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FAMILY COURT ACT 1997

**FAMILY COURT
AMENDMENT RULES 2004**

Family Court Act 1997

Family Court Amendment Rules 2004

Made by the Judges of the Family Court of Western Australia under section 244 of the Act.

1. Citation

These rules may be cited as the *Family Court Amendment Rules 2004*.

2. Commencement

These rules come into operation on 29 March 2004.

3. The rules amended

The amendments in these rules are to the *Family Court Rules 1998**.

[* *Published in Gazette 6 October 1998, p. 5573-85.*
For amendments to 25 March 2004 see Western Australian Legislation Information Tables for 2003, Table 4, p. 107.]

4. Rule 2 amended

Rule 2 is amended by inserting in the appropriate alphabetical position the following definitions —

“

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

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

5. Rule 12 amended

- (1) Rule 12(1) and (2) are repealed and the following subrule is inserted instead —

“

- (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.

Table

| Rule | Rule |
|-------------|----------------|
| 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) Rule 12(3) is amended as follows:

- (a) by deleting “Subject to this rule, a” and inserting instead —

“ A ”;

- (b) by deleting “subrule (1)” and inserting instead —

“ this Division ”.

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r. 6**6. Rule 13 amended**

- (1) Rule 13(1) and (2) are repealed.
- (2) Rule 13(3) is amended as follows:
- (a) by deleting “A reference in a Family Law Rule adopted under subrule (1)” and inserting instead —
- “
- Each Family Law Rule adopted and applied under this Division applies as if a reference in a Family Law Rule
- ”;
- (b) by deleting paragraph (c);
- (c) in paragraph (f) by deleting “25(1)(b)” and inserting instead —
- “ 25(1)(c) ”;
- (d) in paragraph (h) by deleting “Director of Mediation appointed under section 25(2)(e)” and inserting instead —
- “
- Director of Court Counselling appointed under section (25)(1)(d)
- ”;
- (e) by deleting the semicolon after paragraph (i), and paragraphs (j), (k), (l) and (m), and inserting instead —
- “
- ; and
- (j) to a procedural hearing is to be treated as including a reference to a procedural conference.
- ”.

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- (3) Rule 13(4) is repealed and the following subrule is inserted instead —
- “
- (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*;

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- (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.

”.

7. Rule 13A inserted

After rule 13 the following rule is inserted —

“

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

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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”.

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- (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.

”.

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Rule 24 is amended as follows:

- (a) by deleting “Registrar” and inserting instead —

“

Principal Registrar, Registrar and Deputy Registrar

”;

- (b) by deleting the Table to paragraph (a) and inserting instead —

“

Table

| Rule |
|--------------|
| 1.09 to 1.14 |
| 11.01 |
| 20.07 |

”;

- (c) by deleting paragraph (c).

9. Rules 25 to 28 replaced by rules 25 and 26

Rules 25 to 28 are repealed and the following rules are inserted instead —

“

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.

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- (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.

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.

”.

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10. Rules 29 and 30 replaced

Rules 29 and 30 are repealed and the following rule is inserted instead —

“

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 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).

”

11. Rule 36 inserted

After rule 35 the following rule is inserted —

“

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.

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- (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.

”.

Dated: 25 March 2004.

Signed:

N. TOLCON.

J. G. BARLOW.

J. PENNY.

S. E. THACKRAY



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