

JU304

Magistrates Court (Civil Proceedings) Act 2004

Magistrates Court Rules Amendment (Inactive Cases) Rules 2019

Made by the Magistrates Court in accordance with the *Magistrates Court Act 2004* section 39.

Part 1 — Preliminary

1. Citation

These rules are the *Magistrates Court Rules Amendment (Inactive Cases) Rules 2019*.

2. Commencement

These rules come into operation as follows —

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

Part 2 — *Magistrates Court (Civil Proceedings) Rules 2005* amended

3. Rules amended

This Part amends the *Magistrates Court (Civil Proceedings) Rules 2005*.

4. Part 16A heading replaced

Delete the heading to Part 16A and insert:

Part 16A — Inactive cases

5. Rule 95A replaced

Delete rule 95A and insert:

95A. Term used: inactive case

In this Part —

inactive case means a case that is taken to be inactive under rule 95B.

6. Rule 95B amended

Delete rule 95B(4).

7. Rule 95C replaced

Delete rule 95C and insert:

95C. Notification of inactive case

- (1) When a case becomes an inactive case, the Court is to give all parties to the case written notice of —
 - (a) the fact that the case has become an inactive case and why; and
 - (b) the effect of rule 95D.
- (2) If a lawyer representing a party receives a notice under subrule (1), the lawyer is to notify the party as soon as practicable of —
 - (a) the fact that the case has become an inactive case and why; and
 - (b) the effect of rule 95D.

8. Rule 95D amended

In rule 95D delete “a case on the Inactive Cases List” and insert:

an inactive case

Note: The heading to amended rule 95D is to read:

Consequences of case becoming an inactive case

9. Rules 95E and 95F replaced

Delete rules 95E and 95F and insert:

95E. Cases no longer taken to be inactive

- (1) A party to an inactive case may apply to the Court for an order that the case is no longer taken to be inactive.

- (2) The Court may order that an inactive case is no longer taken to be inactive —
 - (a) if it is satisfied that the case will be conducted in a timely way; or
 - (b) for any other good reason.
- (3) When the Court orders that an inactive case is no longer taken to be inactive, it may make further orders for the conduct of the case in a timely way.

95F. Certain inactive cases taken to be dismissed

- (1) A case that is an inactive case for 6 continuous months is taken to be dismissed.
- (2) If no procedural step is taken in the 6 months after the Court orders that an inactive case is no longer taken to be inactive, the case is taken to be dismissed.
- (3) If a case is taken to have been dismissed under subrule (1) or (2) —
 - (a) a party to the case may apply for an order for costs; and
 - (b) the Court may make an order for costs.
- (4) The Court may, in exceptional circumstances and on such terms as it thinks just, set aside the dismissal of a case under this rule.
- (5) For the purposes of subrule (4), it does not matter that the case was taken to be dismissed before the commencement of that subrule.

**Part 3 — Magistrates Court (Minor Cases Procedure)
Rules 2005 amended**

10. Rules amended

This Part amends the *Magistrates Court (Minor Cases Procedure) Rules 2005*.

11. Part 10A heading replaced

Delete the heading to Part 10A and insert:

Part 10A — Inactive cases

12. Rule 45A replaced

Delete rule 45A and insert:

45A. Term used: inactive case

In this Part —

inactive case means a case that has become inactive under rule 45B.

13. Rule 45B amended

Delete rule 45B(4).

14. Rule 45C replaced

Delete rule 45C and insert:

45C. Notification of inactive cases

- (1) If your case becomes an inactive case, the Court is to give you and all the other parties to the case written notice of —
 - (a) the fact that the case has become an inactive case and why; and
 - (b) the effect of rule 45D.
- (2) If an agent representing a party to a case receives a notice under subrule (1), the agent is to notify the party as soon as practicable of —
 - (a) the fact that the case has become an inactive case and why; and
 - (b) the effect of rule 45D.

15. Rule 45D amended

In rule 45D delete “on the Inactive Cases List,” and insert:

an inactive case,

Note: The heading to amended rule 45D is to read:

Consequences of case becoming an inactive case

16. Rules 45E and 45F replaced

Delete rules 45E and 45F and insert:

45E. Cases no longer taken to be inactive

- (1) If your case is an inactive case, you may apply to the Court for an order that the case is no longer taken to be inactive.
- (2) The Court may order that an inactive case is no longer taken to be inactive —
 - (a) if it is satisfied that the case will be conducted in a timely way; or
 - (b) for any other good reason.
- (3) When the Court orders that your case is no longer taken to be inactive, it may make further orders for the conduct of the case in a timely way.

45F. Dismissal of inactive cases

- (1) If your case remains an inactive case for 6 continuous months, it is taken to be dismissed.
- (2) If the Court orders that your case is no longer taken to be inactive and neither you nor any other party to the case takes any procedural step in the case in the 6 months after the date of the order, your case is taken to be dismissed.
- (3) If your case is taken to be dismissed under subrule (1) or (2) —
 - (a) you or any other party to the case may apply for an order for costs; and
 - (b) the Court may make an order for costs.
- (4) The Court may, in exceptional circumstances and on such terms as it thinks just, set aside the dismissal of your case under this rule.
- (5) For the purposes of subrule (4), it does not matter that your case was taken to be dismissed before the commencement of that subrule.

STEVEN HEATH, Chief Magistrate,
Magistrates Court in Perth.

Dated: 1 April 2019.
