

**WESTERN
AUSTRALIAN
GOVERNMENT**
Gazette

5571



PERTH, TUESDAY, 6 OCTOBER 1998 No. 199 SPECIAL

PUBLISHED BY AUTHORITY KEVIN J. McRAE, ACTING GOVERNMENT PRINTER AT 3.45 PM

FAMILY COURT ACT 1997

**FAMILY COURT RULES
1998**

Western Australia

Family Court Rules 1998

CONTENTS

Part 1 — Preliminary

1. Citation
2. Interpretation
3. Dispensing with compliance
4. Repeal

Part 2 — General

Division 1 — General

5. Seal
6. Sittings and registry hours
7. Oaths and affirmations
8. Records, registers and indexes
9. Affidavits
10. Recognizances
11. Costs where court has no jurisdiction

Division 2 — Adoption of Family Law Rules

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

Division 3 — Accounting and enforcement

14. Definition
15. Collector of Maintenance
16. Accounting
17. Notice of election
18. Notice of withdrawal of election
19. Duties of Collector of Maintenance or clerk as to enforcement

Part 3 — Registrars

Division 1 — General

20. Definition
21. Exercise of powers and functions of Registrars
22. Registrars not required to give reasons
23. Protection and immunity

Division 2 — Delegation of judicial power to Registrars

- 24 . Delegation of powers to Registrars
- 25 . Time in which to apply for review
- 26 . Extension of time
- 27 . Listing hearing
- 28 . Procedure on application for review

Division 3 — Conferral of functions on Registrars

- 29 . Conferral of functions on Registrars
- 30 . Review of non-delegated functions of Registrars

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
- 32 . Advice as to mediation facilities
- 33 . Registration of State child orders
- 34 . Proceedings in chambers — s. 212(5)

Family Court Act 1997

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;

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

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, to the extent to which they are relevant, for the purposes of the exercise by the Court and courts of summary jurisdiction of their federal jurisdiction under the Act.

Table

Order 6

Order 36

Order 36A

- (2) The adoption of a Family Law Rule under subrule (1) does not have the effect of conferring any function on the Principal Registrar, a Registrar or a deputy Registrar.
- (3) Subject to this rule, a Family Law Rule adopted under subrule (1) is adopted and applies in the form in which it is in force from time to time.

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

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

Table

Order 6

Order 36

Order 36A

- (2) The adoption of a Family Law Rule under subrule (1) does not have the effect of conferring any function on the Principal Registrar, a Registrar or a deputy Registrar of the Court.
- (3) A reference in a Family Law Rule adopted under subrule (1) —
- (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) to the Attorney General is to be treated as a reference to the State Attorney General;
 - (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)(b);
 - (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 Mediation appointed under section 25(2)(e);
 - (i) to a prescribed child welfare authority is to be treated as a reference to the Director-General;
 - (j) 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;
 - (k) to a form in a Schedule of the Family Law Rule is to be treated as a reference to the form with appropriate modifications for the purposes of the Act;
 - (l) 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; and
 - (m) 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.
- (4) Subject to this rule, a Family Law Rule adopted under subrule (1) is adopted and applies in the form in which it is in force from time to time.

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 Registrar —

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

Table

Order 2 rule 4(1)(b)
 Order 3 rule 3
 Order 4 rule 1 and rule 2
 Order 5 rule 6(3)
 Order 7 rule 13(1)
 Order 8 rule 2(b)
 Order 9 rule 6, rule 12(2)(b), rule 12(3) and rule 12(7)
 Order 15 rule 4(2) and rule 12(b)
 Order 16 rule 3(4), rule 8, rule 11 and rule 14(1)(b)
 Order 19 rule 1(3), rule 2, rule 3(1) and rule 5
 Order 20 rule 2(2) and 4(1)
 Order 24 rule 1(2)
 Order 24A rule 3
 Order 25 rule 5(2)(a) and rule 5(2)(d)
 Order 28 rule 1(1B), rule 1(3), rule 1(4), rule 1(6),
 rule 3(2) and rule 9
 Order 30A rule 9
 Order 31 rule 5 and rule 6(4)
 Order 40 rule 3

- (b) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings;
- (c) the power to register a parenting plan under section 79(3) of the Act or section 63E(3) of the Family Law Act;
- (d) the power to make an order under section 22 of the *Prisons Act 1981*.

25. Time in which to apply for review

For the purposes of section 33(8), the time within which a party to proceedings may apply to the Court to review the exercise of a power of the Court delegated to a Registrar is one month after the day on which the power is exercised by the Registrar.

26. Extension of time

- (1) The time prescribed by rule 25 may be extended in any proceedings —
 - (a) by the Court or a Registrar upon such terms as the Court or Registrar thinks fit; or
 - (b) by the consent of all the parties to the proceedings, whether or not the time has expired.
- (2) Where a time prescribed by rule 25 is extended by the consent of all the parties to the relevant proceedings, the consent may be endorsed on the cover sheet of the application filed in those proceedings.

27. Listing hearing

The hearing date for an application under section 33(8) must not be later than 14 days after the day on which the application is filed.

28. Procedure on application for review

- (1) Family Law Rules Order 36A rule 7 is adopted and applies for the purposes of an application under section 33(8).
- (2) Rule 12(3) or 13(3) and (4), as the case requires, applies to the Family Law Rule adopted under subrule (1).

Division 3 — Conferral of functions on Registrars**29. Conferral of functions on Registrars**

- (1) Subject to subrules (2) and (3) if, under a Family Law Rule set out in the table to this subrule, a function is conferred on a Registrar within the meaning of the Family Law Act, the function is conferred on a Registrar for the purposes of these rules.

Table

Order 2
 Order 3
 Order 4 except rule 1A
 Order 5
 Order 7 except rule 11(1)(b) and Division 2
 Order 8
 Order 9 except rule 2, rule 12(8) and rule 12(9)
 Order 11 except rule 3
 Order 14
 Order 15 except rule 4(1), rule 5, rule 6(2)(b), rule 11(1), rule 11(2) and rule 13
 Order 16 except rule 9 and rule 10
 Order 20
 Order 23A
 Order 24 except rule 1(1), rule 1(1A), rule 2(3)(b) and rule (5)

Order 24A
Order 25 except rule 5(1), rule 5(2)(b) and rule 5(2)(c)
Order 25A
Order 26
Order 26A
Order 27
Order 28
Order 30 except rule 2AAA
Order 30A
Order 31
Order 31A
Order 31B
Order 32
Order 33
Order 35
Order 38
Order 39
Order 40
Order 41

- (2) If, under a Family Law Rule set out in the table to this subrule, a function is conferred on the Principal Registrar within the meaning of the Family Law Rules or on a Registrar within the meaning of the Family Law Act, the function is conferred on the Principal Registrar of the Court for the purposes of these rules.

Table

Order 2 rule 5(3A)
Order 11 rule 5(2)(b)
Order 33 rule 6(8)(d)
Order 38 rule 27(4)(a) and rule 38(2)(a)
Order 40 rule 6(2)(c)

- (3) Subrule (1) does not apply so as to confer on a Registrar a power if, under rule 24, the power is delegated to the Registrar.

30. Review of non-delegated functions of Registrars

- (1) This rule applies where an order, direction or decision is made by a Registrar in the exercise of any of the Registrar's functions conferred under rule 29.
- (2) A party to proceedings in which a Registrar has performed a function conferred under rule 29 may, within 7 days after the day on which the function is performed or such further time as is allowed in accordance with rule 26, apply to the Court to review the performance of the function.
- (3) The hearing date for an application under subrule (2) must not be later than 14 days after the day on which the application is filed.
- (4) The Court may, on application under subrule (2) or of its own motion, review the performance by a Registrar of a function conferred under rule 29 and may make any order it considers

appropriate with respect to the matter to which the performance of the function related.

- (5) Family Law Rules Order 36A rule 7 is adopted and applies for the purposes of an application under subrule (2).
- (6) Rule 12(3) or 13(3) and (4), as the case requires, applies to the Family Law Rule adopted under subrule (5).

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

Dated 29/9/98.

M. H. HOLDEN
D. R. ANDERSON
N. TOLCON
C. E. MARTIN
J. G. BARLOW

