

CONSOLIDATED PRACTICE DIRECTION
– CIVIL JURISDICTION

1. Application

- 1.1 The Consolidated Practice Direction – Civil Jurisdiction dated 1 January 1997, Practice Direction No 1 of 2003 and Practice Note: Service and Execution of Process Act 1992 are hereby revoked.
- 1.2 With the exception of Parts 5 and 6, these Practice Directions apply to all civil matters commenced or being conducted in the District Court.

2. Application of Supreme Court Practice and Procedure

- 2.1 The practice and procedure as applied in the Supreme Court will continue to apply in the District Court except to the extent as modified by the Rules of the District Court or by the provisions of this Consolidated Practice Direction.
- 2.2 The following Practice Directions as issued by the Supreme Court shall, together with such other Supreme Court Practice Directions as may hereafter be adopted by the District Court, be deemed to be included in this Consolidated Practice Direction:
- (a) *Applications for Leave to Compromise* (28 August 1974);
 - (b) *Interlocutory Injunctions – Usual Undertaking as to Damages* (3 October 1975);
 - (c) *Video and Other Cameras, Tape Recorders, Two-way Radios and Mobile Telephones in Courtrooms* (26 August 1992)
 - (d) *Court Dress: Wigs* (14 May 1999);
 - (e) *Media Neutral Citation* (6 May 1999);

3. Transfer of Chamber Summonses for Hearing

- 3.1 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.
- 3.2 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.

- 3.3 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.
- 3.4 The hearing of an interlocutory summons may be transferred by consent pursuant to Order 43 Rule 16 of the Rules of the Supreme Court.

4. Lodging of Documents Relating to a Matter Listed for Hearing

- 4.1 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.

5. Notification as to Costs of Litigation

- 5.1 This part applies only to matters governed by the District Court Rules 1996.
- 5.2 Within 7 days prior to the initial Pre-trial Conference the solicitor for each party (other than a party insured against liability) shall deliver to that party a memorandum in writing setting out:
- (a) the approximate costs and disbursements of the party up to and including the pre-trial conference;
 - (b) the estimated future costs and disbursements of that party up until (but excluding) the trial;
 - (c) the estimated length of the trial and the costs and disbursements thereof; and
 - (d) the estimated party and party costs payable to any other party in the event of an unsuccessful outcome to trial.
- 5.3 The solicitor shall, prior to the pre-trial conference, file with the Court a certificate certifying that the solicitor has complied with paragraph 5.2.
- 5.4 The Registrar may order that the requirements of paragraph 5.2 be complied with prior to any adjourned Pre-trial Conference.

6. Outlines of submissions and lists of authorities

- 6.1 Rule 61 of the District Court Rules 2005 applies to matters governed by the District Court Rules 1996.

7. Actions relating to work related injuries

- 7.1 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. Applications under the Civil Judgments Enforcement Act

- 8.1 Where, following a means inquiry, a judgment creditor applies to the court for an arrest warrant pursuant to *Civil Judgments Enforcement Act 2005* s29(4), counsel for the judgment creditor is to hand up to the Judge convening the hearing a signed certificate in the form of Annexure A to this practice direction.
- 8.2 Where a judgment creditor makes an application for a default inquiry pursuant to *Civil Judgments Enforcement Act 2005* s88, counsel for the judgment creditor is to hand up to the Judge convening the hearing a signed certificate in the form of Annexure B to this practice direction.

9. Expert Witnesses

- 9.1 2005 DCR rule 48 provides that the Court may issue a practice direction in relation to a Code of Conduct for experts. The document in the Annexure C to this Practice Direction is the Code of Conduct for the purposes of 2005 DCR rule 48.
- 9.2 2005 DCR rule 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 Annexure D to this Practice Direction.
- 9.3 If a party decides not to call an expert witness listed in an index filed pursuant to 2005 DCR rule 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.

ANTOINETTE KENNEDY
Chief Judge

ANNEXURE A

CERTIFICATE - ARREST WARRANTS UNDER THE CIVIL JUDGMENTS ENFORCEMENT ACT s29(4)

To be handed to the Judge hearing an application for an arrest warrant pursuant to
Civil Judgments Enforcement Act s29(4).

1. The summons to attend the means inquiry was personally served on the witness (CJEA s29(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 means inquiry was:
 - (a) Issued on [insert date of issue], which was not less than 7 clear days before the date on which the person summoned was required to attend the means inquiry, namely [date of means inquiry] (CJER reg 15); and
 - (b) 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 means inquiry (CJER reg 15).
3. The person summoned did not attend the means inquiry on [insert date of means inquiry].
4. An application was made for an arrest warrant using Form 6* on [insert date].
5. The Form 6 application for an arrest warrant was personally served on the judgment debtor (CJEA s29(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.
6. The judgment creditor has filed an affidavit dated [insert date of affidavit] setting out any additional information the Court should be aware of in determining whether to issue an arrest warrant.

OR

The judgment creditor is not aware of any additional information the Court should be aware of in determining whether to issue an arrest warrant, and has consequently filed no affidavit in support of this application.

[Insert name]

Solicitor/ Counsel for the Judgment Creditor

Dated: [insert date]

* CJEA Forms can be found on the District Court website (www.districtcourt.wa.gov.au) under the “legal resources” then “forms” headings.

ANNEXURE B**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 s89.

1. The summons to attend the default inquiry was personally served on the person required to attend (CJEA s89(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 s88(1) and / or s88(2);
 - (c) the amount owing as at the date of the affidavit, including any costs orders, and the daily date 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 C
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 2005, 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 D**2005 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)