

JU301\*

Magistrates Court Act 2004

## **Magistrates Court (General) Amendment Rules 2014**

Made by the Magistrates Court.

### **1. Citation**

These rules are the *Magistrates Court (General) Amendment Rules 2014*.

### **2. Commencement**

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

### **3. Rules amended**

These rules amend the *Magistrates Court (General) Rules 2005*.

**4. Rule 3 amended**

- (1) In rule 3 insert in alphabetical order:

*approved user*, of the courts electronic system, has the meaning given in the *Criminal Procedure Regulations 2005* regulation 3(1);

*courts electronic system* means the electronic system for the management of proceedings in Western Australian courts;

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

- (2) In rule 3 in the definition of *registry* delete “Court.” and insert:

Court;

**5. Rule 7 replaced**

Delete rule 7 and insert:

**7. Applying court seal electronically**

For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10, a document that is required to be sealed by the Court is authenticated if —

- (a) the Court issues the document in an electronic form; and
- (b) the electronic document bears a facsimile of the Court’s seal.

**6. Rules 12 and 13 replaced**

Delete rules 12 and 13 and insert:

**12. Lodging documents through Court’s website**

- (1) Subject to the requirements of the Court’s website, a person may lodge a document electronically by lodging an electronic version of it by means of the Court’s website.
- (2) A document that must be signed by or on behalf of a person cannot be lodged electronically under this rule unless —
  - (a) the document is an affidavit; or

- (b) the document is lodged by —
    - (i) the person who signed it; or
    - (ii) the person on whose behalf it was signed; or
    - (iii) a person who is acting for either of those persons.
- (3) A document lodged electronically under this rule that is to be signed by or on behalf of the person by whom it is lodged is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
  - (a) the Court's website records the identity of the person who lodges the document; and
  - (b) the name of the person who signed the document is stated in the electronic version of the document at any place where the person's signature is required.
- (4) An affidavit lodged electronically under this rule is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
  - (a) an electronic version of it that includes the signatures on it is lodged; or
  - (b) the electronic version that is lodged includes a statement of the name of the person who signed the affidavit at any place where a signature appears in the paper version.
- (5) A person by or on behalf of whom an affidavit is lodged under this rule must —
  - (a) have possession of the paper version signed according to law; and
  - (b) ensure that, subject to any order of the Court, arrangements are made for the retention of the paper version.
- (6) A document lodged electronically under this rule which is directed to a registry is to be taken to have been lodged at the registry —
  - (a) if the whole document is received before 4.30 p.m. on a day when the registry is open for business, on that day;
  - (b) otherwise, on the next day when the registry is open for business.

- (7) If a document sent electronically to a registry by means of the Court's website is not sent in accordance with the requirements of the Court's website and this rule —
  - (a) the document is to be taken not to have been lodged at the registry; and
  - (b) a registrar must notify the person who sent it of the fact.
- (8) A person by or on behalf of whom a document is lodged electronically under this rule must ensure that the paper version of the document is available at any conference or hearing in the case concerned.
- (9) The Court may at any time, on the application of a party or on its own initiative, order a person who has lodged a document electronically under this rule to lodge the paper version of the document.

**13A. Lodging documents by means of courts electronic system**

- (1) An approved user may lodge a document electronically by providing the information required for the completion of the document by means of the courts electronic system.
- (2) If a document is or must be signed by a person who is not, or who is not acting on behalf of, the person lodging it, the document cannot be lodged electronically under this rule unless it is an affidavit.
- (3) A document lodged electronically under this rule that is to be signed by or on behalf of the person lodging it is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if —
  - (a) the courts electronic system records the identity of the person who lodges the document; and
  - (b) the name of the person who signed the document is stated in the electronic version of the document at any place where the person's signature is required.
- (4) An affidavit lodged electronically under this rule is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if the electronic version that is lodged includes a statement of the name of the person who signed the affidavit at any place where a signature appears in the paper version.



- (5) A person who lodges an affidavit under this rule must —
  - (a) have possession of the paper version signed according to law; and
  - (b) ensure that arrangements are made for the retention of the paper version subject to any order of the Court.
- (6) A document lodged under this rule which is directed to a registry is to be taken to have been lodged at the registry —
  - (a) if the whole document is received before 4.30 p.m. on a day when the registry is open for business, on that day;
  - (b) otherwise, on the next day when the registry is open for business.
- (7) If a document sent electronically to a registry by means of the courts electronic system is not sent in accordance with the requirements of the courts electronic system and this rule —
  - (a) the document is to be taken not to have been lodged at the registry; and
  - (b) a registrar must notify the person who sent it of the fact.

**13B. Making documents available to court by means of courts electronic system**

- (1) An approved user may make a document available to the Court electronically by means of the courts electronic system.
- (2) A document that is required to be signed and is made available electronically under this rule is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if the name of the person who signed the document is stated in the electronic version of the document at any place where a signature appears in the paper version of the document.
- (3) A person who makes available a document under this rule that is required to be signed must, subject to any order of the Court, be satisfied that arrangements have been made for the paper version of the document to be retained.

**13. Electronic address for service**

- (1) A person may give an electronic address for service in accordance with this rule.

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- (2) A person may give a fax number as an address for service by providing —
    - (a) a residential or business address; and
    - (b) a fax number that operates at that address.
  - (3) A person who is not registered by the Court's website as a person authorised to lodge documents electronically may give an email address as an address for service by providing —
    - (a) a residential or business address; and
    - (b) an email address at which documents may be given to, or accepted on behalf of, the person.
  - (4) If a lawyer practises in a business with one or more other lawyers or people —
    - (a) any fax number provided under subrule (2) must be the fax number of the business and not that of the lawyer personally; and
    - (b) any email address provided under subrule (3) must be the email address of the business and not that of the lawyer personally.
  - (5) A self-represented person who resides in Australia and is registered by the Court's website as a person authorised to lodge documents electronically may give an email address as an address for service by providing —
    - (a) a residential or business address; and
    - (b) an email address that is the email address of the party provided in connection with that registration.
  - (6) A lawyer, or the business for which a lawyer works, that has a business address in Australia and is registered by the Court's website as a person authorised to lodge documents electronically may give an email address as an address for service by providing —
    - (a) a residential or business address; and
    - (b) an email address that is the email address of the lawyer or business provided in connection with that registration.
  - (7) A person who under this rule provides an address for service that is a fax number or an email address is to be taken to consent to being served with documents by fax at that fax number, or as an attachment to an email sent to that email address, as the case may be.

- (8) If a person's fax number or email address provided under this rule changes, the person must lodge and serve a notice of change of address as soon as practicable after the change occurs.
- (9) The notice of change of address for service must be in the approved form.

**7. Rule 14 amended**

- (1) In rule 14(1):
  - (a) delete "then, unless the contrary intention appears,";
  - (b) in paragraph (a) delete "13(1)," and insert:

13(2),
- (2) In rule 14(2) after "12(2)" insert:

or 13A(2)
- (3) Delete rule 14(4) and insert:
  - (4) A document served by email that must be signed by a person is authenticated for the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10 if the electronic version of the document that is served states the name of the person whose signature appears in the paper version of the document at each place where a signature is required.
- (4) In rule 14(7) delete "the".

Note: The heading to amended rule 14 is to read:

**Service by fax or email**

**8. Rule 15A inserted**

At the end of Part 2 Division 3 insert:

**15A. Documents issued by court by means of courts electronic system**

- (1) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 12(1), a document that is to be issued to a person by the court is issued to the person if —
  - (a) the person is an approved user of the courts electronic system in respect of a document of

- that type and an electronic version of the document is issued to the person by means of the courts electronic system; or
- (b) the person has provided an email address for service and an electronic version of the document is sent by email to the person at that address.
- (2) For the purposes of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 10, a document issued by the court that must be signed by the person issuing it is authenticated if —
- (a) the Court issues the document in an electronic form by means of the courts electronic system; and
- (b) the electronic document identifies the person who issued it.
- (3) A document that is issued to a person in accordance with subrule (1) is to be taken to have been issued —
- (a) if the whole document is available before 4.30 p.m. on a working day, on that day;
- (b) otherwise, on the next working day.

**9. Rule 45 replaced**

Delete rule 45 and insert:

**45. Manner of lodging prosecution notice (CPA s. 24)**

- (1) Unless subrule (2) applies, a prosecution notice must be lodged by means of the courts electronic system in accordance with rule 13A.
- (2) A prosecution notice may be lodged by handing a hard copy of the notice to the Court if —
- (a) the person lodging the notice does not have access to the courts electronic system; or
- (b) the Court agrees to the notice being lodged in that manner.
- (3) If a hard copy of a prosecution notice is handed to the Court, an officer of the Court must —
- (a) enter the details of the prosecution notice into the courts electronic system; and
- (b) ensure that the original document is retained on the Court's records.



**45A. Substituted prosecution notices**

- (1) In this rule —  
*substituted prosecution notice* means a prosecution notice that is intended to replace a prosecution notice that has been lodged but not finally disposed of.
- (2) If a substituted prosecution notice is lodged but not served on the accused, and the accused fails to appear for the next court appearance scheduled in relation to the original prosecution notice, the charges contained in the substituted prosecution notice must —
- (a) be removed from the list of matters for hearing; or
  - (b) held in a temporary list and only formally listed when the accused next appears in relation to the original prosecution notice.

**45B. Form of remand warrant for accused**

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

**10. Rule 46B inserted**

At the end of Part 6 insert:

**46B. Magistrates and registrars to verify orders**

- (1) If a magistrate or a registrar makes an order in respect of a prosecution notice the magistrate or registrar must —
- (a) ensure that the order is noted on a hard copy of the prosecution notice and sign or initial the order; or
  - (b) ensure that the order is noted on the electronic version of the prosecution notice and verify the making of the order by means of the courts electronic system.

- (2) If under subrule (1)(a) an order is noted on a hard copy of the prosecution notice, an officer of the Court must ensure that the order is also noted on the electronic version of the prosecution notice.

Magistrates' signatures:

STEVEN HEATH, Chief Magistrate.

ELIZABETH WOODS, Deputy Chief Magistrate.

LEANNE ATKINS, Magistrate.

FELICITY ZEMPILAS, Magistrate.