



Western Australia

Criminal Procedure Act 2004  
Juries Act 1957  
Criminal Appeals Act 2004  
Sentencing Act 1995

# **Criminal Procedure Rules 2005**

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## Criminal Procedure Rules 2005

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Western Australia

Criminal Procedure Act 2004  
Juries Act 1957  
Criminal Appeals Act 2004  
Sentencing Act 1995

## **Criminal Procedure Rules 2005**

### **Part 1 — Preliminary**

**1. Citation**

These rules are the *Criminal Procedure Rules 2005*.

**2. Commencement**

These rules come into operation on 2 May 2005 or on the day on which they are published in the *Gazette*, whichever is the later.

**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 lodged in one of those courts;

***clerk of arraigns***, in relation to proceedings before a court, means the associate to the judge sitting in the proceedings;

***criminal appeal*** means an appeal under the *Criminal Appeals Act 2004* Part 2 Division 2;

***court*** means the Supreme Court or, subject to the CPA section 124(2), the District Court, as the case requires;

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

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

**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;

**offender** means a person convicted of an offence;

**registrar** means a registrar of the court concerned;

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

- (2) A term defined in the CPA has the same meaning in these rules as it does in the CPA, unless the contrary intention appears.

**4. Application of these rules**

- (1) These rules apply to and in relation to all cases that are —
- (a) pending when these rules commence; or
  - (b) commenced on or after these rules commence.
- (2) These rules must be read with the *Supreme Court (General) Rules 2005*.

## Part 2 — General

**5. 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.

**6. Court may extend or shorten time**

The court may extend or shorten any period set by these rules for doing any act and may do so on terms.

**7. Adjournments, certain people to be notified**

If a court adjourns a case 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*.

**8. 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 party completing a form in Schedule 1 must adapt the form to the circumstances of the case, 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 party 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*]”.

**9. Lodged documents to be served**

- (1) A person who lodges a document in a case must serve it on each other party unless the CPA or these rules expressly provide otherwise or a 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) A document that has to be served must be served as soon as practicable after the date on which it is lodged unless these rules expressly provide otherwise or a court orders otherwise.
- (4) The document that has to be served must be served in accordance with the *Interpretation Act 1984* section 76 unless —
  - (a) these rules provide otherwise; or
  - (b) the court orders otherwise.

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

**10. 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 lodge, and serve on the DPP, a Form 3 (Notice of acting).
- (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 against the accused is lodged.
- (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.

**11. Duty to notify when ceasing to act for an accused**

- (1) A lawyer who has complied with rule 10 and who ceases to be instructed to act for an accused in any capacity must lodge, and serve on the DPP, a Form 3 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.

**12. Presumptions as to who is acting for an accused**

A lawyer who has lodged a Form 3 is to be taken to be acting for the accused in the capacity shown in the notice until —

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- (a) the lawyer lodges another notice under rule 10 or a notice under rule 11;
- (b) another lawyer, who acts in the same capacity, lodges a notice under rule 10; or
- (c) the court gives leave under rule 11(3).

**13. 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 a criminal appeal or other proceedings arising from the trial or sentencing of the accused.

## **Part 4 — Commencing and discontinuing prosecutions**

### **14. Indictments, form of (CPA s. 85)**

- (1) For the purposes of the CPA section 85(2), Form 4 is the prescribed form of an indictment.
- (2) The indictment must contain a list of the witnesses that the prosecutor intends to summons to appear if the indictment proceeds to trial.

### **15. Discontinuing a prosecution (CPA s. 87)**

- (1) A notice discontinuing a prosecution of a charge that is not in an indictment must be in the form of Form 5.
- (2) A notice discontinuing a prosecution of a charge that is in an indictment must be in the form of Form 6.
- (3) A notice of discontinuance must be lodged, 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 witness undertaking to appear at the trial of the accused; and
  - (c) any witness who has been served with a summons to appear at the trial of the accused.

### **16. When accused may be required to plead**

- (1) An accused must not be required to plead to a charge in an indictment until at least 21 days after the date on which the indictment is lodged unless, on an oral application by a party, the court orders otherwise.
- (2) If an indictment contains more than one charge and the court is satisfied that the accused is literate, the court may direct that the following is to occur for the purposes of requiring the accused to plead to the charges —

- (a) the accused is to be given a copy of the indictment before or at the time of being required to plead and directed to read it; and
- (b) at the time of being required to plead —
  - (i) the accused is to be asked to confirm that he or she has received the copy and has read and understood it;
  - (ii) the accused is to be read a summary of the offences charged in the indictment; and
  - (iii) the accused is to be asked how he or she pleads to the charges in the indictment.



## **Part 5 — Arresting or remanding an accused**

**17. Arrest warrant for an accused, issue of**

On the application of the DPP and if satisfied that —

- (a) an indictment has been lodged against an accused; or
- (b) if no indictment has been lodged, that an accused has been committed to the court for trial or sentence,

the court may issue an arrest warrant for the accused.

**18. Arrest warrant for accused, form of**

An arrest warrant for an accused must be in form of Form 1 in the *Criminal Procedure Regulations 2005* Schedule 1.

**19. Remand warrant for an accused, form of**

A remand warrant for an accused must be in form of Form 2 in the *Criminal Procedure Regulations 2005* Schedule 1.

## **Part 6 — Disclosure rules**

### **20. Times for disclosure by prosecutor (CPA s. 95)**

- (1) For the purposes of the CPA section 95(5) the prescribed period is 42 days after the date on which the accused is committed for sentence.
- (2) For the purposes of the CPA section 95(6) the prescribed period is 42 days after the date on which the accused is committed for trial.
- (3) For the purposes of the CPA section 95(7) the prescribed period is 28 days after the date on which the indictment is lodged.
- (4) For the purposes of the CPA section 95(8) the prescribed period is 28 days after the date on which the indictment is lodged.

### **21. Time for disclosure by accused (CPA s. 96)**

For the purposes of the CPA section 96(3) the prescribed period is the period ending 28 days before the date set for the trial of the accused.

*[Rule 21 amended in Gazette 12 Jul 2011 p. 2923.]*

### **22. Disclosure requirements, orders as to (CPA s. 138)**

- (1) A prosecutor applying for an order under the CPA section 138 (the **section 138 application**) may also apply for an order that the section 138 application be heard in private and in the absence of the accused.
- (2) If an application is made under subrule (1) —
  - (a) the prosecutor must not serve either that application or the section 138 application on the accused; and
  - (b) the court must hear the application made under subrule (1) in private in the absence of the accused.
- (3) If the court grants the application made under subrule (1), it may proceed to hear and determine the section 138 application but

otherwise the section 138 application will be adjourned and the prosecutor must serve it on the accused.

- (4) An order made under the CPA section 138 in the absence of the accused must not be disclosed to the accused except with the leave of the court.

## **Part 7 — Applications**

### **Division 1 — General**

#### **23. Applications, general rules**

- (1) An application to a court must be made by lodging a Form 1 and an affidavit in support unless —
  - (a) these rules provide otherwise; or
  - (b) the CPA or a written law provides otherwise.
- (2) An application and any affidavit in support of it must be served on each other party, and any other person affected by the application, as soon as practicable after they are lodged and in any event at least 2 clear working days before the hearing date for the application, unless the court orders otherwise.
- (3) Despite subrule (1), a court may give leave for an application to be made orally on any terms it thinks are just.

#### **24. District Court applications which can be made orally**

In the District Court, despite rule 23(1), 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 by a surety to cancel his or her surety undertaking;
- (d) an application to adjourn a listed trial;
- (e) an application for the issue of a bench warrant;
- (f) an application for the use of a video link or an audio link at the hearing of any application or plea;
- (g) an application for a directions hearing.

## **Division 2 — Specific applications**

**25. Bail, application for**

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

**26. Stay of proceedings, limit on application for (CPA s. 90)**

If an application for an order under the CPA section 90 is dismissed, another application under that section 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. Referral of question of law to Court of Appeal, application for etc. (CPA s. 98(2)(d))**

- (1) An application for an order under the CPA section 98(2)(d) referring a question of law to the Court of Appeal must be supported by an affidavit that —
  - (a) formulates the question;
  - (b) sets out the circumstances out of which the question arose; and
  - (c) identifies the materials to which the Court of Appeal may need to refer to decide the question and which may be required for the purposes of complying with the *Supreme Court (Court of Appeal) Rules 2005*.
- (2) The application and the supporting affidavit must be lodged, and served on each other party and on any person affected by the question.

**28. Trial by judge alone, application for (CPA s. 118)**

An application for an order under the CPA section 118 must be supported by an affidavit that —

- (a) identifies the charge which the applicant wants to be tried by a judge alone;
- (b) identifies all accused who are jointly charged with the charge and, if known, says whether each such accused will consent to being tried on the charge by a judge alone;
- (c) says that the applicant does not know the identity of the trial judge; and
- (d) if the applicant is the accused, says that the accused intends to plead not guilty to that charge.

**29. Trial date, application for (CPA s. 136)**

An application under the CPA section 136(1) must be made by lodging a Form 1 but must also include —

- (a) the reasons for the application; and
- (b) the dates when the applicant will not be available to be heard on the application.

**30. Urgent case order**

- (1) An urgent case order in relation to a case is an order that the case is an urgent case that must be determined as quickly as practicable consistent with the proper administration of justice.
- (2) An application for an urgent case order must be made by lodging a Form 2.
- (3) The application need not be supported by an affidavit unless the court orders otherwise.
- (4) At the hearing of the application —
  - (a) the applicant must provide material to justify the application, such as a medical certificate; and

- (b) each party must provide the dates when the party is not available.
- (5) An urgent case order must include an order setting a timetable for the various requirements of these rules and may include —
- (a) an order dispensing with or modifying any such requirement;
  - (b) any order that will or may facilitate the case being heard as quickly as practicable consistent with the proper administration of justice.

## **Part 8 — Pre-trial matters**

### **31. 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) If a court makes an order under subrule (1), the court may make any order and issue any document needed to ensure that any person, including the accused, whose presence will be needed, appears at the other court.

### **32. Change of venue or court, court officers' duties on**

If a court makes an order under the CPA section 135(2) or under rule 31(1) 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.

### **33. Status hearings**

- (1) If on the first occasion the accused is required to plead to a charge in an indictment, the 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 shall inquire into these matters —
- (a) whether every requirement imposed by or under the CPA to lodge and serve a document has 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 trial;
  - (d) the dates when the parties will be available for a trial.
- (6) At a status hearing the court may —
- (a) act under the CPA section 93;
  - (b) deal with any application under the CPA section 89, 90, 97, 118, 131, 132, 133, 134, 135, 136 or 138;
  - (c) exercise any of its powers in those sections if it can do so on its own initiative;
  - (d) exercise any of its powers in the CPA section 98 or 137;
  - (e) adjourn the status hearing from time to time;
  - (f) order that a pre-trial hearing be held to deal with specified issues and fix the time and place for it;
  - (g) fix the date of the trial.
- (7) At the conclusion of a status hearing the proceedings must be adjourned to the date of a pre-trial hearing or to the date of the trial, as the case requires.

**34. 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) exercise any of its powers under the CPA section 98, 131, 132 or 133;
  - (b) make an order under the CPA section 138;
  - (c) 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;
  - (d) 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;
  - (e) deal with the return of a witness summons to produce a record or thing;
  - (f) deal with an application to set aside a witness summons;
  - (g) give directions for obtaining and using an interpreter at trial;
  - (h) give directions under the CPA section 109 for the holding of a view;
  - (i) decide any question of law arising in relation to the indictment;
  - (j) decide any questions of evidence or procedure;
  - (k) deal with an application or make orders under the *Evidence Act 1906* in respect of children or special witnesses;
  - (l) 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 trial.

## Part 9 — Witnesses

### 35. Interpretation

In this Part —

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

### 36. 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) any registrar;
- (b) any associate to a judge;
- (c) any officer in the court's registry appointed to or acting in an office of level 3 or above under the *Public Service Award 1992*.

### 37. 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 7.

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

- (1) To make an application under the CPA section 159 a party must lodge a Form 8 to which is attached one or both of the following —
  - (a) a draft witness summons, in the form of Form 9, 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 10, 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 the date of a pre-trial hearing in the prosecution

concerned or if that is not practicable another proceeding at which a judge is presiding.

- (3) An application under the CPA section 159 for a witness summons that requires a witness to attend the Supreme Court at a circuit town may be lodged at any registry of the District Court other than the Central Law Courts at Perth.
- (4) A registrar of the District Court at a place other than the Central Law Courts at Perth may issue a witness summons for and on behalf of the Supreme Court under the seal of the District Court and in that case the summons has the same force and effect as if issued by the Supreme Court.
- (5) A witness summons must be issued under the seal of the court concerned unless it issued under subrule (4).
- (6) A witness summons must contain or be accompanied by the information to the witness in Schedule 2.

**39. Early compliance with summons to produce**

- (1) This rule 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 made under subrule (4)(a) must be made 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.

*[Rule 39 amended in Gazette 15 Sep 2006 p. 3684.]*

**40. 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 in the *Criminal Procedure Regulations 2005* Schedule 1.

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

A warrant to imprison a witness issued under the CPA Schedule 4 clause 2 must be in the form of Form 13 in the *Criminal Procedure Regulations 2005* Schedule 1.

## **Part 10 — Trial matters**

### **42. Prescribed officer (CPA s. 103)**

For the purposes of the CPA section 103, the prescribed officer is the clerk of arraigns or an officer authorised by the trial judge.

### **43. Transcript, entitlements to**

- (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.

## **Part 11 — *Sentencing Act 1995* rules**

### **44. Pending charges**

- (1) A request by an offender under the *Sentencing Act 1995* section 32(1) must be in the form of Form 11.
- (2) The request must be lodged 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 registrar of the court of summary jurisdiction must give —
  - (a) the original prosecution notices that relate to pending charges against that offender in that court to the sentencing court; and
  - (b) a copy of those prosecution notices to the DPP.
- (5) The DPP must prepare a list, in the form of Form 12, of those pending charges against the offender that the Crown will consent to being dealt with by the sentencing court and must give a copy of the list 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 lodge the signed list of pending charges in the sentencing court.

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- (8) When the signed list of pending charges is lodged the clerk of arraigns must immediately send back to the court of summary jurisdiction concerned the original prosecution notice 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 prosecution notice relating to any pending charge in that court that was not dealt with by the sentencing court.

**45. Materials to assist in sentencing**

- (1) A party to sentencing proceedings who intends to call a witness in those proceedings must lodge 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 lodge 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.
- (4) Subrule (2) does not apply to any of the following —
  - (a) a pre-sentence report;
  - (b) a victim impact statement;
  - (c) any letter in respect of the accused that a prosecutor intends to tender in confidence to the court.



**46. Trial as to material facts**

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

**47. Warrant to imprison an offender**

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

## **Part 12 — Court records and judgments**

### **48. 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 judgment or final outcome of the trial or 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 of the trial or proceeding made under the *Supreme Court (General) Rules 2005*, or both.

### **49. Final outcome of charge, certificate of**

- (1) The clerk of arraigns must issue a certificate, in the form of Form 13, of the final outcome of a charge 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 final determination of the charge.
- (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 Accused 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.

**50. 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.

**51. Non-parties may apply for transcripts etc.**

- (1A) In this rule —

*media manager*, of a court, means the person who, on behalf of the court, manages its relations with media organisations;

**media organisation** means an organisation that disseminates news or information to the public through the press or by means of radio, television or the internet.

- (1) A person who is not a party to a case may apply to the court for leave to inspect or obtain a copy of —
- (a) the record, or the certified transcript of the record, of any proceedings in the case; or
  - (b) any other record in the possession of the court in relation to the case, including documents (including those in electronic form) and other things tendered in evidence in the case.
- (2A) The application —
- (a) may be made orally to the court’s media manager if —
    - (i) it is made by a person employed by a media organisation; and
    - (ii) the court, on a written application made under this rule by another such person, has already granted leave to that other person to inspect or obtain a copy of the record the subject of the application;
  - but
  - (b) otherwise must be made in writing to the court and must set out the grounds of the application.
- (2B) The applicant need not give notice of the application to any party to the case unless an order is made under subrule (4)(b).
- (2) On an oral application made under subrule (2A)(a), the court’s media manager —
- (a) may grant the application if satisfied the court has already granted leave to another person who is employed by a media organisation to inspect or obtain a copy of the record the subject of the application; but
  - (b) otherwise must refuse the application.

- (3A) If under subrule (2)(a) the court's media manager grants an oral application, the application must be granted on the same terms and subject to the same conditions (if any) that were imposed by the court when it gave leave to the other person employed by a media organisation.
- (3) A person whose oral application is refused under subrule (2)(b) may make a written application under subrule (2A)(b).
- (4A) A judge or a registrar may deal with a written application.
- (4B) A judge may refer a written application to a registrar.
- (4C) A registrar may refer a written application to a judge.
- (4) A judge or a registrar dealing with a written application —
- (a) may deal with the application even though no other party to the case has been served with it; or
  - (b) may order the applicant to serve another party to the case, specified in the order, with the application and a notice entitling the other party to be heard on the application, and deal with the application accordingly.
- (5) Subject to —
- (a) any order made under the CPA section 171;
  - (b) the *Sentencing Act 1995* section 22; 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 judge or a registrar dealing with a written application, if satisfied the applicant has sufficient cause to be granted leave, may grant the application.
- (6A) A judge or a registrar may grant an application subject to conditions.
- (6B) If a person, pursuant to leave granted under this rule, wants to obtain a copy of a record, the person must pay, or make

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arrangements to pay, the cost of the court supplying the copy, unless the court orders otherwise.

- (6) A registrar may determine the cost of supplying the copy.
- (7) This rule does not prevent the court from publishing, on its own initiative, all or any part of the proceedings in a case to any person, and in any manner, it thinks fit.

*[Rule 51 amended in Gazette 15 Sep 2006 p. 3684; 21 Dec 2010 p. 6755-7.]*

### **Part 13 — *Juries Act 1957* rules**

**52. Interpretation**

In this Part —

*section* means a section of the *Juries Act 1957*.

**53. Precept for a jury, form of (s. 20)**

For the purposes of section 20, Form 14 is the prescribed form of a general jury precept.

**54. Summons to a juror, form of (s. 26(5))**

For the purposes of sections 26(5) and 31, Form 15 is the prescribed form of a summons to a juror.

**55. Summons and notice list, form of (s. 33(2))**

For the purposes of section 33(2), Form 16 is the prescribed form of a summons and notice list.

**56. Summons to show cause, form of (s. 55)**

For the purposes of section 56, Form 17 is the prescribed form of a summons to a juror to show cause.

**57. Jury panels or pools, lawyers may obtain copies of**

(1) In this rule —

*panel or pool* means the panel or pool of jurors kept by the summoning officer under section 30.

(2) The entitlements of a lawyer under this rule are subject to any order made under section 43A in a particular case.

(3) A lawyer employed in the office of the DPP who has lodged a Form 18 with the Sheriff may obtain a copy of the panel or pool for use in accordance with the lawyer's undertaking in the Form 18.

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- (4) A lawyer who has lodged a Form 19 with the Sheriff may obtain a copy of the panel or pool for use in accordance with the lawyer's undertaking in the Form 19 in any case in which the lawyer acts for an accused.



## **Part 14 — *Criminal Appeals Act 2004* Part 2 Division 2 rules**

### **Division 1 — Preliminary**

#### **58. Interpretation in this Part**

- (1) In this Part, unless the contrary intention appears —
- appeal*** means an appeal, or an application for leave to appeal, under the *Criminal Appeals Act 2004* Part 2 Division 2;
- appeal notice*** means a notice in the form of Form 20;
- interim order*** in an appeal, means —
- (a) an order staying the proceedings in the primary court or the execution of the primary court's decision;
  - (b) an order made under the *Criminal Appeals Act 2004* section 12;
  - (c) an order granting bail made under the *Bail Act 1982*;
  - (d) an urgent appeal order;
  - (e) an order that an appellant provide security for a respondent's costs;
  - (f) an order extending or shortening the time for obeying a requirement of these rules, other than the time for commencing an appeal;
  - (g) any other order that the Court may make before the appeal is concluded, other than an order giving or refusing to give leave to appeal;
- lodge*** a document, means to lodge it at the Central Office in the Supreme Court together with any fee required to be paid under the *Supreme Court (Fees) Regulations 2002*;
- primary court***, in relation to an appeal, means the court of summary jurisdiction that made the decision being appealed;
- primary court's transcript*** means —
- (a) the transcript of the proceedings in the primary court; or

- (b) if there is no electronic recording of the proceedings that can be transcribed —
  - (i) the notes made by the judicial officer who presided at the proceedings; and
  - (ii) one or more affidavits of people who were present at the proceedings about what happened in the proceedings.
- (2) A term defined in the *Criminal Appeals Act 2004* has the same meaning in these rules as it does in that Act, unless the contrary intention appears.

### **Division 2 — General**

#### **59. Hearings by telephone**

- (1) A judge may conduct a hearing with one or more of the parties to a criminal appeal by telephone.
- (2) A hearing conducted by telephone is to be taken to be a hearing in the presence of the judge.
- (3) A registrar must confirm in writing any order made at such a hearing.

#### **60. Judge's general jurisdiction**

- (1) For the purposes of dealing with an appeal, a judge has jurisdiction —
  - (a) to make a decision on the judge's own initiative or on an application by a party;
  - (b) to decide an application on the basis of the documents lodged and without listing it for hearing;
  - (c) to make a decision on the judge's own initiative on the basis of the documents lodged and without requiring the parties to attend a hearing;

- (d) to hear and decide any application made during the appeal in the absence of any party other than the applicant;
  - (e) to order some or all of the parties to do one or more of the following in respect of the appeal, or any aspect of it specified by the judge —
    - (i) to lodge, before a date set by the judge, any document specified by the judge that the judge considers will or may facilitate the appeal being conducted and concluded efficiently, economically and expeditiously;
    - (ii) to appear and make oral submissions on a date set by the judge;
  - (f) to limit the time a party has to make oral submissions at a hearing before a judge.
- (2) If a judge makes a decision on the basis of the documents lodged without requiring the parties to attend a hearing, rule 63 applies.

**61. Non-attendance by party, consequences of**

- (1) If a hearing before a judge is adjourned because a party who has been notified of it does not attend, the judge may order the party or the party's lawyer to pay the costs of any party who attended.
- (2) If a party who has been notified of a hearing does not attend the hearing before a judge, the judge may proceed in the party's absence.

**62. Decisions made in absence of a party**

- (1) If in a party's absence a judge makes an order, whether or not at a hearing, the judge may subsequently, but before the order is carried out, set aside the order and again deal with the matter that gave rise to the order.

- (2) If in a party's absence a judge makes a decision in an appeal, whether or not at a hearing, a registrar must notify the party of the decision.

**63. Decisions made on the papers**

- (1) This rule applies if another rule says it applies.
- (2) If a decision is made under the other rule on the basis of the documents lodged without requiring the parties to attend a hearing (the *provisional decision*), a registrar must serve the parties with written notice of the provisional decision.
- (3) If a party wants a hearing of the matter that gave rise to the provisional decision, the party must lodge a Form 25 (Request for a hearing) within 5 working days after the date on which the party is served with the notice of the provisional decision.
- (4) If no party lodges a Form 25 under subrule (3), the provisional decision becomes the final decision on the matter.
- (5) If any party lodges a Form 25 under subrule (3), a registrar must list the matter for hearing by the judge who made the provisional decision or, if he or she is absent, before another, and notify the parties.
- (6) At the hearing the provisional decision may be confirmed, amended or set aside.
- (7) The decision made at the hearing is the final decision on the matter.
- (8) Any right to appeal against, or to make an application as a result of or in respect of, a final decision on a matter cannot be exercised in relation to a provisional decision until it becomes a final decision.

### **Division 3 — Procedure for appeals**

**64. Nature of appeals**

An appeal will be by way of rehearing.

**65. Appeal, how to commence**

(1) To —

- (a) commence an appeal within time; or
- (b) apply for an extension of time within which to commence an appeal,

the appellant must lodge —

- (c) a Form 20 (Appeal notice) that sets out the grounds for the appeal in accordance with subrule (2);
- (d) any document required by subrule (3) or (4);
- (e) a copy of the prosecution notice in respect of which the decision being appealed was made;
- (f) a copy of the primary court's transcript; and
- (g) a copy of every other record that the Court will need to decide the appeal.

(2) The grounds of appeal must not merely allege —

- (a) that the primary court erred in fact or in law;
- (b) that the primary court's decision is against the evidence or the weight of evidence or is unreasonable and cannot be supported having regard to the evidence;
- (c) that the primary court's decision is unsafe or unsatisfactory; or
- (d) in the case of an appeal against a sentence, that the sentence is excessive or inadequate.

(3) If the Form 20 says that an extension of time within which to commence the appeal is needed, the form must be lodged with

an affidavit by the applicant or the applicant's lawyer or both explaining why the appeal was not commenced within time.

- (4) A Form 20 may be lodged together with an application, made in accordance with rule 68, for an interim order.
- (5) For the purposes of the *Criminal Appeals Act 2004* section 17, a Form 20 lodged in accordance with this rule is to be taken to be an application for leave to appeal.
- (6) Any document lodged under this rule must be served on the respondent personally but, if the appellant is in custody, it may be served by post on the respondent.
- (7) As soon as practicable after serving the respondent the appellant must lodge a Form 21 (Service certificate).
- (8) This rule does not affect the operation of the *Criminal Appeals Act 2004* section 17.

**66. Primary court to be notified and to supply records**

- (1) In this rule —  
*primary court case* means the case in the court of summary jurisdiction in which the decision being appealed was made.
- (2) As soon as practicable after an appeal notice is lodged, a registrar must give the primary court concerned —
  - (a) a copy of the appeal notice; and
  - (b) a notice that specifies —
    - (i) the records or things held by the primary court in relation to the primary court case that the primary court must give to the Court for the purposes of the appeal; and
    - (ii) the date by which the primary court must provide the records or things.
- (3) Any copy of a document given by the primary court to the Court need not be certified by the primary court.

- (4) If any record given to the Court contains information to which access by any person is or should be restricted, the primary court must advise the Court.

**67. Respondent's options**

- (1) On being served with an appeal notice, a respondent may lodge a Form 22 (Notice of respondent's intention).
- (2) If the respondent lodges a Form 22, it must be lodged within 7 days after the date on which the respondent is served with the appeal notice.
- (3) A Form 22 may be lodged together with an application, made in accordance with rule 68, for an interim order.
- (4) If a respondent does not lodge a Form 22 within the 7 days or any extension of that period ordered by the court, the respondent is not entitled to take part or be heard in the appeal and is not a party to the appeal for the purposes of these rules.

**68. Interim order, applying for**

- (1) At any time after an appeal is commenced and before it is concluded a party may apply for an interim order or an order amending or cancelling an interim order.
- (2) To make such an application, the party must lodge a Form 23 (Application in an appeal) with —
- (a) an affidavit by the applicant or the applicant's lawyer or both explaining why the interim order is wanted; and
  - (b) a document setting out the proposed order,
- unless a judge orders otherwise.

**69. Urgent appeal order, nature of**

- (1) An urgent appeal order in relation to an appeal is an order that the appeal is an urgent appeal that must be heard as quickly as practicable consistent with the proper administration of justice.

- (2) An urgent appeal order must include an order setting a timetable for the various requirements of these rules and may include —
- (a) an order dispensing with or modifying any such requirement;
  - (b) any order that will or may facilitate the appeal being heard as quickly as practicable consistent with the proper administration of justice.

**70. Consenting to orders**

The parties to an appeal may consent to an interim or other order, other than an urgent appeal order, being made by lodging a Form 24 (Consent notice).

**71. Appeal books etc. not needed unless ordered**

An appeal book containing the documents needed to decide the appeal is not required but a judge in any particular appeal may order some or all of the following —

- (a) a party to lodge and serve an appeal book;
- (b) any or all of the parties to lodge and serve —
  - (i) written submissions;
  - (ii) a chronology of events relevant to the appeal;
  - (iii) a list of the principal legal authorities on which the party relies.

**Division 4 — Concluding an appeal**

**72. Discontinuing an appeal**

- (1) The appellant may discontinue an appeal by lodging and serving a Form 26 (Discontinuance notice).
- (2) If it appears to the court that the appellant is a person under disability (as defined in the RSC Order 70 rule 1), the Form 26 does not have effect unless it is approved by a judge.



- (3) An application for the approval of a judge must be lodged with an affidavit and, unless a judge orders otherwise, an opinion by an independent lawyer.
- (4) Unless a judge orders otherwise, an appellant who discontinues an appeal must pay the respondent's costs in respect of the appeal which must be taxed if they are not agreed.
- (5) In an appeal where the respondent also appeals against the primary court's decision, subrules (1) to (4) and Form 26 apply with any necessary changes.
- (6) The discontinuance of an appeal by the appellant does not affect any appeal by a respondent who also appeals against the primary court's decision.

**73. Settling an appeal**

- (1) The parties to an appeal may lodge a Form 24 (Consent notice), modified as necessary, stating the final order that the parties consent to being made in the appeal.
- (2) When a consent notice is lodged, the registrar must refer it to a judge who may direct the registrar —
  - (a) to issue a final order in accordance with the notice; or
  - (b) to notify the parties that the judge will decide the final orders at a hearing.
- (3) A settlement or compromise of an appeal to which a person who appears to the court to be under disability (as defined in the RSC Order 70 rule 1) is a party has no effect unless it is approved by a judge of appeal.
- (4) An application for the approval of a judge of appeal must be lodged with an affidavit and, unless a judge of appeal orders otherwise, an opinion by an independent lawyer.

**74. Appeal, certificate of conclusion of**

- (1) When an appeal is concluded, the registrar must issue a Form 27 (Certificate of conclusion of criminal appeal).
- (2) The Form 27 is the formal record of the Court and forms part of the Supreme Court's record.
- (3) A registrar must send a copy of the Form 27 to —
  - (a) the primary court;
  - (b) the Commissioner of Police;
  - (c) the chief executive officer of the department of the public service principally assisting the Minister who administers the *Sentence Administration Act 2003*;
  - (d) if the case requires, the chairperson of the Parole Board;
  - (e) if the case requires, the chairperson of the Mentally Impaired Accused Review Board; and
  - (f) any other person to whom an order made by the Court of Appeal in the appeal is directed.
- (4) If a warrant is issued to enforce a judgment or order of the Court, a copy of the Form 27 must be sent with the warrant to any person to whom the warrant is directed.

**75. Return of exhibits**

- (1) After an appeal is concluded, a registrar must, unless the Court has ordered otherwise —
  - (a) return any record or thing given to the Court by the primary court to the primary court;
  - (b) by a written notice, require the party who tendered any record or thing that was admitted in evidence by the Court to collect it from the court; and
  - (c) by a written notice, require any person who, under a subpoena, produced any record or thing to the Court that was not admitted in evidence, to collect it from the court

- (2) A registrar must not act under subrule (1) until —
  - (a) the time for commencing proceedings in the Court of Appeal in relation to the appeal has expired; or
  - (b) if proceedings in the Court of Appeal in relation to the appeal are commenced before that time expires, the proceedings are concluded.
- (3) Despite subrule (2), a registrar —
  - (a) may dispose of a record or thing that the registrar considers is dangerous to retain or return to a person; or
  - (b) may release a record or thing to a person who is entitled to custody of it if the registrar considers that —
    - (i) it is dangerous, impracticable or inconvenient to retain the record or thing under this rule; or
    - (ii) it is necessary for that person to have use of the record or thing.
- (4) If under subrule (3)(b) a registrar releases a record or thing to a person, the registrar may require the person, as a condition of being given it, to give a written undertaking to the Court as to the care maintenance and custody of it and its re-delivery to the Court.
- (5) If a record or thing 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 judge may order a registrar to destroy it or dispose of it in some other way.

**Part 15 — *Service and Execution of Process Act 1992*  
(Cwlth) rules**

**76. Interpretation in this Part**

In this Part —

*section* means a section of the *Service and Execution of Process Act 1992* of the Commonwealth.

**77. Appeals under Part 5**

Part 14, with any necessary changes, applies to —

- (a) an application under section 86 for a review of an order made under section 83; and
- (b) an appeal under section 101 against a decision of a magistrate.

## **Part 16 — Miscellaneous**

**78. Repeal**

The *Criminal Procedure Rules 2000* are repealed.

**cl. 1**

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**Schedule 1 — Forms**

[r. 3(1)]

**1. Application (r. 23)**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Application</b>
Supreme Court/District Court At: Number:		
Case	[Names of all parties]	
Applicant	[Name of the party applying]	
Application details	The applicant applies for — [Set out — <ul style="list-style-type: none"> <li>• the order or orders sought</li> <li>• the written law and provision under which the application is made.].</li> </ul>	
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]	Court stamp

**cl. 2**

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**2.            Application for urgent case order (r. 30)**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Application for urgent case order</b>
Supreme Court/District Court At:    Number:		
Case	[Names of all parties]	
Applicant	[Name of the party applying]	
Application	The applicant applies for an urgent case order in respect of this case.	
Reasons for application	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]	Court stamp



**3. Notice of acting (rr. 10 & 11)**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>  Supreme Court/District Court At:    Number:	<b>Notice of acting</b>		
Case	[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/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%; border-collapse: collapse;"> <tr> <td style="width: 70%; height: 20px;"></td> <td style="width: 30%; padding: 5px;">Date:</td> </tr> </table>		Date:
	Date:		
<b>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).</b>			

**cl. 4.**

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**4. Indictment (r. 14)**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Indictment</b>	
Supreme Court/District Court At: _____ Number: _____			
Parties [Include names of any co-accused(s)]	State of Western Australia v. _____		
Details of charge(s) <sup>1</sup>	I, an authorised officer, allege that —		
Accused's details <sup>2</sup>	Date of birth	_____	Male/Female
	Address _____		
Witnesses	The prosecutor intends to summons the people on the attached list to give evidence.		
Authorised officer	Full name	_____	
	Title	_____	
	Office	_____	
	Signature	_____	Date _____

Notes to Form 4 —

1. These details must comply with the CPA Schedule 1 clause 5.
2. These details must comply with the CPA Schedule 1 clause 4.

## 5. Discontinuance of charge (no indictment) (r. 15(1))

Criminal Procedure Act 2004 Criminal Procedure Rules 2005		<b>Discontinuance of charge(s) (no indictment)</b>	
Supreme Court/District Court At: Number:			
Accused	[Full name]	Date of birth:	
Committal details [*: delete the inapplicable]	On [date] at [place] the accused was committed for *trial/sentence to the [month] sessions of this Court on *a charge/charges that — [In respect of each charge set out — <ul style="list-style-type: none"> <li>• the date or period when the alleged offence occurred</li> <li>• the place where the alleged offence occurred</li> <li>• the name of the accused</li> <li>• a description of the offence</li> <li>• the written law and the provision(s) creating the offence.].</li> </ul>		
Notice of discontinuance	I, the relevant authorised officer, notify the Court that the State discontinues proceedings against the accused in respect of the above charge(s).		
Relevant authorised officer	Full name		
	Title		
	Office		
	Signature		Date

**cl. 6.**

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**6. Discontinuance of charge in indictment (r. 15(2))**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Discontinuance of charge(s) in indictment</b>	
Supreme Court/District Court At: _____ Number: _____			
Parties [Include names of any co-accused(s)]	State of Western Australia v. _____		
Accused	<i>[Full name of relevant accused]</i>	Date of birth: _____	
Notice of discontinuance	<p>I, the relevant authorised officer, notify the Court that the State discontinues proceedings against the above accused in respect of the charge(s) in the indictment dated [date]. or I, the relevant authorised officer, notify the Court that the State discontinues proceedings against the above accused in respect of the following charge(s) in the indictment dated [date] —</p> <p><i>[In respect of each charge set out —</i></p> <ul style="list-style-type: none"> <li>• <i>the date or period when the alleged offence occurred</i></li> <li>• <i>the place where the alleged offence occurred</i></li> <li>• <i>the name of the accused(s)</i></li> <li>• <i>a description of the offence</i></li> <li>• <i>the written law and the provision(s) creating the offence.</i>]. </li></ul>		
Relevant authorised officer	Full name	_____	
	Title	_____	
	Office	_____	
	Signature	_____	Date _____

**7. Request that person in custody be present to give evidence (r. 37)**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Request that person in custody be present to give evidence</b>	
Supreme Court/District Court At:                      Number:			
Case	[ <i>Names of all parties</i> ]		
Applicant	[ <i>Name of the party requesting</i> ]		
Request	The applicant requests the court to require the following person(s) to be present on [ <i>date</i> ] at [ <i>place</i> ] 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	

**8. Application for witness summons (r. 38)**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Application for witness summons</b>	
Supreme Court/District Court At:                      Number:			
Case	[ <i>Names of all parties</i> ]		
Applicant	[ <i>Name of the party requesting</i> ]		
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	

**Criminal Procedure Rules 2005**

**Schedule 1**      Forms

**cl. 8.**

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Result of application	Application granted. Application refused because:  ..... Prescribed court officer	Date	
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**cl. 10.**

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**10.      Witness summons to produce a record or thing (r. 38(1)(b))**

<i>Criminal Procedure Act 2004</i> <i>Criminal Procedure Rules 2005</i>		<b>Witness summons to produce a record or thing</b>	
Supreme Court/District Court At:    Number:			
Case	<i>[Names of the parties to the case in which the witness is required]</i>		
To: <i>[Witness's details]</i>	<i>[Full name and address]</i>		
<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:	Time:	
	Court:		
	Place:		
Records or things to be produced	You must produce to the court the following: <i>[Describe in reasonable detail each record or thing to be produced; on an attachment if necessary.]</i>		
<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 <i>[party]</i> For inquiries contact      Tel:      Ref:		
Date summons issued	This summons is issued by the court on	Court seal	
	<i>[date]</i> .		
Service details	I personally served a copy of this summons and the "Notice to witness" in the <i>Criminal Procedure Rules 2005</i> Schedule 2 on this witness at <i>[place]</i> on <i>[date]</i> . At the same time I gave the witness <i>[set out the amount of money or other means for the witness to comply with the summons]</i> .		
<i>[*Police only]</i>	Name of server:	*Registered No:	
	Signature:	*Station:	



**11. Request that pending charges be dealt with (r. 44(1))**

<i>Sentencing Act 1995</i> <i>Criminal Procedure Rules 2005</i>		<b>Request that pending charges be dealt with</b>	
Supreme Court/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:
Accused's lawyer (if applicable)	Name: Firm: Address: Telephone: Fax:		
<b>Send this form to:</b> <b>Supreme Court of Western Australia</b> Stirling Gardens, Barrack Street, PERTH WA 6000 <b>or to:</b> <b>District Court of Western Australia</b> 500 Hay Street, PERTH WA 6000			

*[Form 11 inserted in Gazette 13 Oct 2009 p. 4035.]*

**cl. 12.**

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**12.      List of pending charges be dealt with (r. 44(5))**

<i>Sentencing Act 1995</i> <i>Criminal Procedure Rules 2005</i>		<b>List of pending charges be dealt with</b>	
Supreme Court/District Court At:                      Number:			
Accused	Full name: Address:		Date of birth:
Charges before Supreme or District Court	Indict No.	Description of offence	
Crown's consent	The Crown 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"> <li>• 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</li> <li>• I want the Court to deal with me for the pending charges against me listed below, other than those indicated.</li> </ul>		
Signature	..... Accused/Accused's lawyer		Date:
Pending charges in court of summary jurisdiction	Court location	Charge No.	Description of offence

**13. Certificate of final outcome of charge (r. 49)**

<p><i>Criminal Procedure Act 2004</i> <i>Sentencing Act 1995</i> <i>Criminal Procedure Rules 2005</i></p> <p>Supreme Court/District Court At:                                  Number:</p>	<p><b>Certificate of final outcome of charge</b></p>
<p><b>Parties</b> [Include names of any co-accused(s)]</p>	
<p><b>Accused or offender</b> [One per certificate]</p>	<p>Family name: Given name(s): Date of birth:</p>
<p><b>Charge</b> [Use reverse if more than one charge]</p>	<p>Date: Charge: <i>The Criminal Code s.</i></p>
<p><b>Trial or other proceeding</b></p>	<p>Date(s): Presiding judge: <input type="checkbox"/> Guilty plea                      <input type="checkbox"/> Not guilty plea <input type="checkbox"/> Other plea (specify): <input type="checkbox"/> Trial by jury                      <input type="checkbox"/> Trial by judge alone <input type="checkbox"/> Other proceeding (describe):</p>
<p><b>Final outcome Part 1</b> [*delete the inapplicable]</p>	<p>Date: <input type="checkbox"/> Charge discontinued <input type="checkbox"/> Proceedings stayed permanently <input type="checkbox"/> Court has no jurisdiction to deal with the *accused/charge <input type="checkbox"/> Accused found mentally unfit to stand trial under the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> <b>Verdict</b> — <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 <b>Judgment</b> — <input type="checkbox"/> Convicted                      <input type="checkbox"/> Acquitted <input type="checkbox"/> Acquitted on account of unsoundness of mind <input type="checkbox"/> Offence charged is not an offence under a written law <input type="checkbox"/> Accused previously *convicted/acquitted of the charge</p>

**cl. 13.**

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<p>Final outcome Part 2</p> <p>[Attach copies of warrants or orders issued]</p>	<p>Date:</p> <p><b>Sentence imposed —</b></p> <p><b>Other orders made on sentencing —</b></p>
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Form 13 continued.

<b>Final outcome</b> <b>Part 3</b> [Attach copies of warrants or orders issued]	Date: <b>Other outcomes —</b> <input type="checkbox"/> New trial ordered <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> ] <input type="checkbox"/> Orders made under <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> :
<b>Certificate</b>	I certify that the information in this certificate is true and correct. ..... Clerk of arraigns                      Judge Date:

**Reverse of Form 13 for use where there is more than one charge**

Offences charged				Plea	Verdict	Date of final outcome	Final outcome
No.	Date	Description	Enactment				

*[Form 13 amended in Gazette 15 Sep 2006 p. 3684.]*

**cl. 14.**

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**14.      General jury precept (r. 53)**

<i>Juries Act 1957</i> <i>Criminal Procedure Rules 2005</i>		<b>General jury precept</b>	
To [Tick one box]	<input type="checkbox"/> The Sheriff of Western Australia <input type="checkbox"/> The senior Registrar of the District Court at the place specified below.		
<b>Command</b>	On behalf of the State of Western Australia I, a Judge of the Supreme Court/District Court — <ul style="list-style-type: none"> <li>• require you to summon a sufficient number of jurors to attend on the date and at the time and place specified below for the trial or trials to be held at the sittings specified below; and</li> <li>• require you, or your deputy, and your officers to attend at that time and place with the jurors summoned, this precept, and a list of the names and identification numbers of the jurors.</li> </ul>		
Number of jurors needed	<input type="checkbox"/> A number in accordance with the <i>Juries Act 1957</i> s. 23. <input type="checkbox"/> At least      and not more than		
Attendance	Date		Time
	Place		
Sittings	<input type="checkbox"/> Supreme Court at Perth <input type="checkbox"/> District Court at Perth <input type="checkbox"/> Supreme Court and District Court at Perth <input type="checkbox"/> Circuit Court at the place specified above <input type="checkbox"/> District Court at the place specified above <input type="checkbox"/> Circuit Court and District Court at the place specified above		
Judge's signature	..... Supreme Court Judge/District Court Judge		Date:

**15.      Summons to a juror (r. 54)**

<i>Juries Act 1957</i> <i>Criminal Procedure Rules 2005</i>		<b>Summons to a juror</b>	
Summons No:			
To	Full name		
	Address		
<b>Summons</b>	<p><b>You are required —</b></p> <ul style="list-style-type: none"> <li>• <b>to attend on the date and at the time and place specified below to be a juror; and</b></li> <li>• <b>to attend daily from then on at that place until you are discharged.</b></li> </ul>		
Time and place to attend	Date		Time
	Place		
<b>Warning</b>	<b>If you do not attend as required you may be fined.</b>		
Summoning officer's signature	..... Sheriff/District Court Registrar	Date:	

**cl. 16.**

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**16.      Summons and notice list (r. 55)**

<i>Juries Act 1957 s. 33</i> <i>Criminal Procedure Rules 2005</i>		<b>Summons and notice list</b>	
Sittings	Criminal sittings of the Supreme Court/District Court to be held at:  commencing on:		
Certificate	I, the officer named below, certify that the information in this document is true and correct.		
Police officer's details	Full name		
	Rank		
	Regimental No		
	Police station		
Sheriff's officer's details	Full name		
	Court		
Certifying officer's signature	..... Police officer/Sheriff's officer	Date:	

Reverse of Form 16 —

Summons No.	Name of juror on summons*	Present address†	Occupation	Is the summons served or unserved? ‡	Date of service (if any)	Reasons for non-service **

Notes to the person completing this form —

\* If the name of the juror has changed, also include his or her new name.  
† If the juror's address has changed, and the new address is known, and the juror still resides in the jury district, the summons should be sent to the appropriate officer to be served at the new address.  
‡ All unserved summonses must be returned to the summoning officer.  
\*\* Examples of reasons for non-service: Deceased, Left address, Absent from jury district, Address unknown.



**17. Summons to a juror to show cause (r. 56)**

<i>Juries Act 1957 s. 56</i> <i>Criminal Procedure Rules 2005</i>		<b>Summons to a juror to show cause why payment of a fine should not be enforced</b>
To	Full name	
	Address	
Background	On you did not attend as required by a summons that had been served on you. As a result the Court fined you \$	
Summons	<p><b>You are required to show cause why the payment of the fine should not be enforced.</b></p> <p><b>You may show cause —</b></p> <ul style="list-style-type: none"> <li>• <b>by attending personally before the Court at the hearing specified below and giving your explanation; or</b></li> <li>• <b>by sending the Court an affidavit containing your explanation before the date of the hearing specified below.</b></li> </ul>	
Note	An affidavit must be sworn before a commissioner for affidavits or a JP and must be posted or delivered to the Registrar or Judge of the Court that imposed the fine.	
Hearing details	This summons will be dealt with — on <i>[date]</i> at <i>[time]</i> or as soon after as possible, at <i>[place]</i>	Court seal
Judge's signature	..... Supreme Court Judge/District Court Judge	Date:

**cl. 18.**

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**18.      DPP lawyer’s undertaking as to jury panels or pools (r. 57(3))**

<i>Juries Act 1957</i>		<b>DPP lawyer’s undertaking as to jury panels or pools</b>
<i>Criminal Procedure Rules 2005</i>		
Lawyer’s details	Full name	
	Title	
	Office	
Undertaking [*delete one]	<p>I am a lawyer employed in the office of the Director of Public Prosecutions of the *State/Commonwealth.</p> <p>I undertake to the Supreme Court that if I obtain a copy of any panel or pool of jurors referred to in the <i>Juries Act 1957</i> section 30 —</p> <p>(a) I will not permit the copy to be copied by any person by any means other than by a person employed in the above office for distribution to the Director of Public Prosecutions or a person employed in the above office;</p> <p>(b) I will not permit the contents of the panel or pool or the identity of any person in it who is sworn as a juror to be divulged to any person other than the Director of Public Prosecutions, any lawyer instructed by the Director in a case, or any person employed in the Western Australian Police Service for the purpose of determining whether any person named in the panel or pool has a criminal record;</p> <p>(c) I will not permit the copy to leave my custody except for the purpose of being copied under paragraph (a); and</p> <p>(d) I will return the copy to the office of the Director of Public Prosecutions or of the Sheriff at or before the end of the sittings.</p>	
Lawyer’s signature		Date:

**19. Defence lawyer's undertaking as to jury panels or pools (r. 57(4))**

<i>Juries Act 1957</i> <i>Criminal Procedure Rules 2005</i>		<b>Defence lawyer's undertaking as to jury panels or pools</b>
Lawyer's details	Full name	
	Firm	
	Address	
Undertaking	<p>I undertake to the Supreme Court that if I obtain a copy of any panel or pool of jurors referred to in the <i>Juries Act 1957</i> section 30 —</p> <p>(a) I will not permit the copy to be copied by any person by any means;</p> <p>(b) I will not permit the contents of the panel or pool or the identity of any person in it who is sworn as a juror to be divulged to any person other than an accused for whom I act, or a lawyer acting as solicitor or counsel for an accused for whom I act;</p> <p>(c) I will not permit the copy to leave my custody; and</p> <p>(d) I will return the copy to the Sheriff's officer in court immediately following the empanelment of the jury.</p>	
Lawyer's signature		Date:

**cl. 20**

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**20.      Appeal notice (r. 65)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Appeal notice</b>
Parties to the appeal	Appellant Respondent	
<b>Primary court's decision</b>		
Primary court Prosecution Notice No. Parties Date of decision Judicial officer	at	
<b>Decision details<sup>1</sup></b>		
Conviction recorded <sup>2</sup> Sentence imposed <sup>3</sup> Other orders made <sup>4</sup>		
<b>Appeal details</b>		
Notice of appeal  [Tick one or more boxes]	<p>The appellant applies to the Court for leave to appeal against the above conviction.</p> <p>The appellant applies to the Court for leave to appeal against —</p> <p>the above sentence</p> <p>the above order</p> <p><sup>5</sup> The appellant applies to the Court for leave to appeal against the above decision.</p>	
Grounds of appeal <sup>6</sup>	1.	
Notice to the respondent	If you want to take part in this appeal you must lodge a Form 22 under the <i>Criminal Procedure Rules 2005</i> within 7 days after you are served with this notice and serve it on the appellant.	
Last date for appealing	Last date: Is an extension of time needed? Yes/No	
Legal representation	Is the appellant legally represented in this appeal? Yes/No <sup>7</sup> Is the appellant applying for legal aid? Yes/No	

Appellant's details for service <sup>7</sup>		
Name <sup>8</sup>	Fax No.	
Street address		
Telephone		
Email address		
Reference No.		
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

Notes to Form 20 —

1. If the appeal is not against a conviction or sentence or other order made as a result of a conviction (see the *Criminal Appeals Act 2004* s. 6 “decision”), delete the following and describe the decision being appealed.
2. Describe the offence. E.g. Dangerous driving causing death. If there is more than one conviction, put the details of the other convictions, sentences and orders on an attachment.
3. State the sentence. E.g. Imprisonment for 18 months with a parole eligibility order cumulative on the sentence for robbery.
4. State any other order made. E.g. Disqualified from holding or obtaining a driver's licence for 4 years.
5. Tick this box if the appeal is against a decision other than a conviction or sentence or other order made as a result of a conviction. See note 1.
6. Set out the grounds in numbered paragraphs.
7. If the appellant is represented by a lawyer, the appellant's details below must be the lawyer's. If the appellant is self-represented, the details must be the appellant's personal details.
8. Leave this line blank if the appellant is self-represented.

**cl. 21**

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**21.      Service certificate (r. 65(7))**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Service certificate</b>
Parties to the appeal	Appellant Respondent	
Certificate	I certify that on [date] at [place] [name of server] served the respondent personally with — <ul style="list-style-type: none"><li>● a copy of an appeal notice dated [date]; and</li><li>● a copy of every other document that was lodged with the appeal notice.</li></ul> I undertake to lodge an affidavit of service if the Court requires me to.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

**22. Notice of respondent's intention (r. 67)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
<b>Notice of respondent's intention</b>		
Parties to the appeal	Appellant Respondent	
Notice [Tick one box]	The respondent intends to take part in this appeal. The respondent does not intend to take part in this appeal and will accept any order made by the court in the appeal other than as to costs.	
Cross appeal [Tick one box]	The respondent is not appealing against the primary court's decision specified in the appellant's appeal notice. The respondent also appeals against the primary court's decision specified in the appellant's appeal notice.	
Last date for appealing <sup>1</sup>	Last date: Is an extension of time needed? Yes/No	
Leave to appeal <sup>1</sup>	Is leave to appeal needed? Yes/No If yes, state the Act and section requiring leave:	
Legal representation	Is the respondent legally represented in this appeal? Yes/No <sup>2</sup> Is the respondent applying for legal aid? Yes/No	
<b>Respondent's details for service<sup>2</sup></b>		
Name <sup>3</sup> Street address Telephone Email address Reference No.	Fax No.	
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

Notes to Form 22 —

1. Complete this only if the respondent also appeals against the primary court's decision.
2. If the respondent is represented by a lawyer, the respondent's details below must be the lawyer's. If the respondent is self-represented, the details must be the respondent's personal details.
3. Leave this line blank if the respondent is self-represented.

**cl. 23**

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**23.      Application in an appeal (r. 68)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Application in an appeal</b>
Parties to the appeal	Appellant Respondent	
Applicant	Appellant/Respondent	
Application <sup>1</sup>	The applicant applies for —	
Conference between parties [Tick one box]	The parties to this application have conferred about the issues giving rise to this application and have not resolved them. The parties to this application have not conferred about the issues giving rise to this application because <sup>2</sup>	
Signature of applicant or lawyer	Applicant/Applicant's lawyer	Date:

Notes to Form 23 —

1. State —
  - the order or orders sought; and
  - the written law and provision under which the application is made.
2. State the reasons why the parties have not conferred.



**24. Consent notice (r. 70 & 73)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Consent notice</b>
Parties to the appeal	Appellant Respondent	
Consent	We consent to the following order being made —	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:
Signature of respondent or lawyer	Respondent/Respondent's lawyer	Date:

**cl. 25**

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**25. Request for hearing (r. 63)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Request for hearing</b>
Parties to the appeal	Appellant Respondent	
Request	The appellant/respondent requests a hearing of the matter decided provisionally by [ <i>name of judge</i> ] on [ <i>date</i> ] in this appeal.	
Signature of party requesting or lawyer	Appellant/Respondent/ Appellant's lawyer/Respondent's lawyer	Date:

**26. Discontinuance notice (r. 72)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Discontinuance notice</b>
Parties to the appeal	Appellant Respondent	
Notice	The appellant discontinues this appeal.	
Signature of appellant or lawyer	Appellant/Appellant's lawyer	Date:

**27. Certificate of conclusion of criminal appeal (r. 74)**

Supreme Court of Western Australia <i>Criminal Appeals Act 2004 Part 2</i>		No:
		<b>Certificate of conclusion of criminal appeal</b>
Parties to the appeal	Appellant Respondent	
<b>Primary court's decision</b>		
Primary court	at	
Prosecution No.		
Prosecutor		
Accused		
Date of decision		
Judicial officer		
<b>Result of appeal</b>		
Supreme Court proceedings <sup>1</sup>	Date(s): Presiding judge:	
Final outcome <sup>2</sup>	Date:	
Certificate	I certify that the information in this certificate is true and correct.	
Signature	Registrar	Date:

Notes to Form 27 —

1. Do not complete if appeal is discontinued.
2. Set out the Court's judgment and any consequential orders made or, if the appeal was discontinued, that it was discontinued.

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

[r. 38(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 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.

**Notes**

<sup>1</sup> This is a compilation of the *Criminal Procedure Rules 2005* and includes the amendments made by the other written laws referred to in the following table.

**Compilation table**

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<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Criminal Procedure Rules 2005</i>	29 Apr 2005 p. 1885-964	2 May 2005 (see r. 2)
<i>Criminal Procedure Amendment Rules 2006</i>	15 Sep 2006 p. 3683-4	15 Sep 2006
<i>Criminal Procedure Amendment Rules 2009</i>	13 Oct 2009 p. 4034-5	r. 1 and 2: 13 Oct 2009 (see r. 2(a)); Rules other than r. 1 and 2: 14 Oct 2009 (see r. 2(b))
<i>Criminal Procedure Amendment Rules 2010</i>	21 Dec 2010 p. 6755-7	r. 1 and 2: 21 Dec 2010 (see r. 2(a)); Rules other than r. 1 and 2: 22 Dec 2010 (see r. 2(b))
<i>Criminal Procedure Amendment Rules 2011</i>	12 Jul 2011 p. 2923-4	r. 1 and 2: 12 Jul 2011 (see r. 2(a)); Rules other than r. 1 and 2: 13 Jul 2011 (see r. 2(b))

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