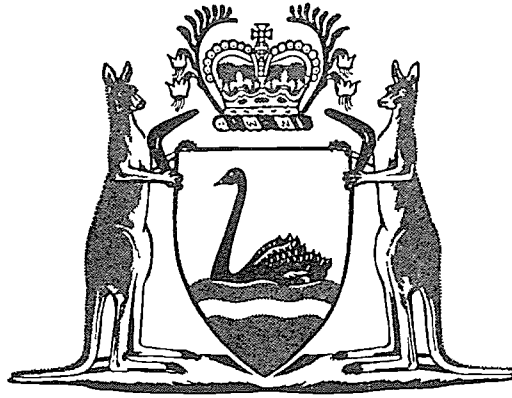


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FAMILY COURT ACT 1975-1979.

FAMILY COURT OF WESTERN AUSTRALIA REGULATIONS 1976.

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FAMILY COURT ACT 1975-1979.

FAMILY COURT OF WESTERN AUSTRALIA
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Reprinted pursuant to the Reprinting of Regulations Act 1954, by authority of the Attorney General dated 28 January 1981.

FAMILY COURT ACT 1975-1979.

**FAMILY COURT OF WESTERN AUSTRALIA
REGULATIONS 1976.**

PART I.—PRELIMINARY.

- Citation. 1. These regulations may be cited as the Family Court of Western Australia Regulations 1976.
- Interpre-
tation.
Amended by
G.G. 7/10/77,
p. 3608;
G.G. 18/1/80,
p. 138.
2. In these regulations, unless the contrary intention appears—
“Act” means the Family Court Act 1975;
“Central Registry” means the Central Registry of the Court;
“Collector” means the officer of the Court known as Collector of Maintenance and includes an Assistant Collector of Maintenance;
“court of summary jurisdiction” means a court of summary jurisdiction constituted by a magistrate and includes such a court when constituted by a stipendiary magistrate who is the Registrar;
“decree” means judgment or order, order dismissing an application or refusing to make an order, and order of the Court dismissing an appeal from a court of summary jurisdiction;
“Family Law Regulations” means the Family Law Regulations made under the Family Law Act and includes any regulations amending those regulations and regulations in substitution thereof;
“Form” means a Form in the First Schedule;
“pending proceedings” has the same meaning as it has in section 91;
“Registry” means a registry of the Court;
“regulation” means one of these regulations;
“Schedule” means a Schedule to these regulations; and
“subregulation” means a subregulation of the regulation wherein the term is used.
- Metropolitan
region.
3. For the purposes of the Act, the metropolitan region is that part of the State that comprised on the 5th January, 1976 the metropolitan region within the meaning of the Town Planning and Development Act 1928 as amended and in force on that date.

PART II.—FAMILY COURT OF WESTERN AUSTRALIA.

- Seal. 4. The Court shall have a seal having inserted on it the words “The Seal of the Family Court of Western Australia” and may be impressed on any document by a rubber stamp or similar process.
- Registrar,
Deputy
Registrars
and
registries.
5. (1) The person appointed Registrar of the Court shall have his office at Perth and that office shall be the Central Office and the Central Registry of the Court.
(2) There shall be a Deputy Registrar of the Court who shall have his office at Perth and there may be such other Deputy Registrars of the Court as are necessary for the conduct of its business.
(3) There may be such registries of the Court outside the metropolitan region as are from time to time specified in these regulations.

6. (1) The Court shall sit at such places and times as the Chairman of Judges directs. Sittings, vacations and holidays.

(2) There shall be no Court vacations but the Court shall not sit on the days specified in subregulation (3) unless the Judge constituting the Court otherwise directs.

(3) Subject to subregulation (4) each Registry shall be open during office hours on every day in the year except Saturdays and Sundays, Good Friday, Monday and Tuesday in Easter week, Christmas Day and the next following working day and all Public Service holidays.

(4) Unless the Chairman of Judges or Registrar otherwise directs the office in each Registry shall be open from 9.30 o'clock in the morning to 3.30 o'clock in the afternoon.

7. (1) The Court may require and administer all necessary oaths and affirmations. Oath and affirmations. Amended by G.G. 7/10/77, p. 3608; G.G. 18/1/80, p. 139.

(2) The forms of oath or affirmation shall be the same as nearly as may be, as those used in the Supreme Court.

(3) Without derogating from any other law relating to affidavits and recognizances, and without limiting the generality of regulation 19, it is hereby specifically provided that affidavits required for use in or before the Court or any officer of the Court, or in or before a court of summary jurisdiction and any recognizances required to be filed therein, may be sworn or executed before a Judge, a Registrar, a Deputy Registrar, the Marshal, the Collector of Maintenance, a Magistrate or a Justice of the Peace.

(4) An affidavit required for use in or before the Court or any officer of the Court, or in or before a court of summary jurisdiction—

(a) is not sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before an agent or correspondent of that solicitor, or before the party himself; and

(b) in the case where it would be insufficient if sworn before the solicitor, agent, correspondent or party himself, is insufficient if sworn before his clerk or partner.

8. (1) Wherever practicable all proceedings of the Court shall be fully recorded. Recording of proceedings.

(2) Proceedings need be transcribed only where a Judge or the Registrar so orders.

(3) Where the proceedings are transcribed on order of a Judge or the Registrar, a party to proceedings is entitled to have one copy of the transcript of the proceedings.

9. (1) The Registrar, Judge's Associate, or a proper officer of the Court shall take charge of every document or object put in as an exhibit during the hearing of any proceeding in the Court. Exhibits. Amended by G.G. 18/1/80, p. 139.

(2) The list of exhibits when completed shall form part of the record of the proceeding.

(3) The Court or the Registrar may direct that the exhibits be kept in the Court, returned to the parties, or otherwise disposed of in such manner as it or he sees fit.

10. Every decree of the Court shall be recorded by the proper officer of the Court in a record kept for that purpose. Decrees to be recorded.

11. (1) Service of applications, notices, summonses, decrees or other documents in proceedings in the Court may be effected on any day other than Christmas Day or Good Friday. Service, etc.

(2) Where a respondent or a person specified in an application has given an address for service for the purpose of the proceedings, the application and all other documents required to be served therewith shall be deemed to have been duly served on the respondent or that person on the day on which the notice of address for service was filed, without further proof of the service.

(3) A warrant may be executed at any time.

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Fees of Marshal. 12. The fees to be taken by the Marshal are as set out in the Second Schedule.

Register of proceedings. 13. The Registrar shall for the Court, and the clerk of a court of summary jurisdiction shall for that court, keep a register, in the form of Form 1, and shall cause to be entered in the register particulars of all applications lodged in the Court or the court of summary jurisdiction, as the case may be.

14. [*Revoked by G.G. 18/1/80, p. 139.*]

Notice of variation where custody to third person. Amended by G.G. 18/1/80, p. 139. 15. Where an application for ancillary relief, made to the Court in the exercise of its non-federal jurisdictions under the Act, is one touching or affecting guardianship or custody of, access to, or maintenance of, a child committed to the legal custody of a person who is not a party to the order whereby the child was so committed, a notice of that application shall be given to that person.

PART III.—ACCOUNTING AND ENFORCEMENT.

Collector of Maintenance. Amended by G.G. 11/8/78, p. 2876; G.G. 18/1/80, p. 139. 16. The Collector of Maintenance shall—
 (a) receive moneys payable to him or to the Court and disburse those moneys to the person named in the order;
 (b) keep proper accounts as to payments due under an order, and payments made under an order; and
 (c) enforce an order at the request of a person entitled to receive moneys under an order in accordance with the enforcement provisions of the Acts involved.

Accounting. Amended by G.G. 18/1/80, p. 139. 17. (1) A ledger in the form of Form 9 shall be maintained at every Registry and at every court of summary jurisdiction except a Registry or a court where a ledger posting machine or other recording machine is installed.

(2) Where moneys are paid to an officer of a court pursuant to an order made by it, the officer shall disburse those moneys to the person named in the order as being entitled to receive payment in accordance with the terms of the order or to the attorney of that person.

(3) Subject to any express directions given by the person making the payment, money paid pursuant to a provision of an order is deemed to be a payment made to the person entitled to receive it in satisfaction to the extent of the payment firstly of any fees payable in respect of the enforcement and 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 making the payment does so before the date on which the moneys are due and payable the officer of the Court may disburse them before that date if the person gives an authority in writing to that effect and an indemnity in writing in respect of the early payment.

(5) Where a person who is obliged to make payments under two or more provisions of an order or under provisions of two 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 or the clerk of the court to which the payment has been made may subject to subregulation (4), appropriate the moneys so paid for or towards the satisfaction of the amounts payable, in such manner as he thinks proper.

Notice of election. Added by G.G. 18/1/80, p. 139. 17A. Where a person who is entitled to enforce any one or more of the provisions of a maintenance order elects, by notice in writing to the Collector or the clerk of the court in which the order is enforceable, not to enforce a provision specified in the notice, then the Collector or that clerk shall cause notice of the election to be given to the person or persons liable to

make payments under the provision and, without affecting the enforcement of any other provision, the order shall not, without leave of the Court or the relevant court of summary jurisdiction first being obtained, be enforced as regards the provisions so specified.

18. On application by or on behalf of any person entitled to enforce a maintenance order to the Collector or to the clerk of the court in which the order is enforceable the Collector or that clerk may take all or any steps necessary or expedient to enforce the order but the person making the application shall have the same liability for all costs properly incurred in or about the enforcement proceedings as if they had been taken by him, and the clerk or the Collector may refuse to act on the application where it appears to him unreasonable to do so.

Duties of
clerk or
Collector
as to en-
forcement.

PART IV.—ADDITIONAL PROVISIONS FOR
NON-FEDERAL JURISDICTION.

19. (1) The practice and procedure of the Family Court of Western Australia and courts of summary jurisdiction relating to matters in their non-federal jurisdiction, except those conferred on the Family Court of Western Australia by the Adoption of Children Act 1896 shall be the same, as nearly as may be, as the practice and procedure provided in the Family Law Regulations of the Commonwealth, as amended from time to time, relating to like matters, unless a contrary intention appears in the laws of this State relating to such matters.

Adoption of
Common-
wealth
practice and
procedure.
Amended by
G.G. 7/10/77,
p. 3608;
G.G. 18/1/80,
p. 139.

(2) In subregulation (1) of this regulation practice and procedure includes all matters with respect to which regulations may be made under the Act.

20. [*Revoked by G.G. 18/1/80, p. 139.*]

21. Forms 7, 8, 9 and 10 shall be used for the respective purposes specified thereon.

Forms.
Substituted
by G.G.
18/1/80,
p. 139.

22. [*Revoked by G.G. 7/10/77, p. 3608.*]

23. [*Revoked by G.G. 7/10/77, p. 3608.*]

24. [*Revoked by G.G. 7/10/77, p. 3608.*]

25. [*Revoked by G.G. 18/1/80, p. 139.*]

26. [*Revoked by G.G. 18/1/80, p. 139.*]

27. (1) Subject to subregulation (2) and regulation 28, each party to proceedings in a non-federal jurisdiction shall bear his own costs.

Costs.

(2) If the Court, or a court of summary jurisdiction, is of the opinion in a particular case in a non-federal jurisdiction that there are circumstances that justify it in so doing it may make such order for costs and security for costs, whether by way of interlocutory order or otherwise, as it thinks fit.

28. The Court, or a court of summary jurisdiction may at any stage of proceedings in a non-federal jurisdiction, if it is satisfied that the proceedings are frivolous or vexatious, dismiss the proceedings and make such orders as to costs as it thinks fit.

Frivolous
or vexatious
proceedings.

29. Where a matter is brought in the Court over which the Court has no jurisdiction, the Judge shall 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

Costs where
the Court
has no
juris-
diction.

jurisdiction therein and the person bringing the matter had not appeared in Court or had so appeared and failed to establish his case.

Referral of matters to an officer of the Court for investigation.

Amended by G.G. 18/1/80, p. 139.

30. (1) The Court may refer to an officer of the Court for investigation, report and recommendation claims or applications for or relating to any matters before the Court.

(2) [*Deleted by G.G. 18/1/80, p. 139.*]

(3) An officer making an investigation referred to in subregulation (1) may take evidence on oath or affirmation, and may obtain and receive in evidence a report from a welfare officer.

(4) Witnesses may be summoned before an officer making an investigation referred to in subregulation (1) for the purpose of giving evidence or producing books and documents.

(5) The Court or a court of summary jurisdiction, as the case may be, may receive the report of the officer who has made the investigation in evidence in the matter before the Court or the court of summary jurisdiction, as the case may be.

PART V.—APPEALS.

Part V.
Substituted by G.G. 7/10/77, p. 3608.

Notice of appeal.
Substituted by G.G. 7/10/77, p. 3608.

31. (1) An appeal under subsection (2) of section 81 of the Act to the Court from a Court of Summary Jurisdiction referred to in section 75 of the Act shall be instituted by filing a notice of appeal.

(2) A notice of appeal referred to in subregulation (1) of this regulation shall be—

(a) in the form of the form of notice of appeal prescribed by the Family Law Regulations in relation to appeals from courts of summary jurisdiction under section 96 of the Family Law Act; and

(b) filed in the Court within 28 days after the making of the decree in relation to which the appeal is made or such further time as the Court may allow.

(3) A copy of the notice of appeal shall, in accordance with the provisions of the Family Law Regulations relating to service of notices of appeal from courts of summary jurisdiction under section 96 of the Family Law Act, be served on—

(a) all parties to the proceedings; and

(b) the clerk of the court appealed from,

within 14 days after the filing of the notice of appeal.

(4) Where notice of appeal under subsection (2) of section 81 of the Act to the Court from a court of summary jurisdiction has been filed in accordance with subregulation (1), the Magistrate who made the decree or a Judge of the Court in which the appeal is instituted, may make an order staying the execution or operation of the decree pending the determination of the appeal and where such an order has been made, a Court having jurisdiction under the Act shall not, pending the determination of the appeal, enforce the decree or entertain proceedings for the enforcement of the decree.

9

First Schedule.

First Schedule.
Amended by
G.G. 18/1/80,
p. 140.

FORMS

Family Court Act 1975.

Form 1.

Application No.	Date Filed	Name and Initials of the Parties	Hearing Date
.....
.....
.....

[Forms 2, 3, 4, 5 and 6 deleted by G.G. 18/1/80, p. 140.]

Western Australia.

FAMILY COURT ACT 1975.

Applicant
Respondent

Form 7

CERTIFICATE AS TO AN AMOUNT ORDERED TO BE PAID
AND PAYMENT MADE.

Date of Order:

Order:

Person liable to make payments under Order:

I

Court

at

certify that it appears from the records

of the

Court at

that:—

Dated the
19 .

day of

Clerk or Registrar.

.....

Form 8

COURT.

No.

Western Australia.

FAMILY COURT ACT 1975.

.....
.....

APPLICATION FOR ENFORCEMENT OF A MAINTENANCE ORDER.

To the Clerk of the Court at

WHEREAS

1. In the Court at in the State of Western Australia on the day of 19 , an order was made whereby was ordered to pay to me the said the sum of \$ per week being maintenance for myself at \$ per week and \$ per week for each of children, and the order is not being enforced in any other court.

2. I request you to take all steps necessary or expedient to enforce the order on my behalf.

3. I understand I shall have the same liability for all costs properly incurred in or about the proceedings as if the proceedings had been taken by me.

4. I undertake—

- (a) not to receive any moneys direct but should they come into my possession I will immediately notify you and act on your instructions;
- (b) not to enter into any negotiation or agreement concerning the payment of maintenance without notifying you.

5. The arrears outstanding as at this date are \$.

6. In support of this application I furnish you the following particulars as set out below.

7. This authority to remain in full force and effect until such time as I revoke it in writing.

DATED at this day of 19 .

.....
SIGNATURE OF APPLICANT.

Address
.....

.....
WITNESS.

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Western Australia.
FAMILY COURT ACT 1975-1979.

Form 10.

NAME OF HUSBAND:
NAME OF WIFE:

NOTICE OF ELECTION NOT TO ENFORCE A PROVISION
OF AN ORDER.

TO the Collector of Maintenance Perth, (or Clerk of Courts at).

WHEREAS an order was made against the abovenamed husband/
wife in the Court sitting at
whereby the husband/wife was directed to pay—

(Delete or
add to as
required).

\$ per week for and towards the maintenance of
and: \$ per week for and towards the maintenance of
and: \$ per week for and towards the maintenance of

NOW TAKE NOTICE THAT I,
being the person entitled to enforce payments under the said order,
hereby elect not to enforce the provision of the order for the
payment of
on and after the day of of 19

I am aware that I may withdraw this election but that if I do
withdraw the election, my right to continue to enforce the payment,
which I now elect not to enforce, does not operate retrospectively
and only operates from the date of withdrawal.

Dated at this day of 19

Signed by the said

In the presence of
(Witness)

Second Schedule.

FEES TO BE TAKEN BY MARSHAL.

Shall be in accordance with Part III of the Fifth Schedule of the Supreme
Court Rules 1971 as amended from time to time.