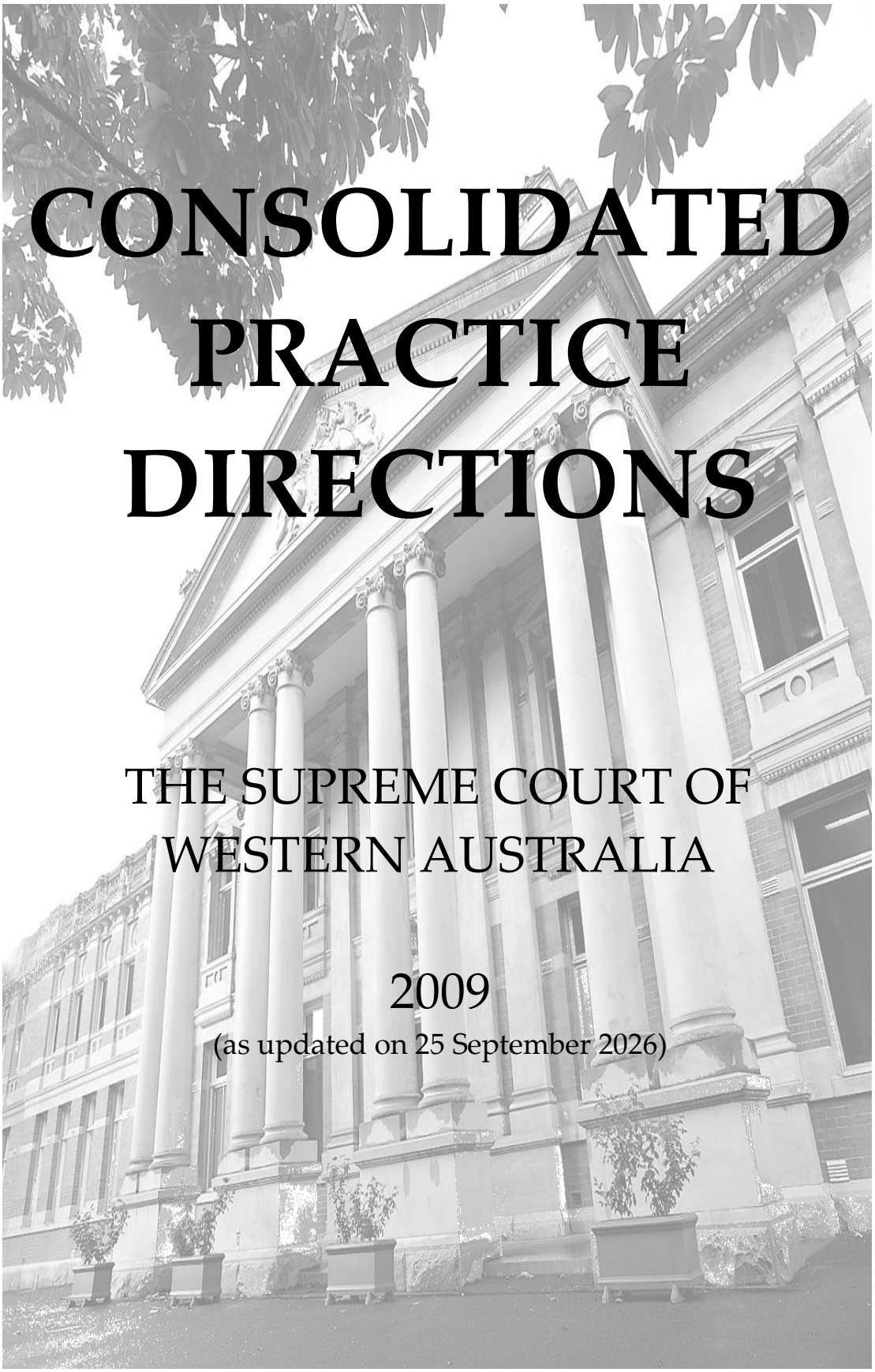

CONSOLIDATED PRACTICE DIRECTIONS

THE SUPREME COURT OF WESTERN AUSTRALIA

2009

(as updated on 25 September 2026)

Unless otherwise indicated, references to the Rules are references to the *Rules of the Supreme Court 1971* (WA); and Orders (O) and rules (r) in this document refer to the orders and rules of the *Rules of the Supreme Court 1971* (WA).

These can be accessed at the Parliamentary Counsel's Office website at:

www.legislation.wa.gov.au

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1. Supreme Court Registry & Court of Appeal Office

1.1. Operations

1.1.1. Supreme Court Registry & Court of Appeal Office - role, location and opening hours

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Registry - role and location

1. The Supreme Court Registry consists of the Central Office, the Probate Office and Criminal and Civil Listings located at:

    Level 11, David Malcolm Justice Centre (DMJC)
    28 Barrack Street
    PERTH

2. Registry can be contacted for:

    (a) General Division civil matters;

    (b) General Division criminal matters;

    (c) Probate;

    (d) Single Judge Appeals (SJAs) (criminal); and

    (e) General Division Appeals (GDAs) (civil).

Court of Appeal Office - role and location

3. The Court of Appeal Office is the contact for Court of Appeal matters and is located at:

    Stirling Gardens
    Cnr St Georges Terrace and Barrack Street
    PERTH

Registry and Court of Appeal Office - opening hours

4. The Supreme Court Registry and the Court of Appeal Office are open to the public daily, between the hours of 9.00 am and 4.00 pm (without break).

1.1.2. Correspondence with the Court Registry

1. All correspondence issued by the Court Registry is signed by the author and includes the file number and reference details.

2. All correspondence sent to the Court Registry should include the file number and reference details and be addressed to:

   (a) the specific officer where that person is known; or

   (b) where the specific officer is not known, the Manager Customer Services.

1.1.3. eCourts Portal

1. The eCourts Portal of Western Australia is a website which provides information relating to the Supreme, District, Magistrates and Children's Courts; the State Administrative Tribunal; and the Fines Enforcement Registry.

2. The eCourts Portal can be accessed from the Court's website, www.supremecourt.wa.gov.au/, or at https://ecourts.justice.wa.gov.au.

3. Any person may obtain the following information in relation to the Supreme Court from the eCourts Portal:

   (a) Court listings for the particular day; and

   (b) Future Court listings for a particular matter, if the person can provide certain required details about the matter (such as party names, indictment number or charge number),

   except where legislative or court requirements provide that the information cannot be published.

4. Registered users of the eCourts Portal may electronically file most originating and non-originating documents in General Division civil matters and in Court of Appeal civil appeals, and pay any associated fees, via the eCourts Portal.

5. The rules concerning filing of documents (electronically or otherwise) are primarily contained in O 67A.

6. Order 1 r 4 provides that the electronic case management system for managing proceedings in all Western Australian courts and tribunals is referred to as the ECMS, and to file electronically means to file under O 67A using the ECMS (refer to Practice Direction 1.1.4).

1.1.4 Electronic Case Management System (ECMS)

1. Order 1 r 4 of the Rules provides that ECMS means the electronic case management system for managing proceedings in all Western Australian courts and tribunals.

2. Order 1 r 4 provides that to file electronically means to file under O 67A using the ECMS. The part of the ECMS through which documents may be filed is the electronic filing system on the eCourts Portal of Western Australia website.

3. Documents may be presented for filing electronically using the ECMS 24 hours per day and seven days per week. Whilst a document may be accepted for filing and sealed at a later time (O 67 r 9(1A)), the time of filing will be recorded as the time the document is presented via the ECMS (O 67A r 4(10)).

Mandatory filing using the ECMS

4. Electronic filing using the ECMS is mandatory for documents filed in General Division civil matters unless the Rules or this Practice Direction provides that there is an exemption for a person or a type of document (O 67A r 3).

4A. From 3 May 2021 electronic filing using the ECMS is mandatory for documents filed in Court of Appeal civil appeals unless the Rules or this Practice Direction provides that there is an exemption for a person or a type of document (O 67A r 3).

Exemptions to mandatory filing using the ECMS

5. Order 67A r 3(1) provides a list of exemptions where the person filing a document is not required to file electronically using the ECMS.

6. Paragraph (a) of O 67A r 3(1) provides an exemption where the ECMS:

   (a) has been declared unavailable for use by the Principal Registrar (refer also to par 7 - 8 below);

   (b) is otherwise unavailable for use (refer also to par 8 below): or

(c) does not permit the document to be presented (refer also to par 9 below).

7. An example of a situation where the Principal Registrar may declare the ECMS unavailable for use is when planned maintenance work is being performed on the ECMS. (The ECMS will require occasional maintenance work. Where possible, maintenance work will be undertaken outside of usual business hours and advance notice will be placed on the ECMS.)

8. When the ECMS is unavailable, documents may be filed in accordance with the Rules by:

(a) email (refer also to Practice Direction 1.2.2 – *Filing by email*);

(b) delivery to the Court (refer also to Practice Directions 1.1.1 –Registry and Court of Appeal Office – opening hours, and 1.2.2 – *Filing by delivery*);

(c) post (refer also to Practice Directions 1.2.2 – *Filing by post* and 1.2.3); or

(d) fax (only where email, delivery or post is not possible, refer also to Practice Direction 1.2.2 – *Filing by fax*).

9. The ECMS may not allow certain types of documents to be presented for filing. A list of the originating and non-originating documents that the ECMS will allow to be presented for filing is available on the Court's website.

10. Order 67A r 3(1) also lists other exemptions, which include documents filed in non-contentious or common form probate business (par (c)); documents filed in the Court of Disputed Returns to which the *Electoral Rules 1908* apply (par (c)); documents filed under O 75A for the purposes of an application for admission under the *Legal Profession Uniform Law (WA)* (par (d)); and documents filed under O 81H for the purposes of an application under the *Surveillance Devices Act 1998* (par (d)).

11. Paragraph (i) of O 67A r 3(1) provides an exemption from mandatory filing using the ECMS for documents declared in the Practice Directions

to be exempt. The following documents are by this Practice Direction declared to be exempt:

(a) originating documents presented for filing by a litigant in person at the discretion of the proper officer at the Court Registry;

(b) documents presented for filing for the purposes of an application or proceedings under the *Witness Protection (Western Australia) Act 1996*;

(c) documents presented for filing in an appeal to a single judge of the Court (SJA matters) (refer also to par 12 below);

(d) documents presented for filing by an applicant for substitution under s 465B of the *Corporations Act 2001* (Cth);

(e) documents presented for filing for the purposes of an application brought under s 76 of the *Service and Execution of Process Act 1992* (Cth) (SEPA) where the application is for leave to serve a notice or summons issued under s 95 or 96 of the *Corruption, Crime and Misconduct Act 2003* (WA);

(f) documents presented for filing pursuant to Part 6 of the SEPA and O 81B of the Rules;

(g) documents presented for filing for the purposes of an application by a non-party to the proceeding to intervene, or to be joined as a party to the proceeding, or to otherwise be heard; and

(h) originating documents presented for filing in proceedings commenced under the *Civil Procedure (Representative Proceedings) Act 2022*.

12. It is not mandatory to file documents using the ECMS in SJA matters, however the filing party may choose to electronically file documents using the ECMS.

13. For filing requirements in relation to applications or proceedings under the *Criminal Property Confiscation Act 2000*, refer to Practice Direction 9.10.

14. Paragraph (j) of O 67A r 3(1) provides an exemption from mandatory filing using the ECMS where a class of persons is declared in the Practice

Directions to be exempt from filing by ECMS. By this Practice Direction, persons who are serving a term of imprisonment as at the date that a document is presented for filing are a class of persons declared to be exempt.

15. Non-parties who wish to file documents are not to present any documents for filing electronically using the ECMS unless permitted to do so by the Principal Registrar. A non-party may apply for permission in writing to the Principal Registrar. The application may be made by letter or email addressed to the associate to the Principal Registrar – refer to website for contact details.

Interested non-parties – Order 9A

16. Under O 9A r 2, a party to an action must notify the Principal Registrar and each other party to the action of the identity of any person who is an interested non-party in relation to the party to the action. There is a requirement that the notice is to be given in writing as soon as is reasonably practicable after the person becomes an interested non-party in relation to the action (O 9 r 2(2)). That notice should be filed electronically by the party, and not by the interested non-party.

Application to the Principal Registrar

17. An application may be made to the Principal Registrar for permission to present a document for filing otherwise than via the ECMS.

18. The Principal Registrar, for any good reason and without a formal application or request, may permit a person to present a document otherwise than via the ECMS (O 67A r 3(3)). Such a request is to be made either in writing by letter addressed to the Principal Registrar, or by email sent to the associate to the Principal Registrar – refer to website for contact details.

19. When giving permission, the Principal Registrar may give directions as to the manner in which the document is to be presented (O 67A r 3(4)), including whether the document is to be presented to the Court:

    (a) by emailing it; or

    (b) by delivering it; or

(c) by posting it; or

(d) by faxing it.

Objections to subpoenas

20. A request made under O 36B r 8 or 8A by a non-party addressee of a subpoena, or any other non-party with sufficient interest, to set aside, vary or grant other relief with respect to a subpoena cannot be filed electronically (O 36B r 8B(3A)). That request must be made by letter addressed to the Principal Registrar in accordance with O 36B r 8B, unless par (a), (b) or (c) of O 36B r 8B(1) apply. Unless there is good reason, that letter should be presented for filing by email, scanned in .pdf format as an attachment. The email address for filing is central.office@justice.wa.gov.au. (Refer also to Practice Direction 1.2.2.)

Registration as an authorised user of the ECMS

21. Specialist software is not required to use the ECMS. To use the ECMS, the following are required:

(a) internet access;

(b) an email account; and

(c) an internet browser (the ECMS is supported by and optimised for Google Chrome, which is recommended for use).

22. To present a document for filing electronically a party must become an authorised user of the ECMS by:

(a) opening the eCourts Portal home page, https://ecourts.justice.wa.gov.au;

(b) reading the terms and conditions;

(c) clicking on the 'Register' link; and

(d) completing and submitting the registration form.

23. Registration is not instantaneous and may take up to 24 hours. An email of notification will be sent to the registering party when registration is complete. If you are required to electronically present a document for

filing by a particular date, and you are concerned that you will not be registered within that time, you may apply to the Principal Registrar for permission to present the document for filing by another method. (See O 67A r 3(1)(h), (3) and (4)). Refer also to pars 17 - 19 above.

24. A law firm registers a single ECMS account, which may have multiple authorised users. Each user within the law firm must also register as an authorised user of the ECMS, and will obtain a unique log-in and password.

25. In addition to electronic filing, if the authorised user is a party, or a legal representative for a party, they will also be able to:

    (a) view documents stored in electronic form in the relevant matter (unless a document is marked as restricted);

    (b) use an e-Inbox to facilitate communication and the transfer of documents from the Court to users; and

    (c) where the Rules provide, print from the ECMS sealed copies of a document for the purpose of service and proof of service.

26. An authorised user must pay any filing fees on fee-attracting documents in the ECMS. Fees may be paid by credit card (Mastercard or Visa only) or direct debit.

27. When a law firm first registers as an authorised user of the ECMS, the Court Technology Group (**CTG**) Helpdesk will contact the firm to inquire whether a direct debit account is required. If the law firm requires a direct debit account to be linked to the firm's ECMS account then the firm should provide CTG with an account name, a BSB number and an account number.

Electronic format of documents filed using the ECMS

28. Order 67A r 4(9) provides that all documents presented to the Court for filing using the ECMS must be in an electronic format specified by these Practice Directions. Refer to Practice Direction 1.2.1 - Documents - Format.

Sensitive documents

29. Division 3 of O 67A deals with documents containing sensitive information. A document may:

(a) contain restricted information. That is, access to all or part of the information in the document is restricted because:

(i) the information is 'restricted information' under O 67A r 9; or

(ii) the person presenting the document for filing is applying for an order restricting access to the information; or

(b) be a 'restricted document' under O 67A r 9; or

(c) not be accessible to the judiciary. That is, the existence and content of the document must not be made accessible or known to the Judge or Master who is or will be trying the case (for example, a dispute in relation to a *Calderbank* offer).

30. A person must advise that the document is sensitive at the time of presenting the document for filing (O 67A r 10(1)). They will do so by selecting the appropriate option from a drop down list on the ECMS. The document, or its contents, will then not be accessible to other parties via the ECMS, or to the Judge or Master (reflecting the option selected).

31. The Rules require that a person who files electronically a document containing sensitive information must file within 24 hours a memorandum stating the reasons for the classification; or a memorandum stating why the Master or Judge must not know the contents or existence of the document; or must file an application under O 67B r 5. When presenting the memorandum or application for filing using the ECMS, a party should consider whether it is appropriate to advise the Court that the memorandum or application is sensitive with the same classification as the sensitive document to which it relates. For more information refer to Practice Direction 1.2.2 – Sensitive documents.

1.2. Documents

1.2.1. Format

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1. Order 69 of the *Rules of the Supreme Court 1971* sets out the requirements for paper, printing, notice and copies of documents for use in the Supreme Court.

2. A document or copy document which is to be filed must not be folded. If the document comprises more than one sheet, it must be fastened at the top left corner - preferably by stapling. If the document is too thick to staple it may be fastened by other means provided these do not add unnecessarily to the bulk of the document. A document stapled and taped along the edge will not be accepted for filing (other than papers for the Judge). For the purposes of documents filed electronically, O 69 r 2 applies with any necessary changes.

Format of documents presented for filing using the ECMS or email

3. A document presented for filing using the ECMS or email must be filed in .docx electronic format, unless it is an affidavit; a consent to the Court doing anything; or a document signed by a person who is not a party to the proceedings, in which case it must not be presented for filing using the ECMS or email unless it is signed and is presented in a .pdf electronic format.

4. If a party presents an amended pleading for filing using the ECMS, the amendments must be made using underline, strikeout and/or font colour changes tools. Documents presented for filing using the ECMS with tracked changes will not retain their formatting.

5. If, under the Rules, a document must be signed before it is presented for filing and the document is not an affidavit; a consent to the Court doing anything; or a document signed by a person who is not a party to the proceedings, then:

   (a) it must be signed before it is presented;

   (b) a copy of it, in .docx electronic format, that states the name of the person who is required to sign it instead of showing the person's

signature, at any place where the signature is required, must be presented instead of the signed copy; and

(c) the person filing it must retain the signed copy and produce it if required to do so by the Court.

5A. The Rules require that every pleading must be signed by counsel, if settled by counsel, and, if not, by the party's solicitor or by the party, if the party sues or defends in person: O 20 r 7(5). Indorsing the pleading with the name of a law firm on the record will not satisfy this requirement. If not settled by counsel, the practitioner who settled the pleading must be identified. A practitioner who settles a pleading filed with the Court owes important duties to the Court in doing so and the practitioner's signature is the confirmation that those duties have been fulfilled: *Unioil International Pty Ltd v Deloitte Touche Tohmatsu (No 2)* (1997) 18 WAR 190, 193.

5B. If a pleading is presented for filing using the ECMS, the requirements of O 67A r 4(7), as summarised at par 5 above, must be satisfied. That is, the pleading:

(a) must be signed before it is presented;

(b) instead of the signed copy, a copy of the pleading, in .docx electronic format, that states the name of counsel (if settled by counsel) or the party's solicitor (if settled by the solicitor) or the party (if the party sues or defends in person) instead of showing the person's signature, must be presented; and

(c) the person filing the pleading must retain the signed copy of the pleading and produce the signed pleading if required to do so by the Court.

Other formatting requirements

6. The heading and title to the proceedings must be endorsed on the first sheet of the document followed immediately by a short description of the document. In the case of an affidavit, the description of the document must include the name of the deponent and refer to the particular application to which it relates.

7. The heading of every document filed or issued in defamation actions shall show the word 'DEFAMATION' in the top left corner below the words 'In the Supreme Court of Western Australia':

    'IN THE SUPREME COURT OF WESTERN AUSTRALIA
    DEFAMATION'

    Refer to sample at 1.2.1.3 (long form of affidavit).

8. The heading of every document filed or issued in CMC list actions (refer to 4.1.2) should be headed:

    'IN THE SUPREME COURT OF WESTERN AUSTRALIA
    COMMERCIAL AND MANAGED CASES LIST'

    Immediately following the description of the document on the first sheet, in a space not exceeding 50 millimetres in depth, there must be endorsed the name of the allocated judge, followed by the other items described at par 10 below. Refer to sample at 1.2.1.4 (long form of affidavit).

9. All documents filed in appeals that are to be heard by the Court of Appeal should be headed:

    'IN THE SUPREME COURT OF WESTERN AUSTRALIA
    IN THE COURT OF APPEAL'

10. Immediately following the description of the document on the first sheet, in a space not exceeding 50 millimetres in depth, there must be endorsed:

    (a) the date of the document;

    (b) the party or other person on whose behalf the document is filed; and

    (c) particulars relating to the solicitor preparing the document, or if no solicitor is acting, particulars in relation to the party or person on whose behalf the document is filed.

11. Except in the case of:

    (a) an originating process;

(b) a document to be served on a person not a party to a proceeding; or

(c) a final judgment or order,

a document may bear an abbreviation of the title of the proceeding sufficient to identify the proceeding.

12. Sample extracts from affidavits with a long and short title are set out at 1.2.1.1 and 1.2.1.2 respectively. As indicated, sample extracts from affidavits with a long title in Defamation and CMC List matters are also set out at 1.2.1.3 and 1.2.1.4 respectively.

1.2.1.1. Sample full title - Extract from Affidavit (General Division)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN	No 2254 of 2000
ABC PTY LTD (ACN .....)	Plaintiff
and	
JOHN BROWN SMITH, BROWN SMITH JOHN and SMITH JOHN BROWN	Defendants

AFFIDAVIT OF J B SMITH - SWORN: 27 APRIL 2000
IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Facsimile

1.2.1.2. Sample short title - Extract from Affidavit (General Division)

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN	No 2254 of 2000
ABC PTY LTD	Plaintiff
and	
SMITH & ORS	Defendants

AFFIDAVIT OF J B SMITH - SWORN: 27 APRIL 2000
IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

...

1.2.1.3. Sample full title - Extract from Affidavit (Defamation)

IN THE SUPREME COURT OF WESTERN AUSTRALIA
DEFAMATION

BETWEEN No 2254 of 2000

JOHN BROWN SMITH Plaintiff

and

ABC PTY LTD (ACN .....) Defendant

AFFIDAVIT OF J B SMITH - SWORN: 27 APRIL 2000
IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Facsimile

1.2.1.4. Sample full title - Extract from Affidavit (CMC List)

IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST

BETWEEN	No 2254 of 2000
JOHN BROWN SMITH	Plaintiff
and	
ABC PTY LTD (ACN .....)	Defendant

AFFIDAVIT OF J B SMITH - SWORN: 27 APRIL 2000
IN SUPPORT OF APPLICATION FOR SUMMARY JUDGMENT

Case Manager: The Hon Justice Brown

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Facsimile

1.2.2. Filing of Documents

REGISTRY

General Division - Civil

Filing electronically via the ECMS

1. All documents must be filed electronically using the ECMS unless the Rules or these Practice Directions provide otherwise.

2. Order 67A r 3(1) and (3), and Practice Direction 1.1.4 – Exemptions to mandatory filing using the ECMS, provide exemptions to filing electronically using the ECMS.

3. A document presented for filing electronically, if accepted for filing, is taken to have been filed on the day and at the time recorded by the ECMS.

3A. When presenting an originating document for filing electronically via the ECMS, the presenting party must enter into the eCourts portal the full names and addresses of every individual or entity to be named as a party (either plaintiff or defendant), regardless of the number. There is no limit to the number of parties whose details can be entered into the eCourts portal.

3B. The party entering information into the eCourts portal is responsible for the accuracy of the information entered.

4. If a party presents a document for filing electronically within 48 hours of a hearing, that party must also immediately email the associate to the Judge, Master or Registrar who is hearing the matter to inform them that the document has been presented for filing.

5. The email addresses for associates to judges, masters and registrars can be found on the Court's website.

6. An email sent to an associate in accordance with par 4 above does not affect the time that a document presented for filing, if accepted for filing, is taken to have been filed (refer to par 3 above).

7. An application may be made to the Principal Registrar for permission to present a document for filing otherwise than via the ECMS. The Principal Registrar, for any good reason and without a formal application or request, may permit a person to present a document otherwise than via the ECMS (O 67A r 3(3)). An application may be made in writing addressed to the Principal Registrar. The email and postal address for the associate to the Principal Registrar can be found on the Court's website.

8. When giving permission, the Principal Registrar may give directions as to the manner in which the document is to be presented for filing (O 67A r 3(4)), including whether the document is presented to the Court:

   (a) by emailing it; or

   (b) by delivering it; or

   (c) by posting it; or

   (d) by faxing it,

   (Refer also to Practice Directions 1.1.4 – Applications to the Principal Registrar).

Filing by email

9. A person must not email a document to the Court for filing unless the Principal Registrar has permitted the person to email it or the Rules otherwise say that it cannot be filed electronically using the ECMS, pursuant to O 67A r 4(2).

10. The email address for filing documents by email is central.office@justice.wa.gov.au. A document that is emailed directly to an associate's email address, or emailed to any other address than central.office@justice.wa.gov.au is taken not to have been filed.

11. A document presented for filing by email, if accepted for filing, is taken to have been filed on the day and at the time that the Court receives the email.

Filing by delivery

12. A person must not deliver a document to the Court to present it for filing unless the Principal Registrar has permitted the person to deliver it or the Rules otherwise say that it cannot be filed electronically using the ECMS, pursuant to O 67A r 5.

13. The address for delivery of documents is:

    Level 11, David Malcolm Justice Centre (DMJC)
    28 Barrack Street
    PERTH WA 6000

Filing by post

14. A person must not post a document to the Court to present it for filing unless the Principal Registrar has permitted the person to post it or the Rules otherwise say that it cannot be filed electronically using the ECMS, pursuant to O 67A r 6(1).

15. A person presenting a document for filing by post must comply with the requirements of Practice Direction 1.2.3.

Filing by fax

16. Paragraphs 17 - 19 apply to documents filed in General Division civil proceedings of the Court by fax pursuant to O 67A r 7.

17. A person must not fax a document to the Court for filing unless the Principal Registrar has permitted the person to fax it, pursuant to O 67A r 7(1). Filing by fax is not permitted simply because the Rules otherwise say that a document cannot be filed electronically using the ECMS.

18. The fax for filing documents is (08) 9421 5353.

19. A document presented for filing by fax, if accepted for filing, is taken to have been filed on the day and at the time when the Court receives the fax.

Sensitive documents

20. Division 3 of O 67A deals with documents containing sensitive information. A document may:

(a) contain restricted information. That is, access to all or part of the information in the document is restricted because:

(i) the information is 'restricted information' under O 67A r 9; or

(ii) the person presenting the document for filing is applying for an order restricting access to the information; or

(b) be a 'restricted document' under O 67A r 9; or;

(c) not be accessible to the judiciary. That is, the existence and content of the document must not be made accessible or known to the Judge or Master who is or will be trying the case (for example, a dispute in relation to a *Calderbank* offer).

Why is it important to inform the Court that a document is sensitive?

21. When presenting a sensitive document for filing, the person presenting the document must inform the Court that the document is sensitive, regardless of the manner in which the document is presented (refer to O 67A r 10(1)). If the Court is not informed at the time of presentation that a document is sensitive, the Court may not know to apply restrictions on access.

22. If you forget to inform the Court that a document is sensitive at presentation, steps may later be made by the Court to apply restrictions on access to the document (refer to O 67A r 10(4)). It may take some time to apply restrictions, so particular caution should be exercised when presenting documents for filing outside of usual working hours. A person who has erroneously described a document as being sensitive may also correct the error (refer to O 67A r 10(6)).

How do I inform the Court that a document is sensitive?

23. If a person presenting a document to the Court for filing electronically believes that it is sensitive, they must inform the Court that it is sensitive by selecting the appropriate option on the ECMS. Depending upon the option selected, the document, or its contents, will then not be accessible to other parties via the ECMS, or to the Judge or Master.

24. If a person presenting a document to the Court for filing electronically believes that it is sensitive for more than one reason (for example, the one affidavit contains restricted information and a copy of a restricted

document), then the document must not be presented for filing electronically (refer to O 67A r 10(2)).

25. If a person presenting a document to the Court for filing by email, delivery, post or fax believes that it is sensitive, they must inform the Court that it is sensitive by ensuring that the document has a cover sheet.

26. If a person presenting a document to the Court for filing by email, delivery, post or fax believes that it is sensitive because the document contains 'restricted information' (as defined in O 67A r 9), then the coversheet must include this statement:

> ATTENTION: This document contains information to which access is restricted by [*the short title and provision of applicable legislation or the details of the applicable court order*].

27. If a person presenting a document to the Court for filing by email, delivery, post or fax believes that it contains information to which access should be restricted, and the person presenting the document for filing is applying or intends to apply for an order restricting access to the information pursuant to O 67B r 5, then the coversheet must include this statement:

> ATTENTION: This document contains information which is the subject of an application for an order under the *Rules of the Supreme Court 1971* O 67B r 5 that restricts access to it.

28. If a person presenting a document to the Court for filing by email, delivery, post or fax believes that the document presented is a 'restricted document' (as defined in O 67A r 9), then the coversheet must include this statement:

> ATTENTION: [*Identify the document*] is a document the existence and the whole of the contents of which must not be known or accessible to anyone other than the person filing it and a judge or master.

29. If a person presenting a document to the Court for filing by email, delivery, post or fax believes that the document presented should not be accessible to the judiciary (that is, the existence and content of the document must not be made accessible or known to the Judge or Master who is or will be trying the case (for example, a dispute in relation to a *Calderbank* offer)), the coversheet must include this statement:

ATTENTION: *[Identify the document*] is a document the existence and the whole of the contents of which must not be known or accessible to the Judge or Master who will be trying the case in respect of which it is filed.

What is required after the Court is informed that a document is sensitive?

30. It is not sufficient to simply assert that a document is sensitive. The Court will need to be satisfied of the basis on which a document is claimed to be sensitive (and therefore subject to a restriction on access).

31. If the Court has been informed that a document is sensitive, then it will be presumed that it is sensitive until its classification is changed or cancelled under O 67A r 10(6); or if an order made under O 67B r 5(3) applies to it, the order is cancelled.

32. There are obligations imposed on a person who informs the Court that a document is sensitive. The obligations differ depending on whether the document is said to be sensitive under O 67A r 10(1)(a)(i), (a)(ii), (b) or (c), and also the manner in which it was presented for filing.

33. In the case of documents presented for filing electronically, an appropriate memorandum or application will need to be filed within 24 hours of the sensitive document having been filed.

34. In the case of documents presented for filing by email, post, delivery or fax, an appropriate memorandum or application will need to be filed within one (1) day of the sensitive document having been filed.

35. If the document contains restricted information, refer to O 67A r 11. If the document contains information to which access should be restricted, refer to O 67A r 12. If the document is a restricted document, refer to O 67A r 13. If the documents is one which should not be accessible to the judiciary, refer to O 67A r 14.

36. If appropriate steps are not taken to satisfy the Court of the basis on which a document is claimed to be sensitive (and therefore subject to a restriction on access), the restriction may be lifted by the Court.

General Division - Criminal

37. Subject to pars 38 - 46, a document may be presented for filing by fax in General Division criminal proceedings.

38. The fax number for presenting documents for filing is (08) 9421 5353.

39. A document that, with any attachments and a cover page, is more than 20 pages long, must not be presented for filing by fax and any such document received by the Court is to be taken not to have been filed.

40. A document that is presented to the Court by fax for filing must have a cover page stating:

    (a) the sender's name, postal address, document exchange number (if any), telephone number and fax number;

    (b) the number of pages (including the cover page) being sent by fax;

    (c) whether any documents required to be sealed by the Court will be collected from the Court or are to be mailed back by post; and

    (d) what arrangements are to be made for other documents. (Refer to the sample coversheet for the presentation of documents for filing by fax at 1.2.2.1.)

41. A person who presents a document for filing by fax must:

    (a) endorse the first page of the original document with:

        (i) a statement that the document is the original of a document sent by fax; and

        (ii) the date and time the document was sent by fax;

    (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and

    (c) if directed to do so by the Court, produce the items in par (b) to the Court.

42. A document presented for filing by fax will not be accepted unless it complies with relevant provisions of the *Criminal Procedure Act 2004*,

Criminal Procedure Rules 2005, the *Criminal Procedure Regulations 2005* and this Practice Direction.

43. The Court will advise the sender if the document is not accepted for filing for any reason.

44. A document accepted for filing by fax is to be taken to have been filed:

    (a) if the whole document is received before 4.00 pm on a day when the Court Registry is open for business, on that day; or

    (b) otherwise, on the next day when the Court Registry is open for business.

45. A person who presents a document for filing by fax must have the original paper version of the document with him or her at any conference or hearing in the course of the case concerned.

46. The Court may at any time, on the application of a party or on its own initiative, order a person who has filed a document by fax to file the paper version of the document.

47. For the purposes of r 25A(3) of the *Criminal Procedure Rules 2005*, a party may present a document for filing electronically by sending a scanned copy of the document in portable document format as an attachment to an email to central.office@justice.wa.gov.au..

General Division Appeals (GDAs)

48. All documents in General Division Appeals (**GDAs**) must be filed electronically using the ECMS unless the Rules or these Practice Directions provide otherwise. Paragraphs 3 - 6 of this Practice Direction apply to documents presented for filing electronically via the ECMS in GDAs.

49. Paragraphs 9 - 11 of this Practice Direction apply to documents presented for filing by email in GDAs.

50. Paragraphs 12 - 13 of this Practice Direction apply to documents presented for filing by delivery to the Court in GDAs.

51. Paragraphs 14 - 15 of this Practice Direction and Practice Direction 1.2.3 apply to documents presented for filing by post in GDAs.

52. Paragraphs 16 - 19 of this Practice Direction apply to documents filed by fax in GDAs.

53. Division 3 of O 67A deals with documents containing sensitive information and applies to documents presented for filing in GDAs. Refer to Practice Direction 1.1.4 – Sensitive documents, and pars 20 - 36 of this Practice Direction.

Single Judge Appeals

54. There is an exemption from mandatory filing using the ECMS for all documents in Single Judge Appeals (**SJAs**), under par (i) of O 67A r 3(1) and Practice Direction 1.1.4 – Exemptions to mandatory filing.

55. Whilst it is not mandatory to file documents using the ECMS in SJA matters, the filing party may choose to file documents using the ECMS. Paragraphs 3 - 6 above will apply to documents where the filing party chooses to present documents for filing via the ECMS in SJAs.

56. Paragraphs 9 - 11 of this Practice Direction apply to documents presented for filing by email in SJAs.

57. Paragraphs 14 - 15 of this Practice Direction and Practice Direction 1.2.3 apply to documents presented for filing by post in SJAs.

58. Paragraphs 16 - 19 of this Practice Direction apply to documents filed by fax in SJAs.

59. Division 3 of O 67A deals with documents containing sensitive information and applies to documents presented for filing via the ECMS in SJAs. Refer to Practice Direction 1.1.4 – Sensitive documents, and pars 20 - 36 of this Practice Direction.

Non-contentious Probate Applications

60. Applications made in the non-contentious probate jurisdiction can be made online using the Probate Online Application system at http://www.justice.wa.gov.au/ProbateOnlineForms/.

61. Unless applications are made using the Probate Online Application system, applications must be presented for filing either by post or by delivery to the Court in person. Applications cannot be presented for filing electronically via the ECMS or by email.

COURT OF APPEAL OFFICE

62. Paragraphs 63 - 86 apply only to documents presented for filing in proceedings in the Court of Appeal.

Filing electronically via the ECMS

63. From 3 May 2021, **a**ll documents in civil appeals must be filed electronically using the ECMS unless the Rules or these Practice Directions provide otherwise.

64. Order 67A r 3(1) and (3), and Practice Direction 1.1.4 – Exemptions to mandatory filing using the ECMS, provide exemptions to filing electronically using the ECMS.

65. A document presented for filing electronically, if accepted for filing, is taken to have been filed on the day and at the time recorded by the ECMS.

66. If a party presents a document for filing electronically within 48 hours of a hearing, that party must also immediately email the Court of Appeal Office (email: courtofappeal.office@justice.wa.gov.au) to inform them that the document has been presented for filing.

67. An application may be made to the Court of Appeal Registrar for permission to present a document for filing otherwise than via the ECMS. The Court of Appeal Registrar, for any good reason and without a formal application or request, may permit a person to present a document otherwise than via the ECMS (O 67A r 3(3)). An application may be made in writing addressed to the Court of Appeal Registrar. The email and postal address for the associate to the Court of Appeal Registrar can be found on the Court's website.

68. When giving permission, the Court of Appeal Registrar may give directions as to the manner in which the document is to be presented for filing (O 67A r 3(4)), including whether the document is presented to the Court of Appeal:

(a) by emailing it; or

(b) by delivering it to the Court of Appeal Office (refer to Practice Direction 1.1 for the address and opening hours); or

(c) by posting it; or

(d) by faxing it.

69. Practice Direction 1.2.3 applies in relation to documents filed by post with the permission of the Court of Appeal Registrar.

Filing by fax

70. A document may be filed by fax in accordance with and subject to the provisions of this Practice Direction.

71. A person wanting to present a document for filing in Court of Appeal proceedings by fax must use the published fax number designated for filing be fax in the Court of Appeal Office.

72. The number for presenting a document for filing by fax in the Court of Appeal Office is: (08) 9421 5375.

73. The following cannot be presented for filing by fax and if received by fax will be taken not to have been filed:

(a) a document that, with any attachments and a cover page, is more than 20 pages long;

(b) an appeal book;

(c) a document that is required to be sealed by the Court of Appeal;

(d) any document where multiple copies are required to be filed.

74. A document presented for filing by fax will not be accepted as filed unless it complies with the *Supreme Court (Court of Appeal) Rules 2005*, any relevant provisions of the Rules and this Practice Direction. The Court of Appeal Office will advise the sender if the document is not accepted for filing for any reason.

75. A document presented for filing by fax must have a cover page stating:

    (a) the sender's name, postal address, document exchange number (if any), telephone number and fax number; and

    (b) the number of pages (including the cover page) being sent by fax.

76. A person presenting a document for filing by fax must:

    (a) endorse the first page of the original document with:

        (i) a statement that the document is the original of a document sent by fax; and

        (ii) the date and time the document was sent by fax.

    (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and

    (c) if directed to do so by the Court of Appeal or a registrar, produce the items in par (b) to the Court of Appeal.

77. A document presented for filing by fax is to be taken to have been received at the Court of Appeal Office:

    (a) if the whole document is received before 4.00 pm on a working day, on that day; or

    (b) otherwise, on the next working day.

78. The date of filing is the date the document is accepted for filing, not necessarily the date of receipt by fax. Where a document meets the requirements of this Practice Direction and has been accepted for filing under par 74, the date of filing will be the same as the date the document is taken to have been received under par 77.

Filing by email

79. A document may be filed by email in accordance with and subject to the provisions of this Practice Direction.

80. The email address for filing a document by email is courtofappeal.filing@justice.wa.gov.au. A document that is emailed directly to an associate's email address, or emailed to any other address than courtofappeal.filing@justice.wa.gov.au is taken not to have been filed.

81. The following cannot be presented for filing by email and if received by email will be taken not to have been filed:

    (a) a document that, with any attachments, is more than 40 pages long;

    (b) an appeal book;

    (c) a document that is required to be sealed by the Court of Appeal;

    (d) any document where multiple copies are required to be filed.

82. A document presented for filing by email will not be accepted as filed unless it complies with the *Supreme Court (Court of Appeal) Rules 2005*, any relevant provisions of the Rules and this Practice Direction. The Court of Appeal Office will advise the sender if the document is not accepted for filing for any reason.

83. A person presenting a document for filing by email must:

    (a) endorse the first page of the original document with:

        (i) a statement that the document is the original of a document sent by email; and

        (ii) the date and time the document was sent by email.

    (b) keep the endorsed original document and the email under cover of which it was sent; and

    (c) if directed to do so by the Court of Appeal or a registrar, produce the items in par (b) to the Court of Appeal.

84. A document presented for filing by email is to be taken to have been received at the Court of Appeal Office:

    (a) if it is received before 4.00 pm on a working day, on that day; or

(b) otherwise, on the next working day.

85. The date of filing is the date the document is accepted for filing, not necessarily the date of receipt by email. Where a document meets the requirements of this Practice Direction and has been accepted for filing under par 82, the date of filing will be the same as the date the document is taken to have been received under par 84.

86. Division 3 of O 67A deals with documents containing sensitive information and applies to documents presented for filing in the Court of Appeal. Refer to Practice Direction 1.1.4 – Sensitive documents, and pars 20 - 36 of this Practice Direction.

1.2.2.1. Presentation for Filing by Fax Cover Sheet - Criminal

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SUPREME COURT OF WESTERN AUSTRALIA
General Division - Criminal Proceedings
PRESENTATION FOR FILING BY FAX COVER SHEET

NOTE: A SEPARATE COVER SHEET IS REQUIRED FOR EACH DOCUMENT

To: The Principal Registrar
Supreme Court of Western Australia
By fax to: (08) 9421 5353

From: ***[Name, postal address, document exchange number (if any), telephone number and fax number]***

Re: ***[Title and Number of Proceedings]***

Number of pages (including coversheet):

Date:

1. The following document is enclosed for filing:
   [Description of document]
2. Please indicate which one of the following options you prefer for the return of the document:
   - □ fax a copy of the document to the above facsimile number.*
   - □ mail the document to the above postal address.
   - □ hold the document the Court and it will be collected.
   - □ note that I do not require a copy of the document returned to me.*

* SEALED DOCUMENTS CANNOT BE FAXED TO YOU AND YOU SHOULD HAVE THE ORIGINAL IN YOUR POSSESSION. YOU CAN EITHER COLLECT THE DOCUMENT OR HAVE IT MAILED TO THE ADDRESS PROVIDED.

NB. You will only receive a notice from this office if your document is <u>not</u> accepted for filing.

<u>AFTER</u> YOU HAVE FAXED THE DOCUMENT

Endorse the 1st page of the original document sent to the Court by fax stating that:

- the document is the original of the document sent by fax; and
- the time and date on which the document was sent by fax.

Keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document.

For Supreme Court use only

NOTIFICATION OF REJECTION OF DOCUMENT
PRESENTATION FOR FILING BY FAX

The above document was not accepted for filing and is returned herewith. The document was rejected for the following reason(s):

_____

_____

Court officer: **Date:**

1.2.3. Presentation for Filing by Post

1. A person must not post a document to the Court for filing unless the *Rules of the Supreme Court* say it cannot be filed electronically; or the Principal Registrar or Court of Appeal Registrar has given permission to the person to post it (refer to O 67A r 6(1)).

2. For applications to the Probate Registry refer to Practice Direction 9.1.1.

3. Any document that is required or permitted by the Rules to be presented for filing by post subject to the following conditions:

   (a) The document must be sent flat in an A4 size or larger envelope; and

   (b) For General Division matters, the envelope must be addressed as follows:

   POSTAL FILING
   Supreme Court of Western Australia
   Level 11, 28 Barrack Street
   PERTH WA 6000

   (c) For Court of Appeal matters, the envelope must be addressed as follows:

   POSTAL FILING
   Supreme Court of Western Australia - Court of Appeal Division
   Stirling Gardens, Barrack Street
   PERTH WA 6000

4. Each document must be accompanied by:

   (a) A separate cover sheet in the form that follows this Practice Direction (the cover sheet) at 1.2.3.1 (for General Division matters) and 1.2.3.2 (for Court of Appeal civil appeals); and

   (b) A separate cheque or a credit card authority in the form that also follows this Practice Direction at 1.2.3.3 made out to the Supreme

Court of Western Australia for the correct fee payable in respect of that document under the *Supreme Court (Fees) Regulations 2002*.

5. A document will not be accepted for filing unless:

   (a) The document complies with the Rules and any relevant Practice Direction; and

   (b) The correct fee has been paid.

6. The date of filing is the date the document is accepted for filing, not necessarily the date of receipt by post. Where the presentation of the document for filing by post meets the requirements of par 5 of this Practice Direction, the date of filing will be the same as the date of receipt.

7. The Court will acknowledge receipt and acceptance of the document by return of the cover sheet. Where the document has not been accepted for filing, it will be returned to the sender with the cover sheet stating the reasons that the document has been rejected.

8. If a document is required to be signed or sealed, it must be accompanied by the correct number of copies.

9. Persons who present documents for filing by post must allow sufficient time to ensure that they comply with any relevant time limits, especially having regard to delays that may occur in the delivery and return of documents by post. Compliance with time limits and the requirements of this Practice Direction is entirely the responsibility of the person presenting the document for filing.

1.2.3.1. Presentation for filing by Post Cover Sheet: General Division

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SUPREME COURT OF WESTERN AUSTRALIA
PRESENTATION FOR FILING BY POST COVER SHEET
NOTE: A SEPARATE COVER SHEET IS REQUIRED FOR EACH DOCUMENT

To: The Principal Registrar
Supreme Court of Western Australia

From:
[Name of Solicitor, Address and Contact Number]

Re: [Title and Number of Proceedings]

Date:

1. The following document is enclosed for filing:

   [Description of document]

2. The document may be presented for filing by post because:

   [Insert explanation of the basis on which O 67 r 6(1) applies to the document]

3. In accordance with the *Supreme Court (Fees) Regulations 2002*, a cheque [ ] or credit card authority [ ] in the amount of $_____ is enclosed in payment of the fee prescribed under item [insert item number] of Schedule 1 of the Regulations.

OR

□ no fee is payable because **[state reason by reference to the Regulations].**

For Supreme Court use only
NOTIFICATION OF RECEIPT OF DOCUMENT
FILED BY POST

□ The above document was accepted for filing on _____

□ The above document was not accepted for filing and is returned herewith. The document was rejected for the following reason(s):

_____
_____

Court officer: **Date:**

1.2.3.2. Presentation for filing by Post Cover Sheet: Court of Appeal civil appeals

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SUPREME COURT OF WESTERN AUSTRALIA: COURT OF APPEAL
PRESENTATION FOR FILING BY POST COVER SHEET
NOTE: A SEPARATE COVER SHEET IS REQUIRED FOR EACH DOCUMENT

To: The Court of Appeal Registrar
Supreme Court of Western Australia – Court of Appeal

From:
[Name of Solicitor, Address and Contact Number]

Re: [Title and Number of Proceedings]

Date:

1. The following document is enclosed for filing:

   [Description of document]

2. The document may be presented for filing by post because:

   [Insert explanation of the basis on which O 67A r 6(1) applies to the document]

3. In accordance with the *Supreme Court (Fees) Regulations 2002*, a cheque [ ] or credit card authority [ ] in the amount of $_____ is enclosed in payment of the fee prescribed under item [insert item number] of Schedule 1 of the Regulations.

OR

□ no fee is payable because **[state reason by reference to the Regulations].**

For Supreme Court use only
NOTIFICATION OF RECEIPT OF DOCUMENT
FILED BY POST

□ The above document was accepted for filing on _____

□ The above document was not accepted for filing and is returned herewith. The document was rejected for the following reason(s):

_____
_____

Court officer: **Date:**

1.2.3.3. Credit Card Payment Authority

SUPREME COURT OF WESTERN AUSTRALIA

CREDIT CARD PAYMENT AUTHORITY

This authority provides the Supreme Court of Western Australia with the approval to debit the account shown below. To enable payment, please supply **all** information sought below.

File No.	Title of Proceedings	Document Description	Amount

==========

BE SURE TO CIRCLE CARD TYPE.

Please debit my: VISA CARD / MASTERCARD / BANKCARD

Card No. / / /

Expiry Date: /

Amount: $

Date: / /

Card Holder Name:			
Card Holder Signature:			

ADDRESS:		
TELEPHONE:		

COURT USE:

PAYMENT TYPE:
PHONE / MAIL

APPROVED: *YES / NO*

RECEIPT NUMBER: ……..

COURT OFFICER: ……..

Please ensure that this form is attached to the receipt.

1.2.4. Taking Affidavits

Introduction

1. All affidavits for use in the Court must be taken in conformity with the *Oaths, Affirmations and Statutory Declarations Act 2005* (OASDA).

All affidavits

2. Of particular note are the provisions of s 9 as to the manner of taking affidavits, and of s 15 prohibiting the use of rubber stamps for signatures.

Affidavits sworn in Western Australia

3. Section 9(5)(a)(ii) of the OASDA requires an authorised witness to imprint or clearly write his or her name and qualification as an authorised witness at or near the statement on the affidavit that it has been sworn or affirmed by the person making it in the presence of an authorised witness.

4. If the witness is an 'experienced legal practitioner' as defined by the OASDA, the following form of endorsement will satisfy s 9(5)(a)(ii) of the OASDA and should be used by practitioners:

> ….before me: [signature]
>
> _____
>
> [Name], a legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate.

1.2.5. Electronic Trials (eTrials)

An overview

1. An electronic trial (eTrial) is a trial in which the trial bundle is submitted electronically and the items submitted within that electronic trial bundle may be viewed in court and tendered as evidence.

2. The Court has the capacity to take electronic materials submitted by the parties, load those materials into the Court's case management system (ICMS) and then manage the submitted items in ICMS throughout the trial.

3. ICMS is an internal court system and is not available for the parties to use. The associate to the trial judge will open and display the submitted items in ICMS throughout the trial, record tendered items as being either 'marked for identification' or an 'exhibit', and otherwise manage the submitted items.

4. In this way the Court and the parties then use the same materials, formatted in the same way, with the same identification of documents.

The purpose of this Practice Direction

5. This Practice Direction is intended to give guidance to parties who may be required, or who request, that the trial be conducted by way of eTrial. It deals with three specific matters:

   (a) Requesting an eTrial;

   (b) Submitting the electronic trial bundle and papers for the judge; and

   (c) Procedures during an eTrial.

6. Attached to this Practice Direction, at 1.2.5.1, is a set of standard directions for an eTrial of a civil action, that can be used by the Court (suitably adapted as the circumstances dictate) to direct that the trial is by eTrial, and for the submission of an electronic trial bundle and papers for the judge.

Requesting an eTrial

7. All civil cases in the Court are case managed. The parties should indicate to the case manager where it will be appropriate to have an eTrial because the use of technology will improve the efficiency of the litigation. Alternatively, a case manager may order that the trial is to be an eTrial if the case manager is of the view that it would improve the efficiency of the trial.

8. The parties should confer in relation to the appropriateness of an eTrial as early as possible and, where it would be appropriate, the parties should inform the case manager.

9. The advantages of early identification include that discovery may also be given electronically which is particularly efficient where a large quantity of documents are already electronically stored (including emails, webpages, word processing files, images, sound recordings, videos and databases). It is then timely to adopt a protocol for the numbering of each party's discoverable electronic documents that will carry through to the use of these documents if required in an electronic trial bundle.

10. Parties may request an eTrial orally in a directions hearing or by preparing consent orders in the terms of the standard orders for eTrials in Practice Direction 1.2.5.1.

Submitting the electronic trial bundle and papers for the judge

11. If orders are made for an eTrial, the plaintiff must prepare and submit an electronic trial bundle on a Universal Serial Bus (**USB**) with:

    (a) the submitted items contained in a single document folder; and

    (b) an index of the submitted items in an excel spreadsheet.

12. The set of standard directions for an eTrial of a civil action, which are attached to this Practice Direction, at 1.2.5.1, include directions for the electronic trial bundle to be delivered to the associate to the case manager or trial judge and to be served on the defendant.

Index to the electronic trial bundle

13. The index to the electronic trial bundle must be in an excel spreadsheet with the filename 'eTrial Bulk Upload Template.xlsx' as provided by the Court and prepared in accordance with these Practice Directions.

Submitted items in the trial bundle

14. It is possible for the Court to accept items in most formats, however the case manager may order that items be submitted in a specific file format. Where documents are submitted in .pdf format the document should be reproduced in colour and enhanced with optical character recognition.

15. The exhibit number is the number that will be referred to in Court. Each exhibit number should attach only to one item in the trial bundle. The parties should adopt a sequential numbering system for ease of reference.

16. If an item contains multiple embedded images and not all images are admitted into evidence as exhibits, the item will need to be removed, amended and resubmitted by the tendering party.

17. The legal representatives for the parties must be able to justify to the Court the purpose for which each document is included in the trial bundle.

18. The plaintiff is to ensure that items are complete, however new or replacement items may be added at a later date where necessary. In the initial upload, all documents should be identified as 'new' in the column 'New or Replacement' on the excel spreadsheet. If a document needs to be resubmitted, then the entry in this column needs to be updated to 'replaced,' so that the system can replace the existing item with the resubmitted item.

19. If there are numerous new or replacement items, the plaintiff should submit those new or replacement items on a USB, meeting the requirements referred to in pars 11 - 13 above.

20. If there are only a few new or replacement items, the plaintiff may email the associate to the case manager a request that they update the electronic trial bundle and index (attaching the relevant items to that email).

21. Once the trial has commenced, any requests to make changes to the trial bundle should be made orally to the judge in Court, or by email to the associate to the judge if Court is not in session.

Papers for the judge

22. The efficiency of an eTrial may be improved by the papers for the judge being provided on a USB, in which there are hyperlinks to all documents in the trial bundle that are referred to in the pleadings (or any affidavits ordered to stand as pleadings).

23. The set of standard directions for an eTrial of a civil action which are attached to this Practice Direction, at 1.2.5.1, include directions for the papers for the judge to be delivered to the associate to the case manager or trial judge on a USB and served on the defendant.

24. Unless directed otherwise, the parties must also file the papers for the judge electronically using the ECMS (O 33 r 14; O 67A r 3).

25. If a party subsequently files an amended pleading in accordance with O 33 r 14(2) or (3), that party must submit to the associate to the case manager or trial judge a further USB in which there are hyperlinks to all documents in the trial bundle that are referred to in the amended pleadings.

Procedures during an eTrial

26. Prior to an eTrial commencing, the Court will upload all submitted items into ICMS, for the associate to the trial judge to manage throughout the eTrial.

27. During the eTrial, the associate will open submitted items from ICMS and project them onto the Court's display screens as required. The item will then simultaneously display on the Court screens, the judge's screen, the associate's screen and any screens on the bar table that are being used.

28. When a submitted item is tendered, the associate will identify the item as either:

    (a) marked for identification; or

(b) an exhibit.

29. ICMS is an internal court system and is not able to be accessed by the parties. If requested by a party, the associate will print for the parties a report from ICMS of all the items tendered as either 'marked for identification' or an 'exhibit', either to date or for a particular day of trial. The parties should inform the associate of any items that are incorrectly included or absent from the report.

30. Parties may view all items in the electronic trial bundle via the ECMS (eCourts Portal). There is a link to the submitted items on the 'hearings' screen for the particular matter. Each item will be identified as being either:

(a) a submitted item;

(b) marked for identification; or

(c) an exhibit.

31. The effective management of the trial requires that the parties use the same index and numbering system so that submitted items can be searched for and retrieved quickly. The hyperlinked index and document folder created for the electronic trial bundle may be sufficient for this purpose, however where parties seek to annotate items or manage them in accordance with the practice of their law firm then they should consider creating their own databases.

32. Parties may bring their own laptops into Court.

33. Parties seeking to bring additional technology into the Courtroom are to make a request in writing to the associate to the case manager at the earliest opportunity. The email addresses for associates to judges, masters and registrars can be found on the Court's website.

1.2.5.1. Standard Directions for Electronic Trials (eTrials)

Electronic trial (eTrial)

1. The trial in this action is to be conducted as an electronic trial (eTrial).

Trial Bundle

2. By _____ [time and date] the plaintiff is to deliver to the associate to _____[case manager/ trial judge] a USB containing an electronic copy of the trial bundle consisting of:

   (a) all documents in a document folder; and

   (b) an index in the form of a populated version of the excel spreadsheet with the filename 'eTrial Bulk Upload Template.xlsx' as provided by the court and prepared in accordance with these Practice Directions.

3. By _____ [time and date] the plaintiff is to serve a copy of the USB containing the trial bundle on the defendant.

4. The legal representatives for the parties must be able to justify to the Court the purpose for which each document is included in the trial bundle.

5. Each document included within the trial bundle will, in the absence of specific objection by another party, be taken to be:

   (a) authentic;

   (b) prepared by the apparent author;

   (c) in the case of a communication, sent by the person appearing to have sent it, and received by the person or persons appearing to have received it, on or about the date it bears; and

   (d) a document which may be tendered by consent.

Papers for the Judge

6. By _____ [time and date] the plaintiff is to file and serve papers for the judge.

7. By _____ [time and date] the plaintiff is to deliver to the associate to _____ [case manager/ trial judge] a USB containing the papers for the judge in .docx electronic format with hyperlinks to all documents referred to in the pleadings within the papers for the judge.

8. By _____ [time and date] the plaintiff is to serve a copy of the USB containing the papers for the judge on the defendant.

1.2.6. The Use of Technology for the Presentation of Evidence, Submissions and other Material

1. This Practice Direction sets out the Court's capabilities and practices for the use of technology for the presentation of evidence, submissions and other material. It refers to the Stirling Gardens complex, the David Malcolm Justice Centre, the District Court Building and circuit locations.

Background

2. The courts in which the Supreme Court sits are equipped with technology designed to facilitate the presentation of evidence, submissions and other material in a manner that enhances the quality of justice delivered by the Court and the efficiency with which the Court is able to do so.

3. The vast majority of hearings conducted by the Supreme Court take place in Perth at the Stirling Gardens complex, the David Malcolm Justice Centre or the District Court building (hereafter collectively referred to as Perth). Where there are particular differences in capabilities and practices for circuit locations, these are noted.

Use of Laptops

4. There are courtrooms in Perth in which practitioners can connect their laptop into the courtroom audio visual presentation system (court AV system). The same capability currently exists in all circuit courtrooms in which the Supreme Court sits. Please note that practitioners must provide their own laptops.

5. Each of these courtrooms has an analogue 15 pin female socket (commonly called a VGA socket) in place ready for connection to a laptop. It is the practitioner's responsibility to provide a lead to connect his or her laptop to the 'female' VGA socket. If audio is required, the practitioner will also need to provide a lead to connect their laptop to a 'female' 3.5 mm audio socket. All the courtrooms in the David Malcolm Justice Centre, Kalgoorlie Court, Kununurra Court and Carnarvon Court also have a HDMI female socket in place ready for connection to a laptop.

6. Where a practitioner wishes to use a laptop based presentation for evidence or submissions, the practitioner must make a formal request of the trial Judge at the commencement of the trial. The practitioner should be in a position to provide the Judge and other parties with a printed copy of the presentation. This request can be made prior to the trial by letter to the associate to the trial Judge, copied to the other parties.

7. Practitioners wishing to use a laptop to present evidence or submissions should test the connections before the commencement of the sitting.

8. Where a practitioner wishes to use the court AV system with a laptop, the party must send to the Court a Courtroom Technology Booking Form not less than 14 days prior to the date on which the hearing is to commence. The Courtroom Technology Booking Form is annexed at the end of this Practice Direction. The reason for this requirement is to allow the Court to allocate a courtroom with the relevant capability.

9. Counsel benches in all Perth courts and many circuit courts are equipped with power points for laptops and other devices.

Video material on DVD and audio material on CD

10. Courtrooms in Perth in which the Supreme Court sits have a device that can replay DVD-Video (MPEG2 format). The DVD player can also play standard audio CDs (not data CDs.). However practitioners are encouraged to bring their own laptops if possible, as familiarity with the laptop layout can assist practitioners to locate and display the relevant material.

11. Material presented on a DVD or CD can originate from many sources. It is critical that proceedings are not disrupted or delayed due to incompatible systems, so parties intending to present DVD or CD material are to test their material on the Court's equipment not later than seven (7) days prior to the hearing. Testing arrangements can be made by emailing the Court Technology Officer at CTOSC@justice.wa.gov.au.

12. If audio or video material was not originally recorded in DVD or CD format, a party must immediately contact the Court Registry to determine whether an appropriate courtroom is available. Upon contacting the Court Registry, a court officer will advise whether a courtroom is available and the next course of action if the courtroom is

not available. Failure to contact the Registry may result in delays to the court proceedings and possible additional costs for the parties to the proceedings.

13. Most audio or video material will be compatible with the Windows media player, VLC media player and GOM player. Other audio or video material such as video surveillance footage originally stored on a hard drive should be presented to the Court seven (7) days prior to the hearing to determine whether the evidence can be displayed in the courtroom. The reason is to allow the relevant material to be tendered as an exhibit through the tender of the DVD, CD or USB device.

14. The DVD, CD or USB device must be labelled with, or accompanied by, the information listed below:
    - Name of proceedings;
    - Name and contact details of lodging party;
    - Court file number and name (party);
    - List of all file names on storage device and a description of each file;
    - The specific player / software that is required to display / play the evidence;
    - Length of time of the audio/video recording
    - A signed declaration that the storage device has been checked for viruses;
    - A signed declaration advising if the device contains objectionable material; and
    - A statement as to whether the lodging party requires the return of the storage device.

15. If the evidence needs to be reformatted to enable the evidence to be displayed in the courtroom, there will need to be continuity evidence given to support the tender of the actual exhibit in the absence of agreement between the parties.

16. The relevant disc or USB device should be made available to the associate to the trial Judge two clear days prior to the commencement of the hearing so that the associate can make sure that the relevant presentation device is turned on and available when required by the practitioner. Note also the testing required of the parties wishing to use the disc or USB device. That testing is referred to in par 11.

17. From time to time when practitioners in a trial have sought to play an audio recording on a CD or DVD, the sound produced has been barely

audible in the courtroom. The reason for this appears to have been that the sound level on the recording was at a lower than usual audio level (for example, a recording of a telephone intercept).

18. Practitioners are requested to check the audio levels of any recording to be played in court. If the recording is quiet, practitioners are requested to ascertain from the source of the recording whether the recording level can be improved and then make arrangements to test whether the recording will be audible when played on the court's audio systems. These arrangements can be made by emailing the Court Technology Officer at CTOSC@justice.wa.gov.au not less than seven (7) days prior to the hearing.

Document cameras

19. Perth courts and all circuit courts are equipped with a document camera. This can be used by the parties to display objects (eg a weapon) or documents to all participants in the Court.

20. Where a practitioner wishes to use the document camera, the practitioner must email the Court a Courtroom Technology Booking Form not less than 14 days prior to the date on which the hearing is to commence.

Photos

21. The Court's preference is for photos to be presented in print format. In this way, the printed photo is tendered as the exhibit and, in a criminal trial, can be taken into the jury room.

22. Printed photos can be displayed in Court rooms on a document camera.

23. If a practitioner wishes to present images in electronic format, the practitioner should arrange for the photos to be saved to a CD or USB device and that device be provided to the trial Judge's associate seven (7) days before the hearing or trial.

24. Printed photos should also be made to be tendered, and so become the exhibit.

25. Each photo should be marked for identification with a unique identification number. This is to ensure that the relevant exhibit can be subsequently identified from the transcript.

Other PC based evidence

26. A practitioner may wish to present evidence, submissions or other material using a computer based format (other than photos). Examples include:

    - Word processed documents
    - Excel spreadsheets
    - PowerPoint presentations
    - Websites

27. Practitioners should be in a position to provide the Judge and the parties with a printed copy which can be tendered as the exhibit (if evidentiary material).

28. As noted in pars 4 - 9, a practitioner wishing to use the court AV system through a laptop must email to the Court a Courtroom Technology Booking Form not less than 14 days prior to the date on which the hearing is to commence, and must seek the formal approval of the Judge at or prior to the commencement of the trial. Practitioners are encouraged to bring their own laptops if possible, as familiarity with the layout of the materials can assist with the efficiency of court proceedings.

CCTV, video and audio conferences

29. All circuit courts and 29 Perth courts are equipped with audio and video conference capabilities. There is one remote witness room at the David Malcolm Justice Centre and another at the Stirling Gardens complex in addition to those at the District Court Building.

30. The following requirements apply:

Media	**Requirements**
Closed circuit TV (eg for complainants and special witnesses)	• Orders required pursuant to *Evidence Act 1906* (WA) (may be made by consent). • A Courtroom Technology Booking Request form is to be sent to Registry 14 days prior to the hearing so that a courtroom with the relevant capability can be allocated.
Media	**Requirements**
Video conference	• For reception of evidence, order required pursuant to *Evidence Act 1906* (WA) s 121 (may be made by consent). • Permission for counsel to appear at interlocutory hearings is dealt with administratively, by letter or email to the associate to the judicial officer presiding over the hearing. Such request is to be sent to the relevant associate not less than three days before the hearing date. • A Video Link Booking Request Form is to be sent to the Court not less than 14 days before the hearing date (in the form published by the Court on the website). • The requesting party also needs to book the facility from which the witness will give evidence. • Fees may apply (*Evidence (Video and Audio Link Fees and Expenses) Regulations 1999*).
Audio conference	• For reception of evidence, order required pursuant to *Evidence Act 1906* (WA) s 121. Permission for counsel to appear at interlocutory hearings is dealt with administratively, by letter or email to the associate to the judicial officer presiding over the hearing. Such request should be sent to the relevant associate not less than three days before the hearing date, however that time may be abridged at the discretion of the judicial officer. Counsel appearing by audio conference must provide a ***direct*** telephone contact number to be called by the Court during the hearing. Counsel should do their utmost to ensure that the Court is not connected to administrative staff or placed on 'hold' function during a hearing.

31. The Court's policy on witnesses giving evidence by video link is set out in Practice Direction 1.2.7 - Taking of Evidence by Video or Audio Link. The Practice Direction imposes an obligation on a party who has obtained an order for the use of video link facilities to use reasonable endeavours to ensure that the video link facility is one set out in the Court's list of Preferred Video Link Facilities. The Practice Direction also sets out some specific obligations to ensure that the dignity and solemnity of the Court is maintained throughout the reception of the evidence by video link or audio link.

31A. Whether counsel may appear remotely at interlocutory hearings (by either video or audio conference) is at the discretion of the judicial officer. Counsel seeking to appear remotely should make their request to the judicial officer in accordance with par 30 above. The parties should not file consent orders agreeing to remote appearances.

31B. For directions hearings, appearance of counsel by audio conference is usually preferable to video conference.

Other modes of presentation

32. Where a practitioner would like to present evidence in a format other than those set out above, the practitioner is responsible for making arrangements to facilitate the presentation of that evidence including seeking any appropriate directions from the Court.

33. The practitioner should also contact the Court Technology Officer on (08) 9421 5462 at least 21 day before the commencement of the hearing in order to discuss the proposed arrangements and arrange a time at which the party can attend Court to test the proposed mode of presentation.

eTrials

34. There are multiple courtrooms in Perth equipped for eTrials. No circuit court is equipped for an eTrial.

35. An eTrial will typically involve the submission of an electronic trial bundle, the viewing of the submitted items in court in an electronic format, and the management of those submitted items by the associate to the trial judge using the Court's case management system (ICMS). An

eTrial may also involve pleadings in an electronic format with hyperlinks to any documents referred to in those pleadings.

36. Practitioners wishing to conduct an eTrial should seek a directions hearing at which specific orders can be made for the trial to be an eTrial.

37. In a criminal trial, the application for a specific directions hearing should be made at the first mention in the Supreme Court.

38. In a civil trial, the parties should confer as to when to seek specific trial directions. In some cases, it would make sense for the discovery to be undertaken electronically to facilitate the trial being an eTrial. At the very latest, the application for specific directions for the eTrial should be made at the first listing conference. It is likely that the Court would allocate the trial Judge shortly after the listing conference with the intent that the trial Judge manage the pre-trial processes and directions. Refer to Practice Direction 1.2.5 – *Electronic Trials (eTrials)* for further information on requesting an eTrial in a civil matter, court procedures during an eTrial and submitting an electronic trial bundle and papers for the judge.

1.2.6.1. Courtroom Technology Booking Form

SUPREME COURT OF WESTERN AUSTRALIA
Level 11, David Malcolm Justice Centre
28 Barrack St
Perth 6000 WA
Phone: 08 9421 5333
Fax: 08 9421 5353
Email: CTOSC@justice.wa.gov.au

Courtroom Technology Booking Request

Please note:

Requests to appear by audio-link (teleconference) should be directed to the Associate of the Judge hearing the matter for approval either via letter or email
If you wish to request a video-link please instead complete the video-link booking request

Please complete the following details and then email or forward this form to the Supreme Court.

Name of Party Requesting Facility	

Contact Details

Name	
Telephone No.	
Email	

Details of Court Order and/or Matter Details

Name of Judicial Officer	
Date or Order (if any)	

Date Required		Time	
Expected Duration			

Matter Details

Jurisdiction eg Supreme Court of WA	
Matter No. eg CIV 1234 of 2016 INS 123 of 2016	
Title	

Please refer to following page for additional information required

Services Required

- ☐ CCTV (eg Remote Witness Room)
- ☐ DVD
- ☐ Facilities to connect a laptop computer to court audio visual system (Please refer to important notes below)
- ☐ Document Camera
- ☐ Electronic Whiteboard
- ☐ CD (standard, not data CD's)
- ☐ VHS Player
- ☐ eTrial
- ☐ Other (please specify):

Important Notes

Counsel must provide their own laptop

The court provides connections/cables for VGA in all courts, and HDMI in some. If your laptop does not support either you will have to provide the appropriate adapter

If sufficient time is not provided before the date required the services requested may not be available, and your request will be rejected.

COURT USE ONLY

Date Received: ____ / ____ / _____

Technology Officer advised: _____ **Date advised:** ____ / ____ / _____

Associate advised: _____ **Date advised:** ____ / ____ / _____

1.2.7. The Taking of Evidence by Video or Audio Link

Application

1. This Practice Direction applies:
   (a) where the Court makes a direction pursuant to *Evidence Act 1906* (WA) s 121 that evidence be taken, or a submission received, by video link or audio link; and
   (b) unless the Court makes a contrary direction.

Booking sheet

2. If evidence is to be taken by video link, the party who intends to call the witness (the Applicant) must send a Video Link Booking Request in the form published by the Court (and available on the website) to the Court Technology Officer.

3. Unless there are exceptional reasons for not doing so, the Video Link Booking Request is to be received by the Court not less than 14 days before the date of the hearing in which the evidence is to be taken.

Obligations on the applicant

4. Where the site at which the witness will appear by video link is within Western Australia, the applicant must use reasonable endeavours to ensure that the video link facility is one set out in the Court's List of Preferred Video Link Facilities, as published from time to time by the Court (and available on the website).

5. The applicant must use reasonable endeavours to ensure that:

   (a) the room from which the video or an audio link is to be broadcast is able to be closed off such that only the witness and any other person as permitted by the Court are in the room;
   (b) the quality of the video link is of a standard that is sufficient to provide continuous uninterrupted video images and clear and audible audio feed, so as to be easily seen and heard by the Court;
   (c) where a video link is used, the witness is dressed appropriately for court, as if the witness were giving evidence in person in the courtroom; and
   (d) the arrangements made with the venue from which the video link or audio link is to be broadcast maintain the dignity and solemnity of the court, consistent with the venue being treated as part of the court for this purpose.

6. An applicant is still required to comply with par 5 although the site at which the witness will appear by video link is not in the Court's List of Preferred Video Link Facilities or within Western Australia.

2. Submissions and Authorities

2.1. Outlines of Submissions, Lists of Authorities and Copies of Authorities for Use in Civil and Criminal Interlocutory Hearings, Trials and Appeals

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Application

1. This direction applies to civil and criminal interlocutory hearings, trials and appeals.

2. In place of separate outlines of submissions and lists of authorities for use at interlocutory hearings, trials and appeals, there is to be a combined Outline that contains both the submissions and a list of the relevant authorities.

3. Unless the presiding Judge, Master or Registrar directs otherwise, Outlines are to comply with this direction, and, where relevant the *Rules of the Supreme Court 1971* (WA) O 34 r 1A, as to their form, content and delivery.

4. In accordance with the procedures set out in this Practice Direction and the *Rules of the Supreme Court 1971* (WA) O 67A r 3(1), Outlines may be either printed or in electronic form.

Form and Content

5. The Outline is to contain, in order:

   (a) a summary of the submissions the party intends to make at the trial;

   (b) if the party considers it would be useful at the trial, a chronology of relevant events; and

   (c) a list of the cases and legislation referred to in the submissions

6. The Outline should include, as attachments, copies of any authorities which are not readily available on the internet or in published hard copy (refer to pars 16 -18 below).

Outline of Submissions

7. The outline of submissions is to be set out in numbered paragraphs. Each paragraph is to contain one contention of law or fact, followed by reference to:

   (a) the authorities to be cited in support of it (identifying relevant pages or paragraphs);

   (b) relevant legislation.

8. The outline of submissions is to be in point or summary form, rather than being a complete exposition of the contentions advanced. It should not normally exceed five pages in length in the case of an interlocutory hearing, 10 pages in the case of a trial and 20 pages in the Court of Appeal.

9. The Outline does not limit oral argument. It may be departed from if some new point emerges in the course of argument.

Chronology

10. A chronology is to be included only if it is reasonably necessary to comprehend the history of matters relevant to the argument. It is anticipated that a chronology will be necessary in only a small fraction of interlocutory matters.

List of authorities

11. The purpose of the list is to enable the Court and the opposing party to prepare for the hearing by obtaining copies of those authorities as necessary. The list must contain all authorities referred to in the outline of submissions, and no others.

12. Cases are to be listed in alphabetical order, and separately from legislation, which is to be listed in alphabetical order by short title.

13. Any cases from which counsel intends to read are to be marked with an asterisk. It would be appreciated if counsel could also include reference to the specific pages or paragraphs to be read. If counsel do not intend to read from any cases, a clear statement to that effect must be included at the end of the list of authorities.

14. Reported cases must be cited by reference to the relevant authorised report. Where possible the medium-neutral citation should appear the first time a case is referred to with subsequent references having only the case name, although it is recognised that where there are a number of cases with the same or similar names, or alternatively popular names, it may be necessary to cite the reference.

15. Unreported cases must be cited by medium-neutral citation if there is one.

Copies of authorities

16 Only those authorities which are not readily available on the internet or in published hard copy should be provided.

17. A party referring to an unreported decision that is not freely available on the World Wide Web must deliver a complete printed copy of that decision to the Court and each other party with the Outline.

18. Copies of cases that are freely available should not be provided and costs will not ordinarily be allowed for the provision of such copies.

Formats

19. An Outline delivered in paper format is to be printed or typewritten and comply with O 69 r 2.

20. An Outline delivered in electronic form is to be in .docx format.

Filing - General Division - Civil

21. For civil interlocutory hearings, trials and single judge appeals in the General Division an Outline in paper format is to be:

    (a) filed; and

    (b) served on each party;

    not less than four clear working days before the hearing in accordance with O 67A.

Filing - Criminal Division

22. For criminal interlocutory hearings and trials in the General Division an Outline in electronic format is to be:

    (a) filed by delivery and sent by e-mail to the address [central.office@justice.wa.gov.au] as an attachment to an e-mail message setting out in its title line the action number and short tile of the proceedings; and

    (b) served on and copied to each other party;

    not later than four clear working days before the hearing.

Filing - Court of Appeal

23. In the Court of Appeal the Outline is filed as part of the 'Appellant's case' and the 'Respondent's answer' (refer to r 32 and r 33 of the *Supreme Court (Court of Appeal) Rules 2005*).

3. Recording or transmitting proceedings

3.1. Use of Electronic Devices in Court

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1. The Practice Direction takes effect from Tuesday, 4 February 2014.

The purpose of this Practice Direction

2. Subject to any direction to the contrary by the presiding judicial officer or the court, this Practice Direction regulates the use of electronic devices to record, transmit or receive by anyone attending the court. Special provisions are made:

    (a) for legal representatives and self-represented litigants engaged in a case at pars 8 and 11. This Practice Direction does not override any conditions which apply to self-represented litigants who are in custody, although application can be made by them to the presiding judge to allow use (see pars 12 - 15); and

    (b) for bona fide members of the media at par 11 (but see also pars 16 - 18).

3. This Practice Direction:

    (a) prohibits the use of electronic devices to harass or intimidate persons attending court (par 6);
    (b) regulates the use of electronic devices:

        (i) to create audio or visual records, including photographs (pars 7 - 8); and
        (ii) for other purposes (pars 9 - 11);

    (c) regulates applications for leave to depart from the terms of this Practice Direction (pars 12 - 15); and

    (d) provides for the identification of bona fide members of the media seeking to make use of special provisions under this Practice Direction (pars 16 - 18).

4. This Practice Direction applies to any electronic device capable of recording, transmitting or receiving information whether audio, visual or other data in any format (including but not limited to mobile phones, computers, tablets and cameras) and the term 'devices' used hereafter is to be construed accordingly. This Practice Direction does not apply to the making or use of sound recordings for the purposes of official transcripts of proceedings.

5. With the relaxation of some of the restrictions on the use of devices in the court, and in particular the potential for members of the media to use live text-based communications, such as mobile email, social media (including Twitter) and internet enabled laptops from court:

   (a) legal representatives and self-represented litigants should:

      (i) ensure that applications for suppression orders are timely and, where ever possible, foreshadowed prior to evidence being heard or admitted;

      (ii) apply to vary the application of this Practice Direction if there are concerns about its application in a particular case (see pars 12 - 15);

   (b) members of the media should exercise additional care to ensure that material they communicate:

      (i) is not subject to any suppression order or other restriction which may be affected by the publication of the material (e.g. the potential to inform witnesses who are excluded from the court while other evidence is being adduced); and

      (ii) can be deleted immediately if a suppression order is made subsequent to the communication.

Use of devices to harass or intimidate

Paragraph 6 prohibits any use of devices to harass or intimidate persons attending court

6. Devices must not be used in a way which constitutes intimidation or harassment of persons attending court whether in the courtroom, in the

court building or in public spaces exterior but adjacent to the court building.

Audio or visual recording

Paragraphs 7 - 8 regulate the use of devices to record in courtrooms and the court building

7. Any form of audio or visual recording, including photography, or any actions which appear to be or are preparatory to the making of audio or visual recordings or the taking of photographs are prohibited without the leave of the presiding judge or the court (see pars 12 - 15 in relation to applications for leave) and subject to par 8. This prohibition applies inside the courtrooms and the court building, whether or not the court is in session.

8. Legal practitioners and self-represented litigants may make audio recordings on a dictaphone or other device outside the courtroom but inside the court building.

Uses other than audio or visual recording

Paragraphs 9 - 11 prohibits any use of devices which is disruptive and limits use while the court is in session

9. Devices are not to be used within the courtroom in any manner which could interfere with the smooth and efficient operation of the court, or the comfort or convenience of other users of the courtroom, whether or not the court is in session.

10. While the court is in session, except as provided in par 11 or in accordance with permission granted by the court or presiding judicial officer (see pars 12 - 15), all devices are to be turned off and their use within the courtroom is prohibited.

11. Devices may be used within the courtroom while the court is in session by:

    (a) members of the legal profession and self-represented litigants (if not in custody) who are engaged in the case; and

(b) bona fide members of the media;

provided:

(c) earphones are not used;

(d) the device is in silent mode and does not make any noise.

Applying for leave to depart from the terms of this Practice Direction

12. Applications for leave under pars 2, 7 or 10 may be made orally or in writing:

(a) to the Associate to the Presiding Judge in the particular courtroom; or

(b) in the case of the Court of Appeal, to the Associate to the Chief Justice or other Judge who is presiding; or

(c) if the application does not relate to particular proceedings, to the Associate to the Chief Justice.

13. Leave under pars 2, 7 or 10 may be granted or refused at the discretion of the court or a judicial officer. Leave may be granted subject to such conditions as the court or a judicial officer thinks proper. Where leave has been granted the court or a judicial officer may withdraw or amend leave either generally or in relation to any particular part of the proceedings.

14. The discretion to grant, withhold or withdraw leave to use any device or to impose conditions as to the use of any material generated by the use of a device or devices is to be exercised in the interests of justice and giving due weight to the open justice principle. However, the following factors may be relevant to the exercise of the discretion by the court or a judicial officer:

(a) the existence of any reasonable need on the part of the applicant, whether a legal representative, self-represented litigant (including those in custody) or a person connected with the media, for the device to be used or for any audio or visual recording or photograph to be made;

(b) in a case in which a direction has been given excluding one or more witnesses from the court, the risk that any audio or visual recording, including photographs, could be used for the purpose of briefing witnesses out of court or informing such witnesses of what has transpired in court in their absence; and

(c) any possibility that the use of any such device would disturb the proceedings or distract or cause alarm or concern to any witnesses or other participants in the proceedings.

15. If the discretion to grant leave to use a device outside the terms of this Practice Direction is granted, consideration will generally be given to the conditions which might be imposed regarding the use of any audio or visual recordings, including photographs, made with leave.

Identifying members of the media

16. Media representatives seeking to make use of the exception provided at par 11 must have been accredited by the Manager, Media and Public Liaison for the Courts, and must produce their accreditation should this be requested by court staff or court security.

17. If a media representative is unable to produce such accreditation when requested, court staff or court security will contact the Manager, Media and Public Liaison for the Courts to verify that a person seeking to make use of the exception allowed at par 11 is a bona fide member of the media.

18. Any question or issue as to whether a person is a bona fide member of the media will be determined by the Manager, Media and Public Liaison for the Courts.

3.2. Video Link Appearance by Persons in Custody

1. To avoid undesirable and unnecessary transportation of persons in custody it is necessary to ensure that the number of personal appearances before the Court by such persons is limited to only those appearances where the interests of justice require it.

2. This Practice Direction applies to appearances by a person in custody in the criminal and civil jurisdiction of the General Division of the Supreme Court.

3. Every appearance by a person in custody before the Court shall be by video link rather than in person UNLESS the person is self-represented, or the appearance is for sentence or for trial, or is ordered to be in person by a Judicial Officer of the Court.

4. Nothing in this Practice Direction prevents a Judicial Officer from at any time ordering that a person appear before the Court by video link or in person for any listing whatever its purpose.

5. A Judicial Officer's Associate or an Officer from the Court's Listings staff shall put an indication on the Remand Warrant to show whether the next appearance of a person in custody before the Court is to be by video link or by personal appearance.

6. Refer to:

   (a) Practice Direction 5.1 (par 2) for the procedure in relation to appearances of persons in custody before the Magistrates Court - Stirling Gardens; and

   (b) Practice Direction 5.3 (par 4) for the procedure in relation to attendances of persons in custody at Voluntary Criminal Case Conferences.

3.3. Access to Information, Records and Things Held by the Court

1. The legislation relating to access, and the procedure for applying for access, to information, records and other things held by the Court differs according to the type of proceedings.

2. Access to information, documents and other things held by the Court involves balancing three competing principles: open justice, privacy and practicality.

3. Any person using the Court's website may access any information and records on the website, if the website is being used lawfully (O 67B r 11(1)).

4. Any person who is an authorised user of the Court's electronic case management system (ECMS) may access information or records related to a proceeding if the ECMS, when used lawfully, allows access (O 67B r 11(2); see also Practice Direction 1.1.4 - Registration as an authorised user of the ECMS).

General Division (Civil proceedings and General Division Appeals) and Court of Appeal proceedings

5. The regimes for access to information, records and other things held by the Court are contained in O 67B of the Rules.

6. The regimes differ depending on whether the person seeking access is a party or a non-party to a proceeding in which the information, record or other thing held by the Court is sought. In the case of non-parties, the regimes also differ depending on whether or not the person seeking access is a media representative; and whether the proceeding was commenced before 1 March 2018, or on or after 1 March 2018 (see O 67B r 2(1), (2) and O 67B Div 7; see also the further discussion below).

7. Order 67B of the Rules does not apply to certain types of documents: subpoenaed records (O 67B r 2(3)(a)(i)); records not formally admitted into evidence as an exhibit or marked for identification (O 67B r 2(3)(a)(ii)); information, records or things no longer held by the Court (O 67B r 2(3)(b)); administrative records sent or received by the Court (O

67B r 2(3)(c)(i)); documents not filed (O 67B r 2(3)(c)(ii)); and documents which are not part of an index or other record of all cases in the Court (O 67B r 2(3)(c)(iii)).

8. Order 67B of the Rules does not affect any right to be given access to information or a record or a thing that a person has under any other legislation (O 67B r 3).

9. It should be noted that O 67B does not prevent the Court from releasing, on its own initiative, any information, record or thing to any person, on any terms and conditions and in any manner, it thinks fit (O 67B r 4). The Court may also make an order on its own initiative, or on the application of any person, to restrict access (O 67B r 5).

Parties to a proceeding

10. Divisions 1 - 6 and 8 of O 67B of the Rules apply to any party to a proceeding seeking access to information or a record or any other thing held by the Court, whether or not due to a court order.

11. The general rule is that unless a party's access is restricted, the party is entitled to access:

    (a) the information listed in the Tables in O 67 r 6 of the Rules;

    (b) a filed document;

    (c) a list of exhibits;

    (d) an exhibit;

    (e) a list of things tendered but not admitted into evidence;

    (f) any of the things on that list in the previous sub-par; and

    (g) transcript (O 67B r 7).

12. A party's access may be restricted by legislation or an order made by any court in Australia (O 67B r 7(1)).

13. A party who seeks access to information or a record or any other thing held by the Court that is not listed at par 11 above may only have access to it with the permission of the Court (O 67B r 8).

14. Order 67B r 9 specifies when the Court may give permission for access and the matters that will be taken into consideration in determining whether to grant access to a party.

Non-parties to a proceeding commenced before 1 March 2018

15. The rights of a non-party seeking access to information or a record or other thing held by the Court in respect of a proceeding commenced before 1 March 2018 are set out in O 67B Div 7.

16. A non-party is entitled, where no legislation prevents it and upon payment of any prescribed fee, to inspect and be given a copy of a writ; a statement of claim; an originating application under the *Corporations Act 2001* (Cth); an appeal notice; a judgment; or an order, in respect of a proceeding commenced before 1 March 2018 (O 67B r 16).

17. Any other filed document not referred to in par 16 above may only be accessed with the leave of the Court or a registrar (O 67B r 16(1)(e)).

18. An application for leave should be made by letter addressed to the Principal Registrar, and need not be served on any person. It should describe clearly the filed document the subject of the application; the proceeding in which the document was filed; and the reasons why access is sought. It should be emailed to the associate: Associate.Principal.Registrar@justice.wa.gov.au, and copied to the Supreme Court Registry: central.office@justice.wa.gov.au.

19. An application for leave will be taken to be an interlocutory application in the proceeding, even though the applicant is a non-party to that proceeding. The application for leave will be a filed document in the proceedings and will be visible to all parties via the ECMS. The application for leave may be the subject of a non-party application for access.

Non-parties to a proceeding commenced on or after 1 March 2018

20. The general rule is that unless a non-party's access is restricted, a non-party is entitled to access the information listed in the Tables in O 67B r 6 of the Rules.

21. A non-party to a proceeding is only entitled to access additional information to that referred to at par 20 above if given permission by the Court or the media manager (O 67B Div 4) (see further discussion below in relation to applications to the media manager).

22. Order 67B r 9 specifies when the Court may give permission for access and the matters that will be taken into consideration in determining whether to grant access to a non-party.

23. If the thing the non-party seeks to access is an exhibit, copy of an exhibit or an exhibit list, further information is available on the Court's website.

Non-party applications made to the media manager

24. The media manager is the person who, on behalf of the Court, manages its relations with media organisations (O 67B r 1).

25. A media representative is a person who is employed by a media organisation, such as a newspaper, radio, television or internet news website that does and has as its principal purpose the dissemination of news or information (O 67B r 1).

26. Order 67B r 10 provides when the media manager may give permission to access information, and what matters will be taken into consideration in determining whether to grant access. In particular, if one media representative has been given permission, and another media representative (who is not a party or an employer of a party) subsequently makes an application, the media manager must grant permission on the same terms and conditions (O 67B r 10(3), (4)).

When an oral application for access may be made

27. A person may only make an oral application to the Court for access if the person is entitled to the information under O 67B Div 3 (that is, if there is no restriction on access, and the information is of a type referred to in pars 11 or 20 above, as those pars apply to parties or non-parties) and there is no fee payable in respect of the application (O 67B r 11(7)).

28. A media representative may apply orally to the media manager for access if entitled to the information under O 67B r 6 (that is, the information referred to above in par 20 that is available to non-parties as a right) (O 67B r 11(8)).

29. A media representative must give the media manager the case number of the proceeding in which the information sought is held by the Court (O 67B r 11(8)). The contact details for the media manager are available on the Court's website.

30. If a non-party seeks access to an exhibit, copy of an exhibit or an exhibit list, further information about making an application is available on the Court's website.

31. Every application must be made in accordance with O 67B r 11. In particular, the applicant must clearly describe the information, record or thing to which access is sought; and the proceeding to which it relates.

When a written application for access may be made

32. If a person seeks access to information under O 67B Div 3 or 4, and there is a fee payable in relation to the application, the application **must** be made by a letter to the Principal Registrar, except where the document sought is a transcript. Where a person seeks access to transcript, see par 35 below.

33. A person **may** also apply for access by a letter to the Principal Registrar where they seek access to information under O 67B Div 3 and no fee is payable in respect of the application. However, they may also make an application orally in those circumstances (see pars 27 - 31 above).

34. Applications by a letter addressed to the Principal Registrar should be emailed to the associate: Associate.Principal.Registrar@justice.wa.gov.au, and copied to the

Supreme Court Registry: central.office@justice.wa.gov.au. If there is a prescribed fee, the fee must accompany the letter (O 67B r 11(10)). The Credit Card Payment Authority form at Practice Direction 1.2.3.3 should be used.

35. Written applications for transcript must be made using the application for transcript form on the Court's website. The application is to be emailed to the Court Transcript Officer at courttranscriptSC@justice.wa.gov.au. If the applicant is entitled to access transcript or permission is granted to obtain a copy of the transcript, it will be provided once the applicable fee has been paid.

36. If a non-party seeks access to an exhibit, copy of an exhibit or an exhibit list, further information about making an application is available on the Court's website.

37. The application will be taken to be an interlocutory application in the proceeding, whether or not the applicant is a party to the proceeding (O 67B r 11(4)). The application will be a filed document in the proceeding and will be visible to all parties via the ECMS. The application may be the subject of a non-party application for access.

General Division (Criminal) and Single Judge Appeal proceedings

38. The power to allow parties and non-parties access to information, records and other things held by the Court is contained in the *Criminal Procedure Rules 2005* (WA) (**CPR**).

39. There are provisions of the *Criminal Procedure Act 2004* (WA) (**CPA**) and *Criminal Investigation Act 2006* (WA) (**CIA**) that also apply to the release, or prohibition on the release, of information, records or things held by the Court.

Entitlements and access to transcript - parties

40. An accused is entitled to receive, free of charge and as soon as it is available, one copy of the record, or of the certified transcript of the record, of any proceedings directly concerning him or her (CPR r 43(1)).

41. The Office of the Director of Public Prosecutions (**DPP**) is entitled to receive, free of charge and as soon as it is available, one copy of the record, or of the certified transcript of the record, of any proceedings in which the DPP is involved (CPR r 43(2)).

42. During a criminal trial, as soon as it becomes available, any electronic record (or the certified transcript of the record) will be emailed to each accused and the DPP. For this to occur, each accused and the DPP must provide to the associate to the judge hearing the trial an email address to which they want the transcript sent. The email address should be provided as early as possible in the proceeding.

43. Any questions about the availability or collection of transcript during trial should be directed to the associate to the judge hearing the trial. The contact details for the associates to judges of the Court can be found on the Court's website.

44. To obtain a copy of any transcript pertaining to a criminal hearing that is not a trial, a party that is entitled to receive that transcript should apply using the application for transcript form on the Court's website, which is to be emailed to the Court Transcript Officer at courttranscriptSC@justice.wa.gov.au.

45. A party may apply to a registrar of the Court for additional copies of the record or the transcript to which the party is entitled (CPR r 43(3)). A registrar may determine the cost of the additional copies. The copies will be provided once the applicable fee has been paid (CPR r 43(4)). The Credit Card Payment Authority form at Practice Direction 1.2.3.3 should be used.

Entitlements and access to transcript – non-parties

46. A non-party may apply to the Court to inspect or obtain a copy of the record, or the certified transcript of the record, of any criminal proceeding (CPR r 51(1)).

47. There is one circumstance in which an application for transcript by a non-party may be made orally to the media manager. That is where the non-party applicant is an employee of a media organisation (as defined in CPR r 51(1A)) and the Court has already granted permission to another such person to inspect or obtain a copy. The media manager may grant

the application if satisfied that the Court has already granted permission to another employee of a media organisation to inspect or obtain a copy, but must otherwise refuse the application (CPR r 51(2)). The contact details for the media manager are available on the Court's website.

48. In all circumstances other than that referred to in par 47 above, a non-party must apply to the Court using the application for transcript form on the Court's website. The application is to be emailed to the Court Transcript Officer at courttranscriptSC@justice.wa.gov.au. The application may be dealt with by a judge or registrar (CPR r 51(4A)). Should the non-party be granted permission to obtain a copy of the transcript, it will be provided once the applicable fee for supplying the copy has been paid (CPR r 51(6B)). There is no fee for supplying a copy of transcript required for the purposes of a child sexual abuse action or a claim under the National Redress Scheme (CPR r 51(6C)). The non-party should indicate on the application for transcript form that the application is for one of those purposes.

Entitlements and access to exhibits and copies of exhibits

49. The DPP has a duty under Pt 4 Div 4 of the CPA to disclose to an accused person confessional materials, evidentiary materials and other documents that may assist the accused's defence, prior to trial. Those disclosed materials and documents may become exhibits if the matter goes to trial and they are tendered as evidence by the DPP.

50. Section 170 of the CPA provides for the retention and release of exhibits by the Court. Every exhibit tendered in evidence in the Court must not be released by the Court to any person until at least 31 days after the day on which the matter is determined or dismissed, except-

    (a) under an order of the Court;

    (b) where the Court considers the exhibit is dangerous to retain (in which case the Court may dispose of it or release it to a person who is entitled to custody of it);

    (c) where the Court considers it is impractical or inconvenient to retain the exhibit (in which case the Court may release it to a person who is entitled to custody of it); or

(d) where the Court considers that it is necessary for a person who is entitled to custody of an exhibit to have use of it (in which case the Court may release it to that person).

51. After 31 days the Court may release an exhibit to a person who in the Court's opinion is entitled to custody of it, or the Court may require the person who tendered it in evidence to collect it (CPA s 170(5)).

52. Rule 51 of the CPR empowers the Court to allow non-parties, including the media, to access copies of exhibits. Under the CIA s 121, it is an offence to broadcast all or part of a recording between a police officer and a suspect, unless the broadcast is under a direction of the Court. Section 122 of the CIA permits the Court to give directions as to the supply and broadcast of an audio-visual recording of an interview.

53. Further information on the relevant legislation; the Court's policy on releasing exhibits and copies of exhibits to non-parties; and how a non-party may make an application for access to an exhibit or copy of an exhibit, is available on the Court's website.

Other information, records or things held by the Court

54. Rule 51(1) of the CPR empowers the Court to allow non-parties, including the media, to inspect or obtain a copy of any other record in the possession of the Court, including documents in both paper and electronic form.

55. There is one circumstance in which an application for records by a non-party may be made orally to the media manager. That is where the non-party applicant is an employee of a media organisation (as defined in CPR r 51(1A)) and the Court has already granted permission to another such person to inspect or obtain a copy. The media manager may grant the application if satisfied that the Court has already granted permission to another employee of a media organisation to inspect or obtain a copy, but must otherwise refuse the application (CPR r 51(2)). The contact details for the media manager are available on the Court's website.

56. In all circumstances other than that referred to in par 55 above, a non-party must apply to the Court in writing and must set out the grounds of the application (CPR r 51(2A)(b)). The application is to be emailed to the Central Office at central.office@justice.wa.gov.au. The application may

be dealt with by a judge or registrar (CPR r 51(4A)). Should the non-party be granted permission to obtain a copy of the information, record or thing, it will be provided once any applicable fee has been paid.

3.4. Web-streaming of Court Proceedings

The purpose of this Practice Direction

1. This Practice Direction establishes guidelines for the use of the court's capacity to publish audio-visual recordings of its proceedings by using the court's equipment to either:

   (a) web-stream court proceedings live over the internet; or

   (b) make an audio-visual recording of the proceedings which will be available for download on the Court's website.

2. This practice direction does not deal with the use by a third-party of equipment to record or transmit court proceedings (which is dealt with by Practice Direction 3.1). Nor does this Practice Direction provide for access to audio or visual records produced for security or transcript monitoring purposes.

The Court's capacity to publish audio-video recordings

3. Courts located in the David Malcolm Justice Centre, and most courts located at Stirling Gardens, have the capacity to live-stream proceedings to the internet in real-time. Those courts also have the capacity to make an audio-visual recording of a live stream of proceedings to the internet, for subsequent publication on the court's website. The court does not currently have the capacity to edit that recorded footage.

4. Certain courts at Stirling Gardens have the capacity to make an audio-visual recording of proceedings which may be published on the court's website at a later date and time following the proceedings. Courts located at the David Malcolm Justice Centre do not currently have the capacity to record proceedings which are not being live-streamed in a manner suitable for internet publication.

5. Generally, images can be taken from a camera at the rear of the court, or cameras which can focus on the judge and either counsel or a witness. The judicial officer's associate has control of the camera selection and whether audio is transmitted. The judicial officer's associate has the capacity to stop a live-feed using equipment in the court.

Publication of audio-visual recordings of court proceedings

6. The decision to stream or publish audio-video recordings of the whole or part of proceedings, and the manner in which publication shall occur, will be made by the judicial officer(s) constituting the court in the relevant proceedings. That decision may be made following a request by an interested person under par 12 of this practice direction or on the court's own initiative.

7. The discretion to decide as to the appropriate use of the court's capacity should be exercised in the interests of justice and giving due weight to the open justice principle. The following factors may be relevant to the exercise of the discretion by the court or a judicial officer:

   (a) The need to ensure a fair trial, and particularly whether and to what extent prejudicial publicity could infringe any person's right to a fair trial;

   (b) The public interest in facilitating public knowledge of particular proceedings, accuracy of reporting on proceedings, and public understanding of the judicial system;

   (c) The level of demand by members of the public or persons with an interest in the proceedings for access to the proceedings via the internet;

   (d) Any potential adverse impact of electronic publication on the proceedings, including on witnesses, jurors, victims, accused persons, members of the public in the public gallery and any other participants in the proceedings;

   (e) The likelihood that information or material which is confidential or otherwise inappropriate to be published electronically as part of an audio-visual recording will be released during the proceedings;

   (f) The potential impact of electronic publication on national security and criminal investigations;

   (g) Whether an order for witnesses or other persons to remain out of court has been made or is likely to be made;

   (h) The views of the parties, victim(s) and vulnerable witnesses;

(i) The cultural views, beliefs and practices of participants in the proceedings which may make them uncomfortable with having images of a participant and/or audio recordings of anything said by a participant being published on the internet;

(j) Any other matter the presiding judge or court considers relevant.

8. Where the court is contemplating making an audio-visual record of proceedings available via the internet, it will ordinarily raise the issue with the parties to the proceedings and give them an opportunity to make submissions as to how the discretion should be exercised.

Legislative Requirements

9. The court's capacity to publish audio-visual recordings of its proceedings will be exercised in a manner which complies with applicable legislative requirements, such as prohibitions on:

(a) the disclosure or publication of information that identifies, or is likely to identify, a juror in particular proceedings (pt IXA of the *Juries Act 1907* (WA));

(b) the publication of information likely to lead members of the public to identify a complainant in proceedings for a sexual offence, or a school which the complainant attends (s 36C of the *Evidence Act 1906* (WA));

(c) the publication of information likely to lead to the identification of a child concerned in proceedings in the Children's Court of Western Australia, or another court on appeal from that court (s 35 of the *Children's Court of Western Australia Act 1988* (WA));

(d) the publication of information which identifies parties to family law proceedings, their associates and witnesses in the proceedings (s 243 of the *Family Court Act 1997* (WA) and s 121 of the *Family Law Act 1975* (Cth)).

10. These restrictions may preclude the publication of an audio-visual recording of some kinds of proceedings in the court.

Copyright

11. Publication by the court does not involve any waiver of copyright in the audio-visual recording or transmission.

Applications for publication of audio-visual recordings of court proceedings

12. A person (whether or not a party to the proceeding) may request that the whole or part of a court proceeding be live-streamed or recorded for subsequent publication on the court's website. Requests, together with reasons for the request, should be directed to the associate to the presiding judicial officer of the court concerned. If the presiding judicial officer is not known, the request should be directed to the Principal Registrar or the Court of Appeal Registrar (as appropriate).

13. To enable appropriate planning, and consultation with the parties under par 8, a request should be made in an approved form as soon as possible, and ordinarily at least seven (7) days, prior to the hearing concerned. The court may not be in a position to accede to requests made shortly prior to a hearing.

4. General Division - Civil

4.1. Case Management

4.1.1. Case Management by Registrars

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1. Case management involves continuous control by the case manager, who personally monitors each case on a flexible basis.

2. Cases not entered into the Commercial and Managed Cases (CMC) List (refer to O 4A r 11 and r 13) are managed by Registrars up to the listing conference stage (refer to Practice Direction 4.4.1) under O 4A of the *Rules of the Supreme Court 1971*.

3. Registrars who are allocated cases use the powers conferred upon case managers by O 4A and O 60A r 2 of the *Rules of the Supreme Court 1971* - other than those powers reserved for CMC List matters under O 4A div 3.

4. The revised usual orders appended at 4.1.2.2 may be of use to parties in drafting directions and orders. It is emphasised that these usual orders should be regarded as a guide only, and should be customised to suit the circumstances of the particular case.

Referral of Cases to the Judge in Charge of the CMC List

5. Any case that presents management problems or which requires more intensive case management may be referred by a Registrar case managing the case, at any time, to the Judge in charge of the CMC List. It is intended that Registrars will identify such cases at an early stage. The parties may also ask the Registrar case managing the case to refer the case to the Judge in charge of the CMC list, or may file a request that the matter be admitted to the CMC List as outlined in O 4A r 14 of the *Rules of the Supreme Court 1971*.

Registrars' powers & CMC List cases

6. Registrars do not have the power to:

   (a) admit cases to the CMC list (O 4A r 14); nor

   (b) make orders in relation to cases admitted to the CMC list (O 4A r 5, r 15).

4.1.2. Case Management - the Commercial and Managed Cases (CMC) List

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The CMC List

1. Cases that require more intensive supervision than that currently provided by the Registrars pursuant to div 2 and div 4 of O 4A of the *Rules of the Supreme Court 1971* are managed in the Commercial and Managed Cases List (the CMC List) pursuant to div 2 and div 3 of O 4A.

2. Cases in the CMC List will, as far as possible, be docket managed by the Judge or Master likely to hear the trial of the case.

Entry onto the CMC List

3. Other than the cases automatically admitted to the CMC List under O4A r 11 of the *Rules of the Supreme Court 1971*, any case will, in general, be admitted to the CMC List if:

   (a) there is a significant prospect of interlocutory dispute;

   (b) it has manifested a propensity for interlocutory dispute by such a dispute being listed in Judges or Masters Chambers;

   (c) in the opinion of a CMC List Judge or Master, it is suitable for more intensive case management for any other reason (such as the need for expedition, the complexity of the issues, the likely length of trial, etc); or

   (d) one party wants the case admitted to the List for any of these or other good reasons.

4. Apart from cases automatically admitted to the CMC List by the Court as outlined in O 4A r 11 of the *Rules of the Supreme Court 1971*, entry into the CMC List is by an application made by a letter to the Court (O 4A r 14). In addition to the information required under O 4A r 14(3), the letter must include an estimate of the likely length of hearing, in the event the matter proceeds to trial. The letter to the Court must also set out the details of any order or direction sought or file with the letter as an attachment a minute in Form 78 of any order sought (O 4A r 5B(1)(b)). Such requests should ordinarily be filed as soon as a party is of the view that the requirements in O 4A r 14(2) and par 3(d) are satisfied.

5. As soon as possible after entry onto the CMC List, each party to proceedings, other than a party who has requested entry to the List in accordance with par 4 above, must provide the Associate to the managing Judge or Master with their estimates of the likely length of hearing, in the event the matter proceeds to trial. From time to time the parties may be required to revise their estimates.

6. Attached at PD 4.1.2.2 are some usual orders that might be used when a matter is entered into the CMC List. It is emphasised that the usual orders should be regarded as a guide only, and should be customised to suit the circumstances of the particular case.

CMC List documents

7. Other than proceedings brought pursuant to arbitration law (for which see PD 4.1.2.3), all documents filed subsequent to admission to the List shall have the words 'COMMERCIAL AND MANAGED CASES LIST' endorsed directly beneath 'In the Supreme Court of Western Australia' on the top left corner of the document (O 4A r 12), and all documents filed subsequent to admission to the CMC List will also bear the name of the allocated Judge or Master below the document tram lines (refer to sample form PD 1.2.1.4).

Objectives of the CMC List

8. The general objective of the CMC List is to bring cases to the point where they can be resolved by mediation or tried in the quickest, most cost effective way, consistently with the need to provide a just outcome. The principle of proportionality is applied (O 1 r 4B).

9. The Court also takes account of the need to allot to each case an appropriate share of the Court's limited resources, while taking into account the need to allot resources to other cases. The parties and their legal advisers are encouraged to assist the Court to achieve these objectives.

10. Having regard to the objectives specified in O 1 r 4B, parties should carefully consider the ambit of any discovery sought. As appears from the usual orders, parties should give consideration to the provision of discovery in stages, or on particular issues only.

The Strategic Conference

11. The Court will generally require the parties and their legal representatives to give specific and careful consideration to the ways in which the objectives of case management in the CMC List might be best achieved in the particular circumstances of the case, and to present their proposals in that regard at a strategic conference to be held before the case manager. Generally the first hearing of the matter in the CMC List will be conducted as a strategic conference (see O 4A r 14A).

12. If a party considers that a strategic conference should not be held, or should be deferred, the party should write to the Associate to the managing Judge or Master and provide reasons as soon as possible after the matter has entered the CMC List.

13. The case manager may direct that a strategic conference not be held, or that it be held at a later time - for example, after pleadings have closed. Unless such a direction is made, the first hearing of the matter in the CMC List will be conducted as a strategic conference in accordance with par 11 above.

14. The strategic conference will be given a special appointment of up to one hour's duration. It will generally be held in a conference room rather than a courtroom. Proceedings will be recorded and transcribed as appropriate. The case manager will ordinarily direct that the parties will be required to attend.

15. In the case of a corporate party, the officer or officers representing the party at the strategic conference must have authority to make decisions and provide instructions with respect to all aspects of the future management of the case. All counsel who have been briefed are to attend the conference together with the most senior solicitor representing each party.

16. At the commencement of the strategic conference, the case manager will call upon a legal representative of each party to provide a short presentation upon the issues which that party considers require determination, and the position of that party in respect of each issue. Legal representatives should be as fully briefed as is practicable at that stage of the case. Unless otherwise agreed and directed by the case manager, those statements of position will be 'on the record'.

17. A legal representative of each party must also inform the case manager and the other party or parties of:

    (a) that party's estimate of the quantum of the plaintiff's claim or the value of the property in dispute; and

    (b) that party's legal costs and disbursements (including any expert fees) incurred to date, an estimate of the legal costs and disbursements (including any expert fees) likely to be incurred up to the end of trial (setting out the estimated duration of trial), and the estimated party and party costs recoverable by, or payable by, the party in respective cases of success or failure at trial.

17A. The purpose of open disclosure as to costs between the parties and the case manager is to allow the case manager to openly comment on the value, importance and complexity of the subject matter and the financial position of each party. Transparency as to costs may assist the parties to put the cost of proceedings into perspective and encourage them to settle the dispute.

18. The strategic conference will also address the following issues (at least):

    (a) the best method for identifying the issues which require determination;

    (b) the best method for identifying the facts which can be agreed, and the facts which are contentious;

    (c) whether it would be desirable to have a preliminary determination of any specific issues of fact or law;

    (d) the most appropriate approach to be taken in relation to discovery;

    (e) the most appropriate point in the preparation of a case for a mediation to be conducted;

    (f) the steps that should be completed before a mediation takes place;

    (g) whether there is any reason why evidence in chief should not be given orally, with or without the provision and exchange of a witness outline (refer also to Practice Direction 4.5.1 Evidence in Chief – Witness Outlines and Witness Statements);

(h) the most appropriate approach to be taken with respect to expert evidence;

(i) specific milestones in the proceedings (for example, the close of pleadings) at which each party must inform the case manager, and the other party or parties, of:

(i) that party's actual legal costs and disbursements (including any expert fees) to date; and

(ii) that party's revised estimate of legal costs and disbursements (including any expert fees) up to the end of trial (setting out the estimated duration of trial).

19. Parties and their representatives will be encouraged by the case manager to present proposals that are the most appropriate for the particular circumstances of the case. The discernible tendency to indiscriminately apply the standard directions to every case, whether appropriate or not, will be actively discouraged.

20. The objective of the strategic conference will be to devise a general strategy for the future management of the case. Directions implementing that strategy may be made by the case manager at the conclusion of the conference.

Interlocutory disputes

21. A fundamental objective of the CMC List, and indeed the general practices and procedures of the Court, is the discouragement of interlocutory disputes with all means at the Court's disposal, including costs orders in appropriate cases. The procedure specified in O 4A r 3 is generally to be followed, as is the approach set out in PD 4.7.1.

22. Where an interlocutory dispute cannot be avoided, it is wherever possible determined by the Case Manager after the exchange of written submissions, either on the papers or following a short case management conference at which the time permitted for oral argument is generally to be limited by direction to 20 minutes or perhaps half an hour for each party. The legal representatives of the parties are actively encouraged to comply with O 59 r 9 by meeting face to face or at least conferring by telephone.

22A. Counsel seeking to appear remotely (by video or audio conference) at an interlocutory hearing should note the requirements set out in PD 1.2.6 par 30 and 31A.

Trial bundles

23. For some time, the Court has actively discouraged the practice of including too many documents within the trial bundle. However, the inclusion of unnecessary documents continues to be a common practice.

24. When the trial bundle is prepared, only the documents which a party **will** tender should be included within the bundle. To that end:

    (a) The usual order of pre-trial directions will require witness outlines or witness statements to be prepared referring to documents by their discovery number (without copying the documents referred to in the witness outline or witness statement). After the trial bundle has been prepared, the parties will be directed to provide the court with another copy of each witness outline or witness statement, annotated so as to show the trial bundle reference in respect of each document referred to in the statement.

    (b) Directions will generally be made specifying that any document included in the trial bundle will, in the absence of specific objection, be taken to be authentic, to have been prepared by its apparent author, and in case of a communication, to have been received by the persons appearing to have received it and to have been sent and received on or about the date which it bears. Accordingly, witness outlines or witness statements should not be prepared merely for the purpose of proving any of those matters, in the absence of specific objection.

    (c) Each party must give consideration to the purpose for which any documents they propose for inclusion in the trial bundle is to be tendered, and be able to explain that purpose to the court upon request.

    (d) In an appropriate case, the court may make orders with respect to the preparation of the trial bundle so that the cost of documents unnecessarily included in the trial bundle may fall upon the party responsible, or the party's solicitors.

Non-expert evidence: Witness outlines and witness statements

25. The Usual Orders (PD 4.1.2.2) include standard orders in relation to the exchange of witness outlines.

26. The Usual Orders include orders in relation to witness statements as an alternative to orders in relation to witness outlines. However a party seeking to utilise witness statements for the purpose of leading evidence-in-chief will be required to satisfy the CMC List Judge that this course will better achieve the objects referred to in paragraph 3 of PD 4.5.1, than if evidence were to be given orally in the usual way.

27. Ordinarily, the use of a witness statement will not be appropriate where contentious evidence is to be given of facts dependent on the recollection of the witness or where the credit of the witness is likely to be challenged on the topic.

Expert evidence

28. Expert evidence can only be adduced with leave of the Court. Leave of the Court will not be granted without some identification of the issues upon which the expert will be asked to give evidence, the field of expertise of each proposed expert, and whether it is an appropriate case for the experts to be given agreed facts, a list of agreed questions and assumptions upon which the expert is asked to rely.

29. Innovative approaches to expert evidence are encouraged, including the nomination of a single expert or parties conferring with a view to agreeing some or all of the facts upon which the expert opinions are to be based and the questions to be addressed to the experts.

30. A conference of experts without the parties or legal representatives present will normally be ordered, either at the request of the parties or by the Court's own initiative.

31. The Court may order that this conference be arranged by the parties without ordering that there be a facilitator or chair of the conference. If making such an order, the Court will normally make an order for the preparation and filing of a joint expert report (JER) following the conference (Refer to Practice Direction 4.1.2.2 for Usual Orders.)

32. Alternatively, the Court may order that the conference be chaired by the Principal Registrar or a Registrar appointed by the Principal Registrar (an expert conclave). Orders will normally be made to facilitate the provision of a JER by the experts following the conclave. (Refer to Practice Direction 4.5.2.2 in relation to expert conferences and conclaves.)

33. The taking of expert evidence concurrently at trial is to be considered where there is more than one expert having the same expertise who is to give evidence on the same or related topics. (Refer to Practice Direction 4.5.2.3 in relation to concurrent expert evidence.) Whether experts should give evidence concurrently is a matter for the Court, which will depend on the circumstances of each individual case, including the character of the proceedings, the nature of the expert evidence and the views of the parties.

34. Although this consideration may take place at any time (including at the commencement of the hearing, if not raised earlier), parties should raise the issue of concurrent evidence at the earliest appropriate opportunity. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:

    (a) the agenda;

    (b) the order and manner in which questions will be asked; and

    (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.

35. At the same time, and before any hearing date is fixed, all parties must notify the Court of the identity of all experts proposed to be called and their areas of expertise.

36. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

37. For further information about expert evidence, expert conclaves and taking concurrent evidence refer to Practice Direction 4.1.2.2 CMC List - Usual Orders and Practice Direction 4.5.2 Expert Evidence.

Other processes applicable to CMC List cases

38. CMC List cases before CMC List Judges will be listed for case management conferences generally at 9.15 am or 9.30 am. Parties are also encouraged to request the Associate to a CMC List Judge to list their matters on a 'not before' a specified later time should they have parental or carer's responsibilities, although this will be at the discretion of the relevant Judge. Counsel seeking to appear remotely in the CMC list should note the requirements set out in PD 1.2.6 par 30, 31A and 31B.

39. Case Management Conferences will not ordinarily be adjourned indefinitely, but relisted for another conference on a specific date. Early identification of the matters truly in issue is a key focus of the CMC List - whether by pleadings or some other process appropriate to the particular case. Formal non-admissions or denials of matters not substantially in issue are actively discouraged.

40. Where a party is represented by a solicitor or counsel, it is not necessary for a party also to attend a case management conference other than strategic and mediation conferences, unless required to do so by subpoena or other order of the Court.

41. Mediation by a registrar is a holistic part of the management process, and, in general, no case is to be listed for trial without the mediation process having first been exhausted.

42. The operation of the CMC List is to be kept under constant review, and changes are made to its procedures as often as necessary to ensure that the cases within it are brought to a just resolution as quickly and as efficiently as possible. The same general principles apply to guide the Registrars in the management of cases outside the CMC List.

Removal from the CMC List

43. The application by a party seeking to have a matter removed from the CMC List under O 4A r 13(3) shall be by informal application to the Case Manager, with notice to the other parties.

44. Otherwise removal of a case from the CMC List shall be at the discretion of a CMC List Judge or Master.

4.1.2.1. CMC List - Summons (Revoked)

[Attachment 4.1.2.1 was revoked on 13 September 2010.]

4.1.2.2. CMC List - Usual Orders

PLEADINGS

1. The [plaintiff] file and serve a statement of claim by _____ [date].

2. The [defendant] file and serve a defence and any counterclaim by _____ [date].

3. The [plaintiff] file and serve [a/any] reply and defence to any counterclaim by _____ [date].

CLAIMS FOR SPECIAL DAMAGES

4. By _____ [date] the plaintiff shall:

   (a) file and serve a Schedule of Special Damages detailing the same under specific heads and, in particular, in personal injuries actions, detailing the claim for:

      (i) past loss of earnings;
      (ii) loss of future earning capacity;
      (iii) medical and other expenses relating to or including the cost of care, attention, accommodation and appliances;

   (b) notify the Case Manager's Associate of the filing of the Schedule.

DISCOVERY

5. The [parties/plaintiff/defendant/third party] give discovery on affidavit by _____ [date]. Or

6. The parties give discovery on affidavit by _____ [date] of only those documents relevant to the following issues [list the issues]:

   (a) .....
   (b) .....
   (c) .....
   (d) .....
   (e) .....

INSPECTION

7. Inspection of documents discovered be completed by _____ [date].

AMENDMENT OF PLEADINGS

8. Unless the Case Manager otherwise orders:

   (a) any party may without leave amend any pleading at any time prior to the date seven (7) weeks before the day fixed for the commencement of the trial by filing and serving the amended pleading; and

   (b) any other party may without leave make consequential amendments within seven (7) working days from service of the amendment by filing and serving the amended pleading.

9. Within seven (7) days after the service on a party of a pleading amended under par 8, that party may apply to the Case Manager to disallow the amendment.

10. Unless the Case Manager otherwise orders, the costs incurred and thrown away by reason of a party amending a pleading under par 8(a) be the other parties' in any event.

COSTS DISCLOSURE (FOR STRATEGIC CONFERENCE)

10A. By 4.00 pm on _____ [date] the solicitors for each party give their respective clients a memorandum setting out:

   (a) the legal costs and disbursements (including any expert fees) that the party has incurred to the date of the memorandum;

   (b) the future legal costs and disbursements (including any expert fees) that it is estimated that the party will incur to the end of trial (setting out the estimated duration of trial); and

   (c) the estimated party and party costs recoverable by, or payable by, the party in the respective cases of success or failure at trial.

10B. By 4.00 pm on _____ [date] the solicitors for each party file and serve a copy of the memorandum provided to their client in

accordance with par 10A, such information to be provided on a confidential basis.

10C. Access to the memorandum is restricted to the Court and to the parties to the proceeding and their legal representative(s), pursuant to Order 67B rule 5, on the basis that the information contained in the document is confidential.

INTERLOCUTORY DISPUTES

11. If any interlocutory dispute arises between any of the parties, their respective solicitors shall, within three (3) working days of the dispute arising, confer and attempt to resolve it.

12. If the dispute has not been resolved after the parties' solicitors have conferred in an attempt to resolve it and a directions hearing is scheduled to take place within seven (7) days then the party seeking the interlocutory relief shall file and serve a minute of the relief sought by that party and the dispute shall be heard at the next directions hearing.

13. If the dispute has not been resolved after the parties' solicitors have conferred in an attempt to resolve it and a directions hearing is not scheduled to take place within seven (7) days then the party seeking the interlocutory relief shall forthwith exercise his right to seek the re-listing of the matter for the purpose of applying for interlocutory relief.

14. The party applying for interlocutory relief at a directions hearing shall, not later than the day before the directions hearing, file and serve a minute of the orders sought by that party by way of interlocutory relief.

NON-COMPLIANCE WITH DIRECTIONS

15. In the event of default by any party for five (5) working days in complying with a direction for the taking of any interlocutory step, the solicitor for the party in default shall submit to the solicitor for each other party a proposed revised timetable for the interlocutory steps outstanding. If the party in default has previously defaulted, the period of five (5) working days is reduced to two (2) working days.

16. Upon receipt of the revised timetable the solicitor for each party shall forthwith inform that solicitor's client:

(a) of the existing timetable;

(b) of the fact of the default; and

(c) of the proposed revised timetable

and obtain the client's instructions as to whether the client consents to the proposed revised timetable.

17. Upon receipt of the client's instructions the solicitor for each party shall forthwith inform the solicitor for the party in default of those instructions.

18. If all parties consent to the proposed revised timetable, interlocutory steps shall proceed in accordance with it, and the Case Manager may at the next review hearing make an order that the timetable be revised accordingly. (The Case Manager may nevertheless remove the matter from the CMC List or impose other sanctions if not satisfied that the parties are proceeding with the diligence and expedition appropriate).

19. If all parties do not consent to the proposed revised timetable, the solicitor for the party in default shall forthwith secure the re-listing of the matters for review by the Case Manager so that appropriate directions may be given.

MEDIATION

20. The case be referred to mediation pursuant to *Supreme Court Act 1935* (WA) pt VI.

21. (a) By _____ [date] the other parties advise the plaintiff of the dates on which the advising parties are unavailable for mediation.

(b) Within three (3) business days of receiving the advice referred to in the preceding subparagraph, the plaintiff file a request for appointment in the approved form completed so as to show one list of all parties' unavailable dates.

(c) Without limiting the power of the Court to make any order for costs of the action or the mediation, the plaintiff pay the fee prescribed when filing the request for an appointment for mediation.

22. At least 14 days prior to the mediation conference, the solicitors for the parties give their clients a copy of the Court brochure 'Mediation - What you need to know'.

23. The following people must attend the mediation conference in person:

(a) each party who is a natural person;

(b) if a party is not a natural person, a representative of that party familiar with the substance of the litigation and with authority to compromise it;

(c) where the settlement negotiations are to be conducted on behalf of a party by its insurer, a representative of the insurer with authority to conduct settlement negotiations and to settle the case; and

(d) the solicitor or counsel, if any, representing each party.

24. At least 14 days prior to the mediation conference, the solicitors for each party give their respective clients a memorandum setting out:

(a) the exact legal costs and disbursements (including any expert fees) that the party has incurred to the date of the memorandum;

(b) the estimated future legal costs and disbursements (including any expert fees) that the party will incur up to and including a mediation conference lasting no more than one (1) day;

(c) the estimated future legal costs and disbursements (including any expert fees) that the party will incur to the end of trial, setting out the estimated duration of trial; and

(d) the estimated party and party costs recoverable by, or payable by, the party in the respective cases of success or failure at trial.

24A. At least 14 days prior to the mediation conference, the solicitors for each party provide to the mediator (by email to the associate to the mediator) a copy of the memorandum provided to their client in accordance with par 24. The memorandum is to be provided on a confidential basis, not to be placed on the court file, and at the conclusion of the mediation is to be kept confidential or returned to the solicitors for each party.

25. Within seven (7) days after the conclusion of a mediation conference the plaintiff shall inform the Case Manager's Associate that the conference has occurred as directed and the outcome of the conference.

TRIAL DOCUMENTS

26. No later than _____ [date] each party will by notice in writing to each other party, specify the documents they intend to tender at the trial, and if inspection has not been directed, where the documents may be inspected. Only those documents which will be tendered at trial should be included within the bundle, and a party including a document within the bundle should be able to justify to the Court the purpose for which the document is to be tendered upon request.

26A. Each document proposed by a party for inclusion within the trial bundle shall, in the absence of specific objection by another party, be taken to be:

(a) Authentic;

(b) Prepared by its apparent author;

(c) In the case of a communication, sent by the person appearing to have sent it, and received by the persons appearing to have received it on or about the date which it bears.

27. No later than _____ [the date five (5) working days thereafter] each party will advise each other party in writing which of the specified documents may be tendered by consent, and whether the authenticity

of any of the remaining documents (specify which) is disputed and give reasons in writing as to why consent to tender the remaining documents is withheld.

28. No later than _____ [the date five (5) working days thereafter] each party other than the plaintiff will deliver to the plaintiff a copy of each of the documents which that party intends to tender and which were not included in the plaintiff's notification of the documents he intends to tender at the trial.

29. No later than _____ [the date five (5) working days thereafter], the plaintiff will file a book of documents containing legible copies of each of the documents to be tendered at the trial by the parties and shall serve a copy of the book of documents to each of the other parties.

30. The book of documents shall satisfy the following formal requirements:

(a) each page of the book will be paginated.

(b) the book will contain an index of its contents.

(c) the index will list the documents in chronological order. If a document is undated it shall be placed according to its approximate date to be derived from its contents.

(d) the index shall include at least the following descriptive fields or categories:

(i) book number (which must run sequentially from beginning to end)

(ii) document date

(iii) document description

(iv) book page number at which the document commences

(v) book page number at which the document ends

(e) there should be no duplication of documents without good reason.

(f) attachments to documents should appear immediately after the document notwithstanding that they bear a date preceding the date of the document.

(g) each individual document should be separated in the physical bundle by a separate tab.

31. Not later than seven (7) days prior to the date fixed for trial the plaintiff shall by email to the Associate to the trial Judge, enquire whether the

trial Judge requires a hard copy of the book of documents for the exclusive use of the trial Judge.

32. On the commencement of the trial the plaintiff will have ready a copy of the book of documents for the exclusive use of witnesses in the course of their examination.

33. A party will have ready for production at the commencement of the trial the originals of the documents, copies of which are included in the book of documents, if requested to do so by notice given at least seven (7) days prior to the commencement of the trial.

34. No later than _____ [the date three (3) working days prior to the date fixed for the commencement of trial] counsel for the plaintiff will file a chronology of relevant events. Counsel for any party other than the plaintiff may also file a chronology of relevant events.

ELECTRONIC TRIAL

35. The trial of this action is to be conducted as an electronic trial (eTrial).

Trial Bundle

36. By _____ [time and date] the plaintiff is to deliver to the associate to _____ [case manager/trial judge] a USB containing an electronic copy of the trial bundle consisting of:

(a) all documents in a document folder; and

(b) an index in the form of a populated version of the excel spreadsheet with the filename 'eTrial Bulk Upload Template.xlsx' as provided by the court and prepared in accordance with these Practice Directions.

36A. By _____ [time and date] the plaintiff is to serve a copy of the USB containing the trial bundle on the defendant.

36B. The legal representatives for the parties must be able to justify to the Court the purpose for which each document is included in the trial bundle.

36C. Each document included within the trial bundle will, in the absence of specific objection by another party, be taken to be:

(a) authentic;

(b) prepared by the apparent author;

(c) in the case of a communication, sent by the person appearing to have sent it, and received by the person or persons appearing to have received it, on or about the date it bears; and

(d) a document which may be tendered by consent.

Papers for the Judge

37. By_____ [time and date] the plaintiff is to file and serve papers for the judge.

38. By_____ [time and date] the plaintiff is to deliver to the associate to _____ [case manager/ trial judge] a USB containing the papers for the judge in .docx electronic format with hyperlinks to all documents referred to in the pleadings within the papers for the judge.

39. By_____ [time and date] the plaintiff is to serve a copy of the USB containing the papers for the judge on the defendant.

NON-EXPERT EVIDENCE: WITNESS OUTLINES ORDERED

39A. Subject to any order of the judge, evidence in the trial be given orally with the parties providing a witness outline for each witness they intend to call.

39B. The plaintiff file and serve its witness outlines by _____ [date].

39C. The defendant file and serve its witness outlines by _____ [date].

39D. Each witness outline must satisfy the following requirements:

(a) it should be set out in numbered paragraphs; and

(b) it must clearly identify the topics in respect of which evidence will be given and the substance of that evidence, including the substance of each important conversation.

39E. The content of a witness outline served pursuant to an order of the Court is subject to the same implied undertaking as to confidentiality as applies to a document produced upon discovery.

39F. No person may use any part of the contents of a witness outline for the purposes of cross-examination of the person providing the witness outline or any other person without leave of the judge.

39G. The plaintiff shall have available at the hearing a copy of documents tendered in evidence [or the trial bundle if ordered] for the exclusive use of witnesses during their examination.

NON-EXPERT EVIDENCE: WITNESS STATEMENTS ORDERED

40. The plaintiff file and serve its witness statements by _____ [date].

41. The defendant file and serve its witness statements by _____ [date].

42. The plaintiff file and serve any witness statement that is purely responsive to any witness statement served by the defendant by _____ [date].

43. Each witness statement shall satisfy the following formal requirements:

(a) It should be set out in numbered paragraphs.

(b) As far as possible, it should be expressed in the witness' own words.

(c) It should contain evidence only in admissible form. For example, inadmissible hearsay should be avoided.

(d) Where the witness statement contains conversations it should, if the witness' recollection permits, be expressed in direct speech. If this is not possible, this fact should be stated and the witness' best recollection or the substance of the conversation may be set out.

(e) Any documents referred to in the statement should be identified by reference to the discovery number of the document. Documents referred to in the statement should

not be annexed to, or copied and supplied with the statement. Once the trial bundle has been prepared, a further copy of each witness statement is to be produced by the party serving that statement, marked up to as to show the volume of the trial bundle, and the page number within the volume, of each document referred to in the witness statement.

(f) It should contain at the end of the statement the following verification:

> *'I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding*.'

(g) It shall be prepared in accordance with best practice guide 01/2009 issued by the Western Australian Bar Association entitled 'Preparing Witness Statements for Use in Civil Cases' and shall contain a certificate to that effect signed by the practitioner most responsible for its preparation.

44. Any party who intends to object to the admissibility of any statement or any part thereof shall by _____ [date] advise the party serving the statement of his objections and the grounds thereof. By _____ [date] the party serving the statement shall inform the other party whether any of the objections are conceded.

45. If any dispute concerning the admissibility of any statement or any part thereof has not been resolved, counsel for the parties shall confer and attempt to resolve it. Such conferral shall, if practicable, be in person and failing that shall be by telephone.

46. If an intended witness, whose statement has been served in accordance with this order, does not give evidence at the trial, no party may put his statement into evidence at the trial save with leave of the court.

47. Where the party serving a statement does call the intended witness at the trial:

(a) that party may not, without leave of the court, lead evidence from that witness if the substance of the evidence is not included in the statement served; and

(b) the court may direct that the statement, or any part of it, stand as the evidence in chief of the witness;

(c) that party should have the statement ready for tender at the trial together with copies for each other party, the witness and the court.

48. Except with leave of the court, no party may adduce evidence from any witness whose statement has not been served in accordance with this order.

49. Except with the leave of the court, no party may object to any evidence in a statement served pursuant to this order other than on grounds set out in a notice of objection served on the party delivering the witness statement.

EXPERT EVIDENCE

[**See Practice Direction 4.5.2 Expert Evidence**. The making of expert evidence orders should be consistent with the overriding objectives contained in O 1 r 4A and 4B. The necessity for detailed expert evidence orders will depend on the nature of the expert evidence and complexity of the subject matter, and whether the cost to the parties are proportionate to the matter in dispute and financial position of the parties. The following orders should be regarded as a guide only and should be customised to suit the circumstances of the particular case.]

50. The parties have leave to adduce expert evidence at the trial on the following topic/s: [identify the issues and/or the relevant paragraphs in the pleadings].

51. By 4.00 pm on _____ [date] the plaintiff must provide the defendant a minute of proposed expert evidence (such minute to address those matters contemplated by par [54] below).

52. By 4.00 pm on _____ [date] the defendant must provide to the plaintiff any amended minute of proposed expert evidence, which records any changes to the minute that the defendant seeks (such changes to identify, among other things, any additional expert evidence that the defendant will seek to adduce at trial).

53. By 4.00 pm on _____ [date] the parties, in person or by their legal representatives, must confer with a view to agreeing the terms of the minute of proposed expert evidence.

54. By 4.00 pm on _____ [date] the parties must file an agreed minute, or file and serve competing minutes, of proposed expert evidence – such minute or minutes to identify by reference to each proposed expert:

(a) the nature of the proposed expert evidence (i.e. the field of specialised knowledge of the proposed expert);

(b) the specific questions on which the proposed expert will be asked to opine (identifying each issue in the pleadings to which the evidence is directed);

(c) to the extent that one party contends that a question arises which is appropriate for expert evidence, but another party disagrees, that question should be identified and the position of the respective parties recorded;

(d) the assumptions that the expert or experts will be asked to make in providing his or her opinion on each question (and if there is a dispute about the validity of any assumption, the assumption should be identified and the position of the respective parties recorded); and

(e) the facts which are relevant to the expert opinion (and if there is a dispute about the facts, the facts sought to be relied upon should be identified and the position of the respective parties recorded).

55. Subject to:

(a) there being no dispute between the parties regarding the matters referred to in the minute of proposed expert evidence; and

(b) the Court being satisfied that the proposal for adducing expert evidence set out in the minute of proposed expert evidence is appropriate,

then the parties must comply with pars [57] to [65].

56. After the filing of the minute or competing minutes of proposed expert evidence, the Court will, if necessary, hold a directions hearing to consider any matters on which the parties do not agree, to make further directions if required and to make orders for the production of any further expert report(s) that the Court considers necessary or appropriate.

57. As soon as practicable after any expert witness is engaged for the purpose of preparing a report or giving evidence in the proceedings

and before the expert makes a report, the engaging party must provide the expert witness with a copy of PD 4.5.2 - Expert Evidence, including 4.5.2.1 - Harmonised Expert Witness Code of Conduct.

58 By 4.00 pm on _____ [date] the plaintiff must file and serve on the defendant a copy of the report or the substance of the evidence of any expert witness whose evidence is to be adduced by the plaintiff.

59. By 4.00 pm on _____ [date] the defendant must file and serve on the plaintiff a copy of the report or the substance of the evidence of any expert witness whose evidence is to be adduced by the defendant.

60. By 4.00 pm on _____ [date] the plaintiff must file and serve the defendant with a copy of the report or the substance of the evidence of any expert witness that is purely responsive to any expert report provided by the defendant.

Contents of an expert's report

61. The parties must instruct every witness preparing a report to be used in the proceedings that the report must clearly state the opinion or opinions of the expert and must state, specify or provide:

(a) the name and address of the expert;

(b) an acknowledgment that the expert has read the Harmonised Expert Witness Code of Conduct and agrees to be bound by it;

(c) the qualifications of the expert to prepare the report;

(d) the questions that the expert was asked to address [a copy of any letter of instructions should be attached to the report];

(e) the assumptions and material facts on which each opinion expressed in the report is based [a copy of any letter of instructions should be attached to the report];

(f) the reasons for and any literature or other materials utilised in support of such opinion;

(g) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

(h) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

(i) that the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;

(j) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

(k) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(l) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(m) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason;

(n) where the report is lengthy or complex, a brief summary of the report at the beginning of the report;

(o) documents that record any instructions given to the expert [copies should be included as attachment to the report]; and

(p) documents and other materials that the expert has been instructed to consider [copies should be included as attachment to the report].

62. Where an expert witness has provided to a party (or that party's legal representative) a report for use in the proceedings, and the expert thereafter changes his or her opinion on a material matter, the party must instruct the expert to prepare a supplementary report which must state, specify or provide the information referred to in par 61 (a), (e), (f), (h) – (n) and, if applicable, par (g) (but may refer to material contained in the earlier report without repeating it).

Expert conference to be arranged by the parties

63. If there are differences between the evidence of the respective expert witnesses, the parties shall arrange for a conference to be held between the expert witnesses in the absence of the solicitors, counsel and the parties for the purpose of narrowing or removing the differences.

OR

If there are differences between the evidence of the respective expert witnesses, the parties shall arrange for a conference to be held between the expert witnesses in the absence of the parties for the purpose of narrowing or removing the differences. Solicitors and/or counsel may attend at some stages of the conference, if required, but their role is strictly to facilitate and assist the experts to confer, particularly to:

(a) identify any point(s) of contention that the experts have not addressed; and

(b) answer any questions that experts may have.

64. The experts shall be instructed by the parties to prepare and sign within seven (7) days of the conclusion of the conference a joint expert report (JER) recording:

(a) the substance of all matters upon which they are agreed;

(b) the points of differences which remain between the experts;

(c) a succinct statement of the position of each expert in relation to each point of difference;

(d) if a particular proposition is beyond their expertise (and not record agreement or disagreement with the proposition in those circumstances);

(e) if a particular proposition has not been examined in adequate detail by them to be able to agree or disagree (and not record agreement or disagreement with the proposition in the circumstances);

(f) where an expert agrees subject to a qualification or reservation, the basis for that qualification or reservation; and

(g) if any propositions in the JER are based on material that is not set out in individual expert reports and identify the additional material (including orally communicated explanations).

The JER shall be signed by all of the experts that attended the conference, filed and served by the solicitors for the plaintiff within seven (7) days of its execution.

65. By 4.00 pm on _____ [date], the parties shall inform the Associate to the [judicial officer] that the conference has occurred as directed and that the JER has been filed.

Expert conclaves

66. The conclave will be chaired by a Registrar of the Court.

67. The experts must participate in the conclave in the absence of the parties and the legal representatives of the parties.

68. The parties and their legal representatives may not seek to restrict the freedom of the experts at the conclave in identifying the matters on which they agree or disagree.

69. As soon as practicable, the parties must instruct the [insert description – e.g. planning] experts that have been engaged by them that:

(a) they must participate in a [insert number] day expert conclave to be chaired by a Registrar of the Court in [insert the month/s and year in which conclave is to be held];

(b) they must be present in person for the duration of the conclave;

(c) following the conclave, they must confer with the other experts, according to a procedure agreed by the experts or determined by the Registrar, in relation to the preparation of a JER; and

(d) within [insert number of days, noting that the usual timeframe will be twenty eight (28) days] of the conclave the experts must provide the final JER to the Registrar, for issue by the Registrar to the parties.

70. By 4.00 pm on _____ [date], the parties must provide to the Principal Registrar, their combined available dates for the [insert description – e.g. planning] experts to participate in a [insert number] day expert conclave in [insert the month/s and year in which conclave is to be held].

71. By 4.00 pm on _____ [date] the parties must file an agreed minute or competing minutes of proposed agenda for the conclave of [insert description – e.g. planning] experts, which:

(a) must record whether the conclave agenda is agreed by the parties after each party has conferred with the experts that have been engaged by them, and if the conclave agenda is not agreed, must record the differences as between the parties;

(b) must include a complete list of the issues required to be the subject of expert evidence, framed as questions;

(c) sets out the questions under broad headings arranged in logical order;

(d) may identify passages of reports or statements of evidence, or documents in evidence, that are relevant to those questions; and

(e) marks the issues the subject of agreement as between the parties or the experts in their respective reports as 'agreed'.

72. In the event that the conclave agenda is not agreed, or if any filed minute of proposed conclave agenda does not comply with par 71, or if the Court determines that for any other reason further directions may be required in relation to the proposed conclave agenda and conclave, the Court will relist the proceedings for further directions. Otherwise, the conclave will proceed in accordance with the agreed minute of proposed conclave agenda.

73. The purpose of an expert conclave is to facilitate the efficient conduct of the proceeding and assist the parties to:

(a) resolve by agreement any issues in dispute which are capable of being resolved and narrow the scope of remaining issues in dispute;

(b) ensure that legal and other costs incurred are reasonable and proportionate to the complexity or importance of the issues in dispute; and

(c) conduct the proceedings efficiently by acting promptly and minimising delay.

74. In order to promote that purpose:

(a) the parties are to be notified by no later than the conclusion of the expert conclave of any instructions given to the experts by the Registrar that are in addition to the Court's orders, and, on request, be given the opportunity to be heard in relation to those instructions; and

(b) the parties are to be notified of any proposal for further work or further reports arising from the conclave, and, on request, be given the opportunity to be heard in relation to the proposal.

75. By no later than [insert number of days, noting that the usual timeframe will be twenty eight (28)] days before the commencement of the conclave, the parties must ensure that each expert engaged by them and the Registrar are provided with:

(a) the report(s) of the other expert(s) participating in the conclave;

(b) all documents relied upon by the other expert(s) in preparing their reports;

(c) a copy of any orders that are in place in relation to expert evidence; and

(d) a copy of the final conclave agenda.

76. The experts will familiarise themselves with all reports and materials provided prior to commencement of the conclave.

77. The experts shall be instructed by the Registrar to prepare and sign within seven (7) days of the conclusion of the conclave, a joint expert report (JER):

(a) addressing the questions in the agenda;

(b) recording:

(i) the substance of all matters upon which they are agreed;
(ii) the points of differences which remain between the experts; and
(iii) a succinct statement of the position of each expert in relation to each point of difference;

(c) stating if a particular proposition is beyond their expertise (and not record agreement or disagreement with the proposition in those circumstances);

(d) stating if a particular proposition has not been examined in adequate detail by them to be able to agree or disagree (and not record agreement or disagreement with the proposition in the circumstances);

(e) where an expert agrees subject to a qualification or reservation, explaining the basis for that qualification or reservation; and

(f) noting if any propositions in the JER are based on material that is not set out in individual expert reports and identifying the additional material (including orally communicated explanations).

The JER shall be signed by all of the experts that attended the conference.

78. The experts shall provide the JER to the Registrar and the Registrar will issue the same to the parties.

79. The plaintiff is to file the JER by no later than [insert number of days, noting that the usual timeframe will be seven (7)] days after the Registrar has issued the JER to the parties.

80. The experts must preserve for production any additional material, calculations or workings that underpin any propositions in the JER and produce those to the party by whom they have been retained within seven [7] days following a request of any party. The party receiving that material will then circulate it to the other parties.

81. By no later than seven [7] days before the commencement of the conclave, the parties instruct the expert(s) engaged by them that:

(a) from the commencement of an expert conclave until the final JER is provided to the Registrar, they must not communicate to any other person (including, but not limited to, the party for whom the expert was engaged and their legal representatives) any matter disclosing:

(i) the progress or content of the discussions at the expert conclave; and

(ii) the progress or content of the conferral, drafting and settling of the JER following the conclave.

(b) at all times, all drafts of the JER are confidential. Experts must not disclose the drafts to any person (including, but not limited to, the party for whom the expert was engaged and their legal representatives).

82. If, during the period between the commencement of an expert conclave until the JER is provided to the Registrar, a party or their legal representatives seeks to communicate with an expert about a matter that in their opinion is not related to any matter intended to be dealt with in the conclave, the person seeking to make the communication must first make a request in writing to the Registrar to obtain consent for the matter to be raised with the expert.

83. All communications between the experts from the commencement of an expert conclave until the final JER is provided to the Registrar are treated as confidential. No expert can be cross-examined as to the course of the expert conclave without leave of the Court.

CHRONOLOGY

84. No later than seven (7) working days prior to the date fixed for the commencement of the trial, the plaintiffs will file and serve a chronology of events settled by counsel. The chronology must succinctly, objectively and without argument, state the date and facts of each event that is material to the proceedings in numbered paragraphs arranged in date order. The facts as identified in the chronology should be linked to the documentary source relied upon to prove that fact at trial.

85. No later than four (4) working days prior to the date fixed for the commencement of the trial, the defendant will file and serve its reply to the plaintiff's chronology of relevant events settled by counsel. This reply must respond to the plaintiff's chronology and either agree the chronology is correct or:

(a) identify any errors in the chronology; and

(b) identify any further events that the defendant alleges ought to be included or excluded. Where further events are included the defendant should state succinctly, objectively and without argument the date and facts of each further event, and link the facts as identified in the chronology to the documentary source relied upon to prove that fact at trial.

LIBERTY TO APPLY

86. Nothing in the foregoing precludes any party from exercising their right to seek the re-listing of the matter for further directions at any time.

NEXT DIRECTIONS HEARING

87. The next directions hearing shall be at _____ hrs on _____

COSTS

88. (a) the costs of today be in the cause;
(b) the costs of today be reserved;
(c) the costs be reserved to the [trial Judge];
(d) the [plaintiff/defendant] pay the [plaintiffs/defendant's] costs fixed in the sum of [$...] forthwith;
(e) there be no order as to costs;
(f) the costs of the application be in the cause;
(g) the costs of the application be reserved; or
(h) the costs of the application be reserved to the [trial Judge].

4.1.2.3. Proceedings brought pursuant to arbitration law

Purpose

1. The purpose of this Practice Direction is to formalise arrangements made by the Supreme Court for managing proceedings brought pursuant to the *Commercial Arbitration Act 2012* or the *International Arbitration Act 1974* (Cth) (arbitration law).

The Commercial Arbitration List

2. Proceedings brought pursuant to arbitration law will be automatically entered onto the CMC List (O 4A r 11(ca) and the *Supreme Court (Arbitration Rules) Rules 2016*), but are managed as part of a separate 'Commercial Arbitration List'.

The Judge in Charge of the Commercial Arbitration List

3. The Commercial Arbitration List is managed by a designated Judge, the Judge in Charge of the Commercial Arbitration List.

Documents

4. All documents filed in proceedings brought under arbitration law should have the words 'COMMERCIAL ARBITRATION LIST' endorsed directly beneath 'In the Supreme Court of Western Australia' on the top left corner of the document and should also bear the name of the Judge in Charge of the Commercial Arbitration List below the document tram lines (refer to sample form 1.2.1.4).

Enquiries

5. Any enquiries about commercial arbitration proceedings should be referred to the Associate of the Judge in Charge of the Commercial Arbitration List.

Application of PD 4.1.2

6. Other than as set out above, Commercial Arbitration List matters will be managed in accordance with CMC List matters as set out in PD 4.1.2.

4.1.3. Telephone Conferencing before General Division Registrars and CMC List Judges (Revoked)

[Practice Direction 4.1.3 was revoked on 15 July 2016.]

4.1.3.1. Teleconferencing Request Form (Revoked)

[Practice Direction 4.1.3.1 was revoked on 15 July 2016.]

4.1.4. Case management requests, conferences and related issues

1. The *Rules of the Supreme Court 1971* (RSC) relating to case management were amended with effect from 30 August 2017.

2. This Practice Direction is intended to provide guidance to parties about the new case management procedures. It applies to all cases that are case managed, whether on the CMC List or otherwise.

3. For the purposes of this Practice Direction:

   (a) ***case management direction*** has the same meaning as in RSC O 4A r 2(1);

   (b) ***interlocutory order*** should be understood in the context of the decisions such as ***Carr v Finance Corporation of Australia (No 1)*** (1981) 147 CLR 246 which establish the test for determining whether an order is interlocutory or final. That is, an order, if made, is interlocutory, if the order:

      (i) would not finally determine the substantive rights of the parties as raised by the litigation; or

      (ii) may be displaced other than by way of appeal and, for example, the option to request that the order be set aside is available, or if the order was refused, the applicant might again apply for a similar order.

Case management requests and other applications

4. RSC O 4A r 5A provides that party requests to make, cancel or amend ***case management directions*** and ***interlocutory orders*** are to be by way of letter to the case manager unless:

   (a) the request is made orally during a case management conference or hearing; or

   (b) the request is made by way of summons or motion, because although not otherwise required, formal process is justified by the circumstances of the particular case or the nature of the request; or

(c) the *Supreme Court (Corporations) (WA) Rules 2004* (WA) apply to the case, in which case the request is to be made in accordance with a form specifically prescribed for the purpose (see *Supreme Court (Corporations) (WA) Rules 2004* r 2.2); or

(d) a form, prescribed under a written law, is specific to the nature of the request; for example, the forms in Schedule 1 of the *Supreme Court (Arbitration) Rules 2016* (WA) (see *Supreme Court (Arbitration) Rules 2016* r 4).

5. Case management requests made by letter are to comply with RSC O 4A r 5B(1)-(2), and are to be filed in accordance with O 67A, div 2.

6. The following is intended to provide guidance to parties determining when a request is for interlocutory orders and case management directions, and considering whether these should be made by letter or by using a formal application. Please note that it is not comprehensive. It is intended only to provide examples of the reasoning that would support a decision about how to apply to the Court:

APPLICATION	FORM OR LETTER?	REASON
i. COMMENCING PROCEEDINGS (LETTERS ARE NOT AVAILABLE)		
1.	Originating application seeking substantive relief e.g. damages for breach of contract; possession of property	Originating forms under RSC (generally by writ - Form 1 or 2; originating summons - Form 74 or 75; or originating motion - Form 64)	The application is commencing proceedings (use generic form as no specific form is prescribed)
2.	Originating application for judicial review, writs of certiorari, mandamus, *procedendo*, prohibition or habeas corpus	Originating forms under RSC (Form 67A, 67, 69, 70, 71 and 73 respectively)	The application is commencing proceedings (use specific forms as prescribed)
3.	Originating application for an information of *quo warranto*	Originating form under RSC (Form 64)	The application is commencing proceedings (use generic form as required by O 56 r 34A)

	APPLICATION	FORM OR LETTER?	REASON
4.	Originating application under a provision of the *Corporations Act 2001* (Cth)	Originating process form under *Supreme Court (Corporations) (WA) Rules 2004* (Form 2)	Prescribed form required by r 2.2(3) *Supreme Court (Corporations) (WA) Rules 2004*
5.	Application for issue of subpoena in arbitral proceedings under *Supreme Court (Arbitration) Rules 2016* (WA)	Originating summons under *Supreme Court (Arbitration) Rules 2016* (WA) (Form 4 or 15)	Prescribed form required by r 9 and r 17 *Supreme Court (Arbitration) Rules 2016* (WA)
	ii. APPLICATIONS FOR INTERLOCUTORY ORDERS AND CASE MANAGEMENT DIRECTIONS		
	(a.) Examples of when prescribed forms are to be used		
6.	Application for a stay and referral under r 6 *Supreme Court (Arbitration) Rules 2016* (WA)	Form 1 *Supreme Court (Arbitration) Rules 2016* (WA)	Required by r 4 *Supreme Court (Arbitration) Rules 2016* (WA) (and see RSC O4A r 5A 2(d))

	APPLICATION	FORM OR LETTER?	REASON
7.	Interlocutory application under a provision of the *Corporations Act 2001* (Cth) for an interlocutory order	Formal application under *Supreme Court (Corporations) (WA) Rules 2004* (Form 3)	Required by r 2.2(4) *Supreme Court (Corporations) (WA) Rules 2004* (and see RSC O 4A r 5A(2)(c))
8.	Application to set aside a subpoena issued by the Supreme Court under the RSC O 39A (*Trans-Tasman Proceedings Act 2010* (Cth))	RSC Form 31A	Required by RSC O 39A r 4(1) (and see RSC O 4A r 5A(2)(d))
9.	Request for default judgment in specified mortgage action (RSC O 13 r 6)	RSC Form 36B	The application is seeking an interlocutory order; it does not finally determine the substantive rights of the parties because it may be set aside other than by way of appeal (RSC O 13 r 14). However as a form is prescribed under RSC O 13 r 6(2)(b), RSC O 4A r 5A(2)(d) applies
10.	Application for interlocutory injunctions, interim preservation of property orders, a freezing	Chamber summons or motion (RSC Form 77 or 65)	Although these are interlocutory applications, formal process is justified by the nature of the orders sought - see RSC O 4A r 5A(2)(b)

	APPLICATION	FORM OR LETTER?	REASON
	order, search order under RSC O 52, 52A, 52B		
11.	Application for an order that a party is in contempt under RSC O 55	Chamber summons or motion (RSC Form 77 or 65)	Although this is an interlocutory application, formal process is justified by the nature of the order sought - see RSC O 4A r 5A(2)(b)
12.	Application for removal of next friend or guardian, or settlement etc of action by person under disability under RSC O 70	Chamber summons or motion (RSC Form 77 or 65)	Although these are interlocutory orders which do not finally determine the proceeding, formal process is justified by the nature of the orders sought - see RSC O 4A r 5A(2)(b)
13.	Application related to *Criminal Property Confiscation Act 2000* (WA) (other than one commencing proceedings)	Chamber summons or motion (RSC Form 77 or 65)	Although these are interlocutory orders which do not finally determine the proceeding, formal process is justified by the nature of the request - see RSC O 4A r 5A(2)(b)

APPLICATION		FORM OR LETTER?	REASON
14.	Application seeking an interlocutory order that is to be served outside the jurisdiction under the Hague Convention or the *Service and Execution of Process Act 1992* (Cth)	Chamber summons or motion (RSC Form 77 or 65)	Although these are interlocutory orders which do not finally determine the proceeding, formal process is justified by the circumstances of the particular case (to assist those outside of the jurisdiction appreciate the nature of the proceeding) - see RSC O 4A r 5A(2)(b)
(b.) Examples of when letters may be used			
15.	Application for leave to issue a subpoena under the RSC O 36B r 2(2B)-(2C)	Letter	The application is seeking an interlocutory order - as it does not finally determine the substantive rights of the parties - and no form is prescribed
16.	Application for leave to issue a subpoena in relation to proceedings in the Supreme Court under the	Letter	The application is seeking an interlocutory order - as it does not finally determine the substantive rights of the parties - and no form is prescribed

	APPLICATION	FORM OR LETTER?	REASON
	RSC O 39A (*Trans-Tasman Proceedings Act 2010* Cth)		
17.	Application for a default judgment (other than under RSC O 13 r 6)	Letter	The application is seeking an interlocutory order - as it does not finally determine the substantive rights of the parties because it may be set aside other than by way of appeal - and no form is prescribed
18.	Application for a case management direction when no form is otherwise prescribed and the nature of the order sought or circumstances do not warrant more formal process (see examples in section ii(a) above)	Letter	The application is seeking an interlocutory order - it does not finally determine the substantive rights of the parties

APPLICATION		FORM OR LETTER?	REASON
19.	Application for security for costs	Letter	The application is seeking an interlocutory order - as it does not finally determine the substantive rights of the parties - and no form is prescribed
iii. APPLICATION TO DETERMINE SUBSTANTIVE CASE (LETTERS ARE NOT AVAILABLE)			
20.	Application for summary judgment	Formal application (generally by chamber summons - RSC Form 77)	Final order - Finally determines the substantive rights of the parties and is only subject to appeal if granted. No specific prescribed Form and so generic prescribed form to be used
21.	Application for a summary judgment in an Arbitration law or *Corporations Act* proceeding	Formal application (generally by chamber summons - RSC Form 77)	Final order - finally determines the substantive rights of the parties and is only subject to appeal if granted. No specific prescribed Form and so generic prescribed form to be used
22.	Application for proceedings under judgment or orders RSC O 61	Formal application (chamber summons - RSC Form 77)	Final order - finally determines the substantive rights of the parties and is only subject to appeal if granted.

APPLICATION		FORM OR LETTER?	REASON
			No specific prescribed form and so generic prescribed form to be used

4.2. Mediation and Compromise

4.2.1. The Supreme Court Mediation Programme

Introduction

1. Mediation is an integral part of the case management process and, in general, no case will be listed for trial without the mediation process having first been exhausted.

Mediation Registrars

2. The Chief Justice approves mediators to conduct mediations in civil proceedings in the Supreme Court pursuant to pt IV of the *Supreme Court Act 1935* (WA) (SCA) and O 4A r 1 of the *Rules of the Supreme Court 1971* (WA). The list of approved mediators is kept by the Chief Justice, and includes all registrars of the Court and a number of judges. There are no private mediators currently approved by the Chief Justice.

3. Most mediations are conducted by the Court's mediation registrars. The Court may assign two mediation registrars to mediate a case where appropriate. This may be because there are a large number of parties, a number of cases are to be mediated together, or the case is particularly complex.

4. The Court may direct that a mediation be conducted by a judge of the Court if warranted by the particular aspects of the case.

5. The Court may also direct that a mediation conference be conducted by a private mediator. However pursuant to O 4A r 2(5) of the Rules, it cannot, without the consent of the parties, direct that a conference take place where a party would become liable to remunerate a mediator.

Privilege and Confidentiality

6. Mediation conferences are conducted pursuant to SCA pt VI. Section 71 of the SCA sets out the privilege attaching to mediations. Section 72 of the SCA sets out the obligation of confidentiality that binds the mediator.

Expert mediations

7. In appropriate circumstances the Court will order mediation between experts with a view to narrowing any points of difference between them and identifying any remaining points of difference - see O 4A r 2(2)(k).

Timing

8. Practitioners should discuss mediation with their client at the commencement of the case and consider whether it should be mediated early. Practitioners will be asked about the suitability of a case for mediation on a regular basis and must be instructed on the point. They must be able to justify a refusal to go to mediation, particularly where the matter is yet to be mediated or, in a case that has previously been mediated, the other side is willing to return to mediation. Practitioners should bear in mind that, in general, no case will be listed for trial without the mediation process having first been exhausted.

9. The timing of mediation is important and will vary from case to case. Many cases benefit from early mediation prior to substantial costs being incurred and the parties becoming entrenched in their positions. The Court will make mediation orders prior to the filing of pleadings or affidavits in appropriate cases. It is open to the parties to file a consent order listing the case for mediation prior to the first case management conference.

Information for parties

10. The Court has produced a brochure 'Mediation - What you need to know'. The Court may direct practitioners to provide a copy of the brochure to their client at the commencement of an action and following the making of mediation orders. Copies of the brochure are available from the Court free of charge.

Usual orders

11. The usual orders made by the Court when listing a case for mediation are:

    (a) The case be referred to mediation pursuant to *Supreme Court Act 1935* (WA) pt VI.

    (b) (i) By [*date*] the other parties advise the plaintiff of the dates on which the advising parties are unavailable for mediation.

    (ii) Within three (3) business days of receiving the advice referred to in the preceding subparagraph, the plaintiff file a request for appointment in the approved form completed so as to show one list of all parties' unavailable dates.

    (iii) Without limiting the power of the Court to make any order for costs of the action or the mediation, the plaintiff pay the fee prescribed when filing the request for an appointment for mediation.

    (c) At least 14 days prior to the mediation conference, the solicitors for the parties give their client a copy of the Court brochure 'Mediation - What you need to know'.

    (d) At least 14 days prior to the mediation conference, the solicitors for each party give their respective clients a memorandum setting out:

    (i) the exact legal costs and disbursements (including any expert fees) that the party has incurred to the date of the memorandum;

    (ii) the estimated future legal costs and disbursements (including any expert fees) that the party will incur up to and including a mediation conference lasting no more than one (1) day;

    (iv) the estimated future legal costs and disbursements (including any expert fees) that the party will incur to the end of trial, setting out the estimated duration of trial; and

    (v) the estimated party and party costs recoverable by, or payable by, the party in the respective cases of success or failure at trial.

(da) At least 14 days prior to the mediation conference, the solicitors for each party provide to the mediator (by email to the associate to the mediator) a copy of the memorandum provided to their client in accordance with par 11(d). The memorandum is to be provided on a confidential basis, not to be placed on the court file, and at the conclusion of the mediation is to be kept confidential or returned to the solicitors for each party.

(e) The following people must attend the mediation conference in person:

(i) each party who is a natural person;

(ii) if a party is not a natural person, a representative of that party familiar with the substance of the litigation and with authority to compromise it;

(iii) where the settlement negotiations are to be conducted on behalf of a party by its insurer, a representative of the insurer with authority to conduct settlement negotiations and to settle the case; and

(iv) the solicitor or counsel, if any, representing each party.

(f) Within seven (7) days after the conclusion of a mediation conference the plaintiff shall inform the Case Manager's Associate that the conference has occurred as directed and the outcome of the conference.

Listing mediations

12. A request to list a mediation conference should be in the form set out at Practice Direction 4.2.1.1. If there are any particular logistical arrangements which the parties wish the Court to make, this should be set out in the request (for example, a request that the mediation take place in Albany where all the parties reside).

13. Resources permitting, the Court aims to list mediations within eight (8) weeks of the filing of the request for mediation conference form. Where a case requires urgent mediation the Court will list a conference at short

notice and require greater flexibility than usual from the parties and their lawyers.

14. A mediation listing fee is payable pursuant to the *Supreme Court (Fees) Regulations 2002* (WA) sch 1, div 1, item 7(c). The plaintiff is usually required to pay the fee however in appropriate cases the Court may order that a party other than the plaintiff pay the fee or that the parties share the fee. The fee includes the first day of the mediation, any preliminary conferences and any adjournment of the conference. Where the mediation is initially listed for more than one day, the fee is payable pursuant item 7(c) is payable for each day of the mediation (item 8). Where the mediation is terminated, as opposed to adjourned, if the case is subsequently listed for a second mediation, the fee is again payable.

Information for the mediation

15. The mediator may direct that the parties provide information to assist them as mediator to efficiently and productively manage the mediation. This could include providing:

- Copies of key documents.
- Copies of without prejudice correspondence.
- Copies of experts' reports.
- A chronology of relevant events.
- A mediation briefing note.

A direction to provide these documents will be by letter from the associate to the mediator. At the conclusion of the mediation, any documents provided will be kept confidential or be returned to the parties.

15A. The usual order made by the Court is that the solicitors for each party provide to the mediator (by email to the associate to the mediator) a copy of the memorandum of costs provided to their client on a confidential basis (see par 11(d) and (da)). The mediator may make a further direction that the parties provide, on a confidential basis, a copy of the memorandum of costs to the other party or parties. If making such a direction, the mediator will also direct that at the conclusion of the mediation the memorandum provided will be kept confidential or be returned to the party who provided it.

15B. The purpose of open disclosure as to costs between the parties and the mediator is to allow the mediator to openly comment on the value, importance and complexity of the subject matter and the financial position of each party. Transparency as to costs may assist the parties to put the cost of proceedings into perspective and encourage them to settle the dispute.

Preliminary conferences

16. A mediator may hold a preliminary conference, for example, in a complex multi-party mediation. A party may request a preliminary conference if it would assist the mediation process. A request should be made when the mediation order is made or thereafter to the mediator following conferral.

17. Issues that may be dealt with at a preliminary conference include:

- Where the mediation is to be held.
- The length of the mediation.
- Who is to attend the mediation and when.
- Whether a number of actions will be mediated at the same time or one after the other.
- Confidentiality issues that arise from actions involving different parties being mediated at the same time.
- Facilities that may be required for the mediation, such as teleconferencing.
- The making of directions or requests for information to facilitate the conduct of the mediation conference.
- Background or context information to assist the mediation registrar to efficiently and productively facilitate the mediation.

18. The preliminary conference is subject to *Supreme Court Act 1935* (WA) pt VI.

19. The preliminary conference will usually involve only the lawyers for each party. If an in-person conference is not practicable, it may be by telephone conference or video link. The mediator may conduct separate preliminary conferences with each party and their lawyer. If

this occurs, the mediator will treat the preliminary conference in the same way as a private session in the mediation. Everything said will be confidential and will not be disclosed to the other side unless the mediator is specifically authorised to do so.

Where mediations are held

20. Most mediations are held at the David Malcolm Justice Centre (DMJC) 28 Barrack Street, Perth.

21. The Court also conducts mediations at other sites in Perth, usually due to the number of parties involved or the particular resources required, and in country areas where appropriate. A request that a mediation be held away from the Court should be made when the mediation order is made or thereafter, to the mediator following conferral.

Duration of mediations

22. Mediations are usually listed for one day commencing between 9:30 am and 10.30 am. Practitioners and parties who attend mediations should keep the day free so that they do not have to leave the conference before it ends.

23. Court of Appeal mediations, asbestos-related mediations and adjourned mediations may be listed at other times and for shorter duration.

Who must attend

24. The usual order made by the Court (set out at par 11) is designed to ensure that the mediation is attended by every person who needs to be involved in the mediation in order for a settlement to be reached

25. Attendance by telephone does not comply with the usual orders. A party who resides in another state will usually be required to attend in person rather than simply being available by telephone. The parties may not agree between themselves that a party may attend by telephone.

26. Any issues regarding the attendance of a party, including whether a party may attend by telephone, should be raised when the mediation order is made or with the mediator prior to the mediation following conferral. (Refer to Practice Direction 4.1.3.)

27. Where a party is represented by an insurer, a properly authorised representative of the insurer must attend the mediation, with or without the insured. Attendance by telephone without prior approval is not acceptable.

Authority

28. A representative of a party who attends a mediation must have authority to compromise the case. He or she must have flexibility in the approach they take to the mediation rather than being limited to making a single offer or a limited number of offers on behalf of the party without then having to obtain further instructions.

Who may attend

29. Sometimes a party will wish to have someone present at the mediation who is not a party (non-party), but who can help resolve the dispute. There is no right to have a non-party present, but, by agreement between the parties, the mediator may allow them to be present. The non-party will be required to give an oral undertaking to the mediation registrar to maintain the confidentiality of the mediation process.

Proper preparation for conferences

30. The Court expects the practitioner with the conduct of the case or properly briefed counsel to attend the mediation with the party. The practitioner's role at a mediation is not to act as an advocate but to support and advise the party. The practitioner or counsel should have discussed the following matters with the party well prior to the mediation:

    - the mediation process;
    - the prospects of succeeding in the action (or successfully defending it);
    - the relative strengths of the other parties' cases;
    - possible outcomes at trial, including best, moderate and worst case outcomes;
    - the costs incurred up to the date of the mediation conference;
    - the costs likely to be incurred in taking the matter to trial;
    - the costs likely to be recovered if the party wins;
    - the costs likely to be incurred if the party loses;
    - the interests of the parties;
    - any particular outcomes which the party would like to achieve from the litigation; and
    - possible solutions to the dispute, including outcomes which cannot be obtained following a trial.

31. The value of disputed property is a key issue in many mediations, particularly in disputes as to the ownership of residential property. Practitioners should consider whether valuation evidence may be required for the mediation and if so, obtain valuations, whether formal or informal, prior to the mediation. This may avoid an adjournment.

32. Practitioners should also consider whether issues may arise in any possible settlement as to capital gains tax, income tax or GST and where possible, obtain advice prior to the mediation.

Adjournments

33. A party who seeks an adjournment should confer with the other side and then advise the mediator in writing.

34. The Court will only adjourn mediation conferences indefinitely in exceptional circumstances. Conferences that cannot be adjourned to a fixed date or to a date to be fixed will usually be terminated.

Costs - failure to cooperate

35. Each party's costs of and incidental to a mediation are the party's costs in the cause. A party to a mediation may, however, apply for the costs of a mediation if they have been incurred unnecessarily by the conduct of another party - see O 4A r 8(4)(c). Such an application should be made to the case manager. The mediator, if a judicial officer, will not usually make any costs order in a mediation.

36. The mediator may report to the Court on any failure by a party to cooperate in a mediation - see O 4A r 8(5)(b) and (6).

Mediation of appeals

37. The Court of Appeal encourages all parties to an appeal to consider mediation as a way of achieving a final resolution of their dispute. Mediation of appeals is generally conducted on the same basis as mediations of civil cases except that the time for the mediation conference is normally limited to 1.5 - 2 hours unless the parties agree to extend the time. Any party who is interested in arranging a mediation of an appeal should contact the Associate to the Court of Appeal Registrar.

4.2.1.1. Request for Mediation Conference

Date:

YOUR REF:
OUR REF:

The Associate to the Principal Registrar
Supreme Court of Western Australia
Level 11, 28 Barrack Street
PERTH WA 6000

Dear

RE:

1. Pursuant to the Order/Direction of _____ dated _____ it is requested that a Mediation Registrar set a date for a Mediation Conference to be held in this Action.

2. The combined available dates of all parties for the next three months are:
   a. _____
   b. _____
   c. _____

3. The parties estimate the length of time required for the Conference to be:

4. Enclosed is payment of the sum of $, being the fee for the appointment before a judge, master or registrar for mediation prescribed in the *Supreme Court (Fees) Regulations 2002*.

Solicitor for _____

Date of Filing at the Central Office: _____

4.2.1.2. Approval and Accreditation of Mediators (Revoked)

[Practice Direction 4.2.1.2 was revoked on 9 March 2016.]

4.2.2. Applications for Leave to Compromise by Persons under a Disability

1. This Practice Direction applies to applications for leave to compromise under O 70 r 10 and r 10A and is published with the concurrence of the Chief Judge of the District Court so as to apply to the practice in that court as well as in the Supreme Court.

2. Where counsel's opinion is not dispensed with, it must be obtained, filed and identified, and the court will normally be required to be satisfied:

   (a) that the next friend, (or guardian appointed by a court to be the representative in a particular lawsuit as the case may be) has perused counsel's opinion, has discussed it with the solicitor and approved of or consents to the proposed compromise;

   (b) that the facts on which counsel's opinion is based are correct and complete so far as can be ascertained;

   (c) that sufficient facts are identified to enable the court to form an opinion in respect of the matter to be approved, and that grounds for any apportionment of liability are stated; and

   (d) that in the opinion of both counsel and solicitor, the proposed compromise would be beneficial to the person under disability.

3. Where counsel's opinion is dispensed with, the court will normally require an affidavit by the next friend's solicitor setting out the relevant facts (as above, so far as applicable) and stating in effect that he had discussed the case with the next friend who approved of or consents to the proposed compromise, and that the solicitor considers the proposed compromise to be beneficial to the person under disability.

4.2.3. Compromise (settlement) after entry for trial/hearing (Refer to PD 4.4.3)

Refer to Practice Direction 4.4.3.

4.3. Interlocutory Disputes

4.3.1. Masters Chambers

1. The Supreme Court has a Master, a judicial officer who handles:

   (a) interlocutory (preliminary) matters prior to trial in civil cases commenced by writ;

   (b) civil cases commenced by originating processes other than by writ; and

   (c) CMC List matters.

2. Subject to any direction otherwise, the Master will sit in Chambers at 9.45 am:

   (a) on Tuesday and Thursday to hear the Master's List; and

   (b) on Wednesday to hear the Master's CMC List.

3. Special appointments will be given for case management requests that are expected to take more than 20 minutes.

4. Where a special appointment is sought, the case management request should be listed in ordinary chambers in the first instance for direction regarding the filing and service of affidavits and any other requisite directions.

5. Solicitors should provide to the Master's Associate, on the same day programming orders for a special appointment are made, their unavailable dates. If dates are provided, such consideration will be given to counsels' availability as is consistent with the expeditious disposal of the matter.

6. It is the responsibility of the parties to ensure compliance with programming orders. The Court will not take any steps to ensure such compliance. Any party seeking to vary programming orders, either by reason of a failure to comply with the orders or otherwise, should contact the Associate to the Master and arrange for the matter to be listed in Chambers. As a general rule no affidavit is required in these circumstances.

4.3.2. Conferral prior to making an application

1. Following this Practice Direction are forms for a memorandum of conferral pursuant to O 59 r 9(1) (Form 108 at PD 4.3.2.1) and a memorandum supporting the waiver of conferral pursuant to O 59 r 9(2) (Form 109 at PD 4.3.2.2). The forms are largely self-explanatory. Practitioners and self-represented persons should also consider the following matters.

2. Order 59 r 9 provides as follows:

> '(1) No order shall be made on an application in chambers unless the application was filed with a memorandum stating -
>
> (a) that the parties have conferred to try to resolve the matters giving rise to the application; and
>
> (b) the matters that remain in issue between the parties.
>
> (2) The Court may waive the operation of subrule (1) in a case of urgency or for other good reason.'

3. The Court promotes the use of the conferral process under O 59 r 9. See ***Youlden Enterprises Pty Ltd v Health Solutions (WA) Pty Ltd*** [2006] WASC 161; (2006) 33 WAR 1 [3] - [5]. The purpose of O 59 r 9 is to ensure that:

- parties resolve issues between themselves so far as possible;
- only those matters which are really in dispute are referred to the Court; and
- on occasions when matters are to be determined by the Court all parties appreciate what the real issues in dispute are.

4. Practitioners, as officers of the Court, have a duty to approach the conferral process to achieve the spirit encapsulated in par 3 of this Practice Direction and not merely to comply with the letter of O 59 r 9.

5. Order 59 r 9 requires that parties confer in the sense of there being an exchange of views for the purpose of trying to resolve the matters in issue. Conferral is required no matter how unlikely it is that the parties will reach agreement or even narrow the issues between them.

6. Conferral must occur shortly prior to the making of an application and must relate to the application itself rather than simply to the issue that is the subject of the application. The giving of notice of an intention to make an application is not conferral.

7. Practitioners with authority to resolve the interlocutory dispute must confer either face to face or by telephone. While an exchange of correspondence will often be part of the conferral process it will only be where face to face or telephone contact is not feasible that reliance simply upon written communication can be justified. In such a case, which will be exceptional, the claimed justification should be set out in the memorandum of conferral.

8. A memorandum of conferral must follow Form 108. It is not acceptable to include a note regarding conferral at the foot of an application. A separate memorandum must be filed. The memorandum must set out briefly the facts relied upon to show conferral. It is not acceptable to note simply that conferral has occurred and that the parties are unable to agree.

9. Affidavits filed in connection with the proceedings should not contain any reference to the conferral without leave of the court. In the past the practice of including this material in affidavits has discouraged the making of concessions in the course of those communications.

10. In the event that parties are unable to resolve the matters in dispute between them, there must be conferral with a view to agreement being reached as to the programming of the application for a case management conference. This may enable the Court to make programming orders or to deal with the application entirely without the need for any appearance by the parties. Paragraph 3 of Form 108 deals with this.

11. In the event that a party seeks an order that the requirement for conferral be waived, for example, because attempts to confer with other parties have been unsuccessful or urgency, then:

    - An order to this effect must be sought in the application; and
    - A memorandum in terms of Form 109 must be filed that states briefly the facts relied upon to support waiver.

12. A failure to:

- confer;
- file a memorandum of conferral; or
- comply with the requirement to omit reference to the conferral in an affidavit without leave of the court (par 9);

may result in adverse costs orders being made against those parties or practitioners who are at fault.

4.3.2.1. Form 108 - Memorandum of Conferral

ORDER 59 RULE 9(1)
MEMORANDUM OF CONFERRAL
RE: [THE PLAINTIFF'S/ DEFENDANT'S] LETTER
[*or APPLICATION*] DATED [ ]

I refer to the plaintiff's/defendant's letter [*or application*] dated [_____] for orders [*insert orders sought*] and certify that:

1. Conferral

The parties have conferred to try to resolve the matters giving rise to this application as follows:

[*Here the memorandum MUST state briefly the facts relied upon to show conferral*]

2. Matters in dispute

[*The following matters/all the matters*] the subject of this application remain in dispute.

3. Conference

The parties have agreed that, subject to the directions of the Court, the application should be listed for a case management conference as follows:

a. type of appointment (*in general chambers/for a special appointment*)
b. programming orders
(*for example*
- *standard programming orders or*
- *attached agreed programme and/or*
- *other special orders*).

c. time required for oral argument
d. unavailable dates

[OR: The parties have been unable to agree a programme for the hearing of the application. The applicant's and respondent's requested programmes are attached.]

[OR: The parties have agreed that the application should be determined on the papers and without the need for any attendance in Court.]

(Signed) _____
Solicitor for the Applicant [Plaintiff/Defendant]
or Applicant [in person]

(Dated) _____

4.3.2.2. Form 109 - Memorandum Supporting Waiver of Conferral

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ORDER 59 RULE 9(2)
MEMORANDUM SUPPORTING WAIVER OF CONFERRAL
RE: [THE PLAINTIFF'S/DEFENDANT'S] LETTER
[*or APPLICATION*] DATED [ ]

I refer to the plaintiff's/defendant's letter [*or application*] dated [ ] for orders [*insert orders sought*] and certify that -

1. Reasons for not conferring

The parties have not conferred as required by O 59 r 9(1) for the following reasons:

[*Here the memorandum MUST state briefly the facts relied upon to support waiver, eg urgency or other good reason]*

2. Intention to seek waiver

The applicant [plaintiff/defendant] intends to move the Court to waive the operation of O 59 r 9(1).

3. Conference

The applicant requests that the application be listed for a case management conference as follows:

a. type of appointment (*in general chambers/for a special appointment*)
b. programming orders (*for example*
   - ! *standard programming orders or*
   - ! *attached special programming orders or*
   - ! *other special orders*).
c. time required for oral argument
d. unavailable dates

(Signed) _____
Solicitor for the Applicant [Plaintiff/Defendant]
or Applicant [in person]

(Dated) _____

4.3.3. Certificate or Undertaking of Solicitor or Counsel on Urgent Chambers Applications

1. The solicitor for a party desiring to make an urgent chambers application during normal court hours should telephone the listing co-ordinator (not the Associate to the Duty Judge) at the earliest possible time and inform the office of the nature of the application and when the papers, if any, will be filed, when the application will be ready to be heard and the estimated time required. If a document is filed for the purposes of an urgent application made outside of office hours, the applicant is not obliged to file electronically: O 67A r 3(1)(g).

2. Arrangements will not usually be made by the listing co-ordinator's office for the application to be listed or heard in chambers unless and until there is delivered to that office an application together with a certificate in the form of a letter addressed to the Principal Registrar signed by the solicitor or counsel for the party as follows:

'I certify that:

1. This application is of such an urgent nature that it is required to be listed/heard immediately.

2. (a) All documents necessary for the Judge/Master to make an order accompany the application.

or

(b) This matter is so urgent that it must be listed/heard without all necessary documents being filed.

3. Notice of the application has been given to the other party or parties.

or

I have considered the need to give notice or to serve any other party or parties and at the hearing of the application I will seek to justify the application being made without notice being given to the other party/ies (*ex parte*).

4. The estimated length of the hearing is:

Solicitor or Counsel'

3. (a) The solicitor for a party desiring to make an urgent chambers application after normal court hours should telephone the Associate to the Duty Judge at the earliest possible time and inform the Associate of the nature of the application and when the papers, if any, will be ready, when the solicitor will be ready to make the application and the estimated time required.

(b) Arrangements will not be made by the Associate for the application to be heard by the Duty Judge unless:

(i) the solicitor or counsel for the applicant undertakes to produce to the Judge at the hearing an application and a certificate complying with par 2 of this Practice Direction; or

(ii) (where the solicitor is not in a position to undertake to produce an application or certificate in writing) the solicitor or counsel undertakes that the matter is so urgent that it justifies an oral application and further gives undertakings in terms of the certificate referred to in subparagraphs 2 and 3 of par 2 of this Practice Direction.

4.3.4. Interlocutory Injunctions - Usual Undertakings as to Damages

1. Where a party is subjected to a restraint imposed by an interlocutory injunction or an interlocutory undertaking to the Court, (whether the application for an injunction is made without notice being given to the other party (ex parte), by consent, or otherwise) the party having the benefit of the restraint will generally be required to give to the Court the usual undertaking as to damages in the terms set out below. The undertaking will also be required to be given by any party obtaining the benefit of an order under:

   (a) s 138 of the *Transfer of Land Act 1893*, having the effect of extending a caveat lodged under s 137 of that Act pending the determination of the claim in respect of which the caveat was lodged; or

   (b) s 138C of the *Transfer of Land Act 1893*, having the effect of extending the operation of caveats after a s 138B notice

2. Any party seeking and obtaining the benefit of any such injunction, undertaking or order will generally be required to give the usual undertaking as to damages, regardless of whether such party is named in the proceedings as a plaintiff, as a defendant, or otherwise.

3. The undertaking as to damages will not usually be required from the State [or Commonwealth] except where the State [or Commonwealth] is suing to assert a proprietary or contractual right. In appropriate cases, the Court may relieve a party from the requirement to give the usual undertaking or may require modification or extension of the usual undertaking.

4. It should be noted that the usual undertaking, by its terms, unless otherwise ordered, remains operative during the period of any extension (whether by consent or otherwise) of the injunction, undertaking or order in connection with which it was originally given.

5. The form of the usual undertaking is as follows:

> 'The plaintiff or defendant (as the case may be) undertakes to the court that he will pay to any party restrained or affected by the restraints imposed by this interlocutory injunction, or this interlocutory undertaking to the court, or the caveat as extended by this order (as the case may be) or of interim continuation thereof, such compensation as the court may in its discretion consider in the circumstances to be just, such compensation to be assessed by the court or in accordance with such directions as the court may make and to be paid in such manner as the court may direct.'

4.3.5. Interlocutory Applications - Time for Filing Affidavits

1. Unless the Court otherwise orders, an affidavit in opposition to a case management request must be filed and served not less than two (2) days before the return day: see O 59 r 5(3).

2. Where a defendant proposes to seek leave to use an affidavit that has not been filed as required by this rule, the affidavit should be filed and arrangements made with the Court for the affidavit to be handed to the Associate prior to the hearing.

4.3.6. Costs of Interlocutory Applications (refer to PD 4.7.1)

Refer to Practice Direction 4.7.1

4.3.7. Subpoenas and items in court custody

The purpose of this Practice Direction

1. This Practice Direction formalises revised procedures in relation to subpoenas and items in court custody, as follows:

   (a) par 3 applies to the issue of any subpoena if the issuing officer is of the view O 67 r 5(1) of the *Rules of the Supreme Court 1971* (WA) (RSC) might be applicable;

   (b) pars 4 - 5 apply to the issue of subpoenas to attend to give oral evidence;

   (c) pars 6 - 10 apply to the issue of subpoenas to produce, and specifically:

      (i) pars 6 - 7 apply to the issue of subpoenas to produce generally;

         (A) par 8 applies to the issue of subpoenas to produce in proceedings where a defence is required and a defence is filed;

         (B) par 9 applies to the issue of subpoenas to produce in proceedings where a defence is required and no defence is filed;

         (C) par 10 applies to the issue of subpoenas to produce in proceedings where no defence is required;

   (d) pars 11 - 12 apply to the service of subpoenas to produce, specifying the documents that the issuing party must attach;

   (e) par 13 applies to altering the date for attendance or production under a subpoena;

   (f) par 14 applies to directions in relation to the removal, inspection, copying and disposal of any documents and things produced under a subpoena to produce returnable at trial;

(g) pars 15 - 26 apply to directions in relation to the removal, inspection, copying and disposal of any documents and things produced under a subpoena to produce not returnable at trial, and specifically:

(i) pars 15 - 17 concern the standard directions that apply to a subpoena not returnable at trial;

(A) pars 18 - 19 concern directions in non-contentious matters involving subpoenas not returnable at trial;

(B) pars 20 - 21 apply to contentious matters involving subpoenas not returnable at trial;

(C) pars 22 - 26 apply to the uplift of subpoenaed documents or things;

(h) par 27 applies to copies of subpoenaed material made by parties; and

(i) par 28 - 29 applies to the disposal of subpoenaed documents and things by the Court;

(j) pars 30 - 32 apply to objections to subpoenas and variations to directions;

(k) pars 33 - 35 apply to the production of documents or things in the custody of court pursuant to O 36B r 13.

2. (a) The procedures referred to in par 1 of this Practice Direction are subject to any other orders made by the Court.

(b) For the purposes of this Practice Direction, the term:

Trial means a hearing which will finally determine substantive rights and obligations;

Hearing means a hearing other than a trial and includes case management conferences.

The issue of subpoenas and Order 67 rule 5(1)

3. The power to issue any subpoena is given to an 'issuing officer' (O 36B r 2), which in practice is a Court Registry officer. When an issuing officer is of the view that the issuing of a particular subpoena may be an abuse of the process of the Court or otherwise frivolous or vexatious, the issuing officer will refer the subpoena to a Registrar for review pursuant to O 67 r 5(1). The Registrar will ordinarily be the case managing Registrar or the Principal Registrar where the case is managed by a Judge.

The issue of subpoenas to attend to give oral evidence

4. A subpoena to attend to give oral evidence (RSC Form 21, or Form 21B if also to produce evidence) can only be issued if the oral evidence of the addressee is required at a trial or hearing, the date for the trial or hearing has been set by the Court (O 36B r 2(2A)), and subject to O 36B r 2(2) and r 3.

5. Leave from the Court to issue a subpoena to attend to give oral evidence is not required, unless otherwise ordered (O 36B r 2(1) and r 2(2)(d)).

The issue of subpoenas to produce

(i) Requirements generally applicable to subpoenas to produce

6. Subpoenas to produce:

   (a) are not limited to a return date that is the date of trial or hearing (O 36B r 2(1) and r 3(5)(a)); and

   (b) must, unless an earlier or later date is fixed by the Court, allow for 5 days from the last date of service before the earliest return date (Order 36B r 3(8)).

7. If an earlier or later date has not been fixed by the Court, and the issuing party is seeking shorter notice to the addressee than is specified in par 6(b), the issuing party should provide a covering letter to the Principal Registrar with the proposed subpoena, setting out the reasons why shorter notice is required.

(A) In proceedings where a defence is required and a defence is filed

8. In a proceeding in which a defence is required and a defence has been filed, leave to issue a subpoena is not required unless the Court directs otherwise (O36B r 2(2)(d)):

   (a) if the proposed subpoena to produce nominates a date of trial or hearing it will generally be issued by the issuing officer;

   (b) if the proposed subpoena to produce nominates a date other than of a trial or hearing and the issuing officer is otherwise satisfied the subpoena complies with the *Rules of the Supreme Court 1971* (WA), the issuing officer will generally:

      (i) treat the proposed subpoena as a request for the Court to permit a return date other than the trial or hearing date pursuant to O 36B r 3(5)(a)(ii); and

      (ii) permit the return date on the proposed subpoena.

(B) In proceedings where a defence is required and no defence is filed

9. In a proceeding in which a defence is required but no defence has been filed, leave from the Court will be required to issue any subpoena to produce (O 36B r 2(2B)(b)(ii) - except under O 73 r 20(2)). Leave will only be granted in exceptional circumstances (O 36B r 2(2D)).

(C) In proceedings where no defence is required

10. In a proceeding in which a defence is not required to be filed, leave from the Court is required unless the subpoena is returnable at trial or hearing (O 36B r 2(2B)(c)). Leave will only be granted in exceptional circumstances (O 36B r 2(2D)).

Service of subpoenas to produce - attachments

11. When serving a subpoena to produce on the addressee, the issuing party must:

    (a) in every case attach a copy of the notice and declaration for addressees, RSC Form 22A, to the front of the subpoena (O 36B r 10(3)); and

    (b) when the date set for production specified is not the date and time of a trial, attach a copy of the cover sheet in the form at PD 4.3.7.1.

12. When serving a copy of the subpoena to produce on each other party (O 36B r 4(2)), the issuing party must, when the date set for production specified is not the date and time of a trial, attach a copy of the cover sheet in the form at PD 4.3.7.1.

Altering the date for attendance or production under a subpoena

13. See O 36B r 5A.

Directions in relation to the removal, inspection, copying and disposal of any documents and things produced under subpoenas returnable at trial

14. For subpoenas to produce that are to be returned to the Court at a trial, issues of inspection, copying etc can be dealt with at the trial.

Directions in relation to the removal, inspection, copying and disposal of any documents and things produced under subpoenas not returnable at trial

i. Standard directions that apply to a subpoena not returnable at trial

15. Unless directions are given, no party is able to inspect, copy or remove the documents and things subject to a subpoena.

16. The directions referred to in par 15 will not be given until after the date and time for production specified in the subpoena, and subject to the issuing party confirming that a copy of the subpoena was served on each other party not less than 14 clear days prior to the issuing party seeking access to the subpoenaed material (see form at PD 4.3.7.2).

17. Subject to any other orders made by the Court, the directions for subpoenas to produce not returnable at trial will be in accordance with the standard directions set out in pars 18 - 29.

(A) Directions in non-contentious matters not returnable at trial

18. For the purposes of this Practice Direction, a non-contentious matter refers to a subpoena not returnable at trial in relation to which no request to the Court pursuant to O36B r 8A, either by letter or at a hearing, has been received prior to the date of return or prior to the issuing party completing and submitting form 4.3.7.2, whichever is later.

19. (a) In a non-contentious matter, the issuing party of a subpoena that is not returnable at a trial may attend the Court to inspect the documents or things and obtain copies within 14 days of the date of return, or of the issuing party completing and submitting form 4.3.7.2, whichever is later.

(b) The other party/ies to the proceedings may attend the Court to inspect the documents or things and obtain copies during the period 15 - 28 days after the date of return or the issuing party completing and submitting form 4.3.7.2, whichever is later.

(c) Subject to any application to retain the documents or things in the custody of the Court, as soon as practicable after the expiry of the period of 42 days after the return date or after the issuing party completed and submitted form 4.3.7.2, whichever is later, the documents or things are to be:

(i) returned to the addressee if the addressee has declared in Form 22A that it includes any documents or things that are original; or

(ii) destroyed if the addressee has declared in Form 22A that all documents or things are copies.

(B) Contentious matters not returnable at trial

20. For the purposes of this Practice Direction, a contentious matter refers to a subpoena not returnable at trial in relation to which a request to the Court pursuant to O36B r 8A, either by letter or at a hearing, has been received prior to the date of return or prior to the issuing party completing and submitting form 4.3.7.2, whichever is later.

21. See pars 30 - 32. The directions will be as made by the Case Manager or Principal Registrar after any objection to the subpoena or request to make or vary directions given by the Court in relation to the removal, return, inspection copying and disposal of documents and things produced to the Court in response to a subpoena has been considered.

(C) Uplift of documents or things

22. No documents or things produced under subpoena will be removed from the Registry except upon application in writing to the Principal Registrar or authorised Court officer, signed by the solicitor for a party (see O 36B r 9(3) and the form at PD 4.3.7.3).

23. Under O 36B r 9(5) a solicitor who signs an application under par 22 (PD 4.3.7.3) and removes a document or thing from the Registry, undertakes to the Court that:

    (a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceedings; and

    (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by the Principal Registrar or authorised Court officer.

24. There is no provision in the *Rules of the Supreme Court 1971* (WA) for a litigant who is not legally represented to uplift documents or things received under subpoena. The Court will copy any documents required by a litigant who is not legally represented, subject to the payment of the usual fees pursuant to the *Supreme Court (Fees) Regulations 2002* (WA).

25. An authorised Court officer may only grant an application under par 22 where:

(a) no order or direction has been made limiting access to the items received;

(b) the solicitor undertakes to return the documents in 48 hours; and

(c) the Registry has received no objection or request to vary directions in relation to the items subject to the application for uplift.

26. If any of the circumstances in par 25(a)-(c) do not apply, the application will be referred to the Case Manager or a Registrar, who may grant the application subject to conditions or refuse the grant of the application.

Copies of subpoenaed material made by parties

27. Any copies of the subpoenaed documents made by the issuing party or other party/ies are only to be used for the purposes of the proceedings.

Disposal of subpoenaed material by the Court

28. Fourteen (14) days' notice in accordance with O 36B r 10(2) and (5) will be given that, subject to any application to retain the documents or things:

(a) all material may be returned to the addressee if the addressee has declared in Form 22A that the material includes any documents or things that are original;

(b) all material may be destroyed if the addressee has declared in Form 22A that none of it is original, including electronic storage devices containing electronic copies of documents.

29. Notice under par 28:

(a) will be given as soon as practicable for subpoenaed material returnable at the trial:

(i) other than for exhibits, after the trial has concluded; and

(ii) for exhibits, when these are no longer required in connection with the proceeding, including on any appeal (O 36B r 10(2), (5)).

(b) for subpoenaed material not returnable at trial, is taken to have been given by way of par 19(c) above and the cover note in the form at PD 4.7.2.1 which is attached to all subpoenas to produce not returnable at trial.

Objections to subpoenas or variations to directions

30. O 36B r 8 and r 8B set out the procedure for persons responding to a subpoena to give evidence, parties or any other person with sufficient interest, to request:

(a) to set aside a subpoena to give evidence; or

(b) other relief in respect of it.

31. O 36B r 8A and r 8B set out the procedure for persons responding to a subpoena to produce, parties or any other person with sufficient interest, to request:

(a) to set aside a subpoena to produce in whole or in part; or

(b) to make or vary directions given by the Court in relation to the removal, return, inspection, copying and disposal of documents and things produced to the Court in response to a subpoena; or

(c) other relief in respect of it.

32. Directions as to the manner of proceeding in relation to any request made pursuant to pars 30 or 31, including directions for the consideration and determination of a request on the papers, may be made by the Case Manager or the Principal Registrar.

Party seeking production of documents or things in custody of a court

33. A party may seek production of documents or things in custody of a court pursuant to O 36B r 13(1).

34. Where the Court itself has custody of a document or thing requested by a party, or has requested and received documents or things from another court pursuant to O 36B r 13(3), the Court generally treats the documents or things in the same manner as a document or thing produced under subpoena, subject to par 35.

35. The Court does not ordinarily allow for such documents or things to be uplifted from the Court for the purposes of copying. The Court will copy any documents required, subject to the payment of the usual fees pursuant to the *Supreme Court (Fees) Regulations 2002* (WA).

4.3.7.1. Subpoena Cover Sheet

SUPREME COURT OF WESTERN AUSTRALIA

Subpoena returnable on other than a trial date

1. A subpoena issued by the Supreme Court of Western Australia is attached together with a subpoena notice and declaration.

   (a) The subpoena requires the person named to produce documents or things as described to the Court on or before the date indicated (the return date).

   (b) The subpoena notice and declaration is to be completed by you and returned to the Court with the subpoenaed material. It lets the Court know if the material you provide includes any originals, in which case it will be returned to you when no longer required by the Court. If you declare that all of the materials you produce are copies, these will be destroyed when no longer required by the Court.

2. Unless the Court otherwise orders, an objection is made or the party who requested the issue of the subpoena (issuing party) notifies you they are changing the return date, the following will apply to the documents and things produced:

   (a) The person who applied for the subpoena will be allowed to attend the Court to inspect the documents or things and obtain copies within 14 days:

   (i) of the return date, or

   (ii) of the date the issuing party completed and submitted form 4.3.7.2 (confirming that a copy of this subpoena was given to each other party),

   whichever is later.

(b) If applicable, the other party/ies to the proceedings may attend the Court to inspect the documents or things and obtain copies during the period 15 - 28 days:

(i) after the return date, or

(ii) after the date the issuing party completed and submitted form 4.3.7.2 (confirming that a copy of this subpoena was given to each other party),

whichever is later.

(c) Subject to any application to retain the documents or things in the custody of the Court, material produced by you will be returned to you as soon as practicable after the expiry of the period of 42 days after the return date or after the issuing party completed and submitted form 4.3.7.2 (confirming that a copy of this subpoena was given to each other party), whichever is later.

(d) Any copies of the documents or things taken by the person who requested the subpoena or other party/ies are only to be used for the purposes of the proceedings.

3. If you receive a notice from the person who applied for this subpoena advising you that the return date has changed to a different date before the trial, the above directions (a) - (d) will apply with effect from the new return date. If the notice changes the return date to a trial date, the above directions do not apply. The Court will give directions at the trial about the inspection, copying and return of the subpoenaed documents or things (subject to the *Rules of the Supreme Court 1971*, O 36B rule 10).

OBJECTIONS or VARIATIONS

4. If you:

- object to the subpoena; or
- claim privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena; or
- want the Court to make or vary any directions in relation to the removal, return, inspection, copying and disposal of documents and things produced to the Court in response to this subpoena, including vary any of the directions in paragraph 2 above;

subject to O 36B rule 8B, you must:

- request by letter to the Case Manager, or to the Principal Registrar if the Case Manager is not known;
- set out the grounds of the request;
- set out the order, direction or relief sought;
- file the letter with the Court; and
- provide a copy of the letter to the issuing party.

5. You must still produce documents or things in accordance with this subpoena:
   - unless you are requesting that the subpoena date is deferred; or
   - except to the extent to which you are requesting to have this subpoena set aside; or
   - unless the Court allows otherwise.

6. Unless you object, a Registrar may permit the parties to the proceeding to inspect or copy any document or thing you produce under this subpoena once the return date has passed, the Court has received a completed form 4.3.7.2 from the issuing party, and in accordance with paragraph 2 above. A legally represented party may also be entitled to take ('uplift') and return the documents or things for the purposes of inspection and copying.

4.3.7.2. Application to access subpoenaed documents (for issuing party seeking inspection)

THE SUPREME COURT OF WESTERN AUSTRALIA

SUBPOENAED DOCUMENTS

No _____ of 20_____ [*Matter number*]

_____ [*Plaintiff/Applicant/Appellant name*]

And
_____ [*Defendant/Respondent name*]

Inspection of subpoenaed documents produced by:

1. **[*Name of addressee*]**

I act for the issuing party / I am the issuing party (without representation in the proceedings) [*delete as appropriate*] and confirm that a copy of the subpoena was served on each other party by _____ (date must be no less than 14 clear days before today's date).

As the subpoena was not returnable at trial, I also confirm that a copy of subpoena cover sheet at PD 4.3.7.1 was attached to each copy of the subpoena served. [*Delete unless appropriate*]

Name: _____ Phone No: _____

Signature: _____

Date: _____

Witness' Signature: _____

Witness' Name: _____

4.3.7.3. Application to uplift subpoenaed documents

THE SUPREME COURT OF WESTERN AUSTRALIA

SUBPOENAED DOCUMENTS

No _____ of 20_____ [*Matter number*]

_____ [*Plaintiff/Applicant/Appellant name*]

And

_____ [*Defendant/Respondent name*]

I acknowledge receipt of subpoenaed documents produced by:

1. **[*Name of addressee*]**

I am a Certified Legal Practitioner and I hereby undertake to keep in my custody or possession the above named documents and to return those documents to the Registry in the condition and order provided to me by _____ am/pm on _____ [*date*].

Any copies made of the uplifted documents will only be used for the purposes of these proceedings.

Name: _____ Phone No: _____

Signature: _____

Date received: _____

Witness' Signature: _____

Witness' Name: _____

Date Returned: _____

Witness' Signature: _____

Witness' Name: _____

4.4. Entry for Trial

4.4.1. Case Evaluation and Pre-Trial Directions Prior to Entry for Trial

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1. This practice direction sets out how Registrars generally manage cases prior to entry for trial.

2. Other than in exceptional cases, a case may only be entered for trial if:

   - all interlocutory steps in relation to pleadings, discovery and expert evidence (if any) have been completed;
   - it has been mediated; and
   - pre-trial directions have been made and satisfied.

3. Once the parties have completed or are close to completing all interlocutory steps in the case the Registrar will generally carry out a full case evaluation pursuant to O 4A r 18(6) of the *Rules*.

4. The Registrar may list a further case management conference for this purpose and order the parties to meet prior to that conference and confer in relation to whether they have completed all interlocutory steps.

5. The memorandum of conferral, which the plaintiff will usually file and serve, must set out:

   - that conferral has occurred (noting when and where);
   - that the parties have considered the matters set out in the case evaluation conference checklist, a copy of which is attached to this Practice Direction (at 4.4.1.1);
   - whether the parties have completed all interlocutory steps;
   - whether there are any outstanding matters; and
   - whether there are any matters on which the parties do not agree.

6. A completed case evaluation checklist (at 4.4.1.1), signed by the solicitor for the plaintiff most closely connected with the preparation of the case for trial, must be attached to the memorandum of conferral (see Practice Direction 4.3.2). The checklist is to be completed by 'yes' or 'no' answers being noted in each column where appropriate. The answers may be written in pen or typed. Any matters that cannot be noted in the checklist, for example due to lack of space, should be noted in the memorandum of conferral.

7. The standard orders in this respect are:

    1. By …….

        (a) The solicitors for the parties meet in order to confer as to the readiness of the matter for trial; and

        (b) The plaintiff file and serve a memorandum of conferral to which shall be attached a case evaluation checklist completed by the parties and signed by the solicitor for the plaintiff most closely connected with the preparation of the action for trial.

    2. The case management conference is adjourned to (*time*) on (*date*).

8. The Case Manager will raise with the parties at the conference at which the case is fully evaluated the matters set out in the checklist, including whether the case has been mediated and whether it would benefit from further mediation. Counsel will be expected to have considered these matters, to have taken full instructions on them, and to be able to address them at the conference. Failure in this respect may well result in the adjournment of the conference and consequential costs orders.

9. If the Case Manager has concerns as to whether the parties have completed all interlocutory steps or in relation to the matter generally, then the Registrar may make further programming orders and adjourn the conference to another date.

10. The Case Manager may, once satisfied that the parties have completed all interlocutory steps, make pre-trial directions regarding:

    (a) the provision of and exchange of witness outlines or witness statements and the preparation of the trial bundles, based on the usual orders 26-49 in PD 4.1.2.2;

    (b) the exchange of all expert evidence, and the conferral of expert witnesses (based on the usual orders in 50-83 in PD 4.1.2.2) if directions dealing with these matters have not previously been made.

    The parties may seek to vary the standard pre-trial directions in appropriate cases. The Case Manager will not, however, make orders for the filing of submissions and other immediate pre-trial orders.

11. If the parties consider that the Registrar is likely to make pre-trial directions at a particular conference then they should, prior to the conference, confer as to the pre-trial directions to be made and, if possible, provide to the Registrar a minute of agreed pre-trial directions either before or at the conference.

12. Once pre-trial orders have been complied with and assuming that there are no additional interlocutory matters to be attended to, the Case Manager will make orders that:

    (a) the plaintiff file an entry for trial (including estimated trial length);

    (b) all parties provide Listings with unavailable dates in 3-6 months' time.

13. The standard order to file an entry for trial is:

    > By [date] the plaintiff enter the action for trial by [insert date] with an estimated trial length of [number of days].

14. The Registrar will then refer the case to Listings. A Judge will be allocated to conduct a listing conference and hear the case.

15. The procedure set out above may be varied in appropriate cases. For example, it may be desirable in a particular case for witness outlines, witness statements or expert evidence to be exchanged earlier in the proceedings. Such matters should be raised with the Registrar as the appropriate time. It will only be in exceptional cases, however, that matters which are not ready for trial or which have not been mediated may be entered for trial.

4.4.1.1. Full Case Evaluation Checklist

Matter number: **Parties:**

		Plaintiff	1st Def	2nd Def	3rd Def
1. (a)	Have you instructed counsel who will appear at trial?				
(b)	Has counsel advised upon the readiness of the case for trial and upon the matters set out below?				
(c)	Has counsel prepared an advice on evidence?				
2. (a)	Do you intend to apply to amend any pleading?				
(b)	Do you intend to apply to strike out any pleading or part of a pleading?				
3. (a)	Do you intend to apply to join any additional parties?				
(b)	If there is a third party who has entered an appearance, has an order for third party directions been obtained?				

		Plaintiff	1st Def	2nd Def	3rd Def
4. (a)	Do you intend to seek particulars of any pleading?				
(b)	Have all requests for particulars been answered satisfactorily?				
(c)	Have you provided particulars of loss and damage?				
5.	Are there any requests to admit facts or documents outstanding?				
6. (a)	Do you intend to seek further discovery from any party?				
(b)	Has inspection been completed?				
7. (a)	Do you intend to make any application in relation to interrogatories?				
(b)	Have administered interrogatories been answered?				
8.	Do you intend to bring an application in relation to any aspect of the case?				

		Plaintiff	1st Def	2nd Def	3rd Def
9.	Do you intend to file any further affidavits in relation to the case?				
10.	Do you propose to take evidence before trial?				
11. (a)	Do you intend to adduce expert evidence at trial?				
(b)	Have you sought all necessary orders in relation to expert evidence?				
(c)	Has there been compliance with all orders in relation to expert evidence?				
(d)	If expert evidence has been exchanged, have the experts conferred?				
(e)	If the answer to (d) is 'no', what arrangements have been made for the conferral process?				
(f)	If the answer to (d) is 'yes', has a report of the conferral been prepared?				
(g)	Have the parties conferred as to the manner in which expert evidence will be adduced at trial, including whether it will be given concurrently?				

		Plaintiff	1st Def	2nd Def	3rd Def
12. (a)	How many witnesses do you intend to call at trial?				
(b)	Have you taken statements or proofs of evidence from all witnesses you intend to call at trial?				
(c)	Do you know of any witnesses who will not provide a statement and who may need to be subpoenaed?				
(d)	Have directions been made for the preparation and exchange of statements which are to stand as the evidence-in-chief of the witness to be called at trial?				
(e)	Have those directions been complied with?				
(f)	Do you know of any difficulties as to the availability of witnesses?				
(g)	Has consideration been given to arranging for any witnesses not in Perth to give their evidence by video link?				

		Plaintiff	1st Def	2nd Def	3rd Def
13.	Has the bundle of documents to be used at trial been prepared in accordance with directions issued?				
14.	How many days will the trial take?				
15. (a)	Has the case been to mediation?				
(b)	If not, should mediation orders be made, and if not, why not?				
(c)	If the case has been mediated previously, should it go back to mediation?				
16. (a)	Are any particular administrative resources likely to be needed for the trial?				
(b)	Has consideration been given to preparing an electronic trial bundle?				
17. (a)	Is the case ready for trial in all respects?				

		Plaintiff	1st Def	2nd Def	3rd Def
(b)	Does counsel believe that the case is ready for trial in all respects?				
18.	Do you agree to provide the Court with unavailable dates upon entering the matter for trial? If the answer is 'Yes', please provide your unavailable dates for five months from the date of entry.				

_____
Solicitor for the Plaintiff
Date:

_____
Registrar
Date:

4.4.2. Entry for Trial

Entry for trial

1. Entry for trial and notice of trial for the civil sittings of the court, whether at Perth or a circuit location, shall be in accordance with annexure 1 (4.4.2.1) with such variations as the circumstances may require.

4.4.2.1. Annexure 1

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN No ____ of 20__

_____ Plaintiff

And

_____ Defendants

ENTRY FOR TRIAL AND NOTICE OF TRIAL

---

1. Enter this action (or as the case may be) for trial before a Judge (or before a Judge and jury) on a date to be fixed for a duration of [*insert*] days the civil sittings to be held at Perth / [*Circuit location*].

2. The entry for trial fee in the amount of [*insert the amount set out in Supreme Court (Fees) Regulations 2002 (WA) sch 1 div 1 item 4*] and the daily hearing fee in the amount of [*insert the amount based on Supreme Court (Fees) Regulations 2002 (WA) sch 1 div 1 item 5*] is tendered with this notice.

Or

Attached to this notice is an application to reduce fees payable for the entry for trial fee and the daily hearing fee in the form of *Supreme Court Fees Regulations 2002* (WA) sch 4 Form 2.

Dated the day of 20

Plaintiff's solicitor
(or as the case may be)

NOTICE TO THE DEFENDANTS [*OTHER PARTIES*]

Take notice that the plaintiff has this day entered this action (or as the case may be) for trial.

4.4.3. Compromise (settlement) after cause, matter or issue has been entered for trial/hearing

---

1. Where any cause or matter is disposed of in whole or in part by compromise, the party who commenced the matter shall, as soon as is practicable, file a certificate in the form of a letter, addressed to the listing co-ordinator and to the associate to the trial Judge, signed by the solicitor or counsel for the party as follows:

   'I certify that the matter of (specify the details) was settled on the day of _____ and the dates fixed for the trial/hearing, namely _____are no longer required.'

2. A copy of the certificate must also be emailed to the associate to the trial Judge.

4.5. Evidence

4.5.1. Evidence in Chief – Witness Outlines and Witness Statements

---

1. Evidence in chief at trial may be led orally or in writing, at the direction of the case manager (and subject to any further order at trial). Those directions will be made before a matter is entered for trial.

2. Ordinarily, evidence of chief will be given orally, without the use of witness statements. In those circumstances, ordinarily, the case manager will order that the parties exchange witness outlines (witness outline orders).

3. Orders for the exchange of witness statements and for witness statements to stand as evidence in chief (witness statement orders) will only be made where a party satisfies the case manager that this course will better achieve the objects of efficiency, just determination of litigation and proportionality than if evidence were to be given orally in the usual way.

4. Ordinarily, the use of a witness statement will not be appropriate where contentious evidence is to be given of facts dependent on the recollection of the witness or where the credit of the witness is likely to be challenged on the topic.

5. The case manager may order that witness statements be provided by only some witnesses, or that only part of the evidence in chief of a witness be provided by way of witness statement.

Witness Outlines

6. Where witness statement orders have not been made, the case manager will ordinarily order the provision of a witness outline (witness outline orders).

7. A witness outline must be directed **only to matters in issue**.

8. A witness outline must clearly identify all the topics in respect of which evidence will be given and **the substance of that evidence**, including the substance of each important conversation.

9. Where a witness refers to a document in a witness outline, they must identify the document by its description and its discovery number or, if an order has been made for a trial bundle to be filed, by a description of

the document and by the page number in the trial bundle. If an order has been made for an electronic trial bundle to be filed, the document must be referred to by the document number assigned to it and the page number within that document.

10. Where a witness outline is ordered, the case manager will ordinarily order that no party may use any part of the contents of that document for the purpose of cross-examination of the witness without leave of the trial Judge.

Witness Statements

11. Where witness statement orders have been made, each witness statement is, in written form, the evidence that a witness would otherwise give orally and, subject to any contrary order, will, when adopted, stand as the evidence in chief of the witness.

12. The evidence contained in a witness statement must:

    (a) be directed only to matters in issue;

    (b) be in admissible form, in accordance with the rules of evidence and the *Evidence Act 1906* (WA); and

    (c) include at the end of the statement the following verification:

        'I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that this is the evidence in chief which I wish to give at the trial of the proceeding.'

13. Where a witness refers to a document in their witness statement, they must identify the document by its description and its discovery number or, if an order has been made for a trial bundle to be filed, by a description of the document and by the page number in the trial bundle. If an order has been made for an electronic trial bundle to be filed, the document must be referred to by the document number assigned to it and the page number within that document.

14. Where witness statement orders have been made, every attempt should be made by practitioners to draft the statements in admissible form and to resolve questions relating to admissibility of evidence prior to seeking to enter the matter for trial.

15. Ordinarily, orders will be made requiring witness statements to be signed, but where the case manager concerned is satisfied that it is not practicable for a party to obtain a witness' signature to a statement, an order may be made that the witness statement be exchanged unsigned. This Practice Direction should be read with O 67A r 3(6) and (7) for witness statements presented for filing via the ECMS or by email.

16. Ordinarily orders will be made requiring witness statements to be prepared having regard to the Best Practice Guide 01/2009 issued by the Western Australian Bar Association entitled 'Preparing witness statements for use in civil cases' and will contain a certificate to that effect signed by the practitioner most responsible for the preparation of the statement.

Practice at trial

17. Where witness statement orders have been made, the practice at the trial will ordinarily be as follows:

    (a) The witness will be called and asked to identify himself or herself, and also the witness statement concerned. The Judge will then ask the opposing counsel whether there are any objections to any parts of the witness statement.

    (b) All objections will be dealt with, and where an objection is successful, the witness will be requested to delete the inadmissible material from the statement.

    (c) The witness statement will then be tendered and admitted as an exhibit.

18. Where witness outline orders have been made, the practice at the trial will ordinarily be that the witness' evidence in chief is given orally, in the usual way. Objections will be dealt with in the course of the witness' evidence.

19. Where a witness statement order or witness outline order is made, a party may not, without leave, adduce from the witness evidence in chief other than evidence included in the witness statement, or in relation to a topic referred to in the witness outline, as the case may be.

4.5.2. Expert Evidence

Introduction

1. The purpose of using expert evidence is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge. The Court is often assisted by expert evidence where the subject matter of the proceedings is complex.

2. An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation. In some circumstances an expert may be appointed as an independent adviser to the Court.

3. Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate, and should never attempt to pressure or influence an expert to conforming his or her views to the party's interests.

4. Parties and legal representatives should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence.

5. This Practice Direction provides an overview of procedures used for expert evidence including:
   (a) leave to adduce expert evidence and consequential orders;
   (b) Harmonised Expert Witness Code of Conduct;
   (c) expert conferral;
   (d) Court facilitated expert conclaves; and
   (e) concurrent evidence.

Expert Evidence orders

6. A party may not adduce expert evidence at a trial unless the case manager for the case has directed that the party may do so and the party has complied with all directions given in relation to that expert evidence (O 36A r 1).

7. Directions given in relation to expert evidence orders should be consistent with the overriding objectives contained in O 1 r 4A and 4B. The Court's objective is to make timely, efficient, fair and effective use of expert evidence. It will make directions on a case-by-by case basis, taking into account the nature, scope and complexity of the issues in the case and whether the costs are proportionate to the matter in dispute and financial position of the parties.

8. In all cases, expert evidence orders should promote the following purposes:

   (a) to encourage the early identification of issues in dispute that will be the subject of expert evidence;

   (b) to improve the utility of expert evidence by ensuring that it is focused on the issues genuinely in dispute; and

   (c) to make use of the existing pre-trial processes at the earliest practicable opportunity.

9. Leave to adduce expert evidence will not be given at large. Parties seeking leave to adduce expert evidence should provide some identification of the issues upon which the expert will be asked to give evidence, the field of expertise of each proposed expert and whether it is an appropriate case for the experts to be given agreed facts, a list of agreed questions and assumptions upon which the expert is asked to rely.

10. Innovative approaches to expert evidence are encouraged, including the nomination of a single expert or the parties conferring with a view to agreeing some or all of the facts upon which the expert opinions are to be based and the questions to be addressed by the experts.

11. The Court's orders for expert evidence may include directions that:

   (a) identify the issues on which the expert evidence may be led;

   (b) specify the nature of the expert's field of expertise;

   (c) settle the questions that the experts must address;

   (d) require the parties to confer in relation to facts and assumptions upon which the experts are required to rely;

(e) schedule meetings between the experts for the purposes of conferral;

(f) set dates for the filing and service of expert reports; and

(g) direct that a Court facilitated conclave between the experts occur.

12. The usual orders for expert evidence set out in PD 4.1.2.2 (CMC List - Usual Orders) are a guide only and should be customised to suit the circumstances of the particular case in accordance with the objectives and purposes set out in this Practice Direction.

Compliance with the Harmonised Expert Witness Code of Conduct

13. The Harmonised Expert Witness Code of Conduct (Code) has been approved by the Council of Chief Justices' Rules Harmonisation Committee. It is reproduced in PD 4.5.2.1.

14. Every expert witness giving evidence in the Court must comply with the Code.

15. As soon as practicable after an expert witness is engaged or appointed:

(a) in the case of an expert witness engaged by one or more parties, the engaging parties, or one of them as they may agree; or

(b) in the case of an expert witness appointed by the Court, such of the affected parties as the Court may direct,

must provide the expert witness with a copy of PD 4.5.2, including the Code.

16. The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them.

Contents of an expert's report

17. The contents of an individual expert's report must comply with the requirements of the Code and the following additional requirements. The expert must:

(a) identify in the report the questions that the expert was asked to address;

(b) acknowledge in the report that the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience; and

(c) sign the report and attach or exhibit to it copies of:

(i) documents that record any instructions given to the expert; and

(ii) documents and other materials that the expert has been instructed to consider.

Expert conferral and conclaves

18. Paragraph 6 of the Code requires that an expert comply with any orders to confer with any other expert witnesses and to prepare and provide the Court with a joint report. Practice Direction 4.5.2.2 relates specifically to expert conferral and conclaves.

19. Where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics, the Court will usually make orders for a conference of experts without the attendance of the parties or their legal representatives.

20. In the circumstances described in the previous paragraph, the Court may make orders for a type of expert conference to be held that is referred to in these practice directions as an 'expert conclave'. An expert conclave is a conference of experts, without the attendance of the parties or their legal representatives, facilitated by the Court and chaired by the Principal Registrar or another Registrar appointed by the Principal Registrar. The experts normally prepare and settle a joint expert report (JER) following the expert conclave, by way of a process agreed by the experts or directed by the Registrar. Practice Direction 4.5.2.2 contains directions regarding the purpose, procedures and confidentiality of expert conclaves, as well as specific requirements for experts, parties and legal representatives where the Court makes orders for an expert conclave.

21. Where it is ordered that the conference of experts is to be arranged by the parties (i.e. not chaired by a Registrar of the Court) the Court will normally

also order the preparation of a JER at the conclusion of the conference. The specific requirements of the JER are contained in PD 4.5.2.2.

22. The usual orders for CMC List matters in PD 4.1.2.2 contain alternative orders for either:

    (a) an expert conference and the preparation of a JER; or

    (b) an expert conclave and the preparation of a JER.

Concurrent expert evidence

23. The Court will often make orders for evidence to be given concurrently at the final (or other) hearing, where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Practice Direction 4.5.2.3 relates specifically to concurrent expert evidence.

4.5.2.1. Harmonised Expert Witness Code of Conduct

Application of the Code

1. This Code applies to any expert witness engaged or appointed:

   (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or

   (b) to give opinion evidence in proceedings or proposed proceedings.

General duties to the Court

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

Content of report

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:

   (a) the name and address of the expert;

   (b) an acknowledgment that the expert has read this Code and agrees to be bound by it;

   (c) the qualifications of the expert to prepare the report;

   (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];

   (e) the reasons for and any literature or other materials utilised in support of such opinion;

   (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

(g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

(h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

(i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

Supplementary report following change of opinion

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in subparagraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of par 3 of this Code and, if applicable, subparagraph (f) of that paragraph.

5. In any subsequent report (whether prepared in accordance with par 4 or not) the expert may refer to material contained in the earlier report without repeating it.

Duty to comply with the Court's directions

6. If directed to do so by the Court, an expert witness shall:

(a) confer with any other expert witness;

(b) provide the Court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and

(c) abide in a timely way by any direction of the Court.

Conference of experts

7. Each expert witness shall:

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

4.5.2.2. Expert Conferences and Conclaves

Expert Conferences

1. Parties, their legal representatives and expert witnesses should be familiar with aspects of the Harmonised Expert Witness Code of Conduct relating to conferences of experts and joint reports (refer to pars 6 and 7 of Practice Direction 4.5.2.1).

2. The Court may direct expert witnesses:

   (a) to confer, either generally or in relation to specified matters;

   (b) to endeavour to reach agreement on any matters in issue;

   (c) to prepare a joint expert report (JER), specifying matters agreed and matters not agreed and reasons for any disagreement; and

   (d) to base any joint report on specified facts or assumptions of fact,

   and may do so at any time, whether before or after the expert witnesses have furnished their experts' reports.

3. The Court may direct that a conference be held:

   (a) with the attendance of the parties affected or their legal representatives; or

   (b) without the attendance of the parties affected or their legal representatives.

4. The parties and their legal representatives may not seek to restrict the freedom of the experts in identifying and communicating about the matters on which they agree or disagree at an expert conference.

5. An expert witness who has been directed to attend a conference may apply to the Court for further directions to assist the expert witness in the performance of his or her functions in any respect.

6. Any such application must be made by sending a written request for directions to the Court. The written request should be by email to the Associate to the Judge who made the order directing the expert witness to attend a conference, copied to the other parties. The email addresses of Judge's Associates can be found on the Court's website.

Expert conference arranged by the parties

7. The Court may order that a conference of experts is to be held in the absence of the parties and their legal representatives, which is to be arranged by the parties (and not chaired by a Registrar of the Court).

8. If such a conference is ordered, the Court will normally order the preparation and filing of a joint memorandum at the conclusion of the conference. The joint memorandum is to record:

   (a) the substance of all matters upon which the experts are agreed;

   (b) the points of difference which remain between the experts; and

   (c) a succinct statement of the position of each expert in relation to each point of difference.

Expert Conclaves

9. For the purposes of these Practice Directions, an 'expert conclave' is a court facilitated conference of experts without the attendance of the parties or their legal representatives, which is chaired by a Registrar of the Court. Following an expert conclave, the experts are normally required to prepare and settle a JER, via a process agreed to by the experts or directed by the Registrar during the conclave.

10. The purpose of an expert conclave is to facilitate the efficient conduct of the proceeding and assist the parties to:

    (a) resolve by agreement any issues in dispute which are capable of being resolved and narrow the scope of remaining issues in dispute;

    (b) ensure that legal and other costs incurred are reasonable and proportionate to the complexity or importance of the issues in dispute; and

(c) conduct the proceedings efficiently by acting promptly and minimising delay.

11. In order to promote that purpose:

(a) the parties are to be notified by no later than the conclusion of the expert conclave of any instructions given to the experts by the Registrar that are in addition to the Court's orders, and, on request, be given the opportunity to be heard in relation to those instructions; and

(b) the parties are to be notified of any proposal for further work or further reports arising from the conclave, and, on request, be given the opportunity to be heard in relation to the proposal.

Conclave agenda

12. The parties will prepare and settle an agenda for the expert conclave, which identifies the issues required to be the subject of expert evidence. The issues should be framed as questions, set out under broad headings and arranged in logical order.

13. The agenda may identify particular passages of reports or statements of evidence or documents in evidence that are relevant to those topics.

14. The list of issues should be complete. Issues the subject of agreement as between the parties or the experts in their respective reports will be shown as 'agreed' in the agenda, and unless something arises, or requires clarification, need not be dealt with further by the experts.

15. Before the agenda is settled the parties are to confer with the experts that they have engaged in relation to the agenda and, in particular, to the questions.

16. The Court will normally order that the parties file the proposed agenda. This will allow the Court to relist the matter for directions prior to the expert conclave, in the event that the Court has any concerns in relation to the proposed agenda or the agenda does not meet the requirements set out in orders of the Court.

17. The Court will normally relist the proceedings for further directions in the event that the parties are unable to agree to an agenda by a specified date.

Conclave procedure and principles

18. An expert conclave is chaired by the Principal Registrar or a Registrar appointed by the Principal Registrar.

19. The parties are to ensure that each expert and the Registrar are provided with:

    (a) the report of the other expert(s) participating in the conclave;

    (b) all documents relied upon by the other expert(s) in preparing their report; and

    (c) a copy of the expert evidence orders made by the Court, and a copy of the agenda,

    a sufficient time before the conclave to allow them to be thoroughly familiarised with the documents so as to participate effectively in the conclave.

20. Prior to the expert conclave all experts should:

    (a) familiarise themselves with all reports and materials that have been provided to them;

    (b) be thoroughly familiar with all the materials upon which their own opinions are based; and

    (c) consider where they believe the differences in opinion lie between themselves and the other experts and what discussions and processes may assist in identifying and refining those areas of difference.

21. The Principal Registrar or Registrar appointed to chair the expert conclave may call a directions hearing prior to or during the conclave with the parties and their legal representatives to clarify any matter in relation to the expert conclave.

22. The experts are to participate in the conclave in the absence of the parties and the legal representatives.

23. The experts are to be present in person for the duration of the conclave.

24. The experts may hear and participate in all discussions on all topics discussed within the conclave but will only be required, and generally will only be permitted by the Registrar, to give a response on a given topic if they addressed the topic in their expert report.

Joint expert report

25. During the conclave(s), the experts will agree upon, or where there is not agreement the Registrar will determine, a procedure for the experts to produce and issue a JER following the conclave.

26. In drafting the JER, the experts will:

    (a) address the issues and questions in the agenda and any instructions or further work identified by the Registrar pursuant to par 11 of this Practice Direction (if any);

    (b) record:

        (i) the substance of all matters upon which they are agreed;

        (ii) the points of differences which remain between the experts; and

        (iii) a succinct statement of the position of each expert in relation to each point of difference.

    (c) state if a particular proposition is beyond their expertise (and not record agreement or disagreement with the proposition in those circumstances);

    (d) state if a particular proposition has not been examined in adequate detail by them to be able to agree or disagree (and not record agreement or disagreement with the proposition in the circumstances);

(e) where an expert agrees subject to a qualification or reservation, explain the basis for that qualification or reservation; and

(f) note if any propositions in the JER are based on material that is not set out in individual expert reports and identify the additional material (including orally communicated explanations).

27. Once settled, the experts will provide the JER to the Registrar, who will then issue a copy to the parties. The JER will then be filed by the plaintiff.

28. The experts are to preserve for production any additional material, calculations or workings that underpin any propositions in the JER so that, if a party requests, these can be produced to the parties.

Confidentiality

29. From the commencement of an expert conclave until the JER is provided to the Registrar, each expert must keep confidential all communications between the experts or made in connection with the conclave. An expert must not communicate to any other person (including, but not limited to, the party for whom the expert was engaged and their legal representatives) any matter disclosing:

(a) the progress or content of the discussions at the expert conclave; and

(b) the progress or content of the conferral, drafting and settling of the JER following the conclave.

30. If, during the period between the commencement of an expert conclave until the JER is provided to the Registrar, a party or their legal representative seeks to communicate with an expert about a matter that in their opinion is not related to any matter intended to be dealt with in the conclave, the person seeking to make the communication must first make a request in writing to the Registrar to obtain consent for the matter to be raised with the expert. The written request should be by way of email to the Associate to the Registrar, copied to the other parties. The email addresses of Registrars' Associates can be found on the Court's website.

31. After the final JER is provided to the Registrar, the experts may disclose to the party for whom the expert was engaged and their legal representatives the course and content of the expert conclave.

32. Despite par 32, all drafts of the JER remain confidential at all times. An expert must not disclose the drafts to any person (including, but not limited to, the party for whom the expert was engaged and their legal representatives).

33. All communications between the experts from the commencement of an expert conclave until the JER is provided to the Registrar are treated as confidential. No expert can be cross-examined as to the course of the expert conclave without leave of the Court.

34. Nothing in pars 29 to 33 of this Practice Direction prohibits cross-examination of an expert on the content of the expert's individual report or the JER or prevents the production of documents referring to the conclave process.

35. Nothing in this Practice Direction or the expert conclave process generally affects a party's right to object to certain evidence being adduced on the basis of the expert's qualifications and/or make an objection in respect of an expert's own report or to their contribution to a JER.

4.5.2.3. Concurrent Expert Evidence

1. Parties should expect that the Court will consider the provision of concurrent evidence where there is more than one expert witness with substantially the same expertise who are to give evidence on the same or related topics.

2. In many cases, the use of concurrent expert evidence reduces the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become 'opposing experts' rather than independent experts assisting the Court.

3. Concurrent expert evidence may allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. It allows the key evidence to be given at the same time (rather than being spread across many days of hearing) and permits the judge to assess each expert more readily. Each party will have a genuine opportunity to put and test expert evidence. This minimises the risk of any opinions of the experts being misunderstood by the other experts, the legal representatives or the judge.

Expert conclaves and joint expert reports or list of issues

4. Where concurrent evidence is appropriate, the Court will generally make orders for an expert conclave or conference to be held; and a joint expert report (JER), or a list of issues to be prepared. This is to facilitate the concurrent expert evidence process at the hearing.

Procedure for taking concurrent expert evidence at a hearing

5. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.

6. At the hearing, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.

7. Without intending to be prescriptive of the procedure, ordinarily:

(a) the Judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;

(b) the experts will be grouped and called to give evidence together in their respective fields of expertise;

(c) the experts will take the oath or affirmation together, as appropriate;

(d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom as directed;

(e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;

(f) the Judge will guide the process by which evidence is given, including, where appropriate:

(i) using any JER as a guide for all the experts to be asked questions by the Judge and counsel, about each issue on an issue-by-issue basis;

(ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;

(iii) inviting legal representatives to identify the topics upon which they will cross-examine;

(iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and

(v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

8. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the Judge.

9. Where appropriate, the Judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.

10. Where any issue involves only one expert, the party wishing to ask questions about that issue should inform the Judge in advance so that consideration can be given to whether arrangements should be made for that issue to be dealt with separately to the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

11. Throughout the concurrent evidence process the Judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

4.6. Civil Judgments, Orders and Reasons for Decision

4.6.1. General

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1. Refer to the Practice Directions at Part 8 'Reasons for Decision'.

2. From 1 March 2018, the Court will operate an electronic file in the General Division (Civil). It is the Court's expectation that all orders and directions made in the General Division (Civil) will be confirmed by the relevant judicial officer, and will usually be extracted at the time the order is confirmed. If an order is not confirmed by the Court, then par 3 below will apply.

3. The attention of practitioners and self-represented persons in General Division - Civil matters is drawn to the following:

   (a) Order 43 r 2. This rule provides that certain orders need not be extracted unless otherwise directed. It is frequently overlooked in relation to orders for extensions of time or for leave to amend pleadings.

   (b) Order 43 r 6(2). The effect of this sub-rule is that the Registrar may decline to settle a judgment or order without leave of the Court unless the requisite documents are filed within seven (7) days after it is given or made. It is desirable that judgments and orders should be taken out promptly; and where there is any undue delay, it is likely that the Registrar will require leave to be obtained.

   (c) Settling judgments and orders. Final judgments and orders should not be extracted without notice to the other party. In a proper case, the Registrar will give an appointment under O 43 r 7 to settle the draft judgment or order in the presence of the parties. Where the Registrar considers that it is not necessary for an appointment to be given, he will provisionally settle the draft and endorse it: 'Settled subject to objection by_____', naming a date at least seven (7) days ahead, and cause a copy to be served on the other party. Where a party objects to the draft, an appointment to settle it will be given on notice to him. If no objections are received by the time fixed by the Registrar, the settled draft will be returned for engrossment by the solicitors for the party extracting the judgment or order. This

practice will apply to all final judgments and orders, and also to interlocutory orders that are unusual or complex.

(d) Order 43 r l6. This rule provides a convenient method of obtaining a consent order without the necessity of either the issue of a case management request or of an attendance in chambers.

(e) Difference between judgments and orders. An order of the Court or a Judge is generally enforceable in the same manner as a judgment to the same effect (judgments are defined to include an order of a court for the purposes of the *Civil Judgments Enforcement Act 2004* - see s 3). The origin of the distinction between the two is historical: see vol I, Seton's Judgments and Orders, (7th ed) cccxxxix. The rules require an order for the recovery of money, land or goods to be expressed in the form of a judgment (O 1 r 6(l) and the Second Schedule, Forms 32 to 44). With the exception of Form No. 100 (order of escheat), no other form of final judgment or final order is prescribed; but the practice is to express all other decisions, whether final or interlocutory, as orders of the Court, that is to say, they must be in accordance with Form No. 78 in the Second Schedule and be signed by the Registrar.

Minutes of orders and directions sought to be filed

4. Except as provided under par 3(a) above or in Practice Direction 4.6.3, in relation to orders made in the CMC list, where directions are sought on an interlocutory application, a minute of the proposed directions should be filed and a copy served with the case management request. This requirement applies to all applications for directions, but particularly to:

(a) third party directions under O 19 r 4;

(b) expert evidence directions under O 4A r2(2)(ia)-(l), (6);

(c) directions on a summons under O 61 r 2 to proceed under a judgment or order;

(d) directions under s l29C(4) of the *Transfer of Land Act 1893* on an application to discharge or modify an easement or restrictive covenant.

5. A minute should also be filed in the following cases:

   (a) on an application for judgment in a partnership action;

   (b) on an application under s l26 of the *Property Law Act 1969* for the sale of land;

   (c) in the following company matters:

      (i) an application for winding up or for confirmation of reduction of capital;

      (ii) an application for the appointment of a provisional liquidator.

4.6.2. Expedited Processes for Urgent Orders

1. This Practice Direction sets out an alternative process that a party may adopt where an order is sought to be extracted from the court on an urgent basis.

2. Examples of orders where the urgency of their extraction may justify recourse to this alternative process include an order for an injunction or for the extension of a caveat.

3. Where following a hearing a party requires a settled order urgently, that party may file the order (electronically if possible) in extractable form and may also email a copy of the order in extractable form directly to the Associate of the Judge or Master who has made the order. If satisfied with the form of the order, the Judge or Master will sign it on an urgent basis. The original of the signed order will be returned promptly to the party by the Associate, or via the ECMS.

4.6.3. Extraction of Orders made in the CMC List

1. From 1 March 2018, the Court will operate an electronic file in the General Division (Civil). It is the Court's expectation that all orders and directions made in the General Division (Civil), including orders made in the CMC List, will be confirmed by the Judge, and will usually be extracted at the time the order is confirmed.

2. After conferral between the parties and at least 24 hours prior to a hearing that an extracted order will be required, a minute of that order should be filed.

3. Where orders are not extracted, parties seeking the extraction of orders made in the CMC List should deal only with the Associate to the Judge concerned, and should not file a minute of orders to be settled and executed by a Registrar.

4.6.4. Applications for a Means Inquiry Summons under to the *Civil Judgements Enforcement Act 2004*

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1. This Practice Direction deals with the procedure for Form 6 Applications requesting a Means Inquiry hearing under the *Civil Judgements Enforcement Act 2004*.

Previous procedure

2. Prior to this Practice Direction, the practice had been for requesting parties to file a Form 6 Application and a completed Form 11 Means Inquiry Summons and a blank Form 38 Statement of Financial Affairs.

3. The Court processed the Application, endorsed the Form 11 Means Inquiry Summons and returned it together with the Form 38 to the filing party to arrange service.

New procedure

4. As the Court now has the capacity to produce the Form 11 and Form 38, it will no longer be necessary for the requesting party to provide these forms when filing a Form 6 Application for a Means Inquiry Summons.

5. The Court will continue to process the Application and provide the relevant documentation to the filing party to arrange service.

4.6.5. Filing and Enforcing a Judgment Pursuant to Part 6 of the *Service and Execution of Process Act 1992* (Cth)

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1. Documents presented for filing pursuant to Part 6 of the *Service and Execution of Process Act 1992* (Cth) and O 81B of the Rules are exempt from the requirement to file electronically using the ECMS (O 67A r 3(1)(i); refer to Practice Direction 1.1.4 – Exemptions to mandatory filing using the ECMS). However, the filing party may choose to electronically file documents using the ECMS.

2. A sealed copy of a judgment lodged under s 105(1) of the *Service and Execution of Process Act 1992* (Cth) is registered in the Court upon the issue of a notice of registration by a registrar of the Court.

3. The notice of registration will contain a matter number assigned by the Court, the date of registration and the name of the registrar issuing the notice.

4. A party seeking to file a judgment and have it registered in the Court is not required to file an affidavit.

5. A party seeking to enforce a registered judgment must file an affidavit that complies with the requirements set out in O 81B r 2(2). Where that party seeks to make a claim for interest under s 108 of the *Service and Execution of Process Act 1992* (Cth) that party must also file an affidavit which complies with the requirements set out in O 81B r 3. If a party seeks to both enforce a judgment and claim interest, that party may file one affidavit that complies with the requirements of both O 81B r 2(2)and O 81B r 3.

4.7. Costs and Taxations

4.7.1. Costs of Interlocutory Applications

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1. Where one party to a case management request is awarded costs to be paid, he or she is entitled to have the costs taxed and paid at once, although the order does not refer to taxation. But where the order says 'plaintiff's (or defendant's) costs in any event', unless the action is settled without costs, those costs are only payable after taxation at the conclusion of the proceedings: see O 66 r 10(1).

2. The Registrar, when settling interlocutory costs orders, is authorised to use the form, 'plaintiff's (or defendant's) costs in any event', except where it is apparent that the Judge or Master intended the costs to be taxed and paid immediately.

3. As a general rule, where an order for costs is to be made against a party in interlocutory proceedings, the costs will be fixed and ordered to be paid forthwith or by a particular date. Likewise as a general rule, where costs are ordered to be in the cause, the quantum will be fixed.

4. That is for a number of reasons. First, as an action progresses, parties have an interest in knowing the quantum of costs awarded to or against them, or the liability for which awaits the cause.

5. Secondly, the historical practice of ordering costs to be paid 'in any event' does not sufficiently serve the purpose of discouraging ill-considered or needless interlocutory applications. The overwhelming majority of actions settle and the orders are not enforced. The apparent benefit to parties in whose favour such orders are made is illusory.

6. Thirdly, where actions do proceed to judgment and an order for costs, the subsequent taxation would be simplified if the costs of interlocutory procedures had already been dealt with.

7. Accordingly, the Court will generally order that interlocutory costs ordered to be paid by a party are to be paid forthwith or by a particular date, rather than in any event.

8. Further, judicial officers can be expected, in the usual run of routine matters, to fix the costs payable by reference to the attached schedule (4.7.1.1), rather than ordering them to be taxed.

9. The schedule has been prepared by reference to the applicable determination of the Legal Costs Committee. As determinations are altered, the schedule will be amended.

10. The figures suggested are calculated by reference to the time required in a typical, or median, instance. The Court will fix costs in a lower sum in a simple matter, or adjust the amount upward (or order costs to be taxed) for unusually heavy matters. If the policy of fixing costs for simple interlocutory matters is to succeed, the profession has to accept that the amounts fixed are appropriate as approximating, by and large, those that might be determined on taxation.

11. As the judicial officer fixing the costs will not be engaging in a taxation, in most cases it will be necessary for counsel to make no more than the briefest submissions as to whether there should or should not be an order for fixed costs, and the amount of the costs.

12. This Practice Direction and the schedule do not fetter in any way the discretion of any judicial officer as to whether a costs order is to be made, or in whose favour. These discretions will continue to be exercised in accordance with long-established and well-known principles. It will remain open to counsel to submit, and to a judicial officer to determine, that costs be dealt with in some other way.

4.7.1.1. Schedule of Standard Costs Orders for Interlocutory Applications

Item		Work included	Allowance
		1. Registrar's chambers	
1.1	Case management conference (first) pursuant to O 4A r 18(1)	Conference with client explaining and advising listing date; communications with other side prior to conference as to subject matters of O 4A r 18(3); preparation, attendance and reporting on day. Assumes senior practitioner (SP) occupied ~ 1.0, plus a junior practitioner (JP) ~ 0.2	$655
1.2	Case management conference thereafter, not being substantial evaluation	Considering matters for attention; conferring with other side; attending; reporting. SP ~ 1.0	$572
1.3	Full case evaluation, canvassing all matters in O 4A r 18(6)	Preparation including reviewing file for all matters referred to in O 4A r 18(6); conferring with other side; attending and reporting. SP ~ 1.3	$743
1.4	Application, whether by case management request or chamber summons	Instructions; conferral with other parties; drawing the case management request and memorandum; filing, serving, but not attendance on return. SP ~ 1.0	$572

Item		Work included	Allowance
		1. Registrar's chambers	
1.5	Affidavit (up to about two pages, no more than three annexures) in support of application	Brief instructions; drawing and engrossing; arranging swearing; filing and serving. SP ~ 1.0	$572
1.6	Contested matter argued (not longer than 45 minutes) without written submissions	Preparation; attendance; reporting. SP ~ 2.5. Matters on which submissions are filed are to be treated in accordance with item 2.4	$1,430
1.7(a)	Order 13 r 6 mortgage action default judgment request (against a mortgagor defendant)	Includes instructions, preparation, drawing Forms 36A & 36B, substantial affidavit, service, notices, certification of service and reporting. SP ~ 1.0 + JP ~ 1.0 + C/PL ~ 2.0	$1,518
(b)	Order 62A application (for default judgments in mortgage actions for which the writ or originating summons was served prior to 23 November 2016)	Includes preparation, conferral, drawing application, substantial affidavit, service, notices, certification of service, attendance at hearing and reporting. SP ~ 1.0 + JP ~ 1.0 + C/PL ~ 2.0 in addition to work in 1.4	$2,090

Item		Work included	Allowance
		1. Registrar's chambers	
1.8	Consent order in lieu of appearance under item 1.2	Costs incidental to consent order, including drafting order, conferral and liaising with the Court. SP ~ 0.7	$400
		2. Judge's, Master's or Registrar's chambers	
2.1	Case management request or chamber summons and O 59 r 9 memorandum	Instructions, conferral with other parties, drawing the case management request and memorandum; filing, serving, but not attendance on return. SP ~ 1.0	$572
2.2	Affidavit in support of application (up to about two pages, no more than three annexures)	Brief instructions; drawing and engrossing; arranging swearing; filing and serving. This item is not intended for something like a summary judgment application. SP ~ 1.0	$572
2.3	Appearance in Master's general list	Considering matters for attention; conferring with other side. SP ~ 1.0	$572
2.4	Special appointment	Including drafting the application, conferral, one affidavit, preparation, submissions, appearance and reporting. SP ~ 4.5	$2,574 for a hearing of no more than 2 hours duration

Item		Work included	Allowance
		2. Judge's, Master's or Registrar's chambers	
2.5	Application to set aside statutory demand	Instructions, preparing and serving application and supporting affidavits, preparing submissions and lists of authorities, one short appearance. SP ~ 5.5	$3,146 for a hearing of no more than 30 minutes duration
2.6	Application for winding up	Instructions, preparation filing and serving of documents, attendance at hearing and reporting. SP ~ 5.0 + JP ~ 2.0 + C/PL ~ 2.0.	$4,224 for a hearing of no more than 30 minutes duration
2.7	Appearance in Judge's chambers or CMC List	Preparation, attendance and reporting. SP ~ 1.0	$572
2.8	Substantive contested application (e.g., for injunction)	Including drafting the application, conferral, one affidavit, preparation, submissions, appearance and reporting. SP ~ 4.5	$2,574 for a hearing of no more than 30 minutes duration

Item		Work included	Allowance
		2. Judge's, Master's or Registrar's chambers	
2.9	Strategic Conference	Thorough review of file, preparation and up to 1.0 hour hearing. Counsel ~ 2.0, SP ~ 3.0	$2,772
2.10	Interlocutory application decided on the basis of written submissions without oral argument	Straight forward matter with up to one affidavit (not exceeding five pages and not exceeding three annexures) and submissions (not exceeding five pages). SP ~ 3.0	$1,716
2.11	Consent order in lieu of appearance under item 2.3 or 2.7	Costs incidental to consent order, including drafting order, conferral and liaising with the Court. SP ~ 0.7	$400

4.7.2. Provisional Assessment of Bills of Costs

Background

1. A taxing officer may, prior to a bill of costs being listed for assessment, make a provisional assessment of the amount at which the bill should be allowed. This procedure is intended to reduce the number of bills that proceed to assessment and result in a saving of costs for parties. The procedure operates in the manner set out below.

2. This procedure applies principally to party and party bills drawn pursuant to the scale. There is no reason, however, why it cannot also be applied, at the sole discretion of the taxing officer, to party and party bills drawn on a law practice and client basis or on an indemnity basis and to law practice and client bills.

Procedure for initiating provisional assessment

3. A party (the filing party) will file and serve a bill of costs in the usual way and pay the lodgment fee.

4. The taxing officer may, if they consider the bill to be suitable for provisional assessment, notify the parties by letter that the bill will be provisionally assessed.

5. If the taxing officer considers the bill to be unsuitable for provisional assessment the bill will be listed for assessment in the usual way. At this point, the taxing fee of 2.5% of the value of the bill becomes due and payable unless the filing party is an eligible individual for the purposes of the fee regulations (see *Supreme Court (Fees) Regulations 2002* (WA) sch 1 div 1 item 9(b)).

Provisional assessment

6. In making a provisional assessment:

   (a) The parties will not appear before the taxing officer and, unless requested by the taxing officer, will not be entitled to provide any additional materials to the taxing officer other than, if requested by the taxing officer, vouchers for disbursements.

(b) The taxing officer will advise the parties by way of a Notice of Provisional Assessment of the total at which the bill would be allowed if the assessment were accepted.

7. The parties will have 21 days from the date of the Notice of Provisional Assessment to file objections to the assessment.

8. If no objections are received within that period, the taxing officer will allow the amount of the provisional assessment without further notice to the parties and no taxing fee becomes payable. The parties may, if they wish, advise the taxing officer in writing within that period that they are satisfied with the assessment whereupon the assessment will be allowed.

Objecting to a provisional assessment

9. An objection to a provisional assessment shall be made in writing and directed to the taxing officer within the time period referred to in par 7. The objection need only state that the party objects - it is not necessary to set out grounds of objection. A copy must be served upon the other party forthwith.

10. Upon receipt of an objection, the taxing officer may invite the parties to attend a confidential settlement conference at which the taxing officer will facilitate without prejudice discussion between the parties with the aim of settling the issue of costs. It will not be part of this conference for the parties to engage with the taxing officer on the provisional assessment.

11. If the costs issue is not settled at a conference or the taxing officer considers convening one to be inappropriate, then the bill will be listed for taxation in the usual way. At this point, the taxing fee of 2.5% of the value of the bill becomes due and payable.

12. The taxing officer who made the provisional assessment will not tax the bill and the provisional assessment will not be available to the new taxing officer.

4.7.3. Use of Schedules in Bills of Costs, Agreed Costs, Modes of Taxation and Directions

1. The purpose of this Practice Direction is to provide guidance as to the use of schedules in bills of costs filed in the Supreme Court, the certification of agreed costs (allocaturs), the use of different methods of taxation and the seeking of directions from the taxing officer prior to the taxation commencing.

The use of schedules in bills of costs

2. These comments apply to party and party and solicitor and client bills of costs drawn pursuant to the scales in force from time to time in respect of work performed in the Supreme Court. They also apply to bills drawn pursuant to special costs orders and indemnity costs orders.

3. A schedule may be attached to a bill of costs where:

   (a) an allowance is claimed in a bill by reference to any of the following scale items in the Schedule to the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012*:

      (i) item 10 (chambers proceedings and attending for reserved judgments);

      (ii) item 11 (originating motions and process);

      (iii) item 12 (motions not otherwise provided for);

      (iv) item 16 (getting up a case for trial);

      (v) item 33 (other work);

   (b) an allowance is claimed pursuant to a special costs order; or

   (c) an indemnity costs order has been made.

4. The object of a schedule is to assist the taxing officer and the paying party by providing additional information regarding the work carried out in respect of an item and the allowances sought. The schedule should set out the various general heads of work performed in respect of the scale item, the amount of time spent on each head, and the amount allocated to each head. It should not take the form of a breakdown of each and every piece of work performed in respect of an item in the bill and the cost thereof and nor is it appropriate to attach to the bill a computer printout of time spent on any item in the bill. Overly detailed schedules should be avoided.

5. A schedule to a bill will not be taxed in the sense of an allowance being made in relation to each item that appears in it.

6. For the assistance of practitioners there is attached to this Practice Direction at 4.7.3.1, an example of a schedule drawn by reference to item 16 of the scale. It is intended to be a guide only and does not purport to set out all possible heads of getting up.

7. The drawing of such schedules will, to the extent that they have been of assistance in the taxation, be taken into account in the allowance made under item 29(a) of the scale for drawing the bill of costs.

Certifying agreed costs (allocaturs)

8. Where a bill of costs has been agreed between the parties prior to the commencement of a taxation, the parties may ask the taxing officer to certify the bill on a consent basis. For this purpose the certification appearing at the end of the agreed bill (allocatur) may be amended in the following or similar terms:

> 'I certify that costs have been agreed in the sum of $.
>
> _____
>
> Taxing Officer
>
> (date)'

Modes of taxation

9. Generally, bills are taxed by each and every item in the bill being considered in turn and an allowance being made in respect of each. Prior to the taxation, however, the parties should consider whether there may be a more efficient means of conducting the taxation. This is particularly the case with bills that contain numerous items, such as in those drawn by reference to costs agreements or which deal with non-contentious work. The parties should consider whether such bills may be taxed by, for example, considering a sample of items in the bill and then applying the conclusions drawn in respect of those items to the balance of the bill. In the event that the parties agree a method of taxation which departs from the usual practice, then the agreement of the taxing officer to this method of taxation should be sought, preferably well prior to the taxation.

Directions

10. Parties should also consider, in the case of bills that are substantial either in terms of the number of items in the bill or the quantum of the bill, whether directions should be sought from the taxing officer prior to the taxation regarding:

    (a) the filing and service of a notice by the paying party that sets out:

        (i) each item in the bill to which the paying party objects;

        (ii) the grounds upon which each objection is made; and

        (iii) what would be a reasonable allowance for each item;

        and;

    (b) the referral of the bill to a mediation conference to be conducted by a Registrar.

4.7.3.1. Sample bill of costs schedule (getting up)

	WORK PERFORMED	TIME	AMOUNT
1.	Proofing witnesses:		
	John Smith - 55 page proof	25 hours	$_____
	William Smith - 27 page proof	12 hours	$_____
	Fred Jones - 10 page proof	7 hours	$_____
2.	Preparing a brief to counsel:		
	3 pages of instructions, observations on the law and the facts and 2 lever arch files comprising 450 pages of documents	3 hours	$_____
3.	Conferences with counsel:		
	4 January 2004	2 hours	$_____
	14 February 2005	3 hours	$_____
4.	Considering proofs of evidence received from the defendant:		
	John Brown - 33 pages		
	Stephen White - 28 pages		
	Joseph Johnson - 12 pages	10 hours in total	$_____

	WORK PERFORMED	TIME	AMOUNT
5.	Preparing bundles of documents: 6 copies of 4 lever arch files containing 670 pages of documents	15 hours	$_____
6	Instructing experts: William Wallace - accountant James Stuart - valuer	2 hours 1 hour	$_____ $_____
7.	Perusing expert reports and conferences with expert	6 hours in total	$_____
8.	Perusing defendant's expert reports	4 hours	$_____
9.	Preparation of submissions and lists of authorities	10 hours	$_____
		Total	**$**

4.7.4. Applications for a costs assessment – Part 4.3 Division 7 of the *Legal Profession Uniform Law (WA)* and Part 10 Division 8 of the *Legal Profession Act 2008*

Introduction

1. This Practice Direction sets out the procedure for a costs assessment under both the *Legal Profession Act 2008* and the *Legal Profession Uniform Law (WA)*.

2. If first instructions were given to a law practice before 1 July 2022, pt 10 div 8 of the *Legal Profession Act 2008* applies.

3. If first instructions were given to a law practice on or after 1 July 2022:

   (a) the Legal Practice Board may deal with a costs dispute in accordance with pt 5.3 div 3 of the *Legal Profession Uniform Law (WA)*; or

   (b) an application may be made to the Court for a costs assessment under pt 4.3 div 7 of the *Legal Profession Uniform Law (WA)*.

Costs disputes may be dealt with by the Legal Practice Board

4. The Legal Practice Board may deal with a costs dispute in accordance with pt 5.3 div 3 of the *Legal Profession Uniform Law (WA)* where:

   (a) the total bill for legal costs is less than $100,000 (indexed) payable in respect of any one matter; or

   (b) the total bill for legal costs equals or is more than $100,000 (indexed) payable in respect of any one matter, but the total amount in dispute is less than $10,000 (indexed).

5. Further information can be found on the Legal Practice Board's website at www.lpbwa.org.au.

6. A complaint must be made to the Legal Practice Board within 60 days after the legal costs become payable or where an itemised bill was requested in accordance with s 187(2) of the *Legal Profession Uniform Law (WA)*, 30 days after the request was complied with. An additional four

month extension may be granted if suitable reasons explaining the delay in lodging the complaint can be provided.

7. The Legal Practice Board is a no costs jurisdiction. If you apply to the Court for a costs assessment, the Court may order you to pay the costs of the costs assessment.

Costs Assessments in the Supreme Court

Who can bring an application to the Court for a costs assessment?

8. Pursuant to the *Legal Profession Act 2008* and *Legal Profession Uniform Law (WA),* an application to a taxing officer for an assessment of the whole or any part of legal costs payable to a law practice may be made by:

   (a) a client;

   (b) a third party payer;

   (c) a law practice; or

   (d) a law practice that retains another law practice to act on behalf of a client.

9. Legal costs that are or have been dealt by the Legal Practice Board under a costs dispute may not be the subject of a costs assessment in this Court, save for exceptions in s 197 of the *Legal Profession Uniform Law (WA)*.

Time in which to bring an application

10. Pursuant to the *Legal Profession Act 2008* and *Legal Profession Uniform Law (WA),* and subject to pars 11 and 12 of this Practice Direction, an application must be made within 12 months after the bill was given to, or the request for payment was made to, the client, third party payer or law practice; or the legal costs were paid if neither a bill nor a request was made.

11. If an application is made under the *Legal Profession Act 2008* by a law practice:

(a) where a law practice retained another law practice, the application must be made within 60 days after the bill was given or the request for payment was made; or the costs were paid if neither a bill was given nor a request was made; or

(b) where the law practice has given a bill in accordance with div 7, the application must not be made unless at least 30 days have passed since the bill was given or the request for payment was made; or the costs were paid if neither a bill was given nor a request was made; or an application has been made by another person in respect of the legal costs.

12. For applications made out of time see Practice Direction 4.7.5.

Conferral

13. Prior to applying for an assessment by a taxing officer, the applicant must confer with the other party. This conferral can be in writing, in person or by telephone.

14. In order to constitute sufficient conferral it is necessary for the applicant to adequately identify:

(a) the bill;

(b) the items in the bill in dispute;

(c) the total value of the items in dispute; and

(d) the reason that each item is in dispute.

15. The applicant must then prepare a memorandum (sample attached to this Practice Direction at 4.7.4.2), to be filed with the Court describing the conferral (memorandum of conferral).

How to make an application

16. In order to apply for a costs assessment, the applicant must file an application with the Court (sample attached to this Practice Direction at 4.7.4.3), naming the applicant and describing the parties.

17. A guide to how to complete an application form is attached to this Practice Direction at 4.7.4.1.

18. The application must identify and attach a copy of:

    (a) the bill;

    (b) any costs agreement applicable to the bill;

    (c) any relevant costs disclosure information or estimates (pt 4.3 div 3 of the *Legal Profession Uniform Law (WA)*; and

    (d) the memorandum of conferral in accordance with par 15 above.

19. The applicant must pay the lodgment fee for an application pursuant to sch 1, div 1, item 9(a) of the *Supreme Court (Fees) Regulations 2002*.

20. The applicant must serve the application on the respondent by ordinary service.

21. A person served with an application:

    (a) is entitled to participate in the costs assessment process; and

    (b) is taken to be a party to the assessment; and

    (c) if the taxing officer so determines, is bound by the assessment.

22. A person who is served with an application for a costs assessment or notified by a taxing officer, and who wishes to participate, must file a memorandum of appearance within 10 days.

Directions hearing

23. Applications may be listed for a directions hearing before a taxing officer.

24. The directions hearing will be at least 21 days after the application is filed with the Court.

25. At the directions hearing, programming orders will be made for either provisional assessment, mediation or assessment.

Provisional assessment

26. If the bill is considered suitable for provisional assessment by the taxing officer, the taxing officer will make directions in respect of that

provisional assessment including, in appropriate cases, the filing of supporting documents and (or) the law practice's file.

27. Where the validity of a costs agreement is in dispute in an application made under the *Legal Profession Uniform Law (WA),* the bill will not be suitable for provisional assessment (see s 199(2)(a)).

28. The procedure for provisional assessment will be in accordance with Practice Direction 4.7.2 pars 6 - 12.

29. If the application is made under the *Legal Profession Act 2008*, and provisional assessment is either accepted or not objected to within 21 days, the taxing officer will certify in writing the amount of costs allowed, including, if appropriate, a separate notation of the amount of costs not in dispute, the amount of disputed costs allowed and the total amount of costs certified.

30. If the application is made under the *Legal Profession Uniform Law (WA)* and the provisional assessment is either accepted or not objected to within 21 days, the application will proceed to a costs assessment on the papers for the purpose of issuing a costs certificate under that scheme.

Mediation

31. If the application is considered suitable for mediation and both parties consent to the application being mediated, and pay the mediation fee, then the taxing officer will make directions programming the application to mediation. Those directions will be in the form of the Court's usual mediation orders (Practice Direction 4.2.1 par 11).

32. If the dispute does not resolve at mediation, then at the conclusion of the mediation, the mediation registrar will refer the application to the taxing officer for programming orders to be made or a further directions hearing listed.

Assessment

33. If the application is not suitable for provisional assessment or mediation, the taxing officer will make directions programming the application for assessment.

34. Typical directions programming the application for assessment may require:

    (a) the law practice to file and serve a bill of costs in assessable form, in compliance with O 66 r 42 of the *Rules of the Supreme Court 1971* (the bill);

    (b) the paying party to file and serve a notice of objection setting out:

        (i) each item in the bill to which the party objects;

        (ii) the grounds on which an objection is made; and

        (iii) the sum considered to be a reasonable allowance for each item.

35. The taxing officer will also make orders in respect of:

    (a) the time and date on which the assessment is to be held; and

    (b) the payment of the taxing fee pursuant to sch 1, div 1, item 9(b) of the *Supreme Court (Fees) Regulations 2002*.

36. The *Legal Profession Uniform Law (WA)* and *Legal Profession Act 2008* set out the relevant criteria for assessment.

37. At the conclusion of an assessment under the *Legal Profession Uniform Law (WA)*:

    (a) the taxing officer will determine the costs of the costs assessment in accordance with s 204(1); and

    (b) the taxing officer will certify in writing the amount of legal costs (if any) determined to be payable on the costs assessment, the amount of interest to be paid on unpaid legal costs for the purposes of s 195 of the *Legal Profession Uniform Law (WA)* and the costs of the costs assessment, pursuant to s 147 of the *Legal Profession Uniform Law Application Act 2022*.

38. At the conclusion of an assessment under the *Legal Profession Act 2008*:

    (a) the taxing officer will determine the costs of the assessment in accordance with s 304; and

    (b) the taxing officer will certify in writing the amount of disputed costs allowed and the costs of the assessment pursuant to s 305.

39. A sample certificate is attached to this Practice Direction at 4.7.4.4.

40. The taxing officer's certificate is binding on the parties, bears interest and may be enforced as a judgment of the Supreme Court for the payment of the amount in the certificate.

4.7.4.1. How to complete an application for assessment of costs form

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1. As set out in Practice Direction 4.7.4, a party applying for a costs assessment must file an application for assessment in the form attached. Before completing the form, please read these notes and Practice Direction 4.7.4 carefully.

2. Please note the following when completing the form:

Par 1:	Your full name and address are required. A post office box is not acceptable.
Par 2:	Include the full name and address of the law practice concerned.
Par 3:	Include the date of the bill to which the application relates. If the application concerns more than one bill then you must set out the date of each bill, if necessary, in an attachment to the application. Please also attach to the application a copy of each bill.
Par 4:	Please complete a memorandum of conferral and attach the memorandum to the application. An application will not be accepted for filing by the Court if a memorandum of conferral is not attached.
Par 5:	Please state the date on which first instructions were given to the law practice.
Par 6:	Legal costs that are or have been dealt with by the Legal Practice Board under a costs dispute may not be the subject of a costs assessment in this Court. An application will not be accepted for filing unless you can make a declaration to that effect.

Par 7: Sign and date the application.

4. Once you have completed the form you should file it with the Court and serve it on the other party. You will be required to pay the applicable filing fee when filing the form. Since the Court fees change from time to time, please refer to Schedule 1 of the *Supreme Court (Fees) Regulations 2022*. The Court's address and telephone number are:

Supreme Court of Western Australia
Level 11, 28 Barrack Street
Perth WA 6000

Tel: (08) 9421 5333

Supreme Court website: www.supremecourt.wa.gov.au

4.7.4.2. Sample memorandum of conferral

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN	No of
NAME (Client/third party payer/law practice)	Applicant
and	
NAME (Client/third party payer/law practice)	Respondent

MEMORANDUM OF CONFERRAL
APPLICATION FOR ASSESSMENT OF COSTS
UNDER THE *LEGAL PROFESSION ACT 2008/LEGAL PROFESSION UNIFORM LAW (WA)* [*delete as appropriate*]

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Facsimile:

I refer to the application for an assessment of costs dated [ ] and certify that:

1. Conferral
The parties have conferred to try to resolve the matters giving rise to the application as follows: [the memorandum must describe briefly the facts relied upon to show conferral].

2. Matters in Dispute
The following matters are in dispute between the parties: [list].

3. Directions sought

The parties have agreed that, subject to the directions of the taxing officer, the following directions should be made:

(a) orders for provisional assessment,
(b) orders for mediation, or
(c) programming orders for an assessment of the bill, including the time required.

OR the parties have been unable to agree any orders.

(Signed) _____
Solicitor for the applicant or applicant [in person]

(Dated) _____

4.7.4.3. Sample application for assessment of costs

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN	No of
NAME (Client/third party payer/law practice)	Applicant
and	
NAME (Client/third party payer/law practice)	Respondent

APPLICATION FOR ASSESSMENT OF COSTS
UNDER THE *LEGAL PROFESSION ACT 2008/LEGAL PROFESSION UNIFORM LAW (WA)* [*delete as appropriate*]

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Facsimile:

1. I, [insert full name and address]

apply for an assessment of costs.

2. The name and address of the respondent is:

3. The bill/s that I seek to have assessed is/are dated [insert date/s of bill/s]. The bill/s is/are attached.

4. I have conferred with the respondent and attach a memorandum of conferral.

5. The date of first instructions was:

6. The bill/s are not and have never been the subject of a costs dispute dealt with by the Legal Practice Board. [*Applications under the Legal Profession Uniform Law (WA)* only]

(Signed) _____

Solicitor for the applicant or applicant [in person]

(Dated) _____

4.7.4.4. Sample taxing officer's certificate

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN	No of
NAME (Client/third party payer/law practice)	Applicant
and	
NAME (Client/third party payer/law practice)	Respondent

CERTIFICATE OF COSTS
UNDER THE *LEGAL PROFESSION ACT 2008/LEGAL PROFESSION UNIFORM LAW (WA)* [*delete as appropriate*]

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Facsimile

I CERTIFY that I have assessed the costs the subject of the bill dated _____ and allowed the sum of $

I CERTIFY that the amount of interest to be paid on the unpaid legal costs is $ [*Legal Profession Uniform Law (WA)* only]

I CERTIFY that the costs of the costs assessment is $

OR

I CERTIFY that the parties have consented to the costs of the assessment of the bill dated _____ in the sum of $

Dated the day of 20

TAXING OFFICER

4.7.5. Applications for a costs assessment made out of time - s 295 of the *Legal Profession Act 2008* and s 198 of the *Legal Profession Uniform Law (WA)*

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1. This Practice Direction deals with the procedure for applications for a costs assessment made out of time under both the *Legal Profession Act 2008* and the *Legal Profession Uniform Law (WA)*.

1A. If first instructions were given to a law practice before 1 July 2022, s 295(7) of the *Legal Profession Act 2008* applies.

1B. If first instructions were given to a law practice on or after 1 July 2022, s 198(4) of the *Legal Profession Uniform Law (WA)* applies.

Applications under the *Legal Profession Act 2008*

2. A client or third party payer, who is not a 'sophisticated client', may apply for a costs assessment out of time.

3. For the definition of 'sophisticated client' refer to s 252 of the *Legal Profession Act 2008*.

4. An application for a costs assessment is made out of time if it is made more than 12 months after:

   (a) the bill was given in accordance with div 7 of the *Legal Profession Act 2008* or the request for payment was made to the client or third party payer; or
   (b) the costs were paid if neither a bill was given nor a request was made.

5. When applying for a costs assessment that is out of time, the client or third party payer must also file a chambers summons to be heard before the Master of the Supreme Court.

6. The chambers summons should be filed with an affidavit from the client or third party supporting the application to allow the costs assessment to be dealt with after the 12 month period.

7. The affidavit should include details of:

(a) the delay;

(b) the reasons for the delay;

(c) whether there is evidence that suggests that the bill may be excessive;

(d) whether the law practice has indicated that it would oppose the application; and

(e) why it would be just and fair for the assessment to be dealt with after the 12 month period.

8. The Master will determine whether it is just and fair for the assessment to be dealt with after the 12 month period.

Applications under the *Legal Profession Uniform Law (WA)*

9. A client or third party payer may apply for a costs assessment out of time.

10. A third party payer who is not a commercial or government client but would be a commercial or government client if the third party payer were a client of the law practice concerned, cannot make an application for a costs assessment out of time.

11. An application for a costs assessment is made out of time if it is made more than 12 months after:

(a) the bill was given to, or the request for payment was made to, the client, third party payer or other law practice; or

(b) the costs were paid if neither a bill was given nor a request was made.

12. When applying for a costs assessment out of time, the client or third party payer must apply to the State Administrative Tribunal.

13. The State Administrative Tribunal will determine whether it is just and fair for the application for assessment to be dealt with after the 12 month period.

14. If an extension of time in which to bring an application for a costs assessment is granted, the application must be commenced in the Supreme Court in the usual way.

4.8. Payment into and out of Court

The purpose of this Practice Direction

1. This Practice Direction applies if a person is required or permitted by an Act, the *Rules of the Supreme Court 1971* (WA), an order of the Court, judgment or other authority to pay money into Court.

2. Order 24 of the *Rules of the Supreme Court 1971* (WA) outlines the process for payments into and out of Court.

3. For applications by a trustee to pay money or securities into Court under section 99 of the *Trustees Act 1962* (WA), refer to O 62. This Practice Direction applies to those proceedings only after the Court has made an order for payment into Court.

Requests for payment into Court

4. A party seeking to pay funds into Court must file a Request for Payment into Court (sample attached to this Practice Direction at 4.8.1).

5. The Request for Payment into Court must contain:

   (a) the full name of the party lodging the funds;

   (b) the amount of the payment;

   (c) the reason for the payment and what the payment is in respect of;

   (d) particulars of the order, judgment or other authority under which the payment is made;

   (e) a statement of whether the funds are to be invested with the Public Trustee; and

   (f) if the person signing the Request in not the party in person (for example, the party's legal practitioner, or a director, officer or trustee where the party is a corporation or a trust), the capacity in

which they sign and the authority pursuant to which they make the request on the party's behalf.

6. Where the funds are paid into Court under a judgment, order, notice, pleading or petition, a copy of that document must be annexed to the Request. Where relevant, the document provided must be a stamped or sealed copy.

7. If the Request for Payment into Court and supporting documents are in order, the requesting party will receive a notification setting out how to make the payment.

Requests for payment out of Court

8. A party seeking to have monies paid out of Court must file a Request for Payment out of Court (sample attached to this Practice Direction at 4.8.2).

9. A copy of the order under which payment is to be made must be annexed to the Request.

10. Where the funds were paid into Court under a judgment, order, notice, pleading or petition, a copy of the judgment, order, notice, pleading or petition, must be annexed to the Request for Payment out of Court.

11. The Court's preferred method of payment is by Electronic Funds Transfer (EFT) to a bank account nominated by the person entitled. A person wishing to have monies paid out of Court must therefore provide a BSB, account number and account name.

12. All Requests for Payment out of Court must be signed by the party entitled to the money, and if the party is represented, by their legal practitioner. This is to ensure that where payment is to be made to a party's legal practitioner, the party authorises the legal practitioner to receive it.

12A Where the person signing the Request is not the party in person (for example, a legal practitioner, a director or other office of a corporation, or a trustee) that person must state the capacity in which they sign and

the authority pursuant to which they make the request on the party's behalf.

13. A person who is not a party to the proceedings cannot present a Request for Payment out of Court for filing using the ECMS (refer to Practice Direction 1.1.4 par 15). The Request should be emailed to central.office@justice.wa.gov.au.

14. International payments will take longer to process.

4.8.1. Sample Request for Payment into Court

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN No of

NAME Plaintiff

and

NAME Defendant

REQUEST FOR PAYMENT INTO COURT

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Email:

Payment details

Party making payment in:

Details of order/judgment or other authority to make payment in:

Amount to be paid in: $[*amount*]

Is the money to be invested with the Public Trustee:

Note: A copy of the judgment, order, notice, pleading, petition or other authority to which the requested payment relates must be attached.

Signed

If the person signing this Request in not the party in person (for example, the party's legal practitioner, or a director, officer or trustee where the party is a corporation or a trust), that person must state the capacity in which they sign and the authority pursuant to which they make the request on the party's behalf.

Dated:

(*Signature of party or party's legal practitioner*)
_____

(*Name*)
_____

(*Capacity/authority*)
_____

4.8.2. Sample Request for Payment out of Court

IN THE SUPREME COURT OF WESTERN AUSTRALIA

BETWEEN		No of
NAME		Plaintiff
and		
NAME		Defendant

REQUEST FOR PAYMENT OUT OF COURT

Date of Document:

Date of Filing:

Filed on behalf of:

Prepared by:

Telephone:
Email:

Payment details

Date of order for payment out:

Party entitled to payment out:

Amount to be paid out (including accrued interest if applicable): $[*amount*]

Is the money invested with the Public Trustee:

Note: A copy of the order under which payment is to be made must be attached along with documents demonstrating the funds out of which payment is to be made.

Payee details			
Name:	Full Name (including capacity, eg, Administrator, Liquidator, Trustee, etc)		
Address:			
Telephone:			
Email:			
Bank Account Details:	Account Name	Account Number	BSB

Signed

A request for payment out of court must be signed by the party and, if the party is represented, by their legal practitioner. Where the person signing is not the party in person (for example, a legal practitioner, a director or other office of a corporation, or a trustee) that person must state the capacity in which they sign and the authority pursuant to which they make this request on the party's behalf.

Dated:

(*Signature of person/party*) (*Signature of legal practitioner*)

_____ _____

(*Name*) (*Name*)

_____ _____

(*Capacity/authority*) (*Capacity/authority*)

_____ _____

4.9. Third Party Notices

4.9.1. Filing and Issuing Third Party Notices

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1. Order 19 of the Rules provides for the issuing of third party notices.

2. The purpose of this Practice Direction is to clarify the requirements for filing and issuing third party notices, and, in particular, requirements where the defendant claims against multiple persons not already a party to the action.

3. O 19 r1(1) provides that a defendant who has entered an appearance in any action may issue a third party notice against a person not already a party to the action, if the defendant claims –

   (a) that they are entitled to contribution or indemnity; or

   (b) that they are entitled to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

   (c) that any question or issue relating to or connected with the original subject matter of the action is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but also as between either or both of them and the third party.

4. A defendant must have leave of the Court to issue a third party notice, unless the notice is issued before the defence is served on the plaintiff: O 19 r 1(2).

5. The notice must contain a statement of the nature of the claim made against the third party and, as the case may be, either of the nature and grounds of the claim made by the defendant or of the question or issue required to be determined.

6. Where the defendant intends to initiate third party proceedings in respect to multiple persons, ordinarily, a separate third party notice must be filed in respect of each person the defendant claims against.

7. Separate third party notices are not required where the nature of the claim made against each proposed third party and, as the case may be, either of the nature and grounds of the claim made by the defendant or of the question or issue required to be determine, are the same as against each proposed third party. For example, where members of a partnership are sued.

5. General Division - Criminal

5.1. Magistrates Court - Stirling Gardens

1. The Magistrates Court - Stirling Gardens Registry was established in the Supreme Court building on 1 October 2007. The Principal Registrar and another Registrar have been appointed as Magistrates and sit once per week at 9.15 am every Wednesday morning.

2. The Court deals with all proceedings in respect of all Supreme Court indictable matters. Accordingly, all accused charged with Supreme Court indictable offences who do not enter pleas of guilty when first appearing in any Magistrates Court will be remanded to appear on the following Wednesday at Stirling Gardens. If an accused is in custody or was released to bail at a place other than the Perth metropolitan area that appearance will be by video or audio link. Where there is any associated charge it will be remanded together with the Supreme Court indictable matter and will only be returned to the location of origin if there is to be a trial in relation to it.

3. The State Director of Public Prosecutions will act as prosecutor in the court but will not become responsible for disclosure under s 42(5) of the *Criminal Procedure Act 2004*. The responsibility for disclosure prior to the disclosure/committal hearing will remain with the investigating officers who commence each prosecution.

4. These procedural changes are aimed at expediting criminal cases and effecting a system of individual case management of each matter from start to finish. To this end, the parties will be encouraged to engage in voluntary case conferencing (refer to Practice Direction 5.3) at a very early stage notwithstanding the lack of full prosecution disclosure.

5. Matters that are not resolved within one month of the accused's first appearance will be provisionally listed for trial on dates convenient to counsel and the main prosecution witnesses. Unless in any particular case there is good reason to delay proceedings, those dates will generally be within six months of the accused's arrest. The provisional trial dates will be subject to any necessary adjustments brought about by late prosecution disclosure, and will only become fixed upon the accused's first appearance in the Supreme Court following committal.

5.2. Disclosure of DNA Reports

5.2.1. Guidelines for Disclosure of DNA Reports in Supreme Court and District Court Indictable Matters

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1. In prosecutions conducted by the State DPP, any requirement for DNA examination and analysis of exhibits, and for the reporting of results, is met by PATHWEST. PATHWEST has other major and competing responsibilities in the area of DNA analysis, and cannot always provide the DPP with reports (in suitable form) within a timeframe suitable to the court system.

2. In an endeavour to overcome this problem, PATHWEST has agreed to the following two stage process of disclosure of DNA results in all Supreme Court and District Court indictable matters:

   (a) Firstly, within one month of any request by the DPP for a preliminary report, PATHWEST will provide the DPP with a 'Summary of Preliminary Findings' substantially in the form of the example attached. This one page summary will be subject to the disclaimer as indicated.

   (b) Secondly, within three months of any request by the DPP for a final report, PATHWEST will provide the DPP with a second and final DNA report. This final report will be in the same form as is currently used.

3. The ability of PATHWEST to meet the above time standards is subject to any request for a preliminary or final report complying with the following:

   (a) The request should be emailed to: fbadmin@pathwest.wa.gov.au

   (b) The request should identify the relevant exhibits by reference to the Police incident or 'IMS' number as found on the 'Statement of Material Facts'.

   (c) A copy of the request should be emailed to the Officer in Charge of the Forensic Analysis Coordination Team at: Forensic.DNA.Exhibits.Unit@police.wa.gov.au

5.2.1.1. Sample Summary of Preliminary Findings Form

Path West Laboratory Medicine WA
FORENSIC BIOLOGY

[Address]
[Telephone]
[Fax]
[Email]

FORENSIC	**BIOLOGY**	**SUMMARY OF PRELIMINARY FINDINGS**	
<AUTHOR>		**<Case**	**Number>**
WA POLICE REFERENCE:		**IMS** Number(s)	

Office of the Director of Public Prosecutions
Level 1, 26 St. Georges Terrace
International House
Perth WA 6000

In relation to this matter, a number of exhibits have been submitted for Forensic Biology testing. The following section lists the exhibits that have been examined to date, and the preliminary results that have been obtained from the examination of those items.

ITEMS LISTED AS FROM [COMPLAINANT].

0001 JEANS: multiple bloodstains detected on front of legs. One stain was tested and gave a profile matching [complainant].

0002 T-SHIRT: bloodstain on sleeve gave a profile matching [accused].

ITEMS LISTED AS FROM [ACCUSED].

0003 JEANS: single bloodstain detected that gave a mixed DNA profile. [Complainant] cannot be excluded as a possible contributor.

0004 SHOES: nothing detected.

ITEMS LISTED AS FROM [SCENE].

0005 SWAB 1: bloodstain gave a profile matching [complainant].

0006 SWAB 2: weak partial profile recovered, Insufficient for analysis.

Exhibits that have not been mentioned here have either:

- been received and are yet to be tested, or
- been received and will not be tested, or
- have not been received.

This **Summary of Preliminary Findings** should NOT be used for Court purposes. As this Summary of Preliminary Findings has been prepared before the conclusion of the full laboratory processes and peer review, it may be necessary to modify this opinion.

To ensure that a Forensic Biology report is available for trial proceedings, all **Exhibits** and **Evidentiary DNA Samples** must be submitted for testing through Forensic Analysis Co-ordination Team (FACT), **at least twelve weeks prior** to the trial. Please quote the Forensic Biology Case Number listed above.

<NAME>	
Forensic Scientist	
Forensic Biology	
<DATE>	
Original:	DPP
Copy:	DPP / IIO

NATA Accredited Forensic Testing Laboratory Number: XXXXX. This document Is Issued In accordance with NATA'S accreditation requirements. Accredited for compliance with ISO/IEC 17025. This document shall not be reproduced except In full.	**NATA** Page 1/1

5.3. Protocol for Voluntary Criminal Case Conferencing

1. The Supreme Court of Western Australia will make the services of a Registrar or external facilitator available for voluntary criminal case conferencing (VCCC) of any of its indictable matters, whether before or after filing of the indictment. VCCC may occur in the period prior to the committal of an accused under s 44 of the *Criminal Procedure Act 2004 (WA)* and/or, if the matter is committed for trial, it may occur at any time after committal and before trial.

2. A Registrar of the Court will only be the VCCC facilitator for a case if it has been committed to the Supreme Court. This ensures that there is no potential for a conflict between the roles of Registrars sitting as Magistrates in the Stirling Gardens Magistrates Court and Registrars acting as facilitators for VCCC. A VCCC facilitated by a Registrar of the Court will also have case management objectives.

3. VCCC can only occur with the consent of all parties, and the consent of an accused is not valid unless he or she has first received a copy of this Protocol.

4. It can be assumed that the Commonwealth DPP will always consent to VCCC of any matter that it prosecutes. A similar assumption can be made in respect of the State DPP, but subject to its obligation to consult secondary victims in all murder cases.

5. An accused can initiate VCCC by way of a request to the Judge in charge of the criminal list. The prospects for VCCC can be canvassed at any stage of proceedings when an accused appears before a Magistrate in Stirling Gardens Magistrates Court or a Supreme Court Judge.

6. In any event, either at the first appearance of an accused in the Supreme Court or at the first status conference of a criminal matter in the Supreme Court, the presiding judge will ask the parties whether they agree to the matter being referred for VCCC. The parties should have considered this issue and be in a position to advise the presiding judge of their attitude.

7. VCCC conferences (whether before or after presentation of the indictment) will ordinarily take place in Court No 9 in the Stirling Gardens Supreme Court building. Counsel and/or the accused may be present by video link. The attendance of an accused is at the option of the defence. The Court encourages the prosecution to arrange for the officer in charge of the investigation to be present, if it may facilitate the resolution of an issue between the parties.

8. If the accused person is in custody and defence counsel requires the accused to appear by video link, defence counsel is to advise the Listings Supervisor in writing not less than seven (7) business days prior to the mediation to enable the Court to arrange the video link.

9. Prior to the conference a party should comply with any request by the Court officer for the supply of copies of any evidentiary or confessional materials in its, his or her possession, which the Court is still to receive pursuant to s 44(2) of the *Criminal Procedure Act 2004* (WA).

10. In every case in which the State DPP is involved, he will ensure that prior to the conference the Court has the complete prosecution brief, the indictment (if any), a transcript of any interview between the accused and the police (if any) and the accused's prior criminal record (if any), so that these documents can be provided to the facilitator/s. This material should be provided to the Court no later than five (5) business days prior to the date on which the VCCC is to occur.

11. In order to facilitate the process of VCCC, the parties are also encouraged to take the following additional steps:

    (a) the prosecution should serve on the accused and bring along to the conference a list of facts forming part of its case that it hopes or expects are not seriously in issue; and

    (b) the accused should serve on the prosecution and bring along to the conference a list of any formal admissions that he or she may be prepared to make.

12. VCCC conferences will ordinarily commence at 9.00 am and, unless prior arrangements have been agreed, take no more than one hour (so that counsel may depart for other jurisdictions). During a conference the facilitator will seek to identify issues that might be resolved, and to discuss generally with the parties the future conduct of the case.

13. The purpose of a VCCC conference is to reach agreement, where possible, in respect of any aspects of the criminal trial process. It may include discussion about:

    (a) the strength of the prosecution case;

    (b) whether the current charge reflects the evidence in the prosecution brief;

    (c) the real matters in issue;

    (d) whether agreement may be reached about matters which are not in issue; and

    (e) any matters relevant to case management.

14. To facilitate a meaningful discussion about these issues the following principles and rules apply to each conference:

    (a) An accused's participation in the conference is not to be taken as an indication of any intention to plead guilty.

    (b) A person present at a conference may draw the attention of the accused to options that are open to him or her, including the option of a plea or pleas of guilty, and the considerations that should be taken into account in evaluating those options. However the accused shall not otherwise be subjected to any pressure (directly or indirectly) to plead guilty during the course of or as a result of the conference.

    (c) Any agreement by an accused, at the conference, to plead guilty to a charge does not inhibit in any way his or her right to enter a plea of not guilty should he or she change his or her mind after the conference and before entering a plea. However in that event it would be open to the prosecution to reconsider any other aspects of any agreement reached at the conference.

(d) The conference does not form part of the trial process. No record of the proceedings will become part of any Court file.

(e) A report as to the outcome of the conference will be made by the facilitator to the Judge in charge of the criminal list. Where the objectives of the conference include case management, a case management report will be made to the Judge in charge of the criminal list. The report summarises the matters agreed.

(f) Nothing an accused says during a conference or that is said on his or her behalf during a conference may be used against him or her in court in the criminal proceedings to which the conference relates or in any related criminal proceedings (other than in a trial for a criminal offence which is allegedly committed during a conference by a person present at the conference). Participation by the prosecution is conditional upon it agreeing that nothing said by an accused or any person on the accused's behalf at the conference may be tendered in evidence at the accused's trial on the charge or charges arising out of the matter the subject of the conference.

(g) A party or lawyer present at the conference may use information obtained in the course of a conference to prepare their or their client's, case for trial. This may include disclosing that information to another person. If an accused person does not wish the prosecution to know his or her defence or to investigate his or her defence before trial, the accused and/or his or her lawyer should ensure that it is not disclosed during the course of a conference.

(h) Whilst the court encourages frank discussions during a conference, there is no obligation on a party to disclose privileged or confidential information at a conference.

5.4. Applications under the *Criminal Procedure Act 2004*, s 138 and the *Criminal Procedure Rules 2005*, r 22

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1. Definitions

1.1. Words defined in the *Criminal Procedure Act 2004* (the Act), s 138 and used in this Practice Direction have the same respective meanings as in the Act.

1.2. 'Application to proceed without notice' means an application made by a prosecutor without notice to an accused pursuant to s 138(4) of the Act and in accordance with r 22 of the *Criminal Procedure Rules 2005* (the Rules).

'Court Officer' means such member or members of the Court Registry staff as the Principal Registrar may from time to time in writing nominate. Until a written nomination is made the Court Officer shall be the Manager Customer Services or, in his/her absence, the Manager Listings.

'Substantive application' means an application for an order under s 138(3) of the Act.

2. Introduction

2.1 This Practice Direction applies to an application to proceed without notice.

2.2 This Practice Direction also applies to a substantive application the subject of an application to proceed without notice.

2.3 This Practice Direction does not apply to substantive applications by an accused or by a prosecutor, on notice to the accused.

2.4 In view of their nature, applications which include an application to proceed without notice must be processed promptly and with complete confidentiality.

3. Commencement of applications

3.1. Application is to be made by Form 1 in the Rules, sch 1 accompanied by an affidavit and a draft order.

3.2 Substantive applications and applications to proceed without notice should be made on separate forms.

3.3 The affidavit may include facts and opinion in support of the application. This does not limit the power of a Judge to receive further information or oral evidence at the hearing of the application.

3.4 Before presenting any documents an applicant for leave to proceed without notice must contact the Court Officer, normally by telephone:

(a) to give notice of a pending substantive application;

(b) to advise that the substantive application will also be the subject of an application to proceed without notice and that notice of neither application is to be given to the accused pending the outcome of the application to proceed without notice;

(c) to make arrangements for a Judge to hear the application to proceed without notice;

(d) to inform the Court Officer whether there have been multiple applications and whether a particular Judge has previously had the conduct of the pending or related applications;

(e) to inform the Court Officer whether the applicant proposes to exhibit videotape or other recordings to the affidavit so that (if necessary) arrangements can be made for the Judge to view or hear the recordings before the application is heard.

3.5 In respect of each application, the application, affidavit and the draft order must be delivered to the Court in a sealed envelope.

3.6 The documents must be handed to the Court Officer who shall:

(a) allocate a sequential number to the envelope, and record it on the envelope;

(b) record the date, the Judge assigned and the number into a Register;

(c) then, immediately deliver the documents personally to the Associate to the Judge nominated to hear the application; and

(d) at that stage, or as soon as practicable, inform the applicant of the identity of the Judge, the number and the time and the place nominated for the hearing.

4. Hearing of applications and subsequent activity

4.1. An application to proceed without notice shall be heard by a Judge in private chambers, without notice being given to any person the subject of the application. If the application is refused, any substantive application must be brought on notice and this Practice Direction has no further application. If the application is granted, the substantive application will also be heard, by the same Judge, without notice being given to any person the subject of the application in private chambers. No person (including members of the Judge's personal staff) other than the Judge, the applicant or a legal representative of the applicant may be present at the hearing unless at the direction of the Judge and with the consent of the applicant that other person is required to attend the hearing to provide further information or to give evidence concerning the application.

4.2 In respect to the hearing of both an application to proceed without notice and a substantive application referred to in par 4.1 where an application to proceed without notice has been granted:

(a) The Judge may make such note as the Judge shall think fit concerning the application, the result of the application, the order made and any such other information as the Judge thinks is necessary or appropriate in the circumstances. In addition to, or instead of making notes, the Judge may initial each page of the affidavit.

(b) At the conclusion of the hearing the Judge will if appropriate, complete and sign the draft order and hand it to the applicant or the applicant's representative.

(c) All documents issued as a result of the hearing shall have the number allocated in par 3.6(a) recorded on them.

(d) Where the Judge has made a note of the order made, the Court need not retain any other copy of the order.

(e) Immediately after the hearing the Judge will place any note referred to in par 4.2(a), the application, the affidavit and any other relevant document in an envelope and hand it to the Associate.

(f) The Associate shall seal any such documents in the envelope and label it:

> 'CRIMINAL PROCEDURE ACT 2004, s 138 and CRIMINAL PROCEDURE RULES 2005, r 22
> Note of proceedings before [name of Judge] on [date].
> Nature of action taken [eg, order made in terms of application, application dismissed]
> Number
>
> NOTE: This envelope is not to be opened other than in accordance with the order of a Judge.'

(g) The Associate shall deliver the envelope to the Court Officer who shall place the envelope in a locked secure area set aside for the purpose.

(h) The envelope shall not be opened other than in accordance with the order of a Judge. If such an order is made then, immediately after the further hearing or action, the Associate to the Judge shall re-seal the envelope and endorse it with a note to this effect:

> 'Envelope opened on [date] by order of [name of Judge]
> Record of proceedings before [name of Judge] on [date].
> Nature of the action taken [give brief details]
> Envelope re-sealed on [date].'

(i) Immediately after the further hearing or action the Associate to the Judge shall deliver the envelope to the Court Officer who shall return it to a locked secure area.

(j) An envelope containing documents in accordance with the above paragraphs shall not be open to inspection by any person other than as required or authorised by law.

(k) Whenever possible, all proceedings in relation to an order after it has been made shall be dealt with by the Judge who made the order.

4.3 The fact that an application to proceed without notice or order to that effect has been made or the content of such an application or order shall not be disclosed to any person other than the applicant for the order, their legal representative, or a member of the staff of the Supreme Court or a Judge in the normal course of the Court's business, except with leave of a Judge. The same level of confidentiality must also be maintained in respect of the substantive application the subject of the application to proceed without notice, unless and until the substantive application is made on notice.

5.5. Early compliance with a witness summons to produce a record or thing

1. Subject to any Court order, this practice direction applies to early compliance with a witness summons to produce a record or thing in General Division - Criminal matters.

2. For the purposes of this practice direction, there is early compliance if:

   (a) the summons requires a witness to produce the record or thing to the Court on a date before the trial; or

   (b) the witness complies with the summons at least two (2) days before the attendance date in the summons, under s 163(1)(a) of the *Criminal Procedure Act 2004*.

3. When there is early compliance with a summons and no application is made to have the witness summons or part of it cancelled, the party who applied for the summons shall have leave to inspect the record or thing produced.

4. The party who applied for the summons is not permitted to take copies of the record and must apply for leave from the Court under s 163(3)(a) *Criminal Procedure Act 2004*.

5. Inspection or copying of the record or thing by any other person or party is not permitted and any other party or person must apply for leave from the Court under s 163(3) *Criminal Procedure Act 2004*.

5.6. Confidentiality of Pre-Sentence and other Reports relevant to Sentence

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Background

1. Section 22 of the *Sentencing Act 1995* (WA) imposes limits upon the persons to whom pre-sentence and other reports relevant to sentence, such as psychological and psychiatric reports (collectively referred to as PSRs in this Direction) may be provided. The provisions of the section embody an obvious legislative intention to the effect that the contents of PSRs should be kept confidential, and their terms not generally disclosed or published.

2. This Practice Direction deals with the procedures which will apply when access is sought to a PSR, and is intended to maintain the legislative objective of confidentiality.

Practitioners' Access to PSRs in Perth

3. The terms upon which access to a PSR will be granted in any particular case will be subject to the direction of the Judge presiding over that case. The procedures specified in this Practice Direction apply in default of any specific directions made by the Presiding Judge.

4. If a Judge does not disallow inspection of a PSR, the PSR may be inspected by arrangement with the Associate to the Presiding Judge, or in the case of appeals, with the Court of Appeal Office. Notes may be taken during such an inspection. References in submissions to material in a PSR should be general in nature, and not include quotes, and should maintain the general confidentiality of the PSR.

5. Copies of PSRs will be made available upon request prior to the relevant hearing. Copies will usually be available five (5) working days prior to the hearing. Copies will only be made available to practitioners who have signed a written undertaking which has been provided to the court, in the terms set out in attachment 5.6.1. Separate undertakings will not be required for each case, and a general undertaking will remain in force unless and until revoked by the practitioner.

6. A copy of a PSR provided upon request will be placed in a sealed envelope and made available for collection from the Associate to the Presiding Judge, or in the case of appeals, from the Court of Appeal Office.

Practitioners' Access to PSRs in regional Western Australia

7. Practitioners who practice outside of Perth may obtain copies of PSRs by email.

8. If the Presiding Judge directs that a PSR is not to be emailed to a practitioner who practices outside of Perth, the Judge will give directions to ensure that the practitioner has access to the PSR in some other manner.

Self-represented parties' access to PSRs

9. Self-represented parties may read PSRs on the day of the relevant hearing by arrangement with the Associate to the Presiding Judge.

General Directions

10. Any request for access to a PSR on terms other than those provided in this Practice Direction should be made to the Associate to the Judge presiding at the relevant hearing or, in the case of an appeal, to the Court of Appeal Office.

11. Only one copy of a PSR sent by email or other electronic means may be printed.

12. A PSR in a sealed envelope may be collected from the Court by the practitioner who has filed a notice of acting for the relevant offender or by an agent for the practitioner. If an agent for a practitioner collects the sealed envelope he or she must provide their name and relationship to the practitioner to the Court, if requested, and is not to open the envelope and must deliver it personally to the practitioner.

13. A PSR is to be retained in the possession of (relevantly):

    (a) the file manager or sentencing counsel of the prosecutor; or

    (b) a legal practitioner who has filed a notice of acting on behalf of the offender.

14. A practitioner who has possession of a PSR:

    (a) is to take appropriate steps to ensure that the contents of the PSR remain confidential;

    (b) is not to disclose the contents of the PSR to any person other than the offender, if the practitioner is his or her lawyer, or, in the case of the prosecutor, another officer of the prosecutor engaged in the matter; and

    (c) is not to use the PSR for any purpose other than the purpose of making submissions at the sentencing of the offender or, if the PSR is obtained in an appeal, other than for the purpose of making submissions in the appeal.

15. Where a legal practitioner ceases to act for an offender prior to the relevant hearing, the practitioner is to:

    (a) return the hard copy of any PSR about the offender to the Court (in a sealed envelope marked for the attention of the Associate to the Presiding Judge only) with the notice of ceasing to act; and

    (b) delete any electronic copies of the PSR.

16. At the conclusion of the relevant hearing counsel appearing for the prosecutor and the offender or the appellant and respondent are each to:

    (a) hand their respective copies of the PSR to the Associate of the Presiding Judge; and

    (b) delete any electronic copies of the PSR.

    This direction applies even if the prosecutor or the offender wishes to consider commencing an appeal or a further appeal in relation to the sentence.

5.6.1. Undertaking of Confidentiality

I, [insert name], Legal Practitioner, undertake that upon being provided with a copy of the pre-sentence report, psychological or psychiatric report relating to a case in which I am engaged:

- I will keep in my custody or possession the copy of the report provided to me;
- I will not copy the report or cause it to be copied;
- I will not disclose the contents of the report to any other person other than my client or in the case of the Director of Public Prosecutions, another officer of that office engaged in the matter;
- I will return the copy of the report to the court immediately following the hearing.

Signature: _____

Date: _____

5.7. Published Written Sentencing Remarks

1. Published written sentencing remarks are the official record of the court's sentencing remarks. These reflect in written form what was said by the sentencing judge in court, and are produced by editing the original transcript for grammatical errors.

2. Written sentencing remarks can be accessed on the eCourts portal by:

   going to the eCourts Portal home page;
   clicking on the 'decisions' tab;
   on the 'decisions' page, selecting the jurisdiction 'Supreme Court' from the drop down list; and
   clicking on the decision type 'sentencing remarks'.

3. Written sentencing remarks are available on the eCourts portal for 28 days.

4. If the written sentencing remarks are not available on the eCourts Portal, an application for a copy of the transcript of the oral sentencing remarks may be made to the Principal Registrar. The application may be made by letter or email addressed to the associate to the Principal Registrar – refer to website for contact details.

5. The original transcript will include a standard notation, 'Remarks on sentence delivered', in the same way as the transcript of an oral judgment includes a standard notation, 'Judgment delivered'.

Appeals

6. Subject to par 9 below, when an appeal against a sentencing decision is instituted, the Court of Appeal requires an appellant to include in the appeal book the published written sentencing remarks.

7. The published written sentencing remarks will be used by the Court of Appeal as the record of the reasons for sentence.

8. A party to an appeal is still able to argue, if electing to do so, that the published written sentencing remarks do not accurately or fully reflect what the judge said during sentence. In those circumstances the Court of Appeal would be able to compare the audio recording or the original

transcript (which are retained in the court files) with the published written sentencing remarks.

9. If, at the time an appeal book is prepared, the published written sentencing remarks are not available to the parties, the transcript of the oral sentencing remarks should be included in the appeal book. An application for a copy of the transcript of the sentencing remarks should be made to the Principal Registrar in accordance with par 4.

Citation of Published Written Sentencing Remarks

10. For the citation of published written sentencing remarks refer to 8.2.2, pars 5 - 6.

5.8. Case Management

Criminal case management

1. Criminal case management involves the continuous control of a case by the case manager, who monitors each case on a flexible basis. Cases will be selected for management in accordance with the processes set out in these directions at the discretion of a judge, having regard to complexity, likely length of trial, issues that have arisen prior to trial and any other relevant considerations.

Objectives of criminal case management

2. The overriding objective of criminal case management is that criminal cases must be dealt with justly. This overriding objective includes:

   (a) facilitating a fair trial according to law;

   (b) dealing with the prosecution and the defence fairly;

   (c) recognising the rights of an accused;

   (d) respecting the interests of witnesses, victims and jurors and keeping them informed of the progress of the case;

   (e) dealing with the case efficiently, economically and expeditiously;

   (f) ensuring that appropriate information is available to the court when bail and sentence are considered; and

   (g) dealing with the case in ways that take into account:

      (i) the gravity of the offence alleged;

      (ii) the complexity of the factual or legal matters in issue;

      (iii) the consequences for the accused and others affected; and

      (iv) the needs of other cases before the court and other Western Australian courts, and the limited judicial and other resources available within the criminal justice system.

3. Through criminal case management the court will aim to ensure that the time taken by and cost of any pre trial proceedings are proportionate to the gravity of the offence and the complexity of the matters in issue, and the extent to which that procedure will enhance the just disposition of the case.

Matters suitable for case management

4. Cases will be selected for case management by the judge in charge of the criminal list.

5. Any party may apply for a case to be managed pursuant to this Practice Direction. An application for case management should be made by letter to the judge in charge of the criminal list and should include the reasons for the application and that the other parties in the case have been advised of the application and, whether they agree with the case being managed.

The role of the case manager

6. The judge in charge of the criminal list will nominate a judge or commissioner to manage the case, or parts of the case.

7. The case manager will manage the case with a view to:

   (a) identifying the real issues in the case as early as possible;

   (b) identifying the needs of witnesses in the case as early as possible;

   (c) achieving certainty as to what must be done, by whom, and when;

   (d) monitoring the progress of the case and compliance with directions;

   (e) ensuring that evidence, whether disputed or not, is presented in the shortest and clearest way;

   (f) discouraging delay, dealing with as many aspects of the case as possible on the same occasion, and avoiding unnecessary hearings;

   (g) encouraging the participants to co-operate in the progression of the case; and

   (h) making use of technology.

Participants in case management

8. Anyone involved in any way with a criminal case is a participant in its conduct for the purposes of this Practice Direction.

9. Each participant, in the conduct of each case, shall:

   (a) prepare and conduct the case in accordance with the overriding objective of criminal case management (see par 2);

   (b) comply with this Practice Direction and directions made by the court; and

   (c) promptly cause the court to be informed of any significant failure to take any procedural step required by this Practice Direction or any direction of the court (whether or not that participant is responsible for that failure). A failure is significant if it might hinder the court in furthering the overriding objective.

The case management conference

10. The case manager may direct that a case management conference be held at any time before trial of a case.

11. A case management conference will be held in an appropriate conference room or, if such a room is not available, court and will be transcribed, unless the case manager directs otherwise.

Who should attend the case management conference?

12. The lawyers responsible for the conduct of the case must attend a conference, unless otherwise directed by the case manager. If the lawyer practices in a city or circuit town other than the city or circuit town in which the conference is being held, he or she may attend the conference in person or by audiovisual link. The lawyer responsible for the conduct of a party's case is:

   (a) where counsel has been briefed, that counsel; and

(b) where counsel has not been briefed, or where counsel has been excused from attending by the case manager, the most senior lawyer directly responsible for the conduct of the case and who has authority to make decisions and (or) take instructions from the accused about the conduct of the case.

13. The case manager may direct that any participant in the conduct of the case attend a case management conference.

Attendance by accused

14. The accused must attend a conference in person, by audiovisual link or by audio link unless otherwise directed by the case manager.

15. If there is no lawyer on the record for an accused then the accused must appear in person or by audiovisual link.

Matters to be dealt with at the case management conference

16. At a case management conference the case manager will expect the parties to advise the court of the following matters:

(a) the names of the witnesses which the prosecutor intends to call to give oral evidence;

(b) the names of any other witnesses which the accused wants the prosecutor to call to give oral evidence;

(c) the names of any expert witnesses who the accused intends to call to give oral evidence;

(d) the approximate order in which witnesses will give their evidence, if an estimate of witness order is reasonable;

(e) whether that party requires an order compelling the attendance of a witness at trial or for examination prior to trial;

(f) what arrangements are desirable to facilitate the giving of evidence by a witness and whether any order will be sought to enable the evidence of a witness to be given by audiovisual link or pre-recorded;

(g) what arrangements are desirable to facilitate the participation of any other person, including the accused;

(h) what written evidence or other exhibits that party intends to introduce and through which witness;

(i) what other material, if any, that party intends to make available to the court in the presentation of the case;

(j) whether that party intends to raise any point of law that could affect the conduct of the trial;

(k) what timetable that party proposes and expects to follow;

(l) whether any application will be made for trial by judge alone;

(m) whether any application will be made for the determination of an issue pursuant to s 98 of the *Criminal Procedure Act 2004* (WA); and

(n) whether there are any unresolved issues in relation to disclosure.

17. At every case management conference the case manager will, where relevant:

(a) find out whether the accused is likely to plead guilty or not guilty;

(b) set, follow or revise a timetable for the progress of the case, which may include a timetable for any hearing including the trial;

(c) make case management directions; and

(d) where a case management direction has not been complied with, find out why, identify who was responsible, and take appropriate action.

Case management directions

18. A case management direction is any direction that in the court's opinion it is just to make in a case to facilitate the attainment of the overriding objective of criminal case management (see par 2). The court may give any direction and take any step necessary or convenient to actively manage a case. Without limiting the generality of the foregoing, the court may make a direction:

    (a) that any person attends a case management conference, including directions as to the manner, time and place of the attendance;

    (b) specifying the time within which any party or participant is to take a step in the case;

    (c) that the parties confer on a 'without prejudice' basis or take other measures before trial to try to identify those facts and issues in the case that are agreed between them and those that will be in issue at the trial of the case;

    (d) that the parties do anything that in the court's opinion will or may facilitate the case being conducted and concluded efficiently, economically and expeditiously;

    (e) that two or more witnesses who are to give expert opinion evidence, whether for the prosecutor or the accused, and whose evidence has been disclosed are:

        (i) to confer on a without prejudice basis before trial in order to identify the differences between them and to resolve as many of them as possible; and

        (ii) to each provide a report to the court that explains which aspects of the evidence to be given by the other are disputed and why;

    (f) that the prosecutor provide to the court and to the defence by a specified date, a written summary of the prosecutor's opening on the facts and law, together with notice of any pre-trial admissions sought from the defence;

(g) that an accused provide to the prosecutor and the court a written response to the summary of the prosecutor's opening and notice of pre-trial admissions sought by a specified date;

(h) that a case management conference or any part of a conference not be conducted in open court;

(i) which is ancillary to another direction and made for the purpose of carrying out that other direction; and

(j) to vary or revoke a direction.

19. If a party fails to comply with a direction, the court may fix, postpone, bring forward, extend, cancel or adjourn a hearing; and may impose such other sanction as may be appropriate.

Applications for case management directions

20. The case manager may give a direction on his or her own initiative or on application by a party.

21. An application for a case management direction may be made by letter to the case manager.

Conferral

22. Any party who applies for a case management direction must, before applying, confer with any other party who might be affected by the direction sought. In this paragraph, conferral means oral communication between the lawyers responsible for the conduct of the cases of the relevant parties, either by telephone, or preferably, by meeting.

Case management directions made 'on the papers'

23. The case manager may make a case management direction without holding a case management conference.

24. If a case management direction is made on the basis of the documents filed without requiring the parties to attend a hearing (the provisional decision), the court must serve the parties with written notice of the provisional decision.

25. If a party wants a hearing of the matter that gave rise to the provisional decision, the party must send a written request for a hearing to the case manager within five (5) working days after the date on which the party is served with the notice of the provisional decision.

26. If no party files a request under par 25, the provisional decision becomes the final decision on the matter.

27. If any party files a written request under par 25, the case manager must list the matter for hearing at a case management conference, and notify the parties.

28. At the hearing the provisional decision may be confirmed, varied or revoked. The decision made at the hearing is the final decision on the matter.

Varying a case management direction

29. A party may apply to vary a case management direction if the case manager gave it at a hearing in his or her absence; or circumstances have changed.

30. An application to vary a direction must be made as soon as practicable after the applying party becomes aware of the grounds for doing so; and that party must give as much notice to the other parties as the nature and urgency of his or her application permits.

31. The parties may agree to vary a time limit fixed by a case management direction, but only if:

    (a) the variation will not:

        (i) affect the date of any hearing that has been fixed; or

        (ii) significantly affect the progress of the case in any other way;

    (b) the case manager has not prohibited variation by agreement; and

(c) the case manager is promptly informed.

Timetables

32. The case manager may set a timetable for procedural steps to be taken in a case.

33. Unless ordered otherwise the prosecutor must file the indictment and prosecution brief within 42 days after the case has been committed for trial.

34. Unless ordered otherwise any application for an issue to be determined pursuant to s 98 of the *Criminal Procedure Act* must be notified to the court not later than 28 days prior to the date fixed for the commencement of the trial.

35. The case manager may:

(a) vary the timetable, whether on his or her own initiative or on a party's application;

(b) at any time request the parties to explain in writing why the timetable has not been complied with;

(c) at any time summon the parties to explain why the timetable has not been complied with;

(d) for the purposes of hearing a summons issued under par (c), direct the parties to file such affidavits in response to the summons at such times as he or she considers just;

(e) on the return of a summons issued under par (c):

(i) amend the timetable;

(ii) make any case management direction he or she considers just;

(iii) make any enforcement order he or she considers just; and

(f) if a party does not comply with the timetable, or obey a summons issued under par (c), or file affidavits as directed, make any case

management direction or enforcement order he or she considers just.

Readiness for trial

36. Each party must take every reasonable step to make sure his or her witnesses will attend the trial when they are needed.

37. Each party must make appropriate arrangements to present any written or other material.

38. Each party must promptly inform the court and the other parties of anything that may:

    (a) affect the date or duration of the trial;

    (b) significantly affect the progress of the case in any other way; or

    (c) affect the technology facilities and equipment required for the proper conduct of the trial.

39. The court may require a party to give a certificate of readiness.

5.9. Applications for a bail hearing or rehearing where charges are pending in the Magistrates Court

1. The purpose of this Practice Direction is to:

   (a) set out the procedures for bail applications under s 14 and s 15 of the *Bail Act 1982* where the charges are pending in the Magistrates Court; and

   (b) ensure that these bail applications are considered in a timely way.

2 Procedures for bail applications under s 13, s 14 and s 15 of the *Bail Act 1982* are set out in r 25 of the *Criminal Procedure Rules 2005*. However, where applications for bail to be granted, revoked or varied are made under s 14 or s 15 and the charges are pending in the Magistrates Court it is desirable to set out in more detail the procedure and what is required in making an application. This Practice Direction relates to those applications only.

3. Procedures for bail applications associated with appeals are set out in:

   (a) Rule 68 *Criminal Procedure Rules 2005* and Practice Direction 6.2 when the appeal is from the Magistrates Court to a single Judge; and

   (b) Rule 44 *Supreme Court (Court of Appeal) Rules 2005* when the appeal is before the Court of Appeal.

Listings Office procedure on receipt of bail application

4. Unless the Judge in Charge of the Criminal List or the Court allows otherwise:

   (a) listing of a bail application will be completed within three (3) days of its receipt by the Listings Office; and

   (b) the hearing date will be within five (5) days of receipt of the bail application.

Bail applications

5. Unless the Judge in Charge of the Criminal List or the Court allows otherwise, bail applications are to include:

(a) one original and one copy of a completed Form 1 'Application' under the *Criminal Procedure Rules 2005*
(available from the Supreme Court of WA website - Forms and Fees - Criminal Forms);

(b) the transcript of the previous bail hearing if available;

(c) certified copy of prosecution notice/s or evidence that a request has been made to the relevant court;

(d) supporting affidavit, including:

(i) if the transcript of any previous bail hearing is not provided at the time of filing (see (b) above):

- the time and date of the request for transcript, and any related correspondence;
- a brief account of the hearing, including:
  - the date of the application, details of the presiding judicial officer, counsel for the applicant and the respondent;
  - submissions made by counsel for the applicant and respondent;
- the decision of the presiding judicial officer
- any other relevant factor in the bail decision that was made;

(ii) if the certified prosecution notices are not provided at the time of filing, the relevant charge numbers and the date of any previous bail hearing (see (c) above);

(iii) facts to be relied upon in submissions including facts relevant to the alleged offending and the personal circumstances of the accused;

(iv) facts relevant to any proposed conditions of bail, including the availability of a residence, a surety and the willingness of the accused to comply with reporting, a curfew, travel restrictions or home detention, and the time and place of the next court appearance (or date to which bail is to extend);

(e) an indication of the available dates and times for a self-represented accused or legal representative (see par 4(b) above). Parties must make themselves available at a hearing time set by the Court. If required, urgent bail applications can be heard outside of the usual court hearing times.

6. Unless the Judge in Charge of the Criminal List or the Court allows otherwise, the bail application must be served on the respondent as soon as practicable after it is filed and in any event at least two (2) clear working days before the hearing date for the application (*Criminal Procedure Rules,* rr 9 and 23).

7. Accused persons or, if represented, their legal representatives making a bail application are encouraged to directly contact the Office of the DPP to discuss their bail application once the papers have been served.

Consent to the orders applied for

8. A party to the bail application may consent to the grant, variation or revocation of bail applied for by filing documents that set out the order sought and evidence of each party's consent to the making of the order (*Criminal Procedure Rules 2005*, r 25A(2)).

9. The consent document/s should be filed as soon as practicable.

10. The party may file the document/s by fax to Listings. Refer to Practice Direction 1.2.2 – General Division – Criminal.

11. Alternatively, the party may file the document/s electronically by sending a scanned copy of the document/s in .pdf format as an attachment to an email to Listings addressed to central.office@justice.wa.gov.au. The email should be marked as urgent and the subject line should read 'URGENT – Application for Bail …'. The document/s to be scanned must be:

(a) endorsed on the first page with a statement that the document is the original of a document sent by email; and

(b) kept by the party and, if directed to do so by the Court, produced to the Court.

Legal representatives - robing

12. Unless otherwise ordered, legal representatives need to be robed for bail applications under s 14 and s 15 of the *Bail Act 1982* in respect of charges pending in the Magistrates Court (refer to PD 10.4 par 5(b)(i)).

5.10. Accused answering their bail at an alternate venue

1. The procedure set out in this Practice Direction applies to both the Stirling Gardens Magistrates Court and the Supreme Court. It does not apply to the Court of Appeal.

2. In the ordinary course, accused are required to answer their bail at the Court venue specified in their bail documents.

3. However, where an accused is required to appear for a hearing other than a trial or sentencing, and that appearance requires significant travel, a legal practitioner acting for the accused may apply to the Court for approval for the accused to answer bail at an alternative venue in accord with procedures set out below.

4. The proposed alternative venue is to be either the courthouse at one of the localities listed in par 11 or, if the locality is not listed, at the local police station. The Court will not ordinarily allow an accused to remotely report at another venue in the metropolitan area.

5. At least two (2) clear working days prior to the hearing, the legal practitioner must contact the relevant Associate and advise the Associate of the name of the accused and the phone number and email address for the venue at which it is proposed the accused will appear. The Associate will notify the legal practitioner in writing (usually by email) whether the presiding judicial officer approves of the request. If the request is approved, the Associate will contact the relevant courthouse or police station and provide a form which the accused is to sign when he or she reports, and which will then be emailed (or faxed) to the Court on the day of the hearing.

6. The accused is to report by 8.45 am on the date of the hearing at the pre-arranged alternative venue. The purpose of requiring the accused to attend at 8.45 am is so that the relevant courthouse or police station can email confirmation that the accused has reported to the Associate by 9.15 am on the day of the hearing.

7. The legal practitioner acting for the accused is to advise the accused in writing where, to whom, and by when they are to report on the day of the mention hearing.

8. Immediately prior to the hearing, counsel appearing (or their instructor) is to phone the relevant courthouse or police station to confirm that the accused has reported and that the confirmation email (or fax) has been sent.

9. When the matter is called, counsel appearing will be requested to confirm that the requirements in pars 7 and 8 have been complied with.

10. In the event that written confirmation of the accused's attendance is not received by 10.00 am, leave will be given for the issue of a bench warrant unless the presiding judicial officer decides that it is not just to do so.

11. The courthouse venues at which the Court will ordinarily allow an accused to report to are:

Albany	Broome
Bunbury	Busselton
Carnarvon	Collie
Coolgardie	Derby
Esperance	Geraldton
Kalgoorlie	Karratha
Katanning	Kununurra
Leonora	Mandurah
Manjimup	Marble Bar
Meekatharra	Merredin
Moora	Mt Magnet
Narrogin	Norseman
Northam	Roebourne
South Hedland	Southern Cross

5.11. Victim Impact Statements

Background

1. Victim impact statements may be delivered in writing, or, subject to any direction of the Presiding Judge, orally by the victim, or by a person authorised under the *Sentencing Act 1995* (WA) (SA) s 24(2) to give a victim impact statement on the victim's behalf (an authorised person), reading a victim impact statement.

2. In the Supreme Court, the prosecutor provides a copy of the victim impact statement to the Court either before or at the sentencing hearing and under SA s 26(2) the Court may rule as inadmissible the whole or any part of a victim impact statement. While a victim impact statement is not subject to the same legislative restrictions on availability as apply to pre-sentence and related reports (see SA s 22 and PD 5.6), a victim impact statement can be made available by the Court on such conditions as it thinks fit (SA s 26(1)).

Purpose of this Practice Direction

3. The purpose of this Practice Direction is to set out the conditions upon which prosecutors and offenders' legal representatives have access to victim impact statements. It also seeks to respond to victims' concerns about the availability of such statements. The conditions set out in this Practice Direction apply unless otherwise ordered by the Presiding Judge.

Conditions of access applying to the prosecution

4. If the prosecution proposes that the Court is to give consideration to a victim impact statement in determining the proper sentence for the offender, the prosecutor must ensure that, where possible prior to the sentencing hearing:

   (a) the Court is informed if a victim or an authorised person proposes to deliver an oral victim impact statement;

   (b) a hard copy of the written victim impact statement is made available to the Court;

(c) where the offender is represented by a legal practitioner who is:

(i) in Perth, a hard copy of the written victim impact statement is made available to that legal practitioner; or

(ii) in regional Western Australia, an electronic copy of the written victim impact statement is made available to that legal practitioner; and

(d) where an offender is not represented by a legal practitioner, a copy of the victim impact statement is to be made available for inspection by the offender.

Conditions of access applying to offenders' legal practitioners

5. A practitioner who receives a victim impact statement under par 4(c) is:

(a) to take appropriate steps to ensure that the contents of the statement remain confidential;

(b) print only one copy of the victim impact statement if sent by email or other electronic means;

(c) not to make any copies of the hard copy victim impact statement;

(d) if required, arrange for the victim impact statement to be made available for inspection by the offender;

(e) not to disclose the contents of the statement to any person other than the offender; and

(f) not to use the statement for any purpose other than the purpose of making submissions at the sentencing of the offender.

6. Where a legal practitioner ceases to act for an offender prior to a sentencing hearing, the practitioner is to:

(a) deliver the hard copy of the victim impact statement with the notice of ceasing to act to the Court; and

(b) delete any electronic copies of the victim impact statement.

7. At the conclusion of the sentencing hearing a legal practitioner appearing for the offender is to hand the hard copy of the victim impact statement to the Associate of the Presiding Judge, and must delete any electronic copies of the victim impact statement.

   This direction applies even if the offender wishes to consider commencing an appeal in relation to the sentence.

6. General Division - Appeals to a Single Judge

6.1. Commencing a Criminal Appeal from the Magistrates Court to a Single Judge

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1. *Criminal Procedure Rules 2005* r 65 (c) - (g) set out what must be filed to commence an appeal as follows:

   (a) a Form 20 (Appeal notice) that sets out the grounds for the appeal in accordance with subrule (2);

   (b) any document required by subrule (3) or (4);

   (c) a certified copy of the prosecution notice in respect of which the decision being appealed was made;

   (d) a copy of the primary court's transcript; and

   (e) a copy of every other record that the Court will need to decide the appeal.

2. It is recognised that there may be a delay in obtaining a copy of the primary court's transcript.

3. If no transcript has been filed within six (6) weeks after an Appeal notice and a copy of the prosecution notice have been filed, the matter will be referred to a Judge who may in his or her discretion:

   (a) refuse leave to appeal on the papers;

   (b) make a provisional decision to grant or refuse leave; or

   (c) list an application for leave to appeal, an extension of time or other interim order for oral submission.

4. In cases of urgency or for other good cause, a Judge may list the application for leave to appeal and the appeal to be heard together expeditiously.

5. Order 67A applies to documents presented for filing in criminal appeals to a single judge. (See also Practice Directions 1.1.3 and 1.1.4).

6.1.1. Prohibited Behaviour Orders (refer to PD 9.12)

Refer to Practice Direction 9.12, par 15.

6.2. Bail applications connected with criminal appeals to a Single Judge

1. Procedures for bail applications connected with criminal appeals from a Magistrates Court decision to a single Judge under the *Criminal Appeals Act 2004* Part 2 Division 2 are set out in the *Criminal Procedure Rules 2005*, r 68 (which has the heading 'Interim order, applying for').

2. Rule 68 of the *Criminal Procedure Rules 2005* provides that an interim application is made by filing a Form 23 (Application in an appeal) with a supporting affidavit explaining why the interim order is wanted. The purpose of this Practice Direction is to set out in more detail the procedure and what is required in making an application.

Listings Office procedure on receipt of bail application

3. The Court seeks to ensure that these bail applications are considered in a timely way.

4. Unless the Court allows otherwise:

   (a) listing of a bail application will be completed within three (3) days of its receipt by the Listings Office; and

   (b) the hearing date will be within five (5) days of receipt of the bail application.

5. The application for leave to appeal and the appeal may be listed to be heard with the bail application, if transcript of the Magistrates Court proceeding is available.

Bail application

6. Unless the Court allows otherwise, bail applications are to include:

   (a) a completed Form 23 'Application in an Appeal' under the *Criminal Procedure Rules 2005* (available from the Supreme Court of WA website - Forms and Fees - Criminal Forms);

(b) unless the Form 23 is being lodged electronically via the ECMS, a copy of the Form 23;

(c) if available, the relevant transcript of the hearing (conviction or sentencing) in the Magistrates Court which is the subject of the appeal;

(d) certified copy of prosecution notice/s or evidence that a request has been made to the relevant court;

(e) supporting affidavit, including:

(i) if the transcript from the Magistrates Court proceedings is not provided at the time of filing (see (c) above):

- the time and date of the request for transcript, and any related correspondence;
- a brief account of the hearing, including:
  - the date of the hearing in the Magistrates Court (conviction or sentencing) which is the subject of the appeal, details of the presiding judicial officer, counsel for the prosecution and the accused;
  - submissions made by counsel for the prosecution and the accused;
- the decision of the presiding judicial officer

(ii) if the certified prosecution notices are not provided at the time of filing, the relevant charge numbers (see (d) above);

(iii) facts to be relied upon in submissions including facts relevant to the conviction in the Magistrates Court and the personal circumstances of the accused;

(iv) facts relevant to any proposed conditions of bail, including the availability of a residence, a surety and the willingness of the accused to comply with reporting, a curfew, travel restrictions or home detention, and the time and place of the next court appearance (or date to which bail is to extend);

(f) an indication of the available dates and times for a self-represented applicant or legal representative (see par 4(b)

above). Parties must make themselves available at a hearing time set by the Court. If required, urgent bail applications can be heard outside of the usual court hearing times.

7. Unless the Court allows otherwise, the bail application must be served on the respondent as soon as practicable after it is filed and in any event at least two (2) clear working days before the hearing date for the application (*Criminal Procedure Rules,* rr 9 and 23).

8. Accused persons or, if represented, their legal representatives making a bail application are encouraged to directly contact the respondent to discuss their bail application once the papers have been served.

Consent to the orders applied for

9. The parties to a bail application may consent to the grant of bail by filing a Form 24 'Consent Notice' (*Criminal Procedure Rules 2005*, r 70).

10. The consent document/s should be filed as soon as practicable.

11. The party may file document/s by fax to Listings. Refer to Practice Direction 1.2.2 – General Division – Criminal.

12. Alternatively, the party may file the document/s electronically by sending a scanned copy of the document/s in .pdf format as an attachment to an email to Listings addressed to central.office@justice.wa.gov.au. The email should be marked as urgent and the subject line should read 'URGENT – Application for Bail - SJA [matter number]'. The document/s to be scanned must be:

    (a) endorsed on the first page with a statement that the document is the original of a document sent by email; and

    (b) kept by the party and, if directed to do so by the Court, produced to the Court.

Legal representatives – robing

13. Unless the Court orders otherwise, legal representatives need to be robed for bail applications whether the bail application is listed with the appeal or not (see PD 10.4 par 5(b)(ii)).

Filing documents using the ECMS

14. Whilst it is not mandatory to file documents using the ECMS in SJA matters (pursuant to O 67A r 3(1)(i) and Practice Direction 1.1.4 [11]), the filing party may choose to file documents using the ECMS. Practice Direction 1.2.2 pars 3 - 6 will apply to documents where the filing party chooses to present documents for filing via the ECMS in SJAs.

15. If a party presents a bail application or any document concerning a bail application for filing electronically, that party must also immediately inform Listings by email (addressed to central.office@justice.wa.gov.au) that the document has been presented for filing. The email should be marked as urgent and the subject line should read 'URGENT – Application for Bail – SJA [matter number]'.

6.3. Confidentiality of Pre-Sentence and other Reports relevant to Sentence

Practice Direction 5.6 applies in relation to any application to access pre-sentence and other reports relevant to sentence arising in criminal appeals from the Magistrates Courts.

6.4. Entry for hearing - Criminal and Civil Appeals to a Single Judge (SJAs and GDAs)

Entry for hearing

1. Entry for hearing of a criminal appeal to a Single Judge of the General Division (Single Judge Appeal - SJA) shall be in accordance with the annexure at 6.4.1 with such variations as the circumstances may require.

2. Entry for hearing of a civil appeal to a Single Judge of the General Division (General Division Appeal - GDA) shall be in accordance with the annexure at 6.4.2 with such variations as the circumstances may require.

6.4.1. Entry for hearing form - Criminal Appeal to a Single Judge (SJA)

Supreme Court of Western Australia *Criminal Appeals Act 2004* Part 2	No: SJA **Entry for Hearing**
Parties to the appeal	Appellant *Enter full names and underline surname*. Respondent
Request:	1. In accordance with the Orders made by The Honourable Justice…….on ……, the Appellant requests that this Appeal be entered for hearing. 2. The estimate of time for hearing is ……..... hours. 3. The unavailable dates for the Appellant are: 4. The unavailable dates for the Respondent are: *(Add anything relevant to the orders here if applicable.)*
Notice to the Respondent	
Take notice that the Appellant has this day entered this appeal for hearing.	
Requesting Party's Details	
Name: Street Address: Telephone: Fax: Email address: Reference No:	

Signature of Appellant or Lawyer *[Please delete the inapplicable signatory]*		Date:

6.4.2. Entry for hearing form - Civil Appeal to a Single Judge (GDA)

Supreme Court of Western Australia *General Division*	No: GDA **Entry for Hearing**
Parties to the appeal	Appellant *Enter full names and underline surname*. Respondent
Request:	1. In accordance with the Orders made by The Honourable Justice…….on ……, the Appellant requests that this Appeal be entered for hearing. 2. The estimate of time for hearing is ……..... hours. 3. The unavailable dates for the Appellant are: 4. The unavailable dates for the Respondent are: *(Add anything relevant to the orders here if applicable.)*
Hearing Fee *[Please delete the inapplicable description for payment of fee]**	
Entry for Hearing Fee:	The entry for hearing fee in the amount of $ is tendered with this notice.* [*insert the amount set out in Supreme Court (Fees) Regulations 2002 (WA) schedule 1 division 1 item 4*] Or
Application to Reduce Fee:	Attached to this notice is an application to reduce fee payable for the entry for hearing.*
Notice to the Respondent	
Take notice that the Appellant has this day entered this appeal for hearing.	
Requesting Party's Details	

Name: Street Address: Telephone: Fax: Email address: Reference No:		
Signature of Appellant or Lawyer *[Please delete the inapplicable signatory]*		Date:

7. Court of Appeal

7.1. Application of O 3 r 3 *Rules of the Supreme Court 1971* to the *Supreme Court (Court of Appeal) Rules 2005*

1. The period between 24 December and 15 January should be excluded from the time calculated for the filing and serving of the Appeal Notice under r 26 and the Appellant's Case under r 32 of the *Supreme Court (Court of Appeal) Rules 2005* (Court of Appeal Rules).

2. The time for filing the Respondent's Answer is fixed by the Court of Appeal Registrar by notice under r 33(3) of Court of Appeal Rules. The Respondent's Answer should therefore be filed on the date fixed in the Registrar's notice.

3. In respect of other time limits in the Court of Appeal Rules or orders of the Court of Appeal, the period between 24 December and 15 January should not be excluded. Parties who require additional time, should seek an extension of time in the usual way, by first conferring with the other side and by filing either a consent notice or an application to extend time supported by affidavit, as required.

7.2. Filing of Documents with the Court of Appeal by Fax Transmission (refer to PD 1.2.2)

Refer to Practice Direction 1.2.2.

7.3. Court of Appeal Mediation Programme (refer to PD 4.2.1 par 37)

Refer to Practice Direction 4.2.1, par 37.

7.4. Review of Evidence in Appeals

1. This Practice Direction applies to civil and criminal appeals in which the Court of Appeal is required to undertake a review of the evidence, namely:

   (a) civil appeals in which the appellant challenges a finding of fact made by the primary court;

   (b) criminal appeals in which the appellant seeks to set aside a conviction under s 30(3)(a) of the *Criminal Appeals Act 2004* on the ground that, having regard to the evidence, the verdict is unreasonable or cannot be supported;

   (c) criminal appeals in which the appellant seeks to set aside a conviction under s 30(3)(c) of the *Criminal Appeals Act 2004* on the ground that there was a miscarriage of justice; and

   (d) criminal appeals in which the State or Crown raises the application of the proviso in s 30(4) of the *Criminal Appeals Act 2004*.

2. Where 1(1) applies:

   (a) the appellant must file and serve a schedule in tabular form that contains:

      (i) each finding of fact made by the primary court that is challenged (together with a reference to the paragraph number of the reasons for decision of the primary court);

      (ii) a summary of each piece of the evidence before the primary court that supports the finding and the source of that evidence; and

      (iii) a summary of each piece of the evidence before the primary court that is against the finding and the source of that evidence.

   (b) the respondent must file and serve a responsive schedule in tabular form that contains, for each finding of fact challenged by the appellant:

(i) any comments on the evidence in the appellant's schedule (including whether the respondent agrees that all relevant evidence has been identified by the appellant); and

(ii) a summary of any relevant evidence before the primary court not referred to by the appellant and the source of that evidence.

3. Subject to 4 below, where 1(2) applies:

(a) the appellant must file and serve a schedule in tabular form that contains a summary of each piece of the evidence before the primary court that:

(i) supports the verdict and the source of that evidence; and

(ii) supports the contention that the verdict is unreasonable or cannot be supported by the evidence and the source of that evidence;

(b) the respondent must file and serve a responsive schedule in tabular form that contains:

(i) any comments on the evidence in the appellant's schedule (including whether the respondent agrees that all relevant evidence has been identified by the appellant); and

(ii) a summary of any relevant evidence before the primary court not referred to by the appellant and the source of that evidence.

4. Where a ground of appeal is confined to a specific issue or specific issues, the schedule and responsive schedule must address only that portion of the evidence relevant to that issue or each of those issues.

5. Subject to 6 below, where 1(3) applies:

(a) the appellant must file and serve a schedule in tabular form that contains:

(i) a summary of each piece of the evidence before the primary court that supports the claim that there was a miscarriage of justice and the source of that evidence; and

(ii) a summary of each piece of the evidence before the primary court that is against the claim and the source of that evidence;

(b) the respondent must file and serve a responsive schedule in tabular form that contains:

(i) any comments on the evidence in the appellant's schedule (including whether the respondent agrees that all relevant evidence has been identified by the appellant); and

(ii) a summary of any relevant evidence before the primary court not referred to by the appellant and the source of that evidence.

6. Where a ground of appeal is confined to a specific issue or specific issues, the schedule and responsive schedule must address only that portion of the evidence relevant to that issue or each of those issues.

7. Where 1(4) applies:

(a) the respondent State or Crown must file and serve a schedule in tabular form that contains a summary of each piece of the evidence before the primary court that:

(i) supports the application of the proviso and the source of that evidence; and

(ii) is against the application of the proviso and the source of that evidence;

(b) the appellant must file and serve a responsive schedule in tabular form that contains:

(i) any comments on the evidence in the respondent's schedule (including whether the appellant agrees that all relevant evidence has been identified by the respondent); and

(ii) a summary of any relevant evidence before the primary court not referred to by the respondent and the source of that evidence.

8. The schedule and responsive schedule must each include a certificate, signed by the person who prepared it, certifying that it complies with this Practice Direction. The person must also type or legibly print his or her name.

9. Paragraph 1(1) of this Practice Direction applies, with any necessary changes, to:

(a) a cross-appeal; and

(b) a notice of contention in which it is contended that the decision of the primary court should be upheld on a finding of fact not made by the primary court.

10. In this Practice Direction, a reference to the source of evidence is a reference to the relevant page or pages of the transcript of the proceedings before the primary court, the number of the relevant exhibit, or the relevant document.

7.5. Confidentiality of Pre-Sentence and other Reports relevant to Sentence (refer to PD 5.6)

Refer to Practice Direction 5.6.

7.6. Published Written Sentencing Remarks (refer to PD 5.7)

Refer to Practice Direction 5.7.

8. Reasons for Decision

8.1. Delivery of Reserved Decisions and Reasons for Decision

Timelines

1. The general policy is that a reserved decision should be delivered as soon as possible after the completion of the hearing.

2. Judges in the Court of Appeal Division endeavour to deliver all reserved decisions in both civil and criminal cases within approximately three (3) months of them being heard. Naturally, in some cases it is necessary to deliver the decision as a matter of urgency.

3. In the case of civil actions, the aim is generally to also deliver decisions within three (3) months of the action being heard. After a particularly long trial, it may be necessary for some additional time to be made available.

4. If it is anticipated that there may be a longer than usual delay in the delivery of a reserved decision, a Judge may inform the parties of a 'not before' date for delivery at the time the decision is reserved.

5. In those cases where the Master has reserved a decision, the aim is that the decision will be delivered as soon as practicable.

6. It is difficult to lay down hard and fast time limits. There are times when the pressure of business in the Court is very great and the time available to individual Judges for writing reasons for decision is insufficient.

7. Practitioners should not feel inhibited from making inquiries regarding the progress of a decision which has not been delivered within the periods indicated above. Such inquiries should be addressed to the Associate to the Presiding Judge in the case of the Court of Appeal or Industrial Appeal Court and, in other cases, to the Associate of the relevant Judge.

8. Where a party to litigation in the Court is aggrieved about delay in the delivery of a reserved decision, it is understood that there may be reluctance to raise the matter with the Master, or the Judge or Judges concerned. Consequently, if the legal representative of a party to proceedings in which there has been a reserved decision desires to complain about delay in its delivery, the complaint should be made by letter addressed to the Chief Justice. In every such case, the matter will be taken up with the Judge, Judges or Master concerned, but without disclosure of the identity of the party raising the matter.

Alternative Procedure for Delivery of Reserved Decisions and Reasons for Decision

9. When a decision is reserved in a matter heard by the Court of Appeal, by Judge/s in a civil matter, or by the Master, and the Court determines that it is appropriate, the procedure set out in pars 10 - 18 inclusive of this Practice Direction (the alternative procedure) shall apply to the delivery of the reserved decision and reasons for decision. The aim is to assist counsel to formulate the orders they will seek when the decision and reasons are delivered, and thereby avoid the need to have a matter stood over.

10. The purpose of the provision of an advance copy of the reasons for decision is to facilitate informed submissions in relation to the precise terms of the judgment, orders or directions to be made in light of the reasons for decision, including in particular the appropriate orders to be made in respect of the costs of the proceedings. Accordingly, where copies of the reasons are provided to parties in advance of their delivery, the Court expects that the parties will be able to produce Minutes of the proposed orders to be made following publication of reasons for decision - preferably after consultation with other parties to the proceedings with a view to identifying those aspects of the orders which are agreed and those which are contentious. The provision of an advance copy of reasons for decision is not to be taken as an invitation to challenge or address further argument in relation to the substantive issues determined in the published reasons, unless the advance copy specifically invites submissions on a particular topic or topics.

11. When the reserved decision is ready to be delivered, each party will be informed of the date and time at which the decision and reasons will be delivered, and will be informed that the court proposes an advance copy

of reasons for judgment (advance reasons) or alternatively asked to indicate whether solicitors for the party, or, where a party is not legally represented, the party, wishes to receive advance reasons prior to the date and time at which the decision will be delivered.

12. Where advance reasons are to be provided to the parties, each party may at the party's election and unless the Court directs otherwise:

    (a) provide the name of a person to whom a paper copy of the advance reasons may be released (collecting person). The advance reasons will be available for collection by the collecting person either at the Supreme Court Registry, Level 11 David Malcolm Justice Centre, 28 Barrack Street, Perth (for all civil matters), or the Court of Appeal Office at Stirling Gardens, Corner of Barrack Street and St Georges Terrace, Perth (for all Court of Appeal matters) from 10.00 am on the last working day before the date on which the judgment will be delivered. The copy of the advance reasons will be in a sealed envelope and addressed to the collecting person. Unless the collecting person is also an authorised person within the terms of par 13 of this Practice Direction the collecting person must deliver the advance reasons to an authorised person as soon as possible.;

    OR

    (b) provide the name and personal email address of a person to whom the advance reasons may be emailed (designated recipient). A designated recipient must be either:

        (i) the solicitor on record for the party, if the party is legally represented; or

        (ii) the party, if the party is not legally represented.

13. Only the following persons are authorised to read the advance reasons or be provided with information contained within the advance reasons:

    (a) each party who is an individual;

    (b) where any party is not an individual:

(i) one representative of that party who is authorised to represent the party or to instruct its legal advisers (if any) with respect to the orders properly made at judgment delivery; and

(ii) any legal practitioner who is employed by the party to provide the party with legal advice generally, even if that legal practitioner is not representing the party in the matter;

(c) if any party is legally represented, the party's legal advisers including barristers or counsel; and

(d) if the case has been conducted on behalf of a party by its insurer, one representative of the insurer who is authorised to represent the party or to instruct the legal advisers (if any) with respect to the orders properly made at judgment delivery.

14. Until the reserved decision has been delivered:

(a) the contents of the advance reasons are to be treated as confidential by any person authorised by par 13 of this Practice Direction to read the advance reasons or be advised of the contents of those advance reasons; and

(b) any authorised person who provides copies of the advance reasons (electronically or otherwise) or information about the advance reasons to any other authorised person is personally responsible to take all necessary steps to ensure that the advance reasons remain confidential in the hands of any and all of those to whom they provide the advance reasons. Reasonable steps include but are not limited to providing a copy of the confidentiality orders relating to the advance reasons to any and all of those to whom they provide the advance reasons (see pars 15 and 16).

15. In order to ensure confidentiality of advance reasons, the standard confidentiality orders in terms set out in annexure 8.1.1 to this Practice Direction apply unless the Court orders otherwise.

16. The Court retains a discretion to vary the standard confidentiality orders upon application by a party or upon its own initiative. For example, where there are particular confidentiality concerns because a decision in a commercial case may affect share prices, the Court may vary the standard confidentiality orders so that no copies of the advance reasons

are allowed to be made by any party for distribution to other authorised persons.

17. Contravention of the standard or varied confidentiality orders may be dealt with as a contempt of court.

18. Where a party is legally represented, the party's legal advisers shall explain to a party referred to in par 13(a), the representative of the party referred to par 13(b)(i), or the representative of the insurer referred to in par 13(d) of this Practice Direction the effect of the confidentiality orders and the consequences of breach of those orders.

General Procedure Following Delivery of a Reserved Judgment

19. When a reserved decision has been delivered, copies of the decision and reasons will be made available to:

    (a) unless the alternative procedure applied, counsel for a party, or, where a party is not legally represented, a party;

    (b) representatives of the media who have previously requested a copy of the decision; and

    (c) any member of the public who wishes to read the decision (public copy).

20. When the sitting of the Court of Appeal or the Court concludes, the public copy of any reserved decision and the reasons for decision which have been delivered at that sitting will, unless a Judge directs otherwise, be made available by publication on the Court's website within 24 hours of delivery.

21. Photocopies of the reasons for decisions can be obtained on request from the Central Office of the Supreme Court on payment of the appropriate fee.

8.1.1. Standard confidentiality orders in respect of advance reasons for judgment

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Supreme Court of Western Australia

The Court has directed that advance reasons for judgment in this matter will be made available to each party from 10.00 am on [*working day prior to judgment delivery*]. The advance reasons may be collected by the collecting person or emailed to the designated recipient for each party in accordance with the procedure in Practice Direction 8.1.

WARNING
Failure to comply with these orders may be a contempt of court and render you liable to punishment.

THE COURT ORDERS THAT:

1. Until judgment is delivered in this matter only the following persons (authorised persons) may view the advance reasons in this matter or be informed of any information from those advance reasons:

    (a) each party who is an individual;

    (b) where any party is not an individual:

        (i) one representative of that party who is authorised to represent the party or to instruct its legal advisers (if any) with respect to the orders properly made at judgment delivery; and

        (ii) any legal practitioner who is employed by the party to provide the party with legal advice generally, even if that legal practitioner is not representing the party in the matter;

    (c) if any party is legally represented, the party's legal advisers including barristers or counsel; and

(d) if the case has been conducted on behalf of a party by its insurer, one representative of the insurer who is authorised to represent the party or to instruct the legal advisers (if any) with respect to the orders properly made at judgment delivery.

2. Until judgment is delivered in this matter:

(a) a person who has a copy of the advance reasons or any information from those reasons is personally responsible to take all reasonable steps to maintain the confidentiality of those reasons except as otherwise provided in this order;

(b) an authorised person may only provide a copy of the advance reasons, or disclose information from the advance reasons, to an authorised person; and

(c) any authorised person who provides a copy of the advance reasons, or discloses information from the advance reasons, to any other authorised person is personally responsible to take all necessary steps to ensure that the advance reasons remain confidential in the hands of any and all of those to whom they provide the advance reasons, including but not limited to providing a copy of these confidentiality orders.

8.2. Publication of Reasons for Decision

8.2.1. Limitation on Publication of Identifying Information in Reasons for Decision in Fraud and Defamation Cases

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1. This Practice Direction does not apply to the publication of reasons for decision to the parties to proceedings. It is limited to the form of reasons for decision published on the eCourts Portal. It applies to interlocutory and final decisions.

2. The Court considers that in addition to any statutory or other obligation that may exist, it is appropriate in some cases to take particular steps on publication of reasons for decision to protect personal information about persons referred to in those reasons.

3. Consistent with O 6 r 3 of the *Rules of the Supreme Court 1971*, the reasons for decision to which this Practice Direction relates are for:

   (a) claims based on an allegation of fraud; or

   (b) claims in respect of defamation, malicious prosecution or false imprisonment.

4. Where reasons for decision to which this Practice Direction relates -

   (a) have been published to the parties; or

   (b) will be published to the parties,

   a party or other person who has been or may reasonably expect to be identified in the reasons, may apply to the judicial officer for an order that the version of the reasons published on the eCourts Portal not identify that person, or if that is not practicable, for an order that the reasons not be published.

5. In considering whether to make such an order, the judicial officer must have regard to the fundamental principle of open justice.

6. An individual is not identified if the person's identity cannot reasonably be ascertained from the reasons for decision. In some circumstances it will be sufficient to replace a person's name with a pseudonym or initials, however in other cases this may be insufficient to prevent their identification.

7. In considering whether a person's identity cannot be reasonably ascertained in the reasons for decision the Court may consider, amongst other things, the following factors alone or in combination:

   (a) any alias of the person;

   (b) the address or general locality of the premises at which the person resides or works, or the locality in which any such premises are situated;

   (c) any physical description or other characteristic of the person;

   (d) any employment or occupation engaged in, profession practised or calling pursued, by the person or any official or honorary position held by the person;

   (e) the relationship of the person to identified relatives of the person or the association of the person with identified friends or identified business, official or professional acquaintances of the person;

   (f) the recreational interests, or the political, philosophical or religious beliefs or interests, of the person; and/or

   (g) any real or personal property in which the person has an interest or with which the person is otherwise associated.

8.2.2. Media Neutral Citation for Reasons for Decision and Sentencing Remarks

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Citation of Reasons for Decision

1. The Supreme Court of Western Australia uses media neutral citation, incorporating paragraph numbering, in all reasons for decision of the Court.

2. The adoption of media neutral citation followed a decision of the Australian and New Zealand Council of Chief Justices on 20 October 1997 to adopt a uniform method of citation across jurisdictions. The adoption of media neutral citation is also designed to assist with and simplify electronic appeals.

3. All reasons for decision of the Court published on and after 30 April 1999 shall be cited in the following manner:

[*Parties*] [Year of publication] [Court identifier] [Judgment no.] [Paragraph no.]

(a) 'Court identifier' refers to the jurisdiction of the Court. The Supreme Court of Western Australia will have two Court identifiers:

(i) **WASC** will designate the reasons for decision of the Court other than when sitting as the Court of Appeal.

(ii) **WASCA** will designate the reasons for decision of the Court of Appeal.

(b) 'Judgment No.' refers to the number assigned by the Court to the reasons for decision. All reasons for decision published after 30 April 1999 will be numbered sequentially. This element does not refer to the Library number.

(c) 'Paragraph No.' refers to the numbers assigned to each paragraph in the reasons for decision by the Court. Paragraphs will be numbered sequentially from the start of the reasons for decision to the end. In the case of appeals the sequence will incorporate the individual reasons for judgment of each Judge in the sequence.

(d) For example:

(i) ***Jones v Smith*** [1999] WASC 12 is a reference to the reasons for decision in the matter of Jones and Smith, at first instance, published in 1999 being judgment number 12.

Lee v The Queen [1999] WASCA 14 is a reference to the reasons for decision in the matter of Lee and the Queen, on appeal, published in 1999 being judgment number 14.

(ii) ***Jones v Smith*** [1999] WASC 12 [15] is a reference to paragraph 15 of the reasons for decision in the matter of Jones and Smith, at first instance, published in 1999 being judgment number 12.

Lee v The Queen [1999] WASCA 14 [5] is a reference to paragraph 5 of the reasons for decision in the matter of Lee and the Queen, on appeal, published in 1999 being judgment number 14.

4. Where the reasons for decision of the Court are reported, the media neutral citation shall be given first followed by the report citation. This method of citation is called 'parallel citation'.

For example:

Lee v The Queen [1999] WASCA 14 is reported as ***Lee v The Queen*** (1999) 18 WAR 23. The parallel citation will be ***Lee v The Queen*** [1999] WASCA 14; (1999) 18 WAR 23. The parallel citation for a particular passage in the reasons for decision will be ***Lee v The Queen*** [1999] WASCA 14; (1999) 18 WAR 23, 34 [15] (Smith J).

Citation of Published Written Sentencing Remarks

5. From 1 February 2011, sentencing remarks are to be cited using the names of the parties, the year the remarks are delivered (in square brackets), the abbreviation of the name of the court, the designation 'SR', and the sequential number of the sentencing remarks published in the Supreme Court from 1 February 2011, and from 1 January in subsequent years.

For example:

The State of Western Australia v Smith [2011] WASCSR 1 would indicate that the prosecutor was the State of Western Australia, the offender's last name was Smith, the offender was sentenced in the Western Australian Supreme Court, the decision contains the sentencing remarks and that the sentencing remarks were the first published since 1 February 2011.

6. For published sentencing remarks prior to 1 February 2011, the format should be the names of the parties, followed by the status of the remarks as unreported, the abbreviation of the name of the court, the designation 'SR', the Supreme Court indictment number and date of sentence all placed between round brackets.

For example:

The State of Western Australia v Smith (Unreported, WASCSR, INS 1 of 2010, 30 January 2010) would indicate that the prosecutor was the State of Western Australia, the offender's last name was Smith, the remarks are unreported, the offender was sentenced in the Western Australian Supreme Court, the decision contains the sentencing remarks, the indictment which resulted in the sentence was the first indictment filed in the Supreme Court in 2010 and that the offender was sentenced on 30 January 2010.

8.2.3. Categorisation of Reasons for Decision for Publication

1. All reasons for decision of the Supreme Court, as published by the Court since 1 August 2001, have the heading 'Category' which appears after the heading 'Result' on the decision.

2. There are four categories of reasons for decision as follows:

   Category A - Those of significance and/or of current interest by virtue of their discussion or application of legal principle.

   Category B - Those which are more routine in nature, either because they turn on their own facts or are routine examples of the application of well-known and understood principles. Decisions of this kind would not normally warrant reporting or uploading into a national database.

   Category C - Those containing data indicating current levels of assessment of damages, either generally or in particular categories of cases.

   Category D - Those which contain data indicating current levels of sentence for offences generally or in particular categories of cases.

3. The applicable category is identified adjacent to the Category heading.

8.2.4. Deletion of 'Case(s) also cited' from Reasons for Decision

1. The Court no longer includes 'Case(s) also cited' in the reasons for decision of the Court.

2. The practice has involved the Court in the expenditure of considerable resources disproportionate to the benefit derived from inclusion of this category of cases.

3. The cessation of this practice is consistent with Olsson, L T, *Guide to Uniform Production of Judgments*, 2nd ed (Carlton South, Vic, AIJA, 1999), which is intended to promote the uniform production of judgments nationally.

8.2.5. Removal of judgments from the internet

Definitions

1. In this Practice Direction:

   Accessible repository includes, but is not limited to, the Supreme Court of Western Australia website (www.supremecourt.wa.gov.au) and the Australian Legal Information Institute (AustLII) judgment repositories on the Internet;

   Application to the Court includes a written application;

   Judgment includes the reasons, orders, catchwords and other identifying details;

   Identified judgment means any judgment that may impact on jury deliberations in a particular trial;

   Medium neutral citation means the year, court identifier and decision number of a judgment, for example, ***Jones v Smith*** [1999] WASC 12 (see Practice Direction 8.2.2).

Introduction

2. The purpose of this Practice Direction is to ensure, for jury trials, that an electronic version of a judgment, which details specifics of the proceedings or related proceedings, is removed from the Internet for the duration of the trial or another appropriate period. It applies in circumstances other than those in which the Court, in the exercise of its own discretion, identifies a risk of prejudice and temporarily withholds or removes a judgment from publication through an accessible repository.

Process

3. A party that locates an identified judgment in an accessible repository is to bring the judgment, its relationship to the forthcoming proceedings and its location to the attention of the Court and all parties to the case.

4. If satisfied, and subject to any order otherwise, the Court will, in the normal course, direct that the identified judgment be removed immediately from the accessible repository and will not be restored until 21 days after the conclusion of the proceedings, to allow for the possibility of an appeal. If an appeal is filed the judgment will not be restored until after the appeal has been determined, or if it is clear from the grounds of appeal that there is no prospect of a re-trial.

8.2.6. Published Written Sentencing Remarks (Refer to PD 5.7)

Refer to Practice Direction 5.7

9. Specialised Procedures

9.1. Probate - Non-Contentious or Common Form

9.1.1. Postal applications in the Probate Office

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1. Applications in the Probate Office may be filed by prepaid post to:

   Supreme Court of Western Australia
   Level 11, 28 Barrack Street
   PERTH WA 6000

2. An application for probate or letters of administration with the will or an application containing a document purporting to be a will or codicil, should be posted by certified mail.

3. An application must be accompanied by the appropriate filing fee.

4. The fee is prescribed in the *Supreme Court (Fees) Regulations 2002* (Schedule 3) and reviewed annually. For information on the current Probate filing fee for applications see the Supreme Court website, Probate Forms and Fees.

5. The applicant should make and retain a photocopy of any original will or codicil, or any document purporting to be an original will or codicil, prior to posting the application.

9.1.2. Death Certificates

1. An original death certificate filed with an application under r 6(3) of the *Non-contentious Probate Rules 1967* may be returned to the applicant 30 days after the issue of the grant provided:

   (a) the applicant requests this in writing;

   (b) a photocopy of the certificate has been filed or the prescribed fee paid for the copying of the certificate; and

   (c) where the application is made in person or through a solicitor who does not have a city agent, a stamped addressed envelope has been lodged in the Registry.

2. Alternatively, rather than filing the original death certificate when filing an application, the applicant may produce the original death certificate which, after being photocopied by Registry staff, will be returned to the applicant. The photocopy will be noted as being a true copy of the original and will be retained on the court file.

3. The fee referred to at par 1(b) above is prescribed in the *Supreme Court (Fees) Regulations 2002* (Schedule 3) and reviewed annually. For information on the current Probate fee for copying a document see the Supreme Court website, Probate Forms and Fees.

9.1.3. Statements of Assets and Liabilities

1. Rule 9B of the *Non-Contentious Probate Rules 1967* requires that an applicant for a grant or applying to re-seal a grant file a statement setting out particulars of the assets and liabilities of the deceased.

2. The statement must be verified, ie, sworn to be true, and annexed to the affidavit.

3. The applicant must swear to each element of r 9B of the *Non-Contentious Probate Rules*: it is not sufficient that the applicant identify the statement merely as 'a statement under rule 9B(1)'. Although the applicant is only required to swear to the truth of matters going to the substance of the rule, failure to comply adequately with the rule will lead to a requisition being raised on the application. It is therefore recommended that the following form of oath be used:

   'Attached hereto and marked ' ' is a true and correct statement setting out:
   (a) all movable property, wherever situated, and all immovable property in Western Australia comprised in the estate of the deceased;
   (b) the value at the time of death of the deceased of the property referred to in subparagraph (a) hereof; and
   (c) all debts, wherever situated, owing by the deceased at the time of his death.'

4. Circumstances will arise, where notwithstanding the search and inquiry that the applicant must make, he or she is not prepared to swear to the truth or adequacy of the statement, and in those circumstances it is sufficient if the application uses the expression 'a statement which so far as I have been able to ascertain is true and correct setting out ...' or words to that effect.

5. No form of statement of assets and liabilities is prescribed, but the following form, at 9.1.3.1, is recommended. Its adoption assists the court in ascertaining other facts which are also essential to grants of letters of administration.

6. An appropriate attachment cover sheet should be attached to the statement of assets and liabilities.

7. Rule 9B of the *Non-Contentious Probate Rules* does not apply where death occurred before 1 January 1980 (in relation to which deaths a statement of assets and liabilities continues to be required by the Commissioner of State Taxation for death duty purposes), nor where the applicant is the Public Trustee or a Western Australian trust corporation, nor where the Court or a Registrar, in special circumstances, so directs. Where such a direction is sought, the special circumstances relied upon should be set out in the affidavit leading to the grant.

8. Where a grant is sought before the information required by r 9B of the *Non-Contentious Probate Rules* can be ascertained, the applicant can request a deferral of compliance with the rule by written application including an undertaking to comply with the rule as soon as may be practicable.

9.1.3.1. Statement of Assets and Liabilities

*** Movable Property**	**† Outside WA**	**In WA**
	$	**$**
Total		
***Immovable Property**	**$**	**$**
Total		
Total assets in WA		

***Debts**	**† Outside WA**	**In WA**
	$	**$**
Total		

9.1.4. Notice to Non-Applying Executors

Background

1. Section 7 of the *Administration Act 1903* provides:

> 'The Court may grant probate to one or more of the executors named in any will, reserving leave to the other, who has not renounced, to come in and apply.'

2. The practice of the Court has been to make such a grant without requiring proof from the applicant that notice of the proposed application has been given to the non-applying executor.

3. The Court has resolved to change its practice so as to avoid the situation where one executor may obtain a grant without notice to the non-applying executor and then deal with estate assets inappropriately.

Notice

4. As from the date of this practice direction and subject to par 5, where an application is made to the Court for a grant of probate with leave reserved to a non-applying executor, the applicant must either:

   (a) file a duly witnessed consent signed by the non-applying executor; or

   (b) demonstrate that notice has been given by:

      (i) giving notice in writing of the proposed application, either personally or by post, to the non-applying executor prior to filing the application;

      (ii) deposing on affidavit to having given such notice, stating when and how notice was given and, if the notice was sent by post, that the address to which it was sent is the current or last known address of the non-applying executor; and

      (iii) annexing to the affidavit filed in support of the application a copy of the notice.

5. The Court will not require either a consent or that notice be given if satisfied that:

   (a) the non applying executor:

      (i) is not of full age or is incapable of consenting by reason of mental illness, defect or infirmity; or

      (ii) cannot be found; or

   (b) it is otherwise just and expedient to do so.

   The applicant must depose in detail to such matters in the affidavit in support of the application.

6. Where the applicant has given notice of the application rather than filing a consent, the Court will not usually make a grant until 14 days have expired from the date that notice was given. Other than in circumstances where par 5 applies, a failure to file a consent or to give notice will usually result in a requisition that requires the applicant to give notice.

7. A form of consent which will be accepted by the Court is at 9.1.4.1. A form of notice which will be accepted by the Court is at 9.1.4.2.

9.1.4.1. Consent Form

[Title]

Consent Form

I, [*full name*], of [*address*] say as follows:

1. The will of [*name of testator*] dated [*date of will*] appoints the following persons as executors:

   (a) ……...…

   (b) ……

   (c) ……..…...

2. I understand that [*full name*] of [*address*] intends to apply to the Supreme Court of Western Australia for a grant of probate with leave reserved to me to apply for a grant in the future.

3. I hereby consent to the Court's making a grant in those terms.

Dated:

(Signature of consenting party)

_____

(Signature of witness)

_____

Name of witness:
Address of witness:

9.1.4.2. Notice Form

[Title]

Notice Form

To: [*full name of the non-applying executor*]
of: [*full address of non-applying executor*]

I, [*full name*], of [*address*] give you notice as follows:

1. The will of [*full name*] dated [*date of will*] appoints the following persons as executors:

   (a) ……...…

   (b) ……

   (c) …….…...

2. It is my intention to apply to the Supreme Court of Western Australia for a grant of probate appointing me as executor with leave reserved to you to apply for a grant in the future.

Dated:

(Signed)

_____

Proposed Applicant

9.2. Probate Actions (Contentious Matters)

9.2.1. Proof of Will

Background

1. It is important for the Court to be able to identify probate actions which relate to non-contentious probate applications.

2. The inclusion of additional information in probate actions concerning any related non-contentious probate application or the identity of the deceased will assist the Court to identify related matters.

Writ to prove will in solemn form

3. When filing a writ in a probate action to prove a will in solemn form, if the plaintiff is aware of any related non-contentious proceedings, the number of the non-contentious probate application must be included (eg. PRO/1234/2009)

4. In any event, when filing a writ in a probate action to prove a will in solemn form, the following details must be included:

   (a) the full name of the deceased;

   (b) the deceased's date of death;

   (c) the deceased's date of birth; and

   (d) any alias used by the deceased.

9.2.2. *Family Provision Act 1972* (WA)

Purpose

1. This Practice Direction and O 75 of the Rules set out procedures to ensure that applications pursuant to the *Family Provision Act 1972* (WA) (the **Act**) proceed expeditiously and cost effectively, and excessive or unnecessary costs are not incurred.

2. These actions are likely to be settled at, or as a result of, a mediation conference. By these Practice Directions, the Court seeks to ensure that these actions are initially case managed so that they are ready for mediation. Should mediation fail, then directions will be made to ensure that the action is ready to be heard and determined by a judge or master.

The Originating Summons

The relief sought must be clearly stated

3. The originating summons must specify the relief sought. For example, does the applicant seek that further provision be made as if the will had been varied by codicil in a particular way, and if so, how? Alternatively, does the applicant seek to alter the distribution provided for by the *Administration Act 1903* (WA), and if so, how?

4. It is not sufficient to repeat the words of s 6 of the Act, for example by seeking an order for "adequate provision for the proper maintenance, (etc) ….", without specifying what that is.

Who should be joined?

5. By the originating summons, the applicant must join all relevant parties.

6. The executor or administrator is to be joined as the first defendant. Other beneficiaries who will be affected by the action are to be joined as the second and subsequent defendants.

7. If the applicant does not seek to vary or disturb the entitlement of a particular beneficiary, the applicant ought not join that beneficiary as a party to the action.

8. The applicant should not join as parties to the action persons who have standing to make their own claim but have not yet done so. At the first case management conference, a direction may be made requiring notice to be served on any potential parties (O 75 r 6), and additional parties may be subsequently joined as appropriate.

The First Affidavit

9. An affidavit in support of the application must be filed with the application unless the imminence of the limitation period makes that impracticable. In that case, the supporting affidavit must be filed as soon as practicable and before the first case management conference.

10. The applicant's first affidavit must contain, and be limited to, only those matters necessary to enable the defendants to enter a mediation conference understanding the size, general nature and strength of the plaintiff's claim.

Standing

11. The applicant's first affidavit must demonstrate that the applicant has standing to bring the application, by reference to the classes of persons who may make an application as listed in s 7(1) of the Act.

Jurisdictional question

12. The applicant's first affidavit must outline why the deceased had a duty to make provision for the applicant; and why any provision made is not adequate by reference to the value of the estate and the plaintiff's needs for:

    (a) maintenance;
    (b) support;
    (c) education; and
    (d) advancement in life.

13. Care must always be exercised when drafting affidavits. In these matters, first affidavits are frequently longer, more time consuming and

costly than is necessary because they contain unnecessary and inadmissible affidavit material. For example, matters relating to the family history of the applicant that are irrelevant to the matters listed at (a) to (d) in par 12 above should not be included in the first affidavit. Unnecessary affidavit material will be taken into account when determining appropriate cost orders: see O 37 r 6(3). The Court may strike out unnecessary material on application by a party or of its own motion.

14. The applicant's first affidavit must set out in the form of two tables the details of the applicant's:

    (a) assets and liabilities; and

    (b) income and expenditure.

15. Where the value of an asset is not self-evident, the applicant must state the source of the value that is included in the assets and liabilities table. For example, if the asset is land the applicant should state whether the value is an appraised value or the result of a formal valuation.

16. Where the applicant is in a domestic relationship, the applicant's first affidavit must clearly state:

    (a) whether expenses claimed (in the income and expenditure table) are for the household or the applicant's contribution only;

    (b) whether assets are owned solely by the applicant, shared or jointly owned (and the percentage ownership of each person); and

    (c) whether or not liabilities are shared.

17. Where the applicant is in a domestic relationship, the applicant's first affidavit must state briefly and in general terms the domestic partner's income and any separate assets, financial resources and liabilities.

18. Where there has been any significant delay between the date of death and the date of the first affidavit, the applicant's financial position at the date of death and the date of the affidavit should be addressed.

19. If there is a will, the applicant's first affidavit should if possible attach a copy.

20. The applicant's first affidavit should not deal with any alleged disentitling conduct of the beneficiaries under the will, or those entitled in distribution.

21. The applicant's first affidavit should not attach all the documentary evidence that the applicant would rely on if the action progressed to a trial. In the event that the action does not settle at mediation, directions will be made in relation to filing further affidavits suitable for a trial. As such, evidentiary documents such as financial records, valuations, appraisals and/or medical reports should not be attached to the applicant's first affidavit. The applicant will not be prejudiced at trial by reason of the applicant not attaching such information to the applicant's first affidavit.

Order 75 rule 3(1)(b)

22. If there is a will, an applicant must comply with O 75 r 3(1)(b), by either attaching a copy of the will:

    (a) as an annexure to the first affidavit (which is preferred); or

    (b) to an email in .pdf electronic format, sent to the Central Office at central.office@justice.wa.gov.au.

The First Case Management Conference

23. Unless otherwise ordered, applications under the Act are case managed by Registrars under O 4A (refer to Practice Direction 4.1.1).

24. All substantive matters under the Act are mediated (refer to Practice Direction 4.2.1). If the applicant has complied with pars 3 - 22 of this Practice Direction, the case manager may be in a position to make orders for mediation at the first case management conference.

25. Any adjournment of the case management conference that is required due to non-compliance with this Practice Direction can be expected to result in an order for costs against the applicant, or alternatively against any legal practitioner whom the Court considers responsible (O 66 r 5, see also par 50 of this Practice Direction).

26. If there are persons who have not been joined as defendants to the application but who may have standing to make a claim pursuant to ss 7 and 12(2) of the Act, the case manager may direct that notice of the application be served on those persons (O 75 r 6). Applicants need not anticipate this by giving notice prior to hearing, as the form of the direction for notice will be tailored to suit the circumstances.

27. The executor or administrator will usually be ordered at the first case management conference to file and serve an affidavit that sets out the assets and liabilities of the estate at the date of death and at the date of the affidavit.

28. Case managers will make tailored directions for the exchange of information that would be helpful to the mediation process. For example, if the value of land in the estate is not agreed, parties will be encouraged or directed to obtain and exchange market appraisals. If a party has obtained a valuation, it will be directed to be disclosed. Directions may also be made for the exchange of other evidentiary documents such as medical reports and superannuation statements. The extent of these directions will be governed by the principle of proportionality.

29. Parties should confer before the first case management conference with a view to agreeing to the exchange of information.

30. The parties should also attend the first case management conference with their combined unavailable dates for mediation. The case management Registrar may elect to act as mediator at the mediation conference. At the first case management conference, the Registrar may fix the date for mediation. If the action is not settled at a mediation conducted by the case management Registrar, a new case management Registrar will be appointed.

Mediation and responsive affidavits

31. Most matters benefit from early mediation prior to the filing of answering affidavits. This helps reduce the costs of the application.

32. It is generally only after it appears that all efforts to reach a negotiated or mediated settlement are exhausted that defendants will be directed to file answering affidavits.

Mediation outcomes

33. Registrars do not have the power to make consent orders for further provision out of the estate of the deceased. A memorandum of consent orders that seeks further provision out of the estate of the deceased will be referred by the mediation Registrar or the case management Registrar (as appropriate) to a Master or a Judge for consideration.

34. A Master or a Judge may make the orders sought on the papers, or may require an attendance by the parties in chambers.

34A. Proposed consent orders should be drafted in a form that takes into account the decision of *Keremestevski v McLeod* [2024] WASCA 12 (S) [11]-[15].

Discovery

35. The Court does not usually order discovery in applications under the Act.

36. Exceptional circumstances would need to be demonstrated before an order for discovery would be made prior to mediation.

37. If a particular need arises for discovery, then the application is to be supported by affidavit and a memorandum of conferral pursuant to O 59 r 9 of the Rules.

Applications for leave under s 7(2)(b) of the Act

38. Under s 7(2) of the Act, no application for provision out of the estate of a deceased person shall be heard by the Court unless:

    (a) the application is made within 6 months from the date on which the administrator becomes entitled to administer the estate of the deceased in Western Australia; or

    (b) the Court is satisfied that the justice of the case requires that the applicant be given leave to file out of time.

39. The only relief sought in an application made pursuant to s 7(2)(b) of the Act should be for leave to bring the substantive application out of

time. If leave is granted, a separate application must be made under s 7(1) of the Act. It is not possible to seek leave to bring a substantive application out of time and substantive relief by the same originating summons.

40. In the supporting affidavit, the applicant must explain the reasons for delay, disclose whether the applicant gave warning to the defendants of the proposed application, disclose whether or not the estate has been distributed before the claim had been notified, and give sufficient reasons for seeking the principal relief to enable the Court to exercise its discretion.

41. Applications for leave to file out of time will generally be case managed by a Master who will program as necessary to enable listing before a Master or a Judge for determination.

42. At the first appearance, the Master will enquire as to whether all proper parties have been joined. The executor or administrator is to be joined as the first defendant, or if more than one, the first and second defendants, or as applicable.

Applications for interim provision under s 7A of the Act

43. An application for interim provision or expedition must be made by a notice of motion filed as soon as the circumstances warranting such an application are known, supported by an affidavit describing the circumstances giving rise to the urgent need and which deals with the issue of dependency.

Costs

44. The Court is concerned by the excessive legal costs often incurred in actions under the Act, and seeks to ensure that the principle of proportionality set out in O 1 r 4B of the Rules applies in the way that actions are managed to mediation, and if necessary, managed to trial.

44A. Prior to the mediation of the action, the parties must be well-informed about the costs that have been incurred and are recoverable to that stage of the action and the costs that might be incurred and may be recoverable if the action proceeds to trial. When the usual orders are made (see Practice Direction 4.2.1 par 11) there will be some additional requirements:

(a) the standard orders will also include a requirement for the costs memorandum to be provided to counsel attending the mediation; and

(b) the costs memorandum shall include the amount that is recoverable to that stage of the action under the applicable costs determination.

45. In all cases, factors relevant to determining the particular costs orders ultimately to be made will include whether the action has been conducted in an appropriate and efficient manner and whether or not the parties have adhered to the requirements of this Practice Direction. A failure to do either may have serious costs consequences for the parties.

46. Any party may apply to the Court pursuant to O 66 r 1 and O 1 r 4B of the Rules at the commencement of the action, during the action or at their end to fix or limit the costs of the action so that they reflect the value and importance of the subject matter in dispute, the financial position of each party, the value of the estate and the nature of the claims being advanced.

47. An application to fix or limit costs at the commencement of the action or during the action must be made by way of a letter to the case manager, supported by affidavit. The case management request must comply with O 4A r 5A(2).

48. When making final orders after trial, the Court will consider whether costs should simply follow the event with the result that an unsuccessful party may be required to pay the costs of the successful party, or at least bear their own costs. Practitioners should not assume that the costs of unsuccessful parties will necessarily be awarded from the estate. Further, the costs orders made by the Court and the amount of costs payable to or by a party will take into account any unreasonable conduct by that party or any other party in the course of the application.

49. Where the Court considers that any unreasonable conduct (which includes non-compliance with this Practice Direction) is attributable to the legal practitioner/s acting for any party, the Court may order that any practitioner whom the Court considers responsible is to pay those costs (O 66 r 5(1)(c)).

9.3. *Wills Act 1970*

9.3.1. *Wills Act 1970*, pt XI and pt XII

Purpose

1. This Practice Direction sets out procedures for applications under pt XI and pt XII of the *Wills Act 1970*.

The Originating Summons

2. Applications under s 40 and s 50 of the *Wills Act 1970* shall be made by originating summons with fees payable in accordance with the provisions of the *Supreme Court (Fees) Regulations 2002*, as amended from time to time.

3. In the case of an application under s 40 of the *Wills Act 1970*:

   (a) the originating summons must set out the nature of the relief sought and the persons or classes of persons affected, including any persons who would be entitled to receive part of the estate of the person concerned under a previous will or under the *Administration Act 1903* if the person concerned were to die intestate, any person who may be entitled to apply under the *Family Provision Act 1972*, and any body or charitable purpose that the person concerned might reasonably be expected to make a gift by will;

   (b) unless making the application, the person concerned and his or her legal guardian or attorney are always defendants; and

   (c) except in relation to the person concerned and his or her legal guardian or attorney, no other party should be given notice until the Court has so directed.

4. In the case of an application under s 50 of the *Wills Act 1970*:

   (a) the originating summons must set out the nature of the relief sought and the persons or classes of persons affected;

(b) unless making the application, the executor or administrator is always the defendant; and

(c) unless otherwise directed, notice of the application shall be given to every person having an interest under the will whose interest might be prejudiced or such other person who might be prejudiced by the rectification applied for.

Affidavit

5. An affidavit in support of the application must be filed with applications under s 40 or s 50 of the *Wills Act 1970*.

6. Practitioners must always exercise care when drafting affidavits. Unnecessary affidavit material will be taken into account on costs: see O 37 r 6(3) of the *Rules of the Supreme Court 1971*.

7. In the case of applications under s 40 of the *Wills Act 1970*:

(a) the affidavit must address the testamentary capacity of the person concerned, the appropriateness of the applicant to make the application, and, save where the Court allows otherwise, all matters set out in s 41 of the Act; and

(b) where the Court's leave is being sought to not address any of the matters set out in s 41 of the Act, reasons should be included in the affidavit filed in accordance with par 7(a) above.

8. In the case of applications under s 50 of the *Wills Act 1970*:

(a) the affidavit must address the matters set out in s 50(1) of the Act; and

(b) unless otherwise directed, any comments of every person having an interest under the will whose interest might be prejudiced or such other person who might be prejudiced by the rectification applied for shall be in writing and be attached as an affidavit in support of the application.

Discovery

9. It is not expected that discovery will usually be ordered in actions under pt XI or pt XII of the *Wills Act 1970*.

10. If a particular need arises for discovery then any application must be supported by an affidavit that shows why discovery is necessary.

11. Because these proceedings can be tried on affidavit evidence, any application for discovery of the documents must show how documents discovered will be put in evidence.

Deposit of pt XI wills

12. After a will or instrument has been signed by the Principal Registrar under s 40(4) of the Act, it must be deposited in a sealed envelope in accordance with s 44(2) of the Act in the office of the Principal Registrar and the prescribed fee paid.

13. Should a person depositing a pt XI will or instrument in the office of the Principal Registrar wish to be issued with a receipt for that will or instrument, the will or instrument should only be sealed in the manner prescribed under s 44(2) in the presence of a member of staff of the Principal Registrar's office.

14. The fee payable upon the deposit of wills or instruments under pt XI of the *Wills Act 1970* will be the same fee stipulated in the *Supreme Court (Fees) Regulations 2002*, as amended from time to time.

Part XII orders to rectify a will

15. A certified copy of the order to rectify a will under pt XII must be attached to the original will and to the probated copy of the will under s 50(4) of the Act.

9.4. Mortgage Actions

9.4.1. Default Judgments in Mortgage Actions

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1. The *Rules of the Supreme Court 1971* relating to mortgage actions were amended with effect from 23 November 2016.

2. Any writ served in a mortgage action on or after that date is to comply with the requirements set out in O 4AA r 1 to r 3. O 13 r 6 and, where applicable r 7, set out the procedures to enter default judgment in a mortgage action commenced by a writ issued in accordance with O4AA.

3. Any writ in a mortgage action that was served before that date or any originating summons in a mortgage action that was filed before that date is to comply with:

    (a) the rules that applied prior to 23 November 2016 (see O 4AA r 4); and

    (b) Practice Direction 9.4.1 as it applied prior to this revision coming into effect (if you require a copy please email a request to central.office@justice.wa.gov.au).

4. In accordance with the transitional provisions in O 4AA r 4, if there are multiple defendants in a mortgage action and not all are served prior to the amendment rules going into effect, different default judgment procedures will apply depending upon the date of service.

Conferral, issuing summons and hearings

5. As a result of the amendments made, the process for applying for a default judgment in a mortgage action in which a defendant does not enter an appearance is more aligned to the process for other default judgments.

6. Plaintiffs are no longer required to confer with defendants pursuant to O 59 r 9, or to issue originating summons and attend mortgage action default judgment hearings.

Consent Orders

7. Even if O 13 r 6(2)(b) would otherwise be applicable, it may be possible in some cases to obtain the defendant's agreement to a judgment for possession where no request under O 13 r 6(2)(b) and by way of Form 36B has been made. Where a defendant has agreed to give possession or pay the amount due and a judgment is still required, the plaintiff's solicitors should file a memorandum of consent orders in accordance with O 43 r 16.

Who is in possession?

8. If applicable, the affidavit in support of the request for judgment under O 13 r 6(2)(b)(ii) must, amongst other things, state the grounds for the belief held by the deponent as to who is in occupation (O 13 r 7(2)(e)(ii)). Too many deponents simply assert possession by a defendant with no evidence of the basis upon which that conclusion is drawn. See O 37 r 6(3A).

9. Service of the writ and Form 4, or of Form 36A, on a defendant at the property address may constitute evidence of possession if served a relatively short time prior to the swearing of the affidavit in support. Service of a writ and Form 4, or of Form 36A, on a defendant at the property address some months prior to the swearing of the affidavit in support will not constitute evidence of possession.

10. Possession can include an intention to possess so that evidence that goods and chattels are still on the property, even though the mortgagor has not been seen on the property, may be given in support of the need to obtain possession pursuant to O 13 r 6.

11. Notice prior to the commencement of the action must have been given to any residential tenant in possession in accordance with the *Residential Tenancies Act 1987* (WA) (O 13 r 7(2)(e)(iii)).

Service

12. A plaintiff who obtains a default judgment must serve the judgment on the defendant as soon as practicable after the judgment is entered (O 13 r 13(1)) and personal service of the default judgment is required under O 13 r 13(2) (unless leave is sought from the Court under O 72 r 1(2)).

Accuracy

13. To ask the Court to give judgment, the effect of which is to put someone out of his, her or their property, requires strict compliance with the rules of court.

14. Practitioners must ensure that the dates, calculations and other information in the affidavits supporting the application are accurate and that they correspond with the supporting documents annexed to the affidavits.

9.4.1.1. Checklists for default judgment in a mortgage action against a mortgagor defendant

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CHECK LISTS FOR REQUESTS TO ENTER DEFAULT JUDGMENT IN MORTGAGE ACTIONS AGAINST MORTGAGOR DEFENDANTS (ORDER 13 RULE 6)

ACTION NO. . . ___

TITLE:

ASSOCIATE'S CHECKLIST

	DOCUMENT NAME	**FOLIO NUMBER/S:**
	Writ	
	Affidavit of Service on each Defendant	
	Order for Substituted Service	
	Application (Form 36B)	
	Affidavit in Support	

REGISTRAR'S CHECKLIST

1.	**Writ**	
	1.1.1 Indorsement 1.1.2 Statement of Claim	YES/NO YES/NO
	1.2 Prayer for Relief	Delivery of possession/ payment of moneys secured/Costs.
	1.3.1 To be served personally (O 9 r 1(1)) 1.3.2 Substituted service 1.3.3 Date of Order	YES/NO YES/NO
	1.4 Deemed service O 9 r 1(3) unconditional appearance	YES/NO

2.	**Affidavit of Service of Writ and Form 4:**	
	2.1 (a) Date of service of Writ and Form 4 on 1st Defendant	
	(b) Date of service of Writ and Form 4 on 2nd Defendant	
	(c) Date of service of Writ and Form 4 on 3rd Defendant	
	2.2 O 9 r 1(4)(e) complied with if applicable	YES/NO
	2.3 Has time elapsed within which each Defendant is required to file appearance (O 13 r 1(2) and O 5 r 11)	
3.	**Request to Enter Judgment and Affidavit in Support (O 13 r 6(2) and Form 36B)**	
	3.1 Default of Appearance even when no statement of claim is filed and served	YES/NO
	3.2 If there is a claim for payment of money secured by the mortgage, does the Form 36B certify -	
	(a) the amount owing to the plaintiff under the mortgage as at the date of the filing of the request; and	YES/NO
	(b) if the claims include a claim for interest after judgment, the amount of a day's interest. (O 13 r 6(3)(b))	YES/NO
	3.3 Has time elapsed from service of Form 36A as required by O 13 r 6(2)(b)?	YES/NO
4.	**Particulars specified in Affidavit (O 13 r 7(2)(a)-(c))**	
	4.1 Does the affidavit specify the property mortgaged?	
	4.2 Does the affidavit specify who the proprietor of the mortgaged property is?	

5.	**Is a legible copy of the mortgage and certificate of title attached (O 13 r 7(2)(c))?**	YES/NO
	5.1 Is the description of mortgaged property the same on Certificate of Title as in mortgage and writ?	YES/NO
6.	**Alleged default (O 13 r 7(2)(d))**	
	6.1 What is the alleged default? (O 13 r 7(2)(d)(i))	
	6.2 Which clause of mortgage contains the right to the relief sought? (O 13 r 7(2)(d)(ii))	
	6.3 Identify the non-merger clause (O 13 r 7(2)(iii))	
	6.4 Does the mortgage require notice of default? (O 13 r 7(2)(d)(iv))	YES/NO
	6.5 If so, date of notice of default. (O 13 r 7(2)(d)(v))	
7.	**Where possession or sale is claimed (O 13 r 7(2)(e))**	
	(a) the affidavit states state that Order 4AA r 3(2) and Order 13 r 6(2)(a) have been complied with	
	(b) details of persons in possession of mortgaged property provided	
	(c) if one or more of the people who are in possession of the property are tenants of the property, give details of the steps taken by the plaintiff to comply with any applicable requirements of the Residential Tenancies Act 1987	

8.	**Does the supporting affidavit contain details of the state of account between mortgagor/mortgagee?**	
	(a) the amount owing under the mortgage (O 13 r 7(2)(f)(i))	YES/NO
	(b) the interest rate as a percentage under the mortgage (O 13 r 7(f)(ii))	
	(c) if interest to judgment claimed (O 13 r 7(f)(iii)) amount of daily interest	YES/NO
	(d) if the plaintiff is claiming costs (other than an order that the defendant pay the plaintiff's costs to be taxed if not agreed), the basis on which the plaintiff claims those costs (O 13 r 7(g))	YES/NO

REGISTRAR'S INSTRUCTIONS TO ASSOCIATE		
	Draft judgment Monetary judgment	YES/NO YES/NO
	REGISTRAR'S NOTES:	

9.5. Corporations

9.5.1. Disclosure by Insolvency Practitioners as to Fees to be Charged (Revoked)

[Practice Direction 9.5.1 was revoked on 7 October 2021.]

9.5.2. Schemes of Arrangement

1. This Practice Direction was developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand and has been adopted by the Supreme Court of Western Australia. The Harmonisation Committee has had regard to submissions received in a consultation process undertaken by the Federal Court of Australia in formulating this Practice Direction. This Practice Direction is issued in order to address recent differences in scheme practice and recognises that consistency in Australian Courts' approach is beneficial to all parties involved in schemes of arrangement.

2. This Practice Direction is concerned solely with members' schemes of arrangement.

3. The Court recognises that the process for approval of schemes of arrangement is intended to be as simple as possible and the Court is supportive of simplification so far as it is consistent with the Court's statutory responsibilities and binding authority. Scheme proponents may proceed on the basis that, subject to the applicable duties in such an application, which has an ex parte character:

Form of affidavits

(a) The Court encourages the simplification of affidavit evidence led in respect of scheme hearings, consistent with proof of compliance with the applicable statutory requirements. There is no mandated form for scheme affidavits.

(b) The Court will generally be prepared to dispense with the requirement under r 2.4(1) of the *Supreme Court (Corporations) (WA) Rules 2004* for the initial affidavit filed in support of the application to state the facts in support of the Originating Process, where that will be addressed by later evidence. It is ordinarily sufficient for that affidavit to identify, in brief terms, the nature of the scheme and key dates, and annex a company search. The Court may be assisted if the proposed scheme or implementation deed is made available at that time, but it is not essential.

(c) Substantive supporting affidavits, exhibits and submissions should be filed, if practicable, at least two business days before the respective hearings, in executed or near final draft form.

(d) The consent of the chair and alternate chair of the scheme meeting can be proved by evidence led on information and belief. Parties should give careful attention to and disclose any conflicts affecting the chair or alternate chair in such evidence.

(e) It is not necessary to file a separate affidavit from an independent expert verifying his or her report that is included in the explanatory statement for the scheme or confirming its compliance with the Harmonised Expert Witness Code of Conduct in PD 4.5.2.1. However, in a contested scheme hearing, an expert report may not be admitted as expert evidence unless the expert witness has been provided with and complied with the Harmonised Expert Witness Code of Conduct.

(f) It is not necessary to exhibit all correspondence between the scheme proponent's solicitors and the Australian Securities and Investments Commission ("ASIC") to an affidavit read at the second Court hearing, where ASIC gives a statement indicating that it does not raise any objection to the scheme. If a scheme proponent wishes to make submissions as to ASIC's position on matters outside the scope of ASIC's statement to be provided to the Court, those submissions should be supported by evidence. Any material issue to be brought to the Court's attention pursuant to ex parte disclosure obligations enlivened by any concerns or substantive issues raised by ASIC with a scheme proponent should be addressed by submissions and, if necessary, affidavit evidence of any relevant facts.

Notice of the second Court hearing

(g) The Court will be prepared to dispense with the publication of a notice of the second Court hearing in a newspaper, if notice can be given by an announcement made on the Australian Securities Exchange or by an announcement on the scheme proponent's website if it is not listed. A newspaper advertisement would only be required if the scheme proponent has reason to think that neither of those mechanisms would be effective to bring the scheme to the attention of its securityholders.

Matters to be addressed in evidence

(h) The appropriate verification of matters in the explanatory statement is an important component of satisfying the Court that it should order that a scheme meeting be convened at the first Court hearing and then approve the scheme at the second Court hearing. The Court expects a scheme proponent to lead evidence at the first Court hearing concerning due diligence and verification processes in respect of the explanatory statement. Direct evidence from a company officer or legal representative with personal experience with the verification process should be sufficient.

(i) The Court expects a scheme proponent to lead evidence at the first Court hearing concerning any break fee as a percentage of the implied equity value of the scheme proponent and the general nature and length of any exclusivity provisions. Submissions as to these matters need not be extensive if the amount of the break fee and the nature and length of the exclusivity provisions do not raise novel issues.

(j) As the Court is asked to convene the meeting, it is important that the orders that are made at the first Court hearing specify the manner of dispatch of the explanatory statement to securityholders. The Court expects a scheme proponent to lead evidence at the second Court hearing of the dispatch of scheme documents in accordance with the Court's orders. That evidence may include evidence on information and belief and need not be extensive, but should disclose any issues with compliance with those orders. Evidence of the use of technology at scheme meetings is not required, unless any issue in that regard needs to be brought to the Court's attention.

(k) In addition to evidence that the scheme was approved by the requisite statutory majorities, the Court expects a scheme proponent to lead evidence at the second Court hearing as to voter turnout at the scheme meeting(s), being the number or percentage of members who attended the scheme meeting, in person or by proxy, as compared to the total number of members of the scheme company.

Shareholder Communications

(l) The Court expects that the Court's approval should be sought for a supplementary explanatory statement to be sent to securityholders in a scheme. The Court also expects that the nature of the scheme proponent's intended communications with securityholders should be disclosed at the first Court hearing. Parties may also wish to continue the existing practice of drawing the Court's attention to material communications to securityholders after the first Court hearing, at least by a communication to the chambers of the judge hearing the application, to reduce the risk of difficulties arising at the second Court hearing.

4. The Court's approach to substantive issues arising in scheme applications will necessarily be guided by the existing and developing case law, for example as to communications by a scheme proponent to its securityholders, proof of due execution of a deed poll by a foreign bidder and proof of financial arrangements supporting bids by special purpose bidding vehicles.

5. The following matters are noted for the assistance of practitioners:

(a) Recent case law has not required foreign law evidence of enforceability of a deed poll in a foreign jurisdiction. Evidence of due execution of a deed poll should only be necessary if a real uncertainty or issue exists in that respect.

(b) Where a special purpose vehicle with minimal assets is to acquire securities of substantial value under a scheme, a risk of a scheme not completing is likely to be material to securityholders, irrespective of the fact that their securities are not transferred to that special purpose vehicle until the consideration is paid. Disclosure of such a risk is also important to maintaining a fully informed market. Evidence should be led at the first Court hearing of the availability of the funding or other financial support on which the special purpose vehicle will rely to complete the scheme.

6. When making an order under subsection 411(1) of the *Corporations Act* the Court will require that the explanatory statement or a document accompanying the explanatory statement prominently display a notice in the following form or to the following effect:

"IMPORTANT NOTICE ASSOCIATED WITH COURT ORDER UNDER SUBSECTION 411(1) OF CORPORATIONS ACT 2001 (Cth)

The fact that under subsection 411(1) of the *Corporations Act 2001* (Cth) the Court has ordered that a meeting be convened and has approved the explanatory statement required to accompany the notices of the meeting does not mean that the Court:

has formed any view as to the merits of the proposed scheme or as to how members/creditors should vote (on this matter members/creditors must reach their own decision); or

has prepared, or is responsible for the content of, the explanatory statement."

7. Nothing in this Practice Direction is intended to limit the obligation on a scheme proponent to lead evidence to discharge its responsibility to make full and fair disclosure to the Court of matters which may be material to the ex parte orders which are sought in respect of a scheme of arrangement.

9.5.2.1. Notice - Section 441(1) of the *Corporations Act 2001* (Cth) (Revoked)

[Practice Direction 9.5.2.1 was revoked on 18 October 2023. See Practice Direction 9.5.2.]

9.5.3. Corporations List

1. All proceedings to which the *Supreme Court (Corporations) (WA) Rules 2004* (WA) apply will be managed in the Corporations List.

2. The Corporations List is managed by a designated Judge, the Corporations List Judge, and the Master.

3. Originating processes falling within the following categories will be referred in the first instance to the Corporations List Judge.

   (a) Matters where the application is primarily brought seeking relief or orders under one or more of the following provisions of the *Corporations Act 2001* (Cth):

   (i) ss 410 – 415A (relating to arrangements and reconstructions);
   (ii) s 418A (declaration whether controller validly appointed);
   (iii) s 423 (supervision of controllers);
   (iv) ss 434A – 434B (removal of controllers);
   (v) s 598 (order against person concerned with corporation);
   (vi) s 599 (appeals from decisions of receivers etc.);
   (vii) s 1322 (irregularities);
   (viii) s 1323 (power of Court to prohibit payments or transfer of money, financial products or other property);
   (ix) ss 1324 – 1325E (injunctions, corrective advertising and other remedial orders);
   (x) Schedule 2 – Insolvency Practice Schedule (Corporations) Div 45 (court oversight of registered liquidators); and/or
   (xi) Schedule 2 – Insolvency Practice Schedule (Corporations) Div 90 (review of the external administration of a company).

   (b) Matters outside the jurisdiction of a Master as provided by r 16.1 of the *Supreme Court (Corporations) (WA) Rules 2004* (WA).

(c) Matters where one or more of the parties requests that the matter be referred to the Corporations List Judge.

(d) Matters that a Master considers ought to be referred to the Corporations List Judge.

4. All other originating proceedings in the Corporations List will be referred to the Master.

5. The Corporations List Judge may refer matters in the Corporations List to the Master or to another CMC List Judge for management.

6. All matters within the Corporations List managed by the Corporations List Judge will be admitted to the CMC List.

9.6. Order 52A - Freezing Orders & Order 52B - Search Orders

9.6.1. Freezing Orders (*Mareva* Orders)

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1. This Practice Direction supplements O 52A of the *Rules of the Supreme Court 1971* relating to freezing orders (also known as '*Mareva* orders' after ***Mareva Compania Naviera SA v International Bulkcarriers SA (The Mareva)*** [1975] 2 Lloyd's Rep 509; [1980] 1 All ER 213, or 'asset preservation orders').

2. This Practice Direction addresses (among other things) the Court's usual practice relating to the making of a freezing order and the usual terms of such an order. While a standard practice has benefits, this Practice Direction and the example form of order annexed to it at 9.6.1.1 do not, and cannot, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.

3. Words and expressions in this Practice Direction that are defined in O 52A have the meanings given to them in that Order.

4. An example form of freezing order which can be granted without notice being given to the respondent (ex parte) is annexed to this Practice Direction at 9.6.1.1. The example form may be adapted to meet the circumstances of the particular case. It may be adapted for a freezing order granted with notice being given to all parties (inter partes) as indicated in the footnotes to the example form (the footnotes and references to footnotes should not form part of the order as made). The example form contains provisions aimed at achieving the permissible objectives of the order consistently with the proper protection of the respondent and third parties.

5. The purpose of a freezing order is to prevent frustration or abuse of the process of the Court, not to provide security in respect of a judgment or order.

6. A freezing order should be viewed as an extraordinary interim remedy because it can restrict the right to deal with assets even before judgment, and is commonly granted without notice being given to the respondent.

7. The respondent is often the person said to be liable on a substantive cause of action of the applicant. However, the respondent may also be a third party, in the sense of a person who has possession, custody or control, or even ownership, of assets which he or she may be obliged ultimately to use to help satisfy a judgment against another person. Order 52A, r 5(5) addresses the minimum requirements that must ordinarily be satisfied on an application for a freezing order against such a third party before the discretion is exercised. The third party will not necessarily be a party to the substantive proceeding, (see ***Cardile v LED Builders Pty Ltd*** (1999) 198 CLR 380) but will be a respondent to the application for the freezing or ancillary order. Where a freezing order against a third party seeks only to freeze the assets of another person in the third party's possession, custody or control (but not ownership), the example form at 9.6.1.1 will require adaptation. In particular, the references to '*your assets*' and '*in your name*' should be changed to refer to the other person's assets or name (e.g. '*John Smith's assets*', '*in John Smith's name*').

8. A freezing or ancillary order may be limited to assets in Australia or in a defined part of Australia, or may extend to assets anywhere in the world, and may cover all assets without limitation, assets of a particular class, or specific assets (such as the amounts standing to the credit of identified bank accounts).

9. The duration of a freezing order granted without notice being given to the respondent should be limited to a period terminating on the return date of the motion, which should be as early as practicable (usually not more than a day or two) after the order is made, when the respondent will have the opportunity to be heard. The applicant will then bear the onus of satisfying the Court that the order should be continued or renewed.

10. A freezing order should reserve liberty for the respondent to apply on short notice. An application by the respondent to discharge or vary a freezing order will normally be treated by the Court as urgent.

11. The value of the assets covered by a freezing order should not exceed the likely maximum amount of the applicant's claim, including interest and costs. Sometimes it may not be possible to satisfy this principle (for example, an employer may discover that an employee has been making fraudulent misappropriations, but does not know how much has been misappropriated at the time of the discovery and at the time of the approach to the Court).

12. The order should exclude dealings by the respondent with its assets for legitimate purposes, in particular:

    (a) payment of ordinary living expenses;

    (b) payment of reasonable legal expenses;

    (c) dealings and dispositions in the ordinary and proper course of the respondent's business, including paying business expenses bona fide and properly incurred; and

    (d) dealings and dispositions in the discharge of good faith obligations and properly incurred under a contract entered into before the order was made.

13. Where a freezing order extends to assets outside Australia, the order should provide for the protection of persons outside Australia and third parties. Such provisions are included in the example form of freezing order.

14. The Court may make ancillary orders. The most common example of an ancillary order is an order for disclosure of assets. The annexed example form at 9.6.1.1 provides for such an order and for the privilege against self-incrimination.

15. The rules of court confirm that certain restrictions expressed in ***The Siskina*** [1979] AC 210 do not apply in this jurisdiction. First, the Court may make a freezing order before a cause of action has accrued (a '*prospective*' cause of action). Secondly, the Court may make a free-standing freezing order in aid of foreign proceedings in prescribed circumstances. Thirdly, where there are assets in Australia, service out of Australia is permitted under a new 'long arm' service rule.

16. As a condition of the making of a freezing order, the Court will normally require appropriate undertakings by the applicant to the Court, including the usual undertaking as to damages.

17. If it is demonstrated that the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to support the

undertaking by providing security. There is provision for such security in the example form of freezing order at 9.6.1.1.

18. The order to be served should be endorsed with a notice in the form of the penal notice on the example form of freezing order attached to this Practice Direction.

19. An applicant seeking a freezing order without notice being given to the respondent is under a duty to make full and frank disclosure of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any information which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.

20. The affidavits relied on in support of an application for a freezing or ancillary order should, if possible, address the following:

    (a) information about the judgment that has been obtained, or, if no judgment has been obtained, the following information about the cause of action:

        (i) the basis of the claim for substantive relief;

        (ii) the amount of the claim; and

        (iii) if the application is made without notice to the respondent, the applicant's knowledge of any possible defence;

    (b) the nature and value of the respondent's assets, so far as they are known to the applicant, within and outside Australia;

    (c) the matters referred to in r 5 of the freezing orders rules of court (O 52A); and

    (d) the identity of any person, other than the respondent, who, the applicant believes, may be affected by the order, and how that person may be affected by it.

9.6.1.1. Example form of Freezing Order without notice being given to the Respondent (ex parte)

[Title of Proceeding]

PENAL NOTICE

TO: [*name of person against whom the order is made*]

IF YOU:

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO: [name of person against whom the order is made]

This is a '*freezing order*' made against you on [*insert date*] by Justice [*insert name of Judge*] at a hearing without notice to you after the Court was given the undertakings set out in Schedule A to this order and after the Court read the affidavits listed in Schedule B to this order.

[*The words 'without notice to you' and 'and after the Court has read the affidavits listed in Schedule B to this order' are appropriate only in the case of an order without notice being given to the respondent*]

THE COURT ORDERS:
INTRODUCTION

[*Paragraphs 1 and 2 are appropriate only in the case of an order without notice being given to the respondent*]

1. (a) The application for this order is made returnable immediately.

   (b) The time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by [insert time and date].

2. Subject to the next paragraph, this order has effect up to and including [*insert date*] (**the Return Date**). On the Return Date at [*insert time*] am/pm there will be a further hearing in respect of this order before Justice [*insert name of Judge*].

3. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.

4. In this order:
   (a) 'applicant', if there is more than one applicant, includes all the applicants;
   (b) 'you', where there is more than one of you, includes all of you and includes you if you are a corporation;
   (c) 'third party' means a person other than you and the applicant;
   (d) 'unencumbered value' means value free of mortgages, charges, liens or other encumbrances.

5. (a) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.

(b) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

FREEZING OF ASSETS

[For order limited to assets in Australia]

6. (a) You must not remove from Australia or in any way dispose of, deal with or diminish the value of any of your assets in Australia (Australian assets) up to the unencumbered value of $AUD (**the Relevant Amount**).

(b) If the unencumbered value of your Australian assets exceeds the Relevant Amount, you may remove any of those assets from Australia or dispose of or deal with them or diminish their value, so long as the total unencumbered value of your Australian assets still exceeds the Relevant Amount.

[If the Court makes a worldwide order, the following additional par (c) also applies.]

(c) If the unencumbered value of your Australian assets is less than the Relevant Amount, and you have assets outside Australia (ex-Australian assets):

(i) You must not dispose of, deal with or diminish the value of any of your Australian assets and ex-Australian assets up to the unencumbered value of your Australian and ex-Australian assets of the Relevant Amount; and

(ii) You may dispose of, deal with or diminish the value of any of your ex-Australian assets, so long as the unencumbered value of your Australian assets and ex-Australian assets still exceeds the Relevant Amount.

[For either form of order]

7. For the purposes of this order,

   (a) your assets include:

      (i) all your assets, whether or not they are in your name and whether they are solely or co-owned;

      (ii) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

      (iii) the following assets in particular:

         (A) the property known as [*title/address*] or, if it has been sold, the net proceeds of the sale;

         (B) the assets of your business [known as [*name*]] [carried on at [*address*]] or, if any or all of the assets have been sold, the net proceeds of the sale; and

         (C) any money in account [*numbered account number*] [*in the name of*] at [*name of bank and name and address of branch*].

   (b) the value of your assets is the value of the interest you have individually in your assets.

PROVISION OF INFORMATION [*See Practice Direction 9.6.1, par 14*]

8. Subject to par 9, you must:

   (a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing of all your assets in [Australia] [world wide], giving their value, location and details (including any mortgages, charges or other encumbrances to which they are subject) and the extent of your interest in the assets;

   (b) within [ ] working days after being served with this order, swear and serve on the applicant an affidavit setting out the above information.

9. (a) This par 9 applies if you are not a corporation and you wish to object that compliance with par 8 may tend to incriminate you or make you liable to a civil penalty;

(b) This par 9 also applies if you are a corporation and all of the persons who are able to comply with par 8 on your behalf and with whom you have been able to communicate, wish to object that compliance may tend to incriminate them respectively or make them respectively liable to a civil penalty;

(c) You must, at or before the further hearing on the Return Date (or within such further time as the Court may allow), notify the applicant in writing that you or all the persons referred to in (b) wish to take such objection and identify the extent of the objection;

(d) If you give such notice, you need comply with par 8 only to the extent, if any, that it is possible to do so without disclosure of the material in respect of which the objection is taken; and

(e) If you give such notice, the Court may give directions as to the filing and service of affidavits setting out such matters as you or the persons referred to in (b) wish to place before the Court in support of the objection.

EXCEPTIONS TO THIS ORDER

10. This order does not prohibit you from:

(a) paying [up to $..... a week/day on] [your ordinary] living expenses;

(b) paying [$.....on] [your reasonable] legal expenses;

(c) dealing with or disposing of any of your assets in the ordinary and proper course of your business, including paying business expenses bona fide and properly incurred; and

(d) in relation to matters not falling within (a), (b) or (c), dealing with or disposing of any of your assets in discharging obligations bona fide and properly incurred under a contract entered into before this order was made, provided that before doing so you give the applicant, if possible, at least two working days written notice of the particulars of the obligation.

11. You and the applicant may agree in writing that the exceptions in the preceding paragraph are to be varied. In that case the applicant or you must as soon as practicable file with the Court and serve on the other a minute of a proposed consent order recording the variation signed by or on behalf of the applicant and you, and the Court may order that the exceptions are varied accordingly.

12. (a) This order will cease to have effect if you:

(i) pay the sum of $..... into Court; or

(ii) pay that sum into a joint bank account in the name of your solicitor and the solicitor for the applicant as agreed in writing between them; or

(iii) provide security in that sum by a method agreed in writing with the applicant to be held subject to the order of the Court.

(b) Any such payment and any such security will not provide the applicant with any priority over your other creditors in the event of your insolvency.

(c) If this order ceases to have effect pursuant (a), you must as soon as practicable file with the Court and serve on the applicant notice of that fact.

COSTS

13. The costs of this application are reserved to the Judge hearing the application on the Return Date.

PERSONS OTHER THAN THE APPLICANT AND RESPONDENT

14. **Set off by banks**

This order does not prevent any bank from exercising any right of set off it has in respect of any facility which it gave you before it was notified of this order.

15. **Bank withdrawals by the respondent**

No bank need inquire as to the application or proposed application of any money withdrawn by you if the withdrawal appears to be permitted by this order.

[For world wide order]

16. **Persons outside Australia**

(a) Except as provided in par (b) below, the terms of this order do not affect or concern anyone outside Australia.

(b) The terms of this order will affect the following persons outside Australia:

(i) you and your directors, officers, employees and agents (except banks and financial institutions);

(ii) any person (including a bank or financial institution) who:

(A) is subject to the jurisdiction of this Court; and

(B) has been given written notice of this order, or has actual knowledge of the substance of the order and of its requirements; and

(C) is able to prevent or impede acts or omissions outside Australia which constitute or assist in a disobedience breach of the terms of this order; and

(iii) any other person (including a bank or financial institution), only to the extent that this order is declared enforceable by or is enforced by a court in a country or state that has jurisdiction over that person or over any of that person's assets.

[For world wide order]

17. **Assets located outside Australia**

Nothing in this order shall, in respect of assets located outside Australia, prevent any third party from complying or acting in conformity with what

it reasonably believes to be its bona fide and properly incurred legal obligations, whether contractual or pursuant to a court order or otherwise, under the law of the country or state in which those assets are situated or under the proper law of any contract between a third party and you, provided that in the case of any future order of a court of that country or state made on your or the third party's application, reasonable written notice of the making of the application is given to the applicant.

SCHEDULE A

UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT

(1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.

(2) As soon as practicable, the applicant will file and serve upon the respondent copies of:

(a) this order;

(b) the application for this order for hearing on the Return Date;

(c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:

(i) affidavits (or draft affidavits);

(ii) exhibits capable of being copied;

(iii) any written submission; and

(iv) any other document that was provided to the Court.

(d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court;

(e) the originating process, or, if none was filed, any draft originating process produced to the Court.

(3) As soon as practicable, the applicant will cause anyone notified of this order to be given a copy of it.

(4) The applicant will pay the reasonable costs of anyone other than the respondent which have been incurred as a result of this order, including the costs of finding out whether that person holds any of the respondent's assets.

(5) If this order ceases to have effect [*for example, if the respondent pays money into Court or provides security, as provided for in par 12 of this Order*] the applicant will promptly take all reasonable steps to inform in writing anyone who has been notified of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

(6) The applicant will not, without leave of the Court, use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in or outside Australia, other than this proceeding.

(7) The applicant will not, without leave of the Court, seek to enforce this order in any country outside Australia or seek in any country outside Australia an order of a similar nature or an order conferring a charge or other security against the respondent or the respondent's assets.

[(8) The applicant will:

(a) on or before [date] cause an irrevocable undertaking to pay in the sum of $ to be issued by a bank with a place of business within Australia, in respect of any order the court may make pursuant to undertaking (1) above; and

(b) immediately upon issue of the irrevocable undertaking, cause a copy of it to be served on the respondent.] [*See Practice Direction 9.6.1, par 17*]

SCHEDULE B

AFFIDAVITS RELIED ON

Name of Deponent	Date affidavit made
(1)	
(2)	
(3)	

NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The applicant's legal representatives are:

[Name, address, reference, fax and telephone numbers both in and out of office hours and email]

9.6.2. Search Orders (*Anton Piller* Orders)

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1. This Practice Direction supplements O 52B of the *Rules of the Supreme Court 1971* relating to search orders (also known as *Anton Piller* orders, after ***Anton Piller KG v Manufacturing Processes Ltd*** [1976] Ch 55).

2. This Practice Direction addresses (among other things) the Court's usual practice relating to the making of a search order and the usual terms of such an order. While a standard practice has benefits, this Practice Direction and the example form of order annexed to it at 9.6.2.1 do not, and cannot, limit the judicial discretion to make such order as is appropriate in the circumstances of the particular case.

3. Words and expressions in this Practice Direction that are defined in O 52B have the meanings given to them in that Order.

4. Ordinarily, a search order is made without notice being given to the respondent (ex parte) and compels the respondent to permit persons specified in the order (search party) to enter premises and to search for, inspect, copy and remove the things described in the order. The order is designed to preserve important evidence pending the hearing and determination of the applicant's claim in a proceeding brought or to be brought by the applicant against the respondent or against another person. The order is an extraordinary remedy in that it is intrusive, potentially disruptive, and made without notice being given to the respondent and prior to judgment.

5. An example form of search order made without notice being given to the respondent is annexed to this Practice Direction at 9.6.2.1 (the footnotes and references to footnotes in the example form should not form part of the order as made). The example form may be adapted to meet the circumstances of the particular case. It contains provisions which are aimed at achieving the permissible objectives of a search order, while minimising the potential for disruption or damage to the respondent and for abuse of the Court's process.

6. The search party must include an independent solicitor who will supervise the search and a solicitor or solicitors representing the applicant. It may be necessary that it include other persons, such as an independent computer expert, and a person able to identify things being searched for if difficulties of identification may arise. Ordinarily, the search party should not include

the applicant or the applicant's directors, officers, employees or partners or any other person associated with the applicant (other than the applicant's solicitor).

7. The order should be clear about the maximum number of persons permitted to be in the search party. The number of people in the search party should be as small as is reasonably practicable. The example form at sch A at 9.6.2.1 contemplates that they will be named in the order. This is desirable but if it is not possible the order should at least give a description of the class of person who will be there (e.g. 'one solicitor employed by A, B and Co').

8. The affidavits in support of an application for a search order should include the following information:

   (a) a description of the things or the categories of things, in relation to which the order is sought;

   (b) the address or location of any premises in relation to which the order is sought and whether they are private or business premises;

   (c) why the order is sought, including why there is a real possibility that the things to be searched for will be destroyed or otherwise made unavailable for use in evidence before the Court unless the order is made;

   (d) the prejudice, loss or damage likely to be suffered by the applicant if the order is not made;

   (e) the name, address, firm, and commercial litigation experience of an independent solicitor, who consents to being appointed to serve the order, supervise its execution, and do such other things as the Court considers appropriate; and

   (f) if the premises to be searched are or include residential premises, whether or not the applicant believes that the only occupant of the premises is likely to be:

      (i) a female; or

      (ii) a child under the age of 18; or

      (iii) any other person (vulnerable person) that a reasonable person would consider to be in a position of vulnerability because of that person's age, mental capacity, infirmity or English language ability; or

(iv) any combination of (i), (ii) and (iii), and any one or more of such persons.

9. If it is envisaged that specialised computer expertise may be required to search the respondent's computers for documents, or if the respondent's computers are to be imaged (i.e. hard drives are to be copied wholesale, thereby reproducing documents referred to in the order and other documents indiscriminately), special provision will need to be made, and an independent computer specialist will need to be appointed who should be required to give undertakings to the Court.

10. The applicant's solicitor must undertake to the Court to pay the reasonable costs and disbursements of the independent solicitor and of any independent computer expert.

11. The independent solicitor is an important safeguard against abuse of the order. The independent solicitor must not be a member or employee of the applicant's firm of solicitors. The independent solicitor should be a solicitor experienced in commercial litigation, preferably in the execution of search orders. The Law Society has been requested to maintain a list of solicitors who have indicated willingness to be appointed as an independent solicitor for the purpose of executing search orders, but it is not only persons on such a list who may be appointed. The responsibilities of the independent solicitor are important and ordinarily include the following:

(a) serve the order, the application for it, the affidavits relied on in support of the application, and the originating process;

(b) offer to explain, and, if the offer is accepted, explain the terms of the search order to the respondent;

(c) explain to the respondent that he or she has the right to obtain legal advice;

(d) supervise the carrying out of the order;

(e) before removing things from the premises, make a list of them, allow the respondent a reasonable opportunity to check the correctness of the list, sign the list, and provide the parties with a copy of the list;

(f) take custody of all things removed from the premises until further order of the Court;

(g) if the independent solicitor considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically or printing out information in documentary form, remove the computer from the premises for that purpose, and return the computer to the premises within any time prescribed by the order together with a list of any documents that have been copied or printed out;

(h) submit a written report to the Court within the time prescribed by the order as to the execution of the order; and

(i) attend the hearing on the Return Date of the application, and have available to be brought to the Court all things that were removed from the premises. On the Return Date the independent solicitor may be required to release material in his or her custody which has been removed from the respondent's premises or to provide information to the Court, and may raise any issue before the Court as to execution of the order.

12. Ordinarily, the applicant is not permitted, without the leave of the Court, to inspect things removed from the premises or copies of them, or to be given any information about them by members of the search party.

13. Ordinarily, a search order should be served between 9.00 am and 2.00 pm on a business day in order to permit the respondent to more readily obtain legal advice. However, there may be circumstances in which such a restriction is not appropriate.

14. A search order must not be executed at the same time as the execution of a search warrant by the police or by a regulatory authority.

15. If the premises are or include residential premises and the applicant is aware that when service of the order is effected the only occupant of the residential premises is likely to be any one or more of a female, a child under the age of 18, or a vulnerable person, the Court will give consideration to whether:

(a) if the occupants are likely to include a female or child, the independent solicitor should be a woman or the search party should otherwise include a woman; and

(b) if the occupants are likely to include a vulnerable person, the search party should include a person capable of addressing the relevant vulnerability.

16. Any period during which the respondent is to be restrained from informing any other person (other than for the purposes of obtaining legal advice) of the existence of the search order should be as short as possible and not extend beyond 4.30 pm on the Return Date.

17. At the hearing between the parties of the application on the Return Date, the Court will consider the following issues:

(a) what is to happen to any things removed from the premises or to any copies which have been made;

(b) how any commercial confidentiality of the respondent is to be maintained;

(c) any claim of privilege by the respondent;

(d) any application by a party; and

(e) any issue raised by the independent solicitor.

18. Appropriate undertakings to the Court will be required of the applicant, the applicant's solicitor and the independent solicitor, as conditions of the making of the search order. The undertakings required of the applicant will normally include the Court's usual undertaking as to damages. The applicant's solicitor's undertaking includes an undertaking not to disclose to the applicant any information that the solicitor has acquired during or as a result of execution of the search order, without the leave of the Court. Release from this undertaking in whole or in part may be sought on the Return Date.

19. If it is demonstrated that the applicant has or may have insufficient assets within the jurisdiction of the Court to provide substance for the usual undertaking as to damages, the applicant may be required to provide security for the due performance of that undertaking. The security may, for example, take the form of a bank's irrevocable undertaking to pay or a payment into Court. The example form of search order at 9.6.2.1 contains provision for an irrevocable undertaking.

20. An applicant for a search order made without notice being given to the respondent is under a duty to the Court to make full and frank disclosure

of all material facts to the Court. This includes disclosure of possible defences known to the applicant and of any financial information which may cast doubt on the applicant's ability to meet the usual undertaking as to damages from assets within Australia.

21. The order to be served should be endorsed with a notice in the form of the Penal Notice on the example form of Search Order attached to this Practice Direction at 9.6.2.1.

22. A search order is subject to the Court's adjudication of any claim of privilege against self-incrimination. The privilege against self-incrimination is available to individuals but not to corporations. The Court will not make an order reducing or limiting that privilege in circumstances where the legislature has not indicated that it may do so.

9.6.2.1. Example Form of Search Order

[Title of Proceeding]

PENAL NOTICE

TO: [*name of person against whom the order is made*]

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THE ORDER FOR THE DOING OF THE ACT; OR

(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

TO: [*name of person against whom the order is made*]

This is a '*search order*' made against you on [*insert date*] by Justice [*insert name of Judge*] at a hearing without notice to you after the Court was given the undertakings set out in Schedule B to this order and after the Court read the affidavits listed in Schedule C to this order.

THE COURT ORDERS:

INTRODUCTION

1. (a) the application for this order is made returnable immediately.

   (b) the time for service of the application, supporting affidavits and originating process is abridged and service is to be effected by [*insert time and date*].

2. Subject to the next paragraph, this order has effect up to and including [*insert date*] (**the Return Date**). On the Return Date at [*insert time*] am/pm there will be a further hearing in respect of this order before Justice [*insert name of Judge*].

3. You may apply to the Court at any time to vary or discharge this order; including, if necessary, by telephone to the Judge referred to in the immediately preceding paragraph (phone No.) or to the Duty Judge (phone No.).

4. This order may be served only between [*insert time*] am/pm and [*insert time*] am/pm on [*insert business day*]

   [*Normally the order should be served between 9.00 am and 2.00 pm on a business day to enable the respondent more readily to obtain legal advice*]

5. In this order:

   (a) 'applicant' means the person who applied for this order, and if there is more than one applicant, includes all the applicants.

   (b) 'independent computer expert' means the person (if any) identified as the independent computer expert in the search party referred to in Schedule A to this order.

(c) 'independent solicitor' means the person identified as the independent solicitor in the search party referred to in Schedule A to this order.

(d) 'listed thing' means any thing referred to in Schedule A to this order.

(e) 'premises' means the premises and any of the premises identified in Schedule A to this order, including any vehicles and vessels that are under the respondent's control on or about the premises or that are otherwise identified in Schedule A.

(f) 'search party' means the persons identified or described as constituting the search party in Schedule A to this order.

(g) 'thing' includes a document.

(h) 'you', where there is more than one of you, includes all of you and includes you if you are a corporation.

(i) any requirement that something be done in your presence means:

(i) in the presence of you or of one of the persons described in par 6 below; or

(ii) if there is more than one of you, in the presence of each of you, or, in relation to each of you, in the presence of one of the persons described in par 6 below.

6. This order must be complied with by you by:

(a) yourself; or

(b) any director, officer, partner, employee or agent of yourself; or

(c) any other person having responsible control of the premises.

7. This order must be served by, and be executed under the supervision of, the independent solicitor.

ENTRY, SEARCH AND REMOVAL

8. Subject to pars 10 - 20 below, upon service of this order you must permit members of the search party to enter the premises so that they can carry out the search and other activities referred to in this order.

9. Having permitted members of the search party to enter the premises, you must:

(a) permit them to leave and re-enter the premises on the same day and the following day until the search and other activities referred to in this order are complete;

(b) permit them to search for and inspect the listed things and to make or obtain a copy, photograph, film, sample, test or other record of the listed things;

(c) disclose to them the whereabouts of all the listed things in the respondent's possession, custody or power, whether at the premises or otherwise;

(d) disclose to them the whereabouts of all computers, computer disks and electronic information storage devices or systems at the premises in which any documents among the listed things are or may be stored, located or recorded and cause and permit those documents to be printed out;

(e) do all things necessary to enable them to access the listed things, including opening or providing keys to locks and enabling them to access and operate computers and providing them with all necessary passwords;

(f) permit the independent solicitor to remove from the premises into the independent solicitor's custody:

(i) the listed things or things which reasonably appear to the independent solicitor to be the listed things and any things the subject of dispute as to whether they are listed things; and

(ii) the copies, photographs, films, samples, tests, other records and printed out documents referred to above; and

(g) permit the independent computer expert (if there is one) to search any computer and make a copy or digital copy of any computer hard drive and permit the independent computer expert (if any) or the independent solicitor to remove any computer hard drive and computer from the premises as set out in pars 20 - 21 below.

RESTRICTIONS ON ENTRY, SEARCH AND REMOVAL

10. This order may not be executed at the same time as a search warrant (or similar process) is executed by the police or by a regulatory authority.

11. You are not required to permit anyone to enter the premises until:

    (a) the independent solicitor serves you with copies of this order and any affidavits referred to in Schedule C (confidential exhibits, if any, need not be served until further order of the Court); and

    (b) you are given an opportunity to read this order and, if you so request, the independent solicitor explains the terms of this order to you.

12. Before permitting entry to the premises by anyone other than the independent solicitor, you, for a time (not exceeding two hours from the time of service or such longer period as the independent solicitor may permit):

    (a) may seek legal advice;

    (b) may ask the Court to vary or discharge this order;

    (c) (provided you are not a corporation) may gather together any things which you believe may tend to incriminate you or make you liable to a civil penalty and hand them to the independent solicitor in (if you wish) a sealed envelope or container; and

    (d) may gather together any documents that passed between you and your lawyers for the purpose of obtaining legal advice or that are otherwise subject to legal professional privilege or client legal privilege, and hand them to the independent solicitor in (if you wish) a sealed envelope or container.

13. Subject to par 22 below, the independent solicitor must not inspect or permit to be inspected by anyone, including the applicant and the applicant's solicitors, any thing handed to the independent solicitor in accordance with pars 12(c) and (d) above and the independent solicitor must deliver it to the Court at or prior to the hearing on the Return Date.

14. During any period referred to in par 12 above, you must:

(a) inform and keep the independent solicitor informed of the steps being taken;

(b) permit the independent solicitor to enter the premises but not to start the search;

(c) not disturb or remove any listed things; and

(d) comply with the terms of pars 25 - 26 below.

15. Any thing the subject of a dispute as to whether it is a listed thing must promptly be handed by you to the independent solicitor for safekeeping pending resolution of the dispute or further order of the Court.

16. Before removing any listed things from the premises (other than things referred to in the immediately preceding paragraph), the independent solicitor must supply a list of them to you, give you a reasonable time to check the correctness of the list, and give you and the applicant's solicitors a copy of the list signed by the independent solicitor.

17. The premises must not be searched, and things must not be removed from the premises, except in the presence of you or of a person who appears to the independent solicitor to be your director, officer, partner, employee, agent or other person acting on your behalf or on your instructions.

18. If the independent solicitor is satisfied that full compliance with the immediately preceding paragraph is not reasonably practicable, the independent solicitor may permit the search to proceed and the listed things to be removed without full compliance.

19. The applicant's solicitors and the independent solicitor must not allow the applicant in person to inspect or have copies of any thing removed from the premises nor communicate to the applicant information about its contents or about anything observed at the premises until 4.30 pm on the Return Date or other time fixed by further order of the Court.

COMPUTERS

20 (a) If it is expected that a computer will be searched, the search party must include a computer expert who is independent of the applicant and of the applicant's solicitors (the independent computer expert).

(b) Any search of a computer must be carried out only by the independent computer expert.

(c) The independent computer expert may make a copy or digital copy of the computer hard drive and remove that copy or digital copy from the premises.

(d) The independent computer expert may search the computer or the copy or digital copy of the computer hard drive at the premises and/or away from the premises for the listed things and may copy the listed things electronically or in hard copy or both.

(e) The independent computer expert must as soon as practicable and, in any event, prior to the hearing on the Return Date, deliver the copy or digital copy of the computer hard drive and all electronic and hard copies of the listed things to the independent solicitor, together with a report of what the independent computer expert has done including a list of such electronic and hard copies.

(f) The independent solicitor must, at or prior to the hearing on the Return Date, deliver to the Court all things received from the independent computer expert and serve a copy of the latter's report on the parties.

(g) If no independent computer expert has been appointed, but the independent solicitor considers it necessary to remove a computer from the premises for safekeeping or for the purpose of copying its contents electronically and printing out information in documentary form, the independent solicitor may remove the computer from the premises in order for that purpose only to be achieved.

21. Unless you are a corporation, you are entitled to object to par 20(b) - (f) on the ground that they might tend to incriminate you or make you liable to a civil penalty. Upon communicating this to the independent solicitor those paragraphs become inoperative to the extent that you have objected

to them. In that event, if the applicant's solicitor communicates to the independent solicitor that the applicant proposes to contest the objection:

(a) the independent computer expert shall remove the computer hard drive (or, if that is not practicable, the computer) from the premises and deliver it into the custody of the independent solicitor who shall deliver it to the Court at or prior to the Return Date.

(b) on the Return Date or on another date, the applicant may apply to the Court for orders to similar effect as par 20(b) - (f) and if you object, the Court may adjudicate upon your objection.

INSPECTION

22. Prior to the Return Date, you or your solicitor or representative shall be entitled, in the presence of the independent solicitor, to inspect any thing removed from the premises and to:

(a) make copies of the same; and

(b) provide the independent solicitor with a signed list of things which are claimed to be privileged or confidential and which you claim ought not to be inspected by the applicant.

PROVISION OF INFORMATION

23. Subject to par 24 below, you must:

(a) at or before the further hearing on the Return Date (or within such further time as the Court may allow) to the best of your ability inform the applicant in writing as to:

(i) the location of the listed things;

(ii) the name and address of everyone who has supplied you, or offered to supply you, with any listed thing;

(iii) the name and address of every person to whom you have supplied, or offered to supply, any listed thing; and

(iv) details of the dates and quantities of every such supply and offer.

(b) within [ ] working days after being served with this order, make and serve on the applicant an affidavit setting out the above information.

24. (a) This par 24 applies if you are not a corporation and you wish to object that compliance with par 23 may tend to incriminate you or make you liable to a civil penalty.

(b) This par 24 also applies if you are a corporation and all of the persons who are able to comply with par 23 on your behalf and with whom you have been able to communicate, wish to object that compliance may tend to incriminate them or make them liable to a civil penalty.

(c) You must, at or before the further hearing on the Return Date (or within such further time as the Court may allow), notify the applicant in writing that you or all the persons referred to in (b) wish to take such objection and identify the extent of the objection.

(d) If you give such notice, you need comply with par 23 only to the extent, if any, that it is possible to do so without disclosure of the material in respect of which the objection is taken.

(e) If you give such notice, the Court may give directions as to the filing and service of affidavits setting out such matters as you or the persons referred to in (b) wish to place before the Court in support of the objection.

PROHIBITED ACTS

25. Except for the sole purpose of obtaining legal advice, you must not, until 4.30 pm on the Return Date, directly or indirectly inform any person of this proceeding or of the contents of this order, or tell any person that a proceeding has been or may be brought against you by the applicant.

26. Until 4.30 pm on the Return Date you must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed things otherwise than in accordance with the terms of this order or further order of the Court.

COSTS

27. The costs of this application are reserved to the Judge hearing the application on the Return Date.

SCHEDULE A

Premises

The premises located at [*insert address or addresses*] including any vehicle or vehicles under the respondent's control on or about those premises.

Listed Things

1.
2.
3.

Search Party

1. The independent solicitor: [*insert name and address*]

2. The applicant's solicitor or solicitors:

    (a) [*insert name and address*] [or description e.g. a partner or employed solicitor of A, B and Co].

    (b) [*insert name and address*] [or description e.g. a partner or employed solicitor of A, B and Co].

    (c) [*insert name and address*] [or description e.g. a partner or employed solicitor of A, B and Co].

3. Other members of the search party:

    (a) [*insert name and address*] in the capacity of [*e.g. an independent computer expert*]

    (b) [*insert name and address*] in the capacity of [*insert capacity*]

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT

Undertakings given to the Court by the applicant:

(1) The applicant undertakes to submit to such order (if any) as the Court may consider to be just for the payment of compensation (to be assessed by the Court or as it may direct) to any person (whether or not a party) affected by the operation of the order.

(2) The applicant will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.

(3) The applicant will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

(4) If the applicant has not already done so, as soon as practicable the applicant will file a notice of motion for hearing on the Return Date and an originating process [in the form of the draft produced to the Court].

[(5) The applicant will insure the things removed from the premises against loss or damage for an amount that reasonably appears to the applicant to be their full value. [*Depending on the nature of the things likely to be removed and their likely value, and the likely particular risks of their being lost or damaged, this undertaking or a more elaborate one may be required*]]

[(6) The applicant will [*See Practice Direction 9.6.2, par 19*]:

(a) on or before [*insert date*] cause a written irrevocable undertaking to pay in the sum of $[*insert* amount] to be issued from a bank with a place of business within Australia, in respect of any order the Court may make referred to in the undertaking as to damages contained in par 1 above; and

(b) immediately upon issue of the irrevocable undertaking to pay, cause a copy of it to be served on the respondent.]

Undertakings given to the Court by the applicant's solicitor

(1) The applicant's solicitor will pay the reasonable costs and disbursements of the independent solicitor and of any independent computer expert.

(2) The applicant's solicitor will provide to the independent solicitor for service on the respondent copies of the following documents:

(a) this order;

(b) the application for this order for hearing on the Return Date;

(c) the following material in so far as it was relied on by the applicant at the hearing when the order was made:

(i) affidavits (or draft affidavits)

(ii) exhibits capable of being copied (other than confidential exhibits);

(iii) any written submission; and

(iv) any other document that was provided to the Court.

(d) a transcript, or, if none is available, a note, of any exclusively oral allegation of fact that was made and of any exclusively oral submission that was put, to the Court; and

(e) the originating process, or, if none was filed, any draft originating process produced to the Court.

(3) The applicant's solicitor will answer to the best of his or her ability any question as to whether a particular thing is a listed thing.

(4) The applicant's solicitor will use his or her best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.

(5) The applicant's solicitor will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.

(6) The applicant's solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

(7) The applicant's solicitor will not disclose to the applicant any information that the solicitor acquires during or as a result of execution of the search order, without the leave of the Court.

Undertakings given to the Court by the independent solicitor

(1) The independent solicitor will use his or her best endeavours to serve the respondent with this order and the other documents referred to in undertaking (2) of the above undertakings by the applicant's solicitor or solicitors.

(2) Before entering the premises, the independent solicitor will:

(a) offer to explain the terms and effect of the search order to the person served with the order and, if the offer is accepted, do so; and

(b) inform the respondent of his or her right to take legal advice.

(3) Subject to undertaking (4) below, the independent solicitor will retain custody of all things removed from the premises by the independent solicitor pursuant to this order until delivery to the Court or further order of the Court.

(4) At or before the hearing on the Return Date, the independent solicitor will provide a written report on the carrying out of the order to the Court and provide a copy to the applicant's solicitors and to the respondent or the respondent's solicitors. The report will attach a copy of any list made pursuant to the order and a copy of any report received from an independent computer expert.

(5) The independent solicitor will use his or her best endeavours to act in conformity with the order and to ensure that the order is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.

(6) The independent solicitor will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.

(7) The independent solicitor will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

Undertakings given to the Court by the independent computer expert

(1) The independent computer expert will use his or her best endeavours to act in conformity with the order and to ensure that the order, so far as it concerns the independent computer expert, is executed in a courteous and orderly manner and in a manner that minimises disruption to the respondent.

(2) The independent computer expert will not, without leave of the Court, use any information, document or thing obtained as a result of the execution of this order for the purpose of any civil or criminal proceeding, either within or outside Australia, other than this proceeding.

(3) The independent computer expert will not inform any other person of the existence of this proceeding except for the purposes of this proceeding until after 4.30 pm on the Return Date.

SCHEDULE C

AFFIDAVITS RELIED ON

Name of Deponent	**Date affidavit made**
(1)	
(2)	
(3)	

NAME AND ADDRESS OF APPLICANT'S SOLICITORS

The Applicant's solicitors are: [*Insert name, address, reference, fax and telephone numbers both in and out of office hours*].

9.7. Applications to the Supreme Court - *Coroners Act 1996*

1. Applications under s 24(2), s 36(3) and s 38(7) of the *Coroners Act 1996* shall be made by Notice of Originating Motion (Form No 64) in the Second Schedule of the *Rules of the Supreme Court 1971*.

2. The Notice of Originating Motion should be accompanied by a letter addressed to the listing co-ordinator setting out the estimated time of hearing and requesting an urgent hearing.

3. Every endeavour will be made to list applications under s 36(3), s 37(3) and s 38(7) for hearing within three (3) days of filing.

4. The Notice of Originating Motion should be supported by an affidavit to which is exhibited all relevant correspondence to and from the Coroner, a Coroner's Clerk or a Coroner's Investigator.

5. In exceptional cases the Court may dispense with the requirement for the filing of an affidavit and permit oral evidence to be given in support of the Motion.

6. The Notice of Originating Motion and supporting affidavits shall be served on the State Coroner immediately after filing.

7. If the decision under challenge was made by a Coroner sitting outside the Perth Metropolitan Area the applicant shall, immediately after filing, provide a copy of the Notice of Originating Motion and supporting affidavits (by facsimile transmission or other means) to the Managing Registrar of the Court at which the decision was made. This requirement is in addition to the services requirement in par 6.

8. An application under s 52(1) of the Act shall be by Writ of Summons (Form No 1 in the Second Schedule of the *Rules of the Supreme Court 1971*) seeking declaratory and other appropriate relief.

9.8. Parliamentary Commissioner Act 1971

1. Section 29 of the *Parliamentary Commissioner Act 1971* (the Act) provides for an application to the Supreme Court to determine the question whether the Parliamentary Commissioner for Administrative Investigations has jurisdiction to conduct an investigation.

2. The application shall be made by originating motion returnable in open court and in accordance with O 54 of the *Rules of the Supreme Court 1971*.

3. Section 29 of the Act requires the leave of the Supreme Court before civil or criminal proceedings may be brought against the Commissioner or any of his officers in respect of any act purporting to be done in pursuance of the Act.

4. An application for leave to institute civil proceedings shall be made to a Judge in chambers by originating summons which shall be served upon the Commissioner and upon any officer of the Commissioner against whom it is sought to institute the proceedings.

9.9. Applications by Law Enforcement Officers under pt 4 & pt 5 of the *Surveillance Devices Act 1998*

1. Definitions

1.1 Words defined in s 3 of the *Surveillance Devices Act 1998* (WA) (the Act) and used in this Practice Direction have the same respective meanings as in the Act.

1.2. 'Court Officer' means such member or members of the Court Registry staff as the Principal Registrar may from time to time in writing nominate. Until a written nomination is made the Court Officer shall be the Manager Customer Service or, in his/her absence, the Manager Listings.

2. Introduction

2.1 This Practice Direction applies to the following applications made by a law enforcement officer under:

(a) s 15 (read with s 13 and s 14), for a warrant to use a surveillance device;

(b) s 15 (read with s 22), for a surveillance device (retrieval) warrant;

(c) s 16 (read with s 17), where the application is made by radio, telephone, video, facsimile transmission or other means of communication;

(d) s 19, for the extension of the period during which a warrant is in force; and

(e) s 31, for an order that a person may publish information obtained by use of a surveillance device.

2.2 This Practice Direction also applies to reports required to be filed by a law enforcement officer under:

(a) s 21(4) and (5), following an emergency authorisation made by an authorised person in relation to a surveillance device; and

(b) s 30 (read with s 28 and s 29), following the emergency use of a surveillance device in the public interest.

2.3 Part 5 of the Act recognises that a member of the public (not being a law enforcement officer) may use a surveillance device (for limited purposes) if it is in the public interest to do so. This may require or enable the member of the public to file a report under s 30 or make an application under s 31. This Practice Direction does not cover those situations.

2.4. The Act contains specific and onerous confidentiality provisions in relation to applications for warrants: see s 23 and s 33.

2.5 In view of the nature of the applications, they must be processed promptly and with complete confidentiality.

2.6 Applications under the *Surveillance Devices Act 1998* are not required to be filed electronically via the ECMS (O 67A r 3(1)(d)).

3. Applications under s 15 - commencement

3.1. An application is to be made by affidavit, accompanied by a draft warrant in accordance with the Regulations. The formatting requirements for the affidavit are set out in Practice Direction 1.2.1 – Documents – Format – *Other formatting requirements*. Refer also to Practice Direction 1.2.4 for information on taking affidavits.

3.2 The affidavit must include information as to the authority of the applicant to make the application.

3.3 Before presenting any documents the applicant must contact the Coordinator (Listings), normally by telephone:

(a) to give notice of a pending application and an estimate of the time of delivery of the application;

(b) to request that arrangements be made for a Judge to hear the application;

(c) to inform the Coordinator (Listings) whether there are multiple applications and whether a particular Judge has previously had the conduct of the pending or related applications; and

(d) to inform the Coordinator (Listings) whether the applicant proposes to exhibit videotape or other recordings to the affidavit so that (if necessary) arrangements can be made for the Judge to view or hear the recordings before the application is heard.

3.4 The Coordinator (Listings) will inform the applicant of the SDA number allocated to the application as soon as practicable, and usually during the first contact with the applicant.

3.5 The applicant must place the application in a sealed envelope, and must record on the envelope the SDA number that was allocated by the Coordinator (Listings) and the date of the application.

3.6 There can be only one application in each envelope. If multiple applications are to be heard by one Judge on the same day, each application must be in a separate sealed envelope and each envelope must have the SDA number and date recorded on it.

3.7 Once a Judge has been assigned to hear the application(s), the Coordinator (Listings) will as soon as practicable inform the applicant as to the identity of the Judge, the time of the hearing and the contact details for the Associate to the Judge.

3.8 The applicant must go to Level 11, David Malcolm Justice Centre, 28 Barrack Street, Perth and contact the Associate to the Judge. The Associate will collect the applicant and escort them to the Judge's floor. The applicant must then hand the sealed envelope containing the application to the Judge hearing the application or to the Associate.

3.9 The Coordinator (Listings) will record the date, the Judge assigned and the SDA number in a register kept for that purpose.

4. Applications under s 15 - hearing and subsequent activity

4.1 The application shall be heard by the Judge in the absence of any other parties in private Chambers. No person (including members of the Judge's personal staff) who is not the applicant or a representative of the applicant may be present during the hearing.

4.2 The Judge may make such note as the Judge shall think fit concerning the application, the result of the application, the type of warrant issued, the period of authorisation and any such other information as the Judge thinks is necessary or appropriate in the circumstances. In addition to, or instead of making notes, the Judge may initial each page of the affidavit.

4.3 At the conclusion of the hearing the Judge will:

(a) if appropriate, complete and sign the draft warrant; and

(b) hand to the applicant or the applicant's representative the warrant and the affidavit and other documents or things (if any) on which the applicant relied.

4.4 All documents issued as a result of the hearing shall have the SDA number recorded on them.

4.5 The Court will not retain any copies of the warrant or of the affidavit and other documents or things (if any) on which the applicant relied.

4.6 Immediately after the hearing the Judge will place any note referred to in par 4.2 in an envelope and hand it to the Associate.

4.7 The Associate shall seal any such documents in the envelope and label it:

'SURVEILLANCE DEVICES MATTER
Note of proceedings before [*name of Judge*] on [*date*].
Nature of action taken [eg, *(type of) warrant issued*]
SDA Number

NOTE: This envelope is not to be opened other than in accordance with the order of a Judge'

4.8 The Associate shall deliver the envelope to the Court Officer who shall place the envelope in a locked secure area set aside for the purpose.

4.9 The envelope shall not be opened other than in accordance with the order of a Judge. If such an order is made then, immediately after the further hearing or action, the Associate to the Judge shall re-seal the envelope and endorse it with a note to this effect:

'Envelope opened on [*date*] by order of [*name of Judge*]
Record of proceedings before [*name of Judge*] on [*date*].
Nature of the action taken [*give brief details*]
Envelope re-sealed on [*date*].'

4.10 Immediately after the further hearing or action the Associate to the Judge shall deliver the envelope to the Court Officer who shall return it to a locked secure area.

4.11 An envelope containing documents in accordance with the above paragraphs shall not be open to inspection by any person other than as required or authorised by law.

4.12 Whenever possible, all proceedings in relation to a warrant after it has been issued shall be dealt with by the Judge who issued the warrant. Otherwise, applications shall be heard by an available Judge.

5. Applications under s 19

5.1 Paragraphs 3 and 4 of this Practice Direction apply, with necessary modifications, to an application under s 19 for the extension of a warrant except that:

(a) instead of presenting a draft warrant, the applicant shall produce the original warrant so that (if the application is successful) the Judge can endorse on it the date on which the extended warrant is to expire; and

(b) the affidavit in support of the application must state that the application is for the extension of an existing warrant.

6. Applications under s 31

6.1 Paragraphs 3 and 4 of this Practice Direction apply, with necessary modifications, to an application under s 31 for an order that a law enforcement officer may publish information obtained by use of a surveillance device except that:

(a) instead of presenting a draft warrant, the applicant shall provide a minute of proposed order setting out with particularity the nature of the relief sought including conditions (if any) that should apply to the publication; and

(b) the Court shall retain the affidavit and other documents or things (if any) on which the applicant relied and those documents shall be placed in an envelope to be marked and kept as provided by pars 4.7 and 4.8; and

(c) par 4.10 does not apply and the right of inspection is governed by s 33 of the Act.

6.2 The applicant shall have the order engrossed and lodge it in duplicate with the Associate for presentation to the Judge to be signed by the Judge. The signature of the Judge shall be sufficient authentication of the order and it shall not be necessary for the order to be settled by a Registrar or sealed.

6.3 The Associate shall arrange for a signed copy of the order to be collected personally by the applicant or the applicant's representative. The other copy of the order shall be retained by the Court and placed in an envelope which is to be delivered to the Court Officer and kept in a locked secure area.

7. Applications under s 16

7.1 An application by radio, telephone, video, facsimile transmission or other means of communication may only be made if time or circumstances do not permit an application to be made in person. The applicant must ensure that as much relevant information as practicable is available to the Judge when the application is heard. It may, for example, be possible to use a combination of media so that while communication is effected primarily by telephone, some documents are transmitted by facsimile for use in the hearing.

7.2 The applicant must first contact the Coordinator (Listings), normally by telephone:

(a) to give notice of a pending application;

(b) to make arrangements for a Judge to hear the application;

(c) to inform the Coordinator (Listings) whether there are multiple applications and whether a particular Judge has previously had the conduct of the pending application or related applications;

(d) to explain briefly the circumstances which make it impractical for an application to be made under s15; and

(e) to inform the Coordinator (Listings) of the name of the applicant.

7.3 The Coordinator (Listings) shall make arrangements for a Judge to hear the application and, in conjunction with the Associate, make the necessary arrangements for telecommunications links and the facsimile transmission of documents or the like. The Coordinator (Listings) shall then inform the applicant about those arrangements.

7.4 When an application is made by telephone or video link:

(a) normally, the applicant, the investigators from the relevant agency and the applicant's solicitor will be present;

(b) at the commencement, the solicitor (if present) or otherwise the applicant, must introduce each person present at the application;

(c) the applicant will make the application and provide the essential information required (including information as to the circumstances said to make it impractical for an application to be made under s 15); and

(d) the applicant will facilitate the provision of any additional information required by the Judge.

7.5 Immediately after the hearing of the telephone or video link application the Judge will hand to the Associate any notes the Judge has made. The Associate shall place any such documents in an envelope to be retained

in a secure place pending compliance by the applicant with the requirements of s 17(3).

7.6 Paragraphs 4.6 - 4.11 of this Practice Direction apply, with necessary modifications, to the handling and custody of documents in an application under s 16.

7.7 In relation to the report required by s 17(3), the documents to be produced to the Judge are:

(a) an affidavit verifying the information which was provided to the Judge when the application was heard; and

(b) the form of warrant prepared by the applicant.

7.8 Before providing the documents referred to in par 7.7 the applicant must inform the Coordinator (Listings) of the intention to do so and arrange to deliver the documents to the Coordinator (Listings).

7.9 The Coordinator (Listings) shall deliver the documents to the Associate to the Judge who heard the initial application or, if the Judge is not available, an available Judge, to be dealt with in accordance with s 17(4).

7.10 Immediately after the Judge has dealt with the warrant as required by s 17(4), the copy of the warrant and any notes made by the Judge shall be placed in a sealed envelope and pars 4.6 - 4.11 shall apply, with necessary modifications. The Associate shall arrange for the affidavit and the form of warrant prepared by the applicant to be collected personally by the applicant or the applicant's representative.

8. Reports under s 21(4) and (5) and s 30

8.1 A written report required by s 21(4) or (5) or s 30 is to be contained in, or exhibited to, an affidavit sworn by an authorized person having responsibility for the matter.

8.2 Before delivering the report the applicant must contact the Coordinator (Listings), normally by telephone, to give notice of a pending delivery.

8.3 The applicant shall deliver the report to the Coordinator (Listings) in a sealed envelope, and the Coordinator (Listings) shall immediately

deliver the envelope personally to the Associate to the Judge who is to deal with the report.

8.4. Having considered the report the Judge may:

(a) order that no further action be taken; in which case the Judge shall make a note to that effect on the report and hand it to the applicant; or

(b) make an order under s 21(10) that the use of the surveillance device cease immediately, in which case the Judge will give written notice to the applicant of the making of the order and hand the report to the applicant; or

(c) make an order under s 21(8) or s 30(3), in which case the Judge will give written notice to the applicant of the making of the order and of the time (if any) which the Judge has specified as the time for compliance with the order.

8.5. If the Judge makes an order under s 21(8) or s 30(3) then, subject to any orders made under s 21(9) or s 30(4), the documents or things delivered to the Court in compliance with the order shall be retained by the Court in a sealed envelope and pars 4.6 - 4.11 shall apply, with necessary modifications.

9.10. Procedures relating to the confiscation of criminal property proceedings

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1. Definitions

1.1 'Court Officer' means such member or members of the Court Registry staff as the Principal Registrar may from time to time in writing nominate. Until a written nomination is made the Court Officer shall be the Manager Customer Service or, in their absence, the Manager Listings.

2. Filing documents in *Criminal Property Confiscation Act 2000* (WA) and *Proceeds of Crime Act 2002* (Cth) matters

2.1 Applications made under the *Criminal Property Confiscation Act 2000* (WA) (**CPCA**), by originating summons or motion pursuant to O 81FA rr 2 or 3, are to be presented for filing electronically using the ECMS, unless there is an exemption under O 67A r 3(1).

2.2 Objections made under the CPCA, by summons or originating summons pursuant to O 81FA r 5, are to be presented for filing electronically using the ECMS, unless there is an exemption under O 67A r 3(1).

2.3 A person who presents a document for filing in a CPCA application or matter which contains any information which is restricted under CPCA s 70 must advise the Court in accordance with O 67A Div 3.

2.4 Applications made under the *Proceeds of Crime Act 2002* (Cth) by summons, originating summons or motion pursuant to O 81F r 2, are to be presented for filing electronically using the ECMS, unless there is an exemption under O 67A r 3(1).

2.5 With the exception of applications filed by the Corruption and Crime Commission, where a paper copy of an application or objection is filed in accordance with the Rules and an electronic copy is not filed, the Principal Registrar (or person delegated by the Principal Registrar) will convert the document to an electronic format and record it in the ECMS as if it had been filed electronically.

3. CPCA Directions List and CPCA Managing Judge

3.1 Applications and objections which are accepted for filing under the CPCA are referred to Listings, to be placed in a 'CPCA Directions List' no earlier than six weeks after the date of filing.

3.2 Matters on the CPCA Directions List will generally be listed for directions at 9.15 or 9.30 am.

3.3 The CPCA Directions List will generally be held once per month.

3.4 Matters on the CPCA Directions List will be managed by a designated judge, referred to as the 'CPCA Managing Judge'.

3.5 The orders that will be made by the CPCA Managing Judge in relation to matters in the CPCA Directions List are limited to:

(a) procedural direction(s) (including, but not limited to, a direction to a party to provide to the Court any information that it requires and/or a direction as to persons to be added as parties);

(b) an order adjourning the matter to a CPCA Directions List on a later date for further directions;

(c) an order that the matter be listed for substantive hearing before a Judge;

(d) where an order is made under par 3.5(c), programming orders for the substantive hearing (which may include orders, for example, that affidavit evidence stand as the evidence in chief, that regulate objections to affidavits, that provide for notice to be given as to whether a deponent will be required for cross examination, and that provide for the filing of submissions);

(e) other interlocutory orders by consent; and

(f) orders for dismissal of proceedings by consent.

3.6 Subject to par 3.5(f), final orders, including declarations, will not be made in the CPCA Directions List, even if they are by consent.

3.7 Once an applicant has completed all the necessary procedural steps and complied with all directions made, the CPCA Managing Judge may make an order that:

(a) the matter be listed before a judge of the Supreme Court for a hearing of [number of hours] duration; and

(b) the parties are to provide their unavailable dates to Listings by [date], by way of email to central.office@justice.wa.gov.au.

3.8 The Associate to the CPCA Managing Judge will, as soon as possible, advise Listings of the terms of an order that the matter be listed for substantive hearing.

3.9 Once the matter has been listed for substantive hearing, Listings will notify the parties of the date and time.

4. Disclosure of information

4.1 Section 70 of the CPCA makes it an offence to disclose to anyone, except as permitted under s 71, the fact that any person is or has been subject to a production order, an examination order, a monitoring order or a suspension order, or that any such orders exist or are in operation. The Commonwealth *Proceeds of Crime Act 1987* (Cth) and the *Proceeds of Crime Act 2002* (Cth) also contain provisions creating offences for the unauthorised disclosure of various orders under that legislation.

4.2 It is also an offence to disclose information from which anything might reasonably be inferred about the existence or operation of any such orders.

Restricted access to applications and objections

4.3 The Principal Registrar (or delegate of the Principal Registrar) will keep any applications or objections which have been presented for filing in paper format in a file in a secure place set aside for that purpose. An application or objection will be retained for the period of time required by O 67A r 8(3) and (4).

4.4 Files relating to applications in confiscation matters are not to be available for inspection, nor should any information be disclosed about any of the contents of the file, or from which the contents may be inferred.

Restricted access to production orders, examination orders, monitoring orders or suspension orders

4.5 Generally, a production order, an examination order, a monitoring order or a suspension order will be issued by means of the ECMS and sealed with the Court's electronic seal. Only a person who is an authorised user of the ECMS in relation to the particular matter will be able to access and print a copy of the order.

4.6 Where a Judge issues orders in paper format, the Judge shall place all papers inside an envelope and give the envelope to their Associate. The Associate shall seal the papers in the envelope and label it as follows:

'*Criminal Property Confiscation Act 2000* (WA)
OR *Proceeds of Crime Act 1987* (Cth)
OR *Proceeds of Crime Act 2002* (Cth)

Monitoring Order
[*Names of the account holder and the financial institution concerned*]
OR Production/Examination/Suspension Order

Issued by [*name of Judge*] on [*date*].

NOTE: This envelope is NOT TO BE OPENED other than in accordance with the order of a Judge'

4.7 The Associate shall deliver the envelope to the Court Officer who will then number the envelope and place the details of the names of the account holder and the financial institution in a register. The envelope and register will be kept in a secure place set aside for the purpose.

4.8 The envelope shall not be opened other than in accordance with the order of a Judge. If such an order is made then, immediately after the further hearing or action, the Associate to the Judge shall re-seal the envelope and endorse it with a note to this effect:

'Envelope opened on [*date*] by order of [*name of Judge*]
Record of proceedings before [*name of Judge*] on [*date*]
Nature of the action taken [*give brief details*]
Envelope re-sealed on [*date*]'

4.9 Immediately after the further hearing or action the Associate to the Judge shall deliver the envelope to the Court Officer so as to be returned to the secure area.

4.10 The envelope is not to be available for inspection, nor should any information be disclosed about any of the contents of the envelope, or from which the contents may be inferred.

4.11 Whenever possible, all proceedings in relation to a monitoring order after it has been issued shall be dealt with by the Judge who issued the order. Otherwise, applications shall be heard by an available Judge.

5. Order for examination

5.1 This Direction applies to applications under s 101 to the Supreme Court for an order for examination under pt 5, div 2 of the CPCA.

5.2 If the Court makes an order for examination, it shall direct that the examination take place before a Registrar, in the absence of exceptional circumstances.

9.11. Cross-Border Insolvency - Cooperation with Foreign Courts or Foreign Representatives

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Background

The *Cross-Border Insolvency Act 2008* (Cth) (the Act) provides in s 6 that, subject to the Act, the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (UNCITRAL) (the Model Law), with the modifications set out in pt 2 of the Act, has the force of law in Australia. The English text of the Model Law is set out in sch 1 to the Act.

Chapter IV of the Model Law, comprising Articles 25 - 27, provides for cooperation with foreign courts and foreign representatives in the cross-border insolvency matters that are referred to in Article 1 of the Model Law.

Articles 25 and 27 of the Model Law, as modified by s 11 of the Act, and as presently relevant, provide:

Article 25
Cooperation and direct communication between [this Court] *and foreign courts or foreign representatives*

1. In matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through a registered liquidator (within the meaning of section 9 of the *Corporations Act 2001*).

2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Article 27
Forms of cooperation

Cooperation referred to in [Article 25] may be implemented by any appropriate means, including:

(a) Appointment of a person or body to act at the direction of the court;

(b) Communication of information by any means considered appropriate by the court;

(c) Coordination of the administration and supervision of the debtor's assets and affairs;

(d) Approval or implementation by courts of agreements concerning the coordination of proceedings;

(e) Coordination of concurrent proceedings regarding the same debtor;

(f) [*The enacting State may wish to list additional forms or examples of cooperation*]. [Section 18 of the Act provides that no additional forms or examples of cooperation are added.]

Directions

1. The form or forms of cooperation appropriate to each particular case will depend on the circumstances of that case.

2. As experience and jurisprudence in this area develop, it may be possible for later versions of this Practice Direction to lay down certain parameters or guidelines.

3. Cooperation between the Court and a foreign court or foreign representative under Article 25 will generally occur within a framework or protocol that has previously been approved by the Court, and is known to the parties, in the particular proceeding.

4. Ordinarily it will be the parties who will draft the framework or protocol. In doing so, the parties should have regard to:

   (a) the Global Principles for Cooperation in International Insolvency Cases and Global Guidelines for Court-to-Court Communications in International Insolvency Cases published by The American Law Institute and The International Insolvency Institute (available at: iiiglobal.org); and

   (b) the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009) (available at: https://uncitral.un.org/en/texts/insolvency/explanatorytexts/practice_guide_cross-border_insolvency).

9.12. Prohibited Behaviour Orders

1. This Practice Direction applies where a Prohibited Behaviour Order (PBO) is being sought by a prosecutor (the applicant), or has been made, under the *Prohibited Behaviour Orders Act 2010* (the Act).

Application process

2. Where an application for a PBO is intended to be made by an applicant in the event of the conviction of an accused person, the applicant must give notice of the intention to apply for that PBO to:

   (a) the Associate to the Judge presiding over the next hearing at which the accused person may be convicted, if known, or to the Co-ordinator Listings, if not; and

   (b) to the accused;

   in writing or by email, not less than five (5) days prior to the hearing at which the accused may be convicted.

3. Upon the conviction of an accused person, in respect of whom notice of an intention to apply for a PBO has been given in accordance with par 2, an applicant must immediately request the Judge who has recorded the conviction to adjourn sentencing of the offender to enable the applicant to make the application for the PBO.

4. On an application under par 3, the Judge may adjourn sentencing until such time as the Judge deems appropriate.

5. An application for a PBO may be made by the applicant by filing:

   (a) an originating motion;

   (b) a minute of proposed orders; and

   (c) any supporting affidavit(s).

6. After an application for a PBO has been filed under par 5, the Court will list the matter for hearing as a civil proceeding at the same time as the sentencing hearing for the offences in respect of which the Court has convicted the offender.

7. Immediately following the passing of sentence, the Court will hear the application for a PBO.

8. If the application for a PBO cannot be determined at that hearing, the application will be adjourned and the Court will make programming orders to facilitate the further hearing of the application.

9. If a PBO is made by the Court, the Associate to the Judge who has made the order must provide a copy of the order to:

   (a) each party to the PBO proceedings; and

   (b) the Commissioner of Police.

Application to vary or cancel a PBO

10. An application to vary or cancel a PBO, made by the prosecutor or the constrained person (defined in s 3(1) of the Act), is commenced by filing:

    (a) a motion which has attached to it a copy of the PBO;

    (b) a minute of proposed orders; and

    (c) any supporting affidavit(s).

11. After an application to vary or cancel a PBO has been filed under par 10, the Court will list the matter for hearing before a Judge on a date that allows service of a copy of the documents filed under par 10 to be made by the Court at least 14 days prior to the hearing.

12. The Court will endorse on the motion the date for the hearing of the application and will send a copy of the motion, so endorsed, to the parties to the application.

13. The parties to an application to vary or cancel a PBO are encouraged to file consent orders where possible.

14. If at a hearing of an application to vary or cancel a PBO, the Court makes an order for variation or cancellation, the Associate to the Judge who has made the order must provide a copy of the order to:

    (a) each party to the application; and

    (b) The Commissioner of Police.

Appeal process

15. Where a Single Judge Appeal is brought in relation to the constrained person's conviction for an offence in respect of which conviction a PBO has been made, the appellant must when filing the appeal notice, also file a copy of the related PBO.

16. If the appellant's conviction for the related offence is set aside or quashed, the Associate to the Presiding Judge must notify the Commissioner of Police that the conviction in respect of which the related PBO was made has been set aside or quashed.

9.13. Interpreting and Language Services Guidelines

1. This Practice Direction sets out the Court's approach to the use of interpreters in proceedings as well as other issues relating to barriers to effective communication. The Court does not provide translators, but will arrange for interpreters in criminal proceedings and can book an interpreter for a party in a civil proceeding. Requests for the use of an interpreter must be made on the booking form not less than 14 days prior to the date of the hearing at which the interpreter is to be used. Lawyers should be alive to conflict of interest issues that may arise with the use of an interpreter. The Practice Direction provides guidance to counsel appearing in hearings in which an interpreter is interpreting for a party or witness. The Practice Direction also includes a Protocol for the Use of Interpreters. The Protocol provides guidance to interpreters undertaking assignments for Supreme Court hearings.

Background

2. Within the constraints of its resources, the Court endeavours to provide equitable access to justice to people who are unable to communicate effectively in English or who are deaf or hearing impaired. The language services guidelines of the Court, set out in this document, deal with the use of interpreters, translators and technical solutions.

   An interpreter is a person who 'transfers a spoken or signed language into another spoken or signed language, usually in a limited time frame in the presence of the participants requiring the translation' (As defined in the Office of Multicultural Interests (OMI) *Western Australian Language Services Policy 2020 & Guidelines*, page 4, available online at: https://www.omi.wa.gov.au/resources-and-statistics/publications/publication/language-services-policy-2020). In this document, a 'Court interpreter' is an interpreter arranged by the Court in distinction to a 'private interpreter' who is an interpreter arranged by a party or a witness.

A translator is a person who 'transfers the source text from one language to another, usually within an extended time frame to allow for corrections and modifications and without the presence of the participants requiring the translation' (*Western Australian Language Services Policy 2020 & Guidelines*, page 14).

In developing its language services guidelines, the Court has had regard to *Western Australian Language Services Policy 2014 & Guidelines* and the *Department of Justice Language Services Policy and Procedures.* The guidelines have been developed in consultation with relevant interpreter service providers and industry bodies.

Translators

3. It is the responsibility of a party to a criminal or civil matter to arrange and pay for any documents which may need to be translated for the purposes of a hearing, to be translated by a suitably qualified translator. The party should request the translator to make an affidavit that:

   (a) sets out their qualifications as a translator;

   (b) identifies the relevant documents translated; and

   (c) states that the English translation is accurate.

   This approach is based on that in *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) s 14(1).

   The affidavit of the translator should be available for the Court and the other parties at the hearing at which the documents are sought to be used.

   The Court will not ordinarily permit an interpreter to orally translate a document in a Court hearing. Nor will the Court ordinarily permit a Court hearing to be adjourned to allow for a document to be translated by an interpreter.

Determining whether an interpreter is required

4. The ultimate responsibility for determining whether an interpreter is required rests with the presiding Judicial Officer. If necessary, the Court will adjourn a hearing while the issue of the need for an interpreter is dealt with.

   The *Western Australian Language Services Policy 2020 & Guidelines* (pages 6-8), contain guidance which may be of assistance in determining whether a person requires the use of an interpreter. A Judicial Officer may use these guidelines to assist in determining whether an interpreter is required.

   The Court also considers that it is part of the duty of lawyers as officers of the Court to determine whether their clients or witnesses require the use of an interpreter or some form of interpretation assistance (for the different types of interpretation services available, see par 2.7 of the attached Protocol for the Use of Interpreters.)

Booking of interpreters - criminal cases

5 In criminal cases, the Court will pay for the cost of providing interpreters required to facilitate efficient and effective court hearings. Except where provided for in this Practice Direction, this does not extend to the Court providing interpreters to enable counsel to obtain instructions or the proofing of witnesses.

6. For a criminal hearing, the accused is to notify the Court not less than 14 days prior to each appearance in the Supreme Court that he or she requires an interpreter. The Interpreter Booking Request form can be found at the end of this Practice Direction. A party need only request an interpreter once and the request is carried forward to all subsequent hearings, although in circumstances where there have been difficulties in securing an appropriate interpreter parties are encouraged to confirm arrangements with the relevant Associate.

   Where a party requires an interpreter for a witness, the party is to notify the Court of the need for an interpreter by no later than the first status conference after an indictment is filed. The booking form may be handed to the Judicial Officer presiding at the status conference hearing.

   A party may arrange, and pay for, a private interpreter. If this occurs, the interpreter is to comply with the competency requirements set out in 9.13(9) of these guidelines and the Protocol for the Use of Interpreters in 9.13(10).

A Court interpreter arranged for one of the accused may also be directed by the Court to interpret for a witness who speaks the same language as the accused.
If an accused has used an interpreter for the purposes of conferral with his or her lawyers, the lawyer is to advise the Court at the time of lodging the request form of:

(a) the name of the interpreter; and

(b) whether the accused objects to the Court booking that interpreter.

The lawyer is also to advise the Court of any other information that may be relevant to the choice of the interpreter, for example, any ethnic or cultural sensitivities (see generally, 9.13(7) below).

Booking of interpreters - civil cases

7. In civil cases, the parties are to bear the cost of providing interpreters. The Court is able to arrange for an interpreter for a party to attend at trial or at a hearing, to be paid for by the party, but taking advantage of the Court's service provision contract.

The Court will ascertain whether a competent interpreter can be provided and, if so, provide a cost estimate to the party. The party will need to pay a deposit of 75% of the estimated cost of the interpreter. The Court does not charge a booking fee for this service.

A party may arrange, and pay for, a private interpreter. If this occurs, the interpreter is to comply with the competency requirements set out at 9.13(9) of these guidelines and the Protocol for the Use of Interpreters at 9.13(10) and 9.13.1.

Where an interpreter is to be used at a civil trial or hearing, the party seeking to use the interpreter is to advise the Judicial Officer case manager as soon as possible but no later than 14 days prior to the hearing or trial. The party requesting the interpreter is to lodge an Interpreter Booking Request form (see 9.13.2).

Practice Direction 4.5.1 (Witness Statements) and the usual case management directions for the filing of non-expert evidence (pars 40-49

of Practice Direction 4.1.2.2 usual CMC List orders) will apply to trials involving interpreters. In addition, the case manager may make orders in relation to:

(a) The booking of the interpreter and who should pay for his or her services;

(b) The filing and service of a signed and dated statement in the language of the witness, which should be attached to an English translation and an affidavit from the translator setting out his or her qualifications and confirming the accuracy of the translation; and

(c) Where a party intends to use a private interpreter, for the filing and service of a certificate including the private interpreter's name and qualifications, conflicts of interest, and confirmation that he or she has been provided with and will by the 'Protocol for the Use of Interpreters' in this Practice Direction.

Upon booking the interpreter, the Court (or the party making the booking, as the case may be) is to inform each party to the action of the name and qualifications of the interpreter proposed to be used and the time or times during the trial for which the interpreter has been booked.

Conflicts of interest

8. A party or a lawyer requesting the use of an interpreter must inform the Court of any potential conflicts of interest that may arise with the provision of an interpreter or like reasons why a particular interpreter or interpreter from a particular cultural background may not be appropriate. This information should be provided in the - 'Any other information' - section of the booking form. Examples of the sort of relevant information that should be provided include:

(a) the names of any interpreters used by the accused (or party or witness) to date who may know information extraneous to the trial process; and

(b) cultural sensitivities which mean that an interpreter of a particular cultural background should not be retained.

If the lawyer for a party becomes aware of any information of this kind after the booking form is submitted, the lawyer is requested to advise the Court of the relevant information in writing.

Competency of interpreters

9. The Court will consider an interpreter to be prima facie competent if the interpreter:

   (a) holds a National Accreditation Authority for Translators and Interpreters Ltd credential as a Professional Interpreter (formerly known as a Level 3 interpreter); or

   (b) holds a nationally accredited Advanced Diploma in Interpreting.

   If the Court or a party proposes to use an interpreter who does not hold one of these qualifications, the presiding Judicial Officer will need to be satisfied that the interpreter is competent and has read and understood the Court's Protocol for the Use of Interpreters at 9.13.1.

   A party proposing to use a private interpreter who does not hold one of the credentials set out above, is to cause the interpreter to make an affidavit in which the interpreter:

   (a) sets out their qualifications as an interpreter;

   (b) sets out their experience as an interpreter; and

   (c) deposes that they have read and understood the Court's Protocol for the Use of Interpreters and agree to abide by it.

   The affidavit is to be given to the Judicial Officer at the commencement of the hearing at which the private interpreter is to be used.

Protocol for the Use of Interpreters

10. The Court's Protocol for the Use of Interpreters (the Protocol) can be found at 9.13.1. This document sets out the Court's expectations of interpreters and what an interpreter can expect from the Court in order to assist them to complete an interpreting assignment.

    The Protocol provides, among other things, that the role of a Court interpreter is an independent role to assist the Court. This means, for example, that a Court interpreter may interpret proceedings in the Court

for an accused and then interpret the evidence of a prosecution witness in the same hearing. If a defence lawyer wishes to use an interpreter to have a private conversation with the accused, they will need to obtain the permission of the presiding Judicial Officer. Any such conversation should not prejudice the ability of the interpreter to fulfil their role of assisting the Court.

The Court has processes in place to ensure that all Court interpreters are aware of the Protocol.

In a criminal case, the Judicial Officer may question counsel and/or the private interpreter to satisfy themselves that the interpreter is aware of, and agrees to abide by, the Protocol.

The Protocol will take effect from 1 April 2012.

Guidance for counsel

11. In order to ensure that an interpreter is able to relay precisely, accurately and completely each communication, counsel will need to adjust the way in which they make submissions and ask questions. Specifically, counsel should:

- Be conscious of the speed of the interpreter and pace themselves accordingly.
- Use short sentences.
- Avoid the use of legalese (for example, expressions like: 'I put it to you' and 'learned friend').
- Avoid idiomatic phrases (for example: 'Can I take you back to what happened on 6 July' or 'You must have been over the moon when the warship was sighted?').
- Ask only one question at a time.
- Avoid complex or loaded suggestions or questions (for example: 'Ultimately you then went and checked the fuel level before reporting to the skipper?').
- Avoid questions containing negative assertions, as they are highly likely to be unfair and confusing, and difficult to interpret accurately (for example, what does the answer 'no' mean to a question like 'You didn't tell the passengers not to panic ' - no I did tell them or no I didn't tell them).

- Not mix topics or switch between topics.
- Deal with events in a logical and/or chronological sequence.

Witnesses or accused with a hearing impairment

12. Some Supreme Court courtrooms are equipped with a hearing aid loop amplifier to assist any hearing impaired person within each courtroom. The audio system transmits audio directly to hearing aids with telecoils (T-coils). Any person with a hearing aid will need to switch their hearing aid to the 'T' position to receive this audio feed.

    There have been occasions where a witness or accused person who suffers from impaired hearing has attended court without their hearing aid. Arrangements can be made by the Court to provide such a person with a sound amplification system for use in Court, however prior notice of this requirement is essential so that the relevant equipment can be made available.

9.13.1. Protocol for the Use of Interpreters

Background

1. This Protocol provides guidance to interpreters undertaking interpreting assignments for Supreme Court (Court) hearings. It does not deal with translation.

2. An interpreter will be able to ascertain from this Protocol the Court's expectations of interpreters and what an interpreter can expect from the Court in order to assist them to complete the interpreting assignment.

3. If an interpreter reads this Protocol and forms the view that they are not able to undertake the interpreting assignment in accordance with the expectations set out in this document, they should inform either their service provider or the Associate to the presiding Judicial Officer of their position. The interpreter should offer to withdraw from the assignment.

4. The Protocol deals with the three main types of interpreter services used in the Court:

   (a) interpretation of indigenous spoken languages from and into spoken English;

   (b) interpretation of other spoken languages other than English (referred to as migrant languages) from and into spoken English; and

   (c) interpretation of sign language (AUSLAN) from and into spoken English.

5. This Protocol draws on material contained in the Australian Institute of Interpreters and Translators Code of Ethics (available online at: http://ausit.org/). In the event of a perceived conflict between this Code of Ethics and the Protocol, the Protocol is to prevail for assignments in the Court. If this proves problematic for the interpreter, the interpreter should inform either their service provider or the Associate to the presiding Judicial Officer of their position. The interpreter should offer to withdraw from the assignment.

General principles

6. In all Court hearings it is important that all participants understand what is occurring in the proceedings. The Court's practice in relation to the provision of interpreters generally is set out at 9.13.

7. In particular, in a criminal trial the accused and the jury must be able to understand the evidence of the witnesses as well as all other audible communications in the Court room. This includes exchanges between lawyers and between the lawyers and the Judicial Officer. The provision of a competent interpreter is an essential element to a person receiving a fair trial.

8. The role of an interpreter is an independent role to assist the Court. This means, for example, that a Court interpreter may interpret proceedings in the Court for an accused and then interpret the evidence of a prosecution witness in the same hearing. In particular, a lawyer for an accused should not generally expect the interpreter to be available for the purpose of taking instructions outside the courtroom during breaks in the proceedings. If the lawyer for an accused wishes to use a Court interpreter to have a private conversation with the accused, they may do so with the permission of the presiding Judicial Officer. Any such conversation should not prejudice the ability of the interpreter to fulfil their role of assisting the Court.

9. The parties may use the services of a privately engaged interpreter. A private interpreter is expected to comply with the same competency and conduct obligations as a Court appointed interpreter.

10. The interpreter must have sufficient ability to completely and accurately communicate both in the English language and the language being used by the witness.

11. The interpreter is required to be sworn in by either taking an oath or make an affirmation that: 'I will to the best of my ability, well and truly translate any evidence that I am asked to translate in this case': *Evidence Act 1906* (WA) s 102(1). There is a similar oath for interpreting for an accused person. It may be that an interpreter is required to be sworn in on two or more occasions at a hearing: once at the commencement to interpret for the accused, and once before interpreting for a witness. There is a serious criminal penalty for an interpreter who knowingly

fails to translate or translates falsely any material matter: *Evidence Act 1906* (WA) s 102(2). The practice of the Court is to require the interpreter to take an oath or affirmation for trials and proceedings where pleas are taken, but not for case management hearings.

12. There are five main methods of interpretation used in the Court;

    (a) **consecutive interpreting** is when the interpreter listens to a segment, takes notes while listening and then interprets while the speaker pauses;

    (b) **simultaneous whispered interpreting** is interpreting while listening to the source language that is speaking while listening to the ongoing statements - thus the interpretation lags a few seconds behind the speaker;

    (c) **simultaneous audio interpreting** is where the interpreter speaks the interpretation into a microphone which provides an audio feed to the persons requiring interpretation services who each have a set of headphones;

    (d) **simultaneous AUSLAN interpreting;** and

    (e) **language assistance** is where the accused or witness does not need interpretation assistance at all times, but may have difficulty from time to time with particular words, phrases or concepts and requires interpretation assistance to fully understand what is being said and to accurately convey their response in spoken English.

13. Generally speaking:

    (a) where an interpreter is interpreting the evidence of a witness, the consecutive interpreting method is used;

    (b) where an interpreter is interpreting at the hearing for an accused, whispered simultaneous interpreting is used; and

    (c) for hearing impaired people, simultaneous AUSLAN interpretation is used.

General Professional Conduct Rules

14. An interpreter has an overriding duty to assist the Court to provide justice to people who are unable to communicate effectively in English or who are deaf or hearing impaired.

15. An interpreter is not an advocate for any party.

16. An interpreter's paramount duty is to the Court and not to any party, including any party who may have retained the interpreter.

17. An interpreter must not allow anything to prejudice or influence their work. The interpreter should disclose to the Court any possible conflict of interest. Examples include:

    (a) where the interpreter knows the accused or victim in a criminal case, one of the parties in a civil case or a witness; and

    (b) where the interpreter has undertaken work for the accused and thereby knows information about the accused extraneous to the trial process.

18. An interpreter must not accept an assignment to interpret in Court in which their impartiality may be at risk because of personal beliefs or circumstances. They should withdraw from the assignment if this becomes an issue.

19. An interpreter must undertake only work they are competent to perform in the language areas for which they are trained and familiar. If during an assignment it becomes clear that the work is beyond an interpreter's competence, the interpreter should inform the Court immediately and withdraw.

20. The interpretation must be given only in the first person, eg, 'I went to school' instead of 'He says he went to school'.

21. An interpreter must use their best endeavours to provide a continuous and seamless flow of communication. If done well, the interpreter effectively becomes invisible in the communication.

22. An interpreter is not responsible for what a witness says. An interpreter should not voice any opinion on anything said by the witness.

23. An interpreter must relay precisely, accurately and completely all that is said by the witness - including derogatory or vulgar remarks and even things that the interpreter suspects to be untrue.

24. An interpreter must not alter, add or omit anything that is said by the witness.

25. An interpreter must use their best endeavours to convey any hesitation or changes in the witness' answer.

26. An interpreter must acknowledge and promptly rectify any interpreting mistakes. If anything is unclear, the interpreter must ask for repetition, rephrasing or explanations. If an interpreter has a lapse of memory which leads to inadequate interpreting, they should inform the Court (see (27) below) and ask for a pause and time to reconsider.

27. There should not be any non-interpreted lengthy exchanges between the interpreter and the witness. It is the function of the interpreter to relate to the Court anything the witness says.

28. If a witness seeks a clarification from the interpreter as to the meaning of a statement or question being interpreted to them, then the interpreter must interpret this question for the Court. The interpreter should then provide their response in English and then to the witness in the witness's language.

29. The interpreter must not disclose to any person any information acquired during the course of an assignment.

30. The interpreter must be, and be seen to be, impartial when undertaking the assignment. For example, an interpreter should not engage in general social conversation with the person for whom they are interpreting or the lawyers for one or other party. The interpreter should promptly disengage from the person for whom they are interpreting when the Court adjourns.

31 The interpreter must act in a manner which maintains the dignity and solemnity of the Court.

Procedural matters

32. The booking information will set out the time period in which an interpreter is required. As a general guide, Supreme Court civil trials run from 10.30 am to 1.00 pm and then from 2.15 pm to 4.00 pm. Criminal trials run from 10.00 am to 1.00 pm and then from 2.15 pm to 4.00 pm. Where the Court is considering sitting outside these times, the Judicial Officer will inquire of the interpreter whether this is convenient. The Court has a minimum callout time of three hours.

33. The interpreter should arrive at the Court 30 minutes before the scheduled starting time. The booking from the Court will reflect this practice. On the first day of a trial the interpreter should attend the Reception counter at Barrack Street, Perth to collect some initial briefing information an hour before the commencement of the trial. Again, this time will be reflected in the Court's booking. In circuit locations, the information will be available at the Registry counter of the relevant court.

34. The initial briefing information will usually comprise:

    (a) a copy of this Protocol;

    (b) a note with the name of the Judicial Officer, the Associate, the Orderly and the accused/witness the interpreter will be interpreting for and the Court room number;

    (c) the indictment (criminal case) or statement of claim and defence (civil case);

    (d) a list of witnesses (in particular to allow the interpreter to check for people they may know);

    (e) a glossary of technical terms (if any); and

    (f) any other document the Judicial Officer thinks it useful for the interpreter to have.

    These documents are not to be taken outside the Court building and, once the hearing commences, are to be left in the Court room (in a place designated by the Associate) or handed to the Associate or Usher when the interpreter leaves the Court room.

35. There are interview rooms outside most of the court rooms. An interpreter should feel free to use any of these interview rooms to review the materials provided and prepare for the hearing.

36. The interpreter should attend the Court room 15 minutes prior to the commencement time. Upon entering the Court room the interpreter should make themselves known to the Associate or Orderly to the presiding Judicial Officer. They will provide any specific instructions required.

37. The Associate is the primary point of liaison between the interpreter and the presiding Judicial Officer. Any queries or concerns at any point in the trial should be directed to the Associate (or if the Associate is not immediately available, the Orderly).

38. On occasions, an interpreter may require a short general conversation with the person for whom they are interpreting to ensure that both can clearly understand each other's speech. If this is required, the interpreter should liaise with the Associate who will advise of the appropriate arrangements for this to occur.

39. An interpreter for an accused will usually be sworn in at the commencement of the hearing.

40. An interpreter may take as many breaks as they require. The Judicial Officer will allow more breaks than usual when an interpreter is being used. The timing of the breaks will depend on the flow of the evidence. The interpreter shall inform the Associate prior to the commencement of the hearing how long it is anticipated he or she will be able to interpret without requiring a break. The interpreter and Associate may wish to agree a subtle signal for the interpreter to use to signify that a break is required.

41. An interpreter usually sits next to the accused in the dock. There will also be a security guard in the dock at all times. If an interpreter has any concerns at all about their personal safety either at the commencement of the trial or during it, these should be raised with the Associate. The Associate will raise the issue/s with the presiding Judicial Officer and appropriate arrangements will be made to address the concern/s.

42. The interpreter should bring with them a pen and paper to assist with the interpreting process. They will be permitted to make notes during the Court hearing.

43. If during the proceedings it becomes necessary for the interpreter to raise an issue with the Judicial Officer, the correct way to do this is for the interpreter to raise their hand to attract the attention of the Judicial Officer, wait until they have the Judicial Officer's attention and communicate to the Judicial Officer their concerns. The Judge is to be addressed as 'Your Honour'.

44. If at any point in time the interpreter cannot hear what is being said in the Court room with sufficient clarity to enable them to optimally interpret, the interpreter should immediately raise this with the Judicial Officer (as set out in (43) above). Likewise, the attention of the Judicial Officer should be attracted if the interpreter does not have a clear line of sight to the person speaking and this is impeding the optimal interpretation of their statements.

45. If the interpreter does not understand any word used in a question or does not understand the question, then the interpreter should inform the Judicial Officer or the questioner immediately (as set out in (43) above). Likewise if the witness or counsel (or Judicial Officer) is speaking too fast to allow the interpreter to optimally interpret or if questions or answers given are too lengthy and/or the delivery is too fast then the interpreter should raise his or her concerns with the Judicial Officer.

9.13.2. Interpreter Booking Request form

INTERPRETER BOOKING REQUEST

To: **Customer Service Officer, Listings, Supreme Court**

Facsimile: **(08) 9421 5353**

Email: SCListingsCoordinator@justice.wa.gov.au

This form is to be used by all persons requiring an interpreter for any Supreme District Court hearing, including circuit sittings.
It is the responsibility of the person making the request for an interpreter to give the Court the notice set out in the Consolidated Practice Direction 9.13. This form must be completed for each person requiring an interpreter and filed prior to each hearing. Failure to do so may result in no interpreter being available.

Details of Proceedings	Court file no: _____ Party Names: -v-
Details of Applicant	Party requesting interpreter : _____ Name of person making request:_____ Organisation/Firm :_____ Address: _____ Tel No: (Office) _____ (Mob): _____ Fax No: _____ Email: _____ Your ref: _____
Details of person for whom the interpreter is required	Name: _____ Language: _____ Dialect: _____ Accused ☐ Adult ☐ Child ☐ Civilian Witness ☐ Police Officer ☐ Expert Witness ☐ Any other information (including as to conflicts of interest):_____ _____ _____
Details of hearing	Date of ____ / ____ / 2011 Time of Hearing ___ : ___ am/pm (WA time) Est. duration ____ hrs/days Location:_____ Trial ☐ Sentencing ☐ Status conference ☐ Directions Hearing ☐ Other comments: _____

Agreement to pay fees (civil cases only)	*On behalf of the Applicant, I agree to pay the State of Western Australia the following fees for this request, within 30 days an invoice being rendered :* • *Daily rate or part thereof* • *All reasonable travel costs for interpreters being booked for outside the metro area.* *The Court will provide an estimate of the fees before confirming the booking. The Court does not add any administration fee, but passes on the fees charged by its service providers. Once the booking has been arranged, the Court will issue an invoice for a 75% deposit of the fees. Once the final fee is set, the Court will issue a further invoice for the balance or refund the unused deposit.* Signed: _____ Dated: ____ / ____ /20_____
COURT USE ONLY	
Interpreter Details	On Call: ☐ TIS: ☐ Booking Confirmed: ☐ Date Confirmation Received: _____ Name of Interpreter: _____ Contact at Interpreter Service: _____ Any other comments: _____ _____
Travel	Travel required: ☐ Interstate: ☐ Outside Metro Area: ☐ Any other comments: _____ _____
Invoice details (civil cases)	Date invoice sent (attach copy to booking form): _____ Amount: _____ Date payment received: _____

9.14. Applications under pt 2 div 5 of the *Witness Protection (Western Australia) Act 1996*

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1. Procedures to be followed in applications

1.1 Applications for New Identity Orders under s 20 and s 26 of the *Witness Protection (Western Australia) Act 1996* shall be made by motion, and are exempt from the requirement to file electronically using the ECMS (O 67A r 3(1)(i); refer to Practice Direction 1.1.4 – Exemptions to mandatory filing using the ECMS).

1.2 The documents to be filed are:

(a) an originating motion;
(b) and affidavit in support; and
(c) a minute of the order sought.

1.3 The heading of the motion shall identify the applicant by name but the subject of the application by initials only or by the identifying number that the person bears in the register of participants to be maintained by the Commissioner of Police under the Act.

1.4 The affidavit in support and the minute of proposed order shall be delivered to the Court in a sealed envelope marked so as to indicate that it may only be opened by the Judge allocated to hear the matter.

1.5 The nature of the applications means that they must be processed promptly and with strict confidentiality.

1.6 As soon as the motion is filed, it and the other documents (without the seal of the envelope having been broken) must be handed to the Coordinator (Listings) who shall allocate the matter the next consecutive number in a Witness Protection Register maintained for that purpose (the Register) and record the matter number, the name of the applicant and the initials or identifying number of the subject of the application in the Register and on the envelope.

1.7 The Coordinator (Listings) shall then immediately assign the matter to an available Judge.

1.8 The Coordinator (Listings) shall then immediately deliver the documents (still without the envelope's seal's having been broken) personally to the assigned Judge or to the Judge's Associate.

1.9 The Coordinator (Listings) shall advise the applicant of the name of the assigned Judge and the time for the hearing of the motion.

1.10 The matter is to be heard by the Judge in private Chambers.

1.11 If the Judge considers it necessary to hear from the applicant, the Judge may permit the applicant or a representative of the applicant to be present during the hearing. However, no person other than the applicant or a representative of the applicant whom the Judge has permitted to be present may be present during the hearing.

1.12 To remove doubt, the Judge's Associate or any other member of the Judge's personal staff is a 'person' within the meaning of that term for the purposes of par 1.11.

1.13 At the time of the hearing, the Judge only may break the envelope's seal.

2. Making of the order

2.1 If the Judge makes the order sought, he or she will provide the applicant or the applicant's representative with a settled form of order.

2.2 If the applicant or the applicant's representative is not present at the hearing, the Judge may seal the settled form of order in an envelope for delivery with the seal unbroken by the Judge's Associate to the applicant or the applicant's representative within the precincts of the Court.

2.3 The applicant shall have the order engrossed and shall return two copies thereof to the Associate in a sealed envelope which the Associate will present without the seal's having been broken to the Judge for his or her signature.

2.4 The Judge's signature shall be sufficient authentication of the order. It shall not be necessary for the order to be settled by a Registrar nor sealed.

2.5 The Associate shall arrange for the signed order to be collected by the applicant or the applicant's representative personally.

2.6 At the time of making the order, the Judge shall seal all the other documents relating to the matter in an envelope which the Associate shall retain with the seal unbroken in safe custody until the signed order had been collected by the applicant.

2.7 If the Judge gives written reasons for decision, no copy of those reasons is to be retained in electronic form and no copy of the reasons is to be made or distributed other than to the applicant in accordance with the usual protocol for the delivery of judgments.

3. Custody of records

3.1 Once the matter has been completed, the Judge shall seal any documents relating to the matter (including the Judge's notes and any reasons for decision) which the Court retains in an envelope and label it:

'WITNESS PROTECTION MATTER No [*xx*] of [*YEAR*]
[*HEADING*]
Order of the Hon Justice [*NAME*] dated [*DATE*]

NOTE: This envelope is not to be opened other than as ordered by a Judge.'

3.2 The Associate shall deliver the sealed envelope to the Manager (Customer Service) who shall record in the Register against the number of the matter the name of the Judge and the date of the order.

3.3 The envelope and the Register shall be kept in a locked secure area set aside for the purpose.

3.4 The envelope shall not be opened other than in accordance with the order of a Judge.

3.5 If an order authorising the opening of the envelope is made, the Judge who made the order shall, immediately after the further hearing, re-seal the envelope and endorse it with a note to this effect:

'Envelope opened on [*DATE*] by order of [*NAME OF JUDGE*]
Record of proceedings before [*NAME OF JUDGE*] on [*DATE*]
Nature of the action taken [*give brief details*]
Envelope re-sealed on [*DATE*]'

3.6 The Manager (Customer Service) shall transcribe the information required by par 3.5 in the Register against the number of the matter.

9.15. Applications under pt 6 div 3 of the *Corruption, Crime and Misconduct Act 2003* (WA)

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1. Definitions

1.1 'Court Officer' means such member or members of the Court Registry staff as the Principal Registrar may from time to time in writing nominate. Until a written nomination is made the Court Officer shall be the Coordinator Listings or, in his/her absence, the Manager Listings.

2. Introduction

2.1 This Practice Direction applies to the applications made by the Corruption and Crime Commission under s 106, s 109 & s 110 of the *Corruption, Crime and Misconduct Act 2003* (WA) (the Act).

3. Commencement of Applications

3.1 An application is to be made by affidavit, accompanied by a draft order.

3.2 Before presenting any documents the applicant must contact the Court Officer, normally by telephone:

(i) to give notice of a pending application;
(ii) to make arrangements for a Judge to hear the application; and
(iii) to inform the Court Officer whether there are multiple applications and whether a particular Judge has previously had the conduct of the pending or related applications.

3.3 The affidavit and the draft order must be delivered to the Court in a sealed envelope.

3.4 As soon as the application is filed, it and the other documents (without the seal of the envelope having been broken) must be handed to the Court Officer who shall allocate the matter the next consecutive number in a Assumed Identity Register maintained for that purpose ('the Register') and record the number of the application in the Register and on the envelope.

3.5 The Court Officer shall then immediately assign the matter to an available Judge.

3.6 The Court Officer shall then immediately deliver the documents (still without the envelope's seal's having been broken) personally to the assigned Judge or to the Judge's Associate.

3.7 The Court Officer shall advise the applicant of the name of the assigned Judge and the time for the hearing of the application.

4. Hearing and subsequent activity

4.1 The application shall be heard by the Judge without notice being given to any person the subject of the application in accordance with the provision of s.107 of the Act.

4.2 Where an order is made, the applicant shall have the order engrossed and lodge it in duplicate in a sealed envelope with the Associate for presentation to the Judge to be signed by the Judge. The signature of the Judge shall be sufficient authentication of the order and it shall not be necessary for the order to be settled by a Registrar or sealed.

4.3 The Associate shall arrange for a signed copy of the order in a sealed envelope to be collected personally by the applicant or the applicant's representative. The other copy of the order shall be securely retained by the Court.

4.4 If the Judge gives written reasons for decision, no copy of those reasons is to be retained in electronic form and no copy of the reasons is to be made or distributed other than to the applicant in accordance with the usual protocol for the delivery of judgments.

5. Custody of records

5.1 Once the matter has been completed, the Judge shall seal any documents relating to the matter (including the Judge's notes and any reasons for decision) which the Court retains in an envelope and label it:

'Assumed Identity No [*xx*] of [*YEAR*]
Order of the Hon Justice [*NAME*] dated [*DATE*]
NOTE: This envelope is not to be opened other than as ordered by a Judge.'

5.2 The Associate shall deliver the sealed envelope to the Court Officer who shall record in the Register against the number of the matter the name of the Judge and the date of the order.

5.3 The envelope and the Register shall be kept in a locked secure area set aside for the purpose.

5.4 The envelope shall not be opened other than in accordance with the order of a Judge.

5.5 If an order authorising the opening of the envelope is made, the Judge who made the order shall, immediately after the further hearing, re-seal the envelope and endorse it with a note to this effect:

'Envelope opened on [*DATE*] by order of [*NAME OF JUDGE*]
Record of proceedings before [*NAME OF JUDGE*] on [*DATE*]
Nature of the action taken [*give brief details*]
Envelope re-sealed on [*DATE*]'

5.6 The Court Officer shall transcribe the information required by par 5.5 in the Register against the number of the matter.

9.16. Applications under the *Criminal Investigation (Covert Powers) Act 2012* (WA)

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1. Access to information about applications under the Act

1.1 Section 54(4) and s 56(3) of the *Criminal Investigation (Covert Powers) Act 2012 (WA)* (the Act) provide that applications under s 54 and s 56 of the Act respectively are to be heard in closed court.

1.2 Section 57(2) of the Act provides that a person is not entitled to search information in the custody of the Supreme Court in relation to proceedings under s 54 or s 56 of the Act unless the Court orders otherwise in the interests of justice.

2 Procedures to be followed in applications under s 54 or s 56 of the Act

2.1 An application under s 54 or s 56 of the Act is made by originating summons.

2.2 The documents to be filed are:

(a) an originating summons;
(b) an affidavit in support; and
(c) a minute of the order sought.

2.3 When the documents are filed, they are to be handed to the Coordinator (Listings) who shall allocate the matter the next consecutive number in a Register maintained for the purpose (the Register).

2.4 The Coordinator (Listings) shall then assign the matter to an available Judge.

2.5 The Coordinator (Listings) shall then deliver the documents personally to the assigned Judge or to the Judge's Associate.

2.6 The Coordinator (Listings) shall advise the applicant of the name of the assigned Judge and the time for the hearing of the application.

2.7 The application is to be heard by the Judge in private Chambers.

2.8 If the Judge considers it necessary to hear from the applicant, the Judge may permit the applicant or a representative of the applicant to be present during the hearing.

2.9 If the Judge considers it necessary to hear from the Registrar of Births, Deaths and Marriages, the Judge may permit the Registrar or a representative of the Registrar to be present during the hearing.

2.10 No person other than someone whom the Judge has permitted to be present may be present during the hearing.

2.11 The Judge may make such notes as he or she shall think fit. The Judge may, in addition to or instead of making notes, initial each page of the affidavit.

3. Making or declining to make the order

3.1 If the Judge makes the order sought, he or she will provide the applicant or the applicant's representative with a settled form of order.

3.2 If the applicant or the applicant's representative is not present at the hearing, the Judge's Associate will deliver the order to the applicant or the applicant's representative within the precincts of the Court.

3.3 The applicant shall have the order engrossed and shall return two copies thereof to the Associate which the Associate will present to the Judge for his or her signature.

3.4 The Judge's signature shall be sufficient authentication of the order. It shall not be necessary for the order to be settled by a Registrar nor sealed.

3.5 The Associate shall arrange for the signed order to be collected by the applicant or the applicant's representative personally.

3.6 At the time of making the order, the Judge shall seal all the other documents relating to the matter in an envelope which the Associate shall retain with the seal unbroken in safe custody until the signed order has been collected by the applicant.

3.7 If the Judge gives written reasons for decision, no copy of those reasons is to be retained in electronic form and no copy of the reasons is to be made or distributed other than to the applicant.

3.8 If a judge chooses to record the hearing of the application or the delivery of his or her reasons, the recording shall be only on to a secure digital card. No copy of that recording is to be made, retained or distributed.

4. Custody of records

4.1 Once the matter has been completed, the Judge shall seal any documents relating to the matter which the Court retains (including the Judge's notes, any reasons for decision and any secure digital card as described in para. 3.8) in an envelope and label it:

'*CRIMINAL INVESTIGATION (COVERT POWERS) ACT 2012*
MATTER No. [*xx*] of [*YEAR*]
[*HEADING*]
Order of the Hon Justice [*NAME*] dated [*DATE*]
NOTE: This envelope is not to be opened other than as ordered by a Judge.'

4.2 The Associate shall deliver the sealed envelope to the Manager (Customer Service) who shall record in the Register against the number of the matter the name of the Judge and the date of the order.

4.3 The envelope and the Register shall be kept in a locked secure area set aside for the purpose.

4.4 The envelope shall not be opened other than in accordance with the order of a Judge.

4.5 If an order authorising the opening of the envelope is made, the Judge who made the order shall, immediately after the further hearing, re-seal the envelope and endorse it with a note to this effect:

'Envelope opened on [*DATE*] by order of [*NAME OF JUDGE*]
Record of proceedings before [*NAME OF JUDGE*] on [*DATE*]
Nature of the action taken [*give brief details*]
Envelope re-sealed on [*DATE*]'

4.6 The Manager (Customer Service) shall transcribe the information required by par 4.5 in the Register against the number of the matter.

5. Proceedings in which a Witness Identity Protection Certificate is filed

5.1 Section 88(1)(a) of the Act requires that a proceeding in which a Witness Identity Protection Certificate has been filed be heard in closed court.

5.2 No person other than someone whom the Judge has permitted to be present may be present during the hearing of such a proceeding.

9.17. Review and other proceedings related to Preventative Detention Orders and Prohibited Contact Orders under the *Terrorism (Preventative Detention) Act 2006* (WA)

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1. Definitions

1.1 Words defined in the *Terrorism (Preventative Detention) Act 2006* (WA) (the Act) and used in this Practice Direction have the same respective meanings as in the Act. All references to sections in this Practice Direction are references to sections in the Act.

1.2 'Court Officer' means such member or members of the Court Registry staff as the Principal Registrar may from time to time in writing nominate. Until a written nomination is made the Court Officer shall be the Co-ordinator Listings or, in his/her absence, the Manager Listings.

1.3 'Detainee' means a person who is or was subject to a preventative detention order.

2. Introduction

2.1 The functions and powers conferred under s 22 of the Act are conferred on the Supreme Court. This is distinct from the appointment of judges of the court as issuing authorities under s 7 of the Act, with their consent, which is in their personal capacity (*personae designatae*: see s 21(2)).

2.2 The object of this Practice Direction is to regulate the procedure for reviews and other proceedings related to preventative detention orders and prohibited contact orders.

2.3 The police officer detaining the detainee must provide a copy of this Practice Direction to the detainee and the detainee's legal representative, if any, as soon as practicable to assist the detainee or his or her legal representative to participate in the review proceedings or to initiate other proceedings related to preventative detention orders and prohibited contact orders.

3. Information about reviews and other proceedings related to the Act

3.1 The Act provides that despite any rule or practice to the contrary, proceedings under the Act are not to be conducted in public and not publicised in any public list of the Supreme Court's business (s 53(1)).

3.2 The Act also restricts publicity about proceedings on a review of a preventative detention order and any other Supreme Court proceedings in relation to a preventative detention order or prohibited contact order (s 53(1)).

3.3 Reviews and other proceedings in relation to orders under the Act therefore will be processed promptly and any information about those proceedings will be confined within the narrowest possible limits (s 53(2)), unless the restrictions on confidentiality are waived in accordance with s 53(3) (see par 3.5).

3.4 Court administrative and personal staff and departmental staff and contractors must not disclose to another person the existence of, or any detail of, the review and any related proceedings other than in accordance with this Practice Direction.

3.5 The Act provides that the Supreme Court is not required to suppress the publication of information if:

(a) the Minister authorises publication; or

(b) the Court determines that the publication of the information:

(i) could not conceivably prejudice national security; and

(ii) its publication should be authorised in the public interest (s 53(3)).

4. Procedures to bring a detainee before the Supreme Court for a review

4.1 To initiate review proceedings under s 22 the Act, the police officer detaining the detainee must provide the Court Officer with:

(a) an originating motion;

(b) an affidavit in support, including the name of the issuing authority who made the preventative detention order;

(c) the name, contact details and availability of the detainee's legal representative (if any) for the duration of the preventive detention order;

(d) the name and contact details for any person approved under s 45(2) for a detainee who is under the age of 18 or incapable of managing their own affairs;

(e) a minute of the order sought; and

(f) any request and supporting material to be relieved of the obligation under s 22(2) to bring the detainee to the court and instead for the detainee's participation to be by remote communication (s 22(4) and see par 5.2 below).

4.2 The documents in par 4.1 are to be provided to the Court Officer in a sealed envelope.

4.3 So that appropriate arrangements can be made for the review to be conducted, the police officer or legal representative providing the sealed envelope under par 4.2 must also advise the Court Officer:

(a) of the name of the issuing authority who made the preventative detention order if it was a judge of the Supreme Court;

(b) whether he or she proposes to exhibit videotape or other recordings to the affidavit; and

(c) whether he or she has requested that the detainee participate by remote communication (par 4.1(f)).

4.4 Upon receipt of the sealed envelope and any advice under par 4.3, the Court Officer must immediately:

(a) allocate the matter the next consecutive number in a specific Register maintained for the purpose (the T(PD)A Register) and record the number (the T(PD)A number) of the envelope;

(b) assign the matter to a Judge. If the preventative detention order was made by a judge (as advised under par 4.3), the Court in the review proceeding is not to be constituted by, or so as to include, that judge (s 22(3)); and

(c) deliver the documents personally to the assigned Judge or to the Judge's Associate.

4.5 So that arrangements can be made to list the review proceedings urgently, the allocated Judge must, as soon as practicable, give consideration to the material provided. In particular, consideration should be given to any request for the detainee to participate by remote communication and as to the manner in which evidence or the submissions from the detainee or the detainee's lawyer are to be received prior to determining the issue.

4.6 The Judge or the Judge's Associate will advise the Court Officer as soon as practicable:

(a) of the Judge's decision in relation to any request for the detainee to participate by remote communication; and

(b) in every case, the contact details for the police officer or his or her legal representative and the detainee's legal representative, if any.

4.7 The Court Officer must advise the nominated officer in Courts Risk Assessment Division (CRAD) that review proceedings are being brought before the Court and provide the T(PD)A number:

(a) immediately upon completing steps 4.4(a) - (c), unless advised of a request for the detainee to participate by remote communication (par 4.3(c)); or

(b) if informed of a request for the detainee to participate by remote communication (par 4.3(c)), as soon as the assigned Judge or his or her Associate advises whether or not the request has been

granted (par 4.6(a)); and if granted the Court Officer must inform the nominated CRAD officer; and

(c) and in every case, advise of any additional information technology requirements (see pars 4.3(b) and 6.5).

4.8 The CRAD nominated officer must immediately upon receiving the information under par 4.7 liaise with:

(a) the relevant section of WA Police about the level of risk associated with the proceedings; and

(b) the allocated Judge so that any relevant approvals can be given (see for example, par 5.5) and the review proceedings can be listed.

4.9 Unless otherwise ordered by the Judge and subject to par 4.10, the CRAD nominated officer will arrange for:

(a) the listing of the review proceeding in an appropriate courtroom at an appropriate time;

(b) authorised officers to be available to provide court and custodial security, in addition to act as court officers if required to be in attendance for the review proceedings;

(c) relevant permissions for access to court custodial facilities if required;

(d) sufficient court security officers to be available at the court building so that access and egress can be managed out of hours; and

(e) permission from the Judge for the attendance at the review proceedings of any court security or court officers that CRAD proposes will be in attendance.

4.10 Unless the allocated Judge orders otherwise, a review proceeding will be:

(a) listed so that it is heard as soon as practicable; if possible no later than 36 hours after the application is received; and

(b) in courtroom 2 or 3 at the Supreme Court or in any criminal court at the Central Law Courts.

4.11 As soon as the nominated CRAD officer has made the arrangements under par 4.9, he or she will advise the Judge or the Judge's Associate and the Court Officer. Unless the Judge directs otherwise:

(a) the Court Officer must confirm with the police officer or his or her representative:

(i) the T(PD)A number for the proceedings and
(ii) the name of the assigned Judge and the time and place for the hearing of the application;

(b) the Court Officer must advise the detainee's legal representative if any:

(i) the T(PD)A number for the proceedings;
(ii) the name of the assigned Judge and the time and place for the hearing of the application; and
(iii) confirm that he or she has been provided with a copy of this Practice Direction by police.

(c) the Judge's Associate must arrange for the appropriate technology to be available for the review, including for the proceedings to be recorded (pars 6.5 and 7.1) and, if required, to enable any videotapes or recordings to be exhibited (par 4.3(b)), and for the detainee to participate by remote communication (par 4.7(b));

4.12 If a detainee is not legally represented, the police officer or his or legal representative must inform the detainee and any person approved under s 45(2) of the hearing time and place.

5. Reviews under s 22 - hearing and subsequent activity

5.1 The application is to be heard by the Judge in closed court.

5.2 The detainee is to be brought before the court (s 22(2)) unless the Judge is satisfied that the detainee's participation by remote communication is appropriate in the circumstances (s 22(4)).

5.3 The following persons can adduce evidence (including by calling witnesses or producing material), or make submissions in the review proceedings (s 22(5)):

(a) a police officer;

(b) a lawyer representing a police officer;

(c) the detainee; and

(d) a lawyer acting for the detainee.

If the detainee is under 18 or incapable of managing his or her affairs, a person with whom the detainee may have contact under s 45(2) can also make submissions (s 22(6)).

5.4 The Act provides that the requirements under s 22(3), (5) and (6) (see pars 4.5(b) and 5.3) do not otherwise limit the power of the Supreme Court to control the review proceedings (s 22(7)).

5.5 No person other than someone referred to in par 5.3 or whom the Judge has permitted to be present may be present during the proceedings. Consideration should be given to whether additional police officers, court security, an interpreter or court administrative support are required (par 4.8(b)).

6. Court orders following a review under s 22 of the Act

6.1 The Judge can exercise the powers set out in s 22(8) upon the review of a preventative detention order.

6.2 The Judge will produce, or arrange for the production of, a settled form of order. The order must contain a reference to the T(PD)A number allocated under par 4.4(a).

6.3 The Judge's signature will be sufficient authentication of the order. It shall not be necessary for the order to be settled by a Registrar nor sealed. Subject to any order otherwise, no copy of the order is to be made or distributed other than to the police officer or the officer's representative and to the detainee or the detainee's representative.

6.4 Subject to any order otherwise, if the Judge gives written reasons for decision, no copy of those reasons is to be retained in electronic form and no copy of the reasons is to be made or distributed other than to the police officer or the officer's representative and to the detainee or the detainee's representative.

6.5 Subject to any order otherwise, the hearing of the application and the delivery of the Judge's reasons will be recorded. However the recording shall be only on to a secure digital card. No copy of that recording is to be made, retained or distributed unless otherwise authorised or determined under s 53(3).

7. Production of Court Records

7.1 The equipment for recording the proceedings referred to in pars 4.11(c) and 6.5 will be held at the Supreme Court in the Business Services office.

7.2 Unless hand written, orders under par 6.2 and reasons under par 6.4 are not to be word processed on the Court's networked drives, but on the hard drive (c:drive) only.

7.3 Should the Judge propose to dictate the reasons for transcription by his or her Secretary, the Judge will arrange to advise the Secretarial Supervisor so that access to the Judge's dictation is limited to only his or her Secretary.

7.4 Upon the detainee being released from detention under the preventative detention order, and subject to any order otherwise from the Judge, the Judge's Associate is to:

(a) enter the matter (with anonymised detainee name) and orders under par 6.2 into the Court's networked case management system (ICMS); and

(b) arrange for the Judge's Secretary to enter the reasons (if any) into the judgment databases (with anonymised detainee name).

The order and reasons are to be suppressed, unless otherwise authorised by the Minister or determined by the Court to under s 53(3).

8. Custody of Court Records

8.1 The following procedures apply subject to any authorisation by the Minister or determination by the Court to publish information under s 53(3).

8.2 Once the matter has been completed, the Judge shall seal any documents relating to the matter which the Court retains (including the Judge's notes, any written reasons for decision, the order and any secure digital card as described in par 6.5) in an envelope and label it:

'TERRORISM (PREVENTATIVE DETENTION) ACT 2006
T(PD)A No. [*xx*] of [*YEAR*]
[*HEADING*]
Order of the Hon Justice [*NAME*] dated [*DATE*]
NOTE: This envelope is not to be opened other than as ordered by a Judge'

8.3 The Associate shall deliver the sealed envelope to the Manager (Customer Service) who shall record in the T(PD)A Register against the number of the matter the name of the Judge and the date of the order.

8.4 The envelope and the T(PD)A Register shall be kept in a locked secure area set aside for the purpose.

8.5 The envelope shall not be opened other than in accordance with the order of a Judge.

8.6 If an order authorising the opening of the envelope is made, the Judge who made the order shall, immediately after the further hearing, re-seal the envelope and endorse it with a note to this effect:

'Envelope opened on [*DATE*] by order of [*NAME OF JUDGE*]
Record of proceedings before [*NAME OF JUDGE*] on [*DATE*]
Nature of the action taken [*give brief details*]
Envelope re-sealed on [*DATE*]'

8.7 The Manager (Customer Service) shall transcribe the information required by par 8.6 in the T(PD)A Register against the number of the matter.

9. Other proceedings in the Supreme Court relating to a preventative detention order or a prohibited contact order under the Act

9.1 For ease of reference, in this part of the Practice Direction proceedings in the Supreme Court relating to a preventative detention order or a prohibited contact order under the Act, other than a review under s 23, are referred to as 'related proceedings' and the review under s 23 of the Act is referred to as 'the original proceedings'.

9.2 In addition to the following, the procedures in pars 3.1 - 3.5, 4.4, 4.5, 4.7 4.8(b), 4.9 4.10, 5.5, 7.1 and 8.1 - 8.7 with appropriate variation apply to related proceedings:

(a) the application is to be commenced by way of the usual court forms but provided in a sealed envelope to the Court Officer;

(b) the applicant is to mark the sealed envelope containing the documents initiating the related proceedings with the T(PD)A number allocated to original proceeding under par 4.4, as 'Original T(PD)A No [*xx*]';

(c) the proceedings are to be conducted in closed court or chambers as appropriate;

(d) the proceedings will not be published in any public list;

(e) the Court Officer is to allocate a new T(PD)A number to the related proceedings, but the T(PD)A Register entries for the original and related proceedings must also be cross referenced;

(f) the allocated Judge will give particular consideration to whether the security requirements in par 4.10 should apply with reference to whether the detainee continues to be detained under a preventative detention order, is otherwise in custody or is in the community. Requirements as to confidentiality continue apply, unless waived by the Court or the Minister under s 53(3);

(g) the Court Officer is to liaise with the nominated CRAD officer to arrange the appropriate time and courtrooms for listing the proceedings;

(h) if the detainee remains in custody under the preventive detention order at the time of the related proceeding and seeks to participate in the proceedings in person, the procedures set out in pars 4.4 - 4.12 also apply with relevant modifications; and

(i) if the detainee remains in custody under the preventive detention order at the time of the related proceedings the procedures in par 6.2 - 6.5 and 7.2 - 7.4 apply; if the detainee has already been released, orders and any reasons are to be dealt with in the usual way for suppressed proceedings.

9.18. Applications under the *Terrorism (Extraordinary Powers) Act 2005*

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1. Definitions

1.1 Words defined in the *Terrorism (Extraordinary Powers) Act 2005* (the Act) and used in this Practice Direction have the same respective meanings as in the Act. All references to sections in this Practice Direction are references to sections in the Act.

1.2. 'Court Officer' means such member or members of the Court Registry staff as the Principal Registrar may from time to time in writing nominate. Until a written nomination is made the Court Officer is:

(a) during Court Registry business hours, the Trials Coordinator or, in his/her absence, the Listings Coordinator or Manager Listings; or

(b) outside of Court Registry business hours, the Associate to the duty Judge.

2. Introduction

2.1 This Practice Direction applies to the following applications made under:

(a) s 7(3) and (4) for approval for the Commissioner to issue a warrant;

(b) s 24 (read with s 25 and s 26), for a covert search warrant; and

(c) s 29 for publication of confidential information in relation to a covert search warrant.

2.2 This Practice Direction also applies to reports required to be filed by the authorised applicant under s 28.

2.3 The object of this Practice Direction is to regulate the procedure for making applications under these sections.

2.4 Proceedings under the Act are not to be held in public.

2.5 Information about any proceeding under the Act is not to be publicised in any public list of the business of the Supreme Court, unless in accordance with approval of the Court (s 29(2)). An application for the Court's approval to publish any information about a proceeding must be in accordance with paragraph 7 of this Practice Direction.

2.6 Court administrative and personal staff and departmental staff and contractors must not disclose to another person:

(a) the existence of, or any detail of, a covert search warrant;

(b) the existence of, or any information about, any proceedings in relation to a warrant; or

(c) the existence of, or any detail of, any report or interim report given under s 28,

unless in accordance with approval of the Court (s 29(2)). An application for the Court's approval must be in accordance with paragraph 7 of this Practice Direction.

2.7 In view of the nature of the applications, they will be processed promptly and with complete confidentiality, and any information about those proceedings will be confined within the narrowest possible limits.

3. Applications under Section 7

3.1. Application is to be made by affidavit, accompanied by:

(a) a draft warrant;

(b) a copy of the warrant; or

(c) a copy of details which were recorded contemporaneously with the issue of an oral warrant.

3.2 Before presenting any documents the applicant must contact the Court Officer, normally by telephone:

(a) to give notice of a pending application;

(b) to make arrangements for a Judge to hear the application;

(c) to inform the Court Officer whether there are multiple applications and whether a particular Judge has previously had the conduct of the pending or related applications;

(d) to inform the Court Officer whether the applicant proposes to exhibit videotape or other recordings to the affidavit so that (if necessary) arrangements can be made for the Judge to view or hear the recordings before the application is heard.

3.3 The affidavit and any relevant documents or things must be delivered in a sealed envelope to the Associate to the Judge who the Court Officer advises the applicant is the Judge who will hear the application.

3.4 The Associate will advise the applicant of the time and the place nominated for the hearing.

4. Applications under Section 7 - Hearing and Subsequent Activity

4.1. The application shall be heard by the Judge without notice being given to any person the subject of the application in private chambers. No person (including members of the Judge's personal staff) who is not the applicant or a representative of the applicant may be present during the hearing.

4.2 At the conclusion of the hearing the Judge will:

(a) either note approval of the issue of the warrant or provide reasons (oral or in writing) for refusing to approve the issue of the warrant; and

(b) hand to the applicant or the applicant's representative either the note of approval or the written reasons for refusal (if any), the warrant (if any), the affidavit and any other documents or things on which the applicant relied.

4.3 The Court will not retain any copies of either the note of approval or the written reasons for refusal (if any), of the warrant (if any), of the affidavit and of any other documents or things on which the applicant relied. The Judge will retain documents related to the application, at his or her discretion.

4.4 Any notes made by the Judge will be securely retained by the Judge in a sealed envelope.

4.5 An envelope containing documents in accordance with the above paragraphs is not open to inspection by any person other than as required or authorised by law.

5. Applications under Section 24

5.1 Paragraphs 3 and 4 of this Practice Direction apply, with necessary modifications, to an application under s 24 for a covert search warrant except that:

(a) the application must comply with s 24(3);

(b) the procedure must comply with s 25;

(c) the issue of the warrant is to be in accordance with s 26.

5.2 Where the applicant is to proceed by way of remote communication, the applicant must first contact the Court Officer, normally by telephone:

(a) to give notice of a pending application;

(b) to make arrangements for a Judge to hear the application;

(c) to inform the Court Officer whether there are multiple applications and whether a particular Judge has previously had the conduct of the pending application or related applications;

(d) to explain briefly the circumstances which requires the application to proceed by way of remote communication;

(e) to inform the Court Officer of the name of the applicant.

5.3 The Court Officer shall make arrangements for a Judge to hear the application and, in conjunction with the Associate to the Judge nominated to hear the application, make the necessary arrangements for telecommunications links and the fax transmission of documents or the like. The Associate to the Judge shall then inform the applicant about those arrangements.

6. Reports under Section 28

6.1 A written report required by s 28 is to be contained in, or exhibited to, an affidavit sworn by the authorised applicant or a replacement police officer (who has been nominated by the Commissioner in accordance with s 28(2A)).

6.2 Before delivering the report the applicant must contact the Court Officer, normally by telephone, to give notice of a pending delivery.

6.3 The applicant shall deliver the report to the Court Officer in a sealed envelope, marked with the name of the Judge who heard the original application, the application number, and a note that in his or her absence, the envelope is to be delivered to the Chief Justice.

6.4 The relevant Court Officer, on the direction of the Judge or Chief Justice, will issue a receipt for the report.

7. Publication of Information under Section 29

7.1 An application for approval to publish any confidential information in relation to a covert search warrant is to be made to the Judge who issued the warrant or, in the absence of that Judge, the Chief Justice.

7.2 An application is to be made by way of affidavit.

7.3 Before delivering the application the applicant must contact the Court Officer, normally by telephone, to give notice of a pending delivery.

9.19. Proceedings commenced under the *Civil Procedure (Representative Proceedings) Act 2022*

Introduction

1. The purpose of this Practice Direction is to provide guidance on the conduct and management of representative proceedings brought under the *Civil Procedure (Representative Proceedings) Act 2022* (the Act).

2. The guidance in this Practice Direction does not apply to proceedings commenced under O 18 r 12 of the *Rules of the Supreme Court 1971*.

3. Representative proceedings are commonly described as class actions or group proceedings.

4. The procedures adopted in this Practice Direction are intended to facilitate the just, efficient, timely and cost-effective conduct of representative proceedings by ensuring that the real issues in dispute are identified at an early stage and that proceedings are not unnecessarily delayed by interlocutory disputes.

Definitions

5. In this Practice Direction:

   Litigation funding agreement means any agreement by which a litigation funder is to pay or contribute to the costs of the proceeding, any security for costs or any adverse costs order and/or to receive payment of commission, costs or charges of any type in relation to the proceeding, whether by way of third-party or commercial litigation funding or by way of litigation funding provided by some of the group members.

   Litigation funding charges means any litigation funder's commission, fees and other charges (including those estimated) to be charged to group members.

6. Words defined in s 3 of the Act and used in this Practice Direction have the same respective meanings as in the Act. All references to sections in this Practice Direction are references to sections in the Act.

Commencement of proceedings

7. Representative proceedings are to be commenced in accordance with O 4 of the *Rules of the Supreme Court 1971*.

7A. Originating documents presented for filing are exempt from the requirement to file electronically using the ECMS (O 67A r 3(1)(i); refer to Practice Direction 1.1.4 – Exemptions to mandatory filing using the ECMS) and should be emailed to central.office@justice.wa.gov.au.

8. Every document filed or issued in a representative proceeding should be headed:

'IN THE SUPREME COURT OF WESTERN AUSTRALIA
REPRESENTATIVE PROCEEDINGS LIST'

9. In accordance with s 11, an originating process commencing a representative proceeding, or a statement of claim in such a proceeding, must, in addition to any other matters required to be included:

(a) describe or otherwise identify the group members to whom the proceeding relates;

(b) specify the nature of the claims made on behalf of the group members and the relief claimed; and

(c) specify the questions of law or fact common to the claims of the group members.

It is not necessary to name, or specify the number of, the group members (s 11(2)).

Management of representative proceedings

10. Representative proceedings which are accepted for filing will be managed by way of judicial case management in a Representative Proceedings List.

11. A first directions hearing will be fixed for a date within six weeks of the filing of the originating process.

12. Prior to the first directions hearing each party will be expected to disclose any agreement by which a litigation funder is to pay or contribute to the costs of the proceeding, any security for costs or any adverse costs order. See pars 15 to 23 for disclosure obligations in relation to litigation funding agreements and litigation funding charges.

13. The matter will then be listed for a strategic conference at which the parties should be in a position to identify and discuss the following:

    (a) whether there is any dispute that the proceeding is a representative proceeding for the purpose of Pt 2 of the Act;

    (b) any issues concerning the description of group members;

    (c) any protocol for communicating with unrepresented group members;

    (d) the date before which a group member may opt out of the proceeding; and

    (e) the manner of publication and dispatch of any opt out notices.

14. Case management will otherwise be conducted in accordance with the Commercial and Managed Cases List.

Disclosure regarding costs agreements and litigation funding agreements

<u>Disclosure to group members</u>

15. In circumstances where the representative party's legal practitioners notify group members (who are clients or potential clients of the representative party's legal practitioners) of any applicable legal costs or litigation funding charges, the representative party's legal practitioners should ensure that the notification is:

    (a) in clear terms; and

    (b) is provided as soon as practicable.

    This is an ongoing obligation and applies to any material changes to the legal costs or litigation funding charges.

16. Failure to do so may be taken into account by the Court in relation to settlement approval under s 23 of the Act.

17. The obligation on the part of the representative party's legal practitioners to notify group members of any applicable litigation funding charges is satisfied if group members have been provided with a document that properly discloses those charges.

18. Disclosure to group members under this Practice Direction is in addition to, and does not derogate from, disclosure obligations under the *Legal Profession Uniform Law (WA)*.

Disclosure to the Court

19. Subject to any objection, no later than seven days prior to the first directions hearing the representative party's legal practitioners shall, on a confidential basis, email unredacted copies of the costs agreement and any litigation funding agreement to the associate of the managing judge with both the email and the agreements clearly marked *"Confidential for the Court only (per Practice Direction 9.19, par 19)"*.

20. The provision of such agreements to the Court may be limited to an example of the standard form of each agreement and need not include individual variations to the standard forms that might be negotiated with different group members.

21. Subject to any objection, the representative party's legal practitioners shall email to chambers any updated costs agreement and/or litigation funding agreement on the same confidential basis as soon as practicable after the representative party's legal practitioners become aware that:

    (a) there is a change to the standard form of litigation funding agreement or costs agreement which significantly alters the agreement;

    (b) a proceeding not previously subject to a litigation funding agreement becomes subject to such an agreement;

    (c) there is a change of the litigation funder funding the proceeding; or

    (d) the litigation funder becomes insolvent or otherwise unable or unwilling to continue to provide funding for the proceeding.

Disclosure to other parties

22. No later than seven days prior to the first directions hearing, the representative party's legal practitioner must serve a copy of the costs agreement and any litigation funding agreement on all other parties. The disclosure may:

    (a) be limited to an example of the standard form of the agreement, and need not include individual variations to the standard form that might be negotiated with different group members;

    (b) be redacted to conceal any information which might reasonably be expected to confer a tactical advantage on another party to the proceeding being:

        (i) the budget or estimate of costs for the litigation or the funds available to the representative party, in total or for any step or stage in the proceeding;

        (ii) which might reasonably be expected to indicate an assessment of the risks or merits of the proceeding or any claim in, or aspect of, the proceeding.

23. Subject to any objection, the representative party's legal practitioners shall serve any updated costs agreement or litigation funding agreement on the other parties in the event that the representative party's legal practitioner becomes aware of any of the circumstances set out in par 21 above.

Objection to disclosure

24. Where a question of legal professional privilege, prejudice or other significant detriment arises in making any disclosure under this Practice Direction, the representative party's legal practitioner may propose a sensible redaction process or object to making the required disclosure. Any proposed objection or redaction process should be raised with the Court and with other parties, so that the matter may be determined by the Court.

Notice to group members

25. Subject to directions of the Court, notice is to be given to group members of the following matters in a form and manner approved by the managing judge:

    (a) the commencement of the proceeding and the right of the group members to opt out of the proceeding before a specified date (s 25(1)(a));

    (b) if the Court so orders, amendment of the originating process varying the persons who may be group members (s 13);

    (c) an application seeking dismissal of the proceeding on the ground of want of prosecution (s 25(1)(b));

    (d) an application by a representative party for leave to withdraw (s 24);

    (e) if the Court so orders, the bringing of money into Court (s 25(3));

    (f) an application for the Court's approval of a settlement of a representative proceeding (s 23); and

    (g) any matter the managing judge considers relevant.

Opting out

26. The Court will fix a date before which a group member may opt out of a representative proceeding (s 12(1)).

27. A group member may opt out of a representative proceeding by written notice under O 18A rule 5 of the *Rules of the Supreme Court 1971* before the date so fixed.

27A. The Notice for opting out may be filed via the eCourts Portal without the need for an eCourts Portal account. Group members will need the Matter Number and Document Number which can be found on the instructions provided with the approved opt-out Notice for the matter or by following links to the matter on the Supreme Court website (see par 38).

Competing representative proceedings

28. The parties' legal representatives must notify the managing judge as soon as practicable after becoming aware of the existence of any 'competing' representative proceeding that appears to overlap in part or in whole with a representative proceeding being managed by the Court.

Issues remaining for the determination of the common questions

29. In the event there are any matters remaining following determination of the common questions, the managing judge shall give direction as to the disposal of the remaining issues.

Court approval of settlement

30. Applications for the approval by the Court of a settlement or discontinuance of a representative proceeding should be made by motion in the proceeding.

31. Prior to any settlement approval application being made, directions must be sought with respect to such application, including in relation to the filing of any supporting material, including expert opinion, and the engagement of a referee.

32. Unless the Court is satisfied that it is just to do so, it will not determine an application for approval of a settlement unless a notice, approved by the Court, has been given to the group members.

33. The notice should include the following:

    (a) a statement that the group members have legal rights that may be affected by the proposed settlement;

    (b) a statement that an individual group member may be affected by a decision whether or not to remain as a group member (where the opt-out date has not already passed or where there is a further opportunity to opt out);

    (c) a brief description of the factual circumstances giving rise to the litigation;

(d) a description of the legal basis of the claims made in the proceeding and the nature of relief sought;

(e) a description of the group members on whose behalf the proceeding was commenced;

(f) information on how a copy of the statement of claim and other legal documents may be obtained;

(g) a summary of the terms of the proposed settlement;

(h) information on how to obtain a copy of the settlement agreement;

(i) an explanation of who will benefit from the settlement;

(j) where all group members are not eligible for settlement benefits, an explanation of who will not be eligible and the reasons for such ineligibility;

(k) an explanation of the Court settlement approval process;

(l) details of when and where the Court hearing will be and a statement that the group member may attend the Court hearing;

(m) an outline of how objections or expressions of support may be communicated, either in writing or by appearing in person or through a legal representative at the hearing;

(n) an outline of any steps required to be taken by persons who wish to participate in the settlement (in the event that affirmative steps are required);

(o) an outline of the steps required to be taken by persons wishing to opt out of the settlement if that is possible under the terms of the settlement; and

(p) information on how to obtain legal advice and assistance.

34. When applying for Court approval of a settlement, the parties will usually be required to address at least the following factors:

(a) the complexity and likely duration of the litigation;

(b) the reaction of the group members to the settlement;

(c) the stage of the proceeding;

(d) the likelihood of establishing liability;

(e) the likelihood of establishing loss or damage;

(f) the risks of maintaining a representative proceeding;

(g) the ability of the defendant(s) to withstand a greater judgment;

(h) the range of reasonableness of the settlement in light of the best recovery;

(i) the range of reasonableness of the settlement in light of all the attendant risks of litigation; and

(j) the terms of any advice received from counsel and/or from any independent expert in relation to the issues which arise in the proceeding.

35. The Court will require to be advised in writing of the performance of the settlement and the costs incurred in administering the settlement in order that it may be satisfied that distribution of settlement monies to the representative party and group members occurs as efficiently and expeditiously as practicable.

Deductions for legal costs or litigation funding charges at settlement

36. Where a proposed settlement contemplates that any part of the payment to be made to group members will be applied towards reimbursement of the unrecovered legal costs of the proceeding, or towards payment of Litigation Funding Charges, the Court may appoint a referee to determine:

(a) in relation to legal costs, whether the claimed costs are reasonable and proportionate in all of the circumstances;

(b) in relation to litigation funding charges, whether the charges ought reasonably and properly be allowed; and

(c) any other matter the Court considers to be relevant.

Access to Court files

37. Unless otherwise ordered, access to documents on the Court file will be dealt with in accordance with O 67B of the *Rules of the Supreme Court 1971*.

38. The managing judge may order that some documents are made available on the Supreme Court website. The website will list details of representative proceedings currently before the Court and provide links to those documents.

9.20. Proceedings under the *Criminal Law (Mental Impairment) Act 2023*

Definitions

1. Words defined in the *Criminal Law (Mental Impairment) Act 2023* (the Act) and used in this Practice Direction have the same respective meanings as in the Act. All references to sections in this Practice Direction are references to sections in the Act.

Introduction

2. The purpose of this Practice Direction is to provide guidance on the conduct and management of proceedings under the Act.

Commencement of civil applications

3. The Act provides for criminal proceedings involving persons with mental impairment, in which the court may make a custody order, a community supervision order or an order that the accused be released unconditionally (court-ordered dispositions).

4. Applications in relation to court-ordered dispositions are heard in the civil jurisdiction of the Court. This includes applications made under:

   (a) s 88 for breach of conditions of a community supervision order;

   (b) s 105(1) for an extended custody order (and s 107(1) for an interim custody order);

   (c) s 105(2) for an extended community supervision order (and s 108(1) for an interim community supervision order);

   (d) s 117 for a periodic review of an extended custody order; and

   (e) s 118 for review of an extended custody order by a supervised person.

5. An initial civil application under the Act shall be made by filing a Form 109 (O 4 r 2A(1)).

6. All subsequent civil applications shall be made by filing a Form 110 (O 4 r 2A(2)). Form 110 must include the file number allocated to the initial civil application.

7. For example, an application for an extended custody order shall be made in the form of Form 109. An application for a periodic review of an extended custody order shall be made in the form of Form 110 stating the Court file number for the proceedings in which the extended custody order was made.

8. All civil applications must be accompanied by a supporting affidavit.

Appeals

9. A civil appeal to the General Division (General Division Appeal - GDA) shall be made by filing a Form 83 Appeal notice (O 65 r 10).

10. A criminal appeal to the General Division (Single Judge Appeal - SJA) shall be made by filing a Form 20 Appeal notice (*Criminal Procedure Rules 2005* r 65). This includes appeals against decisions, findings and orders made in criminal proceedings by a court of summary jurisdiction under Parts 3 and 5, and appeals provided for in ss 93(1)(a) and 93(2)(a).

Sensitive documents

11. Paragraphs 11 to 18 apply to applications made under s 88 for a breach of conditions of a community supervision order and all applications under Part 7.

12. Applications made under s 88 and Part 7 are likely to include documents containing sensitive information. Division 3 of O 67A of the *Rules of the Supreme Court 1971* deals with documents containing sensitive information.

13. Order 67A r 10(1)(a) requires a person to advise the Court if a document is sensitive at the time of presenting the document for filing. This is done by selecting the appropriate option from the drop down list on the ECMS.

14. The Rules require that a person who files a document containing 'restricted information' must file within 24 hours a memorandum stating the reasons for the classification or must file an application under O 67B r 5 for an order restricting access to the information.

15. The Court recognises that the provision of a memorandum or an application under O 67B r 5 on each occasion a sensitive document is filed in an application described in par 11 will cause an unnecessary burden on the parties.

16. In order to dispense with the requirement to file a memorandum under O 67A r 11 or an application under O 67B r 5, the Court may make standard orders at the request of the filing party in relation to some or all of the documents filed.

17. The standard order to file is:

> Access to documents filed in these proceedings, that are categorised as containing restricted information, is limited to:
>
> (a) the parties and their legal representatives; and
> (b) judges and registrars of the Court and their staff; and
> (c) any Court officer who is required to deal with the documents for the purposes of these proceedings; and
> (d) any person required by the *Criminal Law (Mental Impairment) Act 2023* and/or and *Criminal Law (Mental Impairment) Regulations 2024*; and
> (e) any other person ordered by the presiding judge.

18. A party that files a 'restricted document' (O 67 r 9) or a document whose existence must not be made accessible or known to the judge who is or will be trying the case, must still comply with rules 13 or 14 of O 67A as applicable.

Breach proceedings

19. An affidavit in support of an application under s 88(3) for an order under s 89 following the breach of a condition of a community supervision order must include details of:

(a) the condition or conditions of the community supervision order that have not been complied with (s 89(3)(a));

(b) how the failure to comply with a condition indicates a significant risk to the health or safety of a person (s 89(3)(b));

(c) why the risk cannot be adequately managed under the community supervision order (s 89(3)(c));

(d) the extent to which the supervised person has complied with the conditions of the community supervision order (s 89(4));

(e) the time spent by the supervised person in custody as a result of the failure to comply with the conditions of the community supervision order (s 89(6)); and

(f) the prescribed details which are to be provided to the supervised person under s 88(4).

Extension proceedings

20. An affidavit in support of an application under s 105 for an extended custody order or extended community supervision order must include:

(a) the precise details of the relevant order including all conditions, and whether a leave of absence order applies;

(b) the date on which the current order will expire;

(c) the relevant prosecution notice or indictment relating to the order;

(d) the full transcript of the proceeding in which the order was made;

(e) the written reasons, if any, for making the custody order or community supervision order;

(f) any report relied upon by the court when making the custody order or community supervision order;

(g) the supervised person's criminal history;

(h) where relevant, the supervised person's placement history;

(i) where relevant, details of any breach of the conditions of the relevant community supervision order or leave of absence order;

(j) details of an appropriate expert to examine and prepare a report in respect of the supervised person including details of their relationship, if any, to the supervised person (s 106(1));

(k) details of any support measures required by the supervised person;

(l) victim submissions (if any) (s 148(2));

(m) written submissions of close family members and carers (if any) (s 22); and

(n) any report of the Tribunal under s 103(3) or s 104(2) which recommends that the Minister apply for an extended custody order or extended community supervision order.

9.21. Guidelines for the use of generative AI

Introduction

1. These guidelines concern the use of artificial intelligence (**AI**) in proceedings before the Supreme Court of Western Australia. They are intended to assist all those involved in proceedings, including lawyers, non-lawyers, self-represented litigants in civil and criminal proceedings and expert witnesses.

Understanding generative AI capabilities and risks

2. AI is a broad concept referring to the development of computer systems designed to perform tasks that typically require human intelligence. These tasks include collecting, synthesising, categorising and generating information. Generative AI refers to a type of AI that can generate new content based on patterns learned from existing data. For example, a generative AI tool can create text documents based on information, data and prompts provided or available to it.

3. Generative AI does not think or reason. Rather, it predicts word sequences based on training data. Generative AI tools rely entirely on the extent and quality of input data. AI generated content should never be presumed to be correct and is not a substitute for legal research or human experience and oversight.

4. Publicly available generative AI tools often store and reuse prompts, outputs and data. Litigants and practitioners should be aware that the privacy and confidentiality of information and data provided to generative AI tools may not be guaranteed and the information may not be secure. Before using publicly available generative AI tools litigants and practitioners should consider what ongoing or future use, if any, the AI tools may make of information and data that is provided by the litigant or practitioner.

5. Litigants and practitioners should be aware of the various risks associated with the use of generative AI tools, including but not limited to:

    (a) outdated information: generative AI tools may have been trained on historical data with fixed cut-off dates and may not have access to current information;

(b) incompleteness: AI generated content may omit relevant arguments and issues or overlook essential points;

(c) inaccuracy and/or fabrications: generative AI tools can invent cases, authorities or facts, often confidently presenting them as true;

(d) jurisdiction issues: generative AI tools may draw on jurisdictions with different substantive laws or procedural requirements and may offer output not appropriate to the relevantly applicable laws and procedures; and

(e) bias: generative AI tools may embed biases by over- or under-representing certain demographics. Generative AI tools cannot understand specific cultural or emotional needs.

Principles for the use of generative AI in court proceedings

6. Litigants and practitioners should ensure they understand the capabilities and limitations of generative AI tools if using those tools to assist in the preparation of court documents.

7. AI generated content that is relied on for the purposes of conducting proceedings in the Supreme Court must be verified by a human who takes legal responsibility for the contents of the document. Litigants and practitioners who sign or certify a document, file a document with the court or otherwise rely on a document's contents in proceedings will be responsible for the accuracy of the content of the document, and any omissions from the document, irrespective of whether the document was prepared with the assistance of a generative AI tool. Should a document contain errors or omissions, it will not be an adequate response that the document was prepared with the assistance of a generative AI tool.

8. Practitioners are reminded of their existing professional obligations which apply when using generative AI tools in court proceedings. A practitioner filing or signing any court document must verify that the document does not contain misleading information and that there is a proper basis for all factual and legal contentions advanced to the court. Practitioners filing or signing a court document are personally responsible for ensuring they fulfill their duties to the court irrespective of the kind of assistance employed in preparing the document. Those responsibilities and duties are particularly acute where a practitioner has prepared the document with the assistance of a generative AI tool.

9. Litigants and practitioners must ensure that the use of generative AI does not breach their obligation not to use information obtained from other parties in the litigation for any purpose other than the proper conduct of the proceedings, without the leave of the court or until the information has been received into evidence.

10. Privacy and confidentiality should be protected and maintained. Confidential, suppressed or legally privileged information should not be entered into public or unsecured generative AI tools. Litigants and practitioners are responsible for ensuring that confidential information is not disclosed to third parties.

11. Litigants and practitioners must exercise caution when employing generative AI to assist with documents intended to represent evidence or opinion, including:

    (a) affidavits and witness statements: must be drafted in the witness's own words, accurately reflecting their personal knowledge. AI generated content must not substitute the witness's own voice; and

    (b) expert reports and opinions: must be drafted in compliance with the Harmonised Expert Witness Code of Conduct (see Practice Direction 4.5.2.1). AI generated content is not a substitute for an expert witness's opinion expressed in their own words. Experts should carefully consider what, if any, disclosures need to be made as to any use of generative AI in the preparation of an expert report or opinion.

12. Generative AI must not be used in a way that may mislead other parties or the court as to the work undertaken by a party or a practitioner or the manner in which the content of a document has been produced. Accordingly, when directed by the court or where otherwise necessary or appropriate, the use of generative AI in Supreme Court proceedings (including the preparation of any materials) should be disclosed to other parties and the court.

10. Practitioners

10.1. Admissions

10.1.1. Register of Practitioners (Revoked)

[Practice Direction 10.1.1 was revoked on 27 July 2009.]

10.1.2. Admission to the Australian Legal Profession - *Legal Profession Uniform Law* (WA)

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1. An application for admission to the Australian legal profession is made by way of presenting for filing an originating motion for admission (O 75A r 2).

2. The application must be presented for filing, and the application fee paid, at least two (2) months before the applicant's proposed date for admission (O 67A r 2(2), O 75A r 2). The Court's admission dates, the deadlines for filing motion papers and further information are available from the Supreme Court's website at:

   https://www.supremecourt.wa.gov.au/A/admissions.aspx

3. An electronic template for the originating motion for admission is available from the Supreme Court's website at:

   www.supremecourt.wa.gov.au/_files/LPA_2008_Originating_Motion_2010.doc

4. Applications for admission under the *Legal Profession Uniform Law (WA)* cannot be filed electronically using the ECMS (O 67A r 3(1)(d), O 75A r 2(2A)); refer also to Practice Direction 1.1.4 – Exemptions to mandatory filing using the ECMS).

5. An application for admission may be presented for filing by either email (subject to O 67A r 4), delivery (subject to O 67A r 5) or post (subject to O 67A r 6). An application for admission must not be faxed to the Court unless the Principal Registrar has permitted the applicant to fax it (O 67A r 3(2)(d), 7(1)).

6. Refer to Practice Directions 1.2.2 and 1.2.3 for the Court's requirements in relation to presenting documents for filing. In particular, for filing by email see Practice Direction 1.2.2 – *Filing by email*; for filing by delivery see Practice Direction 1.2.2 – *Filing by delivery*; for filing by post see Practice Directions 1.2.2 – *Filing by post*, 1.2.3 and 1.2.3.1; and for filing by fax see Practice Direction 1.2.2 – *Filing by fax*.

7. If the application is presented for filing by post or delivery, the Court requires two (2) copies of the originating motion for admission to be filed (O 67A r 2(3)).

8. If the application is accepted for filing, a sealed copy of the originating motion for admission will be returned to the applicant.

9. The applicant is required to provide the Legal Practice Board with the sealed copy of the originating motion for admission not more than two (2) days after it is filed with the Court (*Legal Profession Uniform Law Application Regulations 2022* reg 31).

10. If the applicant is paying the application fee by credit card, and the application is filed by post, email or fax, the applicant should use the Court's Credit Card Payment Authority form (at Practice Direction 1.2.3.3).

11. The applicant will be notified by the Legal Practice Board of its assessment of the application by way of a copy of the compliance certificate filed at the Supreme Court at least seven (7) days before the proposed admission date (O 75A r 2A).

12. An applicant must attend the Court's admission ceremony unless the applicant is being admitted under the *Mutual Recognition Act 1992* (Commonwealth) *or* *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) (see O 75A r 3) in which case the applicant may elect to have the application dealt with on the papers without an appearance (refer to Practice Direction 10.1.3).

10.1.3. *Mutual Recognition Act 1992* (Commonwealth) & *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth)

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1. This Practice Direction sets out the procedure for the admission of practitioners under the *Mutual Recognition Act 1992* (Commonwealth) as adopted by the *Mutual Recognition (Western Australia) Act 2020* and the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) as adopted by the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007*.

2. An applicant for admission must file a Notice of Application for Admission. Attached to this Practice Direction at 10.1.3.1 is a precedent for the Notice. To assist applicants:

   - items in [**square brackets and bolded**] provide an instruction about what needs to be completed by the applicant
   - items in [square brackets and normal text with alternatives marked by a /] provide options for the applicant to delete as appropriate
   - items in (*round brackets and italics*) provide a guide as to alternative paragraphs where relevant.

   A copy of the Notice of Application filed must be provided forthwith to the Legal Practice Board of Western Australia.

3. The applicant must give a postal address for service within Australia and provide a telephone number at which he or she can be contacted.

4. The applicant must annex to the Notice a certificate from any State, Territory or New Zealand certifying that his or her name remains on the roll, which is given by the proper officer -

   (a) of the Supreme Court of the State or Territory where such registration occurred or, where applicable, of the High Court of New Zealand, or

   (b) of a body, having functions similar to the Legal Practice Board of the State or Territory where such existing registration occurred or, where applicable, of New Zealand.

The certificate must have been issued not more than one month before the day of filing of the Notice. Alternatively, the applicant may annex a copy of the certificate to the Notice so long as the applicant certifies that the annexed copy is a complete and accurate copy of the original certificate. *Please note: an original or copy of your Admission Certificate will not be accepted as confirmation that your name remains on the roll for a State, Territory or New Zealand.*

5. The Notice is in the form of a statutory declaration. Under the *Oaths, Affirmations and Statutory Declaration Act 2005*, a statutory declaration may be taken outside Western Australia (but within Australia) by any person who, under the law of that place, has authority to take or receive a statutory, solemn or other declaration or by any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a statutory declaration may be made.

   A statutory declaration may be taken outside of Australia by a prescribed consular official who is performing official functions at that place, a person who is a justice or notary public under the law of that place or a person who has authority under the law of that place to administer an oath to another person or to take, receive or witness a statutory, solemn or other declaration.

6. The Notice may be filed over the counter at the Court's Central Office or faxed or posted to the Court. Practice Direction 1.2.3 – *Presentation for filing by post*, O 67A of the Rules and Practice Direction 1.2.2 – *Filing by fax*, set out the Court's requirements in relation to fax and postal filing.

7. A fee is payable on the Notice under the *Supreme Court (Fees) Regulations 2002*. The Notice will not be processed unless the fee has been paid. The Practice Directions referred to in par 6 provide how the fee is to be paid if the application is faxed or posted to the Court.

8. Paragraph 12 of the Notice requires the applicant to elect whether the application is to be dealt with on the papers without an appearance or whether the applicant wishes to appear before the Court at an admission ceremony in relation to the application. The Court will advise the applicant in writing of the date of the admission ceremony where the applicant wishes to appear before the Court or where the Court considers that for some reason the application should not be dealt with on the papers. Where the applicant is to appear before the Court at an

admission ceremony, the applicant will need to make arrangements for his or her admission to be moved by counsel.

9. An applicant who wishes to appear before the Court at an admission ceremony is required to waive s 21(1) and (4) of the *Mutual Recognition Act 1992* (Commonwealth) or s 20(1) and (4) of the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth). That is because of the difficulties the Court has in listing applications for hearing within 28 days of the date of the filing of the Notice. An applicant who does not wish to waive these provisions should elect to have the application dealt with on the papers.

10. An applicant who appears before the Court and is admitted will take the oath and sign the roll at that time. An applicant who is approved on the papers must take the oath within 21 days. Once approved, the Court will notify the applicant in writing as to what steps must be taken to take the oath.

    In both cases the Court will advise the Legal Practice Board of Western Australia that the practitioner has been admitted and their name placed on the roll. The Legal Practice Board should be contacted regarding practice certificates.

10.1.3.1. Notice of Application for Admission

IN THE SUPREME COURT OF
WESTERN AUSTRALIA EXP /20

In the Matter of the [*Mutual Recognition (Western Australia) Act 2020 / Trans-Tasman Mutual Recognition (Western Australia) Act 2007*].

and

In the Matter of an application by [**applicant's full name**] for admission as a practitioner of the Supreme Court of Western Australia.

NOTICE OF APPLICATION FOR ADMISSION AS A PRACTITIONER

Date of Document:

Date of Filing:

Prepared by:

Address: Tel:
…….. Email:
……..

I, [**name, address and occupation of applicant**] sincerely declare as follows:

1. I hereby apply for admission as a practitioner of the Supreme Court of Western Australia under the [*Mutual Recognition (Western Australia) Act 2020 / Trans-Tasman Mutual Recognition (Western Australia) Act 2007*].

2. My residential address is [**residential address of applicant**] and my business address is [**business address of applicant**].

3. I was first admitted to practice as a [barrister / solicitor / legal practitioner] in [New Zealand / **name of State or Territory in Australia**] on [**date**].

(*if applicant is only admitted in the one relevant jurisdiction)*

4. I am not admitted to practise as a [barrister / solicitor / legal practitioner] in [New Zealand or any other State or Territory in Australia / any State or Territory in Australia].

(or)

(*if applicant is admitted in multiple relevant jurisdictions)*

4. I am also admitted to practise as a [barrister / solicitor / legal practitioner] in [New Zealand / other States and Territories in Australia / New Zealand and other States and Territories in Australia] as follows:

Jurisdiction	Date of Admission / Registration

5. Annexed hereto and marked A is a [certificate / copy of a certificate that I certify is a complete and accurate copy of the original certificate] of the [Registrar / **other proper officer**] of the [Supreme Court / **name of registration board**] of [**name of State or Territory**] certifying that my name remains on the roll for [**name of State or Territory**].

(or)

(*if certification is from New Zealand)*

5. Annexed hereto and marked A is a [certificate / copy of a certificate that I certify is a complete and accurate copy of the original certificate] of the [Registrar / **other proper officer**] of the [High Court of New Zealand / **name of registration board**] certifying that my name remains on the roll for New Zealand.

6. I am not the subject of disciplinary proceedings in New Zealand or any State or Territory in Australia (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to my occupation as a [barrister / solicitor / legal practitioner].

(or)

6. I am the subject of disciplinary proceedings in [New Zealand / States or Territories in Australia / New Zealand and States or Territories in

Australia] in relation to my occupation as a [barrister / solicitor / legal practitioner] as follows:

Jurisdiction	Date & Nature of Disciplinary Proceedings

7. My [admission / registration] as a [barrister / solicitor / legal practitioner] in New Zealand or any State or Territory in Australia is not cancelled or currently suspended as a result of disciplinary action.

(or)

7. My [admission / registration] as a [barrister / solicitor / legal practitioner] in [New Zealand / States or Territories in Australia / New Zealand and States or Territories in Australia] is cancelled or currently suspended as a result of disciplinary action as follows:

Jurisdiction	Details of Cancellation / Suspension

8. I am not otherwise personally prohibited from carrying on the occupation of [barrister / solicitor / legal practitioner] in New Zealand or any State or Territory in Australia.

(or)

8. I am otherwise personally prohibited from carrying on the occupation of [barrister / solicitor / legal practitioner] in [New Zealand / States or Territories in Australia / New Zealand and States or Territories in Australia] as follows:

Jurisdiction	Details of Prohibition

9. I am not subject to any special conditions in carrying on my occupation, as a result of criminal, civil or disciplinary proceedings in New Zealand or any State or Territory in Australia.

(or)

9. I am subject to the following special conditions in carrying on my occupation in the following States or Territories or New Zealand:

Jurisdiction	Special Conditions

10. I know of no other matter which might bear on my fitness to be admitted in Western Australia as a legal practitioner or to practise in Western Australia as such.

11. I give consent to the making of enquiries of, and the exchange of information with, the authorities of any State, Territory or New Zealand regarding my activities as a [barrister / solicitor / legal practitioner], or otherwise regarding matters relevant to this application.

12. I consent to this application being determined on the papers and without an appearance by me before the Court at an admission ceremony.

(or)

12. (a) I wish to appear before the Court at an admission ceremony in relation to this application on a date to be advised; and

(b) I waive [s 21(1) of the *Mutual Recognition Act 1992* (Commonwealth) (the MR Act) / s 20(1) of the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) (the TTMR Act)] (namely, that registration must be granted 1 month after this application is filed with the Court) and [s 21(4) of the MR Act / s 20(4) of the TTMR Act] (namely, that if the Court neither grants the application nor postpones or refuses it within 1 month after this application is filed, I am entitled to be registered at the end of that period).

This declaration is true and I know that it is an offence to make a declaration knowing that it is false in a material particular.

This declaration is made under the)
Oaths, Affirmations and Statutory)
Declarations Act 2005 (WA) on **[date]**) _____
at **[place]** by:) Signature of person making the declaration

in the presence of -

_____

Signature of authorised witness

[**Name of authorised witness and qualification as such a witness**]

10.2. Change of Name of Practitioners

1. A practitioner who has changed his or her name, whether on marriage or otherwise, will be permitted to re-subscribe the roll on proving the change of name to the satisfaction of the Master.

2. The application should be made by affidavit exhibiting the relevant certificate.

10.3. The Appointment of Senior Counsel in Western Australia

Objects

1. The purpose of this Practice Direction is to establish a revised procedure for the appointment of Senior Counsel in the State of Western Australia.

2. The office of Senior Counsel is continued by this Practice Direction. The office furthers the administration of justice in Western Australia by recognising those counsel who are of outstanding ability and who are dedicated to the pursuit of justice.

Appointor

3. Appointment to the office of Senior Counsel shall be by the Chief Justice on behalf of the Court.

Criteria

4. There are four principal criteria for appointment as Senior Counsel, namely:

   (a) eminence in the practice of law, especially in advocacy;

   (b) integrity;

   (c) availability; and

   (d) independence.

5. Eminence includes:

   (a) high intellectual capacity, comprehensive and up to date knowledge of the law and procedures in the chosen field of practice, and of legal method; and

   (b) a demonstrated commitment to the provision of the highest level of service and the pursuit of excellence.

   Demonstrated leadership within the profession, including leadership in the provision of guidance and advice to more junior practitioners, may be taken into account.

6. These attributes are likely to be reflected in the appointee having a substantial and high quality practice, largely based on demanding cases.

7. Integrity includes:

   (a) a history of and reputation for honesty, discretion and plain dealing with the courts, professional colleagues, and lay and professional clients;

   (b) independence of mind and moral courage;

   (c) professional standing, namely, having the respect of the judiciary and the profession with respect to observing duties to the courts and to the administration of justice, while preparing and presenting a client's case with dedication and skill, and having the trust and confidence of professional colleagues; and

   (d) maturity of judgment and balance based on many years practice of the law.

8. Availability involves a practitioner adopting a mode of practice which ensures that his or her services are available generally to prospective clients and are not restricted by client relationships (whether between the practitioner and clients or others associated with the practitioner, such as partners).

9. Independence is essential to objectivity and detachment which are, in turn, fundamental to sound judgment and the observance of duties to the courts. Independence has a practical aspect, namely the absence of connections which may unduly restrict the availability of a practitioner. It also has an intellectual and moral aspect, namely the perception, courage and experience to make decisions which serve the best interests of the client and the administration of justice.

10. The interests of the administration of justice will only be served if appointees are, and are recognised as, persons of conspicuous ability. With the development of a national legal profession in Australia, the applicable criteria shall have regard to the highest standards achieved and expected to be achieved by counsel in Australia.

11. These criteria are not intended to diminish the overall and fundamental requirement that an appointee shall have demonstrated over many years outstanding ability as counsel.

12. A part-time or flexible practice is not a barrier to being appointed Senior Counsel.

13. These criteria apply to all counsel, save that the criterion of availability does not apply to those counsel holding statutory offices or otherwise employed by the State and its instrumentalities.

Applications

14. Those wishing to be considered for appointment may so inform the Chief Justice in writing by 31 August of each year. They should each provide a current resume including date of birth, details of qualifications, experience and practice, and any other information relevant to their suitability for appointment. Additional information may be provided subsequently at the request of the Chief Justice.

15. An applicant shall identify as part of the application:

    (a) Judicial officers before whom they have appeared in a contested matter in the previous 3 years;

    (b) Legal practitioners against whom they have appeared, or with whom they have otherwise had professional interaction (whether or not in contested hearings) sufficient to speak to the merits of the application, in the previous 3 years.

16. Applicants should understand that any persons identified under paragraph 15 may become aware of their application.

17. The Chief Justice may invite applications from appropriate individuals.

Consultation

18. For the purposes of consultation in relation to applications for appointment, the Judges and Master of the Supreme Court have resolved to create a Committee (the Committee) comprising:

    - The Chief Justice;
    - President, Court of Appeal;

- Senior Puisne Judge;
- President of the State Administrative Tribunal;
- Chief Judge of the Family Court of Western Australia or his or her nominee;
- Chief Judge of the District Court of Western Australia or his or her nominee; and
- Senior Judge of the Federal Court resident in Western Australia or his or her nominee.

19. The Chief Justice will consult with the Committee. Without limiting the nature or extent of that consultation, the Chief Justice will provide to the Committee for its comment the list of applicants, their applications and any comments received in the process of consultation.

20. After the period has passed in any year for applications to be made for appointment, the Chief Justice will circulate a list of the names of applicants to all members of the Supreme Court for comment if they wish. Copies of applications made will be available to members of the Court upon request.

21. The Chief Justice, or his or her nominee, will also consult:

    (a) the President of the Industrial Relations Commission;

    (b) the Chief Magistrate in Western Australia;

    (c) the Solicitor General for the State of Western Australia;

    (d) the President or other nominee of the Law Society of Western Australia;

    (e) the President or other nominee of the Western Australian Bar Association (Inc);

    (f) the President or other nominee of Women Lawyers of WA (Inc);

    (g) representatives of existing Senior Counsel (including King's Counsel);

    (h) the President or other nominee of the Criminal Lawyers Association of WA; and

    (i) the President or other nominee of the Family Law Practitioners Association (WA)

    and may consult anyone else the Chief Justice, his or her nominee, or the Committee considers appropriate.

22. Subject to the confidentiality of the application required by this Practice Direction, the persons consulted under par 21 may consult within their respective bodies or organisations (as the case may be) in relation to the suitability of an applicant including persons identified under par 15 who are members of that body or organisation.

23. Subject to par 24, the persons consulted under par 21 shall provide their views, or the view of their respective bodies or organisations (as the case may be) in relation to the suitability of an applicant in writing. The views expressed in writing should be limited to those of persons who are members of that body or organisation with a direct professional interaction with the applicant in the previous 3 years. Those persons, and the basis for their views in relation to the suitability of the applicant, shall be identified.

24. Any person consulted under par 21 may request a meeting with the Chief Justice, or his or her nominee, in relation to the suitability of an applicant.

25. The Senior Judge of the Federal Court resident in Western Australia or his or her nominee may convey to the Committee the results of such consultation with the Judges of the Federal Court resident in Western Australia as the Senior Judge considers appropriate.

26. The Chief Judge of the Family Court of Western Australia or his or her nominee may convey to the Committee the results of such consultation with Family Court Judges and the Family Law Practitioners Association of WA (Inc) as the Chief Judge considers appropriate.

27. The Chief Judge of the District Court of Western Australia or his or her nominee may convey to the Committee the results of such consultation with District Court Judges as the Chief Judge considers appropriate.

28. The fact that an application has been made, and its terms, shall be regarded as confidential, and only disclosed to the extent necessary to enable the processes of consultation and the workings of the Committee referred to herein. Those consulted by the Chief Justice, and members of the Committee, are at liberty to consult with others within the organisation or court of which they are a member on a confidential basis, and for that purpose may disclose the fact that an application or applications have been made, and the content of that application or applications. All consultations should be undertaken with discretion, respecting as far as possible the privacy of applicants.

29. Where a specific allegation adverse to an applicant is made in the course of the process of consultation or the deliberations of the Committee, the applicant will be given the opportunity to respond to the allegation, either in writing or, at the invitation of the Chief Justice, personally. Where a general question of suitability arises, the Committee will ensure that it has sufficient information to make a judgment on the application, but will not necessarily put that question to the applicant for his or her comment.

Appointment

30. After taking account of the recommendations of the Committee, the Chief Justice will decide which applicants will be appointed to the office of Senior Counsel, and will advise each applicant in writing of the outcome of their application. The appointment of successful applicants will be announced publicly.

31. The Chief Justice will not normally provide written reasons for declining to appoint an applicant. However, the Chief Justice may, of his or her own volition or at the request of the Committee, initiate a meeting with any unsuccessful applicant for the purpose of discussing their application and the reasons for its refusal. Any unsuccessful applicant may request such a meeting.

32. Persons who are appointed Senior Counsel because of eminence in a specialist field of practice may be required to provide a written undertaking to the Chief Justice as to the field(s) in which they will practice as Senior Counsel.

33. The Chief Justice may require a prospective appointee to provide an undertaking as to the manner in which the person will practise.

34. Appointments will be made under the hand of the Chief Justice by an instrument in writing bearing the seal of the Supreme Court and will be announced no later than December each year. Appointees shall be entitled to the appellation of Senior Counsel and to the use of the abbreviation 'SC' after their names.

Interstate and territorial recognition

35. Counsel who have been appointed King's Counsel or Senior Counsel in and for another jurisdiction in Australia shall be accorded the status of Senior Counsel in and for the State of Western Australia when practising in this State, with precedence according to the date of their appointment in the jurisdiction in which they were first appointed.

36. King's Counsel or Senior Counsel appointed in and for another jurisdiction in Australia prior to 24 September 2001 and who gave the Chief Justice an undertaking to apply for and maintain a practice certificate from the Legal Practice Board are released from that undertaking.

Existing WA King's Counsel

37. Any person holding the office of King's Counsel in and for the State of Western Australia shall be entitled to adopt the style or appellation of Senior Counsel and to be recognised as such upon giving notice of such adoption and of resignation from the office of King's Counsel to the Chief Justice for transmission to His Excellency the Governor. Any such King's Counsel shall be entitled to adopt the style or appellation of Senior Counsel and to be recognised as such from the date of such notice, but shall take precedence as and be deemed to hold office as Senior Counsel in accordance with the date of his or her appointment as King's Counsel.

Robes

38. The robes to be worn in Court by Senior Counsel shall be the same as those which have been customarily worn by persons appointed as King's Counsel in Western Australia.

Revocation and resignation

39. An appointment of Senior Counsel or an automatic recognition of Senior Counsel under par 35 may be revoked by writing under the hand of the Chief Justice. Prior to any revocation, the counsel concerned shall be given an opportunity to show cause why his or her appointment or recognition should not be revoked.

40. Any Senior Counsel may resign his or her appointment by writing and delivered to the Chief Justice.

41. Without limiting the power of the Chief Justice under par 39, any Senior Counsel who changes his or her manner of practice will be expected to offer to resign his or her appointment. The Chief Justice may accept the resignation if the Chief Justice considers that, in the changed circumstances, the appointee does not qualify for appointment.

42. Without limiting the power of the Chief Justice under par 39, the Chief Justice may revoke the appointment of an appointee as Senior Counsel, or any person previously appointed as King's Counsel in and for the State of Western Australia who has adopted the style or appellation of Senior Counsel, if disciplinary proceedings before the Supreme Court or the State Administrative Tribunal find the appointee guilty of conduct which, in the opinion of the Chief Justice, is incompatible with the office of Senior Counsel.

10.4. Court Dress

Robing

1. For the purposes of this Practice Direction robing for:

   (a) ***Judges and Masters***: means black robe without wig or jabot/bands;

   (b) ***Counsel***: means black robe with bar jacket and jabot or bands, but without wig; and

   (c) ***Senior/Queens Counsel***: means the Court dress customarily associated with that office but without wig.

Background

2. There are no legislative provisions that specifically require robing for certain kinds of proceedings and practitioners are expected to robe (or not) in accordance with judicial officers' attire for the proceeding.

3. The requirement to robe is drawn from custom and is based on court procedure and practice. Historically the need to robe was associated with proceedings being conducted in open court as distinct from those conducted in a judicial officer's private chambers (with only the parties able to attend). However, chambers proceedings are now also open to the public making this distinction less clear and practitioners' ability to identify when robing is required more difficult.

4. This Practice Direction has been agreed by the Court's judicial officers and its purpose is to assist practitioners identify the kinds of proceedings for which robing is required. Note however that any general rule expressed is subject to any order of the Court otherwise.

Attire when is robing required?

5(a) ***Court of Appeal***

(i) One or more Judges of Appeal

Hearing type	Robes
Pre-hearing directions	Yes
Applications (including applications for leave and post-appeal hearing applications)	Yes
Bail	Yes
Appeal hearing	Yes
Delivery of reserved judgment	Yes

(ii) Court of Appeal Registrars

Hearing type	Robes
Appointments or hearings	No

5(b) ***General Division - Criminal Work***

(i) Non-appellate

Hearing type	Robes
Bail	Yes
Directions hearings and status conferences	Yes
Applications (including post-trial applications)	Yes
Trial	Yes
Sentence proceedings	Yes
Delivery of reserved judgment	Yes

(ii) Single Judge Appeal (Criminal) (SJAs)

Hearing type	Robes
Bail	Yes
Directions	Yes
Applications (including post-appeal hearing applications)	Yes
Appeal hearing	Yes
Delivery of reserved judgment	Yes

5(c) ***General Division - Civil Work***

(i) Non-appellate

Hearing type	Robes
Case management conferences, interlocutory or directions hearings	No
Applications (including post-trial applications)	No
Trial of the substantive issues in an action commenced by a writ	Yes
Trial of an action not commenced by a writ	No
Delivery of reserved judgment following a robed trial of the substantive issues	Yes
Delivery of reserved judgment when no robed trial of the substantive issues	No

(ii) General Division Appeals (Civil) (GDAs)

Hearing type	Robes
Directions hearings	No
Applications (including post-appeal hearing applications)	No
Appeal hearing	No
Delivery of reserved judgment	No

(iii) General Division Registrars

Hearing type	Robes
Conferences, mediations or hearings	No

5(d) ***Ceremonial Sittings (including Admissions)***

Hearing type	Robes
All ceremonial sittings (including Admissions)	Yes
Applicants for admission as practitioners (Admissions Ceremonies)	No

Attire when robing is not required

6. If the Court has not made an order to robe and where robing is not required in accordance with pars 5(a) - (d) above, judicial officers and counsel will wear contemporary clothing of an appropriate standard - namely, jacket and tie for men and apparel of a corresponding standard for women.

10.5. Practising Solely as a Barrister

Background

1. For many years, it has been the practice in Western Australia for legal practitioners who choose to practise solely as barristers to announce their intention to do so to the Full Court at the first sittings following the commencement of their practice as an independent barrister.

Announcement

2. The Court considers the announcement of an intention to practise solely as a barrister as indicating that the practitioner will practise according to the manner, style, customs and rules of conduct of an independent barrister pursuant to the condition indorsed on his or her practising certificate.

3. To this end, practitioners who make the announcement are expected to:
   (a) work solely as independent barristers, which work comprises:
      (i) appearing as an advocate;
      (ii) preparing to appear as an advocate;
      (iii) negotiating for a client with an opponent to compromise a case;
      (iv) representing a client in a mediation or arbitration or other method of alternative dispute resolution;
      (v) giving legal advice;
      (vi) preparing or advising on documents to be used by a client or others in relation to the client's case or other affairs;
      (vii) carrying out work properly incidental to the kinds of work referred to in (i)-(vi); and
      (viii) such other work as is from time to time commonly carried out by barristers; and

(b) be sole practitioners, meaning that they must not;

(i) practise in partnership with any person;

(ii) practise as an employer of any legal practitioner who acts as a legal practitioner in the course of that employment;

(iii) practise as the employee of any person;

(iv) be a legal practitioner director of an incorporated legal practice; or

(v) be a member of a multi-disciplinary partnership; and

(c) abide by the conduct rules generally recognised by the profession as applying to the practice of a barrister.

Table of Amendments
2012 - 2014

Date	Practice Direction (PD) Number	Replacement Pages
02/04/2012	Complete Reissue of the Supreme Court's Consolidated Practice Directions further to a formatting update of the whole document.	All
27/7/2012	Insertion of PD 9.13 Interpreting and language Services Guidelines; 9.13.1 Protocol for the Use of Interpreters; and 9.13.2 Interpreter Booking Request Form.	269 - 286
13/8/2012	Insertion of PD 5.8 Case Management.	159 - 168
	Further to insertion of PD 9.13 and PD 5.8, the following pages to be reprinted to ensure correct pagination.	vi - viii & 159 onwards
17/9/2012	Insertion of new PD 10.5 Practicing Solely as a Barrister.	305 - 306 & viii
21/11/2012	Insertion of new PD 9.1.4 Notice to Non-Applying Executors.	197 - 200
	Further to insertion of PD 9.1.4, the following pages to be reprinted to ensure correct pagination.	vii - viii & 197 onwards
12/3/2013	Insertion of new allowances in PD 4.7.1.1 - Schedule of Standard Costs Orders for Interlocutory Applications.	119 - 121
13/3/2013	Insertion of No 18 into PD 4..4.1.1 - Checklist for Entry for Trial.	98
20/3/2013	PD 6.1 - Commencing an appeal. Amendment to 6.1.1(e) insertion of the word 'certified'; and in 6.1.3 and 6.1.4 the filing time is now 'six (6) weeks'.	169
27/6/2013	Insertion of paragraph after PD10.3(5)(b).	301 - 307 & iii
14/8/2013	Revision of PD 5.6 to allow for earlier access to PSRs and email copies in specified circumstances.	154 - 156

Date	Practice Direction (PD) Number	Replacement Pages
	Further to revision of PD 5.6, the following pages to be reprinted to ensure correct pagination.	iii - ix & 157 onwards
5/12/2013	Revision of PD 5.3 to update procedure on Voluntary Criminal Case Conferencing (pars 3 and 5 updated, new par inserted at 6).	148 - 150
	Revision of PD 10.1.2 to update links to on-line admission documents.	294
	Further to revisions, the following pages to be reprinted to ensure correct pagination.	iv - ix & 148 onwards
30/01/2014	Revision of PD 3.1 to update procedures for the Use of Electronic Devices in Court.	35 - 39
	PD 4.1.2, subparagraph 2A(b) amended by replacing '1985' with '2012'.	43
	Further to revision, the following pages to be reprinted to ensure correct pagination.	iv - ix & 35 onwards
21/3/2014	Revision of PD 9.2.2 to clarify cost recovery principles and other procedures under the *Family Provision Act 1972* (WA)	207 - 210
	Further to revision, the following pages to be reprinted to ensure correct pagination.	iv - ix & 207 onwards
29/4/2014	Amendment to PD 4.1.2 pars 2A(b) and 5 to include proceedings brought pursuant to the *International Arbitration Act 1974* (Cth) and to refer to new PD 4.1.2.3.	43 & 44
	Insertion of PD 4.1.2.3 - Proceedings brought pursuant to arbitration law	61
	Further to revision, the following pages to be reprinted to ensure correct pagination.	iv - ix & 61 onwards
21/5/2014	Insertion of new PD 5.9 on applications for a bail rehearing where charges are pending in the Magistrates Court	175 - 178
	Insertion of new PD 5.10 to provide for an accused to answer bail at an alternate venue	179 - 180

Date	Practice Direction (PD) Number	Replacement Pages
	Revision of PD 6.2 to adopt similar procedures to PD 5.9 for bail applications connected with single judge appeals	183
	Further to revision, the following pages to be reprinted to ensure correct pagination	iv - xi & 175 onwards
21/8/2014	Revision of PD 4.1.2 to include a requirement for additional information from parties when a matter is admitted to the CMC list (pars 4 - 5), and the renumbering of par 5 onwards	43 - 48
	Correction to PD 8.1(15) the reference should be to par 14.	193
	Further to revision, the following pages to be reprinted to ensure correct pagination	v, 43 - 48 & 193
13/10/2014	Revision of PD 4.1.2 to provide for CMC List strategic conferences to be deferred or not held at party request (pars 11 - 13) ; to provide that only documents which a party **will** tender are to be included within trial bundles (par 23) with a revised structure and order (pars 22 - 30) and other minor amendments (including pars 2A, 4).	43 - 49
	Revision of PD 4.1.2.2 par 27 to reflect revision to PD 4.1.2 par 23.	55
	Revision of PD 4.3.2. to require no inclusion of reference to conferral in affidavits without leave of the court (new par 9) as well as notice re potential adverse costs orders (par 12); renumbered pars 10 - 12.	79 - 81
	Revision of PD 4.7.2 to reflect amendment to *Supreme Court (Fees) Regulations 2002*, sch 1, div 1, item 9 so that 2.5% fee is only payable upon setting of an appointment to tax a bill of costs (pars 6, 11); and a general restructure and renumbering.	128 - 130
	Further to revision, the following pages to be reprinted to ensure correct pagination	v, vii - xi & 43 onwards

Date	Practice Direction (PD) Number	Replacement Pages
27/10/2014	General revision of PD 5.3, including new provisions allowing for a Registrar to conduct voluntary criminal case conferencing (VCCC) (par 1) and to avoid any potential conflict of interest (par 2); see also new pars 5, 9, 13 &14 (f), (g).	155-158
	Amendment to PD 10.1.3 par 2 to clarify instructions for completing the Notice of Application for Admission at PD 10.1.3.1	310-312
	Revision of PD 10.1.3.1 to clarify requirements for completing the Notice of Application for Admission.	313-317
	Further to revision, the following pages to be reprinted to ensure correct pagination	vi-xii & 155 onwards

PLEASE NOTE: The Consolidated Practice Directions (CPD) have been amended to exclude the use of designated page numbers. This is to avoid repagination of the document when amendments are issued. After the reissue on 31 March 2015 (see next page) users who maintain hard copy versions need only print and insert or replace the new or amended PDs and update the Table of Amendments.

Table of Amendments: 2015 -

Date	PD No	Reason for Amendment*
31/3/2015	All	Designated page numbers removed; various minor editing changes and contact detail updates. New PD issued on handling of victim impact statements (PD 5.11).
15/4/2015	PDs 4.4.2 & 4.4.2.1 revised and PDs 4.4.2.2, 4.4.2.3 & 4.4.3 rescinded	Revised procedures for entry for trial including rescinding the directions on certificates of readiness and listing conferences, and new arrangements for the payment of fees upon entry for trial.
	PD 4.4.4 renumbered	Renumbered to 4.4.3
	PD 4.7.2 revised	Revision so that provisional assessment of costs is at the discretion of the taxing officer rather than by consent.
5/6/2015	PD 4.7.1.1 revised	Revised schedule of standard costs orders for interlocutory applications after a review, in consultation with the Law Society of WA, of the allocated hours and scope of work, to add additional items and to reflect the maximum allowable hourly rates set out in the *Legal Profession (Supreme Court) (Contentious Business) Determination 2014*.
9/6/2015	PD 4.7.1.1 revised	Insert additional items in revised schedule of standard costs orders for interlocutory applications omitted in error in 5 June 2015 CPD version (schedule items 2.6 - 2.11).
22/9/2015	PD 4.7.4 revised	Revised to ensure procedures for costs assessments under the *Legal Profession Act 2008* are consistent with *Supreme Court (Fees) Regulations 2002*, sch 1, div 1, item 9 and PD 4.7.2 (see revised pars 9, 14, 15 and 22(b)).
1/03/2016	PD 5.9 revised	To clarify the scope of the PD (change of title only)
	PD 9.9 revised	Revisions to clarify procedure (pars 2.4, 4.4, 4.6 - 4.12, 7.5, 7.9, 8.3, 8.4) (in accordance with directions issued for internal use on 12/08/2010)
	PD 9.10 deleted	Published to assist applicants making applications relating to confiscation of criminal property proceedings (originally issued for internal use on 12/08/2010)

Date	PD No	Reason for Amendment*
	PD 9.14 inserted	Published to assist applicants making applications under pt 2 div 5 of the *Witness Protection (Western Australia) Act 1996* (originally issued for internal use on 01/08/2011)
	PD 9.15 inserted	Published to assist applicants making applications under pt 6 div 3 of the *Corruption and Crime Commission Act 2003* (WA) (originally issued for internal use on 15/02/2012)
	PD 9.16 inserted	Published to assist applicants making applications under the *Criminal Investigation (Covert Powers) Act 2012* (WA) (originally issued for internal use on 12/03/2013)
	PD 9.17 inserted	New PD on procedures for reviews and other proceedings related to Preventative Detention Orders and Prohibited Contact Orders under the *Terrorism (Preventative Detention) Act 2006* (WA)
	PD 10.1.3 revised	Revised to reflect the practice for mutual recognition for applicants admitted in South Australia (pars 4(a) and 4(c)).
	PD 10.1.3.1 revised	Revised to reflect the practice for mutual recognition for applicants admitted in South Australia (par 5 - 1st and 3rd options).
09/03/2016	PD 4.1.2.2 revised	Consequential revisions to usual orders pars 20 - 24 - see revised PD 4.2.1 below.
	PD 4.2.1 revised	Following a review of mediation practices, including consultation with the legal profession, the main changes include the requirement for insurers to attend mediation if negotiating for a party; foreshadowing the option for more expansive requests for information by the mediator and use of preliminary conferences; and clarification of the basis for calculating fees payable.
	PD 4.2.1.2.revoked	The Chief Justice's approval of mediators under s 69 (b) of the *Supreme Court Act 1935* (WA) is to be retained internally in accordance with revised PD 4.2.1 par 2.
	PD 7.3 revised	Consequential amendment to cross-reference to PD 4.2.1 par 37.

Date	PD No	Reason for Amendment*
15/07/2016	PDs 1.1.1; 1.1.2; 1.2.2; 1.2.3, 1.2.6; 1.2.6.1; 4.2.1; 4.2.1.1; 4.7.4.1; 5.7; 8.1; 9.1.1; 9.4.1; 10.1.2	As a result of the relocation of the Supreme Court Registry and General Division - Civil to the David Malcolm Justice Centre (DMJC): • CPD Division 1 renamed as 'Registry and Court of Appeal Office'; • PD 1.1.1 renamed and revised; • minor revisions to PD 1.1.2 par 2(b); • reissue of PD 1.2.2 with new pars 15 - 17 and headings; renumbered pars 14 - 27 and revised pars 2, 4, 18, 27; • minor revisions to PD 1.2.3 par 2(b); • reissue of PD 1.2.6 to provide for updated courtroom IT capabilities; • reissue of PD 1.2.6.1 Courtroom Technology Booking Form; • minor revisions to PD 4.2.1 par 20; • minor revisions to PD 4.2.1.1 (address); • minor revisions to PD 4.7.4.1 par 4; • minor revisions to PD 5.7 par 1; • minor revisions to PD 8.1 par 21; • minor revisions to PD 9.1.1 title and par 1; • minor revision to PD 9.4.1 par 19; and • minor revisions to PD 10.1.2 par 1.
	PDs 4.1.3; 4.1.3.1	PDs 4.1.3. and 4.1.3.1 on telephone conferencing revoked (procedure is incorporated in PD 1.2.6).
	PDs 4.2.1; 4.4.2.1; 4.7.2	As a result of amendments to the *Supreme Court (Fees) Regulations 2002* revisions have been made to PD 4.2.1 par 14; PD 4.4.2.1 par 2 (2nd option) and PD 4.7.2 par 5, with pars 12 and 13 renumbered.
	PD 4.7.1.1	Allowances have been revised in PD 4.7.1.1 as a result of the *Legal Profession (Supreme Court) (Contentious Business) Determination 2016*.
	PD 5.3	Revised PD 5.3 to incorporate case management principles into Registrar conducted VCCC (revise par 2, new par 13(e), new par 14(e) and renumbered) and minor change par 7.

Date	PD No	Reason for Amendment*
	PD 5.4	Revisions to PD 5.4 to clarify procedure (pars 3.6, 4.2, 4.3) (in accordance with directions issued for internal use on 12/08/2010).
	PDs 5.9; 6.2; 10.4	Reissued PD 10.4 on court attire; consequential amendments to PD 5.9 par 12 and PD 6.2 par 5.
2/09/2016	PD 7.4	Reissue of PD 7.4 to set out in detail the obligations of appellants and respondents in civil and criminal appeals in which the Court of Appeal is required to undertake a review of the evidence.
	PDs 8.1; 8.1.1	Revision of PD 8.1 to provide for earlier access to advance copy of reasons for decision (par 12), to authorise an expanded range of persons who may access advance reasons (as specified in par 13) and to strengthen confidentiality provisions (pars 15, 16 and PD 8.1.1). Minor amendments to pars 9-18.
	PD 9.15	Minor revision - update legislation title to *Corruption, Crime and Misconduct Act 2003* (heading and par 2.1).
	PD 10.4	Insert new row in table at par 5(d) on court attire for applicants for admission as practitioners at Admissions Ceremonies.
28/09/2016	PDs 4.1.2.2; 4.2.1	Minor revisions to reflect the replacement of the mediation booklet with the new brochure 'Mediation - What you need to know' (PD 4.1.2.2 par 22; PD 4.2.1 pars 10, 11(c))
8/11/2016	PD 5.9	New email address for bail application consent documents at par 11.
	PDs 8.1; 8.1.1	Further revisions to the PD 8.1 procedure for advanced reasons to (a) provide for a copy to be emailed to a designated recipient; (b) clarify authorised persons' responsibilities; (c) clarify discretion to vary standard confidentiality orders (pars 12 - 17) and (d) renumber pars (pars 9, 16 - 21). Revised standard confidentiality orders in PD 8.1.1 to reflect (a) and (b) above.
22/11/2016	PD 4.7.1.1	Amend item 1.7 Schedule of Standard Costs Orders for Interlocutory Applications for new O 13 r 6 default judgment in mortgage action allowance.

Date	PD No	Reason for Amendment*
	PDs 9.4.1; 9.4.1.1	Major revisions to the procedure for default judgments in mortgage actions to reflect the *Supreme Court Amendment Rules 2016* coming into operation. The amendment rules delete O 62A and insert provisions which include clearer information about the opportunities and risks of participating in the court process when a mortgagee initiates action against a mortgagor defendant. Advice for those seeking a copy of PD 9.4.1 as it applies to default judgments in mortgage actions for which originating process was served prior to the amendment rules going into effect is at par 3(b).
9/01/2017	PD 4.1.2	Amendments to PD 4.1.2 Heading and pars 2, 3(c), 5, 12, 32 to provide for Master's CMC List; to par 25 to better accommodate parental/carer's responsibilities of those appearing in the CMC Lists; and to par 1 to clarify applicable rules. Paragraphs renumbered from par 14 onwards.
	PD 4.3.1	Amendments to PD 4.3.1 pars 1, 2 to provide for expanded Master's Lists (including a CMC List) and revised sitting times for the Master's Chambers.
	CPD Section 6	Amendment of Section Heading, as section now includes PDs on civil as well as criminal appeals to single judges in the General Division.
	PDs 6.1; 6.2; 6.3	Minor amendments to PD 6.1 Heading, PD 6.2 par 1 and PD 6.3 to clarify that these PDs apply to criminal appeals.
	PDs 6.4; 6.4.1; 6.4.2	New PDs providing forms for entry for hearing of criminal (PD 6.4.1) and civil (PD 6.4.2) appeals to a single judge of the General Division.
	PD 9.4.1	Correction to PD 9.4.1 par 11 re notice of mortgage possession action under the *Residential Tenancies Act 1987*.
24/3/2017	PDs 1.2.6, 1.2.6.1 & 1.2.7	Minor revisions to clarify procedures relating to the use of technology in court (PD 1.2.6 pars 4, 10, 29, 31, 32; PD 1.2.7 Title, pars 2, 4, 5 and new par 6) and to replace form 1.2.6.1.
07/06/2017	PDs 4.3.7, 4.3.7.1; 4.3.7.2	Significant amendments arising from *Supreme Court Amendment (Subpoena) Rules 2017* and to implement other new procedures relating to subpoenas. Key changes to the practice directions include:

Date	PD No	Reason for Amendment*
		• changes to procedures to issue subpoenas to produce with leave now required in certain circumstances (PD 4.3.7 pars 8 - 10); • a requirement for the issuing party to attach PD 4.3.7.1 (standard directions) to subpoenas to produce returnable other than at trial (PD 4.3.7 par 11); • a requirement for the issuing party to complete new PD 4.3.7.2 confirming service, at least 14 days prior to seeking access to subpoenaed material, of a copy of the subpoena to produce on each other party, with PD 4.3.7.1 attached where relevant (PD 4.3.7 par 12 and new PD 4.3.7.2); • a simplified process for objecting to a subpoena or requesting variation to directions on inspection, copying, disposal etc of subpoenaed materials (PD 4.3.7 pars 30 - 31 and see PD 4.3.7.1 par 4).
	PD 4.3.7.3	Renumbered - previously PD 4.3.7.2 - and minor revisions only.
07/07/2017	PD 4.3.7	Minor changes to pars 7, 25, 26, 29(a)(ii).
	PD 4.3.7.1	Correction to Subpoena Cover Sheet par 5, dot point 2: delete 'not'.
	PD 4.3.7.2	Minor change to Application to access subpoenaed documents insert 'name' after Defendant/Respondent.
30/08/2017	PDs 1.2.3; 2.1; 4.1.1; 4.1.2; 4.1.4; 4.2.1; 4.3.1; 4.3.2; 4.3.2.1; 4.3.2.2; 4.3.5; 4.3.7; 4.4.1; 4.4.1.1; 4.5; 4.6.1; 4.7.1; 4.7.1.1; 9.2.2	Amendments arising from the *Supreme Court Rules Amendment Rules 2017* (WA) going into effect: • amendment to PD 1.2.3 par 1 to reference new rule; • amendment to PD 2.1 pars 3, 4, 5 to reference new and amended rules; • amendment to PD 4.1.1 pars 21, 22 to reflect the new requirement to file of Outlines of Submissions; revisions to pars 3, 4 to reference amended rules and minor revision to par 5 (terminology); • amendment to PD 4.1.2 deleting par 2A and amending pars 3, 4, 11 to reference amended rules; and minor revisions to pars 22, 25, 26, 27, 28 (terminology) • new PD 4.1.4 to provide guidance to parties about the new case management procedures, in particular the use

Date	PD No	Reason for Amendment*
		of case management letters of request for CMC List and non-CMC List cases; • minor correction to PD 4.2.1 par 24 (paragraph cross-reference); • minor revisions to PD 4.3.1 pars 3, 4 (terminology); • minor revision to PD 4.3.2 par 10 (terminology); • minor revisions to PD 4.3.2.1 (terminology); • minor revisions to PD 4.3.2.2 (terminology); • minor revision to PD 4.3.5 par 1 (terminology); • amendment to PD 4.3.7 pars 19(c) and 28 relating to the Court's discretion to destroy subpoenaed material subject to providing notice to the issuing party; • reissue of PD 4.4.1 setting out the general case management practice of Registrars prior to entry for trial and reflecting the amendment rules; • amendment to PD 4.4.1.1 to delete standard orders for case evaluation conferences 1 and 2. • minor revision to PD 4.5 par 10 (terminology); • minor revision to PD 4.6.1 pars 2(d), 3, 3(b) (terminology); • minor revision to PD 4.7.1 par 1 (terminology); • amendments to PD 4.7.1.1 items 1.1 and 1.3 to reference new and amended rules and minor revisions to items 1.4 and 2.1 (terminology) • minor revision to PD 9.2.2 par 4 (terminology);
	PD 3.4	New PD to provide guidelines for web-streaming of court proceedings.
16/10/2017	PD 10.3	Insertion of par 12 to expressly provide that a part-time or flexible practice is not a barrier to appointment as Senior Counsel.
1/03/2018	PDs 1.1.3; 1.1.4	New PDs to assist litigants who are required to file documents electronically with the commencement of the *Supreme Court Amendment Rules 2018* (on 1 March 2018) to understand and use the eCourts Portal and electronic document system (EDS).

Date	PD No	Reason for Amendment*
	PDs 1.2.1; 1.2.2; 1.2.2.1; 1.2.3; 1.2.3.1; 2.1	Insertion of par 3 and 4 in PD 1.2.1 and major revisions to PD 1.2.2 due to the insertion of Order 67A in the *Rules of the Supreme Court 1971*; provides directions concerning format and filing of documents, exemptions to mandatory electronic filing and filing sensitive documents.
	PDs 4.1.1; 4.1.2; 4.1.2.2; 4.1.4; 4.3.3; 4.3.5; 4.4.3; 4.5; 4.6.1; 4.6.2; 4.6.3; 6.1; 7.2	Amendments to reflect the changes to practice and procedure in the General Division - Civil and General Division - Appeals to a Single Judge due to the *Supreme Court Amendment Rules 2018* and the commencement of mandatory (with exceptions) electronic filing using the EDS; and to reflect new terminology in the *Rules of the Supreme Court 1971.*
	PDs 9.2.1; 9.9; 9.10; 9.12; 9.14; 10.1.2	Amendments to clarify the effect of Order 67A of the *Rules of the Supreme Court 1971* on requirements for filing in specialised procedures and applications; and to clarify that applications for admission of practitioners are not required to be filed electronically. [Remove: Table of Amendments: 2015 - (pages 14-15); Practice Directions Index (pages 16-20) & PD 1.2.1; PD 1.2.2; PD 1.2.2.1; PD 1.2.3; PD 1.2.3.1; PD 2.1; PD 4.1.1; PD 4.1.2; PD 4.1.2.2; PD 4.1.4; PD 4.3.3; PD 4.3.5; PD 4.4.3; PD 4.5; PD 4.6.1; PD 4.6.2; PD 4.6.3; PD 6.1; PD 7.2; PD 9.2.1; PD 9.9; PD 9.10; PD 9.12; PD 9.14; PD 10.1.2. Print and insert: Table of Amendments: 2015 - (pages 14-15); Practice Directions Index (pages 16 - 20); PD 1.1.3 & 1.1.4 (pages 24-28); PD 1.2.1 (pages 29-31); PD 1.2.2 & PD 1.2.2.1 (pages 36-45); PD 1.2.3 (pages 46-47); PD 1.2.3.1 (page 48); PD 2.1 (pages 69-72); PD 4.1.1 & PD 4.1.2 (pages 84-92); PD 4.1.2.2 (pages 94-105); PD 4.1.4 (pages 109-110); PD 4.3.3 (pages 137-138); PD 4.3.5 (page 141); PD 4.4.3 (page 170); PD 4.5 (pages 171-173); PD 4.6.1 (pages 174-176); PD 4.6.2 (page 177); PD 4.6.3 (page 178); PD 6.1 (page 248); PD 7.2 (page 258); PD 9.2.1 (page 292); PD 9.9 (pages 350-358); PD 9.10 (pages 359-362); PD 9.12 (pages 365-367); PD 9.14 (pages 386-389); PD 10.1.2 (pages 409 - 410)].
07/04/2018	Preface	To refer litigants to the website of Parliamentary Counsel's Office (rather than the website of the State Law Publisher) to access the *Rules of the Supreme Court 1971* (WA).

Date	PD No	Reason for Amendment*
	PDs 1.2.2; 4.2.1; 4.6.4; 4.7.1.1; 4.7.2; 5.3; 5.8; 5.9; 6.2; 8.2.5; 9.1.1; 9.10	To reflect changes in terminology in relation to filing in the *Rules of the Supreme Court 1971* (WA) after commencement of the *Supreme Court Amendment Rules 2018;* and miscellaneous amendments.
	PD 10.1.2	Revised to assist applicants for admission as practitioners as to filing requirements.
29/06/2018	PD 1.1.4	Amendments clarifying that the EDS will not accept certain documents (par 9); declaring further categories of documents, including documents in single judge appeals, exempt from mandatory filing via the EDS (par 11(c) - (e)); clarifying the procedure for making applications to the Principal Registrar to file otherwise than via the EDS (pars 17 – 19); and clarifying that objections to subpoenas cannot be filed via the EDS (par 20).
	PD 1.2.2	Amendments requiring parties to email associates if filing documents within 48 hours of a hearing (pars 4 - 6); clarifying filing requirements for general division appeals (pars 48 – 53) and single judge appeals (pars 54 – 59); and clarifying that probate applications cannot be filed via the EDS (par 61).
18/07/2018	PD 3.3	Revised following the introduction of O 67B of the *Rules of the Supreme Court 1971* (WA) to provide guidance to parties and non-parties (including the media) concerning the practice and procedure of the Court in relation to access to information, records or things held by the Court.
	PD 9.2.2	Revised to make clear the requirements in *Family Provision Act 1972* (WA) matters in relation to the originating summons and first affidavit; what should be annexed to the first affidavit; who should be joined as defendants; the potential cost consequences of non-compliance with PD 9.2.2; and what will occur at the first case management conference.
	PD 9.5.3	Inserted to provide for all matters to which the *Supreme Court (Corporations) (WA) Rules 2004* (WA) apply to be managed in a Corporations List, by a judge designated as the Corporations List Judge or by the Master.

Date	PD No	Reason for Amendment*
	PDs 1.1.4; 1.2.2; 5.9; 9.14; 10.1.2; 10.1.3	Minor amendments to update cross-references to other PDs.
24/08/2018	PD 3.3	Revised to clarify that the transcript request form on the Court's website should be used for all applications for access to transcript; that transcript will only be provided once payment is made; and that the Credit Card Payment Authority form at PD 1.2.3.2 should be used (pars 32 – 37 and 45 revised).
31/10/2018	PD 1.1.4	Amendment to par 11 to provide an exemption to mandatory filing using the EDS in applications brought under s 76 of the *Service and Execution of Process Act 1992* (Cth) where the application is for leave to serve a notice or summons issued under s 95 or 96 of the *Corruption, Crime and Misconduct Act 2003* (WA).
20/12/2018	PD 1.2.1	New par 4 inserted to provide that where amended pleadings are presented for filing using the EDS, the amendments must be made using underline, strikeout and/or font colour changes tools.
	PD 9.9.3	Existing pars 3.4 and 3.5 deleted, new pars 3.4 – 3.9 inserted and minor amendments to pars 3.1 and 3.3, revising the procedure in applications for warrants under the *Surveillance Devices Act 1998*.
01/02/2019	PD 4.5	Substantial amendments to provide that, ordinarily, evidence in chief at trial will be given orally, without the use of witness statements. Ordinarily, the case manager will order that the parties exchange witness outlines which identify the topics in respect of which evidence will be given and the substance of that evidence. The purpose of the witness outline is to provide notice of a witness' evidence in chief to the Court and other parties. Witness outlines are not, and do not become, evidence.
	PD 4.1.2	Consequential amendment to par 18(g); insertion of new pars 25 – 27 in relation to orders for witness outlines and witness statements for non-expert evidence; renumbering of pars 28 – 35.

Date	PD No	Reason for Amendment*
	PD 4.1.2.2	Insertion of new Usual Orders for CMC List matters in relation to: 1. costs disclosure for strategic conferences (pars 10A – 10C); 2. witness outlines ordered for non-expert evidence (pars 39A – 39G); and 3. electronic trials (eTrials) (pars 35 – 39).
	PD 4.4.1	Consequential amendments to pars 10(a) and 15.
	PD 4.1.2.3	Minor amendments to pars 3 – 5, clarifying that the Chief Justice is not currently the Judge in Charge of the Commercial Arbitration List.
	PD 1.2.5	Substantial amendments in relation to requesting an eTrial, submitting the electronic trial bundle and papers for the Judge, and procedures during an eTrial.
	PD 1.2.5.1	Deletion of standard orders for the use of electronic materials in trials and appeals, and insertion of new standard orders for electronic trials (eTrials).
	PD 1.2.6	Amendments to the section on eTrials - deletion of pars 35 – 39 and insertion of new pars 34 – 38; amendments to pars 11, 18, 20 and 28 (previously pars 11, 19, 21 and 29) in relation to emailing the Court; minor corrections to pars 15, 22 and 26 (previously pars 15, 16, 23 and 27); and renumbering of pars 17 – 34 as pars 16 – 33.
02/08/2019	PD 1.1.4	Insertion of new par 11(f) to create an exemption to mandatory filing using the EDS for documents presented for filing pursuant to Part 6 of the *Service and Execution of Process Act 1992* (Cth) and O 81B of the Rules.
	PD 1.2.3; 4.2.3; 9.11; 9.13; 9.13.1; 10.1.2.	Minor amendments to update hyperlinks and cross-references to other PDs.
	PD 4.1.2.2	Insertion of par 30(g) requiring that documents in a trial bundle are separated by tabs. Amendments to pars 56 and 57 requiring that facts identified in a chronology are linked to the documentary source which will be relied on to prove that fact at trial.

Date	PD No	Reason for Amendment*
	PD 4.6.5	Insertion of new direction which sets out the requirements for filing and enforcing a judgment under Part 6 of the *Service and Execution of Process Act 1992* (Cth) and to clarify how the Court registers a judgment.
18/09/2019	PD 1.2.1	Insertion of new par 5A and par 5B. Par 5A serves as a reminder that pleadings must be signed. Par 5B explains how the requirement is satisfied in the context of the Court's electronic document system.
	Preface	Removal of the preface.
20/12/2019	PD 3.3	Amendment to par 48 confirming that no fees apply to non-parties seeking criminal transcript for the purpose of a child sexual abuse action or a claim under the National Redress Scheme (reflecting the insertion of s 51(6C) in the *Criminal Procedure Rules 2005*).
	PD 4.9	Insertion of PD 4.9 to clarify the requirements for filing third party notices.
08/01/2020	PD 1.1.3; 1.1.4; 1.2.1; 1.2.2; 1.2.5; 3.3; 4.5; 4.6.2; 4.6.5; 9.9; 9.10; 9.14; 10.1.2.	Minor amendments to replace references to 'EDS' with 'ECMS' to reflect amendments to the Rules by way of the *Supreme Court Amendment Rules (No 3) 2019* and the *Supreme Court (Corporations) (WA) Amendment Rules 2019* (published in the *Gazette* on 31 December 2019).
20/01/2020	PD 1.2.2	Minor amendments to pars 62 and 66, renumbering of par 72 (to become par 79) and insertion of new pars 72 – 78, to provide for filing by email in the Court of Appeal. The new Court of Appeal Office email filing address is contained in par 73.
20/11/2020	PD 1.2.5	Amendments to pars 10, 13 – 15 and 18, in relation to the requirements of parties where an eTrial is sought or has been ordered.
	PD 1.2.5,1; 4.1.2.2	Amendment to the standard orders for eTrials in par 2(b) of PD 1.2.5.1 and par 36(b) of PD 4.1.2.2.

Date	PD No	Reason for Amendment*
18/12/2020	PD 1.2.2	Paragraph 3A inserted to require parties presenting originating documents for filing to enter names and addresses of all parties in the ECMS. Paragraph 3B inserted to confirm that it is the responsibility of the party entering information into the eCourts portal (and not the Court) to check the accuracy of information entered.
23/02/2021	PD 1.2.6; 1.2.6.1; 4.1.2; 4.1.2.2; 4.2.1	Amendments (to the table in par 30 of PD 1.2.6, the form in PD 1.2.6.1 and par 28 of PD 4.1.2) and insertions (of paragraphs 31A and 31B in PD 1.2.6 and par 22A in PD 4.1.2) to clarify the requirements for counsel and parties seeking to appear remotely (by audio or video conference). Amendments (to pars 17 and 18 of PD 4.1.2; pars 10B and 10C of PD 4.1.2.2; and pars 24, 11(d) and 15 of PD 4.2.1) and insertions (of par 17A in PD 4.1.2; par 24A in PD 4.1.2.2; and pars 11(da), 15A and 15B in PD 4.2.1) in relation to directions for disclosure of costs memoranda between parties and with mediators in strategic conferences and mediations.
08/03/2021	PD 3.1	Amendments to pars 2, 3, 16 and 17; insertion of par 18.
30/04/2021	PD 1.1.4; 1.2.2; 1.2.3.2	New PDs to assist parties who will be required to file documents electronically in civil appeals in the Court of Appeal when the substantive provisions of the *Supreme Court Rules Amendment (Court of Appeal) Rules 2021* come into effect on 3 May 2021. The main amendments are the insertion of par 4A in PD 1.1.4; new pars 63 to 69 in PD 1.2.2; and a new 'Presentation for Filing by Post Cover Sheet' for Court of Appeal civil appeals in PD 1.2.3.2.
	PD 1	Minor updates throughout the PD for currency.
	PD 5.9	Amendment to par 6 to refer to the Judge in charge of the Criminal List.
18/06/2021	PD 1.2.2; 9.13.2	Minor amendments to par 47 in PD 1.2.2 and the Interpreter Booking Request Form in PD 9.13.2 to change the email address to which documents are sent to the Court.
	PD 5.9	Minor amendments to pars 2, 4(a), 6, 10 12; par 11 amended to require that bail documents filed by email be marked as 'urgent'.

Date	PD No	Reason for Amendment*
	PD 6.2	Revised to clarify the procedures for bail applications in single judge appeals, and so that PD 6.2 will stand alone (no longer referring to PD 5.9).
11/08/2021	PD 4.7.1.1	Updates to the schedule of standard costs for interlocutory applications in accordance with the *Legal Profession (Supreme and District Courts) (Contentious Business) Costs Determination 2020*
	PD 8.2.1	Minor amendments to reflect that decisions are now published on the eCourts Portal; new pars 6 and 7 inserted for guidance to applicants seeking non-publication orders.
	PD 9.18	New PD inserted in relation to applications under the *Terrorism (Extraordinary Powers) Act 2005*.
07/10/2021	PD 9.5.1 (revoked)	This PD is revoked as the Insolvency Practice Schedule now regulates the remuneration of external administrators and sets out the factors that the Court must consider when reviewing a remuneration determination.
24/11/2021	PD 5.7	Substantial amendments to clarify the process for obtaining sentencing remarks including the process for applying for sentencing remarks more than 28 days after delivery. Outdated reference to PLEAS removed.
	PD 7.6	Heading amended to be consistent with PD 5.7.
	PD 8.2.6	Heading amended to be consistent with PD 5.7.
28/02/2022	PD 9.10	Substantial amendments to provide for a *Criminal Property Confiscation Act 2000* (CPCA) Directions List and Managing Judge. New rules have been included concerning the filing of applications under the CPCA and to safeguard confidentiality.
21/03/2022	PD 2.1	Amendment to par 13 to require counsel to include a clear statement at the end of the list of authorities if they do not intend to read from any cases.
20/05/2022	PD 9.10	Paragraph added to allow for the electronic filing of applications under the *Proceeds of Crime Act 2002* (Cth).

Date	PD No	Reason for Amendment*
01/07/2022	PD 1.1.4	Minor amendment to par 10 to replace reference to the *Legal Profession Act 2008* with the *Legal Profession Uniform Law (WA)*.
	PD 4.7.2	Amendments to pars 2-4 to update and reflect current practice.
	PD 4.7.4	Replaced with new Practice Direction to incorporate the procedure for costs assessments under the *Legal Profession Uniform Law (WA)*.
	PD 4.7.4.1, 4.7.4.2, 4.7.4.3, 4.7.4.4	Minor amendments to include reference to the *Legal Profession Uniform Law (WA)*. Consequential additional requirements inserted into the application for assessment of costs form.
	PD 4.7.5	Amended to include the procedure for applications for costs assessments made out of time under the *Legal Profession Uniform Law (WA).* New pars 1A, 1B and 9-14.
	PD 10.1.2	Minor amendments to pars 1, 4, 9, 11 and 12 as a result of the *Legal Profession Uniform Law (WA)* and consequential changes to Order 75A.
	PD 10.1.3	Reference to Mutual Recognition Acts in par 1 amended. Par 4 amended to streamline and update the bodies that can certify that a practitioner's name is on the roll for a particular State. Par 10 amended to remove the requirement for an applicant under the Mutual Recognition Acts to sign the roll.
	PD 10.1.3.1	Consequential amendments arising from PD 10.1.3.
19/08/2022	PD 4.7.4	Amendment to par 18 requiring costs disclosure information to be filed with an application for a costs assessment under the *Legal Profession Uniform Law (WA).* Minor amendment to par 23 to remove the provision that all costs assessment applications will be listed for a directions hearing before a taxing officer.
24/03/2023	PD 9.19 inserted	New PD on proceedings commenced under the *Civil Procedure (Representative Proceedings) Act 2022* (WA).

Date	PD No	Reason for Amendment*
27/04/2023	PD 4.7.1.1	Updates to the schedule of standard costs for interlocutory applications in accordance with the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2022.*
	PD 9.2.2	Par 44A inserted to ensure that parties are well informed about costs prior to mediation in *Family Provision Act 1972* (WA) actions.
26/07/2023	PD 1.1.4; 1.2.1	Temporary pars 4B and 13 (respectively) inserted to increase the size of affidavits that can be filed electronically pending Rule change.
04/08/2023	PD 1.2.2	Fax number for filing in Court of Appeal Office updated in par 72.
18/10/2023	PD 9.5.2 PD 9.5.2.1 - (revoked)	Replaced with a new Practice Direction to adopt the *Practice Note – Harmonisation in schemes of arrangement* as developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand.
09/04/2024	PD 1.1.4, 1.2.1	Temporary pars 4B and 13 (respectively) removed.
	PD 4.1.2.2	Minor corrections to par 58 to replace 'FROM' with 'from' and remove gendered language.
06/05/2024	PD 4.1.2	New pars inserted on expert evidence for cases entered into the CMC list.
	PD 4.1.2.2	New expert evidence CMC List usual orders from par 50.
	PD 4.4.1	Par 10 amended to change references to paragraph numbers in PD 4.1.2.2.
	PD 4.5	PD 4.5 renamed 'Evidence'. 'Evidence in Chief – Witness Outlines and Witness Statements' becomes 4.5.1.
	PD 4.5.2	New PD titled 'Expert Evidence'.
	PD 4.5.2.1	The *Harmonised Expert Witness Code of Conduct* approved by the Committee for the Harmonisation of Rules of the Council of Chief Justices is reproduced at 4.5.2.1.
	PD 4.5.2.2	New PD titled 'Expert Conferences and Conclaves'.

Date	PD No	Reason for Amendment*
	PD 4.5.2.3	New PD titled 'Concurrent Expert Evidence'.
	PD 9.5.2	Subparagraph 3(e) amended to refer to the Harmonised Expert Witness Code of Conduct.
	PD 9.13	Par 7 subparagraph 5 amended to refer to paragraphs in newly named PD 4.5.1.
	PD 10.3	Queen's Counsel changed to King's Counsel throughout.
30/08/2024	PD 9.20 inserted	New PD on proceedings under the *Criminal Law (Mental Impairment) Act 2023*.
14/02/2025	PD 2.1	Change of email address in par 22 for sending an Outline in the Criminal Division.
23/05/2025	PD 4.7.1.1	Updates to the schedule of standard costs for interlocutory applications in accordance with the *Legal Profession (Supreme and District Courts) (Contentious Business) Determination 2024.*
20/06/2025	PD 1.1.4	Originating documents in Representative Proceedings added to the list of documents in par 11 exempt from the requirement to file using the ECMS.
	PD 9.19	New pars 7A and 27A. Originating documents filed in proceedings commenced under the *Civil Procedure (Representative Proceedings) Act 2022* to be emailed. Notices to opt-out can be filed via the eCourts Portal without the need for an eCourts Portal account. Par 27 also amended.
	PD 10.1.3.1	Notice of Application for Admission (mutual recognition) to include an email address instead of a fax number or reference.
10/12/2025	PD 4.8	Replaced with a new PD updating the process for payments into and out of court. New sample forms at PD 4.8.1 and 4.8.2.
	PD 5.4; 9.9; 9.14; 9.15; 9.16; 9.17	References to the 'vault' replaced with 'a locked secure area'.
	PD 9.21	New PD containing guidelines for the use of generative AI in proceedings.

Date	PD No	Reason for Amendment*
29/04/2026	PD 9.2.2	Par 34A inserted and amendment to par 41.
27/05/2026	Table of Amendments	The two Table of Amendments have moved to the end of the document.
	All	Additional hyperlinks have been added throughout the document. The text has not changed.
	PD 9.1.1 and 9.1.2	References to the State Law Publisher website have been removed in pars 4 and 3 respectively.
	PD 9.3.1	Par 3(a) now refers to the *Family Provision Act 1972* instead of the *Inheritance (Family and Dependants Provision) Act 1972.*
	PD 9.9	Pars 3.7 and 3.8 amended to require applicants for surveillance devices under the *Surveillance Devices Act 1998* to attend Level 11 of the David Malcolm Justice Centre.
	PD 9.11	The documents relating to cooperation and communication in cross-border insolvency cases referred to in par 4 have been updated.
	PD 9.13	Pars 2 and 4 amended to refer to the *Western Australian Language Services Policy 2020* and to update the definitions of an interpreter and a translator.
21/08/2026	PD 4.2.1	Par 2, final sentence deleted, that the usual practice is that private mediations are conducted outside the regime in SCA pt VI. Par 5, final sentence deleted, the requirement that private mediators in a mediation under direction must be approved by the Chief Justice.
	PD 4.3.7	Par 28 amended for consistency. Now refers to any application to retain the documents or things, in relation to subpoenaed items in court custody.
	PD 9.2.2	Par 3 amended to reflect the decision in *Keremestevski*. Par 42 amended in relation to the Master case managing applications under the FPA to serve out of time.
	PD 10.3	Changes to the consultation process for the appointment of Senior Counsel. New pars 15 and 16, and 22 to 24. Amendments to par 21 to refer to the Chief Justice's nominee. Paragraphs 15 onwards have been renumbered.

Date	PD No	Reason for Amendment*
25/09/2026	4.8	Pars 5(f) and 12A inserted and sample request forms for payment into and out of court at PD 4.8.1 and PD 4.8.2 amended to clarify capacity and authority of person signing.