

PROCEDURE GUIDE FOR MAGISTRATE COURT APPEALS RESTRAINING ORDERS

1. Appellant

- 1.1 To commence an Appeal against a decision of a Magistrate the Appellant needs to lodge at the District Court Registry 3 copies of the appeal notice (Attachment A). The person who commences the appeal is referred to as the 'Appellant'. The other party is referred to as the 'Respondent'.
- 1.2 The Appellant will need to pay the prescribed fee for the filing the Notice of Appeal, which is \$454.00 for an individual or \$1175.00 for a corporation. The filing fee is reduced to \$100 for eligible individuals, those being:
 - (a) the holder of a health care card, a health benefit card, a pensioner concession card or a Commonwealth seniors card; or
 - (b) the holder of any other card issued by Centrelink or the Department of Veterans' Affairs of the Commonwealth that certifies entitlement to Commonwealth health concessions; or
 - (c) an individual who is in receipt of a youth training allowance, or an AUSTUDY allowance, as defined in the *Social Security Act 1991* (C'th) section 23(1); or
 - (d) an individual who is in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme; or
 - (e) an individual who has been granted legal aid under the *Legal Aid Commission Act 1976* or a legal aid scheme or service established under a Commonwealth, State or Territory law in respect of the proceedings in relation to which a fee would otherwise be payable; or;
 - (f) an individual who the Court or a registrar has directed is an eligible individual under regulation 8A(1)(b).

To apply for eligibility under Regulation 8A(1)(b), a party needs to file a "Form 2 – Application to reduce fee" and lodge it with the District Court registry where it will then be assessed by a Registrar.
- 1.3 Any person under the age of 18 is not required to pay any fees.
- 1.4 The Court will insert into the appeal notice the date and time for an initial hearing, called a 'Directions Hearing'. This hearing is before a Registrar.
- 1.5 The Court will keep 1 copy of the Notice of Appeal and return 2 stamped (sealed) copies to the Appellant. The Directions Hearing will be about 6 weeks after the date on which the appeal is commenced. This time interval is to allow the Appellant time to serve the appeal papers on the Respondent and for the Respondent to take legal advice in relation to the Appeal. It also allows time for the Court to obtain the file from the jurisdiction in which the original decision was made.

- 1.6 When the Appellant serves the appeal notice on the Respondent, the Appellant must attach to it a Form 8 notice of respondent's intention (Attachment C): *District Court Rules 2005 (WA)* ('DCR') r 51(6).
- 1.7 The District Court rules provide that the appeal notice is to be personally served on the Respondent: DCR r 51(4).
- 1.8 If the Respondent is in a prison, the appeal notice may be served by sending it to the superintendent of the prison by ordinary pre-paid post.
- 1.9 Appellants may find it convenient or indeed necessary to use a professional process server to serve the appeal notice.
- 1.10 If an Appellant cannot find an address for the Respondent, the Appellant can apply to the Court for an order allowing service in some other way, for example, by advertisement or by post on a third party. The process to obtain orders of this type is set out in the Procedure Guide (see section 4).
- 1.11 As soon as practicable after serving the Respondent the Appellant must file a service certificate (Attachment B). This can be posted to the Court at:

District Court of Western Australia
500 Hay Street
PERTH WA 6000

It may also be faxed to the Court on 9425 2268.

2. Respondent

- 2.1 The appeal notice will specify when the directions hearing has been listed for in the appeal. A Respondent should make every effort to attend this directions hearing as a failure to attend may result in orders being made in relation to the appeal in their absence.
- 2.2 A Respondent who does not wish to contest the appeal may tick the appropriate box in the notice of respondent's intention (Form 8) served with the appeal notice identifying that he or she does not wish to contest the appeal. The notice should then be signed, filed and served.
- 2.3 A Respondent who wishes to contest the must complete the appropriate sections of the notice of respondent's intention served with the appeal notice. The notice should then be signed, filed and served. A blank template and a worked example of a completed notice of respondent's intention is at Attachment C.
- 2.4 The notice must be filed with the court either by personally attending the Registry or by sending or faxing as set out in paragraph 1.11.
- 2.5 The notice must also be served on the Appellant, which can be done by posting or faxing it to the address for service in the appeal notice.

- 2.6 If a Respondent does not file a Form 8 within the 21 days or any extension of that period ordered by the Court, the Respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal.

3. Initial Directions Hearing

- 3.1 On the day of the direction hearing set out in the appeal notice, the parties should attend the District Court at least 15 minutes prior to the scheduled starting time for the hearing. For hearings held in Perth in the District Court Building, the Courtroom number will be displayed on the screens on the right hand side of the foyer as you enter the building. The directions hearing will appear as 'For Mention Appeals' on the display screens. Look for the appeal number.
- 3.2 At the directions hearing, the Registrar will review the appeal to check whether it is ready to proceed to final hearing. This will include checking the material which has been sent to the Court by the Magistrates' Court. The Registrar will make any orders that are necessary to get the appeal in order for the formal hearing. If required, a further directions hearing will be listed.
- 3.3 If the appeal is ready to be listed for a final hearing, the Registrar will set a date and time for the final hearing.
- 3.4 If the appeal cannot be listed at the directions hearing, the Registrar may make any orders required and list the Appeal for a further directions hearing.

4. General matters applicable to all parties

- 4.1 If a party requires the Court to make an order before the hearing of the appeal the party will need to file and serve an application. For example this would be used where:
- (a) the Appellant cannot locate the Respondent and requires the Court to make an order for substituted service; or
 - (b) the Appellant needs leave to appeal out of time; or
 - (c) a party wishes to have the Court rely on additional evidence from that relied on by the Magistrate.
- 4.2 An application is in the form of Attachment D. The party making the application will also need to file and serve an affidavit (Attachment G) setting out the facts which the party making the application would like to bring to the Court's attention to support its application for the orders sought.
- 4.3 The party making the application will need to file 3 copies of each document with the Court. The Court will write in the hearing date and time, keep one copy and return the other 2 to the party.
- 4.4 The Court will generally list the application for hearing at the directions hearing in the Appeal.

- 4.5 The party making the application will need to serve a copy of the application (with the Court hearing date inserted), together with the affidavit in support of the application, on the other parties except in the case of an application for substituted service.

- 4.6 If a party wishes to change their address for service, they will need to file a Form 1AB, Notice of Change of Address for Service (Attachment H).

5. Hearing of the appeal

- 5.1 If a party wishes to file any written submissions for the Judge to consider prior to the hearing, the submissions should be filed and served at least 7 clear working days prior to the date of the hearing: DCR r 61.
- 5.2 The parties should attend the District Court at least 15 minutes prior to the scheduled starting time for the appeal. For appeals held in Perth in the District Court Building, the Courtroom number will be displayed on the screens on the right hand side of the foyer as you enter the building.
- 5.3 Upon entering the Courtroom, if the Court is already in session, the protocol is to make a short bow towards the Judge.
- 5.4 If the Court is not in session, the party should approach the staff member sitting in front of the Judge's bench. This person is known as the 'Associate'. The party should identify themselves to the Associate.
- 5.5 When the Judge enters the Court and the Associate announces the case, the protocol is to stand and make a short bow to the Judge. This protocol also applies when the Court is adjourning.
- 5.6 The Judge should be addressed as 'Your Honour'.
- 5.7 Typically, the Appellant will be asked to address the Court first and then the Respondent.
- 5.8 The hearing before the Judge is a reconsideration of the evidence before the Magistrate. A party is not allowed to adduce evidence that was not before the Magistrates Court unless the party has obtained the leave of the Court. The Court is not to grant leave unless there are exceptional circumstances: *Magistrates Court (Civil Proceedings) Act 2004* (WA), s 40(5).
- 5.9 The Judge will either determine the appeal at the hearing and give reasons there and then, or adjourn and provide written reasons for the decision. If this occurs, a further hearing will be listed for the Judge to hand down the decision. The parties will be notified when the decision has been written and the further hearing listed. Typically, the Judge will take between 1 and 3 months to consider the appeal and provide written reasons.

6. Further Enquiries

6.1 For any further enquiries please contact the Court on 9425 2344.

6.2 Court staff can:

- Provide Court forms;
- Provide information about Court practice and procedure;
- Provide information about when a hearing is listed;
- Provide information about Court fees; and
- Provide contact information of other agencies that may assist a litigant.

6.3 Court staff cannot:

- Provide legal advice;
- Complete forms for a person;
- Tell a litigant what to write on a form; or
- Tell a litigant what to say in Court.

7. Forms

Attachment	Blank pro forma	Worked example
A	Appeal notice	Appeal notice - example
B	Service certificate	Service certificate - example
C	Notice of respondent's intention	Notice of respondent's intention - example
D	Application in an appeal	Application in an appeal - example
E	Consent notice	Consent notice - example
F	Discontinuance notice	Discontinuance notice - example
G	Affidavit	Affidavit - example
H	Notice of change of address for service	Notice of change of address for service - example
I	Form 2 Fee Waiver	Form 2 Fee Waiver - example

A

6. Appeal notice (r. 51(1))

District Court of Western Australia Held at Perth ¹		Appeal No:
		APPEAL NOTICE
Parties	Appellant Respondent	
PRIMARY COURT'S DECISION		
Primary court Case number Parties Date of decision Judicial officer		
Decision details ²		
APPEAL DETAILS		
Notice of appeal	The appellant appeals to the District Court against the above decision.	
Grounds of appeal ³	1.	
Acts that allows appeal ⁴	Section:	
Notice to the respondent ⁵	<p>If you want to take part in this appeal you must file a Form 8 (attached) under the <i>District Court Rules 2005</i> within 21 days after the date on which you are served with this notice and serve it on the appellant.</p> <p>If you file a Form 8 you must attend a directions hearing at the time and place stated below.</p>	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Date of filing		

Notes to Form 6–

1. If not held at Perth, state the location of the relevant registry.
2. Examples:
 - Judgment against the defendant for \$40 000.
 - Dismissal of claim to recover possession of real property.
3. Set out the grounds in numbered paragraphs.
4. State the short title of the Act under which the appeal is being made.
5. A copy of Form 8 (Notice of respondent's intention) must be attached to this form when it is served on the respondent.
6. The Court will complete this row when the appeal notice is filed.

Directions hearing ⁶	Date:	
	Time:	
	Place:	
APPELLANT'S SERVICE DETAILS		
Geographical address of appellant (Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71A rule 2 and <i>District Court Rules 2005</i> rule 22C)		
Name of lawyer (If one has been appointed)		
Postal address for service of documents (Must be provided)		
Email address (Optional-if provided, may be used for service of documents)		
Fax number (Optional-if provided, may be used for service of documents)		
Telephone number		
Reference		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form 6—

1. If not held at Perth, state the location of the relevant registry.
2. Examples:
 - Judgment against the defendant for \$40 000.
 - Dismissal of claim to recover possession of real property.
3. Set out the grounds in numbered paragraphs.
4. State the short title of the Act under which the appeal is being made.
5. A copy of Form 8 (Notice of respondent's intention) must be attached to this form when it is served on the respondent.
6. The Court will complete this row when the appeal notice is filed.

A

6. Appeal notice (r. 51(1)) Magistrates Court Restraining Orders example

District Court of Western Australia Held at Perth ¹		Appeal No:
		APPEAL NOTICE
Parties	Rodney Smith Appellant Annabel Jones Respondent	
PRIMARY COURT'S DECISION		
Primary court	Magistrates Court-Joondalup	
Case number	MCJ234/2010	
Parties	Annabel Jones (Applicant) Rodney Smith (Respondent)	
Date of decision	1 February 2011	
Judicial officer	Magistrate Black	
Decision details ²	Misconduct restraining order made against respondent	
APPEAL DETAILS		
Notice of appeal	The appellant appeals to the District Court against the above decision.	
Grounds of appeal ³	1. The Magistrate did not allow the appellant to cross-examine the respondent about previous relationships in which she became obsessive and demanding. 2. The Magistrate did not allow Eric Hill to give evidence about the respondent's behaviour towards her once their relationship ended, in particular about the lies she told about him. 3. The Magistrate did not agree to the appellant's request to adjourn the hearing so that the appellant could produce emails to the Court which would show that the respondent was lying in the evidence she gave to the Magistrate. 4. Had the Magistrate heard this evidence, it would have been very obvious that the respondent was lying about the appellant's behaviour and that no misconduct restraining order was justified.	
Acts that allows appeal ⁴	<i>Restraining Orders Act 1997 (WA)</i> Section: 64	
Notice to the respondent ⁵	If you want to take part in this appeal you must file a Form 8 (attached) under the <i>District Court Rules 2005</i> within 21 days after the date on which you are served with this notice and serve it on the appellant.	

	If you file a Form 8 you must attend a directions hearing at the time and place stated below.	
Last date for appealing	Last date: 22 February 2011 Is an extension of time needed? Yes/No	
Date of filing		
Directions hearing ⁶	Date: Time: Place:	
APPELLANT'S SERVICE DETAILS		
Geographical address of appellant (Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71A rule 2 and <i>District Court Rules 2005</i> rule 22C)	Rodney Smith 123 Rockhampton Drive, Safety Bay, WA, 6169 9426 2793 Rodney.smith@inet.com.au	
Name of lawyer (If one has been appointed)		
Postal address for service of documents {Must be provided}		
Email address (Optional – if provided, may be used for service of documents)		
Fax number (Optional — if provided, may be used for service of documents)		
Telephone number		
Reference		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date: 20 February 2011

7. Service certificate (r. 51(7))

District Court of Western Australia		Appeal No:
Held at Perth ^{IA}		SERVICE CERTIFICATE
Parties	<p style="text-align: right;">Appellant</p> <p style="text-align: right;">Respondent</p>	
Date of filing		
Certificate ¹	<p>I certify that on <i>[date]</i> at <i>[place]</i> <i>[name of server]</i> served the respondent personally with these documents-</p> <ul style="list-style-type: none"> • a copy of an appeal notice dated <i>[date]</i>/appeal notice (WCIMA appeal) dated <i>[date]</i> ²; • a copy of every other document that was filed with the appeal notice; • a copy of Form 8 (Notice of respondent's intention). <p>I undertake to file an affidavit of service if the Court requires me to.</p>	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Note to Form 7 –

JA. If not held at Perth, state the location of the relevant registry.

1. If the documents were posted to the superintendent of the prison in which the respondent is imprisoned, modify this certificate to say when they were posted and to which prison.
2. Strike out whichever is inapplicable.

7. Service certificate (r. 51(7))

Maeistrates Court Restraining orders example

District Court of Western Australia		Appeal No:123 of2013
Held at Perth 1A		SERVICE CERTIFICATE
Parties	Rodney Smith Appellant Annabel Jones Respondent	
Date of filing		
Certificate	I certify that on 24 February 2011 at Rockingham Billy Elliot served the respondent personally with these documents — <ul style="list-style-type: none"> • A copy of an appeal notice dated 20 February 2011; • A copy of every other document that was filed with the appeal notice; • A copy of Form 8 (Notice of respondent's intention). I undertake to file an affidavit of service if the Court requires me to.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Note to Form 7 —

1A. If not held at Perth, state the location of the relevant registry.

1. If the documents were posted to the superintendent of the prison in which the respondent is imprisoned, modify this certificate to say when they were posted and to which prison.

2. Strike out whichever is inapplicable.

8. Notice of respondent's intention (r. 53)

District Court of Western Australia Held at Perth ¹		Appeal No:	
		NOTICE OF RESPONDENT'S INTENTION	
Parties	<div style="text-align: right;"> Appellant Respondent </div>		
Notice [Tick one box]	02 03	The respondent intends to take part in this appeal. The respondent does not intend to take part in this appeal and will accept any order made by the Court in the appeal other than as to costs.	
Grounds for upholding	0	The respondent will argue the primary court's decision should be upheld on the grounds relied on by the primary court in its decision.	
Other grounds for upholding ⁴	0 1.	The respondent will argue the primary court's decision should be upheld on the following grounds, not relied on by the primary court in its decision: 1.	
Variation ⁴	0 1. 0 1.	The respondent applies for the primary court's decision to be varied as follows — The respondent will argue the primary court's decision should be varied on the following grounds: 1.	
Cross-appeal ⁴	0 1.	The respondent also appeals against the primary court's decision and will rely on the following grounds: 1.	
Other orders	The respondent also seeks order that: ⁵		
Last date for annealing ⁶	Last date: Is an extension of time needed? Yes/No		
Date of filing			

RESPONDENT'S DETAILS FOR SERVICE		
Geographical address of respondent (Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71A rule 2 and <i>District Court Rules 2005</i> rule 22C)		
Name of lawyer (If one has been appointed)		
Postal address for service of documents (Must be provided)		
Email address (Optional-if provided, may be used for service of documents)		
Fax number (Optional — if provided, may be used for service of documents)		
Telephone number		
Reference		
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form 8 –

1. If not held at Perth, state the relevant registry.
2. If this box is ticked, complete one or more of the next 5 rows and the respondent's details for service.
3. If this box is ticked, ignore the next 5 rows and complete the respondent's details for service.
4. Set out the grounds in numbered paragraphs.
5. For possible orders see rule 57(2).
6. Complete this only if the respondent also appeals against the primary court's decision.

8. Notice of respondent's intention (r. 53)

Malistrates Court restramml! orders example

District Court of Western Australia Held at Perth ¹		Appeal No: 234 of2011	
		NOTICE OF RESPONDENT'S INTENTION	
Parties	Rodney Smith Appellant		
	Annabel Jones Respondent		
Notice [Tick one box]	<input type="radio"/> 02	The respondent intends to take part in this appeal.	
	<input type="radio"/> 03	The respondent does not intend to take part in this appeal and will accept any order made by the Court in the appeal other than as to costs.	
Grounds for upholding	<input type="radio"/> 0	The respondent will argue the primary court's decision should be upheld on the grounds relied on by the primary court in its decision.	
Other grounds for upholding ⁴	<input type="radio"/> 0	The respondent will argue the primary court's decision should be upheld on the following grounds, not relied on by the primary court in its decision: 1. The fact that the appellant has commenced this appeal is further evidence of the vicious and unrelenting campaign of intimidation and harassment he has engaged in towards me.	
Variation ⁴	<input type="radio"/> 0	The respondent applies for the primary court's decision to be varied as follows — 1.	
	<input type="radio"/> 0	The respondent will argue the primary court's decision should be varied on the following grounds: 1.	
Cross-appeal ⁴	<input type="radio"/> 0	The respondent also appeals against the primary court's decision and will rely on the following grounds: 1.	
Other orders	The respondent also seeks order that: ⁵		
Last date for appealing ⁶	Last date: Is an extension of time needed? Yes/No		
Date of filing			

RESPONDENT'S DETAILS FOR SERVICE		
Geographical address of respondent (Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71 A rule 2 and <i>District Court Rules 2005</i> rule 22C)	Annabel Jones Unit 5, 44 Monash Avenue, Nedlands, WA, 6009 9425 2222	
Name of lawyer (If one has been appointed)		
Postal address for service of documents (Must be provided)		
Email address (Optional-if provided, may be used for service of documents)		
Fax number (Optional-if provided, may be used for service of documents)		
Telephone number		
Reference		
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date: 1 March 2011

Notes to Form 8 –

1. If not held at Perth, state the relevant registry.

9. Application in an appeal (r. 58A)

District Court of Western Australia Held at Perth ^{1A}		Appeal No:			
		APPLICATION IN AN APPEAL			
Parties	Appellant				
	Respondent				
Date of filing					
Applicant	Appellant/Respondent				
Application ¹	The applicant applies for —				
Conferral between the parties [Tick one box]	<input type="radio"/> The parties to this application have conferred about the issues giving rise to this application and have not resolved them. <input type="radio"/> The parties to this application have not conferred about the issues giving rise to this application because— 2				
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:			

Notes to Form 9—

1A. If not held at Perth, state the relevant registry.

1. State—

- the order or orders sought; and
- the written law and provision under which the application is made.

2. State the reasons why the parties have not conferred.

9. Application in an appeal (r. 58A)

District Court of Western Australia		Appeal No: 234 of 2011
Held at Perth IA		APPLICATION IN AN APPEAL
Parties	Rodney Smith Appellant Annabel Jones Respondent	
Date of filing	1 March 2011	
Applicant	Annabel Jones (Respondent)	
Application ¹	The applicant applies for — 1. An order that this application be heard by telephone. 2. An order that the respondent have leave to participate in the hearing of the appeal by video link to a secure location.	
Conferral between the parties [Tick one box]	<input type="radio"/> The parties to this application have conferred about the issues giving rise to this application and have not resolved them. <input type="radio"/> The parties to this application have not conferred about the issues giving rise to this application because- ²	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date: 1 March 2011

Notes to Form 9—

JA. If not held at Perth, state the relevant registry.

1. State—

- the order or orders sought; and
- the written law and provision under which the application is made.

2. State the reasons why the parties have not conferred.

10. Consent notice (r. 58B)

District Court of Western Australia Held at Perth ¹		Appeal No:
		CONSENT NOTICE
Parties	Appellant Respondent	
Date of filing		
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Note to Form 10—

1. If not held at Perth, state the relevant registry.

10. Consent notice (r. 58B)
Magistrates Court Restraining Orders Example

District Court of Western Australia Held at Perth ¹		Appeal No: 234 of 2011
CONSENT NOTICE		
Parties	Rodney Smith Appellant Annabel Jones Respondent	
Date of filing	1 March 2011	
Consent	We consent to the following order being made — 1. The directions hearing listed for 3 March 2011 at 10.30 am be adjourned to a date not earlier than 3 April 2011. 2. The appellant have leave to file and serve a substituted appeal notice in terms of the minute dated 3 March 2011 filed with this consent notice.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date: 1 March 2011
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date: 1 March 2011

Note to Form 10—

1. If not held at Perth, state the relevant registry.

F

11. Discontinuance notice (r. 58)

District Court of Western Australia Held at Perth ¹		Appeal No:
		DISCONTINUANCE NOTICE
Parties	Appellant Respondent	
Date of filing		
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Note to Form 11 —

1. If not held at Perth, state the relevant registry.

11. Discontinuance notice (r. 58)

Magistrates Court Restraining Orders example

District Court of Western Australia Held at Perth ¹		Appeal No: 234 of 2011
		DISCONTINUANCE NOTICE
Parties	Rodney Smith Appellant Annabel Jones Respondent	
Date of filing	1 March 2011	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date: 1 March 2011

Note to Form 11 —

1. If not held at Perth, state the relevant registry.

6

1A. Affidavit (r. 23A)

District Court of Western Australia Held at Perth 1A		Appeal No / Action No: AFFIDAVIT ¹
Parties	<p>*Appellant/Plaintiff</p> <p>*Respondent/Defendant</p> <p>*delete inapplicable and/or add full party details</p>	
Person making affidavit		
Date of filing		
Date made		
Purpose ²		
Filed by	[Parry]	
Index ³	Contents	Page
	1. <i>Affidavit of Vincent van Gogh</i>	1
	2. <i>Attachment VVG 1-M J Citizen's birth certificate</i>	7
	3. <i>Attachment VVG 2-Letter from J Smith to T Jones dated 3 March 1999</i>	8

Notes to Form 1A-

- 1A. If not held at Perth, state the location of the relevant registry.
1. The affidavit must comply with the RSC Order 37.
2. Example: To support summons by plaintiff dated 1 May 2010 for summary judgment.
3. The index must comply with the RSC Order 37 rule 2(7). Form 1A contains in italics an example of an index.
4. Page 1 must be on a separate sheet of paper from the above.
5. The *Oaths, Affidavits and Statutory Declarations Act 2005* Part 3 sets out the requirements for affidavits and who are authorised witnesses for affidavits.

Page 1 ⁴

1. *[name, address and occupation of person making the affidavit],
[insert words of oath or affirmation in accordance with the Oaths, Affidavits and
Statutory Declarations Act 2005] as follows-[insert content of affidavit in numbered
paragraphs]*
2. This affidavit is *[sworn/affirmed]* by *[name of person making the affidavit]* in the
presence of an authorised witness at *[place]* on *[date]*.

[Signature of person making the affidavit]

[Signature of authorised witness]
Authorised witness

[Name of authorised witness]

[Qualification of authorised witness] ⁵

Notes to Form 1A –

- 1A. If not held at Perth, state the location of the relevant registry.
1. The affidavit must comply with the RSC Order 37.
2. Example: To support summons by plaintiff dated 1 May 2010 for summary judgment.
3. The index must comply with the RSC Order 37 rule 2(7). Form 1A contains in italics an example of an index.
4. Page 1 must be on a separate sheet of paper from the above.
5. The *Oaths, Affidavits and Statutory Declarations Act 2005* Part 3 sets out the requirements for affidavits and who are authorised witnesses for affidavits.

G

1A. Affidavit (r. 23A)

Magistrates Court Restraining Orders example

District Court of Western Australia		Appeal No/Action No: 234 of 2011
Held at Perth ^{1A}		AFFIDAVIT ¹
Parties	RODNEY SMITH* Appellant/Plaintiff ANNABEL JONES* Respondent/Defendant *delete inapplicable and/or add full party details	
Person making affidavit	Annabel Jones	
Date of filing	3 March 2011	
Date made	12 February 2011	
Purpose ²	To support application dated 3 March 2011 for leave to have the appeal heard by video link.	
Filed by	Respondent	
Index ³	Contents	Page
	1. <i>Affidavit of Annabel Jones</i>	1
	2. <i>Attachment 'AJ1'-Email Rodney Smith to Annabe/Jones, 12 February 2011</i>	3
	3. <i>Attachment 'AJ2'- Email Rodney Smith to Annabel Jones, 13 February 2011</i>	4

Notes to Form 1A-

- 1A. If not held at Perth, state the location of the relevant registry.
1. The affidavit must comply with the RSC Order 37.
2. Example: To support summons by plaintiff dated 1 May 2010 for summary judgment.
3. The index must comply with the RSC Order 37 rule 2(7). Form 1A contains in italics an example of an index.
4. Page 1 must be on a separate sheet of paper from the above.
5. ~~The Oaths, Affidavits and Statutory Declarations Act 2005 Part 3 sets out the requirements for affidavits and who are authorised witnesses for affidavits.~~

Page 1 ⁴

I, Annabel Jones, of Unit 5, 44 Monash Avenue, Nedlands, WA 6009, General Practitioner, being duly sworn MAKE OATH AND SAY as follows-

1. I am the respondent in this appeal.
2. Since I made the application to get a restraining order, the intimidation and harassment which I have been subject to from the appellant has increased markedly. This is clear from the evidence before the Magistrate and the Magistrate's reasons.
3. On 12 February 2011, after the decision was made, I received another intimidating email from the appellant, this time about the appeal. In the email he says that an appeal will be fun as he can be close to me, 'real close to me'. He says he is going to drag out the appeal for as many hearings as he can so he can see me 'lots and lots and lots'.
Now produced and shown to me and marked 'AJ1' is a true copy of this email.
4. On 13 February 2011 the appellant sent me another email in similar terms. That email is now produced and shown to me and marked 'AJ2'.
5. It causes me great trauma and psychological distress to be in the same room as the appellant. I led evidence about this in the hearing before the Magistrate.
6. I would like the appeal to be conducted in such a way that we are not in the same room together.

[Signature of person making the affidavit]

[illegible signature]
Authorised witness

[Name of authorised witness]

[Qualification of authorised witness] ⁵

Notes to Form 1A-

- 1A. If not held at Perth, state the location of the relevant registry.
1. The affidavit must comply with the RSC Order 37.
2. Example: To support summons by plaintiff dated 1 May 2010 for summary judgment.
3. The index must comply with the RSC Order 37 rule 2(7). Form 1A contains in italics an example of an index.
4. Page 1 must be on a separate sheet of paper from the above.
5. The *Oaths, Affidavits and Statutory Declarations Act 2005* Part 3 sets out the requirements for affidavits and who are authorised witnesses for affidavits.

H

IAB. Notice of change of address for service (r. 22B)

District Court of Western Australia Held at Perth	Appeal No/Action No: NOTICE OF CHANGE OF ADDRESS FOR SERVICE	
Parties *Appellant/Plaintiff *Respondent/Defendant <div style="text-align: right;"><small>*delete inapplicable and/or add full party details</small></div>		
Party filing document	*Appellant/Respondent/Plaintiff/Defendant <div style="text-align: right;"><small>*delete inapplicable or add party designation</small></div>	
Date of filing		
NEW SERVICE AND CONTACT DETAILS		
Geographical address of party <small>(Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71A rule 2 and <i>District Court Rules 2005</i> rule 22C)</small>		
Name of lawyer <small>(If one has been appointed)</small>		
Postal address for service of documents <small>(Must be provided)</small>		
Email address <small>(Optional — if provided, may be used for service of documents)</small>		
Fax number <small>(Optional-if provided, may be used for service of documents)</small>		
Telephone number		
Reference		
Signature of party or lawyer	Party/lawyer	Date of signing

Note to Form IAB-

I. If not held at Perth, state the location of the relevant registry.

H

IAB. Notice of change of address for service (r. 22B)

Magistrates Court Restraining Orders example

District Court of Western Australia Held at Perth	Appeal No/Action No: 123 of 2013 NOTICE OF CHANGE OF ADDRESS FOR SERVICE	
Parties	*Rodney Smith Appellant/Plaintiff *Annabel Jones Respondent/Defendant *delete inapplicable and/or add full party details	
Party filing document	*Appellant/Respondent/Plaintiff/Defendant *delete inapplicable or add party designation	
Date of filing	20 February 2011	
NEW SERVICE AND CONTACT DETAILS		
Geographical address of party (Must be provided unless otherwise ordered by the Court: see <i>Rules of the Supreme Court 1971</i> Order 71 A rule 2 and <i>District Court Rules 2005</i> rule 22C)	123 Rockhampton Drive, Safety Bay, WA, 6169 9426 2793	
Name of lawyer (If one has been appointed)		
Postal address for service of documents (Must be provided)		
Email address (Optional – if provided, may be used for service of documents)		
Fax number (Optional – if provided, may be used for service of documents)		
Telephone number		
Reference		
Signature of party or lawyer	Party/lawyer	Date of signing

Note to Form IAB-

I. If not held at Perth, state the location of the relevant registry.

DISTRICT COURT (FEES) REGULATIONS 2002

Form 2 Application to reduce fee			
In the District Court of Western Australia		No. of 2	
Plaintiff/Appellant*: (*strike out word that is not applicable)			
Defendant/Respondent*: (*strike out word that is not applicable)			
Fee type for which request is made			
<input type="checkbox"/> Application fee	<input type="checkbox"/> Hearing fee	<input type="checkbox"/> Transcription fee	<input type="checkbox"/> Other (please describe below)
Concession Card Holder <input type="checkbox"/> Yes <input type="checkbox"/> No		Pension Concession Card No:	
		Health Care Card No:	
Grant of Legal Aid under a legal aid scheme or service <input type="checkbox"/> Yes <input type="checkbox"/> No			
Applicant Details:	Full name:		
	Please indicate your party type: <input type="checkbox"/> Individual <input type="checkbox"/> Entity		
	Address:		
	Date of birth:		
If you are applying for a fee reduction because of financial hardship or in the interests of justice, please give supporting reasons for your request (attach a separate page if required). <u>If the reasons include financial hardship you must complete the information on the following pages.</u>			
I certify that the above information and disclosures in this form are true and correct.			
<i>Applicant's Signature</i>		<i>Dated:</i>	

**Note: A person who makes a statement or representation in this application that the person knows or has reason to believe is false or misleading in a material particular commits an offence under District Court (Fees) Regulations 2002 regulation 8B(1).*

COURT SEAL

FINANCIAL DETAILS: APPLICANT WHO IS AN INDIVIDUAL

If the reasons for application include financial hardship, the following sections of the form must be provided by the applicant if the applicant is an individual.

Occupation:	
Employer:	
Employer's Address:	
Marital Status:	<input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> partner <input type="checkbox"/> de facto <input type="checkbox"/> separated
Dependants:	<input type="checkbox"/> dependant wife/husband/partner/de facto ____(number of) dependant children

INCOME AND FINANCIAL ASSET DETAILS

Income / financial assets (net)	Self	Partner	Total
Wage / salary / benefit	\$	\$	\$
Money in financial institution	\$	\$	\$
Cash	\$	\$	\$
Income from investments	\$	\$	\$
Other income	\$	\$	\$
Money loaned and to be repaid	\$	\$	\$
Total	\$	\$	\$

EXPENDITURE DETAILS

Rent / board	\$	\$	\$
Mortgage payment	\$	\$	\$
Maintenance for dependants	\$	\$	\$
Food	\$	\$	\$
Utilities (gas / electricity)	\$	\$	\$
Telephone	\$	\$	\$
Water	\$	\$	\$
Rates and taxes	\$	\$	\$

Court orders		\$	\$	\$	
Credit card/s		\$	\$	\$	
Other debts (provide details)		\$	\$	\$	
TOTAL		\$	\$	\$	
TOTAL INCOME	\$	TOTAL EXPENDITURE	\$		
ASSETS				VALUE	
House or other property (provide addresses)				\$	
Motor Vehicles (car, utility, motorcycle, truck etc.)	1	Year: Make: Model: Registration Number:	\$		
	2	Year: Make: Model: Registration Number:	\$		
Other assets (provide details)				\$	
TOTAL ASSET VALUE				\$	
HOME CONTENTS (please complete appropriate box where applicable)					
Television	DVD Player	Computers	Other electronic devices	Dishwasher	Microwave
\$	\$	\$	\$	\$	\$
Furniture	Collection of coins, stamps etc.	Other collectables	Other assets	Interests in business or company	
\$	\$	\$	\$	\$	
LIABILITIES				TOTAL	
Mortgage to:				\$	
Other to:				\$	
Time to pay Order:				\$	

TOTAL LIABILITIES		\$
FINANCIAL DETAIL: APPLICANT WHO IS NOT AN INDIVIDUAL		
If the reasons for application include hardship, the following sections of the form must be provided by the applicant if the applicant is an entity.		
Income		\$
Assets		\$
Liabilities		\$
TOTAL		\$