

## **Magistrates Court Rules Amendment Rules 2021**

**SL 2021/25**

Made by the Magistrates Court in accordance with the *Magistrates Court Act 2004* section 39.

### **Part 1 — Preliminary**

**1. Citation**

These rules are the *Magistrates Court Rules Amendment Rules 2021*.

**2. Commencement**

These rules come into operation as follows —

- (a) Part 1 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

### **Part 2 — *Magistrates Court (Civil Proceedings) Rules 2005* amended**

**3. Rules amended**

This Part amends the *Magistrates Court (Civil Proceedings) Rules 2005*.

**4. Rule 5 amended**

In rule 5(1) after “Unless” insert:

the contrary intention appears or

**5. Rule 41B amended**

In rule 41B after “defence” (second occurrence) insert:

and

**6. Part 16 replaced**

Delete Part 16 and insert:

## Part 16 — Lodging documents

### 95. Terms used

In this Part —

**ECMS exempt**, in relation to a document, has the meaning given in rule 96;

**lodge a document** means to present the document for lodgment in accordance with this Part.

### 96. ECMS exempt

- (1) A person is ECMS exempt in relation to a document if —
  - (a) the document is lodged for the purposes of proceedings or matters referred to in the *Magistrates Court (General) Rules 2005* rule 51; or
  - (b) the document is lodged for the purposes of an application under the *Restraining Orders Act 1997*; or
  - (c) the document is lodged for the purposes of an application under the *Children and Community Services Act 2004* section 35; or
  - (d) the document is in a class of documents declared in practice directions to be exempt from the requirement to be lodged by using the ECMS; or
  - (e) the person is in a class of persons declared in practice directions to be exempt from the requirement to lodge by using the ECMS; or
  - (f) the document is lodged for the purposes of an application for exemption under subrule (2) or (3); or
  - (g) the person is exempt in relation to the document under subrule (2) or (3).
- (2) The Court may, for any good reason and without a formal application or request, exempt a person from a requirement to use the ECMS in relation to —
  - (a) a document relating to a proceeding; or
  - (b) all documents relating to a proceeding; or
  - (c) all documents relating to all proceedings.
- (3) A registrar may, on the application of a person, exempt the person from a requirement to use the ECMS in relation to —
  - (a) a document relating to a proceeding; or

- (b) all documents relating to a proceeding.
- (4) The application must be in the approved form.
- (5) If the Court or a registrar exempts a person under subrule (2) or (3), the Court or the registrar may give directions as to the manner in which a document is to be presented for lodgment, including as to whether the document is to be presented to the Court —
  - (a) by delivering it by hand; or
  - (b) by email in accordance with rule 98D; or
  - (c) by post in accordance with rule 98F; or
  - (d) by fax in accordance with rule 98G.

**97. General rules about lodging documents**

- (1) A person who is required by these rules or the Court to lodge a document, or who wants to do so, must present the document to the Court for lodgment in accordance with this Part.
- (2) The person must present the document for lodgment together with —
  - (a) any fee required to be paid under the *Magistrates Court (Fees) Regulations 2005*; or
  - (b) any information the Court needs to enable the Court to be paid the fee.
- (3) A party required by these rules or the Court to lodge a document cannot, without the Court's leave, refer to or rely on the document in any hearing, or in any other document to be lodged, unless it has been lodged.
- (4) For the purposes of subrule (3), a document is lodged if it has —
  - (a) been lodged with the Court in accordance with this Part; and
  - (b) not been rejected by the Court or a registrar under rule 98B(1); and
  - (c) been recorded by the Court as having been lodged.
- (5) A party given leave under subrule (3) must lodge the document as soon as practicable after leave is given or otherwise in accordance with a relevant order of the Court.

**98. Registry at which originating claims and applications must be lodged**

- (1) Except as provided in this rule, an originating claim or an application referred to in rule 124 may be lodged at any registry of the Court where there is at least 1

registrar who is not a deputy registrar appointed under the *Magistrates Court Act 2004* section 26(5).

- (2) An originating claim to recover possession of real property must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the property.
- (3) An application under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52N(1) must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the last known address of the offender (as defined in rule 123).
- (4) An application under the *Criminal Investigation Act 2006* section 49 or 147 must be lodged at the registry of the Court referred to in subrule (1) that is nearest to the relevant protected forensic area or the place where the relevant seized thing is secured, as the case requires.

**98A. Lodging multiple copies**

- (1) A person must not present more than 1 copy of a document to the Court for lodgment unless these rules or the Court requires more than 1 copy to be lodged.
- (2) A person is taken to have complied with a requirement in these rules or by the Court to lodge 2 or more copies of a document if the document is lodged by using the ECMS or by email.

**98B. Powers of the Court in relation to lodgment**

- (1) The Court or a registrar may reject a document that is presented for lodgment if —
  - (a) the form and content of the document do not comply with these rules and any Court order or direction; or
  - (b) the document is not presented in accordance with this Part.
- (2) If the Court or a registrar rejects a document under subrule (1), a registrar must notify the person who presented the document for lodgment.
- (3) If a document is lodged other than by using the ECMS, the Court or a registrar may, where necessary, convert the document to an electronic format and record it in the ECMS as if it had been lodged by using the ECMS.

**98C. Requirement to lodge documents using the ECMS**

- (1) A person must present a document for lodgment by using the ECMS unless —
  - (a) the person is ECMS exempt in relation to the document; or
  - (b) the ECMS —
    - (i) has been declared unavailable for use under rule 99; or
    - (ii) is otherwise unavailable for use; or
    - (iii) does not permit the document to be lodged.
- (2) A person who is not required to present a document for lodgment by using the ECMS may, subject to rule 96(5), lodge the document —
  - (a) by delivering it by hand; or
  - (b) by email in accordance with rule 98D; or
  - (c) by post in accordance with rule 98F; or
  - (d) by fax in accordance with rule 98G; or
  - (e) by using the ECMS.
- (3) The Court may at any time, on the application of a party or on the Court's own initiative, order a person who has presented a document for lodgment by using the ECMS to do either or both of the following —
  - (a) have the original document with the person at any conference or hearing in the course of the case concerned;
  - (b) lodge the original document by a means specified in the order.

**98D. Lodging by email**

- (1) An email by which documents are presented for lodgment in relation to a proceeding must —
  - (a) state the sender's name; and
  - (b) state the title and number of the proceeding to which the documents relate; and
  - (c) list and describe the documents being presented for lodgment by the email; and
  - (d) give an explanation of the basis on which the documents may be lodged by email instead of by using the ECMS.
- (2) A person who presents a document for lodgment by email must —
  - (a) endorse the first page of the original document with —

- (i) a statement that the document is the original of a document sent by email; and
  - (ii) the date and time the document was sent by email;
- and
- (b) keep the endorsed original document and produce it if required to do so by the Court.
- (3) A document presented for lodgment by email must be sent to the email address of the Court registry where the case is being heard.
- (4) The Court may at any time, on the application of a party or on the Court's own initiative, order a person who has presented a document for lodgment by email to do either or both of the following —
  - (a) have the original document with the person at any conference or hearing in the course of the case concerned;
  - (b) lodge the original document by a means specified in the order.

**98E. Form of documents lodged using ECMS or by email**

- (1) This rule applies to a document presented for lodgment —
  - (a) by using the ECMS; or
  - (b) by email.
- (2) Subrule (3) applies to a document that —
  - (a) under these rules or the *Magistrates Court (General) Rules 2005*, must be signed before it is lodged; and
  - (b) is not listed in subrule (4).
- (3) If a document to which this subrule applies is to be presented for lodgment —
  - (a) the document must be signed; and
  - (b) a copy of the document, in .docx format, must be presented instead of the signed copy; and
  - (c) the copy of the document in .docx format must, at any place in it where a signature would otherwise be required, state the name of the person who is required to sign it.
- (4) Subrule (5) applies to the following documents —
  - (a) an affidavit;
  - (b) a consent to the Court doing anything;

- (c) a document to be signed by a person who is not a party to the proceedings.
- (5) A document to which this subrule applies must be —
  - (a) signed; and
  - (b) presented in .pdf format.
- (6) A person who presents a document for lodgment under subrule (3) or (5) must keep the signed copy and produce it if required to do so by the Court.

**98F. Lodging by post**

- (1) A document presented for lodgment by post must have a cover page —
  - (a) stating the name of the person sending the document; and
  - (b) stating the title and number of the proceeding to which the document relates; and
  - (c) stating a description of the document; and
  - (d) giving an explanation of the basis on which the document is being lodged by post instead of by using the ECMS.
- (2) A document presented for lodgment by post must be sent to the postal address of the Court registry where the case is being heard.

**98G. Lodging by fax**

- (1) A document presented for lodgment by fax must have a cover page —
  - (a) stating the name, postal address, telephone number and fax number of the person sending the document; and
  - (b) stating the title and number of the proceeding to which the document relates; and
  - (c) stating a description of the document; and
  - (d) giving an explanation of the basis on which the document is being lodged by fax instead of by using the ECMS; and
  - (e) stating the number of pages (including the cover page) being sent by fax.
- (2) A person who presents a document for lodgment by fax must —
  - (a) endorse the first page of the original document with —
    - (i) a statement that the document is the original of a document sent by fax; and

- (ii) the date and time the document was sent by fax;
  - and
  - (b) keep the endorsed original document and the fax machine's report evidencing the successful transmission of the document; and
  - (c) produce the items referred to in paragraph (b) if directed to do so by the Court.
- (3) A document presented for lodgment by fax must be sent to the fax number of the Court registry where the case is being heard.
- (4) A person must not present a document for lodgment by fax that, with any attachments and a cover page, has more than 20 pages and any such document received by the Court is taken not to have been presented for lodgment.
- (5) The Court may at any time, on the application of a party or on the Court's own initiative, order a person who has presented a document for lodgment by fax to do either or both of the following —
- (a) have the original document with the person at any conference or hearing in the course of the case concerned;
  - (b) lodge the original document by a means specified in the order.

**98H. Time of lodgment**

- (1) A document lodged by using the ECMS is taken to have been lodged on the day and at the time recorded by the ECMS.
- (2) Subrule (1) does not apply to a document that is recorded in the ECMS under rule 98B(3) as if it had been lodged by using the ECMS.
- (3) A document lodged by email or fax is taken to have been lodged —
- (a) if the whole document is received before 4 pm on a day when the Court registry is open for business, on that day;
  - (b) otherwise, on the next day when the Court registry is open for business.

**99. Chief Magistrate may declare ECMS unavailable**

- (1) The Chief Magistrate may, in any manner the Chief Magistrate thinks fit, declare that the ECMS is unavailable for use for a period specified by the Chief Magistrate.



- (2) The Chief Magistrate, in writing, may delegate the Chief Magistrate's function under this rule to 1 or more other officers of the Court.
- (3) For the purposes of these rules, a declaration made by a delegate of the Chief Magistrate under this rule is taken to be a declaration made by the Chief Magistrate.

**7. Rule 123 amended**

- (1) In rule 123 insert in alphabetical order:

***audio link*** has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

***Fines Enforcement Registrar*** means the Registrar as defined in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 3(1);

***offender*** —

- (a) has the meaning given in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 28(1); and

- (b) includes a person liable to pay an amount referred to in Part 5 of that Act;

***video link*** has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

***warrant of commitment inquiry*** has the meaning given in the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52M(1).

- (2) In rule 123 in the definition of ***conferring Act*** delete “124.” and insert:

124;

**8. Rule 124 amended**

In rule 124(1) in the Table in the item for *Fines, Penalties and Infringement Notices Enforcement Act 1994* before “69(1),” insert:

52N(1),

**9. Rule 126 amended**

In rule 126(1) after “129D,” insert:

130A,

**10. Rule 127 amended**

In rule 127(1A) in the Table in the item for *Fines, Penalties and Infringement Notices Enforcement Act 1994* before “94.” insert:

52N(1),

**11. Rule 128 amended**

Delete rule 128(1) and insert:

- (1) This rule does not apply to an application made to the Court under —
  - (a) the *Mandatory Testing (Infectious Diseases) Act 2014* section 16; or
  - (b) the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52N(1).

**12. Rules 130A to 130E inserted**

After rule 129 insert:

**130A. Application under *Fines, Penalties and Infringement Notices Enforcement Act 1994* s. 52N(1)**

- (1) An application under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52N(1) must be lodged with any documentation and evidence required by section 52O(2) of that Act.
- (2) The evidence required by the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52O(2)(b) must be provided by way of affidavit.
- (3) Rule 126(1) does not apply to the application.
- (4) Parts 16, 19 and 22 apply, with any necessary modifications, to the application.

**130B. Dealing with application under *Fines, Penalties and Infringement Notices Enforcement Act 1994* s. 52N(1)**

- (1) The magistrate dealing with an application under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52N(1) may, in chambers and in the absence of the Fines Enforcement Registrar and the offender —
  - (a) grant the application; or

- (b) direct that the application be listed for hearing by a magistrate.
- (2) The Court must notify the Fines Enforcement Registrar of the details of a hearing referred to in subrule (1)(b).
- (3) The notification must be at least 5 clear days before the date listed for the hearing unless the magistrate considers the hearing to be urgent.
- (4) The magistrate hearing the application may grant or refuse it.

**130C. Process where summons issued under *Fines, Penalties and Infringement Notices Enforcement Act 1994* Pt. 4 Div. 3E**

- (1) This rule applies if the Court decides to hold a warrant of commitment inquiry and issues a summons under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52Q(1)(a) for the offender to appear at the inquiry.
- (2) The inquiry must be held at the registry of the Court at which the application for the inquiry was lodged.
- (3) The Fines Enforcement Registrar must arrange service of the summons in accordance with the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52V.

**130D. Process where arrest warrant issued under *Fines, Penalties and Infringement Notices Enforcement Act 1994* Pt. 4 Div. 3E**

- (1) In this rule —  
*Commissioner of Police* means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*.
- (2) This rule applies if the Court decides to hold a warrant of commitment inquiry and issues an arrest warrant under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52Q(1)(b) to have the offender arrested and brought before the Court for the inquiry.
- (3) If the offender is to be released under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52ZB(1)(b) or (3), the Court must set a time and place for the warrant of commitment inquiry.
- (4) If the arrest warrant ceases to be in force as a result of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52ZA(b)(ii) or (iv), the

Court must notify the Commissioner of Police that the arrest warrant is no longer in force.

**130E. Process for warrant of commitment inquiry under *Fines, Penalties and Infringement Notices Enforcement Act 1994* Pt. 4 Div. 3E**

- (1) This rule applies if the Court decides to hold a warrant of commitment inquiry.
- (2) The Court must notify the Fines Enforcement Registrar of the time and location at which the inquiry will be held.
- (3) The notification under subrule (2) must be given immediately in the case of an offender who is brought before the Court under an arrest warrant issued under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52Q(1)(b), or who appears voluntarily in Court following the issue of the warrant.
- (4) The Fines Enforcement Registrar may appear before the Court at the inquiry —
  - (a) in the case of an inquiry held outside the metropolitan region (as defined in the *Planning and Development Act 2005* section 4(1)) — in person or by video link or audio link; or
  - (b) in any other case — in person or, with the leave of the Court, by video link or audio link.
- (5) If the Court makes an order under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 52S(1), the Court must immediately notify the Fines Enforcement Registrar of the order.

**13. Rule 143 amended**

In rule 143 delete “(1) At” and insert:

At

**Part 3 — *Magistrates Court (General) Rules 2005*  
amended**

**14. Rules amended**

This Part amends the *Magistrates Court (General) Rules 2005*.

**15. Rule 3 amended**

In rule 3 insert in alphabetical order:

*ECMS exempt*, in relation to a document, has the meaning given in the *Magistrates Court (Civil Proceedings) Rules 2005* rule 96;

**16. Rule 8 amended**

In rule 8(b) delete “rule 96; and” and insert:

rule 98; and

**17. Rule 8A amended**

After rule 8A(2) insert:

- (3) For the purposes of subrule (1), a document that is lodged by using the ECMS is taken to have been lodged at the registry where the case is being conducted.

**18. Rule 11A inserted**

At the beginning of Part 2 Division 3 insert:

**11A. Certain rules do not apply to civil proceedings**

Rules 11, 12 and 13A do not apply to or in relation to proceedings in the civil jurisdiction of the Magistrates Court.

**19. Rule 11 amended**

In rule 11(6)(a) delete “4.30 p.m.” and insert:

4 pm

**20. Rule 12 amended**

In rule 12(6)(a) delete “4.30 p.m.” and insert:

4 pm

**21. Rule 13A amended**

In rule 13A(6)(a) delete “4.30 p.m.” and insert:

4 pm

**22. Rules 13C and 13D inserted**

After rule 13B insert:

**13C. Access to applications, notices and other documents through ECMS**

- (1) A requirement to notify a person or give them a copy of a document in relation to a proceeding is satisfied, on a day, if —
  - (a) the notice or document becomes accessible using the ECMS to the person before 5 pm on that day; and
  - (b) electronic notification that the notice or document is accessible is sent to the person before 5.00 p.m. on that day; and
  - (c) the person is not a person who —
    - (i) is ECMS exempt; and
    - (ii) does not have access to the ECMS in relation to the proceeding.
- (2) In subrule (1) —  
*electronic notification*, in relation to a person, includes notification via an email sent to an email address provided by the person.

**13D. Listing matters for hearing using ECMS**

- (1) This rule applies to a requirement to list an appeal for hearing under rule 28 or list an application for hearing under Part 7 or 8.
- (2) The requirement to list an appeal for hearing is satisfied if the ECMS lists the appeal.
- (3) The requirement to list an application for hearing or insert hearing details on a form is satisfied if the ECMS lists the application or inserts the details (as the case may be).

**23. Rule 36 amended**

In rule 36(2) delete “written”.

**24. Rule 51 amended**

- (1) In rule 51(1) delete “a Form 5” and insert:

the approved form

- (2) In rule 51(3) delete “a Form 7” and insert:

the approved form

**25. Rule 52 amended**

- (1) In rule 52(2) delete “a Form 5,” and insert:

an application under the RT (AD) Act section 27,

- (2) In rule 52(3) delete “a Form 7,” and insert:

an application under the RT (AD) Act section 35(1),

**26. Schedule 2 amended**

- (1) Delete Schedule 2 Form 5.  
(2) Delete Schedule 2 Form 7.

**Part 4 — *Magistrates Court (Minor Cases Procedure)*  
Rules 2005 amended**

**27. Rules amended**

This Part amends the *Magistrates Court (Minor Cases Procedure) Rules 2005*.

**28. Rule 4 amended**

In rule 4 insert in alphabetical order:

*ECMS* means the electronic case management system for the management of proceedings in Western Australian courts and tribunals;

*ECMS exempt*, in relation to a document, has the meaning given in the *Magistrates Court (Civil Proceedings) Rules 2005* rule 96;

**29. Part 10 replaced**

Delete Part 10 and insert:

## **Part 10 — How to lodge documents**

### **45. How to lodge a document**

To lodge a document you must present it to the Court following the rules in this Part together with —

- (a) the fee (if any) required to be paid under the *Magistrates Court (Fees) Regulations 2005*; or
- (b) any information the Court needs to enable the Court to be paid the fee.

### **46. Where you may lodge a claim that starts a case**

You may lodge a claim that starts a case at any registry of the Court except a registry of the Court where the only registrar is a member of the Police Force who is a deputy registrar under the *Magistrates Court Act 2004* section 26(5).

### **47. You must lodge a document by using the ECMS unless these rules permit you not to**

- (1) You must lodge a document by using the ECMS unless —
  - (a) you are ECMS exempt in relation to the document; or
  - (b) the ECMS —
    - (i) has been declared unavailable for use under the *Magistrates Court (Civil Proceedings) Rules 2005* rule 99; or
    - (ii) is otherwise unavailable for use; or
    - (iii) does not permit the document to be lodged.
- (2) If you are not required to lodge a document by using the ECMS, you may lodge it by —
  - (a) delivering it by hand; or
  - (b) emailing it (see rule 48); or
  - (c) posting it (see rule 49C); or
  - (d) faxing it (see rule 49C).

### **48. Lodging documents by email**

If you want to lodge a document by email and you are permitted to do so by these rules, you must comply with the lodgment requirements set out in the *Magistrates Court (Civil Proceedings) Rules 2005* rule 98D.



**49. Form of documents lodged using ECMS or by email**

- (1) You must comply with this rule if you want to lodge a document by using the ECMS or by email.
- (2) If the document is an affidavit, a consent to the Court doing anything, or a document signed by someone who is not a party to your case, you must —
  - (a) ensure that the document is signed; and
  - (b) convert it to .pdf format; and
  - (c) lodge the document; and
  - (d) keep the signed copy and produce it if required to do so by the Court.
- (3) For any other document that must be signed under the *Magistrates Court (General) Rules 2005* or the *Magistrates Court (Civil Proceedings) Rules 2005*, you must —
  - (a) ensure that the document is signed; and
  - (b) present a copy of the document, in .docx format, instead of the signed copy; and
  - (c) in any place in the copy of the document in .docx format where a signature would otherwise be required, state the name of the person who is required to sign it; and
  - (d) retain the signed copy and produce it if required to do so by the Court.

**49A. Time documents are lodged**

Documents lodged by using the ECMS or by email or fax are taken to have been lodged —

- (a) in the case of lodging by using the ECMS — on the day and at the time when the ECMS records the lodgment; and
- (b) in the case of lodging by email — on the day and at the time when the Court receives the email; and
- (c) in the case of lodging by fax — on the day and at the time when the Court receives the fax.

**49B. General provisions as to lodgment**

- (1) You do not need to comply with a requirement by the Court to lodge 2 or more copies of a document if you lodge the document by using the ECMS or by email.
- (2) The Court or a registrar may reject a document that you present for lodgment if —

- (a) the form and content of the document do not comply with these rules and any Court order or direction; or
  - (b) the document is not presented following the rules in this Part.
- (3) If the Court or a registrar rejects a document under subrule (2), a registrar must notify the person who presented the document for lodgment.
- (4) If you present a document for lodgment by using the ECMS or by email, the Court or a registrar may order you to —
  - (a) bring the original document to any conference or hearing in the case; or
  - (b) lodge the original document.

**49C. Lodging documents by post or fax**

If you want to lodge a document by post or fax and you are permitted to do so by these rules, you must comply with the lodgment requirements set out in the *Magistrates Court (Civil Proceedings) Rules 2005* rule 98F or 98G.

**49D. The Court may convert paper documents to electronic form**

The Court may convert the lodged paper copy of a document to an electronic format and record it in the ECMS as if it had been lodged by using the ECMS.

**30. Rule 86 amended**

In rule 86 delete “(1) At” and insert:

At

Dated 10 February 2021.

STEVEN HEATH, Chief Magistrate,  
Magistrates Court in Perth.

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