



## CIRCULARS TO PRACTITIONERS – GENERAL TABLE OF CONTENTS

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## CPG 1 PRELIMINARY MATTERS

**Summary:** *In 2023, the Court revised and re-issued its Practice Directions and Circulars to Practitioners. This Circular provides guidance on the application and structure of, and the terms used in, the Circulars to Practitioners.*

### 1.1 Introduction

1.1.1 The practices and procedures set out in the Rules of Court are supplemented by:

- a) Practice Directions, which are issued by the Chief Judge and are binding - they impose obligations on parties and legal practitioners engaged in litigation in this Court; and
- b) Circulars to Practitioners, which are issued by the Principal Registrar and provide guidance to parties and legal practitioners about the practice of the Court.

### 1.2 Structure and application

1.2.1 The former *Consolidated Practice Directions and Circulars to Practitioners* are revoked and replaced by the Practice Directions (**PD**) and Circulars to Practitioners (**CP**) issued in 2023 (as amended from time to time).

1.2.2 The Court has resolved to issue its Practice Directions and Circulars to Practitioners separately, in each case structured as follows:

- a) **General** – these directions and circulars (and associated forms and annexures) apply to all civil and criminal proceedings in the District Court. Any General instrument is denoted with the suffix "**G**";
- b) **Civil** - these directions and circulars (and associated forms and annexures) apply only to civil proceedings in the District Court. Any Civil instrument is denoted with the suffix "**C**"; and
- c) **Criminal** - these directions and circulars (and associated forms and annexures) apply only to criminal proceedings in the District Court. Any Criminal instrument is denoted with the suffix "**M**".

1.2.3 It follows that the *Circulars to Practitioners – General (CPG)* apply to all civil and criminal proceedings in the District Court. They are to be read with, and are incorporated into, the:

- a) *Circulars to Practitioners – Civil (CPC)*; and
- b) *Circular to Practitioners – Criminal (CPM)*.

#### **Forms and annexures**

1.2.4 The PDs and CPs are published with:

- a) forms (denoted with the prefix "**F**") which, in addition to the forms prescribed under the Rules of Court, the Court may require for various purposes; and
- b) annexures (denoted with the further suffix "**-A[#]**") which contain additional information or examples relevant to the subject matter.

1.2.5 The *Table of Contents* sets out the structure of, and reflects the naming conventions adopted in relation to, the CPs and associated forms and annexures.

### ***Usual orders***

#### 1.2.6 The PDs and CPs:

- a) refer on occasion to 'usual orders'; and
- b) previously, contained the text of some 'usual orders' in the body of the PDs, CPs and/or their associated annexures. This was in addition to certain 'usual orders' published on the Court's website.

#### 1.2.7 For clarity and ease of reference, all usual orders (**UO**) are now compiled and published separately.

- a) The purpose of publishing usual orders is to give parties and their lawyers an indication of the orders that are commonly made in various contexts.
- b) A reference to 'usual orders' does not in any way bind or limit the Court. In each case, the presiding judicial officer will make orders in the exercise of the Court's discretion taking account of the particular circumstances of the matter at hand.

### **1.3 Naming and reference conventions**

#### 1.3.1 It follows from the above that the following instruments are referred to as set out below:

<b>Instrument</b>	<b>Reference</b>
Practice Direction - General	PDG
Practice Direction - Civil	PDC
Practice Direction - Criminal	PDM
Practice Direction Annexure	PD[G/C/M]-A
Circular to Practitioners -General	CPG
Circular to Practitioners - Civil	CPC
Circular to Practitioners - Criminal	CPM
Circular to Practitioners Annexure	CP[G/C/M]-A
Form - General	FG
Form - Civil	FC
Form - Criminal	FM
Usual Order - General	UOG
Usual Order - Civil	UOC
Usual Order - Criminal	UOM

#### 1.3.2 Further, in addition to certain terms that are used and defined in the context of particular CPs, the following terms and abbreviations are commonly used throughout the CPs.

<b>Legislation / rules</b>	<b>Abbreviation</b>
Rules of the Supreme Court 1971 (WA)	RSC
District Court Rules 2005 (WA)	DCR
District Court (Fees) Regulations	Fees Regs
<b>Other terms</b>	
Trial List Judge	TLJ



## CPG 2 USE OF TECHNOLOGY

**Summary:** *This Circular<sup>1</sup> sets out the Court's practices for the use of technology to present evidence, submissions and other material, both in the Perth District Court Building (DCB) and in circuit locations.*

### 2.1 Introduction

- 2.1.1 The District Court encourages the use of technology to present evidence, submissions and other material where it is practicable to do so and where use of technology enhances the quality and efficiency of proceedings.
- 2.1.2 Where there are differences in the capabilities and practice in the DCB and circuit locations, these are noted.

### 2.2 Types of available technology

- 2.2.1 The Court has a range of technology and equipment in courtrooms, including:
- video and audio conference facilities;
  - closed circuit (remote witness) facilities;
  - MS Teams integration for video or audio links;
  - audio-visual (AV) presentation system (AV system);
  - document cameras;
  - annotation devices;
  - ability to display material through the courtroom AV system directly from CDs, DVDs, or USBs;
  - power access points for laptop devices; and
  - the ability to display material electronically using the courtroom AV presentation system (for example, to display photographs, documents, websites, play audio or video files);
  - HDMI points to connect laptop devices (other than Apple devices) to the courtroom's AV presentation system;
  - for approved cases, the ability to provide a private or public link to view proceedings remotely (eg. the handing down of a judgment).

### 2.3 Compatible files

- 2.3.1 The Court's computer system is compatible with most file formats, including all Microsoft Office applications/programs and most audio and video file formats. For a full list of compatible file formats, consult the Court's website [Submitting Electronic Evidentiary Material.pdf \(districtcourt.wa.gov.au\)](#).
- 2.3.2 Practitioners who are unsure of whether a file is compatible can make inquiries with the Court Technology Officer via email to [CTODC@justice.wa.gov.au](mailto:CTODC@justice.wa.gov.au).

### 2.4 Incompatible technology

- 2.4.1 The following is a list of commonly used technology that is not compatible with the court's AV system and cannot be used to present material electronically in a courtroom.

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<sup>1</sup> Formerly CP (Civ) 1,7 and 11; CP (Crim) 1.

- Apple devices, including MacBooks, are not compatible with the Court’s audio-visual presentation system and cannot be used to present evidence, submissions or other material in electronic format.
- Material stored on VHS or cassette tapes.

## **2.5 Presenting material electronically**

2.5.1 There are a number of options for presenting material electronically in courtrooms. Parties may present evidence, submissions, or other material in an electronic format. Examples include:

- Audio and video files<sup>2</sup>
- Word-processed documents
- Excel spreadsheets
- PowerPoint presentations
- Websites
- Photographs

2.5.2 Electronic materials can be presented in one of two ways:

- Via laptop (other than an Apple MacBooks) connected to the courtroom AV system; or
- Presenting materials stored on CD, DVD or USB.

## **2.6 Presenting materials via laptop**

2.6.1 All courtrooms are fitted with HDMI ports to facilitate the connection of laptops (other than Apple devices)<sup>3</sup> to the courtroom AV system.

2.6.2 A practitioner wishing to present material from a laptop must:

- a) at least 2 clear days prior to the first hearing date, advise the trial Judge by email to the Judge's Associate copied to all parties;
- b) ensure the material is in a compatible file format (see CPG 2.5).
- c) attend the hearing with the laptop and any leads and adaptors necessary to connect that laptop to an HDMI port;
- d) test the connections prior to the commencement of the hearing; and
- e) be in a position to provide the Judge and other parties with a printed copy of the presented material.

## **2.7 Presenting materials on CDs, DVDs and USBs**

2.7.1 In addition to displaying electronic materials via a laptop<sup>4</sup>, electronic material stored on DVDs, CD and USBs can be displayed through the AV courtroom AV system.

2.7.2 A practitioner wishing to present material from a CD, DVD or USB must ensure the material is in a compatible file format (see CPG 2.3).

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<sup>2</sup> For example, video surveillance footage or a telephone intercept recording stored on a hard drive.

<sup>3</sup> Apple devices, including MacBooks, are not compatible with the Court’s audio-visual presentation system and cannot be used to present evidence, submissions or other material in electronic format.

<sup>4</sup> See CPG 2.6, above.

## **2.8 Audio and video material**

2.8.1 A practitioner wishing to present audio or video material or evidence must:

- a) ensure the material is stored on a CD, DVD or USB<sup>5</sup>.
- b) check the sound levels of any audio or video recording to be played in court and, if the sound level or quality of the recording is not optimal:
  - i) ascertain from the source of the recording whether the audio level can be improved; and
  - ii) make arrangements to test whether the recording will be audible when played through the courtroom AV system. Arrangements to test whether the recording will be audible through the AV system can be made to the Court Technology Officer via email to [CTODC@justice.wa.gov.au](mailto:CTODC@justice.wa.gov.au).
- c) If the material needs to be reformatted, re-recorded or enhanced to enable the material to be displayed or audible in the courtroom, there must be continuity evidence given to support the tender of the material as an actual exhibit in the absence of agreement between the parties.

## **2.9 Photographic material**

2.9.1 Each photographic image presented in evidence must be marked with a unique identification number (to ensure it can be identified from the transcript) and tendered as an exhibit.

2.9.2 The Court's preference is for photographs to be presented in print format, which:

- a) in a criminal trial, can be taken into the jury room; and
- b) can be displayed in Court rooms on a document camera (see CPG 2.11 below).

2.9.3 A practitioner wishing to display images in electronic format may do so from a laptop, subject to complying with CPG 2.6 above.

## **2.10 Annotation devices**

2.10.1 Each court in the DCB is equipped with an annotation device in the form of a tablet and stylus pen.. This device can be used by a witness to draw diagrams and annotate documents/images. A drawn/annotated image or document can be:

- a) saved as an electronic image, printed, and tendered as an exhibit; and
- b) recalled to the screen and, if necessary, annotated by other witnesses.

2.10.2 A practitioner wishing to use the annotation device must:

- a) store the material they wish to have annotated to a CD, DVD or USB device; and
- b) deliver the CD, DVD or USB on which the material is stored to the Court not less than 7 days prior to the first hearing date

2.10.3 ZIP files, cloud services and file-sharing links<sup>6</sup> cannot be used for the purpose of delivering materials to the Court.

2.10.4 Witnesses be instructed on how to use the annotation device. In a criminal trial, the presiding Judge or Judge's staff may instruct the witness. In a civil trial, this responsibility rests with the practitioner calling the witness. Suggested instructions are set out in AG 1.

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<sup>5</sup> Material stored on a VHS or cassette tape cannot be viewed.

<sup>6</sup> For example, Google Drive and DropBox.



## **2.11 Document cameras**

2.5.1 All courtrooms are equipped with document cameras which can be used to display objects<sup>7</sup> or documents to all participants in the Court.

## **2.12 Other modes of presentation**

2.12.1 A practitioner wishing to present evidence in a way other than those described above<sup>8</sup>:

- a) is responsible for making arrangements to facilitate the presentation of that evidence;
- b) must, not less than 21 days prior to the first hearing date, contact the Court Technology Officer to discuss the proposed arrangements and arrange a time at which the party can attend court and test the proposed mode of presentation; and
- c) must, at least 2 clear days prior to the first hearing date, make a formal request of the trial Judge by letter to the Judge's Associate, copied to all parties.

## **2.13 Attendance by video link, audio link and remote witness facilities**

2.13.1 The District Court routinely uses video link facilities for hearings conducted at circuit locations. The Court also uses video links for some shorter criminal hearings to reduce cost and/or enhance the efficiency of proceedings.

2.13.2 All circuit courts and all DCB courts are equipped with audio and video conference capabilities.

2.13.3 Personal attendance at all hearings is generally required. Leave of the presiding judge or registrar is necessary to appear or attend by video or audio link. Practitioners wishing to appear at a hearing via audio or video link must obtain leave or a direction from the Court.

2.13.4 Leave will not ordinarily be given unless the hearing is remote and/or the hearing is in chambers (and then is a matter of discretion).

2.13.5 Counsel with leave to appear by video or audio link must:

- a) at least 24 hours prior to the hearing, inform the associate to the presiding judge or registrar by email of their telephone number; and
- b) be available to be contacted on that number at the time appointed for the hearing.

2.13.5 To facilitate remote appearances of practitioners, parties, or witnesses, the DCB has:

- a) 2 fully equipped AVL rooms from which counsel or non-vulnerable witnesses may appear remotely to another location outside the DCB; and additionally
- b) 9 remote witness rooms, including 3 dedicated child witness rooms, from which witnesses who require the attendance of a Court Appointed Officer or support person may give evidence.
- c) MS Teams integrated into all courtrooms (at the discretion of the presiding judicial officer, MS Teams is generally used as a backup to appearing from a dedicated video conferencing centre or courthouse).

A number of circuit courts are also equipped with remote witness rooms.

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<sup>7</sup> For example, a photograph of a weapon or dangerous item.

<sup>8</sup> For example, a witness demonstrating something on a laptop in the witness box, which would require testing of the equipment prior to the hearing.

- 2.13.6 The Court’s requirements for witnesses giving evidence by video link are set out in PDG 2 - Use of Video Link Facilities.
- 2.13.7 A practitioner wishing to book an AVL room must:
- 1) Obtain leave or a direction from the Court to appear by video link.
  - 2) Complete a Video Link Booking Form and submit to the Court Technology Officer via email to [CTODC@justice.wa.gov.au](mailto:CTODC@justice.wa.gov.au) at least 14 days prior to the hearing (unless leave is obtained at short notice);
  - 3) Pay any applicable booking fee; and
  - 4) Complete a test of the link if requested by the Court Technology Officer.
- 2.13.8 A practitioner wishing to book a remote witness room must:
- 1) Obtain leave via a special witness application a direction from the Court that the witness/s appear from a remote witness/child witness room.
  - 2) Notify the Court of the requirement for a Court Appointed Officer via email to [districtcourt@justice.wa.gov.au](mailto:districtcourt@justice.wa.gov.au).
  - 3) Pay any applicable booking fee.<sup>9</sup>
- 2.13.9 A practitioner wishing to book a remote witness room or AVL room at a circuit location is responsible for contacting the circuit location and making the appropriate arrangements to book a room.
- 2.13.10 A practitioner wishing to book remote witness or AVL room at an interstate or overseas location is responsible for contacting the location and making the appropriate arrangements to book a room.
- 2.13.11 A practitioner wishing to appear in a DCB hearing remotely from another court location<sup>10</sup> must:
- 1) Contact the court or video conferencing centre (“remote location”) they are seeking to appear from and request to book a link for the required date and time.
  - 2) Complete and submit any booking form required by the remote location.
  - 3) Submit the District Court’s Video Link Booking Request Form (FG 1) not less than 14 calendar days prior to the hearing to the Court Technology Officer via [CTODC@justice.wa.gov.au](mailto:CTODC@justice.wa.gov.au). The booking form must specify the address to be used to connect the link and the specific room or courtroom the DCB should connect to at the remote location.

## **2.14 Video link fees**

- 2.14.1 No fees/charges are payable in criminal matters where a direction by the Court has been made pursuant to s 121 of the Evidence Act 1906.
- 2.14.2 Where a fee is applicable, such fees are set out in the [Evidence \(Video and Audio Links Fees and Expenses\) Regulations 1999](#) (WA) (**EVAR**).

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<sup>9</sup> All matters requiring a Court Appointed Officer attract a minimum three-hour fee to book the Court Appointed Officer.

<sup>10</sup> For example, to appear remotely from Bunbury courthouse for a hearing conducted in the DCB.

## 2.15 Other requirements

2.15.1 The following additional requirements apply, depending on the media requirements:

Media	Requirements
Closed circuit TV (eg for complainants and special witnesses)	<ul style="list-style-type: none"><li>• Orders required pursuant to <i>Evidence Act 1906</i> (WA) (may be made by consent).</li></ul>
Video conference	<ul style="list-style-type: none"><li>• If evidence is to be given via video link, an order is required pursuant to <i>Evidence Act 1906</i> (WA) s 121 (may be made by consent).</li><li>• Permission for Counsel to appear at interlocutory hearings is dealt with administratively. A request can be sent to the Associate to the presiding judicial officer via letter or email.</li><li>• Not less than 14 days prior to the first hearing date, a Video Link Booking Request Form (FG 1) is to be sent to the Court.</li><li>• The requesting party must book the facility from which the witness will give evidence.</li><li>• Fees apply.</li></ul>
Audio conference	<ul style="list-style-type: none"><li>• If evidence is to be given via audio link, an order is required pursuant to <i>Evidence Act 1906</i> (WA) s 121.</li><li>• Permission for Counsel to appear at interlocutory hearings is dealt with administratively. A request can be sent to the Associate to the presiding judicial officer via letter or email.</li></ul>

## 2.16 Communication with the Court by email

2.16.1 Where the address for service of a party includes an email address, the Court will use that email address as the primary means of communicating in writing with the party. A law firm may provide only the firm's email address, and not the address of individual solicitors: DCR r 21A; RSC O 71A r 3.

2.16.2 Email correspondence to the Court must contain the following information:

- a) the action number, which should be in the reference line;
- b) the sender's name, postal address, telephone number (which may be in the signature block);
- c) the return email address; and
- d) if the sender is a legal representative, the party for whom the sender acts.

2.16.3 Except where the correspondence relates solely to one party,<sup>11</sup> email correspondence to the Court must be copied to all other parties (or their solicitors).<sup>12</sup>

2.16.4 In civil proceedings, all documents should be filed electronically via the ECMS. The ECMS is accessed through the eCourts Portal of Western Australia (eLodgment). Counsel and self-represented parties may register for eLodgment at [ecourts.justice.wa.gov.au](http://ecourts.justice.wa.gov.au). Documents may not be filed by email unless leave is granted (DCR r 20).

<sup>11</sup> For example, an application to be recognised as an 'eligible person' for the purposes of fees (see CPC 19).

<sup>12</sup> If another party has not provided an email address for service, a copy the email should be sent to that party by post or facsimile and the email to the Court should provide an undertaking in that regard.

## CPG 3 TRANSCRIPTS

**Summary:** *This Circular<sup>1</sup> sets out the information needed, and arrangements to facilitate, the provision of accurate and timely transcripts.*

### 3.1 Introduction

3.1.1 The District Court's transcription service providers are:

- a) off-site and rely on recordings to produce a written transcript; and
- b) contracted to produce transcripts against specified timelines, which depend on the location and time of the proceedings.

### 3.2 Accuracy – names and authorities

3.2.1 Many transcript inaccuracies arise from unusual names or those not encountered in everyday use. Examples include:

- a) Company names
- b) Acronyms
- c) Street names outside of Perth
- d) Places/communities outside of Perth, such as remote communities or farm names
- e) Unit/apartment blocks
- f) Unusual brand names
- g) Shop names
- h) Foreign names
- i) Case names.

3.2.2 Practitioners in all proceedings are encouraged to be alert to these and, on the first occasion each name is used, to spell it or ask the witness to spell it, for the purposes of the transcript.

<sup>2</sup>

### 3.3 Delivery of transcripts

#### ***Civil proceedings***

3.3.1 Civil proceedings will not routinely be transcribed.

3.3.2 Any party seeking a transcript of a civil proceeding must:

- a) make a request in writing via [courttranscriptdc@justice.wa.gov.au](mailto:courttranscriptdc@justice.wa.gov.au); and
- b) pay any fee associated with the production of the transcript (including, in the case of a running transcript) any fee deposit required by the Court – see DCR 71(9); *District Court (Fees) Regulations 2002*, Sch 1 item 16 and reg 8D.

3.3.3 Requests for a running transcript:

- a) will not ordinarily be approved for civil matters; and
- b) must be made at least 14 days prior to the hearing.

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<sup>1</sup> Formerly CP (Civ) 2, 3; and CP (Crim) 2, 3 – *Maintaining Transcript Quality and Transcript – Last Portion of the Day*.

<sup>2</sup> This is in addition to, and does not derogate from, the obligation to comply with DCR r 45I, r 45H and r 61.

### ***Criminal proceedings***

- 3.3.4 For trials in the District Court Building (DCB), the Court’s transcript service provider is contracted to provide 90% of all transcripts by the following deadlines:

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

- 3.3.5 For circuit trials with *running* transcripts, the Court’s transcript service provider is contracted to provide:

90% of all transcripts of words spoken	11.00 am	Delivered no later than	1.30 pm
	2.30 pm		4.30 pm
95% of all transcripts of words spoken	before 4.00 pm		6.00 pm
	after 4.00 pm		9.30 am next day

- 3.3.6 Transcripts are provided electronically to the Court. The transcript service provider does not to provide copies of transcripts directly to practitioners.

### **3.4 End of day transcripts – criminal trials**

- 3.4.1 Counsel wishing to obtain an electronic copy of the end of day transcript must complete a Transcript Order Form (FG 2) and email it to the presiding Judge's associate.
- 3.4.2 The end of day transcript will be sent automatically, in MS Word or PDF format, to counsel's nominated email address.
- 3.4.3 There is no fee for the provision of the electronic version of the end of day transcript.
- 3.4.3 A paper copy of the last portion of each day’s transcript will be provided to counsel in the courtroom on the following day, except for the last day of the trial where counsel will receive only the electronic version.

### **3.5 Fees – criminal proceedings**

- 3.5.1 The *District Court (Fees) Regulations 2002* do not apply to criminal proceedings: reg 5(1)(a).
- 3.5.2 For transcripts of criminal proceedings:
- a) CPR r 43 applies to parties (the accused and the DPP), each of whom is entitled to receive one copy of the record free of charge: CPR r 43(1)-(2). A registrar may determine the cost of any additional copies requested (and, if the party pays the amount, must supply them): CPR r 43(4); and
  - b) CPR r 51 applies to applications made by third parties (see CPG 4.3.8) - a registrar may determine the cost of supplying the copy: CPR 51(6).

## CPG 4 COURT RECORDS

**Summary:** *This Circular<sup>1</sup> sets out the Court's approach to managing the retention and disposal of, and access to, its records. It also deals with requests to restrict or 'uplift' documents that are e-filed.*

### 4.1 Introduction

4.1.1 Judicial officers exercise discretion in considering the need to extend the retention of, or requests for access to, court records. That discretion is in no way impacted by the general guidance contained in this Circular. Each application will be considered on its own merits.

### 4.2 Retention and disposal

4.2.1 Pursuant to the *State Records Act 2000* (WA), the State Records Commission has approved the District Court's Retention and Disposal Schedule, which is summarised below:

Record	Archive	Destroy
Significant criminal files	25 years after finalisation	
Insignificant criminal files		53 years after finalisation
Significant civil files	25 years after finalisation	
Insignificant civil files		25 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 civil and criminal proceedings		6 years after creation
Calendar of offences	25 years after last action	

4.2.2 The Schedule categorises case files as 'significant' and 'insignificant'. Significant files include those files deemed to satisfy one of the following criteria:

- a) relate to the development of legislation, regulations, or policy; or
- b) relate to controversial matters; or
- c) have wide community interest; or
- d) relate to unique events or circumstances.

4.2.3 Unless a judge or registrar has directed further retention of a record, it is unlikely to be retained after the period specified in the Schedule.

### 4.3 Media and third party access to Court records

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<sup>1</sup> Formerly CP (Civ) 4, 5 and 8; and CP(Crim) 4 and 5.

4.3.1 The Court has the power to allow third parties (including the media) access to court records - including copies of transcripts and video footage or images tendered in evidence in civil and criminal cases. That power:

- a) in criminal cases, derives from *Criminal Procedure Rules 2005 (WA) (CPR)* r 51;
- b) in civil cases, derives from *District Court Rules 2005 (WA) (DCR)* r 71; and
- c) in each case, may be exercised by a 'judicial officer' (judge or registrar) and, in certain cases, by the Court's media manager.

4.3.2 A non-party applicant must demonstrate 'sufficient cause' to inspect or copy a record: CPR r 51(5) and DCR r 71(7)(a).

**Applications**

4.3.3 All applications to access a court record must be made in writing,<sup>2</sup> which includes:

- a) the District Court action / proceeding number;
- b) for a current hearing, the name of the judicial officer presiding and the location of the hearing;
- c) details to identify the particular record or exhibit sought (for example, the exhibit number);
- d) the grounds on which the application is made (see CPG 4.3.2 above);
- e) 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; and
- f) any relevant publication deadlines.

4.3.4 Any application for a copy of a transcript must be made using the Transcript Order Form at FG 2.

4.3.5 Applications should be addressed and sent to the Court as follows:

Proceeding	Addressee	Email
Criminal - current trial or sentencing	Associate to presiding Judge	Associate to Judge (see website) cc: <a href="mailto:courttranscriptdc@justice.wa.gov.au">courttranscriptdc@justice.wa.gov.au</a>
Criminal – other	Principal Registrar	<a href="mailto:courttranscriptdc@justice.wa.gov.au">courttranscriptdc@justice.wa.gov.au</a>
Civil – current trial	Associate to presiding Judge	Associate to Judge cc: <a href="mailto:courttranscriptdc@justice.wa.gov.au">courttranscriptdc@justice.wa.gov.au</a>
Civil other	Principal Registrar	<a href="mailto:courttranscriptdc@justice.wa.gov.au">courttranscriptdc@justice.wa.gov.au</a>

4.3.6 Any application emailed to a judge's associate must be copied to the general transcripts email address (above) to ensure the Court has a central record of all applications.

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<sup>2</sup> Media organisations are encouraged to apply by email.

4.3.7 The subject line of any emailed application should be in the following format:

*Release of information – [case number] – [plaintiff/ accused name] – [Hearing details].*<sup>3</sup>

4.3.8 The judicial officer dealing with the application:

- a) may require the applicant to provide further information or file an affidavit in support of the application: DCR r 71(2)(a);
- b) may require the applicant to notify interested persons of the application: CPR r 51(4)(b);
- c) will determine the fees associated with the application: CPR r 51(6), DCR r 71(9) (see further CPC 15); and
- d) may grant the application 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 name of a child complainant - not otherwise covered by s 36 of the *Evidence Act* - not be published without the written consent of the child's parent.<sup>4</sup>

***Access generally - open justice and countervailing considerations***

4.3.9 The Court's power to allow access to, and provide copies of, court records is one way in which it can facilitate 'open justice'. That is, 'justice is not just done, but is seen to be done'<sup>1</sup> - so as to foster public understanding of, and to promote integrity, fairness and efficiency in, the administration of justice.

4.3.10 However, the principle of open justice is not an end in itself; it must be balanced against other potentially competing interests.

- a) In the criminal context, the interests of victims of crime is a relevant factor.<sup>5</sup>

4.3.11 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:

- a) embarrass or humiliate the victim or another witness or expose them to risk of harm;
- b) identify a child who is a witness or is otherwise involved;
- c) identify a police undercover operative or a protected witness or otherwise prejudice an ongoing investigation; or
- d) 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).

4.3.12 CPR r 51(5), and DCR r 71(7)(b) and DCR r (10), preclude access to a court record where:

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

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<sup>3</sup> For example: '*Release of information – CIV 1234 of 2010 – Smith - Trial before Judge Fenbury*' or '*Release of information – IND 1234 of 2010 – Jones - Trial before Judge Fenbury*'.

<sup>4</sup> See *Re Hogan; ex parte West Australian Newspapers Limited* [2009] WASCA 221 (*Hogan*).

<sup>5</sup> *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' which relevantly include 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).



- 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 – for example, *Evidence Act 1906* (WA) s 36C.

#### ***Records of criminal proceedings***

- 4.3.13 The Court will not usually release exhibits during a trial (at least before the jury has returned a verdict).
- 4.3.14 Media organisations are encouraged to send their request to the Court as soon as they identify an exhibit that they would like access to.
- a) 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 (more usually) after sentencing.
  - b) The Court's preference is to release copies of exhibits immediately following the conclusion of the sentencing hearing – this allows time to copy the exhibits in between the end of the trial and the sentencing.
- 4.3.15 Where a request is made during a trial:
- a) 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;
  - b) 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 the associate) of the request to determine whether the prosecution or the defence have any objections to the exhibit being released.
- 4.3.16 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.
- 4.3.17 Where an exhibit requires editing prior to release, the Court will need to be satisfied that such editing:
- a) is practicable; and
  - b) can be performed without compromising the exhibit.

An alternative is to release a copy of an exhibit subject to a limit on republication.<sup>6</sup>

- 4.3.18 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).

#### ***Records of civil proceedings***

- 4.3.19 Any person, including a media organisation, may (subject to payment of the relevant fee) inspect and receive a copy of any writ (including any endorsed statement of claim) filed in, or judgment or order of, the Court: DCR r 71(1A).

#### **4.4 Filing confidential and sensitive information**

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<sup>6</sup> As was done, for example, in *Hogan*.

### ***Criminal proceedings***

4.4.1 PDM 8 deals with secure and sensitive material tendered in criminal proceedings.

### ***Civil proceedings - eFiling privileged and confidential material***

4.4.2 A party may be required to file, or produce to a judicial officer, documents which contain (or are claimed to contain) confidential or privileged matter. Such documents might include, for example:

- a) counsel's opinion filed in support of an application to compromise a claim of a person under a disability (see CPC 9);
- b) bundles produced for the purposes of mediation only (see CPC 8);
- c) documents filed for the purposes of determining a disputed claim of privilege.

4.4.3 Where a party lodges such documents electronically, via the ECMS:

- a) if the documents are not restricted, they will, by reason of DCR r 72, be able to be searched and inspected by any other party who is a registered user of the ECMS
- b) the lodging party may request that the documents be restricted pursuant to RSC O 67 r 10 – this is done by selecting this option in ECMS at the time of lodging the document and the document will be:
  - i) automatically restricted from the time of lodgement, pending review; and
  - ii) referred for review to ensure that the document is appropriate for restriction.

### ***Anonymising party names***

4.4.4 Any application to anonymise a party name must be made in accordance with PDC 9.

4.4.5 The usual orders giving effect to anonymising a party name are set out in UOG 4.1.

### **4.5 'Uplifting' or withdrawing eFiled materials**

4.5.1 On occasion, materials are mistakenly or incorrectly filed via ECMS, or a party seeks to withdraw a document (such as a summons to produce), and the Court is asked to uplift a document.

4.5.2 It is not possible to delete a document lodged via ECMS. In circumstances where the document would otherwise have been uplifted from a physical Court file, the electronic document will be inactivated (so that it can no longer be accessed or searched).

## CPG 5 LANGUAGE SERVICES AND COMMUNICATION SUPPORT

**Summary:** *This Circular<sup>1</sup> sets out the Court's approach to and requirements for the use of translation and interpreting services in criminal and civil proceedings, and provides guidance on effective communication in that context. It also deals with the support available for persons with a hearing impairment.*

### 5.1 Introduction

- 5.1.1 An interpreter 'transfers a spoken or signed language into another spoken or signed language, usually in a limited time frame in the presence of the participants requiring the translation.<sup>2</sup> The role of an interpreter is to enable communication between two or more people who use different languages or dialects, either spoken or signed, in a manner that is 'unfiltered', objective and impartial.<sup>3</sup>
- 5.1.2 By way of contrast, a translator 'transfers the source text from one language to another, usually within an extended time frame to allow for corrections and modifications and without the presence of the participants requiring the translation'.<sup>4</sup>
- 5.1.3 In this document:
- a) a 'Court interpreter' is an interpreter arranged by the court; and
  - b) a 'private interpreter' who is an interpreter arranged by a party or a witness.
- 5.1.4 In short, the court does not provide translators, but will arrange for a court interpreter in criminal proceedings and can book a private interpreter for a party in civil proceedings.

### 5.2 Translators

- 5.2.1 In all proceedings, any party seeking to rely on or tender a document must arrange and pay for the translation of that document, by a suitably qualified translator, if required.
- 5.2.2 A translated document must be supported by an affidavit of the translator, to be made available to court and the other parties at the hearing, which:
- a) sets out the qualifications of the translator;
  - b) identifies the translated document/s; and
  - c) states that the English translation is accurate.
- 5.2.3 The Court will not ordinarily permit:
- a) an interpreter to translate a document orally in a Court hearing; or
  - b) an adjournment of the hearing for a document to be translated.

### 5.3 Interpreters

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<sup>1</sup> Formerly CP (Civ) 6 and CP(Crim) 6 (Interpreting and Language Services Guidelines).

<sup>2</sup> ANZSCO 272412; Western Australian Language Services Policy 2020 (WALSP), p 4.

<sup>3</sup> WALSP, p 4.

<sup>4</sup> WALSP, p14.

### ***Determining need***

- 5.3.1 The presiding judicial officer is responsible for determining whether an interpreter is required. If considered necessary, the court will adjourn a hearing while the issue is dealt with.
- 5.3.2 The court considers that lawyers, as officers of the Court, have a duty to determine whether a client or witness may require an interpretation service<sup>5</sup> and to assist the court in its determination of that issue.
- 5.3.3 Resources may assist counsel and the presiding judicial officer to determine the need for an interpreter include:
- a) guidance and a set of questions<sup>6</sup> published by the Western Australian Language Services Policy 2020 (WALSP); and
  - b) *Annexure 4- Four-part test for determining need for an interpreter*, annexed to the *Recommended National Standards for Working with Interpreters in Courts and Tribunals* (2<sup>nd</sup> ed.) (**National Standards**).<sup>7</sup>

### ***Protocol for the Use of Interpreters***

- 5.3.4 The Court's *Protocol for the Use of Interpreters* is set out in CPG-A2.
- 5.3.5 As emphasised in the *Protocol*, the role of a Court interpreter is an independent role to assist the Court.

### ***Competency and engagement***

- 5.3.6 The court adopts rule 4 of the Model Rules under the National Standards, as follows:

4.1 *Subject to 4.2, to carry out the office of interpreter a person must:*

1. *be currently certified, registered or recognised as an interpreter for the other language by a recognised agency or otherwise satisfy the Court/Tribunal that they are qualified to carry out the office of interpreter; and*
2. *have read and agreed to comply with the Code of Conduct; and*
3. *swear or affirm to interpret accurately to the best of their ability; and*
4. *not be a person who:*
  - a. *is or may become a party to or a witness in the proceedings or proposed proceedings (other than as the interpreter); or*
  - b. *is related to or has a close personal relationship with a party or a member of the party's family or with a witness or potential witness; or*
  - c. *has or may have a financial or other interest of any kind whatsoever in the outcome of the proceedings or proposed proceedings (other than an entitlement to a reasonable fee for the services provided by the interpreter in the course of their engagement or appointment); or*
  - d. *is or may be unable to fulfil their duty of accuracy or impartiality under the code of conduct for any reason including, without limitation, personal or religious beliefs, or cultural or other circumstances; and*

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<sup>5</sup> As to the kinds of interpretation service used in the Court, see paragraph 2.7 of the *Protocol for the Use of Interpreters* (CPG-A2).

<sup>6</sup> 'When to engage an interpreter: Decision-making guide', WALSP, p 8.

<sup>7</sup> Available online at: <https://icdi.org.au/wp-content/uploads/2022/05/JCDD-Recommended-National-Standards-for-Working-with-Interpreters-in-Courts-and-Tribunals-second-edition.pdf>

5. *cease to carry out the office of interpreter if they become aware of any of the disqualifying matters referred to in subrule (4) during a hearing and immediately disclose this to the Court/Tribunal.*
- 4.2 *In exceptional circumstances or where all reasonable efforts have failed to identify a person who satisfies the requirements of rule 4.1, the Court/Tribunal may grant leave for any person (whether or not related or known to the witness, a party or the accused) to carry out the office of interpreter under these rules even though that person may not satisfy one or more of the requirements of rule 4.1, provided that:*
1. *the Court/Tribunal is satisfied that because of their specialised knowledge based on their training, study or experience that person is able to interpret and, if necessary, sight translate accurately to the level the Court/Tribunal considers satisfactory in all the circumstances from the other language into English and from English into the other language;*
  2. *the person swears or affirms to interpret accurately to the best of their ability;*
  3. *the Court/Tribunal is satisfied that the person understands and accepts that in carrying out the office of interpreter they are not the agent, assistant or advocate of the witness, the party or an accused but are acting as an officer of the Court or Tribunal owing a paramount duty only to the Court/Tribunal to be impartial and accurate to the best of their ability;*
  4. *the Court/Tribunal directs that the evidence and interpretation be sound recorded for spoken languages, and video recorded for sign languages; and*
  5. *the person is over the age of 18 years.*
- 5.3.7 If the court engages an interpreter, it will do so by making a booking through an approved service provider or recognised agency.
- 5.3.8 If a party proposes to engage a private interpreter, then:
- a) the presiding judicial officer will need to be satisfied that the interpreter meets the requirements set out in 5.3.6 and has read and understood the Court's *Protocol for the Use of Interpreters* (CPG-A2); and
  - b) the party proposing to engage the interpreter as a private interpreter must, no later than one clear business day before the commencement of the relevant hearing, provide to the presiding judicial officer an affidavit of the interpreter deposing:
    - i) to their qualifications and experience as an interpreter; and
    - ii) that they have read and understood the *Protocol* and agree to abide by it.

***Bookings – criminal proceedings***

- 5.3.9 An accused person in criminal proceedings who seeks the assistance of an interpreter must, not less than 14 days prior to each appearance in the District Court, request an interpreter by submitting an Interpreter Booking Request Form (FG 3).
- 5.3.10 If an accused has used an interpreter for the purposes conferring with their legal representatives, their lawyer must, at the time of lodging any Interpreter Booking Request Form, advise the Court of:
- a) the name of the interpreter;
  - b) whether the accused objects that interpreter being engaged as a court interpreter in the proceedings; and

- c) any other information that may be relevant to the choice of the interpreter.<sup>8</sup>
- 5.3.11 Any party requesting an interpreter for a witness must, by no later than the first trial listing hearing after an indictment is filed, request an interpreter by submitting an Interpreter Booking Request Form (FG 3).
- 5.3.12 A court interpreter engaged to interpret for an accused person may also be directed by the court to interpret for a witness who speaks the same language as the accused.
- 5.3.13 A party may engage a private interpreter subject to:
  - a) CPG 5.3.8 above;
  - b) the party arranging and paying for the private interpreter; and
  - c) the private interpreter complying with the *Protocol for the Use of Interpreters* (CPG-A2).

#### ***Bookings – civil proceedings***

- 5.3.14 Where an interpreter is to be used at a civil trial, the party requesting an interpreter is to advise the registrar presiding at the listing conference so that appropriate case management orders may be made.
- 5.3.15 A party in civil proceedings may request that the Court book an interpreter, under the court's service provision contract, to be paid for by the party. That request must be made by submitting an Interpreter Booking Request Form (FG 3):
  - a) for a trial, not less than 14 days prior to the first special directions / trial review hearing; and
  - b) for all other hearings, not less than 14 days prior to the hearing.
- 5.3.16 The Court will ascertain whether a competent interpreter can be provided and, if so, provide a cost estimate to the party. The party will need to pay a deposit of 75% of the estimated cost of the interpreter. The Court does not charge a booking fee for this service.
- 5.3.17 A party may engage a private interpreter subject to:
  - a) CPG 5.3.8 above;
  - b) the party arranging and paying for the private interpreter; and
  - c) the private interpreter complying with the Protocol for the Use of Interpreters (CPG-A2).

#### ***Conflicts of interest and other relevant information***

- 5.3.18 A party or a lawyer requesting the use of an interpreter must inform the Court of any:
  - a) potential conflicts of interest that may arise in relation to an interpreter; or
  - b) reasons why an interpreter, or interpreter from a particular cultural background, may not be appropriate,(together, **Relevant Information**).
- 5.3.19 Examples of the kinds of matters falling within Relevant Information include:

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<sup>8</sup> See paragraph CPG 5.3.18 - 5.3.21 below.

- a) any interpreters previously used by the accused (or party or witness) who may know information extraneous to the trial or hearing; and
- b) cultural sensitivities which mean that an interpreter of a particular cultural background should not be retained.

5.3.20 Relevant Information should be identified in the 'Any other information' section on the booking request form (FG 3).

5.3.21 If a legal representative for a party becomes aware of any Relevant Information the booking form has been submitted, they should advise the Court of the Relevant Information in writing.

#### ***Guidance for Counsel***

5.3.22 To ensure that interpreters can relay each communication precisely, accurately and completely, counsel need to adjust the way in which they make submissions and ask questions. Specifically, counsel should:

- a) be conscious of the speed of the interpreter and pace themselves accordingly;
- b) use short sentences;
- c) ask only one question at a time;
- d) deal with events in a logical and/or chronological sequence;
- e) not mix topics or switch between topics;
- f) avoid the use of 'legalese' and acronyms (such as: 'learned friend' or 'I put it to you');
- g) avoid idiomatic phrases (such as: 'can I take you back to what happened on 6 July' or 'you must have been over the moon when that happened');
- h) avoid complex or loaded suggestions or questions; and
- i) avoid questions containing negative assertions (such as: 'you didn't tell the passengers not to panic').

#### **5.4 Hearing impairment support**

5.4.1 In addition to the possible engagement of an AUSLAN interpreter (in accordance with the above), the following are available to support persons with a hearing impairment:

- a) All court rooms are equipped with a hearing aid loop amplifier. 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.
- b) Persons with a hearing impairment occasionally attend court without a hearing aid. Arrangements can be made to provide such persons 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.

## CPG 6 OBTAINING DOCUMENTS FROM THE WA POLICE SERVICE UNDER COURT ORDER

**Summary:** *This Circular<sup>1</sup> sets out Court’s practice in relation to the issue of summonses and subpoenas to the Commissioner of Police to produce documents, and the usual time limits imposed on such orders.*

### 6.1 Introduction

6.1.1 Given the number of summonses and subpoenas issued to the Commissioner of Police, and to ensure that reasonable time is allowed for the desired level of due diligence in responding, this Circular sets out guidelines as to the usual timeframes for compliance.

### 6.2 Service

6.2.1 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 2 Adelaide Terrace, East Perth, WA 6004.

6.2.2 The Commissioner of Police may also accept service of summonses or subpoenas by email<sup>2</sup> to: [summonsandsubpoena@police.wa.gov.au](mailto:summonsandsubpoena@police.wa.gov.au) on the following conditions:

- a) a PDF scan of the summons is provided; and
- b) a credit card authority is completed and returned with the summons, or an undertaking is given to pay the appropriate conduct money by alternate means to be arranged with the Commissioner's Coordinator.

### 6.3 Criminal proceedings

6.3.1 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).

6.3.2 Unless there are particular circumstances of urgency, the Court considers that a reasonable time for service is not less than 14 days prior to the date specified for compliance.

### 6.4 Civil proceedings

6.4.1 A subpoena to produce documents returnable at trial may be issued without a Court order (RSC O 36B). Unless otherwise ordered, the subpoena must specify the last date for service of the subpoena which must be not less than 5 days before the date specified for compliance.

6.4.2 Unless there are particular circumstances of urgency, the Court considers that a reasonable time for service is not less than 14 days prior to the date specified for compliance.

#### ***Excluded documents***

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

- a) an audio-visual recording of an interview pursuant to the *Criminal Investigation Act 2006 (WA)*; or
- b) a visually recorded interview or a visual recording of evidence pursuant to the *Evidence Act 1906 (WA)*.

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<sup>1</sup> Formerly CP (Civ) 22; and CP(Crim) 16.

<sup>2</sup> Notice issued by WA Police Force dated 30 March 2020.



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

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

6.4.5 If, notwithstanding the above, a record or transcript of interview within CPG 5.4.3 above is produced to the Court, the Court will not grant a party leave to inspect the document.