

Western Australia

Criminal Procedure Act 2004

# **Criminal Procedure Regulations 2005**

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## **Criminal Procedure Regulations 2005**

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**Defined Terms**

## **Criminal Procedure Regulations 2005**

### **Part 1 — Preliminary**

**1. Citation**

These regulations are the *Criminal Procedure Regulations 2005*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on 2 May 2005.

**3. Terms used in these regulations**

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

**CPA** means the *Criminal Procedure Act 2004*;

**Form**, if followed by a number, means the form of that number in Schedule 1;

**lodge** a document, means to lodge it with the court concerned at the registry where the prosecution concerned is being conducted together with any fee required to be paid under —

(a) the *Magistrates Court (Fees) Regulations 2005*; or

(b) the *Children's Court (Fees) Regulations 2005*,

as the case requires;

**working day** means a day other than a Saturday, a Sunday, or a public holiday.

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- (2) Examples in these regulations do not form part of them and are provided to assist understanding.



## Part 2 — General

### 4. Forms prescribed

Each form in Schedule 1 is prescribed for the purposes for which it is applicable, whether under the CPA or another Act referred to in the form.

### 5. Forms, completion of

- (1) When completing a form in Schedule 1 —
  - (a) the name of a party must be capitalised according to the preference of the party; and
  - (b) the family name of a party must be underlined.

*Examples: Vincent van Gogh; Wong Hei; Mary Jane Citizen.*

- (2) A person completing a form in Schedule 1 must adapt the form to the circumstances of the prosecution concerned, such as where there is more than one accused.
- (3) If an item in a form in Schedule 1 does not have enough space to complete it, the person completing it must —
  - (a) insert in the item “See attachment [*number*]”; and
  - (b) attach to the form a separate document titled “Attachment [*number*] — [*name of the item*]”.

### 6. Service information

Unless a form in Schedule 1 provides otherwise, the following information is the service information that must be included in the service certificate on a document that is served on a person under the CPA Schedule 2 —

- (a) the name of the person who served the document;
- (b) the name of the person served with the document;
- (c) how the document was served;

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- (d) if the document was served under the CPA Schedule 2 clause 2 — the date on which, and the time and place at which, it was served;
- (e) if the document was served under the CPA Schedule 2 clause 3 —
  - (i) the date on which it was posted;
  - (ii) the address to which it was posted; and
  - (iii) if the CPA Schedule 2 clause 3(4) or (5) applies, a statement as to how the person who served the document is qualified to serve it.

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## **Part 3 — CPA Part 2 regulations**

### **6A. Prescribed Acts (CPA s. 4)**

For the purposes of the definition of “prescribed Act” in the CPA section 4, the Acts listed in Schedule 1A are prescribed.

*[Regulation 6A inserted in Gazette 14 Jul 2006 p. 2568.]*

### **7. Corresponding laws prescribed (CPA s. 11)**

For the purposes of the definition of “corresponding law” in the CPA section 11, each law of each jurisdiction listed in the Table to this regulation is prescribed to be a law that corresponds with the *Road Traffic Act 1974* or the *Control of Vehicles (Off-road Areas) Act 1978*.

**Table**

<b>Jurisdiction</b>	<b>Corresponding law</b>
Australian Capital Territory	<i>Road Transport (General) Act 1999</i> <i>Road Transport (Driver Licensing) Act 1999</i> <i>Road Transport (Vehicle Registration) Act 1999</i>
New South Wales	<i>Road Transport (General) Act 1999</i> <i>Road Transport (Driver Licensing) Act 1998</i> <i>Road Transport (Vehicle Registration) Act 1997</i>
Northern Territory	<i>Motor Vehicles Act 2004</i>
Queensland	<i>Transport Operations Road Use Management Act 1995</i>
South Australia	<i>Motor Vehicles Act 1959</i>
Tasmania	<i>Vehicle and Traffic Act 1999</i>
Victoria	<i>Road Safety Act 1986</i>

## **Part 4 — CPA Part 3 regulations**

### **Division 1 — General**

#### **7A. Public authority prescribed (CPA s. 18)**

For the purposes of paragraph (c) of the definition of *authorised investigator* in the CPA section 18 the following are a prescribed public authority —

- (a) the Department as defined in the *Child Care Services Act 2007* section 3;
- (b) the Authority as defined in the *Public Transport Authority Act 2003* section 3.

*[Regulation 7A inserted in Gazette 21 Apr 2009 p. 1368.]*

#### **8. Prosecution notice**

- (1) A prosecution notice must be in the form of Form 3.
- (2) Any attachment to a prosecution notice must be signed by the person or persons who sign the notice.
- (3) A prosecution notice must not allege both an either way charge and an indictable charge that is not an either way charge.
- (4) If a prosecution notice alleges more than one offence —
  - (a) the item in Form 3 that requires the details of the alleged offence must contain “See attachment 1 — Charges”;
  - (b) in the attachment —
    - (i) each alleged offence must be numbered consecutively as “Charge No. 1 of 2” and “Charge No. 2 of 2” as the case requires; and
    - (ii) the details of each alleged offence, as required by Form 3, must be stated.
- (5) If a prosecution notice alleges that more than one person committed an offence —

- (a) the item in Form 3 that requires the accused's details must contain "See attachment [*number*] — Accused";
- (b) in the attachment —
  - (i) each of the accused must be numbered consecutively as "Accused No. 1 of 2" and "Accused No. 2 of 2" as the case requires; and
  - (ii) the name of each accused, and the accused's details, as required by Form 3, must be stated;
- (c) on the original of the notice that is lodged, in the item in Form 3 that requires the details of the alleged offence, the name of the first accused in the item must be marked with an asterisk; and
- (d) for each of the other accused the prosecutor must lodge a copy of the original of the notice (together with its attachment or attachments) on which, in the item in Form 3 that requires the details of the alleged offence, the name of the accused to which the copy relates is marked with an asterisk.

**9. Warrant in the first instance, applying for**

- (1) In this regulation —

***remote communication*** means any way of communicating at a distance including by telephone, fax, email and radio.
- (2) A reference in this regulation to making an application includes a reference to giving information in support of the application.
- (3) This regulation applies to and in respect of an application to a magistrate under the CPA section 28 for an arrest warrant for an accused.
- (4) The application must be made in person before the magistrate in chambers unless —
  - (a) the warrant is needed urgently; and
  - (b) the applicant reasonably believes that a magistrate is not available within a reasonable distance of the applicant,

in which case —

- (c) it may be made to a magistrate by remote communication; and
- (d) the magistrate must not grant it unless satisfied about the matters in paragraphs (a) and (b).

(5) The application must be made in writing unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable to send the magistrate written material,

in which case —

- (c) it may be made orally; and
- (d) the magistrate must make a written record of the application and any information given in support of it.

(5a) Despite subregulation (5), information in support of the application may be given orally if the warrant is needed urgently, in which case the magistrate must make a written record of the information.

(6) The application must be made on oath unless —

- (a) the application is made by remote communication; and
- (b) it is not practicable for the magistrate to administer an oath to the applicant,

in which case —

- (c) it may be made in an unsworn form; and
- (d) if the magistrate issues a warrant, the applicant must as soon as practicable send the magistrate an affidavit verifying the application and any information given in support of it.

(7) If on an application made by remote communication a magistrate issues a warrant, the magistrate must, if practicable, send a copy of the original warrant to the applicant by remote communication, but otherwise —

- (a) the magistrate must give the applicant by remote communication any information that must be set out in the warrant;
  - (b) the applicant must complete a form of a warrant with the information received and give the magistrate a copy of the form as soon as practicable after doing so; and
  - (c) the magistrate must attach the copy of the form to the original warrant and any affidavit received from the applicant and make them available to the applicant.
- (8) The copy of the original warrant sent, or the form of the warrant completed, as the case may be, under subregulation (7) has the same force and effect as the original warrant.
- (9) If an applicant contravenes subregulation (6)(d) or (7)(b) any evidence obtained under the warrant is not admissible in proceedings in a court unless the court is satisfied that the desirability of admitting the evidence outweighs the undesirability of admitting the evidence.

*[Regulation 9 amended in Gazette 14 Nov 2006 p. 4728.]*

**10. Prescribed simple offences (CPA s. 35)**

For the purposes of the CPA section 35, the offences listed in Schedule 3 are prescribed as prescribed simple offences.

**11. Committal, prescribed periods after (CPA s. 45)**

- (1) For the purposes of the CPA section 45(2), the prescribed period is 21 days.
- (2) For the purposes of the CPA section 45(3), the prescribed period is 21 days.

**12. Listed simple offences (CPA s. 60)**

For the purposes of the CPA section 60, the offences listed in Schedule 4 are prescribed as listed simple offences.

**Division 2 — Applications to courts of summary jurisdiction**

**Subdivision 1 — Applications in or after a prosecution**

*[Heading inserted in Gazette 9 Nov 2007 p. 5612.]*

**13. Application of this Subdivision**

- (1) This Subdivision applies to and in respect of any application that may be made to a court of summary jurisdiction —
  - (a) in a prosecution; or
  - (b) after a prosecution —
    - (i) if the application could have been, but was not, made in the prosecution; or
    - (ii) under the CPA section 72.
- (2) This Subdivision does not apply to or in respect of an application that may be made to a superior court.

*[Regulation 13 inserted in Gazette 9 Nov 2007 p. 5612.]*

**14. Applications, general provisions about**

- (1) This regulation applies to and in respect of an application except to the extent that —
  - (a) another regulation provides otherwise;
  - (b) the CPA or a written law provides otherwise; or
  - (c) a court, in a particular case, permits otherwise.
- (2) The application must be made by lodging a Form 6.
- (3) The application and any affidavit in support of it must be lodged and served at least 3 clear working days before the date on which it is to be heard, unless the court orders otherwise.
- (4) The application must be served on each other party in accordance with the CPA Schedule 2 clause 2 or 3.
- (5) The application must be heard in court and not in chambers.



**15. Applications that can be made orally**

Despite regulation 14(2) and (3), these applications may be made orally unless the court in any particular case orders otherwise —

- (a) an application for bail;
- (b) an application to vary a condition of bail;
- (c) an application made under the *Bail Act 1982* section 20 or 54;
- (d) an application for the issue of a warrant under the *Bail Act 1982* section 59B;
- (e) an application under the CPA to a prescribed court officer, other than an application under the CPA section 159;
- (f) an application to adjourn a prosecution, other than an application made under the CPA section 63(2);
- (g) an application for the use of a video link or audio link at the hearing of any proceedings in a prosecution;
- (h) an application for a directions hearing;
- (i) an application for costs;
- (j) an application for forfeiture.

*[Regulation 15 amended in Gazette 27 Feb 2009 p. 518.]*

**16. Application for arrest warrant for accused (CPA s. 28)**

An application under the CPA section 28(3) or (4) to a magistrate for an arrest warrant for an accused must be lodged together with —

- (a) the prosecution notice that alleges one or more charges against the accused; and
- (b) a draft arrest warrant for the accused.

**17. Application for an adjournment due to non-disclosure (CPA s. 63)**

An application under the CPA section 63(2) must be lodged and served at least 5 clear working days before the date on which the trial is listed to begin, unless the court orders otherwise.

**18. Application to set aside decision made in absence of a party (CPA s. 71)**

An application under the CPA section 71 must be made by lodging a Form 7 together with an affidavit verifying the grounds for the application.

**19. Application for use of video link (CPA s. 77)**

An application for an order under the CPA section 77(2) or (3) may be dealt with in chambers.

**20. Applications, non-appearance at hearing of**

If a court is satisfied that a party who does not appear at the hearing of an application has had adequate notice of the hearing, the court may deal with the application in the absence of the party.

**Subdivision 2 — Applications not in or after a prosecution**

*[Heading inserted in Gazette 9 Nov 2007 p. 5612.]*

**20A. Applications under the *Crimes Act 1914* (Cwlth) section 9**

- (1) An application under the *Crimes Act 1914* of the Commonwealth section 9 must be made by lodging a Form 6A.
- (2) The application and any affidavit in support of it must be lodged at least 3 clear working days before the date on which it is to be heard, unless the court orders otherwise.
- (3) The application may be heard in chambers.

*[Regulation 20A inserted in Gazette 9 Nov 2007 p. 5612.]*

## Part 5 — Witnesses

### 21. Term used in this Part

In this Part —

*trial date*, in relation to a trial, means the date the trial is listed to begin.

### 22. Application of this Part

This Part does not apply to or in respect of a prosecution in a superior court.

### 23. Prescribed court officers (CPA s. 159)

For the purposes of the CPA section 159 the prescribed court officers for a court are as follows —

- (a) for the Magistrates Court, any registrar;
- (b) for the Children's Court, any registrar;
- (c) for an industrial magistrate's court established under the *Industrial Relations Act 1979*, the clerk of the court;
- (d) for a compensation magistrate's court established under the *Workers' Compensation and Injury Management Act 1981*, the clerk of the court.

### 24. 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 in a case, he or she must lodge a Form 8.

### 25. Witness summons, application for (CPA s. 159)

- (1) To make an application under the CPA section 159 a party must lodge a Form 9 to which is attached one or both of the following —

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- (a) a draft witness summons, in the form of Form 10, that requires the witness to attend the court to give oral evidence in the case;
  - (b) a draft witness summons, in the form of Form 11, that requires the witness to attend the court and produce to the court a record or thing that is relevant to the case.
- (2) The attendance date in a witness summons to produce a record or thing must be —
- (a) if the person who applied for the issue of the summons so requests, a date before the trial date; or
  - (b) otherwise, the trial date.
- (3) A witness summons must be issued under the seal of the court concerned.
- (4) A witness summons must contain or be accompanied by the information to the witness in Schedule 2.

**26. Early compliance with summons to produce in court of summary jurisdiction**

- (1) This regulation applies in the case of a witness summons to produce a record or thing if —
- (a) the summons requires the witness to produce the record or thing to the court on a date before the trial date; or
  - (b) under the CPA section 163 the witness wishes to produce the record or thing to the court on a date before the trial date.
- (2) The witness may produce the record or thing in person or may send it to the court by post or a courier.
- (3) If the witness produces more than one record or thing to the court, the witness must give the court a list of whatever is produced.
- (4) If the witness claims that any record or thing to which the summons relates is privileged, the witness —

- (a) must apply for an order that the record or thing is privileged; and
  - (b) must produce the record or thing to the court at the hearing of the application.
- (5) An application under subregulation (4)(a) must be lodged as soon as practicable after the witness is served with the witness summons and in any event on or before the attendance date in the witness summons.
- (6) On receiving the record or thing produced, a registrar must —
- (a) issue a receipt to the witness for the record or thing; and
  - (b) keep the record or thing in safe custody until any application for an order under the CPA section 163(3) is decided and, subject to any order made on such an application, until the trial date.

**27. Arrest warrant for a witness (CPA s. 159(2))**

A warrant to arrest a witness (whether issued under the CPA section 159(3) or under the *Evidence Act 1906* section 16(1)(b)) must be in the form of Form 12.

**28. Warrant to imprison a witness (CPA Sch. 4 cl. 2)**

A warrant to imprison a witness under the CPA Schedule 4 clause 2 must be in the form of Form 13.

## **Part 6 — CPA Part 6 regulations**

### **28A. Destruction or disposal of unclaimed exhibits**

If an exhibit tendered in evidence to a court remains in the possession of the court after reasonable steps have been taken to identify a person who is entitled to possession of it and to require the person to collect it from the court, a magistrate may order a registrar to destroy it or dispose of it in some other way.

*[Regulation 28A inserted in Gazette 9 Nov 2007 p. 5612-13.]*

### **28B. Fee for additional copy of served documents (CPA s. 175A)**

The fee to be paid for giving another copy of a document under section 175A of the Act is the fee set out in the *Magistrates Court (Fees) Regulations 2005* Schedule 1 Division 1 item 1(b).

*[Regulation 28B inserted in Gazette 16 May 2008 p. 1910.]*

### **29. Application to correct court record (CPA s. 179)**

- (1) If an application made under the CPA section 179 to correct a record of a court in respect of an accused is made by or on behalf of the prosecutor in the relevant prosecution against the accused, the application —
  - (a) need not be served on the accused; and
  - (b) may be dealt with in the absence of the accused,unless a court orders otherwise.
- (2) If an application made under the CPA section 179 to correct a record of a court in a prosecution is made by a person other than the prosecutor, the application —
  - (a) must be served on the prosecutor; and
  - (b) must not be dealt with in the absence of the prosecutor unless a court considers it is in the interests of justice to do so.

**30. Application for review of court officer's decision  
(CPA s. 184)**

- (1) To make an application under the CPA section 184 a person must lodge a Form 14.
- (2) The court may deal with the application either —
  - (a) at a hearing of which notice has been given to the parties; or
  - (b) without a hearing on the basis of the documents lodged with the court.
- (3) If the application is dealt with without a hearing, the court must notify the parties of the court's decision on the application.

### **Part 7 — CPA Schedule 3 regulations**

**31. Transcripts, certification of (CPA Sch. 3 cl. 6)**

- (1) For the purposes of the CPA Schedule 3 clause 6(5), a certificate that a transcript of a witness's evidence is correct must comply with the *Evidence Act 1906* section 50A(2).
- (2) A person who signs a certificate required by the CPA Schedule 3 clause 6(5) knowing that it is false in a material particular commits an offence.

Penalty: \$1 000.



## **Part 8 — Miscellaneous matters**

*[Heading inserted in Gazette 14 Nov 2006 p. 4728.]*

**32. *Dangerous Sexual Offenders Act 2006* s. 21, applications under**

Regulation 9, other than subregulations (3) and (6), applies with any necessary changes to and in respect of an application under the *Dangerous Sexual Offenders Act 2006* section 21 to a magistrate for a warrant or a summons.

*[Regulation 32 inserted in Gazette 14 Nov 2006 p. 4728-9.]*

**Schedule 1 — Forms**

[r. 4]

**1. Arrest warrant**

Western Australia [Name of court] at No:		<b>Arrest warrant for an accused or an offender</b> CWI Warrant No.	
<b>To</b>	<b>All police officers.</b> <b>All persons authorised to exercise a power in the <i>Court Security and Custodial Services Act 1999</i> Schedule 2 clause 2.</b>		
Person to be arrested	Full name		
	Date of birth		Male/Female
	Address		
<b>Command</b>	<b>This warrant authorises and commands you to arrest the above person and bring him or her before the above court to be dealt with according to law.</b> <b>When arrested the person must be brought before the above court as soon as is reasonably practicable, either in person or by means of an audio link or video link.</b>		
Reason for issue of warrant	Under the <i>Bail Act 1982</i> — <input type="checkbox"/> Person required at application to cancel surety undertaking (s. 48). <input type="checkbox"/> Person required at application to vary or revoke bail (s. 54). <input type="checkbox"/> Person did not obey bail undertaking (s. 59B).		
	Under the <i>Criminal Procedure Act 2004</i> — <input type="checkbox"/> Issued in the first instance to accompany a prosecution notice or indictment charging the person (s. 28, 86). <input type="checkbox"/> Person did not obey summons (s. 38). <input type="checkbox"/> Person required to appear on a charge (s. 139).		
	Under the <i>Young Offenders Act 1994</i> — <input type="checkbox"/> Person did not obey notice to attend court (s. 43).		
	Under the <i>Sentencing Act 1995</i> — <input type="checkbox"/> Person required for sentencing (s. 14, 33J). <input type="checkbox"/> Person required so court can ascertain if he or she has complied with PSO, CRO or CSI requirements (s. 33C, 50, 84O). <input type="checkbox"/> Person required to answer allegation of breach, or likely breach, of PSO (s. 33P). <input type="checkbox"/> Person required at application to amend or cancel CRO, CBO, ISO or CSI requirements (s. 14, 84H, 126). <input type="checkbox"/> Person required to answer allegation of re-offending while subject to CRO, CBO, ISO, CSI or suspended imprisonment (s. 79, 84E, 129).		

	Other (specify) —		
Relevant charges	Prosecution notice/ Indictment No.	Description of offence	
Warrant issued by	Signature:	Date	
	Judicial officer/[ <i>Title of officer</i> ]		
Execution details	Person arrested on	20	at hours at
	by:	Registered No.:	
	of:	Station:	
	Signature:	Date:	

*[Form 1 amended in Gazette 12 May 2006 p. 1784; 27 Feb 2009 p. 518.]*

**2. Remand warrant**

Western Australia [Name of court] at No:		<b>Remand warrant</b>	
<b>To</b>	<b>All police officers.</b> <b>Chief executive officer under the <i>Prisons Act 1981</i>.</b> <b>All persons authorised to exercise a power in the <i>Court Security and Custodial Services Act 1999</i> Schedule 2 clause 2 or 3, as the case requires.</b>		
Person remanded	Full name		
	Date of birth		Male/Female
	Address		
<b>Reason for warrant</b>	<b>The above person appeared before this court in relation to these offences and the proceedings were adjourned.</b>		
<b>Command</b>	<b>This warrant authorises and commands you to keep the person in custody until the new court date stated below, when you shall bring the person to the court at the place stated below, unless before then bail, if granted, is entered into under the <i>Bail Act 1982</i> in accordance with the conditions below.</b>		
Offences charged	Prosecution notice/ Indictment No.	Description of offence	
New court date (if in custody)	Date:	Time:	
	Court: Place:		
[Tick one box]	Unless the court orders otherwise before that date, the accused must be brought before the court — <input type="checkbox"/> in person <input type="checkbox"/> by means of a video link or audio link		
New court date (if bailed)	Date:	Time:	
	Court: Place:		
Bail	<input type="checkbox"/> Granted (see below) <input type="checkbox"/> Not granted		
Bail details (if granted)	Conditions:  Surety to be approved by <input type="checkbox"/> JP <input type="checkbox"/> Other (specify)		
Warrant issued by	Signature:	Date	
	Judicial officer/[Title of officer]		

**3. Prosecution notice (r. 8)**

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:		<b>Prosecution notice</b>	
Details of alleged offence <sup>1</sup>	Accused		
	Date or period		
	Place		
	Description		
	Written law		
<b>Notice to accused</b>	<b>You are charged with the offence described above, or the offences described in any attachment to this notice. The charge(s) will be dealt with by the above court.</b>		
Accused's details <sup>2</sup>	Date of birth		Male/Female
	Address		
Prosecutor <sup>3</sup>			
Person issuing this notice	Full name		
	Official title		
	Work address		
	Work telephone		
	Signature		
	Witness's signature <sup>4</sup>	JP/Prescribed court officer	
Date	This prosecution notice is signed on		

## Notes to Form 3 —

1. This description must comply with the CPA Schedule 1 clause 5.
2. This description must comply with the CPA Schedule 1 clause 4.
3. Identify the prosecutor in accordance with the CPA Schedule 1 clause 3.
4. A witness may not be needed. See the CPA section 23.

**4. Summons to an accused**

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:		<b>Summons to an accused</b>
Accused's details	Full name Address	
Hearing details	The charge(s) in the attached prosecution notice dated _____ at _____ a.m./p.m. at _____	
<b>Command</b>	<b>You are commanded to attend personally before the above court at the above hearing to be dealt with according to law. You must attend at the court until you are released by the court, not only on the above date but also on subsequent days.</b>	
<b>Warning</b>	<b>If you do not obey this summons you may be arrested.</b>	
Notice	If you do not know what to do, you should get advice from a lawyer, the Legal Aid Commission or the Aboriginal Legal Service. If you will need an interpreter in court, please contact the court.	
Issuing details	This summons is issued on [date]. ..... [Title of person issuing summons]	
Service details [*Police only]	I personally served a copy of this summons and the prosecution notice referred to above on the accused at [place] on [date]. Name of server: _____ *Registered No: _____ Signature: _____ Station: _____	

## 5. Court hearing notice

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:		<b>Court hearing notice</b>
Accused's details	Full name Address	
Hearing details	The charge(s) in the attached prosecution notice dated _____ at _____ a.m./p.m. at _____	
<b>Notice to accused</b>	<b>Your options are set out below. You should read them carefully.</b> If you do not know what to do, you should get advice from a lawyer, the Legal Aid Commission or the Aboriginal Legal Service. If you will need an interpreter in court, please contact the court.	
Options	1. You can attend the above hearing. 2. You can do nothing. 3. You can plead <u>not guilty</u> in writing. 4. You can plead <u>guilty</u> in writing. <b>Options 2, 3 and 4 are explained below.</b>	
Doing nothing [Option 2]	If you do not appear at the above hearing and you do not send the court a written plea in time, the court may determine the charge(s) at the above hearing in your absence. In some cases the court can take as proved any allegation in the attached prosecution notice without hearing evidence. The court may decide to summons you to court or have you arrested and brought before the court. If the court finds you guilty, it may fine you and order you to pay court costs and the prosecutor's costs.	
Pleading not guilty in writing [Option 3]	Pleading <u>not guilty</u> to a charge in the prosecution notice means you do not admit the charge. If you send the court a written plea of <u>not guilty</u> , you need not attend the above hearing. If the court receives your written plea in time it will send you a notice of another hearing at which the court will deal with the charge(s) (in your absence if you are not there) and hear any evidence you wish to give and any witnesses you call. To send the court a written plea of not guilty, fill out page 2 of this form and send page 2 to the address on it at least 3 days before the above hearing date.	

Pleading guilty in writing [Option 4]	<p>Pleading <u>guilty</u> to a charge in the prosecution notice means you admit the charge.</p> <p>If you send the court a written plea of <u>guilty</u>, you need not attend the above hearing unless you want to tell the court something.</p> <p>If the court receives your written plea in time it will deal with the charge(s) at the above hearing (in your absence if you are not there) and may fine you and order you to pay court costs and the prosecutor's costs.</p> <p>To send the court a written plea of guilty, fill out page 2 of this form, include any written explanation or information you want the court to consider, and send it all to the address on the form at least 3 days before the above hearing date.</p> <p>The court might not accept your plea of guilty if what you tell the court suggests you do not admit the charge. If that happens you will be notified.</p>
Issuing details	<p>This notice is issued on [date].</p> <p>.....</p> <p>[Title of person issuing notice]</p>
Service details <sup>1</sup> [*Police only]	<p>On 20 , the accused was served with a copy of this notice and the prosecution notice referred to above in the following manner:</p> <p>Name of server: *Registered No:  Signature: *Station:</p>

Notes to Form 5 page one —

1. Service must be in one of the manners in the CPA Schedule 2 clauses 2, 3 or 4 (see s. 33(3)). Insert here whichever manner of service was used.

Form 5 page 2

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:		<b>Written plea by accused</b>	
Accused's details	Full name		
	Address		
Accused's plea	I have received a prosecution notice dated and a court hearing notice advising me of the hearing on [date]. I understand or have had explained to me the charge(s) in the prosecution notice and the contents of the court hearing notice and I understand the effect of this written plea I am sending to the court.		



Plea of guilty [Tick one box]  [Tick one box]	<input type="checkbox"/> I plead <u>guilty</u> to the charge(s) in the prosecution notice. <input type="checkbox"/> I plead <u>guilty</u> to Charge No. <sup>1</sup> in the prosecution notice. Attendance at court: <input type="checkbox"/> I will be attending the hearing on the above date. <input type="checkbox"/> I will not be attending the hearing on the above date. I would like the court to take account of the following: <sup>2</sup>
Plea of not guilty [Tick one box]  [Tick one box]	<input type="checkbox"/> I plead <u>not guilty</u> to the charge(s) in the prosecution notice. <input type="checkbox"/> I plead <u>not guilty</u> to Charge No. <sup>3</sup> in the prosecution notice. Attendance at court: <input type="checkbox"/> I will be attending the hearing on the above date. <input type="checkbox"/> I will not be attending the hearing on the above date. At the trial of the charge(s) I intend to call <sup>4</sup> witnesses (including myself). When setting a date for the trial please take account of the following: <sup>5</sup>
Contact details	My contact details are — Address (if different to the one above): Telephone No.                      Fax No.                      Mobile No.
Lawyer's details [If a lawyer will appear for you]	Name: Firm name:
Accused's signature <sup>6</sup>	Date
Court address	Send this document to: at:

## Notes to Form 5 page 2 —

1. If the prosecution notice contains more than one charge and you want to plead guilty to only some of them, write the numbers of the charges here.
2. If you are pleading guilty you can (but need not) explain why you committed the offence(s) and give any information that you want the court to consider when deciding what sentence to impose on you.
3. If the prosecution notice contains more than one charge and you want to plead not guilty to only some of them, write the numbers of them here.
4. Please insert the number of witnesses to assist the court in deciding how long the trial might last.
5. Please provide any information that might assist the court when setting the date for the trial such as dates when you will be overseas or in hospital.
6. This may be signed by the accused's lawyer or, if the accused is a corporation, made in accordance with the *Criminal Procedure Act 2004* section 154(1).

**6. Application in or after a prosecution (r. 14)**

<i>Criminal Procedure Act 2004</i>		<b>Application in or after a prosecution</b>	
[Name of court] at No:			
Case	[Names of all parties]		
Applicant	[Name of the party applying]		
Application details	The applicant applies for — [Set out the order or orders sought]		
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date	
Hearing details	This application will be heard — on [date] at [time] or as soon after as possible, at [place]		

[Form 6 amended in Gazette 9 Nov 2007 p. 5613.]

**6A. Application under the Crimes Act 1914 (Cwlth) section 9 (r. 20A)**

<i>Criminal Procedure Act 2004</i>		<b>Application under the Crimes Act 1914 (Cwlth) section 9</b>	
[Name of court] at No:			
Case	[Names of all parties]		
Applicant	[Name of the party applying]		
Application details	The applicant applies for an order that the following forfeited articles be condemned:		
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date	
Hearing details	This application will be heard — on [date] at [time] or as soon after as possible, at [place]		

[Form 6A inserted in Gazette 9 Nov 2007 p. 5613.]

## 7. Application to set aside decision made in absence of a party (r. 18)

Criminal Procedure Act 2004 [Name of court] at No:		<b>Application to set aside decision made in absence of a party</b>	
Case	[Names of all parties]		
Applicant	[Name of the party applying]		
Application	Under the <i>Criminal Procedure Act 2004</i> section 71, the applicant applies for an order that sets aside the decision specified below and that orders the charge specified below to be dealt with again.		
Licence disqualification order, suspension of <sup>1</sup>	<input type="checkbox"/> Under the <i>Criminal Procedure Act 2004</i> section 71(3) the applicant applies for an order that suspends the court's order disqualifying the accused from holding or obtaining a licence under a written law until the above application is decided.		
Decision details	Court	at No.	
	Date		
Grounds <sup>2</sup> [Tick one box]	The grounds for this application are — <input type="checkbox"/> I did not receive notice of the court date on which the above decision was made. <input type="checkbox"/> I did not receive notice of the court date on which the above decision was made in enough time to enable me to appear. <input type="checkbox"/> I did receive notice of the court date on which the above decision was made but I did not appear for these reasons —		
Signature of applicant or lawyer			Date
	Applicant/Applicant's lawyer		
Hearing details	This application will be heard — on [date] at [time] or as soon after as possible, at [place]		

Notes to Form 7 —

1. Tick the box if you are applying under the *Criminal Procedure Act 2004* section 71(3).
2. You must lodge an affidavit verifying these grounds.

**8. Request that person in custody be present to give evidence (r. 24)**

<i>Criminal Procedure Act 2004</i>		<b>Request that person in custody be present to give evidence</b>	
[Name of court] at No:			
Case	[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 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	

**9. Application for witness summons (r. 25(1))**

<i>Criminal Procedure Act 2004</i>		<b>Application for witness summons</b>	
[Name of court] at No:			
Case	[Names of all parties]		
Applicant	[Name of the party requesting]		
Request	The applicant requests the court to issue the attached witness summons(es) requiring the witness(es) named below to give or produce evidence on behalf of the above applicant in this matter.		
Full names of witness(es)	1.		
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date	
Result of application	<input type="checkbox"/> Application granted. <input type="checkbox"/> Application refused because: ..... Prescribed court officer	Date	

**10. Witness summons to give oral evidence (r. 25(1)(a))**

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:	<b>Witness summons to give oral evidence</b>	
Case	[Names of the parties to the case in which the witness is required]	
To: [Witness's details]	[Full name and address]	
<b>Command</b>	<b>You are commanded to attend personally at the time and place specified below to give evidence in the above matter.</b>	
Time and place to appear	You must attend personally as follows: Date: _____ Time: _____ Court: Place: You must attend at the court until you are released by the court, not only on the above date but also on subsequent days.	
<b>Warning</b>	<b>If you do not obey this summons you may be arrested and also you may be imprisoned or fined or both.</b>	
Party requesting summons	This summons is issued by the court at the request of [party] For inquiries contact _____ Tel: _____ Ref: _____	
Date summons issued	This summons is issued by the court on [date].	Court seal
Service details  [*Police only]	I personally served a copy of this summons and the "Notice to witness" in the <i>Criminal Procedure Regulations 2005</i> Schedule 2 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 summons]. Name of server: _____ *Registered No: _____ Signature: _____ *Station: _____	

**11. Witness summons to produce a record or thing (r. 25(1)(b))**

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:	<b>Witness summons to produce a record or thing</b>	
Case	[Names of the parties to the case in which the witness is required]	
To: [Witness's details]	[Full name and address]	
<b>Command</b>	<b>You are commanded to produce the records or things described below at the place, and on or before the date and time specified below.</b>	
Time and place to produce record or thing	Date: Court: Place:	Time:
Records or things to be produced	You must produce to the court the following: [Describe in reasonable detail each record or thing to be produced; on an attachment if necessary.]	
<b>Warning</b>	<b>If you do not obey this summons you may be arrested and also you may be imprisoned or fined or both.</b>	
Party requesting summons	This summons is issued by the court at the request of [party] For inquiries contact Tel: Ref:	
Date summons issued	This summons is issued by the court on [date].	Court seal
Service details  [*Police only]	I personally served a copy of this summons and the "Notice to witness" in the <i>Criminal Procedure Regulations 2005</i> Schedule 2 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 summons]. Name of server: *Registered No: Signature: *Station:	

## 12. Arrest warrant for a witness (r. 27)

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:		<b>Arrest warrant for a witness</b>  CWI Warrant No.	
<b>To</b>	<b>All police officers. All persons authorised to exercise a power in the <i>Court Security and Custodial Services Act 1999</i> Schedule 2 clause 2.</b>		
Person to be arrested	Full name		
	Date of birth		Male/Female
	Address		
Case in which witness is required	The above person is wanted as a witness in the following case: [Set out the parties to the case.]		
<b>Command</b>	<b>This warrant authorises and commands you to arrest the above person and take him or her to the above court. When arrested the person must be brought before the above court as soon as is reasonably practicable, either in person or by means of an audio link or video link.</b>		
Reason for warrant	<input type="checkbox"/> The above person did not obey a witness summons. <input type="checkbox"/> The above person is wanted as a witness in the above matter.		
Warrant issued by	Signature:	Date	
	Judicial officer		
Execution details	Person arrested on	20	at hours at
	by:		Registered No:
	of:		Station:
	Signature:		Date:

**13.      Warrant to imprison a witness (r. 28)**

Western Australia <i>Criminal Procedure Act 2004</i> [Name of court] at No:		<b>Warrant to imprison a witness</b>	
<b>To</b>	<b>All police officers. Chief executive officer under the <i>Prisons Act 1981</i>. All persons authorised to exercise a power in the <i>Court Security and Custodial Services Act 1999</i> Schedule 2 clause 2 or 3 as the case requires.</b>		
Witness	Full name		
	Date of birth		Male/Female
	Address		
Case in which witness is required	The above person is wanted as a witness in the following case: [Set out the parties to the case.]		
<b>Command</b>  [Tick box(es) as required]	<b>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 —</b> <input type="checkbox"/> the witness complies with an order made under the <i>Criminal Procedure Act 2004</i> Schedule 4 clause 2(5) as set out below; <input type="checkbox"/> one or more sureties comply with an order made under the <i>Criminal Procedure Act 2004</i> Schedule 4 clause 2(5) as set out below.		
Hearing date	Date:	Time:	
	Place:		
Order as to witness <sup>1</sup>			
Order as to surety <sup>2</sup>			
Warrant issued by	Signature:	Date	
	Judicial officer		

Notes to Form 13 —

1. Leave blank if no order is made under the *Criminal Procedure Act 2004* Schedule 4 clause 2(4). Otherwise set out terms of the order made under clause 2(4) and any order made under clause 2(5) in respect of the witness.



2. Leave blank if no order is made under the *Criminal Procedure Act 2004* Schedule 4 clause 2(5) requiring one or more sureties. Otherwise set out the terms of any order made as to a surety or sureties.

**14. Application for review of court officer's decision (r. 30)**

<i>Criminal Procedure Act 2004</i>		<b>Application for review of court officer's decision</b>	
[Name of court] at No:			
Case	[Names of all parties]		
Applicant	[Name of the party applying]		
Decision to be reviewed	Date of decision		
	Brief description of decision		
Application	Under the <i>Criminal Procedure Act 2004</i> section 184 the applicant applies for a review of the above decision.		
Extension of time	Is this application lodged within 7 days after the date of the above decision? Yes/No If no, state why the application is lodged late:		
Grounds of review	1.		
Signature of applicant or lawyer	Applicant/Applicant's lawyer		Date
Hearing details	This application will be heard — on [date] at [time] or as soon after as possible, at [place]		

**Schedule 1A — Infringement notices: prescribed Acts**

[r. 6A]

*[Heading inserted in Gazette 14 Jul 2006 p. 2568.]*

*Associations Incorporation Act 1987*  
*Business Names Act 1962*  
*Charitable Collections Act 1946*  
*Chattel Securities Act 1987*  
*Child Care Services Act 2007*  
*Companies (Co-operative) Act 1943*  
*Consumer Affairs Act 1971*  
*Consumer Credit (Western Australia) Act 1996*  
*Co-operative and Provident Societies Act 1903*  
*Credit Act 1984*  
*Credit (Administration) Act 1984*  
*Debt Collectors Licensing Act 1964*  
*Door to Door Trading Act 1987*  
*Electricity Act 1945*  
*Employment Agents Act 1976*  
*Energy Coordination Act 1994*  
*Energy Safety Act 2006*  
*Gas Standards Act 1972*  
*Hire-Purchase Act 1959*  
*Land Valuers Licensing Act 1978*  
*Painters' Registration Act 1961*  
*Real Estate and Business Agents Act 1978*

*Residential Tenancies Act 1987*

*Retail Trading Hours Act 1987*

*Settlement Agents Act 1981*

*Street Collections (Regulation) Act 1940*

*Sunday Entertainments Act 1979*

*Travel Agents Act 1985*

*[Schedule 1A inserted in Gazette 14 Jul 2006 p. 2568-9; amended in Gazette 13 Nov 2007 p. 5696; 8 May 2009 p. 1502; 23 Jun 2009 p. 2467; 26 Jun 2009 p. 2569.]*

## **Schedule 2 — Information for witnesses**

[r. 25(4)]

### **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 witness summonses that have been issued by a court.

### **Your rights**

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

### **Your obligations**

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

- an amount that is likely to be sufficient to meet your reasonable expenses of attending court was tendered to you;
- arrangements to enable you to attend court were made with you; or
- you were provided the means to enable you to attend court.

If you do not obey the summons(es) 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 summons(es); 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 summons(es); and
- tell the party that requested the summons(es),

as soon as practicable after you are served with the summons(es).

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

If the restriction is not varied you must tell the court that issued the summons(es) and the party that requested the summons(es) 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.

### **Schedule 3 — Prescribed simple offences**

[r. 10]

**1. Criminal Code offence**

The offence under *The Criminal Code* section 338E (Stalking).

**2. Prostitution Act 2000 offence**

The offence under the *Prostitution Act 2000* section 7 (Seeking to induce person to act as prostitute).

**3. Restraining Orders Act 1997 offences**

The offences under the following sections of the *Restraining Orders Act 1997* —

- (a) section 61(1) (Breaching a violence restraining order);
- (b) section 61(2a) (Breaching a police order).

**4. Road Traffic Act 1974 offence**

The offence under the *Road Traffic Act 1974* section 59A (Dangerous driving causing bodily harm).

*[Clause 4 amended in Gazette 9 Nov 2007 p. 5613.]*

## **Schedule 4 — Listed simple offences**

[r. 12]

*[Heading inserted in Gazette 9 Nov 2007 p. 5613.]*

**1. Criminal Code offence**

The offence under *The Criminal Code* section 338E (Stalking).

*[Clause 1 inserted in Gazette 9 Nov 2007 p. 5613.]*

**2. Environmental Protection Act 1986 offences**

Any simple offence under the *Environmental Protection Act 1986*.

*[Clause 2 inserted in Gazette 9 Nov 2007 p. 5613.]*

**3. Fish Resources Management Act 1994 offences**

Any simple offence under the *Fish Resources Management Act 1994*.

*[Clause 3 inserted in Gazette 9 Nov 2007 p. 5614.]*

**4. Liquor Control Act 1988 offences**

Any simple offence under the *Liquor Control Act 1988*.

*[Clause 4 inserted in Gazette 9 Nov 2007 p. 5614.]*

**5. Mines Safety and Inspection Act 1994 offences**

Any simple offence under the *Mines Safety and Inspection Act 1994*.

*[Clause 5 inserted in Gazette 9 Nov 2007 p. 5614.]*

**6. Occupational Safety and Health Act 1984 offences**

Any simple offence under the *Occupational Safety and Health Act 1984*.

*[Clause 6 inserted in Gazette 9 Nov 2007 p. 5614.]*

**7. Prostitution Act 2000 offence**

The offence under the *Prostitution Act 2000* section 7 (Seeking to induce person to act as prostitute).

**cl. 8**

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*[Clause 7 inserted in Gazette 9 Nov 2007 p. 5614.]*

**8. Restraining Orders Act 1997 offences**

The offences under the following sections of the *Restraining Orders Act 1997* —

- (a) section 61(1) (Breaching a violence restraining order);
- (b) section 61(2a) (Breaching a police order).

*[Clause 8 inserted in Gazette 9 Nov 2007 p. 5614.]*

**9. Road Traffic Act 1974 offence**

The offence under the *Road Traffic Act 1974* section 59A (Dangerous driving causing bodily harm).

*[Clause 9 inserted in Gazette 9 Nov 2007 p. 5614.]*



### Notes

- <sup>1</sup> This is a compilation of the *Criminal Procedure Regulations 2005* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Criminal Procedure Regulations 2005</i>	28 Apr 2005 p. 1441-82	2 May 2005 (see r. 2)
<i>Criminal Procedure Amendment Regulations 2006</i>	12 May 2006 p. 1784	31 May 2006 (see r. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Criminal Procedure Amendment Regulations (No. 2) 2006</i>	14 Jul 2006 p. 2567-9	14 Jul 2006
<i>Criminal Procedure Amendment Regulations (No. 3) 2006</i>	14 Nov 2006 p. 4728-9	14 Nov 2006
<i>Criminal Procedure Amendment Regulations 2007</i>	9 Nov 2007 p. 5611-14	r. 1 and 2: 9 Nov 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Nov 2007 (see r. 2(b))
<i>Criminal Procedure Amendment Regulations (No. 2) 2007</i>	13 Nov 2007 p. 5696	13 Nov 2007 (see note to r. 1)
<b>Reprint 1: The Criminal Procedure Regulations 2005 as at 8 Feb 2008</b> (includes amendments listed above)		
<i>Criminal Procedure Amendment Regulations 2008</i>	16 May 2008 p. 1909-10	r. 1 and 2: 16 May 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 30 Sep 2008 (see r. 2(b) and <i>Gazette</i> 11 Jul 2008 p. 3253)
<i>Criminal Procedure Amendment Regulations 2009</i>	27 Feb 2009 p. 517-18	r. 1 and 2: 27 Feb 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Criminal Procedure Amendment Regulations (No. 3) 2009</i>	21 Apr 2009 p. 1368	r. 1 and 2: 21 Apr 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 22 Apr 2009 (see r. 2(b))
<i>Criminal Procedure Amendment Regulations (No. 2) 2009</i>	8 May 2009 p. 1501-2	r. 1 and 2: 8 May 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 9 May 2009 (see r. 2(b))

## **Criminal Procedure Regulations 2005**

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Criminal Procedure Amendment Regulations (No. 5) 2009</i>	23 Jun 2009 p. 2467	r. 1 and 2: 23 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Jun 2009 (see r. 2(b))
<i>Criminal Procedure Amendment Regulations (No. 4) 2009</i>	26 Jun 2009 p. 2569	r. 1 and 2: 26 Jun 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 27 Jun 2009 (see r. 2(b))

## Defined Terms

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

*The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
CPA.....	3(1)
Form.....	3(1)
lodge .....	3(1)
remote communication.....	9(1)
trial date .....	21
working day .....	3(1)