



Western Australia

## **Magistrates Court Regulations 2005**

Compare between:

[01 Oct 2014, 01-b0-00] and [10 Feb 2015, 01-c0-01]



Western Australia

Magistrates Court Act 2004

## Magistrates Court Regulations 2005

### Part 1 — Preliminary

**1. Citation**

These regulations are the *Magistrates Court Regulations 2005*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on the day on which the *Magistrates Court Act 2004* comes into operation<sup>1</sup>.

**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*<sup>2</sup>.

## **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 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 in Gazette 24 Jun 2011 p. 2507-8.]*

**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; 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 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; 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 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 in Gazette 24 Jun 2011 p. 2508.]

**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 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 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 in Gazette 27 Feb 2009 p. 519.]

**Part 4 — Miscellaneous**

*[Heading inserted in 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;
- (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 in Gazette 22 Aug 2008 p. 3668-9; amended in Gazette 27 Apr 2012 p. 1767; 30 Sep 2014 p. 3597.]*



## Notes

- <sup>1</sup> 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 <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Magistrates Court Regulations 2005</i>	28 Apr 2005 p. 1561-71	1 May 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7127)
<i>Magistrates Courts Amendment Regulations 2008</i>	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))
<i>Magistrates Court Amendment Regulations 2009</i>	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 <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Magistrates Court Amendment Regulations 2011</i>	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))
<i>Magistrates Court Amendment Regulations 2012</i>	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))
<b>Reprint 1: The <i>Magistrates Court Regulations 2005</i> as at 17 Aug 2012</b> (includes amendments listed above)		
<i>Magistrates Court Amendment Regulations (No. 2) 2014</i>	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))

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

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**Provisions that have not come into operation**

<u>Citation</u>	<u>Gazettal</u>	<u>Commencement</u>
<u>Magistrates Court Amendment Regulations 2015 r. 3 and 4</u> <sup>3</sup>	<u>10 Feb 2015</u> <u>p. 615-16</u>	<u>Operative on the day fixed under the Road Traffic (Administration) Act 2008 section 2(b) (see r. 2(b))</u>

<sup>2</sup> Repealed by the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 4.

<sup>3</sup> On the date as at which this compilation was prepared, the *Magistrates Court Amendment Regulations 2015* r. 3 and 4 had not come into operation. They read as follows:

**3. Regulations amended**

These regulations amend the *Magistrates Court Regulations 2005*.

**4. Regulation 6 amended**

(1) In regulation 6:

(a) delete “A” and insert:

(1) A

(b) in paragraphs (d) and (e) delete “the *Road Traffic Act 1974*” and insert:

a road law

(2) At the end of regulation 6 insert:

(2) In subregulation (1)(d) and (e) —

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