

**WESTERN
AUSTRALIAN
GOVERNMENT
Gazette**

ISSN 1448-949X

1561



PERTH, THURSDAY, 28 APRIL 2005 No. 74 SPECIAL

PUBLISHED BY AUTHORITY JOHN A. STRIJK, GOVERNMENT PRINTER AT 3.00 PM

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MAGISTRATES COURT ACT 2004

**MAGISTRATES COURT
REGULATIONS 2005**

Western Australia

Magistrates Court Regulations 2005

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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*.

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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);

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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*.

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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.

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- (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

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- 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

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- (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.



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