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PDC 1 APPLICATION OF SUPREME COURT PRACTICE AND PROCEDURE

1.1 Application¹

1.1.1 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 the 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); and
- g) 9.6 Specialised Procedures – Order 52A (Freezing Orders) – Order 52B (Search Orders).

¹ Formerly PDC(Civ) 4.

PDC 2 TRANSFER OF CHAMBER SUMMONSES FOR HEARING

2.1 Application

2.1.1 This Practice Direction¹ applies to all civil matters commenced or being conducted in the District Court.

2.2 Transfer of Chamber Summonses for Hearing

2.2.1 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.

2.2.2 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.

2.2.3 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.

2.2.4 The hearing of an interlocutory summons may be transferred by consent pursuant to *Rules of the Supreme Court 1971 (WA) O 43 r 16*.

¹ Formerly PD (Civ) 5.

PDC 3 CIVIL JURISDICTION HEARINGS AND APPEARANCES

3.1 Trials¹

3.1.1 Civil trials will be listed in accordance with normal listing practices and subject to any order made by a judge. This means civil trials can be listed for immediate hearing.

3.2 Expedited Trials Generally

3.2.1 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.

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

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

3.3 Expedited Hearings for Historic Sexual Abuse Cases

3.3.1 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 PDC 9 (see 9.1).

3.3.2 Applications for expedited listing of actions for trial should be made in accordance with 3.2 above.

3.4 Mediation of Expedited Actions

3.4.1 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.

3.4.2 Subject to any order of a judge or registrar to the contrary, mediation will take place by personal attendance. Any application for mediation by video or audio link should be made in accordance with PDG 3.

3.5 Appeals

3.5.1 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 PDG 3.

3.5.2 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.

3.6 Applications for Compromise

3.6.1 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.

3.7 All Other Hearings and Appearances Before the Court

3.7.1 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

¹ Formerly PD (Civ) 17.

This includes the hearing of originating summons/motions, pre-trial conferences, mediations and taxation of costs.

- 3.7.2 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 PDG 3.

3.8 Telephone Links

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

3.9 Review

- 3.9.1 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.

PDC 4 LODGING OR PRODUCING DOCUMENTS OR THINGS

4.1 Application

4.1.1 This Practice Direction¹ applies civil proceedings.

4.2 Lodging documents for a matter listed for hearing

4.2.1 Any document lodged for a matter that is listed for hearing on a particular day must clearly specify on its face the date of such hearing.

4.3 Compliance with a subpoena – DCR 48AD(3)

Acceptable electronic formats and lodging instructions

4.3.1 Where a subpoena does not require production of an original document or thing, an addressee may comply by producing an electronic copy to the Registry in the following formats:

Text	.docx; .doc; .docm; .rtf; .pdf; .txt; .html
Spreadsheets	.xls; .xlsx; .xlsb; csv
Music/Videos	.mp3; .mp4; .wma; .f4v; .wmv; .vob; .mts; .mov; .m4v; .avi
Images	.bmp; .gif; .tif; .tiff; .jpg; .jpeg; .png
Power Points	.ppt; .pptx
Emails	.msg

Manner of production

4.3.2 For subpoenas issued **before 15 January 2024** an addressee:

- a) will be unable to comply with the subpoena by producing documents via the ECMS; and
- b) must comply with the subpoena by producing:
 - i) if the original is required, the document or thing itself; or
 - ii) a copy of the document or thing - and this may be in an electronic format specified in PDC 4.3.1, which may be produced on a USB device or on DVD or CD-ROM.

4.3.3 For subpoenas issued **on or after 15 January 2024** an addressee must comply with the subpoena by producing:

- a) if the original is required, the document or thing itself; or
- b) otherwise, a copy of the document in an electronic format specified in PDC 4.3.1, which:
 - i) should, wherever possible, be produced via the ECMS, in accordance with the lodging instructions annexed to the subpoena; and
 - ii) if the document cannot be uploaded via the ECMS, on a USB device.

4.3.4 In the event that the document or thing cannot be produced as contemplated in PDC 4.3.2 or 4.3.3, the addressee or the issuing party may apply to the Court for directions: DCR r 48AD(3).

¹ Formerly PD (Civ) 6.

PDC 5 LATE FILED DOCUMENTS

5.1 Application

5.1.1 Subject to 5.1.2, this Practice Direction¹ 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.

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

5.2 Correspondence

5.2.1 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

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

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

5.3 Court Documents - Civil

5.3.1 Where a court document is filed to which this 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

Note: For criminal matters, see PDM 2023.²

¹ Formerly PD (Civ) 7.

² Formerly PD (Crim) 2017.

PDC 6 EXPERT WITNESSES

6.1 Procedure¹

- 6.1.1 *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. PDC-A1² is the Code of Conduct for the purposes of r 48.
- 6.1.2 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 PDC-A2.³
- 6.1.3 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 in place.

¹ Formerly PD (Civ) 11.

² Formerly PD 2019 Ax 3.

³ Formerly PD 2019 Ax 4.

PDC 7 EXCHANGE OF WITNESS STATEMENTS OR WITNESS OUTLINES

7.1 Application

7.1.1 This Practice Direction¹ applies to all civil matters commenced or being conducted in the District Court.

7.2 Exchange of Witness Statements or Witness Outlines

7.2.1 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.

7.2.2 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.

7.2.3 The chamber summons will be listed for hearing and determination by a judge.

7.2.4 Where the 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.

¹ Formerly PD (Civ) 15.

PDC 8 ACTIONS RELATING TO WORK RELATED INJURIES

8.1 Procedure¹

- 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.

¹ Formerly PD (Civ) 8.

PDC 9 APPLICATIONS IN ABUSE CLAIMS AND OTHER CIVIL ACTIONS

9.1 Application¹

9.1.1 PDC 9.2 deals specifically with applications in historical child sexual abuse and National Redress Scheme claims (abuse claims). PDC 9.3 and PDC 9.4 apply to civil actions generally, including abuse claims.

9.2 Application to Set Aside a Settlement

9.2.1 An application pursuant to the *Limitation Act 2005* (WA):

- a) s 91(2) – to set aside a previous judgment; or
- b) s 92 – to set aside a previously settled cause of action,

is by originating summons (Form 1B, schedule 1 of the *District Court Rules 2005* (WA)) supported by an affidavit deposing to the merits and annexing a draft proposed writ of summons and statement of claim.

Listing of the Application

9.2.2 The application will be listed for hearing before a judge in chambers (the first return date). It is not possible to auto list the application through the ECMS.

9.2.3 At the first return date, the respondent must advise the court if the application is opposed. If the application is opposed:

- a) case management directions will be made (see, for example, UOC 9.1); and
- b) the parties are to provide their unsuitable dates for the hearing of the application.

9.3 Anonymising a Person's Name and Restricting Access to the Court Record or Information²

9.3.1 An application to anonymise the plaintiff's name in an abuse claim:

- a) subject to PDC 9.3.2(d), need not be by way of a formal application (by originating summons or chamber summons); and
- b) may be made at the initial directions hearing (as to which, see CPC 14.2).

9.3.2 In any other case, where a litigant seeks an order in a civil action that their name be anonymised and access to the Court record be restricted,³ in circumstances where there is no legislative requirement mandating this, the following procedure applies:

- a) Pursuant to the RSC O 67A r 10(1)(a)(ii), on presenting an originating summons or writ of summons for filing the filing party should inform the Court that they are applying for an order under the RSC O 67B r 5 restricting access to the name of the litigant, the Court record and other information. Such access will be restricted immediately.
- b) An 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. Unless the order is to be made by consent, it should be supported by an affidavit deposing to the grounds for the application.

¹ Formerly PD (Civ) 9.

² Formerly PD (Civ) 16.

³ An application for restriction of the court record (as to which, see UOG 4.1.3), including by the plaintiff, must always be made by originating summons or chamber summons (as appropriate) and must be dealt with by a judge.

- c) An application in an existing matter for an order anonymising a party's name or restricting access to the court record is to be made by chamber summons. Unless the order is to be made by consent, supported by affidavit deposing to the grounds for the application.
- d) Any application for orders in terms of UOG 4.1.3 (restricting access to the court record) or UOG 4.1.4 (pseudonym in written decision) must be dealt with by a judge.

Consent Orders

- 9.3.3 Where a respondent or defendant consents to the application, the parties may file their written consent to the making of orders pursuant to RSC O 43 r 16. 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 application will be heard.

Form of Orders

- 9.3.4 An example of the form of orders to be sought in an application is found at UOG 4.1.⁴

9.4 Application for Expedited Hearing

- 9.4.1 Any application for an expedited hearing (including of any application under PDC 9.2 or PDC 9.3) must be made by originating summons (if no action has commenced) or chamber summons (in an existing action).
- 9.4.2 The application should be filed with an affidavit deposing to the circumstances that justify an expedited hearing.
- 9.4.3 The applicant should enquire of the registry if a listing date has not been allocated within 24 hours of filing.

⁴ Formerly PD (Civ) 2019 Ax 5.

PDC 10 APPLICATIONS UNDER THE *CIVIL JUDGMENTS ENFORCEMENT ACT 2004* (WA)

10.1 Application for a Default Inquiry¹

10.1.1 Where a judgment creditor makes an application for a default inquiry pursuant to the *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 PDC-A3.²

¹ Formerly PD (Civ) 10.

² Formerly PD 2019 Ax 2.

PDC 11 LEAVE TO COMPROMISE CLAIMS BY PERSONS UNDER A DISABILITY

11.1 Application

11.1.1 This Practice Direction¹ applies to all civil matters commenced or being conducted in the District Court.

11.2 Procedure

11.2.1 The *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”.

11.2.2 The *GAA* grants the 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.

11.2.3 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).

11.2.4 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).

¹ Formerly PD (Civ) 12.

PDC 12 APPLICATIONS UNDER THE *DOMESTIC VIOLENCE ORDERS (NATIONAL RECOGNITION) ACT 2017*

12.1 Application

12.1.1 This Practice Direction¹ applies to all applications to the District Court under the *Domestic Violence Orders (National Recognition) Act 2017* (WA) ('DVOA') for a declaration that a Domestic Violence Order (DVO) made in any jurisdiction be a recognised DVO in this jurisdiction. Section 42(3) of the DVOA provides that the person bound by the DVO is not to be served with notice of the application and s 42(4) of the DVOA 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* (WA) (RSC) O 4 and O 54 r 5, is required to be commenced by originating motion.

12.2 Form of Application

12.2.1 The form of the application to be used is Form 64 in Schedule 2 to the RSC.

12.2.2 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.

12.2.3 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.

12.3 Orders Sought

12.3.1 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".

12.4 Evidence in Support of the Application

12.4.1 Section 41(4) of the DVOA provides that the declaration must be made where the application is made in accordance with Pt 6 Div 4 of the DVOA unless the court decides to refuse the application in 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:

- a) the capacity in which the applicant makes the application and if a police officer that officer's rank, station and number;
- b) the jurisdiction in which the order was made;

¹ Formerly PD (Civ) 14.

- c) the relevant Court's reference;
- d) where reasonably practical, a copy of the order;
- e) a certificate in writing signed by an authorized person as defined in s 32 of the *DVOA* that the order has been properly notified under the law of the jurisdiction in which it was made;
- f) 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; and
- g) 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.

12.5 The Hearing of the Application

12.5.1 In the first instance the application will 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.