



Western Australia

The Criminal Code

Criminal Procedure Rules 2000

These rules were repealed by the *Criminal Procedure Rules 2005* r. 78 as at 2 May 2005 (see *Gazette* 29 Apr 2005 p. 1936).

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Criminal Procedure Rules 2000

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Western Australia

The Criminal Code
Sentencing Act 1995

Criminal Procedure Rules 2000

Part 1 — Preliminary

1. Citation

These rules may be cited as the *Criminal Procedure Rules 2000*.

2. Commencement

These rules come into operation on 5 February 2001.

3. Interpretation

(1) In these rules, unless the contrary intention appears —

“**accused**” means a person who has been committed to the District Court or Supreme Court for trial or sentence or who is the subject of an indictment that has been presented in one of those courts;

“**actual trial**” means the trial proper of an accused, whether by jury or by judge alone;

“**audio link**” has the meaning given by section 120 of the *Evidence Act 1906*;

“**clerk of arraigns**”, in relation to proceedings before a court, means the associate to the judge or to the most senior of the judges sitting in the proceedings;

“**Code**” means *The Criminal Code*;

“court” means the District Court or the Supreme Court or the Court of Criminal Appeal, as the case requires;

“Court of Criminal Appeal” has the meaning given by section 687 of the Code;

“DPP” means the Director of Public Prosecutions for the State or for the Commonwealth, as the case requires;

“file” means to file with the court concerned;

“form” followed by a designation means the form of that designation in Schedule 1;

“lawyer” means a certificated practitioner within the meaning of the *Legal Practice Act 2003* and includes a firm of such practitioners;

“offender” means a person convicted of an offence;

“party” means the DPP or the accused or an offender;

“registrar” means a registrar of the court concerned;

“video link” has the meaning given by section 120 of the *Evidence Act 1906*.

- (2) Unless the contrary intention appears, words and expressions used in these rules have the same meanings as they have in section 1 of the Code.

[Rule 3 amended in Gazette 19 Apr 2005 p. 1296.]

4. Application

These rules apply to and in relation to all proceedings in the criminal jurisdiction of the District Court or the Supreme Court or in the Court of Criminal Appeal that are —

- (a) pending on the commencement of these rules; or
- (b) commenced on or after the commencement of these rules.

5. Electronic documents and communications

- (1) A court may give directions to facilitate —
 - (a) the preparation, filing, service and exchange of electronic documents relating to proceedings before the court;
 - (b) the preparation and issue of electronic documents by the court; and
 - (c) the conduct of proceedings before the court by means of the electronic communication of written information between the court and parties to the proceedings.
- (2) The directions may be given —
 - (a) in practice directions issued by the court applicable to proceedings generally or to a particular class of proceeding; or
 - (b) by a judge or the Court of Criminal Appeal in particular proceedings.
- (3) The directions may vary the operation of, or allow non-compliance with, these rules.
- (4) A direction given under this rule has effect as if it were part of these rules.
- (5) Nothing done under such a direction shall be treated as an irregularity for the purposes of rule 6.

Part 2 — General provisions

6. Filing and serving documents

- (1) A document that is required by these rules to be served must be served in accordance with section 76 of the *Interpretation Act 1984* unless —
 - (a) these rules provide otherwise; or
 - (b) the court orders otherwise.
- (2) If under Part 3 a lawyer has given notice of being instructed to act for a person, a document to be served on the person may instead be served on the lawyer.
- (3) The court may order that a document is not required to be served.

7. Applications

- (1) An application to the court must be in the form of Form 1 unless —
 - (a) these rules provide otherwise; or
 - (b) the Code or a written law provides otherwise.
- (2) An application and any affidavit in support of it must be filed, and served on every other party, and any other person affected by the application, at least 2 clear days before the date on which it is to be heard, unless the court orders otherwise.
- (3) Despite subrule (1), the court may give leave for an application to be made orally on any terms it thinks are just.

8. Adjournments

- (1) On the application of a party or on its own initiative, a court may adjourn a trial or other proceeding if it thinks fit.

- (2) In the case of a proceeding involving an accused, the power in subrule (1) may be exercised before or after the accused is arraigned.
- (3) Subrule (1) is in addition to and does not affect the operation of section 610 of the Code or any other provision of the Code that allows a court to adjourn a trial or other proceeding.
- (4) If a court adjourns a trial or other proceeding —
 - (a) it may do so until a fixed date or until a date to be fixed by the court;
 - (b) it may, subject to the *Bail Act 1982*, remand the accused or offender in custody; and
 - (c) it may make any orders necessary to ensure the attendance of any other person at the time and place to which the trial or other proceeding is adjourned.
- (5) If a court adjourns a trial or other proceeding the clerk of arraigns or a registrar must give notice of the adjournment and of the new hearing date —
 - (a) to any person who is required to appear at the trial or proceeding, and any surety of such a person; and
 - (b) if a person who is required to appear at the trial or proceeding is in legal custody, to the chief executive officer under the *Prisons Act 1981*.

9. Appearance by audio links or video links

- (1) A court may direct that an accused, offender or other person appear before the court by means of an audio link or a video link.
- (2) If an accused, offender or other person appears before the court by means of a video link, the appearance is to be taken to be an appearance in person before the court for all purposes including for the purposes of section 635 of the Code.

r. 10

- (3) The place where an accused, offender or other person is when appearing before the court by means of an audio link or a video link, is to be taken to be part of the court.
- (4) This rule is in addition to and does not affect section 647 of *The Criminal Code*, sections 14 or 14A of the *Sentencing Act 1995*, or sections 120 to 132 of the *Evidence Act 1906*.

10. Duties to be obeyed as soon as practicable

Unless these rules expressly specify a time for obeying any duty the duty must be obeyed as soon as practicable.

11. Court may extend or shorten time

The court may extend or shorten any period set by these rules for doing any act on any terms it thinks are just.

Part 3 — Duties of lawyer acting for accused to notify court

12. Duty to notify when acting for an accused

- (1) On being instructed to act for an accused, whether in the capacity of solicitor or counsel, a lawyer must file, and serve on the DPP, a notice in the form of Form 2.
- (2) The duty in subrule (1) arises —
 - (a) when the accused is committed to the court for trial or sentence; or
 - (b) if the accused is not so committed, when an indictment is presented against the accused.
- (3) Subrule (1) applies to a lawyer even if —
 - (a) another lawyer also acts for the accused in another capacity;
 - (b) having been instructed to act in one capacity, the lawyer is instructed to act for the accused in another capacity.

13. Duty to notify when ceasing to act for an accused

- (1) A lawyer who has complied with rule 12 and who ceases to be instructed to act for an accused in any capacity must file, and serve on the DPP, a notice in the form of Form 2 at least 21 days before the date when the next court proceedings involving the accused are listed.
- (2) If it is not possible to comply with subrule (1) the lawyer must apply for leave to cease to act.
- (3) On an application for leave the court may give leave on any terms it thinks are just.

14. Presumptions as to who is acting for an accused

A lawyer who has filed a notice in the form of Form 2 is to be taken to be acting for the accused in the capacity shown in the notice until —

- (a) the lawyer files another notice under rule 12 or a notice under rule 13;
- (b) another lawyer, who acts in the same capacity, files a notice under rule 12; or
- (c) the court gives leave under rule 13(3).

15. Lawyers acting for offenders, on appeals, etc.

- (1) This Part, with any necessary changes, also applies to a lawyer who is instructed to act or who ceases to be instructed to act for an offender.
- (2) This Part, with any necessary changes, also applies to a lawyer who is instructed to act or who ceases to be instructed to act for an accused who is a party to an appeal or other proceedings arising from the trial or sentencing of the accused.

Part 4 — Corporations

16. Application

- (1) This Part applies if a corporation is an accused.
- (2) In this rule —

“corporation” means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, other than an exempt body within the meaning of that Act.

[Rule 16 inserted in Gazette 17 Aug 2001 p. 4345.]

17. Corporation may appoint a representative

- (1) The corporation may appoint an individual to be its representative in proceedings before the court.
- (2) The appointment need not be under the seal of the corporation and, if it is not, a certificate signed by another individual who has, or purports to have, the management of the corporation certifying the appointment has been made is admissible as *prima facie* proof of the appointment.
- (3) A corporation’s representative is not, by reason only of the appointment, qualified or entitled to act on behalf of the corporation for any purposes other than those of this Part.

[Rule 17 amended in Gazette 31 Oct 2003 p. 4564.]

18. Representative’s functions

- (1) The corporation may appear before the court by its representative who on behalf of the corporation may do all things that an accused who is an individual may do before the court.
- (2) If the corporation appears by its representative —
 - (a) a requirement to read, say, ask or do any thing in the presence of the accused is to be construed as a

requirement to read, say, ask or do the thing in the presence of the representative;

- (b) any thing that must or may be done or said by an accused personally may be done or said by the representative; and
 - (c) any thing done or said or omitted to be said by the representative is to be taken as having been done or said or omitted to be said by the corporation.
- (3) If the corporation does not appear by its representative —
- (a) it is not necessary for any requirement referred to in subrule (2)(a) to be complied with;
 - (b) the court must enter a plea of not guilty on behalf of the corporation unless it enters a plea under rule 19.
- (4) This rule does not limit the operation of section 634 of the Code.

19. Pleas on behalf of the corporation

- (1) Any plea by the representative on behalf of the corporation must be in writing.
- (2) A written plea by the representative is for all purposes to be taken to be the plea of the corporation.

Part 5 — Indictments, arraignment and related matters

20. Indictments, form and service of

- (1) An indictment must be in the form of Form 3.
- (2) An indictment must not name as the place of trial any place where the court does not sit in its criminal jurisdiction.
- (3) The indictment must contain a list of the witnesses that the State proposes to subpoena to appear if the indictment proceeds to an actual trial.
- (4) An indictment must be presented by filing it, or presenting it to a judge in open court.
- (5) Without affecting the operation of section 613 of the Code, an indictment must be served on the accused after it is presented.

[Rule 20 amended in Gazette 19 Apr 2005 p. 1296.]

21. Arraignment

- (1) An accused must not be arraigned on an indictment until at least 21 days after it is presented unless, on an oral application by a party, the court orders otherwise.
- (2) An accused must be arraigned in the manner provided by section 612 of the Code or by subrule (3).
- (3) If the indictment contains more than one charge and the court is satisfied that the accused is literate the court may direct that the accused be arraigned as follows —
 - (a) the accused is to be given a copy of the indictment prior to or at the time of being arraigned and directed to read it;
 - (b) the accused is to be asked to confirm that he or she has received the copy and has read and understood it;

- (c) the accused is to be read a summary of the offences charged in the indictment; and
- (d) the accused is to be asked how he or she pleads to the charges in the indictment.

[Rule 21 amended in Gazette 19 Mar 2002 p. 1343.]

22. Nolle prosequi, form and service of

- (1) If an indictment has not been presented against an accused who has been committed for trial or sentence a nolle prosequi under section 11 of *The Grand Jury Abolition Act Amendment Act 1883* must be in the form of Form 4.
- (2) If an indictment has been presented against an accused, a nolle prosequi under section 581 of the Code must be in the form of Form 5.
- (3) A nolle prosequi must be filed, and served on —
 - (a) the accused and on any person who under the *Bail Act 1982* is a surety for the accused;
 - (b) any witness who is bound by a recognisance to appear at the trial of the accused; and
 - (c) any witness who has been served with a subpoena to appear at the trial of the accused.

Part 6 — Specific applications

23. Application for bail

- (1) These rules do not limit or affect the operation of section 4 of the *Bail Act 1982*.
- (2) An application to the Supreme Court under section 13, 14 or 15 of the *Bail Act 1982* must be supported by an affidavit unless the court orders otherwise.

24. Application for acceleration of proceedings (Code ss. 608 & 609)

- (1) An accused who has been committed to a court for trial or sentence may apply at any time for an order that the DPP present an indictment against the accused.
- (2) An accused against whom an indictment has been presented may apply at any time for an order setting a date for the actual trial.
- (3) On an application under subrule (1) or (2) or section 608 or 609 of the Code, the court may —
 - (a) order the DPP to present an indictment against the accused within a period set by the court;
 - (b) order the actual trial to commence on a date fixed by the court;
 - (c) order that the accused be discharged in relation to an alleged offence for which he or she has been committed to the court;
 - (d) adjourn the proceedings to a status hearing;
 - (e) adjourn the application.

25. Application for a stay of proceedings

- (1) A party may apply at any time to the court for an order staying proceedings permanently or temporarily.

- (2) If an application made under subrule (1) is dismissed, another application of the same kind can only be made in respect of the indictment or proceedings if there has been a material change in circumstances and then only on the grounds of the changed circumstances.

26. Application to quash indictment (Code s. 614)

If an application made under section 614 of the Code is dismissed, another application of the same kind can only be made in respect of the indictment or proceedings if there has been a material change in circumstances and then only on the grounds of the changed circumstances.

27. Application for trial by judge alone (Code s. 651A)

- (1) An accused who under section 651A of the Code wants to elect to be tried by a judge alone must apply to make the election.
- (2) The application must be supported by an affidavit of the accused that —
- (a) identifies the alleged offence or offences in respect of which the accused wants to be tried by a judge alone;
 - (b) says that the accused intends to plead not guilty when arraigned on those offences;
 - (c) identifies any person who is jointly charged with the accused with those offences and, if known, says whether that person intends to elect to be tried by judge alone;
 - (d) says whether the State will consent to the actual trial proceeding without a jury; and
 - (e) says that the accused does not know the identity of the trial judge.

[Rule 27 amended in Gazette 19 Apr 2005 p. 1296.]

28. Application under *Criminal Injuries (Compensation) Act 1970*

- (1) An application under section 4 or 6 of the *Criminal Injuries (Compensation) Act 1970* may be made to the court —
 - (a) orally immediately after the conviction or acquittal of the person against whom an order is sought; or
 - (b) at a later time by a written application supported by an affidavit.
- (2) A written application and the supporting affidavit must be served on the chief executive officer of the department of the Public Service principally assisting the Minister who administers the *Criminal Injuries (Compensation) Act 1970*, and the person against whom the order is sought, at least 14 days before the day when the application is listed to be heard.
- (3) On an application the court may inform itself in any manner it thinks fit in order to decide on the proper order to be made and in particular may have regard to —
 - (a) the depositions and statements of witnesses made for the purposes of committing the accused for trial or sentence;
 - (b) the evidence given at the trial in any other court or proceeding;
 - (c) other evidence given orally, by affidavit or in a manner allowed by the court.
- (4) The hearing of an application must be in open court.
- (5) The hearing of an application may be adjourned from time to time but must not be finally determined until the time for appealing or applying for leave to appeal against the conviction or acquittal has expired.
- (6) On the hearing of an application the court may exercise the powers in section 635A of the Code.

- (7) If the parties to an application each agree, the court may, without conducting a hearing, deal with the application by considering the application and the supporting affidavit together with any other documents or written submissions that are filed.

Part 7 — Witnesses

29. Witness in custody, request for presence of

If a party or other person wants a person who is in legal custody to be present to give oral evidence, he or she must file a request in the form of Form 6.

30. Subpoenas, request for and issue of

- (1) If a party or other person wants a court to issue a subpoena to a person (the “**witness**”), he or she must file a request in the form of Form 7 to which is attached a draft subpoena, or draft subpoenas, for one or both of the following, as the case requires —
 - (a) a subpoena to give oral evidence in the form of Form 8;
 - (b) a subpoena to produce a record or thing in the form of Form 9.
- (2) A request for a subpoena returnable to sittings of the Supreme Court at a circuit town may be filed at any registry of the District Court other than the Central Law Courts at Perth.
- (3) When a request is filed a registrar must issue one or both subpoenas to the witness as the request requires.
- (4) A subpoena must be issued under the seal of the court.
- (5) A registrar of the District Court at a place other than the Central Law Courts at Perth may issue a subpoena for and on behalf of the Supreme Court under the seal of the District Court and in that case the subpoena has the same force and effect as if issued by the Supreme Court.
- (6) A subpoena must contain or be accompanied by the information to the witness in Schedule 2.
- (7) A subpoena to produce a record or thing must be made returnable to the date of a pre-trial hearing or, if it is not

practicable to do so, of another proceeding at which a judge is presiding.

[Rule 30 amended in Gazette 19 Mar 2002 p. 1343-4.]

31. Subpoenas, service of

- (1) A subpoena must be served personally on the witness.
- (2) At the time the witness is served with a subpoena or at a reasonable time before the date stated in it for compliance —
 - (a) an amount that is sufficient to meet the witness's reasonable expenses of complying with it must be tendered to the witness;
 - (b) arrangements to enable the witness to comply with it must be made with the witness; or
 - (c) the means to enable the witness to comply with it must be provided to the witness.
- (3) The person who requested the subpoena must ensure that subrule (2) is complied with.
- (4) Service of a subpoena and compliance with subrule (2) may be proved —
 - (a) by evidence on oath; or
 - (b) by tendering a copy of the subpoena that has been endorsed with the details of service and compliance with subrule (2) and signed by the person who served the subpoena and complied with subrule (2).

32. Subpoenas, setting aside

- (1) On an application by the witness, a party or a person who has a sufficient interest in the subpoena, the court may set a subpoena aside, wholly or in part and on any terms it thinks fit.
- (2) The court may make any orders as to the payment of the costs of the application that it thinks fit.

33. Subpoenas to produce records or things

- (1) At the pre-trial hearing or other proceeding at which a subpoena to produce a record or thing is returnable —
 - (a) the witness must produce the record or thing and deliver it into the custody of the court; and
 - (b) having done so, the witness is released from the subpoena.

- (2) At the pre-trial hearing or other proceeding the court may —
 - (a) give leave for any party or other person to inspect the record or thing or to take a copy of the record;
 - (b) order the record or thing to be returned to the person who produced it on any terms or conditions the court thinks fit;
 - (c) make any other orders it thinks fit in relation to the record or thing.

- (3) If a record or thing is in the custody of the court at the date of the actual trial it must be produced then by the clerk of arraigns.

[Rule 33 amended in Gazette 19 Mar 2002 p. 1344.]

34. Warrant to arrest a witness

- (1) A party or other person may apply to the court for the issue of a warrant to arrest a witness.

- (2) The court must not issue the warrant unless it is satisfied by evidence on oath that —
 - (a) the witness is likely to be able to give oral evidence or to produce some record or thing; and
 - (b) the witness would probably not obey a subpoena if served with it.

- (3) A warrant to arrest a witness (whether issued under this rule or under section 16(1)(b) of the *Evidence Act 1906*) must be in the form of Form 10.
- (4) A witness who is arrested under a warrant must be taken before the court and for that purpose may be taken before the court —
 - (a) at any place where it is then sitting; or
 - (b) by means of an audio link or video link.
- (5) When a witness who has been arrested is brought before the court the court, by a warrant in the form of Form 11 —
 - (a) may order the witness be imprisoned until the hearing concerned; or
 - (b) may order the witness be imprisoned until the hearing concerned unless before then he or she enters into a recognisance in the form of Form 12, with or without a surety, to secure the witness's appearance at the hearing concerned.
- (6) A court may at any time cancel or amend a warrant to imprison a witness.
- (7) A court must cancel a warrant to imprison a witness if the witness is no longer required to give oral evidence or to produce some record or thing.
- (8) If a witness does not appear in accordance with a recognisance, the clerk of arraigns must certify the non-appearance on it.
- (9) The certificate of the clerk of arraigns on a recognisance is *prima facie* evidence that the witness has failed in a condition of it.
- (10) This rule does not affect the operation of section 16 of the *Evidence Act 1906*.

Part 8 — Matters prior to actual trial

35. Change of court

- (1) On the application of a party or on its own initiative, a court may order that an accused who has been committed to the court for trial or sentence be dealt with by another court of competent jurisdiction in respect of some or all of the charges for which the accused was committed.
- (2) Subrule (1) does not limit section 577 of the Code.
- (3) If a court makes an order under subrule (1) the last 3 paragraphs of section 577 of the Code apply with any necessary changes.

36. Change of venue (Code ss. 577 & 611)

If a court makes an order under section 577 or 611 of the Code or under rule 35(1) that a trial be held in another court or at another place the clerk of arraigns or a registrar must —

- (a) send the order and the court's papers to a registrar of the other court or to a registrar at the other place, as the case requires; and
- (b) in writing notify any person who is required to appear at the trial, and any surety of such a person, of the change of court or place.

[37-39. Repealed in Gazette 31 Oct 2003 p. 4564.]

40. Status hearings

- (1) If on being arraigned an accused enters any plea other than a plea of guilty, the proceedings may be adjourned to a status hearing.
- (2) If a new trial is ordered (whether at trial or on appeal) the court may order that a status hearing be held.
- (3) The court must fix the time and place for a status hearing.

- (4) A judge must preside at a status hearing.
- (5) At a status hearing the court must inquire into these matters —
 - (a) whether all requirements imposed by or under the Code or the *Justices Act 1902* to file and serve a document have been complied with;
 - (b) whether there are any matters that should be dealt with at a pre-trial hearing;
 - (c) whether the case is ready to go to an actual trial;
 - (d) the dates when the parties will be available for an actual trial.
- (6) At a status hearing the court may —
 - (a) deal with any application under section 577, 610 or 651A of the Code or under rule 35;
 - (b) make an order under section 611B(6) or 611C(3) of the Code;
 - (c) adjourn the status hearing from time to time;
 - (d) order that a pre-trial hearing be held to deal with specified issues and fix the time and place for it;
 - (e) fix the date of the actual trial.
- (7) At the conclusion of a status hearing the proceedings are to be adjourned to the date of a pre-trial hearing or to the date of the actual trial, as the case requires.

[Rule 40 amended in Gazette 31 Oct 2003 p. 4564.]

41. Pre-trial hearings

- (1) A pre-trial hearing is to be held if the court so orders —
 - (a) at a status hearing;
 - (b) on the application of a party at any time before trial; or
 - (c) on its own initiative at any time before trial.
- (2) A judge must preside at a pre-trial hearing.

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- (3) At a pre-trial hearing the court may —
- (a) make an order under section 611B(6) or 611C(3) of the Code;
 - (b) exercise its powers under section 585 of the Code;
 - (c) make a direction under section 592 of the Code;
 - (d) exercise its powers under section 611A of the Code;
 - (e) deal with an application under section 624 of the Code;
 - (f) give directions for the use at trial of charts, summaries or other explanatory documents to aid comprehension of evidence to be given at the trial;
 - (g) with the consent of the parties, and where the court thinks it desirable and convenient to do so, direct that evidence be given at the trial other than strictly in accordance with the laws of evidence;
 - (h) deal with the return of a subpoena to produce a record or thing;
 - (i) deal with an application to set aside a subpoena;
 - (j) give directions for obtaining and using an interpreter at trial;
 - (k) give directions under section 641 of the Code for the holding of a view;
 - (l) decide any question of law arising in relation to the indictment;
 - (m) decide any questions of evidence or procedure;
 - (n) deal with an application or make orders under the *Evidence Act 1906* in respect of children or special witnesses;
 - (o) adjourn the pre-trial hearing from time to time.
- (4) At the conclusion of the pre-trial hearing the proceedings are to be adjourned to the date of the actual trial.

[Rule 41 amended in Gazette 31 Oct 2003 p. 4564.]

Part 9 — Arresting, remanding or imprisoning an accused or an offender

42. Warrant to arrest an accused

- (1) On the application of the DPP and if satisfied that —
 - (a) an indictment has been presented to the court in respect of the accused; or
 - (b) if no indictment has been presented, that the accused has been committed to the court for trial or sentence,the court may issue a warrant to arrest an accused.
- (2) A warrant to arrest an accused must be in the form of Form 12 in the Schedule to the *Justices (Forms) Regulations 1982*.
- (3) An accused who is arrested pursuant to a warrant must be taken before the court and for that purpose may be taken before the court —
 - (a) at any place where it is then sitting; or
 - (b) by means of an audio link or video link.
- (4) Subrule (3) does not limit the operation of section 16 of the *Bail Act 1982* or section 43(7) of the *Young Offenders Act 1994*.

43. Warrant to remand an accused

A warrant to remand an accused in custody must be in the form of Form 13 in the Schedule to the *Justices (Forms) Regulations 1982*.

44. Warrant to imprison an offender

A warrant of commitment to imprison an offender must be in the form of Form 1 in Schedule 1 to the *Sentencing Regulations 1996*.

Part 10 — Trial

45. Proper officer

For the purposes of sections 626, 632, 636, 639 and 654 of the Code the proper officer is the clerk of arraigns or a person directed by the judge to be the proper officer or, in the absence of either, the judge.

46. Jury may be given documents

On the application of a party or on its own initiative a court may direct the jury to be given copies of —

- (a) the indictment and any written particulars relating to it;
- (b) any record admitted in evidence;
- (c) any statement of fact or law;
- (d) any charts, summaries or other explanatory documents to aid comprehension of the evidence given at the trial.

Part 11 — Sentencing and other orders

47. Pending charges

- (1) A request by an offender under section 32(1) of the *Sentencing Act 1995* must be in the form of Form 13.
- (2) The request must be filed with the court at least 14 days before the date when the offender is to be sentenced by the court.
- (3) The court must give a copy of the request —
 - (a) to any court of summary jurisdiction in which the offender has indicated there are pending charges against the offender; and
 - (b) to the DPP.
- (4) The clerk of the court of summary jurisdiction must give —
 - (a) the original complaints that relate to pending charges against that offender in that court to the sentencing court; and
 - (b) a copy of those complaints to the DPP.
- (5) The DPP must prepare a list, in the form of Form 14, of those pending charges against the offender that the State will consent to being dealt with by the sentencing court and must give a copy of the list and a copy of the complaints that relate to the listed pending charges to the offender or the offender's lawyer.
- (6) The offender must indicate on the list of pending charges —
 - (a) which of the listed pending charges of which the offender has not previously been convicted the offender intends to plead guilty to; and
 - (b) which of the listed pending charges the offender wants the sentencing court to pass sentence for,and must sign the list and return it to the DPP.

- (7) The DPP must file the signed list of pending charges in the sentencing court.
- (8) When the signed list of pending charges is filed the clerk of arraigns must immediately send back to the court of summary jurisdiction concerned the original complaint of any charge against an offender that is not listed or that will not be dealt with by the sentencing court by reason of the offender's intentions.
- (9) After the sentencing court has sentenced the offender, the clerk of arraigns must —
 - (a) notify each court of summary jurisdiction of any pending charge in that court that was dealt with by the sentencing court and of the sentence imposed on the offender for the charge; and
 - (b) send back to each court of summary jurisdiction the original complaint relating to any pending charge in that court that was not dealt with by the sentencing court.

[Rule 47 amended in Gazette 19 Apr 2005 p. 1296.]

48. Materials to assist in sentencing

- (1) A party to sentencing proceedings who intends to call a witness in those proceedings must file a statement of the witness, and serve a copy on any other party who does not already have a copy.
- (2) A party to sentencing proceedings who intends to refer in those proceedings to any record must file it, and serve a copy of it on any other party who does not already have a copy.
- (3) Without limiting subrule (2), it applies to the report of an expert, a record of interview, a video-tape, a character reference, an antecedent report and a criminal history.

49. Trial as to material facts

Without limiting the operation of section 14 of the *Sentencing Act 1995* a court may try any dispute about a fact that is material to sentencing an offender.

50. Stay of operation of orders pending an appeal

(1) In this rule —

“appeal” includes an application for leave to appeal;

“stay order” means an order made by a court on the conviction of a person that stays the operation of —

- (a) section 24(1) of *The Sale of Goods Act 1895* (the **“relevant statutory provision”**) in relation to the re-vesting of the property in stolen goods;
- (b) an order for the restitution or delivery of any thing;
- (c) an order for the forfeiture, disposal or destruction of any thing;
- (d) a community order within the meaning of the *Sentencing Act 1995*;
- (e) an order imposing a fine or for the payment of compensation or another sum of money; or
- (f) an order imposing a disqualification on that person.

(2) If an accused is convicted or an offender is sentenced in a court, the person convicted or sentenced, the DPP or any other person who is, or is to be, affected by the operation of the relevant statutory provision or the order in relation to which the stay order is sought may apply to the court for a stay order.

(3) The application may be made at any time after the conviction and before an appeal is finally determined in relation to the conviction or sentence.

(4) A court may make a stay order on any terms and conditions that it thinks fit, including terms and conditions for the purpose of —

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- (a) ensuring that an appeal is prosecuted without delay;
 - (b) securing the safe custody of any record or thing during the period that the order has effect;
 - (c) requiring security to be given in relation to an order imposing a fine or for the payment of compensation or another sum of money.
- (5) A court may make an order varying or revoking a stay order.
- (6) The operation of a stay order is subject to section 694 of the Code.

[Rule 50 amended in Gazette 19 Mar 2002 p. 1344-5.]

Part 12 — Court of Criminal Appeal

51. Interpretation

In this Part —

“appeal” includes an application for leave to appeal;

“appellant” includes an applicant for leave to appeal;

“CCA” stands for Court of Criminal Appeal;

“notice” includes application.

52. Sittings

- (1) The CCA is to sit on the days and at the times that the Chief Justice directs.
- (2) The Chief Justice must publicise any such direction in any manner he or she thinks fit.

53. Commencing an appeal

- (1) An appeal to the CCA by an offender must be commenced by filing, and serving on the DPP, a notice in the form of Form 15.
- (2) An appeal to the CCA by the prosecution must be commenced by filing, and serving on the respondent, a notice in the form of Form 15.
- (3) The notice must state briefly —
 - (a) the grounds of the appeal and the particulars in support of them; and
 - (b) the final orders that it is proposed the CCA should make on the appeal.
- (4) In particular the notice must not merely allege —
 - (a) that the trial judge erred in law or in fact;

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- (b) that the verdict is against the evidence or the weight of the evidence or is unreasonable and can not be supported having regard to the evidence;
- (c) that the conviction is unsafe or unsatisfactory; or
- (d) that the sentence is excessive or inadequate,

but must specify the particulars relied on to support any of those grounds of appeal.

- (5) The notice may include an application for an order under section 697(a), (b) or (c) of the Code if any of the grounds of the appeal give rise to a need for such an order and if it does, the notice must be accompanied by an affidavit that describes the evidence to be produced or given and says how it is relevant to the grounds.
- (6) If an offender intends to apply under section 699 of the Code for leave to be present the notice must include an application for leave and the grounds for the application.
- (7) The notice may include an application for the CCA to give a guideline judgment in which case the application must comply with rule 65(4).

54. Extensions of time

An application under section 695 of the Code for an extension of time must be supported by an affidavit that must exhibit a notice that complies with rule 53.

55. Particulars may be sought and ordered

The CCA, on the application of a party to an appeal or on its own initiative, may —

- (a) order that further particulars be provided by a party in support of a ground of appeal;
- (b) strike out a ground of appeal for which inadequate particulars are specified in the notice of appeal;

- (c) order that a party file and serve an amended notice of appeal.

56. Attorney General's reference of point of law (Code s. 693A)

- (1) A request by the Attorney General under section 693A of the Code must be made by filing in the court that tried the accused concerned, and serving on the parties and any person affected by the proposed referral of the question of law, an application and a supporting affidavit.
- (2) The supporting affidavit must —
 - (a) set out the circumstances out of which arose the question of law;
 - (b) formulate the question of law; and
 - (c) identify any record that should be considered by the CCA.
- (3) The judge who tried the accused must refer the question of law to the CCA by sending the CCA a document in the form of Form 16 together with —
 - (a) a copy of the application and the supporting affidavit;
 - (b) the statement required by section 693A(2) of the Code; and
 - (c) a list of any other records that the judge thinks should be considered by the CCA.
- (4) A registrar of the Supreme Court must ensure the CCA is provided with all the records relevant to considering the question of law.

57. Reserving other matters to the CCA

- (1) Any party may apply to the court under —
 - (a) section 49 of the *District Court of Western Australia Act 1969*; or

- (b) section 43(1) of the *Supreme Court Act 1935*,
for the court to reserve a case, point or question to the CCA or
to direct that it be argued before the CCA.
- (2) The application must be supported by an affidavit that —
- (a) sets out the circumstances out of which arose the case,
point or question;
 - (b) formulates the case, point or question; and
 - (c) identifies any record that should be considered by the
CCA.
- (3) The application and the supporting affidavit must be filed, and
served on the other parties and on any person affected by the
case, point or question.
- (4) To reserve a case, point or question to the CCA, a trial judge
must send the CCA a document in the form of Form 16 together
with —
- (a) a copy of the application and supporting affidavit, if any;
and
 - (b) a list of any records that the judge thinks should be
considered by the CCA.
- (5) A registrar of the Supreme Court must ensure the CCA is
provided with all the records relevant to considering the case,
point or question.
- (6) Subrules (1) to (3) do not prevent a court from reserving a case,
point or question on its own initiative.

58. Petitions for the Royal Prerogative of Mercy

- (1) If under section 140 of the *Sentencing Act 1995* a petition is
referred to the CCA, the petitioner, the DPP, the offender or any
other person affected by the reference may apply to the CCA for
directions.

- (2) On such an application the CCA may give any directions that are necessary for dealing with the petition including directions as to who is to have the conduct of the reference.

59. Stay of execution

Upon the commencement of an appeal the CCA may make any stay order that a court may make under rule 50.

60. Judge's notes

For the purpose of section 696 of the Code the transcript of the record of proceedings, certified as referred to in rule 72(1), is to be taken to be the judge's notes of a trial.

61. Obtaining additional evidence

- (1) A party to an appeal or any other matter before the CCA may apply for an order under section 697(a), (b) or (c) of the Code.
- (2) The application must be supported by an affidavit that describes the evidence to be produced or given and says how it is relevant to the grounds for the appeal or to an issue before the CCA.
- (3) If on such an application the CCA, under section 697(b) of the Code, orders that a witness is to be examined by the CCA, the CCA is to fix the time and place for the examination.
- (4) If on such an application the CCA, under section 697(b) of the Code, orders that a witness is to be examined before a person other than the CCA (the "**examiner**") a registrar must —
 - (a) fix the time and place for the examination;
 - (b) notify the examiner; and
 - (c) notify the parties.
- (5) When the time and place for an examination is fixed under subrule (3) or (4) a registrar must issue a subpoena under Part 7 to the witness.

- (6) The subpoena must be served on the witness by the party that applied for the order unless the CCA orders otherwise.
- (7) An examination of a witness before an examiner must be on oath and recorded.
- (8) The examiner may administer an oath to the witness.
- (9) A party to the appeal or matter is entitled to be present at and take part in the examination.
- (10) On completing the examination, the examiner must —
 - (a) certify that the recorded version of the witness's evidence is accurate; and
 - (b) give a registrar the certified recorded version and any record or thing referred to by the witness.
- (11) The registrar must keep the material supplied by the examiner in safe custody and must deal with it in accordance with the directions of the CCA.

62. Special commissioners and assessors

- (1) If under section 697(d) of the Code the CCA makes an order, the order —
 - (a) must identify the special commissioner who has been appointed;
 - (b) must specify the question that the special commissioner is to inquire into and report on;
 - (c) must specify the documents or accounts to be examined, or the scientific or local investigation to be conducted;
 - (d) may give directions as to how and when the examination or investigation is to be conducted and as to whether and how any party to the appeal or matter may participate in it;
 - (e) may give any other directions necessary for the conduct of the examination or investigation.

- (2) If under section 697(e) of the Code the CCA makes an order, the order —
 - (a) must identify the assessor who has been appointed;
 - (b) must specify the special expert knowledge for which the assessor has been appointed;
 - (c) may specify any question that the assessor is to assist the CCA with;
 - (d) may give directions as to how and when the assessor is to assist the court;
 - (e) may give any other directions necessary for the use by the CCA of the assessor.
- (3) A registrar must serve the order on the special commissioner or the assessor together with any records that the CCA directs to be served.
- (4) A special commissioner or assessor must give any report required of him or her by the CCA to a registrar who must deal with it in accordance with directions of the CCA.

63. Single judge's powers (reviewable)

- (1) Without limiting section 702 of the Code, a single judge of the Supreme Court may, in the same manner as the CCA, deal with an application and exercise the powers under —
 - (a) rules 55, 58, 59 and 67; and
 - (b) section 697(a), (b) or (c) of the Code.
- (2) If under section 702 of the Code or subrule (1) a single judge refuses an application by an appellant and the appellant wants the application determined by the CCA, the appellant must file, and serve on the other party, a notice in the form of Form 17 within 14 days after the refusal.
- (3) If a notice is not filed in accordance with subrule (2) the refusal by the single judge is to be taken to be a refusal by the CCA.

- (4) A single judge may adjourn proceedings from time to time.

64. Single judge's powers (not reviewable)

- (1) A single judge of the Supreme Court may, in the same manner as the CCA —
- (a) in the case of an unrepresented party, give directions as to or recommending the provision of legal aid or assistance;
 - (b) give directions as to the content, form and preparation of the appeal books or the sets of papers to be used by the CCA at the hearing of the appeal or matter;
 - (c) in the case of an unrepresented appellant, direct that no appeal books be prepared and that instead a registrar must cause sufficient copies of documents specified by the single judge to be provided to the CCA at the hearing of the appeal or matter;
 - (d) give directions to enable a party to an appeal or matter to present his or her case in writing.
- (2) If a single judge refuses an appellant's application for a direction under this rule the appellant is not entitled to have the application determined by the CCA.

65. Guideline judgments

- (1) This rule does not limit section 143 of the *Sentencing Act 1995*.
- (2) A guideline judgment may be given in respect of one appeal or in respect of a number of appeals, even if they are not heard together.
- (3) A guideline judgment may be given on the application of a party to an appeal or by the CCA on its own initiative.
- (4) An application for the CCA to give a guideline judgment must set out the guidelines that it is proposed the CCA should give.

66. Discontinuing an appeal

- (1) An appeal or an application under section 695 of the Code for an extension of time may be discontinued at any time by filing, and serving on every other party, a notice in the form of Form 18.
- (2) On the filing of the notice the appeal or application is to be taken to have been dismissed by the CCA.

67. Enforcement of CCA's orders

- (1) The CCA may issue a warrant to enforce an order it makes.
- (2) A warrant must be in a form provided for by Part 9.

68. Final outcome of appeal, certificate of

- (1) A registrar must issue a certificate, in the form of Form 19, of the final outcome of every appeal or other proceeding before the CCA and the orders made as a result.
- (2) The certificate must be issued in addition to any warrant needed to enforce an order of the CCA.
- (3) A copy of any warrant needed to enforce an order of the CCA must be attached to the certificate.
- (4) A copy of the certificate must be sent to —
 - (a) the Commissioner of Police;
 - (b) the chief executive officer of the department of the Public Service principally assisting the Minister who administers the *Sentence Administration Act 2003*;
 - (c) the chairperson of the Parole Board;
 - (d) if the case requires, the chairperson of the Mentally Impaired Defendants Review Board; and
 - (e) any person to whom an order made by the court in the appeal or other proceedings is directed.

- (5) The certificate is the formal record of the CCA and forms part of the Supreme Court's record.

[Rule 68 amended in Gazette 31 Oct 2003 p. 4564.]

Part 13 — Recording court proceedings

69. Transcripts may be in electronic form

This Part does not prevent a transcript of court proceedings being in an electronic form.

70. Which proceedings are to be recorded and transcribed

- (1) A registrar may direct that the whole or a part of any proceedings or class of proceedings be recorded.
- (2) A registrar may direct that the whole or a part of any record or class of record be transcribed into written English.

71. Recorders and transcribers, duties of

- (1) In this rule a reference to recording court proceedings or to transcribing records of court proceedings includes a reference to copying a record or transcript of court proceedings.
- (2) A person who records court proceedings or who transcribes records of court proceedings or who checks the accuracy of transcripts of court proceedings is, while doing so, an officer of the court and must obey any directions of a judge or a registrar in respect of those activities.
- (3) A person who records court proceedings must —
 - (a) check that the recording equipment is working properly;
 - (b) monitor the equipment and ensure that an accurate record is made; and
 - (c) identify the record.
- (4) A person who transcribes a record of court proceedings must —
 - (a) enter in a register the identification of the record;
 - (b) accurately transcribe the record into written English; and

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- (c) include on each page of the transcript information to identify the proceedings and the speakers and any other matter directed by a registrar.
- (5) A person who checks a transcript, or who copies a record or transcript, of court proceedings must —
 - (a) ensure that the transcript is an accurate transcription of the record or that the copy is an accurate copy, as the case requires; and
 - (b) having done so, certify that it is accurate.
- (6) A person who records, copies, transcribes or checks the accuracy of transcripts of court proceedings must at all times ensure the safe custody of the record of the proceedings.

72. Accuracy of transcript

- (1) A transcript or a copy that has been certified under this Part to be accurate is to be taken to be an accurate account of the proceedings and to accurately identify what was said by whom in the proceedings.
- (2) Whether or not a transcript or a copy has been certified under this Part to be accurate, a person may apply to a registrar to have the accuracy of a specific part of the transcript checked.
- (3) On such an application a registrar must cause the transcript to be checked for accuracy, corrected if necessary and certified to be accurate.

73. Entitlement of parties to transcripts

- (1) An accused is entitled to receive, free of charge and as soon as it becomes available, one copy of the record or of the certified transcript of the record of any proceedings directly concerning him or her.
- (2) The DPP is entitled to receive, free of charge and as soon as it becomes available, one copy of the record or of the certified

transcript of the record of any proceedings in which the DPP is involved.

- (3) A party may apply to a registrar for additional copies of the record or of the transcript of the record to which the party is entitled.
- (4) A registrar may determine the cost of any additional copies requested and if the party pays the amount must supply them.

74. Custody of recordings and transcripts

- (1) A registrar must ensure that the recording and any transcript of the recording of any proceedings in the court —
 - (a) are sufficiently registered and marked for identification;
 - (b) are kept in safe custody; and
 - (c) unless the court orders to the contrary, are not destroyed until 2 years after the conclusion of the proceedings, or the last date for commencing any appellate proceedings in relation to the proceedings, whichever is the later.

[(2) repealed]

[Rule 74 amended in Gazette 31 Oct 2003 p. 4564.]

Part 14 — Court records and judgments

75. Committal papers

Without limiting section 127 of the *Justices Act 1902*, if any exhibits are transmitted under that section each is to bear a unique identifier and there is to be an accompanying list of them.

76. Non-parties may apply for transcripts etc.

- (1) A person who is not a party to a proceeding may apply to a registrar for leave to inspect or obtain a copy of —
 - (a) the record, or the certified transcript of the record, of the proceeding; or
 - (b) any other record in the possession of the court in relation to the proceedings, including documents (including those in electronic form) and other things tendered in evidence in the proceedings.
- (2) The application must be in writing and must set out the grounds of the application.
- (3) Subject to —
 - (a) any order made under section 635A of the Code;
 - (b) section 22 of the *Sentencing Act 1995*; and
 - (c) any other order or written law that prohibits or restricts the publication or possession of the record to which the application relates,

a registrar, if satisfied that the applicant has sufficient cause to be granted leave, may grant the application subject to the applicant paying or making arrangements to pay the cost of supplying the copy.

- (4) A registrar may determine the cost of supplying the copy.

77. Clerk of arraigns' duties

- (1) At every trial or other proceeding before a court the clerk of arraigns must ensure that there is a record of —
 - (a) particulars of the indictment or other originating document;
 - (b) the plea, if any, entered by or on behalf of the accused;
 - (c) the names of counsel, jurors and witnesses;
 - (d) the times when particular aspects of the trial or proceeding occur;
 - (e) the description of and the unique identifier given to each exhibit;
 - (f) the particulars of the verdict or result of the trial or proceeding;
 - (g) the final outcome of the trial and proceeding and the orders made as a result;
 - (h) any special order or direction made during the course of the trial or proceeding.
- (2) The records required by subrule (1) may be made either by the clerk of arraigns, or as part of a record made under Part 13 of the trial or proceeding, or both.

78. Final outcome of trial or proceeding, certificate of

- (1) The clerk of arraigns must issue a certificate, in the form of Form 20, of the final outcome of a trial or other proceeding before the court and the orders made as a result.
- (2) The certificate must be issued in addition to any warrant needed to enforce an order of the court.
- (3) A copy of any warrant needed to enforce an order of the court must be attached to the certificate.
- (4) The certificate must be signed by the judge who presided at the trial or other proceeding.

- (5) A copy of the certificate must be sent to —
- (a) the Commissioner of Police;
 - (b) the chief executive officer of the department of the Public Service principally assisting the Minister who administers the *Sentence Administration Act 2003*;
 - (c) the chairperson of the Parole Board;
 - (d) if the case requires, the chairperson of the Mentally Impaired Defendants Review Board; and
 - (e) any person to whom an order made by the court in the trial or other proceedings is directed.
- (6) The certificate is the formal record of the court and forms part of the court's record.

[Rule 78 amended in Gazette 31 Oct 2003 p. 4564.]

79. Custody of exhibits

- (1) A registrar must ensure that all exhibits tendered in any trial or other proceedings before the court are kept in safe custody.
- (2) When the time for commencing appellate proceedings in relation to the proceedings has passed a registrar —
- (a) if no appellate proceedings have been commenced — must return each exhibit to the party who tendered it or to a person who appears to a registrar to be entitled to it unless directed otherwise by the court; or
 - (b) if appellate proceedings have been commenced — must deal with the exhibits according to law.

Part 15 — Miscellaneous

80. Repeals

- (1) *The Criminal Practice Rules* are repealed.
- (2) The *Sentencing Rules 1996* are repealed.

Schedule 1 — Forms

1. Application (r. 7)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Application		
Matter	[Names of all parties]	
Applicant	[Name of the party applying]	
Application details	The applicant applies for — [Set out — <ul style="list-style-type: none"> • <i>the order or orders sought</i> • <i>the written law and provision under which the application is made.</i>]. 	
Hearing details	This application will be heard — at [place] on [date] at [time] or as soon after as possible.	Court stamp
Signature of applicant or lawyer	..... Applicant/Applicant's lawyer	Date:

2. Notice of acting (rr. 12 & 13)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Notice of acting	<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:		
Matter	[Names of all parties]		
Client	[Full name of party]		
Proceedings	<input type="checkbox"/> committed for sentencing <input type="checkbox"/> committed for trial <input type="checkbox"/> appeal <input type="checkbox"/> application for leave to appeal <input type="checkbox"/> other proceedings (describe):		
Notice [Mark one box]	The lawyer or firm of practitioners named below — <input type="checkbox"/> is acting as <u>solicitor</u> for the above client in the above proceedings. <input type="checkbox"/> is acting as <u>counsel</u> for the above client in the above proceedings. <input type="checkbox"/> is acting as <u>both solicitor and counsel</u> for the above client in the above proceedings. <input type="checkbox"/> has ceased to act in any capacity for the above client in the above proceedings.		
Lawyer or firm of practitioners	Name: Address: Telephone: Fax:		
Signature of lawyer	<table border="1" style="width: 100%; height: 30px;"> <tr> <td style="width: 80%;"></td> <td style="width: 20%;">Date:</td> </tr> </table>		Date:
	Date:		
Send the original of this form to the Registrar of the court concerned. Send a copy to the DPP for WA or the Commonwealth (as the case requires).			

3. Indictment (r. 20)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Indictment		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Parties [Include names of any co-accused(s)]	R v.	
Charge(s)	The Attorney General or [Name of prosecutor], being duly appointed to sign and present indictments, informs the Court that — <i>[In respect of each charge set out —</i> <ul style="list-style-type: none"> • <i>the date or period when the alleged offence occurred</i> • <i>the place where the alleged offence occurred</i> • <i>the name of the accused(s)</i> • <i>a description of the offence</i> • <i>the written law and the provision(s) creating the offence.</i> 	
Witnesses	The State intends to subpoena the people on the attached list to give evidence.	
Signature of prosecutor	..... [Attorney General, DPP, etc.]	Date:

[Form 3 amended in Gazette 19 Apr 2005 p. 1296.]

4. Nolle prosequi (no indictment) (r. 22(1))

<i>The Criminal Code</i> <i>The Grand Jury Act Amendment Act 1883</i> <i>Criminal Procedure Rules 2000</i>		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Nolle prosequi (no indictment)		
Defendant	Family name: Given name(s):	Date of birth:
Committal details [*: delete the inapplicable]	On [<i>date</i>] at [<i>place</i>] the defendant was committed for trial/ sentence* to the [<i>month</i>] sessions of this Court on a charge/charges* that — [<i>In respect of each charge set out —</i> <ul style="list-style-type: none"> • <i>the date or period when the alleged offence occurred</i> • <i>the place where the alleged offence occurred</i> • <i>the name of the defendant</i> • <i>a description of the offence</i> • <i>the written law and the provision(s) creating the offence.</i>]. 	
Nolle prosequi	The Attorney General or [<i>Name of prosecutor</i>], being duly appointed to sign and present indictments, informs the Court that the State will not present an indictment against the defendant in respect of the above charge(s).	
Signature of prosecutor	..... [<i>Attorney General, DPP, etc.</i>]	Date:

[Form 4 amended in Gazette 19 Apr 2005 p. 1296.]

5. Nolle prosequi to indictment (r. 22(2))

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Nolle prosequi to indictment		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Parties [Include names of any co-accused(s)]	R v.	
Accused	[Full name of relevant accused]	Date of birth:
Nolle prosequi	The Attorney General or [Name of prosecutor], being duly appointed to sign and present indictments, informs the Court that the State will not proceed further on the indictment dated [date] against the above accused. <i>or</i> informs the Court that on the indictment dated [date] against the above accused the State will not proceed further in respect of the charge that — [In respect of each charge set out — <ul style="list-style-type: none"> • the date or period when the alleged offence occurred • the place where the alleged offence occurred • the name of the accused(s) • a description of the offence • the written law and the provision(s) creating the offence.]. 	
Signature of prosecutor	..... [Attorney General, DPP, etc.]	Date:

[Form 5 amended in Gazette 19 Apr 2005 p. 1296.]

6. Request that person in custody be present to give evidence (r. 29)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Request that person in custody be present to give evidence		<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Matter	[Names of all parties]	
Applicant	[Name of the party requesting]	
Request	The applicant requests the Court to require the following person(s) to be present on [Date] at [Place] to give evidence on behalf of the above applicant in this matter.	
	Full name of person in custody	Place of custody (if known)
Signature of applicant or lawyer	..... Applicant/Applicant's lawyer	Date:

7. Request for subpoena (r. 30)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Request for subpoena		<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Matter	[Names of all parties]	
Applicant	[Name of the party requesting]	
Request	The applicant requests the Court to issue the attached subpoena(s) requiring the named witness(es) to give or produce evidence on behalf of the above applicant in this matter.	
Signature of applicant or lawyer	..... Applicant/Applicant's lawyer	Date:

8. Subpoena to give oral evidence (r. 30)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Subpoena to give oral evidence		
Matter	[Names of the parties to the matter in which the witness is required]	
To: [Witness's details]	[Full name and address]	
Command	You are commanded to appear personally before the above Court to give evidence on behalf of [name of party] in the above matter.	
Place and time to appear	You must appear personally as follows: Date: _____ Time: _____ Place: _____ You must appear at the Court until you are released by the Court, not only on the above date but also on subsequent days.	
Warning	If you do not appear as required you may be arrested and also you may be imprisoned or fined or both.	
Issuing details	This subpoena is issued on [date].	Court seal
Service details [*Police only]	I personally served a copy of this subpoena and the "Notice to witness" in Schedule 2 to the <i>Criminal Procedure Rules 2000</i> on this witness at [place] on [date]. At the same time I gave the witness [set out the amount of money or other means for the witness to comply with the subpoena]. Name of server: _____ Signature: _____ *Police registered number: _____ Station: _____	

9. Subpoena to produce a record or thing (r. 30)

<p><i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i></p> <p>Subpoena to produce a record or thing</p>	<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Matter	[Names of the parties to the matter in which the witness is required]
To: [Witness's details]	[Full name and address]
Command	You are commanded to appear personally before the above Court and to produce the records or things described below on behalf of [name of party] in the above matter.
Place and time to appear [Pre-trial hearing]	You must appear personally as follows: Date: _____ Time: _____ Place: _____
Records or things to be produced	You must bring and produce to the Court the following: [Describe in reasonable detail the records or things to be produced; on an attachment if necessary.]
Warning	If you do not comply with this subpoena you may be arrested and also you may be imprisoned or fined or both.
Issuing details	This subpoena is issued by the Court on [date]. Court seal
Service details [*Police only]	I personally served a copy of this subpoena and the "Notice to witness" in Schedule 2 to the <i>Criminal Procedure Rules 2000</i> on this witness at [place] on [date]. At the same time I gave the witness [set out the amount of money or other means for the witness to comply with the subpoena]. Name of server: _____ Signature: _____ *Police registered number: _____ Station: _____

10. Warrant to arrest a witness (r. 34)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court
Warrant to arrest a witness		At: Number:
To:	All police officers.	
Witness	Name: Address:	Date of birth (if known):
Matter in which witness is required	The above person is wanted as a witness in the following matter: <i>[Set out the parties to the matter.]</i>	
Command	This warrant authorises and commands any police officer to arrest the above person and to take the person before the above court, either in person or by means of an audio link or video link.	
Warrant issued by	Signature: Judge/Clerk of arraigns	Date:
Arrest details	This person was arrested on/...../..... at hours at: by: of: Signature:	
		Registered No.: police station. Date:

11. Warrant to imprison a witness (r. 34)

<p><i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i></p> <p>Warrant to imprison a witness</p>	<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:	
To:	All police officers. Chief executive officer under the <i>Prisons Act 1981</i>.	
Witness	Name: Address:	Date of birth:
Matter in which witness is required	The above person is wanted as a witness in the following matter: [<i>Set out the parties to the matter.</i>]	
Command [*delete if not applicable] [**include if surety is required]	This warrant authorises and commands you to keep the above witness in custody until the hearing date below when you must bring the witness to this court at the place stated below; *unless before then the witness enters into the attached recognisance [with a surety**].	
Hearing details	Date: Place:	Time:
Warrant issued by	Signature: Judge/Clerk of arraigns	Date:

12. Witness's recognisance to appear (r. 34)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		<input type="checkbox"/> Court of Criminal Appeal <input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court
Witness's recognisance to appear		At: Number:
Witness	Name: Address:	Date of birth:
Matter in which witness is required	[Set out the parties to the matter in which the witness is required.]	
Undertaking by witness	I undertake to appear personally before the above Court on: [date of hearing] at: [time of hearing] at: [place of hearing] to give evidence in the above matter. I undertake to remain at the above Court until I am released by the Court, not only on the above date but also on subsequent days. I agree that if I do not obey the above undertakings I will forfeit \$ to the State. Signed: In the presence of: [Signature, name and official title.] Date:	
Is a surety required?	<input type="checkbox"/> Yes <input type="checkbox"/> No Amount: \$	
Surety's agreement [If required]	Name: Address: I agree to forfeit \$ to the State if the above witness does not obey the above undertakings. Signed: In the presence of: [Signature, name and official title.] Date:	
The original to be kept by the court. Copy to be given to the witness and surety (if any).		

[Form 12 amended in Gazette 19 Apr 2005 p. 1296.]

13. Request that pending charges be dealt with (r. 47)

<i>Sentencing Act 1995</i> <i>Criminal Procedure Rules 2000</i> Request that pending charges be dealt with		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Accused	Full name: Address:	Date of birth:
Charges before Supreme or District Court	Charge/Indict No.	Description of offence
Request by accused	I am to be sentenced by the above Court for the above charges. I request the Court to also deal with the following pending charges against me.	
Pending charges in court of summary jurisdiction	Court location	Charge No. Description of offence
Signature	..... Accused/Accused's lawyer	Date:
Send this form to: Manager, Criminal Registry, Supreme Court Stirling Gardens, Barrack Street, PERTH WA 6000 or to: Manager, Criminal Registry, District Court Level 2, Central Law Courts, 30 St George's Terrace, PERTH WA 6000		

14. List of pending charges to be dealt with (r. 47)

<i>Sentencing Act 1995</i> <i>Criminal Procedure Rules 2000</i> List of pending charges to be dealt with		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:	
Accused	Full name: Address:		Date of birth:
Charges before Supreme or District Court	Indict No.	Description of offence	
State's consent	The State consents to the Court dealing with the pending charges against the accused listed below when it deals with the accused for the above charges.		
Accused's statement	When I am being dealt with for the above charges — <ul style="list-style-type: none"> • I intend to plead guilty to any of the pending charges against me listed below that I have not been convicted of, other than those indicated; and • I want the Court to deal with me for the pending charges against me listed below, other than those indicated. 		
Signature	..... Accused/Accused's lawyer		Date:
Pending charges in court of summary jurisdiction	Court location	Charge No.	Description of offence

[Form 14 amended in Gazette 19 Apr 2005 p. 1296.]

15. Notice of appeal or application for leave to appeal (r. 53)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		Court of Criminal Appeal
Notice of appeal Application for leave to appeal		No.
Parties [*delete the inapplicable]	Appellant/Applicant* Respondent	
Offender	Full name:	Date of birth:
Conviction details	In the District Court/Supreme Court* at [place] on [date] the offender was convicted of the following offence(s) — [In respect of each conviction set out (on an attachment if necessary): <ul style="list-style-type: none"> • a description of the offence • the sentence imposed • any other orders made on conviction.] 	
Appeal [Mark applicable box(es)]	The appellant/applicant* appeals against/applies for leave to appeal against* — <input type="checkbox"/> the above conviction(s) [or specify particular convictions] <input type="checkbox"/> the above sentence(s) [or specify particular sentences] <input type="checkbox"/> the above order(s) [or specify particular orders].	
Grounds of appeal or application	[Set out briefly but specifically the grounds relied on and the particulars in support of the grounds (on an attachment if necessary).]	
Orders under s. 697 sought [Omit if necessary]	The appellant/applicant* applies for the following orders under <i>The Criminal Code</i> s. 697 — [Set out the orders sought (on an attachment if necessary).]	
Final orders sought on appeal	The appellant/applicant* applies for the following final orders — [Set out briefly the final orders sought. If a guideline judgment is sought, set out the guidelines that it is proposed the CCA should give. Use an attachment if necessary.]	
Appearance by offender [Omit if necessary]	The offender, being the appellant/applicant, <input type="checkbox"/> wishes to be present at the hearing of this appeal <input type="checkbox"/> seeks leave to be present at the hearing of this appeal on the following grounds — [Set out the grounds on which leave should be granted.]	
Signature of appellant or applicant	..... Appellant/Applicant/ Appellant's/Applicant's lawyer/DPP*	Date:

16. Reference by judge to CCA (r. 57(4))

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		Court of Criminal Appeal
Reference by judge to CCA		No.
Parties	R v.	
Accused or offender(s)	Full name:	Date of birth:
Hearing details [*delete the inapplicable]	In the District Court/Supreme Court* at [place] on [date] the accused/offender was tried on the attached indictment (Attachment A). A copy of the certificate of final outcome of the trial is attached (Attachment B).	
Referral [Mark one box]	<input type="checkbox"/> At the request of the Attorney General made under <i>The Criminal Code</i> s. 693A I refer the following question of law which arose at the trial to the Court of Criminal Appeal for its consideration and opinion. <input type="checkbox"/> Under the <i>District Court of Western Australia Act 1969</i> s. 49 I reserve the following point of law which arose at the trial for the opinion of the Court of Criminal Appeal. <input type="checkbox"/> Under the <i>Supreme Court Act 1935</i> s. 43(1) I reserve the following case, or point or question in a case, for the consideration of the Court of Criminal Appeal.	
Question, point or case referred	[Set out the question, point or case; on an attachment if necessary.]	
How the question etc arose	The question, point or case arose out of the following circumstances — [Set out the circumstances; on an attachment if necessary.]	
Material to be considered by CCA	The following records are relevant to this matter — [List the records, documents, transcripts and exhibits to be considered by the CCA (on an attachment if necessary) and attach them.]	
Signature of judge		Date:

17. Request that CCA determine application refused by single judge (r. 63)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Request that CCA determine application refused by single judge		Court of Criminal Appeal No.
Parties [*delete the inapplicable]	Between: Appellant/Applicant* and: Respondent	
Appellant or applicant making request	Name:	
Application refused	On [date] the appellant/applicant* made an application for — [Describe the application that was refused.]	
Single judge's decision	On [date] Justice [name of judge] refused the application.	
Request	Under <i>The Criminal Code</i> s. 702 the appellant/applicant* requests that the Court of Criminal Appeal determine the application.	
Signature of appellant or applicant	..... Appellant/Applicant/ Appellant's/Applicant's lawyer/DPP*	Date:

18. Discontinuance of CCA proceedings (r. 66)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		Court of Criminal Appeal No.
Discontinuance of CCA proceedings		
Parties [*delete the inapplicable]	Appellant/Applicant* Respondent	
Appellant or applicant discontinuing	Name:	
Proceedings being discontinued	The appellant/applicant* has — <input type="checkbox"/> appealed against conviction/sentence* <input type="checkbox"/> applied for leave to appeal against conviction/sentence* <input type="checkbox"/> applied for an extension of time to appeal/apply for leave to appeal* against conviction/sentence*.	
Discontinuance	The appellant/applicant* discontinues the above proceedings and understands that on the filing of this notice the proceedings will be taken to have been dismissed by the Court of Criminal Appeal.	
Signature of appellant or applicant	..... Appellant/Applicant/ Appellant's/Applicant's lawyer/DPP*	Date:

19. Certificate of final outcome of CCA proceedings (r. 68)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i>		Court of Criminal Appeal Number:
Certificate of final outcome of CCA proceedings		
Parties [*delete the inapplicable]	Appellant/Applicant* Respondent	
Proceedings [Mark one box]	Date(s): Presiding judges: <input type="checkbox"/> Application for leave to appeal <input type="checkbox"/> Appeal <input type="checkbox"/> Reference to CCA <input type="checkbox"/> Other proceeding (describe):	
Final outcome	Date: [Set out the judgment of the CCA and any consequential orders made.]	
Certificate	I certify that the information in this certificate is true and correct. Registrar Date:	

20. Certificate of final outcome of trial or proceeding (r. 78)

<i>The Criminal Code</i> <i>Criminal Procedure Rules 2000</i> Certificate of final outcome of trial or proceeding		<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: Number:
Parties [Include names of any co-accused(s)]		
Accused or offender [One per certificate]	Family name: Given name(s): Date of birth:	
Trial or other proceeding	Date(s): Presiding judge: <input type="checkbox"/> Guilty plea <input type="checkbox"/> Not guilty plea <input type="checkbox"/> Trial by jury <input type="checkbox"/> Trial by judge alone <input type="checkbox"/> Other proceeding (describe):	
Charge [Use reverse if more than one charge]	Date: Charge: <i>The Criminal Code</i> s.	
Final outcome [*delete the inapplicable] [Use reverse if more than one charge] [Attach copies of warrants or orders issued]	Date: <input type="checkbox"/> Proceedings stayed permanently/until [<i>date or event</i>]* <input type="checkbox"/> Indictment quashed <input type="checkbox"/> Demurrer to indictment upheld <input type="checkbox"/> Accused found to have been previously convicted/acquitted* Verdict — <input type="checkbox"/> Guilty <input type="checkbox"/> Not guilty <input type="checkbox"/> No verdict <input type="checkbox"/> Not guilty on account of unsoundness of mind Judgment — <input type="checkbox"/> Convicted <input type="checkbox"/> Acquitted <input type="checkbox"/> New trial ordered Sentence imposed — Other orders made on sentencing — Under <i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> — <input type="checkbox"/> Accused found mentally unfit to stand trial <input type="checkbox"/> Accused acquitted on account of unsoundness of mind Orders made: Other outcomes — <input type="checkbox"/> Accused discharged from custody <input type="checkbox"/> Accused remanded in custody until [<i>date</i>] and warrant issued <input type="checkbox"/> Bail granted [<i>terms and conditions</i>]	

Schedule 2 — Information for witnesses

[r. 30(6)]

Notice to witness

This notice and the attached document(s) are very important.

Please read them very carefully. If you have any trouble understanding them, you should get legal advice as soon as possible.

Attached to this notice is either one or two subpoenas that have been issued by either the Supreme Court or the District Court.

Your rights

You may be able to apply to the court to have the subpoena(s) set aside. If you want to make such an application you should get legal advice.

Your obligations

You must obey the subpoena(s) if at the time you were served with them or at some reasonable time before the date(s) when the subpoena(s) require you to appear in court —

- the party that requested the subpoena(s) made arrangements to enable you to comply with the subpoena(s); or
- you were given or offered money, travel tickets, vouchers or a combination of them to enable you to obey the subpoena(s) and to meet your reasonable expenses in obeying the subpoena(s), including any travel and accommodation costs.

If you do not obey the subpoena(s) you may be imprisoned or fined or both.

Are you restricted in where you can go by a legal order?

Read this if you are subject to a legal restriction on your movements that you might breach when you obey the subpoena(s); for example one of these —

- a bail undertaking;
- an order imposed on you by a court as or part of a sentence;
- a work and development order;
- a parole or other order imposed on you when you were released from prison.

If you are restricted in where you can go, you must —

- tell the person who supervises the order that restricts your movements; and
- tell the court that issued the subpoena(s); and
- tell the party that requested the subpoena(s),

as soon as practicable after you are served with the subpoena(s).

You must take all reasonable steps to have the restriction varied so that you can comply with the subpoena(s).

If the restriction is not varied you must tell the court that issued the subpoena(s) and the party that requested the subpoena(s) either —

- of the steps you took to have the restriction varied and that the restriction has not been varied; or
- that the law does not permit that variation,

whichever is the case.

Notes

¹ This is a compilation of the *Criminal Procedure Rules 2000* and includes the amendments referred to in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Criminal Procedure Rules 2000</i>	2 Jan 2001 p. 3-75	5 Feb 2001 (see r 2)
<i>Criminal Procedure Amendment Rules 2001</i>	17 Aug 2001 p. 4345	17 Aug 2001
<i>Criminal Procedure Amendment Rules 2002</i>	19 Mar 2002 p. 1343-6	19 Mar 2002
<i>Criminal Procedure Amendment Rules 2003</i>	31 Oct 2003 p. 4563-5	31 Oct 2003
<i>Courts and Legal Practice (Consequential Amendments) Regulations 2005 r. 5</i>	19 Apr 2005 p. 1294-302	19 Apr 2005

These rules were repealed by the *Criminal Procedure Rules 2005* r. 78 as at 2 May 2005 (see *Gazette* 29 Apr 2005 p. 1936)

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
accused.....	3(1)
actual trial	3(1)
appeal.....	50(1), 51
appellant.....	51
audio link	3(1)
CCA	51
clerk of arraigns	3(1)
Code.....	3(1)
corporation.....	16(2)
court	3(1)
Court of Criminal Appeal	3(1)
DPP	3(1)
examiner	61(4)
file	3(1)
form	3(1)
lawyer	3(1)
notice	51
offender.....	3(1)
party	3(1)
registrar	3(1)
relevant statutory provision.....	50(1)
stay order	50(1)
video link	3(1)
witness	30(1)