

Prohibited Behaviour Orders Bill 2010

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Constrained persons to be natural persons	4

Part 2 — Prohibited behaviour orders

Division 1 — Making PBOs, general

5.	Application for PBO	5
6.	Court may make PBO after sentencing	5
7.	Hearing of PBO proceedings	6
8.	Grounds for PBO	6
9.	Matters to be considered by court	7
10.	Constraints imposed by PBO	8
11.	When PBO comes into force	10
12.	Duration of PBO	10
13.	PBO ceases to have force if conviction set aside or quashed	11
14.	Explanation about PBO to be given	11
15.	Registrar to give copies of PBOs	12

Division 2 — Making PBOs against youths

16.	Term used: youth-related PBO proceedings	12
17.	No PBO where court refrains from imposing punishment on youth	12
18.	Child welfare laws not affected	12
19.	Court to take into account certain principles and considerations	13
20.	Responsible adult to attend	13

	Division 3 — Varying or cancelling PBOs	
21.	Application	14
22.	Registrar to fix hearing and notify parties	14
23.	Applications to extend period of PBOs	14
24.	Variation or cancellation	15
25.	Correcting minor errors in PBOs	15
	Division 4 — PBO proceedings	
26.	Evidence in PBO proceedings	16
27.	PBO proceedings, general provisions about	17
28.	Practice and procedure	18
	Part 3 — Firearms constraints in PBOs	
29.	Application of this Part	19
30.	Constrained person to give up possession of firearms and licences	19
31.	Seizure of firearms	20
32.	Notification of co-licensees and responsible persons	20
	Part 4 — General	
33.	Giving of documents	23
34.	Publication of details of constrained people	23
35.	Breach of PBO	24
36.	Defence	25
37.	Appeals	25
38.	Protection from liability for wrongdoing	26
39.	Regulations	27
40.	Review of Act	27
	Part 5 — Amendments to other Acts	
	Division 1 — <i>Children's Court of Western Australia Act 1988</i> amended	
41.	Act amended	28
42.	Section 20 amended	28
43.	Section 35 amended	28
44.	Section 36 amended	28

Division 2 — <i>Criminal Investigation Act 2006</i>		
amended		
45.	Act amended	29
46.	Section 69A inserted	29
	69A. Searching people for things relevant to prohibited behaviour orders	29
Division 3 — <i>Criminal Investigation (Identifying People) Act 2002</i> amended		
47.	Act amended	29
48.	Section 73 amended	30
Division 4 — <i>Sentencing Act 1995</i> amended		
49.	Act amended	30
50.	Section 124B inserted	30
	124B. Prohibited behaviour orders	30

Defined Terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Prohibited Behaviour Orders Bill 2010

A Bill for

An Act to enable courts to make orders that constrain offenders who have a history of anti-social behaviour and for related purposes.

The Parliament of Western Australia enacts as follows:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Part 1 — Preliminary

1. Short title

This is the *Prohibited Behaviour Orders Act 2010*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act, unless the contrary intention appears —

adult means a person who has reached 18 years of age;

anti-social behaviour, by a person, means behaviour that causes or is likely to cause —

- (a) harassment, alarm, distress, fear or intimidation to one or more persons; or
- (b) damage to property;

child means a person under 18 years of age;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

constrained person means a person on whose lawful activities and behaviour constraints are imposed by a PBO;

firearm has the meaning given in the *Firearms Act 1973* section 4;

firearm licence means a Firearms Act Extract of Licence or permit, issued under the *Firearms Act 1973*, entitling a person to be in possession of a firearm;

- 1 **hearing notice** means a notice in writing that specifies the date,
2 time and place of a hearing of PBO proceedings and the terms
3 of the PBO being sought;
- 4 **party**, to PBO proceedings, means —
- 5 (a) the prosecutor; or
- 6 (b) the person against whom the PBO is sought;
- 7 **PBO proceedings** means proceedings in which the court makes,
8 varies or cancels a PBO against a person or considers doing any
9 of those things;
- 10 **prescribed** means prescribed in regulations made under
11 section 39;
- 12 **prohibited behaviour order** or **PBO** means an order made under
13 this Act imposing constraints of the kind referred to in
14 section 10 on a person;
- 15 **prosecutor**, in relation to PBO proceedings, means —
- 16 (a) if the related prosecution was in the Supreme Court or
17 the District Court — the authorised officer (as defined in
18 the *Criminal Procedure Act 2004* section 80) who
19 commenced the prosecution or another such authorised
20 officer; or
- 21 (b) if the related prosecution was in a court of summary
22 jurisdiction — the authorised person (as defined in the
23 *Criminal Procedure Act 2004* section 20) who
24 commenced the prosecution or another such authorised
25 person;
- 26 **registrar** means a registrar of the relevant court;
- 27 **related prosecution**, in relation to PBO proceedings, means the
28 prosecution that gave rise to the PBO proceedings;
- 29 **related sentence**, in relation to a PBO, means the sentence
30 referred to in section 6(2) after which the PBO is considered or
31 made by a court, as the case requires;
- 32 **relevant offence** means an offence involving anti-social
33 behaviour;

s. 4

1 **wellbeing** has the meaning given in the *Children and*
2 *Community Services Act 2004* section 3;
3 **youth** means a person who has reached 16 years of age but who
4 is under 18 years of age.

5 (2) A prescribed offence is to be taken to involve anti-social
6 behaviour in the absence of proof to the contrary.

7 **4. Constrained persons to be natural persons**

8 A constrained person must be a natural person.

Part 2 — Prohibited behaviour orders

Division 1 — Making PBOs, general

5. **Application for PBO**

- (1) A prosecutor in criminal proceedings may make an application for a PBO against the accused person at any time —
- (a) after the court has convicted the person; and
 - (b) before the court has sentenced the person.
- (2) The application must be made in accordance with rules of court.

6. **Court may make PBO after sentencing**

- (1) In this section —
- sentence* —
- (a) imposed on an adult, means a sentence imposed under the *Sentencing Act 1995* section 39(2); and
 - (b) imposed on a youth, means a sentence imposed under the *Young Offenders Act 1994*.
- (2) Subject to subsection (4) and section 17, a court that has sentenced a person for an offence may, after imposing the sentence, make a PBO against the person.
- (3) The PBO may be made —
- (a) on the application of the prosecutor under section 5; or
 - (b) on the initiative of the court.
- (4) A court must not make a PBO against a person unless —
- (a) the court is satisfied that there are grounds for making the PBO under section 8; and
 - (b) the court has had regard to the matters set out in section 9 and, if applicable, section 19; and
 - (c) the person has reached 16 years of age; and

- 1 (d) the person —
2 (i) is present when the PBO is made and has been
3 given an opportunity to be heard on the question
4 of whether or not the court should make the
5 PBO; or
6 (ii) has personally been given a hearing notice at
7 least 7 days before the PBO proceedings.

8 **7. Hearing of PBO proceedings**

- 9 (1) A court considering the question of whether to make a PBO
10 against a person may —
11 (a) proceed to hear the question after passing the related
12 sentence; or
13 (b) adjourn the question to a hearing.
14 (2) If PBO proceedings in relation to a person are adjourned to a
15 hearing under subsection (1)(b), a registrar must give a hearing
16 notice to each party to the PBO proceedings.
17 (3) If a party is given the hearing notice but does not attend the
18 hearing, the court may, as it thinks fit —
19 (a) proceed with the hearing; or
20 (b) if the party is an applicant under section 5 and the court
21 is satisfied that he or she was given the hearing
22 notice — dismiss the application; or
23 (c) adjourn the hearing.
24 (4) A court hearing PBO proceedings adjourned under this section
25 is not required to be constituted in the same manner as the court
26 that imposed the related sentence.

27 **8. Grounds for PBO**

- 28 (1) In this section —
29 **conviction** —
30 (a) includes a finding or admission of guilt despite the fact
31 that a conviction is not recorded under the *Young*
32 *Offenders Act 1994* section 55; and

- 1 (b) does not include a conviction that has been set aside or
2 quashed.
- 3 (2) Grounds for making a PBO exist if —
- 4 (a) the person —
- 5 (i) committed and was convicted of a relevant
6 offence; and
- 7 (ii) during the period of 3 years after that conviction
8 again committed, and was convicted of, a
9 relevant offence;
- 10 and
- 11 (b) unless constrained from certain otherwise lawful
12 activities and behaviour, the person is likely to commit
13 another relevant offence; and
- 14 (c) granting a PBO to impose the constraints is appropriate
15 in the circumstances.
- 16 (3) For the purposes of subsection (2)(a)(i), it does not matter if the
17 relevant offence was committed before, on or after the day on
18 which this section came into operation.

19 **9. Matters to be considered by court**

- 20 (1) When considering whether to make a PBO against a person, a
21 court must have regard to —
- 22 (a) the desirability of protecting other persons and property
23 from acts that constitute relevant offences; and
- 24 (b) the degree of hardship that may be caused to the person
25 if the PBO is made.
- 26 (2) A court must have regard to the matter set out in
27 subsection (1)(a) as being of primary importance.
- 28 (3) When considering whether to make a PBO against a person, a
29 court may have regard to all or any of the following —
- 30 (a) other current legal proceedings involving the person;
- 31 (b) any criminal record of the person;

- 1 (c) any sentence to which the person is subject;
- 2 (d) any order, made under a written law, that applies to the
- 3 person or, if the person is a youth, a person responsible
- 4 for the care, welfare or development of the person;
- 5 (e) any previous behaviour of the person that is similar to
- 6 the behaviour in relation to which the PBO is being
- 7 considered by the court;
- 8 (f) the extent to which the person complied with any
- 9 previous PBO;
- 10 (g) other matters the court considers relevant.

11 **10. Constraints imposed by PBO**

- 12 (1) In this section —
- 13 *specified*, in relation to a PBO, means specified in the PBO.
- 14 (2) In making a PBO a court may impose such constraints on
- 15 otherwise lawful activities and behaviour of a person as the
- 16 court considers reasonably necessary to reduce the likelihood of
- 17 the person committing a relevant offence.
- 18 (3) Without limiting the constraints that may be imposed under
- 19 subsection (2), a court may constrain the person from doing all
- 20 or any of the following —
- 21 (a) entering or remaining on, or being near, specified
- 22 premises or a specified locality or place;
- 23 (b) engaging in behaviour of a specified kind, either at all or
- 24 in a specified place, at a specified time or in a specified
- 25 manner;
- 26 (c) approaching within a specified distance of a specified
- 27 person;
- 28 (d) communicating, or attempting to communicate, (by a
- 29 specified means or by whatever means) with a specified
- 30 person;
- 31 (e) being in possession of a specified thing or a specified
- 32 class of thing;

- 1 (f) causing another person to engage in conduct of a type
2 referred to in paragraphs (a) to (e).
- 3 (4) A constraint may be imposed on the person absolutely or on
4 such terms as the court considers appropriate.
- 5 (5) A PBO may constrain a person from entering or remaining on
6 premises or in a place, or otherwise restrict the person's access
7 to the premises or place, even if the constrained person has a
8 legal or equitable right to be on the premises or in the place.
- 9 (6) A PBO is of no effect to the extent that it requires the
10 constrained person to consent to an act by another person that is
11 not lawful.
- 12 (7) A PBO is of no effect to the extent that it conflicts with or
13 duplicates any of the following that applies to the constrained
14 person —
- 15 (a) a restraint imposed by a restraining order made under
16 the *Restraining Orders Act 1997*; or
- 17 (b) a limitation or condition imposed by an extraordinary
18 licence granted under the *Road Traffic Act 1974*
19 section 76; or
- 20 (c) a requirement of a conditional release order made under
21 the *Sentencing Act 1995* Part 7; or
- 22 (d) a requirement of a community based order made under
23 the *Sentencing Act 1995* Part 9; or
- 24 (e) an obligation of an intensive supervision order made
25 under the *Sentencing Act 1995* Part 10; or
- 26 (f) a condition of conditional suspended imprisonment
27 under the *Sentencing Act 1995* Part 12 Division 1; or
- 28 (g) a condition of a youth community based order made
29 under the *Young Offenders Act 1994* Part 7 Division 6;
30 or
- 31 (h) a condition of an intensive youth supervision order made
32 under the *Young Offenders Act 1994* Part 7 Division 7.

1 **11. When PBO comes into force**

2 If a court makes a PBO, it comes into force —

- 3 (a) if the related sentence is not a term of imprisonment, or
4 is a term of imprisonment that is suspended —
- 5 (i) at the conclusion of the proceedings in which the
6 PBO is made; or
- 7 (ii) if a later time is specified in the PBO — at that
8 time;
- 9 (b) if the related sentence is a term of imprisonment that is
10 not suspended —
- 11 (i) when the constrained person is released from
12 custody in respect of the sentence or any other
13 sentence of imprisonment the constrained person
14 has to serve concurrently or cumulatively with
15 that sentence; or
- 16 (ii) if a later time is specified in the PBO — at that
17 time.

18 **12. Duration of PBO**

19 (1) In this section —

20 *community based sentence* means —

- 21 (a) a community based order made under the *Sentencing*
22 *Act 1995* Part 9; or
- 23 (b) an intensive supervision order made under the
24 *Sentencing Act 1995* Part 10; or
- 25 (c) conditional suspended imprisonment imposed under the
26 *Sentencing Act 1995* Part 12 Division 1;

27 *specified*, in a PBO, includes specified in a PBO that has been
28 varied under section 24(1)(b) or made under section 24(2).

29 (2) Subject to section 13, the period of a PBO is —

- 30 (a) the period specified in the PBO; or

- 1 (b) if no period is specified, the shorter of —
2 (i) if the related sentence is a community based
3 sentence — the period of the sentence; or
4 (ii) otherwise, 6 months from the day the PBO came
5 into force.
- 6 (3) If a period is specified in a PBO it must be —
7 (a) if the related sentence is a community based sentence —
8 not longer than the period of the sentence; or
9 (b) otherwise — at least 6 months and not more than
10 2 years.

11 **13. PBO ceases to have force if conviction set aside or quashed**

12 If a PBO is made against a person and the person's conviction
13 for the related offence is set aside or quashed, the PBO ceases to
14 be in force at the conclusion of the proceedings in which the
15 conviction is set aside or quashed.

16 **14. Explanation about PBO to be given**

- 17 (1) A court that makes a PBO must explain to the constrained
18 person —
19 (a) the purpose, terms and effects of the PBO; and
20 (b) the consequences that might follow if the constrained
21 person contravenes the PBO; and
22 (c) that the PBO may be varied, cancelled or extended; and
23 (d) if the PBO imposes constraints relating to the possession
24 of a firearm or to holding or obtaining a firearm licence,
25 the effects of sections 30 and 31 relating to firearms and
26 firearm licences.
- 27 (2) The court must give the explanation —
28 (a) if the constrained person is present — orally or in
29 writing; or
30 (b) if the constrained person is not present — in writing.

1 (3) If a constrained person does not readily understand English, or
2 the court is not satisfied that the constrained person understood
3 the explanation, the court must, as far as practicable, arrange for
4 the explanation to be given to the constrained person in a way
5 that the constrained person can understand.

6 (4) A PBO is not invalid merely because the constrained person
7 was not given the explanation.

8 **15. Registrar to give copies of PBOs**

9 After a court makes a PBO, a registrar must cause a copy of it to
10 be given to each party to the PBO proceedings and, if the
11 Commissioner of Police is not a party to the PBO proceedings,
12 to the Commissioner of Police.

13 **Division 2 — Making PBOs against youths**

14 **16. Term used: youth-related PBO proceedings**

15 In this Division —

16 *youth-related PBO proceedings* means PBO proceedings
17 relating to making, varying or cancelling a PBO against a youth.

18 **17. No PBO where court refrains from imposing punishment on
19 youth**

20 A PBO cannot be made against a youth if the related sentence
21 involves the exercise of a power under the *Young Offenders
22 Act 1994* Part 7 Division 2, 3 or 4.

23 **18. Child welfare laws not affected**

24 (1) In this section —

25 *child welfare law* means any of these written laws —

- 26 (a) the *Adoption Act 1994*;
27 (b) the *Children and Community Services Act 2004*;
28 (c) the *Family Court Act 1997*;

- 1 (d) the *Young Offenders Act 1994*;
- 2 (e) another written law providing for —
- 3 (i) the imprisonment, detention or residence of a
- 4 child; or
- 5 (ii) the care, treatment and protection of a child who
- 6 has a mental illness.
- 7 (2) Nothing in this Act, and no PBO made under this Act, affects —
- 8 (a) the jurisdiction of a court or the power of an authority,
- 9 under a child welfare law, to make an order, or to take
- 10 any other action, as a consequence of which a child is
- 11 placed under the control, supervision or care (however
- 12 described) of a person; or
- 13 (b) any such order made or action taken; or
- 14 (c) the operation of a child welfare law in relation to a child.
- 15 (3) If it appears to a court hearing youth-related PBO proceedings
- 16 that another court or an authority proposes to make an order, or
- 17 to take any other action, of the kind referred to in
- 18 subsection (2)(a) in relation to the youth, the court may adjourn
- 19 the youth-related PBO proceedings until that order is made or
- 20 action is taken, as the case requires.

21 **19. Court to take into account certain principles and**

22 **considerations**

23 When a court hears youth-related PBO proceedings, the *Young*

24 *Offenders Act 1994* section 46(1) and (2) apply as if references

25 to the court disposing of the matter were references to the court

26 hearing and determining the youth-related PBO proceedings.

27 **20. Responsible adult to attend**

28 In youth-related PBO proceedings, the *Young Offenders*

29 *Act 1994* section 45 applies as if the youth-related PBO

30 proceedings were proceedings for an offence.

1

Division 3 — Varying or cancelling PBOs

2

21. Application

3

(1) An application to vary or cancel a PBO may be made at any time while the PBO is in force by —

4

5

(a) the prosecutor; or

6

(b) the constrained person.

7

(2) An application to vary or cancel a PBO must be made in accordance with rules of court.

8

9

22. Registrar to fix hearing and notify parties

10

(1) If an application is made under section 21, a registrar must give a hearing notice and a copy of the application to each party to the PBO proceedings.

11

12

13

(2) If a party is given the hearing notice but does not attend the hearing, the court may, as it thinks fit —

14

15

(a) proceed with the hearing; or

16

(b) if the party is an applicant under section 21 and the court is satisfied that he or she was given the hearing notice — dismiss the application; or

17

18

19

(c) adjourn the hearing.

20

23. Applications to extend period of PBOs

21

If an application is made to vary a PBO by extending the period of the PBO and the constrained person has been given a copy of the application, then, despite anything else in this Act —

22

23

24

(a) the PBO does not expire until the application is determined; and

25

26

(b) the period of the PBO is extended until that time.

1 **24. Variation or cancellation**

- 2 (1) At a hearing of an application under section 21 the court may
3 make an order —
- 4 (a) dismissing the application; or
5 (b) varying the PBO; or
6 (c) cancelling the PBO.
- 7 (2) If the court decides to vary the PBO it may, instead of making
8 an order under subsection (1)(b) —
- 9 (a) make an order cancelling the PBO; and
10 (b) make a new PBO that has the effect the cancelled PBO
11 would have had if varied under subsection (1)(b).
- 12 (3) If the court makes an order under subsection (1)(b) or (c), or if it
13 makes a new PBO under subsection (2), a registrar must cause a
14 copy of the order or PBO to be given —
- 15 (a) to each party to the PBO proceedings; and
16 (b) if the Commissioner of Police is not a party to the PBO
17 proceedings — to the Commissioner of Police.
- 18 (4) A cancellation of a PBO has effect —
- 19 (a) if a new PBO is made when the original PBO is
20 cancelled — at the time the new PBO comes into force;
21 or
22 (b) otherwise — at the conclusion of the hearing at which
23 the PBO is cancelled.

24 **25. Correcting minor errors in PBOs**

- 25 (1) If a PBO contains —
- 26 (a) a clerical mistake; or
27 (b) an error arising from an accidental slip or omission; or

1 (c) a material mistake in the description of any person, thing
2 or matter referred to in the PBO,

3 a registrar may correct the PBO, or the court, on an application
4 by or on behalf of the prosecutor or the constrained person, may
5 make an order correcting the PBO.

6 (2) Subsection (1) does not apply if the correction would adversely
7 affect the interests of the public or the constrained person.

8 **Division 4 — PBO proceedings**

9 **26. Evidence in PBO proceedings**

10 (1) A court considering whether to make a PBO against a person
11 may take evidence as to —

12 (a) the behaviour of the person in committing —

13 (i) the offence for which the person received the
14 related sentence; and

15 (ii) any other relevant offence of which the person
16 was convicted before committing the offence
17 referred to in subparagraph (i);

18 and

19 (b) whether the PBO should be made in order to reduce the
20 likelihood of the person committing a relevant offence.

21 (2) A court considering whether to vary or cancel a PBO against a
22 person may take evidence relevant to whether —

23 (a) the PBO should be varied in order to reduce the
24 likelihood of the constrained person committing a
25 relevant offence; or

26 (b) the PBO should be varied to alleviate undue hardship
27 imposed on the constrained person by the PBO; or

28 (c) the PBO should be varied or cancelled because the
29 likelihood of the constrained person committing a
30 relevant offence has significantly decreased.

- 1 (3) Without limiting subsection (1) or (2), a court in PBO
2 proceedings may —
- 3 (a) admit as evidence any record as defined in the *Criminal*
4 *Procedure Act 2004* section 3 that was —
- 5 (i) disclosed to the person in accordance with the
6 *Criminal Procedure Act 2004*
7 section 35, 42, 61, 62, 95 or 96; or
- 8 (ii) otherwise admitted into evidence,
9 in the course of the prosecution referred to in
10 paragraph (b) or (d); and
- 11 (b) admit as evidence any evidence given in the related
12 prosecution, and hear any evidence given during the
13 related prosecution; and
- 14 (c) admit as evidence —
- 15 (i) the criminal record of the person, subject to the
16 *Criminal Procedure Act 2004* section 168 (which
17 applies with any necessary changes); or
- 18 (ii) any criminal record of the person admitted in the
19 related prosecution;
- 20 and
- 21 (d) admit any evidence relating to the circumstances of an
22 offence specified on a criminal record admitted under
23 paragraph (c); and
- 24 (e) admit as evidence the transcript of the proceedings of
25 any prosecution referred to in paragraph (b) or (d).

26 **27. PBO proceedings, general provisions about**

- 27 (1) PBO proceedings are taken to be civil proceedings for all
28 purposes.
- 29 (2) The rules of evidence applicable in civil proceedings apply in
30 PBO proceedings.

1 (3) The rules of evidence applicable only in criminal proceedings
2 do not apply in PBO proceedings.

3 (4) A question of fact to be decided by a court in PBO proceedings
4 is to be decided on the balance of probabilities.

5 (5) Except in relation to an offence under this Act, a rule of
6 construction that is applicable only in relation to the criminal
7 law does not apply in the interpretation of this Act.

8 **28. Practice and procedure**

9 (1) Unless otherwise prescribed, the practice and procedure to be
10 followed in PBO proceedings are —

11 (a) in the Magistrates Court — the practice and procedure
12 applying in that court under the *Magistrates Court (Civil*
13 *Proceedings) Act 2004*; or

14 (b) in the Children’s Court — the practice and procedure
15 applying in the non-criminal jurisdiction of that court
16 under the *Children’s Court of Western Australia*
17 *Act 1988*; or

18 (c) in the District Court or Supreme Court — the practice
19 and procedure of those courts when exercising their civil
20 jurisdiction.

21 (2) Despite subsection (1), a court cannot order a party to PBO
22 proceedings to pay another party’s costs of or relating to the
23 PBO proceedings except in exceptional circumstances.

1 **Part 3 — Firearms constraints in PBOs**

2 **29. Application of this Part**

3 This Part applies if a court makes a PBO under which the
4 constrained person is prohibited from —

- 5 (a) being in possession of a firearm; or
6 (b) holding or obtaining a firearm licence.

7 **30. Constrained person to give up possession of firearms and**
8 **licences**

9 (1) The constrained person must give up possession of all firearms
10 and firearm licences held by the constrained person —

- 11 (a) to a prescribed person; and
12 (b) in a prescribed manner; and
13 (c) within a prescribed period after the making of the PBO.

14 (2) A firearm or firearm licence given up under subsection (1) must
15 be dealt with in the prescribed manner.

16 (3) If the constrained person —

- 17 (a) was lawfully in possession of a firearm or firearm
18 licence before the PBO was made; and
19 (b) gives up possession of the firearm or firearm licence
20 under subsection (1),

21 the constrained person does not breach the PBO only because he
22 or she is in possession of the firearm or firearm licence for the
23 period necessary to comply with subsection (1).

24 (4) When making a PBO the court may shorten the prescribed
25 period within which the constrained person must give up
26 possession of firearms and firearm licences.

s. 31

1 **31. Seizure of firearms**

- 2 (1) Subject to the *Criminal Investigation Act 2006* section 31, if a
3 constrained person does not give up possession of a firearm or
4 firearm licence in accordance with section 30 of this Act, a
5 police officer may, without a warrant, enter a place where —
6 (a) a firearm that is, or is reasonably suspected to be, in the
7 possession of the constrained person; or
8 (b) a firearm licence held by the constrained person,
9 is reasonably suspected to be, and search for and seize the
10 firearm or firearm licence.
- 11 (2) In order to exercise a power under subsection (1), a police
12 officer may use any force against any person or thing that it is
13 reasonably necessary to use in the circumstances.
- 14 (3) A firearm or firearm licence seized under subsection (1) must be
15 given to the Commissioner of Police and dealt with in the
16 prescribed manner.

17 **32. Notification of co-licensees and responsible persons**

- 18 (1) In this section —
19 **co-licensee**, in relation to a constrained person who holds a
20 firearm licence for a firearm, means another person who holds a
21 firearm licence for the same firearm;
22 **responsible person**, in relation to a constrained person who uses
23 or has access to a firearm in the course of the constrained
24 person's usual occupation, means the person who holds a
25 firearm licence (or the equivalent under a law of another State
26 or a Territory) for that firearm or, if there is no such person —
27 (a) if the constrained person is a police officer or a member
28 of an armed force — the officer in command of the
29 police or armed force in the State or Territory where the
30 constrained person is based; or
31 (b) if the constrained person is employed or engaged by an
32 employing authority, as defined in the *Public Sector*

- 1 *Management Act 1994*, (or an equivalent body under a
2 law of another State, a Territory or the Commonwealth
3 corresponding to that Act) — that employing authority
4 (or equivalent body); or
- 5 (c) in any other case — the person by whom the constrained
6 person is employed or engaged.
- 7 (2) As soon as practicable after receiving a copy of a PBO under
8 section 15 or 24(3), the Commissioner of Police must instruct a
9 police officer to —
- 10 (a) ask the constrained person whether the constrained
11 person uses or has access to any firearms in the course
12 of the constrained person’s usual occupation and if so —
- 13 (i) the name and business address of the responsible
14 person; and
- 15 (ii) the name and address of any co-licensee;
- 16 and
- 17 (b) complete the relevant part of the copy of the PBO in
18 accordance with the response given by the constrained
19 person to those questions; and
- 20 (c) tell the constrained person that the responsible person
21 and any co-licensee will be given written notice that the
22 PBO has been made.
- 23 (3) A constrained person who fails to answer, or gives a false
24 answer to, a question asked under subsection (2)(a) commits an
25 offence.
- 26 Penalty: a fine of \$6 000 or imprisonment for 9 months or both.
- 27 (4) As soon as possible after receiving the copy of the PBO
28 completed under subsection (2)(b), the Commissioner of Police
29 must give written notice to the responsible person and any
30 co-licensee named in the copy —
- 31 (a) that a PBO has been made in relation to the constrained
32 person; and

s. 32

- 1 (b) that the PBO prohibits the constrained person from —
2 (i) being in possession of a firearm; or
3 (ii) being in possession of a firearm other than on the
4 conditions specified in the PBO,
5 as the case requires; and
6 (c) of the period of the PBO; and
7 (d) that it is an offence for the responsible person or
8 co-licensee to allow the constrained person to use or
9 have access to a firearm in contravention of the PBO.
- 10 (5) A responsible person or co-licensee given written notice under
11 subsection (4) who allows the constrained person to use or have
12 access to a firearm, except as permitted under the PBO,
13 commits an offence.
- 14 **Penalty:**
- 15 (a) in the case of a responsible person — a fine of
16 \$12 000;
17 (b) in the case of a co-licensee — a fine of \$12 000 or
18 imprisonment for 12 months or both.

Part 4 — General

33. Giving of documents

(1) If under this Act a document must be given to a person, the document must be —

- (a) given to the person personally; or
- (b) sent by ordinary prepaid post to the person at the person's last known place of residence or business.

(2) If under this Act a person must be given a hearing notice —

- (a) if it is given personally — the notice must be given at least 7 days before the hearing date; or
- (b) if it is given by post — the notice must be posted at least 14 days before the hearing date.

34. Publication of details of constrained people

(1) In this section —

CEO means the chief executive officer of the Department;

Department means the department of the Public Service principally assisting in the administration of this Act.

(2) Unless ordered otherwise by a court, the CEO must publish on a website the following in relation to a constrained person —

- (a) the name of the constrained person;
- (b) a photograph of the constrained person;
- (c) the town or suburb where the constrained person lives;
- (d) the constraints imposed by the PBO on the activities and behaviour of the constrained person.

(3) Subsection (2) does not permit the publication of anything that identifies, or is capable of identifying —

- (a) a child other than the constrained person; or
- (b) the exact address of the constrained person; or

s. 35

- 1 (c) any offence of which the constrained person was
2 convicted in the Children’s Court.
- 3 (4) A court making a PBO may, on its own initiative or on an
4 application by a party to the PBO proceedings, order that all or
5 any of the things referred to in subsection (2) must not be
6 published if, in the opinion of the court, there are circumstances
7 justifying the making of such an order.
- 8 (5) In determining whether there are circumstances justifying an
9 order being made under subsection (4) in relation to a PBO
10 against a youth, the court must have regard to the wellbeing of
11 the youth.
- 12 (6) For the purposes of subsection (2)(b) the CEO may request the
13 Commissioner of Police to provide to the CEO the most recent
14 photograph of the constrained person in the Commissioner’s
15 possession.
- 16 (7) The Commissioner of Police is to comply with a request made
17 under subsection (6) as soon as practicable after it is received.
- 18 (8) A person may republish in any manner something that has been
19 published under subsection (2).

20 **35. Breach of PBO**

- 21 (1) A constrained person who breaches the PBO under which the
22 person is constrained commits an offence.

23 Penalty:

- 24 (a) if the PBO was made by the Children’s Court — a
25 fine of \$2 000 or imprisonment for 2 years or both;
- 26 (b) if the PBO was made by the Magistrates Court — a
27 fine of \$6 000 or imprisonment for 2 years or both;
- 28 (c) if the PBO was made by the Supreme or District
29 Court — a fine of \$10 000 or imprisonment for
30 5 years or both.

-
- 1 (2) Proceedings for a breach of a PBO are to be brought —
2 (a) if the alleged offender is a youth — in the Children’s
3 Court; or
4 (b) if the alleged offender is an adult — in the Magistrates
5 Court.

6 **36. Defence**

- 7 (1) In this section —
8 *legal practitioner* means an Australian legal practitioner within
9 the meaning of that term in the *Legal Profession Act 2008*
10 section 3.
- 11 (2) It is a defence to a charge under section 35 for the constrained
12 person to satisfy the court that in carrying out the act that
13 constituted the offence, the constrained person was —
14 (a) using a process of family dispute resolution, as defined
15 in the *Family Court Act 1997*; or
16 (b) instructing, or acting through, a legal practitioner or a
17 person acting under the *Aboriginal Affairs Planning*
18 *Authority Act 1972* section 48, or using conciliation,
19 mediation or another form of consensual dispute
20 resolution provided by a legal practitioner; or
21 (c) acting in accordance with an action taken by a person or
22 authority under a written law; or
23 (d) acting on the medical advice of a person with medical
24 qualifications as defined in the *Civil Liability Act 2002*
25 section 5AB; or
26 (e) acting as the result of such an emergency that an
27 ordinary person in similar circumstances would have
28 acted in the same or a similar way.

29 **37. Appeals**

- 30 (1) A person aggrieved by the decision of a court in PBO
31 proceedings may appeal against that decision in accordance
32 with this section.

s. 38

- 1 (2) If the decision was made by the Magistrates Court, the appeal is
2 to be made in accordance with the *Magistrates Court (Civil*
3 *Proceedings) Act 2004* Part 7.
- 4 (3) If the decision was made by the Children’s Court when
5 constituted so as not to consist of or include a judge, the appeal
6 is to be made in accordance with the *Children’s Court of*
7 *Western Australia Act 1988* section 41 as if the decision were a
8 decision referred to in that section.
- 9 (4) If the decision was made by the Children’s Court when
10 constituted so as to consist of or include a judge, the appeal is to
11 be made to the Court of Appeal in accordance with the
12 *Children’s Court of Western Australia Act 1988* section 43 as if
13 the decision were a decision referred to in subsection (4) of that
14 section.
- 15 (5) If the decision was made by the District Court, the appeal is to
16 be made to the Court of Appeal and the *District Court of*
17 *Western Australia Act 1969* section 79 (with any necessary
18 changes) applies as if the decision were a final judgment of the
19 District Court.
- 20 (6) If the decision was made by a judge of the Supreme Court, the
21 appeal is to be made to the Court of Appeal in accordance with
22 the *Supreme Court Act 1935* section 58.

23 **38. Protection from liability for wrongdoing**

- 24 (1) An action in tort does not lie against a person for anything that
25 the person has done, in good faith, in the performance or
26 purported performance of a function under this Act.
- 27 (2) The protection given by subsection (1) applies even though the
28 thing done as described in that subsection may have been
29 capable of being done whether or not this Act had been enacted.
- 30 (3) Despite subsection (1), the State is not relieved of any liability
31 that it might have for another person having done anything as
32 described in that subsection.

1 (4) In this section, a reference to the doing of anything includes a
2 reference to an omission to do anything.

3 **39. Regulations**

4 (1) The Governor may make regulations prescribing all matters that
5 are required or permitted by this Act to be prescribed, or that are
6 necessary or convenient to be prescribed to give effect to the
7 purposes of this Act.

8 (2) Without limiting subsection (1), regulations may be made in
9 relation to any or all of these matters —

10 (a) the manner in which firearms and firearm licences are to
11 be —

12 (i) given up by a constrained person; and

13 (ii) delivered to, and dealt with by, a prescribed
14 person;

15 (b) facilitating the effective operation of PBOs that prohibit
16 or restrict a person from being in possession of a
17 firearm.

18 **40. Review of Act**

19 (1) The Minister must carry out a review of the operation and
20 effectiveness of this Act as soon as is practicable after the
21 expiry of 3 years from the commencement of this section.

22 (2) The Minister is to prepare a report based on the review and, as
23 soon as is practicable after the report is prepared, cause it to be
24 laid before each House of Parliament.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Part 5 — Amendments to other Acts

Division 1 — *Children's Court of Western Australia Act 1988* amended

41. Act amended

This Division amends the *Children's Court of Western Australia Act 1988*.

42. Section 20 amended

After section 20(2) insert:

(3) Subject to this Act, the Court has exclusive jurisdiction to hear PBO proceedings under the *Prohibited Behaviour Orders Act 2010* relating to a child.

43. Section 35 amended

(1) In section 35(1) delete “section 36A,” and insert:

section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34,

(2) In section 35(3) delete “section 36A,” and insert:

section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34,

44. Section 36 amended

In section 36(1) delete “section 36A.” and insert:

section 36A or in accordance with the *Prohibited Behaviour Orders Act 2010* section 34.

1 **Division 2 — *Criminal Investigation Act 2006* amended**

2 **45. Act amended**

3 This Division amends the *Criminal Investigation Act 2006*.

4 **46. Section 69A inserted**

5 After section 68 insert:

6

7 **69A. Searching people for things relevant to prohibited**
8 **behaviour orders**

9 If an officer reasonably suspects that a person in a
10 public place is prohibited by a PBO made under the
11 *Prohibited Behaviour Orders Act 2010* from having
12 something in his or her possession (a ***prohibited thing***)
13 in that place, the officer —

- 14 (a) may do a basic search of the person, whether or
15 not the officer suspects the person is in
16 possession of a prohibited thing; and
17 (b) may, subject to section 146, seize any
18 prohibited thing that the officer finds; and
19 (c) may do a forensic examination on the
20 prohibited thing, whether or not the officer
21 seizes it.
22

23 **Division 3 — *Criminal Investigation (Identifying People)***
24 ***Act 2002* amended**

25 **47. Act amended**

26 This Division amends the *Criminal Investigation (Identifying*
27 *People) Act 2002*.

1 **48. Section 73 amended**

2 After section 73(1)(m) insert:

3

4 (na) for the purposes of the *Prohibited Behaviour*
5 *Orders Act 2010* section 34;

6

7 **Division 4 — *Sentencing Act 1995* amended**

8 **49. Act amended**

9 This Division amends the *Sentencing Act 1995*.

10 **50. Section 124B inserted**

11 At the end of Part 17 insert:

12

13 **124B. Prohibited behaviour orders**

14 For the purposes of section 123, a prohibited behaviour
15 order made against an offender under the *Prohibited*
16 *Behaviour Orders Act 2010* is taken to be an order
17 made under this Part.

18

19

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined Term	Provision(s)
adult	3(1)
anti-social behaviour	3(1)
CEO	34(1)
child	3(1)
child welfare law.....	18(1)
co-licensee	32(1)
Commissioner of Police	3(1)
community based sentence	12(1)
constrained person	3(1)
conviction	8(1)
Department	34(1)
firearm.....	3(1)
firearm licence	3(1)
hearing notice	3(1)
legal practitioner	36(1)
party	3(1)
PBO.....	3(1)
PBO proceedings	3(1)
prescribed	3(1)
prohibited behaviour order	3(1)
prosecutor	3(1)
registrar	3(1)
related prosecution.....	3(1)
related sentence.....	3(1)
relevant offence	3(1)
responsible person.....	32(1)
sentence	6(1)
specified	10(1), 12(1)
wellbeing	3(1)
youth	3(1)
youth-related PBO proceedings	16