

---

# The South West Justices Journal

---



AUGUST 2009

---

## **2009 AGM AND TRAINING SEMINAR Thursday 29TH OCTOBER**

The Annual Seminar will again be combined with the SW Branch AGM and will be held on the date listed above. It will be held at THE PARK'S TAVERN on Bussell Highway in Bunbury.

It is our intention this year to engage some interesting speakers who will speak on a range of subjects that are of interest to Justices of the Peace. One session during the day will be given over to our Magistrates who will bring us up to date with recent legislative changes. Further material more specific to this day will be forwarded to you a little closer to the day.

It is the intention of the Magistrates and the Branch to invite those Justices on a Court Roster to attend other specific training sessions that will be focused on the work that Justices do in the Magistrate's Courts around the SW Region. It is the intention that these will be held at various locations to ensure that "Court Accredited" Justices have a reasonable opportunity to be able to attend at least one of these sessions each year. Justices not presently on a court roster who wish to join a court roster will also have the opportunity to attend these sessions to gain the necessary accreditation.

You are again reminded that it is a requirement that Justices who wish to be included on court rosters that they attend at least one of these training session each calendar year.

## **THE WEB SITE** [www.rajwaswb.org.au](http://www.rajwaswb.org.au)

As you are no doubt aware, our SW Branch Website is up and running with a substantial amount of information posted for the information and education of Justices in our region. Please take the opportunity to visit the site on a regular basis. As new information is added the date of addition is clearly indicated on the very first page. Remember, to log in to the Members Area you need to use the ID justices and the PASSWORD justice. You have the ability to have the link "remember the login info" so you do not have to remember it each time. If you have anything that you think might be of interest to your fellow Justices please send the material to the secretary either by email or snail mail for inclusion.

For those of you that are on a court roster and deal with Road Traffic Matters it would be of great benefit if you log on to the website/members area and access the powerpoint presentation prepared by Magistrate Wilson. It sets out very clearly the range of penalties that can be applied in these matters.

On the subject of email, we do from time to time have matters that Justices need to be made aware of quickly and it would appear that email is by far the best way for this to happen. We therefore ask that if you have an email address you make that known to the Branch by emailing a g'day message to [secretary@rajwaswb.org.au](mailto:secretary@rajwaswb.org.au). This will enable us to put your email onto our list and include you in these occasional bulletins. It is also our practice to send an email to all on the list whenever the website is updated. Who knows, maybe in time this newsletter could be sent to most of our SW Justices by the same method. Time will tell I am sure.

Regards

Chris Mills JP

Secretary



# FROM THE PRESIDENT

## President's Message – August 2009

It's statistics time again – I would encourage all Justices to submit their statistics, the Branch was recently asked to submit approximate hours of Justices contribution to the courts and signing centres. Sometimes a “one” in the court statistics list does not accurately reflect the amount of time – Summons court can go on all day, with sometimes over 75 cases dealt with.

It was estimated that JP hours for the south west are 1420 hours per year in signing centres, 1500 hours in courts, and 72 hours at the Regional Prison. Quite a contribution by any measure.

For Justices who do court work I would recommend the penalty information on the JP website, it is JP specific which means that if it is not there you cannot deal apart from “Remand and Bail”. I suggest you make up your own file, and keep it up to date, it makes life a whole lot easier when you are under the pressure of court duty. As always our Magistrates are more than willing to help any of you in keeping up to date, sitting in with them during court sittings is a very worthwhile exercise, if you feel you would like to take advantage of their offer, please contact the court house (as only one Justice at a time can be accommodated in each court).

The Training day in Busselton was well attended – including representation from the office of the Attorney General, court staff from Bunbury and Busselton, and RAJWA Council representatives. I am hopeful we will get a good turnout for the AGM and Seminar on the 29<sup>th</sup> October – More information will be sent to you all closer to the day.

I have been involved in a multi-faceted interdepartmental meeting at the City of Bunbury regarding the implementation of the Safer City Programme (I was there wearing a couple of “hats” – Neighbourhood Watch, Registered Nurse and my JP role). An “Alcohol Accord” is now in place – its' purpose is to reduce crime and violence, address dependency issues, combat litter and public safety problems posed by glass containers, limit underage drinking, as well as lessen the detrimental health effects of excessive alcohol consumption. It will be interesting to see the benefits flow through the community.

Our efforts at encouraging younger members of the community to become Justices has resulted in 9 nominations – and their applications are in various stages of completion.

Our Council delegate Kathleen Heath was a victim of a hit and run accident (she was knocked off her scooter) – she is now out of hospital, we wish her well, and hope to see her at our committee meetings again shortly.

There is a lot of great information on our website. A big thank you to Chris Mills for maintaining the website and keeping us all up to date. Rosters for all courts, and signing centres are available on line. If your address, phone or other personal circumstance have changed you can update the branch with the changes by using the web site and you can indicate your availability for both court and JP Signing Room Rosters as well. We endeavour to keep the site as up to date as possible and it is only by you checking regularly and advising us of any glitches that we can make this happen.

Thank you to Justices who make themselves available for court rosters, and the signing centres – as well as through your business offices and your homes – the Justice system would not survive without us, and you should all be proud of your contribution!!

Alison Comparti J.P.  
President, South West Branch



Remember we have been asked to keep records of the JP work we do and forward the statistics to the RAJWA each six months.

A standard form has been prepared for the collection of these statistics. A copy can be downloaded from the website or you can get a copy sent to you by the SWB Secretary.

The Council uses these statistics whenever they have a meeting with the Attorney General to stress just how much the general community and the Police etc., in fact the Legal System, generally, rely on the services of a JP.

**Once the numbers are recorded the forms are shredded.**

## SIGNING CENTRE NEWS



This service is provided by volunteer Justices who are rostered at a signing centre to assist the public, Police and others with matters that need witnessing or swearing before a Justice of the Peace.

We have signing facilities in Bunbury, Busselton, Dunsborough and Collie and all provide a welcome service for their communities.

The passing of time has seen some Justices leave the Bunbury roster and as a result we are a little short on numbers.

Terry would like to hear from Justices who might be able to give a few hours each month to help fill out the roster.

In fact, all of our coordinators would be keen to hear from you if you are able to help in either Bunbury, Busselton or Collie.

**Terry Donaldson, Coordinator**  
Bunbury Justice Centre  
Phone 9726 1170  
Email [mated1@westnet.com.au](mailto:mated1@westnet.com.au)

**Graham Edwards, Secretary**  
Busselton Sub-Committee  
Phone 97554848  
Email [gwe1927@optusnet.com.au](mailto:gwe1927@optusnet.com.au)

**Geoff Wilks, Secretary**  
Collie Sub Committee  
Phone 97341846  
Email [ggwilks@westnet.com](mailto:ggwilks@westnet.com)

## IMPORTANT NOTICE FOR JUSTICES OF THE PEACE

### JURISDICTION OF J'sP IN COUNTRY COURTS

The issue of whether J'sP can deal with (that is, take a plea of guilty and sentence) **indictable offences** has again been raised and it is perhaps best clarified with this note; and I do apologise for its length.

You will all be aware that section 3 of the Criminal Procedure Act 2004 defines each an "indictable offence" and a "simple offence as follows:-

**"indictable offence"** means a crime or any other offence described by a written law as an indictable offence, irrespective of whether in some circumstances it may be dealt with summarily;

**"simple offence"** means an offence that is not an indictable offence.

You would also appreciate that where a statute does not describe the offence as either a crime or an indictable offence the offence is to be taken to be a simple offence; whether an offence is a crime, an indictable or simple offence is usually found in the section creating the offence. Eg the offence of stealing is created by section 378 of the Criminal Code where it is described as a "crime" and accordingly indictable.

The Magistrates Court of WA is created by the Magistrates Court Act 2004, which by section 7(2) allows for the making of regulations prescribing when Justices of the Peace may constitute a court and its jurisdiction when so constituted in each the Perth Metropolitan Region (Metro Court) and in a country location (Country Court).

**Regulation 10(2) of the Magistrates Court Regulations 2005 precludes J'sP when constituting a Country Court from dealing with an indictable offence. This means that where an offence, described as a "crime" or "indictable", is before you IT MUST BE ADJOURNED for the matter to be dealt with by a magistrate.** If the accused appears, either in person or with a solicitor, you must consider bail unless you dispense with bail under section 13A of the Bail Act 1982. If the **accused does not appear** and you have proof of service of a summons to appear, you may issue a further summons to the accused indicating a new court date or issue an arrest warrant. If the accused does not appear in answer to a bail undertaking you may either adjourn the charge and extend bail upon written notice under section 31 (2)(b) of the Bail Act to a new date or issue an arrest warrant under section 59B of the Bail Act. (see section 38 of the Criminal Procedure Act 2004.

Magistrate Fisher

*For those interested, posted on the SWB WEBSITE is a more detailed explanation of when a Justice of the Peace may constitute a Court and the jurisdiction of a Country Court when constituted by J'sP and the relevant provisions of the Magistrates Court Regulations 2005.*

**Police Interviews:**  
**Should a JP be an “Interview Friend”, or “Independent Person”**  
**at a Police Interview?**

Justices of the Peace are asked from time to time by police to act as an “Interview Friend” or “Independent Person” during the conduct of a police interview with a suspect.

It is my opinion that, a JP should decline to act as an “Interview Friend” or “Independent Person” in a police interview.

The role of an “Interview Friend” or “Independent Person” in a police requires a JP to cross the boundaries of their obligations to remain impartial and independent within the judicial process.

Before an interview commences the police have an obligation to inform the “Interview Friend” of their role in the interview. The “Interview Friend” then has an obligation to become involved in the protection of the rights of the suspect in an interview.

It is that role that, in my opinion, makes it inappropriate that a JP act as an “Interview Friend” as a JP is required to act in a manner that will cause them to lose their judicial independence and be seen as no longer impartial.

It should also be remembered that a JP who acts as an “Interview Friend” or “Independent Person” in a police interview becomes involved in the investigative process. Accordingly, should the interview be challenged the JP may be summoned to give evidence and be cross-examined. That process may well expose the JP to attacks on their credibility and character as well as bring into question their capacity to be seen to be impartial and independent in the carrying out of their functions as a JP.

The loss of a JPs judicial independence if used as an “Interview Friend” during a police interview is recognised by police.

The Commissioner for Police in WA, through the Commissioner’s Orders and Procedures Manual (**COPS Manual**), advises police officers not to use JPs as “Interview Friend” or “Independent Person” during a police interview.

The COPS Manual under the heading “**JV-1.1.17.6 Independent Persons**” says;

“To protect their independent judicial status, Justices of the Peace should not be used.”

However, the COPS Manual under the heading “**QS-1.2.5 Questioning children and people with special needs**” under the heading “Interview Friend” says;

“Justices of the Peace are not to be used as interview friends’ except if requested as such by a suspect. Should such a situation occur it is to be made abundantly clear that the Justice of the Peace is there as an interview friend at the suspects request and not in their capacity as a Justice of the Peace.”

Whilst the above instruction from the Commissioner of Police recognises the inappropriateness of the use of a JP as an “Interview Friend” it then, regrettably, attempts to suggest that judicial independence and the need for impartiality by a JP can be “switched off”.

The obligations and responsibilities of judicial independence and impartiality that come with being a JP remain with a JP at all times and no words can change that fact. Similarly, a person who is a sworn member of the police force remains a sworn member of the police force at all times and cannot turn on and off the functions of that office to suit a circumstance.

Notwithstanding any difficulties police may have in finding a suitable person to perform the role of “Interview Friend” or “Independent Person” during a police interview it is, in my opinion, inappropriate for a JP to take on that role.

Accordingly, in my opinion, to protect your impartiality and judicial independence as a JP any request by police or a suspect to act as an “Interview Friend” or “Independent Person” or to “sit through” or “witness” a police interview should be politely declined.

Stephen M Wilson  
Magistrate  
Northam  
8<sup>th</sup> June 2009

This is a slightly edited version of Magistrate Wilson’s paper that also appeared in the recent RAJWA journal. It is reproduced here for the benefit of those Justices who do not receive that journal.

The full text is on the RAJWASWB WEBSITE