

Western Australia

Magistrates Court Act 2004

## **Magistrates Court Regulations 2005**

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## Magistrates Court Regulations 2005

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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**

- (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).

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[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;
  - (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 —

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- (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**

- (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.

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- (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;
    - (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 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. 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;
- (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.]*

**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.

**Compilation table**

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| <b>Citation</b>  | <b>Gazettal</b>           | <b>Commencement</b>  |
|--|---------------------------|--|
| <i>Magistrates Court Regulations 2005</i>                | 28 Apr 2005<br>p. 1561-71 | 1 May 2005 (see r. 2 and <i>Gazette</i><br>31 Dec 2004 p. 7127)  |
| <i>Magistrates Courts Amendment<br/>Regulations 2008</i> | 22 Aug 2008<br>p. 3668-9  | r. 1 and 2: 22 Aug 2008 (see<br>r. 2(a));<br>Regulations other than r. 1 and 2:<br>23 Aug 2008 (see r. 2(b))   |
| <i>Magistrates Court Amendment<br/>Regulations 2009</i>  | 27 Feb 2009<br>p. 518-19  | r. 1 and 2: 27 Feb 2009 (see<br>r. 2(a));<br>Regulations other than r. 1 and 2:<br>1 Mar 2009 (see r. 2(b) and<br><i>Gazette</i> 27 Feb 2009 p. 511) |
| <i>Magistrates Court Amendment<br/>Regulations 2011</i>  | 24 Jun 2011<br>p. 2507-8  | r. 1 and 2: 24 Jun 2011 (see<br>r. 2(a));<br>Regulations other than r. 1 and 2:<br>25 Jun 2011 (see r. 2(b))   |
| <i>Magistrates Court Amendment<br/>Regulations 2012</i>  | 27 Apr 2012<br>p. 1766-7  | r. 1 and 2: 27 Apr 2012<br>(see r. 2(a));<br>Regulations other than r. 1 and 2:<br>28 Apr 2012 (see r. 2(b))   |

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