PERTH, TUESDAY, 5 MAY 2020   No. 69   SPECIAL

Magistrates Court (Civil Proceedings) Act 2004

Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2020

SL 2020/54

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

1.   Citation

These rules are the *Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2020*.

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* (**gazettal day**);

(b)   rule 10(b) — on the day on which the *Restraining Orders Amendment Regulations 2020* regulation 4 comes into operation;

(c)   the rest of the rules — on the day after gazettal day.

3.   Rules amended

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

4.   Rule 4 amended

In rule 4 insert in alphabetical order:

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

ECMS means the electronic case management system for the management of proceedings in Western Australian courts and tribunals;

5. Rule 95 amended

In rule 95 delete "In" and insert:

Except as otherwise provided in these rules, in

6. Rule 131CA amended

(1) In rule 131CA(2) delete "A registrar" and insert:

The Court

(2) Delete rule 131CA(3) and insert:

    (3) Subject to subrule (4), the Court must fix a hearing that is to be held in the absence of one party by —
        (a) fixing a day, time and place for the hearing; and
        (b) notifying the party who is to be present at the hearing.

    (4) If the Court has not fixed a hearing under subrule (3), an approved user acting for the party who is to be present may select the day, time and place (the *hearing details*) for the hearing by means of the ECMS.

    (5) When the hearing details have been selected under subrule (4), the Court must give notice to confirm the hearing details by means of the ECMS to the approved user.

7. Rule 131CB amended

(1) In rule 131CB(2) after "prepared" insert:

by means of the ECMS

(2) In rule 131CB(3):
    (a) delete "a registrar" and insert:

        the Court

      (b)   delete paragraphs (c) and (d) and insert:

            (c)   the police copy of the order to be delivered by means of the ECMS to the Commissioner of Police.

    (3)   After rule 131CB(3) insert:

      (4)   Delivery of a document under subrule (3)(b) may be by means of the ECMS if an approved user is acting for the person to whom the document is to be delivered.

      (5)   When subrule (3) has been complied with, the court copy of the order must be placed by means of the ECMS on the Court's records.

8. Rules 131CC to 131CF inserted

After rule 131CB insert:

131CC. Application for FVRO under *Restraining Orders Act 1997* s. 24A

    (1)   This rule applies for the purposes of an application for an FVRO under the *Restraining Orders Act 1997* section 24A.

    (2)   The application must be made —
            (a)   in person, using the form set out in Schedule 1 Form 1; or
            (b)   if an approved user is acting for the applicant and the application is being made by means of the ECMS — by providing the information required by the ECMS to make the application.

131CD. Application for VRO under *Restraining Orders Act 1997* s. 25

    (1)   This rule applies for the purposes of an application for a VRO under the *Restraining Orders Act 1997* section 25.

    (2)   The application must be made —
            (a)   in person, using the form set out in Schedule 1 Form 5; or
            (b)   if an approved user is acting for the applicant and the application is being made by means of the ECMS — by providing the information required by the ECMS to make the application.

131CE. Applicant's declaration if application is to be made by ECMS

(1) If an application is to be made by means of the ECMS under rule 131CC(2)(b) or 131CD(2)(b), the approved user must —

(a) read out to the applicant the information provided by the applicant that is to form the evidence in support of the application; and

(b) ask the applicant to declare that the information is true; and

(c) if the applicant makes that declaration, record that fact in the application.

(2) If the applicant does not make the declaration referred to in subrule (1), the application cannot be made by means of the ECMS.

131CF. Relationship with *Magistrates Court (General) Rules 2005* Pt. 2 Div. 3

If there is an inconsistency between rules 131CA to 131CE and the *Magistrates Court (General) Rules 2005* Part 2 Division 3 in relation to the ECMS, rules 131CA to 131CE prevail to the extent of the inconsistency.

9.   Schedule 1 Form 1 amended

In Schedule 1 Form 1:

(a) in the row relating to Grounds for application delete "Give details of the respondent's behaviour." and insert:

Set out details of the evidence in support of your application.

(b) after the row relating to Firearms insert:

Police incident *[Reference number to be inserted, if applicable]*	

(c) in the row relating to Applicant before the row relating to Hearing delete "[*Not essential if applicant is a police officer*]" and insert:

[*Not essential if lodged by means of the ECMS or if applicant is a police officer*]

(d) in the row relating to Hearing delete "Signature of registrar:";

     (e)   delete the following:

Notification [*To be filled in by the court*]	I certify that on __ __/__ __/__ __ __ __ at _____ am/pm at _____ I notified the applicant of the hearing date. Signature of registrar:

     (f)   at the end of Form 1 insert:

Approved user to certify applicant's declaration [*If applicable*]	I [*Insert name of approved user*] certify that I have read out to the applicant the information the applicant provided to me that forms the evidence in support of this application, and the applicant has declared that the information is true.

10. Schedule 1 Form 2 amended

In Schedule 1 Form 2 Part E in the row relating to Certificate:

     (a)   delete "Part 6 Division 2." and insert:

          section 60(2)(a).

     (b)   before "In the case of oral service," insert:

          ❐   I took the steps prescribed by regulations under the *Restraining Orders Act 1997* section 60(2)(b) to effect substituted service of this order on the person who is bound by the order.

11. Schedule 1 Form 5 amended

In Schedule 1 Form 5:

     (a)   in the row relating to Grounds for application delete "Give details of the respondent's behaviour." and insert:

          Set out details of the evidence in support of your application.

     (b)   after the row relating to Firearms insert:

Police incident [*Reference number to be inserted, if applicable*]	

     (c)   in the row relating to Applicant before the row relating to Hearing delete "[*Not essential if applicant is a police officer*]" and insert:

          [*Not essential if lodged by means of the ECMS or if applicant is a police officer*]

     (d)   in the row relating to Hearing delete "Signature of registrar:";

    (e)   delete the following:

Notification [*To be filled in by the court*]	I certify that on __ __/__ __/__ __ __ __ at _____ am/pm at _____ I notified the applicant of the hearing date. Signature of registrar:

    (f)   at the end of Form 5 insert:

Approved user to certify applicant's declaration [*If applicable*]	I [*Insert name of approved user*] certify that I have read out to the applicant the information the applicant provided to me that forms the evidence in support of this application, and the applicant has declared that the information is true.

Dated 1 May, 2020.

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Mr STEVEN HEATH, Chief Magistrate,
Magistrates Court in Perth.

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