres Strait Islander prisoners.
- » Community Legal Centres (CLCs): some visit prisons. For example:
 - » MIDLAS helps Wooroloo prisoners with financial counselling.
 - » The Wheatbelt CLC provides housing advocacy to Wooroloo prisoners.
 - » The Women's Law Centre (WLC) is a state wide service which provides women experiencing disadvantage in WA with advice and assistance in family law (mainly divorce and children), family violence, protection and care (child protection) and criminal injuries compensation. As of September 2018 there are a limited number of outreach appointments at Melaleuca. This may be expanded into Boronia and Bandyup. WLC assists women from these centres through phone appointments and through free community legal education sessions which are run a few times a year..
- » Independent Visitors Scheme (IVS): run by the Inspector of Custodial Services. Scrutinises the standards of treatment and services in WA prisons.
- » Department of Communities, Child Protection and Family Support: case workers may visit you if they are asked to do so.
- » Justices of the Peace: can assist prisoners with swearing or affirming documents. They can also hear prison offences.
- » Salvation Army: provides chaplaincy, counselling and support.
- » AccordWest: its Re-entry Link program assists people exiting prison in the Peel and South West regions to successfully reintegrate back into the community.
- » Peer support teams: include peer support prisoners who assist new prisoners with settling in and other prisoners who are having difficulties.
- » Prison support officers: Aboriginal employees whose main role is suicide prevention. They work closely with prison officers, nursing staff and the Prison Counselling Service and manage the peer support teams.
- » Prisoner At-Risk Group: manages all prisoners at risk of hurting themselves or others.
- » Prison Counselling Service (PCS): provides individual counselling. Prisoners can access this through self-referral or referral by the officers.
- » ReSet: provides support to men and women while in prison and after leaving prison. To get support contact your Transitional Manager and find out if you qualify to be referred.

PART 9

Criminal law issues

This part covers:

1. Appeals
2. Applying to set aside a court decision made in your absence
3. Chasing up interstate warrants
4. Confiscation of assets
5. Criminal court procedure
6. Mentally-impaired accused
7. Extradition
8. "Fast track" plea of guilty
9. Getting information from the WA Police
10. How to early list a charge to change your bail conditions
11. How to early list a charge to change your plea to guilty
12. Obtaining a court transcript



PART 9

Criminal law issues

This part features information about areas of criminal law that may be of special interest to prisoners. It is always best to speak with a lawyer about your specific criminal law matter.

1. Appeals

Time limits apply so get legal advice as soon as possible.

Call the **Legal Aid WA Infoline** on the dedicated prison line to get a copy of the Legal Aid WA publication *District and Supreme Courts Appeal Kit* or the *Magistrates Court Appeal Kit*.

2. Applying to set aside a court decision made in your absence

Under what circumstances can I apply to have a decision set aside?

You can apply to have the decision set aside if you were not present when the decision was made because:

- » you did not receive notice of the court date
- » you did not receive notice of the court date with enough time to appear, or
- » you did receive notice of the court date but did not appear for another good reason.

How do I apply to set aside a decision?

If the decision was made in the Magistrates Court, fill out a Form 7 (this is contained in the Kit). You must file the Form 7 at the Magistrates Court, along with an affidavit (for what an affidavit is see **Part 18: Legal words explained**) stating why you were not at court when the decision was made and attaching any relevant information.

What happens after you have made the application?

If you make this application within 21 days of the initial decision (in your absence) being made, the decision may be set aside without the need for a hearing, or the decision may stand.

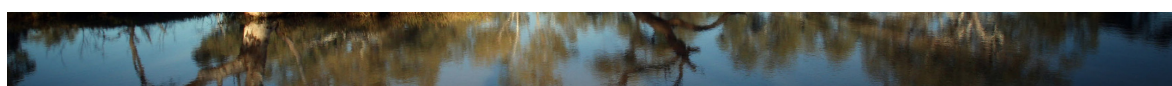
If you make this application more than 21 days after the decision (in your absence) was made, a hearing will be required. You must go to the hearing. At the hearing the magistrate will decide either:

- » to dismiss the application (if so there will be no new hearing), or
- » set aside the decision and either immediately deal with the original matter or set a new date for the original matter to be heard again.

3. Chasing up interstate warrants

If there is a warrant out for your arrest in another State (for example because you missed a court date), unless the police in the other State seek your extradition, the warrant will sit until you re-enter that State. On entry to the other State you are liable to be arrested on that warrant.

If you are serving a long sentence and have outstanding charges in another State which you wish to clear up you can apply for transfer of your WA sentence to the other State and answer those charges in the other State. (For more information on interstate transfer see page 13).



4. Confiscation of assets

Criminal Property Confiscation Act 2000 (WA)

Introduction

The *Criminal Property Confiscation Act 2000* (WA) [CPCA] gives the police the power to obtain a freezing notice and allows the Director of Public Prosecutions (the DPP) to seek orders to freeze and/or confiscate certain property.

If the Act applies property may be frozen or confiscated regardless of whether the confiscation offence was committed in WA or elsewhere, or whether anyone has been charged or convicted of the confiscation offence.

Property may be seized by a police officer, or a freezing notice may be issued over property even if you have obtained the property lawfully.

Under the CPCA, individuals who have unexplained wealth can be ordered by the courts to show how they got their assets. The DPP only has to prove that there is a difference between your lawfully acquired income and your known assets. It is then up to you to prove that your assets were lawfully obtained. Any unexplained wealth may be confiscated and forfeited to the State.

How will I know if my property has been frozen?

You do not have to be there in court for the DPP to be successful in obtaining a freezing order. The DPP will often make the application without you knowing about it.

Once the police have obtained a freezing notice or if the DPP have successfully applied to the court for a freezing order they must personally serve the papers on you. You or other people (for example, members of your family) might also be served with a freezing notice or a freezing order if you or they have an interest in the property.

If you are given a freezing notice or order you must not deal with frozen property in any way. For example, you cannot sell it or give it away. If you deal with the property you might be committing a criminal offence.

If you have been served with a freezing notice or order you should seek urgent legal advice.

After you receive a freezing notice or freezing order

You must complete a statutory declaration within seven days.

If you are served with a freezing notice or order you need to:

- » complete a statutory declaration which names every other party who has an interest in the property (and provide their address if known), or
- » complete a statutory declaration which states that you are not aware of any other party with an interest in the property.

You must provide a statutory declaration to the police (if you received a freezing notice) or the DPP (if you have received a freezing order) within seven days of receiving or becoming aware of the freezing notice or order. If you do not provide a statutory declaration you may be charged with a criminal offence.

Any objection to the freezing notice or order must be filed within 28 days.

If you want to object to your property being confiscated you need to file an objection at the court noted on your paperwork within 28 days after you received the notice or order (or within any further time allowed by the court).

If you did not receive a copy of the notice, the objection to the notice must be filed within 28 days after you become aware that the property has been frozen (that is, the subject of a freezing notice or order) or within any further time allowed by the court.

If you fail to object to the freezing notice or order within the time limit, your property may be automatically confiscated.

How do I pay for a lawyer if all of my property is frozen?

Legal aid is usually not available for representation in court for proceedings under the CPCA.

The Supreme Court may release some of your property from a freezing order on the condition that it is used for legal expenses only. If you need to make an application to the Court for release of funds contact the **Legal Aid WA Infoline** for more information.

You can get a copy of Legal Aid WA's 'Objecting to confiscation - Part 1 - Information kit' and 'Objecting to confiscation - Part 2 - Forms' by ringing the Legal Aid WA Infoline.

5. Criminal court procedure

How the criminal process begins

The criminal court process begins when you are charged with an offence and either:

- » you are arrested by the police and taken to court in custody or released on police bail requiring you to attend court on a particular date
- » you receive a summons which requires you to attend court on a particular date, or
- » you receive a court hearing notice letting you know when your case is to be heard and giving you the option to attend court.

Plea

You can plead either guilty or not guilty to a charge. You can also apply for an adjournment to obtain legal or other advice. A plea of guilty means you accept all the elements of the offence and generally, all the relevant facts as contained in the Statement of Material Facts provided by the prosecution. A plea of not guilty means you dispute the charge or have a defence and your case will be resolved through a trial where each side can present evidence.

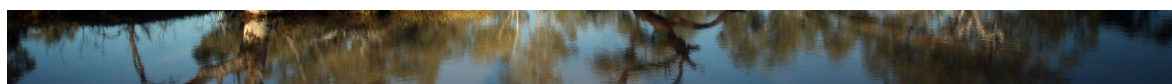
Different levels of courts

The Magistrates Court deals with summary offences and "either way" offences. Summary offences are less serious offences that may be dealt with by a Magistrate and where there is a trial, a Magistrate decides if you are guilty, rather than a jury. "Either way" offences can be dealt with in either the Magistrates Court, where lower penalties generally apply, or the District Court.

The District and Supreme Courts hear more serious offences which are dealt with "on indictment" (which is what a charge sheet in the District and Supreme Court is called).

Section 32 notices

If you are appearing in the District or Supreme Court for sentence an application can be made by the defence or prosecution to have your Magistrates Court charges also sent up to



the District or Supreme Court through the preparation of a “section 32 Notice”. This notice is a request that your charge or charges in the Magistrates Court be moved to the District Court, so that all your charges can be dealt with together.

Remember however, that the District Court penalties will apply to “either way offences” and this may lead to harsher penalties than would have applied in the Magistrates Court. **Given this, it is very important you get legal advice before doing this.**

6. Mentally impaired accused

If you are charged with an offence in Western Australia and have a mental illness and/or mental impairment, the *Criminal Law (Mentally Impaired Accused) Act 1996 (WA)* sets out the correct procedure and how your mental state is taken into account when dealing with your charges.

Custody orders

A custody order may be imposed by the court if:

- » you are found mentally unfit to stand trial, or
- » you are found not guilty of the offence because you were of unsound mind at the time the offence was committed.

If you are subject to a custody order it means you will be kept in an authorised hospital, a “declared place”, a detention centre (if you are a young offender) or a prison, until you are released by an order of the Governor.

What does the court take into account?

The judge or magistrate who is making a decision about a custody order where you have been found mentally unfit to stand trial, must take into account:

- » the strength of the evidence against you
- » the nature and circumstances of the offence you are charged with
- » your character, past history, health, age and mental condition, and
- » the public interest.

What happens after a custody order is made?

If a custody order is made against you, the Mentally Impaired Accused Review Board (MIARB) must decide within five days where you will be detained. The MIARB then regularly reviews your case and makes recommendations about whether you should be given a leave of absence, conditional release or an unconditional release. The MIARB ordinarily recommends leave of absence first before moving to conditional or unconditional release.

7. Extradition

This is when the police from another State or country have applied to have you transferred to that State or country to face outstanding charges. A warrant for your extradition in the correct form before a WA magistrate will provide the basis for you to be extradited to another State. However, you can apply for bail to allow you to return to the other State of your own accord as an alternative to being extradited in the company of police.

8. “Fast track” plea of guilty

This system may be an option for you if you have been charged with an indictable (more serious) offence to be heard in the District Court or Supreme Court. Under this system if you

plead guilty to the offence at an early stage in the Magistrates Court, your case will then be sent up to the District or Supreme Court for you to be sentenced as soon as possible and this can be taken into account to reduce the sentence.

You should get legal advice if you are considering pleading guilty to an offence that will be heard in the District or Supreme Court.

9. Getting information from the WA Police

There is some information you can obtain from WA police by application or request. This is the first step you should follow in getting information. Otherwise, you may need to ask for access to the information under the *Freedom of Information Act 1992 (WA) [FOI Act]*.

Freedom of Information

The [FOI Act] allows you to:

- » access WA Police documents
- » make sure that your personal information in documents held by the police is accurate, complete, up to date and not misleading, or
- » obtain details about personal and non-personal information.

If you are unable to obtain the information held by WA Police by any other means, you can apply under the FOI Act for:

- » **Personal information:** WA Police documents including information only about you.
- » **Non-personal information:** WA Police documents including information about other persons.

STEP 1 – Follow a set application process to get certain information from WA police

Firstly, please check that the information you want to get is held by the WA Police.

Contact the **WA Police Information Release Centre** on **(08) 6229 5900** to ask for the forms referred to below to be sent to you and to find out what fees you have to pay.

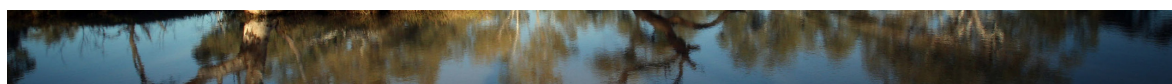
Criminal and traffic records - National Police Certificate

A National Police Certificate (NPC) lists an individual's criminal and WA traffic court outcomes and pending charges that are deemed disclosable at the time of application. Application forms for this can be obtained from Australia Post outlets or an application can be made online through the WA police website. If you want traffic conviction details you must apply for a National Police Certificate. There is a fee payable when you submit your application.

Information held by the WA Police

You need to fill in an application form for release of each of the types of information set out below. For some there are other requirements, for example, a copy of photo identification. Application requirements are different for your authorised representative, for example, your lawyer.

Different fees are payable for each of the applications except for History for Court documents and replacement copies of personal statements which are provided free of charge. For assistance with your application, please contact the **Information Release Centre (IRC)** on **(08) 6229 5900**.



- » **Information Report for Criminal Injuries Compensation:**
 - » If you are a victim of crime seeking police information for your criminal injuries compensation application this report gives you the information held by police about your incident. Police investigations and court proceedings must be finalised before information will be released.
- » **Record of Crash Incident:**
 - » This is only available for crashes that are investigated by police and is a record of information collected by police when attending a traffic crash. It may help you or your insurer recover losses from an accident. It will only be released to someone involved in the crash or their authorised representative, for example, their insurer or lawyer.
- » **Record of Crime Incident:**
 - » This contains information about a criminal incident relating to a property or injury offence. It is only available to victims, their authorised representative or personal representatives. It is commonly used to assist with recovery of loss, for example, an insurance claim.
- » **Record of Traffic Infringement Notices:**
 - » A WA Traffic Infringement Record is a 5 year record of infringements resulting from red light cameras, fixed speed cameras, multi novas and hand written notices issued by police.
- » **History for Court:**
 - » A History for Court document is a complete, certified criminal record which details all your criminal and traffic convictions, including non-disclosable outcomes such as court outcomes as a young offender and spent convictions.
 - » This document is generally strictly for court purposes and cannot be used for any other purpose. For employment and licensing purposes you must apply for a National Police Certificate.
- » **Replacement copy of Statement of Material Facts:**

This document:

 - » is a prosecution document for use in court, that will be provided to you following charge
 - » describes the circumstances of the offence or offences with which you have been charged, and
 - » does not contain the date or outcome of any court hearing associated with the charge.
- » **Replacement copies of personal statements made to police:**
 - » A request for a copy of a personal statement you made to police as a victim of an offence, or as a party to a traffic crash should initially be made directly to the police officer or police station where you made the statement.

Where an investigation is finalised, an application for a replacement statement can be made to the IRC.

 - » Information relating to, and statements of, any third party (eg, witness or offender) can only be obtained by lodging an FOI application (See Step 2).

STEP 2 – Make an FOI application

If the information you want is not covered in Step 1 you will need to make an FOI application. You should include as much information as possible as this will assist with locating all relevant documentation.

Your valid application will be processed as soon as possible (and, in any case, **within 45 days**) after it is received.

You have two options if you cannot go in in person or apply online:

Option 1

Complete an application form and send it to:

FOI Coordinator
Information Release Centre
Locked Bag 20
Perth Business Centre WA 6849

Option 2

Write a letter and post it to the above address. You should include as much of the following information as possible:

- » your name and other relevant names involved
- » your postal address (must be an address in Australia)
- » date of incident – if relevant
- » location of incident – if relevant
- » nature of incident
- » incident or traffic crash reference number (if applicable)
- » name of attending police officers (if known)
- » attach proof of identity to your application (eg, copy of driver's licence or passport).

An application fee is only payable (if the requested information may contain details about a person other than yourself). Please include a cheque/money order made payable to the Commissioner of Police. It is important that you send the fee because if you do not the application will be invalid and it will not proceed until full payment is received.

Fees

You do not have to pay a fee for access to personal information or requests to amend personal information. Fees are payable to apply for and to process non-personal information. A photocopying fee per page is also payable.

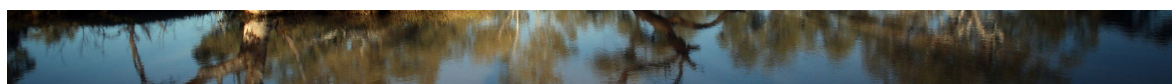
Where FOI processing fees are likely to exceed \$25.00, FOI Staff will provide an "Estimate of Costs". This Estimate contains details of additional charges that may be applicable to your application and also provides you with the opportunity to reduce any applicable charges by reducing the number of documents requested.

Notice of decision

You will receive a notice in relation to your application. It is called "Notice of Decision". This notice is a formal decision regarding the level of access that has been provided to documents located in relation to your application.

Levels of access are:

- » full access



- » partial access (edited format), or
- » refused access.

This notice may also include advice on any further charges that have been incurred in relation to your application.

What can I do if I am not satisfied with the decision?

If you are dissatisfied with a decision that has been made, you:

- » can make an application for an internal review of the decision, and
- » should lodge this application in writing to WA Police within 30 days after the Notice of Decision is received.

An independent officer of Inspector rank or above will undertake the internal review and review the original decision. The internal review process will be complete within 15 days of the internal review request being received.

If you are dissatisfied with the internal review, you can make an application with the Office of the Information Commissioner. This request must be lodged within 60 days of the Notice of Decision being given.

Contact details:

Office of the Information Commissioner:
Albert Facey House
469 Wellington Street
PERTH WA 6000
Telephone: **(08) 6551 7888**
Toll Free: **1800 621 244** (Western Australia country landline callers only)
Fax: **(08) 6551 7889**

10. How to early list a charge to change your bail conditions

When you may apply to vary bail

You may apply to vary bail if your circumstances have changed. For example, you may apply to change who is your surety or the residential address where you have to reside while on bail.

Do I need to be represented by a lawyer to vary bail?

If you are not currently represented by a lawyer you may apply to vary bail yourself. However if you are appearing in the Magistrates Court you may ask for a duty lawyer to represent you.

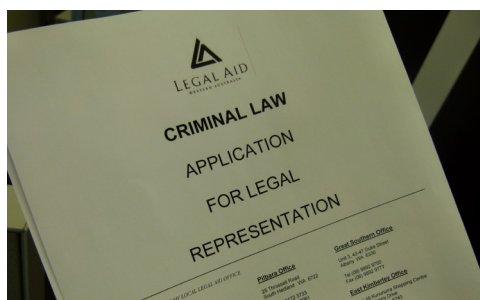
What if I need to have bail varied before my next court date?

You may always apply to vary bail on your next court date. If you want to apply to vary bail before then you can complete a request for an early listing. An early listing is a court appearance date before your next scheduled court date, when the court will consider your application to vary bail. You must apply for the early listing at the same court where your charge is already listed.

If your charge is listed in the Magistrates Court you need to fill out a Form 6. Then send this form to the court and police prosecutions.

If your charge is listed in the District Court you need to fill out a Form 1. Then send this form to the District Court and the Office of the Director of Public Prosecutions (DPP).

If you have a lawyer, you should speak to them before applying to early list your matter.



If you do not have a lawyer and you are appearing in the Magistrates Court you can ask for help from the duty lawyer on the day you appear in court.

To find the phone number for the court registry where your case is listed see the list of court numbers on page 155.

Bandyup and Hakea

The Department of Justice, Corrective Services (DJCS) has a Bail Unit, which sends Bail Coordinators to Bandyup and Hakea. The Bail Coordinator can usually file a Form 6 for you.

11. How to early list a charge for changing your plea to guilty

If you decide to change your plea from not guilty to guilty you may apply for an early listing. As you will no longer need a trial date the court will be able to consider your case at an earlier date. You should get legal advice before deciding whether or not to change your plea.

How to apply for an early listing

If you do not have a lawyer you can apply yourself for an early listing to change your plea to guilty. You should try and contact the investigating officer to let them know you are changing your plea to guilty. If you have a statement of material facts the investigating officers contact details will be on that.

If your case is listed for trial in the Magistrates Court you will need to fill out a Form 6. Then send this form to the court and police prosecutions.

If your case is listed in the District Court fill out a Form 1 and send it to the court and the DPP.

if you have a lawyer, you should speak to them before applying to early list your matter.

Contact **Legal Aid WA** for information on how to obtain a copy of these forms.

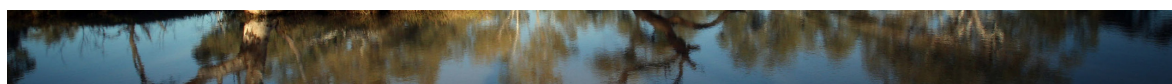
12. Obtaining a court transcript

To get a copy of any of the forms referred to here, you can ring the relevant court and ask to be sent one, or you can get a copy from staff in our Prison Visiting Service.

To request a transcript from the Magistrates Court of WA, you must fax or post the **Form 1 Request to inspect or obtain a copy of a court record** to the relevant court registry.

There is a fee associated with obtaining a transcript. If you want to apply to pay a reduced fee you will also have to use the appropriate form/s and send it to the registry:

1. **Form 1A Application to Change Fee Concession Card Holder and people under 18** (this form also covers if you have a grant of legal aid for the proceedings). Note: You will not be eligible for the required Commonwealth assistance while you are in prison or detention.



2. **Form 1B Application to Change Fee Financial Hardship**
3. **Form 1C Application to Change Fee Interests of Justice**

If you are the holder of a concession card (after release from prison or detention), or are under 18, or have a grant of legal aid, you must complete Form 1A so you can be assessed for the reduced fee.

While you are in prison if you have not been granted legal aid, or are under 18, but believe you should be eligible for a reduced fee due to financial hardship or because it is in the interests of justice, you must put in a Form 1B or Form 1C (whichever is applicable and you may put in both).

To request a transcript from the District Court you must make your request by email to courttranscriptdc@justice.wa.gov.au or fax or post a District Court transcript form to the court. If possible give the indictment number, and your full name and date of birth, and the reason for your request. This transcript is normally provided free of charge.

This form is available from the court, the prison or from staff in our Prison Visiting Service.

To request a transcript from the District or Supreme Court, you must fax or post the following forms to the relevant registry:

1. **Transcript Request Form.** This can be found on the Supreme Court website under **Forms and Fees**.
2. **Form 2 - Application to Reduce Fee.** This can be found on the Supreme Court website under **General Division Fees** and **Court of Appeal Fees**.

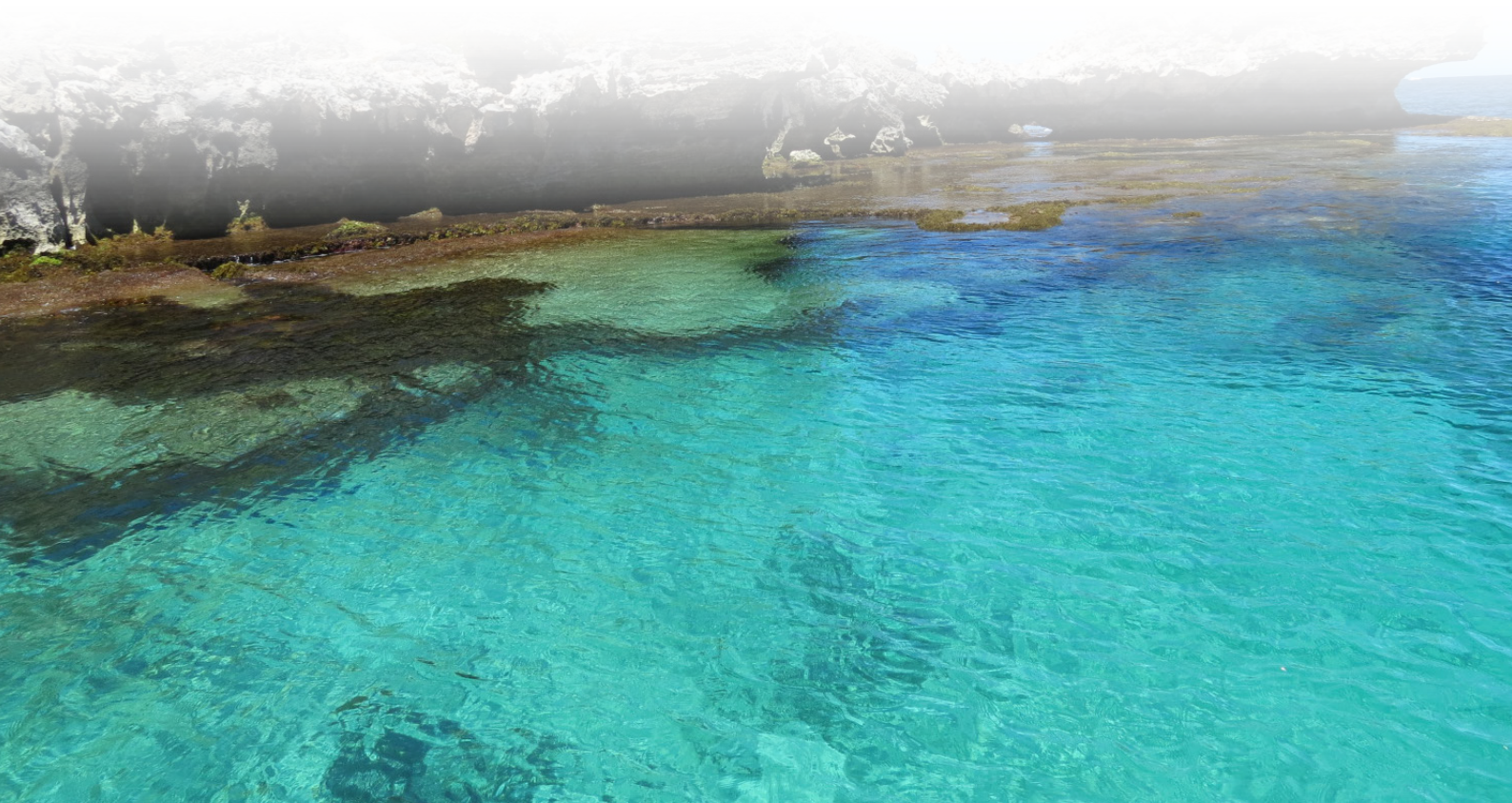
Links to both of these forms can be found on the Supreme Court website under **Forms and Fees**.

If you are in custody, you may apply to have the transcript fee waived. In this case you should submit the **Form 2 - Application to Reduce Fees** together with the **Transcript Request Form**.

PART 10 **Family issues**

This part covers:

1. Arranging contact with your children
2. Child support
3. Dealing with the Department of Communities, Child Protection and Family Support
4. Divorce
5. Family violence restraining orders



PART 10 Family issues

1. Arranging contact with your children

How do I arrange a prison visit

If you and the other person have an agreement or orders for contact with your child/ren the prison can accommodate visits. (See Visitors code of conduct, *Adult Custodial Rule 7* Appendix (5)).

Children under 17 are able to participate in contact visits as long as they are under the control of an accompanying adult visitor at all times. A Superintendent may permit an unaccompanied child aged 16 or 17 to visit if the child has the written consent of their parent or legal guardian unless the prisoner is a 'Restricted Category' prisoner, that is, charged with or convicted of violent or sexual offences against children. All visitors need to show good behaviour, be well dressed and wear appropriate footwear.

Unless directed otherwise by the Superintendent, children are able to sit on a prisoner's or a visitor's lap.

All prisoners can have a maximum of three adults per visit.

Contact with your children can occur by telephone and letter.

What if I can't agree with the other party on visits with my children while I am in prison?

If you are not in agreement with the other person on what arrangements are in the best interest of your child you will need to try and negotiate directly with the other person. You can do this by writing a letter to the other person outlining what you think would be a reasonable arrangement for contact with your child/ren.

If there is an FVRO (or family related VRO) between you and the other person, you should obtain legal advice before attempting to communicate with the other person.

Alternatively you can participate in Family Dispute Resolution (FDR)

You will need to attempt FDR before you can make an application in the Family Court, or obtain an exemption stating that you attempted FDR but it was not suitable. FDR involves you and the other party discussing arrangements with a fully qualified family dispute resolution practitioner (FDRP) to try and sort out the issues. The FDR will not make a decision for you but will attempt to help you and the other party reach an agreement on arrangements for your child/ren.

If you want to get legal advice or attend FDR you can either write your name in the **Legal Aid WA Prisons Visit Book** to speak with a lawyer or contact the **Legal Aid WA Infoline**.

How does the Family Court make decisions about children spending time with a parent in prison?

If the Family Court is asked to make a decision about whether your children should visit you in prison, the court will do what it thinks is in the best interests of the child. The court will look at



many things, including:

- » Will the children be protected from harm (both physical and psychological)
- » Will the children's emotional wellbeing be at risk from being exposed to the prison environment, or from the reactions of the adults involved, the reactions of other prisoners, prison staff or visitors present?
- » What prison you are in and what facilities are available
- » The practicalities of the children coming to the prison (for example, how far away is the prison from their home, who will bring them, who will pay the costs, etc)
- » The other parent or caregiver's attitude towards the children visiting in prison
- » How old the children are
- » What your relationship with your children was like before you went to prison and if you did not live with them, how often you spent time with them
- » What your relationship with your children might be like when you leave prison
- » What communication or time you may have already had with your children while in prison and how that went
- » How long you are in prison for
- » What offence you were imprisoned for.

Do I need to put our agreement about arrangements for the children in writing?

There is no requirement to put an agreement in writing. If you do want to put your agreement in writing, you have two options:

- » **Parenting plan**

This is a document where you and the other parent write down your agreement about arrangements for your children. It must be signed by both parents and dated. A parenting plan is **not** enforceable in the Family Court, but may be taken into account in later court proceedings if it would be in the best interests of the child to do so.

- » **Consent orders**

You can seek to have your agreement made into consent orders by filling out a Form 11 Application for Consent Orders and filing the application with the court. Usually you will not have to go to court. Consent orders are enforceable in the Family Court in the same way as court orders that were made by a judicial officer after a trial.

Important: Consent orders are the only way that agreements about arrangements for children can be enforced.

It is always best to get legal advice before signing any written agreement, even a parenting plan.

What if I have concerns about my children's safety while I am in prison?

If you have concerns about your children being exposed to child abuse, family violence or neglect with the person or people they are living with while you are in prison, contact the Department of Communities, Child Protection and Family Support (CCPFS). For more information, see below **Dealing with the Department of Communities, Child Protection and Family Support**.

My child is in the care of CCPFS – can I see my child?

If your child is in the care of CCPFS see: **If your child is already on a protection order** under the heading **What if I am not getting contact with my child?** on page 90.

Sample letter to make arrangements about your children

* **Make sure sending this letter does not breach any violence restraining order in place.**

You can change this letter to suit your own circumstances.

(Your address – where the other person can write back to you)

(name of other person)

(address of the other person)

(Date)

Dear (other person's name)

I am writing to make arrangements to (spend time with and/or communicate with) (names of your children) while I am in (name of prison).

I believe that the visiting facilities are appropriate for in person contact to take place each (nominate day/time/frequency) during visiting hours.

(Provide details of transport and who will accompany children)

I would also like to:

- » telephone (children's names) (nominate day/ time/frequency).
- » write letters and send parcels to (children's names) on a regular basis.

I believe that it would be in the best interests of (children's names) to maintain a relationship with me.

I am happy to discuss these proposals with you. If you wish to discuss the matter and do not want to communicate directly with me, please leave a message with (name and phone number).

I propose these arrangements be in place while I am in (name of prison). I would like to renegotiate arrangements for the children once I am released.

At the moment my expected date of release is (date).

Please let me know in writing within 14 days if you agree to my proposals or if you would like to make other suggestions.

Yours sincerely

(your signature)



What do I do about seeing my children when I get out of prison?

See under this heading at **After release** on page 139.

Where can I get legal advice?

In very limited circumstances you may be eligible for a grant of legal aid for advice and ongoing assistance from a lawyer. Grants of aid are means tested so your available finances will be taken into account. Legal Aid WA will also look at the circumstances of your matter and the likelihood you would get what you are seeking if you went to Family Court to make sure available funds are used as effectively as possible. Contact the **Legal Aid WA Infoline** on **1300 650 097** for more information.

There may be other community legal services that can provide family law advice to people in prison. Women prisoners may be able to get legal assistance from the **Women's Law Centre**. It can be contacted on **(08) 9272 8800** or **1800 625 122**.

You can seek legal advice from a private lawyer. Private lawyers charge a fee for their services so be sure to discuss this with them before asking them to give you advice. For a referral to a private lawyer, call the **Law Society of WA** on **(08) 9324 8600**.

2. Child support

What happens to my child support obligations while I am in prison?

You only have to pay the minimum amount of child support. This amount changes each year. If you are in prison on a long sentence, you can apply to have your payments reduced to nil while you are in custody.

When you enter prison you need to contact the Department of Human Services - Child Support for a payment review to reduce the risk of getting a child support debt. You can do this by calling the Child Support Incarcerated Customer Team on the prison phone. Child Support will be an option on the auto dial list.

You can ask to be sent a brochure **Information for people in prison**.

You should tell Child Support:

- » your address in prison
- » the best way to contact you while you're in prison
- » your income while you're in prison - you need to give details of any:
 - » income or allowances you earn in prison
 - » money from investments or other income you receive outside prison; and
- » if the care arrangements for your children will change while you're in prison - if you normally have care of your child, your payments may change

You should also call the Department of Human Services - Child Support Inquiry Line on **131 272** (Mon - Fri 8.30am - 4.45pm EST) when you get out.

3. Dealing with the Department of Communities, Child Protection and Family Support

Introduction

This information covers when:

- » The Department of Communities Child Protection and Family Support (CCPFS) is working with your family before the birth, if your partner is pregnant, and you want to be involved in decision making about the baby.

- » CCPFS has taken your child/children into care, **your case is at court or is expected to be at court soon** and you want to have a say
- » Your child has **been placed on a protection order** by the Children's Court and you:
 - » want to know what is going on
 - » want to have a say about what is happening
 - » want to work towards contact now or more contact and/or
 - » getting your child back into your care, etc when you get out
- » You want to **make a complaint** about something CCPFS is doing/not doing that is separate from case planning for example, calls not being returned, the way a worker speaks to you, doesn't contact you and so on.

Useful hints

- » If you have concerns about how your children are being looked after contact CCPFS nearest to where the children live during office hours Monday to Friday. If you have concerns and it is on the weekend or after hours contact the **Crisis Care Helpline** on **(08) 9223 1111** or **1800 199 008**. (See page 157 for CCPFS office contact details.)
- » Write things down. Try to keep a written record, eg, with a diary of every contact you have with the Department or other agencies, who you speak to, when and so on
- » Get legal advice especially if your case is at court.
- » You can try to have decisions changed if you think they are not in the best interests of your child, for example, in care plans after an order is made.
- » Remember the focus of the court and CCPFS is on what is best for your children and making sure they are safe. It should also be your focus.

Pre-birth

If you, or your girlfriend or partner is pregnant and CCPFS is working with your family, eg, because of past involvement or current worries, CCPFS may arrange a pre-birth signs of safety (SOS) meeting.

What is a pre-birth signs of safety meeting?

- » This is a meeting held before the birth to talk about how to make sure the baby is safe after birth.
- » More than one meeting may be held.
- » The social worker from the hospital or other support workers the mother/father has may also go to the meeting.
- » The meetings assess risk to the baby, look at what CCPFS is worried about and strengths and make decisions about the baby's safety. They should help everyone become clear about what CCPFS is worried about and what they expect so they don't need to be worried any more.

If you want to have a say you should go to the meeting (if you are out) or be involved by phone/video conference or in person if the meeting can be held at the prison.

The person who runs the meeting, an independent CCPFS trained facilitator, is specially trained in pre-birth meetings and will not have had any previous involvement in your case.

Everyone who goes to a signs of safety meeting should have the chance to talk about what is working well and what is worrying them, and be involved in decisions about people who might support a baby who is at risk.



If a satisfactory safety plan for the baby to stay with the mother and/or the father after the birth (if you are released by the time of the birth or are in Bandyup) is not worked out, you can suggest other options for CCPFS to consider to make the baby safe, for example, placement with a relative.

If you are going to be in custody after the birth you can talk about:

- » what if any contact arrangements can be put in place
- » ways of finding out information about the baby being put in place, eg, getting sent photos.

If you are in Bandyup it may be possible to have the baby with you.

How do I find out more information about what is going on?

- » Contact the CCPFS case manager who is working with your family. Leave a message if you cannot get through.
- » Keep a record of when you ring and who you speak to.

Can I get a lawyer to represent me?

- » Legal representation may be available for some pre-birth SOS meetings if they are held in the metropolitan area.
- » Make a legal aid application as soon as you know the date of the meeting by ringing the **Legal Aid WA Infoline**.

Can I get legal advice before the meeting?

If you do not have a lawyer to represent you, ring **Legal Aid WA's Infoline**. You may be able to get legal advice from **Legal Aid WA's Children's Court (Protection) Services**.

Who else can go to the meeting?

Anyone who cares about a child and their family can go to the meetings. Family members, friends, support services, and others are welcome. Sometimes separate meetings are held for the parents, for example, if there are safety issues.

What happens at the meeting?

- » The meeting may take up to a couple of hours.
- » The person who runs the meeting (the facilitator) will write up the notes of what people say on a whiteboard or on butchers paper.
- » You should be able to get a copy before you leave (if you are there in person) or a typed copy will be sent out later.
- » If you disagree with something said this should be written down.

What happens after the meeting?

The parties need to do anything they have agreed to do. CCPFS may also decide it needs to develop a safety plan for your child. The safety plan is to keep the child safe wherever they are living.

4. If your case is at the Children's Court

If your child has been taken into the care of CCPFS, with or without a warrant, the child is in the provisional (temporary or interim) care of CCPFS.

Being taken into care usually means that the child is taken away from the parents and placed into the care of the Chief Executive Officer (CEO) of CCPFS. When a child has been taken into

care, CCPFS will make all of the decisions about the day-to-day care and protection of that child.

Within two working days, CCPFS has to:

- » return the child to a parent, or
- » file a protection application with an affidavit in support which gives CCPFS' reasons for bringing the case to court. The affidavit is sworn or affirmed by the case manager.

The court is meant to list the case within three working days of receiving the application. In some regional Children's Courts it may take longer for the case to be listed.

In some cases the CCPFS will place the child with another parent or family member, eg a grandparent and instead of making an application for a protection order, CCPFS will support the other parent or family member going to the Family Court of WA to get parenting orders to avoid the need for protection orders.

What can I do if CCPFS does not file a protection application within two days?

- » You should get legal advice. Contact **Legal Aid WA's Infoline for information and referral**.

There is no penalty for CCPFS if it does not file on time.

What can I do about where the child is living/contact before the case gets to court?

- » Before the case gets to court you should talk to the case manager about where the child will live and your contact with them.
- » If you are not happy with the response, you should get legal advice. Contact **Legal Aid WA's Infoline**.

Do I need a lawyer for the case at court?

- » You should get legal advice about your case.
- » In limited circumstances Legal Aid WA provides initial advice and investigation (subject to a means test) for parents and in some cases other parties, for example, grandparents when they have been made parties. After that ongoing representation depends on what you want and your chances of success.
- » Apply for legal aid as soon as you know the court date.

What court papers should I have at the start?

If you are a parent at the start you should have a copy of:

- » the CCPFS' application
- » the affidavit in support of the CCPFS' application.

CCPFS has to give these papers to you if you are a parent or have been made a party in the case.

Read:

- » the application to see what protection order CCPFS wants and whether it wants any interim (temporary) orders.
- » the affidavit which gives the reasons for bringing the case to court.

Write down the things you disagree with in the CCPFS' affidavit or important things that you think have been left out and what you think is best either in the margins or on a separate sheet of paper. You can use these notes when you talk to your lawyer. You can also use them to complete a Response form to let the court know your position. You can get this form and a kit to help you fill it in from the **Legal Aid WA Infoline** or the Children's Court.



What if I don't have some of the court papers I think I should have?

You can ask your lawyer, if you have one, your CCPFS case manager or tell the magistrate on the court date that you do not have a document.

Will I be able to be at court?

Sometimes a bring up order (by video) has been made for the first court date. If not, one will be done by the court for the next court date once the court knows you are in custody.

You can ask to come in person but remember you may end up in the cells at the Children's Court all day.

What if I am not a parent but have lived with the mother/father and the children?

Biological parents are automatically parties ("respondents") in the court case and can have a say at court.

If you are not a biological parent but having been living with the father/mother and had a lot to do with the child and expect to remain involved you can apply to be made a party if you think you need to have a say. If other parties do not agree to you being made a party, the magistrate will want you to put in both:

- » an application (Form PC1) and
- » an affidavit in support.

A magistrate may let you be joined as a party if you can show you have a **"direct and significant interest"** in the wellbeing of a child. Get legal advice before making your application. For more information, contact **Legal Aid WA's Infoline**.

What happens on the first day at court?

- » The case is only listed for mention so not a lot of time is usually spent on the case.
- » Nothing permanent usually happens on the first date.
- » Nothing is made final until all the parties are in agreement or a magistrate makes a decision after a hearing.
- » The case is often put off for two to three weeks for the parties to get legal advice or to give time for negotiations with CCPFS.

Interim orders

Interim (temporary) orders can often be made on the first mention day at court or on later court dates. They can be made about things like:

- » contact
- » placement.

On the first mention CCPFS often asks for an interim (temporary) order for the child to remain in the provisional protection and care of CCPFS even though they are already in the provisional care of CCPFS. This is because CCPFS prefers to have a court order to show organisations such as Medicare.

Sometimes magistrates do not see the need for this order to be made and will not make it.

What can I have a say about at court?

Some of the issues you can have a say about include:

- » where your child lives, for example,
- » if your child is in foster care you may want to ask for a relative to be assessed as a relative carer, or

- » if the child may have been placed by CCPFS with a relative but you think it may be in the child's best interests to be placed with another relative
- » whether you can have contact with your child, and if so how often and under what circumstances, eg, supervised
- » if you do not think you are the father you can ask the court to order a paternity test.

If you ask for more contact in court, not all magistrates deal with this issue in the same way. Some will put the issue off and ask you to put in:

- » a written application for interim orders (Form PC1) and
- » affidavit (Form PCFF or a Response form) in support

so that they have more information before making a decision.

When you put in your application you will usually be given a mention date. On the mention date a hearing time will be given for another date. Other magistrates may ask CCPFS its reasons for not offering more and hear from parents and then decide what is best and either make an order for more or leave things as they are.

If it is not the first time mention date or you are at court for the first time, it is likely the magistrate will want you to put in an application and affidavit in support.

What do I put in the application?

You should try to get legal advice about this. The magistrate will want to know what you want, what is your relationship to the child, why you want what you want and why it is in the best interests of the child.

What other papers should I get as the case goes on?

You should get the following papers:

- » a provisional care plan
- » a Section 143 Written Proposal (you may get more than one of these if changes are made or if the case goes on a long time), and
- » a report about proposed special guardians if an application is being made for a protection order (special guardianship).

In some cases you may also get:

- » a copy of a warrant if there is one
- » a signs of safety planning outcome sheet
- » a minute of consent orders (make sure you get legal advice before signing this)
- » expert reports on your child and/or other assessments on parents, eg, psychiatric assessments, parenting capacity assessments, or
- » new affidavits, eg, on efforts to contact the other parent, key developments since the case started.

Provisional care plan

This is a document that sets out the temporary living arrangements and decisions that have been made about your child.

You should be given the opportunity to participate in the development of the plan through a meeting with the case manager.

It should be done within seven working days of your child going into care.



Section 143 Written Proposal

Before a magistrate can make a protection order they need to have a Section 143 Written Proposal from CCPFS. It sets out the proposed living arrangements, including contact arrangements, and if the child is out of the parents' care, what the parents have to do to have their child returned to their care.

It should be your "roadmap" for what you have to do to get to get what you want, for example, more contact, unsupervised contact and/or to move towards having your child back in the care of a parent/s in certain cases.

What should I be looking for in the Written Proposal?

The answer depends on what you want to happen.

For example, if you:

- » want more contact and/or to move to unsupervised contact when you get out, it should include what you have to show and for how long, and how things will progress if you do what is expected of you, or
- » want your child to be placed back in your care in the future, it should include what you have to do to achieve this.

Again in some cases you may not be able to do much apart from courses while you are in custody but should be clear on what you have to do when you get out.

Can I get changes made to the Written Proposal and if so how?

If you do not agree with anything set out in the Written Proposal or want something else included, for example, the contact you are to get, timeframes to do certain things and how the case will progress if you do, speak to:

- » your lawyer if you have one, or
- » your CCPFS case manager.

Get legal advice if you are unable to get the changes you want and you do not have a lawyer. Contact **Legal Aid WA's Infoline** for a referral.

Sometimes your case will be put off for a signs of safety pre-hearing conference or a pre-hearing conference to see if agreement can be reached.

If none of these options lead to change, speak up in court about the changes you want (you may be told by the magistrate to get legal advice but some magistrates may ask CCPFS whether your change can be made).

Arguing against the making of a final order may not help you get the changes you want to the Written Proposal as a magistrate cannot force CCPFS to change the content of the Proposal at a final hearing.

What is a pre-hearing conference?

- » It is a meeting which the parents and their lawyers and if appointed, a child representative, go to. The case manager and team leader also go.
- » It is usually chaired by a magistrate.
- » Everyone gets a chance to say what they want and an attempt is made to try reaching an agreement on some or all of the issues in dispute.
- » If an agreement is not reached your case may be put off for another pre-hearing conference, a mention or a final hearing (after another pre-hearing conference to sort out witnesses, reports and so on).

- » If you are in custody you will be on video link and the conference will be held in a court room.

What is a signs of safety pre-hearing conference?

A signs of safety pre-hearing conference SOS-PHC (SOS PHC) is a meeting organised by the court that aims to reach agreement between the parties regarding the child or at least see if some of the issues in dispute can be sorted out. The meetings use the signs of safety framework. The conference is an opportunity to discuss what you and CCPFS are worried about, what is working well and what needs to happen next in relation to the child's best interests.

Who can go to the SOS PHC?

- » Parents and their lawyers. As a prisoner you will participate by video link.
- » CCPFS case manager, the team leader and their lawyer.
- » The child's lawyer if one has been appointed.
- » You can bring a support person and/or a professional working with you. You need to tell your lawyer who will tell the person who will run the meeting in advance to check it will be OK, eg, there may not be enough room for everyone you want to go.

You should tell your lawyer **before** the meeting if either you have a family violence restraining order (FVRO) or a family related violence restraining order against your partner or they have one against you.

What do I have to do to prepare for the signs of safety PHC?

CCPFS, the parents and the child representative, if there is one, have to prepare "conference outlines" and send them to the other parties and the convenor of the meeting **before** the SOS PHC.

The court sets the dates for when each party has to prepare their outline. CCPFS goes first and then the others respond.

What happens at the SOS PHC?

The meetings can often go for a couple of hours. What happens is similar to what is outlined above under the heading **What is a pre-birth signs of safety meeting?** The information about agreed next steps will go to the court. You should get a copy of what is discussed before the next court date.

Possible outcomes include:

- » agreement to changes being made to the Section 143 Proposal and the protection order being made
- » putting the case off for an agreed time to allow concerns to be worked on by a parent/parents, or
- » the case going to a final hearing (often after a pre-hearing conference).

Will I get a lawyer?

Subject to a means test, in very limited circumstances you may get a lawyer for a signs of safety pre-hearing conference. You will have to apply for legal aid as soon as possible if you have not already applied.

Child representatives

A child representative (sometimes also called a "separate representative") is a lawyer who acts



for your child in a Children's Court of WA protection and care case. This lawyer acts for a child in a court case in much the same way that a lawyer acts for any person in court.

In some cases:

- » a child says what they want to happen in the protection and care case through the child representative if they are able to give instructions, or
- » the lawyer will tell the court what they think is in the best interests of the child if the child is not able to give instructions.

If your child is old enough to understand, the lawyer will explain how the court procedure works and the decisions the court might make about their future.

Can I ask for a lawyer for my child?

The court decides for itself whether or not a child should have a separate lawyer. However, as a parent, you can ask for the court to appoint a lawyer and the court will consider your request.

Your child or the child's carer, or any other person who is professionally involved with the child, can also ask the court to consider appointing a lawyer for the child.

What if I do not want a child representative appointed?

You can say what you want to the magistrate and why. The magistrate will listen to what you and the other parties want and decide if it is best for your child to have one.

What is permanency planning?

With permanency planning caseworkers are meant to plan at the same time for both reunification with a parent or parents and long-term out of home care in case reunification is not achieved.

From the time a child enters the temporary care of CCPFS, caseworkers must make decisions about the long-term placement of a child within:

- » Twelve months for children less than three years of age; and
- » Two years for all other children.

Given this policy, if your child is in the care of CCPFS, you should begin to work on issues as soon as possible. You may find it useful to get legal advice after a protection order (time limited) has been in place for a few months to check on your progress.

What is a protection order?

A protection order is the final order made by the Children's Court when it is decided that your child is in need of protection and care and needs to be on an order.

What is the test for making a protection order?

For a child to be found to be in need of protection and care CCPFS has to prove on the balance of probabilities (that is, more likely than not) that:

- » harm has, is or is likely to occur, and
- » there is no parent able and willing to protect your child from harm.

This burden of proof requirement is different from criminal court where evidence has to be "beyond reasonable doubt" which is a very high level of proof of evidence.

The court can:

- » dismiss the application if it finds a child is not in need of protection

- » find a child is in need of protection and decide that they need to be on an order, or
- » allow CCPFS to withdraw its application, eg if things have improved since the case first came to court and it thinks no order is needed as the child is now safe, or one of the parents (or another party, for example, a grandparent) has gone to the Family Court of WA and got orders which make the child safe.

What orders can the court make?

If the court decides your child is in need of protection and should be placed on an order the options are:

- » **Protection order (“supervision”)** – your child is not removed from your care but CCPFS supervises or checks your care of the child for up to two years.
- » **Protection order (“time-limited”)** – your child is usually removed and placed in CCPFS’ care for up to two years. A written proposal goes with the order outlining what parents have to do to work towards having the child returned to their care.
- » **Protection order (“until 18”)** – your child is put into CCPFS’ care until they turn 18.
- » **Protection order (“special guardianship”)** – your child is not in the care of a parent or CCPFS. A carer (the special guardian), not CCPFS, will be responsible for day to day and long term decisions for your child until they turn 18 unless the order is cancelled or an adoption order is made.

What are my options?

Once the Written Proposal is available you should get legal advice as you will need to decide whether to:

1. **Agree to CCPFS’ application**, that is, agree to the children being in need of protection and the making of a protection order:
 - » with the Written Proposal as it is, or
 - » with changes made to the Written Proposal.

You can sign a minute of consent if you are OK with the Written Proposal in the beginning or as changed and agree with the protection order being made.

2. **Oppose the making of a protection order.** This means you argue against the case being brought to court and/or the protection order sought. Your case will be put off for a pre-hearing conference and then a final hearing. The court’s final decision will be based on the evidence presented by all parties.
3. If you don’t want to agree to but don’t want to argue against the order you can say **you neither consent to nor oppose the making of the protection order CCPFS is seeking.** In this case:
 - » you might be OK with the Written Proposal as it is, or
 - » you might want changes made before you tell the court your final position.

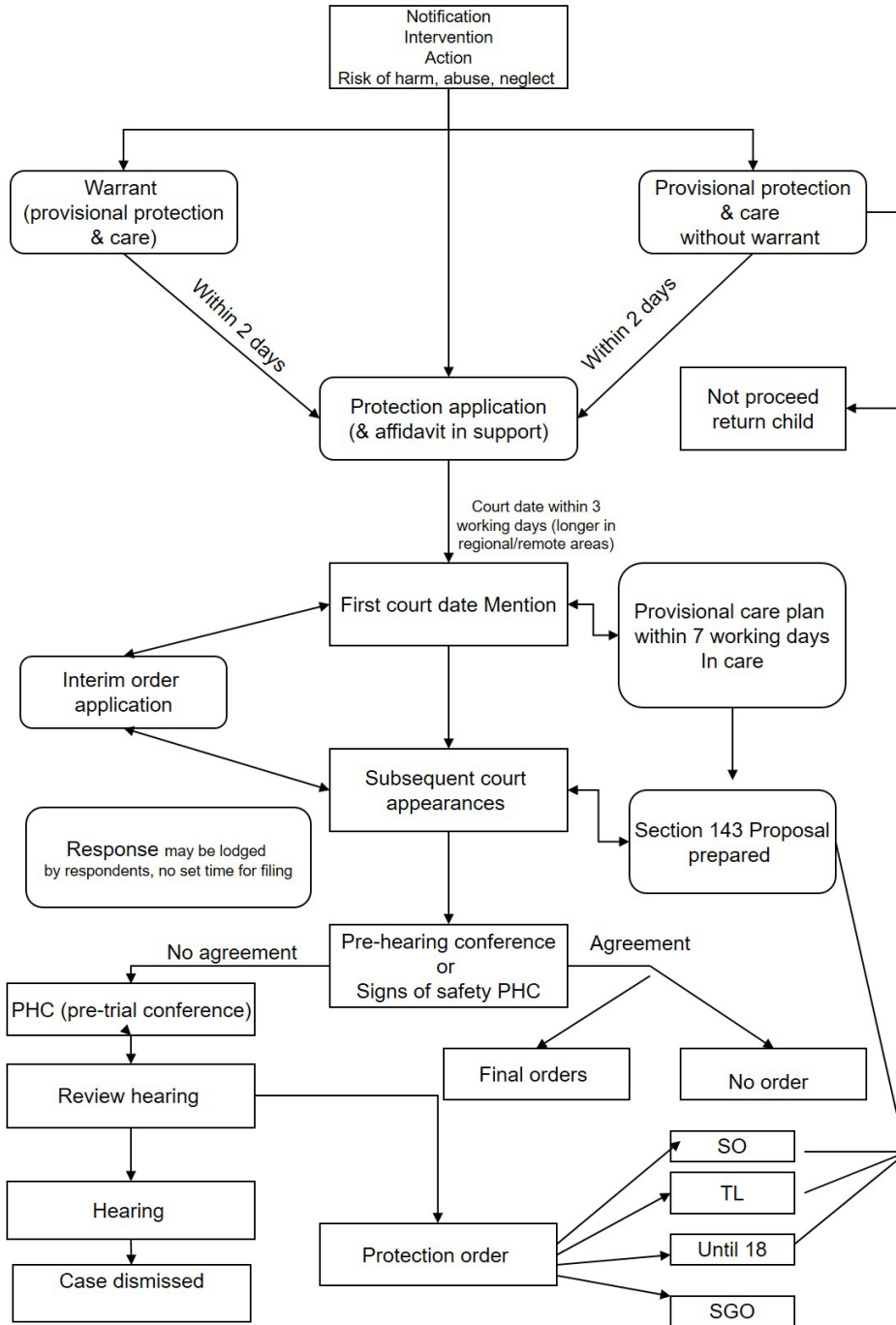
The magistrate will read the court documents and decide what is best for your child. Your position will be written down on the court file.

4. **Consider other options**, for example, an adjournment to give you or the other parent time to do certain things towards reunification before deciding on which if any, final order is needed; or going to a signs of safety pre-hearing conference.

With a protection order (time limited) or a protection order (until 18), CCPFS, not the magistrate, decides where your child lives. The magistrate could only make a recommendation.



Flow chart of the Children's Court process



Is there any other way I can have my comments noted on the court file?

You can:

- » Put your side of the story in by completing and filing a Response form at any time before the case is finalised.
- » Fill in a Response form (Form PCRESP). It will need to be witnessed by someone authorised to witness affidavits, for example, a justice of the peace. You will need to send it to the court or give it to your lawyer if you have one. The other parties should also get a copy.
- » In some cases have notes made on the court file. Some magistrates will let you have notes made on the court file about eg, things you do not agree with, and/or, you or your lawyer if you have one can read out your comments so they are included in the court transcript.

What if I am released and don't go to court?

The case can be decided without you as long as CCPFS prove to the court that they have tried to give you copies of the court documents and that they have made reasonable attempts to do so before the hearing.

The magistrate reads the court papers and decides if an order should be made. The court can make a different order to the one asked for by CCPFS if it thinks it is in the best interests of the child, eg CCPFS might be seeking a protection order (time limited) but a protection order (until 18) may be made. If you do not want this to happen you should make sure you go to court.

What if the case goes to a final hearing and I do not agree with the magistrate's decision?

You can appeal the decision. Time limits apply. Get legal advice quickly.

Can I change a protection order?

You can apply to change:

- » the conditions on a protection order (supervision)
- » the contact condition on a protection order (special guardianship) or to have a contact condition added, or
- » an interim protection order.

You would need to show things have changed since the order was made. You should get legal advice before going to court to change an order.

Can I apply to cancel an order?

You as a parent, or CCPFS, or any other party to the initial proceedings can apply to cancel (revoke) a Children's Court order. The first thing you will need to show to start your case is that things have changed since the order was made.

The court can:

- » only cancel the order if it is satisfied it is in the child's best interests
- » make another order, or
- » decide no order is needed.



Where can I get the forms I need?

You can get the forms from a Children's Court registry or the Children's Court website.

You need a:

- » Protection and Care Application Form
- » Protection and Care Affidavit.

Can a protection order be extended?

CCPFS can apply to the court to extend time limited and supervision protection orders. Towards the end of a protection order (time limited) if reunification looks close, CCPFS may apply to extend the order, eg for 6, 12 or 24 months, to give time for reunification to happen. If reunification does not look like happening it is likely CCPFS will apply to revoke (cancel) the protection order (time limited) and ask the court to place the child on a protection order (until 18). CCPFS can also apply to revoke a protection order (supervision).

Get legal advice if this happens in your child's case.

If your child is already on a protection order

What if I am not getting contact with my child?

What you should do may depend on what order your child is on.

- » If your child is on a protection order (supervision):
 - » Check the Written Proposal and/or the minute of consent to see what is supposed to happen about contact. If there is a condition which says you should have contact you can call CCPFS case manager and see if they can get the other parent to follow the order.
 - » If CCPFS cannot get contact started and there is no condition about contact get legal advice. If you cannot have the order amended in the Children's Court you may need to get Family Court orders about your contact.
- » If your child is on a protection order (time limited) or a protection order (until 18):
 - » Check what the Written Proposal says about your contact.
 - » If you are meant to be getting contact ring the case manager and ask them to follow the Written Proposal, or if they won't, to tell you why they won't. In this case you may need to seek a review of the care plan decisions about contact. See the heading **What if I am a parent who does not agree with a CCPFS care plan decision?** below.
- » If your child is on a protection order (special guardianship)
 - » If there is a contact condition for you which is not being followed – first contact CCPFS. If CCPFS cannot help get contact started get legal advice.
 - » If there is no condition about contact you may need to get one added. You will need to make an application to the court to change the order to add one. The magistrate's decision on your application will depend on what is seen as in your child's best interests.

What if I am a parent and I do not agree with a CCPFS care plan decision?

If you are a parent who does not agree with a CCPFS care plan, for example, about the amount of contact, or living arrangements, you can seek an **internal review** of the decision. You should get legal advice on how best to do this.

The Care Plan Review Panel (CPRP) does the review. Time limits apply. Applications to the CPRP must be made **within 14 days** of you receiving a copy of the care plan or modified care plan. **If there are special circumstances, this period may be extended.** To get an extension you must write to the Chairperson of the CPRP to:

- » ask for an extension, and
- » clearly state why you need the extra time.

The CPRP cannot do reviews of provisional care plans.

Before asking for an internal review talk to the person who chaired the care plan meeting about the decision you disagree with. You may be able to get some changes without needing to have a review.

You can get an application form from a District office or by contacting the CPRP on **(08) 9222 2593**. When getting the form check if you meet the criteria to apply and if you need to apply for an extension. Make sure you keep a copy of your application form.

What if I am not happy with the CPRP's decision?

If you are unhappy with the decision of the CPRP you can apply for review by the State Administrative Tribunal (SAT). Get legal advice before going to the SAT.

5. Complaints about the Department of Communities, Child Protection and Family Support

What if I have a complaint about how my child is being treated in care?

You can:

- » contact the case manager
- » if you do not receive a response or if you are not happy with it you can contact the Advocate for Children in Care, or
- » make a complaint as outlined below under the heading **What if I have a complaint about CCPFS that is not about a care plan?**

The Advocate can help children with problems or complaints which they can't sort out with their case manager, and can make sure they have a say in decisions that affect their life. If your child is old enough they should do this themselves but if they are too young you can ring the Advocate for them.

The **Advocate** can be contacted on **1800 460 696** (freecall) or **0429 086 508** or **9222 2518**.

If your case is at court and you have a lawyer they may also be able to help you with your complaint.

What if I have a complaint about CCPFS that is not about a care plan?

You can:

- » explain your concerns to CCPFS officer working with your family
- » talk to the team leader who supervises the CCPFS officer
- » make a complaint to the Director of the District Office or work unit.
- » If you are still not satisfied, you can:
 - » call CCPFS' **Complaints Management Unit** on **(08) 9222 2594** or freecall **1800 013 311** (free for STD Callers), or
 - » write to the **Complaints Management Unit** at **189 Royal Street East Perth WA 6004**.



The Complaints Management Unit **cannot** deal with complaints about:

- » decisions made by the Children’s Court or Family Court
- » any complaint subject to legal action
- » formal case plan decisions
- » recommendations of the Care Plan Review Panel, or
- » anonymous complaints.

There is a complaints kit that you can use. You can get a copy of this from CCPFS. More information on the complaints that CMU **cannot** deal with is in the kit.

The Complaints Management Unit oversees all complaints about CCPFS.

If CCPFS is not able to resolve your complaint you can go to:

- » the **Ombudsman WA** on (08) 9220 7555 or freecall 1800 117 000 (for country and interstate callers)
- » the **Minister for Child Protection** on (08) 6552 6600.

Hints for complaints letters

- » Keep a copy for your records.
- » Date the letter.
- » Make sure you put in the full name and date of birth of your child/children and what your relationship to the child/children is.
- » State your main problem/s clearly.

Other questions

My child has been placed in a secure care centre. What is that?

A secure care centre (the Kath French Centre) has been set up by the government in WA for children and young people where:

- » there is an “immediate and substantial risk” of them causing significant harm to themselves or another person, and
- » there is no other suitable way for them to receive the care they need.

There are limits about how long a child can be placed in the centre. If the case is currently at court you will get a say about this placement.

What happens when the protection order ends?

Once the order ends (if there is no CCPFS application to extend, or revoke and replace with another order) there is no restriction on a parent going to the family court to get parenting orders if they are needed. Or if there were family court orders before the Children’s Court case they will come back into operation.

Where can I get more information or help?

- » Contact **Legal Aid WA’s Infoline** for information and referral and to get copies of information sheets that may help you if you especially if your case is listed for a final hearing.
- » Contact the **Family Inclusion Network of Western Australia Inc** on (08) 9227 5818 for help for parents.
- » Any Children’s Court of WA registry has the forms you need.

- » Contact the **Aboriginal Legal Service** on 1800 019 900.
- » Contact the **State Administrative Tribunal** on (08) 9219 3111, or 1300 306 017 (cost of a local call) for information on the review process.
- » Women prisoners can contact the **Women's Law Centre** on 1800 625 122 or (08) 9272 8800.
- » Aboriginal women prisoners in Perth can contact **Djinda Services** on (08) 9200 2202.
- » Contact the **Law Society of WA Pro Bono Coordinator** on (08) 9324 8600 for information on whether you can get help from the Law Access Pro Bono Referral Scheme if you are not eligible for legal aid.

6. Divorce

If you have been separated more than 12 months you can apply for a divorce.

If you cannot apply online contact the **Family Court of WA** on (08) 9224 8222 for information on what you can do.

7. Family violence restraining orders

If a family violence restraining order (FVRO) or a family related violence restraining order (VRO) made before 1 July 2017 has been made against you this information may be useful for you.

What is an FVRO?

It is a court order against a partner, ex-partner or another family member, (eg uncle, aunt, son, daughter, grandfather, grandmother) designed to stop threats of violence or violence, behaviour that coerces, controls or causes the applicant, or person protected, to be fearful.

It tells the person bound to stay away from the person protected and/or to stop behaving in certain ways towards them.

There are other types of restraining orders:

- » police orders (on the spot FVRO called situations of family violence)
- » violence restraining orders (VROs) (against a person you are not or have not been in a family relationship with); and
- » misconduct restraining orders (MROs).

What is family violence?

Family violence means:

- » violence, or a threat of violence, by someone towards a family member; or
- » any other behaviour that coerces or controls another family member, or causes them to be fearful.

Family violence is not just physical violence. It can include forms of physical, financial, emotional and psychological abuse.

Examples of family violence behaviour covered by the law include:

- » hitting the family member
- » threatening to hit the family member
- » threatening to share or actually sharing intimate images
- » holding the family member against their will
- » not letting the family member have money when they ask you for financial support
- » causing death or injury to the family member's pets



- » damaging property the family member or you jointly own
- » repeatedly sending the family member unwanted or offensive texts
- » stopping the family member seeing or keeping in contact with friends, family or culture.

Even if the person gets someone else to do these sorts of things against the family member they will be taken to have committed family violence.

Am I in a family relationship?

For legal purposes you are in a family relationship with someone if that other person is your:

- » spouse or ex-spouse
- » de facto or ex-de facto
- » girlfriend/boyfriend or ex-girlfriend/ex-boyfriend
- » child, step-child or grandchild
- » parent, step-parent or grandparent
- » your sibling or step-sibling, or
- » relative or former relative.

Where can I get more information?

Legal Aid WA has information sheets that may help you respond if you have been served with a restraining order application. Contact **Legal Aid WA's Infoline** to ask for copies to be sent to you.

Other legal problems

This part covers:

1. Assault
2. Centrelink
3. Changing personal information in WA Police records
4. Court orders for compensation and restitution
5. Criminal injuries compensation – as an offender
6. Criminal injuries compensation – as a victim
7. National Redress Scheme for victims of institutional child sexual abuse
8. Dealing with debts
9. Discrimination
10. Enduring power of attorney
11. Fines and infringements
12. Getting information from WA Police
13. Guardians and administrators
14. Immigration issues – visa cancellation
15. Negligence
16. Personal injury – if you have been injured in prison or before you went to prison
17. Power of attorney
18. Registration and enforcement of fines from another state
19. Return of seized goods from the police
20. Tenancy issues
21. Uncollected goods



PART 11

Other legal problems

1. Assault

If you have been the victim of an assault in prison, for example, by another prisoner, or if you received medical treatment without consenting to it (and it did not fit within one of the exceptions where consent is not required) you may be able to make a civil claim for assault. You should get legal advice. It may also be a criminal matter and should be reported to the police. See also under the heading **Criminal injuries compensation – as a victim** on page 102.

2. Centrelink

You do not receive Centrelink payments while you are in custody, even if you are on remand for a short period of time. Social security payments for you are returned to Centrelink with a covering letter stating that you are in custody.

See also under the heading **After release** on page 142 for how to apply for help on release.

3. Changing personal information in WA Police records

You have the right to apply to change your personal information contained within WA Police documentation if the information is:

- » inaccurate
- » incomplete
- » out of date, or
- » misleading.

Your application to change personal information should follow the requirements set out in Section 46 (1) of the *Freedom of Information Act 1992 (WA)* [FOI Act]. It must:

- » be in writing
- » give enough details to enable the document that contains the information to be identified
- » give details of matters in relation to which you believe the information is inaccurate, incomplete, out of date or misleading
- » give your reasons for holding that belief
- » give details of the amendment that you wish to have made
- » give an address in Australia to which notices under the FOI Act can be sent
- » give any other information or details required under the regulations
- » be lodged at an office of the agency.

The new application must state whether the change is made by:

- » altering information
- » striking out or deleting information
- » inserting information
- » inserting a note in relation to information

or in two or more of those ways.



4. Court orders for compensation and restitution

This information covers what happens when a court in a criminal case makes any of the following orders when an offender is found guilty of an offence:

- » that the fine imposed on the offender be paid to the victim(s)
- » that the offender pay the victim(s) an amount of money as compensation, or
- » that property be returned to the victim(s). (Note: the court can also order a third party to do this).

What happens if a fine ordered by a court has been made payable to a victim?

If you are found guilty of the offence of assault, the court may make an order that any fine imposed on you has to be paid to the victim.

You do not pay this money to the victim directly. You must pay the fine to the court and the court will pass the money on to the victim.

The payment of the fine by you can be enforced in the same way as other fines (see under the heading **Fines and infringements** on page 108).

What is a reparation order?

There are two sorts of reparation orders that can be made by a criminal court:

- » compensation orders, and
- » restitution orders.

What is a restitution order?

A restitution order is an order that an offender or third party return property to the victim within a set time. Usually, the property will have been seized by police and it will be the police who return it to the victim.

A restitution order can be enforced by the sheriff if it is not complied with.

What is a compensation order?

A compensation order is an order that the offender pay an amount of money to the victim as compensation for:

- » loss of or damage to their property, and
- » for any expenses they have reasonably incurred.

The compensation order cannot cover the type of injury or loss that would be covered under the *Criminal Injuries Compensation Act 2003* (WA). (See under **Criminal injuries compensation – as an offender** on page 99).

A compensation order can be enforced as a judgment debt through the appropriate court. It is the responsibility of the victim to enforce this order.

How is a reparation order made?

The court can decide to make a reparation order without any application.

A victim of an offence or a prosecutor can apply for a reparation order to be made by the court.

An application for an order can be made:

- » orally or in writing (using an approved form available from the court) when you are being sentenced, or

- » in writing (using an approved form) within 12 months after the date you were sentenced.

What happens if a compensation order is made against me?

The court does not pay the victim this money out of its own funds. The victim will have to get the money from you through the court's enforcement process unless you voluntarily pay it.

If the amount payable under a compensation order has not been paid to the victim within 28 days from the date of the order, the victim can enforce it in the relevant court, eg, the Magistrates Court of WA if that court made the order. Amounts of \$75,000 and less would be enforced through the Magistrates Court of WA.

Can I appeal a decision to make a reparation order?

It is possible to appeal a court's decision to make a reparation order. Different time limits apply depending on which court made the decision. Get legal advice.

5. Criminal injuries compensation – as an offender

When is recovery of criminal injuries compensation sought?

If you have been convicted of committing an offence and the victim of the offence is awarded criminal injuries compensation, you may have to pay to the State of Western Australia either the whole amount awarded or a portion of the amount. This is called a "compensation reimbursement order".

An application for you to pay can be made at any time after a compensation award is made. However, if criminal injuries compensation is awarded to a victim of an offence for which you have not been convicted, you will not be required to make any repayment towards the award.

How much compensation can be ordered?

The maximum amount of compensation that can be awarded to a victim is dependent upon the date that the offence/s occurred.

The table below sets out these amounts.

Item	Period (all dates inclusive)	Maximum amount
1.	22 January 1971 to 17 October 1976	For an indictable offence: \$2,000 For a simple offence: \$300
2.	18 October 1976 to 31 December 1982	\$7,500
3.	1 January 1983 to 31 December 1985	\$15,000
4.	1 January 1986 to 30 June 1991	\$20,000
5.	1 July 1991 to 14 December 2003	\$50,000
6.	On or after 15 December 2003	\$75,000

If you were convicted of only one offence, the maximum amount of criminal injuries compensation that can be awarded is the amount available at the time that the offence occurred.



If you have been convicted of more than one offence and if at the time the offences occurred there were different maximum amounts of criminal injuries compensation that could be awarded, the sum awarded to the victim is not to exceed twice the amount available at the time the last offence occurred.

For example, if one of the offences was committed in 1992 at which time the maximum amount was \$50,000 and if the last offence was committed in January 2004 at which time the maximum amount was \$75,000, then the total amount of criminal injuries compensation that can be awarded to the victim is \$150,000 (\$75,000 x 2).

However, if you committed more than one offence and the offences for which you were convicted occurred at the same time, the victim is only entitled to receive one payment of the maximum amount that is available at the time that the offences occurred.

In some circumstances, the criminal injuries compensation assessor may not make an order for compensation, or may reduce the amount awarded.

If the victim was injured as a result of an offence and at that time was also committing an offence, a compensation award cannot generally be made to the victim.

If the victim behaved or acted in a way that contributed, directly or indirectly to the victim's injury and/or death, the assessor dealing with the application may reduce the amount awarded or refuse to make an award.

What can the compensation award include?

As well as making a claim for physical injury, the victim can also make a claim for compensation if the victim has suffered from emotional and/or psychological injury as a result of the offence/s.

If a person witnessed the offence/s and suffered emotional and/or psychological injury as a result, that person can also make a claim for compensation.

A close relative of the victim who was living with the victim at the time the offence/s occurred can make a claim for compensation including if the victim dies as a result of the offence/s.

A close relative is defined as a:

- » parent, grandparent or step-parent of the victim
- » spouse or de facto partner of the victim, or
- » child, grandchild or stepchild of the victim.

If the victim dies as a result of the offence/s, the parent or step-parent of the victim can make a claim for compensation even if the parent or step-parent was not living with the victim at the time the offence/s occurred.

If a compensation order is made can I get the reasons?

If an assessor makes a compensation award where you were the offender, as an interested person you can write to the assessor to ask for the reasons. The assessor has to give you written reasons for making an award.

If a compensation award is made can I appeal the decision?

Yes, you can appeal to the District Court against an assessor's decision to make a compensation award and/or the amount awarded. Time limits apply. You must start your appeal within 21 days of the date of the assessor's decision. In limited circumstances the District Court may allow you to appeal after 21 days.

What happens when the State of WA applies to recover compensation from an offender?

If an application is made by the State of WA for you to pay (reimburse) the compensation that was awarded to the victim, you will be provided with a notice of the application and the time and place of the hearing of the application.

When you receive the notice you can:

- » Give written submissions to the assessor dealing with the application, before the hearing, in relation to whether a compensation reimbursement order should be made. For example, you will be able to tell the assessor if the applicant's behaviour contributed to their injuries, their injuries are not as bad as they say they are, or that their injuries are not because of the offence.
- » Appear at the hearing and have your say about the application.
- » Represent yourself or be represented by a lawyer, or by a person approved by the assessor hearing the application, and
- » Present any evidence you have, call any witnesses and cross-examine any other witnesses.

What matters will be considered by the criminal injuries compensation assessor in deciding what if anything I should pay?

When the assessor is deciding how much, if any, money you should pay, they will consider:

- » How responsible you were for the injuries that the victim had.
- » Whether the victim provoked the offence to any extent.
- » Whether any injury or condition the victim had contributed to their injury.
- » Your means to pay the compensation. They will take into consideration your income and assets as well as your current employment, and potential future employment.
- » Your ability to pay the money in a reasonable amount of time.

Will I have to pay the compensation amount?

If a compensation reimbursement order is made, you can be ordered to repay all or some of the money. This is a debt owing to the State. You can be ordered to pay it by instalments or in a lump sum.

Changing or cancelling a criminal injury compensation reimbursement order

You may at any time apply for the reimbursement order made against you to be changed or cancelled. However, you will have to have a good reason as to why this should occur and it is only on rare occasions that the order will be altered or cancelled.

Can I appeal against an assessor's decision to make a compensation reimbursement order against me?

Yes, you can appeal against an assessor's decision to make a reimbursement order against you or their refusal to cancel or amend it. The appeal is to the District Court. Time limits apply. You must start your appeal within 21 days of the date of the assessor's decision. In limited circumstances the District Court may allow you to appeal after 21 days.



6. Criminal injuries compensation – as a victim

What if I have been the victim of a crime?

You may be eligible to apply for criminal injuries compensation.

If you have been injured or suffered loss as a result of a criminal offence, you may be able to:

- » make a compensation claim under the *Criminal Injuries Compensation Act 2003 (WA)*
- » bring a common law claim against the offender, and
- » ask the court sentencing the offender to give you a compensation or restitution order against the offender.

What is criminal injuries compensation?

Victims of crime who have suffered an injury can apply for compensation under the *Criminal Injuries Compensation Act 2003 (WA)*.

A claim for criminal injuries compensation can be made for injury caused by, and/or loss from, an offence which occurred on or after 22 January 1971. If the incident happened before this seek legal advice.

Do I have to report the offence to the police to make a criminal injuries compensation claim?

You should report the offence to the police as soon as possible and give them whatever information and help you can to identify, find and prosecute the alleged offender. Even if no one is caught or convicted, you may still make a claim and may receive compensation.

When making a report to the police make sure you write down the name of the police officer and the report number.

In some circumstances you may not be awarded compensation if you have not fully helped the police in their enquiries. You would need a very good reason for not reporting the offence to the police.

Do time limits apply?

There is a three year time limit to make a claim for criminal injuries compensation. The time limit runs from the date the incident took place. It may be extended if the Office of Criminal Injuries Compensation decides you had a good reason or reasons for not making the claim within that time.

Sometimes you will not know the extent of your injury before the three year time limit ends. In this case, you should lodge your claim before the time limit ends.

Send a letter with it to the Office of Criminal Injuries Compensation saying that your injuries have not settled and you will send more information when they have.

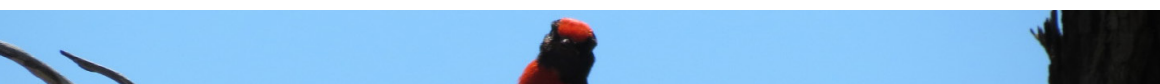
Your claim will be rejected until the extra information is given in your application but you may not have to ask for an extension of time later.

The time limit may be extended in some cases, particularly if you were injured as a child, or had an intellectual disability at the time. If you believe you have a claim but are outside the time limit you should get legal advice.

What does the compensation cover?

Compensation is available for:

- » pain and suffering
- » loss of enjoyment of life



- » loss of income
- » medical expenses, which includes the costs of getting medical reports
- » other incidental expenses (such as travel for medical treatment and loss/damage of clothing, footwear or aids), and
- » in the case of death, a close relative may be eligible for funeral expenses and compensation for the loss of financial support. If a close relative has paid for funeral expenses they can be compensated.

Contact **Legal Aid WA's Infoline** to get a copy of the **Legal Aid WA information sheet: Compensation for victims of crime**.

7. National Redress Scheme - for victims of institutional child sexual abuse

Following from the 2017 Royal Commission into Institutional Responses to Child Sexual Abuse, the Commonwealth Government has set up the National Redress Scheme ("the Scheme").

The Scheme will provide support to Australian citizens and permanent residents who were sexually abused as children (aged under 18) while in the care of participating governments and institutions **before** 1 July 2018. Each state and territory will participate and non-government bodies have the option to participate in the Scheme. As of 10 August 2018, six major churches and charities have also agreed to join the Scheme - the Catholic Church, the Anglican Church, the Uniting Church, the Salvation Army, the YMCA and Scouts Australia.

You can apply to the Scheme until 30 June 2027. You cannot apply while you are in prison. You can apply once you are released, or in exceptional circumstances, for example, if you have early onset dementia and there is a risk that details of the abuse will be forgotten.

Your application will be considered differently in several circumstances including if you have ever been sentenced to more than 5 years in prison.

The Scheme is an alternative to applying for compensation through the courts. You will not be able to apply to both the courts and the Scheme for the same events.

The Redress Scheme can provide three things:

- » access to psychological counselling
- » a direct personal response - such as an apology from the responsible institution for people who want it
- » a monetary payment

For more information call the **National Redress Scheme** on **1800 737 377** or call the **Legal Aid WA Infoline**.

For legal help you can call the free **knowmore** advice line **1800 605 762** Monday to Friday 9am to 5pm AESTY/AEDT. It is independent service giving free legal advice to help survivors of institutional child sexual abuse by providing them with information and advice about the justice or redress options that may be available to them. This includes possible claims under institutional redress schemes and access to assistance or compensation through victims of crime schemes or common law and civil law rights and claims.

8. Dealing with debts

When entering prison, you may owe money to individuals or credit providers with limited or no ability to pay. Generally speaking, your obligations to repay debts do not stop while you are in prison. However, you do have some rights to put off repayments in some circumstances.



If you owe a debt to an individual, you will need to speak to them directly to negotiate an acceptable arrangement. Alternatively, the person that you owe money to could apply to the relevant court to obtain judgment against you. They could then enforce this judgment (see below under the heading **Enforcing debts** below).

Debts owed to credit providers – hardship provisions

If you have a:

- » home loan
- » personal loan, or
- » credit card

with a bank or other financial institution, you have some rights under the hardship provisions of the *National Credit Code*. These state that if you have reasonable cause to be unable to meet your commitments under a credit contract, you have the right to apply for a hardship variation. A term of imprisonment has been found by the courts to be “reasonable cause”.

You can apply to change the credit contract by postponing repayments for a certain length of time or extending the period of the contract and reducing repayments or in any other way you think might work. When applying for a hardship variation, you should always consider how you are going to deal with any repayments that you missed while the variation was effective. For example, if you negotiate to suspend repayments for six months while you are serving a term of imprisonment, also negotiate how the missed repayments will be repaid or they may become immediately owing at the end of the six months. You could, for example, negotiate to extend the term of the contract until the missed repayments have been paid in full.

The credit provider will generally consider whether you will be able to meet your obligations under the contract or whether it is “putting off the inevitable”. In practical terms, the length of your sentence may be a key consideration when deciding whether to give a hardship variation.

If the credit provider rejects your application for a hardship variation, you can apply to an external dispute resolution scheme to consider the dispute. Your credit provider will be a member of either the Financial Ombudsman Service (FOS) or the Credit and Investments Ombudsman (CIO). FOS and CIO can make orders that are binding on the credit provider. From 1 November 2018 the **Australian Financial Complaints Authority** will replace FOS and CIO. It can be contacted on **1800 931 678**.

Enforcing debts

Credit providers must give you a default notice giving you 30 days to pay any arrears. If you do not pay in the 30 days, it can enforce the debt. Debts owed to individuals and unsecured creditors (such as credit cards) are generally enforced through the appropriate court.

If a creditor is successful in obtaining a judgment against you, it can apply for a number of enforcement orders to enforce the judgment. Depending on your circumstances, some enforcement orders could not be practically affected while serving a term of imprisonment (such as an instalment order when you receive no income).

However, if you have money in the bank or own property (cars or a house) a judgment creditor could apply for a time for payment order (requiring payment of the debt) or a property seizure sale order (to sell property to satisfy the debt).

Suspending enforcement

It is possible to apply to the court to suspend the enforcement of a judgment debt. The court would consider any “special circumstances” of the case. It is unclear whether a term of

imprisonment would be considered “special circumstances”. You should get legal advice before applying for a suspension order.

Car or motorbike loans

If you are in default on your car or motorbike loan, the credit provider must give a default notice giving 30 days to fix the default. If you do not pay the outstanding repayments within this 30 day time period, the credit provider can repossess the vehicle.

The credit provider cannot repossess the vehicle from residential property without a court order or the occupier’s consent. However, if the vehicle is out on the road it can simply be towed away. Therefore, it is a good idea to keep the vehicle on residential property so you (or your family or friends) can make an informed decision whether to release the vehicle to the credit provider.

The credit provider must give you a notice within 14 days of repossessing the vehicle stating the estimated value of the vehicle and the outstanding arrears and enforcement costs. It cannot sell the vehicle for 21 days after this notice. If you pay the outstanding arrears and enforcement costs (and any other amounts that fall due) it must give you back the vehicle. If you do not pay within the 21 days, it must sell the vehicle for the best price obtainable. A trade-in price is a good guide to the amount usually seen as acceptable.

You can also find a buyer who is willing to buy the vehicle for the estimated value as stated on the notice. This must happen within 21 days from the date of the notice after repossession.

Often, once the proceeds of the sale of the vehicle are applied to the money borrowed, there is an outstanding amount still owing often referred to as the “shortfall debt”. This is common as vehicles lose value quite quickly whereas interest and default charges often mean that car and motorbike loans are slow to decrease. Shortfall debts are generally payable immediately to the credit provider. These debts are enforceable as described above in **Enforcing debts**.

Home loans

If you are in default under the credit contract, the credit provider must send a default notice complying with section 88 of the *National Credit Code* and section 106 of the *Transfer of Land Act 1893 (WA)* before it can enforce the home loan and mortgage. A notice given under the *Transfer of Land Act 1893 (WA)* must be served personally or by registered post. The notice must give you 30 days to pay any outstanding arrears and any payment that falls due within the 30 day notice period. If you pay the outstanding arrears and your normal repayment before the 30 days expires, both notices are satisfied and the contract is reinstated.

If you do not pay the arrears and any repayment that falls due during the 30 day notice period, the lender can take steps to repossess and sell the mortgaged property.

Enforcing the home loan and mortgage

If the lender decides to enforce the credit contract and mortgage, it can request that you (or the occupier) vacate the property and give vacant possession to the credit provider. However, more commonly it would start legal proceedings in the Supreme Court. The credit provider will generally ask for possession of the property and/or the payment of all monies due under the contract. Generally speaking, in the absence of any valid defence, the Supreme Court will give judgment to the credit provider.

If the credit provider obtains a judgment against you

If the credit provider obtains a judgment against you, the credit provider or sheriff (an officer who enforces court orders) may serve a Notice to Vacate. This usually gives approximately 21 days to vacate the property.



However, even after judgment has been obtained it may be possible to negotiate with the credit provider to delay enforcing the judgment. However, any agreement not to enforce the judgment is at the credit provider's discretion.

If the credit provider repossesses the property

If the credit provider takes possession of the property, they will generally sell it by public auction. If there is any money left after discharging the mortgage and paying enforcement and selling costs, it will be returned to you. If the proceeds of the sale do not discharge the mortgage and cover enforcement and selling costs, you will be liable to the credit provider for the shortfall debt.

Getting help

It is always worth seeking legal advice about your options and the likelihood of a hardship variation being successful. It also may be helpful to contact a free financial counsellor who may be able to assist you to deal with debts while in prison. The **National Debt Helpline** can be contacted on **1800 007 007**.

Until the 31 October 2018 contact the **Financial Ombudsman Service** on **1800 367 287** or the **Credit and Investments Ombudsman** on **1800 138 422**. These may be able to assist with any dispute with your credit provider. From 1 November 2018 the **Australian Financial Complaints Authority** will replace the FOS and the CIO. It can be contacted on **1800 931 678**.

9. Discrimination

What is discrimination?

Discrimination may be either **direct discrimination** or **indirect discrimination**.

Direct discrimination is the less favourable treatment of a person in a group compared to another person of the same group because of a certain attribute they possess.

Indirect discrimination is when there is an unreasonable condition or requirement placed upon a person and the person is unable to comply with that condition or requirement, but a higher proportion of other people without the attribute can or do comply with the conditional requirement.

Less favourable treatment of a prisoner compared to other prisoners may amount to discrimination.

The *Equal Opportunity Act 1984* (WA) applies to certain areas of public life. The most relevant area in relation to discrimination against a prisoner is in the provision of goods, services and facilities.

What are goods, services and facilities?

Services include those provided by:

- » government
- » public authorities, and
- » local government.

Services must provide a benefit to those alleging discrimination.

Services might include:

- » services to prison visitors
- » prison food
- » rehabilitation services

- » recreation and sporting services
- » services to prisoners' families
- » providing facilities and staff allowing prisoners to have their children with them, and
- » activities including work arrangements and educational classes.

However, cell transfers and accommodation might not amount to "services" for prisoners.

What "attributes" can lead to discrimination?

It is illegal to discriminate against a person on the basis of:

- » age (including being too young or too old)
- » breastfeeding or bottle feeding
- » family responsibility (eg, having a caring role)
- » family status (ie, being a relative of a certain person)
- » gender history (including having a reassigned gender)
- » impairment (having a current, past or assumed mental, physical or intellectual disability)
- » marital status
- » political conviction (including lack of conviction)
- » pregnancy
- » race (including skin colour and ethnicity)
- » racial harassment
- » religious conviction (including lack of conviction)
- » sex
- » sexual harassment (including unwelcome requests for sexual favours, touching and comments)
- » sexual orientation, and
- » spent conviction.

What is "less favourable treatment"?

If you have one or more of the above attributes, it is possible for you to be discriminated against in two ways:

- » **Direct discrimination:** This requires a comparison between the way you are treated and the way a similar prisoner without your "attribute" is treated. If you are treated differently, this can be direct discrimination.
- » **Indirect discrimination:** Where a rule or policy negatively affects a higher proportion of people within a particular group (for example, persons of a certain race) compared to those outside of the group.

Examples of discrimination in prison

In Australia, a number of actions have amounted to discrimination against prisoners. For example:

- » In Queensland, not providing Halal meat to a Muslim prisoner who requested it amounted to discrimination.
- » In Western Australia, denying a prisoner access to activities and services available to other prisoners because of his HIV status amounted to discrimination.

How can I make a complaint?

If you feel you have been discriminated against you may make a complaint to the Equal Opportunity Commissioner. Ordinarily, a complaint must be made within 12 months of an incident of discrimination, although exceptions may apply.



The **Equal Opportunity Commission** can be contacted by:

- » Telephone: **(08) 9216 3900**
- » Email: eoc@eoc.wa.gov.au
- » Post: PO Box 7370, Cloisters Square, Perth WA 6850

Discrimination in employment on the basis of criminal record

Criminal record discrimination is not unlawful under federal law. However, the Australian Human Rights Commission may investigate complaints of discrimination in employment on the basis of criminal record and, when appropriate, attempt to resolve the complaint by conciliation.

Criminal record discrimination occurs when you do not experience equality of opportunity in employment because of your criminal record. This may include being refused a job, dismissed from employment, denied training opportunities or being harassed at work on the basis of your criminal record.

You may make a complaint if you think you have been discriminated against because of your criminal record by contacting the Australian Human Rights Commission.

Information is available from the **Australian Human Rights Commission**.

- » Telephone: **(02) 9284 9600** (for general information) and **1300 656 419** (to make a complaint)
- » Email: newcomplaints@humanrights.gov.au
- » Post: GPO Box 5218, Sydney NSW 2001

Where can I get more information?

Contact **Legal Aid WA's Infoline** for information and referral.

Contact the **Equal Opportunity Commission WA** on **(08) 9216 3900**.

10. Enduring power of attorney

An enduring power of attorney is different to a power of attorney. The ability to appoint an attorney who can keep making decisions for you after you lose legal capacity is what makes an enduring power of attorney different to an ordinary power of attorney. An attorney, who is appointed under an ordinary power of attorney, loses the power to act as your attorney if you lose legal capacity (for example, if you have a stroke and cannot communicate). An enduring power of attorney allows you to appoint an attorney who will be able to keep acting as your attorney, even if you lose legal capacity. The power "endures" after you lose capacity.

You can get more information about enduring power of attorney and an information kit with the necessary forms from the **Office of the Public Advocate** on **1300 858 455**.

For information on powers of attorney see under this heading on page 113.

11. Fines and infringements

What are infringements?

An infringement notice is a notice issued by the police, local government authority or other prosecuting agency, requiring the payment of money as a penalty for breaking a particular law. The difference between a fine and an infringement is that an infringement notice does not have to be dealt with in court in order to be legally binding.

Infringement notices are issued for breaches of the law that are not as serious, such as minor traffic offences and parking offences. An infringement notice is often called a “ticket”, for example a “speeding ticket” or “parking ticket”.

What are fines?

A fine is an amount of money that a judge, magistrate or justice of the peace in court may order you to pay as a penalty for committing an offence. A fine may be the whole sentence (penalty) or just part of the sentence you receive for the offence. You might receive a fine for an offence such as drink driving or disorderly conduct.

What is the difference between a fine and an infringement notice?

The difference between a fine and an infringement is that a fine can only be imposed on you by a court. An infringement notice is issued by the police, local government authority or other prosecuting agency for minor breaches of the law and is sometimes called a “ticket”. For example, a “speeding ticket” or “parking ticket”. An infringement notice cannot be imposed on you by a court

Why do I need to know the difference between a fine and an infringement notice?

Different processes apply depending on whether you have received a fine or an infringement notice. There are different processes for:

- » disputing payment
- » seeking time to pay
- » enforcing payment, and
- » applying to have a licence suspension order set aside for non-payment.

An important example is that **you can serve time in custody for a fine but not for an infringement notice.**

If I don't pay my fine or infringement notice within the required time or organise time to pay, can I lose my licence?

Yes, suspending your driver's licence is usually the first step taken when a person fails to pay their fine or infringement notice.

If your licence is suspended, **your actual driver's licence will not be taken from you but you will not be allowed to drive.**

See the **Legal Aid WA information sheet *Infringement notices*** for information on these and what you can do if you fail to pay your infringement notice. You can call the **Legal Aid WA Infoline** to be sent a copy.

Can I convert my fines and infringement notices to time in custody?

You can only convert fines to time in custody. Infringement notices cannot be converted to time in custody. For example, a fine for drink driving can be converted to time in custody, but a parking ticket cannot.

For information on how to how to apply to cut out your fines while you are in custody see the **Legal Aid WA information sheet *Fines***. You can call the **Legal Aid WA Infoline** to be sent a copy.

What if I am on remand?

If you are on remand, the Registry will consider how long you are likely to be on remand before deciding whether to allow you to cut out your fines while you are in custody. They will not let



you cut out fines in custody if you may be released soon as they do not want you doing extra time in custody after you are granted bail or been given a sentence that is not jail.

I am a sentenced prisoner. Will I have to spend more time in custody?

If you are a sentenced prisoner you should apply to cut out your fines as soon as possible after you are sentenced to imprisonment to ensure the time in custody for unpaid fines is completed before your term of imprisonment ends. The period of imprisonment for an unpaid fine will run at the same time as your sentence. If you apply late, towards the end of your term of imprisonment, you may need to spend extra time in custody.

Can I backdate cutting out my fines?

No, you cannot backdate the cutting out of fines.

I was under 18 years old when I was fined. What happens if I don't pay my court fine?

The process for the enforcement of your fine will be different according to your current age.

If you were under 18 when you were fined and are still under 18, then the Children's Court of WA will deal with the failure to pay. The court will give you three choices:

- » more time to pay the fine
- » a community work order, or
- » a detention order.

The court may also **decline to make a detention order**. This means that you cannot be imprisoned for failure to pay that fine and it cannot be registered with the Fines Enforcement Registry.

If you were under 18 when you were fined but have since turned 18, then the fine may be registered with the Fines Enforcement Registry as normal for adults. This will not happen, however, if other action has been taken to deal with the matter, for example, a work and development order has been made.

12. Getting information from WA Police

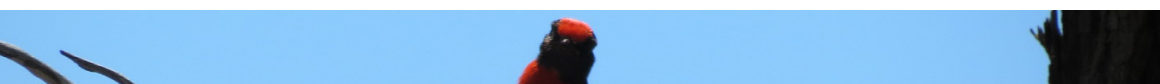
See under this heading under **Criminal law matters** on page 67.

13. Guardians and administrators

The *Guardianship and Administration Act 1990 (WA)* allows a substitute decision maker to be appointed for adults over the age of 18 years. A substitute decision maker can be appointed for you by the State Administrative Tribunal if you are found to be not capable of making reasoned decisions for yourself. The appointment of a guardian or administrator takes away your right to make your own decisions and this right is given to another person for you. The appointment of a guardian or administrator is an option of last resort and should be taken only when it is needed.

A guardian is a person over the age of 18 years who is appointed to make decisions about a person's lifestyle, including matters such as work, living arrangements and medical treatment. A guardian is a decision-maker, not a carer (although they may be both).

An administrator is a person over the age of 18 years or a trustee company that is appointed to make financial and legal decisions in the best interests of the represented person, such as purchase or sale of assets (eg, a house), payment of debts, or investment of moneys.



14. Immigration issues – visa cancellation

The Department of Home Affairs (“the Department”, previously the Department of Immigration and Border Protection) may cancel your visa if you do not pass the “character test”. Your visa will not be automatically cancelled if you do not pass the character test, the Department must consider other reasons why your visa should not be cancelled before making a decision. For more information contact the **Department** on **131 861**.

The **Legal Aid WA** information sheet **Visa cancellation on character grounds** explains what this means and what you can do. You can call the **Legal Aid WA Infoline** to get a copy.

15. Negligence

What is negligence?

Negligence involves doing or failing to do something that a reasonable person would or would not do in a certain situation, and damage, injury or loss occurs to someone as a result.

The *Civil Liability Act 2002* (WA) (the Act) applies to personal injuries claims where the injury occurred after **1 January 2003**. If the injury occurred **after 1 December 2003**, the new provisions of the Act will apply.

How is negligence determined?

There are four criteria that must be satisfied to prove negligence:

- » that the respondent had a duty of care
- » that the respondent breached their duty of care
- » that the plaintiff suffered an injury or other damage, and
- » that the injury or the damage occurred as a result of the breach of duty of care.

When does a duty of care exist?

Sometimes it can be complicated to work out if a duty of care is owed, and legal advice is required.

When is a duty of care breached?

The court will look at what **standard of care** could be expected in the circumstances.

If the person you are taking action against acted in an unreasonable way or their actions fell below the standard expected they might have breached their duty of care.

The Act applies the reasonable person test. The test is would a reasonable person, in the person’s position have taken precautions against the risk of harm?

When does a breach of a duty of care cause a personal injury?

In some cases it will be obvious what has caused the injury eg, if a woman slips on a wet floor and then discovers she has a broken arm.

Sometimes showing the cause of an injury can be more complex eg, the woman slips on a wet floor but earlier that morning she hurt her arm in a fall on the stairs of another building. There may be a question about which fall caused the injury.

Is a claim worthwhile?

This depends on how badly you were injured and the costs of making the claim.

You need legal advice to work out:

- » whether there is any legal basis to a claim
- » who the client should make a claim against



- » the chances of success
- » the costs involved in going to court eg, legal cost, court fees and witness fees, and
- » the appropriate court.

In many cases, parties negotiate a settlement as any legal action can be costly, time consuming and stressful. You should get legal advice before negotiations start.

Do time limits apply?

There are time limits to start legal proceedings. Get legal advice about the time limits that apply in your case.

Things to take to a legal appointment

You should take the following to a legal appointment:

- » personal details of any other parties involved
- » names and addresses of any witnesses
- » copies of any letters written
- » the date, time and place of the incident
- » full details of how the incident occurred (notes may be helpful)
- » full description of injuries or loss (if property damage, eg, quotes)
- » details of any hospitalisation or treatment
- » full names and addresses of any treating doctors or other therapists
- » any medical accounts or other accounts related to this injury that they have received
- » details of work history and current employment details
- » their thoughts on how the injury is currently affecting them
- » any valuations or quotes for repairs etc (if property damage), and
- » any photos taken – photos should be dated and signed by the person who took them.

What should I ask the lawyer?

Before deciding to hire a lawyer for a personal injury claim, you should ask them:

- » if you have a strong case and if it is likely to succeed
- » how much you are likely to get if you win
- » how much it is likely to cost you, and
- » how long it is likely to take.

The lawyer may not be able to give you definite answers, but they should be able to give you an idea about the likely outcome. You can then weigh up the information and decide if it is worth going ahead.

I want to go ahead with my claim. What should I do?

The first step is to sign a costs agreement with the lawyer who has agreed to take on your case. This is a contract setting out how and when you will pay the lawyer.

Do not sign this agreement unless you understand what it means.

Before signing the agreement, talk to your lawyer and make sure you understand:

- » how their fees will be calculated
- » the expected extra costs for your case, eg, filing fees, medical reports
- » if you are expected to pay for anything during your case or only at the end
- » what costs you will have to pay if your case is not successful, and
- » the maximum amount the other person will have to pay, even if you win.

16. Personal injury – if you have been injured in prison or before you went to prison

You should get legal advice before you make a personal injury claim.

Personal injury is a term used to refer to physical or psychological harm or injury.

Psychological harm is often referred to as “nervous shock”. There are specific legal rules about what kind of psychological injury a person can recover damages for.

The *Civil Liability Act 2002 (WA)* sets out rules that apply to personal injuries claims that occurred after 1 January 2003.

Damages

Damages is the term used for monetary compensation awarded to the injured person.

The aim of compensation is that the person be restored, as far as possible, to the position they would have been in, had they not suffered the injury.

For some injuries there is specific legislation that awards compensation (eg, the *Workers Compensation and Injury Management Act 1981 (WA)*, the *Criminal Injuries Compensation Act 2003 (WA)*).

Sometimes the person injured has to seek compensation directly from the person who caused the injury. This may involve negotiation and settlement or commencing a court action.

Limits on the amount of damages

If the injury occurred after 1 January 2003, the provisions of the *Civil Liability Act 2002 (WA)* will apply. The Act places limits on the amount of damages that can be awarded. For example, there is a restriction where your claim is for non-pecuniary damages. Non-pecuniary damages are for:

- » pain and suffering
- » loss of amenities of life
- » loss of enjoyment of life
- » shortening of life expectancy, and
- » bodily or mental harm.

Where your claim for non-pecuniary damages is equal to or less than an amount that is set each year (\$21,500, current as at 1 July 2018) you will not be paid any money for those damages. You may still be able to claim for other types of damages such as loss of income or costs of medical treatment.

17. Power of attorney

What is a power of attorney?

A power of attorney is a legal document which gives, one person (the donee or attorney) the power to act for another (the donor) in some circumstances.

For example, you may wish to sell a property while you are in prison. The donee would be able to act for you as a result of the power of attorney.

It is often used for a specific purpose and for a fixed period of time.

When can a power of attorney be used?

A power of attorney may be used for any purpose that can legally be given to someone else. Some situations where a power of attorney can be used are:

- » buying and selling property (if the property is not held on trust for someone else), eg, while you are on holidays



- » operating a bank account, eg, if you are in prison.

Some things can not be done for you by someone else through a power of attorney, these include:

- » making a will
- » swearing or affirming your affidavit, and
- » anything prohibited from being delegated by law.

If you are not sure if you can or should have a power of attorney in your situation get legal advice.

Are there special requirements for dealing with land?

Yes. Where a donee intends to be involved in a transaction about land and it will be recorded at Landgate the power of attorney must be lodged at Landgate.

Landgate requires an original copy so two originals should be signed.

Can a power of attorney be limited?

Yes. A power of attorney can be worded to cover a particular purpose, eg, sale of a particular piece of land, for a limited time, or to apply only in a particular state or territory.

When you make a power of attorney you need to be clear what, where and when you want it for. You should make sure the wording does not give the donee more power than you intended. Get legal advice if you are not sure what your power of attorney should cover.

What are some of the things I should consider in deciding who I should give my power of attorney to?

Some of the things you should consider are:

- » Do you trust the person?
- » Are they reliable?
- » Do they have the time to do what you may need done?
- » Does the person have the skills and knowledge to do what you want done?
- » Is there any conflict between your interests and theirs?

Be careful who you appoint as there is the potential for the power to be abused. You may want to get legal advice so that you understand the risks you are taking in giving a power of attorney.

What is the main danger in having a power of attorney?

The main potential danger is that while the donee has your power of attorney, another party dealing with the donee may be able to enforce an arrangement against you which is not in your interests depending on the facts.

Does a power of attorney have to be witnessed?

Yes. A power of attorney must be signed before an independent adult witness. The witness verifies that the donor signed the document on the date specified.

If there is a dispute about the legal capacity of the donor or whether they signed it freely, the witness may be called to give evidence.

Are there special requirements for a power of attorney dealing with land?

Yes. A power of attorney must be signed before an independent adult witness. The witness verifies that the donor signed the document on the date specified.



If three months have passed without lodgement of the power of attorney the registrar will need proof that the power of attorney has not been revoked.

There is a fee for registration of the power of attorney and a fee for removing the registration.

Where can I get the form to make a power of attorney?

Most lawyers have a standard form which can be changed to fit a particular situation.

Do I need a lawyer to prepare a power of attorney?

Lawyers usually prepare powers of attorney but this is not a legal requirement. It is important the document is correctly worded and complies with the requirements in the state or country it is needed in.

Some of the situations where you should get legal advice include if:

- » you want a better understanding of the risks for you
- » a company is involved
- » the property involved is overseas or interstate
- » the document is to be used overseas or interstate
- » the power of attorney is given as security, for example, for a debt, or
- » a trustee is involved.

Can more than one person be given a power of attorney?

Yes. You can give more than one person your power of attorney. You would need to indicate in the power of attorney whether they were to:

- » use the power together, or
- » exercise the power together and independently.

When does a power of attorney stop operating?

When a power of attorney stops operating can vary.

Some of the situations where a power of attorney may end or lapse are:

- » if it contains a time limit it ends at the end of that time limit
- » if it is for a specific purpose it ends when the purpose is achieved
- » the donee or donor dies
- » the donor or donee loses legal capacity it lapses (eg, through mental illness, medical problems)
- » the donor revokes it (see the heading below **How do I revoke a power of attorney?**)
- » when the donor is a trustee, when the trustee returns to the state or when they regain the capacity to perform the duties
- » if the donor does something that is inconsistent with having given the donee authority, eg, if the donor authorises the donee to do something and then does it themselves, or
- » in most cases if the donor becomes bankrupt.

Get legal advice if you are not sure if your power of attorney has ended.

If the power of attorney has been given as security as part of a wider arrangement get legal advice as the donor may not be able to revoke it.

How do I revoke or cancel a power of attorney?

The requirements for this can vary depending on the situation. Get legal advice if:

- » you are not sure what applies in your situation, or



- » you have entered into a contact with someone for them to be your attorney for a given time or purpose.

In some cases you can say to the donee that the power is at an end. As the donee may deny being told, the presence of a witness may help.

You should give written notice to the donee stating that the power of attorney is revoked or cancelled as soon as possible.

You should keep a copy of this notice. If you send it by registered post you will have proof of postage or you could get a receipt if you hand deliver it. It is a good idea for you to have the power of attorney and any copies returned to you.

You should tell all relevant parties that you have revoked or cancelled the power of attorney (eg, Landgate, banks) as soon as possible.

Are there special requirements for revocation of a power of attorney for land transfer?

Yes. Landgate requires written notice if the power of attorney is terminated.

You could tell the Registrar of Titles by phone and confirm in writing as soon as possible, eg by fax.

Where can I get more information?

Contact the **Citizens Advice Bureau** on (08) 9221 5711 for help with drafting powers of attorney (a fee applies).

Contact **Landgate** on (08) 9273 7373 for information on fees and procedures to lodge a power of attorney for a land transaction.

For information on **enduring power of attorney** see under this heading on page 108.

18. Registration and enforcement of fines from another state

A fine from another State can be registered in WA where this is requested by the other State. The request from the other State will be accompanied by the order of the court imposing the fine or fines. The effect of registration in WA is that the fine can then be enforced in WA to the extent that the fine could have been enforced in the other State. When the fine is paid in WA then this money is sent back to the other State.

19. Return of seized goods from the police

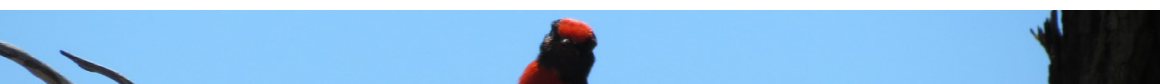
You should contact the police officer who charged you about the return of any seized goods where the court has not made an order for forfeiture or destruction or for which you did not end up being charged.

20. Tenancy issues

If you are in prison as a sentenced prisoner or on remand it is important to think about how your situation affects your rental. Depending on your circumstances you could need to keep paying rent or your tenancy agreement may be ended.

Do you have a tenancy agreement?

A tenancy agreement is also known as a lease. It is a contract and can be either in writing or oral. It is where an owner allows you the right to live in a residential premise in exchange for rent.



How does going to prison affect my tenancy agreement?

How your imprisonment affects your tenancy agreement will depend on your particular circumstances. For example, the length of time that you are away from the premises, if you are a private or public tenant or if you have a fixed or periodic tenancy.

What if I have a private lease?

You are a private tenant if you rent the premises from a private owner or through an agent (“the owner”).

If you are a private tenant both the owner’s and your rights and obligations are set out in the *Residential Tenancy Act 1987 (WA)* [RTA], the *Residential Tenancy Regulations 1989 (WA)* and the tenancy agreement.

The tenancy agreement will set out what you have to do including such things as how much rent you need to pay and whether the term is either fixed term or periodic. With a private tenancy you may be able to assign or sublet your tenancy agreement to another person.

If others are living at the property and are not named in the tenancy agreement they can apply to a court to be recognised as a tenant under the agreement.

What is a periodic tenancy?

A periodic tenancy is ongoing and does not have an expiry date. If you have a periodic tenancy you have to keep paying the rent until you give 21 days notice that you intend to terminate the tenancy. The termination notice must be in writing, signed by you, identify the property and specify the date you will deliver up the property.

If you fall into rent arrears or otherwise breach the tenancy agreement the owner may issue you with a breach notice. If you fail to rectify the breach in the given time the owner can start eviction proceedings at court against you. If successful you may be liable for any rent arrears and to pay damages to the owner. Damages can include lost rent and the costs of finding a new tenant. In any eviction proceedings the owner must take reasonable steps to keep their costs down.

The owner can also terminate your periodic tenancy without specifying a ground if they give you 60 days notice or if they have entered into a contract to sell the property with 30 days notice.

What is a fixed term tenancy?

A fixed term tenancy has a specific end date for the tenancy agreement. You have to pay the rent for the term of the tenancy.

Can my fixed term tenancy be terminated?

You can terminate your tenancy by agreement with the owner. Be aware that the owner may charge you fees and costs to cover expenses incurred in releasing you from the agreement. There may be other fees that apply too, for example, if the owner uses a real estate agent there may be a final inspection fee payable.

The owner can terminate your fixed term tenancy at the end of the tenancy period. The tenancy will expire at the end date of the tenancy agreement if either you or the owner writes to the other party 30 days before the expiry is due and you set a possession date.

If you breach the terms of the tenancy agreement the owner may issue you with a breach notice. If you fail to fix the breach in the given time the owner can start eviction proceedings at court against you. If successful you may be liable for any rent arrears and to pay damages to the owner.



Abandoned premises

Regardless of if you have a fixed term or periodical tenancy if the owner suspects that you are no longer living at the premises they may apply to the Magistrates Court for a declaration that you have abandoned the premises. If the court declares the premises are abandoned your tenancy agreement may be terminated and you will be liable to pay the owner's costs and damages.

What if I am a public tenant?

If you are a tenant with the Housing Authority the RTA still applies and you will have a tenancy agreement. As such, much of the above information is relevant to public tenants too.

However, Housing Authority policies such as the Disruptive Behaviour Management Policy ("DBMP") and the Rental Policy Manual ("rental policy") also apply. The DBMP sets out how the Housing Authority is to respond to disruptive tenants while the rental policy sets out various obligations on a tenant.

Going to prison and public housing

As part of your tenancy agreement with the Housing Authority you need to continuously occupy the premises or you need their written permission if you are going to be away for more than four weeks. As such, if you are imprisoned for more than four weeks and you do not have the Housing Authority's approval for such an absence you may be in breach of your continuous occupation obligation.

The Housing Authority has the discretion to permit you to be absent from the premises for up to six months. If your tenancy agreement is not terminated you still need to pay the rent. Under certain conditions you may be able to sublet your property while you are in prison.

If you are in prison and your partner is also a tenant your partner can apply to the Housing Authority asking for the rent payable to the premises be lowered to match their income. Alternatively, in certain circumstances the tenancy agreement may be transferred solely into your partner's name.

Others residing in the premises, but not on the tenancy agreement, can apply to the court to be recognised as a tenant under the agreement. The Housing Authority also has the discretion to transfer the property to others in the premises if there is a "sensitive situation".

If you are imprisoned for more than six months and you are the sole tenant it is likely that you will need to vacate the premises.

Can my details be entered onto a tenant's database?

If you breach your tenancy agreement an owner may, in certain circumstances register the breach and your details with a tenancy database. A tenancy database may be used by an owner to assess your suitability for future tenancies.

The owner is required to provide you with details of the listing they are putting onto the tenancy database. You can dispute a listing with a court to partially or fully remove the listing if the information is inaccurate, incomplete, out of date, ambiguous or unjust in the circumstances.

What happens to my bond?

If your tenancy agreement is terminated you should have all bond money returned to you unless you owe money for outstanding rent, or you owe money for water consumption (if liable) or to repair damage to the place that goes beyond fair wear and tear. You should not stop paying rent on the assumption that the arrears will be covered by the bond.



The bond cannot be disbursed unless both you and the owner sign a bond disposal form or if there is a court order.

What if I have left my things at the rental premises?

If you are imprisoned you should arrange for friends or relatives to contact the owner to collect your things.

If you have abandoned the premises the RTA says that after two days the owner is able to dispose of goods left behind if they are perishable food stuffs or the costs of removing, storing and selling the goods is more than their value.

If the goods can not be disposed of as described above the owner must store your property in a safe place for 60 days. If your property is stored the owner must notify you of this within seven days by writing to your forwarding address or putting a notice in a newspaper with state-wide publication.

You have the right to reclaim your property within the 60 day holding period, but you must pay the removal and storage costs incurred by the owner. You do not need to pay any rent arrears. If the owner refuses to release the property contact a tenant advocate for assistance.

After 60 days the owner can sell your property and recover money owed by you including arrears, damage and the removal, storage and selling costs relating to the abandoned property. Excess money from the sale is to be repaid to you or placed in the Rental Accommodation Fund with the Magistrates Court.

The RTA says that the owner must follow a similar process before destroying a tenant's abandoned documents. Tenant documents include photographs, correspondence, official documents or any document which it would be reasonable to want to keep.

Summary

Tenancy agreements are legally binding contracts and they continue even if you are in prison. If you are in public housing it is important to notify the Housing Authority and arrange permission to be away from the premises for more than four weeks.

If you are a private tenant you can either continue with the agreement or you will need to contact the owner and negotiate an end to your agreement.

If you are unsure you should contact a tenant advocate for assistance.

Where can I get more information?

You can contact a tenant advocate from the **WA Tenancy Network** or the **Tenancy WA Advice Line** on (08) 9221 0088 or 1800 621 888 for country callers.

Contact **Legal Aid WA's Infoline** for information or referral.

21. Uncollected goods

This information covers the steps a person must take where goods are left with them or on their property and they want the owner to collect them. For example:

- » If you were living in a house and you moved out and left several items of furniture or boxes in that house.
- » You temporarily left your car in a friend's garage for a week and failed to collect it because you have since been imprisoned.
- » You left your car on the verge in front of a house and the owner of the house wants it removed.



The legal term for this situation is "abandoned goods".

There are steps the person needs to take before they can sell or dispose of goods that have been left with them. They cannot throw away or dispose of the goods unless ordered to do so by the court.

The *Disposal of Uncollected Goods Act 1970* (WA) (DUGA) sets out the steps that must be taken before a person can do anything with the goods they have in their possession.

What is not covered by this information

The information here does not cover situations where:

- » goods are left with someone in the course of a business
- » goods have been left for someone to repair, inspect or store
- » goods have been received by someone by committing a criminal offence
- » goods are abandoned in residential tenancy situations (see under the heading **What if I have left my things at the rental premises** on page 119).
- » goods are subject to bailment.

If any of these situations applies to you, get legal advice.

What is bailment?

This is the situation where the owner of goods leaves those goods with another person (the holder of the goods) with the agreement that the holder of the goods will:

- » be responsible for the safekeeping of the goods, and
- » return the goods after a certain time.

For example, a car parked in a garage or an animal looked after in a boarding kennel.

What if I have separated and I have left things at my former home – can they throw them out?

They shouldn't as the goods may form part of your property settlement. If this applies to you get legal advice.

What if I left my goods in my rental property can my landlord throw them out?

Generally no. However this will depend on the type and value of the goods left at the property. Get legal advice.

For information about abandoned goods in residential tenancy situations see below under the heading **Where can I get more information?** and above under the heading **What if I have left my things at the rental premises?** on page 119.

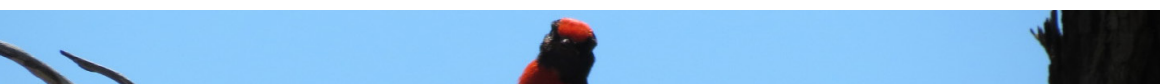
What if I left goods at a friend's home after I moved out. Can they throw them out?

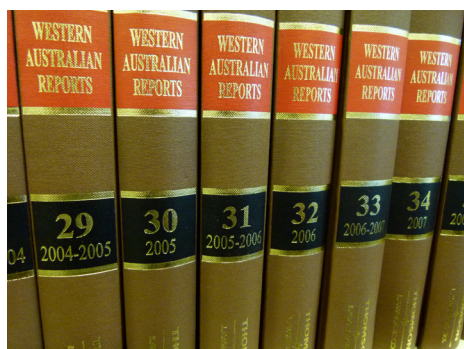
No, they must follow the steps outlined below before they can sell or dispose of your goods.

What are the steps a person needs to take to sell or dispose of the goods/property?

They can negotiate with you.

They may contact you and ask that you collect them. Make sure that they say the date that they would like the goods/property collected by. You may have to get a friend on the outside that you trust to pick up the things for you. If possible, get the request for the collection of goods in writing. It may be possible to negotiate an agreement for collection of the goods that is suitable to you both. If the goods remain uncollected they may begin legal proceedings to sell or dispose of the property.





They must give formal notice.

If you cannot reach an agreement with the other party before they dispose of any goods or property they are required by the DUGA to give you formal notice that they intend to sell or dispose of the property. This can be completed by filling in a form and serving it on you.

What if I have been given notice and do nothing?

If the notice has been served on you ("given to you") and one month has passed and you do not reply the other party you can make an application to the Magistrates Court of WA for an order to sell or dispose of the goods. Get legal advice.

What orders can the court make?

The court can order:

- » the goods be sold or disposed of
- » the way in which the goods are to be sold or disposed of
- » prohibit the sale or disposal of the goods
- » reasonable storage fees be awarded to the person making the application
- » an advertisement be placed in the newspaper for the owner to be notified.

Do I need legal advice if I receive a notice?

Yes. Legal proceedings are costly and the unsuccessful party is usually ordered to pay the successful party's legal costs.



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PART 12

Aboriginal prisoners

This part covers:

1. Royal Commission into Aboriginal Deaths in Custody
2. Aboriginal Legal Service
3. Family Violence Prevention Legal Service
4. Women's Law Centre
5. Aboriginal Visitor Scheme
6. Artists in the Black
7. Wungening Aboriginal Corporation
8. Building on Aboriginal Skills (BOAS)



PART 12 **Aboriginal prisoners**

1. Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal deaths while held in State and Territory prisons was established in 1987 in response to a growing public concern that deaths in custody of Aboriginal people were too common and poorly explained.

The Commission examined all deaths of Aboriginal people in custody in each State and Territory gaol which occurred between 1 January 1980 and 31 May 1989, and the actions taken in respect of each death. The Commission's terms of reference enabled it to take account of social, cultural and legal factors which may have had a bearing on the deaths under investigation.

The Royal Commission produced a number of reports, including individual reports for each death investigated. The final report in 1991, made 339 recommendations, mainly concerned with procedures for persons in custody, liaison with Aboriginal groups, police education and improved accessibility to information. Not all recommendations have been implemented.

2. Aboriginal Legal Service

Aboriginal Legal Service of Western Australia Inc (ALSWA) provides legal advice and assistance to Aboriginal and Torres Strait Islander peoples throughout Western Australia. ALSWA has offices at Albany, Broome, Bunbury, Carnarvon, Derby, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra, Laverton, Meekatharra, Newman, Northam, Roebourne and South Hedland. For more information, contact the Perth office of **Aboriginal Legal Services** on **(08) 9265 6666** or **1800 019 900**.

3. Family Violence Prevention Legal Service

The Family Violence Prevention Legal Service (FVPLS) is a legal and counselling service for victims of family violence and/or sexual assault who are Aboriginal or Torres Strait Islander peoples, or whose partner or children are Aboriginal or Torres Strait Island peoples. Each FVPLS provides a range of services that may include:

- » legal advice and information
- » community legal education
- » court representation on family violence and sexual assault matters
- » advocacy and assistance with completion and lodgement of legal documents
- » information on some general law matters
- » sexual abuse counselling
- » community awareness groups/development, and
- » outreach to towns in their area.

There are eight FVPLS located in regional Western Australia and one in Perth. Here is a list of the locations:



Albany

Family Violence Prevention Legal Service
Boyd House, 45-47 Aberdeen Street
PO Box 5277
ALBANY WA 6332
Phone: (08) 9842 7777
Fax: (08) 9842 6851

Carnarvon

Aboriginal Family Law Service
13 Skipworth Street
PO Box 729
CARNARVON WA 6701
Phone: (08) 9941 3633
Fax: (08) 9941 3801

Geraldton

Aboriginal Family Law Service
66 Fitzgerald Street
PO Box 2731
GERALDTON WA 6530
Phone: (08) 9965 4654
Fax: (08) 9921 6377

Kununurra

Aboriginal Family Law Service
Suite 1/10 Banksia Street
PO Box 1749
KUNUNURRA WA 6743
Phone: (08) 9168 2001
Fax: (08) 9169 3321

South Hedland

Aboriginal Family Law Service
Unit 5/31 Throssell Road
PO Box 2807
SOUTH HEDLAND WA 6722
Phone: (08) 9172 5024
Fax: (08) 9172 5035

Broome

Aboriginal Family Law Service
Unit 1/46 Dampier Terrace
PO Box 2037
BROOME WA 6725
Phone: (08) 9193 5455
Fax: (08) 9193 7913

Fitzroy Crossing

Marninwarntikura Family Violence Prevention Unit
Balinjangarri Road
PO Box 43
FITZROY CROSSING WA 6765
Phone: (08) 9191 5284
Fax: (08) 9191 5611

Kalgoorlie

Aboriginal Family Law Service
2/45 Brookman Street
PO Box 10411
KALGOORLIE WA 6430
Phone: (08) 9021 0244
Fax: (08) 9021 2765

Perth

Djinda Services – Perth Aboriginal Family
Violence Prevention Legal Service (for the Perth
metropolitan area only)

Legal assistance - Women's Law Centre of WA
(08) 9200 2202
445 Hay Street, PERTH WA 6000

Support services - Relationships Australia WA
(08) 6164 0650
Level 1, 156 Railway Parade
WEST LEEDERVILLE WA 6007

4. Women's Law Centre

The Women's Law Centre (WLC) is a state wide service which provides women experiencing disadvantage in WA with advice and assistance in family law (mainly divorce and children), family violence, protection and care (child protection) and criminal injuries compensation. As of September 2018 there are a limited number of outreach appointments at Melaleuca. This may be expanded into Boronia and Bandyup. WLC assists women from these centres through phone appointments and through free community legal education sessions which are run a few times a year. The **Centre** can be contacted on **(08) 9272 8800** or **1800 625 122** (country callers).



5. Aboriginal Visitor Scheme

The Aboriginal Visitors Scheme (AVS) is a group of Aboriginal staff who visit prisons and detention centres around the state, providing support and counselling to Aboriginal people in custody.

All visitors are employed on a casual, rostered basis.

Visitors cannot help with money, legal or medical matters but can make referrals to appropriate agencies.

Other visitors

Access to recognised spiritual or tribal elders is provided to Aboriginal and Torres Strait Islander prisoners.

6. Artists in the Black

Artists in the Black provides free legal help for Aboriginal and Torres Strait Islander artists. The service can help with a range of issues including wills so the property of Indigenous artists is distributed in the way they want after passing away.

You may be able to get help from the Arts Law Centre of Australia in relation to legal issues that may arise for you as an artist eg, recovering money owed, agreements to sell. **Artists in the Black** and the **Arts Law Centre of Australia** can be contacted on **1800 221 457** (toll free) or **(02) 9356 2566**.

For more information on your rights to art produced in prison see also under the heading **Artwork produced in prison** on page 20.

7. Wungening Aboriginal Corporation

Wungening Aboriginal Corporation is an Aboriginal community controlled organisation which provides culturally secure, confidential and free of charge alcohol and drug services to Aboriginal people in the Perth metropolitan area. They also offer training and support to families and people working with Aboriginal and Torres Strait Islander peoples who are having difficulties with drugs. For more information, contact **Wungening Aboriginal Corporation** on **(08) 9221 1411**.

8. Building on Aboriginal Skills (BOAS)

The Building on Aboriginal skills (BOAS) program is an Aboriginal specific program that was designed for Aboriginal prisoners who want to reconnect with their land and culture while learning cognitive skills and positive behaviour.

This program is available in many regional prisons in Western Australia (including Broome, Eastern Goldfields, Greenough, Roebourne and Casuarina prisons) and is appropriate for men and women.



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PART 13 **Young prisoners**

This part covers:

1. Your rights in custody
2. Complaints
3. Fines



PART 13 Young prisoners

1. Your rights in custody

If you are in police custody, and for some reason have not been granted bail, you have the right to be placed in a detention centre as soon as practicable.

Before you are questioned by police while in their custody, the police have to let a responsible adult know, for example, a parent.

Once you are in a detention centre your rights are published and set out by the Department of Justice, Corrective Services. You are entitled to know about these rules and rights, even if you cannot understand or read and write English.

2. Complaints

You may make a request, complaint or allegation about anything that affects you while you are in custody. Your parent, a care giver or a significant other as the adult responsible for you may also make requests or complaints. You can make a complaint in writing or orally to the Superintendent or their representative. If it is not resolved, you have the right to ask for the next higher authority to consider the matter.

If the Superintendent or their delegate can't resolve your complaint in a way you agree with, or doesn't agree to your request, they are meant to let you know what you have to do to have the matter reviewed.

You might be interviewed by a Department of Justice, Corrective Services investigator or an external agency about your complaint.

If the complaint is about a custodial staff member and an investigation finds that your complaint is false or had no real basis, the Superintendent or their representative might talk to you about it, or have you charged for it as a detention offence under the *Young Offenders Act 1994* (WA).

If you make an allegation of misconduct (sexual, physical or emotional) or suspected inappropriate sexual conduct by another young person in custody towards you, or there is an allegation by another young person in detention about you:

- » The safety and well being of the alleged victim will be the most important concern;
- » The rights and protection of the detainee against who the allegation is made will be considered, and
- » The detainee who made the allegation won't be left on their own or put under any form of pressure to change their allegation or complaint.

Staff are meant to provide you with support.

As sexual abuse is a criminal offence it will be reported to the police.

3. Fines

For more information see **Part 12 – Other legal problems** under the heading **I was under 18 when I was fined. What happens if I don't pay my fine?** on page 110.



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PART 14 **Release**

This part covers:

1. External activities
2. Parole
3. Reintegration and support programs
4. Re-integration leave
5. Re-socialisation programs



PART 14 Release

1. External activities

To give you more chances for rehabilitation and re-connecting with the community before your release, if you are a minimum-security prisoner you are able to take part in a range of activities outside prison that:

- » promote health and wellbeing
- » give you knowledge and skills that will help you live a crime free lifestyle
- » provide opportunities for you to improve yourself, for example, through education and training, and
- » help you pay back your debt to the community for the crimes you committed.

Your involvement in these outside activities is always based on a security assessment.

2. Parole

For information on applying for parole see the [Legal Aid WA Parole Information Kit](#).

3. Re-integration and support programs

The Department of Justice, Corrective Services (DJCS) has a number of services to help you re-enter the community. These are:

- » Re-entry Link Program
- » Transport Options Programs
- » Supported Accommodation Services
- » Parenting and Support Services
- » Family Support Service Centres
- » Chaplains, and
- » Specialist Re-entry and Support Services

A user guide from the DJCS provides an overview of these programs.

Supported Accommodation Services

DJCS has a number of supported accommodation services to support those who have just got out of prison and others at risk of re-offending if they don't have somewhere stable to live.

This includes:

- » short-term and emergency accommodation - for newly released offenders for up to 3 months;
- » transitional accommodation and support services - accessible via the relevant prison's transitional manager to prisoners for up to 9 months post-release, including mothers and babies; and
- » long-term accommodation for single people for up to 18 months.

For information on what you can access speak to your Transition Manager.



4. Re-Integration leave

The Re-Integration Leave (RIL) program (formerly Home Leave) enables you if you are a long-term, minimum-security prisoner to leave the prison under the supervision of an approved sponsor for set periods of time. This leave means that if you have spent a long time in prison you can re-establish family and community relationships which help you adjust when you are released. As an incentive for work camp participation, a greater rate of leave is provided for prisoners located in a work camp than for those placed at a prison.

How do I know if I am eligible?

You have to meet several eligibility criteria before you can apply to be included in the RIL program. Some of these include:

- » You must have served not less than 12 months continuous imprisonment in custody under sentence
- » You must have achieved a minimum-security rating
- » If you are a life/indefinite sentenced prisoner, your participation in RIL must be a component of an approved re-socialisation programme
- » If you may be liable for or have a confirmed order of deportation or removal from Australia you are not eligible for RIL
- » Where written advice has been received from police of the intention to seek extradition or when a warrant relating to extradition has been issued by the court, you are not eligible for RIL, and
- » You must be able to identify a proposed RIL sponsor to be eligible to apply for RIL.

5. Re-socialisation programs

Re-socialisation programs may apply to you if are a long-term prisoner, including if you have a life or indefinite sentence. The aim is to gradually reintegrate you into the community before you are released.

DJCS, the Prisoners Review Board and the Attorney General all have to give approval for life and indefinite sentenced prisoners to take part in a re-socialisation program. Final approval is then required from the Governor.

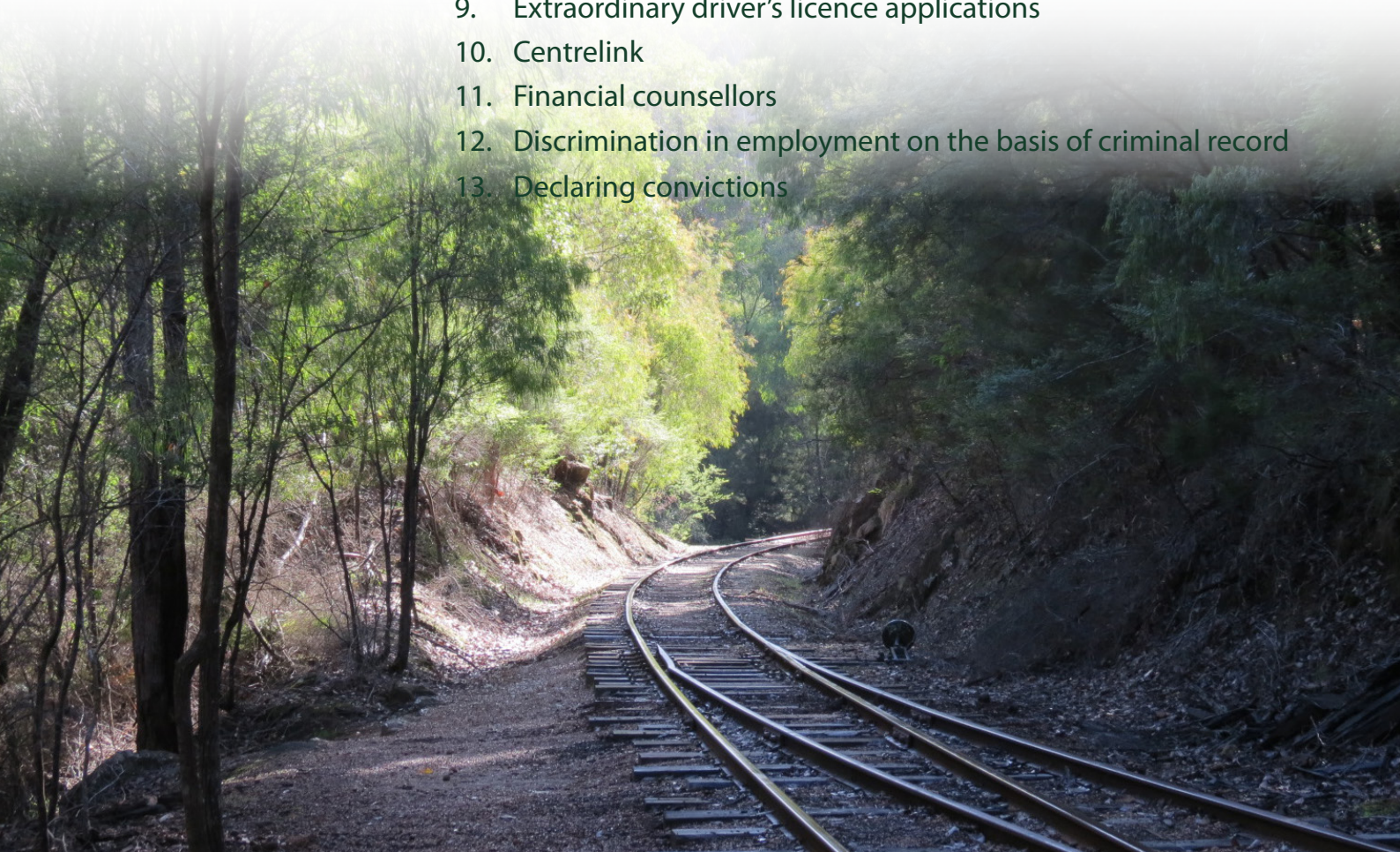
Re-socialisation programs vary in length depending on the individual prisoner's risks and needs, although they generally run between 6 and 24 months. Typically, if you are on a re-socialisation program you will be placed at a minimum-security facility and will take part in supervised and unsupervised external activities, develop your community supports through the RIL program and also take part in aspects of the Prisoner Employment Program.



PART 15 **After release**

This part covers:

1. Seeing my children when I get out of prison
2. Prohibited Behaviour Orders
3. Dangerous Sexual Offender applications
4. Community Protection WA website
5. Family violence restraining orders and violence restraining orders
6. Getting your property from the prison
7. Breach of parole
8. Removal of licence disqualification
9. Extraordinary driver's licence applications
10. Centrelink
11. Financial counsellors
12. Discrimination in employment on the basis of criminal record
13. Declaring convictions



PART 15 **After release**

1. Seeing my children when I get out of prison

Sometimes things will just go “back to normal” when you get out of prison, and previous care arrangements for your children resume. If this is the case and you are happy with those arrangements, you don’t have to do anything formal about this, even if you are separated from the children’s other parent.

In some circumstances you and the other person may not agree about what arrangements are in the best interests of your children. If this is the case, first you will need to try negotiating directly with that person about arrangements for the children (unless there is a family violence restraining order or family related violence restraining order. In this case you should get legal advice).

Family dispute resolution is available to assist you in your negotiations with the other person or people involved.

If you still cannot come to an agreement with the other person, you may need to go to the Family Court to seek parenting orders. In most cases you will need to have tried family dispute resolution before going to court.

It is usually best to come to an agreement with the other person if possible, as going to court can be a lengthy, expensive and stressful process and the outcome is never guaranteed.

Contact **Legal Aid WA’s Infoline** for information and referral.

2. Prohibited Behaviour Orders

If you have had a Prohibited Behaviour Order (PBO) made against you make sure you don’t breach it when you are released.

What is a Prohibited Behaviour Order?

A PBO will prohibit you from doing certain things which would otherwise be legal. This may include:

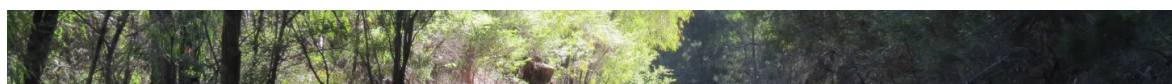
- » being in or near certain places
- » going within a certain distance of a specific person, or
- » being in possession of a certain thing.

Who may a Prohibited Behaviour Order be imposed on?

A PBO may be imposed on you if you are convicted of an offence involving anti-social behaviour twice or more in three years. Anti-social behaviour means behaviour that may cause harassment, fear, intimidation or damage to property.

Can Prohibited Behaviour Orders apply to young people?

A PBO may be made against a person who is 16 and above.



Details of person with PBO may be made public

Unless the courts says otherwise, if a PBO is made against you, the following details may be put on a website:

- » your name
- » a photo of you
- » the town or suburb you live in, and
- » the things you are prohibited from doing.

When does the Prohibited Behaviour Order begin?

The PBO usually begins when you are released from prison.

What are the consequences of breaching a PBO?

It is an offence to breach a PBO. This offence is punishable by imprisonment and/or a fine.

Defence to the breach of a Prohibited Behaviour Order

One defence to the breach of a PBO may be that you were in an emergency situation. Get legal advice about whether you have a defence.

3. Dangerous Sexual Offender applications

Dangerous Sexual Offender (DSO) applications are applications to have an offender either indefinitely imprisoned or released but subject to supervision.

Who can be the subject of this application?

A DSO application will be made in relation to a person who is imprisoned at least partly due to a serious sexual offence. The great majority of sexual offences are serious sexual offences. Sexual offences don't need to be aggravated to be considered serious. You won't be the subject of a DSO application unless there is a chance that you will be released in the next six months.

Under what circumstances will this order be made?

If the DSO application is successful an indefinite imprisonment order or supervision order will be made. This will happen if the court thinks that there is an unacceptable risk that if you are not detained or supervised, you would commit another serious sexual offence. To decide this, the court may consider, for example:

- » psychiatric reports
- » your criminal record (including offences committed when you were 17 or younger), and
- » rehabilitation programs you have undertaken.

What is the effect of the order?

You may:

- » have to remain in custody for an indefinite period of time, or
- » be released from custody but will be supervised and have conditions imposed on you. These conditions may include for example:
 - » reporting to and receiving visits from a corrections officer
 - » not leaving WA without permission
 - » not consuming alcohol.

If you are imprisoned indefinitely will this be reviewed?

There will be a yearly review of your indefinite imprisonment order.

What happens if you breach a supervision order?

If you breach the supervision order or the court believes you are likely to breach it, a warrant may be issued for your arrest. Breaching the order is an offence which is punishable by imprisonment.

Can your photo and suburb be published on a website?

The Commissioner of Police may publish your photo and town/suburb on a website if:

- » you are not a child and you are the subject of a supervision order (the order described above), or
- » you are a reportable offender and are after that found guilty of a serious sexual offence, or
- » you are found guilty of an offence which carries a penalty of five or more years imprisonment and the minister believes you pose a risk to lives or sexual safety.

4. Community Protection WA website

The Community Protection WA website provides the public with photographs and certain information on dangerous and serious repeat sexual offenders.

The website has been divided into three tiers for different types of offenders. Tier 1 is for sex offenders who have gone missing or underground and do not comply with their reporting obligations. Information includes a photograph, date of birth, physical description, name and known aliases.

Tier 2 is for dangerous and high risk offenders. A person can apply to make a local search to get access to photographs of dangerous and high risk offenders living in their suburb and adjoining suburbs.

Tier 3 allows a parent or guardian to make a request regarding whether a specific person who has regular unsupervised contact with their child is a reportable offender.

5. Family violence restraining orders and violence restraining orders

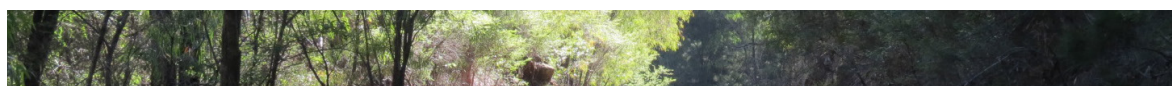
It is very important you do not breach any restraining order that is in force against you either while you are in custody or on your release.

See the heading **Family violence restraining orders** on page 93 for more information. If you think you have good reason to get a restraining order changed or cancelled see the **Legal Aid WA information sheet *After a restraining order is made*** for more information and get legal advice.

6. Getting your property from the prison

If your property is unclaimed, abandoned or uncollected three months after your release your property can be disposed of. This can be by:

- » being sold at public auction
- » being given to an association incorporated under the *Associations Incorporation Act 1987* (WA), or
- » destroyed or otherwise disposed of.



7. Breach of parole

It is important to stick to your parole conditions to avoid being sent back to prison to finish your sentence.

8. Removal of licence disqualification

Avoid driving while disqualified or driving without a licence. Licence disqualification does not run while you are in custody. You should always check that you have a current, valid licence before you drive. You can be imprisoned for driving while disqualified.

If you have been disqualified from driving and the length of that disqualification is more than three years, or you have been disqualified for life, you may be able to apply to get your driver's licence back before the disqualification ends.

See **Legal Aid WA's *Removal of Licence Disqualification Kit***. This includes information on how long you have to wait before you can apply and what happens if you have more than one disqualification.

9. Extraordinary driver's licence applications

What is an extraordinary driver's licence?

An extraordinary driver's licence is a licence granted at the discretion of a court. It allows someone who has been disqualified from holding or obtaining a driver's licence, to drive in certain specified circumstances.

You can apply for an extraordinary licence if you are currently under disqualification, however, there are certain types of disqualification that do not allow you to apply for an extraordinary licence.

Disqualification is also sometimes called "licence suspension".

Where can I get more information on extraordinary driver's licences?

For more information you can get a copy of the **Legal Aid WA information sheet *Extraordinary driver's licences*** which includes information on how to apply for one.

The Magistrates Court of WA also puts out a fact sheet on extraordinary driver's licences.

10. Centrelink

You can re-apply for Centrelink on your release. You may be eligible for a "crisis payment". You will need to fill in a "Claim for Crisis Payment - Prison Release and Anticipated Payment" form (SU508).

You are eligible if you:

- » are eligible for a pension or benefit ((not including Family Tax Benefit) or ABSTUDY Living Allowance
- » are in severe financial hardship when leaving prison after being charged with an offence
- » have been in custody for at least 14 days, and
- » make a claim for crisis payment within 7 days of the date of your release from prison.

You will need to prove to Centrelink that you have been in custody for at least 14 days. This should be on your discharge papers.

11. Financial counsellors

If you need help with managing your money when you get out contact the **National Debt Helpline** on **1800 007 007**. This is a free and confidential service to provide information about possible ways to deal with financial problems.

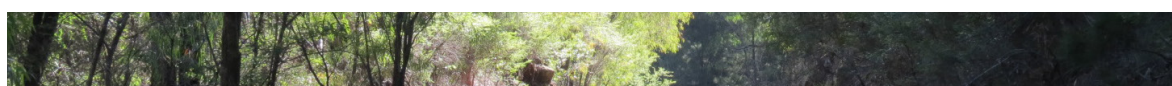
12. Discrimination in employment on the basis of criminal record

See under the heading **Discrimination** on page 106.

13. Declaring convictions

When do I have to declare my conviction?

If you are filling out a form for employment or being interviewed for a job or an application for a visa to travel somewhere and are asked if you have any convictions, you should reply honestly.



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PART 16 **Legal help**

This part covers:

1. Legal information within the prison
2. Legal visits
3. Legal Aid WA
4. Avoiding problems with lawyers
5. Appearances at court
6. Legal Aid WA publications



PART 16 Legal help

1. Legal information within the prison

Hakea is currently the only prison with a dedicated legal library. If you are at Hakea the manager of the library can help you access legal cases, commentary and legislation.

The Department of Justice, Corrective Services (DJCS) has an independent contractor who works as a librarian to help with appeals. You can post requests for copies of legal material to DJCS. The Appellant Librarian will then post the material to you. You will need to check first that someone is in the position when you need help in case the position is not filled.

2. Legal visits

If you have been granted legal aid you should contact your lawyer and ask them to come and see you.

If you do not have a grant of legal aid, ask your Unit Manager to write your name in the **Legal Aid WA Prison Visits Book** or call the **Legal Aid WA Infoline** on the dedicated prison line and request a prison visit. The more information that you provide about your matter at this time, the better prepared the prison visits officer will be able to be when they see you. This means they will be more likely to be able to help you when you receive a prison visit.

At some prisons you can have an appointment by video link to your lawyer.

You can see someone from **Aboriginal Legal Service** by contacting the nearest ALS Office. The telephone number for the office in Perth is **(08) 9265 6666**. You can put your name in the **ALS Prison Visits Book** in your unit at the prison. You can ask your Unit Manager to write your name down in the **ALS Prison Visits Book**.

3. Legal Aid WA

Legal Aid WA:

- » gives legal help to people in special need
- » may be able to help you if you have a legal problem and can't afford a lawyer, and
- » is an independent statutory body and is not a government department.

The **Information for Prisoners – Legal Aid WA Services – Kit** has details about applying for legal aid and Legal Aid WA Services including the prison visiting service. A copy of this kit can be obtained by contacting **Legal Aid WA's Infoline**.

4. Avoiding problems with lawyers

Legal costs

Ask your lawyer how much it will cost to represent you before your case begins. Different lawyers charge different amounts for preparing your matters and representing you in court. Ask about the cost before you instruct a lawyer.

Talk to your lawyer

The advice you get is only as good as the information you give.



Ask questions when you don't understand. This is your case, it is about you and you need to know exactly what is going on. It is your lawyer's job to make sure that you do know what is going on.

Ask for legal jargon to be explained to you. Lawyers use special words and phrases all the time and can often forget that the rest of the world doesn't speak the same way. If you don't understand something ask for it to be explained.

Be prepared

If your lawyer asks for information – make sure you get it. If you need reports – make sure they are ordered. If you need references – make sure you get them. If you need an address to live at – try and arrange this before you go to court.

If you are unhappy with your lawyer

Tell your lawyer that you are unhappy and why you are unhappy.

If you have talked to your lawyer and you are still unhappy with them and you have a grant of Legal Aid and would like another lawyer write to the Director of Legal Aid WA and ask to be transferred to another lawyer. You need to tell Legal Aid WA why you want a transfer. Transfers are not automatically given to everyone who asks because there is often a double up in costs when another lawyer takes over. An **Application to Transfer a Grant of Legal Aid** is in the *Information for Prisoners – Legal Aid WA Services – Kit*. A copy of this kit can be obtained by contacting Legal Aid WA's Infoline.

5. Appearances at court

Video link

At the prison there is a courtroom where there is a TV, a camera and a microphone. When you have a court date you can make your appearance in court by having your image and words transmitted to the court and the words and images from the court transmitted back to you at the courtroom at the prison.

Outside the courtroom at the prison is a holding area where people who are appearing on the video link will wait until their case is called. The order in which cases are called is controlled by the court and not by the prison officers or the duty lawyer. There is a toilet outside the holding area.

There are telephones available outside the holding area so that your lawyer can telephone you at the video link before court starts. There is also a telephone in the video link courtroom so that you can provide information to your lawyer at the court. If you wish to speak to your lawyer during your court proceeding then put your hand up and say, "excuse me please I want to talk to my lawyer".

Duty lawyer in the Magistrates Court

If you are appearing in court by video link and do not have a lawyer, then please ask at the prison to speak to a duty lawyer over the telephone.

A duty lawyer service is not available on the day of your protection and care matters in the Children's Court at Perth. To arrange representation you would have to contact Children's Court (Protection) Services before the court date. If that service cannot help you it may be able to make a referral to a service that may be able to help.



What to do when appearing in court by video link?

On entering the courtroom at the prison you should sit down straight away behind the desk. You should not stand up unless told to do so.

If you want to talk to the court you should raise your hand and wait until the court asks you what you want. You should refer to a magistrate as “Your Honour”. You should refer to a judge in the District or Supreme Court as “Your Honour”.

If you cannot hear any of the proceedings then you should raise your hand and say, “excuse me but I cannot hear you properly”.

If you do not understand what has happened in court you should raise your hand and say, “I do not understand what has happened”. If you are at Hakea Prison then you can ask the duty lawyer at the prison to explain what has happened as well.

When your matter is finished you will be told to “stand down”.

6. Legal Aid WA publications

Kits

Information for prisoners – Legal Aid WA services – Kit

This kit has information on all Legal Aid WA services. This covers assistance available in family law, criminal or civil matters, including visiting services and applying for legal aid.

District and Supreme Court Appeal - Part 1 - Information kit

This kit covers:

- » Appeal Notice
- » affidavit in support
- » filing your documents
- » serving your documents
- » appellant’s case
- » single judge-leave to appeal
- » respondent’s answers
- » appeal books
- » hearing
- » discontinuing your appeal.

District and Supreme Court Appeal - Part 2 - Forms, notices and affidavit

This kit covers the forms, notices and affidavit required for an appeal.

Magistrates Court Appeal - Part 1 - Information kit

This kit covers:

- » steps involved in an appeal
- » grounds of appeal
- » appeal notice
- » prosecution notice/s and transcript
- » affidavit in support
- » bail



- » filing and serving your documents
- » withdrawing your application
- » leave to appeal
- » appeal books
- » outline
- » appeal hearing
- » legal words explained.

Magistrates Court Appeal - Part 2 - Forms, notices and affidavit

This kit covers the forms , notices and affidavit required for an appeal.

Objecting to confiscation - Part 1 - Information kit

This kit covers:

- » definitions and terms
- » freezing notices
- » freezing orders
- » what to do after getting a freezing notice
- » what to do after getting a freezing order
- » how to fill in the documents
- » filing and serving the documents
- » directions hearing
- » objection hearing
- » applying for release of confiscated property.

Objecting to confiscation - Part 2 - Forms

This part includes the forms you need to use if you have received a freezing notice or freezing order and wish to object to the confiscation of property included in the notice or order.

Parole information kit

This kit covers:

- » when are you eligible for parole
- » what the Prisoner's Review Board considers
- » what the Board will receive
- » if you are denied parole
- » what happens if you receive parole
- » suspension of parole
- » cancellation of parole
- » how to ensure you do not breach parole.

Prison offences information kit

This kit covers:

- » types of prison offences
- » penalties for prison offences
- » procedure for being charged
- » how to represent yourself



- » what happens when you admit a prison offence
- » what happens when you don't admit a prison offence.

Removal of licence disqualification - Part 1 - Information kit

This kit covers:

- » who can apply and when
- » before you apply
- » filling in the forms
- » where to apply and who to notify
- » before the hearing
- » after the hearing.

Removal of licence disqualification - Part 2 - Form and affidavits

This has the form and affidavits you need in your application for removal of licence disqualification.

Information sheets

Any information sheets and kits referred to in this handbook can be obtained from **Legal Aid WA's Infoline**. Information sheets are available on civil, family and criminal law topics, for example:

Information sheets on restraining orders:

- » Responding to a restraining order
- » Undertakings
- » Conduct agreement orders in FVRO proceedings
- » Preparing as a respondent for a restraining order final hearing
- » Representing yourself as a respondent at a restraining order final hearing
- » After a restraining order is made
- » Family violence restraining orders
- » Violence restraining orders
- » Misconduct restraining orders
- » Restraining orders - court process.

Information sheets on protection and care matters:

- » Protection orders in the Children's Court of WA
- » Representing yourself in a final hearing in a protection and care matter in the Children's Court of WA
- » Preparing for a final hearing in a protection and care matter in the Children's Court of WA
- » Grandparents - protection and care (grandchildren).



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PART 17

Contacts

This part covers:

1. The Magistrates Court of WA
2. The Children's Court Perth
3. The District Court
4. The Supreme Court
5. The Department of Communities, Child Protection and Family Support
6. Other agencies



PART 17 Contacts

This section contains useful phone numbers for courts and agencies.

See also **Part 8 - Outside contact** for useful numbers for services that may be able to help you.

Magistrates Court of WA

Standard courthouse hours are 8.30am-4.30pm Monday to Friday.

Central Law Courts Perth

Criminal matters

Telephone: (08) 9425 2222

Fax: (08) 9425 2776

Criminal Registry enquiries and for the payment of court imposed fines: (08) 9425 2222.

Civil matters

Telephone: (08) 9425 2222

Fax: (08) 9425 2777

Civil Registry enquiries: (08) 9425 2222

Metropolitan Courts

Armadale Courthouse

Telephone: (08) 9399 0700

Fax: (08) 9497 1488

Joondalup Courthouse

Telephone: (08) 9400 0700

Fax: (08) 9300 2005

Mandurah Courthouse

Telephone: (08) 9583 1100

Fax: (08) 9581 1842

Fremantle Courthouse

Telephone: (08) 9431 0300

Fax: (08) 9430 4464

Midland Courthouse

Telephone: (08) 9250 0200

Fax: (08) 9274 6676

Rockingham Courthouse

Telephone: (08) 9599 5100

Fax: (08) 9592 3077

Regional Courts

Locations marked with an asterisk also act as District Court registries for the commencement of civil actions.

Albany Courthouse *

Telephone: (08) 9845 5200

Fax: (08) 9841 7920

Broome Courthouse *

Telephone: (08) 9192 1137

Fax: (08) 9192 1878

Bunbury Courthouse *

Telephone: (08) 9781 4200

Fax: (08) 9721 8180

Busselton Courthouse *

Telephone: (08) 9754 9666

Fax: (08) 9752 4950

Carnarvon Courthouse *

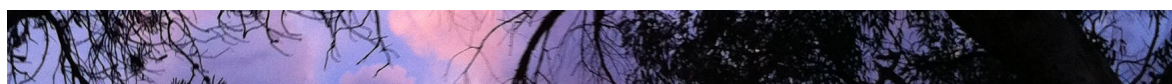
Telephone: (08) 9941 5500

Fax: (08) 9941 2779

Christmas Island Courthouse

Telephone: (08) 9164 7901

Fax: (08) 9164 8530



Cocos (Keeling) Islands Courthouse

c/- Police Station
Telephone: (08) 9162 6600
Fax: (08) 9162 6601

Collie Courthouse

Telephone: (08) 9734 2061
Fax: (08) 9734 1817

Derby Courthouse *

Telephone: (08) 9191 1406
Fax: (08) 9193 1025

Esperance Courthouse *

Telephone: (08) 9071 2444
Fax: (08) 9071 2288

Geraldton Courthouse *

Telephone: (08) 9921 3722
Fax: (08) 9964 1864

Kalgoorlie Courthouse *

Telephone: (08) 9093 5300
Fax: (08) 9021 2005

Karratha Courthouse *

Telephone: (08) 9185 2922
Fax: (08) 9185 2413

Katanning Courthouse

Telephone: (08) 9821 1177
Fax: (08) 9821 2210

Kununurra Courthouse *

Telephone: (08) 9166 7100
Fax: (08) 9168 1103

Manjimup Courthouse

Telephone: (08) 9771 1316
Fax: (08) 9777 1252

Merredin Courthouse

Telephone: (08) 9041 5266
Fax: (08) 9041 2604

Moora Courthouse

Telephone: (08) 9651 1407
Fax: (08) 9651 1375

Narrogin Courthouse

Telephone: (08) 9881 1722
Fax: (08) 9881 3344

Northam Courthouse

Telephone: (08) 9622 1035
Fax: (08) 9622 1234

South Hedland Courthouse *

Telephone: (08) 9172 9300
Fax: (08) 9172 9330

Children's Court Perth

Telephone: (08) 9218 0100
Fax: (08) 9221 1705

District Court

Telephone: (08) 9425 2128
Fax: (08) 9425 2268
Registry Hours: 9:00am - 4:00pm

Metro Non Trial Enquiries

Case Management Officer Telephone: (08) 9425 2150

Case Management Officer Telephone: (08) 9425 2541

Case Management Officer Telephone: (08) 9425 2382

Fax: (08) 9425 2538

Metro Trial Enquiries

Trial Support Officer Telephone: (08) 9425 2514

Trial Support Officer Telephone: (08) 9425 2539

Fax: (08) 9425 2924

Metro Trials, Judge Allocation, Video Link Bookings, Court Allocation

Listings Coordinator Telephone: (08) 9425 2275

Deputy Listings Coordinator Telephone: (08) 9425 2294

Fax: (08) 9425 2924

Circuit and Regional Courts

Circuit Coordinator Telephone: (08) 9425 2339

Circuit Support Officer Telephone: (08) 9425 2539

Fax: (08) 9425 2924

Fines and Exhibits

Customer Support Officer Telephone: (08) 9425 2341

Fax: (08) 9425 2268

Supreme Court

Telephone: (08) 9421 5333

Fax: (08) 9221 4436

Registry opening hours: 9am – 4pm

Registry telephone contact: 8am – 5pm

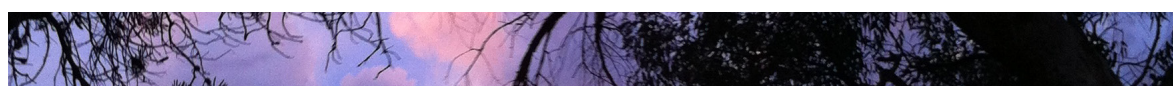
Supreme Court Registry Fax: (08) 9421 5353

Appeal Court Registry Fax: (08) 9421 5471

Department of Communities, Child Protection and Family Support

Metropolitan

District Office	Address	Telephone	Facsimile
Armadale	145 Jull Street Armadale WA 6112	(08) 9497 6555	(08) 9497 6500
Cannington	Cnr Grose and Lake St Cannington WA 6107	(08) 9351 0888	(08) 9351 0877
Fremantle	25 Adelaide Street Fremantle WA 6160	(08) 9431 8800	(08) 9431 8803
Joondalup	Joondalup House 8 Davidson Terrace Joondalup WA 6027	(08) 9301 3600	(08) 9301 3601
Midland	Cale House Level 1, 52 The Crescent Midland WA 6056	(08) 9274 9411	(08) 9250 1779

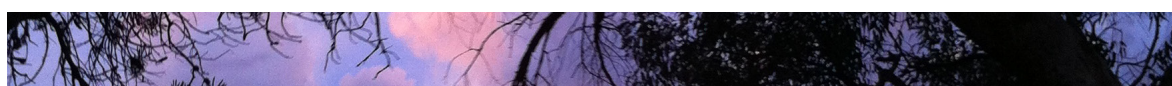


District Office	Address	Telephone	Facsimile
Mirrabooka	8 Sudbury Road Mirrabooka WA 6061	(08) 9344 9666	(08) 9349 3074
Perth	190 Stirling Street Perth WA 6000	(08) 9214 2444	(08) 9214 2445
Rockingham	8 Leghorn St Rockingham WA 6168	(08) 9527 0100	(08) 9527 0101

Country district offices

District Office	Address	Telephone	Facsimile
Albany	25 Duke Street Albany WA 6330	(08) 9841 0777	(08) 9842 1356
Broome	19 Coghlan Street Broome WA 6725	(08) 9193 8400	(08) 91921541
Bunbury	80 Spencer Street Bunbury WA 6230	(08) 9722 5000	(08) 9721 9457
Busselton	Unit 7, 8-10 Prince Street Busselton WA 6280	(08) 9752 5600	(08) 9752 1519
Carnarvon	6 Robinson Street (first floor Correia's Arcade) Carnarvon WA 6701	(08) 9941 7222	(08) 9941 1905
Collie	68 Wittenoom Street Collie WA 6225	(08) 9734 0300	(08) 9734 4266
Derby	17 Neville Street Derby WA 6728	(08) 9193 3700	(08) 9191 1655
Esperance	86B Windich Street Esperance WA 6450	(08) 9083 2566	(08) 9071 3925
Fitzroy Crossing	Cnr Flynn Dve and Fallon Rd Fitzroy Crossing WA 6765	(08) 9163 9800	(08) 9191 5113
Geraldton	45 Cathedral Avenue Cnr Chapman Road Geraldton WA 6530	(08) 9965 9500	(08) 9921 7421
Halls Creek	71 Thomas Street Halls Creek WA 6770	(08) 9168 9999	(08) 9168 6180
Kalgoorlie	Cnr Boulder Rd and Cheetham St Kalgoorlie WA 6430	(08) 9022 0700	(08) 9021 6917
Karratha	WA Govt Administration Building Cnr Welcome and Searipple Rds Karratha WA 6714	(08) 9185 0200	(08) 9185 0222
Katanning	Reidy House, 25 Amherst St Katanning WA 6317	(08) 9821 6500	(08) 9821 2614

District Office	Address	Telephone	Facsimile
Kununurra	State Government Building Cnr Konkerberry Dve & Messmate Way Kununurra WA 6743	(08) 9168 0333	(08) 9168 3607
Laverton	Laver Place Laverton WA 6440	(08) 9088 2900	(08) 9031 1306
Leonora	Lot 40 Cnr Tower and Rajah Sts Leonora WA 6438	(08) 9037 2300	(08) 9037 6369
Mandurah	Cnr Tuckey and Sutton Streets Mandurah WA 6210	(08) 9583 6688	(08) 9581 1126
Manjimup	Lot 432 South West Highway Manjimup WA 6258	(08) 9771 6000	(08) 9771 2944
Meekatharra	Lot 83 Main Street Meekatharra WA 6642	(08) 9981 0300	(08) 9981 1298
Merredin	113 Great Eastern Highway Merridin WA 6415	(08) 9041 6900	(08) 9041 2572
Moora	49 Dandaragan Street Moora WA 6510	(08) 9653 0100	(08) 9651 1666
Mullewa	12 Main Street, Cnr Burgess St Mullewa WA 6630	(08) 9961 1004	(08) 9961 1208
Narrogin	Government Buildings, Park St Narrogin WA 6312	(08) 9881 0123	(08) 9881 2040
Newman	Cnr Newman Drive and Abydos Way Newman WA 6753	(08) 9175 4600	(08) 9175 1935
Norseman	80 Princep Street Norseman WA 6443	(08) 9039 1129	(08) 9039 1539
Northam	Cnr Fitzgerald and Gairdner Sts Northam WA 6401	(08) 9621 0400	(08) 9622 3779
Onslow	Third Avenue Onslow WA 6710	(08) 9184 3900	(08) 9184 6137
Roebourne	Lot 37 Sholl Street Roebourne WA 6718	(08) 9182 0500	(08) 9182 1375
South Hedland	1st Floor State Government Building Cnr Brand and Tonkin Streets South Hedland WA 6722	(08) 9160 2400	(08) 9172 3351
Tom Price	Lot 247 Poinciana Street Tom Price WA 6751	(08) 9188 0100	(08) 9189 2311



District Office	Address	Telephone	Facsimile
Wyndham	Lot 994 Great Northern Hwy Wyndham WA 6740	(08) 9161 3500	(08) 9161 1049

Other agencies

ReSet

All referrals need to be through a Transitional Manager at a relevant prison. Family members or others can fill in an online contact form at: <http://www.reset.org.au/contact-us/>.

AccordWest

For people exiting prison in the Peel and South West regions
Telephone (08) 9729 9000 or 1800 155 799 (freecall)

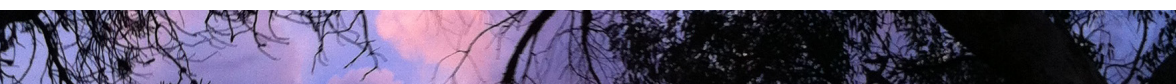
Centrelink

Telephone: 132 468 (recorded information)

Telephone: 131 202 for languages other than English

Telephone: 1800 136 380 Indigenous Call Centre (freecall)

Telephone: 132 850 Newstart Allowance



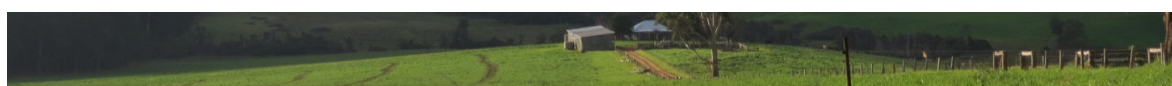
PART 18

Legal words explained



PART 18 Legal words explained

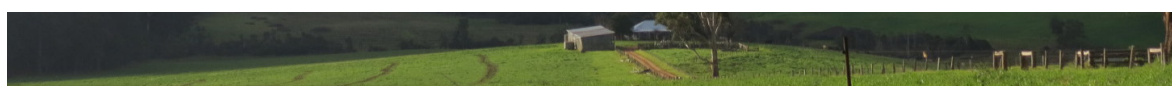
Accused	A person charged with an offence.
Acquit	When a magistrate or a jury finds an accused person to be not guilty of an offence.
Act	Acts of Parliament are what make the laws of Australia. An Act is another name for a statute. Both Federal and State Governments can make laws by passing Acts.
Adjourn	To suspend a court hearing to a future time, day, or date. There are three main types of adjournments: <ul style="list-style-type: none">» The lunch adjournment (from 1.00pm to 2.15pm).» The adjournment to a set day. This may happen because the defendant needs more time to prepare their defence, or because the prosecution need to prepare their case.» Adjournment sine die (civil proceedings). This is when the judge does not set a day for the case to be heard and generally, it is for the parties to re-list the case.
ADR	Alternative dispute resolution (Legal Aid WA offers a dispute resolution service).
Adversarial	A system in civil law where two sides argue their case.
Advocate	An advocate is the person who speaks for another in court such as a lawyer or ALS Court Officer.
Affidavit	An affidavit is a statement in writing and on oath, sworn or affirmed before someone who has authority to administer it, such as a justice of the peace, a magistrate or a Commissioner for Affidavits.
Affirmation	A declaration or solemn promise that the evidence to be given in court is the truth – made instead of taking a religious oath.
Appeal	To ask a higher court to review the decision of a lower court.
Applicant	A person who applies for a court order including a restraining order or family court order.
Arraignment	This is when the registrar of the courts. <ul style="list-style-type: none">» calls you by name» reads the charge, and» you plead “guilty” or “not guilty”.
Arrest	To be taken into the custody of the police.
Arrest warrant	An arrest warrant allows the police to arrest the person and bring them before the court. If a person has been summonsed to court and fails to attend, a bench warrant can be ordered.



Assets/liabilities	<p>An asset is an item which</p> <ul style="list-style-type: none">» has some economic value to its owner» may be money, or» can be converted into money for the owner's benefit. <p>An example of an asset is a bank account, a house, a car etc. Assets may be used for the payment of debts.</p> <p>A liability is something a person</p> <ul style="list-style-type: none">» is obliged to do, or» is responsible for. <p>An example of a liability is a mortgage or debt.</p>
Bail	<p>The release of a person who has been charged with a criminal offence on condition that he or she appears in court later to answer the charge. Conditions may be attached.</p>
Bailiff	<p>An officer who does a number of jobs ordered by the courts. They can:</p> <ul style="list-style-type: none">» serve summons and writs» take a person's property and sell it, and» serve eviction notices. A police sergeant can act as a bailiff.
Bailment	<p>A delivery of goods from one person (the bailor) to another (the bailee) for some purpose on the understanding that they will be returned when that purpose has been fulfilled.</p>
Balance of probabilities	<p>Level of proof needed in civil law cases (including protection and care and restraining order cases) to decide which version of events is more likely to have happened.</p>
Bankruptcy	<p>The state of being or becoming bankrupt. A bankrupt person is one who, on their own petition or that of their creditors, is declared insolvent by a court. You may be declared insolvent if you are unable to satisfy creditors or discharge liabilities, either because: your liabilities exceed your assets, or an inability to pay debts as they mature. Once a person is bankrupt their property is administered for and divided among their creditors.</p>
Barrister	<p>A lawyer who argues cases in court.</p>
Bench	<p>Area where the judge or magistrate sits in court.</p>
Bench warrant	<p>When a person does not appear in court as promised in the bail undertaking, the police can request from the court that a bench warrant be issued. A bench warrant allows any police officer in the State to arrest the person and hold them in custody until the first available opportunity to take them before a court.</p>
Bill	<p>A draft of a proposed statute presented to parliament but not yet passed and made law.</p>
Breach	<p>To break a law or court order.</p>
Brief	<p>The instructions given by an arresting officer to the police prosecutor about the case. The instructions given by a lawyer to a barrister.</p>



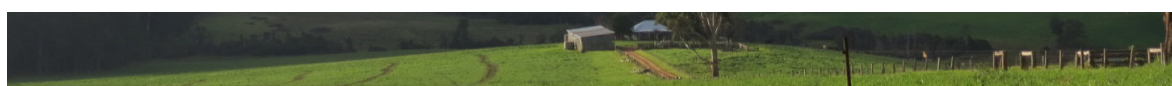
Bond	A contract or undertaking under seal in which a person binds themselves to do or refrain from doing certain things.
Burden of proof	The obligation to prove what is alleged. In criminal cases this obligation rests on the prosecution, which must prove its case beyond reasonable doubt. In civil cases, it rests on the claimant or plaintiff who must prove their case on the balance of probabilities. Sometimes, however this burden shifts, for example, where the defendant raises certain defences.
By-law	A law made by an authority that only has legal effect within the boundaries of that authority's jurisdiction, eg, a council by-law.
Charge	A charge is an accusation that a person has committed an offence.
Child support	Child support is financial support for a child paid by a parent to the other parent or carer of the child.
Civil law	The area of law that covers matters between people where the wronged party seeks action against the party who caused hardship or inconvenience, eg, the law of negligence.
Claimant	This party who starts a civil claim in the Magistrates Court.
Committal mention	When an accused pleads not guilty to a serious (indictable offence) in the Magistrates Court a committal mention date is set. On this date the prosecution must show the court and the accused what evidence they have.
Committal proceedings	Proceedings in which a Magistrate's Court hears evidence on an indictable charge and decides whether the accused should be sent for trial (also called a preliminary hearing).
Common law	Law made through judgments made in court/precedent.
Communicates with	A term used in family law for arrangements about how a child will keep in contact with the parent they are not living with eg, by phone, letter, and email.
Community based order	A sentencing order which a court may make requiring a person to undertake unpaid community work and/or educational programs under the supervision of a community corrections officer.
Compensation	Paying money for the damage or hurt done.
Complainant	A person who begins a prosecution against another in courts of criminal jurisdiction.
Concurrent	Existing together, eg, Victoria is convicted of two offences at the same time. The magistrate may give a sentence of imprisonment for two months for one of the offences and four months for the other offence. They may make an order that terms run concurrent, then both sentences will run together and Victoria will only be liable to serve a total of four months. However, if the magistrate orders that the terms be served cumulatively, then Victoria is liable to serve the terms one after another, which gives a total of six months.
Conduct agreement order	This is the name given to a family violence restraining order that has been made with the consent of the respondent without making any admissions.



Consent orders	An agreement made between parties which is approved by the court and then made into a court order.
Conspiracy	When two or more people plan to commit an offence. A conspiracy is an agreement to commit an offence.
Constitution	The law that states the rules for the governing body.
Contempt of Court	An act that shows disregard for the authority of a court or judge.
Convict	A person is convicted once they are found guilty or plead guilty to an offence.
Corroboration	Independent evidence that supports or confirms other evidence.
Costs	This is the money claimed by the successful side at the end of a case for costs incurred in going to court or for part of a court case.
Counterclaim	A claim in a civil action made by a defendant who alleges that they have a claim against the claimant or plaintiff or is entitled to any relief or remedy against a claimant or plaintiff.
Court	A place where a hearing or a trial is held. The lowest criminal and civil court in WA is the Magistrates Court. The next court up is the District Court then the Supreme Court.
Criminal law	Law dealing with offences which are considered to be offences against the community as a whole. For example, burglary, drug offences, murder. Compare with civil law.
Cross-examination	When the opposing party, or their lawyer, questions a witness.
Cumulative	When the court orders that two or more sentences be served one after the other.
Damages	Monetary compensation for loss or injury for damage suffered.
De facto	A Latin term that means the actual state of things, eg, a person has a de facto partner if they live together as if they were married, even though they are not married.
Default	To fail in some duty or obligation, eg, in default of an appearance means when one party fails to appear in court.
Defendant	A person who has been charged with a criminal offence, or against whom a civil action has been brought.
Dependant	A person who depends on another person for some or all of the ordinary necessities of life: food, clothes, shelter, medical attention, etc. Usually, a person's dependants are their children and maybe their partner if they are out of work.
Divorce	When a court decrees that a man and wife are no longer legally married.
Eviction	The action of recovering land or property by legal proceedings. Action to recover property by expelling a person (especially tenant from land) by legal proceedings.



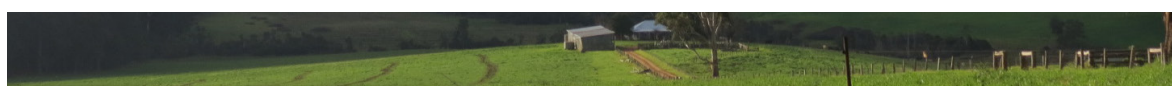
Evidence	When a fact has to be proved in court, a party seeking to prove that fact usually has to call a witness to give evidence about it. The evidence is usually given verbally, although in some situations it can be in writing. When the party seeking to prove this fact calls the witness, their evidence is referred to as evidence-in-chief. The other party is allowed to ask questions of the witness and when the opposing party asks the witness questions, it is called cross-examination.
Examination-in-chief	The questioning of a witness in court by the party who called the witness to give evidence.
Exhibit	A document or an object used as evidence in court, eg, a screwdriver used to break into a car.
Extradition	The process used to send a person from one state or country to another to stand trial for an offence committed there.
Family consultant	A family consultant is a psychologist/social worker employed by the Family Court who specialises in child and family issues after separation and divorce. Their role includes helping parties resolve their dispute and assisting and advising the court.
Fine	A sum of money imposed by a judge or magistrate as punishment for an offence.
Garnishment	Proceedings for the attachment of debts in the hands of a third party. The person in whose hands the debt is attached is called a garnishee.
Guarantee	An undertaking to ensure that another person will carry out the terms of a contract or perform certain acts. The person giving the guarantee is called the guarantor.
Guardian	A responsible person appointed by the State Administrative Tribunal to make decisions for a person with a decision-making disability..
Hearing	Another word for trial. Most people say 'hearing', when they are talking about a summary trial before a magistrate, and a trial when they mean trial upon indictment in the District or Supreme Court.
Indictable offence	A serious crime, which is triable before a judge and jury.
Indictment	A written document describing the offence with which a person has been charged.
Injunction	A court order directing a person to do, or not to do, a particular thing.
Interrogatories	Written questions put by one party in a civil action to another on relevant points of the dispute prior to the court hearing.
JP	The abbreviation for justice of the peace.
Judge	A judicial officer appointed to try cases in the District or Supreme Court.
Judgment	Is the decision, sentence, or order of the court in a civil or criminal case.
Jurisdiction	Is the limit of the authority of a court.
Juror	A member of the jury.



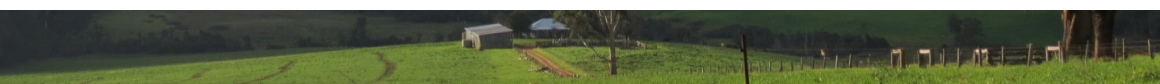
Jury	Usually twelve citizens who hear a case with a judge. If that case is criminal, then they must decide whether they are satisfied beyond reasonable doubt whether the accused person is guilty of an offence.
Liability	Legal responsibility, eg, for breaking a contract, committing a crime. It may be civil or criminal, according to whether it is enforced by the civil or criminal court.
Live with orders	A type of parenting order made in the Family Court about who a child will live with.
Locus standi	The right to be heard in a court or other proceedings.
Mandamus	A prerogative writ. An order of a superior court to compel an official to perform their public duty.
Magistrate	A judicial officer who administers the law in courts of summary jurisdiction. A magistrate can sit in courts including the Children's Court, the Family Court of WA or in the Magistrates Court.
Mandatory	Binding, not optional. Usually a court that finds a person guilty has a discretion in relation to the sentence that is imposed. However, sometimes the court does not have any discretion about what the sentence will be. This is because the Act says that the offence has a mandatory penalty. In the case of a mandatory penalty, the magistrate has no discretionary powers to lessen the penalty.
Mens rea	A guilty mind; criminal intent; knowledge that an act is wrong.
Mitigation	Circumstances put forward by an advocate (lawyer or court officer), which go towards reducing the damages, or punishment, which the court may order against a defendant or prisoner. The purpose is to get the least harsh penalty as possible for the defendant. Mitigation means to place the offence into perspective and also talk about the personal details of the defendant.
Minor	A person less than eighteen years old, also known as a child or a young person.
Natural justice	The principles to be followed by a person or body with the power to settle disputes. They include the duty to act fairly, without bias, and the right of all parties to be heard.
Negligence	Lack of proper care or attention. A civil action which one person can bring against another because of damage suffered because of the other's failure to observe a duty of care.
Nolle prosequi	A Latin term. When the prosecution in an indictable charge do not want to continue to prosecute, they file a document with the court called a nolle prosequi. If it is accepted, the accused is discharged.
Nominal damages	Damages of a small amount ordered where a right has been affected.
Oath	A pledge that statements made are true which is made with one hand on the bible. Witnesses in court are required to take an oath before giving evidence. If one has no religious belief, an affirmation may be taken instead.



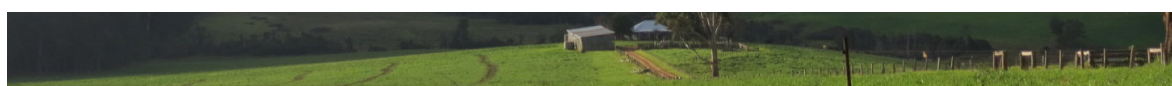
Offence	Every breach of the law is an offence. Offences are divided into three kinds: simple offences, misdemeanours and crimes. Misdemeanours and crimes are indictable offences, although some of them can sometimes be dealt with summarily.
Ombudsman	A person appointed by government to investigate citizens' complaints about administrative actions of government departments and agencies.
Onus of proof	In criminal cases, the prosecution has the onus of proving the offence. In civil cases the applicant has to prove the case.
Order to review	An appeal to a higher court.
Open court	All cases, unless otherwise ordered by the magistrate or judge to be closed proceedings, must be held in the open court and are open to the general public.
Parental responsibility	Defined in the <i>Family Law Act 1975</i> (Cth) as all the duties, powers, responsibilities and authority, which, by law, parents have in relation to their children. Until a court order is made to the contrary, each of the parents of a child who has not attained the age of 18 ordinarily has parental responsibility for the child. This remains the case whether the parents were married or de facto, separated or either parent remarries.
Parole	The procedure of permitting a prisoner to leave prison before their full sentence has been served in order to complete the sentence in the community.
Party to an offence	To be a party to an offence, you must aid, encourage or assist another person to commit the offence.
Penalty	The punishment handed down by the court to a convicted person.
Perjury	Lying while under oath when questioned in court proceedings. A person found guilty of perjury may face imprisonment. Perjury can also be committed by signing your name to a document knowing it is not true.
Plaintiff	Person who initiates legal proceedings against another in a civil dispute in the District Court or the Supreme Court.
Plea	A statement made by a prisoner or defendant to the court after the magistrate or judge has read the charge and asks the accused person "Are you guilty or not guilty?" The accused person will enter their plea of guilty or not guilty.
Pleadings	Written or printed statements delivered by parties to a case to one another concerning questions of fact and law to be decided eventually in a court.
Possession	To have or hold an object in ones possession. If the object is on them and they know it is there.
Power of attorney	A formal, written, legal document by which one person gives another power to represent them, to act in their place for certain purposes.
Precedent	The doctrine by which courts follow past decisions.



Quash	To reject as not valid. If a convicted person appeals to a higher court and that court agrees with them that the court in the first instance was wrong, the higher court will quash the judgment of the first court and may order a re-trial or make a new decision itself.
Release	A document signed by a person accepting compensation and which releases the other person from any further obligation.
Remand in custody	Order that a person who is charged with an offence is detained or imprisoned until a court hears the charge.
Remission	For prisoners – a reduction in the time to be served on a sentence of imprisonment.
Respondent	A person against whom a summons has been issued or an appeal brought. The person against whom a restraining order application is made.
Returnable (summons)	A summons specified to be heard on a particular day.
Search warrant	A document authorised by a JP or magistrate allowing police to enter and search premises as part of an investigation into a crime, eg, the police can obtain a search warrant to search a house for stolen goods.
Security	Something given as a pledge to guarantee performance, such as the payment of a loan.
Sequestration order	An order that property be seized to satisfy a debt.
Sine die	When court proceedings are adjourned sine die, no specified date is set for them to resume.
Spend time with orders	A type of parenting order made in the Family Court which covers who a child will spend time with. It can include when, where and how the child spends time with a parent.
Standard of care	The degree of care required of a person in a particular case.
Statutory declaration	A written statement of facts, which the person making it signs and solemnly declares to be true before a person authorised to take declarations.
Statute	Law made by parliament (State or Commonwealth).
Stay of proceedings	An order that a particular course of legal action ceases. A stay may be for a fixed period, ie until a certain event occurs or it may be permanent.
Strict liability	Liability incurred regardless of fault or ignorance of the law.
Sue	To take legal action against a person.
Summary offence	An offence heard and decided in a Magistrate's Court and not sent to trial before a judge and jury.
Summary conviction	A conviction by a magistrate or two JPs without a jury.



Summary jurisdiction	This is the jurisdiction exercised by a magistrate or two JPs. All simple offences are tried summarily within the summary jurisdiction of the magistrate. In some circumstances indictable offences can be tried summarily.
Summing up	A judge is required to direct the jury on the law, after all the evidence has been given and before they deliver their verdict.
Summons	A document which is issued by a court requiring the person named in the summons to attend at court on a specified date to give evidence or produce a document.
Surety	A person who undertakes to ensure an defendant's attendance in court. A surety is required to pledge an amount of money.
Tort	A civil wrong; an act that causes harm, intentionally or otherwise for which the remedy is an action for damages.
Trial	See Hearing.
Tribunal	A body set up to hear and decide disputes.
Ultra vires	Beyond the power; an act, which is in excess of the authority conferred by law, and is therefore invalid.
Undertake	To promise, in the course of legal proceedings, for example restraining order proceedings, to do or not do something.
Unliquidated	Undetermined, unascertained, eg when damages are left to a court to determine.
Verdict	The answer given to the court by a jury: guilty or not guilty.
Void	Of no legal effect.
Warrant	There are varying kinds of warrants. All warrants order someone, usually a police officer or all police officers, to do something. An arrest warrant orders the police to arrest someone. A search warrant allows the police to search a house. A bench warrant orders the police to bring in a person who has failed to appear in court. A warrant of commitment orders the police to take a person to prison as a result of the non-payment of their fines. A warrant of deliverance orders a Superintendent of a prison to release a prisoner because they have been admitted to bail. A warrant from the Children's Court can order a child to be taken into the temporary care of the Department of Communities, Child Protection and Family Support.
Witness	A witness is a person who gives sworn/affirmed testimony to something they saw or something they know that will assist the case of the defendant or prosecution or the applicant or the respondent.



Quick Flicks

Are you looking for information about:

Entering prison

See page 7

Moving prisons

See page 13

Your entitlements

See page 17

Prison offences

See page 19

Prison officer powers

See page 23

Programs and education

See page 29

Health treatment

See page 35

Making complaints

See page 49

Freedom of information enquiries

See page 49

Contacting friends and family

See page 57

Prison visits

See page 58

Appeals

See page 63

Fines and infringements

See page 108

Early listing with the court

See page 71



Contact with your children	See page 75
Child support	See page 78
Department of Communities, Child Protection and Family Support	See page 78
Family violence restraining orders	See page 93
Centrelink	See page 97
Criminal injuries compensation	See page 99
National Redress Scheme	See page 103
Debt	See page 103
Fines and infringements	See page 108
Immigration issues and visa cancellation	See page 111
Negligence	See page 111
Tenancy issues	See page 116
Aboriginal prisoners	See page 123
Young prisoners	See page 129
Release from prison	See page 135
Parole	See page 135
After release	See page 137
Getting legal help	See page 145
Useful contacts	See page 153
Legal words explained	See page 161



