



**THE DISTRICT COURT
OF
WESTERN AUSTRALIA**

**CONSOLIDATED
PRACTICE DIRECTIONS &
CIRCULARS TO
PRACTITIONERS**

CIVIL JURISDICTION

2019

As updated on 11 March 2021

PREFACE

Civil Practice Directions are issued by the Chief Judge and supplement the procedures set out in the Rules of Court. 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 Court. Over the years, the District Court has issued a number of Practice Directions and Circulars to Practitioners applicable to the civil jurisdiction of the Court.

In 2016, the District Court resolved to produce a consolidated document of all practice directions and circulars to practitioners applicable to civil 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 civil 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 Civil Jurisdiction excludes the use of designated page numbers. This is to avoid repagination of the document when amendments are issued.

TABLE OF CONTENTS

PRACTICE DIRECTIONS (PD)	10
1 COURT ATTIRE	11
1.1 APPLICATION.....	11
1.2 CHAMBERS, INCLUDING APPEALS FROM REGISTRARS.....	11
1.3 CIVIL TRIALS AND APPEALS FROM OTHER JURISDICTIONS.....	11
2 USE OF VIDEO LINK FACILITIES	12
2.1 APPLICATION.....	12
2.2 USE OF VIDEO LINK FACILITIES	12
2.3 BOOKING OF VIDEO LINK FACILITIES	12
2.4 FEES AND CHARGES	13
2.5 OBLIGATIONS OF THE APPLICANT.....	13
3 USE OF ELECTRONIC DEVICES IN COURT	14
3.1 PURPOSE OF THIS PRACTICE DIRECTION	14
3.2 USE OF DEVICES TO HARASS OR INTIMIDATE	15
3.3 AUDIO OR VISUAL RECORDING	15
3.4 USE OTHER THAN AUDIO OR VISUAL RECORDING.....	15
3.5 APPLYING FOR LEAVE TO DEPART FROM THE TERMS OF THIS PRACTICE DIRECTION.....	16
3.6 IDENTIFYING MEMBERS OF THE MEDIA	17
4 APPLICATION OF SUPREME COURT PRACTICE AND PROCEDURE	18
4.1 APPLICATION.....	18
5 TRANSFER OF CHAMBER SUMMONSES FOR HEARING	19
5.1 APPLICATION.....	19
5.2 TRANSFER OF CHAMBER SUMMONSES FOR HEARING	19
6 LODGING OF DOCUMENTS RELATING TO A MATTER LISTED FOR HEARING	20
6.1 APPLICATION.....	20
7 LATE FILED DOCUMENTS	21
7.1 APPLICATION.....	21
7.2 CORRESPONDENCE	21
7.3 COURT DOCUMENTS – CIVIL.....	21
8 ACTIONS RELATING TO WORK RELATED INJURIES	23
8.1 APPLICATION.....	23
9 APPLICATIONS UNDER THE LIMITATION ACT 2005 S 91(2) AND S 92	24
9.1 APPLICATION.....	24
9.2 FORM OF APPLICATION.....	24
9.3 LISTING OF THE APPLICATION	24
9.4 REQUESTS FOR EXPEDITED HEARINGS	24
10 APPLICATIONS UNDER THE CIVIL JUDGMENTS ENFORCEMENT ACT 2004	26
10.1 APPLICATION FOR A DEFAULT INQUIRY	26
11 EXPERT WITNESSES	27
11.1 PROCEDURES	27
12 PERSONS UNDER A DISABILITY	28
12.1 APPLICATION.....	28
12.2 PROCEDURE.....	28
13 DELETION OF “CASE(S) ALSO CITED” FROM JUDGMENTS	29

13.1	APPLICATION.....	29
14	APPLICATIONS UNDER THE DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) ACT 2017.....	30
14.1	APPLICATION.....	30
14.2	FORM OF APPLICATION.....	30
14.3	ORDERS SOUGHT	30
14.4	EVIDENCE IN SUPPORT OF THE APPLICATION	30
14.5	THE HEARING OF THE APPLICATION	31
15	APPLICATIONS FOR THE EXCHANGE OF WITNESS STATEMENTS OR WITNESS OUTLINES	32
15.1	APPLICATION.....	32
15.2	EXCHANGE OF WITNESS STATEMENTS OR WITNESS OUTLINES	32
16	APPLICATIONS IN HISTORIC SEXUAL ABUSE CASES TO.....	33
16.1	APPLICATION.....	33
16.2	PROCEDURE.....	33
16.3	EXISTING ACTIONS WHERE A LITIGANT’S NAME IS SUPPRESSED.....	33
16.4	CONSENT ORDERS.....	33
16.5	FORM OF ORDERS	34
17	CIVIL JURISDICTION CHANGE IN PRACTICE IN RESPONSE TO COVID-19.....	35
17.1	TRIALS	35
17.2	EXPEDITED TRIALS GENERALLY	35
17.3	EXPEDITED HEARINGS FOR HISTORIC SEXUAL ABUSE CASES.....	35
17.4	MEDIATION OF EXPEDITED ACTIONS.....	35
17.5	APPEALS.....	36
17.6	APPLICATIONS FOR COMPROMISE	36
17.7	ALL OTHER HEARINGS AND APPEARANCES BEFORE THE COURT.....	36
17.8	TELEPHONE LINKS	36
17.9	REVIEW	36
PD ANNEXURES.....		37
	ANNEXURE 1: EXAMPLE OF ORDERS ON APPLICATIONS UNDER THE LIMITATION ACT SECTIONS 91(2) AND 92 (PD 9)	38
	ANNEXURE 2: CERTIFICATE – DEFAULT INQUIRY (PD 10)	39
	ANNEXURE 3: CODE OF CONDUCT – EXPERT WITNESSES (PD 11).....	40
	ANNEXURE 4: INDEX OF EXPERTS’ REPORTS (PD 11).....	43
	ANNEXURE 5: FORMS OF ORDERS (PD 16)	44
CIRCULARS TO PRACTITIONERS (CP)		45
1	USE OF TECHNOLOGY	46
1.1	BACKGROUND	46
1.2	USE OF LAPTOPS	46
1.3	VIDEO MATERIAL ON VHS OR DVD AND AUDIO MATERIAL ON CD	47
1.4	DOCUMENT CAMERAS	47
1.5	PHOTOS	48
1.6	OTHER PC BASED EVIDENCE	48
1.7	ELECTRONIC WHITEBOARDS – “STARBOARDS”	49
1.8	CCTV, VIDEO AND AUDIO CONFERENCES.....	49
1.9	OTHER MODES OF PRESENTATION.....	50
1.10	eTRIALS.....	50
1.11	INSTRUCTIONS TO A WITNESS ON USING THE STARBOARD	51
2	MAINTAINING TRANSCRIPT QUALITY.....	52
2.1	BACKGROUND	52
2.2	UNUSUAL NAMES	52
2.3	CIVIL CASES	52

2.4	DPP.....	53
3	TRANSCRIPT – LAST PORTION OF THE DAY	54
3.1	BACKGROUND	54
3.2	PROCEDURE FOR CRIMINAL TRIALS	54
3.3	PROCEDURE FOR CIVIL TRIALS.....	55
4	RETENTION AND DISPOSAL OF COURT RECORDS	56
4.1	INTRODUCTION.....	56
4.2	RETENTION AND DISPOSAL SCHEDULE.....	56
5	REQUESTS BY MEDIA FOR ACCESS TO COURT RECORDS.....	57
5.1	OPEN JUSTICE	57
5.2	INSTANCES IN WHICH RECORDS WILL NOT BE PROVIDED	58
5.3	OPEN JUSTICE	58
5.4	CRIMINAL JURISDICTION.....	60
5.5	CIVIL JURISDICTION.....	61
6	INTERPRETING AND LANGUAGE SERVICES GUIDELINES.....	62
6.1	BACKGROUND	62
6.2	TRANSLATORS	63
6.3	DETERMINING WHETHER AN INTERPRETER IS REQUIRED	63
6.4	BOOKING OF INTERPRETERS – CRIMINAL CASES	64
6.5	BOOKING OF INTERPRETERS – CIVIL CASES.....	64
6.6	CONFLICTS OF INTEREST.....	65
6.7	COMPETENCY OF INTERPRETERS	65
6.8	PROTOCOL FOR THE USE OF INTERPRETERS.....	66
6.9	GUIDANCE FOR COUNSEL.....	67
6.10	WITNESSES OR ACCUSED WITH A HEARING IMPAIRMENT	67
7	COMMUNICATION WITH THE COURT BY EMAIL	68
7.1	INTRODUCTION.....	68
7.2	FORM REQUIREMENTS OF EMAILS TO THE COURT.....	68
7.3	DOCUMENT LODGMENT	68
7.4	CUSTOMER SERVICE STANDARDS	69
8	FILING OF CONFIDENTIAL INFORMATION.....	70
8.1	BACKGROUND	70
9	LISTING OF SPECIAL APPOINTMENTS AND APPEALS FROM REGISTRARS’ DECISIONS.....	71
9.1	LISTING OF REGISTRARS’ SPECIAL APPOINTMENTS.....	71
9.2	LISTING OF APPEALS FROM REGISTRARS’ DECISIONS.....	72
10	APPEALS FROM DECISIONS OF REGISTRARS	73
10.1	INTRODUCTION.....	73
10.2	NOTICE OF APPEAL	73
10.3	EXTENSION OF TIME WITHIN WHICH TO APPEAL.....	73
10.4	LISTING OF THE APPEAL.....	74
10.5	SUBMISSIONS.....	74
11	CHAMBERS ATTENDANCES AND DIRECTIONS HEARINGS BY TELEPHONE.....	75
11.1	APPLICATION.....	75
12	CASE MANAGEMENT	76
12.1	INTRODUCTION.....	76
12.2	REFERENCES TO “USUAL” ORDERS	76
12.3	STAGES.....	77
12.4	REQUIREMENTS ON PARTIES	77

12.5	ENTRY FOR TRIAL MILESTONE	78
12.6	DIRECTIONS HEARINGS TO EXTEND THE ENTRY FOR TRIAL MILESTONE	79
12.7	INACTIVE ACTIONS	80
12.8	THIRD PARTY PROCEEDINGS	80
13	ACTIONS COMMENCED IN COUNTRY REGISTRIES	82
13.1	APPLICATION OF THE 2005 AND 1996 DISTRICT COURT RULES.....	82
13.2	CHAMBERS HEARINGS	82
13.3	INACTIVE LIST	83
13.4	ADDRESS FOR SERVICE	83
14	COMMERCIAL LIST.....	84
14.1	INTRODUCTION.....	84
14.2	COST EFFECTIVE LITIGATION	85
14.3	INITIAL DIRECTIONS HEARING	85
14.4	DOCKET MANAGEMENT	86
14.5	EARLY MEDIATION	86
14.6	USUAL APPLICATION OF THE DCR TO COMMERCIAL CASES.....	87
14.7	MEDIATION CONFERENCES IN THE COMMERCIAL MATTERS	88
14.8	ADJOURNING A DIRECTIONS HEARING	89
14.9	CHAMBER SUMMONSES	89
14.10	TRIALS OF COMMERCIAL MATTERS.....	90
15	MEDIATION CONFERENCES.....	91
15.1	INTRODUCTION.....	91
15.2	LISTING A MEDIATION CONFERENCE BEFORE A REGISTRAR	92
15.3	PRIVATE MEDIATION CONFERENCES	93
15.4	PARTIES TO THE MEDIATION CONFERENCE	93
15.5	PREPARATION FOR A MEDIATION CONFERENCE	94
15.6	ORDERS TO FACILITATE THE CONDUCT OF THE MEDIATION CONFERENCE.....	95
15.7	CONFIDENTIALITY OF THE MEDIATION PROCESS	96
15.8	POST MEDIATION	96
15.9	SETTLEMENT DOCUMENTS.....	96
16	PRE TRIAL CONFERENCES	98
16.1	INTRODUCTION.....	98
16.2	LISTING OF THE INITIAL PRE-TRIAL CONFERENCE	98
16.3	ADJOURNMENT OF PRE-TRIAL CONFERENCES	99
16.4	LISTING A MEDIATION CONFERENCE IN LIEU OF A PRE TRIAL CONFERENCE	99
16.5	LISTING A MEDIATION CONFERENCE FROM THE PRE TRIAL CONFERENCE.....	100
16.6	DISPENSATION OF ATTENDANCE AT PRE-TRIAL CONFERENCES	100
16.7	SETTLEMENT DOCUMENTS.....	100
17	FINALISATION OF ACTIONS REQUIRING COURT APPROVAL	102
17.1	INTRODUCTION.....	102
17.2	REGISTRAR'S JURISDICTION.....	102
17.3	ACTIONS REQUIRING COURT APPROVAL	102
17.4	LISTING OF THE APPLICATION FOR COURT APPROVAL	102
17.5	CONTENTS OF THE APPLICATION.....	103
18	PAYMENT OF TRIAL LISTING FEES	104
18.1	PAYMENT OF TRIAL LISTING FEES	104
18.2	REFUNDS WHERE THE MATTER SETTLES	105
19	LIMITED DISCOVERY	106
19.1	INTRODUCTION.....	106
19.2	THE POWER TO ORDER DISCOVERY IN THE DISTRICT COURT	106
19.3	LIMITED DISCOVERY ORDERS	107
20	SCOTT SCHEDULES	109

20.1	NATURE OF A SCOTT SCHEDULE.....	109
20.2	OBLIGATION TO SEEK DIRECTIONS.....	109
20.3	USUAL ORDERS.....	110
20.4	GENERAL CASE MANAGEMENT CONSIDERATIONS.....	111
20.5	EXPERT EVIDENCE.....	111
21	EXPERT EVIDENCE.....	112
21.1	INTRODUCTION.....	112
21.2	USUAL ORDERS FOR PROVISION OF EXPERT EVIDENCE.....	112
21.3	CONTENT OF EXPERT’S REPORTS	113
21.4	CONFERRAL BETWEEN EXPERTS	113
21.5	SCOTT SCHEDULES AND EXPERT EVIDENCE.....	114
21.6	INDEXES OF EXPERT’S REPORTS	114
22	OBTAINING DOCUMENTS FROM THE WA POLICE SERVICE UNDER COURT ORDER	115
22.1	BACKGROUND	115
22.2	SERVICE	115
22.3	CIVIL JURISDICTION.....	115
22.4	CIVIL JURISDICTION – EXCLUDED DOCUMENTS.....	115
23	SUBPOENAS.....	117
23.1	SUBPOENAS RETURNABLE AT TRIAL	117
23.2	SUBPOENAS RETURNABLE PRIOR TO TRIAL – RETURN AND SERVICE DATE.....	117
23.3	PARTICULAR ADDRESSEES	118
23.4	DRAFTING SUBPOENAS	119
23.5	COSTS OF COMPLIANCE	120
23.6	INSPECTION AND COPYING – ORDINARY RULES.....	120
23.7	INSPECTION AND COPYING – SUBPOENAS ADDRESSED TO HEALTH PROFESSIONALS	120
23.8	ALTERATION OF DATE FOR ATTENDANCE OR PRODUCTION.....	122
23.9	RETURN OF DOCUMENTS	122
24	INSPECTION AND COPYING OF DOCUMENTS PRODUCED PURSUANT TO SUBPOENA IN PERTH.....	123
24.1	PROCEDURE.....	123
25	TRIALS.....	124
25.1	INTRODUCTION.....	124
25.2	SUMMARY OF ACTIONS AFTER ENTRY FOR TRIAL.....	124
25.3	INDEXES OF EXPERTS’ REPORTS	125
25.4	CHRONOLOGIES	125
25.5	COUNSEL’S CERTIFICATE.....	126
25.6	CASE MANAGEMENT OF ACTIONS LISTED FOR TRIAL	126
25.7	TRIAL MATERIALS FOR THE JUDGE	127
25.8	MANAGEMENT OF DOCUMENTS	127
25.9	SURVEILLANCE VIDEOS AND OTHER EVIDENCE NOT IN A WRITTEN FORM	128
25.10	WITNESSES AND WITNESS STATEMENTS	128
25.11	OUTLINES OF SUBMISSIONS	129
26	EXTRACTION OF ORDERS.....	130
26.1	FILING OF ORDERS FOR EXTRACTION	130
26.2	COMMON MISTAKES	130
26.3	CONSENT ORDERS.....	130
26.4	DUPLICATE ORDERS.....	131
26.5	STANDARD ORDERS	131
27	APPLICATIONS UNDER THE CIVIL JUDGMENTS ENFORCEMENT ACT 2004	132
27.1	INTRODUCTION.....	132
27.2	FORMS	132

27.3	EX PARTE APPLICATIONS	132
27.4	SERVICE OF THE MEANS INQUIRY SUMMONS.....	133
27.5	DOCUMENTS PRODUCED AT A MEANS INQUIRY.....	133
27.6	ARREST WARRANTS.....	133
27.7	PROVISIONS FOR COUNTRY REGISTRIES	135
28	ENFORCING DETERMINATIONS UNDER THE CONSTRUCTION CONTRACTS ACT 2004.....	136
28.1	INTRODUCTION.....	136
28.2	DOCUMENT REQUIREMENTS	136
28.3	ENFORCEMENT	136
28.4	FEES	136
29	ANONYMISING LITIGANTS NAMES.....	137
29.1	INTRODUCTION.....	137
29.2	PRACTICE	137
29.3	EXISTING SUPPRESSED MATTERS	137
29.4	FORM OF ORDERS	137
29.5	CONSENT ORDERS.....	138
	CP ANNEXURES.....	139
	ANNEXURE 1: TRANSCRIPT ORDER FORM (CP 3)	140
	ANNEXURE 2: PROTOCOL FOR THE USE OF INTERPRETERS (CP 6).....	141
	ANNEXURE 3: INTERPRETER BOOKING REQUEST FORM (CP 6)	148
	ANNEXURE 4: INTERPRETERS – USUAL CASE MANAGEMENT ORDERS (CP 6).....	150
	ANNEXURE 5: NOTICE OF APPEAL FROM REGISTRAR’S DECISION (CP 10)	153
	ANNEXURE 6: EXAMPLE COMPLETED NOTICE OF APPEAL FROM REGISTRAR’S DECISION (CP 10)	154
	ANNEXURE 7: CASE MANAGEMENT – EXAMPLE OF PARTICULARS OF DAMAGES (CP 12).....	156
	ANNEXURE 8: CASE MANAGEMENT – PRO FORMA CONSENT ORDER FOR EXTENSION OF TIME FOR ENTRY FOR TRIAL (CP 12).....	162
	ANNEXURE 9: COMMERCIAL LIST – USUAL CASE MANAGEMENT ORDERS (CP 14)	163
	ANNEXURE 10: COMMERCIAL LIST – EARLY MEDIATION CONSENT ORDER (CP 14)	166
	ANNEXURE 11: COMMERCIAL LIST – CONSENT DIRECTIONS (CP 14)	170
	ANNEXURE 12: COMMERCIAL LIST – CONSENT ORDER FOR A CHAMBER SUMMONS (CP 14)	172
	ANNEXURE 13: COMMERCIAL LIST – TRIAL ON AFFIDAVIT EVIDENCE (CP 14)	174
	ANNEXURE 14: USUAL ORDERS FOR A MEDIATION CONFERENCE BEFORE A REGISTRAR (CP 15).....	177
	ANNEXURE 15: USUAL ORDERS FOR A MEDIATION CONFERENCE BEFORE A PRIVATE MEDIATOR (CP 15)	178
	ANNEXURE 16: DIRECTIONS TO FACILITATE A MEDIATION (CP 15).....	179
	ANNEXURE 17: EXAMPLE ENTRY FOR TRIAL NOTICE (CP 16).....	182
	ANNEXURE 18: PRO FORMA CONSENT ORDER TO ADJOURN A PRE TRIAL CONFERENCE (CP 16)	184
	ANNEXURE 19: PRO FORMA CONSENT ORDER TO LIST AN ACTION FOR A MEDIATION CONFERENCE IN LIEU OF A PRE TRIAL CONFERENCE (CP 16).....	186
	ANNEXURE 20: CONSOLIDATED PRACTICE DIRECTIONS OF THE SUPREME COURT OF WESTERN AUSTRALIA (CP 17).....	188
	ANNEXURE 21: STANDARD ORDERS – JUDGMENT (CP 17)	189
	ANNEXURE 22: STANDARD ORDERS – DEED OF RELEASE (CP 17)	190
	ANNEXURE 23: PRO FORMA ORDER – EXISTING ACTION (CP 17).....	191
	ANNEXURE 24: PRO FORMA ORDER – ORIGINATING APPLICATION (CP 17)	193
	ANNEXURE 25: EXAMPLE OF DISCOVERY ORDERS (CP 19).....	195
	ANNEXURE 26: SCOTT SCHEDULES (CP 20)	198
	ANNEXURE 27: SAMPLE PLAINTIFF INDEX OF EXPERTS’ REPORTS (CP 21)	200
	ANNEXURE 28: UNDERTAKING IN RELATION TO INSPECTION AND COPYING OF DOCUMENTS OR THINGS SUBPOENAED (CP 23).....	201
	ANNEXURE 29: UNDERTAKING IN RELATION TO REMOVAL AND COPYING OF DOCUMENTS OR THINGS SUBPOENAED (CP 23).....	202
	ANNEXURE 30: SAMPLE INDEX TO PAPERS FOR THE JUDGE (CP 25)	203
	ANNEXURE 31: USUAL TRIAL MATERIALS ORDERS (CP 25)	204
	ANNEXURE 32: USUAL ORDERS FOR THE EXCHANGE OF LISTS OF DOCUMENTS (CP 25)	205
	ANNEXURE 33: USUAL ORDERS FOR WITNESS STATEMENTS (CP 25)	206

ANNEXURE 34: PRO FORMA AGREED BUNDLE – MEDICAL REPORTS (CP 25)	208
ANNEXURE 35: ECONOMIC LOSS INFORMATION (CP 25).....	210
ANNEXURE 36: EXTRACTION OF ORDERS – PRO FORMA CONSENT ORDER (CP 26).....	212
ANNEXURE 37: EXTRACTION OF ORDERS – EXAMPLE CONSENT ORDER (CP 26).....	214
TABLE OF AMENDMENTS.....	216
PRACTICE DIRECTIONS.....	217
CIRCULARS TO PRACTITIONERS	219

PRACTICE DIRECTIONS (PD)

1 COURT ATTIRE¹

1.1 Application

1.1.1 This Practice Direction applies to all hearings.

1.2 Chambers, including appeals from Registrars

1.2.1 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.

1.3 Civil trials and appeals from other jurisdictions

1.3.1 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.

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

2 USE OF VIDEO LINK FACILITIES²

2.1 Application

- 2.1.1 This Practice Direction 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.

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 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 Criminal 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 paragraph 2.5 of this Practice Direction.

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

- 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 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 to *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 court room 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: 384kbp; 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 court room; and
 - (d) the arrangements made with the venue from which the video link or audio link is to be broadcast maintain the dignity and solemnity of the court, consistent with the venue being treated as part of the court room for this purpose.

Related Circular to Practitioners:

CP 1, Use of Technology, paragraph 1.8

3 USE OF ELECTRONIC DEVICES IN COURT³

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 (paragraph 3.3); and
 - (ii) for other purposes (paragraph 3.4);
- (c) regulates applications for leave to depart from the terms of this Practice Direction (paragraph 3.5); and
- (d) provides for the identification of bona fide members of the media seeking to make use of special provisions under this Practice Direction (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 communications, such as mobile email, social media (including Twitter) and internet enabled laptops from court:

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

- (a) legal representatives and self-represented litigants should:
 - (i) ensure that applications for suppression orders are timely and, where ever possible, foreshadowed prior to evidence being heard or admitted;
 - (ii) apply to vary the application of this Practice Direction if there are concerns about its application in a particular case (see 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 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.

3.6.2 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 paragraph 3.4.3 is a bona fide member of the media.

3.6.3 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.

4 APPLICATION OF SUPREME COURT PRACTICE AND PROCEDURE⁴

4.1 Application

4.1.1 Save to the extent that they are inconsistent with the *District Court of Western Australia Act 1969* (WA), the *District Court Rules 2005* (WA) and the remainder of this consolidation of Practice Directions, the following provisions of the *Consolidated Practice Directions of the Supreme Court of Western Australia 2009*, shall be deemed included in this Practice Direction:

- (a) 1.2.1 Documents – format;
- (b) 1.2.4 Documents – taking affidavits;
- (c) 4.2.2 Mediation and compromise – applications for leave to compromise by persons under a disability;
- (d) 4.3.4 Interlocutory injunctions – Usual undertaking as to damages;
- (e) 4.8 Payment into court;
- (f) 8 Reasons for decision (with the references to the Chief Justice replaced with a reference to the Chief Judge);
- (g) 9.6 Specialised procedures – Order 52A (Freezing orders) – order 52B (search orders);

⁴ Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

5 TRANSFER OF CHAMBER SUMMONSES FOR HEARING⁵

5.1 Application

- 5.1.1 This Practice Direction applies to all civil matters commenced or being conducted in the District Court.

5.2 Transfer of chamber summonses for hearing

- 5.2.1 An interlocutory summons issued in a district registry may be transferred for hearing before a Judge or Registrar in chambers sitting in Perth or elsewhere on the application of a party, or by the Court of its own motion. Any such summons issued in the principal registry may similarly be transferred for hearing elsewhere.
- 5.2.2 The application may be made ex parte and shall be accompanied by a supporting affidavit showing the grounds upon which the application is made. The application shall be filed in the registry in which the summons is issued and shall then be sent or delivered to the Principal Registrar at Perth who shall bring the matter before the Court. The Court may, if it thinks fit and without requiring the attendance of the parties, direct that the hearing be transferred.
- 5.2.3 If at the hearing of the interlocutory summons it appears that the transfer was improperly or unnecessarily obtained the Court may order the applicant to pay the costs thrown away as a result of such transfer.
- 5.2.4 The hearing of an interlocutory summons may be transferred by consent pursuant to *Rules of the Supreme Court 1971* (WA) O 43 r 16.

⁵ Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

6 LODGING OF DOCUMENTS RELATING TO A MATTER LISTED FOR HEARING⁶

6.1 Application

- 6.1.1 This Practice Direction applies to all civil matters commenced or being conducted in the District Court.
- 6.1.2 Any document lodged in relation to a matter which is listed for hearing on a particular day in chambers or open court must clearly specify on its face the date of such hearing.

⁶ Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

7 LATE FILED DOCUMENTS⁷

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. For example:

**STATE v SMITH, IND 1234 of 2008
SENTENCING HEARING 4 NOVEMBER 2008**

**SMITH v BROWN CIV 1234 of 2007
DIRECTIONS HEARING 4 NOVEMBER 2008**

- 7.2.2 Where a facsimile is sent to 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 – Civil

- 7.3.1 Where a court document is filed to which the Practice Direction applies, the filing party is to include in the 'tram lines' description of the document a reference to the date of the hearing and hearing type. For example:

**PLAINTIFF'S OUTLINE OF SUBMISSIONS
SUMMARY JUDGMENT APPLICATION – 3 NOVEMBER 2008**

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

Note: For criminal matters, see the *District Court's Consolidated Practice Directions and Circulars to Practitioners – Criminal Jurisdiction*

8 ACTIONS RELATING TO WORK RELATED INJURIES⁸

8.1 Application

- 8.1.1 Where the plaintiff's claim is a work related injury being dealt with under the *Workers Compensation and Injury Management Act 1981* (WA), and the plaintiff has been assigned a WorkCover Claim Number in respect of that injury, the plaintiff is to endorse the WorkCover Claim number on the face of any writ lodged with the Court relating to the claim.

⁸ Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

9 APPLICATIONS UNDER THE LIMITATION ACT 2005 s 91(2) and s 92⁹

9.1 Application

- 9.1.1 This Practice Direction applies to applications pursuant to the *Limitation Act 2005* (WA) s.91(2) to set aside any previously barred cause of action, and s.92 to set aside any previously settled cause of action.

9.2 Form of Application

- 9.2.1 Pursuant to the provisions of the *Rules of the Supreme Court 1971* Order 58 the application is to be commenced by way of an originating summons. The originating summons is to be issued in **Form 1B** found in Schedule 1 to the *District Court Rules 2005*. The application is to be supported by an affidavit addressing the merits of the application. A draft of the proposed writ of summons and statement of claim should be annexed.

9.3 Listing of the Application

- 9.3.1 The application will be listed by registry staff for hearing before a judge sitting in chambers every Tuesday at 12.00 noon (the first return date). It is not possible for the profession to auto list an originating summons of this nature through the electronic document system.
- 9.3.2 At the first return date the respondent must advise the Court if the respondent consents to the application.
- 9.3.3 If the respondent opposes the application, directions will be made for the case management of the originating summons in terms of the example at PD Annexure 1.
- 9.3.4 The hearing of the application will be listed for 2.15 pm on a Tuesday on such date as is provided by the Court. Parties should bear this in mind when providing their unsuitable dates in accordance with the order made at the first return date.

9.4 Requests for Expedited Hearings

- 9.4.1 Requests for expedited hearings should be made at the first return date

⁹ Consolidated Practice Directions & Circulars to Practitioners – Civil Jurisdiction 2018.

- 9.4.2 In cases where the application needs to be determined as a matter of urgency the originating summons should be filed with an affidavit deposing to the circumstances that justify the conclusion the hearing of the application should be expedited.
- 9.4.3 Practitioners should follow up their request with the registry if they have not had the documents returned to them for service within 24 hours.
- 9.4.4 Practitioners acting for the applicant should request the respondent to immediately advise if the application is conceded or is to be opposed. If the application is opposed, practitioners should be in a position to apply for appropriate orders regarding the filing of any further evidence and timetabling the application for final hearing. An example of the type of orders that might be sought and made at the first return date are found in PD Annexure 1.

10 APPLICATIONS UNDER THE CIVIL JUDGMENTS ENFORCEMENT ACT 2004¹⁰

10.1 Application for a default inquiry

- 10.1.1 Where a judgment creditor makes an application for a default inquiry pursuant to *Civil Judgments Enforcement Act 2004* (WA) s 88, counsel for the judgment creditor is to hand up to the Judge convening the hearing a signed certificate in the form of PD Annexure 2.

Related Circular to Practitioners:

CP 27, Applications under the Civil Judgments Enforcement Act 2004

¹⁰ Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

11 EXPERT WITNESSES¹¹

11.1 Procedures

- 11.1.1 *District Court Rules 2005* (WA) (**DCR**) r 48 provides that the District Court may issue a practice direction in relation to a Code of Conduct for experts. The document in PD Annexure 3 is the Code of Conduct for the purposes of DCR r 48.
- 11.1.2 DCR r 45E provides a party must file and serve an index of the reports or expert witnesses they intend to tender at trial. The format of the document to be filed and served is as set out in PD Annexure 4.
- 11.1.3 If a party decides not to call an expert witness listed in an index filed pursuant to DCR r 45E, the party:
- (a) must immediately advise the other parties in writing of that decision; and
 - (b) must not cancel any existing arrangements for the expert to appear at trial without first consulting with the other parties in case one of those parties wishes to now call the witness and take advantage of the arrangements then in place.

Related Circular to Practitioners:
CP 21, Expert Evidence

¹¹ Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

12 PERSONS UNDER A DISABILITY¹²

12.1 Application

- 12.1.1 This Practice Direction applies to all civil matters commenced or being conducted in the District Court.

12.2 Procedure

- 12.2.1 *Rules of the Supreme Court 1971 (WA) (RSC) O 70 r 1* defines a “person under a disability” to be an infant, a represented person within the meaning of the *Guardianship and Administration Act 1990 (WA) (GAA)* or a person “who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing his affairs in respect of any proceedings to which the declaration relates”.
- 12.2.2 The GAA grants to State Administrative Tribunal (**SAT**) the power to make findings as to a person’s capacity to manage their affairs and to make appropriate orders for the representation of people unable to do so. The Court recognises that the expertise in the appointment of representatives of incapable persons resides with SAT. Accordingly, a person seeking to commence or defend litigation on behalf of an incapable person who is not an infant should first seek a guardianship or administration order pursuant to the GAA. The Court will not usually make a declaration that a person is incapable of managing their affairs for the purpose of making that person a person under a disability within O 70.
- 12.2.3 A person appointed to represent an incapable person under the GAA does not need to make an application to act as a next friend, unless the party became a represented person after the action was commenced (RSC O 70 r 3).
- 12.2.4 A person appointed to represent an incapable person must act by a solicitor. The solicitor must file with the writ or appearance a copy of the order by which the next friend was appointed to represent the incapable person (RSC O 70 r 3).

¹² Formerly CIV 1 of 2005 Consolidated Practice Direction – Civil Jurisdiction.

13 DELETION OF “CASE(S) ALSO CITED” FROM JUDGMENTS¹³

13.1 Application

- 13.1.1 In accordance with the *Consolidated Practice Directions of the Supreme Court of Western Australia 2009* Practice Direction 8.2.4, the District Court of Western Australia will no longer include "Case(s) also cited" in judgments of the Court, for the reasons outlined in that Practice Direction.

¹³ Formerly Practice Direction CIV 2 of 2007 – Deletion of “case(s) also cited” from Judgments.

14 APPLICATIONS UNDER THE DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) ACT 2017¹⁴

14.1 Application

- 14.1 This Practice Direction applies to all applications to the District Court under the Domestic Violence Orders (National Recognition) Act 2017 for a declaration that a Domestic Violence Order made in any jurisdiction be a recognised DVO in this jurisdiction. Section 42 (3) of the Act provides that the person bound by the DVO is not to be served with notice of the application and s.42(4) of the Act provides that applications must be determined in the absence of the person bound by the DVO.

The same requirements apply to applications under s.43 of the Act for a declaration that a general violence order is a recognised DVO.

Accordingly the application is an ex parte application and by the *Rules of the Supreme Court 1971* Order 4 and Order 54 r.5, is required to be commenced by originating motion.

14.2 Form of Application

- 14.2.1 The form of the application to be used is Form 64 in Schedule 2 to the RSC.
- 14.2.2 The form should be amended so as to substitute “District Court” for “Supreme Court” and “Court of Appeal” and the “District Court, 500 Hay Street Perth” substituted for the address at which the Court will hear the application.
- 14.2.3 Notwithstanding the prescribed form is headed “Notice of Originating Motion”, notice of the motion and the date on which it is to be heard is not to be given to the restrained party and the form should be modified to delete that part of the form that deals with short notice.

14.3 Orders sought

- 14.3.1 The form of the relief sought in the Notice of Originating Motion should be for “a declaration that the order of the [court and the state or territory] made the [date] be recognised as a Domestic Violence Order in this jurisdiction”.

14.4 Evidence in Support of the Application

- 14.4.1 The Domestic Violence Orders (National Recognition) Act s.41 (4) provides that the declaration must be made where the application is made in accordance with Part 6 Division 4 of the Act unless the court decides to refuse the application in

¹⁴ Consolidated Practice Directions & Circulars to Practitioners – Civil Jurisdiction 2019.

the interests of justice. This practice direction does not attempt to formulate any test for what the Court may consider to be relevant to the interests of justice.

Section 41(5) provides that the Court may refuse to make the declaration if not satisfied that the person bound by the DVO has been properly notified of the making of the DVO under that law of the jurisdiction in which the DVO was made.

The evidence in support of the application must be made on affidavit in accordance with RSC O.37 and comply with the requirements of O.37 r.6. The affidavit must provide the following information;

1. The capacity in which the applicant makes the application and if a police officer that officer's rank, station and number;
2. The jurisdiction in which the order was made;
3. The relevant Court's reference;
4. Where reasonably practical, a copy of the order;
5. A certificate in writing signed by an authorized person as defined in s.32 of the Act that the order has been properly notified under the law of the jurisdiction in which it was made;
6. In the case of an application for a declaration that a general violence order is a recognised DVO, the facts that demonstrate the order addresses a domestic violence concern;
7. Any other information that is relevant to the application including any information bearing on the question of whether the interests of justice warrant refusal of the application.

14.5 The hearing of the Application

- 14.5.1 The application will in the first instance be dealt with on the papers by a legally qualified registrar of the District Court. Accordingly there will be no capacity for a legal practitioner to select a hearing date when lodging the originating motion via the Court's electronic document system. In the event of difficulties with the application the applicant will be notified and the application may be listed for hearing before a registrar sitting in chambers.

15 APPLICATIONS FOR THE EXCHANGE OF WITNESS STATEMENTS OR WITNESS OUTLINES

15.1 Application

- 15.1.1 This Practice Direction applies to all civil matters commenced or being conducted in the District Court.

15.2 Exchange of Witness statements or Witness outlines

- 15.2.1 An order for the exchange of witness statements, or the exchange of an outline of the evidence a witness will give at the trial of the case, or the use of the witness statement in the trial, will not be made as a matter of course.
- 15.2.2 An application for orders for the exchange of witness statements or witness outlines must be made by way of a chamber summons supported by an affidavit addressing the need or justification for the orders.
- 15.2.3 The chamber summons will be listed for hearing and determination by a judge.
- 15.2.4 Where parties are successful in obtaining orders relating to the use of the witness statement in the trial, those Orders will provide that the ultimate use of the witness statement will be in the discretion of the trial judge.

16 APPLICATIONS IN HISTORIC SEXUAL ABUSE CASES TO ANONYMISE AN INDIVIDUAL LITIGANT'S NAME AND TO RESTRICT ACCESS TO THE COURT RECORD OR INFORMATION IN A CASE

16.1 Application

- 16.1.1 This Practice Direction applies where an individual litigant seeks an Order, in a civil action, that their name be anonymised and access to their Court record be restricted, in circumstances where there is no legislative requirement mandating this.

16.2 Procedure

- 16.2.1 On presenting an Originating Summons or Writ for filing, pursuant to RSC O.67A r.10(1)(a)(ii) the filing party should advise the Court that they are applying for an order under RSC O.67B r.5 restricting access to the name of the litigant and other information or documentation if any. This will have the effect of immediately restricting access to the documents and the information in it.
- 16.2.2 The application under O.67A r.5 should be made by chamber summons immediately after filing the originating application, but in any event within the 24 hours prescribed by O.67A r.12 and unless the order is to be made by consent, should be supported by an affidavit establishing the grounds relied upon for the orders sought.
- 16.2.3 Any application is to be served on the prospective respondent or defendant, who will have the opportunity to be heard on the application.

16.3 Existing actions where a litigant's name is suppressed

- 16.3.1 An application by an individual litigant for an order anonymising their name, or to restrict access to the court record in an existing matter is to be made by chamber summons and unless the order is to be made by consent, supported by affidavit establishing the grounds relied upon for the orders sought.

16.4 Consent orders

- 16.4.1 Where a respondent or defendant consents to the application, the parties may file their written consent to orders pursuant to Order 43.r16. If the Court is not prepared to make the orders either in the terms sought or at all, the parties will be informed and the hearing of the application will proceed.
-

16.5 Form of orders

- 16.5.1 An example of the form of Orders to be sought in an application is found at PD Annexure 5.

17 CIVIL JURISDICTION CHANGE IN PRACTICE IN RESPONSE TO COVID-19

Summary: Consistent with the Phase 4 easing of restrictions which commenced in Western Australia on 27 June 2020 this Practice Direction is amended effective 20 July 2020 and applies until further notice, subject to any order made by a judge or registrar to the contrary.

17.1 Trials

17.1.1 Civil trials will be listed in accordance with normal listing practices and subject to any order made by a judge the trial will be conducted in accordance with social distancing requirements under Government COVID-19 guidelines. This means civil trials can now be listed for immediate hearing.

17.2 Expedited trials generally

17.2.1 The Court will continue to expedite the listing of hearings for trial where appropriate, having regard to all relevant considerations including, but not limited to, circumstances in which a party may have a limited life expectancy. Applications for expedited trials may be made to a judge or registrar in chambers.

17.2.2 The application should be supported by an affidavit setting out the grounds upon which the action should be heard on an expedited basis.

17.2.3 In addition to the expedited listing of the action for trial the action may be listed for mediation on short notice.

17.3 Expedited hearings for historic sexual abuse cases

17.3.1 Applications for the expedited hearing of applications for leave under s 91 and s 92 of the *Limitation Act 2005* (WA) should continue to be made as provided by Practice Direction 9.4.

17.3.2 Applications for expedited listing of actions for trial should be made in accordance with 17.2 above.

17.4 Mediation of expedited actions

17.4.1 On the application of the parties or on the court's own initiative the action may be listed for mediation on short notice and immediately before trial where appropriate.

17.4.2 Subject to any order of a judge or registrar to the contrary, mediation will take place by personal attendance and the mediation will be conducted in accordance

with social distancing requirements under Government COVID-19 guidelines. Any application for mediation by video or audio link should be made in accordance with Practice Direction 2 of the Consolidated Practice Directions & Circulars to Practitioners Civil Jurisdiction.

17.5 Appeals

17.5.1 Subject to any order of a judge or registrar to the contrary, the parties to an appeal are required to attend in person. Any application for hearing by video or audio link should be made at the directions hearing or in accordance with Practice Direction 2 of the Consolidated Practice Directions & Circulars to Practitioners Civil Jurisdiction.

17.5.2 The judge before whom the appeal is listed may direct that the appeal be heard on the papers and give such other directions as the judge thinks necessary for the hearing of the appeal.

17.6 Applications for compromise

17.6.1 All applications for compromise will be dealt with on the papers subject to an order of the court on application being made to the contrary.

17.7 All other hearings and appearances before the court

17.7.1 Subject to any order of a judge or registrar to the contrary, all other hearings and appearances before the court by counsel or self-represented litigants will require the personal attendance of the parties. This includes the hearing of originating summons/motions, pre-trial conferences, mediations and taxation of costs.

17.7.2 The judge or registrar before whom the matter is listed may direct that any matter will be dealt with by audio or video link or on the papers and give such other directions as is necessary. Any application for hearing by video or audio link should be made in accordance with Practice Direction 2 of the Consolidated Practice Directions & Circulars to Practitioners Civil Jurisdiction.

17.8 Telephone links

17.8.1 The telephone number provided for a telephone link must be a direct line to the practitioner appearing and with quiet surroundings.

17.9 Review

17.9.1 The court will review from time to time, the above procedures for trials, hearings and appearances in its civil jurisdiction depending on the availability of resources.

PD ANNEXURES

Annexure 1: Example of Orders on Applications under the Limitation Act Sections 91(2) and 92 (PD 9)

1. By 4.00 pm on [date], the Respondent do file and serve any affidavits in response to the Application.
2. By 4.00 pm on [date] the Applicant file and serve written submissions and a list of authorities.
3. By 4.00 pm on [date] the Respondent file and serve its written submissions and list of authorities.
4. The Originating Summons be listed for hearing before a judge on a date to be fixed after the [date].
5. By 4.00 pm on [date] the Applicant do advise the registry in writing of the parties combined unavailable dates.
6. There be liberty to the parties to apply
7. The costs of and incidental to this application be in the cause of the child sex abuse action

Annexure 2: Certificate – Default Inquiry (PD 10)

CERTIFICATE - DEFAULT INQUIRY UNDER THE CIVIL JUDGMENTS ENFORCEMENT ACT

To be handed to the Judge hearing an application of a default inquiry pursuant to
Civil Judgments Enforcement Act 2004 (WA) s 89.

1. The summons to attend the default inquiry was personally served on the person required to attend (CJEA s 89(3)) as set out in CJER Part 6, Division 2 or 4. An affidavit of service of [insert name] was filed on [date of filing] confirming personal service.
2. The summons to attend the default inquiry was served on [insert date of service], which is not less than 5 clear days before the date on which the person summoned was required to attend the default inquiry, namely [date of default inquiry] (CJER reg 64).
3. The judgment creditor has filed an affidavit setting out:
 - (a) the orders previously made under the CJEA;
 - (b) any action taken by the person the subject of the order to comply with the order (for example, the date and amount of each payment made by the judgment creditor), including the circumstances of the alleged default, in compliance with CJEA s 88(1) and/or s 88(2);
 - (c) the amount owing as at the date of the affidavit, including any costs orders, and the daily rate of interest;
 - (d) setting out any additional information the Court should be aware of in respect of the orders to be sought.

[Insert name]
Solicitor / Counsel for the Judgment Creditor
Dated: [insert date]

Annexure 3: Code of Conduct – Expert Witnesses (PD 11)

DISTRICT COURT OF WESTERN AUSTRALIA

CODE OF CONDUCT – EXPERT WITNESSES

1. Application of Code

- 1.1 This Code of Conduct applies to any expert engaged to:
- (a) provide a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
 - (b) give opinion evidence in proceedings or proposed proceedings.
- 1.2 The Code of Conduct does not apply to medical evidence in actions for personal injuries.

2. General Duty to the Court

- 2.1 An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- 2.2 An expert witness is not an advocate for a party.
- 2.3 An expert witness's paramount duty is to the Court and not to the person retaining the expert.

3. Form of Experts' Reports

- 3.1 The expert's report must certify at the commencement of the report that:
- (a) the expert has been provided with this Code of Conduct prior to preparing the expert's report;
 - (b) the report complies with the Code of Conduct.
- 3.2 An expert's written report will set out in summary form the qualifications and experience of the expert which are relied upon to qualify the expert to give the report.

Note: Under the District Court Rules, another party to the action may require the expert to provide a full statement of his or her qualifications and experience.

- 3.3 The report will give particulars identifying the material upon which the expert bases his or her expert opinion.

- 3.4 If any tests or experiments are relied upon by the expert in compiling the report, the report will contain details of the qualifications of the person who carried out any such tests or experiments.
- 3.5 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the delivery of the report.
- 3.6 The report will set out all of the factual findings or assumptions upon which any opinion is based. The opinions which the expert expresses will be in a clearly identified separate section from the factual findings and assumptions.
- 3.7 The expert should give reasons for each opinion. The reasons should be in sufficient detail so that another expert in the same discipline can understand the reasoning process used by the expert who prepared the report.
- 3.8 If an expert opinion is not fully researched because the expert considers that insufficient data is available – or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
- 3.9 The expert should make it clear when a particular question or issue falls outside his or her field of expertise.
- 3.10 At the end of the report the expert must make the following declaration:

"I [name] have made all inquiries which I believe are desirable and appropriate and that no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court."

4. Experts' Conference

- 4.1 An expert witness must abide by any direction of the Court to:
 - (a) confer with any other expert witness;
 - (b) endeavour to reach agreement on material matters for expert opinion, and
 - (c) provide the Court with a joint report and specifying matters agreed and matters not agreed and the reasons for any non agreement.
 - 4.2 An expert witness must exercise his or her independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement.
-

5. Ongoing Obligations of an Expert and the Party Retaining the Expert

- 5.1 If, after exchange of reports or at any stage, an expert witness changes his or her view on a material matter, having read another expert's report or for any other reason, the change of view should be communicated in writing (through legal representatives) without delay to each party to whom the expert witness's report has been provided and, when appropriate, to the Court.

Annexure 4: Index of Experts' Reports (PD 11)

DCR Rule 45E – Index of experts' reports

[Usual court document heading]

Witness	Date of Reports	Issues to which the report is relevant	Comments (including any special requirements)

Annexure 5: FORMS OF ORDERS (PD 16)

- 1 The (plaintiff/defendant's) name be anonymised and the (plaintiff/defendant) continue the proceedings under a pseudonym approved by the court.
- 2 All court documents filed in the proceedings shall refer to the (plaintiff/defendant) by a pseudonym.
- 3 Until further order, a non party to the action is prohibited from searching for, inspecting, or receiving copies of any Court document or information in relation to the case constituted by or relation to;
 - (a) the commencement of proceedings
 - (b) any document in connection with the proceedings, or any application in the proceedings
 - (c) any interlocutory proceeding
 - (d) the trial of the proceedings
- 4 Any reasons for decision in the proceeding shall be published using the pseudonyms approved by the court for the party and redacting references in the reasons which may lead to identification of the party.

<p><i>Related Circular to Practitioners:</i> <i>CP 29, Anonymising Litigants Names</i></p>

**CIRCULARS TO
PRACTITIONERS
(CP)**

1 USE OF TECHNOLOGY¹⁵

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 16 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 except Derby and Kalgoorlie.
- 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.
- 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 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 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

¹⁵ Formerly Circular to Practitioners GEN 2 of 2010 – Use of Technology.

this requirement is to allow the Court to allocate a courtroom with the relevant capability.

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

1.3 Video material on VHS or DVD and audio material on CD

- 1.3.1 All courts in which the District Court sits have a DVD-Video (MPEG2 format) disk player and a VHS tape player. The DVD player can also play standard audio CDs (not data CDs.).
- 1.3.2 Audio or video material which was not originally recorded in DVD or CD format, 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 or CD. In the absence of agreement between the parties, there will need to be continuity evidence given to support the tender of the actual exhibit.
- 1.3.3 The disc or tape 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.
- 1.3.4 From time to time when practitioners in a trial have sought to play an audio recording on a CD or DVD, the sound produced has been barely audible in the courtroom. The reason for this appears to have been that the sound level on the recording was at a lower than usual audio level (for example, a recording of a telephone intercept).
- 1.3.5 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 21 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 preference is for photos to be presented in print format. In this way, the printed photo is tendered as the exhibit and, in a criminal trial, can be taken into the jury room.
- 1.5.2 Printed photos can be displayed in Court rooms on a document camera (see paragraph 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 through a laptop on the counsel bench (or that of the instructing solicitor), connected to the court AV system. The requirements in paragraph 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 paragraph 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 paragraph 1.2, 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 Electronic whiteboards – “Starboards”

- 1.7.1 Each court in the DCB is equipped with an electronic whiteboard, known as a “Starboard”. This can be used by a witness in the same manner as a conventional whiteboard, save that the diagram can be saved as an electronic image and printed. 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 When a witness is being asked to use the starboard, the practitioner calling the witness will need to familiarise the witness with the system. Paragraph 1.11 below sets out the type of instruction which should be given to the witness.
- 1.7.3 A practitioner can also request the Court to upload images onto the electronic whiteboard for a witness to annotate. The annotated image is then saved and printed. There are colour printers outside each court. The printed image is then tendered as the exhibit.
- 1.7.4 The court limits the number of images each party can upload to 10. This is because more images than that slows the Starboard system, with the consequent risk of delays to the efficient conduct of the trial.
- 1.7.5 A practitioner wishing to use the Starboard must send to the Court a Courtroom Technology Booking Form and Electronic Starboard Booking Request 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 Technology Booking Form.

1.8 CCTV, video and audio conferences

- 1.8.1 All circuit courts and 14 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)	<ul style="list-style-type: none">• Orders required pursuant to <i>Evidence Act 1906</i> (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	<ul style="list-style-type: none">• For reception of evidence, order required pursuant to <i>Evidence Act 1906</i> (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.

	<ul style="list-style-type: none">• The requesting party also needs to book the facility from which the witness will give evidence.• Fees apply.
Audio conference	<ul style="list-style-type: none">• For reception of evidence, order required pursuant to <i>Evidence Act 1906</i> (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 in 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 day before the commencement of the hearing in order to discuss the proposed arrangements and arrange a time at which the party can attend court and test the proposed mode of presentation.

1.10 eTrials

- 1.10.1 There are 6 courtrooms in the DCB equipped for eTrials. No circuit court is equipped for an eTrial.
- 1.10.2 An eTrial will typically involve:
- All exhibits and potential exhibits being scanned and entered into the Court’s eTrial database.
 - Linking of documents within the database, for example witness statements and transcripts.
 - Presentation of documents in an electronic format.
- 1.10.3 The Supreme and District Courts have adopted a common approach to eTrials, set out in a document entitled “Technical Guide for Preparing and Submitting Documents for eTrials”. It is available on the website of both courts.

- 1.10.4 Practitioners wishing to conduct an eTrial should seek a directions hearing at which specific orders can be made for the trial to be an eTrial. In a criminal trial, the application for a specific directions hearing should be made at the first mention in the District Court.
- 1.10.5 In a civil trial, the parties should confer as to when to seek specific trial directions. In some cases, it may make sense for the discovery to be undertaken electronically to facilitate the trial being an eTrial. At the very latest, the application for specific directions for the eTrial should be made at the first listing conference. It is likely that the Court would allocate the trial Judge shortly after the listing conference with the intent that the trial Judge will manage the pre trial processes and directions.

1.11 Instructions to a witness on using the starboard

Ms Witness, in a moment I am going to ask you to draw on the device in front of you which is an electronic whiteboard. Before I do that, I want to make sure you are comfortable with the system.

Mr Usher is going to hand you a special 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. You will see a car in the image. Can you draw a circle around it?

Now we are going to change colour. You will see a selection of coloured lines called a palette on the right hand side of the screen. In the middle there is a box with a red coloured line. Press on the box. Now draw another circle.

You can erase what you have drawn. In the palette in the bottom left hand corner you will see a box with an eraser in it. Press on the box. Now rub out what you have drawn.

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 Witness, do you feel comfortable with the Starboard?

2 MAINTAINING TRANSCRIPT QUALITY¹⁶

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 everyday 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.

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 Civil cases

2.3.1 Practitioners are reminded that, for civil trials, each party is to file and serve a list of witnesses that the party intends to call to give evidence (*District Court Rules 2005 (WA) (DCR) r45I(1)*). The list is to be filed and served at least 7 days before the trial date. A party cannot call a witness at a trial unless the party has complied with this requirement unless they obtain the leave of the Court.

¹⁶ Formerly Circular to Practitioners GEN 1 of 2009 – Maintaining Transcript Quality.

2.3.2 Pursuant to DCR r 45H and r 61, there is also a requirement for counsel to prepare and file as part of the Outline of Submissions a list of Legal Authorities.

2.3.3 In addition to meeting these obligations, practitioners are asked to fax or email witness lists and legal authorities to the transcript service providers before 9am on the day of the hearing. The relevant contact details are:

All Perth matters (criminal and civil)

DTI Global
Email: debbie.helm@dtiglobal.com

All circuit matters (criminal and civil)

Auscript Australasia Pty Limited
Fax: 9221 2449
Email: ausper@auscript.com.au or t.debski@auscript.com.au

2.4 DPP

2.4.1 Prosecuting authorities are to provide transcript service providers with copies of the trial indictment and the associated witness list by 9am on the day of hearing to the contact details set out in paragraph 2.3 above.

3 TRANSCRIPT – LAST PORTION OF THE DAY¹⁷

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 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 prior to 4:00pm, by 6:00pm the same day. The service provider is under a further obligation to provide 90% of all transcripts of words spoken at a trial after 4:00pm by 9:30am the next day.
- 3.1.3 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 automatically, as soon as it is received by the Court.
- 3.1.4 The Court has instructed its transcript service provider not to provide copies of transcripts directly to practitioners.

3.2 Procedure for criminal trials

- 3.2.1 In order to be provided with an electronic copy of the end of day transcript, prior to the commencement of the trial counsel must complete the form in CP Annexure 1 and fax or email it to the Associate to the presiding Judge. 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 This procedure applies only to trials conducted in the DCB.
- 3.2.5 There is no fee for the provision of the electronic version of the end of day transcript.

¹⁷ Formerly Circular to Practitioners GEN 3 of 2008 – Transcript – Last Portion of the Day.

- 3.2.6 For circuit criminal trials, running transcript is only available for trials of 4 or more days duration. The Court does not currently have the capacity to provide practitioners with an electronic copy of the end of day transcript for a circuit trial.

3.3 Procedure for civil trials

- 3.3.1 The procedure set out in this Circular can also be used in a civil trial, subject to the parties requesting and paying the usual fees for running transcript.

4 RETENTION AND DISPOSAL OF COURT RECORDS¹⁸

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*, 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
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	

¹⁸ Formerly Circular to Practitioners GEN 1 of 2008 – Retention and Disposal of Court Records.

5 REQUESTS BY MEDIA FOR ACCESS TO COURT RECORDS¹⁹

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:
- Embarrass or humiliate the victim or another witness or expose them to risk of harm.

¹⁹ Formerly Circular to Practitioners GEN 1 of 2011 – Requests by Media for Access to Court Records.

- 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
Civil – current trial	Associate to presiding Judge	Perth: see website Circuit courthouse: see website	Associate to Judge – see attached cc: courttranscriptdc@justice.wa.gov.au
Civil 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] – [plaintiff/ accused name] – [Hearing details]

For example:

Release of information – CIV 1234 of 2010 – Smith - Trial before Judge Fenbury

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, though 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 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)).

5.5 Civil jurisdiction

- 5.5.1 Any person, including a media organisation, may 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)). This is subject to payment of the prescribed fee.
- 5.5.2 Applications to inspect or copy other records or exhibits are to be made in accordance with the procedure set out in paragraph 5.3 above.

6 INTERPRETING AND LANGUAGE SERVICES GUIDELINES²⁰

Summary: This Circular sets out the Court's approach to the use of interpreters in criminal and civil proceedings as well as other issues relating to barriers to effective communication. The Court does not provide translators, but will arrange for interpreters in criminal proceedings and can book an interpreter for a party in a civil proceeding. Requests for the use of an interpreter must be made on the booking form 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. The Circular provide 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”.²¹ 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. As is the case with interpreters, translators are responsible for the communication process, and not for the information provided”.²²
- 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*.²³ The guidelines have been

²⁰ Formerly Circular to Practitioners GEN 2 of 2011 – Language Services Guidelines.

²¹ As defined in *The Western Australian Language Services Policy 2014*, available online at: http://www.omi.wa.gov.au/resources/publications/Languages/Language_Services_Policy_2014.pdf (“OMI Policy”), p 45.

²² OMI Policy, n 25, p 46.

²³ Available online at: http://www.department.dotag.wa.gov.au/C/customer_service.aspx?uid=1163-9829-1813-1792

developed in consultation with relevant interpreter service providers and industry bodies.

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:²⁴

- (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*²⁵ 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.²⁶

²⁴ This approach is based on that in *Oaths, Affidavits and Statutory Declarations Act 2005* (WA) s14(1).

²⁵ See n 25.

²⁶ 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 Booking of interpreters – criminal cases

- 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.
- 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 paragraph 6.7 of these guidelines and the Protocol for the Use of Interpreters in paragraph 6.8.
- 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, paragraph 6.6 below).

6.5 Booking of interpreters – civil cases

- 6.5.1 The Court is able to arrange for an interpreter for a party to attend at trial or at a hearing, to be paid for by the party, but taking advantage of the Court's service provision contract. A party wishing the Court to do so is to file a request in the form of CP Annexure 3:
- (a) for a trial, not less than 14 days prior to the listing conference at which the action is to be allocated hearing dates; and
 - (b) for all other hearings, not less than 14 days prior to the hearing.
- 6.5.2 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.

- 6.5.3 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 paragraph 6.7 of these guidelines and the Protocol for the Use of Interpreters in paragraph 6.8.
- 6.5.4 Where an interpreter is to be used at a civil trial, the party seeking to use the interpreter is to advise the Registrar presiding at the listing conference of this fact. The Registrar will then make appropriate case management orders, usually as set out in CP Annexure 4.

6.6 Conflicts of interest

- 6.6.1 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.
- 6.6.2 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.
- 6.6.3 In a civil case, the usual case management orders in CP Annexure 4 provide that the certificate filed by a party’s lawyer when using a private interpreter contain a certification regarding conflicts of interest.

6.7 Competency of interpreters

- 6.7.1 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.
- 6.7.2 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).

6.7.3 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.

6.8 Protocol for the use of interpreters

6.8.1 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.

6.8.2 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.

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

6.8.4 In a civil case, the usual case management orders in Annexure 4 provide that the certificate filed by a party's lawyer when using a private interpreter contain a certification that the Protocol has been provided to the interpreter and that the interpreter agrees to abide by it.

6.8.5 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.

6.9 Guidance for counsel

6.9.1 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.

6.10 Witnesses or accused with a hearing impairment

6.10.1 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.

6.10.2 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 COMMUNICATION WITH THE COURT BY EMAIL²⁷

Summary: The District Court will be using email as a method of communication with parties. This circular sets out some guidance as to how this will occur.

7.1 Introduction

- 7.1.1 The purpose of this Circular to Practitioners is to set out some guidelines for communicating with the Court by email.
- 7.1.2 The Court will be making greater use of email as a method of communication. The Court will facilitate but not require parties to communicate with it by email.
- 7.1.3 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: see *District Court Rules 2005 (WA)* (DCR) r 21A read with *Rules of the Supreme Court 1971 (WA)* O 71A r 3.

7.2 Form requirements of emails to the Court

- 7.2.1 Email correspondence to the Court must contain the following information:
- The action number, which should be in the reference line;
 - The sender's name, postal address, telephone number (which may be in the signature block);
 - The firm's return email address; and
 - Where the sender is a lawyer, the party whom the sender acts for.

The email address of the Court is published on the District Court website.

- 7.2.2 Except where the correspondence relates solely to one party (eg a fee waiver), the email should be copied to all other parties (or their solicitors). Where a party or their lawyer has not provided an email address for service, the email should state that the sender will provide a copy to the other party by post or facsimile.

7.3 Document lodgment

- 7.3.1 This Circular to Practitioners relates to correspondence, and not the filing of Court documents.

²⁷ Formerly Circular to Practitioners CIV 9 of 2005 – Communication with the Court by Email – Civil Jurisdiction.

7.3.2 The DCR do not allow for Court documents to be filed with the Court by email (see DCR r 20). Rather, Court documents can be filed through an eLodgment facility developed by the Court. .

7.3.3 The Court has advised in other Circulars to Practitioners that the following documents may be sent to the Court by email:

Circular	Document
CP 16	Request for a dispensation of the need to attend a pre trial conference
CP 18	Fee waivers, including requests where a Form 2 is required.
CP 26	Draft orders for extraction

7.4 Customer service standards

7.4.1 The Court's usual customer service standards will apply to email communications, which are:

- All correspondence will be opened the same business day (correspondence received after 4.00pm will be opened the next business day).
- All correspondence will be answered within 7 days.

7.4.2 Given the service standards, parties or their solicitors should not use email to advise the Court of urgent matters, that is, matters requiring attention within 24 hours. This should continue to be done by telephone.

8 FILING OF CONFIDENTIAL INFORMATION²⁸

Summary: This circular provides information about the filing of sensitive information such as restricted information, confidential information and other documents in respect of which legal professional privilege or other claims to confidentiality might arise.

8.1 Background

- 8.1.1 Documents over which privilege of some form is claimed, such as counsels opinion in respect of an application for compromise, or in respect of which some other claim or requirement for confidentiality arises, have in the past been filed with the District Court by presenting the documents in a paper form at the registry, usually with the privileged documents sealed in an envelope and with a covering letter drawing the Court's attention to the claim.
- 8.1.2 The practice also applied where parties sought to restrict judicial officers' access or knowledge of documents in respect of cases of which a document was filed.
- 8.1.3 Filing such documents this way has facilitated the Court's ability to recognise the nature of the documents and to ensure the confidentiality of the documents is maintained to the appropriate extent.
- 8.1.4 However, the Court's transition from paper files to electronic files from the 4 July 2016, and the expansion of the capacity for electronic lodgement of documents with the Court via the eCourts Portal of Western Australia has seen a significant increase in the legal professions use of this technology.
- 8.1.5 In circumstances where lodgement is not permitted otherwise than by the Court's electronic document system (EDS), the legal profession is required to file sensitive documents electronically and to advise the Court that the information is "restricted information" by making a record on EDS: RSC O.67A r.10.
- 8.1.6 Where paper filing is still possible parties may continue to lodge those documents at the registry in the same manner as in the past.
- 8.1.7 The legal profession is reminded that by *District Court Rules 2005 (WA)* r 72 registered users of electronic lodgement who are parties to the case may search for and inspect documents that have been filed electronically in that case. The search can be conducted online and remotely from the Court.

²⁸ Formerly Circular to Practitioners CIV 1 of 2016 – Filing of Confidential Information.

9 LISTING OF SPECIAL APPOINTMENTS AND APPEALS FROM REGISTRARS' DECISIONS²⁹

Summary: The District Court will endeavour to list all special appointments and appeals from Registrar's decisions at the initial appearance or mention.

9.1 Listing of Registrars' special appointments

- 9.1.1 Where a chamber summons is to be heard at a special appointment, the Court will in the ordinary course list the special appointment at the first return of the summons.
- 9.1.2 Parties wishing to have the unavailable dates of counsel taken into account should be in a position to advise the Court of unavailable dates at the first mention.
- 9.1.3 This practice will replace the practice of the Court adjourning the application to a special appointment, then leaving it to the parties to provide their unavailable dates to the Court, on some occasions, many weeks after the initial return of the chambers summons.
- 9.1.4 Where as a result of the consultation process it is apparent to the parties that the application will require a special appointment, the applicant may write to the Court with the application setting out:
- (a) the parties' agreement that a special appointment will be required;
 - (b) any agreed programming orders (for example, the for filing of affidavits);
 - (c) the estimated duration of the special appointment; and
 - (d) the unavailable dates of counsel.
- 9.1.5 The application will be reviewed by a Registrar who will either list the application for a special appointment with appropriate programming orders or list the application in general chambers for an initial mention.
- 9.1.6 Where an application has been listed in general chambers and the parties subsequently form the view that it will require a special appointment, the applicant may write to the Court in the same form as the preceding paragraph. Counsel for the parties will still need to attend on the listed initial mention in chambers unless advised to the contrary.

²⁹ Formerly Circular to Practitioners CIV 4 of 2007 – Listing of Special Appointments and Appeals from Registrars' Decisions.

9.2 Listing of appeals from Registrars' decisions

- 9.2.1 Under the *District Court Rules 2005* (WA), a directions hearing is held in each appeal initiated in the Court. For appeals from decisions of Registrars, in the ordinary course, the Court will set the hearing date for the appeal at the directions hearing.
- 9.2.2 Parties wishing to have the dates of counsel taken into account should be in a position to advise the Court of unavailable dates at the first mention.
- 9.2.3 At this stage, the Court does not propose to ordinarily list other appeals for hearing at the initial directions hearing. This is because, routinely, in other appeals there are preliminary matters that need to be attended to before the appeal can be listed. For example, the Court may have to obtain the relevant Magistrates Court file.

10 APPEALS FROM DECISIONS OF REGISTRARS³⁰

Summary: *The Court has clarified the documentation required to commence an appeal from a decision of a Registrar.*

10.1 Introduction

- 10.1.1 Any party dissatisfied with a decision of a Registrar may appeal the decision to a Judge: *District Court Rules 2005 (WA) (DCR) r 15(1)*. The appeal is by way of a new hearing of the matter that was before the Registrar: *DCR r 15(6)*.
- 10.1.2 *DCR r 15(3)* provides that an appeal is to 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.

10.2 Notice of appeal

- 10.2.1 There is no prescribed form for the notice of appeal. CP Annexure 5 is a format which the Court would encourage practitioners to adopt as the preferred format. CP Annexure 6 is an example of a completed notice of appeal.
- 10.2.2 As an appeal from the decision of a Registrar is a new hearing, there is no need for the notice of appeal to set out any specific errors in the Registrar's decision. If there is any reasoning on which the Registrar relied which the party appealing wishes to specifically address, this can be done in the submissions (see paragraph 10.5).
- 10.2.3 A fee is payable upon filing of a notice of appeal. There is a further fee payable for each additional half day allocated for the hearing of the appeal. The relevant fees payable are set out in Schedule 1, item 5 of the *District Court Fees Regulations 2002 (WA)*.

10.3 Extension of time within which to appeal

- 10.3.1 An appeal must be commenced within 10 days after the date of the decision or such longer period as a Judge or legally qualified Registrar may direct.

³⁰ Formerly Circular to Practitioners CIV 2 of 2009 – Appeals from Decisions of Registrars.

10.3.2 Where leave to appeal is sought, this should be the first proposed order in the notice of appeal. An example is provided in CP Annexure 6.

10.4 Listing of the appeal

10.4.1 In the ordinary course, the Court will allocate the hearing date for the appeal at the directions hearing. Parties wishing to have the unavailable dates of their counsel taken into account in allocating the hearing date should bring those dates to the directions hearing.

10.5 Submissions

10.5.1 DCR r 61 provides that the parties are to file and serve written submissions for the hearing of the appeal. The submissions are to be filed at least 2 clear working days prior to the hearing of the appeal. This timetable may be adjusted by order of the Court.

10.5.2 DCR r 61(4) provides that at least 7 clear working days prior to the hearing each party is to file and serve a list of documents, including any affidavits, which the party intends to rely on, or refer to, at the appeal. The party appealing may comply with this rule by including the list in its submissions, though the submissions would then need to be filed at least 7 clear working days prior to the hearing.

11 CHAMBERS ATTENDANCES AND DIRECTIONS HEARINGS BY TELEPHONE³¹

Summary: From time to time, Registrars of the District Court will hold chambers attendances by telephone conference. This circular sets out the administrative arrangements to support that process.

11.1 Application

- 11.1.1 By *District Court Rules 2005* (WA) r 24(2)(g), the Court may deal with applications or hold conferences by telephone conference.
- 11.1.2 As at the date of issue, the most likely circumstance in which the Court would hold a telephone conference is for the purposes of a directions hearing in a pre trial conference or mediation.
- 11.1.3 Where a telephone conference is proposed by a Registrar, the Registrar's Secretary or Associate will contact the parties by email or telephone advising that the Registrar wishes to convene a telephone conference, proposing a date and requesting the parties to advise whether they are available. Once a date and time has been settled, the Registrar's Secretary or Associate will advise the parties of the date, time and administrative arrangements for the conference.
- 11.1.4 The cost of the conference call will be borne by the Court.
- 11.1.5 The conference call will proceed with the same level of formality as a chambers attendance.

³¹ Formerly Circular to Practitioners CIV 7 of 2005 – Chambers Attendances and Directions Hearings by Telephone.

12 CASE MANAGEMENT³²

Summary: The Circular sets out the way in which the District Court manages cases from commencement to entry for trial. The Court focuses its active case management oversight on areas that it considers require attention from time to time.

12.1 Introduction

12.1.1 The case management regime in the District Court is set out in the *District Court Rules 2005 (WA) (DCR)*.

12.1.2 The outcomes of case management in the District Court are to:

- Promote the just resolution of litigation.
- Facilitate the timely resolution of litigation at a cost affordable to parties and proportionate to the value and complexity of what is in issue.
- Maximise the efficient use of scarce judicial and administrative resources.
- Ensure that, where a case proceeds to trial, the issues are clearly defined, evidence is presented in an efficient manner and the materials for the Judge are complete and well organised.
- Avoid undue delay, and efficiently dispose of the business of the Court.
- Maintain public confidence in the administration of justice by the District Court.

12.1.3 These outcomes have to be achieved in the context of the ultimate aim of a court which is the attainment of justice (see generally *AON Risk Services Australia Ltd v Australian National University* (2009) 258 ALR 14; *Qld v JL Holdings Pty Ltd* (1997) 189 CLR 146).

12.1.4 In answering the question of how best to achieve these outcomes, the Court will aim to deploy the resources available for case management to those cases where the outcomes of case management are most at risk of not being met.

12.2 References to “usual” orders

12.2.1 Circulars to Practitioners issued by the Court make reference on occasion to “usual” orders.

12.2.2 The purpose of making reference to “usual” orders is to give parties and their lawyers an indication of the type of order that will commonly be made in an identified scenario.

³² Formerly Circular to Practitioners CIV 1 of 2007 – Case Management.

- 12.2.3 The reference to a “usual” order should not in any way be considered as binding or limiting the Court’s discretion. In each case the Court will make those orders necessary to facilitate the attainment of justice in the circumstances of the particular facts before it.

12.3 Stages

- 12.3.1 The standard case management timetable in the DCR is as follows:

Milestone	Time
Pre-trial conference	160 days after first defence
Trial	290 days after first defence

- 12.3.2 Although there is no milestone for case management purposes until a defence has been filed, this does not affect the ability of the parties to take whatever steps they consider appropriate to progress or finalise an action at this stage. The *Rules of the Supreme Court 1971 (WA) (RSC)* as they apply to the District Court (see DCR r 6) impose a timetable for pleadings. The parties have remedies where there has been non-compliance with the relevant rules, including the ability to enter default judgment or seek judgment on a springing order where there has been non-compliance with an order of the Court.
- 12.3.3 The Court’s approach to case management is to use the stages set out above as a framework. The time between entry for trial and the first pre-trial conference is in the hands of the Court to meet through its listing practices. Likewise, the time between trial and judgment is a matter for the Court.
- 12.3.4 This leaves 3 stages which will be the subject of active case management:
- Entry for trial stage - Lodgment of defence to entry for trial
 - Pre-trial conference stage – First pre-trial conference to commencement of listing conference
 - Callover stage – First listing conference to commencement of trial.
- 12.3.5 Management of cases in the pre-trial conference stage is dealt with in CP 16, Pre Trial Conferences. Management of cases in the callover stage is dealt with in CP 25, Trials. The remainder of this Circular to Practitioners deals with management of cases prior at the entry for trial stage.

12.4 Requirements on parties

- 12.4.1 The DCR impose a number of obligations on parties to serve, and in some cases file, documents prior to entry for trial, as follows:

Time	Party required to take action	Rule	Action
Within 60 days of first defence	Party claiming damages	45C	File and serve particulars of damages
Within 60 days of first defence	All parties	46	Give discovery
Within 75 days of first defence	Plaintiff in an action on building or engineering contract	45D	Apply for directions as to the filing of a Scott Schedule
Within 120 days of first defence	Plaintiff	37	File and serve Entry for Trial

CP Annexure 7 is an example of a set of particulars of damages.

12.5 Entry for trial milestone

12.5.1 Under the DCR, the action is to be entered for trial within 120 days after first defence is filed. If the action is not so entered for trial, the Court will issue a Form 2 notice of default (r 38). If that form is not complied with, the action is taken to be inactive and is placed on the Inactive Cases List (r 44, r 44D). If that occurs, the Court will send to the parties a notice advising that the action has been placed on the Inactive Cases List, and of the effect of r 44E and r 44G.

12.5.2 If a case is on the Inactive Cases List, only the following types of documents may be lodged (r 44E):

- (aa) a Form 1AA Memorandum of appearance;
- (a) a Form 1 Entry for Trial (which may be lodged by any party – r 38(2));
- (b) a consent order finalising the action;
- (c) a summons for an order to remove the action from the Inactive Cases List;
- (d) a summons for an order dismissing the action for want of prosecution; or
- (e) any document that relates to a document listed above.

12.5.3 Once an action is on the Inactive Cases List, the Court cannot accept a consent order removing it from the Inactive Cases List and extending the entry for trial milestone.

12.5.4 The Court will accept a consent order extending the time within which the action must be entered for trial prior to the date on which the action is placed on the Inactive Cases List. The consent order will be reviewed by a Registrar who may wish to summons the parties to a directions hearing in any event. The consent order should briefly record the reason for the extension or the explanation could be contained in a covering letter. Examples supporting an application for extension include where:

- the parties are waiting for an expert's report to be finalised; or
- the plaintiff's medical condition is not yet stable enough for the matter to progress to trial.

An example consent order is set out at CP Annexure 8.

12.6 Directions hearings to extend the entry for trial milestone

12.6.1 Where a chambers summons is filed seeking to extend the entry for trial milestone, the Court's expectation for this directions hearing is as follows:

- (a) Unless directed to do so by the Court beforehand, there is no need for any party to file an affidavit supporting (or opposing) the extension. If required, the Registrar convening the directions hearing will direct that a party file an affidavit deposing to particular facts relevant to the grant of an extension.
- (b) If there is a need for any of the parties to take particular action before the matter can be entered for trial, the plaintiff should set out the orders required in the chamber summons. The orders should comprise a programme of all that needs to be done in order to enter the matter for trial. Examples of the orders that may need to be made include:
 - Requiring a party (including a third party) to give discovery or inspection, either generally or of particular documents; or
 - Orders in relation to expert evidence pursuant to RSC O 36A.
- (c) It is open for any other party to seek orders at the directions hearing. In this case, the party should file and serve a minute of proposed orders. Any party seeking directions or orders at the directions hearing must comply with DCR r 34 and give the other parties at least 2 clear days notice of the orders sought. Obviously, if more notice can be given that may well assist the efficient disposition of the matter at the directions hearing.
- (d) If, in the usual course, the orders sought by a party at a directions hearing would need to be supported by an affidavit, then the party should file and serve an affidavit in support (for example, an application for discovery of specific documents).
- (e) The RSC and the DCR require the parties to consult about the orders required prior to the directions hearing and endeavoured, in good faith, to have resolved as many of the issues giving rise to the summons as possible (see DCR r 22).
- (f) If there is a contested application at the directions hearing which, in the ordinary course, would have gone to a special appointment, the Registrar hearing the application may list the matter for a special appointment. The listing will usually be done at the directions hearing. Parties wishing to

have their unavailable dates taken into account should bring those dates to the directions hearing.

- (g) The Court's expectation is that counsel or the solicitor attending on the chambers summons will have sufficient familiarity with the case to make submissions on any case management matter likely to arise in order to progress the case through to entry for trial.

12.7 Inactive actions

12.7.1 An action may be placed on the Inactive Cases List in one of three ways:

- (a) breach of the entry for trial milestone (DCR r 44, r 44D);
- (b) by order of the Court (DCR r 44C, r 44D);
- (c) if no document has been filed in the action for 12 months (DCR r 44A, r 44D).

12.7.2 Where an action is placed on the Inactive Cases List, the Court must give all parties a notice that this has occurred and of the effect of DCR r 44E and r 44G. DCR r 44E is discussed above.

12.7.3 DCR r 44G provides that an action that is on the Inactive Cases List for 6 months is taken to have been dismissed for want of prosecution. Parties will be given notice if this occurs (but no warning that it is about to occur). Where an action is dismissed pursuant to DCR r 44G, the parties may apply to the Court for consequential orders, for example, as to costs or the disposition of a counterclaim.

12.8 Third party proceedings

12.8.1 Third party proceedings have the potential to (and in many cases do) cause prejudice to the plaintiff in the form of costs and delay while the issues between the defendant and the third party are being sorted out.

12.8.2 When a party applies for leave to issue third party proceedings, the usual order will set a specific time for service of the third party proceedings, and provide for ongoing case management. The usual orders will be in the following terms:

- “1. The Defendant do have leave to issue a Third Party Notice directed to [name of proposed third party].
- 2. By [insert date], the Defendant do serve on the Third Party:
 - (a) the Third Party Notice;
 - (b) a copy of this order;
 - (c) a copy of the current pleadings in the action [if appropriate];and

(d) a statement of claim in the third party proceedings [if appropriate].

3. The application be adjourned to a directions hearing on [insert date] at [insert time].”

The date in paragraph 3 will be approximately 6 to 8 weeks after the date of the initial hearing. It will serve two purposes. If the defendant has filed a summons pursuant to RSC O 19 r 4, it will be the return date of the summons. If no summons has been filed, then the Court will use the directions hearing to inquire into the progress of the third party proceedings.

12.8.3 When third party directions are made, the usual order will provide for the matter to be listed for a directions hearing at a point in time when the orders made should have been complied with:

“The third party proceedings be listed for a directions hearing on [insert date] at [insert time].

There be liberty to any party, including the plaintiff, to apply for an earlier directions hearing.”

12.8.4 The directions hearing is for the action and the third party proceedings, so all parties must attend by their lawyer or in person. The defendant is to notify all parties of the date of the directions hearing.

12.8.5 The purpose of the directions hearing is for the Court to review the progress of the third party proceedings in the context of the action as a whole. It will provide an opportunity for a plaintiff who considers that its position is being prejudiced by delays in the third party proceedings to raise its concerns with the Court.

12.8.6 Any party seeking to have the Court make orders at any of the directions hearings referred to above must comply with the service requirements in DCR r 34(2).

12.8.7 A plaintiff with access to eLodgment can view the documents filed in the action online to monitor the progress of the third party proceedings.

12.8.8 Where a defendant has commenced third party proceedings without leave, and the plaintiff is concerned about the progress of the third party proceedings, the plaintiff may request the Court to list the action for a directions hearing. At the directions hearing, the Court can inquire into the progress of the third party proceedings and make appropriate orders.

12.8.9 Where a plaintiff is ready to enter an action for trial, and the defendant has instigated third party proceedings which are not ready for trial, it is open for the plaintiff to nonetheless enter the action for trial. The defendant can apply to have the entry for trial countermanded pursuant to DCR r 38B(1).

13 ACTIONS COMMENCED IN COUNTRY REGISTRIES³³

Summary: This Circular highlights some of the impacts of the District Court Rules 2005 (WA) on actions commenced in country registries and also sets out the way in which the District Court may manage cases in country registries from commencement to entry for trial.

13.1 Application of the 2005 and 1996 District Court Rules

- 13.1.1 By virtue of *District Court Rules 2005* (WA) (“2005 DCR”) r 5(1), the 2005 DCR apply to all matters commenced after 30 May 2005, including matters commenced in country registries. If an appearance has been entered to an action prior to 30 May 2005 then the *District Court Rules 1996* (WA) (“1996 DCR”) still apply.
- 13.1.2 Where there are current actions the subject of the 1996 DCR, it is the intention of the Court that those actions be brought within the 2005 DCR (see r 5(2)(b)). To that end any 1996 DCR actions will be identified and may brought before a Perth Registrar by way of a directions hearing.
- 13.1.3 The attention of country practitioners is drawn to CP 12, Case Management. This Circular sets out the way the District Court will manage actions from commencement to entry for trial.

13.2 Chambers hearings

- 13.2.1 To enable improved access to the Court, the Perth Registrars may conduct chambers hearings for country matters by either video link or by telephone conference. The Associate to the presiding Registrar will contact the parties with the logistical details for the hearing a day or so beforehand.
- 13.2.2 The Court will continue its practice of sending a Perth Registrar to Bunbury each month (as required).
- 13.2.3 To the extent that is practical, applications in the Country Chambers List will be dealt with on the first return. However, where it is evident that there will be lengthy argument (more than 10 minutes) or further material is required (eg responsive affidavit evidence), the summons will be adjourned to a fixed date, either before a circuit Judge, or a Registrar.

³³ Formerly Circular to Practitioners CIV 1 of 2008 – Actions Commenced in Country Registries.

13.3 Inactive list

- 13.3.1 The inactive list will now apply to all matters. The country registry will send a Form 2 to all parties if the action has not been entered in accordance with the timetable.
- 13.3.2 If an action is not entered for trial within the time specified in the Form 2 the action will become inactive. Paragraph 12.7 of CP 12, Case Management is relevant in this regard.

13.4 Address for service

- 13.4.1 Practitioners are referred to the amendments to the *Rules of the Supreme Court 1971 (WA) (RSC)* where the requirement for an address for service to be within 66 kilometres of the Perth registry has been abolished.
- 13.4.2 Practitioners are reminded that they can now give an electronic address for service, and serve documents electronically in accordance with the RSC.
- 13.4.3 Where an action has been initiated in the Perth registry practitioners are encouraged to lodge documents electronically through the Courts website.

14 COMMERCIAL LIST³⁴

Summary: The District Court's Commercial List is designed to facilitate the resolution of commercial disputes in a timely and cost-effective manner. This Circular explains the procedures and practices adopted by the District Court to achieve this, and informs practitioners how they can tailor the procedures to the requirements of a particular case.

14.1 Introduction

14.1.1 In this Circular to Practitioners, a 'commercial case' is any action commenced by writ where the remedy sought is other than damages for personal injury.

14.1.2 At a general level, the outcomes which the Court seeks to achieve in the management of commercial cases are those set out in *Rules of the Supreme Court 1971* (WA) (RSC) O 1 r 4A and 4B, which apply in the District Court.

14.1.3 There are three more specific objectives which the Court seeks to achieve in the management of commercial cases. They are:

- (a) the parties to a routine commercial case should ordinarily attend a mediation conference before a Registrar within 3 months of filing of the first memorandum of appearance;
- (b) by the time of the mediation conference, the parties to a routine commercial case should have spent no more than 10% of the amount in issue in legal fees (including the cost of attending the conference); and
- (c) a routine commercial case which does not settle at a mediation conference should ordinarily go to trial within 9 months of commencement.

14.1.4 The term 'routine' is designed to provide a flexible benchmark. As a general guide, a 'routine' commercial case is best described in the negative, as being one that:

- Does not involve a third party claim
- Does not involve the use of experts
- Is not expected to take more than 3 days at trial.

14.1.5 The following Circulars to Practitioners may also be relevant to commercial cases:

- CP 15, Mediation Conferences
- CP 21, Expert Evidence
- CP 20, Scott Schedules

³⁴ Formerly Circular to Practitioners CIV 2 of 2013 – Commercial List.

14.2 Cost effective litigation

14.2.1 The practices of the District Court set out in this Circular contain a number of approaches which are designed to facilitate the parties conducting a commercial case in a cost effective manner. They include:

- (a) the use of consent orders to make the standard case management orders, obviating the need for the parties to attend a directions hearing;
- (b) the ability to list a mediation conference by consent order, without the need to attend a directions hearing;
- (c) a usual order for discovery which requires the parties to serve on each other copies (hard or electronic) of documents able to be inspected, with the cost of provision in the cause, obviating the need for inspection and conferral as to the costs of the provision of copies;
- (d) a standard set of orders to list a routine commercial case for trial on affidavits following an unsuccessful mediation;
- (e) docket management of the case by the same Registrar; and
- (f) the publication of the standard orders and consent orders on the Court's website to assist with drafting of orders.

14.3 Initial directions hearing

14.3.1 As a general rule in commercial matters, once the first memorandum of appearance is filed, the parties will be summoned to attend a case management hearing pursuant to *District Court Rules 2005 (WA) (DCR)* r 31. The Court endeavours to list the initial directions within 4 weeks of the first memorandum of appearance being filed.

14.3.2 At the initial directions hearing, the Registrar will discuss with the parties the appropriate case management orders to be made.

14.3.3 Broadly speaking, one of three outcomes will occur:

- Case management orders will be made (see 14.4 below).
- The action will be listed for an early mediation conference (see 14.5 below).
- No or minimal orders will be made, meaning that the DCR have their usual application (see 14.6 below).

- 14.3.4 Parties are encouraged to agree a minute of proposed orders for the initial directions hearing. The usual case management orders for an action in the commercial list are set out at CP Annexure 9.³⁵ Parties are encouraged to tailor the orders sought to the requirements of the action.
- 14.3.5 Parties in the Commercial List are reminded of DCR r 22 and r 34(2). DCR r 22 provides an obligation on a party filing a summons to be dealt with in chambers to confer with the other parties prior to filing the summons. The Court considers that this obligation applies equally where directions are being sought at a case management hearing. The certificate of conferral may be included with the chamber summons.
- 14.3.6 DCR r 34(2) provides that, so far as is practicable, a party should give the other parties 2 clear days' notice of any orders or directions to be sought at the case management hearing.

14.4 Docket management

- 14.4.1 The Court's usual practice is to docket manage commercial cases. This means that case management orders will be made at a directions hearing designed to efficiently and cost effectively move the action towards a resolution by mediation or trial.
- 14.4.2 Case management prior to a listing conference will be undertaken by the same Registrar.
- 14.4.3 The Court's usual orders are set out at CP Annexure 9. It may be that the orders will be made in stages, rather than all being made at the initial directions hearing.

14.5 Early mediation

- 14.5.1 In cases where the issues are not complex, it may be appropriate to list the matter for a mediation conference as early as practicable in the proceedings. The aim would be to get the parties together to talk about settlement before significant costs have been incurred in the proceedings. In a case of this type, the Court endeavours to list a mediation conference within 3 months of the filing of the first memorandum of appearance.
- 14.5.2 The Court encourages parties to file consent orders to this effect, obviating the need to attend the first directions hearing. A pro forma consent order to achieve this end is set out in CP Annexure 10.³⁶ This series of orders:

³⁵ These orders are also available on the District Court website at this link:

http://www.districtcourt.wa.gov.au/C/civil_procedures_standard_orders.aspx?uid=3452-8819-2758-1061.

³⁶ The pro forma consent order is also available on the District Court website in MSWord format at this link: http://www.districtcourt.wa.gov.au/C/consent_orders.aspx?uid=7464-5664-5414-5339.

- (a) obviates the need to attend the initial directions hearing;
- (b) provides a timetable for pleadings;
- (c) extends the time within which to make a summary judgment application or to apply to strike out the pleadings until after the mediation conference, reserving these rights pending the settlement discussions;
- (d) provides a timetable for informal discovery, including the provision of copies of documents obviating the need for inspection;
- (e) allocates a mediation conference, with directions to facilitate it; and
- (f) allocates a directions hearing after the mediation conference if the action does not settle.

14.5.3 If the Registrar makes orders in terms of the consent order, the Court will advise the parties of the date of the mediation conference and the subsequent directions hearing by letter.

14.5.4 Even if the action does not settle, the mediation conference may serve to identify or narrow the issues in dispute.

14.5.5 If the initial directions hearing proceeds, the parties may wish to seek orders along the lines of those in CP Annexure 10 from the Registrar. The orders in CP Annexure 10 are intended as a starting point for a discussion with the Registrar as to the most appropriate way in which to program the action to resolution.

14.5.6 It is anticipated that an action proceeding along this path that did not settle in mediation would be allocated a trial date as soon as practicable after the mediation conference, with a view to the trial being concluded within 9 months of commencement.

14.6 Usual application of the DCR to commercial cases

14.6.1 The usual application of the DCR and the relevant portions of the RSC gives rise to the following timetable:

Time	Party required to take action	Rule	Action
Within 14 days of a defendant entering an appearance	Plaintiff	RSC O 20 r 1	File and serve statement of claim
Within 14 days of the later of appearance or service of the statement of claim	Defendant	RSC O 20 r 4	File and serve defence
Within 60 days of first defence	Party claiming damages	DCR 45C	File and serve particulars of damages
Within 60 days of first defence	All parties	DCR 46	Give discovery
Within 75 days of first defence	Plaintiff in an action on building or engineering contract	DCR 45D	Apply for directions as to the filing of a Scott Schedule
Within 120 days of first defence	Plaintiff	DCR 37	File and serve Entry for Trial

- 14.6.2 The parties have remedies where there has been non-compliance with the relevant rules, including the ability to enter default judgment or seek judgment on a springing order where there has been non-compliance with an order of the Court.

14.7 Mediation conferences in the commercial matters

- 14.7.1 The existing case management rules of the Court allow the Court to order the parties to participate in a mediation conference at any stage in the litigation process (see DCR r 24(2)(e) and r 35). For example, the parties may wish to attend a mediation conference prior to going to the expense of obtaining expert evidence.
- 14.7.2 As part of the tailored approach to case management in the Commercial List, the Registrar will discuss with the parties during the case management hearings the optimal time for a Court ordered mediation to take place. In the absence of any other order, the usual practice in the Court will apply, and a pre-trial conference will be held following the action being entered for trial (see DCR r 39(1)).
- 14.7.3 In the usual course, a mediation conference will take place before a Registrar (not necessarily the managing Registrar). The parties may, however, nominate an external mediator consistent with the practices set out in the DCR (in particular r 35).
- 14.7.4 Paragraphs 9 to 14 of CP Annexure 9 contain the standard orders for mediation, which can be used as a starting point to construct an order tailored to the circumstances of the case.
- 14.7.5 Where the parties provide the Registrar convening the mediation with copies of ‘without prejudice’ documents, the documents will not form part of the Court file and will be returned to the parties or destroyed at the conclusion of the mediation.

14.7.6 If the parties have held a Court ordered mediation conference prior to the action being entered for trial, the managing Registrar may make a direction that this earlier mediation stand as the pre-trial conference in the action, dispense with any further pre-trial conference, and list the action for a listing conference.

14.7.7 Where the Court orders the parties to attend a mediation conference, then unless otherwise ordered, the mediation conference:

- (a) will involve the parties conferring on a without prejudice in order to settle the case or, failing settlement, to resolve as many of the issues between them as possible (see DCR r 24(2)(e));
- (b) will be held at the District Court Building, 500 Hay Street, Perth; and
- (c) will be allocated to a Registrar for half a day .

14.7.8 More information about mediation conferences at the District Court is set out in Circular to Practitioners CP 15, Mediation Conferences.

14.8 Adjourning a directions hearing

14.8.1 If the parties wish to adjourn a directions hearing, they may file a consent order:

- (a) vacating the directions hearing;
- (b) setting out the next series of case management orders required; and
- (c) listing the action for a further directions hearing on any Wednesday or Friday at 10:00am;
- (d) if necessary, extending the entry for trial milestone.

A pro forma consent order is at CP Annexure 11.³⁷

14.8.2 If a consent order to this effect is received more than 3 working days prior to the directions hearing, the parties may assume that their attendance is not required at the directions hearing unless otherwise advised by the Court.

14.9 Chamber summonses

³⁷ The pro forma consent order is also available on the District Court website in MSWord format at this link: http://www.districtcourt.wa.gov.au/C/consent_orders.aspx?uid=7464-5664-5414-5339.

- 14.9.1 Where a chamber summons is filed (eg for security for costs or summary judgment) in a case in the commercial list, it will be returned at the next directions hearing.
- 14.9.2 The applicant may insert the date of the next directions hearing into the chamber summons, in which case it will be immediately returned to the applicant on filing.
- 14.9.3 If, following conferral, it is clear that the chambers summons will need to be heard at a special appointment before any further steps can be taken at the action, the applicant may file a consent order to this effect with the chamber summons. A pro forma consent order is at CP Annexure 12.³⁸
- 14.9.4 The consent order may also be filed prior to the first return of the chamber summons at the directions hearing.
- 14.9.5 Where the Court requests a party to provide unavailable dates, the party should provide the combined unavailable dates of the parties.
- 14.9.6 The draft orders CP Annexure 12 assume that submissions are to be filed in accordance with DCR r 61, 2 working days before the date of the hearing. The parties may adjust this timetable in the consent order.

14.10 Trials of commercial matters

- 14.10.1 The Court endeavours to list a routine commercial case for trial within 9 months of the action being commenced.
- 14.10.2 For some routine commercial cases, it may be appropriate for the trial to take place on affidavit evidence. CP Annexure 13³⁹ contains a series of orders to facilitate a trial on affidavit evidence, including variations to the rules otherwise applicable for trials in the DCR.
- 14.10.3 If a party wishes to seek orders to facilitate a trial on affidavit evidence, they should bring a minute of proposed orders based on CP Annexure 13 to the listing conference.
- 14.10.4 It may be that in some cases an early trial on affidavits is a more cost effective way to proceed than an application for summary judgment.

³⁸ The pro forma consent order is also available on the District Court website in MSWord format at this link: http://www.districtcourt.wa.gov.au/C/consent_orders.aspx?uid=7464-5664-5414-5339.

³⁹ These orders are also available on the District Court website at this link: http://www.districtcourt.wa.gov.au/C/civil_procedures_standard_orders.aspx?uid=3452-8819-2758-1061.

15 MEDIATION CONFERENCES⁴⁰

Summary: This Circular provides information about mediation conferences conducted in the District Court, including guidance on how to apply for a mediation conference prior to the usual compulsory pre-trial conference and how to apply for orders for a private mediation.

15.1 Introduction

- 15.1.1 The Court has the power to make a case management order that the parties confer on a ‘without prejudice’ basis in order to settle the case or, failing settlement, to resolve as many of the issues between them as possible, and to identify the issues to be tried (*District Court Rules 2005 (WA) (DCR)* r 24(2)(e)). This conferral is referred to as a mediation conference.
- 15.1.2 The Court does not align itself to a particular mediation model. In general terms, mediation is a process in which the parties to the action, with the assistance of a Registrar (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The Registrar has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. In determining how best to facilitate the mediation process, Registrars will draw on their experience after reviewing the Court file, any preparatory material filed by the parties, the relationship of the parties and the quantum in dispute, to decide the best course to adopt.
- 15.1.3 As mediation is more of a process than an event, the Court may direct the parties to attend a mediation conference at any stage of the proceedings. Thus, if the parties consider it appropriate, they can apply for the Court to list the action for a mediation conference as soon as the Memorandum of Appearance has been filed. By the same token, it is open to the parties to request the Court to list the action for a mediation conference even after trial dates have been allocated.
- 15.1.4 There are two types of mediation conference in the District Court.
- 15.1.5 The first is a mediation conference before a Registrar which is listed pursuant to DCR r 35. This is dealt with in 15.2 below.
- 15.1.6 The second is a private mediation, which is a mediation conference listed pursuant to DCR r 35 before a private mediator arranged and paid for by the parties. Private mediations are dealt within 15.3 below.
- 15.1.7 The remainder of this Circular provides guidance as to the conduct of a mediation conference before a Registrar, though aspects of the guidance in this Circular are also relevant to a private mediation.

⁴⁰ Formerly Circular to Practitioners CIV 2 of 2012 – Mediation Conferences.

15.2 Listing a mediation conference before a Registrar

- 15.2.1 Pursuant to DRC r 24(2)(e) and r 35, the Court can direct that the parties confer on a “without prejudice” basis for the purpose of attempting to settle an action or, failing settlement, to resolve as many of the issues between them as possible.
- 15.2.2 As a general principle, the Court has adopted a tailored approach to case management. As part of this approach, the Court will facilitate parties participating in a mediation conference at the point in the conduct of the action that the parties consider optimal.
- 15.2.3 The content of expert evidence, including medical evidence, is a key issue in many mediation conferences. A party wishing to seek orders listing the action for a mediation conference should liaise with the other parties to determine whether the expert evidence is sufficiently crystallised for the mediation to be held. Alternatively, it may be that all parties are content for the mediation conference to proceed prior to the parties formally obtaining and exchanging expert evidence
- 15.2.4 A party wishing to apply for a mediation conference may:
- (a) file a minute of consent orders seeking orders for a mediation conference;
 - (b) file a chamber summons seeking order for a mediation conference; or
 - (c) if the Court has listed the action for a directions hearing, serve a minute of proposed orders prior to a directions hearing.
- 15.2.5 The usual directions for the listing of a mediation conference are set out in CP Annexure 14.
- 15.2.6 At the return of the chamber summons, or at the directions hearing, the presiding Registrar will assess whether it is appropriate to list the action for a mediation conference at that stage. One significant factor will be whether the other parties to the action consider it appropriate to hold a mediation conference at that stage.
- 15.2.7 If it is appropriate to list the action for a mediation conference, the Registrar will then consider what orders should be made to facilitate the mediation conference. CP Annexure 16 sets out some possible orders that may be made to facilitate the mediation conference in addition to the usual orders in CP Annexure 14.
- 15.2.8 Where the Court orders the parties to attend a mediation conference before a Registrar, in the ordinary course, the mediation will be allocated a half day hearing. The mediation will take place at the District Court Building, 500 Hay Street, Perth.
- 15.2.9 If the parties have participated in a Court ordered mediation conference prior to the action being entered for trial, the presiding Registrar may make a direction

that this mediation conference stand as the pre-trial conference in the action (DCR r 35A). The usual form of this order is:

“On entering the action for trial, the requirement on the parties to attend a pre trial conference be waived, and the action be listed for a listing conference.”

The provisions of DCR r 41 relating to pre trial conference, other than r 41(3), apply to a mediation conference (DCR r 35(10)).

15.3 Private mediation conferences

- 15.3.1 If the parties consent, the Court has the power to direct that the parties participate in a mediation conference presided over by a mediator who is not a Registrar of the Court (DRC r 24(2)(e) and r 35). An application for a private mediation conference may be made in the same manner as an application for a mediation conference before a Registrar, including by consent order.
- 15.3.2 Where a private mediation conference is to be before an accredited mediator pursuant to the regime established by the Mediator Standards Board Ltd (www.msb.org.au), then all that need be done by the party applying is to state that fact in a letter accompanying the application or consent order.
- 15.3.3 Where the mediator in a private mediation conference is not accredited then a brief statement in a letter setting out the mediator’s name, qualifications and experience will be required.
- 15.3.4 The usual orders for a private mediation conference are set out in CP Annexure 15.
- 15.3.5 The usual orders include an order for the plaintiff to provide the mediator with a copy of the DCR. This is so the mediator can be made aware of the provisions of DCR r 35(8), which provides that the mediator may notify the Court of any failure by a party to cooperate in the mediation conference, and of r 41, relating to pre trial conferences, other than r 41(3), apply to a mediation before a private mediator (DCR r 35(10)).

15.4 Parties to the mediation conference

- 15.4.1 The Court’s usual orders for a mediation conference provide that each party must attend the mediation conference in person or, if the party is a body corporate, by an agent who is authorised by the body corporate to conduct settlement negotiations and to settle the case. These orders mirror the requirements of DCR r 35(4) and 40(1).

- 15.4.2 Where a party is represented by an insurer, a properly authorised representative of the insurer must attend the mediation conference in person, with or without the insured.
- 15.4.3 The Court's usual practice is that a party (or their representatives) who resides in another state or overseas will be required to attend in person rather than simply being available by telephone. This includes insurance representatives.
- 15.4.4 Any issues regarding the attendance of a party, including whether a party may attend by telephone conference, should be raised when the order for the mediation conference is made.
- 15.4.5 A representative of a party who attends a mediation conference must have authority to compromise the case. He or she must have flexibility in the approach they take to the mediation conference rather than being limited to making a single offer or a limited number of offers on behalf of the party without then having to obtain further instructions.
- 15.4.6 Sometimes a party will wish to have someone present at the mediation conference who is not a party but who can help resolve the dispute. There is no right to have that person present but, by agreement between the parties, the Registrar may allow them to be present. He or she will be required to give an oral undertaking to the Registrar to maintain the confidentiality of the mediation process. Alternatively, the party may take part in the private sessions in the mediation conference, but not in the joint sessions.

15.5 Preparation for a mediation conference

- 15.5.1 The Court expects the lawyer with the conduct of the case or properly briefed counsel to attend the mediation conference with the party. The practitioner or counsel should have discussed the following matters with the party well prior to the mediation:
- The prospects of succeeding in the action (or successfully defending it if the party is a defendant).
 - The relative strengths of the other parties' cases.
 - The key issues in dispute in the action and the evidence likely to be led at trial on these issues.
 - The parameters for settlement discussions.
 - The best and moderate case outcomes following trial.
 - The worst case outcomes following trial.
 - The time and effort that will be involved in preparing for a trial and the trial itself.
 - The legal costs involved in going to trial (noting the provisions of DCR r 36).

- 15.5.2 More information about the role of a lawyer in a mediation conference, and the preparation required for a mediation conference, is set out in the Guidelines for Lawyers in Mediations produced by The Law Council of Australia.
- 15.5.3 Lawyers should consider the form in which any settlement may be recorded and may wish to prepare a draft settlement deed or heads of agreement to take to the mediation (see further, 15.9 below).
- 15.5.4 In a personal injuries action, the lawyer for the plaintiff should obtain a notice of past benefits from Medicare Australia that will be current as at the date of the mediation.
- 15.5.5 Lawyers should also consider whether issues may arise in any possible settlement as to capital gains tax, income tax or GST and where possible, provide advice relevant to their client prior to the mediation.

15.6 Orders to facilitate the conduct of the mediation conference

- 15.6.1 The usual orders convening a mediation conference (set out in CP Annexures 14 and 15) provide for the exchange of without prejudice schedules of damages prior to the mediation conference. The usual orders also provide for a bundle of relevant documents to be provided to the Registrar or mediator prior to the mediation conference.
- 15.6.2 In some cases, when making orders listing the mediation, the Registrar may make orders for the preparation and exchange of documents in order to summarise the issues in dispute for the purposes of the mediation conference. Some of the orders that the Court has made from time to time to facilitate a mediation conference are set out in CP Annexure 16.
- 15.6.3 The Registrar presiding at the mediation conference may wish hold a preliminary conference in the mediation conference. This could be by attendance before the Registrar or telephone conference.
- 15.6.4 Alternatively, the Registrar may hold a preliminary conference with the parties separately. Where this occurs, the Registrar will treat the preliminary conference as a private session in the mediation conference.
- 15.6.5 A party may request the Registrar conduct a preliminary conference if it would assist the mediation process. The request should be made when the order is made for the mediation conference and may be made by letter to the Principal Registrar.
- 15.6.6 Issues that may be dealt with at a preliminary conference include:
- Where the mediation is to be held.
 - The length of the mediation conference.
 - Who is to attend the mediation conference and when.

- Whether a number of actions will be mediated at the same time or one after the other.
- Confidentiality issues that arise from actions involving different parties being mediated at the same time.
- Facilities that may be required for the mediation conference, such as teleconferencing or a monitor on which to play a DVD.
- The making of orders or requests for information to facilitate the conduct of the mediation conference.

15.6.7 The Registrar may also write to the parties to request information, for example, a short memo setting out the position of the parties or the key issues in dispute. The letter may request information along the lines set out in the orders in CP Annexure 16.

15.7 Confidentiality of the mediation process

15.7.1 Evidence of anything said, or any admission made, at a pre trial conference or mediation conference is not admissible at the trial of the case (DCR r 35(10), r 41(1)). Other than these rules, there is no wider obligation of confidentiality for District Court mediations along the lines of *Supreme Court Act 1935* (WA) Part VI. However, the effect of the without prejudice privilege would produce a similar obligation of confidentiality: *C v M* [2011] WASC 175, at [64]. It may well also be that the implied undertaking of confidentiality would apply to documents or information received at a District Court mediation or pre trial conference.

15.8 Post mediation

15.8.1 Where the action does not settle, the Registrar presiding at the mediation conference may convene a directions hearing at the conclusion of a mediation conference to make orders to progress the action. The Registrar will not make contested orders and may simply list the action for a further directions hearing and make orders as to costs of the mediation.

15.8.2 Where the parties provide the Registrar convening the mediation with copies of “without prejudice” documents, the documents will not form part of the Court file and will be returned to the parties or destroyed at the conclusion of the mediation.

15.9 Settlement documents

15.9.1 The Court has template consent orders available for the parties to use to record any agreement reached at a mediation conference.

- 15.9.2 The Court also has available a computer and printer in the pre trial conference area for use by the parties' solicitors. The computer is not connected to the courts technology system. The Court's computer uses the standard Windows format.
- 15.9.3 Parties are encouraged to bring to the mediation conference a lap top and a USB 2.0 thumb drive or just a thumb drive with a draft settlement agreement already downloaded. Alternatively, the Court has, on the Courts computer, template consent orders for use by the parties. The template consent orders can be downloaded to the thumb drive. The parties can then use their own draft, or the Courts templates, to record any settlement agreement.
- 15.9.4 Once the draft agreement or template has been amended to reflect the terms of the agreement it can be printed from the Court's computer via the thumb drive for signature.

16 PRE TRIAL CONFERENCES⁴¹

Summary: This Circular sets out the District Court's approach to listing pre-trial conferences, as well as its approach to case management of actions that have been entered for trial.

16.1 Introduction

16.1.1 The *District Court Rules 2005* (WA) (**DCR**) provide that every action entered for trial is to have a pre-trial conference (r 39). By DCR r 35A, where the parties have participated in a mediation conference prior to entry for trial, the Court may dispense with the requirement to participate in a pre-trial conference.

16.1.2 In its listing arrangements for pre-trial conferences, the Court endeavours to tailor the case management of matters undergoing pre-trial conference to the needs of the matter. This Circular to Practitioners sets out how this is to occur.

16.2 Listing of the initial pre-trial conference

16.2.1 The Court will endeavour to list an action for a pre-trial conference within 40 days of filing of the entry for trial.

16.2.2 Where the parties' unavailable dates for a pre-trial conference include all dates within 40 days from the filing of the entry for trial, the action may be referred to a Registrar for review to determine whether the pre-trial conference should be listed on a date which the parties have marked as being unavailable.

16.2.3 If there is a particular reason why a pre-trial conference cannot be held for more than 40 days from the date of the entry for trial, the party entering the action for trial should note the reason with the list of unavailable dates. An example is where the defendant has arranged for the plaintiff to be reviewed by a specialist, and the appointment is 2 months after the date of entry for trial.

16.2.4 If there are no available dates within 40 days from the date of entry for trial, the party entering the matter for trial should provide the list of unavailable dates for each party separately, and not merely a combined list.

16.2.5 If there is a particular date within 60 days of the entry for trial which is preferred by all parties, the parties are invited to request the Court to list the pre-trial conference on that date by covering letter. The letter should include a statement that no counsel appearing for any party has another pre-trial conference listed on the preferred date. The same information may appear in the entry for trial notice as set out in CP Annexure 17.

⁴¹ Formerly Circular to Practitioners CIV 1 of 2012 – Pre Trial Conferences.

- 16.2.6 The Registrar may wish to seek further information from the parties or convene a directions hearing to enquire as to the reasons for a delay in listing the pre-trial conference.

16.3 Adjournment of pre-trial conferences

- 16.3.1 Where the parties by consent seek an adjournment of the pre-trial conference to a date within 60 days from the date of the first pre-trial conference, it will not usually be necessary for them to attend before a Registrar. However, parties will be required to advise the Court of the reason for the adjournment. A pro forma consent order is attached at CP Annexure 18.
- 16.3.2 If the parties have not lodged a consent order by the close of business the day before the pre-trial conference, one of the parties will need to attend the Court and advise of the adjournment request and the reasons for the adjournment.
- 16.3.3 Where an adjournment is sought which extends the pre-trial conference beyond 60 days following the date of the first pre-trial conference, the parties will need to attend before a Registrar in order to adjourn the pre-trial conference, even if it is by consent.
- 16.3.4 Most pre-trial conferences extending past 60 days from the date of the first pre-trial conference will be allocated a Registrar who will have responsibility for case managing the pre-trial conference. This will mean, so far as is practicable, that Registrar will preside over all future pre-trial conferences in the action.

16.4 Listing a mediation conference in lieu of a pre trial conference

- 16.4.1 DCR r 35A provides that if the parties have participated in a mediation conference, the Court may order there not be a pre trial conference in the action.
- 16.4.2 If the parties wish to have the action listed for a mediation conference before a Registrar in lieu of a pre trial conference following entry for trial, it is open to the parties to file a consent order to this effect with the entry for trial papers. The parties should also provide their unavailable dates.
- 16.4.3 The parties can also request the Court to make an order that the action be listed for a mediation conference in lieu of a pre trial conference following entry for trial at a directions hearing held prior to entry for trial.
- 16.4.4 Where the parties consent the Court may order a mediation conference before a private mediator.
- 16.4.5 CP 15, Mediation Conferences, provides more information on mediation conferences before a Registrar and a private mediator.

16.4.6 A pro forma consent order is at CP Annexure 19. The consent order may also include directions for the exchange of information based on those in CP Annexure 16 to CP 15, Mediation Conferences.

16.4.7 Examples of cases in which a mediation conference may be appropriate include complex commercial disputes, medical negligence cases, catastrophic injury cases and cases involving multiple parties.

16.5 Listing a mediation conference from the pre trial conference

16.5.1 Where an action does not settle at a pre trial conference, the parties may request the Registrar to list the action for a mediation conference pursuant to DCR r 35. The mediation conference will be listed before a Registrar for a half a day or more, as required.

16.5.2 CP 15, Mediation Conferences provides more information on mediation conferences in the District Court. The usual orders for the listing of a mediation conference which the Registrar would use as the starting point for making orders at the pre trial conference are contained in CP 15.

16.6 Dispensation of attendance at pre-trial conferences

16.6.1 DCR r 40 provides that parties or representatives of corporate litigants with authority to settle must attend a pre-trial conference in person. It goes on to provide that a party may seek dispensation from this requirement.

16.6.2 The Court's expectation is that:

- (a) the request for dispensation should be copied to all parties;
- (b) the letter of request should contain an undertaking by the party to be available to be contacted by telephone for the entire duration of the pre trial conference; and
- (c) the requesting party should notify all other parties of the outcome of the request for dispensation.

16.6.3 A request for dispensation may be filed through the Court's eLodgment system.

16.7 Settlement documents

16.7.1 The Court has template consent orders available for the parties to use to record any agreement reached at a pre-trial conference.

- 16.7.2 The Court also has available a computer and printer in the pre trial conference area for use by the parties' solicitors. The computer is not connected to the courts technology system. The Court's computer uses the standard Windows format.
- 16.7.3 Parties are encouraged to bring to the pre trial conference a lap top and a USB 2.0 thumb drive or just a thumb drive with a draft settlement agreement already downloaded. Alternatively, the Court has, on the Courts computer, template consent orders for use by the parties. The template consent orders can be downloaded to the thumb drive. The parties can then use their own draft, or the Courts templates, to record any settlement agreement.
- 16.7.4 Once the draft agreement or template has been amended to reflect the terms of the agreement it can be printed from the Court's computer via the thumb drive for signing.

17 FINALISATION OF ACTIONS REQUIRING COURT APPROVAL⁴²

Summary: The Court has put in place procedures to improve its case management of actions requiring Court approval (infants claims and claims by people under a disability).

17.1 Introduction

- 17.1.1 On a reasonably regular basis, the Court is notified that an action has settled, or settled in principle, but that the action cannot be finalised as the plaintiff is an infant or a person under a disability, and the compromise requires Court approval.
- 17.1.2 The Court has noted that in a significant number of actions it takes an inordinately long period of time for the application for leave to compromise to be filed. This is of particular concern in cases involving compromises by infants and others under a disability, as the Court has an oversight jurisdiction.
- 17.1.3 For this reason, the Court has put in place specific procedures to allow for the more effective case management of these types of cases.

17.2 Registrar's jurisdiction

- 17.2.1 Registrars will be dealing with all applications for leave to compromise where the amount of damages proposed to be awarded is \$100,000 or less. The usual appeal provisions in the *District Court Rules 2005 (WA)* (DCR) apply to these decisions.

17.3 Actions requiring Court approval

- 17.3.1 For actions in which the amount of damages proposed is in excess of \$100,000, the Court has created a separate Judge's chambers list for approval of compromises by infants and persons under a disability. This list will be heard on the 2nd and 4th Friday mornings of each month.

17.4 Listing of the application for Court approval

- 17.4.1 Where the Court is notified that an action involving an infant or person under a disability has been settled subject to Court approval, the application will be given to a registrar for checking and/or listed before a registrar in the first instance to ensure that all the necessary documentation has been filed prior to listing before a judge.

⁴² Formerly Circular to Practitioners CIV 1 of 2006 – Finalisation of Actions Requiring Court Approval.

17.4.2 The Court will not ordinarily adjourn a compromise hearing without an appearance.

17.4.3 Where a party is of the view that the compromise hearing is likely to take more than 15 minutes, the party's solicitors should advise the Registrar allocating the hearing date in Judge's chambers or the Registry of the likely hearing length required.

17.5 Contents of the application

17.5.1 Pursuant to Practice Direction 4, Application of Supreme Court Practice and Procedure, Part 4.2.2 of the *Consolidated Practice Directions of the Supreme Court of Western Australia 2009* applies to the District Court. For ease of reference, it is set out at CP Annexure 20.

17.5.2 CP Annexure 21 contains standard orders for an application to leave to compromise where the amount of the compromise is to be reflected in the judgment.

17.5.3 CP Annexure 22 contains a standard set of orders where the compromise is to be reflected in a deed and the application is made in an existing action.

17.5.4 CP Annexure 23 contains a worked example of the format of an order submitted for extraction in an existing action.

17.5.5 CP Annexure 24 is a worked example of a final order where the application was made by originating summons.

18 PAYMENT OF TRIAL LISTING FEES⁴³

Summary: In most cases, the amount of the trial listing fee will be set at the final pre-trial conference. Applications for waiver should be made prior to the first listing conference. Actions will not be given trial dates until the trial listing fees are either paid, deferred or waived.

18.1 Payment of trial listing fees

18.1.1 The *District Court (Fees) Regulations 2002* (WA) (“Fees Regulations”) provide that the Court cannot list a matter for trial unless the listing fees have been paid (reg 9(5)). The Fees Regulations also give the Court more flexibility as to when it assesses the length of the trial for the purposes of fixing the relevant fee.

18.1.2 The Court has adopted the following administrative arrangements:

- (a) Where practicable, the Registrar presiding over the pre-trial conference which lists a listing conference will determine the length of the trial for the purpose of payment of trial listing fees. This will require the parties to be in a position to make meaningful submissions on the length of the trial at the pre-trial conference.
- (b) If a party wishes to apply for a deferral or reduction of the trial fees, they should make the application before the first listing conference. If the Court has not set the length of the trial, then the application should include an estimate of the length of the trial by counsel for the party seeking the fee waiver or deferral or reduction. The application is to be in the form of Form 2 to the Fees Regulations. The application may be emailed (with an image of the signed Form 2 attached) to the email address published on the Court’s website.
- (c) If the application is for a deferral of fees, the usual order will be in the following terms:

“Pursuant to Regulation 6(2) of the *District Court (Fees) Regulations 2002* (WA), the payment of the listing fee and any additional daily hearing fees in this matter is deferred until the earlier of the following events:

 - (a) judgment being handed down following a trial of the matter;
 - (b) the trial dates allocated being vacated;
 - (c) the Court being advised of the finalisation of the matter; or
 - (d) 12 months from the date of the order”.

The Court will no longer require an undertaking from the party.

⁴³ Formerly Circular to Practitioners CIV 5 of 2005 – Payment of Trial Listing Fees.

It is open to a party in whose favour an order has been made deferring payment of listing fees to make a subsequent request for extension of the deferral order (eg pending the outcome of an appeal).

- (d) If the Court has set the length of the trial before the listing conference, and the listing fee has not been paid or deferred, then the Court will not allocate trial dates, even on a provisional basis. The matter will be listed for a further listing conference.
- (e) If the Court has not set the length of the trial by the listing conference, the Court will do so at the listing conference. The Registrar presiding may provisionally allocate trial dates subject to payment of the listing fee that day. If the listing fees are not paid on the day of the listing conference, the Court will vacate the dates and listing the matter for a further listing conference.
- (f) The Court will not allocate a hearing date (even on a provisional basis) on the basis that the party will make an application for a deferral or waiver.

18.1.3 If the trial runs beyond the allocated number of days or is adjourned part heard, a daily listing fee is payable under Item 7 of Schedule 1 of the Fees Regulation. The fee is payable prior to the daily reconvening of the hearing. The usual form of deferral extends to any additional daily hearing fees.

18.2 Refunds where the matter settles

18.2.1 The refund of listing fees where a matter settles is dealt with in reg 9(7). Parties wishing to seek a refund under reg 9(7) will need to write to the Court requesting the refund, but need not use Form 2 to the Fees Regulations.

19 LIMITED DISCOVERY⁴⁴

Summary: From time to time in the Court there are cases, mainly commercial or insurance cases, in which there is a risk that full discovery by a party will incur costs that are out of all proportion to the utility of the documents likely to be discovered and the value of subject matter involved. In a case of this type, the parties are encouraged to seek directions limiting the discovery process.

19.1 Introduction

19.1.1 The outcomes of case management in the District Court are to:

- Promote the just determination of litigation.
- Dispose efficiently of the business of the Court.
- Maximise the efficient use of scarce judicial and administrative resources.
- Facilitate the timely disposal of business at a cost affordable to parties.
- Ensure that, where a case proceeds to trial, the issues are clearly defined, evidence is presented in an efficient manner and the materials for the Judge are complete and well organised.

19.1.2 These outcomes have to be achieved in the context of the ultimate aim of a court, which is the attainment of justice. No principle of case management can be allowed to supplant that aim (see generally *Qld v JL Holdings Pty Ltd* (1997) 189 CLR 146).

19.1.3 As a means of giving practical effect to these outcomes, the Court will endeavour to deal with cases, so far as practicable, in ways which are proportionate to the:

- (a) importance of the issues involved;
- (b) value of the subject matter involved;
- (c) complexity of the issues; and
- (d) financial position of each party,

consistently with the overriding obligation of the Court to deal justly with its cases.

19.2 The power to order discovery in the District Court

19.2.1 *District Court Rules 2005* (WA) (**DCR**) r 46 amends the application of *Rules of the Supreme Court 1971* (WA) (**RSC**) O 26 in its application to the District Court. In its ordinary application, DCR r 46 requires the parties to give discovery “of all documents that are or have been in the party’s possession, custody or power relating to any matter in question in the action”. The discovery must be given

⁴⁴ Formerly Circular to Practitioners CIV 1 of 2009 – Limited Discovery.

within 60 days after the first defence is filed. It is to be verified by affidavit unless the parties otherwise agree.

- 19.2.2 The ordinary application of DCR r 46 is subject to any order made by the Court. This power, along with the Court's case management powers contained in DCR r 24, and the residual application of RSC O 26, allow orders to be made to mould the discovery obligation to suit the facts of the case,

19.3 Limited discovery orders

- 19.3.1 The purpose of a limited discovery order is to tailor the discovery obligation to the requirements of the case. The following quote from the decision of Tamberlin J in *United Salvage Pty Ltd v Louis Dreyfus Armateurs SNC* [2006] FCA 116, at [3] summarises the main considerations which the Court may take into account when tailoring a discovery order:

On a discovery application, the Court has a broad discretion and will balance the costs, time and possible oppression to the producing party against the importance and likely benefits which arise to the requesting party from production of the documents: *Australian Broadcasting Commission v Parish* (1981) 41 FLR 292 at 295. The Court will ensure that in all the circumstances, the litigation is conducted fairly in the interests of both parties, and care must be taken to make sure that there is no excessive or unnecessary discovery: see *Index Group of Companies Pty Ltd v Nolan* [2002] FCA 608. This Court has made it clear in Practice Note 14 that it will take a restrictive approach to discovery to ensure that excessive and wasteful discovery does not occur.

- 19.3.2 Examples of situations in which a party may wish to seek to limit the discovery process include where:

- There has been a change in ownership of the entity in question.
- The documents in question have been archived.
- The contents of a large number of individual documents have been incorporated into documents proposed to be discovered (eg primary accounting documents where financial accounts are to be discovered).
- There are significant amounts of potentially relevant electronically held records, for example, email archives.

- 19.3.3 The question of whether limited discovery orders should be made, and if so in what terms, will require a balancing of the competing interests in the context of the facts of the case and the difficulties foreshadowed in providing full discovery. It may be that in some cases, it is appropriate for the Court to order that discovery be provided in a staged manner.

- 19.3.4 CP Annexure 25 sets out a number of orders that the Court could make in order to limit the scope and cost of discovery. These orders are provided by way of example, and should not be seen as limiting the scope of the orders that could be made. For ease of reference, the Court's usual discovery orders are also included.

- 19.3.5 If the action is being managed in the Commercial List, a party wishing to limit the scope of discovery should circulate a minute of proposed orders at least 2 clear days prior to the directions hearing at which the orders will be sought (DCR r 34(2)). If the making of the orders will be contested, the Registrar will make appropriate programming orders at the directions hearing, which may include the filing of affidavits.
- 19.3.6 Where an action is not being case managed, a party wishing to limit the scope of the discovery should file a chamber summons seeking directions in relation to discovery. The chamber summons should set out the discovery orders sought. The application should be supported by an affidavit setting out the facts justifying the limitation of the discovery process.

20 SCOTT SCHEDULES⁴⁵

Summary: District Court Rules 2005 (WA) rule 45D imposes obligations on parties to actions on building and engineering contracts to apply for directions in relation to this filing of Scott Schedules. The Circular provides guidance on the use of Scott Schedules in the Court, and obviates the need to refer back to Atkin's Court forms for the basic requirements.

20.1 Nature of a Scott Schedule

20.1.1 A Scott Schedule is a form of particulars usually ordered in actions where a party's case is made up of a substantial number of claims. Scott Schedules are named after their inventor, His Honour George Scott, Official Referee of the UK High Court of Justice 1920 to 1933. The Scott Schedule allows the Court determining the action to have conveniently before it a document which gives a full description of each claim and the contention of each party with respect to it.

20.1.2 The objectives sought to be achieved by the Court in orders made relating to Scott Schedules are to ensure that when the action is entered for trial:

- (a) each individual item claimed is particularised to a level enabling it to be conveniently identified by the Court, parties and their witnesses;
- (b) the amount asserted by both parties in relation to each individual item is quantified;
- (c) the contentions of each party in relation to each individual item are articulated;
- (d) areas of agreement relating to the description of the item and quantum are identified (for example, a defendant may agree that the work described in the item was requested, but may argue that the quantum charge was not as set out in the contract was not reasonable); and
- (e) the aggregate of the claims and areas of admissions of each party are known.

20.2 Obligation to seek directions

20.2.1 *District Court Rules 2005 (WA) (DCR) r 45D* imposes an obligation on the plaintiff in an action on a building or construction contract to apply for directions as to whether the plaintiff is to lodge a Scott Schedule. The application must be made within 75 days after filing the first defence.

⁴⁵ Formerly Circular to Practitioners CIV 3 of 2007 – Scott Schedules.

20.2.2 In some actions on a building contract, the plaintiff will claim on the contract, say, for the amounts due and the defendant will defend the claim on the basis of defective workmanship, and may counterclaim. In that scenario, it would be open for a plaintiff to seek directions that the obligation be on the defendant to file and serve the Scott Schedule.

20.2.3 The Court also has a general case management power to order the filing of Scott Schedules (DCR r 24(1)). Another type of action in which a Scott Schedule may be beneficial is an action for breach of the covenant to repair in a lease where multiple instances of breach are alleged.

20.2.4 The Court will monitor compliance with DCR r 45D as part of its ongoing case management oversight.

20.3 Usual orders

20.3.1 The application for directions pursuant to DCR r 45D should contain the orders sought. It is, however, open to a plaintiff to submit that no Scott Schedule be ordered in the particular circumstances of the case.

20.3.2 The usual orders are as follows:

1. By not later than [insert date], the Plaintiff serve on the Defendant by email a draft schedule in the form of [Schedule [A, B, C, D, E or F as appropriate – as set out in CP Annexure 26 in the *District Court's Consolidated Practice Directions & Circulars to Practitioners Civil Jurisdiction*], or in the form attached to this application] (“Scott Schedule”) relating to the claims in paragraphs XX and YY of the Statement of Claim dated [insert].
2. By no later than [insert date], the Defendant serve on the Plaintiff by email a further draft of the Scott Schedule having duly completed columns 5 and 6 [or other columns as the case may be].
3. By no later than [insert date], the Plaintiff either:
 - (a) file and serve a final version of the Scott Schedule; or
 - (b) file and serve a memorandum stating that the parties have conferred to try and resolve the outstanding issues relating to the form of the Scott Schedule, setting out the outstanding issues, annexing the latest drafts of the Scott Schedule and requesting the Court to list the action for a directions hearing.

20.3.3 Where one party is a litigant in person or does not have email, the Court can tailor the form in which the Scott Schedule is served. For example, it may be able to be served by exchanging computer discs.

- 20.3.4 The formats in the Schedules in CP Annexure 26 are illustrative only. They are broadly based on the formats in Atkin's Court forms. Where a party seeks to customise a format, the format should appear in the Schedule to the orders sought.
- 20.3.5 The formats in the Schedule in CP Annexure 26 depart from more traditional formats in that they include a requirement to identify relevant discoverable documents. The Court considers this to be an important reform initiative and so will be slow to remove this requirement from the order.

20.4 General case management considerations

- 20.4.1 If the proposed timetable will cause the parties to breach the Entry for Trial milestone, the parties should seek orders extending the Entry for Trial milestone to an appropriate date after the finalisation of the Scott Schedule.
- 20.4.2 The Court is concerned to ensure that the parties do not have to file with the Court multiple documents containing the same particulars. To that end:
- (a) A party may foreshadow in a pleading that full particulars will be provided by way of Scott Schedule in accordance in DCR r 45D; and / or
 - (b) the party pleading the damages claim to which the Scott Schedule relates may seek an order that the Scott Schedule stand as that party's schedule of damages for the purpose of DCR r 45C (either in whole or in part).

These comments should in no way be taken as limiting the discretion of the Court to make whatever orders the Court considers appropriate in relation to particulars on application by any party.

20.5 Expert evidence

- 20.5.1 Where the substance of the Scott Schedule is likely to be based on expert evidence (for example, rectification costs based on the report of a builder), the parties should seek to align the drafting of the Scott Schedule with the exchange of expert's reports. The Court's practice relating to the exchange of expert reports is set out in Circular to Practitioners 21 , Expert Evidence.
- 20.5.2 In some types of cases, it may make sense to incorporate the expert evidence into the Scott Schedule. Schedules E and F in CP Annexure 26 are illustrative of how this could occur.

21 EXPERT EVIDENCE⁴⁶

Summary: This circular provides guidance on the District Court's approach to the use of expert evidence in civil trials. It cross references the various requirements as regards expert evidence in the District Court Rules, Practice Directions and other Circular.

21.1 Introduction

- 21.1.1 As a result of amendments on 30 August 2017, O 36A of the *Rules of the Supreme Court 1971* (WA) (RSC) was almost entirely repealed in respect of the use of expert evidence in civil trials in the District Court.
- 21.1.2 As of 21 September 2018 RSC O.36A does not apply: DCR r 47C. Accordingly, parties wishing to adduce expert medical and other expert evidence (in actions for personal injuries) must comply with the obligations prescribed in the DCR Part 5A.

21.2 Usual orders for provision of expert evidence

- 21.2.1 In an application pursuant to DCR Part 5A the usual orders made are as follows:

- “1. The parties do have leave to adduce expert evidence at the trial of the action;
2. by [date] the [party] shall:
 - (a) serve on [party] a copy of the report of any expert witness, the substance of which it intends to rely on at the trial, or
 - (b) disclose in writing to the [party] the substance of any expert evidence that it intends to adduce at the trial;
3. by [date] the [party] shall:
 - (a) serve on [party] a copy of the report of any expert witness, the substance of which it intends to rely on at the trial, or
 - (c) disclose in writing to the [party] the substance of any expert evidence that it intends to adduce at the trial;”

⁴⁶ Formerly Circular to Practitioners CIV 2 of 2007 – Expert Evidence.

21.3 Content of expert's reports

- 21.3.1 DCR r 48A provides that persons giving expert evidence in the District Court must comply with any Code of Conduct issued by the Court. There is an exception for a medical expert report prepared for the purpose of a personal injuries action.
- 21.3.2 The Code of Conduct is set out in PD Annexure 2 in the *District Court's Consolidated Practice Directions & Circulars to Practitioners Civil Jurisdiction*.
- 21.3.3 The Court is aware that certain experts, both medical and non-medical, are well known to practitioners such that there is a practice of not insisting that the expert provide a full statement of his or her qualifications or experience in each and every report. Thus the Code of Conduct sets out a practice of providing a summary of the expert's qualifications and experience (clause 3.2). This is complemented by DCR r 45E which provides a mechanism for a party to obtain from the other party more detailed information qualifications and experience of the witness.

21.4 Conferral between experts

- 21.4.1 Where experts' reports have been exchanged, and it is apparent that the experts disagree on some material points, there is often an advantage in having the experts confer to see if those differences can be narrowed. In that case, where it becomes apparent that there is disagreement between the experts, the parties can seek on application to the Court, or the Court on its own motion can make, order that the experts confer (see DCR r 24(2)(f)). The usual form of order in that regard is as follows:

- “1. The experts named in the table below, in the presence of the parties' solicitors, shall meet and confer on a “without prejudice basis” for the purposes of identifying the differences between them and resolving as many of those differences as possible.

Name	Party calling
	Plaintiff
	First Defendant
	Second Defendant

2. within 7 days of the conferral being held the solicitors for the parties do file and serve a report:
- (a) confirming that the conference was held as ordered;
 - (b) recording the substance of any resolution or narrowing the point of difference between the experts resulting from the conference.”

- 21.4.2 In appropriate circumstances, the Court can order that the conference take place in the presence of a Registrar of the Court.

21.5 Scott Schedules and expert evidence

- 21.5.1 Where the substance of the Scott Schedule is likely to be based on expert evidence (for example, rectification costs based on the report of a builder), the parties should seek to align the drafting of the Scott Schedule with the exchange of experts' reports. Circular to Practitioners 20, Scott Schedules, sets out the Court's practice in relation to Scott Schedules.
- 21.5.2 Practitioners are encouraged to seek case management orders which allow the Scott Schedule to be drafted in a logical sequence around the exchange of expert evidence. In this way, experts should be able to prepare their reports and comment on draft Scott Schedules at the same time.

21.6 Indexes of expert's reports

- 21.6.1 DCR r 45E provides that the parties must file and serve indexes to expert reports prior to the Listing Conference. In view of the rule, Registrars will no longer order the filing of indexes to expert reports when listing the Listing Conference unless the timetable for filing the indexes is to be varied from that in the DCR.
- 21.6.2 The Court has prescribed the form of the Index to Experts Reports in PD Annexure 3 in the *District Court's Consolidated Practice Directions & Circulars to Practitioners Civil Jurisdiction*.
- 21.6.3 CP Annexure 27 contains an example of a completed index. Practitioners are encouraged to use the comments field to flag reports which they consider can be tendered by consent without the need to call the witness. The party should also include in the comments field any special logistical requirements, for example, the fact that an application will be made for the expert's evidence to be taken by video link.
- 21.6.4 DCR r 45E(4) and (5) provide a mechanism for a party to obtain information about the qualifications and experience of an expert witness whose report is in the index filed by another party.
- 21.6.5 DCR r 45E(6) provides that, except with the leave of the Court, no party may tender an expert report that is not in the index.
- 21.6.6 The attention of practitioners is drawn to Practice Direction 12, Expert Witnesses, which provides that if a party decides they are not going to call at trial an expert witness, they must immediately give notice of that fact to each other party and consult before cancelling any arrangements made for the witness to attend the trial.

22 OBTAINING DOCUMENTS FROM THE WA POLICE SERVICE UNDER COURT ORDER⁴⁷

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.

22.1 Background

22.1.1 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.

22.2 Service

22.2.1 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.

22.3 Civil jurisdiction

22.3.1 A subpoena to produce documents returnable at trial may be issued without a Court order (*Rules of the Supreme Court 1971* (WA) 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. It is the Court's expectation that, unless there are particular circumstances of urgency, the subpoena will be served not less than 14 days prior to the date specified for compliance.

22.3.2 Where the Court is requested to order that the documents be produced prior to the commencement of the trial, the usual orders will set a last date for service not less than 14 days prior to the date specified for compliance.

22.4 Civil jurisdiction – excluded documents

22.4.1 From time to time, a subpoena addressed to the Commissioner of Police is wide enough in its terms to encompass an audio-visual recording of an interview

⁴⁷ Formerly Circular to Practitioners GEN 2 of 2008 – Obtaining Documents from the WA Police Service under Court Order.

pursuant to the *Criminal Investigation Act 2006* (WA) (**CIA**) or a visually recorded interview or a visual recording of evidence pursuant to the *Evidence Act 1906* (WA) (**EA**). The record or transcript of the interview is produced to the District Court, though the party will not be given leave by the Registrar to inspect the document.

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

- (a) an audiovisual recording of an interview pursuant to the CIA; and
- (b) a visually recorded interview or a visual recording of evidence pursuant to the EA.

In view of this specific legislation, the Court considers that this material should not ordinarily be the subject of a subpoena.

22.4.3 The Court will thus 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).

Note: In relation to the practice in the criminal jurisdiction, see the *District Court's Consolidated Practice Directions and Circulars to Practitioners – Criminal Jurisdiction*.

23 SUBPOENAS⁴⁸

Summary: District Court Rules 2005 (WA) Pt 5BA modifies the operation of Rules of the Supreme Court 1971 (WA) O 36B in its application to the District Court.

23.1 Subpoenas returnable at trial

23.1.1 Pursuant to *District Court Rules 2005 (WA) (DCR)* Pt 5BA, where a party (issuing party) seeks to issue a subpoena returnable at trial, the party will need to file with the Court:

- (a) where the addressee is required to give evidence, three copies of the proposed subpoena in the form of DCR Form 4A, with the notice in Form 4B attached; and / or
- (b) where the addressee is required to produce records or things, three copies of the proposed subpoena in the form of DCR Form 4C, with the applicable notice (DCR Form 4D or 4E) attached.

23.1.2 An addressee required to both attend and give evidence and produce records or things will thus be served with two subpoenas.

23.1.3 The issuing officers of the Court will review the Court's records to determine whether a subpoena may be issued as set out in *Rules of the Supreme Court 1971 (WA) (RSC)* O 36B r 2(2). If the subpoena can be issued, the issuing officer will affix the Court seal to each subpoena and return two sealed originals to the party.

23.1.4 If the issuing party wishes the Court to adjust the usual rules for inspection and copying of documents in DCR r 48AE and r 48AF, it may request the appropriate orders from the Court on the return of the subpoena.

23.1.5 If a subpoena to produce is issued, the issuing party must serve a copy of it on the other parties as soon as practicable after service on the addressee: RSC O36B r 4(2).

23.2 Subpoenas returnable prior to trial – return and service date

23.2.1 If a party seeks to issue a subpoena to produce records or things returnable prior to trial, the party will need to file with the Court three copies of the proposed subpoena in the form of DCR Form 4C, with the applicable notice (Form 4D or 4E) attached. DCR Form 4D is applicable where the addressee is a health professional (defined in DCR r 3), a hospital or a person who manages the records of a health professional. DCR Form 4E is applicable in all other cases.

⁴⁸ Formerly Circular to Practitioners CIV 1 of 2013 – Subpoenas.

23.2.2 Subject to what follows, the requesting party will not ordinarily be required to file a chamber summons to obtain a subpoena returnable prior to trial.

23.2.3 The Court will treat a proposed subpoena endorsed with a date earlier than trial as containing a request for the Court to permit a return date other than the trial date. The discretion will ordinarily be exercised by the issuing officers on the front counter. The issuing officers will also ordinarily fix the last date for service for the purposes of O 36B r 3(8).

23.2.4 If:

- (a) the return date for the subpoena is 35 days or more from the date on which the subpoena is filed;
- (b) the last date for service is at least 21 days prior to the return date;
- (c) the addressee of the subpoena is not another court or the Australian Taxation Office (see 23.3 below);
- (d) for a subpoena addressed to the Commissioner of Police, the description of the documents sought contains the reservation set out in paragraph 22.4 of Circular to Practitioners 22, Obtaining Documents from the WA Police Service under Court Order; and
- (e) the issuing officer is otherwise satisfied that the subpoena complies with the DCR and RSC,

the issuing officer will affix the Court seal to each subpoena and return two sealed originals to the party.

23.2.5 If the subpoena does not comply fall within these guidelines, the issuing officer will refer the subpoena to a Registrar for review. If shorter notice is required, the issuing party should provide a covering letter to the Principal Registrar with the proposed subpoena setting out the reasons why shorter notice is required.

23.2.6 Once the subpoena to produce is issued, the issuing party must serve a copy of it on the other parties as soon as practicable after service on the addressee: RSC O 36B r 4 (2).

23.3 Particular addressees

23.3.1 There are statutory limits on the information which the Australian Taxation Office may disclose.⁴⁹ Where a subpoena to produce is addressed to the Australian Taxation Office, it will be referred to a Registrar for review.

⁴⁹ See for example *Taxation Administration Act 1953* (C'th) Schedule 1, Division 355.

23.3.2 The Court will not issue a subpoena to another court, including the Coroner's Court: RSC O 36B r 2(2)(b). The appropriate procedure for a party to seek documents from another court is to write to the Principal Registrar to request the District Court to issue a letter of request as set out in RSC O 36B r 13. The District Court ordinarily permits inspection and copying of documents provided to it by another court on the same basis as a subpoena issued pursuant to RSC O36B.

23.3.3 A subpoena to the Commissioner of Police must comply with the guidelines set out in Circular to Practitioners 22, Obtaining Documents from the WA Police Service under Court Order. In particular, the documents sought must contain the reservation set out in paragraph 22.4 of that Circular.

23.4 Drafting subpoenas

23.4.1 Practitioners are requested to confirm the service details for a subpoena with the proposed addressee. In particular, it is not uncommon for a subpoena addressed to a medical practitioner to be returned for reissue on the basis that the relevant records are now in the possession of a medical services provider.

23.4.2 In drafting the subpoena, practitioners are requested:

- To identify any party by name rather than by party type (eg refer to Mary Jane Smith not 'the plaintiff').
- Where medical records are being sought, to include the patient's date of birth.
- Where police crash records are being sought, to include the date of the accident, the registration numbers of both vehicles and any known police reference numbers.

23.4.3 Where the documents are being sought from a corporate entity, it is sufficient if the subpoena is addressed to the corporate entity, for example, 'Smith Pharmaceuticals Ltd'. It is not necessary to refer to the 'Proper Officer' of the corporation. If the corporate entity has published specific guidance as to how it would like subpoenas to be managed, this may also be used, for example, 'Smith Pharmaceuticals Limited (Attention General Counsel)'.

23.4.4 Where the documents are being sought from a government department or agency, the subpoena may be addressed in accordance with any published guidance from the department or agency as to addresses for service of legal documents. Subpoenas seeking documents from the Department of Human Services (formerly Centrelink and Medicare) should be addressed to:

The Proper Officer
Department of Human Services
Box 7788 Canberra Business Centre Canberra ACT 2603

23.5 Costs of compliance

- 23.5.1 Unless otherwise ordered, or the issuing party and the addressee agree otherwise, when serving a subpoena to produce, the issuing party must pay to the addressee the amount of \$80 for any loss or expense incurred in complying with it: DCR r 48AH(2). This requirement does not limit the power of the Court to make orders pursuant to RSC O 36B(11). If the issuing party considers that the Court should order otherwise, it should file an ex parte chamber summons seeking the appropriate order.
- 23.5.2 DCR Forms 4D and 4E at note 17 provide information to an addressee as to how they can go about claiming a higher amount.

23.6 Inspection and copying – ordinary rules

- 23.6.1 By DCR r 48AE, unless the r 48AF applies or the Court otherwise directs, a document produced in response to a subpoena:
- (a) may be inspected by any party; and
 - (b) may, with the approval of a Registrar, be copied by a party.

This position is described in DCR Form 4E for the benefit of the addressee.

- 23.6.2 Where a practitioner or their clerk wishes to inspect or copy documents or things that have been subpoenaed, the Court requires the practitioner or clerk to sign an undertaking in the form attached in CP Annexure 28.
- 23.6.3 Where documents are provided in PDF format on CD-ROM or DVD, the Court's usual practice is to copy the disc for the party. The Court has facilities available for parties to inspect documents provided in PDF format.
- 23.6.4 For IT security reasons, the Court does not accept documents produced on a USB drive. The producing party will be asked to provide the documents on a disc.
- 23.6.5 Where a practitioner wishes to remove a document produced to copy it pursuant to RSC O 36B r 9, the usual form of undertaking is that set out in CP Annexure 29.

23.7 Inspection and copying – subpoenas addressed to health professionals

- 23.7.1 By DCR r 48AF, slightly different provisions apply if the subpoena is:
- (a) issued in a personal injuries action (defined in DCR r 3); and

- (b) addressed to a health professional (defined in DCR r 3), a hospital or a person that manages the records or a health professional.

This recognises the fact that the records produced may contain personal and private information about the plaintiff which is not relevant to the facts then in issue in the proceedings.

23.7.2 The term ‘health professional’ is defined in the DCR to have the meaning given in the *Civil Liability Act 2002* (WA) s 5PA. The definition is:

health professional means —

- (a) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in any of the following health professions —
 - (i) Aboriginal and Torres Strait Islander health practice;
 - (ii) Chinese medicine;
 - (iii) chiropractic;
 - (iv) dental;
 - (v) medical;
 - (vi) medical radiation practice;
 - (vii) nursing and midwifery;
 - (viii) occupational therapy;
 - (ix) optometry;
 - (x) osteopathy;
 - (xi) pharmacy;
 - (xii) physiotherapy;
 - (xiii) podiatry;
 - (xiv) psychology;
- or
- (b) any other person who practises a discipline or profession in the health area that involves the application of a body of learning.

23.7.3 By DCR r 48AF(2), unless the Court otherwise directs:

- (a) the plaintiff may inspect and copy the subpoenaed documents; and
- (b) after 7 days from the date for production of the documents, the other parties may inspect and, with the approval of a Registrar copy, the documents.

This position is described in DCR Form 4D for the benefit of the addressee.

23.7.4 If a plaintiff considers that the records produced include documents which are not then relevant, the plaintiff should either:

- (a) come to an agreement with the other parties to discover all relevant documents on the basis that the other parties do not inspect the documents produced; or
- (b) write to the Court to request the Court to list the action at short notice for a directions hearing to resolve the issues.

23.7.5 If a defendant does not consider it appropriate to allow the plaintiff the first opportunity to inspect the documents produced by an addressee to which DCR r 48AF applies, it should file and serve a chamber summons (or if need be on an ex parte basis) seeking directions pursuant to DCR r 48AF(2).

23.7.6 The remainder of 23.6 above applies to a subpoena to produce addressed to a health professional, hospital or person that manages the records or a health professional

23.8 Alteration of date for attendance or production

23.8.1 Pursuant to RSC O 36B r 5A, the issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both. Where this occurs, the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena.

23.8.2 If an issuing party gives notice pursuant to RSC O 36B r 5A, the party is to file and serve a copy of the notice as soon as practicable after it is given: DCR r 48AC.

23.9 Return of documents

23.9.1 Return of documents produced pursuant to a subpoena is dealt with pursuant to RSC O 36 r 10 as modified by DCR r 48AG. DCR r 48AG(1)(b) makes the return of documents following a trial subject to RSC O 34 r 14.

23.9.2 RSC Form 22A is replaced by DCR Form 4D (where the addressee is a health professional, a hospital or a person that manages the records or a health professional) or DCR Form 4E (in other cases). Both forms contain a declaration in similar terms to RSC Form 22A.

23.9.3 Where the addressee declares that some or all of the documents are originals, then, unless the Court otherwise directs, the Court will return the documents after the expiry of 28 days from the date on which production is due. Before doing so, the Court will write to the parties giving them at least 14 days' notice that the documents are to be returned in compliance with RSC O 36B r 10(2).

23.9.4 Where the addressee declares that all the documents are copies, the Court will destroy the documents after the expiry of 4 months from the conclusion of the proceeding (subject to any appeals): RSC O 36B r 10(4), (6).

24 INSPECTION AND COPYING OF DOCUMENTS PRODUCED PURSUANT TO SUBPOENA IN PERTH⁵⁰

Summary: This Circular provides information as to facilities available for the copying of documents produced to the Perth District Court pursuant to subpoena.

24.1 Procedure

- 24.1.1 *District Court Rules 2005* (WA) r 48AF allow a plaintiff in a personal injuries action to copy the documents produced pursuant to subpoena by health professionals, hospitals or a person that manages the records of a health professional. In all other cases approval of a Registrar is required to copy subpoenaed documents.
- 24.1.2 Currently parties are copying documents by attending the District Court Registry in Perth and inserting their own paper into a photocopier provided by the Court. The time associated with the copying process potentially delays other parties who may be waiting to copy documents and also increases cost if the copier runs out of paper or should for any reason stop printing.
- 24.1.3 Facility now exists for documents to be copied directly to a USB stick or to a SD Card by inserting either of the above into the photocopier.

⁵⁰ Formerly Circular to Practitioners GEN 1 of 2014 – Inspection and Copying of Documents Produced Pursuant to Subpoena in Perth.

25 TRIALS⁵¹

Summary: This Circular contains guidance on how to comply with the requirements in the District Court Rules 2005 (WA) concerning material for use at trials, along with an outline of the Court's approach to case management of cases nearing trial. It also contains guidance as to the Court's expectations as to counsel being available to continue appearing in a trial that runs for longer than it is listed.

25.1 Introduction

25.1.1 The trial phase of a civil action refers to that period of time from when the action is listed for a trial at a listing conference to the first day of the trial. This Circular seeks to draw together the requirements in the *District Court Rules 2005 (WA)* (DCR), the consolidated Civil Practice Direction and Circulars to Practitioners issued by the court to provide a “roadmap” for complying with the Court’s requirements for actions listed for trial.

25.1.2 It is the Courts expectation that once a civil trial has commenced, that trial will be concluded without an adjournment. Counsel will need to take the eventuality of a trial overrunning into account when accepting a brief. However the Court retains the discretion to adjourn a trial part heard in appropriate circumstances.

25.2 Summary of actions after Entry for Trial

25.2.1 The following table summarises the actions to be taken from the point of Entry for Trial.

Time when action to be taken	Party required to taken action	Source	Action required to be taken
At least 14 days before the day of the listing conference	Plaintiff	DCR r 45E	File and serve index of reports of expert witnesses.
At least 7 days before the listing conference	Parties other than plaintiff	DCR r 45E	File and serve index of reports of expert witnesses.
Listing conference	All parties	DCR r 43(3a)	Tender pleadings certificate at Listing Conference
At least 42 days before the day listed for trial	Plaintiff	DCR r 45F DCR r 45H	File and serve papers for the Judge. File and serve outline of submissions.
At least 28 days before the day listed for trial	All parties	DCR r 45G	Provide opportunity to inspect any document and objects to be tendered at trial, for which an opportunity to inspect has not to date been provided
At least 28 days before the day listed for trial	Parties other than plaintiff	DCR r 45H	File and serve outline of submissions.

⁵¹ Formerly Circular to Practitioners CIV 6 of 2007 – Trials.

At least 21 days before first day of trial	Any party	DCR r 45E	Request for qualifications of expert witnesses
Within 7 days of the request	Other party	DCR r 45E	Provide the information
At least 14 days prior to the hearing		PD 2, Use of Video Link Facilities	Send Videolink Booking Request to the Court
At least 7 days prior to the hearing	Any party	CP 1, Use of Technology	Send Courtroom Technology Booking Form to Court
At least 7 days before the day listed for trial	All parties	DCR r 45I	File and serve a list of witnesses.
At least 5 working days before the day listed for trial	All parties	CP 25. Trials	File and serve Trial Bundle (if ordered)

25.3 Indexes of experts' reports

25.3.1 DCR r 45E provides that the parties must file and serve indexes to expert reports prior to the Listing Conference. Registrars will not order the filing of indexes to expert reports when listing the Listing Conference unless the timetable for filing the indexes is to be varied from that in the DCR.

25.3.2 The Court has prescribed the form of the Index to Experts Reports in PD Annexure 3.

25.3.3 DCR r 45E(4) and (5) provide a mechanism for a party to obtain information about the qualifications and experience of an expert witness whose report is in the index filed by another party.

25.3.4 DCR r 45E(6) provides that except with the leave of the Court, no party may tender an expert report that is not in the index.

25.3.5 The attention of practitioners is drawn to Practice Direction 12, Expert Witnesses, which provides that if a party decides not to call an expert witness at trial, that party must immediately give notice to each other party and consult before cancelling any arrangements made for the witness to attend the trial.

25.4 Chronologies

25.4.1 There is no requirement in the DCR to file a chronology before a Listing Conference. However, many Judges report that a carefully prepared chronology is of considerable assistance in factually complex cases.

25.4.2 If, during the course of the Listing Conference or later callover, the Court, or counsel, identifies a requirement for a chronology, then an order can be made at that point (see DCR r 24(2)(gb)). Practitioners can expect that in complex cases, including commercial matters, a chronology will usually be ordered.

- 25.4.3 DCR permits a party to file and serve a chronology as part of their trial documents for use at the trial (see DCR r 45H(2)(d)).

25.5 Counsel's certificate

- 25.5.1 At a Listing Conference, if trial counsel does not attend, the party must provide the Court with a certificate signed by trial counsel (DCR r 43). In addition to information about the trial, Counsel is to certify that the pleadings are in order and accurately reflects the issues in dispute, and thus need not be amended (DCR r 43(3a)).
- 25.5.2 The certificate should be carefully considered because once the matter has been listed for Trial, any amendment to the pleadings must be on application to the Court supported by affidavit (DCR r 48A). The affidavit is to state what matters or facts have arisen since counsel's certificate was signed that justifies leave to amend being granted.
- 25.5.3 The ability of a party to amend its pleadings without the leave of the Court ceases on the earlier of the filing of a r 43(3a) certificate (DCR r 48A).
- 25.5.4 The certificate must specify the estimated length of the trial (DCR r 43(3)(a)). Counsel need to ensure that the estimate of trial length provided at the Listing Conference, whether in the certificate or by counsel attending the conference, is an accurate one.
- 25.5.5 Once a trial commences the Court expects that it will proceed to completion without an adjournment. If a trial runs for longer than the time for which it is listed counsel will be expected to continue appearing at the trial.

25.6 Case management of actions listed for trial

- 25.6.1 All cases that have had their first Listing Conference, but where trial dates are not allocated, will be case managed by a Registrar. The purpose of this case management is to enable interlocutory matters to be dealt with expeditiously prior to allocation of trial dates. The Court will adopt different styles of case management depending on the length and complexity of the case.
- 25.6.2 Once trial dates are allocated, the case will continue to be case managed, but may be case managed by a Judge. All subsequent chamber summonses will ordinarily be listed for initial mention before the case managing Judge or Registrar.
- 25.6.3 Long or complex cases will be subject to a trial review immediately following the allocation of hearing dates. The trial review may be conducted by a Judge. The Judge will case manage the action until it is handed over to the trial Judge. Unless the Court advises the parties that the reviewing Judge is the trial Judge, the parties should work on the assumption that the reviewing Judge will not be the trial Judge.

- 25.6.4 The purpose of the trial review is to conduct a general review of the matter to ensure that there are no outstanding issues that may necessitate adjournment of the Trial. The presiding Judge or Registrar will consider making orders or directions to facilitate the smooth running of the trial. In this regard the Court encourages use of an agreed minute of orders to be tendered at the relevant hearing.
- 25.6.5 All remaining cases will be listed for a callover usually around 40 days prior to the commencement of the trial in order to ensure compliance with DCR r 45F and 45H by the plaintiff.

25.7 Trial materials for the Judge

- 25.7.1 The requirement of filing Papers for the Judge at time the time of Entry for Trial no longer forms part of the DCR.
- 25.7.2 In its place, by DCR r 45F, the plaintiff is to file and serve Papers for the Judge 42 days prior to the first day of trial. This recognises that the majority of actions in this Court settle at a Pre Trial Conference.
- 25.7.3 As part of its general case management powers, the Court has the power to order a party to file and serve a set of Papers for the Judge on a date different to the date set out in r 45F if this is required (for example, for an appeal).

A sample index of Papers for the Judge is set out in CP Annexure 30.

- 25.7.4 In most cases, the Registrar will also order the parties to file and serve a bundle of trial materials for the Judge. The purpose of this requirement is to ensure that the Trial Judge receives a bundle of the documents to be relied on at trial shortly before the trial so that the Judge can efficiently prepare for the trial. The usual order is CP Annexure 31.
- 25.7.5 Parties are requested to ensure that the trial bundle only contains those documents that will in fact be tendered at trial in the course of evidence or used in cross examination.

25.8 Management of documents

- 25.8.1 There is no requirement in the DCR for the parties to exchange lists of records they propose to tender at trial.
- 25.8.2 At the listing conference, the Registrar will consider whether orders should be made in relation to the management of documents at trial. CP Annexure 32 contains a standard set of orders relating to document management at trial. The orders in CP Annexure 32 are based on the Supreme Court's Trial Documents Order, aligned to the timetable used in the DCR.

25.8.3 Where the parties propose to file an agreed bundle of documents, the bundle should on its face make it clear what its status is. Where the status of the bundle is unclear, the Court will assume that the bundle organises and marks for identification the documents which the party intends to tender during the course of the trial.

25.8.4 Where a bundle is to be tendered with the consent of each party, this should be made clear on face of the bundle. Likewise, any relevant admissions should be recorded in a document at the commencement of the bundle. Two examples are attached:

- (a) CP Annexure 34 - where there is a bundle of agreed medical reports;
- (b) CP Annexure 35 – where there is a bundle of agreed economic loss information;

25.8.5 Where the facts sought to be admitted are illegible on the face of the document (eg hospital notes), the parties should include an agreed typewritten version of the document.

25.8.6 It would not be appropriate for the facts contained in a document to be admitted by agreement where there is ambiguity on the face of the document as to what the relevant facts are.

25.9 Surveillance videos and other evidence not in a written form

25.9.1 DCR r 45G supersedes the operation of RSC O 36 r 4. The effect is to bring back the point in time at which items like surveillance videos are to be disclosed if they are to be used at trial. The disclosure is required 28 days prior to trial, unless otherwise ordered

25.10 Witnesses and witness statements

25.10.1 DCR r 45I provides for the parties to disclose to each other and the Court the witnesses to be called at trial, along with any special arrangements that may have been made in relation to the witness (eg video conferencing). Parties are not permitted to call any witness who has not been included in this disclosure without the leave of the Court (DCR r 45I(2)).

25.10.2 The DCR do not contain a rule creating any presumption that parties exchange witness statements. The power to require an exchange of witness statements is part of the general case management powers (DCR r 24(2)(j)) and orders have, on occasions, been made. In making an order for the exchange of witness statements, the Court will have regard to the type and nature of the case and the issues in dispute.

25.10.3 Where it is appropriate there be an exchange of witness statements, then CP Annexure 33 to this Circular is an example of the form of orders that the Court may make. This form of orders is aligned to the filing and service of other trial related documents in the DCR.

25.10.4 If orders for the exchange of witness statements are to be sought, the application should ordinarily be made at the time of the Listing Conference so as to allow any time savings to be taken into account in setting the trial length.

25.10.5 Ordinarily orders will be made requiring witness statements to be prepared having regard to the Best Practice Guide 01/2009 issued by the Western Australian Bar Association entitled “Preparing witness statements for use in civil cases”, and will contain a certificate to that effect signed by the practitioner most responsible for the preparation of the statement.

25.10.6 The Court will also have regard to Practice Direction 4.5 of the *Consolidated Practice Directions of the Supreme Court of Western Australia 2009* in managing witness statements at trial.

25.11 Outlines of submissions

25.11.1 DCR r 45H provides for the exchange of written outlines of submissions. The objective of the rule is to ensure that opening submissions focus on the key issues - hence the limit of 10 pages. The Court does not expect the submissions to canvass every issue in dispute between the parties – that is the function of the pleadings. Rather, the Court’s expectation is that the outline of submissions will focus on the key factual or legal disputes on which the case will turn. The submissions should also identify any legal authorities central to the party’s case.

25.11.2 This rule does not in any way limit the ability of the parties to file detailed written closing submissions if they so choose (though they may be ordered to do so by the trial judge).

26 EXTRACTION OF ORDERS⁵²

Summary: The Court will generally extract orders in directions hearings. For other orders, the Court's preferred method of accepting draft orders for extraction is through eLodgment.

26.1 Filing of orders for extraction

- 26.1.1 The Court's general practice is to extract any orders made at directions hearings, pre trial conferences and listing conferences. The Court does not generally extract orders made in chambers lists.
- 26.1.2 A party requiring an extracted order should file the draft order through the Court's eLodgment system (EDS) and label the document as follows: "Draft order for extraction – CIV [action number]."
- 26.1.3 Where the Court receives the draft order in 26.1.2, the Court will make any minor amendments that may be required, and then forward the extracted order to the party requesting it.
- 26.1.4 The Court will still accept draft orders in paper form, and the settled draft order will be returned to the party if any amendments are required.

26.2 Common mistakes

- 26.2.1 It is not necessary to differentiate between the Principal Registrar, a Registrar or a Deputy Registrar in the order. A reference to a "Registrar" will suffice.

26.3 Consent orders

- 26.3.1 If a party wishes the Court to make an order made by consent pursuant to *Rules of the Supreme Court 1971 (WA) (RSC)* O 43 r 16, the party may lodge a minute of consent orders in a form substantially the same as that in CP Annexure 36 (with an example at CP Annexure 37). The form contains an indorsement: 'Settled, signed and sealed in accordance with RSC Order 43 rule 16'. If the Registrar is satisfied that the orders should be made, the Registrar will sign and seal the order. The order will accordingly be issued as an extracted order without the need to file a separate draft order for extraction.
- 26.3.2 There are template consent orders, including CP Annexures 36 and 37, on the Court's website www.districtcourt.wa.gov.au, under the 'Civil Procedure' tab.

⁵² Formerly Circular to Practitioners CIV 8 of 2005 – Extraction of Orders.

- 26.3.3 Where the consent order does not contain this endorsement, then, if the Registrar accepts the order, the Registrar will stamp the order with an indorsement in the same terms, and sign and seal the orders.
- 26.3.4 In each case, the filing party should file two copies of the proposed consent order with the Court.
- 26.3.5 Where a matter is listed in chambers or in a directions hearing and the parties wish to deal with the issues by way of consent, the parties should file a minute of consent orders in the EDS in terms of the attached pro forma. The Registrar will settle, sign and seal the order. The order will be retained on the Court file and a copy provided to the party who filed the order. That party will be responsible for providing copies to all other parties.

26.4 Duplicate orders

- 26.4.1 Where the Court extracts the order, it will provide a signed original to the plaintiff. Until now, the other parties have received an unsigned copy of the order marked “Copy for Information”. The second and subsequent copies will be sealed as duplicate orders pursuant to RSC O 43 r 4. This is to clarify the status of the second and subsequent copies of the order.
- 26.4.2 Where the Court issues the order through the eLodgment system an authorised user may print one or more copies of the order. The printed copy may be treated as a duplicate of the order for the purposes of RSC O 43 r 4.

26.5 Standard orders

- 26.5.1 The Court has published a list of standard orders on the Court’s website, www.districtcourt.wa.gov.au, under the ‘Civil Procedure’ tab. Practitioners are encouraged to use these standard orders wherever practicable.

27 APPLICATIONS UNDER THE CIVIL JUDGMENTS ENFORCEMENT ACT 2004⁵³

Summary: Ex parte applications under the Civil Judgments Enforcement Act 2004 (WA) may be dealt with on the papers. Judges of the Court have power to issue arrest warrants for failure to attend a means inquiry or a default inquiry. It is important that judgment creditors make arrangements for counsel to attend the Court at very short notice on execution of the arrest warrant.

27.1 Introduction

27.1.1 Since 1 May 2005, enforcement of civil judgments in the Court has been governed by the *Civil Judgments Enforcement Act 2004 (WA) (CJEA)* and *Civil Judgments Enforcement Regulations 2005 (WA) (CJER)*. The Court has put in place procedures to streamline the way in which it deals with applications under this legislation.

27.1.2 The *District Court Rules 2005 (WA) (DCR)* in r 62 to r 64 delegate jurisdiction for most applications under the CJEA to Registrars. The main exceptions are:

- Default inquiry hearings pursuant to CJEA s 89.
- Applications for the issue of an arrest warrant CJEA s 29 (4) and s 89(4).

27.2 Forms

27.2.1 The CJER sets out prescribed forms for applications and orders. In addition, the CEO of the Department of the Justice has authorised the issue of additional forms. All the forms can be obtained online from the District Court website (www.districtcourt.wa.gov.au) under the 'Civil procedure' then 'Forms' Tabs.

27.3 Ex parte applications

27.3.1 The Court's usual practice is to try and deal with as many ex parte applications as practicable on the papers. In particular the Court is conscious of determining applications in a timely manner given that priority is determined not by when an application is received or an order is made, but by when it is lodged with the Sheriff's office.

27.3.2 Specifically, the Court will endeavour to deal with the following types of applications on the papers in the first instance:

- Property (Seizure and Sale) order

⁵³ Formerly Circular to Practitioners CIV 2 of 2006 – Applications Under the Civil Judgments Enforcement Act.

- Property (Seizure and Delivery) order
- Debt Appropriation Order.

27.3.3 If a party wishes to have the notice of motion dealt with in general chambers, the party should lodge a covering letter with a request to that effect with the notice of motion.

27.3.4 Applications by unrepresented litigants will be listed in the general chambers list.

27.3.5 If the Registrar has any queries about the order, or is not prepared to grant it, the Registrar will list the matter in the general chambers list.

27.4 Service of the means inquiry summons

27.4.1 The notice to attend the means inquiry must be personally served: CJE s 29(3). This may occur pursuant to either CJER Part 6 Division 2 or Division 4: CJER reg 78. CJER Part 6 Division 4 deals with service by email or fax. For these provisions to be relied upon, the witness must consent to ‘the document’ – that is, the notice to attend the means inquiry – ‘being served on or given to the person by email or fax at an email address or fax number specified in writing by the person’: CJER reg 93.

27.5 Documents produced at a means inquiry

27.5.1 From time to time a means inquiry summons will require a witness to produce a number of documents. If this occurs, it is open to the judgment creditor to request the Court to:

- (a) stand the matter down for a short period of time to allow Counsel to review the documents; or
- (b) adjourn the means inquiry for a week or so, again to allow Counsel to review the documents and, if necessary, take further instructions.

If the latter occurs, the Registrar may make an order permitting the judgment creditor to inspect and copy the documents in the Registry, prior to the adjourned means inquiry.

27.6 Arrest warrants

27.6.1 CJE s 29(4) and s 89(4) provide the court with the power to issue an arrest warrant against a person who, being personally served with a summons to attend to give oral evidence or produce any record or thing at a means enquiry (s 29) or a default enquiry (s 89), fails to attend. Personal service is dealt with in CJER Part 6, Division 2 or 4: CJER reg 78.

27.6.2 The power to issue an arrest warrant under the CJEA is reserved to the Judges of the Court: DCR r 63.

27.6.3 Means inquiries are listed before a Registrar. If the judgment debtor does not attend the means inquiry, and the judgment creditor wishes to apply for the issue of an arrest warrant, then the Registrar will adjourn the means inquiry to the next available date before a Judge in chambers. Before doing so, the Registrar will need to be satisfied that:

- (a) the summons to attend the means inquiry was issued on date which was not less than 7 clear days before the date on which the person summoned was required to attend the means inquiry (CJER reg 15);
- (b) an affidavit of service of has been filed confirming personal service pursuant to CJER Part 6 Division 2 or 4: and
- (c) the summons to attend the means inquiry was served not less than 5 clear days before the date on which the person summoned was required to attend the means inquiry (CJER reg 15).

27.6.4 The judgment creditor should be in a position to tender the affidavit of service in order for the Registrar to consider whether service has been validly effected.

27.6.5 Alternatively, the judgment creditor may seek an adjournment of the means inquiry to either consider its position or attempt informally to have the judgment debtor attend the adjourned means inquiry. If the means inquiry is adjourned, it is open for the judgment creditor to make an application for the issue of an arrest warrant. This application will be listed before a Judge in chambers. In this case, the judgment creditor must file an application for an arrest warrant in the form of Form 6 (see 27.2 above).

27.6.6 Default inquiries are listed before a Judge. If the judgment creditor does not attend the default inquiry, then it is open to the judgment creditor to request the Judge to issue an arrest warrant at the default inquiry hearing.

27.6.7 Practice Direction 11, Applications under the Civil Judgments Enforcement Act 2004, requires counsel, on an application for a default inquiry to hand to the presiding Judge a certificate in the form of PD Annexure 1.

27.6.8 The application for the arrest warrant will inevitably proceed ex parte. The judgement creditor is thus under an obligation to place before the Court all facts material to the question of whether an arrest warrant will issue. This includes facts which the person summoned would have brought forward had they been present. Examples include:

- (a) a letter which the judgment creditor has received from the person summoned setting out why they did not attend the means inquiry or default inquiry or making an offer of a payment arrangement; or
-

- (b) a payment arrangement entered into between the judgment creditor and the judgment debtor following the means inquiry.

27.6.9 Where an arrest warrant is issued, and executed, the judgment debtor must be brought before the Court as soon as practicable: CJER reg 96. The Registry will endeavour to contact the judgment creditor so that the judgment creditor can attend when the judgment debtor is brought before the Court. It is important that where a judgment creditor has obtained an arrest warrant, arrangements are made for counsel for the judgment creditor to be able to attend the Court at very short notice upon the execution of the arrest warrant.

27.6.10 Upon the return of the arrest warrant, the options open to the Judge include:

1. Releasing the judgment debtor on his or her own undertaking, with or without a surety, pursuant to the provisions CJER reg 96, and adjourning the means or default inquiry to a fixed date.
2. Remanding the judgment debtor in custody and adjourning the inquiry to a fixed date.
3. Proceeding with the means inquiry or default inquiry (though this is unlikely to be practical given listing considerations).

27.7 Provisions for country registries

27.7.1 Where there is an application under the CJEIA issued from a country registry of the Court which is to be determined by a Judge, the application will be listed in the next sittings of the Court in that location. If there are particular reasons of urgency, the Court may list the application to be dealt with by video conference. If a party wishes an application to be dealt with by video conference, the party should forward to the relevant Registry a letter setting out the relevant circumstances of the case at the time of making the application

28 ENFORCING DETERMINATIONS UNDER THE CONSTRUCTION CONTRACTS ACT 2004⁵⁴

Summary: The purpose of this Circular is to inform the profession about the change in court process following amendments to the Construction Contracts Act 2004 (WA).

28.1 Introduction

- 28.1.1 As practitioners are aware s 43 *Construction Contracts Act 2004* (WA) (CCA) has been amended. No longer is it necessary to bring an application to enforce a determination made under the CCA.
- 28.1.2 A determination under the CCA is taken to be a subpoena under RSC O.36B r.4 or the notice under RSC O.36B r.5A of the court upon the filing of a copy of the determination which the Building Commissioner has certified to be a true copy, and an affidavit as to the amount not paid under the determination (s 43(2) CCA).

28.2 Document requirements

- 28.2.1 To ensure the prompt processing of the determination by court staff, practitioners are required to file two separate documents, the certified copy of the determination, and the affidavit. This will enable the determination to be immediately processed, and thus enable enforcement to be undertaken.
- 28.2.2 There is no need to extract the judgment before enforcement can take place.

28.3 Enforcement

- 28.3.1 Upon filing in accordance with s 43(2) CCA, the determination is taken to be an order of the court and may be enforced accordingly.
- 28.3.2 The court will accept a Form 6 *Civil Judgments Enforcement Act 2004* (WA) application that is filed with the determination and affidavit.

28.4 Fees

- 28.4.1 No fees are payable on the filing of the determination and affidavit.

⁵⁴ Formerly Circular to Practitioners CIV 1 of 2017 – Enforcing Determinations under the Construction Contracts Act 2004.

29 ANONYMISING LITIGANTS NAMES

29.1 Introduction

- 29.1.1 To assist practitioners in relation to applications pursuant to Order 67B rule 5 of the *Rules of the Supreme Court* (RSC), to anonymise an individual litigant's name and to restrict access to other information or documents, if any (collectively a restriction order) the Court has published Practice Direction 16.

29.2 Practice

- 29.2.1 Applications for a restriction order should be made by complying with RSC O.67A r.10(1)(a)(ii) and notifying the Court that an application is to be made pursuant to RSC O.67B r.5.
- 29.2.2 Pursuant to the *District Court Rules 2005* r.20 applications for a restriction order filed by a lawyer are required to be lodged through the Court's ECMS.
- 29.2.3 A chamber summons can be lodged at the same time as the lodgement of the Originating Summons or Writ but in any event should be lodged within the 24 hours prescribed by O.67A r.12. Unless the order is to be made by consent, the application should be supported by an affidavit establishing the grounds relied upon for the orders sought. The application is to be served on the prospective defendant.
- 29.2.4 The application for a restriction order will be listed at first instance before a Registrar.

29.3 Existing Supressed matters

- 29.3.1 Access to the Court record in certain matters have been restricted because of the nature of the action. On a number of occasions this has occurred in the absence of a proper application or formal order. From 1 December 2019 the anonymization of these names will be removed from those matters unless an order to the contrary has been made in the meantime.

29.4 Form of orders

- 29.4.1 To assist practitioners in bringing an application for a restriction order the Court has published as PD Annexure 5 to these Consolidated Circulars and Practice Directions a form of orders that may be appropriate.
-

29.5 Consent orders

- 29.5.1 Where a respondent or defendant consents to the application, the parties may file their written consent to orders pursuant to Order 43 r. 16. In many instances it will be self-evident that it is appropriate to order the anonymization of the plaintiff's name. It is less evident that the public interest is served by anonymization of the respondents and defendants names, and less evident again where the respondent or defendant is an institution or the State. Where anonymization of the names of the respondents or defendants is sought it is likely that the application will need to proceed to a hearing.

CP ANNEXURES

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
/ /

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

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.⁵⁵ 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.

⁵⁵ Available online at: <http://www.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 Court room. This includes exchanges between lawyers and between the lawyers and the Judicial Officer. The provision of a competent interpreter is an essential element to a person receiving a fair trial.
- 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;
- (c) **consecutive interpreting** is when the interpreter listens to a segment, takes notes while listening and then interprets while the speaker pauses;

- (d) **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;
- (e) **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;
- (f) **simultaneous AUSLAN interpreting**; and
- (g) **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 Court room number;
- (c) the indictment (criminal case) or statement of claim and defence (civil case);
- (d) a list of witnesses (in particular to allow the interpreter to check for people they may know);
- (e) a glossary of technical terms (if any); and
- (f) any other document the Judicial Officer thinks it useful for the interpreter to have.

These documents are not to be taken outside the Court building and, once the hearing commences, are to be left in the Court room (in a place designated by the Associate) or handed to the Associate or Usher when the interpreter leaves the Court room.

- 4.4 There are interview rooms outside most of the Court rooms 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 Court room 15 minutes prior to the commencement time. Upon entering the Court room 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 Court room with sufficient clarity to enable them to optimally interpret, the interpreter should immediately raise this with the Judicial Officer (as set out in 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.

Annexure 3: Interpreter Booking Request Form (CP 6)

<h2 style="text-align: center;">INTERPRETER BOOKING REQUEST</h2>	
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)	
<p><i>This form is to be used by all persons requiring an interpreter for any District Court hearing, including circuit sittings.</i></p> <p><i>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.</i></p>	
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 <input type="checkbox"/> Adult <input type="checkbox"/> Child <input type="checkbox"/> Civilian Witness <input type="checkbox"/> Police Officer <input type="checkbox"/> Expert Witness <input type="checkbox"/> Any other information (including as to conflicts of interest) _____ _____ _____ _____
Details of hearing	Date of ____ / ____ / 2011 Time of Hearing ____ : ____ am/pm (WA time) Est. duration ____ hrs/days Location _____ Trial <input type="checkbox"/> Sentencing <input type="checkbox"/> Trial Listings Hearing <input type="checkbox"/> Directions Hearing <input type="checkbox"/> 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 : <ul style="list-style-type: none"> • Daily rate or part thereof • All reasonable travel costs for interpreters being booked for outside the metro area.

	<p><i>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.</i></p> <p>Signed: _____ Dated ____ / ____ /20____</p>
COURT USE ONLY	
Interpreter details	<p>On Call <input type="checkbox"/> TIS <input type="checkbox"/> Booking Confirmed: <input type="checkbox"/> Date Confirmation Received: _____</p> <p>Name of Interpreter: _____</p> <p>Contact at Interpreter Service: _____</p> <p>Any other comments: _____</p> <p>_____</p>
Travel	<p>Travel required: <input type="checkbox"/> Interstate: <input type="checkbox"/> Outside Metro Area <input type="checkbox"/></p> <p>Any other comments: _____</p> <p>_____</p>
Invoice details (civil cases)	<p>Date invoice sent (attach copy to booking form): _____ Amount: _____</p> <p>Date payment received: _____</p>

Annexure 4: Interpreters – Usual Case Management Orders (CP 6)

USUAL CASE MANAGEMENT ORDERS FOR CASES INVOLVING AN INTERPRETER AND/OR TRANSLATOR

(To be used where there is to be an interpreter for witnesses from a spoken language other than English)

1. at least 42 days before the date fixed for the commencement of the trial, the party requiring the use of an interpreter (“applicant”) shall serve on each other party:
 - (a) a signed and dated written statement of the proposed evidence in chief of each witness proposed to be called by the applicant requiring the use of an interpreter (“interpreted witness”) in the language spoken by the witness;
 - (b) an English translation of the witness statement in par 1(a); and
 - (c) an affidavit of the translator complying with paragraph 6.2 of Circular to Practitioners 6, Interpreting and Language Services Guidelines;
2. at least 42 days before the date fixed for the commencement of the trial, the applicant is to serve on each other party:
 - (a) a notice setting out the documents to be used at the trial of the action which the applicant has had translated;
 - (b) a copy of the document in the translated language; and
 - (c) an affidavit of the translator complying with paragraph 6.2 of Circular to Practitioners 6, Interpreting and Language Services Guidelines;
3. at least 42 days prior to the date fixed for commencement of the trial, the applicant is to file and serve a certificate setting out:
 - (a) the name and qualifications of the interpreter proposed to be used for the interpreted witness at the trial of the action;
 - (b) the time or times during the trial at which the interpreter has been booked;
 - (c) the fact that the applicant has provided the interpreter with a copy of the Court’s Protocol for the Use of Interpreters; and
 - (d) the fact that the applicant is not aware of any conflicts of interest impacting on the independence of the interpreter;
4. at least 28 days before the date fixed for the commencement of the trial, each other party is to notify the applicant in writing of:

- (a) any objections to the qualifications of any interpreter or translator used or proposed to be used;
 - (b) any objections to the admissibility of the witness statement served and the grounds therefore;
 - (c) any other documents that the party requires the applicant to have translated for the purpose of cross examination of the interpreted witness; and
 - (d) a list of witnesses pursuant to *District Court Rules 2005* (WA) r 45I;⁵⁶
- 5. at least 21 days before the date fixed for the commencement of the trial, the applicant is to respond in writing to any notification pursuant to par 4;
- 6. at least 14 days before the date fixed for commencement of the trial, the applicant is to serve on each other party:
 - (a) a copy of each document referred to in par 4(c) translated into the language of the interpreted witness, with sufficient identification so that the version of the document in English is readily apparent; and
 - (b) an affidavit of the translator complying with paragraph 6.2 of Circular to Practitioners 6, Interpreting and Language Services Guidelines;
- 8. in the event of non-compliance with any of the orders set out above or a dispute in relation to the translation of documents or the proposed use of an interpreter at trial which remains unresolved for more than 3 business days, the applicant is to immediately write to the Court and request the Court to list the action for a directions hearing;
- 9. at the trial of the action:
 - (a) save with the leave of the Court, the applicant may not lead evidence from the interpreted witness if the substance of the evidence is not included in the statement served;
 - (b) the Court may direct that the statement, or any part of it, stand as the evidence in chief of the witness;
 - (c) the applicant must have the original statement and the translation ready for tender at the trial together with copies for each other party, the witness and the court;
 - (d) save with the leave of the Court, the applicant may not lead evidence from any other witness requiring the use of an interpreter;

⁵⁶ This is required to allow the applicant to check for possible conflicts of interest between the witnesses and the proposed interpreter.

- (e) save with the leave of the Court, a party other than the applicant may not object to any evidence in a statement served pursuant to this order other than on grounds set out in a notice of objection served pursuant to par 4; and
 - (f) save with the leave of the Court, a party other than the applicant may not cross-examine the interpreted witness on a document that is not in the lists in par 2(a) and 4(c);
- 10. each witness statement is to be prepared having regard to the Best Practice Guide 01/2009 issued by the Western Australian Bar Association entitled “Preparing witness statements for use in civil cases”; and
- 11. each witness statement filed is to be accompanied by a certificate from the practitioner most responsible for the preparation of the statement to the effect that the order in par 9 has been complied with.

Annexure 5: Notice of Appeal from Registrar's Decision (CP 10)

IN THE DISTRICT COURT
OF WESTERN AUSTRALIA
HELD AT PERTH

No of

BETWEEN

[Name] Plaintiff

-and-

[Name] Defendant

NOTICE OF APPEAL FROM A DECISION OF A REGISTRAR

Date of document: [Date]

Filed on behalf of: [Party name]

Date of filing: [Date]

Prepared by:

[Law firm]

Tel: []

Fax: []

Ref: []

TAKE NOTICE that the [party name] appeals from the decision of [Registrar name] made on [date] on the [name of party who filed application] application for [broad description of type of application] dated [date of application] wherein the Registrar made orders that:

[Set out particulars of the Registrar’s decision or that part of it to which the appeal relates. This may be done by listing the orders appealed from]

The final orders that the [party name] proposes the Court should make on the appeal are:

[List orders proposed]

**Annexure 6: Example Completed Notice of Appeal from Registrar's
Decision (CP 10)**

IN THE DISTRICT COURT
OF WESTERN AUSTRALIA
HELD AT PERTH

No 123 of 2009

B E T W E E N

ANGELIQUE PITT

Plaintiff

-and-

THE MINISTER FOR HEALTH

Defendant

NOTICE OF APPEAL FROM A DECISION OF A REGISTRAR

Date of document: 20 July 2009

Filed on behalf of: Defendant

Date of filing: 20 July 2009

Prepared by:

State Solicitors Office
Westralia Square
141 St Georges Terrace
PERTH WA 6000

Tel: 9425 7313
Fax: 9425 7314
Ref: AB:CD: 123

TAKE NOTICE that the defendant appeals from the decision of the Principal Registrar made on 1 July 2009 on the plaintiff's application for leave to amend the statement of claim dated 1 May 2009 wherein the Registrar made orders that:

1. the plaintiff have leave to amend the statement of claim in terms of the Minute of Proposed Amended Statement of Claim dated 1 May 2009 ("Minute");
2. the Minute stand as the amended statement of claim in the action, with further filing and service dispensed with;
3. the defendant file and serve any amended defence by 20 July 2009;

4. the plaintiff pay the defendant's costs of the application and any costs thrown away in any event.

The final orders that the defendant proposes the Court should make on the appeal are:

1. the time within which the defendant may file and serve the notice of appeal be extended to 20 July 2009;
2. paragraphs 4 and 6 of the plaintiff's statement of claim dated 23 February 2009 be struck out;
3. within 14 days of this order the plaintiff serve on the defendant a further Minute of Proposed Amended Statement of Claim;
4. the action be listed for a directions hearing within 28 days of this order;
5. the plaintiff pay the defendant's costs of the appeal, costs of the application (including costs reserved) and any costs thrown away, in any event.

Annexure 7: Case Management – Example of Particulars of Damages (CP 12)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

No of

B E T W E E N

Plaintiff

-and-

Defendant

PARTICULARS OF DAMAGES PURSUANT TO RULE 45C (3) DISTRICT COURT RULES 2005

Usual details as to the party filing etc

The plaintiff provides the following particulars pursuant to Rule 45C (3) District Court Rules 2005.

1. LOSS OF EARNING CAPACITY

1.1 Past Loss

- (a) Prior to his accident on 1 July 2001, the plaintiff was employed as a storeman at Blue Mining Ltd, earning \$24.25 per hour (gross) working 55 hours per week, making a gross weekly wage of \$1,333.75 (55 x \$24.25), net \$925.81.
- (b) But for the accident, in the period from 1 July 2001 to 30 June 2006 (260 weeks), he would have earned \$240,710:

260 weeks x \$925.81 (net weekly wage) = \$240,710
- (c) The plaintiff was totally incapacitated for work for the period 1 July 2000 to 31 December 2000.
- (d) The plaintiff has been partially incapacitated for work from 31 December 2000 to the present date.

- (e) The plaintiff's actual earnings from 1 July 2001 to 30 June 2006 were:

Year	Gross	Tax	Net
2001	0	0	0
2002	\$30,330	\$5,725	\$24,605
2003	\$24,527	\$3,780	\$20,747
2004	\$330		\$330
2005	\$27,160	\$4,714	\$22,446
2006	\$35,207	\$7,126	\$28,081
	\$117,554	\$21,345	\$96,209

- (f) The past loss of earning claimed is \$144,501:

$$\$240,710 \text{ (earnings but for accident)} - \$96,209 \text{ (actual earnings)} = \$144,501$$

- (g) Total past economic loss is \$144,501.

1.2 Future loss

- (a) The plaintiff is presently employed as an accounts clerk, earning \$50,000 per annum, or \$962 gross per week, \$753 net per week (using the 2006 tax tables).

- (b) While the plaintiff retains a residual earning capacity, his range of employment options has been reduced as a result of his injuries.

- (c) But for the accident, the plaintiff would have sought work in a manual to heavy manual labouring job in the mining industry. The gross income for jobs of this kind range from \$80,000 to \$150,000. The amount of \$100,000 per annum is claimed, which is slightly lower than the midpoint to take into account the fact that the plaintiff would have inevitably moved away from a heavy manual job in the latter years of his working life.

- (d) \$100,000 per annum is \$1,923 gross per week or \$1,358 net per week.

- (e) The lost earning capacity is \$605 net per week:

$$\$1,358 \text{ (potential net weekly)} - \$753 \text{ (actual net weekly)} = \$605.$$

- (f) The plaintiff is now 24 years, 6 months, meaning he has 40.5 years remaining in the workforce until he retires at 65. The multiplier for 40.5 years is 810.9

- (g) The future loss of earning capacity is claimed at:

$$\$605 \text{ (lost per week net)} \times 810.9 \text{ (40.5 year multiplier)} = \$490,594$$

- (h) 5% is deducted for contingencies and vicissitudes of life, giving \$466,065:

$$\$490,594 \times 0.95 = \$466,065$$

2. LOSS OF SUPERANNUATION

2.1 Past loss

- (a) Superannuation on past economic loss is claimed at 9% reduced by 30%⁵⁷ to take into account taxation and management fees in the amount of \$14,423:

$$260 \text{ weeks} \times \$1,333.75 \times 9\% \times 70\% = \$21,846.$$

Less superannuation on gross actual income of \$117,554, being \$7,423 (\$117,819 x 9% x 70%):

$$\$21,846 - \$7,423 = \$14,423$$

2.2 Future loss

- (a) Superannuation on future economic loss is claimed at 9% reduced by 30%, in the amount of \$49,465:

$$\$1,923 \text{ (potential gross weekly)} - \$962 \text{ (actual gross weekly)} = \$961$$

$$\$961 \times 9\% \times 70\% = \$61 \text{ (superannuation lost per week)}$$

$$\$61 \times 810.9 \text{ (40.5 year multiplier)} = \$49,465$$

- (b) Discount at the rate of 5% for contingencies and vicissitudes of life, giving \$46,992.

$$\$49,465 \times 95\% = \$46,992$$

3. SPECIAL DAMAGES

Date	Provider	Service	Amount
10/6/06	Dr. X	GP consult	\$35
12/6/06	Mr Y	Specialist consult	\$50
20/6/06	Hospital	X-ray	\$180
25/6/06	Mr Z	Physio	\$30
<i>etc</i>	<i>etc</i>	<i>etc</i>	<i>etc</i>
Total			\$10,000

[Or... The plaintiff claims special damages as set out in the HIC notice dated 24 July 2007 sent to the defendant under cover a letter dated 27 July 2007]

⁵⁷ See *Jongen v CSR Ltd & Anor* (1992) *Aust Torts Reports* 81-192. It is acknowledged that this decision may have been superseded by later taxation changes, so the figure of 30% should be regarded as merely illustrative for layout purposes.

4. PAST GRATUITOUS SERVICES

- (a) The plaintiff's mother had to provide extensive care in the week following the accident.
- (b) Prior to the accident, the plaintiff was able to mow his lawn and undertake heavy gardening tasks. Since the accident he has not been able to undertake these tasks. His brother has done them.

Date from/to	Number of weeks	Provider	Service	Hourly rate	Hours	Total \$
1/7/01 – 8/7/01	1	Mother	Assistance in dressing	\$18	2 per day	\$254
1/7/01 – 8/7/01	1	Mother	Shopping	\$18	1 per day	\$127
1/7/01 – 30/6/06	260	Brother	Brother	\$18	Ave 1 per week	\$4,680
						\$5,061

- (c) A total of \$5,016 is claimed for past gratuitous services.

5. INTEREST ON PAST LOST AND EXPENDITURE

- (a) Interest on past economic loss is claimed at 3%:

$$\$144,501 \times 3\% \times 6 \text{ years} = \$26,010.18$$

- (b) Interest on past superannuation is claimed at 3% in the amount of \$2,596:

$$\$14,423 \times 3\% \times 6 \text{ years} = \$2,596$$

- (c) Interest on past gratuitous services is claimed at 3% in the amount of

$$\$5,016 \times 3\% \times 6 \text{ years} = \$903$$

6. FUTURE NEEDS

6.1 Future Medical Expenses

- (a) The plaintiff will need to visit his GP every 3 months and his specialist once a year for the foreseeable future.

- (b) The plaintiff will need 1 packet of anti-inflammatory tablets per week and 1 tube of heat gel per week for the foreseeable future.

Service	Cost	Frequency	Weekly Cost
GP visit	\$40	Quarterly	\$10
Specialist Review	\$150	Once per year	\$2.85
Tablets	\$5	Weekly	\$5
Gel	\$5	Weekly	\$5
Total			\$22.85

- (c) The plaintiff is currently 24.5 years old. The life expectancy of a 24.5 year old male is a further 54.8 years (ABS Life Tables, Western Australia, 2003 to 2005). The 55 year weekly multiplier is 859.

- (d) At a weekly cost of \$22.85, the plaintiff claims a total sum of \$19,628:

$$\$22.85 \text{ (weekly cost)} \times 859 \text{ (multiplier)} = \$19,628.$$

- (e) He will also require 12 physio visits per year for 2 years at a cost of \$36 per visit, totalling:

$$24 \text{ (visits over 2 years)} \times \$36 \text{ (per visit)} = \$864$$

- (f) There is a 50% chance that at some stage in the next 10 years the plaintiff will require a knee reconstruction. This operation would currently cost \$5,000. \$2,500 is sought as an allowance for this.

- (g) Total future medical expenses of \$29,859 are claimed:

$$\$19,628 \text{ (ongoing treatment)} + \$864 \text{ (physio)} + \$2,500 \text{ (allowance for surgery)} = \$22,992$$

6.2 Future Care and Gratuitous Services

- (a) The plaintiff will require some assistance from time to time to undertake heavier gardening tasks for the foreseeable future.

Hourly Rate	Hours Per Week	Weekly Cost
\$18	1	\$18

- (b) As set out in paragraph 6.1(c), the plaintiff's life expectancy is for a further 54.8 years. The multiplier for 55 years is 859.

- (c) At a weekly cost of \$18.00, the plaintiff claims a total sum of \$15,462:

$$\$18 \text{ (weekly cost)} \times 859 \text{ (multiplier)} = \$15,462$$

6.3 Aids and appliances

- (a) The plaintiff will need to wear a knee brace at all times for the next 5 years. A knee brace costs \$45 and is replaced yearly. \$225 is claimed.

Summary

1.	Loss of earning capacity	
1.1	Past economic loss	\$137,276
1.2	Future economic loss	\$466,065
2.	Loss of superannuation	
2.1	Past and future superannuation	\$14,423
2.2	Future superannuation	\$46,992
3.	Special damages	\$10,000
4.	Past gratuitous services	\$5,601
5.	Interest	
5.1	Interest on past economic loss	\$24,710
5.2	Interest on past superannuation	\$2,596
5.3	Interest on past gratuitous services	\$ 903
6.	Future needs	
6.1	Medical services	\$22,992
6.2	Care and gratuitous services	\$15,426
6.3	Aids and appliances	\$ 225
Total		<hr/> \$747,209 <hr/>

**Annexure 8: Case Management – Pro forma Consent Order for
Extension of Time for Entry for Trial (CP 12)**

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

No of

B E T W E E N

Plaintiff

-and-

Defendant

CONSENT ORDER

WE THE PARTIES to this action consent to orders in the following terms:

1. the timetable within which the action be conducted be adjusted such that the latest date for entry for trial be 31 August 2011.

The reason for the extension is that the plaintiff is being reviewed by Dr Smith on 12 August 2011 and the parties require time to review Dr Smith's report prior to attending a pre trial conference.

Plaintiff's Counsel/Solicitor

Defendant's Counsel/Solicitor

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the day of 2010.

BY THE COURT

REGISTRAR

Annexure 9: Commercial List – Usual Case Management Orders (CP 14)

Pleadings

1. by [date] the plaintiff file and serve its statement of claim;
2. by [date] the defendant file and serve its defence and any counterclaim;
3. by [date] the plaintiff file and serve any reply and defence to counterclaim;
4. by [date] the plaintiff [and the defendant if there is a counter claim] serve on each other party particulars of damages complying with DCR rule 45C;
5. the time within which the parties may make any of the following applications be extended to 7 days after the mediation conference listed in paragraph []:
 - (a) an application for summary judgment; and
 - (b) an application to strike out any pleading.

Discovery

6. by [date] each party:
 - (a) make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action in the form of RSC Form 17;
 - (b) file and serve a copy of the document in paragraph (a); and
 - (c) serve on each other party a legible photocopy (or PDF image) of each document referred to in Part 1A of the list in paragraph (a), which is not the subject of an objection as set out Part 1B of the list, the cost of provision of which is to be in the cause;

Or

7. by [date] each party:
 - (d) make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action in the form of RSC Form 17;
 - (a) swear an affidavit verifying the list in paragraph (a) in the form of RSC Form 18;
 - (b) file and serve a copy of the documents in paragraphs (a) and (b);

- (e) serve on each other party a legible photocopy (or PDF image) of each document referred to in Part 1A of the list in paragraph (a), which is not the subject of an objection as set out Part 1B of the list, the cost of provision of which is to be in the cause;

Or

- 8. a party must complete their inspection of documents discovered by another party within 10 working days following the date on which it was served with that party's list of discoverable documents;

Mediation conference

- 9. the parties attend a mediation conference before a Registrar on a *[date]* at *[time]*;
- 10. each party must attend the mediation conference in person or, if the party is a body corporate, by an agent who is authorised by the body corporate to conduct settlement negotiations and to settle the case;
- 11. not less than 7 days before the mediation conference, the lawyer for each party provide the party with notice in writing of the issues as to costs set out in DCR rule 36;
- 12. not less than 7 days before the mediation conference, the plaintiff *[and the defendant if there is a counter claim]* serve on each other party a without prejudice schedule of damages complying with DCR rule 45C;
- 13. not less than 3 working days before the mediation conference, each party must send to the Registrar presiding at the mediation conference a bundle of documents comprising a copy of any:
 - (a) schedule of damages served pursuant to paragraph 12;
 - (b) significant without prejudice correspondence exchanged between the parties; and
 - (c) document that would be useful for the Registrar to have to facilitate the mediation;
- 14. unless otherwise ordered at the mediation conference, the costs of each party of, and incidental to, the mediation conference be in the cause;

Expert evidence

- 15. the parties have leave to adduce expert evidence at the trial of this action;
- 16. by *[date]*, the plaintiff:

- (a) serve on each other party a copy of the report of any expert witness, the substance of which it intends to rely on at the trial; or
 - (b) disclose in writing to each other party the substance of any expert evidence that it intends to adduce at the trial.
17. by [date], the defendant:
- (a) serve on each other party a copy of the report of any expert witness, the substance of which it intends to rely on at the trial; or
 - (b) disclose in writing to each other party the substance of any expert evidence that it intends to adduce at the trial;

Ongoing case management

18. *[If there has been a mediation]* unless otherwise ordered, on entering the action for trial, the requirement on the parties to attend a pre trial conference be waived, and the action be listed for a listing conference;
19. the action be listed for a directions hearing on [date] at [time];
20. there be liberty to either party to request the court to list the action for an earlier directions hearing, the liberty to be exercised by letter to the Court attaching a minute of proposed orders;
21. in the event of default by any party for 3 working days in complying with any paragraph of this order, the party in default shall either:
- (a) file and serve a consent order adjusting the timetable set out in this order; or
 - (b) request the court to list the action for a directions hearing;
22. there be liberty to apply in relation to these orders;
23. the time within which the plaintiff must enter the action for trial be extended to [date]; and
24. the costs of the hearing today be in the cause.

Annexure 10: Commercial List – Early Mediation Consent Order (CP 14)

IN THE DISTRICT COURT) No of
OF WESTERN AUSTRALIA)
HELD AT PERTH)

BETWEEN

Plaintiff

-and-

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Facsimile:

Email:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

Pleadings

1. by [date] the plaintiff file and serve its statement of claim;
2. by [date] the defendant file and serve its defence and any counterclaim;
3. by [date] the plaintiff file and serve any reply and defence to counterclaim;
4. the time within which the parties may make any of the following applications be extended to 7 days after the mediation conference listed in paragraph 6:

- (a) an application for summary judgment; and
- (b) an application to strike out any pleading.

Discovery

5. by [date] each party:
- (a) make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action in the form of RSC Form 17;
 - (b) file and serve a copy of the document in paragraph (a); and
 - (c) serve on each other party a legible photocopy (or PDF image) of each document referred to in Part 1A of the list in paragraph (a), which is not the subject of an objection as set out Part 1B of the list, the cost of provision of which is to be in the cause;

Mediation conference

6. the parties attend a mediation conference before a Registrar on a date to be fixed by the Court taking into account the following unavailable dates of the parties:
-
7. each party must attend the mediation conference in person or, if the party is a body corporate, by an agent who is authorised by the body corporate to conduct settlement negotiations and to settle the case.
8. not less than 7 days before the mediation conference, the lawyer for each party provide the party with notice in writing of the issues as to costs set out in DCR rule 36;
9. not less than 7 days before the mediation conference, the plaintiff [and the defendant if there is a counter claim] serve on each other party a without prejudice schedule of damages complying with DCR rule 45C;
10. not less than 3 working days before the mediation conference, each party must send to the Registrar presiding at the mediation conference a bundle of documents comprising a copy of any:
- (a) schedule of damages served pursuant to paragraph 9;
 - (b) significant without prejudice correspondence exchanged between the parties; and

- (c) document that would be useful for the Registrar to have to facilitate the mediation;
- 11. unless otherwise ordered at the mediation conference, the costs of each party of, and incidental to, the mediation conference be in the cause;

Ongoing case management

- 12. unless otherwise ordered, on entering the action for trial, the requirement on the parties to attend a pre trial conference be waived, and the action be listed for a listing conference;
- 13. the directions hearing listed for [*the initial directions hearing listed by the Court*] be vacated;
- 14. the action be listed for a directions hearing on a date to be fixed not earlier than 14 days after the date of the mediation conference;
- 15. any party wishing to file and serve any interlocutory application, file and serve the application no later than 7 days prior to the directions hearing in paragraph 14;
- 16. the first return date of any application filed pursuant to paragraph 15 be the directions hearing in paragraph 14;
- 17. there be liberty to either party to request the court to list the action for an earlier directions hearing, the liberty to be exercised by letter to the Court attaching a minute of proposed orders;
- 18. in the event of default by any party for 3 working days in complying with any paragraph of this order, the party in default shall either:
 - (b) file and serve a consent order adjusting the timetable set out in this order;
or
 - (b) request the court to list the action for a directions hearing;
- 19. there be liberty to apply in relation to these orders;
- 20. [*if required*] the time within which the plaintiff must enter the action for trial be extended to 21 days after the date of the mediation conference; and

21. the costs in relation to the preparation of this consent order be in the cause.

Plaintiff's Counsel/Solicitor

Defendant's Counsel/Solicitor

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the day of 20 .

BY THE COURT

REGISTRAR

Annexure 11: Commercial List – Consent Directions (CP 14)

IN THE DISTRICT COURT) No of
OF WESTERN AUSTRALIA)
HELD AT PERTH)

BETWEEN

Plaintiff

-and-

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Facsimile:

Email:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

1. by [date] the plaintiff file and serve its statement of claim;
2. by [date] the defendant file and serve its defence and any counterclaim;
3. by [date] the plaintiff file and serve any reply and defence to counterclaim;
4. by [date] each party:

- (a) make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action in the form of RSC Form 17;
 - (b) file and serve a copy of the document in paragraph (a); and
 - (c) serve on each other party a legible photocopy (or PDF image) of each document referred to in Part 1A of the list in paragraph (a), which is not the subject of an objection as set out Part 1B of the list, the cost of provision of which is to be in the cause;
- 5. the directions hearing listed for [*the initial directions hearing listed by the Court*] be vacated;
 - 6. the action be listed for a directions hearing on [*a Wednesday or Friday around 10 days after the date for compliance in paragraph 4*] at 10:00am; and
 - 7. [*if required*] the time within which the plaintiff must enter the action for trial be extended to [*date*]; and
 - 8. the costs in relation to the preparation of this consent order be in the cause.

Plaintiff's Counsel/Solicitor

Defendant's Counsel/Solicitor

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the day of 20 .

BY THE COURT

REGISTRAR

Annexure 12: Commercial List – Consent Order for a Chamber Summons (CP 14)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

BETWEEN

Plaintiff

-and-

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Facsimile:

Email:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

1. the directions hearing listed for [*the next directions hearing listed by the Court*] be vacated and relisted to the special appointment in paragraph 2;
2. the [party]'s application for [describe primary orders sought – eg security for costs] dated [date of application] be listed for a special appointment not before [date – having regard to the date on which the last affidavit is due] before a Registrar having regard to the following combined unavailable dates:

3. by [*date*] the [*party*] file and serve any affidavit in opposition to the application;
4. by [*date*] the [*party*] file and serve any affidavit in response to any affidavit filed pursuant to paragraph 3;

5. [if required] the time within which the plaintiff must enter the action for trial be extended to 14 days after the date of the special appointment in paragraph 1; and
6. the costs in relation to this consent order be reserved.

Plaintiff's Counsel/Solicitor

Defendant's Counsel/Solicitor

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the day of 20 .

BY THE COURT

REGISTRAR

Annexure 13: Commercial List – Trial on Affidavit Evidence (CP 14)

1. the action be listed for trial on *[dates]*;
2. the evidence in chief of all witnesses at the trial of the action be given on affidavit;
3. by *[date – usually 42 days before the date fixed for the commencement of the trial]*, the plaintiff must serve on each other party a signed and dated affidavit sworn by each witness to be called by the plaintiff:
 - (a) containing the evidence in chief of the witness; and
 - (b) annexing all documents to be tendered through the witness;
4. the action be listed for a callover on *[date - usually 35 days before the date fixed for the commencement of the trial]*;
5. by *[date – usually 28 days before the date fixed for the commencement of the trial]*, each party other than the plaintiff must serve on each other party a signed and dated affidavit sworn by each witness to be called by the party:
 - (a) containing the evidence in chief of the witness; and
 - (b) annexing all documents to be tendered through the witness;
6. each party have leave to lead oral evidence at the trial of the action from a witness for whom an affidavit has been filed pursuant to this order which is purely responsive to material contained in an affidavit served by any other party;
7. any party who intends to object to the admissibility of any paragraph of an affidavit filed pursuant to paragraphs 3 or 5 must within 5 working days of service of the affidavit advise the party serving the affidavit of the paragraphs objected to and the grounds of the objection;
8. within 5 working days of receipt of a notice of objection pursuant to paragraph 7, the party receiving the notice must inform the party serving the notice whether any of the objections are conceded;
9. no party may object to any evidence in an affidavit filed pursuant to this order other than on grounds set out in a notice of objection served according to paragraph 7;
10. no party may adduce evidence from a witness who has not sworn an affidavit which has been filed and served in accordance with this order;
11. save for documents tendered by consent or able to be tendered other than through a witness, no party may tender any document at the trial of the action unless the document is annexed to an affidavit filed pursuant to this order;

12. each party must make available the deponent of each affidavit filed on behalf of the party pursuant to this order for cross examination at the trial of the action, unless each other party has consented in writing to the witness being excused from attending the trial;
13. the orders in paragraphs 2 to 12 apply unless otherwise ordered by the trial Judge;
14. compliance with DCR rule 45G (*inspection of records to be tendered at trial*) be dispensed with;
15. the time by which the plaintiff is to comply with DCR rules 45F (*Papers for the Judge*) and 45H (*Opening submissions*) be varied to [*date – usually 14 days before the date fixed for the commencement of the trial*];
16. the time by which each other party is to comply with DCR rule 45H (*Opening submissions*) be varied to [*date – usually 7 days before the date fixed for the commencement of the trial*];
17. by [*date – usually 7 days before the date fixed for the commencement of the trial*], each party is to file a bundle of materials for use by the Trial Judge comprising a legible copy of:
 - (a) (for the plaintiff) the Papers for the Judge filed pursuant to DCR rule 45F;
 - (b) the submissions filed pursuant to DCR rule 45H;
 - (c) the List of Witnesses filed pursuant to DCR rule 45I; and
 - (d) each affidavit to be filed by the party pursuant to this order;
18. the bundle of materials in paragraph 17 is to be:
 - (a) indexed;
 - (b) divided into sections (or lever arch files) corresponding to paragraphs 17(a) to (d);
 - (c) paginated (if more convenient by section); and
 - (d) presented in ring binder or lever arch files;
19. in the event of default by any party for 3 working days in complying with any paragraph of this order, the party in default shall either:
 - (a) file and serve a consent order adjusting the timetable set out in this order;
or
 - (b) request the court to list the action for a directions hearing;

20. there be liberty to either any to request the court to list the action for a directions hearing, the liberty to be exercised by letter to the Court attaching a minute of proposed orders; and
21. the costs of the hearing today be in the cause.

Annexure 14: Usual Orders for a Mediation Conference before a Registrar (CP 15)

1. the parties attend a without prejudice mediation conference before a Registrar on a date to be fixed by the Court taking into account the following unavailable dates of the parties:

2. each party must attend the mediation conference in person or, if the party is a body corporate, by an agent who is authorised by the body corporate to conduct settlement negotiations and to settle the case.
3. where the settlement negotiations are to be conducted on behalf of a party by its insurer, a representative of the insurer with authority to conduct settlement negotiations and to settle the case attend the mediation conference in person, in which case the attendance of a corporate representative of the party is dispensed with;
4. not less than 7 days before the mediation conference, the lawyer for each party provide the party with notice in writing of the issues as to costs set out in 2005 DCR r 36;
5. not less than 7 days before the mediation conference, the plaintiff [and the defendant if there is a counter claim] serve on each other party a “without prejudice” schedule of damages complying with 2005 DCR rule 37(3)(b) or (c);
6. not less than 3 clear days before the mediation conference, each party must send to the Registrar presiding at the mediation a bundle of documents comprising:
 - (a) any schedule of damages served pursuant to paragraph 5; and
 - (b) a copy of any significant without prejudice correspondence exchanged between the parties;
 - (c) a copy of any document that would be useful for the Registrar to have to facilitate the mediation [*eg the contract allegedly breached or a key expert report*].
7. unless otherwise ordered at the mediation conference, the costs of each party of, and incidental to, the mediation conference be in the cause;
8. unless otherwise ordered, on entering the action for trial, the requirement on the parties to attend a pre trial conference be waived, and the action be listed for a listing conference.
9. the action be listed for a directions hearing on a date not earlier than 14 days after the date of the mediation conference.

**Annexure 15: Usual Orders for a Mediation Conference before a
Private Mediator (CP 15)**

1. the parties attend a mediation presided over by [name of mediator] (“mediator”)
2. each party attend the mediation in person or, if the party is a body corporate, by an agent who is authorised by the body corporate to conduct settlement negotiations and to settle the case.
3. where the settlement negotiations are to be conducted on behalf of a party by its insurer, a representative of the insurer with authority to conduct settlement negotiations and to settle the case attend the mediation conference in person, in which case the attendance of a corporate representative of the party is dispensed with;
4. within 14 days after the conclusion of the mediation conference, the plaintiff to file a report, signed by or on behalf of the parties concerned, confirming that the mediation conference took place;
5. unless otherwise ordered, on entering the action for trial, the requirement on the parties to attend a pre trial conference be waived, and the action be listed for a listing conference.
6. the action be listed for a directions hearing on a date no earlier than 21 days after the filing of the report referred to in Order 4 hereof.

Annexure 16: Directions to Facilitate a Mediation (CP 15)

Summary of issues

1. by [date] each party must send⁵⁸ to the Registrar presiding at the mediation conference a briefing note of not more than 3 pages (prepared on a confidential and without prejudice basis, and on the basis that its contents will not be revealed to the other parties unless authorised by the party), setting out the following:
 - (a) the finding(s) on liability contended by party, including any issues of apportionment and any alternate findings;
 - (b) the 3 most critical findings of fact or law which the Court must make in order for the Court to make the finding(s) in paragraph (a);
 - (c) any issues on which there appears to be a consensus in the expert evidence;
 - (d) the contested expert evidence that the Court would have to accept in order to make the findings in paragraph (b);
 - (e) the 3 main reasons why the party contends the Court will prefer the expert evidence in paragraph (d) over contrary expert evidence; and
 - (f) any policy, background, personality or relationship issues which may make it difficult for the action to settle or otherwise sidetrack the mediation;

Chronology

2. by [date], the plaintiff serve on the defendant by email a draft chronology cross referenced to documents discovered by each party.
3. by [date], the defendant serve on the plaintiff by email either:
 - (a) an amended version of the document in paragraph 2, with its additions noted and cross referenced to discovered documents; or
 - (b) a stand alone draft chronology cross referenced to documents discovered by each party.
4. by not less than 7 days prior to the mediation either:
 - (a) the plaintiff send to the Registrar presiding at the mediation an agreed consolidated chronology cross referenced to discoverable documents; or

⁵⁸ The word “send” is used rather than “file” to denote that the document will not form part of the Court file, but will go the Registrar directly and be destroyed or handed back to the parties at the conclusion of the mediation.

- (b) each party send to the Registrar presiding at the mediation a chronology cross referenced to discoverable documents

Without prejudice Scott Schedule – building case

5. by [date], the plaintiff serve on the defendant, by email, on a without prejudice basis, a Scott Schedule of the claims in paragraph [] of the statement of claim in the form set out in Schedule A⁵⁹ to this order, having completed columns 1, 2, 3 and 4;
6. by [date], the defendant serve on the plaintiff, by email, on a without prejudice basis, a response to the document in paragraph 5 having completed columns 4, 5 and 6 (prepared on the assumption that the plaintiff is successful on liability);

Schedule A

Item No	Description of defect and/ or incomplete work	Plaintiff's discovered documents	Plaintiff's cost of remedying	Defendant's cost of remedying	Defendant's comments	Defendant's discovered documents

7. by not less than 7 days prior to the mediation, the plaintiff send to the Registrar presiding at the mediation, and serve on each other party, the completed without prejudice Scott Schedule.

Scott schedule style damages analysis for a personal injuries case

6. by [date], the plaintiff serve on the defendant, by email, on a without prejudice basis, a version of the particulars of damages in the form set out in Schedule B to this order, having completed columns 1, 2, 3 and 4;
7. by [date], the defendants serve on the plaintiff, by email, on a without prejudice basis, a response to the document in paragraph 6 having completed columns 5 and 6 (prepared on the assumption that the plaintiff is successful on liability);

Schedule B

Item No.	Head of damage	Assumptions or factual basis relied on by plaintiff	Amount claimed by plaintiff	Defendant's assessment of likely award	Assumptions or factual basis relied on by defendant

⁵⁹ The form of the schedule is broadly taken from the usual Scott Schedule in Circular to Practitioners 20, Scott Schedules. Other forms of the Scott Schedule are set out in this Circular to Practitioners. The key difference in format with the without prejudice version is that the two columns containing the numbers are adjacent to facilitate ease of comparison at the mediation.

Annexure 17: Example Entry for Trial Notice (CP 16)

District Court of Western Australia		At: Perth
Entry for trial		Number: CIV 123 of 2011
Matter	MARY SMITH Plaintiff <p style="text-align: center;">-and-</p> ALLAN GREEN Defendant	
Date of filing	15 May 2013	
Certificate <small>* delete if inapplicable</small>	<p>The plaintiff certifies that —</p> <ul style="list-style-type: none"> • the plaintiff has been given discovery and inspection by all of the other parties; and • the plaintiff served interrogatories and has received answers; and • the plaintiff has complied with all directions and orders made by the Court at the case management hearing; and • the plaintiff has complied with all orders made by the Court since the case management hearing; and • no other interlocutory orders are needed; and • the plaintiff has complied with the <i>Rules of the Supreme Court 1971</i> Order 36A; and • the plaintiff has complied with the <i>District Court Rules 2005</i> rule 36(1); and • the plaintiff has complied with the <i>District Court Rules 2005</i> rule 45C; and • this matter is in all respects ready for trial. 	
Entry for trial	The plaintiff enters this matter for trial.	
Unavailable dates	<p>The plaintiff requests the Court not to list the action for a pre-trial conference until September 2011, as the plaintiff has a review medical appointment on 2 August 2011.</p> <p>The parties are not available for a pre-trial conference on these dates:</p> <p style="text-align: center;">September 10,11,12, 18 ,19 20</p> <p>The parties request the Court to list the pre-trial conference for 24 September 2011. No counsel appearing for any party has another pre-trial conference on that date.</p>	

Contact details of party or lawyer	Name			
	Firm			
	Address			
	Phone		Fax	
	Email			
	Reference			
Signature of party or lawyer	Plaintiff's lawyer		Date	

**Annexure 18: Pro forma Consent Order to adjourn a Pre Trial
Conference (CP 16)**

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No 123 of 2011

B E T W E E N

MARY SMITH

Plaintiff

-and-

ALLAN GREEN

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Facsimile:

Email:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

1. the pre trial conference scheduled for [*insert date*] being adjourned to [*preferred date of the parties*]; and
2. the costs in relation to the preparation of this consent order be in the cause.

The reason for the adjournment is.....

.....

The parties' unavailable dates for the adjourned pre trial conference are:

.....

Plaintiff

Defendant

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the _____ day of _____ 20__.

BY THE COURT

REGISTRAR

**Annexure 19: Pro forma Consent Order to List an Action for a
Mediation Conference in lieu of a Pre Trial Conference (CP 16)**

IN THE DISTRICT COURT OF WESTERN AUSTRALIA
HELD AT PERTH

No 123 of 2011

B E T W E E N

MARY SMITH

Plaintiff

-and-

ALLAN GREEN

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Email:

Facsimile:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

1. on entering the action for trial, the requirement on the parties to attend a pre trial conference be waived;
2. the parties attend a without prejudice mediation conference before a Registrar on a date to be fixed by the Court taking into account the following unavailable dates of the parties:
3.

each party must attend the mediation conference in person or, if the party is a body corporate, by an agent who is authorised by the body corporate to conduct settlement negotiations and to settle the case;

4. where the settlement negotiations are to be conducted on behalf of a party by its insurer, a representative of the insurer with authority to conduct settlement negotiations and to settle the case attend the mediation conference in person, in which case the attendance of a corporate representative of the party is dispensed with;
5. not less than 3 working days before the mediation, each party must send to the Registrar presiding at the mediation a bundle of documents comprising:
 - (a) a copy of any significant without prejudice correspondence exchanged between the parties; and
 - (b) a copy of any document that would be useful for the Registrar to have to facilitate the mediation [*eg the contract allegedly breached or a key expert report*]; and
6. unless otherwise ordered at the mediation conference, the costs of each party of, and incidental to, the mediation conference be in the cause.

Plaintiff

Defendant

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the _____ day of _____ 20__.

BY THE COURT

REGISTRAR

Annexure 20: Consolidated Practice Directions of the Supreme Court of Western Australia (CP 17)

4.2.2 Applications for Leave to Compromise by Persons under a Disability

1. This Practice Direction applies to applications for leave to compromise under O 70 r 10 and r 10A and is published with the concurrence of the Chief Judge of the District Court so as to apply to the practice in that court as well as in the Supreme Court.
2. Where counsel's opinion is not dispensed with, it must be obtained, filed and identified, and the court will normally be required to be satisfied:
 - (a) that the next friend, (or guardian appointed by a court to be the representative in a particular lawsuit as the case may be) has perused counsel's opinion, has discussed it with the solicitor and approved of or consents to the proposed compromise;
 - (b) that the facts on which counsel's opinion is based are correct and complete so far as can be ascertained;
 - (c) that sufficient facts are identified to enable the court to form an opinion in respect of the matter to be approved, and that grounds for any apportionment of liability are stated; and
 - (d) that in the opinion of both counsel and solicitor, the proposed compromise would be beneficial to the person under disability.
3. Where counsel's opinion is dispensed with, the court will normally require an affidavit by the next friend's solicitor setting out the relevant facts (as above, so far as applicable) and stating in effect that he had discussed the case with the next friend who approved of or consents to the proposed compromise, and that the solicitor considers the proposed compromise to be beneficial to the person under disability.

Annexure 21: Standard Orders – Judgment (CP 17)

1. The Plaintiff do have leave to compromise her claim against the Defendant for damages for personal injuries as alleged in the statement of claim for the sum of \$, of which the sum of \$ has already been paid to, or on behalf of, the plaintiff.
2. Judgment be entered for the Plaintiff against the Defendant in the sum of \$, of which the sum of \$ has already been paid to, or on behalf of, the Plaintiff.
3. Within 14 days of the date of service of this order, the Defendant do pay to:
 - (a) the Plaintiff's [.....] the sum of [\$.....] in respect of past gratuitous services provided by the Plaintiff's parents and special damages paid by them, which is included in the judgment sum;
 - (b) Centrelink whatever is owed by the Plaintiff under the *Social Security Act 1991* (Cth) as a consequence of the compromise of her claim; and
 - (c) Medicare Australia the sum of \$ pursuant to the Notice of Charge issued in relation to the Plaintiff dated [date]; and
 - (d) the Public Trustee (“trustee”) the unpaid balance of judgment sum (“trust fund”) to be invested and administered on behalf of the Plaintiff until she attains the age of 18 years.
4. While the trust is in operation, the trustee be empowered at its discretion to apply, from time to time, the whole or any part of the income of the trust fund and, if considered necessary the capital thereof, for the maintenance, welfare and advancement of the Plaintiff, or otherwise for the benefit of the Plaintiff.
5. Investment of the trust fund is not limited to the Common Fund.
6. There be liberty to apply in respect of the trust fund.
7. The Defendant do pay the Plaintiff's costs of the application to be taxed if not agreed.

Annexure 22: Standard Orders – Deed of Release (CP 17)

1. The Plaintiff do have leave to compromise her claim against the Defendant for damages for personal injuries as alleged in the statement of claim for \$, of which the sum of \$ has already been paid to, or on behalf of, the Plaintiff.
2. Within 7 days after service of this order, the Defendant(s) and the Plaintiff shall execute a Deed of Discharge giving effect to the settlement set out in paragraph 1.
3. Upon execution of the Deed of Discharge the defendant do pay to:
 - (a) Medicare Australia any amount owing as is notified deemed payable pursuant to the provisions of the *Health and Other Services (Compensation Act) 1985*;
 - (b) the Public Trustee (“trustee”) the unpaid balance of compromise sum (“trust fund”) to be invested and administered on behalf of the Plaintiff until she attains the age of 18 years.
4. While the trust is in operation, the trustee be empowered at its discretion to apply, from time to time, the whole or any part of the income of the trust fund and, if considered necessary the capital thereof, for the maintenance, welfare and advancement of the Plaintiff, or otherwise for the benefit of the Plaintiff.
5. Investment of the trust fund is not limited to the Common Fund.
6. There be liberty to apply in respect of the trust fund.
7. The Defendant do pay the Plaintiff’s costs of the action to be taxed if not agreed.
8. Upon payment of the sums referred to in paragraph 3 and the Plaintiff’s costs in respect of the application, the Defendant and the Plaintiff shall sign and file a Consent Order dismissing this action with no order as to costs.

Annexure 23: Pro forma Order – Existing Action (CP 17)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

No CIV of

B E T W E E N

**LAURA GREEN (by her next friend
MAXINE GREEN)**

Plaintiff

-and-

ERIC WOOD

Defendant

**ORDER FOR LEAVE TO COMPROMISE
OF HIS HONOUR THE CHIEF JUDGE
12 NOVEMBER 2010**

Date of document: 12 November 2010

Date of filing:

Prepared by:

White and Grey
Barristers & Solicitors
524 Hay Street
PERTH WA 6000

Tel: 9332 7473
Fax: 9332 7474
Ref: MW: 1234

UPON THE APPLICATION of the Plaintiff by Chamber Summons filed 5 October 2010 and UPON HEARING Mr T White for the Plaintiff and Ms A Black for the Defendant IT IS ORDERED that:

1. The Plaintiff do have leave to compromise her claim against the Defendant for damages for personal injuries as alleged in the statement of claim for the sum of \$2,345,678, of which the sum of \$54,123 has already been paid to, or on behalf of, the plaintiff.

2. Judgment be entered for the Plaintiff against the Defendant in the sum of \$2,345,678, of which the sum of \$54,123 has already been paid to, or on behalf of, the Plaintiff.
3. Within 14 days of the date of service of this order, the Defendant do pay to:
 - (a) Centrelink whatever is owed by the Plaintiff under the *Social Security Act 1991* (Cth) as a consequence of the compromise of her claim; and
 - (b) Medicare Australia the sum of \$45,123 pursuant to the Notice of Charge issued in relation to the Plaintiff dated 16 August 2010; and
 - (c) the Public Trustee (“trustee”) the unpaid balance of judgment sum (“trust fund”) to be invested and administered on behalf of the Plaintiff until she attains the age of 18 years.
4. While the trust is in operation, the trustee be empowered at its discretion to apply, from time to time, the whole or any part of the income of the trust fund and, if considered necessary the capital thereof, for the maintenance, welfare and advancement of the Plaintiff, or otherwise for the benefit of the Plaintiff.
5. Investment of the trust fund is not limited to the Common Fund.
6. There be liberty to apply in respect of the trust fund.
7. The Defendant do pay the Plaintiff's costs of the application to be taxed if not agreed.

BY THE COURT

REGISTRAR

Annexure 24: Pro forma Order – Originating Application (CP 17)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

No CIVO of

B E T W E E N

**LAURA GREEN (by her next friend
MAXINE GREEN)**

Plaintiff

-and-

ERIC WOOD

Defendant

**ORDER FOR LEAVE TO COMPROMISE
OF HIS HONOUR THE CHIEF JUDGE
12 NOVEMBER 2010**

Date of document: 12 November 2010

Date of filing:

Prepared by:

White and Grey
Barristers & Solicitors
524 Hay Street
PERTH WA 6000

Tel: 9332 7473
Fax: 9332 7474
Ref: MW: 1234

UPON THE APPLICATION of the Plaintiff by Originating Summons filed 5 October 2010 and UPON HEARING Mr T White for the Plaintiff and Ms A Black for the Defendant IT IS ORDERED that:

1. The Plaintiff do have leave to compromise her claim against the Defendant for damages for personal injuries arising from a motor vehicle accident which occurred at Pinjarra in the State of Western Australia on 12 December 2005 (“the accident”) for \$2,345,678, of which the sum of \$54,123 has already been paid to, or on behalf of, the Plaintiff.

2. Within 14 days of the date of service of this order, the Defendant do pay to:
 - (a) Centrelink whatever is owed by the Plaintiff under the *Social Security Act 1991* (Cth) as a consequence of the compromise of her claim; and
 - (b) Medicare Australia the sum of \$45,123 pursuant to the Notice of Charge issued in relation to the Plaintiff dated 16 August 2010; and
 - (c) the Public Trustee (“trustee”) the unpaid balance of compromise sum (“trust fund”) to be invested and administered on behalf of the Plaintiff until she attains the age of 18 years.
3. While the trust is in operation, the trustee be empowered at its discretion to apply, from time to time, the whole or any part of the income of the trust fund and, if considered necessary the capital thereof, for the maintenance, welfare and advancement of the Plaintiff, or otherwise for the benefit of the Plaintiff.
4. Investment of the trust fund is not limited to the Common Fund.
5. There be liberty to apply in respect of the trust fund.
6. The Defendant do pay the Plaintiff's costs of the application to be taxed if not agreed.
7. Upon payment of the sums referred to in paragraph 2 and the Plaintiff's costs in respect of the application, the Defendant be discharged from any further liability for damages for personal injuries arising from the accident.

BY THE COURT

REGISTRAR

Annexure 25: Example of Discovery Orders (CP 19)

Usual discovery orders

1. by [date], the [party]:
 - (a) make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action;
 - (b) swear an affidavit verifying that list; and
 - (c) serve a copy of each document on each other party;

Informal discovery

2. by [date] each party make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action and serve a copy of each on each other party;

Further discovery

3. by [date], the [party]:
 - (a) make a list of the documents which are or have been that party's possession, custody or power relating to any matter in question in the action and which to date have not been discovered;
 - (b) swear an affidavit verifying that list; and
 - (c) serve a copy of each document on each other party;

Specific discovery

4. by [date], the [party] swear an affidavit stating whether the documents or any documents within the class or classes of documents described in the schedule are or have at any time been in that party's possession, custody or power, and in each case where a document is part of such a class of documents, the deponent identify each document and, if a document is no longer in its possession, what has become of the document;
5. the affidavit in paragraph 4 be sworn by [name].

Inspection

6. each party complete their inspection of documents discovered by another party within 10 working days following the date on which its was served with that party's list of discoverable documents;

Discovery limited to certain issues

7. by [date], the each party make a list of the documents which are or have been in their possession, custody or power relating to the following issues:

- (a)
- (b)
- (c)

and, by the same date, make an affidavit verifying that list and serve a copy of each on the other party;

8. the parties be otherwise excused providing further discovery until further order;
9. there be liberty to the parties to apply for further discover orders, such liberty to be exercised prior to the date on which the action is allocated trial dates.

Exclusion

10. subject to paragraph 11, the [party] is at liberty not to discover documents falling within the following classes:

- (a)
- (b)
- (c)

11. if the [party] intends to rely at trial on a document falling within paragraph 10, then that party must discover the document prior to the date on which the action is entered for trial, otherwise the document may not be tendered at trial without the leave of the Court;

Good faith proportionate search ⁶⁰

12. subject to paragraphs 13 to 17, by [date], each party:
- (a) make a list of the documents which are or have been in that party's possession, custody or power relating to any matter in question in the action;
 - (b) swear an affidavit verifying that list; and
 - (c) serve a copy of each document on each other party;
13. each party is only required to include in the list in paragraph 12 documents discovered in the course of a good faith proportionate search of its documents and

⁶⁰ These orders are based on the practice in the Federal Court's Fast Track List.

records, and it otherwise excused from providing further discovery until further order;

14. in paragraph 13, the reference to a “good-faith proportionate search” is a reference to a search undertaken by a party in which the party makes a good faith effort to locate discoverable documents, while bearing in mind that the cost of the search should not be excessive having regard to the nature and complexity of issues raised by the case, including the type of relief sought and the quantum of the claim;
15. if directed by the Court or requested by another party, a party must file and serve an affidavit describing briefly the kind of good faith proportionate search it has undertaken to locate discoverable documents;
16. there be liberty to the parties to apply for further discovery orders, such liberty to be exercised prior to the date on which the action is allocated trial dates;
17. each party is under an obligation to provide continuing discovery until conclusion of the trial of any document falling within paragraph 12(a) which it becomes aware of subsequent to filing and serving the list in paragraph 12;

Annexure 26: Scott Schedules (CP 20)

SCHEDULE A – DEFECTIVE WORK

Item No	Description of defect and/or incomplete work	Plaintiff's cost of remedying	Plaintiff's discovered documents	Defendant's comments	Defendant's cost of remedying	Defendant's discovered documents	Judge's comments

SCHEDULE B – WORK DONE AND MATERIALS SUPPLIED

Item No	Work and/ or materials supplied by plaintiff	Payment claimed by Plaintiff	Plaintiff's discovered documents	Defendant's comments	Payment admitted by Defendant	Defendant's discovered documents	Judge's comments

SCHEDULE C – CLAIM FOR BREACH OF COVENANT TO REPAIR/ MAKE GOOD

Item No	Description of alleged breach	Plaintiff's cost of remedying	Plaintiff's discovered documents	Defendant's comments	Defendant's cost of remedying	Defendant's discovered documents	Judge's comments

SCHEDULE D – CLAIM FOR DEFECTIVE SUPPLY RAISED AS COUNTERCLAIM

Item No	Date of delivery	Description of goods	Description of defects	Defendant's discovered documents	Amount admitted by Defendant	Plaintiff's comments	Amount conceded by Plaintiff	Plaintiff's discovered documents	Judge's comments

SCHEDULE E – SCOTT SCHEDULE INCORPORATING EXPERT EVIDENCE, DEFECTIVE WORK

Item No	Description of Defect or incomplete work	Plaintiff's cost to remedy	Plaintiff's Documents	Plaintiff's expert report	Defendant's cost to remedy	Defendant's documents	Defendant's expert report	Judge's comment

SCHEDULE F – SCOTT SCHEDULE INCORPORATING EXPERT EVIDENCE, HEADS OF DAMAGE, PERSONAL INJURY

Item No	Head of damages claimed	Plaintiff's claim for award	Plaintiff's documents in support	Plaintiff's expert report	Defendant's estimate of award	Defendant's documents in support	Defendant's expert report	Judge's comment

Annexure 27: Sample Plaintiff Index of Experts' Reports (CP 21)

[Usual court document heading]

Witness	Reports/ Notes	Issues	Comments (including any special requirements)
Dr Antony	12.5.04 17.5.04 18.6.04 18.7.04 10.3.05 10.6.05 10.9.05 11.4.06 11.6.06	General as to symptoms – usual GP	
Dr Cassius	13.5.05	Extent of injuries generally, including timing of symptoms	Substitute for usual GP. Seek to tender by consent without calling witness. If to be called, propose to apply for evidence to be taken by video.
Dr Macbeth	11.6.03	Extent of back injury	Results of MRI scans. Seek to tender by consent without calling witness.
Dr Hamlet	12.4.05 14.7.06 12.4.06	Extent of psychological injury	
Mr Othello	12.12.03 4.7.04 12.3.05	Extent of back injury	Now based in Sydney. Propose to apply to have evidence taken by video link.

Annexure 28: Undertaking in relation to Inspection and Copying of Documents or Things Subpoenaed (CP 23)

Proceedings: CIV /

Witness name:

Date of subpoena: (“Subpoena”)

Name of person signing undertaking:.....

Firm name: (“my Firm”)

Contact Details (*Phone*):
(*For confirmation of approval to copy etc*)

Party acting for :.....

1. ⁶¹I certify that a copy of the subpoena under RSC O.36B r.4 or the notice under RSC O36B r.5A was served by my Firm on each other party to the action.
2. I undertake that, neither I nor any representative of my Firm, will divulge, communicate or refer to any person any information obtained from inspection of any document or thing produced to the Court pursuant to the Subpoena or a copy of any document or thing so produced to and inspected by me:
 - (a) otherwise than for the purpose of the Proceedings; or
 - (b) except with the leave of the Court.
3. I undertake that neither I nor any representative of my firm will recopy any of the documents produced by the Court to me except for the purposes of the Proceedings.
4. I undertake that neither I nor any representative of my firm will divulge, communicate or refer to any person, any copies I have made of the documents produced otherwise than for the purpose of the Proceedings

SIGNED:

DATE:

*Office use
only*

APPROVAL TO COPY DOCUMENTS: YES / NO

Registrar: Date:

⁶¹ If the party inspecting the documents was not the party which applied for the subpoena, this paragraph is not applicable and a line should be drawn through it.

Annexure 29: Undertaking in relation to Removal and Copying of Documents or Things Subpoenaed (CP 23)

Proceedings: CIV /

Witness name:

Date of subpoena: (“Subpoena”)

Name of person signing undertaking:.....

Firm name: (“my Firm”)

Contact Details (*Phone*):
(*For confirmation of approval to copy etc*)

Party acting for :.....

1. I am a Certified Legal Practitioner.
2. I acknowledge receipt of documents produced pursuant to the Subpoena on (date).
3. I hereby undertake to keep in my custody or possession the above named documents and to return those documents to the Registry in the condition and order provided to me by am/pm on(date).
4. I undertake that, neither I nor any representative of my Firm, will divulge, communicate or refer to any person any information obtained from inspection of any document or thing produced to the Court pursuant to the Subpoena or a copy of any document or thing so produced to and inspected by me:
 - (a) otherwise than for the purpose of the Proceedings; or
 - (b) except with the leave of the Court.
5. I undertake that neither I nor any representative of my firm will recopy any of the documents produced by the Court to me except for the purposes of the Proceedings.
6. I undertake that neither I nor any representative of my firm will divulge, communicate or refer to any person, any copies I have made of the documents produced otherwise than for the purpose of the Proceedings

*Office use
only*

Approval to remove and copy	<input type="checkbox"/> All documents returned
Registrar:.....	Received by:
Date:	Date returned:

Annexure 30: Sample Index to Papers for the Judge (CP 25)

[Usual court document heading]

Page	Document
1-8	Statement of claim dated 23 May 2006
9-15	Amended defence and counterclaim dated 15 October 2006
16-18	Amended reply and defence to counterclaim, dated 1 November 2006
19-25	Plaintiff's particulars of damages pursuant to Rule 45C, dated 12 December 2006;
26-32	Defendant's (plaintiff by counterclaim) particulars of damages pursuant to Rule 45C, dated 12 December 2006;
33-36	Plaintiff's further and better particulars of defence to counterclaim dated 19 December 2006;
37	Third party directions dated 12 January 2007;
38-45	Defendant's statement of claim in third party proceedings, dated 26 January 2007;
46-55	Third party's defence in third party proceedings, dated 18 February 2007.

Annexure 31: Usual Trial Materials Orders (CP 25)

1. No later than 5 business days prior to the date fixed for the commencement of the trial, each party is to file a bundle of materials for use by the Trial Judge comprising:
 - (a) (for the plaintiff) the Papers for the Judge filed pursuant to 2005 DCR rule 45F;
 - (b) any submissions filed pursuant to 2005 DCR rule 45H;
 - (c) a List of Witnesses pursuant to 2005 DCR rule 45I;
 - (d) each witness statement exchanged with the other parties, to relied on by the party at trial [*subject to orders being made in terms of Annexure D below*]; and
 - (e) a bundle of the documents to be tendered at trial by the party [*subject to orders being made in terms of Annexure C below*].
2. the bundle of materials in para 1 is to be:
 - (a) indexed;
 - (b) divided into sections corresponding to paras 1(a) to (e) above;
 - (c) paginated; and
 - (d) presented in lever arch files.

Annexure 32: Usual Orders for the Exchange of Lists of Documents (CP 25)

1. No later than 28 days prior to the date fixed for commencement of the trial, each party will by notice in writing to each other party, specify the documents the party intends to tender at the trial, and if inspection has not been directed, where the documents may be inspected.
2. Within 5 business days thereafter, each party will advise each other party in writing which of the specified documents may be tendered by consent, and whether the authenticity of any of the remaining documents (specify which) is disputed and give reasons in writing as to why consent to tender the remaining documents is withheld.
3. No later than 14 days prior to the date fixed for commencement of the trial, each party other than the plaintiff will deliver to the plaintiff a copy of each of the documents which that party intends to tender and which were not included in the plaintiff's notification pursuant to para 1 hereof.
4. No later than 5 business days prior to the date fixed for the commencement of trial, the plaintiff will file, duly indexed and paginated, a bundle of clear, legible copies of documents to be tendered at the trial by the parties. The index will indicate the identity of the party who will tender each document and which documents are to be tendered by consent.
5. No later than 5 business days prior to the date fixed for the commencement of trial, the plaintiff will deliver a copy of the bundle referred to in para 4 to all other parties.
6. The plaintiff will have ready for production at the commencement of the trial a further bundle of documents containing, wherever possible, the originals of the documents, copies of which are included in the bundle delivered in accordance with para 4 hereof, similarly indexed and paginated, and in the absence of originals, clear legible copies. Any party, other than the plaintiff, in possession of original documents to be included in such bundle will deliver such original documents to the plaintiff together with the copies referred to in para 3 hereof.
7. The plaintiff will have ready a further bundle in the form described in para 4 for the exclusive use of witnesses in the course of their examination.

Annexure 33: Usual Orders for Witness Statements (CP 25)

1. At least 42 days before the date fixed for the commencement of the trial, the plaintiff shall serve on each other party a signed and dated written statement of the proposed evidence in chief of each witness (save expert witnesses) to be called by the plaintiff.
2. At least 28 days before the date fixed for the commencement of the trial, each party other than the plaintiff shall serve on each other party a signed and dated written statement of the proposed evidence in chief of each witness (save expert witnesses) to be called by that party.
3. At least 14 days before the date fixed for the commencement of the trial, a party shall serve any statement (which should be signed and dated) which is purely responsive to material contained in a statement served by any other party.
4. Any party who intends to object to the admissibility of any statement or any part thereof shall within 5 working days of service of the statement advise the party serving the statement of his objections and the grounds therefor. Within 5 business days of receipt of the notice of objection the party serving the statement shall inform the other party whether any of the objections are conceded.
5. If an intended witness, whose statement has been served in accordance with this order, does not give evidence at the trial, no party may put his or her statement into evidence at the trial save with leave of the court.
6. Where the party serving a statement does call the intended witness at the trial:
 - (a) that party may not, without leave of the court, lead evidence from that witness if the substance of the evidence is not included in the statement served; and
 - (b) the court may direct that the statement, or any part of it, stand as the evidence in chief of the witness; and
 - (c) that party should have the statement ready for tender at the trial together with copies for each other party, the witness and the court.
7. Save with leave of the court, no party may adduce evidence from any witness whose statement has not been served in accordance with this order.
8. Save with the leave of the court, no party may object to any evidence in a statement served pursuant to this order other than on grounds set out in a notice of objection served according to para 4 hereof.
9. Each witness statement is to be prepared having regard to the Best Practice Guide 01/2009 issued by the Western Australian Bar Association entitled "Preparing witness statements for use in civil cases".

10. Each witness statement filed is to be accompanied by a certificate from the practitioner most responsible for the preparation of the statement to the effect that the order in par 9 has been complied with.

Annexure 34: Pro forma Agreed Bundle – Medical Reports (CP 25)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

No of

BETWEEN

Plaintiff

-and-

Defendant

AGREED BUNDLE OF MEDICAL REPORTS

WE THE PARTIES to this action, admit:

1. That each document (“Report”) set out in the Index in the Schedule to this Notice:
 - (a) where described as an original, is an original document;
 - (b) where described as a copy, is a true copy of the original;
2. That the author of the Report (“Author”) is the person named in column 3.
3. That the Author is a duly qualified expert in relation to the opinions set out in the Report.
4. That the original of the Report was printed, written, and/ or signed as the document purports to have been.
5. Except in relation to the facts identified in the Reports set out at column 5 in the Schedule to this Notice, each fact set out in the Report on which the Author’s opinion was based.

WE THE PARTIES to this action further agree to tender this bundle at the trial of this action by consent and without the need to call the author of the document.

Dated the [date] day of [month] [year].

Plaintiff's
Counsel/Solicitor

Defendant's
Counsel/Solicitor

**SCHEDULE
INDEX OF REPORTS TO BE TENDERED**

No.	Date	Author	Orig/ Copy	Facts in dispute

Annexure 35: Economic Loss Information (CP 25)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH) No of

B E T W E E N

Plaintiff

-and-

Defendant

AGREED BUNDLE OF ECONOMIC LOSS MATERIAL

WE THE PARTIES to this action, admit:

1. That each document (“Document”) set out in the Index in the Schedule to this Notice:
 - (a) where described as an original, is the original document;
 - (b) where described as a copy, is a true copy of the original;
2. That the author of the Document is the person named in column 3.
3. That the original of the Document was printed, written, signed and / or executed as the document purports to have been.
4. Except in relation to the facts identified in the Documents set out at column 6 in the Schedule to this Notice, each fact set out in the Document.

WE THE PARTIES to this action further agree to tender this bundle at the trial of this action by consent and without the need to call the author of the document.

Dated the [date] day of [month] [year]. .

Plaintiff’s
Counsel/Solicitor

Defendant’s
Counsel/Solicitor

SCHEDULE
INDEX OF DOCUMENTS TO BE TENDERED BY CONSENT

No.	Date	Author	Description	Orig/ Copy	Facts in dispute

Annexure 36: Extraction of Orders – Pro forma Consent Order (CP 26)

IN THE DISTRICT COURT) No of
OF WESTERN AUSTRALIA)
HELD AT PERTH)

BETWEEN

Plaintiff

-and-

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Facsimile:

Email:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

- 1.
- 2.
- 3.
4. the costs in relation to the preparation of this consent order be in the cause.

Plaintiff's Counsel/Solicitor

Defendant's Counsel/Solicitor

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the day of 20 .

BY THE COURT

REGISTRAR

Annexure 37: Extraction of Orders – Example Consent Order (CP 26)

IN THE DISTRICT COURT)
OF WESTERN AUSTRALIA)
HELD AT PERTH)

No of

BETWEEN

MARY SMITH

Plaintiff

-and-

BLACK CORPORATION PTY LTD

Defendant

CONSENT ORDER

Date of document:

Date of filing:

Filed on behalf of:

Prepared by:

Address:

Telephone:

Facsimile:

Email:

Reference:

PURSUANT TO RSC ORDER 43 RULE 16 the parties consent to the following orders:

1. the plaintiff have leave to amend the statement of claim in terms of the minute dated 8 February 2010, with further filing and service dispensed with;
2. the plaintiff pay the defendant any costs thrown away by reason of the amendments;
3. by 22 February 2010 the defendant file and serve any amended defence;
4. the time by which the parties are to comply with DCR r 46(4) be varied to 19 April 2010;

5. the time within which the plaintiff must enter the action for trial be extended to 25 April 2010; and
6. the costs in relation to the preparation of this consent order be in the cause.

Plaintiff's Counsel/Solicitor

Defendant's Counsel/Solicitor

Settled, signed and sealed in accordance with RSC Order 43 rule 16.

Dated the day of 20 .

BY THE COURT

REGISTRAR

TABLE OF AMENDMENTS

PRACTICE DIRECTIONS

HISTORICAL AMENDMENTS – PRACTICE DIRECTIONS (up to February 2019)		
Date	Former Practice Direction	Current Practice Direction
Date of Issue: 27 Nov 2009 Revised: 27 June 2011	GEN 2009/1 – Court Attire	PD 1 – Court Attire
Date of Issue: 9 Sept 2011 Revised: 16 Sept 2016, 10 Nov 2011	GEN 2011/1 – Use of Video Link Facilities	PD 2 – Use of Video Link Facilities
Date of Issue: 3 Feb 2014	GEN 2014/1 – Use of Electronic Devices in Court	PD 3 – Use of Electronic Devices in Court
Date of Issue: 15 July 2005 Revised: 20 May 2013, 27 Oct 2011, 27 Nov 2009 18 Mar 2009 3 Aug 2007 27 June 2006	CIV 2005/1 – Consolidated Practice Direction Civil Jurisdiction	PD 4 – Application of Supreme Court Practice and Procedure. PD 5 – Transfer of Chamber Summonses for Hearing. PD 6 – Lodging of Documents Relating to a Matter Listed for Hearing. PD 8 – Actions Relating to Work Related Injuries. PD 10 – Applications under the Civil Judgments Enforcement Act 2004. PD 11 – Expert Witnesses. PD 12 – Persons under a Disability.
Date of Issue: 2 Dec 2008	GEN 2008/1 – Documents Filed for Imminent Hearings	PD 7 – Late Filed Documents
Date of Issue: 19 Mar 2007	CIV 2007/2 – Deletion of “Case(s) also cited” from Judgments	PD 13 – Deletion of “Case(s) also cited” from Judgments
Date of Issue: 13 Feb 2019	N/A	PD 9 – Applications under the Limitation Act s 91(2) & s 92
Date of Issue: 13 Feb 2019	N/A	PD 14 – Applications under the Domestic Violence Orders (National Recognition) Act 2017

RECENT AMENDMENTS – PRACTICE DIRECTIONS (from February 2019)		
Date of issue	Practice Direction	Amendment
13 Feb 2019	CIV 2005/1 – Consolidated Practice Direction Civil Jurisdiction	PD 5 - Notification as to Costs of Litigation deleted
13 Feb 2019	CIV 2005/1 – Consolidated Practice Direction Civil Jurisdiction	PD 6 – Outlines of Submissions and Lists of Authorities deleted
13 Feb 2019	PD 9 – Applications under the Limitation Act s 91(2) & s 92	New PD 9 inserted.
13 Feb 2019	PD 14 - Applications under the Domestic Violence Orders (National Recognition) Act 2017	New PD 14 inserted.
23 Jan 2020	PD 15 – Applications for the exchange of witness statements or witness outlines PD 16 – Applications in historic sexual abuse cases to anonymise an individual litigants name and to restrict access to the court record or information in a case.	New PD 15 inserted. New PD 16 inserted.
3 April 2020	PD 17 – Civil Jurisdiction Change in Practice in Response to Covid-19.	New PD 17 inserted.
27 May 2020	PD 17 – Civil Jurisdiction Change in Practice in Response to Covid-19.	PD 17 amended.
11 March 2021	PD 3 – Use of Electronic Devices in Court	Para 3.6.1 and 3.6.2 amended; para 3.6.3 inserted

CIRCULARS TO PRACTITIONERS

HISTORICAL AMENDMENTS – CIRCULARS TO PRACTITIONERS (up to February 2019)		
Date	Former Circular to Practitioners	Current Circular to Practitioners
Date of Issue: 1 Nov 2010 Revised: 23 Sept 2016, 13 Oct 2011	GEN 2010/2 – Use of Technology	CP 1 – Use of Technology
Date of Issue: 17 Apr 2009	GEN 2009/1 – Maintaining Transcript Quality	CP 2 – Maintaining Transcript Quality
Date of Issue: 27 June 2008 Revised: 5 Dec 2012	GEN 2008/3 – Transcript – Last Portion of the Day	CP 3 – Transcript – Last Portion of the Day
Date of Issue: 20 Mar 2008	GEN 2008/1 – Retention and Disposal of Court Records	CP 4 – Retention and Disposal of Court Records
Date of Issue: 31 May 2011	GEN 2011/1 – Request by Media for Access to Court Records	CP 5 – Request by Media for Access to Court Records
Date of Issue: 27 Sept 2011	GEN 2011/2 – Languages Services Guidelines	CP 6 – Interpreting and Language Services Guidelines
Date of Issue: 30 May 2005	CIV 2005/9 – Communication with the Court by Email	CP 7 – Communication with the Court by Email
Date of Issue: 24 Aug 2016	CIV 2016/1 – Filing of Confidential Information	CP 8 – Filing of Confidential Documents
Date of Issue: 3 Aug 2007	CIV 2007/4 – Listing of Special Appointments and Appeals from Registrars’ Decisions	CP 9 – Listing of Special Appointments and Appeals from Registrars’ Decisions
Date of Issue: 7 Aug 2009	CIV 2009/2 – Appeals from Decisions of Registrars	CP 10 – Appeals from Decisions of Registrars
Date of Issue: 30 May 2005	CIV 2005/7 – Chambers Attendances and Directions Hearings by Telephone	CP 11 – Chambers Attendances and Directions Hearings by Telephone

Date of Issue: 3 Aug 2007 Revised: 1 July 2011, 15 Mar 2010, 11 Nov 2009, 11 Feb 2008	CIV 2007/1 – Case Management	CP 12 – Case Management
Date of Issue: 11 Feb 2008	CIV 2008/1 – Actions Commenced in Country Registries	CP 13 – Actions Commenced in Country Registries
Date of Issue: 21 Aug 2013	CIV 2013/2 – Commercial List	CP 14 – Commercial List
Date of Issue: 20 Apr 2012	CIV 2012/2 – Mediation Conferences	CP 15 – Mediation Conferences
Date of Issue: 20 Apr 2012 Revised: 21 Aug 2013	CIV 2012/1 – Pre Trial Conferences	CP 16 – Pre Trial Conferences
Date of Issue: 6 July 2006 Revised: 17 Dec 2010, 3 Aug 2007	CIV 2006/1 – Finalisation of Actions Requiring Court Approval	CP 17 – Finalisation of Actions Requiring Court Approval
Date of Issue: 30 May 2005	CIV 2005/5 – Payment of Trial Listing Fees	CP 18 – Payment of Trial Listing Fees
Date of Issue: 30 Mar 2009	CIV 2009/1 – Limited Discovery	CP 19 – Limited Discovery
Date of Issue: 3 Aug 2007	CIV 2007/3 – Scott Schedules	CP 20 – Scott Schedules
Date of Issue: 3 Aug 2007	CIV 2007/2 – Expert Evidence	CP 21 – Expert Evidence
Date of Issue: 5 June 2008 Revised: 2 Apr 2013, 7 Aug 2009	GEN 2008/2 – Obtaining Documents from the WA Police Service under Court Order	CP 22 – Obtaining Documents from the WA Police Service under Court Order
Date of Issue: 9 Aug 2013	CIV 2013/1 – Subpoenas	CP 23 – Subpoenas

Date of Issue: 19 Nov 2014	GEN 2014/1 – Inspection and Copying of Documents Produced Pursuant to Subpoena in Perth	CP 24 – Inspection and Copying of Documents Produced Pursuant to Subpoena in Perth
Date of Issue: 3 Aug 2007 Revised: 30 Mar 2012, 17 Dec 2010	CIV 2007/6 – Trials	CP 25 – Trials
Date of Issue: 30 May 2005 Revised: 21 Aug 2013, 15 Mar 2010	CIV 2005/8 – Extraction of Orders	CP 26 – Extraction of Orders
Date of Issue: 6 July 2006 Revised: 20 May 2013	CIV 2006/2 – Applications under the Civil Judgments Enforcement Act	CP 27 – Applications under the Civil Judgments enforcement Act 2004
Date of Issue: 10 Jan 2017	CIV 2017/1 – Enforcing Determinations under the Construction Contracts Act 2004	CP 28 – Enforcing Determination under the Construction Contracts Act 2004

RECENT AMENDMENTS – CIRCULARS TO PRACITITIONERS (from January 2020)		
Date revised	Circular to Practitioners	Paragraphs amended
12/04/2019	CP 7	7.2.1
12/04/2019	CP 16	16.6.3
12/04/2019	CP 18	18.1.2 (b)
12/04/2019	CP 26	26.1; 26.1.2; 26.3.5; 26.4.1 26.4.2
23/01/2020	CP 29	CP 29 inserted - Anonymising litigants names.

THIS PAGE IS INTENTIONALLY BLANK