

Western Australia

Family Court of Western Australia Rules 1988

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Family Court of Western Australia Rules 1988

CONTENTS

Part I — Preliminary

1.	Citation	2
2.	Commencement	2
3.	Interpretation	2

Part II — Family court of Western Australia

4.	Seal	3
5.	Sitting vacations and holidays	3
6.	Oaths and affirmations	3
7.	Decrees to be recorded	3
8.	Register of proceedings	4

Part III — Non-federal jurisdiction

9.	Adoption of Commonwealth practice and procedure	5
10.	Costs where the Court has no jurisdiction	5
11.	Persons who may take affidavits	5

Part IV — Appeals

12.	Notice of Appeal	6
13.	Savings	7

NOTES

Western Australia

FAMILY COURT ACT 1975

Family Court of Western Australia Rules 1988

MADE by the Judges under section 88A.

Part I — Preliminary

1. Citation

These rules may be cited as the *Family Court of Western Australia Rules 1988*.

2. Commencement

These rules shall come into operation on the day fixed for the coming into operation of the *Family Court Amendment Act 1987*.

3. Interpretation

In these rules, unless the contrary intention appears —

“**Central Registry**” means the Central Registry of the Court;

“**court of summary jurisdiction**” means a court of summary jurisdiction referred to in section 75 of the Act;

“**decree**” has the same meaning as in section 81 of the Act;

“**Family Law Rules**” means the Family Law Rules made under the Family Law Act;

“**the Act**” means the *Family Court Act 1975*.

Part II — Family court of Western Australia

4. Seal

- (1) The Court shall have a seal which shall contain the words “The Seal of the Family Court of Western Australia”.
- (2) The seal may be impressed on any document by a rubber stamp or similar process.

5. Sitting vacations and holidays

- (1) The Court shall sit at such places and times as the Chief Judge directs.
- (2) There shall be no Court vacations but the Court shall not sit on the days specified in subrule (3) unless the Judge constituting the Court otherwise directs.
- (3) Subject to subrule (4) the Central Registry shall be open on every day in the year except Saturdays and Sundays, Good Friday and Monday in Easter week, Christmas Day and all Public Service holidays.
- (4) Unless the Chief Judge or Registrar otherwise directs the Central Registry shall be open from 9.00 am to 3.30 pm.

*[Rule 5 amended by Gazettes 10 December 1993 p.6528;
7 April 1995 p.1228.]*

6. Oaths and affirmations

- (1) The Court may require and administer all necessary oaths and affirmations.
- (2) The form of an oath or affirmation shall be the same as nearly as may be as that used in the Supreme Court.

7. Decrees to be recorded

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

s. 8

8. Register of proceedings

The Registrar shall keep a register for the Court and shall cause to be entered in the register particulars of all applications lodged in the Court.

Part III — Non-federal jurisdiction

9. Adoption of Commonwealth practice and procedure

- (1) The practice and procedure of the Court and courts of summary jurisdiction relating to matters in their non-federal jurisdiction, except those conferred on the Court 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 Rules relating to like matters, unless a contrary intention appears in a written law.
- (2) In this rule practice and procedure includes all matters with respect to which rules may be made under the Act.

10. Costs where the Court has no jurisdiction

Where a matter is brought in the Court or in a court of summary jurisdiction over which the Court has no jurisdiction, the Judge or Magistrate shall order the matter to be struck out, and the Court or court of summary jurisdiction has power to award costs to the same extent, and recoverable in the same manner, as if the Court had jurisdiction therein and the person bringing the matter had not appeared in the Court or the court of summary jurisdiction or had so appeared and failed to establish his case.

11. Persons who may take affidavits

An affidavit required for use in or before the Court or any officer of the Court, or in a court of summary jurisdiction, and a recognizance 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, a Justice of the Peace or any other person allowed by any written law or the Family Law Rules to take an affidavit or recognizance.

Part IV — Appeals

12. Notice of Appeal

- (1) An appeal under section 81 (2) of the Act to the Court from a court of summary jurisdiction shall be instituted by filing a notice of appeal.
- (2) A notice of appeal referred to in subrule (1) shall be —
 - (a) in the form of the form of notice of appeal prescribed by the Family Law Rules 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 Rules 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 section 81 (2) of the Act to the Court from a court of summary jurisdiction has been filed in accordance with subrule (1), the Magistrate who made the decree or a Judge 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.

13. Savings

- (1) Subject to subrules (4) and (5), proceedings pending or orders or directions made, appointments made or authorizations given, documents filed or served, or any other act or thing done, before the commencement of these rules, in accordance with the repealed regulations, shall, if of a kind to which these rules or the regulations apply, be treated as if pending, made, given, filed, served, or done, as the case requires, in accordance with these rules or the regulations, as the case requires.
- (2) Subject to subrules (4) and (5), an obligation incurred or undertaking given under the repealed regulations before the commencement of these rules if of a kind to which these rules or the regulations apply shall be treated as if incurred or given under these rules or the regulations as the case requires.
- (3) Subject to subrules (4) and (5), where a person has, before the commencement of these rules, omitted to do any act or thing in accordance with the repealed regulations and the act or thing is one to which these rules apply, the act or thing shall be treated as if omitted to be done under these rules unless subsequently done in accordance with these rules.
- (4) These rules do not operate to revive any period of time for the doing of any act or thing, being a period of time which, under the repealed regulations, had expired before the commencement of these rules.
- (5) A period of time that commenced under the repealed regulations but had not expired before the commencement of these rules shall, if the matter in respect of which that period has commenced is a matter to which these rules apply, continue as if these rules had not come into operation.
- (6) In this rule —
 “**regulations**” means the *Family Court of Western Australia Regulations 1988*;

s. 13

“repealed regulations” means the *Family Court of Western Australia Regulations 1976* repealed by regulation 13 of the *Family Court of Western Australia Regulations 1988*.

Dated 30 December 1987.

D. F. CONNOR.
A. J. BARBLETT.
I. W. P. McCALL.
G. E. FERRIER.
D. R. ANDERSON.

NOTES

- ^{1.} This is a compilation of the *Family Court of Western Australia Rules 1988* and includes the amendments referred to in the following Table.

Compilation table

Citation	Gazettal	Commencement
<i>Family Court of Western Australia Rules 1988</i>	15 Jan 1988 p. 74-5	15 Jan 1988 (see r. 2 and <i>Gazette</i> 15 Jan 1988 p. 67)
<i>Family Court of Western Australia Amendment Rules 1993</i>	10 Dec 1993 p. 6528	10 Dec 1993
<i>Family Court of Western Australia Amendment Rules 1995</i>	7 Apr 1995 p. 1228	7 Apr 1995