

Western Australia

Family Court Act 1997

Family Court Regulations 1998

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Family Court Regulations 1998

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Western Australia

Family Court Act 1997

Family Court Regulations 1998

Part 1 — Preliminary

[Heading inserted in Gazette 13 May 2011 p. 1738.]

1. Citation

These regulations may be cited as the *Family Court Regulations 1998*¹.

2. Commencement

These regulations come into operation on the day on which the *Family Court Act 1997* comes into operation¹.

3. Terms used in these regulations

- (1) In these regulations, unless the contrary intention appears —
 - authorised officer* means a person designated as an authorised officer under regulation 17B;
 - court* has the meaning referred to in section 8;
 - Family Law Regulations* means the *Family Law Regulations 1984* of the Commonwealth;
 - Family Law Rules* means the *Family Law Rules 2004* of the Commonwealth;
 - section* means section of the Act.
- (2) A reference in a Family Law Regulation adopted or applied under these regulations —
 - (a) to the Family Court is to be treated as a reference to the Family Court of Western Australia;
 - (b) to a registrar is to be treated as a reference to a registrar of the Family Court of Western Australia;
 - (c) to a Registry of the Family Court is to be treated as a reference to the registry of the Family Court of Western Australia;
 - (d) to a form in a Schedule of the Family Law Regulations or the Family Law Rules is to be treated as a reference to

- the form with the appropriate modifications for the purposes of the Act;
- (e) to a Part, Division, section, Schedule or other provision of the Family Law Act is to be treated as a reference to the provision of the *Family Court Act 1997* with which the provision is comparable;
 - (f) to the Act is to be treated as a reference to the *Family Court Act 1997*; and
 - (g) to Part VIII is to be treated as a reference to Part 5A.
- (3) Subject to this regulation, a Family Law Regulation adopted or applied under these regulations is adopted or applied in the form in which it is in force from time to time.

*[Regulation 3 amended in Gazette 29 Nov 2002 p. 5663-4;
14 Jul 2006 p. 2561; 13 May 2011 p. 1738.]*

Part 2 — General

[Heading inserted in Gazette 13 May 2011 p. 1738.]

4. Dispensing with compliance

A court may dispense with compliance with any requirement of these regulations, either before or after the occasion for compliance has arisen.

5. Court registry

The registry of the Family Court is to be in Perth.

6. Fees of Marshal

The fees payable to the Marshal are to be in accordance with Part III of the Fifth Schedule to the *Rules of the Supreme Court 1971*.

7. Recording of proceedings

- (1) All proceedings in a court are, where practicable, to be fully recorded.
- (2) A record of proceedings need be transcribed only where a court or a registrar so orders or directs.
- (3) A party to proceedings may request a copy of a transcript of the proceedings.
- (4) A fee is payable by a person who makes a request under subregulation (3) of an amount equal to the actual cost to the court of transcribing the record of proceedings.

[Regulation 7 amended in Gazette 13 May 2011 p. 1738.]

8. Family Dispute Resolution

Part 5 of the Family Law Regulations is adopted.

[Regulation 8 inserted in Gazette 14 Jul 2006 p. 2561.]

[8A. Deleted in Gazette 14 Jul 2006 p. 2561.]

9. Prescribed information about reconciliation

Family Law Regulation 7 is adopted for the purposes of section 65D.

[Regulation 9 inserted in Gazette 14 Jul 2006 p. 2561.]

10. Matters that a family law dispute resolution practitioner is to have regard to before giving a certificate under section 66H(7)(b)

Before giving a certificate under section 66H(7)(b) a family law dispute resolution practitioner is to have regard to the following matters —

- (a) a history of family violence among the parties;
- (b) the likely safety of the parties;
- (c) the equality of bargaining power among the parties (for example, whether a party is economically or linguistically disadvantaged in comparison with another party);
- (d) the risk that a child may suffer abuse;
- (e) the emotional, psychological and physical health of the parties;
- (f) any other matter that the family dispute resolution practitioner considers relevant.

[Regulation 10 inserted in Gazette 14 Jul 2006 p. 2562.]

11. Registration of court decision

Family Law Regulation 12CC is adopted for the purposes of section 176(6).

[Regulation 11 inserted in Gazette 14 Jul 2006 p. 2562.]

12. Prescribed government agencies

For the purposes of section 202K the following are prescribed government agencies —

- (a) the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*;
- (b) the Police Force of Western Australia provided for by the *Police Act 1892*.

[Regulation 12 inserted in Gazette 14 Jul 2006 p. 2562.]

13. Third party expenses

Family Law Regulation 15AA is adopted for the purposes of section 205ZLK.

[Regulation 13 inserted in Gazette 14 Jul 2006 p. 2562.]

[14, 14A-14E. Deleted in Gazette 14 Jul 2006 p. 2561.]

14F. Prescribed benefits

Family Law Regulation 12A is adopted and applies for the purposes of the definition of “income tested pension, allowance or benefit” in section 205T.

[Regulation 14F inserted in Gazette 29 Nov 2002 p. 5665.]

15. Parentage testing procedures

- (1) Family Law Regulation 21C is adopted and applies for the purposes of the definition of “parentage testing procedure” in section 5.
- (2) Family Law Regulations 21B, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21K and 21L are adopted and apply to a parentage testing procedure that is required to be carried out on a person under a parentage testing order made by a court under section 195.

16. Parentage testing reports

- (1) The Attorney General may appoint in writing a person or class of persons, being persons employed at a particular place, to prepare reports relating to the information obtained as the result of conducting parentage testing procedures.
- (2) An instrument of appointment under subregulation (1) is to be published in the *Gazette*.
- (3) Family Law Regulation 21M is adopted and applies for the purposes of section 200(b).

17. Registration in a court of orders etc. made by another court

- (1) An order under the Act referred to in section 223 in paragraph (f) of the definition of “order under this Act” may be registered by filing a sealed copy of the order in the registry of the first-mentioned court referred to in paragraph (g) of that definition.
- [(2) deleted]*
- (3) A decree within the meaning of section 209A may be registered in any court by filing a sealed copy of the order in the court’s registry.

*[Regulation 17 amended in Gazette 29 Nov 2002 p. 5665;
14 Jul 2006 p. 2562.]*

Part 3 — Court fees

[Heading inserted in Gazette 13 May 2011 p. 1739.]

Division 1 — Preliminary

[Heading inserted in Gazette 13 May 2011 p. 1739.]

17A. Terms used

In this Part —

filing fee means a fee mentioned in Schedule 1 item 1, 4 or 7;

full fee means a fee that has not been reduced or waived;

hearing fee means a fee mentioned in Schedule 1 item 3 or 6;

reduced fee means the fee mentioned in Schedule 1 item 8;

setting-down fee means a fee mentioned in Schedule 1 item 2 or 5;

working day means a day on which the offices of the court are open.

[Regulation 17A inserted in Gazette 13 May 2011 p. 1739.]

17B. Authorised officers

The Principal Registrar may, in writing, designate an officer of the court to be an authorised officer for the purposes of these regulations.

[Regulation 17B inserted in Gazette 13 May 2011 p. 1739.]

Division 2 — Court fees payable

[Heading inserted in Gazette 13 May 2011 p. 1739.]

18. Court fees payable in respect of proceedings

- (1) Schedule 1 sets out the fees payable in proceedings under the Act.

- (2) The person liable to pay a fee is —
- (a) if the fee is a filing fee, the person seeking to file the application or response; or
 - (b) if the fee is a setting-down or hearing fee, the person who initiated the proceedings or lodged the appeal; or
 - (c) if the court or a registrar so orders —
 - (i) another party to the proceedings or appeal; or
 - (ii) each of 2 or more parties to the proceedings or appeal, including the person initiating the proceedings or lodging the appeal in the proportions ordered.
- (3) A filing fee is payable at the time when the application or appeal is filed.
- (3A) A setting-down fee is payable —
- (a) if a court or a registrar directs a time within which the fee must be paid — within that time; or
 - (b) in any other case — at the time when a date is fixed for the hearing of the proceedings.
- (4) A hearing fee is payable —
- (a) if a court or a registrar directs a time within which the fee must be paid — within that time; or
 - (b) in any other case — at the time when a date is fixed for the hearing of the proceedings.
- (5) A registrar must not accept an application or appeal for filing in any registry unless any filing fee for the application or appeal mentioned in Schedule 1 has been paid.
- (6) If, in relation to an application, a hearing fee payable under subregulation (1) is unpaid —
- (a) a court may order that no proceedings, or no proceedings other than specified proceedings, are to take place,

- except by leave, in the matter to which the application relates;
- (b) a person other than the person liable to pay the fee may pay the fee without affecting any power of the court to make an order for costs for the fee; and
 - (c) the court may vacate the date fixed for hearing.
- (6A) If a fee remains unpaid after the time mentioned in subregulation (3) or (4) or the end of a period mentioned in regulation 18D(3), the unpaid fee is recoverable in a court of competent jurisdiction as a debt due to the State.
- (7) A fee mentioned in Schedule 1 is not payable if the fee has already been paid in relation to the proceedings by a person other than the person liable to pay the fee.
- (8) If —
- (a) a fee referred to in Schedule 1 has been paid; and
 - (b) the fee is not payable under subregulation (7),
- a registrar must refund to the applicant, or other person who paid the fee, an amount equal to the amount of the fee.
- (8A) A person is entitled to a refund of the whole or part of a fee mentioned in Schedule 1 (the *refund amount*) if the person pays more than the person is required to pay for the fee under these regulations.
- (8B) The refund amount is the difference between the fee paid by the person and the amount the person is required to pay for the fee.
- (9) Upon written notice to a registrar, a person who has paid a setting-down fee is entitled to a refund of the fee if —
- (a) notice that the hearing for which the fee was paid will not proceed is given to the registrar —
 - (i) if the hearing date was fixed less than 20 working days before that date — at least 2 working days before that date; or

- (ii) in any other case — at least 10 working days before the hearing date;
 - and
 - (b) the hearing —
 - (i) does not proceed; or
 - (ii) is conducted only to formalize the making of final orders.
- (10) A person who has paid a hearing fee for the whole or part of a hearing is entitled to a refund of —
- (a) if the hearing is conducted only to formalise the making of final orders — the hearing fee; or
 - (b) if the hearing does not proceed on a particular hearing day — the hearing fee for that day.
- (11) In this regulation —
appeal includes cross-appeal.
[Regulation 18 amended in Gazette 29 Nov 2002 p. 5665; 14 Jul 2006 p. 2562-3; 9 Nov 2010 p. 5629; 13 May 2011 p. 1739-42.]

18A. Reduction of fees — general

- (1) This regulation applies to a person if —
 - (a) the person has been granted legal aid (under a legal aid scheme or service established under Commonwealth, State or Territory law, or approved by the Attorney-General of the Commonwealth for the proceeding; or
 - (b) the person is —
 - (i) the holder of any of the following cards issued by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs —
 - (I) a health care card;

- (II) a pensioner concession card;
 - (III) a Commonwealth seniors health card;
- or
- (ii) the holder of any other card issued by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, or the Commonwealth Department of Veterans' Affairs, that certifies the holder's entitlement to Commonwealth health concessions; or
 - (iii) serving a sentence of imprisonment, or otherwise lawfully detained in a public institution; or
 - (iv) aged less than 18 years; or
 - (v) receiving youth allowance or austudy payment, within the meaning of the *Social Security Act 1991* (Commonwealth); or
 - (vi) receiving benefit under ABSTUDY, within the meaning of the *Social Security Act 1991* (Commonwealth).
- (2) In subregulation (1)(b) —
holder, of a card, does not include a dependant of the holder.
- (3) Other than in relation to the fee mentioned in Schedule 1 item 7, the reduced fee is payable instead of the full fee on the first occasion the full fee would otherwise be payable by the person in a proceeding.
- (4) However, if the full fee for the proceeding mentioned in subregulation (3) is less than the reduced fee, the full fee is payable by the person.
- (5) If a fee mentioned in subregulation (3) or (4) is paid by the person in a proceeding, or if a fee is waived under subregulation (6), no other fees mentioned in Schedule 1 (other

than a fee mentioned in item 7) are payable by the person in connection with the proceeding.

- (6) A registrar or an authorised officer may waive payment of a fee (other than a fee mentioned in Schedule 1 item 7 or a fee for an appeal), payable by a person in a proceeding related to a proceeding mentioned in subregulation (3), if the registrar or authorised officer considers that the proceedings are closely connected and that the waiver of the fee is appropriate.
- (7) In considering whether to waive payment of a fee in a related proceeding, the registrar or authorised officer must take into account the following factors —
- (a) whether the dispute is between the same parties;
 - (b) whether the dispute arises from the same circumstances;
 - (c) the length of time since the first proceeding was commenced;
 - (d) whether the manner in which the proceedings have been brought is an efficient use of the court's resources;
 - (e) whether the litigation would be in the public interest;
 - (f) the capacity of the person to pay the fee.
- (8) In this regulation, an appeal is to be treated as a new proceeding.

[Regulation 18A inserted in Gazette 13 May 2011 p. 1742-3.]

18B. Reduction of fees — hardship

- (1) If a registrar or an authorised officer, having regard to the income, day-to-day living expenses, liabilities and assets of a person liable to pay a fee mentioned in Schedule 1 (other than a fee mentioned in item 7), considers that payment of the fee would cause financial hardship to the person, the registrar or authorised officer may impose the reduced fee on each occasion the fee is payable instead of the fee for which the person would otherwise be liable.

- (2) However, if subregulation (1) applies, the reduced fee is payable only once for setting-down, and no fee is payable for a hearing, regardless of the number of hearing days.

[Regulation 18B inserted in Gazette 13 May 2011 p. 1743-4.]

18C. Change in circumstances

- (1) Regulation 18A(5) applies to a person as if the person had paid a fee under regulation 18A(3) or (4) if —
- (a) the person pays a full fee, or a reduced fee under regulation 18B, in a proceeding; and
 - (b) after the fee has been paid, the person becomes eligible under regulation 18A(1) to pay the reduced fee.
- (2) However, if a person's circumstances change so that regulation 18A(1) no longer applies to the person, the person is liable to pay all fees that become payable after the change in circumstances.

[Regulation 18C inserted in Gazette 13 May 2011 p. 1744.]

18D. Deferral of fees

- (1) Subject to subregulation (2), all or part of a fee mentioned in these regulations may be deferred by a registrar or an authorised officer, subject to any conditions determined by the registrar or authorised officer.
- (2) The registrar or authorised officer may defer the whole or part of a fee if —
- (a) the registrar or authorised officer considers that —
 - (i) for a filing fee — the need to file the document is so urgent that it overrides the requirement to pay the filing fee at the time of filing; or
 - (ii) it would, having regard to the financial circumstances of the person liable to pay the fee, be oppressive or otherwise unreasonable to

require payment in accordance with
regulation 18(3), (3A) or (4);

or

- (b) for a setting-down fee — the date of the hearing is more than 6 months after the day on which the proceeding is set down for hearing.
- (3) If payment of a fee has been deferred under this regulation, the fee must be paid within —
- (a) 30 days after the date of deferral; or
 - (b) another period specified in writing by the registrar or authorised officer.

[Regulation 18D inserted in Gazette 13 May 2011 p. 1744-5.]

Division 3 — Automatic variation of fees

[Heading inserted in Gazette 13 May 2011 p. 1745.]

19. Biennial increases

A fee mentioned in Schedule 1 (other than a fee mentioned in item 8) is increased in accordance with this Division on each biennial anniversary of 1 July 2010.

[Regulation 19 inserted in Gazette 13 May 2011 p. 1745.]

20. Calculation of increase

- (1) In this regulation —
- fee*** means a fee mentioned in Schedule 1 (other than the fee mentioned in item 8);
- CPI number*** means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician;
- relevant period*** means any of the following periods —
- (a) the 2 year period commencing on 1 July 2010;

(b) after that period — each 2 year period commencing on a biennial anniversary of 1 July 2010.

- (2) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{fee x latest CPI number}}{\text{earlier CPI number}}$$

where:

earlier CPI number is the CPI number for the last March quarter before the beginning of the relevant period;

fee is the fee in force at the end of the relevant period;

latest CPI number is the CPI number for the last March quarter before the end of the relevant period.

- (3) If, apart from this subregulation, the amount of a fee increased under subregulation (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
- (4) Subject to subregulation (5), if at any time, whether before or after the commencement of this regulation, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this regulation.
- (5) If, at any time, whether before or after the commencement of this regulation, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this regulation after the change is made, regard shall be had only to numbers published in terms of the new reference base.

[Regulation 20 amended in Gazette 13 May 2011 p. 1745.]

Part 4 — Review

[Heading inserted in Gazette 13 May 2011 p. 1746.]

21. Review of decisions under these regulations

A decision made by a registrar or authorised officer under these regulations is reviewable as if it were an order or direction made by the Principal Registrar, registrar or deputy registrar under the *Family Court Rules 1998* rule 25.

[Regulation 21 inserted in Gazette 13 May 2011 p. 1746.]

Part 5 — Transitional provisions

[Heading inserted in Gazette 13 May 2011 p. 1746.]

22. Transitional provisions relating to the *Family Court Amendment Regulations 2011*

- (1) In these regulations —
commencement day means the day on which the *Family Court Amendment Regulations 2011* regulation 10 comes into operation.
- (2) Regulation 18(7)(a) and (b) of these regulations as in force immediately before commencement day continues to apply to proceedings commenced before commencement day.
- (3) Regulation 18(9) of these regulations as in force immediately before commencement day continues to apply to —
 - (a) a hearing fee paid before 1 July 2010; and
 - (b) a hearing fee, for the first day of hearing, paid before commencement day.
- (4) Regulation 18(10), inserted by the *Family Court Amendment Regulations 2011* regulation 10(11), applies to a hearing fee for the second and subsequent days of a hearing, paid before commencement day.

[Regulation 22 inserted in Gazette 13 May 2011 p. 1746-7.]

Schedule 1 — Fees

[r. 18, 18A, 18B, 18C and 18D]

[Heading inserted in Gazette 13 May 2011 p. 1747.]

Item	Document or action	Fee
1.	Filing an application for final orders in Part 5A proceedings or for a parenting order	\$243
2.	Setting-down for hearing in Part 5A proceedings or for a parenting order, if defended, for final orders — (a) for a hearing before a judge (b) for a hearing before a magistrate	\$608 \$444
3.	Hearing in Part 5A proceedings or for a parenting order, if defended, for final orders — for each hearing day, or part of a hearing day, excluding the first hearing day — (a) for a hearing before a judge (b) for a hearing before a magistrate	\$608 \$444
4.	Filing a response to an application for final orders in Part 5A proceedings or for a parenting order	\$243
5.	Setting-down for hearing in an appeal under section 211 from a decree of a Magistrates Court	\$608
6.	Hearing in an appeal under section 211 from a decree of a Magistrates Court — for each hearing day, or part of a hearing day, excluding the first hearing day	\$608
7.	Filing an application for a consent order	\$80

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Item	Document or action	Fee
8.	Reduced fee	\$60

[Schedule 1 inserted in Gazette 13 May 2011 p. 1747.]

Notes

¹ This is a compilation of the *Family Court Regulations 1998* 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

Citation	Gazettal	Commencement
<i>Family Court Regulations 1998</i>	25 Sep 1998 p. 5303-9	26 Sep 1998 (see r. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Family Court Amendment Regulations 2002</i>	29 Nov 2002 p. 5663-5	1 Dec 2002 (see r. 3 and <i>Gazette</i> 29 Nov 2002 p. 5651)
<i>Family Court Amendment Regulations 2006</i>	14 Jul 2006 p. 2560-3	15 Jul 2006 (see r. 2 and <i>Gazette</i> 14 Jul 2006 p. 2559)
Reprint 1: The Family Court Regulations 1998 as at 9 Feb 2007 (includes amendments listed above)		
<i>Family Court Amendment Regulations (No. 2) 2010</i>	9 Nov 2010 p. 5628-9	r. 1 and 2: 9 Nov 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Nov 2010 (see r. 2(b)(ii))
<i>Family Court Amendment Regulations 2011</i>	13 May 2011 p. 1737-47	r. 1 and 2: 13 May 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 14 May 2011 (see r. 2(b))