Western Australia

Magistrates Court Act 2004

Magistrates Court Regulations 2005

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## Part 1 — Preliminary

##### 1. Citation

These regulations are the *Magistrates Court Regulations 2005*.

##### 2. Commencement

These regulations come into operation on the day on which the *Magistrates Court Act 2004* comes into operation.

##### 3. Terms used

In these regulations, unless the contrary intention appears —

country court means the Magistrates Court sitting at a place outside the Perth metropolitan region;

metropolitan court means the Magistrates Court sitting at a place in the Perth metropolitan region;

Perth metropolitan region has the meaning given to the term ***metropolitan region*** by the *Metropolitan Region Town Planning Scheme Act 1959*1.

## Part 2 — Metropolitan courts

##### 4. JP not to constitute court unless requested to do so

(1) A JP must not constitute a metropolitan court, either alone or with another JP, unless he or she has been requested to do so by —

(a) a registrar; or

(b) a deputy registrar who has been directed by a magistrate or a registrar to make the request.

(2) A registrar must not request a JP to constitute a metropolitan court, and a registrar must not direct a deputy registrar to make such a request, unless —

(a) a magistrate has requested that the court be constituted by JPs; or

(b) it is not practicable for a magistrate to constitute the court at the time when and the place where the court has to sit.

##### 5. When 2 JPs may constitute the court in civil cases

(1) A metropolitan court constituted by 2 JPs alone may deal with an application made under the *Restraining Orders Act 1997* for a family violence restraining order or violence restraining order at a hearing in the absence of the respondent fixed under section 26(2) of that Act.

(2) A metropolitan court constituted by 2 JPs alone may adjourn the following for hearing by the Magistrates Court constituted by a magistrate —

(a) an application made under the *Prohibited Behaviour Orders Act 2010* section 5 for a PBO;

(b) an application made under the *Prohibited Behaviour Orders Act 2010* section 21 to vary or cancel a PBO.

(3) A metropolitan court constituted by 2 JPs alone must not deal with PBO proceedings under the *Prohibited Behaviour Orders Act 2010* except as permitted by subregulation (2).

[Regulation 5 amended: Gazette 24 Jun 2011 p. 2507‑8; 27 Jun 2017 p. 3435.]

##### 6. When 2 JPs may constitute the court in criminal cases

(1) A metropolitan court constituted by 2 JPs alone may do any of the following —

(a) perform the court’s functions under the *Bail Act 1982* sections 5(2) and 7(1) in relation to bail for an accused for an appearance in the Magistrates Court, other than an initial appearance, and under the *Restraining Orders Act 1997* section 63(1);

(b) deal with an application made under the *Criminal Procedure Act 2004* for an adjournment and perform the court’s functions under section 75 of that Act;

(c) adjourn a charge of a simple offence that, under the *Criminal Procedure Act 2004* section 50(3), 52(1) or 53(1), has to be adjourned to a new court date;

(d) deal with a charge of a simple offence under a road law if —

(i) under the *Criminal Procedure Act 2004*, the accused has been served with a summons or a court hearing notice in relation to the offence; and

(ii) the accused is present in court; and

(iii) both the accused and the prosecutor consent to the prosecution being dealt with by the court constituted by 2 JPs alone; and

(iv) the accused pleads guilty;

(e) deal with a charge of a simple offence under a road law if —

(i) under the *Criminal Procedure Act 2004*, the accused has been served with a summons or a court hearing notice in relation to the charge; and

(ii) the accused is not present in court,

and either —

(iii) the court has received a written plea of guilty to the charge from the accused under the *Criminal Procedure Act 2004*; or

(iv) the court has not received a written plea from the accused under the *Criminal Procedure Act 2004*.

(2) In subregulation (1)(d) and (e) —

road law has the meaning given in the *Road Traffic (Administration) Act 2008* section 4.

[Regulation 6 amended: Gazette 10 Feb 2015 p. 615‑16.]

##### 7. When one JP may constitute the court in criminal cases

(1) One JP must not constitute a metropolitan court unless advised by a registrar or a deputy registrar that it is impracticable in the circumstances to also request a second JP to constitute the court.

(2) A metropolitan court constituted by one JP alone may do any of the following —

(a) perform the court’s functions under the *Bail Act 1982* sections 5(2) and 7(1) in relation to bail for an accused for an appearance in the Magistrates Court, other than an initial appearance, and under the *Restraining Orders Act 1997* section 63(1);

(b) deal with an application made under the *Criminal Procedure Act 2004* for an adjournment and perform the court’s functions under section 75 of that Act;

(c) adjourn a charge of a simple offence that, under the *Criminal Procedure Act 2004* section 50(3), 52(1) or 53(1), has to be adjourned to a new court date.

## Part 3 — Country courts

##### 8. JP not to constitute court unless requested to do so

(1) A JP must not constitute a country court, either alone or with another JP, unless he or she has been requested to do so by —

(a) a registrar; or

(b) a deputy registrar who has been directed by a magistrate or a registrar to make the request.

(2) A registrar must not request a JP to constitute a country court, and a registrar must not direct a deputy registrar to make such a request, unless —

(a) a magistrate has requested that the court be constituted by JPs; or

(b) a magistrate is not listed to constitute the court at the time when and the place where the court is due to sit; or

(c) the magistrate who is listed to constitute the court is unable to attend at the time when and the place where the court is due to sit.

##### 9. When 2 JPs may constitute the court in civil cases

(1) A country court may be constituted by 2 JPs alone for the purposes of dealing with an application made under the *Restraining Orders Act 1997* for a family violence restraining order or violence restraining order at a hearing in the absence of the respondent fixed under section 26(2) of that Act.

(2) A country court constituted by 2 JPs alone may adjourn the following for hearing by the Magistrates Court constituted by a magistrate —

(a) an application made under the *Prohibited Behaviour Orders Act 2010* section 5 for a PBO;

(b) an application made under the *Prohibited Behaviour Orders Act 2010* section 21 to vary or cancel a PBO.

(3) A country court constituted by 2 JPs alone must not deal with PBO proceedings under the *Prohibited Behaviour Orders Act 2010* except as permitted by subregulation (2).

[Regulation 9 amended: Gazette 24 Jun 2011 p. 2508; 27 Jun 2017 p. 3435.]

##### 10. When 2 JPs may constitute the court in criminal cases

(1) A country court constituted by 2 JPs alone may do any of the following —

(a) perform the court’s functions under the *Bail Act 1982* sections 5(2) and 7(1) in relation to bail for an accused for an appearance in the Magistrates Court, other than an initial appearance, and under the *Restraining Orders Act 1997* section 63(1);

(b) exercise the court’s jurisdiction under the *Bail Act 1982* section 59B;

(c) deal with an application made under the *Criminal Procedure Act 2004* for an adjournment and perform the court’s functions under section 75 of that Act;

(d) adjourn a charge of a simple offence that, under the *Criminal Procedure Act 2004* section 50(3), 52(1) or 53(1), has to be adjourned to a new court date;

(e) deal with a charge of an offence if —

(i) the accused is present in court; and

(ii) both the accused and the prosecutor consent to the prosecution being dealt with by the court constituted by 2 JPs alone; and

(iii) the accused pleads guilty;

(f) deal with a charge of an offence if the accused is not present in court and either —

(i) the court has received a written plea of guilty to the charge from the accused under the *Criminal Procedure Act 2004*; or

(ii) the court has not received a written plea from the accused under the *Criminal Procedure Act 2004*.

(2) A country court constituted by 2 JPs alone must not, when dealing with a charge of an indictable offence —

(a) deal with proceedings, or make an order, under *The Criminal Code* section 5 in respect of the charge; or

(b) deal with proceedings, or make an order, under the *Criminal Procedure Act 2004* section 138 in respect of the charge; or

(c) determine (as that term is defined in the *Criminal Procedure Act 2004*) the charge; or

(d) under the *Criminal Procedure Act 2004*,dismiss the charge for want of prosecution.

[Regulation 10 amended: Gazette 27 Feb 2009 p. 519.]

##### 11. When one JP may constitute the court in criminal cases

(1) One JP must not constitute a country court unless advised by a registrar or a deputy registrar that it is impracticable in the circumstances to also request a second JP to constitute the court.

(2) A country court constituted by one JP may do any of the following —

(a) perform the court’s functions under the *Bail Act 1982* sections 5(2) and 7(1) in relation to bail for an accused for an appearance in the Magistrates Court, other than an initial appearance, and under the *Restraining Orders Act 1997* section 63(1);

(b) exercise the court’s jurisdiction under the *Bail Act 1982* section 59B;

(c) deal with an application made under the *Criminal Procedure Act 2004* for an adjournment and perform the court’s functions under section 75 of that Act;

(d) adjourn a charge of a simple offence that, under the *Criminal Procedure Act 2004* section 50(3), 52(1) or 53(1), has to be adjourned to a new court date.

[Regulation 11 amended: Gazette 27 Feb 2009 p. 519.]

## Part 4 — Miscellaneous

[Heading inserted: Gazette 22 Aug 2008 p. 3668.]

##### 12. Persons prescribed (Act s. 33(7)(i))

For the purposes of section 33(7)(i) the following persons are prescribed —

(a) the CEO as defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4;

(b) an officer of the Department assisting the CEO in carrying out a criminal record check as those terms are defined in the *Working with Children (Criminal Record Checking) Act 2004* section 4;

(ba) the CEO as defined in the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 5(1);

(bb) an officer assisting the CEO in carrying out a criminal record check as those terms are defined in the *National Disability Insurance Scheme (Worker Screening) Act 2020* section 5(1);

(ca) the chief executive officer as defined in the *Prisons Act 1981* section 3(1);

(cb) a person authorised by the chief executive officer as defined in the *Prisons Act 1981* section 3(1);

(c) the chief executive officer of the department of the Public Service principally assisting the Minister in the administration of the Act.

[Regulation 12 inserted: Gazette 22 Aug 2008 p. 3668-9; amended: Gazette 27 Apr 2012 p. 1767; 30 Sep 2014 p. 3597; SL 2021/26 r. 6.]

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Notes

This is a compilation of the *Magistrates Court Regulations 2005* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

| **Citation** | **Published** | **Commencement** |
| --- | --- | --- |
| *Magistrates Court Regulations 2005* | 28 Apr 2005 p. 1561-71 | 1 May 2005 (see r. 2 and *Gazette* 31 Dec 2004 p. 7127) |
| *Magistrates Courts Amendment Regulations 2008* | 22 Aug 2008 p. 3668-9 | r. 1 and 2: 22 Aug 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 23 Aug 2008 (see r. 2(b)) |
| *Magistrates Court Amendment Regulations 2009* | 27 Feb 2009 p. 518-19 | r. 1 and 2: 27 Feb 2009 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Mar 2009 (see r. 2(b) and *Gazette* 27 Feb 2009 p. 511) |
| *Magistrates Court Amendment Regulations 2011* | 24 Jun 2011 p. 2507‑8 | r. 1 and 2: 24 Jun 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 25 Jun 2011 (see r. 2(b)) |
| *Magistrates Court Amendment Regulations 2012* | 27 Apr 2012 p. 1766‑7 | r. 1 and 2: 27 Apr 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 28 Apr 2012 (see r. 2(b)) |
| **Reprint 1: The *Magistrates Court Regulations 2005* as at 17 Aug 2012** (includes amendments listed above) | | |
| *Magistrates Court Amendment Regulations (No. 2) 2014* | 30 Sep 2014 p. 3597 | r. 1 and 2: 30 Sep 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Oct 2014 (see r. 2(b)) |
| *Magistrates Court Amendment Regulations 2015* | 10 Feb 2015 p. 615-16 | r. 1 and 2: 10 Feb 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 27 Apr 2015 (see r. 2(b) and *Gazette* 17 Apr 2015 p. 1371) |
| *Attorney General Regulations Amendment (Family Violence Restraining Orders) Regulations 2017* Pt. 6 | 27 Jun 2017 p. 3432‑5 | 1 Jul 2017 (see r. 2(b)) |
| *Attorney General Regulations Amendment (NDIS) Regulations 2021* Pt. 3 | SL 2021/26 26 Feb 2021 | 27 Feb 2021 (see r. 2(b)) |

Other notes

1 Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 4.

Defined terms

*[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]*

**Defined term Provision(s)**

country court 3

metropolitan court 3

Perth metropolitan region 3