

## **OBTAINING DOCUMENTS FROM THE WA POLICE SERVICE UNDER COURT ORDER**

*Summary: This Circular sets out the Court's practice in relation to the issue of summonses and subpoenas to the Commissioner of Police to produce documents, in particular the usual time limits imposed on such orders.*

### **1. Background**

The Court issues many witness summonses and subpoenas to the Commissioner of Police to produce documents. On occasions, the timeframes set by the parties have proven onerous for the Commissioner to comply with. To ensure that the Commissioner has time to undertake the desired level of due diligence in responding to summonses and subpoenas issued by the Court, this Circular to Practitioners sets out guidelines as to the usual timeframes for compliance.

### **2. Service**

All summonses or subpoenas issued by the Court requiring production of documents from the Police are to be addressed to the Commissioner of Police with a service address of Level 4, 2 Adelaide Terrace, East Perth, WA 6004.

### **3. Criminal jurisdiction**

A witness summons issued pursuant to *Criminal Procedure Act 2002* (WA) must be served a "reasonable time" before the attendance date: CPA s162(2).

It is the Court's expectation that, unless there are particular circumstances of urgency, a reasonable time for service is not less than 14 days prior to the date specified for compliance.

### **4. Civil jurisdiction**

A subpoena to produce documents returnable at trial may be issued without a Court order (*Rules of the Supreme Court 1971* (WA) O36B). Unless otherwise ordered, the subpoena must specify the last date for service of the subpoena which must be not less than 5 days before the date specified for compliance. It is the Court's expectation that, unless there are particular circumstances of urgency, the subpoena will be served not less than 14 days prior to the date specified for compliance.

Where the Court is requested to order that the documents be produced prior to the commencement of the trial, the usual orders will set a last date for service not less than 14 days prior to the date specified for compliance.

## 5. Civil jurisdiction – excluded documents

From time to time, a subpoena addressed to the Commissioner of Police is wide enough in its terms to encompass an audio-visual recording of an interview pursuant to the *Criminal Investigation Act 2006* (WA) (CIA) or a visually recorded interview or a visual recording of evidence pursuant to the *Evidence Act 1906* (WA) (EA). The record or transcript of the interview is produced to the District Court, though the party will not be given leave by the Registrar to inspect the document.

There is specific legislation dealing with access by third parties to:

- (a) an audiovisual recording of an interview pursuant to the CIA; and
- (b) a visually recorded interview or a visual recording of evidence pursuant to the EA.

In view of this specific legislation, the Court considers that this material should not ordinarily be the subject of a subpoena.

The Court will thus not accept a subpoena addressed to the Commissioner of Police unless the description of the documents sought contains the following exclusion:

**Except** for any audio-visual recording of an interview pursuant to the *Criminal Investigation Act 2006* (WA) and any visually recorded interview or visual recording of evidence pursuant to the *Evidence Act 1906* (WA).

**MICHAEL GETHING**  
Principal Registrar