



PRACTICE DIRECTIONS – GENERAL TABLE OF CONTENTS

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PDG 1 PRELIMINARY MATTERS

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

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 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).

1.3 Structure and Naming Conventions

1.3.1 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**".

1.3.2 It follows that the *Practice Directions – General (PDG)* apply to all civil and criminal proceedings in the District Court. They are to be read with, and are incorporated into, the:

- a) *Practice Directions – Civil (PDC)*; and
- b) *Practice Directions – Criminal (PDM)*.

Forms and annexures

1.3.3 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.

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

Usual orders

1.3.5 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.

1.3.6 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.

1.4 Terminology and Abbreviations

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

Instrument	Reference
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

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

Legislation / rules	Abbreviation
Rules of the Supreme Court 1971 (WA)	RSC
District Court Rules 2005 (WA)	DCR
District Court (Fees) Regulations	Fees Regs

Other terms

Trial List Judge	TLJ
Electronic Court Management System / eFile / eCourts Portal	ECMS

- 1.4.3 'Rules of Court' is a collective term used to denote the RSC, as modified by the DCR, and any other applicable legislative instruments that govern the practice and procedure for proceedings in the District Court.

PDG 2 ATTIRE

2.1 Application

2.1.1 This Practice Direction¹ applies to all hearings.

2.2 Civil Chambers, Including Appeals from Registrars

2.2.1 In all proceedings other than those specified below, judicial officers and counsel will wear contemporary clothing of an appropriate standard - namely, jacket and tie for men and apparel of a corresponding standard for women.

2.3 Civil Trials and Appeals from Other Jurisdictions

2.3.1 In civil trials, and on the hearing by a Judge of appeals from other jurisdictions, court dress will be as follows:

Judges: Black robe with bar jacket and jabot or bands, without wig.

Counsel: Black robe with bar jacket and jabot or bands, without wig.

Senior/Queens Counsel: The Court dress customarily associated with that office, but without wig.

2.4 Criminal and Ceremonial Occasions

2.4.1 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.

2.4.2 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 PD (Civ) 1; PD (Crim) 1.

PDG 3 USE OF VIDEO LINK FACILITIES

3.1 Application

3.1.1 This Practice Direction¹ applies to all District Court hearings in which evidence is to be taken, or a party or legal practitioner is to appear, using a video link.

3.2 Use of Video Link Facilities

3.2.1 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.

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

3.2.3 A party (“Applicant”) may seek orders pursuant to the EA s 121 by consent order (see the *Rules of the Supreme Court 1971 (WA)* O 43 r 16).

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

3.2.5 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).

3.2.6 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 3.5 of this Practice Direction.

3.3 Booking of Video Link Facilities

3.3.1 Where an order is made pursuant to the 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).

3.3.2 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.

3.4 Fees and Charges

3.4.1 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.

3.4.2 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)*.

3.5 Obligations of the Applicant

3.5.1 The Applicant must use reasonable endeavours to ensure that:

- a) 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.

¹ Formerly PD (Civ) 2; PD (Crim) 2.

This includes ensuring that the video conferencing system used by the Applicant at the far end meets the minimum bandwidths required:

- i) for an ISDN video conference call: 384kbp; or
 - ii) for an external IP video conference call: 512kbps.
- b) 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; and
- c) 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.

PDG 4 USE OF ELECTRONIC DEVICES IN COURT

4.1 Purpose of this Practice Direction¹

4.1.1 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 4.3.2 and 4.4.3. 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 4.5); and
- b) for bona fide members of the media at 4.4.3 (but see also 4.6).

4.1.2 This Practice Direction:

- a) prohibits the use of electronic devices to harass or intimidate persons attending court (4.2);
- b) regulates the use of electronic devices:
 - i) to create audio or visual records, including photographs (4.3); and
 - ii) for other purposes (4.4);
- c) regulates applications for leave to depart from the terms of this Practice Direction (4.5); and
- d) provides for the identification of bona fide members of the media seeking to make use of special provisions under this Practice Direction (4.6).

4.1.3 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.

4.1.4 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 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 4.5);
- b) members of the media should exercise additional care to ensure that material they communicate:
 - i) ensure that applications for suppression orders are timely and, wherever possible, foreshadowed prior to evidence being heard or admitted;
 - ii) can be deleted immediately if a suppression order is made subsequent to the communication.

¹ Formerly PD (Civ) 3; PD (Crim) 3.

4.2 Use of Devices to Harass or Intimidate

4.2.1 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.

4.3 Audio or Visual Recording

4.3.1 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 4.5 in relation to applications for leave) and subject to 4.3.2. This prohibition applies inside the courtrooms and the court building, whether or not the court is in session.

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

4.4 Use other than Audio or Visual Recording

4.4.1 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.

4.4.2 While the court is in session, except as provided in 4.4.3 or in accordance with permission granted by the court or presiding judicial officer (see 4.5), all devices are to be turned off and their use within the courtroom is prohibited.

4.4.3 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; and

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

4.5 Applying for Leave to Depart from the Terms of this Practice Direction

4.5.1 Applications for leave under 4.1.2, 4.3.1 or 4.4.2 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.

4.5.2 Leave under 4.1.2, 4.3.1 or 4.4.2 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.

4.5.3 The discretion to 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.

4.5.4 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.

4.6 Identifying Members of the Media

- 4.6.1 Media representatives seeking to make use of the exception provided at 4.4.3 must have been accredited by the Manager, Media and Public Liaison for the Courts, and must produce their accreditation should this be requested by court staff or court security.
- 4.6.2 If a media representative is unable to produce such accreditation when requested, court staff or court security will contact the Manager, Media and Public Liaison for the Courts to verify that a person seeking to make use of the exception allowed at 4.4.3 is a bona fide member of the media.
- 4.6.3 Any question or issue as to whether a person is a bona fide member of the media will be determined by the Manager, Media and Public Liaison for the Courts.