



Western Australia

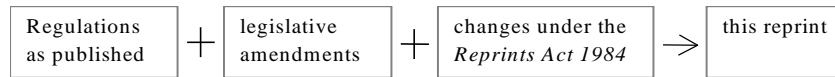
Magistrates Court Act 2004

# **Magistrates Court Regulations 2005**

**Reprint 1: The regulations as at 17 August 2012**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Magistrates Court Regulations 2005

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 17 August 2012

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;

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- (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.

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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; 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;
- (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 reprint is a compilation as at 17 August 2012 of the *Magistrates Court Regulations 2005* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<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)		

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

**Defined Terms**

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**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
country court .....	3
metropolitan court .....	3
Perth metropolitan region .....	3