

Training and Support for Justices of the Peace





VISION
of the
Office of the Auditor General
*Excellence in auditing for the
benefit of Western Australians*

MISSION
of the
Office of the Auditor General
*To improve public sector
performance and accountability
by reporting independently to
Parliament*

**Office of the Auditor General
Western Australia**

7th Floor Albert Facey House
469 Wellington Street, Perth

Mail to:

Perth BC, PO Box 8489
PERTH WA 6849

T: 08 6557 7500

F: 08 6557 7600

E: info@audit.wa.gov.au

W: www.audit.wa.gov.au

National Relay Service TTY: 13 36 77
(to assist persons with hearing and voice impairment)

On request this report may be made available in an
alternative format for those with visual impairment.

© 2014 Office of the Auditor General Western Australia. All
rights reserved. This material may be reproduced in whole or
in part provided the source is acknowledged.

ISBN: 978-1-922015-50-1

**Training and Support for
Justices of the Peace**



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

TRAINING AND SUPPORT FOR JUSTICES OF THE PEACE

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of the overall audit program. They seek to provide Parliament with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

The information provided through this approach will, I am sure, assist Parliament in better evaluating agency performance and enhance parliamentary decision-making to the benefit of all Western Australians.

A handwritten signature in black ink, appearing to read 'C. Murphy'.

COLIN MURPHY
AUDITOR GENERAL
26 November 2014

Contents

- Auditor General’s Overview4
- Executive Summary.....5
 - Overview 5
 - Conclusion 6
 - Key findings..... 6
 - Note to the report 7
 - Recommendations 7
 - Agency response 7
- What Did We Do?8
- Background9
- What Did We Find?12
 - Not all JPs that perform duties in the community are trained and the Department of the Attorney General does not know the significance of this risk 12
 - Training is focused on JPs before appointment and on JPs who preside in Court 14
- Appendix 1.....18
 - Access to Cabinet information 18

Auditor General's Overview

Around 3 000 Western Australians are currently appointed as Justices of the Peace (JPs). They give freely of their time to serve their communities and to support the justice system.

JPs can perform a range of functions, from witnessing documents to approving bail applications and authorising search warrants. As well, 300 JPs are currently eligible to preside in a Court if allowed by the local Magistrate.



A person can be appointed as a JP without the need for any legal qualification. However, a prerequisite to appointment since 2002 and evident from 2011 has been satisfactory completion of training. Once appointed, training for JPs is not mandatory unless they wish to preside in Court, in which case annual training is required.

The Department of the Attorney General (DotAG) is responsible for administering the JP function which includes the provision of training and support.

In 2011 the Standing Committee on Environment and Public Affairs tabled a report on the implementation of the Coroner's recommendations into the 2008 death of Mr Ward, a prisoner in custody. The Committee found that training of JPs had improved since 2008 but it was not satisfied that all JPs had received training. My audit looked into the training and support provided to JPs since the Committee's inquiry.

I was encouraged to see that DotAG makes a range of training and support options available to JPs. However, my testing showed that the majority of JPs were going for years at a time without training.

While I appreciate that DotAG focuses its training efforts on the JPs that preside in Court, not all duties that carry risk are carried out in Court. It also only takes one wrong decision to profoundly affect an individual or the community. The death of Mr Ward highlights this concern. My audit shows that DotAG is still to fully address the risk of an untrained JP making significant decisions.

Continuous professional development is an accepted requirement of most professions. Although the JP function is voluntary, it is nevertheless surprising to me that regular training is not a requirement for all JPs, particularly those performing significant functions such as approving bail applications and authorising search warrants. I have recommended to DotAG that they establish a greater understanding of the duties that JPs individually and as a group perform so that they can better target their training.

DotAG has told us that it will be commencing consultation about possible changes to the law that may help address these risks. Unfortunately, I was unable to confirm this as DotAG denied access to the documentation on the grounds that they were Cabinet-in-confidence.

My lack of access to Cabinet-in-confidence material has been an ongoing issue since the introduction of the *Auditor General Act 2006*. While a protocol is in place that allows me to seek permission to access Cabinet-in-confidence documents, my access is not automatic or always timely. I intend to pursue avenues to address this issue.

Executive Summary

Overview

There are nearly 3 000 Justices of the Peace (JPs) registered in Western Australia (WA). JPs perform a range of activities in Courts and in the community that improve the community's access to justice, such as:

- witnessing signatures to documents such as wills, affidavits, and statutory declarations
- issuing search warrants for the WA Police and other authorities
- hearing bail applications and interim violence restraining orders, and dealing with simple traffic offences.

The voluntary work performed by JPs can ease the burden on our justice system and can have a significant impact on the lives of those they serve.

JPs are appointed to their positions by the Governor on the recommendation of the Attorney General. The administration of appointments and training is handled by the JP Branch of the Department of the Attorney General (DotAG).

To be eligible for appointment, a person must be an Australian citizen and enrolled to vote in WA. No other qualifications are required.

In 2009 the role of JPs and the training they receive came under scrutiny during the Coroner's inquest into the death of Mr Ward in the back of a prisoner transport vehicle. The Coroner's report¹ noted that:

... this transfer of custody would not have happened at all if police and the JP ... had complied with relevant legislation.

and that

The fact that both the Deputy Registrar ... and JP ... appear to have known almost nothing about their relevant roles and responsibilities is, at the very least, an embarrassment.

The report also made a number of recommendations to DotAG around the use of JPs to perform Court duties, and the need to ensure they are trained, assessed², and regularly monitored to ensure they are performing their duties appropriately.³ Court duties are generally performed in the Magistrates Court. They may also occur in other locations within the community such as police stations where JPs have been requested to do so and certain requirements are met.

In 2011, the Standing Committee on Environment and Public Affairs tabled a report on the implementation of the Coroner's recommendations. Although the Committee found that training had improved, it was not satisfied that all JPs had received training⁴. The Committee reiterated the recommendations of the Coroner⁵. The Government supported the recommendations and advised that JPs who preside in Court would be monitored⁶ to ensure that their skills were maintained.

1 Alastair Neil Hope, *Record of Investigation into Death* (2009), 117-118.

2 Ibid, 139.

3 Ibid, 140.

4 Standing Committee on Environment and Public Affairs, Report 23: *Inquiry into the Transportation of Detained Persons: The Implementation of the Coroner's Recommendations in relation to the Death of Mr Ward and Related Matters* (2011), 22.

5 Ibid, 17.

6 Terry Redman MLA, (then) Minister for Corrective Services, *Government Response to Report Recommendations* (2011) 7.

Our audit objective was to determine if JPs are trained and supported so that they can carry out their duties.

Conclusion

DotAG does not know whether JPs need more training because it does not collect and assess information about the duties they perform in the community. This is despite the fact that duties performed in the community can include authorising search warrants and deciding on bail at police stations in country areas.

All prospective JPs must complete and pass training on their Court and community duties before they can be appointed. DotAG has improved the breadth and depth of training as well as its accessibility in recent years.

While all existing JPs are provided with the opportunity to receive training, only the small number of JPs that preside in Court are required to complete ongoing training. There is a lack of any requirement for JPs to receive ongoing training on duties they may perform in the community. This is reflected in our test results which showed that over 50 per cent of JPs had not received any training for three years or more.

Key findings

Not all JPs that perform duties in the community are trained, and DotAG does not know the significance of this risk:

- Not all JPs are regularly trained to ensure they have the skills to perform duties in the community. Fifty eight of the 100 JPs whose training records we reviewed had not attended any training in the last three years. If a JP makes a mistake because they are not trained, it can have a big impact on individuals and the community.
- DotAG does not know which JPs are actively performing duties in the community, what types of duties they are performing and whether they have been trained to perform those duties. The inability to identify the JPs that for instance, authorise bail at country police stations or issue search warrants and to match these functions to the training they have received, is a serious risk.
- DotAG's communication with JPs working in the community is patchy. This is in part because not all JPs have provided email addresses and may not have access to online resources. The need for a more comprehensive communication approach was recently evident when many JPs were not made aware of important procedural changes related to the issuing of search warrants.

Compulsory training only applies to persons seeking to be appointed as a JP and those JPs who preside in Court:

- Since 2011, DotAG can demonstrate it has consistently applied a policy that requires people who want to become JPs to complete a training course before they can be appointed. This means that all new JPs are trained in how to perform their duties.
- All JPs who preside in Court complete regular training. At the time of our audit, 300 JPs could preside in Court, and all had been trained in the past 24 months. This means that the JPs who perform important duties in Court, such as hearing, determining and sentencing on charges, have been provided with up-to-date knowledge about their duties. Additional assurance as to their competency is that they can only preside in a Magistrates Court if allowed by the local Magistrate.

Note to the report

During the audit we were advised of possible changes to the *Justices of the Peace Act 2004*. When we asked to see the documentation to understand whether the proposed changes might address the types of risks we were identifying, DotAG declined to provide the documents on the basis of legal advice that the documents were Cabinet-in-confidence. The Department's legal advice was that the *Auditor General Act 2006* does not give authority to access such documents. Appendix 1 provides some detail of this issue and of how we are attempting to gain access to the documents.

Recommendations

The Department of the Attorney General should by December 2015:

- commence collecting data about the duties JPs perform in the community and compare it to the training provided. This information should be used to help assess the skills of JPs and to better target the training of JPs both individually and as a group.

Agency response

Department of the Attorney General

The Department of the Attorney General has valued the opportunity for external review of its performance regarding the training and support that it provides to Justices of the Peace across Western Australia. It is pleasing to note that the Auditor General has confirmed the Department's effectiveness in providing training and support to JPs performing in court duties. The Department notes the findings reported regarding the training and support of JPs in the broader community and will consider the Auditor General's recommendation following a risk assessment.

What Did We Do?

Our objective was to determine if Justices of the Peace are trained and supported so that they can carry out their duties. We looked at whether DotAG:

- provides comprehensive training to JPs prior to their commencement
- regularly audits the skills and knowledge of all JPs and identifies pre and post-appointment training needs
- targets training delivery towards identified needs
- ensures JPs receive ongoing professional development to keep their skills up-to-date
- provides ongoing support to JPs, that JPs can access as the need arises
- monitors the skills and knowledge of all JPs
- reviews the effectiveness of its JP training and support
- takes action to improve the effectiveness of its JP training and support.

We interviewed DotAG staff and examined their key documents and training records. We also interviewed the contracted training provider, Central Institute of Technology (CIT), and reviewed their key documents. We consulted with the following stakeholders:

- Deputy Chief Magistrate
- Royal Association of Justices (RAJWA)
- Fremantle Association of Justices (FAJ).

We issued a survey to a representative sample of 100 JPs across the State to get a better understanding of the duties they carry out and their views on the training and support they received. Twenty five JPs responded.

Our audit focused on the training and support provided to JPs, not the appropriateness of decisions made by JPs while undertaking their role and responsibilities.

The audit was conducted in accordance with Australian Auditing and Assurance Standards.

Background

The Justice of the Peace Branch within the Department of the Attorney General has a budget of just under \$500 000 to coordinate the appointment and training of JPs across Western Australia. JPs are appointed under the *Justices of the Peace Act 2004* but the functions they perform arise from many other Acts, such as the *Magistrates Court Act 2004*, the *Restraining Orders Act 1997*, and the *Criminal Investigation Act 2006*.

JPs come from diverse backgrounds, including fisheries, accounting, finance, teaching, occupational health and safety, and administration and support. Any Australian citizen is eligible to become a JP as long as they are enrolled to vote in WA. They are not required to have any specific legal qualifications or experience.

Some people are automatically considered JPs while they hold certain offices. These include judges, magistrates and members of Executive Council (the Governor and Cabinet members).

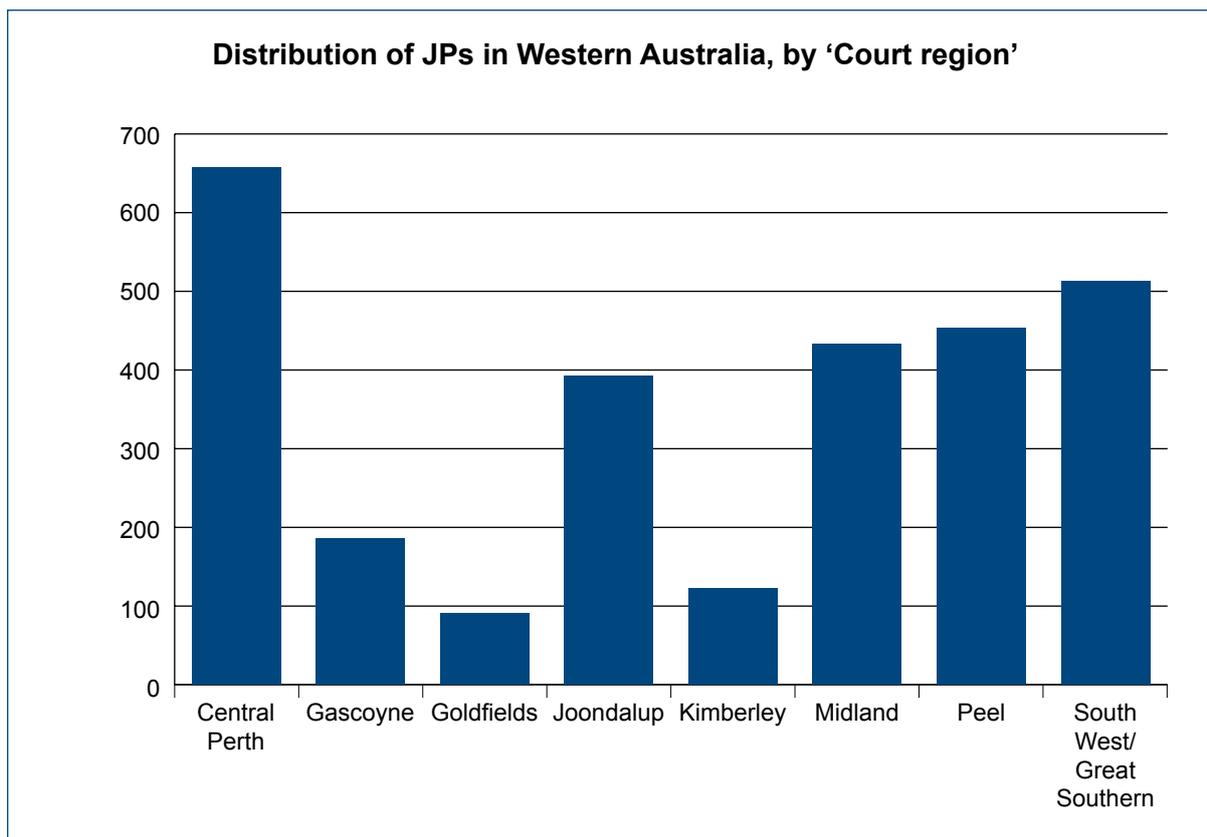
JPs provide voluntary services which improve the community's access to justice. Some of these duties are straightforward and low risk, such as witnessing documents, while others are higher risk, for example:

- issuing search warrants for the WA Police and other authorities
- hearing bail applications in the Magistrates Court and in police lock ups
- authorising sureties (where another party agrees to pay a sum if the accused person does not comply with bail)
- deciding verdicts for traffic offences and the issue of interim violence restraining orders in the Magistrates Court
- sentencing for some less serious offences in Court, usually with agreement of the accused and the prosecutor, where the accused has pleaded guilty.

The duties JPs perform in Courts are generally higher risk than those outside of Court. However, the Court duties a JP may perform do not have to happen in a traditional courtroom setting, as Courts can be 'constituted' in other places within the community, if certain requirements are met.

In WA, Courts can be constituted in regional and remote locations without a courthouse or Magistrate present, if certain Court officials such as magistrates request JPs to do so. This recognises and caters for the State's geographical spread. However, the risk of inadequately trained JPs performing Court duties in regional locations has previously been noted by the Coroner and Standing Committee on Environment and Public Affairs.

There are nearly 3 000 JPs living and working in the State (Figure 1), from central Perth to remote locations.



Source: DotAG and the Office of the Auditor General (OAG)

Figure 1: Distribution of JPs in Western Australia, by 'Court region'

JPs are appointed for an indefinite term but can seek voluntary termination at any time. They can also be terminated by the Governor upon recommendation from the Minister. Since 2006, the Governor has terminated 60 JPs because they could not be located or had been convicted of a crime.

DotAG does not routinely carry out criminal record checks of JPs after they are appointed. Therefore, being a JP is no guarantee of a clear criminal record. However, JPs are screened before appointment and are required to self-report convictions.

Some duties that JPs perform are restricted by age. For example, JPs aged:

- 70 and above are not allowed to preside in Court without permission from the Minister
- 75 and above are not allowed to issue search warrants.

About one third of all current JPs are aged 70 or older. In September 2014, JPs in WA ranged in age from 24 to 101 years of age.

The functions and powers of JPs as well as their training obligations differ in each state. In WA, legislation does not require JPs to do any training. JPs in other states generally have training obligations that match their level of responsibility. For example:

- Victoria has voluntary Bail Justices to hear applications for bail and remand out of hours. By law, these Bail Justices must complete extensive induction, pre-appointment training, and rigorous scenario based assessment to be appointed. They are also reassessed every five years.

- Queensland and South Australia use a tiered system where JPs who do more training have more authority. For example, to preside in Court in South Australia, laws require that JPs known as Special Justices must complete an 18 month course before presiding in Court.
- In New South Wales and the Australian Capital Territory, JPs are only allowed to carry out administrative tasks such as administering oaths and witnessing signatures. The training they are required to undertake reflects these responsibilities.

What Did We Find?

Not all JPs that perform duties in the community are trained and DotAG does not know the significance of this risk

JPs that perform duties in the community are not required to receive ongoing training after they are appointed. This poses a risk because all JPs are authorised to carry out duties that, if done incorrectly, can seriously impact the lives of citizens. For example, subject to certain age limits, JPs in the community can generally authorise search warrants, and approve bail and sureties.

DotAG does not know how significant these risks are because it does not know if, and how frequently, individual JPs perform duties in the community. Without understanding these risks, it cannot know whether it targets training activities correctly and whether JPs have a good understanding of their duties.

There is an additional risk that some JPs may not be aware of training opportunities and important changes to their duties because DotAG primarily relies on its website to communicate with JPs. However, a significant number of JPs have not provided DotAG with email addresses which may suggest they are not regular users of online resources.

Not all JPs are regularly trained

We reviewed training records for a random sample of 100 JPs and found that 58 had not done any voluntary training in the past three years. The numbers of JPs who participated in training in 2011, 2012 and 2013 (Figure 2) also show that less than a third of JPs do training each year.

Year	Number of JPs trained
2011	790
2012	886
2013	729

Source: DotAG and OAG

Figure 2: Number of JPs who attended training in 2011, 2012 and 2013

DotAG acknowledges there is a risk that a JP could make a significant inappropriate decision due to lack of training. However, it considers that the risk is reduced by making information and support available to JPs. The following example shows how untrained JPs can perform duties incorrectly, with potentially serious implications for the justice system.

Example: Lack of JP training can pose risk to the community

During our audit, we were told by DotAG about a JP who signed surety papers to release a person from prison on bail. The JP did not have authority to do this because they were over the age of 75. This JP had never had any training. Fortunately, the error was detected by a Court officer before the person in custody was released from prison.

DotAG attempts to manage performance issues like this by marking the JP as 'unavailable' on the public register. While this makes it more difficult for the general public to identify and seek out this JP, it does not actually limit the JP's powers to carry out duties under legislation.

DotAG advised it received approval from the Attorney General in mid-September 2014 to commence consultation with stakeholders and draft legislative amendments that may address this risk. We were not provided with any evidence of this correspondence as it was considered Cabinet-in-confidence. Appendix 1 provides some detail of this issue and of how we are attempting to gain access to the documents.

Limited information is available about the duties JPs perform in the community

There is no comprehensive, up-to-date data on what duties JPs perform in the community, as this information is not recorded. This information if available, would allow DotAG to better assess the risks associated with the duties performed by JPs both individually and as a group and to better target its training programs.

The Standing Committee on Environment and Public Affairs in 2011, recommended an annual audit of the skills and understanding JPs have of their duties⁷. However, these annual audits are not done and it is not known what duties individual JPs perform in the community.

While DotAG has not audited JPs' skills and understanding, it did survey them in 2009-10. The survey showed that 14 per cent of JPs preside in Court, but a greater number of JPs authorised warrants (30 per cent) and considered bail or sureties (19 per cent). This result raises questions about whether those JPs who do not preside in Court but are performing significant duties such as authorising bail are receiving sufficient training.

While it is clear that JPs frequently perform important duties in the community, there are no records to show which JPs perform what duties or where. This means we are not able to establish whether the JPs performing functions in the community have been trained to perform those functions.

Further, the results of JP online training assessments from 2012 and 2013 (Figure 3) raise other concerns. Fourteen of 182 JPs (eight per cent) that completed online training modules were not rated as competent. While there are a number of reasons why JPs might not be rated as competent, like not completing the course, the most serious risk is that some JPs may not fully understand how to perform their duties.

	Enrolments	Considered competent	Not considered competent	Withdrew / did not start module
Online	251	168	14	69

Source: DotAG and CIT

Figure 3: Results of assessments of JP training in 2012 and 2013

Our own survey of 100 JPs confirmed that JPs can be called upon to perform important duties in their communities. For instance, 13 of the 25 respondents told us they authorise search warrants at least once a year.

Our survey also showed that some JPs believed they had not received adequate training to carry out their duties. Specifically:

- two of the 25 respondents said they had not been adequately trained to certify documents and witness affidavits

⁷ Standing Committee on Environment and Public Affairs, Report 23: *Inquiry into the Transportation of Detained Persons: The Implementation of the Coroner's Recommendations in relation to the Death of Mr Ward and Related Matters* (2011), 23.

- of the 19 respondents who were aged under 75 and therefore eligible to hear bail or remand, authorise sureties and search warrants:
 - seven said they had not been adequately trained to hear bail and remand applications
 - six said they had not been adequately trained to authorise surety applications
 - two said they had not been adequately trained to authorise search warrants.

The Department of the Attorney General's communication with JPs working in the community is patchy

DotAG's ability to communicate easily and reliably with the State's 3 000 JPs is critical to the success of the JP system. However, the communication that does occur is patchy.

Part of the reason for this is that DotAG primarily relies on its website to share information with JPs. This includes its training calendar and important legislative or administrative updates. However, DotAG does not have email addresses for 29 per cent of JPs, which suggests that these JPs may not have access to DotAG's website.

This could be part of the reason why the uptake rates for online training remain low. In 2012 and 2013 only 251 JPs accessed the online training despite all JPs being eligible to enrol.

In June 2014 DotAG placed an important update about search warrants on its website and emailed the update to JPs. The update was about a new obligation to inform a Court that a search warrant has been issued. However, the update was not sent to those JPs that had not provided an email address. It is not clear whether these JPs are aware of the new obligation, even though they may be asked to authorise a search warrant.

Training is focused on JPs before appointment and on JPs who preside in Court

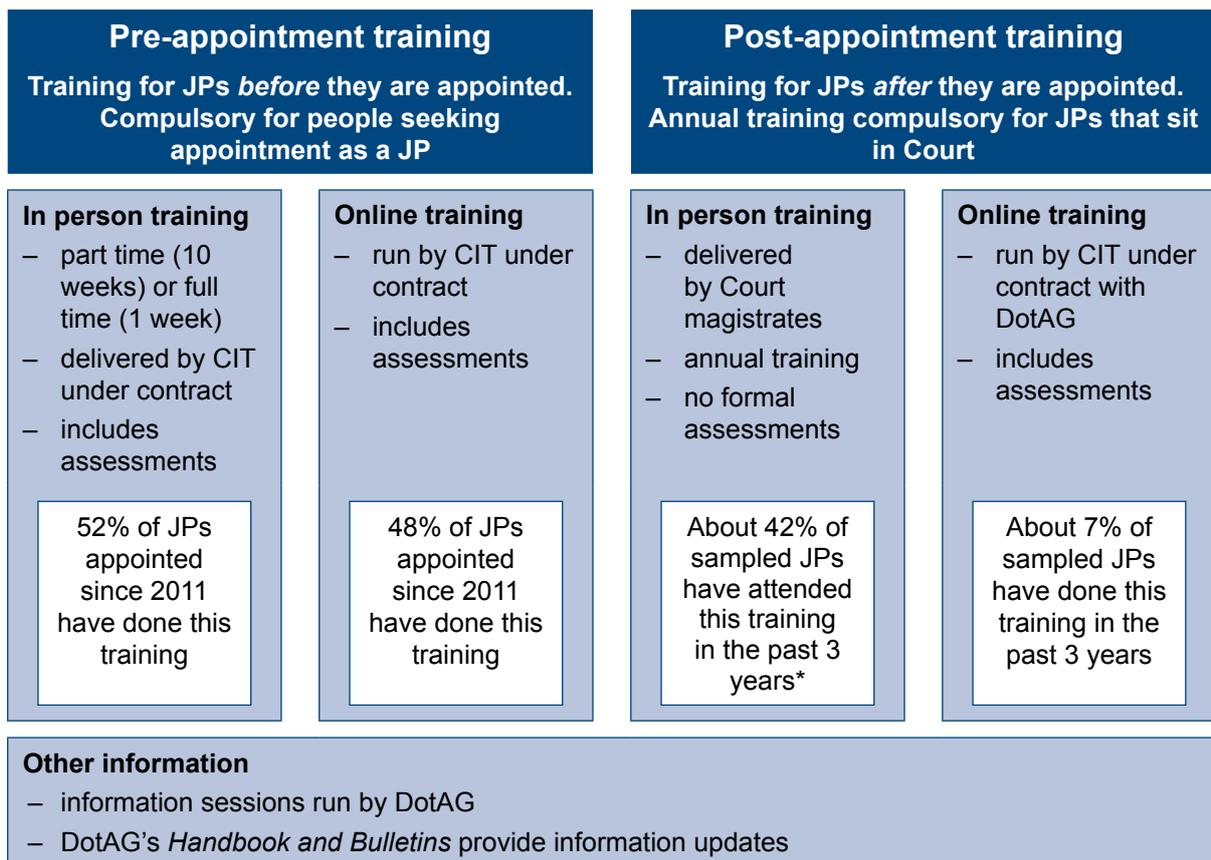
Comprehensive training is provided to all applicants before they are appointed as a JP and JPs presiding in Court are trained annually.

In 2002 the Attorney General made training a prerequisite to appointment to ensure that new JPs are well prepared to carry out their duties correctly. However, prior to 2007, people could apply to have this requirement waived. It was later decided that JPs presiding in a Magistrates Court must receive annual training to help ensure that their skills and knowledge are up-to-date.

Although there is no legislative requirement for JPs to be trained, DotAG has made efforts to make training more available. It has developed training options to address the needs of JPs in more remote locations, and those unable to attend traditional class based training programs. These include video linking and online training. The types of training available are shown in Figure 4.

Of the 25 JPs who responded to our survey, 17 said they had done training in the past three years. Most rated the training and support positively:

- fourteen respondents rated the training as 'good or very good'. Only two respondents rated the training as poor
- eleven rated DotAG's support as 'good or very good', while seven rated it as either 'somewhat poor or poor'. Those that rated the support as 'somewhat poor or poor' said they were most likely to go to a JP association (five of seven respondents), the JP Handbook (four of seven) or another JP (four of seven) for advice.



* JPs may have attended both in person and online post-appointment training.

Source: DotAG and OAG

Figure 4: Training and resources available to JPs, including uptake rates since 2011

JP's are trained before they are appointed

In 2002 the Attorney General approved a policy to require people who want to become JPs to complete a training course before they can be appointed. However, it was not until 2011, when a new registration and training database named JPAX was introduced, that DotAG could demonstrate that it applied the policy. We analysed the JPAX training records and found that all of the 158 JPs appointed since September 2011 had completed the required pre-appointment training course.

Participants in pre-appointment training can complete the course online, or attend full or part time training. About half the JPs appointed since 2011 attended training in person, and about half did the training online (see Figure 5).

The course was developed with input from stakeholders, including JPs themselves, and covers the following key duties and obligations of JPs:

- JP Code of Conduct
- cultural awareness
- witnessing documents
- restraining orders
- bail
- sentencing
- warrants
- Children's Court.

Participants have to complete assessments to demonstrate their competency in the subject matter. They are allowed two attempts to 'pass'. Ninety per cent of participants that completed the training in 2012 and 2013 were considered competent. All of those rated as not yet competent were either not appointed as JPs, or were not appointed until after they re-enrolled and successfully passed the training course. Results of 2012 and 2013 assessments are shown in Figure 5.

	Enrolments	Considered competent	Not considered competent	Withdrew or did not start
In person	61	58	2	1
Online	51	34	9	8

Source: DotAG and CIT

Figure 5: 2012 and 2013 pre-appointment training results

Participants are asked to evaluate the training they received. We reviewed 55 evaluations between 2011 and 2014 and found that almost all participants rated the course highly.

Training of JPs is focused on those who preside in the Magistrates Court

Once a person is appointed as a JP, training is focused on those JPs that carry out judicial duties in Court. At the time of our audit, about 300 JPs had been nominated to preside in Court. We found that all had been trained in the 2013 or 2014 calendar years.

JPs that preside in Court can be involved in hearing bail applications, deciding verdicts, and sentencing and so proper training is essential to reduce the likelihood that they will reach an incorrect decision. Annual training for these JPs is compulsory.

Since 2011, DotAG has used its JPAX database to ensure that only those JPs that have completed their annual training are included on the list of JPs available to sit in Court.

Each Magistrate decides whether to have JPs work in their Courts, and can change their decisions on this over time. For example, JPs may preside in regional Courts to cover periods when the Magistrate is on circuit in other locations. We found that between June and August 2014, JPs presided in 30 Courts across the State.

The type of duties JPs perform in Court depends on whether the Court is regional or metropolitan. For example, JPs that work in regional Courts can sentence on more serious offences than JPs in metropolitan Courts.

Magistrates have a strong interest in ensuring that JPs who preside in their Court are appropriately trained to carry out their duties. As such, magistrates themselves have developed and voluntarily deliver the training. The content of the training will vary according to the priorities of each Magistrate.

This training is not formally assessed, although we were advised that magistrates make informal assessments about the suitability of each JP when deciding whether to allow them to work in their Court.

If a JP wants to preside in Court but cannot attend training by a Magistrate, they can do online training instead. They must complete at least two modules from a five module course but are allowed unlimited attempts to pass each module. Magistrates are still involved in deciding whether to allow them to work in their Court.

In 2010, the Justice of the Peace Training Committee was established to further assist in the training of JPs presiding in Court and to:

- develop a targeted training program
- identify and communicate JP training needs
- facilitate and coordinate the delivery of training in every region.

The Committee is chaired by the Deputy Chief Magistrate and meets about every six weeks. Attendees include representatives from DotAG, regional Courts, Royal Association of Justices WA, and Central Institute of Technology. The Committee has been instrumental in developing relevant training material such as a mock Court DVD.

Appendix 1

Access to Cabinet information

During this audit, DotAG advised my staff that it had received approval from the Attorney General to begin consultation with key stakeholders about possible changes to the *Justices of the Peace Act 2004*.

When we asked to see the documentation to verify and understand whether the proposed changes might address the types of risks we were identifying, DotAG declined to provide the document on the basis of advice from the State Solicitor's Office (SSO) that the document was Cabinet-in-confidence.

Although we were not provided with the SSO's advice, we did discuss the issue with the senior legal staff that provided the advice. They confirmed that the documentation was Cabinet-in-confidence even though it had not been submitted to Cabinet. This was because the content of the document in question would likely be eventually considered by Cabinet.

Our access to Cabinet information has been an ongoing issue since the commencement of the *Auditor General Act 2006*. The legislation was intended to allow us to access information even where it is considered Cabinet-in-confidence. The Explanatory Memorandum accompanying the Bill noted:

The clause [Clause 35] ensures that the Auditor General has the power to access all information necessary for the performance of his or her functions. Access to Cabinet documents would be available and claims of legal professional privilege would not be maintainable.

However, the SSO's view was that Parliament's intent was not reflected in the legislation. The SSO advised that despite the intentions of the law to allow our access to Cabinet information, this was not actually achieved by the *Auditor General Act 2006*.

In essence, their advice was that the confidentiality of such information is derived from common law, that is, unwritten law. Section 36(2) of the *Auditor General Act 2006* states that a person must provide information to the Auditor General "...despite any duty of secrecy or confidentiality that a person has under another written law". Confidentiality derived from unwritten law is not covered in this or any other section of the Act.

To facilitate my access to Cabinet information, the Department of the Premier and Cabinet (DPC) included a protocol in the Cabinet Handbook. This protocol enables me to request DPC to seek permission from the Premier, or Leader of the Opposition if the information relates to an opposition Government, to access Cabinet information. While I appreciate the cooperation of DPC in facilitating requests under this protocol, my access is still dependent on receiving permission. As well significant delays can occur while seeking this permission and this impacts my ability to provide timely advice and assurance to Parliament.

In relation to this audit, I have decided to table the report in Parliament while the Cabinet protocol is still in progress, rather than postponing tabling.

The *Auditor General Act 2006* needs to be amended to provide my Office with authority to access Cabinet-in-confidence material. This is a recommendation that I will be pursuing with the Joint Standing Committee on Audit when it undertakes its upcoming review of the legislation and the performance of my Office.

Auditor General's Reports

REPORT NUMBER	2014 REPORTS	DATE TABLED
20	Ensuring Compliance with Conditions on Mining – Follow-up	19 November 2014
19	Purchasing Through Common Use Agreements	12 November 2014
18	Audit Results Report – Annual 2013-14 Financial Audits	12 November 2014
17	Opinions on Ministerial Notifications	25 September 2014
16	Our Heritage and Our Future: Health of the Swan Canning River System	13 August 2014
15	Working with Children Checks	30 June 2014
14	Information Systems Audit Report	30 June 2014
13	Royalties for Regions – are benefits being realised?	25 June 2014
12	Government Funded Advertising	25 June 2014
11	Licensing and Regulation of Psychiatric Hostels	25 June 2014
10	Universal Child Health Checks Follow-Up	18 June 2014
9	Governance of Public Sector Boards	18 June 2014
8	Moving On: The Transition of Year 7 to Secondary School	14 May 2014
7	The Implementation and Initial Outcomes of the Suicide Prevention Strategy	7 May 2014
6	Audit Results Report – Annual 2013 Assurance Audits (Universities and state training providers – Other audits completed since 1 November 2013)	7 May 2014
5	Across Government Benchmarking Audits – Controls Over Purchasing Cards – Debtor Management – Timely Payment of Invoices	1 April 2014
4	Behaviour Management in Schools	19 March 2014
3	Opinion on ministerial decision not to provide information to Parliament about funding for some tourism events	18 March 2014
2	Charging Card Administration Fees	12 March 2014
1	Water Corporation: Management of Water Pipes	19 February 2014



Office of the Auditor General
Serving the Public Interest

**Office of the Auditor General
Western Australia**

7th Floor Albert Facey House
469 Wellington Street, Perth

Mail to:
Perth BC, PO Box 8489
PERTH WA 6849

T: 08 6557 7500

F: 08 6557 7600

E: info@audit.wa.gov.au

W: www.audit.wa.gov.au



Follow us on Twitter [@OAG_WA](https://twitter.com/OAG_WA)



Download QR Code Scanner app
and scan code to access more
information about our Office