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MAGISTRATES COURT ACT 2004

MAGISTRATES COURT REGULATIONS 2005

Western Australia

Magistrates Court Regulations 2005

CONTENTS

Part 1 — Preliminary

1. Citation
2. Commencement
3. Interpretation

Part 2 — Metropolitan courts

4. JP not to constitute court unless requested to do so
5. When 2 JPs may constitute the court in civil cases
6. When 2 JPs may constitute the court in criminal cases
7. When one JP may constitute the court in criminal cases

Part 3 — Country courts

8. JP not to constitute court unless requested to do so
9. When 2 JPs may constitute the court in civil cases
10. When 2 JPs may constitute the court in criminal cases
11. When one JP may constitute the court in criminal cases

Magistrates Court Act 2004

Magistrates Court Regulations 2005

Made by the Governor in Executive Council.

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*.

Magistrates Court Regulations 2005**Part 2** Metropolitan courts**r. 4**

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);

Magistrates Court Regulations 2005

Metropolitan courts

Part 2**r. 6**

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- (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*.

Magistrates Court Regulations 2005**Part 2** Metropolitan courts**r. 7**

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.

Magistrates Court Regulations 2005

Country courts

Part 3**r. 8****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

Magistrates Court Regulations 2005**Part 3** Country courts**r. 10**

- initial appearance, and under the *Restraining Orders Act 1997* section 63(1);
- (b) exercise the court's jurisdiction under the *Bail Act 1982* section 56;
 - (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

Magistrates Court Regulations 2005

Country courts

Part 3**r. 11**

- (d) under the *Criminal Procedure Act 2004*, dismiss the charge for want of prosecution.

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 56;
 - (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.

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
