

The South West Justices Journal



February 2013

BUSSELTON SEMINAR

Tuesday February 28th 2013

IMPORTANT INFORMATION FOR JUSTICES

You are again reminded that it is a requirement that Justices who wish to gain/retain their Court Accredited status attend at least one DotAG accredited training session each calendar year and be serving on a current court roster.

Training dates set down for this year are

Busselton-28th Feb, Manjimup-30th May, Collie-1st July, Bunbury-28th Oct.

The RAJWASWB AGM and Annual Seminar, Bunbury, November 29th
(The training on the 29th November is of a general nature and not for court accreditation)

AGENDA

DotAG — SW JP Court Accreditation BUSSELTON TRAINING SEMINAR

28th February 2013

The Abbey Beach Resort

595 Bussell Hwy, Busselton

9.00am Registration and Refreshments

9.30am Welcome & Opening

9.35am Training Session

10.45am Morning tea

11.00am Training Session

12.00pm Ask the Magistrate

Time to ask any questions and for a discussion of matters of common interest.

12.30pm Lunch

1.30pm Training Session

2.15pm Break

2.30pm Training Session

4.00pm Close

Justices may advise of their intention, or otherwise, to attend by forwarding the attached form by one of the various methods indicated

or by accessing the Branch Website at

www.rajwaswb.org.au/justices

BUSSELTON DotAG APPROVED TRAINING DAY 28th February 2013

This training day will be specifically targeted at the judicial functions that are carried out by Justices of the Peace. Attendance at this event by Justices who are currently under the age of 70 years will provide the necessary “Court Accreditation” to enable them to sit in a Magistrate’s Court in the SW region.

Justices are encouraged to attend and become accredited so that they can assist in filling the various JP Court Rosters that are in force in the SW. As time goes by Justices who reach the age of 70 are removed from these rosters and there is a need for other Justices to step up and fill these vacancies.

Matters to be dealt with at this training day will include :-

- Court Procedures when :-
 - Dealing with an accused who has legal representation
 - Dealing with an accused without legal representation
 - Dealing with an accused who is not present but has provided an endorsed plea
 - Dealing with an accused who is not present where there is no endorsed plea
- Bail and Surety :-
 - Dealing with bail and/or surety when sitting in Magistrate’s and Court
 - Dealing with bail and/or surety when contacted by a person wanting to go surety
 - Dealing with bail and/or surety when contacted by the Police
 - Dealing with bail and/or surety when contacted by the Bunbury Prison
 - Procedures to ensure you can be made aware of any instance of “JP Shopping”
- Matters to do with the Road Traffic Act, including among others :-
 - Discretionary disqualification of an MDL
 - Replacing a fine with a CSO
- Other matters that have been brought to the attention of the Magistrates with regard to Justices exercising various judicial functions.

You will note there is a half hour session programmed at 12 noon for Justices to ask the Magistrates any questions they may have about any matter concerning the duties of a Justice that they may have a concern with, or that they need to be further clarified. Justices are encouraged to turn their mind to such questions and have them ready on the day. If the questions are of an involved nature it might be appropriate for the question to be forwarded to the court prior to the day so that the Magistrates have an opportunity to research and prepare an answer.

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- Send your questions to
- **melinda.atkins@justice.wa.gov.au** **attention Magistrate Fisher**

MUSING FROM THE MAGISTRATES

May we take this opportunity to wish each and everyone a happy and healthy 2013. We would also acknowledge the contributions and assistance provided by Justices to the Courts, Signing Centres, Police and the general communities of the South West and ourselves in 2012.

Some of you may have had the pleasure of meeting Her Honour Magistrate Elizabeth (Liz) Hamilton, who replaced Her Honour Magistrate Vivien Edwards. Ms Edwards is now in Mandurah and Ms Hamilton was previously in Albany for some years where she involved herself with the ongoing training & education of Justices and we welcome her to the South West.

As is ever the experience when we believe we understand the law, it changes. We would wish to draw your attention to recent changes to the Road Traffic Act 1974 (Section 71C), the Restraining Orders Act (Section 61A) and, although not a recent amendment, the Bail Act 1982 as regards the approval of sureties (Sections 35 to 43A inclusive).

ROAD TRAFFIC ACT 1974 (SECTION 71C)

With effect from the 1st August 2012 a Police Officer has the authority/power to impose a 'road side' disqualification of a driver's license for two (2) months on the alleged offences of driving under the influence of alcohol/drugs (S63), driving in excess of 0.08% (Section 64) or failure to provide sample of breath, blood or urine for analysis (S67). The disqualification operates from the time the notice issued by the Police Officer is given to the offender; disqualification notices may be given up to and including 10 days after the alleged offence; Section 71H of the Road Traffic Act requires that a Court convicting an offender of an offence to which a disqualification notice relates is to "take into account any period of disqualification imposed under these provisions."

As a matter of common sense and practice this is best done by **ordering that the "period of disqualification imposed by the Court be reduced by any period during which the offender was disqualified by a disqualification notice given under Section 71C"**. Each South West Court has been provided with a stamp to ease the burden of the long endorsement on the prosecution notice.

RESTRAINING ORDERS ACT (SECTION 61A)

Section 61A provides for a mandatory period of imprisonment which by application of Section 86 of the Sentencing Act 1995 "must not be 6 months or less" (ie. 6 months and one day), where an offender has been convicted of at least two offences of breach of a Violence Restraining Order or Police Order within the period of 2 years before the persons conviction of the present offence.

The Court may decide not to imprison the offender, if it "would be clearly unjust given the circumstances of the offence and the person", and it must give written reasons why imprisonment /detention was not imposed.

It is our direction that where you have before you an offender charged with a fresh breach of a VRO or Police Order and who has two or more convictions for breach of a VRO or Police Order in the last two years, that you remand such person to appear before a Magistrate and thereafter consider bail.

BAIL ACT – APPROVAL OF SURETY

Recent experience suggests that there has been a degree of Justice shopping to obtain the approval of an applicant surety. We will provide more detailed guidance at future seminars, however, in the interests of brevity may we highlight – by dot point – the primary interests of the Act (Sections 35 to 43A) with any assessment as to suitability and approval of a surety.

Applicant attending upon a Justice must have first obtained a Form 8 [Notice to Surety as to terms of Bail] from the Court or Prison duly completed and a Form 9 [Information for Proposed Surety]

The Justice before commencing the assessment ought to inquire whether the surety applicant has before applied and been refused as surety in this particular matter/case. If so, the matter under Section 41 must go back before the previous "surety approval officer" (Justice) to consider again unless he/she is unavailable or absent.

Upon completion of the information declaration (Part B) by the proposed surety you are not required to notify the Prosecutor unless it is a condition of bail, however, it seems to us that to notify the Prosecutor is an appropriate enquiry by a Justice (Section 40) to see if there is any objection to propose surety. The objection by a Prosecutor is not an exclusion, rather a matter for the discretionary consideration of a Justice.

Considerations for the discretion of the "surety approval officer" (Justice) are set down in Section 39 include, but not limited to :-

character and antecedents of applicant;
proximity to or connection with the accused or relationship; and
ability to pay in event of forfeiture and hardship to applicant

Whether you approve or refuse a surety you must keep the Form 8 and forward it to the Court at the first opportunity; where the matter is being considered on a weekend and the accused is held in Prison or Police custody the Form 8 should be forwarded to the Prison or Police Station where the accused is being held without delay.

May we again take this opportunity to wish you well for 2013 and look forward to your continuing support.

MAGISTRATES PONTIFEX, HAMILTON & FISHER

FROM THE PRESIDENT

It has been a very busy 2012 with both our court and signing rooms rosters. The new Rules of the Association are nearly completed. Our Pro-bono lawyers have done an excellent job re-writing our rules, and bringing them into the current form of expression and modern practice. Council is currently reviewing them for amendments/corrections etc. It is hoped they will be published in the not too distant future.

The RAJ Pres and Registrar, after attending our AGM were very impressed with the quality and information exchanged with our guest speakers and magistrates. During some casual discussion with members, it was suggested that RAJ Council hold a meeting of the Council in Bunbury.

This has been considered, and could eventuate in April this year. The format and other details will be advised when final plans formed.

Finally, Anne and I wish all of you a year of good health, happiness and safety through 2013.

Regards,

Tim Lee Steere
RAJSW Branch Pres.

A Refresher on AFFIDAVITS

The person who is making the affidavit must —
sign or personally mark the statement and each other page of the affidavit;
sign or initial any alteration, such as an insertion or erasure, that has been made to the affidavit;
and
in the presence of a JP, say orally on oath, or orally affirm —
that he or she is the person named as the maker of the affidavit;
that the contents of the affidavit are true;
that the signature or mark is his or hers; and
that any attachment to the affidavit is the attachment referred to in it.

**It does not need to be signed in the presence of the JP.
(This is also true for initialling alterations).**

After the Oath/Affirmation has been taken the JP must
sign and clearly write your name and qualification as an authorised witness, and your JP number.
(for everything but the signature you can use a stamp)
sign each other page of the affidavit; and
sign or initial any alteration in the affidavit that has been signed or initialled by the maker. This should be done in the margins next to altered line/s of text.
The affidavit must conclude with a statement that states —
it is **sworn or affirmed**, by the person making it in the presence of an authorised witness; and where and when it is sworn or affirmed.

Affidavits and declarations by blind or illiterate people

If the person making an affidavit or statutory declaration is blind or illiterate, the JP must —
read the document aloud to the person, or cause the document to be read aloud to the person in his or her presence;
satisfy himself or herself that the person understood what was read aloud; and
certify on the document —
that the document was read aloud to the person; and
that the JP is satisfied that the person understood what was read aloud.

Affidavits and declarations by people not conversant with English

If the person making an affidavit does not clearly understand or speak English, they can make the affidavit in another language but the affidavit is not admissible in a court or by a person acting judicially unless —
the affidavit is translated into written English by a suitably qualified translator; and the translator makes an affidavit —
that sets out his or her qualifications as a translator;
that says the English translation is accurate; and
that has the English translation attached to it.

Rubber stamp signatures are NOT to be used