

Western Australia

## **Family Court Rules 1998**

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As at 29 Mar 2004

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## Family Court Rules 1998

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## Family Court Rules 1998

Made by the the Judges under s. 244.

### Part 1 — Preliminary

**1. Citation**

These rules may be cited as the *Family Court Rules 1998*.

**2. Interpretation**

In these rules, unless the contrary intention appears —

“**court**” has the meaning referred to in section 8 of the Act;

“**decree**” has the same meaning as in section 211 of the Act;

“**Family Law Regulations**” means the *Family Law Regulations 1984* of the Commonwealth;

“**Family Law Rules**” means the *Family Law Rule 2004* of the Commonwealth;

“**section**” means section of the Act.

*[Rule 2 amended in Gazette 26 Mar 2004 p. 1051-2.]*

**3. Dispensing with compliance**

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

**4. Repeal**

The *Family Court of Western Australia Rules 1988* are repealed.

## **Part 2 — General**

### **Division 1 — General**

#### **5.       Seal**

The Court's seal —

- (a) is to contain the words “The Seal of the Family Court of Western Australia”; and
- (b) may be impressed on any document by a rubber stamp or similar process.

#### **6.       Sittings and registry hours**

- (1) The Court is to sit at such places and times as the Chief Judge directs.
- (2) There are to be no Court vacations but the Court is not to sit on Saturdays, Sundays or public service holidays unless the Judge constituting the Court otherwise directs.
- (3) Subject to subrule (4), the Court's registry is to be open every day in the year except Saturdays and Sundays and public service holidays.
- (4) Unless the Chief Judge otherwise directs, the Court's registry is to be open from 9.00 a.m. to 4.00 p.m.

#### **7.       Oaths and affirmations**

- (1) A court may require and administer all necessary oaths and affirmations.
- (2) The form of an oath or affirmation is, to the extent appropriate, to be the same as that used in the Supreme Court.

**8. Records, registers and indexes**

The Principal Registrar is to —

- (a) cause to be kept such records, registers and indexes as the Chief Judge directs; and
- (b) ensure that every decree of a court is recorded by the proper officer of the court in a record kept for that purpose.

**9. Affidavits**

(1) An affidavit to be sworn in Australia and filed or used in a court can only be sworn before —

- (a) a justice of the peace;
- (b) a notary public; or
- (c) a lawyer, with or without a commission for taking affidavits.

(2) An affidavit to be sworn outside Australia and filed or used in a court can only be sworn —

- (a) before —
  - (i) an Australian diplomatic or consular agent; or
  - (ii) a diplomatic agent or a consular agent of any part of Her Majesty's dominions, exercising his or her functions at that place;
- (b) before a judge of a court of that place or a magistrate or justice of the peace of or for that place;
- (c) before a notary public; or
- (d) if the place is under the dominion of Her Majesty, before a person who otherwise has authority to administer oaths at that place.

**10. Recognizances**

A recognizance required to be filed or used in a court can only be executed before a Judge, the Principal Registrar, a Registrar,

a Deputy Registrar, the Marshal, the Collector of Maintenance, a magistrate, a justice of the peace, the clerk of a court of summary jurisdiction or any other person allowed by a written law or the Family Law Rules to take a recognizance.

**11.       Costs where court has no jurisdiction**

If a matter is brought in a court over which the court has no jurisdiction, the court must order the matter to be struck out, and the court has power to award costs to the same extent, and recoverable in the same manner, as if the court had jurisdiction in the matter and the person bringing the matter had not appeared in the court or had so appeared and failed to establish his or her case.

**Division 2 — Adoption of Family Law Rules**

**12.       Adoption of certain Family Law Rules for federal jurisdiction**

- (1) The Family Law Rules, except for those set out in the Table to this subrule, are adopted and apply in accordance with this Division, to the extent to which they are relevant, for the purposes of the exercise by the Court and courts of summary jurisdiction of their jurisdiction under the Act.

<b>Rule</b>	<b>Rule</b>
1.18	12.08
4.14	12.09
4.25	12.14 to 12.16
4.30	15.03(1)
4.31	18.01 to 18.10
5.09(2)	19.03(3)
12.01(e)	

*[(2) repealed]*



- (3) A Family Law Rule adopted under this Division is adopted and applies in the form in which it is in force from time to time.

*[Rule 12 amended in Gazette 26 Mar 2004 p. 1052.]*

**13. Adoption of certain Family Law Rules for non-federal jurisdictions**

*[(1), (2) repealed]*

- (3) Each Family Law Rule adopted and applied under this Division applies as if a reference in a Family Law Rule —

- (a) to the Family Court is to be treated as a reference to the Family Court of Western Australia;
- (b) to a court is to be treated as including a reference to a court as defined in rule 2;

*[(c) deleted]*

- (d) to a legal aid body is to be treated as a reference to the Legal Aid Commission of Western Australia;
- (e) to a Judicial Registrar is to be treated as having no effect;
- (f) to the Chief Executive Officer is to be treated as a reference to the Executive Officer appointed under section 25(1)(c);
- (g) to the Marshal is to be treated as a reference to the Marshal appointed under section 25(1)(e);
- (h) to the Principal Director of Mediation is to be treated as a reference to the Director of Court Counselling appointed under section (25)(1)(d);
- (i) to a prescribed child welfare authority is to be treated as a reference to the Director-General; and
- (j) to a procedural hearing is to be treated as including a reference to a procedural conference.

*[(k)-(m) deleted]*

- (4) Each Family Law Rule adopted and applied under this Division applies for the purposes of the exercise by the Court and courts of summary jurisdiction of their non-federal jurisdiction under the Act as if a reference in the Family Law Rule —
- (a) to the Attorney General is, except in Family Law Rules 7.19, 7.20 and 15.73(3), to be treated as a reference to the State Attorney General;
  - (b) to a member of the Australian Federal Police is to be treated as including a reference to a member of the Western Australian Police Force;
  - (c) to a form in a Schedule of the Family Law Rules is to be treated as a reference to the form with appropriate modifications for the purposes of the Act;
  - (d) to a 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 Family Law Act provision is comparable;
  - (e) to a provision of the Family Law Regulations is to be treated as a reference to the provision of the *Family Court Regulations 1998* or of these rules with which the Family Law Regulations provision is comparable;
  - (f) to the Director of Public Prosecutions is to be treated as a reference to holder of the office created under section 4 of the *Director of Public Prosecutions Act 1991*;
  - (g) to the term “document” is to be treated as a reference to the term “document” as defined in section 5 of the *Interpretation Act 1984*; and
  - (h) to the term “penalty unit” is to be treated as a reference to the sum of \$110.

*[Rule 13 amended in Gazette 26 Mar 2004 p. 1053-5.]*

**13A. Specific Family Law Rules that are adopted and applied in a modified form**

- (1) A Family Law Rule that is adopted and applied in a subrule of this Rule is adopted and applied in accordance with that subrule.
- (2) Family Law Rule 2.02(1) is to be treated as providing that a person who applies for financial orders under Part 5A of the Act must at the same time as filing the documents specified in the Table to the rule, file an affidavit that states the facts necessary to determine whether the Court has jurisdiction.
- (3) Family Law Rules 2.02(1) and 12.02 are to be treated as providing that a person required under the rule to exchange a completed superannuation information form may, if the fund to which the form relates is an accumulation fund, instead exchange the 2 most recent member benefit statements (a statement setting out the person's entitlement to benefits from the fund as at a date specified in the statement) received by the person relating to the fund.
- (4) Family Law Rule 4.03 is to be treated as providing that for an application seeking orders for child support or maintenance only the Registry Manager is to fix a date for hearing as near as practicable to, but not earlier than, 28 days after the date on which the application is filed.
- (5) In Family Law Rule 11.02, a "procedural order" is to be treated as including a procedural direction.
- (6) Family Law Rule 11.18 and 11.19 apply to applications to transfer a case between different sitting locations of the Court.
- (7) Family Law Rule 12.10 is to be treated as if it contained the following subrule —  
“
  - (3) If a case is a financial case each party must provide to the court and exchange with each other party at least 7 days before a pre-trial conference —”

- (a) an up to date conciliation conference document;  
or
    - (b) such other document as is approved by the  
Principal Registrar.
- ”.
- (8) Family Law Rule 12.12 is to be treated as providing that the court may consider a request under rule 12.12(1) in chambers on the documents.
  - (9) Family Law Rule 13.06 is to be treated as not requiring amendments to be marked upon a new Form 13 where a new Form 13 is required under the rule.
  - (10) Family Law Rule 13.15 is to be treated as applying only if a financial order, parenting order, order under the Assessment Act or order under the Registration Act is amongst the orders sought.
  - (11) In Family Law Rule 15.07(2), “14 days” is to be treated as “21 days”.
  - (12) Family Law Rule 16.12(3) is to be treated as providing that a trial date may be vacated in exceptional circumstances by order of a Judge, or by a Magistrate or Registrar when all matters to be determined at the trial have been resolved.
  - (13) Family Law Rule 19.04 is to be treated —
    - (a) as applying to all applications except an undefended Application for Divorce;
    - (b) as applying to the first court event, conciliation conference and pre-trial conference and a trial; and
    - (c) as requiring that a notice under subrule 19.04(1) be produced to the presiding judicial officer at the commencement of a trial.
  - (14) Family Law Rule 19.40 is to be treated as not applying to a case conducted before a Magistrate who is also the Principal Registrar, a Registrar or a Deputy Registrar of the Court.

- (15) Family Law Rule 22.36 is to be treated as providing that —
- (a) on the filing of a Notice of Appeal (Form 20) from a decision of a court of summary jurisdiction, the Registry Manager is to fix a date for a procedural hearing relating to the appeal as near as practicable to 14 days after the filing; and
  - (b) if the appeal is from a court of summary jurisdiction outside of Perth, it is to be listed for hearing in the next practicable circuit of the Court nearest to that court of summary jurisdiction.

*[Rule 13A inserted in Gazette 26 Mar 2004 p. 1055-7.]*

### **Division 3 — Accounting and enforcement**

#### **14. Definition**

In this Division —

**“order”** means an order or registered agreement for —

- (a) the maintenance of a child;
- (b) the maintenance of one of the parties; or
- (c) the payment of child bearing expenses or for the payment of similar expenses under the Family Law Act,

and includes child maintenance provisions in a registered parenting plan within the meaning of the Act or the Family Law Act.

#### **15. Collector of Maintenance**

The Collector of Maintenance or the clerk of a court of summary jurisdiction —

- (a) is to receive moneys payable to the Collector of Maintenance or to the court and disburse those moneys to the person named in the order; and

- (b) is to keep proper accounts as to payments due, and made, under an order.

**16. Accounting**

- (1) A ledger is to be maintained —
  - (a) at the Court's registry by the Collector of Maintenance; and
  - (b) by the clerk of every court of summary jurisdiction.
- (2) Where moneys are paid to an officer of a court under an order made by, or registered in, the court the officer is to disburse those moneys to the person named in the order as being entitled to receive payment or to a person who is entitled to receive those moneys on behalf of the person so named.
- (3) Subject to any express directions given by the person making the payment, money paid under an order is to be treated as a payment made to the person entitled to receive it in satisfaction to the extent of the payment —
  - (a) firstly of any fees payable in respect of the enforcement; and
  - (b) secondly to amounts due and unpaid under the provision (an amount due at an earlier date being satisfied before an amount due at a later date).
- (4) Where a person makes a payment before the date on which the moneys are due the Collector of Maintenance or clerk of the court to which payment has been made may disburse the moneys before that date if the person gives —
  - (a) a written authority to that effect; and
  - (b) an indemnity in writing in respect of the early payment.
- (5) Where a person who is obliged to make payments under 2 or more provisions of an order or under provisions of 2 or more orders pays an amount that is less than the aggregate amount payable under those provisions, without giving any directions as to the appropriation of the moneys so paid, the Collector of

Maintenance or the clerk of the court to which the payment has been made may, subject to subrule (4), appropriate the moneys so paid for or towards the satisfaction of the amounts payable, in such manner as the Collector or clerk thinks proper.

**17. Notice of election**

- (1) Subject to rule 18(1), a person who is entitled to enforce one or more of the provisions of an order may elect not to enforce a specified provision.
- (2) An election under subrule (1) must be made by written notice to the Collector of Maintenance or clerk of the court in which the order is enforceable.
- (3) The Collector or clerk referred to in subrule (2) must cause notice of the election to be given to each person liable to make payments under the order and the provision specified in the notice cannot be enforced unless —
  - (a) notice of withdrawal of the notice of election has been given in accordance with rule 18(3); or
  - (b) the Court or relevant court of summary jurisdiction has granted leave to do so.
- (4) A notice of election given under this rule does not affect the enforcement of any other provision of the order.

**18. Notice of withdrawal of election**

- (1) A notice of election referred to in rule 17 may be withdrawn at any time by the person entitled to enforce the order.
- (2) The withdrawal of a notice of election must be made by written notice to the Collector of Maintenance or clerk referred to in rule 17(2).
- (3) The Collector of Maintenance or clerk referred to in rule 17(2) must cause notice of the withdrawal of the notice of election to be given to each person referred to in rule 17(3) and the provision specified in the notice of election is enforceable from

the day of the notice of withdrawal, without the leave of any court.

**19.     Duties of Collector of Maintenance or clerk as to enforcement**

- (1) On application by or on behalf of any person entitled to enforce an order being made to the Collector of Maintenance or to the clerk of the court in which the order is enforceable, the Collector or clerk may take any step necessary or expedient to enforce the order.
- (2) A person who applies under subrule (1) has the same liability for all costs properly incurred in or about the enforcement proceedings as if the proceedings had been taken by that person.
- (3) The Collector of Maintenance or a clerk of a court may refuse to act on an application under subrule (1) if it appears to the Collector or clerk that it is unreasonable to do so.



## **Part 3 — Registrars**

### **Division 1 — General**

#### **20. Definition**

In this Part —

**“Registrar”** means the Principal Registrar, a Registrar or a Deputy Registrar.

#### **21. Exercise of powers and functions of Registrars**

- (1) If under these rules a function is conferred upon a Registrar, the function may also be performed —
  - (a) in the Family Court — by a Judge;
  - (b) in a court of summary jurisdiction — by a magistrate.
- (2) If a Registrar is required or able to do an act not involving the exercise of judicial power it is sufficient if the act is done on behalf of the Registrar by —
  - (a) a clerk in the office of the Registrar; or
  - (b) another officer of the court or by a clerk in that person’s office.

#### **22. Registrars not required to give reasons**

Unless requested by a party to do so a Registrar need not give reasons for any order, direction or decision.

#### **23. Protection and immunity**

- (1) In the exercise of a power of a court or in the conduct of a conference or enquiry under these rules a Registrar or other person acting under rule 21 has the same protection and immunity as a Judge or magistrate.
- (2) A party, lawyer or witness appearing before a Registrar or other person acting under rule 21 on the hearing of any application or matter, or on the conducting of any conference or enquiry, has

the same protection and immunity as the party, lawyer or witness would have if appearing in proceedings in a court.

**Division 2 — Delegation of judicial power to Registrars**

**24. Delegation of powers to Registrars**

For the purposes of section 33, the following powers of the Court are delegated to each Principal Registrar, Registrar and Deputy Registrar —

- (a) the court powers referred to in a Family Law Rule set out in the Table to this subrule;

<b>Table</b>
<b>Rule</b>
1.09 to 1.14
11.01
20.07

- (b) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings;

*[(c) deleted]*

- (d) the power to make an order under section 22 of the *Prisons Act 1981*.

*[Rule 24 amended in Gazette 26 Mar 2004 p. 1058.]*

**25. Applications to review exercises of powers and functions by Registrars**

- (1) This rule applies to the review of an order or direction made by a Principal Registrar, Registrar or Deputy Registrar.
- (2) A party to proceedings may apply to the Court to review an order or direction made by a Registrar for 28 days after the Principal Registrar, Registrar or Deputy Registrar makes the order or direction.

- (3) An application under subrule (1) is to be made by filing in the filing registry an Application in a Case (Form 2) and a copy of the order or direction appealed from.
- (4) The filing of an application for a review of an order or direction does not operate as a stay of the order or direction.
- (5) A party may apply for a stay of an order or direction in whole or in part.

*[Rule 25 inserted in Gazette 26 Mar 2004 p. 1058-9.]*

**26. Power of Court on review**

- (1) The Court is to hear an application under rule 25 as an original hearing.
- (2) The Court may on hearing an application under rule 25 receive as evidence —
  - (a) any affidavit or exhibit tendered in the first hearing;
  - (b) any further affidavit or exhibit;
  - (c) the transcript, if any, of the first hearing; or
  - (d) if a transcript is not available, an affidavit about the evidence that was adduced at the first hearing, sworn by a person who was present at the first hearing.
- (3) The Court may determine an application under rule 25 in chambers on the documents.

*[Rule 26 inserted in Gazette 26 Mar 2004 p. 1059.]*

*[27, 28. Repealed in Gazette 26 Mar 2004 p. 1058.]*

**Division 3 — Conferral of functions on Registrars**

**29. Conferral of functions on Registrars**

- (1) If under a Family Law Rule adopted applied under Division 2 a function is conferred on a Registrar within the meaning of the Family Law Act, the function is conferred on a Registrar for the

**Family Court Rules 1998**

**Part 3** Registrars

**Division 3** Conferral of functions on Registrars

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purpose of those rules and for that purpose a reference in such a Family Law Rule —

- (a) to the Principal Registrar is to be treated as a reference to the Principal Registrar appointed under section 25(1)(a);
- (b) to a Registrar is to be treated as a reference to a Registrar appointed under section 25(1)(b);
- (c) to a Deputy Registrar is to be treated as a reference to a Deputy Registrar appointed under section 25(2)(a).

*[Rule 29 inserted in Gazette 26 Mar 2004 p. 1060.]*

*[30. Repealed in Gazette 26 Mar 2004 p. 1060.]*

**Part 4 — Other matters prescribed for the purposes of  
specified provisions of the Act**

**31. Advice as to effect of proceedings and as to counselling and  
welfare facilities**

- (1) The Chief Judge may give directions in relation to the preparation of documents of the kinds referred to in section 55.
- (2) If the Chief Judge has not given directions under subrule (1) then documents of the kinds referred to in section 55 are to be prepared in accordance with Family Law Rules Order 25 rule 3(1).

**32. Advice as to mediation facilities**

- (1) The Chief Judge may give directions in relation to the preparation of documents of the kind referred to in section 61(2).
- (2) If the Chief Judge has not given directions under subrule (1) then documents of the kind referred to in section 61(2) are to be prepared in accordance with Family Law Rules Order 25A rule 21(1).

**33. Registration of State child orders**

For the purposes of section 204, a State child order within the meaning of section 203 may be registered in a court having jurisdiction under the Act by filing a sealed copy of the order in the court's registry.

**34. Proceedings in chambers — s. 212(5)**

- (1) A court may exercise in chambers any jurisdiction conferred on it under this Act in proceedings other than the final hearing in contested proceedings and any sitting held in chambers has effect as if it were held in open court.

**r. 35**

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- (2) A court may adjourn the hearing of proceedings from chambers to open court and from open court to chambers.

**35. Notification to spouse — s. 205ZB(3)**

For the purposes of section 205ZB(3), a de facto partner who —

- (a) has a spouse; and
- (b) is a party to an application under Part 5A Division 2 of the Act,

is to give notification of the application to his or her spouse —

- (c) if the defacto partner has filed the application, by serving on his or her spouse a copy of that application and, if filed, the information sheet; and
- (d) if the de facto partner has filed a response to the application, by serving on his or her spouse a copy of —
  - (i) that application and, if filed, the information sheet; and
  - (ii) that response,

as soon as is practicable after filing the application or response, as is applicable.

*[Rule 35 inserted in Gazette 29 Nov 2002 p. 5662-3.]*

**36. Certain evidential statements**

- (1) Despite anything in these rules or the Family Law Rules adopted and applied under Part 2 this rule applies to evidence other than evidence on an issue at a trial and where but for this rule, undue delay or inconvenience would be caused.
- (2) If a statement on information and belief is made —
  - (a) by a deponent in an affidavit; or
  - (b) by a witness being examined orally,

and the deponent or witness gives the source and ground of the information, the court may admit the statement despite the statement being hearsay.

- (3) If —
- (a) a deponent swears in an affidavit; or
  - (b) a witness being examined orally states,

that a document is a copy of an original, the court may admit the document as evidence of the contents of the original even though the original is not produced.

*[Rule 36 inserted in Gazette 26 Mar 2004 p. 1060-1.]*

**Notes**

- <sup>1.</sup> This is a compilation of the *Family Court Rules 1998* and includes the amendments referred to in the following Table.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Family Court Rules 1998</i>	6 Oct 1998 p. 5573-85	6 Oct 1998
<i>Family Court Amendment Rules 2002</i>	29 Nov 2002 p. 5662-3	1 Dec 2002 (see r. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651)
<i>Family Court Amendment Rules 2004</i>	26 Mar 2004 p. 1049-61	29 Mar 2004 (see r. 2)