DISTRICT COURT
OF
WESTERN AUSTRALIA

CONSOLIDATED PRACTICE DIRECTIONS & CIRCULARS TO PRACTITIONERS

CRIMINAL JURISDICTION

2017

As updated on 26 March 2019

PREFACE

Practice Directions are issued by the Chief Judge and supplement the procedures set out in the *Criminal Procedure Act 2004* (WA), the *Criminal Procedure Regulations 2005* (WA), the *Criminal Procedure Rules 2005* (WA) and the *Criminal Procedure (District Court) Rules 2008*. They impose obligations on the parties and their lawyers. Circulars to Practitioners are issued by the Principal Registrar and provide guidance about the practice of the District Court. Over the years, the District Court has issued a number of Practice Directions and Circulars to Practitioners applicable to the criminal jurisdiction of the Court.

In 2017, the District Court resolved to produce a consolidated document of all practice directions and circulars to practitioners applicable to criminal matters before the Court. Current directions and circulars are now contained in this document and those that are no longer relevant have been removed. New directions and circulars and any amendments to current directions and circulars will be added to this document as they are issued during the year; as well as being posted on the Court's website. With the publication of this document, all former practice directions and circulars applicable to criminal court matters are revoked.

His Honour Kevin Sleight
Chief Judge of the District Court of Western Australia

Mr Shane Melville
Principal Registrar of the District Court of Western Australia

PLEASE NOTE

This *Consolidated Practice Directions & Circulars to Practitioners – Criminal Jurisdiction* excludes the use of designated page numbers. This is to avoid repagination of the document when amendments are issued.

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PRACTICE DIRECTIONS (PD)

1 COURT ATTIRE[1]

1.1 Application

1.1.1 This Practice Direction applies to all hearings.

1.2 Criminal and Ceremonial Occasions

1.2.1 In criminal trials, sentencing and other appearances in the criminal jurisdiction (except for appearances before a Criminal Commissioner or Registrar) and on ceremonial occasions, the court dress will be as follows:

Judges:	Navy gown with purple bands, red sash and black cummerbund, jabot or bands, without wig
Counsel:	Black robe and bar jacket and jabot or bands, without wig
Senior/Queens Counsel:	The court dress customarily associated with that office, without wig.

1.2.2 In all proceedings before a Registrar, the Registrar and counsel will wear contemporary clothing of an appropriate standard – namely, jacket and tie for men and apparel of a corresponding standard for women.

[1] Formerly Practice Direction GEN 1 of 2009 – Court Attire.

2 USE OF VIDEO LINK FACILITIES[2]

2.1 Application

2.1.1 This Practice Direction applies to all District Court ("Court") hearings in which evidence is to be taken, or a party or legal practitioner is to appear, using a video link.

2.2 Use of video link facilities

2.2.1 The Court routinely uses video link facilities for certain hearing types, including Circuit Trial Listing Hearings and Sentence Mention Hearings. Where the Court routinely uses video link facilities for the particular hearing type, or otherwise decides to use a video link facility for a hearing, there is no obligation on a party to book the video link facility.

2.2.2 In other cases, the Court may be requested to make orders pursuant to *Evidence Act 1906* (WA) (**EA**) s 121 that evidence be taken, or a submission be received, by video link or audio link.

2.2.3 In both the criminal and civil jurisdictions, a party ("Applicant") may seek orders pursuant to EA s 121 by consent order (see *Rules of the Supreme Court 1971* (WA) O 43 r 16 and Practice Direction 8 'Consent Orders').

2.2.4 Where an application is made, or consent order filed, seeking orders pursuant to EA s 121 the orders sought must specify the venue at which the witness, party or practitioner proposes to appear.

2.2.5 Where the venue at which the witness, party or practitioner will appear is within Western Australia, the Applicant must use reasonable endeavours to ensure that this venue is a video link facility set out in the Court's List of Preferred Video Link Facilities, as published from time to time by the Court (and available on its website).

2.2.6 Where the venue at which the witness, party or practitioner proposes to appear is not on the Court's List of Preferred Video Link Facilities, the Applicant must file with the application or consent order a letter or an affidavit setting out how it proposes to comply with the obligations in 2.5 of this Practice Direction.

[2] Formerly Practice Direction GEN 1 of 2011 – Use of Video Link Facilities.

2.3 Booking of video link facilities

2.3.1 Where an order is made pursuant to EA s 121 for the use of a video link facility, the Applicant must send to the Court a Video Link Booking Request in the form published by the Court from time to time (and available on its website).

2.3.2 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 or submission received.

2.4 Fees and charges

2.4.1 Where the Court decides to use a video link facility (for example a Circuit Trial Listing Hearing), no fees or charges are payable by the parties.

2.4.2 Where:

(a) an order is made pursuant to EA s 121; and

(b) the hearing relates to a criminal matter

the Court will not charge for the use of the video link facility. The Court has waived these charges pursuant to *Evidence (Video and Audio Links Fees and Expenses) Regulations 1999* (WA) reg 6. However, where the venue at which the witness, party or practitioner will appear is not on the Court's List of Preferred Video Link Facilities, then any charges levied by that venue will be the responsibility of the party making the application.

2.4.3 For all other use of video link facilities requested by a party, fees and charges are payable for the use of video link facilities as set out in the *Evidence (Video and Audio Links Fees and Expenses) Regulations 1999* (WA).

2.5 Obligations of the Applicant

2.5.1 The Applicant must use reasonable endeavours to ensure that:

(a) the room from which the video link is to be broadcast is able to be closed off such that only the persons permitted by the Court to be in the room 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 in the courtroom. This includes ensuring that the video conferencing system used by the Applicant at the far end

meets the minimum bandwidths required:

- for an ISDN video conference call: 384kbps; or
- for an external IP video conference call: 512kbps;

(c) the persons appearing on the video link are dressed appropriately for court, as if the person was actually present 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 courtroom for this purpose.

Related Circular to Practitioners:

CP 1 'Use of Technology', paragraph 1.8

3 USE OF ELECTRONIC DEVICES IN COURT[3]

3.1 Purpose of this Practice Direction

3.1.1 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 paragraphs 3.3.2 and 3.4.3. 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 paragraph 3.5); and

(b) for bona fide members of the media at paragraph 3.4.3 (but see also paragraph 3.6).

3.1.2 This Practice Direction:

(a) prohibits the use of electronic devices to harass or intimidate persons attending court (paragraph 3.2);

(b) regulates the use of electronic devices:

(i) to create audio or visual records, including photographs (paragraphs 3.3); and

(ii) for other purposes (paragraph 3.4);

regulates applications for leave to depart from the terms of this Practice Direction (paragraph 3.5); and

(c) provides for the identification of bona fide members of the media seeking to make use of special provisions under this Practice Direction (paragraph 3.6).

3.1.3 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.

3.1.4 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

[3] Formerly Practice Direction GEN 1 of 2014 – Use of Electronic Devices in Court.

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, wherever 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 paragraph 3.5);

(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.

3.2 Use of devices to harass or intimidate

3.2.1 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.

3.3 Audio or visual recording

3.3.1 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 paragraph 3.5 in relation to applications for leave) and subject to paragraph 3.3.2. This prohibition applies inside the courtrooms and the court building, whether or not the court is in session.

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

3.4 Use other than audio or visual recording

3.4.1 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.

3.4.2 While the court is in session, except as provided in paragraph 3.4.3 or in accordance with permission granted by the Court or presiding judicial officer (see paragraph 3.5), all devices are to be turned off and their use within the courtroom is prohibited.

3.4.3 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.

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

3.5.1 Applications for leave under paragraphs 3.1.2, 3.3.1 or 3.4.2 may be made orally or in writing:

(a) to the presiding judge in the particular courtroom; or

(b) if the application does not relate to particular proceedings, to the Chief Judge.

3.5.2 Leave under paragraphs 3.1.2, 3.3.1 or 3.4.2 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.

3.5.3 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.

3.5.4 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.

3.6 Identifying members of the media

3.6.1 Media representatives seeking to make use of the exception provided at paragraph 3.4.3 are expected to produce photo identification issued by the media organisation they represent and verifying their accreditation should this be requested by court staff.

3.6.2 If a media representative is unable to produce such identification when requested, court staff will contact the Court's Media Liaison Officer to verify that a person seeking to make use of the exception allowed at paragraph 3.4.3 is a bona fide member of the media. Any question or issue as to whether a person is a bona fide member of the media will be determined by the Media Liaison Officer.

4 APPEARANCES BY ACCUSED AT ALTERNATIVE VENUES[4]

4.1 Background and application

4.1.1 For some time, the Court has sanctioned a practice by which some accused have been allowed to appear at an alternative venue for mention hearings in order to avoid the need for accused to travel long distances involving significant time and cost. This arrangement is a privilege. This Practice Direction sets out procedures to be adopted to ensure that the Court is informed of the proposed arrangements and of the fact that the accused has reported in accordance with the arrangements, prior to the commencement of the mention hearing.

4.2 Procedure

4.2.1 In the ordinary course, accused are required to answer their bail at the court venue specified in their bail documents.

4.2.2 However, where an accused is required to appear for a mention hearing that will not include arraignment or sentencing, and that appearance requires significant travel, counsel may apply to the Court for approval for the accused to answer bail at an alternative venue in accord with procedures set out in this Practice Direction.

4.2.3 The proposed alternative venue is to be either the courthouse at one of the localities listed in paragraph 4.3 or if the locality is not listed in paragraph 4.3 and is outside the metropolitan area, then at the local police station

4.2.4 Before the close of business two (2) business days prior to the mention hearing Counsel must contact the relevant Judge's Associate and advise the Associate the name of the accused and the venue phone and fax number at which it is proposed the accused will appear. After receiving notification from counsel, 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 faxed to the Court.

4.2.5 The accused is to report by 9.00 am on the date of the mention hearing at the pre-arranged alternative venue. The purpose of requiring the accused to appear at 9.00 am is so that the relevant courthouse or police station can fax confirmation that the accused has reported to the Associate by 9.30 am on the day of the mention hearing.

[4] Formerly Practice Direction CRIM 1 of 2008 – Appearances by Accused at Alternative Venues.

4.2.6 Counsel are to advise the accused in writing where, to whom, and by when they are to report on the day of the mention hearing.

4.2.7 Immediately prior to the mention hearing, Counsel (or their instructor) are to phone the relevant courthouse or police station to confirm that the accused has reported and that the confirmation fax has been sent.

4.2.8 When the matter is called, Counsel will be requested to confirm that the requirements in paragraphs 4.2.6 and 4.2.7 have been complied with.

4.2.9 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 Judge decides that it is not just to do so.

4.3 Courthouse localities for alternative venues

4.3.1 Metropolitan:

Central Law Courts, Perth
Armadale
Fremantle
Joondalup
Midland
Rockingham

4.3.2 Regional:

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 ORDERS AS TO DISCLOSURE REQUIREMENTS[5]

5.1 Definitions

5.1.1 Words defined in the *Criminal Procedure Act 2004* (WA) (**CPA**), s 138 and used in this Practice Direction have the same respective meanings as in the CPA.

5.1.2 The following definitions apply to this Practice Direction:

"Application to proceed without notice" means an application made by a prosecutor without notice to an accused pursuant to CPA s 138(4) and in accordance with *Criminal Procedure Rules 2005* (WA) (**CPR**) r 22.

"Court Officer" means the Associate to the Chief Judge, Manager Trials, Listings Coordinator and Deputy Listings Coordinator, or any person acting in those positions from time to time.

"Substantive application" means an application for an order under CPA s 138(3).

5.2 Introduction

5.2.1 This Practice Direction applies to an application to proceed without notice.

5.2.2 This Practice Direction also applies to a substantive application the subject of an application to proceed without notice.

5.2.3 This Practice Direction does not apply to a substantive application by an accused or by a prosecutor on notice to the accused.

5.2.4 In view of their nature, applications that include an application to proceed without notice will be processed promptly and with complete confidentiality.

5.2.5 Applications to which this Practice Direction applies will not be disclosed on the daily court list or in any other listings information published by the Court.

5.3 Commencement of applications

5.3.1 An application to proceed without notice and a substantive application are each to be made in Form 1 CPR and are to be accompanied by an affidavit and a draft order.

[5] Formerly Practice Direction CRIM 1 of 2010 – Orders as to Disclosure Requirements.

5.3.2 An application to proceed without notice and a substantive application are each to be made in Form 1 CPR and are to be accompanied by an affidavit and a draft order.

5.3.3 Substantive applications and applications to proceed without notice may be made on the same Form 1 CPR, and rely on the same supporting material.

5.3.4 The substantive application must specify whether the applicant opposes leave being given under CPA s 138(4) to disclose to the accused that an order under CPA s 138 has been made.

5.3.5 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.

5.3.6 Before presenting any documents an applicant for leave to proceed without notice must contact a 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 no notice of either 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;

(f) to inform the Court Officer whether the applicant wishes any of the procedures set out in this Practice Direction to be varied in that application.

5.3.7 The application, affidavit and draft order must be delivered to the Court in a sealed envelope.

5.3.8 The documents must be handed to the Court Officer who shall without opening the envelope, list the application for hearing and as soon as practicable, inform the applicant of the identity of the Judge, and the time and the place nominated for the hearing.

5.4 Hearing of applications and subsequent activity

5.4.1 An application to which this Practice Direction applies will ordinarily be listed before the duty judge.

5.4.2 Where an application arises in the course of a trial, the applicant must (subject to this paragraph), in the first instance, forward the application to proceed without notice to the Court Officer, who will advise whether the application is to be listed before the trial judge or the duty judge. The affidavit in support of the application is to include a submission on whether or not it is appropriate for the trial judge to hear the application. In cases of urgency, or with the leave of the trial judge, the application to proceed without notice may be made before the trial judge.

5.4.3 An application to proceed without notice will ordinarily be heard by a Judge in closed court, without notice being given to any person the subject of the application.

5.4.4 If the application is refused, any substantive application must be brought on notice and this Practice Direction has no further application.

5.4.5 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 closed court, at the same sitting as the hearing of the application to proceed without notice.

5.4.6 No person other than the Judge, the Judge's personal staff, a representative of the applicant and a legal representative of the applicant may be present at the hearing unless at the direction of the Judge.

5.4.7 Where the hearing is recorded and transcribed, the transcript of the hearing will be kept by the Court, and will not be made available to the prosecution or any other party save with the leave of the Judge who dealt with the application or the Chief Judge.

5.4.8 If the applicant does not wish the Court to make a transcript of the hearing, the Court Officer must be told prior to the hearing of the application and the grounds for the request must be addressed in the materials filed in support of the application. In the event that there is no transcript of the hearing, the Associate to the Judge hearing the application will ensure that a record is kept of the hearing, for example by digitally recording it and placing the audio file on a CD on the file or by making a full note of what was said at the hearing, which note will be kept by the Court with the documents filed in support of the application.

5.4.9 Any notes made by Court staff of the hearing will be kept by the Court, and will not be made available to the prosecution or any other party save with the leave of the Judge who dealt with the application or the Chief Judge.

5.4.10 At the conclusion of the hearing the Judge will, if appropriate, hand the applicant a signed order. All other documents will be securely retained in a sealed envelope by the Court.

5.4.11 Unless the Court orders otherwise, an order made in the absence of the accused is not to be given or disclosed to the accused or his lawyer as required by CPA s 138(5).

5.4.12 The materials relating to an application to which this Practice Direction applies will be retained by the Court and stored in a confidential manner, not on the court file. The materials will not be made available for inspection by any person unless with the leave of a Judge, or as required by law**.**

6 LODGMENT OF BRIEFS[6]

6.1 Application

6.1.1 This Practice Direction applies to all prosecution materials lodged pursuant to *Criminal Procedure Act 2004* (WA) (**CPA**) s 95 ("the Brief").

6.1.2 This Practice Direction applies to both committals for trial and committals for sentence.

6.2 Lodgment of Briefs

6.2.1 CPA s 95 does not specify the number of copies of the materials comprising the Brief that are required to be lodged with the Court pursuant to CPA s 95.

6.2.2 The Court requires the prosecutor to lodge one paginated copy of the materials comprising the Brief within the time specified in *Criminal Procedure Rules 2005* (WA) r 20. The copy of these materials lodged with the Court may be double sided.

6.2.3 The prosecutor is required to maintain a bundle of the materials comprising the Brief consisting of:

(a) the original of each signed witness statement;

(b) the original or best available other version of the evidentiary material relevant to the charge, which is to be the exhibit tendered at the trial of the matter; and

(c) a copy of each other document comprising the Brief.

("Original Brief")

6.2.4 The Original Brief must be maintained in a form that can be readily and conveniently produced to the Court.

6.2.5 The prosecutor must produce the Original Brief to the Court at the commencement of any:

(a) trial;

(b) sentencing hearing;

[6] Formerly Practice Direction CRIM 2 of 2011 – Lodgment of Briefs.

(c) pre-recording of evidence; and

(d) hearing at which the Court directs the Original Brief to be produced.

6.2.6 Subject to being able to comply with clauses paragraphs 6.2.4 and 6.2.5, the prosecutor may cause original witness statements and evidential material to be maintained in the possession of the investigating agency.

7 DOCUMENTS FILED FOR IMMINENT HEARINGS[7]

7.1 Application

7.1.1 Subject to paragraph 7.1.2, this Practice Direction applies to any correspondence that is sent to the Court, or document that is filed at the Court, less than 2 clear working days before a hearing in Court.

7.1.2 This Practice Direction does not apply to documents filed through the Court's eLodgment system.

7.2 Correspondence

7.2.1 Where a letter is sent to the Court to which this Practice Direction applies, the letter is to contain a reference line at the commencement of the letter containing the name of the matter, the matter or case number, the date of the hearing and the type of the hearing.

7.2.2 Where a facsimile is sent to the Court to which this Practice Direction applies, the name of the matter, the matter or case number, the date of the hearing and the type of the hearing is to appear on the first page of the facsimile transmission.

7.2.3 Where an email is sent to the Court to which this Practice Direction applies, the name of the matter, the matter or case number, the date of the hearing and the type of the hearing is to appear in the subject matter field in the email.

7.3 Court documents

7.3.1 Where a court document is lodged to which this Practice Direction applies, the lodging party is to either:

(a) in the document type box in the top right hand corner, include a reference to the date of the hearing or hearing type, for example:

Criminal Procedure Act 2004 *Criminal Procedure Rules 2005* Supreme Court/District Court At: Number:	**Application** **Initial mention hearing** **14 November 2008**
Case	[*Names of all parties*]
Applicant	[*Name of the party applying*]

[7] Formerly Practice Direction GEN 1 of 2008 – Documents Filed for Imminent Hearings.

Or

(b) lodge the document with a covering letter or facsimile cover sheet containing in a prominent place the date of the hearing and the type of hearing.

8 CONSENT ORDERS[8]

8.1 Background

8.1.1 Pursuant to *Criminal Procedure Rules 2005* (WA) (**CPR**) r 25A, the parties to a case may consent to the making of an order or direction in the case by lodging one or more documents that set out the order or direction sought and evidence the consent of the parties to the making of the order or direction.

8.2 Jurisdiction

8.2.1 By CPR r 5A and r 25A, the power to make a direction or order by consent is delegated to a legally qualified registrar of the District Court. A registrar cannot make a consent order that would finally determine a prosecution (CPR r 25A(6)).

8.3 Fax or electronic lodgment

8.3.1 Pursuant to CPR r 25A(3) the address for electronic lodgement of a consent order is: districtcourt@justice.wa.gov.au

8.3.2 The facsimile number for lodgment at the District Court is (08) 9425 2268.

8.4 Form

8.4.1 The form of the consent order is set out in PD Annexure 1.

8.4.2 If basis for the making of the order or direction sought is not readily apparent from the face of the order, the party lodging the consent order is also to lodge with the Court a letter stating out the basis on which the order or direction is sought.

8.4.3 Where the order is to edit a record of interview or visually recorded interview, the application is to annex a copy of the transcript with the portions to be edited out marked.

8.5 Consent orders for the use of video link facilities

8.5.1 Where the consent order seeks orders pursuant to *Evidence Act 1906* (WA) s 121, Practice Direction 2 ‘Use of Video Link Facilities’ provides that:

[8] Formerly Practice Direction CRIM 3 of 2011 – Consent Orders.

(a) the orders sought must specify the venue at which the witness, party or practitioner proposes to appear; and

(b) where the venue at which the witness, party or practitioner proposes to appear is not on Court's List of Preferred Video Link Facilities, the applicant must file with the application or consent order a letter or an affidavit setting out how it proposes to comply with the obligations in paragraph 2.5 of Practice Direction 2.

Related Circular to Practitioners:

CP 7 'Registrars - Criminal Jurisdiction', paragraph 7.3

9 CRIMINAL LISTINGS[9]

9.1 Application

9.1.1 This Practice Direction applies to all accused committed for trial or sentence with their first appearance in the District Court.

9.2 Filing of the indictment

9.2.1 Unless otherwise ordered by the Court, the prosecution must lodge the indictment no later than 42 days after the date on which the accused is committed for trial or sentence.

9.2.2 An application to extend the time within which the indictment is to be filed may be:

(a) made orally; and

(b) made after the date on which the indictment was required to have been lodged pursuant to paragraph 9.2.1.

9.2.3 The Court may order the prosecution to lodge and serve an affidavit setting out:

(a) the reasons why an indictment has not yet been lodged; and

(b) the likely time by which an indictment will be lodged.

9.2.4 The Court may order that any second or subsequent application to extend the time within which the indictment is to be filed be supported by an affidavit as set out in paragraph 9.2.3.

9.3 Prosecution's listing certificate

9.3.1 Where an accused is committed for trial, at the time of lodging an indictment, the prosecution must also lodge and serve a Listing Certificate in the form set out in PD Annexure 2.

9.3.2 The prosecution is not required to lodge and serve any further Listing Certificate unless ordered by the Court.

9.3.3 In completing the Listing Certificate, the practitioner signing the certificate is to have regard to any Circular to Practitioners issued by the Court.

[9] Formerly Practice Direction CRIM 2 of 2008 – Criminal Listings.

9.3.4 The prosecution's Listing Certificate should be on green paper.

9.4 Accused's listing certificate

9.4.1 Where an accused is committed for trial, not later than 28 days after the indictment is lodged, the accused must lodge and serve a Listing Certificate in the form set out in PD Annexure 3.

9.4.2 The accused is not required to lodge and serve any further Listing Certificate unless ordered by the Court.

9.4.3 In completing the Listing Certificate, the practitioner signing the certificate is to have regard to any Circular to Practitioners issued by the Court.

9.4.4 The accused's Listing Certificate should be on yellow paper.

9.4.5 Prior to signing the Listing Certificate the accused is to be advised by his or her legal representative of the following matters:

(a) The discount that may be available under s 9AA of the *Sentencing Act 1995* (WA) (**SA**) if a plea of guilty is entered at the first reasonable opportunity;

(b) The legal practitioner's estimate of the reduction in the head sentence (expressed in years or months) that may be available if a plea of guilty is entered at the first reasonable opportunity;

(c) The extent of the discount available under s 9AA of the SA will generally be reduced the longer the delay in entering a plea of guilty.

9.5 Material changes in the listings information

9.5.1 Where a party becomes aware of changes in circumstances which render the information provided in the Listing Certificate incorrect, out of date or misleading, the party must immediately notify the Court and each other party of the relevant facts in writing. The advice may be by way of letter or facsimile.

9.6 Adjournment of listings hearings

9.6.1 Unless otherwise ordered by the Court, neither the prosecution nor the accused is obliged to file a further or undated Listing Certificate.

9.6.2 Where a matter has not yet been listed for trial, at each subsequent appearance before the Court, counsel for the parties must be in a position to advise the Court of:

(a) the current unavailable dates of the witnesses; and

(b) whether the party has complied with paragraph 9.5.1 of this Practice Direction.

9.7 Editing of videos

9.7.1 Where:

(a) the prosecution brief includes a video record of interview ("ROI") or a Visually Recorded Interview ("VRI"); and

(b) the accused wishes to object to portions of the ROI or VRI,

counsel for the accused is to notify the prosecution in writing of the portions of the ROI or VRI objected to by no later than 14 days after the date on which the matter is allocated trial dates.

9.7.2 Where the prosecution receives notice of objections to a ROI or VRI, the prosecution and the accused must, in good faith, attempt to resolve the objections and agree to any edits required to the relevant video record.

9.7.3 In the event that the prosecution and the defence cannot agree on the edits required by 28 days prior to the date of commencement of the trial, the prosecution is to list the matter for a directions hearing for the purpose of resolving the disputed objections.

Related Circulars to Practitioners:

CP 9 'Criminal Listings – Perth'

CP 11 'Circuit Hearings'

10 SENTENCING HEARINGS[10]

10.1 Application

10.1.1 This Practice Direction applies to any hearing at which an offender is to be sentenced, listed in Perth or on circuit.

10.2 Sentencing Act s 32 requests

10.2.1 Pursuant to *Criminal Procedure (District Court) Rules 2008* (WA), *Criminal Procedure Rules 2005* (WA) (**CPR**) r 44(2) is varied so that the request by an offender under *Sentencing Act 1995* (WA) (**SA**) s 32 must be lodged with the Court and served:

(a) where the accused has been committed for trial in Perth, not less than 28 days before the date on which the offender is to be sentenced by the Court;

(b) where the accused has been committed for sentence in Perth, at or before the Sentencing Mention in the District Court at which a date is allocated to sentence the offender; or

(c) where the accused has been committed for trial or sentence at a circuit location, not less than 28 days before the date on which the offender is to be sentenced by the Court.

10.2.2 Further to CPR r 44(7), the DPP must lodge any Form 12 in relation to a particular Sentencing Hearing no later than 14 days prior to the date when the offender is to be sentenced by the Court.

10.2.3 The Court will not under any circumstances accept applications lodged later than the time frames set by this rule.

10.3 Consequential breaches

10.3.1 For the purposes of this rule a "Consequential Breach Notice" is a notice filed pursuant to one or more of SA s 79 (suspended sentence), s 84 (conditional suspended sentence) or s 129 (conditional release order or community order).

10.3.2 If the prosecution wishes the Court to deal with a Consequential Breach Notice at a particular sentencing hearing in relation to an offender, the prosecution is to lodge and serve the relevant notice:

[10] Formerly Practice Direction CRIM 3 of 2008 – Sentencing Hearings.

(a) where the accused has been committed for trial in Perth, not less than 14 days before the date on which the offender is to be sentenced by the Court;

(b) where the accused has been committed for sentence in Perth, at or before the first Sentencing Mention in the District Court; or

(c) where the accused has been committed for trial or sentence at a circuit location, not less than 14 days before the date on which the offender is to be sentenced by the Court.

10.3.3 If an offender wishes the prosecution to lodge and serve a Consequential Breach Notice to be dealt with at a particular sentencing hearing in relation to the accused, the offender can send a written request to this effect to the prosecution. The request is to be served on the prosecution not less than 28 days before the date of the Sentencing Hearing in question.

10.3.4 If the prosecution receives a written request pursuant to paragraph 10.3.3, it is to lodge and serve the notice requested not less than 14 days prior to the particular Sentencing Hearing.

10.4 Prosecution material for a sentencing hearing

10.4.1 Subject to paragraph 10.4.2, the prosecution is to lodge with the Court and serve the following documents not less than 7 days prior to the date on which the offender is to be sentenced by the Court:

(a) submissions (if any);

(b) criminal history report;

(c) victim impact statements (if any);

(d) photographs (for example, samples of pornographic images);

(e) video material (for example, excerpts of pornographic videos);

(f) any other materials to be relied on at the sentencing pursuant to SA s 45.

10.4.2 Where the accused has been committed for sentence, the prosecution is to lodge any criminal history report to be relied on with the Court at or before the initial mention in the District Court.

10.5 Offender's material for a sentencing hearing

10.5.1 The offender is to lodge with the Court and serve any materials to be relied on at the sentencing pursuant to SA s 45 not less than 2 clear days prior to the date on which the offender is to be sentenced by the Court. This includes any written submissions to be relied on.

10.6 Victim impact statements

10.6.1 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 SA s 24(2) to give a victim impact statement on the victim's behalf, reading a victim impact statement.

10.6.2 If the prosecution proposes that a victim, or a person authorised under SA s 24(2) to give a victim impact statement on the victim's behalf, will deliver an oral victim impact statement, then the prosecution must give written notice to the Court and the offender not less than 7 days prior to the date on which the offender is to be sentenced by the Court.

10.6.3 The written notice referred to in paragraph 10.6.2 which is filed at the Court is to attach a copy of the written statement which the victim, or a person authorised under SA s 24(2) to give a victim impact statement on the victim's behalf, proposes to read.

10.6.4 A victim impact statement made available to an offender or an offender's legal representative is, unless otherwise ordered, made available on the conditions set out in this Practice Direction which are conditions for the purpose of SA s 26(1).

10.6.5 Where an offender is represented by a legal practitioner who has filed a notice of acting on behalf of the offender, a copy of the victim impact statement to be lodged under paragraph 10.4.1(c) or under paragraph 10.6.3 is to be served on that legal practitioner.

10.6.6 Where an offender is not represented by a legal practitioner, the prosecution is to make a copy of the victim impact statement to be lodged under paragraph 10.4.1(c) or under paragraph 10.6.3 available for inspection by the offender before the sentencing hearing.

10.6.7 A practitioner who receives a victim impact statement:

(a) is to take appropriate steps to ensure that the contents of the statement remain confidential;

(b) is not to disclose the contents of the statement to any person other than the offender; and

(c) is not to use the statement for any purpose other than the purpose of making submissions at the sentencing of the offender.

10.6.8 Where a legal practitioner ceases to act for an offender prior to a sentencing hearing, the practitioner is to:

(a) deliver to the Court the hard copy of the victim impact statement with the notice of ceasing to act; and

(b) delete any electronic copies of the statement.

10.6.9 At the conclusion of the sentencing hearing counsel appearing for the offender is to:

(a) deliver to the Court the hard copy of the victim impact statement; and

(b) delete any electronic copies of the statement.

10.7 Pre-sentence reports

10.7.1 In this part, a reference to a "pre-sentence report" is a reference to a pre-sentence report prepared pursuant to SA Part 3, Division 3, and includes any specialist reports commissioned as part of the pre-sentence report, for example, as to the physical or mental state of the offender.

10.7.2 This part applies:

(a) where pursuant to SA s 22(5) the Court makes a copy of the pre-sentence report available to the prosecutor and/or a legal practitioner who has filed a notice of acting on behalf of the offender; and

(b) unless the Court orders to the contrary.

10.7.3 A pre-sentence report which is made available by the Court is, unless otherwise ordered, made available on the conditions set out in this Practice Direction, which are conditions for the purpose of SA s 22(5).

10.7.4 Where the pre-sentence report is made available by email, only one copy of the pre-sentence report is to be printed out.

10.7.5 The pre-sentence report 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.

10.7.6 A practitioner who retains possession of the pre-sentence report:

(a) is to take appropriate steps to ensure that the contents of the pre-sentence report remain confidential;

(b) is not to disclose the contents of the pre-sentence report 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 pre-sentence report for any purpose other than the purpose of making submissions at the sentencing of the offender.

10.7.7 Where a legal practitioner ceases to act for an offender prior to a sentencing hearing, the practitioner is to:

(a) return the hard copy of the pre-sentence report to the Court with the notice of ceasing to act; and

(b) delete any electronic copies of the pre-sentence report.

10.7.8 At the conclusion of the sentencing hearing, counsel appearing for the prosecutor and the offender are each to:

(a) hand their respective copies of the pre-sentence report to the Associate to the Judge who sentences the offender; and

(b) delete any electronic copies of the pre-sentence report.

This rule applies even if the prosecutor or the offender wish to consider commencing an appeal in relation to the sentence.

10.7.9 Self-represented offenders may read the pre-sentence report on the day of sentencing by arrangement with the Associate to the presiding judge.

10.8 Mediation reports

10.8.1 In this part, a reference to a "mediation report" is a reference to a written report prepared by a mediator about any mediation or attempted mediation between an offender and a victim prepared pursuant to SA Part 3, Division 5.

10.8.2 This part applies:

(a) where pursuant to SA s 30 the Court makes a copy of a mediation report available to the prosecutor and/or a legal practitioner who has filed a notice of acting on behalf of the offender; and

(b) unless the Court orders to the contrary.

10.8.3 A mediation report which is made available by the Court is, unless otherwise ordered, made available on the conditions set out in this Practice Direction, which are conditions for the purpose of SA s 30(1).

10.8.4 The restrictions set out in paragraphs 10.7.4 to 10.7.8 apply to the release of a mediation report.

Related Circular to Practitioners:

CP 10 'Sentencing Hearings'

11 DEALING WITH SECURE AND SENSITIVE MATERIALS[11]

11.1 Application

11.1.1 This Practice Direction applies to all exhibits and other material tendered in criminal proceedings in the District Court, including trials, sentencing hearings, directions hearings and hearings at circuit locations.

11.1.2 Unless otherwise ordered or directed, all exhibits are retained by the Court until at least 31 days after the day on which the case is determined or dismissed (see generally *Criminal Procedure Act 2004* (WA) (**CPA**) s 170). Where there is an appeal, all exhibits are sent to the Court of Appeal. Where there is no appeal, each exhibit is returned to the party who tendered it or who appears to be entitled to it, or destroyed (see generally, *Criminal Procedure Rules 2005* (WA) (**CPR**) r 50).

11.1.3 An exception to the general rule is that the Court may dispose of an exhibit that it considers dangerous to retain (CPA s 170(2)(a)). The Court may also release an exhibit to a person who is entitled to custody of it if the Court considers that it is dangerous, impracticable or inconvenient for it to be retained, or that it is necessary for the person to have use of the exhibit (CPA s 170(2)(b)).

11.2 Normal exhibits

11.2.1 Material or items tendered as exhibits in a criminal trial are usually stored overnight in a safe in the court. Following completion of the trial, the exhibits are dealt with in accordance with CPA s 170 and CPR r 50.

11.2.2 Where a party wishes to tender into evidence a large or bulky item (not otherwise dealt with in this Practice Direction), the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made. The notification should describe the item and set out the arrangements proposed by the party.

11.3 Pornographic and other offensive or disturbing material

11.3.1 Pornographic or other offensive material is to be brought into the Court secured in a sealed envelope clearly marked as containing pornographic material (or other appropriate description) with a large distinctively coloured label. The

[11] Formerly Practice Direction CRIM 1 of 2011 – Dealing with Secure and Sensitive Materials.

envelope is to contain a second unused enveloped which can be used for the return of the material.

11.3.2 Where the images are stored in an electronic medium (eg flashdrive or CD or DVD), the same procedures are to be followed as if the images were in hard copy format.

11.3.3 The parties should endeavour to agree the material which needs to be viewed as a representative sample (see generally, Circular to Practitioners 15 'Management of Trials – Offences Relating to Pornography and Objectionable Material').

11.4 Drugs

11.4.1 The Court's preference is that all evidence in relation to the actual drugs the subject of the indictment be tendered to the Court as photographic or digital images.

11.4.2 If a party wishes to bring the actual drugs into Court, either for inspection or tender, the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made.

11.4.3 It is impracticable for the Court to store drugs either overnight or at the conclusion of a trial pending the expiration of the appeal period. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Federal Police. When the prosecution brings the actual drugs into Court, it will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is at Court when the Court rises at the end of the day to take custody of the drugs.

11.5 Weapons and dangerous items

11.5.1 The Court's preference is that evidence relating to firearms, ammunition, weapons and other dangerous items be tendered to the Court as photographic or digital images.

11.5.2 If a party wishes to bring the actual item into Court, either for inspection or tender, the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made.

11.5.3 It is impracticable for the Court to store firearms, ammunition, weapons and other dangerous items either overnight or at the conclusion of a trial pending the expiration of the appeal period. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the

Commissioner of Police or the Federal Police. When the prosecution brings the items into Court, it will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is at Court when the Court rises at the end of the day to take custody of the items.

11.6 Explosives and hazardous substances

11.6.1 Under no circumstances are live or possibly live explosives to be brought into Court.

11.6.2 Under no circumstances are hazardous or potentially hazardous substances to be brought into Court.

11.6.3 In each case, evidence is to be led using photographs, expert reports or other means approved by the trial judge.

11.7 Money and other valuable items

11.7.1 The Court's preference is that evidence relating to money and other valuable items (eg gold or diamonds) be tendered to the Court as photographic or digital images.

11.7.2 If a party wishes to bring the actual item into Court, either for inspection or tender, the party is to notify the Court in writing addressed to the Manager Trials, copied to all other parties, not less than 21 days before the commencement of the trial so that appropriate arrangements can be made.

11.7.3 It is impracticable for the Court to store money and other valuable items either overnight or at the conclusion of a trial pending the expiration of the appeal period. Accordingly, an order will be made releasing the exhibit to the person who is entitled to custody of it, usually the Commissioner of Police or the Federal Police. The party tendering the items will need to ensure that a police officer or a member of the exhibits management team of the relevant investigating authority is at Court when the Court rises at the end of the day to take custody of the items.

11.8 Letters of recognition

11.8.1 A Letter of Recognition is a letter from the police or other investigating agency setting out the assistance provided by an offender to the agency.

11.8.2 A Letter of Recognition is to be secured in a sealed envelope marked to the attention of the sentencing Judge, care of the Senior Associate to the Chief Judge

and hand delivered to Level 11 District Court Building not less than 2 clear working days prior to the hearing date.

11.8.3 The Letter of Recognition will be returned to the relevant prosecution authority as soon as practicable after the hearing at which it is used.

PD ANNEXURES

PD Annexure 1: Consent Order (PD 8)

Criminal Procedure (District Court) Rules 2008 **District Court** **At:** **Number:**		**CONSENT ORDER**
Accused		
Prosecutor		
Orders sought *(Examples)*	The prosecution and the accused consent to the Court making the following orders: 1. The evidence of Mary Smith be taken by video link; 2. Mary Smith be declared a special witness pursuant to *Evidence Act 1906* s 106R and that her evidence be taken by video link; 3. The original visual recording of the evidence / record of interview of Mary Smith be edited as marked on the copy of the transcript of the interview annexed to this order; 4. The State take possession of the original visual recording of the evidence of Mary Smith and have leave to copy and edit it as ordered by the Court; 5. Mary Smith be permitted to receive a copy of the record of interview of John Brown dated 1 March 2006; 6. The things described in the schedule to this consent order be released to [name of claimant]/ destroyed / forfeited to the State pursuant to *Misuse of Drugs Act* 1981 s 28(3).	
Prosecution lawyer	…… Signature	Date:
Accused's lawyer	…… Signature	Date:
☐ **The Court hereby makes orders in terms of paragraphs [ ] to [ ] above.** ☐ **The Court declines to make the orders by consent and requires the relevant party to make an application.**		
Judicial officer		
Signature		Date:

PD Annexure 2: Prosecution Listing Certificate (PD 9)

LISTING CERTIFICATE – PROSECUTION

	District Court of Western Australia At: Number:
Parties	THE STATE OF WESTERN AUSTRALIA / THE QUEEN -and- [ ]

1. COMMUNICATION WITH THE ACCUSED

(a) Have all the accused's requests for information, clarification or better disclosure concerning this prosecution been complied with?

❒ Yes ❒ No

If "no", specify why not:

(b) Has there been any discussion with the accused as to facts that might be agreed or evidence that might be admitted at trial by consent?

❒ Yes ❒ No

If the answer to either question is "no", specify why not:

2. DISCLOSURE

(a) Has the State complied with *Criminal Procedure Act 2004* s 95?

❒ Yes ❒ No

(b) Has the prosecution disclosed statements for each witness it currently intends to call at trial?

❒ Yes ❒ No

(c) Has the prosecution disclosed witness statements or reports for each expert it currently intends to call at trial?

❒ Yes ❒ No

(d) Has the prosecution disclosed all forensic evidence it intends to rely on at trial?

❒ Yes ❒ No

If the answer to any of questions 2(a) to (d) is "no", specify what remains to be disclosed:

3. RECORDS OF INTERVIEW

In respect of any proposed records of interview:

(a) Does the disc / tape need editing?

❒ Yes ❒ No

(b) Has the prosecution provided the accused with any proposed edits?

❒ Yes ❒ No

(c) Has the editing been agreed?

❒ Yes ❒ No

Practitioners are reminded of the need to comply with paragraph 9.7 of Practice Direction 9 'Criminal Listings' in relation to edits to video evidence.

4. OTHER VIDEO EVIDENCE

In respect of any visually recorded evidence or other video evidence:

(a) Does the disc / tape need editing?

❒ Yes ❒ No

(b) Has the prosecution provided the accused with any proposed edits?

❒ Yes ❒ No

(c) Has the editing been agreed?

❒ Yes ❒ No

Practitioners are reminded of the need to comply with paragraph 9.7 of Practice Direction 9 'Criminal Listings' in relation to edits to video evidence.

5. TRIAL LISTING

(a) Estimated trial length (in days) ☐

(b) Number of counts ☐

(c) Number of accused ☐

(d) Number of lay prosecution witnesses (including complainant and police) ☐

(e) Number of expert witnesses ☐

(f) Will any witness be required to travel from interstate or overseas?

❒ Yes ❒ No

(g) Dates on which prosecution witnesses are not available (due to overseas travel or other specified reason):

6. TRIAL PREPARATION

(a) Are there any disputes as to the admissibility of evidence?

If "yes", specify the evidence in issue and nature of the dispute:

(b) Is a *Criminal Procedure Act* s 98 directions hearing required?

❒ Yes ❒ No

If "yes", specify the issues to be determined:

(c) Are there any other issues that need to be attended to prior to trial?

❒ Yes ❒ No

If "yes", specify the issues:

7. TRIAL ARRANGEMENTS

(a) Is this a "serious sexual offence" matter under *Evidence Act 1906* s 106A?

❒ Yes ❒ No

(b) Does the prosecution intend to seek orders that any witness be declared a "special witness" pursuant to *Evidence Act 1906* s 106A?

❒ Yes ❒ No

If "yes", specify:

Witness' name	**Date of birth**	**When application will be made**

(c) Does the prosecution intend to seek orders that any witness give evidence by audiolink or videolink?

❒ Yes ❒ No

If "yes", specify:

Witness' name	**Date of birth**	**When application will be made**

(d) Does any witness require an interpreter?

❒ Yes ❒ No

If an interpreter is required, the prosecution must advise the criminal registry not less than 14 days before the trial is due to commence.

(e) Is the trial going to require audio visual or electronic arrangements beyond the use of a DVD player, CD player or VHS video player (eg presentation of documentary evidence on computer screens or digital photos)?

❒ Yes ❒ No

If "yes", the prosecution must advise the criminal registry in writing of its requirements not less than 21 days prior to the commencement of the trial.

The Court's capabilities as regards electronic evidentiary material are set out in the document entitled "Submission of Electronic Evidentiary Materials in Western Australian Courts" which is available on the Court's website.

(f) Does the offence relate to pornography or objectionable material under legislation such as the *Classification (Publications, Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996?*

❒ Yes ❒ No

If "yes", the practitioners should comply with the directions in Circular to Practitioners 15 'Management of Trials – Offence Relating to Pornography and Objectionable Material'.

8. CONTACT DETAILS

Case manager	
Direct phone number	
Fax	
Email	

9. CERTIFICATION

I am the case manager / solicitor with the conduct of this prosecution.

I certify that:

(a) in all respects *or* in all respects other than those noted in this certificate (*delete inapplicable*) the prosecution is ready for the trial of this matter;

(b) to the best of my belief the answers in this Certificate are correct; and

(c) it is not anticipated that a notice discontinuing the prosecution will issue.

I undertake that I will inform the Court as soon as is reasonably practicable after I become aware of any change in circumstances which results in a change to any of my answers on this Listing Certificate.

_____ _____

Signature Date

PD Annexure 3: Defence Listing Certificate (PD 9)

LISTING CERTIFICATE – DEFENCE

	District Court of Western Australia At: Number:
Parties	THE STATE OF WESTERN AUSTRALIA / THE QUEEN -and- [ ]

1. STATUS OF ACCUSED

(a) Is the accused:

❒ On bail ❒ Remanded in custody ❒ Sentenced prisoner

(b) Has the accused been advised of:

(i) The discount that may be available under s 9AA of the *Sentencing Act 1995* if a plea of guilty is entered at the first reasonable opportunity;
(ii) The legal practitioner's estimate of the reduction in the head sentence (expressed in years or months) that may be available if a plea of guilty is entered at the first reasonable opportunity;
(iii) The extent of the discount available under s 9AA of the *Sentencing Act 1995* will generally be reduced the longer the delay in entering a plea of guilty.

❒ Yes ❒ No

(c) In relation to the current charges, does the accused intend to:

❒ Plead guilty? ❒ Plead not guilty?

❒ Enter another plea? (Please specify) _____

(d) Is there any possibility of the accused pleading guilty to any lesser charges?

❒ Yes ❒ No

(e) Have the accused's solicitor and counsel complied with CPR rule 10?

❒ Yes ❒ No

(f) Does the accused intend to apply for Legal Aid?

❒ Yes ❒ No

If "yes", specify current status of any Legal Aid application:

If a guilty plea, it is not necessary to complete Parts 2 to 7.

2. COMMUNICATION WITH THE PROSECUTION

(a) Have all the accused's requests for information, clarification or better disclosure concerning this prosecution been complied with?

❒ Yes ❒ No

If "no", specify the nature of the request and when it was made:

(b) Has there been any discussion with the prosecution as to facts that might be agreed or evidence that might be admitted at trial by consent?

❒ Yes ❒ No

If "no", specify why not:

3. RECORDS OF INTERVIEW

In respect of any proposed records of interview:

(a) Does the disc / tape need editing?

❒ Yes ❒ No

(b) Has the accused provided the prosecution with any proposed edits?

❒ Yes ❒ No

(c) Has the editing been agreed?

❒ Yes ❒ No

Practitioners are reminded of the need to comply of paragraph 9.7 of Practice Direction 9 'Criminal Listings' in relation to edits to video evidence.

4. OTHER VIDEO EVIDENCE

In respect of any visually recorded evidence or other video evidence:

(a) Does the disc / tape need editing?

❒ Yes ❒ No

(b) Has the accused provided the prosecution with any proposed edits?

❒ Yes ❒ No

(c) Has the editing been agreed?

❒ Yes ❒ No

Practitioners are reminded of the need to comply with paragraph 9.7 of Practice Direction 9 'Criminal Listings' in relation to edits to video evidence.

5. TRIAL LISTING

(a) Estimated trial length (in days) ☐

(b) Number of defence witnesses ☐

(c) Will any witness be required to travel from interstate or overseas?

❒ Yes ❒ No

(d) Dates on which accused's witnesses are not available (due to overseas travel or other specified reason):

(e) Does the accused intend to make any application that may affect whether the matter can be listed for trial (eg for separate trials)?

If "yes", specify the nature of the proposed application and when it will be made:

6. TRIAL PREPARATION

(a) Are there any disputes as to the admissibility of evidence?

❒ Yes ❒ No

If "yes", specify the evidence in issue and nature of the dispute:

(b) Is a *Criminal Procedure Act 2004* s 98 directions hearing required?

❒ Yes ❒ No

If "yes" specify the issues to be determined:

(c) Does the accused intend to call expert evidence?
(See Criminal Procedure Act 2004 s 96, Criminal Procedure Rules 2005 r 21)

❒ Yes ❒ No

(d) Does the accused intend to give or adduce alibi evidence?
(See Criminal Procedure Act 2004 s 96, Criminal Procedure Rules 2005 r 21)

❒ Yes ❒ No

(e) Are there any other issues that need to be attended to prior to trial?

❒ Yes ❒ No

If "yes", specify the issues:

7. TRIAL ARRANGEMENTS

(a) Does the accused intend to seek orders that any witness be declared a "special witness" pursuant to *Evidence Act 1906* s 106A?

❒ Yes ❒ No

If "yes", specify:

Witness' name	**Date of birth**	**When application will be made**

(b) Does the accused intend to seek orders that any witness give evidence by audiolink or videolink?

❒ Yes ❒ No

If "yes", specify:

Witness' name	**Date of birth**	**When application will be made**

(c) Does any witness to be called by the accused require an interpreter?

❒ Yes ❒ No

If an interpreter is required, the accused must advise the criminal registry not less than 14 days before the trial is due to commence.

(d) Is the trial going to require audio visual or electronic arrangements beyond the use of a DVD player, CD player or VHS video player (eg presentation of documentary evidence on computer screens or digital photos)?

❒ Yes ❒ No

If "yes", the accused must advise the criminal registry in writing of its requirements not less than 21 days prior to the commencement of the trial.

The Court's capabilities as regards electronic evidentiary material are set out in the document entitled "Submission of Electronic Evidentiary Materials in Western Australian Courts" which is available on the Court's website.

(e) Does the offence relate to pornography or objectionable material under legislation such as the *Classification (Publications, Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996?*

❒ Yes ❒ No

If "yes", the practitioners should comply with the directions in Circular to Practitioners 15 'Management of Trials – Offence Relating to Pornography and Objectionable Material'.

8. CONTACT DETAILS

Solicitor	
Direct phone number	
Fax	
Email	

9. CERTIFICATION

I am the solicitor with the conduct of the defence in this matter.

I certify that:

(a) in all respects *or* in all respects other than those noted in this certificate (*delete inapplicable*) the defence is ready for the trial of this matter; and

(b) the answers in this certificate are correct to the best of my knowledge and instructions;

(c) it is not anticipated that the accused will change his intention as set out in the answer to question 1(c).

I undertake that I will inform the Court as soon as is reasonably practicable after I become aware of any change in circumstances which results in a change to any of my answers on this Listing Certificate.

_____ _____

Signature Date

CIRCULARS TO PRACTITIONERS (CP)

1 USE OF TECHNOLOGY[12]

Summary: This Circular 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 both the District Court Building in Perth and circuit locations.

1.1 Background

1.1.1 The courts in which the District 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.

1.1.2 The vast majority of hearings conducted by the District Court take place in the District Court Building ("DCB"). Where there are particular differences in capabilities and practice for circuit locations, these are noted.

1.2 Use of Laptops

1.2.1 There are 24 courtrooms in the DCB 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 District Court sits.

1.2.2 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 responsibility of practitioners to provide a lead to connect their 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' 3.5mm audio socket. An adapter will also be required to connect an Apple MAC laptop.

1.2.3 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 trial 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.

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

1.2.5 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 7

[12] Formerly Circular to Practitioners GEN 2 of 2010 – Use of Technology.

days prior to the date on which the hearing is to commence. The Courtroom Technology Booking Form is available on the Court's website. The reason for this requirement is to allow the Court to allocate a courtroom with the relevant capability.

1.2.6 Counsel benches in all DCB and circuit courts are equipped with power points for laptops and other devices.

1.3 Video & audio material

1.3.1 All courts in which the District Court sits have a DVD-Video (MPEG2 format) disc player and a VHS tape player. The DVD player can also play standard audio CDs (not data CDs.).

1.3.2 Video and audio material (e.g. mp4, mp3) recorded on a USB can also be played on the Court Usher's computer or on the practitioner's own laptop. The requirements in 1.2 above apply to the use of the practitioner's laptop for this purpose. In particular, the practitioner is required to seek the formal approval of the Judge at or prior to the commencement of the trial should they wish to use their own laptop. If using the Court Usher's computer, it is the practitioner's responsibility to ensure that any recording on a USB is in a file format that is supported by the Court Usher's computer. Practitioners can make arrangements to test the compatibility of recordings to be played on the Court Usher's computer by telephoning the Court's Technology Officer on 9425 2278.

1.3.3 Audio or video material which was not originally recorded on a DVD, CD, or USB, should be re-recorded into one of these formats. An example may be video surveillance footage or the recording of a telephone intercept originally stored on a hard drive. The reason is to allow the relevant material to be tendered as an exhibit through the tender of the DVD, CD or USB. In the absence of agreement between the parties, there will need to be continuity evidence given to support the tender of the actual exhibit.

1.3.4 The disc, tape or USB should be made available to the Associate to the trial judge 2 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.

1.3.5 From time to time when practitioners in a trial have sought to play an audio recording on a CD, DVD, or USB 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).

1.3.6 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 telephoning the Court's Technology Officer on 9425 2278.

1.4 Document cameras

1.4.1 Twenty-one of the DCB 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.

1.4.2 Where a practitioner wishes to use the document camera, the practitioner must send to the Court a Courtroom Technology Booking Form not less than 7 days prior to the date on which the hearing is to commence.

1.5 Photos

1.5.1 The Court's general practice 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.

1.5.2 Printed photos can be displayed in courtrooms on a document camera (see 1.4 above).

1.5.3 If a practitioner wishes to present images in electronic format, the practitioner should arrange for the photos to be displayed though a laptop on the counsel bench (or that of the instructing solicitor), connected to the court AV system. The requirements in 1.2 above apply to this use of the laptop.

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

1.5.5 Each photograph 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.

1.6 Other PC based evidence

1.6.1 A practitioner may wish to present evidence, submissions or other material using a computer based format (in addition to images which are dealt with in 1.5 above). Examples include:

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

1.6.2 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).

1.6.3 As noted in 1.2 above, the practitioner wishing to use the court AV system through a laptop must send to the Court a Courtroom Technology Booking Form not less than 7 days prior to the date on which the hearing is to commence, and is required to seek the formal approval of the Judge at or prior to the commencement of the trial.

1.7 Annotation Devices

1.7.1 Each court in the DCB is equipped with an Annotation Device in the form of a tablet and stylus-pen installed with an interactive whiteboard software program. This device doubles as a touch-screen computer monitor and whiteboard. It can be used by a witness to draw diagrams, which can be saved as an electronic image onto a USB and printed. There are colour printers outside each court. The printed copy will be the exhibit. The image can be recalled to the screen and, if necessary, annotated by other witnesses.

1.7.2 A practitioner can also request the Court to upload images or documents onto the Annotation Device for a witness to annotate. The jury can see the witness annotate the image or document in real time via the overhead screens in court. The annotated image can be saved onto a USB and printed. The printed image will be the exhibit. The Annotation Device is also equipped with a digital zoom, to zoom in and out of images and documents.

1.7.3 The Court limits the number of images each party can upload to 10. This is because more images than that slows the Annotation Device, with the consequent risk of delays to the efficient conduct of the trial.

1.7.4 When a witness is being asked to use the Annotation Device, the Court Usher will assist with familiarising the witness with the system. Paragraph 1.10 below sets out the type of instruction that a Judge may give to the witness.

1.7.5 A practitioner wishing to use the Annotation Device must send to the Court a Courtroom Technology Booking Form and Annotation Device Booking Request Form not less than 7 days prior to the date on which the hearing is to commence. Where the party wishes to have images uploaded, the images need to be submitted together with the Courtroom Technology Booking Form.

1.8 CCTV, video and audio conferences

1.8.1 All circuit courts and all DCB courts are equipped with audio and video conference capabilities. There are 9 remote witness rooms in the DCB, including 3 dedicated child witness rooms.

1.8.2 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 7 days prior to the hearing so that a courtroom with the relevant capability can be allocated.
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 fax to the Court. • A Video Link Booking Request Form is to be sent to the Court not less than 14 days before the hearing date. • The requesting party also needs to book the facility from which the witness will give evidence. • Fees apply.
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 fax to the Court. • A Courtroom Technology Booking Request Form is to be sent to Registry 7 days prior to the hearing so that a courtroom with the relevant capability can be allocated.

1.8.3 The Court's policy on witnesses giving evidence by video link is set out in Practice Direction 2 'Use of Video Link Facilities'. 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.

1.9 Other modes of presentation

1.9.1 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.

1.9.2 The practitioner should also contact the Court's Technology Officer on 9425 2278 at least 21 days before the commencement of the hearing in order to discuss the proposed arrangements and arrange a time at which the party can attend court and test the proposed mode of presentation.

1.10 Instructions to a witness on using the Annotation Device

Ms/Mr Witness, in a moment I am going to ask you to draw on the tablet in front of you which is an Annotation Device. Before I do that, I want to make sure you are comfortable with the system.

Ms/Mr Usher is going to hand you a special stylus pen to use.

I would like you to draw a square on the page. Now a circle. You will need to hold the pen straight (perpendicular) against the screen.

Now we are going to change colour. You will see a selection of four coloured boxes under 'Colour' on the top left hand side of the screen. To select the red colour, press on the red box. Now draw another circle.

You can erase what you have drawn by using the rubber tip on the other end of the pen to rub out the screen. Alternatively, in the toolbar at the bottom of the screen you will see a box with an eraser in it. Press on the box. Now rub out what you have drawn. Please be aware that there is also an 'Erase' box at the top of the screen. If you press this box, it will completely erase the entire drawing.

If you make a mistake, let us know, and you can erase what you have drawn.

Once you have completed your drawing, we are going to save the image and print it for use in the trial.

Ms/Mr Witness, do you feel comfortable with the Annotation Device?

2 MAINTAINING TRANSCRIPT QUALITY[13]

Summary: This Circular sets out the information practitioners are requested to provide in order to assist the Court's transcription service providers produce accurate transcripts first time, every time.

2.1 Background

2.1.1 The District Court's transcription service providers no longer provide monitor staff in or adjacent to courts. This means that it is no longer practical for transcription monitors to physically attend court hearings to obtain information to assist in the production of accurate transcripts. In order to maintain the quality of transcripts, practitioners are requested to provide the information set out in this Circular.

2.2 Unusual names

2.2.1 Many transcript inaccuracies arise from unusual names not encountered in every day use. Examples include:

- Company names
- Acronyms
- Street names outside of Perth
- Places/communities outside of Perth such as remote communities; farm names
- Unit/apartment blocks which are part of someone's address
- Unusual brand names
- Shop names
- Foreign names
- List of legal authorities.

2.2.2 It is considered these are most effectively dealt with by practitioners being alert to these and either asking the witness to spell the names on the first occasion the name is mentioned or the practitioner themselves spelling the name for the purposes of the transcript.

2.3 DPP

2.3.1 Prosecuting authorities are to provide transcript service providers with copies of the trial indictment and the associated witness list by 9.00 am on the day of hearing.

[13] Formerly Circular to Practitioners GEN 1 of 2009 – Maintaining Transcript Quality.

The relevant contact details are:

All Perth matters

Epiq Global
Transcript Manager – Debbie Helm
Email: debbie.helm@epiqglobal.com

All circuit matters

Auscript Australasia Pty Limited
Court Monitor Supervisor – Tania Debski
Fax: 08 9221 2449
Email: ausper@auscript.com.au copied to t.debski@auscript.com.au

3 TRANSCRIPT – LAST PORTION OF THE DAY[14]

Summary: This Circular sets out the Court's arrangements to facilitate the provision of transcript to counsel involved in trials in the District Court Building and circuit locations where the last portion of transcript is produced after the Court has risen for the day.

3.1 Background

3.1.1 The Court is concerned to ensure that trial counsel are able to conveniently obtain transcript produced after the Court has risen ("end of day transcript").

3.1.2 For trials in the District Court Building ("DCB"), the Court's transcript service provider is under an obligation to provide 90% of all transcripts of words spoken at a trial by the following deadlines:

For all spoken word before	11.00 am	Delivered no later than	1.30 pm
	2.00 pm		4.30 pm
	4.00 pm		6.00 pm
	after 4.00 pm		9.30 am next day

3.1.3 For circuit trials, the Court's transcript service provider is under an obligation to deliver

- 90% of all transcripts of words spoken at a trial by the following deadlines:

For all spoken word before	11.00 am	Delivered no later than	1.30 pm
	2.00 pm		4.30 pm

- 95% of all transcripts of words spoken at a trial by the following deadlines:

For all spoken word before	4.00 pm	Delivered no later than	6.00 pm
	after 4.00 pm		9.30 am next day

3.1.4 The delivery requirements in 3.1.3 only apply to running transcripts. In circuit trials, running transcript is only provided up to the time the jury retires to consider their verdict. The portion of transcript following the time the jury retires to consider their verdict to the end of the hearing ("remaining transcript"), does not form part of the running transcript or the end of day transcript for the last day of the trial. The provision of the remaining transcript is based on a two-day turnaround.

[14] Formerly Circular to Practitioners GEN 3 of 2008 – Transcript – Last Portion of the Day.

3.1.5 The transcripts are provided electronically to the Court. The procedure in this Circular sets out how a practitioner may receive an electronic version of the end of day transcript, as soon as it is received by the Court.

3.1.6 The Court has instructed its transcript service provider not to provide copies of transcripts directly to practitioners.

3.2 Procedure for DCB criminal trials

3.2.1 In order to be provided with an electronic copy of the end of day transcript, counsel must complete the form in CP Annexure 1 and fax or email it to the Associate to the presiding judge, prior to the commencement of the trial. Contact emails for Associates are published on the Court's website. The Associate will enter the email information into the Court's transcript management system, with the effect that the end of day transcript will be automatically sent to the nominated email address.

3.2.2 The end of day transcript will be provided in MS Word format.

3.2.3 The paper copy of the last portion of the day's transcript will be provided to counsel in the courtroom the following day, except for the last day of the trial where counsel will receive only the electronic version.

3.2.4 There is no fee for the provision of the electronic version of the end of day transcript.

3.3 Procedure for circuit criminal trials

3.3.1 Please note that 3.2.1 above does not apply to circuit criminal trials. The Court's transcript management system does not currently have the capacity to automatically send to practitioners an electronic copy of the end of day transcript for a circuit trial.

3.3.2 The paper copy of the end of day transcript will be provided to counsel in the courtroom the following day, except for the last day of the trial where counsel will receive only an electronic version, where they have provided an email address to the Associate to the presiding judge.

3.3.3 An electronic version of the remaining transcript (as defined in 3.1.4 above) will be provided to counsel approximately two days after the end of the trial and only where counsel have provided an email address to the Associate.

3.3.4 The end of day transcript and the remaining transcript will be provided in MS Word format. There is no fee for the provision of the electronic version of these transcripts.

4 RETENTION AND DISPOSAL OF COURT RECORDS[15]

Summary: This Circular sets out the Court's approach to managing the retention and disposal of its records.

4.1 Introduction

4.1.1 In line with the provisions of the *State Records Act 2000* (WA), the State Records Commission has approved the District Court's Retention and Disposal Schedule.

4.1.2 A summary of the Schedule is set out in the table below. Please note the Schedule categorises case files as significant and insignificant. Significant files include those files deemed to satisfy one of the following criteria:

- Relate to the development of legislation, regulations, or policy; or
- Relate to controversial matters; or
- Have wide community interest; or
- Relate to unique events or circumstances.

4.1.3 Court records may not be available beyond the times specified below unless a judge or registrar has directed further retention of the record.

4.2 Retention and Disposal Schedule

Record	Archive	Destroy
Significant criminal files	25 years after finalisation	
Insignificant criminal files		53 years after finalisation
Video pre-recordings of child evidence		6 years after transcription
Video recordings of child interview (by Police)		6 years after transcription
Master audio recordings of criminal proceedings		6 years after creation
Calendar of offences	25 years after last action	

[15] Formerly Circular to Practitioners GEN 1 of 2008 – Retention and Disposal of Court Records.

5 REQUESTS BY MEDIA FOR ACCESS TO COURT RECORDS[16]

Summary: This Circular sets out the Court's practice in relation to requests by media organisations for access to court records, in particular copies of video footage or images tendered in trial.

5.1 Open justice

5.1.1 The Court has the power in both its civil and criminal jurisdiction to allow third parties, including the media, access to court records. In particular, this power allows the Court to release copies of transcripts and copies of video footage or images tendered in evidence in civil and criminal cases. In criminal cases, the power is contained in *Criminal Procedure Rules 2005* (WA) (**CPR**) r 51. In civil cases, the power is contained in *District Court Rules 2005* (WA) (**DCR**) r 71. In each case, the power may be exercised by a Judge or Registrar ("judicial officer") and, in certain cases, by the Court's media manager.

5.1.2 The Court's power to allow access to, and provide copies of, court records is one way in which it can facilitate 'open justice'. In the words of Lord Scarman in *Home Office v Harman* [1982] 1 All ER 532 at 547, "the common law by its recognition of the principle of open justice ensures that the public administration of justice will be subject to public scrutiny….Justice is done in public so that it may be discussed and criticised in public". However, the principle of open justice is not an end in itself. "It is a means to an end; namely, to inform the public about the workings of the third arm of government and to ensure that courts and judges administer the justice system in a way that will maintain and foster its integrity, fairness and efficiency": *Re Hogan; ex parte West Australian Newspapers Limited* [2009] WASCA 221 [50] ("*Hogan*").

5.1.3 The facilitation of open justice needs to be balanced against other potentially competing interests. In the criminal jurisdiction, the interests of victims of crime is a relevant factor. *Victims of Crime Act 1994* (WA) s 3(1) provides that judicial officers "are authorised to have regard to and apply the guidelines in Schedule 1 [to the Act] and they should do so to the extent that it is … within or relevant to their functions to do so, and … practicable for them to do so". Relevantly, the Schedule provides that a "victim should be treated with courtesy and compassion and with respect for the victim's dignity" (par 1) and the "privacy of a victim should be protected" (par 5).

5.1.4 Examples of competing interests which may tend to suggest that release of information is not appropriate include where release of the court record, in particular a video or image, may:

[16] Formerly Circular to Practitioners GEN 1 of 2011 – Requests by Media for Access to Court Records.

- Embarrass or humiliate the victim or another witness or expose them to risk of harm.
- Identify a child who is a witness or is otherwise involved.
- Identify a police undercover operative or a protected witness or otherwise prejudice an ongoing investigation.
- Undermine the interests of the person who made the video or image (who may have signed an exclusive deal to provide the video or image to a particular media outlet).

5.1.5 The Court will thus determine each application on a case by case basis.

5.1.6 The information set out in this Circular to Practitioners in no way limits the discretion of judicial officers in considering requests for the release of information. Judicial officers are not bound by this Circular, and will depart from it if considered appropriate in all the circumstances of the application before them.

5.2 Instances in which records will not be provided

5.2.1 There are a number of instances in which the Court may not release information. CPR r 51(5) provides that a record will not be provided where:

(a) a suppression or other order has been made pursuant to *Criminal Procedure Act 2004* (WA) s 171;

(b) the record is a pre-sentence report which is protected by *Sentencing Act 1995* (WA) s 22;

(c) any other order or written law prohibits or restricts the publication or possession of the record to which the application relates (eg *Evidence Act 1906* (WA) (**EA**) s 36C).

5.2.2 DCR r 71(7)(b) and (10) are to the same effect as CPR r 51(5).

5.2.3 Both DCR r 71(7)(a) and CPR r 51(5) require the applicant to demonstrate "sufficient cause" to inspect or copy the record.

5.3 Open justice

5.3.1 All applications are to be made in writing, including by email.

5.3.2 The application should set out:

- The matter number.

- Where there is a current hearing, the name of the judicial officer presiding and the location of the hearing.
- Specific details to identify the record or exhibit sought to be released, for example, exhibit numbers.
- The grounds on which the application is made.
- Whether the application is being made on the basis that any video or image released will be pooled with any other media outlets and, if so, the name of those outlets.
- Any relevant publication deadlines.

5.3.3 The application should be addressed and sent to the Court as follows:

Type of application	**Addressee**	**Fax**	**Email**
Criminal - current trial or sentencing	Associate to presiding Judge	Perth: see website Circuit courthouse: see website	Associate to Judge – see website cc: courttranscriptdc@justice.wa.gov.au
Criminal – other	Principal Registrar	(08) 9425 2268	courttranscriptdc@justice.wa.gov.au

5.3.4 Media organisations are encouraged to apply by email. The purpose of having the applications to Associates copied to the general transcripts email address is to enable the Court to have a central record of all applications.

5.3.5 Applications sent by email should have a reference line as follows:

Release of information – [case number] – [accused name] – [Hearing details]

For example:

Release of information – IND 1234 of 2010 – Jones - Trial before Judge Fenbury

5.3.6 The judicial officer dealing with the application may require the applicant to provide further information or file an affidavit in support of the application (DCR r 71(2)(a)).

5.3.7 The judicial officer dealing with the application may also require the applicant to notify interested persons of the application (see CPR r 51(4)(b)).

5.3.8 The application may be granted on terms or conditions (CPR r 51(6A), DCR r 71(8)(b)). This could include a condition prohibiting republication or a condition that the names of child complainants (not otherwise covered by EA s 36C) not be published without the written consent of the child's parent: see generally, *Hogan*.

5.3.9 The judicial officer will also determine the costs associated with the application (CPR r 51(6), DCR r 71(9)).

5.4 Criminal jurisdiction

5.4.1 The Court will not usually release exhibits during a trial, at least not until the point in time where the jury has returned a verdict. Prior to that, the jury requires access to the exhibits as part of their deliberation processes. There is also the obvious risk of media reporting of the trial referring to the released material in a way that impacts on the deliberation by members of the jury.

5.4.2 Where the application is made in the course of a trial, up to and including the sentencing of the defendant, the request is to be made to the Associate to the trial judge. Contact details for Associates are provided on the Court's website.

5.4.3 If the application is made after sentencing has taken place, it should be addressed to the Principal Registrar.

5.4.4 Media organisations are encouraged to send their request to the Court as soon as they identify an exhibit that they would like access to. The Court will endeavour to deal with the request so that if release is appropriate, it can be made either immediately after the verdict has been handed down or after sentencing.

5.4.5 The Court's preference is to release copies of exhibits immediately following the conclusion of the sentencing hearing. This allows the Court time to copy the exhibits in between the end of the trial and the sentencing.

5.4.6 Where there is a request made during a trial, the first issue for the Judge is a negative screen. If there are no circumstances in which the Judge would release the information, then the Judge, through their Associate, will advise the applicant of that decision.

5.4.7 If the Judge is of the view that it may be appropriate to release the exhibit, then the Judge may inform counsel either in open court or through his or her Associate that a request has been made to determine whether the prosecution or the defence have any objections to the exhibit being released.

5.4.8 Where an exhibit is to be released, the Court will if practicable make copies of the exhibit. This may not be possible at circuit locations, which may mean that release cannot be made until the Judge has returned to Perth.

5.4.9 Where an exhibit requires editing prior to release, the Court will need to be satisfied that there is a process in place for this to occur, without compromising the exhibit. The Court will also need to be satisfied that editing the exhibit is practicable. An example is where the prosecutor or police media unit is able to provide edited or pixelated video footage using a copy exhibit. An alternative is

to release a copy of an exhibit subject to a limit on republication as was done in *Hogan*.

5.4.10 Where one media organisation has been granted leave to inspect or obtain a copy of an exhibit, the Court's media manager may grant an oral application for access to the same material to another media organisation (CPR r 51(2), (3A)).

6 INTERPRETING AND LANGUAGE SERVICES GUIDELINES[17]

Summary: This Circular sets out the Court's approach to the use of interpreters in criminal 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. Requests for the use of an interpreter must be made on the booking form in CP Annexure 3 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. This Circular provides guidance to counsel appearing in hearings in which an interpreter is interpreting for a party or witness. The Circular also includes a Protocol for the Use of Interpreters, which is set out in CP Annexure 2. The Protocol provides guidance to interpreters undertaking assignments for District Court hearings.

6.1 Background

6.1.1 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.

6.1.2 An interpreter is a "person who facilitates communication between two parties who use different languages. The interpreter conveys an oral or signed message or statement from one language into another with accuracy and objectivity ".[18] 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.

6.1.3 A translator is a "person who makes a written transfer of a message or statement from one language into another language with accuracy and objectivity to enable communication between two parties who use different languages."[19]

6.1.4 In developing its language services guidelines, the Court has had regard to *The Western Australian Language Services Policy 2014* and the *Department of the Attorney General Language Services Policy 2017*.[20] The guidelines have been developed in consultation with relevant interpreter service providers and industry bodies.

[17] Formerly Circular to Practitioners GEN 2 of 2011 – Language Services Guidelines.
[18] As defined in *The Western Australian Language Services Policy 2014*, available online at: http://www.omi.wa.gov.au/resources/publications/documents/Languages/Language_Services_Policy_2014.pdf ("OMI Policy"), p 45.
[19] OMI Policy, n 18, p 46.
[20] Available online at: http://www.department.dotag.wa.gov.au/C/customer_service.aspx?uid=1163-9829-1813-1792

6.2 Translators

6.2.1 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: [21]

(a) sets out their qualifications as a translator;

(b) identifies the relevant documents translated; and

(c) states that the English translation is accurate.

6.2.2 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.

6.2.3 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.

6.3 Determining whether an interpreter is required

6.3.1 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.

6.3.2 *The Western Australian Language Services Policy 2014*[22] contains guidance and a set of questions which may be of assistance in determining whether a person requires the use of an interpreter. A judicial officer may use these questions to assist in determining whether an interpreter is required.

6.3.3 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.[23]

6.4 Booking of interpreters

6.4.1 For a criminal hearing, the accused is to notify the Court not less than 14 days prior to each appearance in the District Court that he or she requires an interpreter. The request form is CP Annexure 3.

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[21] This approach is based on that in *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) s14(1).
[22] See footnote 18.
[23] For the different types of interpretation services available, see para 2.7 of the Protocol for the Use of Interpreters set out in CP Annexure 2.

6.4.2 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 trial listing hearing after an indictment is filed. The booking form may be handed to the judicial officer presiding at the trial listing hearing. The request form is also CP Annexure 3.

6.4.3 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 6.6 of these guidelines and the Protocol for the Use of Interpreters in 6.7.

6.4.4 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.

6.4.5 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.

6.4.6 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, 6.5 below).

6.5 Conflicts of interest

6.5.1 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 in CP Annexure 3. 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.

6.5.2 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.

6.6 Competency of interpreters

6.6.1 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.

6.6.2 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 (CP Annexure 2).

6.6.3 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.

6.7 Protocol for the Use of Interpreters

6.7.1 CP Annexure 2 is the Court's Protocol for the Use of Interpreters ("Protocol"). 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.

6.7.2 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.

6.7.3 The Court has processes in place to ensure that all Court interpreters are aware of the Protocol.

6.7.4 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.

6.8 Guidance for counsel

6.8.1 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.

6.9 Witnesses or accused with a hearing impairment

6.9.1 The District Court Building is 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.

6.9.2 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.

7 REGISTRARS – CRIMINAL JURISDICTION[24]

Summary: This Circular sets out the District Court's practices for the exercise of criminal jurisdiction by Registrars of the Court

7.1 Background

7.1.1 By *Criminal Procedure Act 2004* (WA) (**CPA**) s 124(5) and *Criminal Procedure Rules 2005* (WA) (**CPR**) r 5A, each legally qualified Registrar of the Court has been delegated jurisdiction in relation to criminal matters, including under any other written law, other than jurisdiction to:

- find a person guilty or not guilty of an offence
- discharge an accused from a charge;
- consent to the discontinuance of a charge in a case where the accused does not consent to the discontinuance;
- stay a prosecution;
- set aside a committal;
- find a person guilty of a contempt of the court.

7.1.2 A Registrar may refer any proceedings before him or her to a Judge who may deal with the proceedings or refer them back with or without directions (CPR r 5B(1)).

7.1.3 Pending the determination of the proceedings the Registrar may make an interim order (CPR r 5B(2)).

7.1.4 A reference in this Circular to Practitioners to a Registrar is to a legally qualified Registrar.

7.2 Sentence mention hearings

7.2.1 Sentence Mention lists will ordinarily be presided over by a Registrar.

7.2.2 Practitioners are not required to robe before the Registrar.

7.2.3 The other arrangements for Sentence Mention Hearings set out in Circular to Practitioners 10 'Sentencing Hearings', continue to apply.

[24] Formerly Circular to Practitioners CRIM 1 of 2014 – Registrars – Criminal Jurisdiction.

7.3 Consent orders

7.3.1 By CPR r 5A and r 25A, the power to make a direction or order by consent is delegated to the Registrars of the Court. A Registrar cannot make a consent order that would finally determine a prosecution (CPR r 25A(6)). This includes an order discontinuing a prosecution. Nor will a Registrar consider a consent order for a matter for which the Registrar would not have jurisdiction were the matter to be dealt with in open court (see CPR r 5A).

7.3.2 As a matter of practice, Registrars will not deal with a consent order to edit a record of interview or visually recorded interview.

7.3.3 The matters which Registrars will deal with by way of consent order include applications to vary bail.

7.3.4 The other arrangements for consent orders set out in Practice Direction 8 'Consent Orders', apply to decisions made by Registrars.

7.4 Other duties

7.4.1 The Court will advise practitioners if other duties are given to Registrars.

7.5 Appeals

7.5.1 A person dissatisfied by a decision made by a Registrar under jurisdiction delegated to a Registrar may appeal to a Judge of the Court (CPA s 124(6)). An appeal cannot be commenced more than 21 days after the date of the Registrar's decision, unless a Judge of the Court gives leave to do so (CPA s 124(7)). The appeal must be conducted in accordance with the rules of court (CPA s 127(8)). The appeal is to be by way of a new hearing of the issue that was before the Registrar (CPA s 124(9)).

7.5.2 The appeal must be commenced by filing and serving a notice that:

(a) sets out the particulars of the Registrar's decision or that part of it to which the appeal relates; and

(b) sets out the final orders that it is proposed the Court should make on the appeal (CPR r 5C(1)).

7.5.3 The notice should be in the form of CPR Form 1, save that:

(a) the words "Appeal from a decision of a Registrar" should be inserted in place of the word "Application" in the box in the top right hand corner; and

(b) the information required by CPR r 5C(1) should appear in the row marked 'Application details'.

7.5.4 The Court will ordinarily list the appeal for a hearing before a Judge in the General Duties list in the Court, with an accused in custody whose appearance is required appearing by videolink.

7.5.5 Appeals from decisions in circuit matters will likewise ordinarily be listed in the General Duties list in the Court in Perth, with any country practitioners and the accused appearing by videolink.

7.5.6 An appeal does not operate as a stay of proceeding unless a Judge orders otherwise (CPR r 5C(2)).

8 MANAGEMENT OF INDICTMENTS AND NOTICES OF DISCONTINUANCE[25]

Summary: This Circular includes a protocol agreed between the District 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.

8.1 Background

8.1.1 The District 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 set out at paragraph 8.2 of this Circular.

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

8.1.3 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.

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

8.2 Protocols for the management of indictments and notices of discontinuance

8.2.1 The protocol reflects the policy that each prosecution notice charge committed to the District Court needs to be finalised by way of:

(a) a CPR Form 13, including where the charge has been discontinued; or

(b) remittal back to the court of summary jurisdiction pursuant to the 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.

[25] Formerly Circular to Practitioners CRIM 2 of 2010 – Management of Indictments and Notices of Discontinuance.

8.2.2 When an accused is properly committed to the District 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.

8.2.3 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 District 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 s 83(6)" in substitute of a prosecution notice/charge number (see the examples attached).

8.2.4 When the prosecution intends to apply to remit any prosecution notice charge to the court of summary jurisdiction pursuant to CPA s 86A, 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 s 132(7)).

8.2.5 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.

8.2.6 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 the 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.

8.2.7 When the prosecution intends to make an application to amend a charge on an indictment, pursuant to CPA s 132 (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.

8.2.8 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.

This is so that if the indictment goes to a jury it is not apparent that any amendments have been made.

8.2.9 An application in accordance with this protocol may be dealt with by consent order, in accordance with CPR r 25A and Practice Direction 8 'Consent Orders'. 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.

8.2.10 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.

8.2.11 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.

9 CRIMINAL LISTINGS – PERTH[26]

Summary: The District Court endeavours to allocate trial dates to all criminal matters as soon as practicable after the indictment is filed. The prosecution's Listing Certificate will be required when the indictment is filed; the accused's Listing Certificate 28 days later.

9.1 Background

9.1.1 The Court is in the process of reducing the time between committal and commencement of a trial to a median of 20 weeks. In order to achieve this reduction, the Court will endeavour to allocate trial dates at the first appearance in the District Court, or as soon thereafter as is practicable. At the present time, the trial dates will usually be within 1 to 4 months of the date on which they are allocated. However, the Court's intention is to further reduce this listing horizon in due course.

9.2 Application

9.2.1 This Circular to Practitioners applies to all criminal matters with their first appearance in the District Court.

9.3 Committals for trial – documents to be filed

9.3.1 Each matter committed for trial will be allocated a first appearance date in the District Court no earlier than 12 weeks after the date of committal. The current interval between committal and first appearance is thus maintained for the time being. The Court's intention is to reduce the time between committal and the first appearance in due course.

9.3.2 *Criminal Procedure Act 2004* (WA) (**CPA**) s 95, read with *Criminal Procedure Rules 2005* (WA) (**CPR**) r 20, provides that the prosecution must comply with its disclosure obligations by no later than 42 days after the date on which the accused is committed for trial.

9.3.3 Practice Direction 9 'Criminal Listings' directs that the indictment is to be lodged and served no later than 42 days after the date on which the accused is committed for trial or sentence. There is a power to extend this time limit. If the prosecution complies with this requirement and CPA s 95, the accused should have ample time to consider his or her position prior to the first appearance in the District Court.

[26] Formerly Circular to Practitioners CRIM 2 of 2008 – Criminal Listings – Perth.

9.3.4 Practice Direction 9 'Criminal Listings' also provides that the prosecution must lodge and serve its Listing Certificate at the same time as it lodges and serves the indictment.

9.3.5 Practice Direction 9 'Criminal Listings' further directs that the accused is to lodge and serve his or her Listing Certificate no later than 28 days after the date on which the indictment is lodged. This allows the accused to have 21 days in which to consider the indictment (CPR r 16) and then a further 7 days to consider trial issues if the intent is to proceed to trial.

9.3.6 If the prosecution and the accused both comply with their obligations, the accused's Listing Certificate should be filed about 2 weeks before the initial hearing.

9.4 Committals for trial – first appearance

9.4.1 The first appearance of an accused in the District Court will be before a Judge in a list to be referred to as a "Trial Listing Hearing".

9.4.2 The Judge will endeavour to allocate trial dates at the first Trial Listing Hearing.

9.4.3 The trial dates will be within 1 to 4 months from the date on which they are allocated.

9.4.4 The Court endeavours to accommodate the availability of counsel of choice for the accused. However, this may not always be possible.

9.4.5 In the event that there is an outstanding issue that needs to be resolved prior to trial, the Judge will allocate trial dates, and will also allocate a pre-trial hearing pursuant to CPR r 34.

9.5 Court attire for Trial Listing Hearings

9.5.1 As is the current practice, practitioners are required to robe for the Trial Listing Hearing before the Judge.

9.6 Expedited trials

9.6.1 The arrangements set out in this Circular to Practitioners should obviate the need for any particular matter to have an expedited trial. If there remains a need for a matter to have an expedited trial, the party seeking expedition should lodge and serve an application supported by an affidavit setting out the relevant facts prior to the initial hearing. The first appearance will then be in the Trial Listings Hearings list.

9.7 Summary

9.7.1 The changes described in this Circular to Practitioners are summarised in the table in 9.8 below.

9.8 Timetable for criminal listings

Timeline	**Party required to taken action**	**Source of obligation**	**Action**
Week 0			Accused committed for trial
Committal plus 6 weeks (42 days after committal)	Prosecution	CPA s 95 CPR r 20	Comply with disclosure obligations
Committal plus 6 weeks (42 days after committal)	Prosecution	Practice Direction 9 'Criminal Listings'	Lodge and serve indictment
Committal plus 6 weeks (42 days after committal)	Prosecution	Practice Direction 9 'Criminal Listings'	Lodge and serve Listing Certificate
Committal plus 9 weeks (21 days after indictment lodged)	Accused	CPR r 16	Accused has at least 21 days to consider indictment before he or she can be asked to plead to it.
Committal plus 10 weeks (not later than 28 days after the indictment is lodged)	Accused	Practice Direction 9 'Criminal Listings'	Lodge and serve Listing Certificate (if accused proceeding to trial).
Committal plus 12 weeks	All parties		Initial hearing
Trial Listing Hearing plus 1 to 4 months	All parties		Trial
Total of between 4 and 7 months from committal to trial			

10 SENTENCING HEARINGS[27]

Summary: All sentencing in the District Court will be undertaken in the one type of list, whether the matter comes into the Court as a committal for trial or a committal for sentence. This list will be referred to as a "Sentencing Hearing".

10.1 Application

10.1.1 This Circular to Practitioners applies to the sentencing of all offenders in the District Court.

10.2 Sentencing Hearings

10.2.1 The District Court will schedule Sentencing Hearings in Perth on Tuesdays, Thursdays and Fridays at 10.00 am. More than one Judge may be undertaking Sentencing Hearings on any given day. Practitioners should not assume that all Sentencing Hearings they have listed on a particular day will be before the same Judge.

10.3 Committals for sentence – Perth

10.3.1 As is the current practice, for a committal for sentence, the Magistrate will record the plea and make any necessary orders for pre-sentence or other reports.

10.3.2 All matters committed for sentence to the District Court will be listed in to a "Sentencing Mention" in the District Court on the next following Friday 7 weeks after the committal hearing. Pursuant to Practice Direction 9 'Criminal Listings' the indictment is to be filed no later than 42 days (6 weeks) after the date on which the accused is committed for sentence.

10.3.3 The Sentencing Mention will be before a Registrar. Practitioners are not required to robe before the Registrar.

10.3.4 The purpose of the Sentencing Mention is to ascertain whether the matter is ready for a Sentencing Hearing date to be allocated. No sentencing date will be allocated until an indictment has been filed. If no indictment has been filed, the matter will be listed for a further Sentencing Mention shortly after the time at which the indictment is to be filed.

10.3.5 For committals for sentence, the s 32 notice is required to be lodged at or before the first Sentencing Mention. The prosecution will be required to lodge the criminal history report again at or before the first Sentencing Mention. The

[27] Formerly Circular to Practitioners CRIM 3 of 2008 – Sentencing Hearings.

purpose of these requirements is to enable the Court to procure all relevant files from the Magistrates Court so as to enable the sentencing hearing to proceed on the first allocated date.

10.3.6 Where a matter is ready to be allocated a Sentencing Hearing, it will be allocated a date at the Sentencing Mention. The date will usually be within 3 to 6 weeks of the date of the initial mention.

10.4 Circuit arrangements

10.4.1 The substantive arrangements for circuits have not changed. To ensure consistency, some hearings have been renamed. The first day of each circuit will include a Sentencing Hearing. Accused who plead guilty in a video list will be remanded to the next Sentencing Hearing. Accused who are due to go to trial in the circuit will also be sentenced in this Sentencing Hearing.

10.5 Materials for Sentencing Hearings

10.5.1 The Court is concerned to ensure that all relevant material is received by the Judge presiding at a Sentencing Hearing sufficiently prior to the hearing to allow the Judge adequate time to prepare for the hearing. To this end, the Court has issued Practice Direction 10 ‘Sentencing Hearings’ which sets down a timetable for the filing of sentencing materials. The timetable is summarised in 10.6 of this Circular. It applies to both Perth and circuit sentencing.

10.6 Timetable for Sentencing Hearings

Time when action to be taken	**Party required to taken action**	**Source of obligation**	**Action required to be taken**
Not less than 42 days after committal	Prosecution	Practice Direction 9, para 9.2	Indictment to be filed
At or before the sentencing mention	Offender - Committed for sentence	Practice Direction 10, para 10.2	Lodge and serve Form 11 – s 32 *Sentencing Act 1995* (**SA**) request.
At or before the sentencing mention	Prosecution - Committal for sentence	Practice Direction 10, para 10.4	Lodge criminal history report
At least 28 days before the sentencing hearing	Offender - Committed for trial	Practice Direction 10, para 10.2	Lodge and serve Form 11 – SA s 32 request.
At least 28 days before the sentencing hearing	Offender	Practice Direction 10, para 10.3	Request the prosecution to lodge a notice pursuant to SA s 79 (suspended sentence), s 84 (conditional suspended sentence) or s 129 (conditional release order or community order) to be relied on at the sentencing hearing.
At least 14 days before the sentencing hearing	Prosecution	Practice Direction 10, para 10.3	Lodge any notice pursuant to SA s 79 (suspended sentence), s 84 (conditional suspended sentence) or s 129 (conditional release order or community order) to be relied on at the sentencing hearing.
At least 14 days before the sentencing hearing	Prosecution	Practice Direction 10, para 10.2	Lodge and serve Form 12 – SA s 32 consent.
At least 7 days before the sentencing hearing	Prosecution	Practice Direction 10, para 10.4	Lodge: • submissions • criminal history report • victim impact statements (if any) • photos or videos (or excerpts) • any other materials to be relied on at the sentencing pursuant to SA s 45.
At least 2 clear days before the sentencing hearing	Offender	Practice Direction 10, para 10.5	Lodge any materials to be relied on at the sentencing pursuant to SA s 45, including written submissions.

11 CIRCUIT HEARINGS[28]

Summary: The District Court operates one of the largest geographic circuit programs in the world. This Circular sets out the District Court's practices for circuit trials and sentencing hearings, highlighting differences with Perth hearings.

11.1 Background

11.1.1 The Court undertakes about 130 weeks of circuit hearings each year in which around 100 trials and 500 sentencing hearings are conducted.

11.1.2 The Court endeavours to finalise most circuit matters within 12 months of committal. In order to achieve this outcome, the Court will endeavour to allocate trial dates at the first appearance in the District Court, or as soon thereafter as is practicable. This in turn requires the indictment to be filed and disclosure completed before the first appearance.

11.2 Committals for trial – documents to be filed

11.2.1 *Criminal Procedure Act 2004* (WA) (**CPA**) s 95, read with *Criminal Procedure Rules 2005* (WA) (**CPR**) r 20, provides that the prosecution must comply with its disclosure obligations by no later than 42 days after the date on which the accused is committed for trial.

11.2.2 Practice Direction 9 'Criminal Listings' directs that the indictment is to be lodged and served no later than 42 days after the date on which the accused is committed for trial or sentence. There is a power to extend this time limit. If the prosecution complies with this requirement and CPA s 95, the accused should have ample time to consider his or her position prior to the first appearance in the District Court.

11.2.3 Practice Direction 9 'Criminal Listings' also provides that the prosecution must lodge and serve its Listing Certificate at the same time as it lodges and serves the indictment.

11.2.4 Practice Direction 9 'Criminal Listings' further directs that the accused is to lodge and serve his or her Listing Certificate no later than 28 days after the date on which the indictment is lodged. This allows the accused to have 21 days in which to consider the indictment (CPR r 16) and then a further 7 days to consider trial issues if the intent is to proceed to trial.

[28] Formerly Circular to Practitioners CRIM 3 of 2010 – Circuit Hearings – Criminal.

11.3 Committals for trial – first appearance

11.3.1 Each matter committed for trial will be allocated a first appearance date at a trial listing hearing ("TLH") in the District Court no earlier than 12 weeks after the date of committal.

11.3.2 A circuit TLH will be by video link to the circuit location and will commence at 9:15 am.

11.3.3 The TLH will be conducted via videolink from a courtroom in the District Court Building in Perth to the circuit location. Counsel for the prosecution and the defence based in Perth are to participate in proceedings in person in a courtroom at Perth. Counsel for the defence based in the circuit location are to participate in proceedings in person in a courtroom at the circuit location.

11.3.4 The Court's practice is that accused in custody and represented by Counsel will not have to appear by video link from the prison. Similarly, accused on bail and reporting at a location other than the circuit location courtroom and represented by Counsel will not have to appear in the proceedings. Accused on bail and not represented by Counsel will have to appear at the courtroom at the circuit location.

11.3.5 Defence counsel who wish to have their client brought up to court personally to the circuit location (or to the District Court Building if the accused is in a metropolitan prison) should make a request in writing not less than 14 days prior to the date on which the circuit TLH is to occur. The application is to be marked to the attention of the Criminal Circuits Listings Co-ordinator, who will then refer it to the Judge presiding at the circuit TLH or the Chief Judge. If an accused in custody does not wish to be present at the circuit TLH, and the Court is informed of that request sufficiently prior to the hearing to make the necessary administrative arrangements, the circuit TLH can take place in the absence of the accused in accordance with CPA s 88(4).

11.3.6 If the prosecution and the accused both comply with their obligations as set out in 11.2 above, the accused's Listing Certificate should be filed about 2 weeks before the first TLH.

11.3.7 The Judge will endeavour to allocate trial dates at the first TLH. Trial dates will not be allocated prior to the prosecution filing an indictment.

11.3.8 If the matter cannot be allocated trial dates, it will be adjourned to a further TLH.

11.3.9 The Court will endeavour to allocate trial dates within 1 to 4 months of the TLH. The Court endeavours to accommodate the availability of counsel of choice for the accused. However, this may not always be possible.

11.3.10 In the event that there is an outstanding issue that needs to be resolved prior to trial, the Judge will allocate trial dates, and will also allocate a pre-trial hearing pursuant to CPR r 34.

11.4 Committals for sentence – circuit arrangements

11.4.1 The requirements of Practice Direction 10 'Sentencing Hearings', apply to circuit sentencing hearings.

11.4.2 The first day of a circuit is generally allocated to Sentencing Hearings. There is a limit on the number of matters that can be dealt with in a day. Accordingly, some circuit sentencing hearings may not be able to be listed in the next following circuit sitting.

11.4.3 Committals for sentence from circuit locations will be listed for a Sentencing Hearing a minimum of 8 weeks from the date of committal. This is to allow the DPP to prepare the indictment and sentencing materials. It also allows time for any pre-sentence reports to be prepared. Where a psychological or psychiatric pre-sentence report has been ordered, the Sentencing Hearing is listed a minimum of 12 weeks from the date of committal.

11.4.4 Where a pre-sentence report is not ordered in the Magistrates Court, and the practitioner considers that a pre-sentence report is required, the practitioner may request the Court to order the preparation of a report. The request should be made as soon as the need for a pre-sentence report is identified. The request is to be in writing and may be faxed or emailed to the Court (districtcourt@justice.wa.gov.au Attention: Circuits Listing Coordinator). The request will be reviewed by a Judge or legally qualified Registrar. If a report is required, it will be ordered administratively without the need for a hearing. If the request is approved, and the timing of the request is such that the report ordered is not able to be provided prior to the scheduled Sentencing Hearing, the Court may indicate to the parties that the Sentencing Hearing will be a mention only.

11.4.5 The Court has requested Community and Youth Justice to prepare any pre-sentence reports not less than 14 days prior to the date of the Sentencing Hearing. As set out in Practice Direction 10 'Sentencing Hearings', practitioners can receive copies of the pre-sentence report prior to the day of the Sentencing Hearing. The Court encourages practitioners to include an email address in their Notice of Acting to facilitate this occurring.

11.4.6 Pleas of guilty in circuit TLHs are generally listed to a Sentencing Hearing in a circuit list.

11.4.7 Pleas of guilty for matters listed for trial are dealt with by the Judge undertaking the circuit at which the trial was listed.

11.5 Late case management of conferences

11.5.1 Where a Judge at a circuit TLH is of the view that a matter listed for trial requires further case management prior to trial, the Judge may order the parties to attend a case management conference pursuant to CPA s 137. The conference will usually be before a legally qualified Registrar. It will usually take place about 3 weeks prior to trial. The usual orders for a late case management conference are set out in CP Annexure 4. The Judge will tailor these orders to the requirements of the particular case.

12 APPEARANCES BY ACCUSED IN CUSTODY AT TRIAL LISTING HEARINGS AND SENTENCING MENTION LISTS[29]

Summary: Those in custody who are represented by a practitioner will not be required to appear by videolink during Sentencing Mention Hearings. Rather, practitioners will, as is the practice at Trial Listing Hearings, appear on behalf of their clients. Unrepresented persons in custody will continue to appear by videolink.

12.1 Background

12.1.1 Since 29 May 2009 those in custody involved in Sentencing Mention Hearings have, as a matter of course, appeared by videolink regardless of whether they are represented by a practitioner or not.

12.1.2 However, in relation to Trial Listing Hearings the practice for some time has been for practitioners to appear in court without their clients appearing by videolink at these hearings unless a specific request has been made by the practitioner prior to the hearing.

12.2 Application

12.2.1 This Circular applies to all Trial Listing Hearings and Sentencing Mention Hearings at the District Court Building, 500 Hay Street, Perth.

12.3 Appearances

12.3.1 Practitioners who represent an accused in custody will, as a matter of course, appear on behalf of their client at Trial Listing Hearings or Sentencing Mention Hearings.

12.3.2 Practitioners may specifically request that their client appear by videolink no later than three clear days before the hearing. The request will be considered and a decision made by the relevant judicial officer without reference to the other party.

12.3.3 Accused in custody who are not represented by a practitioner will continue to appear by videolink at Trial Listing Hearings and at Sentencing Mention Hearings.

12.3.4 Notwithstanding the above, where the justice needs of the case require:

[29] Formerly Circular to Practitioners CRIM 2 of 2014 – Appearances by Accused in Custody at Trial Listing Hearings and Sentencing Mention Lists.

(a) the Court, of its own motion, may order that the accused appear in person; or

(b) the prosecutor or defence counsel may apply to the Court for an order that the accused appear personally. Such an application may be made in court at the hearing preceding the hearing at which the accused is required to appear personally or by letter to the presiding judicial officer no later than three clear days before the hearing. An application by letter will be determined by the judicial officer on the papers without reference to the other party.

12.4 Contact with clients

12.4.1 It is recommended that practitioners wishing to communicate with their client do so before the day of the hearing to avoid any delays.

13 CEASING TO ACT BEFORE A CRIMINAL TRIAL[30]

Summary: This Circular sets out the practices adopted by the District Court to manage the situation which arises when a legal practitioner wishes to cease to act for an accused whose criminal matter has been listed for trial.

13.1 Background

13.1.1 By *Criminal Procedure Rules 2005* (WA) (**CPR**) r 11 a legal practitioner who ceases to be instructed to act for an accused in any capacity must lodge, and serve on the DPP, a Form 3 Notice of Ceasing to Act at least 21 days before the date when the next court proceedings involving the accused is listed. If this is not possible, the practitioner must apply for leave to cease to act.

13.1.2 In addition, a legal practitioner has an obligation under *Legal Profession Conduct Rules 2010* (WA) (**LPCR**) r 27 not to terminate their retainer or otherwise cease to act for a client charged with a serious criminal offence unless, among other things, there remains sufficient time for another practitioner to be engaged by the client and to master the matter. The Court expects practitioners to structure their costs affairs with respect to a client charged with a serious criminal offence in a manner that allows them to comply with LPCR r 27.

13.2 Applications for leave to cease to act where a trial is listed

13.2.1 This part applies where:

(a) a criminal matter has been listed for trial; and

(b) a practitioner lodges an application for leave to cease to act pursuant to CPR r 11(2).

13.2.2 At the hearing of the application, and without limiting the discretion in CPR r 11(3), the practitioner should be in a position to satisfy the Court that they have satisfied their obligations under LPCR r 27, in particular that when they ceased to act there remained sufficient time for the accused to engage another practitioner and for that practitioner to master the matter.

13.2.3 The practitioner should also ensure that the accused is aware of the application and, if the accused is on bail, ensure, if possible, that the accused attends the hearing of the application. Where the accused is in custody, the Court will bring up the accused for the hearing of the application. If the accused does not attend the hearing of the application the practitioner should be in a position to satisfy

[30] Formerly Circular to Practitioners CRIM 1 of 2012 – Ceasing to Act Before a Criminal Trial.

the Court that it has not been possible for the practitioner to secure the attendance of the accused at the hearing.

13.3 Lodgement of notices of ceasing to act where a trial is listed

13.3.1 Where:

(a) a practitioner lodges a notice of ceasing to act after a criminal matter has been listed for trial (in circumstances in which leave is not required pursuant to CPR r 11(1)); and

(b) a notice of acting is not filed by another practitioner at the same time,

the Court will ordinarily list the prosecution for mention before the duty judge. The mention will usually be at 9:15am.

13.3.2 The Court will summons or bring up the accused to attend the mention.

13.3.3 The Court will also write to the practitioner requiring their attendance at the mention before the duty judge. At the hearing, the practitioner should be in a position to satisfy the Court that they have satisfied their obligations under LPCR r 27, in particular that when they ceased to act there remained sufficient time for the accused to engage another practitioner and for that practitioner to master the matter.

13.3.4 The fact that the notice of ceasing to act was lodged not less than 21 days prior to the date of commencement of the trial (in compliance with CPR r 11) does not necessarily constitute compliance with LPCR r 27.

14 MANAGEMENT OF UNASSIGNED TRIALS[31]

Summary: This Circular outlines the manner in which the Court deals with trials that remain unassigned at the trial starting date.

14.1 Background

14.1.1 The District Court operates an extensive trial list. Each year, around 800 civil and criminal trials are listed in Perth of which approximately 500 proceed.

14.1.2 The vast majority of the Court's most expensive resource, judicial time, is consumed in conducting trials.

14.1.3 The challenge in listing trials is to achieve the optimum balance in ensuring sufficient trials are listed to maximise the use of judicial time while not overlisting to the extent that listed trials are not reached. Unreached trials result in additional costs and delay and cause great disappointment to the parties involved as they have waited a long time for their trial date. Further, from the Court's perspective, unreached trials represent a lost opportunity to finalise a matter.

14.1.4 Despite its best endeavours, there are however occasions where the Court is faced with the situation that the number of trials proceeding exceeds the number of judges available.

14.2 Objective

14.2.1 The object of this procedure is to ensure, as far as possible, unassigned trials are allocated to a Judge and to minimise the number of trials that are marked as unreached.

14.3 Scope

14.3.1 This procedure applies to all criminal trials listed in the Perth metropolitan area. Trials listed at regional circuit sittings are subject to the flexi-list procedure developed to meet the specific needs of circuit cases.

[31] Formerly Circular to Practitioners CRIM 1 of 2006 – Management of Unassigned Trials.

14.4 Procedure

14.4.1 In order to assist in the management of judicial rostering, the Court adopts listing blocks of one-week duration and these blocks ordinarily commence on a Monday. Consequently, most trials are scheduled to commence on Mondays and these procedures are prepared with that in mind. However, the procedure applies, with appropriate adjustment, to all trials that are potential unreached trials.

1. Each Thursday, the Court Listing Coordinator prepares for the Chief Judge a schedule of trials listed in the following week together with recommendations, and reasons, as to the priority in which those matters are to be allocated a trial judge.

2. Following receipt of the Court Listing Coordinator's recommendations, the Chief Judge at his or her discretion is to assign judges to trials. Note that due to movement in the trial list, this process may continue until Friday afternoon, or later.

3. In the event there are trials proceeding for which no judge is available, the Court Listing Coordinator is to advise the respective parties their trial is unassigned.

4. Due to constant movement in the trial list, it is the Court's expectation that unassigned trials will be reached at the scheduled start time or very soon thereafter. Therefore, parties and other participants to unassigned trials must attend the court and be ready to commence the trial at the scheduled start time, usually 10am.

5. Counsel are to contact the Court Listing Coordinator prior to 9.30am on the first scheduled trial day in order to ascertain if the trial has been assigned and if it has, in which courtroom it will be held.

6. In the event the trial remains unassigned, the case will be listed for mention in the General Duties Court at not before 11.30am. In this event,

   - It is not necessary for the accused to report to the Detention Facility until defence counsel is notified to do so; and
   - Counsel are to provide the Court Listing Coordinator with contact numbers and remain on standby.

7. In the event a judge becomes available before 11.30am to take an unassigned trial, the Chief Judge will assign the next priority unassigned trial to that judge, and so on until all unassigned trials are catered for. The Court Listing Coordinator will contact counsel and advise the trial start time and venue.

8. Where trials remain unassigned at the 11.30am mention, the Court will adjourn the matter for further mention at 2.15pm that day and make any orders deemed appropriate.

9. In the event trials remain unassigned at the 2.15pm mention, in addition to any other orders the Court may make, the Court may adjourn the matter for further mention at 10am the following day in the General Duties List.

10. If the matter cannot be reached a new listing will be given.

15 MANAGEMENT OF TRIALS – OFFENCES RELATING TO PORNOGRAPHY AND OBJECTIONABLE MATERIAL[32]

Summary: This Circular outlines the pre-trial obligations on counsel in trials relating to Classification (Publication Films & Computer Games) Enforcement Act 1996/ Censorship Act 1996 offences.

15.1 Background

15.1.1 The prosecution of offences relating to pornography and objectionable material under legislation such as the *Classification (Publication Films & Computer Games) Enforcement Act 1996* (WA) and *Censorship Act 1996* (WA) may give rise to logistical issues which need to be resolved prior to trial. Issues that have arisen recently include:

- The optimal way to show the jury images which are not appropriate to show to members of the public in the gallery.
- Identifying a suitable computer for the jury to use to view images stored in computer format (as distinct from video tape or DVD format).
- The location of viewing screens in court to ensure that all parties can see the material but that it is not visible to members of the public in the gallery.

15.1.2 In making determinations and logistical arrangements, the objective of the Court is to ensure that the accused receives a fair trial in an open court but that sensitive material is not shown to the public gallery.

15.2 Requirement to seek directions

15.2.1 This procedure applies to all trials relating to *Classification (Publication Films & Computer Games) Enforcement Act 1996* (WA) and *Censorship Act 1996* (WA) offences in Western Australia (which will be referred to as "offences relating to pornographic material").

15.2.2 Where there is a plea of not guilty to an offence relating to pornographic material, the Court's expectation is that the prosecution will initiate a discussion with the defence about the issues set out in the schedule to this Circular. This discussion should be initiated at least 14 days prior to the hearing at which the matter will be listed for trial.

[32] Formerly Circular to Practitioners CRIM 1 of 2007 – Management of Trials – Offences Relating to Pornography and Objectionable Material.

15.2.3 At the time the matter is to be listed for trial, counsel for the prosecution is to inform the Court:

(a) that the trial concerns offences relating to pornographic material;

(b) of the outcome of the discussions with the defence on logistical issues;

(c) whether the accused has made or proposes to make a formal admission that the material is pornographic or objectionable as defined;

(d) of any outstanding logistical issues relating to the matters set out in the schedule to this Circular.

15.2.4 If the Court is of the view that there are outstanding logistical issues, the Court will list the matter for a pre-trial hearing (*Criminal Procedure Rules 2005* (WA) r 34) before the duty judge about 2 months prior to trial. The purpose of the pre-trial hearing is to resolve the logistical issues relating to the presentation of the relevant pornographic material.

15.3 Court facilities

15.3.1 Each court in which criminal trials are conducted has the capability to play video material in both open court and the jury room. The capacity to play DVD material is possible. However, 14 days prior notice to the Registry is required in order to equip the courtroom with the appropriate equipment.

15.3.2 In some courts, material to be viewed on a computer screen can be presented in open court, however this functionality is limited. If this facility is required, the prosecution will need to send a request to this effect to the Registry no later than 14 days after the pre trial hearing. This will allow Court staff to ensure that the appropriately equipped court is available.

15.3.3 If the prosecution wishes to have the material go in to the jury room, the prosecution will need to provide a laptop computer with appropriate software for use in the jury room. There should be no other material on the computer which may have the potential to prejudice the jury deliberations (eg drafts of counsel's submissions or material from other trials). The prosecution should also provide a typewritten set of instructions as to how to turn on the computer (eg any passwords) and how to access the material.

15.3.4 The Court's expectation is that the prosecution will make the laptop available to the defence no less than 14 days prior to the trial so that defence counsel can satisfy themselves that the material on the laptop, and the form in which it is available, are appropriate.

15.4 Issues for case management of prosecutions under the *Classification (Publication Films & Computer Games) Enforcement Act 1996* and *Censorship Act 1996*

1. Is there any issue with the form of the indictment? (*eg in some indictments each count will relate to a single image and in others each count may relate to a group of images – are particulars required?*)

2. In relation to each count does the accused propose to formally admit the element that the material is pornographic or objectionable as defined?

3. What material does the prosecution propose to show to the jury?

4. In what format is the material to be presented to the court (*eg printed photos, DVD video, digital images [including type], downloaded website material to be viewed on a computer*)?

5. What quantity of material is proposed to be shown (*eg 456 photos, 2 hours of video, 30 mins of DVD, "captured" computer website*).

6. How is it proposed that the material will be presented to the jury? *(eg in a booklet form of selected images, on the large video screen in court, on individual computer screens for jurors, as a group in the file in which it is stored on the accused's computer including the accused's grouping and labelling of the material).*

7. Does the prosecution allege that the material has any particularly offensive attributes which would make it inappropriate to be viewed in open court? *(eg images of children)* If so, what arrangements are proposed so that the material can be viewed without being visible in the public gallery.

8. Are there any other logistical issues that will need to be considered? *(eg if the indictment relates to a circuit court, whether there any difficulties in the trial proceeding in a regional court or does an application to change the venue need to be considered?).*

16 OBTAINING DOCUMENTS FROM THE WA POLICE SERVICE UNDER COURT ORDER[33]

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

16.1 Background

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

16.2 Service

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

16.3 Criminal jurisdiction

16.3.1 A witness summons issued pursuant to *Criminal Procedure Act 2002* (WA) (**CPA**) must be served a "reasonable time" before the attendance date: CPA s 162(2).

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

[33] Formerly Circular to Practitioners GEN 2 of 2008 – Obtaining Documents from the WA Police Service under Court Order.

17 WITNESS SUMMONSES – PROTECTED COMMUNICATIONS[34]

Summary: This Circular sets out the Court's practice where a party applies for a summons to produce records or things which may include protected communications under the Evidence Act 1906 (WA).

17.1 Background

17.1.1 The Court has noticed an increasing trend of parties issuing witness summons to produce records or things which appear to include records or things containing protected communications as defined in *Evidence Act 1906* (WA) (**EA**) s 19A to s 19M. Examples include a request for a "patient file" from Graylands Hospital and a "student file" from a school.

17.1.2 The leave of the Court is required before a protected communication may be required to be disclosed by a witness summons (EA s 19C(1)). A subpoena which purports to require disclosure of a protected communication without the leave of the Court is of no effect (EA s 19C(2)).

17.2 Summonses which appear to require production of protected communications

17.2.1 The power to issue a witness summons is delegated to "prescribed court officers", which includes both senior Registry staff and Registrars. The Court, through its prescribed court officers, will not issue a witness summons which appears to require production of a protected communication.

17.2.2 It is preferable that practitioners lodge all witness summonses to produce directly with the Perth registry.

17.2.3 To ensure uniformity of approach when processing witness summonses to produce, all summonses of this type lodged at a circuit registry of the Court will be forwarded to the Perth registry for processing.

17.2.4 Witness summonses can be lodged by email to districtcourt@justice.wa.gov.au

17.2.5 Where Registry staff have a concern that the witness summons might require production of a protected communication, the summons will be referred to a legally qualified Registrar for review. The Registrar will decline to issue the summons if he or she forms the view that the records or objects required under

[34] Formerly Circular to Practitioners CRIM 2 of 2007 – Witness Summonses – Protected Communications.

the summons appear to include protected communications. The applicant will be notified of this decision by letter.

17.2.6 The applicant can either:

(a) resubmit the summons with an amended description of the records or objects sought; or

(b) apply to the Court for leave to require production of the protected communications pursuant to EA s 19C.

17.2.7 Alternatively, the applicant can expressly exclude protected communications from the scope of the documents sought pursuant to the witness summons by inserting the following words:

> "**Except** for any document, recording or evidence which is a **protected communication** as defined in the EA s 19A and s 19B, a copy of which is annexed to this summons."

The annexure should then have the heading "**Protected Communications as defined in *Evidence Act 1906* (WA)**", and be in the form in CP Annexure 5.

17.3 Summonses to Courts

17.3.1 There is a rule of practice or comity that a court will not issue a witness summons or a subpoena to another court. This rule is reflected in *Rules of the Supreme Court 1971* (WA) O 36B r 13. Although there is no equivalent rule in the *Criminal Procedure Act 2004* (WA), the District Court will exercise its discretion to decline to issue a witness summons to another court, for example, the Supreme Court, the Family Court or the Magistrates Court. Instead, a Registrar of the District Court will write to the Registrar of the other court to request that the relevant documents be provided to the District Court.

17.3.2 The District Court's standard request letter will exclude Protected Communications from the request. It will however, request the other court to identify the date and type of document excluded in a covering letter when providing the balance of the documents. A copy of the letter of request will be provided to the party on whose behalf the request is made.

17.3.3 Documents received from another court will be treated in the same manner as documents received under a witness summons. That is, upon receipt of the documents, the District Court will notify the parties and list the matter before the duty judge to make orders regarding custody and access.

17.3.4 The District Court treats the Coroner's Court, the State Administrative Tribunal and the Chief Assessor of Criminal Injuries Compensation as courts for the purpose of the issue of letters of request.

18 GUIDELINES FOR CROSS-EXAMINATION OF CHILDREN AND PERSONS SUFFERING A MENTAL DISABILITY[35]

18.1 Preamble

18.1.1 These guidelines are meant to provide assistance to counsel as to the appropriate approach to take when cross-examining in criminal proceedings child witnesses and witnesses suffering from mental disabilities. The guidelines are not meant to be rules of the District Court and are not meant to limit or restrict the ability of counsel to represent the interests of the client (subject to s 26 of the *Evidence Act 1906* (WA), other rules of evidence and rules of professional conduct).

18.2 Guidelines

18.2.1 Counsel should address the witness by the name the witness prefers. For a young child this will usually be the child's first name. (Counsel calling the witness should generally inform the Court and opposing counsel of the name the witness prefers before the witness is called).

18.2.2 Questions should be short and simple.

18.2.3 A witness should be given an adequate opportunity to consider the question, formulate a response and then give an answer. This will generally be longer than is required for the average adult witness. Quick fire questions are to be avoided.

18.2.4 As a general rule a witness' answer should not be interrupted except where it is necessary to ensure the witness responds to the question or to prevent the witness giving inadmissible evidence. It is to be taken into account that such witnesses may require greater leeway in formulating an oral response to a question.

18.2.5 The tone of questions should not be intimidating, annoying, insulting or sarcastic. Likewise the volume of counsel's voice should not be intimidating.

18.2.6 Terminology used in questions should be age or mental capacity appropriate.

18.2.7 Legalese is to be avoided (for example, "I put it to you", "my learned friend", "His Honour").

[35] Formerly Circular to Practitioners CRIM 1 of 2010 – Guidelines for Cross-Examination of Children and Persons Suffering a Mental Disability.

18.2.8 A young child should not be accused of "lying" except where the defence case is that the child is deliberately telling lies. Rather, counsel should suggest the witness' version is "not correct", or is "wrong" or the child should be asked whether an alternative version has occurred. The purpose of this guideline is to emphasise that counsel should normally avoid an unnecessary allegation that a witness is "lying" which may cause distress to the witness.

18.2.9 The witness should not be subject to unduly repetitive questioning.

18.2.10 Counsel should not mix topics or switch between topics. Events should be dealt with in a logical and/or chronological sequence.

18.2.11 In cases where the witness clearly is incapable of understanding inconsistencies and the inconsistencies only go to the issue of reliability, counsel should give consideration to limiting or abandoning cross-examination on otherwise proven inconsistencies. In such cases Counsel should seek a ruling from the trial judge as to whether proven inconsistencies can be relied upon in the closing address without comment that the inconsistencies were not the subject of cross-examination.

19 GROUND RULES HEARINGS

Summary: This circular outlines the Court's practice where a 'ground rules' hearing is ordered.

19.1 Background

19.1.1 In its final report, the *Royal Commission into Institutional Responses to Child Sexual Abuse* (2017) made the following recommendations:

> *53. Where the pre-recording of cross-examination is used, it should be accompanied by ground rules hearings to maximise the benefits of such a procedure.*
>
> *59. State and Territory governments should establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution.*
>
> *60. State and Territory governments should work with their court administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a pre-recorded hearing or during the trial …*

19.1.2 The State Government is presently considering introducing legislation and providing resources for an intermediary scheme in Western Australia. However, as an interim measure the Court will conduct 'ground rules' hearings in cases where a witness is extremely vulnerable and within its existing legislative framework. Due to limited resources at this time, ground rules hearings will generally be listed only in the circumstances as described in 19.2.2 below.

19.1.3 The purpose of a 'ground rules' hearing is to discuss any difficulties that may be experienced in the taking of the evidence and to discuss and impose rules and procedures to be followed to facilitate the taking of the evidence.

19.2 Application

19.2.1 On its own motion or on application by the prosecution or defence at a Trial Listing Hearing the Court may order that a 'ground rules' hearing take place prior to a pre-recording of evidence.

19.2.2 Although the category of cases is not closed, 'ground rules' hearings will generally be ordered in the following matters:

(a) Where the witness is a child aged six years or under.

(b) Where a special witness requires a communicator (*Evidence Act 1906* (WA) s 106R(4)

(c) On application by the Director of Public Prosecutions where a "substantial need" is demonstrated.

19.3 Procedure

19.3.1 Ground rules hearings will generally be ordered at a Trial Listing Hearing when a pre-recording of the evidence of a vulnerable witness is listed. The order will provide that the Associate of the presiding judge of the pre-recording will contact counsel and arrange a listing of the 'ground rules' hearing on a morning (generally at about 9:15 am) in the week prior to the pre-recording. Where the Court orders a 'ground rules' hearing to take place, counsel appearing on the pre-recording will need to be available in the week before to attend the 'ground rules' hearing. The accused is not required to attend and the witness will not attend.

19.3.2 The Court may request a report from the Child Witness Service (CWS) or a qualified medical practitioner, such report to be provided to counsel for the parties, addressing any difficulties that may be experienced in the taking of the evidence from the witness. The Court may also request a representative of the CWS to attend the 'ground rules' hearing.

19.3.3 Prior to the 'ground rules' hearing, counsel must have viewed any visually recorded interviews and be fully prepared. Counsel must be familiar with the materials listed in 19.5.1 and 19.5.2 below and are strongly encouraged to consider and use the resources listed in 19.5.3.

19.3.4 The 'ground rules'' hearing will be conducted relatively informally. The CWS officer and any communicator will be asked to address the witness' communication needs and counsel will be given the opportunity to ask questions of them.

19.3.5 The judge and counsel will discuss the conduct of the pre-recording and the Court may make directions establishing ground rules relating to the conduct of the pre-recording and questioning of the witness.

19.4 Orders that might be made

19.4.1 At a 'ground rules' hearing, the Court may make or vary any orders within its power for the fair and efficient conduct of the pre-recording.

19.4.2 Without limiting 19.4.1 the Court may make directions for the conduct of the questioning of the witness, which may include:

(i) directions permitting the witness to have with him or her in the remote room a special toy or comforter;

(ii) directions about the use of models, plans, body maps or similar aids to help communicate a question or an answer;

(iii) directions about the frequency and duration of breaks;

(iv) directions about the manner of questioning, including a word limit on questioning (depending on the age or intellectual capacity of the witness);

(v) directions about the duration of questioning;

(vi) if necessary, directions about the questions that may or may not be asked;

(vii) where there is more than one accused, the allocation among them of the topics about which the witness may be asked;

(viii) limiting the extent to which cross-examination can take place on inconsistencies (with appropriate directions to be given to the jury in accordance with cl 18.2.11);

(ix) limiting the extent to which counsel may put the defence case to the child (with appropriate directions to be given to the jury);

(x) requiring counsel to submit their proposed list of questions in advance of the pre-recording or trial.

19.5 Authorities and resources

19.5.1 **Legislation and Guidelines**

Evidence Act 1906 (WA) ss 25, 26, 27A, 106F, 106K, 106R, 106S.
Criminal Procedure Act 2004 (WA) s 98.
Consolidated Practice Directions & Circulars to Practitioners – Criminal, Circular to Practitioners 18, Guidelines for cross examination of children and persons suffering a mental disability.

19.5.2 **Cases**

GO v State of Western Australia [2016] WASCA 132.
R v Ward (a pseudonym) [2017] VSCA 37.
BGS v The State of Western Australia [2016] WADC 55.
R v Lubemba [2015] 1 CR App R 137.

19.5.3 **Resources**

Children's Court of Victoria, Multi-Jurisdictional Court Guide for the IntermediaryPilot Program: Intermediaries and Ground Rules Hearings (2018).

The Australian Institute of Judicial Administration, Bench Book for Children Giving Evidence in Australian Courts (2015).

Judicial College of Victoria, 'Practical Guide to Questioning Child Witnesses (Uniform Evidence Manual)' (2015).

Plotnikoff and Woolson, 'Intermediaries in the Criminal Justice System' (Policy Press, 2015).

CP ANNEXURES

CP Annexure 1: Transcript Order Form (CP 3)

DISTRICT COURT OF WESTERN AUSTRALIA

TRANSCRIPT ORDER FORM – LAST PORTION OF THE DAY

Case Number_____/__

State/CDPP/Plaintiff_____

V

Accused/Defendant_____

I _____, counsel for the
State/CDPP/Plaintiff/Accused/Defendant hereby request an electronic copy of the last portion of the transcript for the day.

Please send the transcript to the following email address:

_____

This form is to be submitted to the associate to the presiding judge no later than the commencement of the trial. Please note there is no need to submit this form for each day of the trial.

_____
Counsel signature
/ /

CP Annexure 2: Protocol for the Use of Interpreters (CP 6)

PROTOCOL FOR THE USE OF INTERPRETERS

1. Background

1.1 This protocol provides guidance to interpreters undertaking interpreting assignments for District Court ("Court") hearings. It does not deal with translation, as to which see Circular to Practitioners 6 'Interpreting and Language Services Guidelines'.

1.2 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.

1.3 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.

1.4 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.

1.5 This protocol draws on material contained in the Australian Institute of Interpreters and Translators Code of Ethics.[36] 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.

[36] Available online at: https://ausit.org/

2. General Principles

2.1 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 in Circular to Practitioners 6 'Interpreting and Language Services Guidelines'.

2.2 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 courtroom. 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.

2.3 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.

2.4 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.

2.5 The interpreter must have sufficient ability to completely and accurately communicate both in the English language and the language being used by the witness.

2.6 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 Trial Listing Hearings, Sentence Mention Hearings and other case management hearings.

2.7 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.

2.8 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.

3. General Professional Conduct Rules

3.1 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.

3.2 An interpreter is not an advocate for any party.

3.3 An interpreter's paramount duty is to the Court and not to any party, including any party who may have retained the interpreter.

3.4 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.

3.5 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.

3.6 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.

3.7 The interpretation must be given only in the first person, eg, "I went to school" instead of "He says he went to school".

3.8 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.

3.9 An interpreter is not responsible for what a witness says. An interpreter should not voice any opinion on anything said by the witness.

3.10 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.

3.11 An interpreter must not alter, add or omit anything that is said by the witness.

3.12 An interpreter must use their best endeavours to convey any hesitation or changes in the witness' answer.

3.13 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 point 4.12 below) and ask for a pause and time to reconsider.

3.14 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.

3.15 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.

3.16 The interpreter must not disclose to any person any information acquired during the course of an assignment.

3.17 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.

3.18 The interpreter must act in a manner which maintains the dignity and solemnity of the Court.

4. Procedural Matters

4.1 The booking information will set out the time period in which an interpreter is required. As a general guide, District Court civil trials run from 10:30am to 1:00pm and then from 2:15pm to 4:15pm. Criminal trials run from 10:00am to 1:00pm and then from 2:15pm to 4:15pm. 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 3 hours.

4.2 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 Registry counter on the ground level of the District Court Building ("DCB") (500 Hay Street) 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.

4.3 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 Usher and the accused/witness the interpreter will be interpreting for and the courtroom 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 courtroom (in a place designated by the Associate) or handed to the Associate or Usher when the interpreter leaves the courtroom.

4.4 There are interview rooms outside most of the courtrooms in the District Court Building, in particular on the south end of level 1. An interpreter should feel free to use any of these interview rooms to review the materials provided and prepare for the hearing.

4.5 The interpreter should attend the courtroom 15 minutes prior to the commencement time. Upon entering the courtroom the interpreter should make themselves known to the Associate or Usher to the presiding judicial officer. They will provide any specific instructions required.

4.6 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 Usher).

4.7 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.

4.8 An interpreter for an accused will usually be sworn in at the commencement of the hearing.

4.9 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.

4.10 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.

4.11 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.

4.12 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".

4.13 If at any point in time the interpreter cannot hear what is being said in the courtroom with sufficient clarity to enable them to optimally interpret, the interpreter should immediately raise this with the judicial officer (as set out in point 4.12). 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.

4.14 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 point 4.12). 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.

CP Annexure 3: Interpreter Booking Request Form (CP 6)

INTERPRETER BOOKING REQUEST

To: Senior Court Support Officer, Customer Service, District Court

Facsimile: 9425 2268

Email: districtcourt@justice.wa.gov.au (attention: Senior Court Support Officer, Customer Service)

This form is to be used by all persons requiring an interpreter for any 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 Circular to Practitioners 6 'Interpreting and Language Services Guidelines'. 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 ____ / ____ / 20XX Time of Hearing ___ **:** ___ am/pm (WA time) Est. duration ____ hrs/days Location _____ Trial ☐ Sentencing ☐ Trial Listings Hearing ☐ 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: _____

CP Annexure 4: Circuit Hearings – Late Case Management Conference Orders (CP 11)

Late Case Management Conference – Usual Orders

1. Counsel for the State and counsel for each accused attend a case management conference before a legally qualified Registrar on [*Date and time*] ("Conference") at Level 1, District Court Building, 500 Hay Street, Perth.

2. Unless otherwise ordered by the legally qualified Registrar, the parties are to confer at the Conference on a "without prejudice" basis.

3. Each counsel is at liberty to attend the Conference by telephone.

4. Not less than 7 days prior to the Conference, trial counsel for the prosecution is to fax or email to the Court (districtcourt@justice.wa.gov.au Attention: Circuits Coordinator), with a copy to each defence counsel, a letter in which counsel confirms that:

   (a) each prosecution witness has been served with a witness summons to give evidence at trial;

   (b) counsel has personally spoken to each key prosecution witness within the 7 days preceding the date of the letter, specifying the names of each key witness;

   (c) each key prosecution witness will give evidence at trial substantially in accordance with their proof of evidence;

   (d) counsel has personally spoken to the investigating officer;

   (e) there is no further disclosure to be made by the prosecution;

   (f) all edits to video material and transcripts of video material have been made;

   (g) the action is in all respects ready to proceed on the allocated trial dates; and

   (h) counsel has full instructions for the Conference.

5. Not less than 7 days prior to the Conference, trial counsel for each accused is to fax or email to the Court (districtcourt@justice.wa.gov.au Attention: Circuits Coordinator), with a copy to the prosecution, a letter in which counsel confirms that:

(a) counsel has personally spoken to the accused in the 7 days preceding the letter;

(b) the accused intends to maintain his or her plea of not guilty;

(c) each witness the defence intends to call at trial has been served with a witness summons to give evidence at trial;

(d) there are no outstanding requests to the prosecution for further information, particulars or disclosure;

(e) all edits to video material and transcripts of video material have been made;

(f) counsel has no instructions to seek that any matters be dealt with by way of directions at the commencement of the trial;

(g) the action is in all respects ready to proceed on the allocated trial dates; and

(h) counsel has full instructions for the Conference.

6. If trial counsel is unable to confirm any of the matters set out in paragraphs 4 or 5 (whichever is applicable), counsel is to set out in the letter the steps that have been taken in that regard and the reason why counsel is not then able to confirm the relevant matter.

7. The letter in paragraph 5 is also to advise whether or not the accused wishes to participate in the Conference and, if so, the telephone number or prison at which the accused can be contacted.

8. The letter in paragraphs 4 or 5 (whichever is applicable) is to either:

(a) advise that counsel will attend the Conference in person; or

(b) provide the most convenient contact telephone number for counsel for the Conference.

9. A reference in these orders to counsel, is a reference to the counsel then briefed to appear as lead counsel at the trial of the matter;

10. A reference in the orders in paragraph 4 or 5 to counsel personally speaking to a person, is satisfied where the conversation takes place by telephone.

CP Annexure 5: Form of Annexure to Witness Summons (CP 17)

The recipient of this Summons should obtain legal advice as to the effect of the following provisions

Protected Communications as defined in *Evidence Act 1906* (WA)

19A. Terms used

(1) In this section and sections 19B to 19M —

application for leave means an application for leave to disclose or require disclosure of a protected communication in, or in connection with, any criminal proceedings;

counselling communication means a communication —

(a) made in confidence by a person upon or in respect of whom sexual assault was committed or is alleged to have been committed (the ***complainant***) to another person (the ***counsellor***) who is counselling the complainant in relation to any harm the complainant may have suffered;

(b) made in confidence to or about the complainant by the counsellor in the course of the counselling process;

(c) made in confidence about the complainant by a support person in the course of the counselling process; or

(d) made in confidence by or to the counsellor to or by another person who is counselling, or has at any time counselled, the complainant,

and includes a communication made through an interpreter;

counsels has the meaning given to that term in subsection (2);

disclose a protected communication means to disclose, or adduce or produce anything that would disclose —

(a) the protected communication; or

(b) the contents of a document recording the protected communication;

harm includes actual physical bodily harm, financial loss, stress or shock, damage to reputation or emotional or psychological harm (such as shame, humiliation and fear);

protected communication means a counselling communication made by, to or about a complainant and includes —

(a) a counselling communication made before the commission, or alleged commission, of sexual assault;

(b) a counselling communication not made in connection with sexual assault or alleged sexual assault or any condition arising from sexual assault or alleged sexual assault; and

(c) a counselling communication made before the protection provisions were inserted into this Act;

protected person, in relation to a protected communication, means —

(a) the complainant;

(b) any person who made the protected communication; or

(c) an interpreter through whom the protected communication was made;

require disclosure of a protected communication includes —

(a) to require (whether by the issue of a subpoena or any other process or procedure) the production of a document recording the protected communication; and

(b) to seek an order of the court that will, if made, result in the disclosure of the protected communication or the production of a document recording the protected communication;

support person means a parent, carer or other supportive person who is present when a person counsels the complainant to facilitate communication between the complainant and the counsellor or to further the counselling process in some other way;

supporting affidavit means the affidavit accompanying an application for leave;

the protection provisions means this section and sections 19B to 19M.

(2) A person ***counsels*** another person if —

(a) the person has undertaken training or study or has experience that is relevant to the process of counselling persons who have suffered harm; and

(b) the person —

(i) listens to and gives verbal or other support or encouragement to the other person; or

(ii) advises, gives therapy to or treats the other person,

whether or not for fee or reward.

(3) In the protection provisions, a reference to a document recording a protected communication —

(a) is a reference to any part of the document that records a protected communication or any report, observation, opinion, advice, recommendation or other matter that relates to the protected communication made by a protected person; and

(b) includes a reference to any copy, reproduction or duplicate of that part of the document.

(4) For the purposes of the definition of ***counselling communication*** in subsection (1), a communication can be regarded as being made in confidence even if it is made in the presence of a support person or through or in the presence of an interpreter.

19B. Protected communications recorded electronically

For the purposes of the protection provisions, if —

(a) a document recording a protected communication is stored electronically; and

(b) a written document recording the protected communication could be created by use of equipment that is usually available for retrieving or collating such stored information,

the document stored electronically is to be dealt with as if it were a written document so created.

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