

District Court of Western Australia
Circular to Practitioners CRIM 2010/2
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2 September 2013, 17 November 2015

MANAGEMENT OF INDICTMENTS AND NOTICES OF DISCONTINUANCE

Summary: This Circular annexes a protocol agreed between the Court and the two prosecuting agencies regarding the management of indictments and notices of discontinuance. It has been revised to make clear that a notice of discontinuance is not required when a charge is amended.


The District Court (“the Court”), Office of the Director of Public Prosecutions for Western Australia (“ODPP”) and the Commonwealth Director of Public Prosecutions (“CDPP”) have agreed to put in place protocols for the management of indictments and notices of discontinuance. The primary aim of the protocols is to ensure that there is a distinct audit trail of how each charge the subject of a prosecution notice has been dealt with. The protocols are attached.

The protocols are published to ensure that the Court’s practices are transparent.

To the extent that the terms of the protocols set out practices in addition to those in the *Criminal Procedure Act 2004* (WA) (“CPA”) and the *Criminal Procedure Rules 2005* (WA) (“CPR”), the practices do not have statutory or regulatory force. A breach of the protocols does not in any way affect the validity of the indictment or notice of discontinuance to which it relates.

The District Court, ODPP and CDPP will review the protocols from time to time to ensure that they remain appropriate.

The protocols have been amended with effect from 17 November 2015.


SHANE MELVILLE
Principal Registrar

Protocols for the Management of Indictments And Notices of Discontinuance

The Court, ODPP and CDPP have agreed the following protocols for the management of indictments and notices of discontinuance. The primary aim of the protocols is to ensure that there is a distinct audit trail of how each charge, the subject of a prosecution notice which comes before the Court, is dealt with. The Court, ODPP and CDPP will review the protocols from time to time to ensure that they remain appropriate.

1. The protocol reflects the policy that each prosecution notice charge committed to the District Court needs to be finalised by way of:
 - (a) A *Criminal Procedure Rules 2005* (WA) (CPR) Form 13, including where the charge has been discontinued; or
 - (b) Remittal back to the court of summary jurisdiction pursuant to *Criminal Procedure Act 2004* (WA) (“CPA”).

Where a prosecution notice charge is transferred to the Supreme Court, the charge will be formally finalised by way of CPR Form 13 from the Supreme Court at the conclusion of the relevant proceedings.

2. When an accused is properly committed to the Court on any charge which does not become the subject of a count on an indictment, that charge must either be the subject of a notice of discontinuance or the subject of an application pursuant to CPA s 86A. At the time of lodging the indictment, the prosecution will also lodge:
 - (a) A notice of discontinuance for the charges being discontinued.
3. The prosecution will include the prosecution notice charge number for each count in the “Details of Charges” column on any indictment which is lodged with the Court and in the “Committal Details” column of any notice of discontinuance which is lodged with the Court. When an *ex officio* charge is contained on an indictment, the indictment will refer to “CPA s83(6)” in substitute of a prosecution notice/charge number (see the examples attached).
4. When the prosecution intends to apply to remit any prosecution notice charge to the court of summary jurisdiction pursuant to CPA s86A, the prosecution will lodge:
 - (a) A Form 1 application which identifies those charges which are the subject of the application; and
 - (b) if the charge to be remitted is a count in an indictment, a new version of the indictment containing only those charges which the prosecution intends to proceed with (in compliance with CPA s132(7)).

5. When the prosecution intends to discontinue any charges on an indictment which has previously been lodged, the prosecution will lodge:
 - (a) a notice of discontinuance for the charges being discontinued;
 - (b) if the matter is proceeding to trial, a new signed and dated indictment containing only those charges which the prosecution intends to proceed with.

6. When the prosecution intends to join further charges on an indictment which has already been lodged, the prosecution will lodge:
 - (a) a CPR form 1 application for an order permitting the joinder of the further charges; and
 - (b) a new signed and dated indictment which contains all charges the prosecution then intends to proceed with.

7. When the prosecution intends to make an application to amend a charge on an indictment, pursuant to CPA s132 (eg., to correct a typographical error or to correct a particular) the prosecution will lodge:
 - (a) a CPR Form 1 application which identifies the amendments for which the application is being made; and
 - (b) a new signed and dated indictment containing the amendments which are the subject of the application.

8. Where the prosecution lodges a new signed and dated indictment as set out in these protocols:
 - (a) if a count is removed, the counts on the new version of the indictment are to be renumbered; and
 - (b) any amendments are not to be marked up.

9. This is so an application in accordance with this protocol may be dealt with by consent order, in accordance with CPR r25A and District Court Practice Direction CRIM 3 of 2011. In this case:
 - (a) the consent order is filed in lieu of the CPR Form 1; and
 - (b) at the same time as filing the consent order, the prosecution will file a new signed and dated indictment.

10. A CPR Form 1 application made in accordance with these protocols will be dealt with at the next listed hearing of the matter before a Judge unless the prosecution or defence requests the Court to list it for earlier determination.

11. Where not all accused on a joint indictment are proceeding to trial, the prosecution will have available for the Judge and accused a version of the indictment with the references to the accused who are not proceeding to trial removed. This is so that there is a version of the indictment which can be given to the jury which is limited to the charges which the jury will need to determine.