Western Australia

Magistrates Court Regulations 2005

Compare between:

[23 Aug 2008, 00-b0-04] and [01 Mar 2009, 00-c0-02]

Western Australia

Magistrates Court Act 2004

Magistrates Court Regulations 2005

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.   Interpretation

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*.

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

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

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

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 the *Road Traffic Act 1974* 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;

(ii)   the accused is present in court;

(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 the *Road Traffic Act 1974* 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*.

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;

        (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

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 violence restraining order at a hearing in the absence of the respondent fixed under section 26(2) of that Act.

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 5659B;

(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;

    (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;

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

(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 in 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 5659B;

(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 in Gazette 27 Feb 2009 p. 519.]

Part 4 — Miscellaneous

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

12.   Access to Court's records

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.

[Regulation 12 inserted in Gazette 22 Aug 2008 p. 3668-9.]

Notes

This is a compilation of the *Magistrates Court Regulations 2005* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	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 Courts 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)