

Version No. 005
Magistrates' Court (Judicial Registrars)
Rules 2005

S.R. No. 166/2005

Version incorporating amendments as at 3 February 2010

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The Chief Magistrate together with 2 Deputy Chief Magistrates jointly make the following Rules:

1 Object

The object of these Rules is to—

- (a) prescribe proceedings that may be dealt with by the Court constituted by a judicial registrar; and
- (b) delegate to judicial registrars some of the powers of the Court; and
- (c) establish a procedure for the review by the Court of a hearing and determination of a proceeding by a judicial registrar.

2 Authorising provisions

These Rules are made under sections 16 and 16I of the **Magistrates' Court Act 1989**.

3 Commencement

These Rules come into operation on 1 January 2006.

4 Proceedings that may be dealt with by a judicial registrar

(1) A judicial registrar may deal with and exercise all or any powers of the Court in any of the following proceedings—

Rule 4(1)(a)
substituted by
S.R. No.
86/2007
rule 4(1).

(a) in a civil proceeding, the power to make orders, including final orders, with the consent of the parties to the proceeding (except for a proceeding under the **Crimes (Family Violence) Act 1987** or the Family Law Act 1975 of the Commonwealth); and

Rule 4(1)(ab)
inserted by
S.R. No.
86/2007
rule 4(1).

(ab) a proceeding for an order to remove a prisoner from a prison and to have the prisoner brought before the Court under regulation 19(1) of the Corrections Regulations 1998¹; and

Rule 4(1)(ac)
inserted by
S.R. No.
86/2007
rule 4(1).

(ac) subject to subrule (1A), a proceeding under sections 5, 6 and 7 of the **Instruments Act 1958**; and

Rule 4(1)(ad)
inserted by
S.R. No.
86/2007
rule 4(1).

(ad) a proceeding under section 5(1), 6(7)(b), 8, 13, 14 or 18 of the **Judgment Debt Recovery Act 1984**; and

(b) subject to subrule (2), a proceeding dealing with any article, thing or material brought before the Court under a search warrant in accordance with section 78(1)(b)(ii) of the **Magistrates' Court Act 1989**; and

(c) a complaint referred to arbitration in accordance with Division 2 of Part 5 of the **Magistrates' Court Act 1989**, provided that the amount of monetary relief sought is less than \$5000; and

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- (ca) the power of a registrar in a proceeding under Division 3 of Part 4 of the **Magistrates' Court Act 1989**; and
- Rule 4(1)(ca) inserted by S.R. No. 86/2007 rule 4(2).
- (cb) subject to subrule (1A), a proceeding under sections 110, 128(1), (3) and (4) of the **Magistrates' Court Act 1989** and section 94(1) of the **Criminal Procedure Act 2009**; and
- Rule 4(1)(cb) inserted by S.R. No. 86/2007 rule 4(2), amended by S.R. No. 6/2010 rule 4(1).
- (d) a civil proceeding or part of a civil proceeding that has been referred under section 107(1) of the **Magistrates' Court Act 1989** to a magistrate or a registrar for a pre-hearing conference; and
- (e) a proceeding—
- Rule 4(1)(e) substituted by S.R. No. 86/2007 rule 4(3).
- (i) for an offence which is an infringement offence or a lodgeable infringement offence within the meaning of the **Infringements Act 2006**, except for a proceeding under section 49 of the **Road Safety Act 1986**; or
- (ii) under the **Infringements Act 2006** that is not a proceeding of a kind referred to in subparagraph (i), except for a proceeding under section 87(2), 107, 127(1), 128(1), 133(1), 139, 143(2), 155, 156(4) or (5), 160(1), (3) or (4), 161A or 167 of that Act; and
- (f) a proceeding involving the exercise of any power under the Magistrates' Court Civil Procedure Rules 1999² that a magistrate may exercise except—
- (i) Rule 27.05, if the value of the property or proceeds is \$5000 or more; and
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- (ii) Rules 32.05(1), 35.04 and 35.05, apart from the power in Rule 35.05 in relation to inspection; and
- Rule 4(1)(fa) inserted by S.R. No. 86/2007 rule 4(4).
- (fa) an application under section 8 or 15 of the **Private Agents Act 1966**; and
- (g) a proceeding under sections 50(4) (including the power referred to in section 50(4D)), 50AAA(2), (3), (3A) and 50AAB(4) of the **Road Safety Act 1986**.
- Rule 4(1A) inserted by S.R. No. 86/2007 rule 4(5), amended by S.R. No. 6/2010 rule 4(2).
- (1A) Subject to this Rule, the powers of a judicial registrar in a proceeding under section 74 of the **Infringements Act 2006**, section 6 of the **Instruments Act 1958**, section 94(1) of the **Criminal Procedure Act 2009** or section 110 of the **Magistrates' Court Act 1989** do not include a power to re-hear the proceeding.
- Rule 4(2) substituted by S.R. No. 86/2007 rule 4(6).
- (2) The powers of a judicial registrar—
- (a) subject to paragraph (b), include a power to deal with and exercise all or any of the powers of a registrar under the Magistrates' Court Act 1989 and any other Act or the rules; and
- (b) in a proceeding referred to in subrule (1)(b), do not include any powers referred to in section 16I(b)(i) of the **Magistrates' Court Act 1989**.
- Rule 4(3) inserted by S.R. No. 34/2009 rule 4, amended by S.R. No. 6/2010 rule 4(3).
- (3) A judicial registrar may exercise all or any powers of the Court under section 59 of the **Criminal Procedure Act 2009** in a criminal proceeding for a summary offence or an indictable offence triable summarily.
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5 Review of decision of judicial registrar

- (1) A request under section 16K of the **Magistrates' Court Act 1989** for the review of the hearing and determination of a proceeding by the Court constituted by a judicial registrar must be in Form 1.
- (2) The request must be accompanied by an affidavit that must state the reasons for the request.
- (3) The request and the affidavit must be filed within 14 days after the day on which the order was made.
- (4) The Court may extend time under paragraph (3) before or after the time expires, whether or not a request for the review is made before the time expires.
- (5) The request for the review must be determined by the Court—
 - (a) after consideration of the request and the accompanying affidavit; and
 - (b) unless the Court otherwise directs, without notice to any person.

6 Stay

- (1) The filing of a request referred to in Rule 5 does not operate as a stay of any order made by the Court constituted by a judicial registrar.
- (2) A party making the request may apply to the Court for a stay of any order made by a judicial registrar in the proceeding.

7 Direction for review to operate as stay of order of judicial registrar

If the Court directs that the hearing and determination of a proceeding by the Court constituted by a judicial registrar be reviewed, the direction operates as a stay on any order made by the judicial registrar in the proceeding, unless the Court otherwise orders.

8 Notification of direction for review

A person who obtains from the Court a stay of an order made by a judicial registrar must notify all other parties of the stay.

SCHEDULE

Rule 5(1)

FORM 1

In the Magistrates' Court of Victoria at [venue of Court] No.

In the matter of a request for a direction under section 16K of the **Magistrates' Court Act 1989**.

BETWEEN [name of party] [title of party e.g. Plaintiff or Defendant or Informant]

AND [name of party] [title of party]

REQUEST FOR DIRECTION

Date of document:

Filed on behalf of the: [title of party]

Prepared by: [insert details]

TAKE NOTICE that the abovementioned [title of party] requests, under section 16K of the **Magistrates' Court Act 1989**, a direction that the hearing and determination of this proceeding constituted by [name of judicial registrar], a judicial registrar, on [insert date] be reviewed by the Court constituted by a magistrate.

*The order made by the judicial registrar in the proceeding was that [insert details of order made].

OR

*A copy of the order made by the judicial registrar in the proceeding is attached [attach copy of order].

Dated:

(Signed by the party making the request or the party's solicitors)

*Delete if inapplicable

Magistrates' Court (Judicial Registrars) Rules 2005

Sch.

S.R. No. 166/2005

Dated: 15 December 2005

IAN LESLIE GRAY,
Chief Magistrate

PETER HENRY LAURITSEN,
Deputy Chief Magistrate

PAUL DOUGLAS GRANT,
Deputy Chief Magistrate

ENDNOTES

1. General Information

The Magistrates' Court (Judicial Registrars) Rules 2005, S.R. No. 166/2005 were made on 15 December 2005 by the Chief Magistrate together with 2 Deputy Chief Magistrates jointly under sections 16 and 16I of the **Magistrates' Court Act 1989**, No. 51/1989 and came into operation on 1 January 2006: rule 3.

The Magistrates' Court (Judicial Registrars) Rules 2005 will sunset 10 years after the day of making on 15 December 2015 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Magistrates' Court (Judicial Registrars) Rules 2005 by statutory rules, subordinate instruments and Acts.

Magistrates' Court (Judicial Registrars) (Amendment) Rules 2007, S.R. No. 86/2007

Date of Making: 31.7.07

Date of Commencement: 1.8.07: rule 3

Magistrates' Court (Judicial Registrars) Amendment Rules 2009, S.R. No. 34/2009

Date of Making: 15.4.09

Date of Commencement: 20.4.09: rule 3

Magistrates' Court (Judicial Registrars) Amendment Rules 2010, S.R. No. 6/2010

Date of Making: 2.2.10

Date of Commencement: 3.2.10

3. Explanatory Details

¹ Rule 4(1)(ab): S.R. No. 52/1998. As amended by S.R. No. 14/2006.

² Rule 4(1)(f): S.R. No. 58/1999. Reprint No. 3 incorporating amendments as at 1 March 2005. Reprinted to S.R. No. 5/2005. Subsequently amended by S.R. No. 15/2005.