

MAGISTRATES COURT OF WESTERN AUSTRALIA



PRACTICE DIRECTION 1 OF 2014
Use of Electronic Devices in Court

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- 1 The Practice Direction takes effect from Tuesday, 4 February 2014.
- 2 Subject to any direction to the contrary by the presiding Magistrate or the court, this Practice Direction regulates the use of electronic devices to record, transmit or receive by anyone attending the court. Special provisions are made:
- (a) for legal representatives and self-represented litigants engaged in a case at paragraphs 8 and 11. This Practice Direction does not override any conditions which apply to self-represented litigants who are in custody, although application can be made by them to the presiding Magistrate to allow use (see paragraphs 12 - 15); and
 - (b) for bona fide members of the media at paragraph 11 (but see also paragraphs 16 - 17).
- 3 This Practice Direction:
- (a) prohibits the use of electronic devices to harass or intimidate persons attending court (paragraph 6);
 - (b) regulates the use of electronic devices:

- (i) to create audio or visual records, including photographs (paragraphs 7 - 8); and
 - (ii) for other purposes (paragraphs 9 - 11);
 - (c) regulates applications for leave to depart from the terms of this Practice Direction (paragraphs 12 - 15); and
 - (d) provides for the identification of bona fide members of the media seeking to make use of special provisions under this Practice Direction (paragraphs 16 - 17).
- 4 This Practice Direction applies to any electronic device capable of recording, transmitting or receiving information whether audio, visual or other data in any format (including but not limited to mobile phones, computers, tablets and cameras) and the term 'devices' used hereafter is to be construed accordingly. This Practice Direction does not apply to the making or use of sound recordings for the purposes of official transcripts or proceedings.
- 5 With the relaxation of some of the restrictions on the use of devices in the court, and in particular the potential for members of the media to use live text-based communications, such as mobile email, social media (including Twitter) and internet enabled laptops from court:
- (a) legal representatives and self-represented litigants should:
 - (i) ensure that applications for suppression orders are timely and, wherever possible, foreshadowed prior to evidence being heard or admitted;
 - (ii) apply to vary the application of this Practice Direction if there are concerns about its application in a particular case (see paragraphs 12 - 15);
 - (b) members of the media should exercise additional care to ensure that material they communicate:

- (i) is not subject to any suppression order or other restriction which may be affected by the publication of the material (eg the potential to inform witnesses who are excluded from the court while other evidence is being adduced); and
- (ii) can be deleted immediately if a suppression order is made subsequent to the communication.

Use of devices to harass or intimidate

- 6 Devices must not be used in a way which constitutes intimidation or harassment of persons attending court whether in the courtroom, in the court building or in public spaces exterior but adjacent to the court building.

Audio or visual recording

- 7 Any form of audio or visual recording, including photography, or any actions which appear to be or are preparatory to the making of audio or visual recordings or the taking of photographs are prohibited without the leave of the presiding Magistrate or the court (see paragraphs 12 - 15 in relation to applications for leave) and subject to paragraph 8. This prohibition applies inside the courtrooms and the court building, whether or not the court is in session.
- 8 Legal practitioners and self-represented litigants may make audio recordings on a dictaphone or other device outside the courtroom but inside the court building.

Uses other than audio or visual recording

- 9 Devices are not to be used within the courtroom in any manner which could interfere with the smooth and efficient operation of the court, or the comfort or convenience of other uses of the courtroom, whether or not the court is in session.

- 10 While the court is in session, except as provided in paragraph 11 or in accordance with permission granted by the court or presiding Magistrate (see paragraphs 12 - 15), all devices are to be turned off and their use within the courtroom is prohibited.
- 11 Devices may be used within the courtroom while the court is in session by:
- (a) members of the legal profession and self-represented litigants (if not in custody) who are engaged in the case; and
 - (b) bona fide members of the media;
- provided:
- (c) earphones are not used;
 - (d) the device is in silent mode and does not make any noise.

Applying for leave to depart from the terms of this Practice Direction

- 12 Applications for leave under paragraphs 2, 7 or 10 may be made orally or in writing:
- (a) to the presiding Magistrate in the particular courtroom; or
 - (b) if the application does not relate to particular proceedings, to the Chief Magistrate.
- 13 Leave under paragraphs 2, 7 or 10 may be granted or refused at the discretion of the court or a Magistrate. Leave may be granted subject to such conditions as the court or a Magistrate thinks proper. Where leave has been granted the court or a Magistrate may withdraw or amend leave either generally or in relation to any particular part of the proceedings.

- 14 The discretion to grant, withhold or withdraw leave to use any device or to impose conditions as to the use of any material generated by the use of a device or devices is to be exercised in the interests of justice and giving due weight to the open justice principle. However, the following factors may be relevant to the exercise of the discretion by the court or Magistrate:
- (a) the existence of any reasonable need on the part of the applicant, whether a legal representative, self-represented litigant (including those in custody) or a person connected with the media, for the device to be used or for any audio or visual recording or photograph to be made;
 - (b) in a case in which a direction has been given excluding one or more witnesses from the court, the risk that any audio or visual recording, including photographs, could be used for the purpose of briefing witnesses out of court or informing such witnesses of what has transpired in court in their absence; and
 - (c) any possibility that the use of any such device would disturb the proceedings or distract or cause alarm or concern to any witnesses or other participants in the proceedings.
- 15 If the discretion to grant leave to use a device outside the terms of this Practice Direction is granted, consideration will generally be given to the conditions which might be imposed regarding the use of any audio or visual recordings, including photographs, made with leave.

Identifying members of the media

- 16 Media representatives seeking to make use of the exception provided at paragraph 11 are expected to produce photo identification issued by the media organisation they represent and verifying their accreditation should this be requested by court staff.

- 17 If a media representative is unable to produce such identification when requested, court staff will contact the court's Media Liaison Officer to verify that a person seeking to make use of the exception allowed at paragraph 11 is a bona fide member of the media. Any question or issue as to whether a person is a bona fide member of the media will be determined by the Media Liaison Officer.

Dated and signed this 31st day of January 2014

S Heath
Chief Magistrate