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**JUSTICE**

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JM301\*

Family Court Act 1997

## Family Court Regulations 1998

Made by the Governor in Executive Council.

### 1. Citation

These regulations may be cited as the *Family Court Regulations 1998*.

### 2. Commencement

These regulations come into operation on the day on which the *Family Court Act 1997* comes into operation.

### 3. Interpretation

- (1) In these regulations, unless the contrary intention appears —
  - “**court**” has the meaning referred to in section 8;
  - “**Registrar**” means the Principal Registrar, a Registrar or a Deputy Registrar and includes, in relation to a court of summary jurisdiction, the clerk of petty sessions of that court;
  - “**section**” means section of the Act.
- (2) A reference in a Family Law Regulation adopted or applied under these regulations —
  - (a) to the Family Court is to be treated as a reference to the Family Court of Western Australia;
  - (b) to a Registrar is to be treated as a reference to a Registrar as defined in subregulation (1);
  - (c) to a Registry of the Family Court is to be treated as a reference to the registry of the Family Court of Western Australia;
  - (d) to a form in a Schedule of the Family Law Regulations is to be treated as a reference to the form with the appropriate modifications for the purposes of the Act; and
  - (e) 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 provision is comparable.
- (3) Subject to this regulation, a Family Law Regulation adopted or applied under these regulations is adopted or applied in the form in which it is in force from time to time.

**4. Dispensing with compliance**

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

**5. Court registry**

The registry of the Family Court is to be in Perth.

**6. Fees of Marshal**

The fees payable to the Marshal are to be in accordance with Part III of the Fifth Schedule to the *Rules of the Supreme Court 1971*.

**7. Recording of proceedings**

- (1) All proceedings in a court are, where practicable, to be fully recorded.
- (2) A record of proceedings need be transcribed only where a court or a Registrar so orders or directs.

**8. Persons authorized to offer family and child counselling**

- (1) For the purposes of paragraph (c) of the definition of “family and child counsellor” in section 5, the Attorney General may authorize a person, in writing, to offer family and child counselling.
- (2) The Attorney General may authorize a person only if the Attorney General considers that the person is suitable by reason of the person’s training and experience.

**9. Oath or affirmation of secrecy of family and child counsellors**

For the purposes of section 56, the form of the oath or affirmation of secrecy to be made by a family and child counsellor is the form set out in Family Law Regulation 58.

**10. Approval of persons as court mediators**

The Chief Judge may approve a person as a family and child mediator only if the Chief Judge considers that the person is suitable by reason of the person’s training and experience.

**11. Oath or affirmation of secrecy of court mediators and community mediators**

For the purposes of section 62, the form of the oath or affirmation of secrecy to be made by a court mediator or a community mediator is the form set out in Family Law Regulation 66.

**12. Community mediators and private mediators**

Family Law regulations 60, 61, 62, 63, 64, 65 and 67 are adopted.

- 13. Advertising counselling services in the Court's registry**  
Family Law Regulations 68(1)(a)(i), 68(1)(b), 68(2), 69 and 70 are adopted and apply for the purposes of section 65(1).
- 14. Advertising mediation services in the Court's registry**  
Family Law Regulations 68(1)(a)(ii), 68(1)(b), 68(2), 71 and 72 are adopted and apply for the purposes of section 65(2).
- 15. Parentage testing procedures**
- (1) Family Law Regulation 21C is adopted and applies for the purposes of the definition of "parentage testing procedure" in section 5.
  - (2) Family Law Regulations 21B, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21K and 21L are adopted and apply to a parentage testing procedure that is required to be carried out on a person under a parentage testing order made by a court under section 195.
- 16. Parentage testing reports**
- (1) The Attorney General may appoint in writing a person or class of persons, being persons employed at a particular place, to prepare reports relating to the information obtained as the result of conducting parentage testing procedures.
  - (2) An instrument of appointment under subregulation (1) is to be published in the *Gazette*.
  - (3) Family Law Regulation 21M is adopted and applies for the purposes of section 200(b).
- 17. Registration in a court of orders etc. made by another court**
- (1) In subregulation (2) —  
**"first-mentioned court"** means the court first mentioned in the definition of "order under this Act" in section 223;  
**"second-mentioned court"** means a court referred to in paragraph (b)(i), (d)(i), (h)(i) or (j)(i) of the definition of "order under this Act" in section 223.
  - (2) For the purposes of —
    - (a) section 223(b)(ii), an order of a second-mentioned court;
    - (b) section 223(d)(ii), an injunction granted by a second-mentioned court;
    - (c) section 223(h)(ii), a parenting plan registered in a second-mentioned court; or
    - (d) section 223(j), a recognizance entered into in accordance with an order, or on the direction of, a second-mentioned court,may be registered in the first-mentioned court by filing a sealed copy of the order in the registry of the first-mentioned court.
  - (3) A decree within the meaning of section 211 may be registered in any court by filing a sealed copy of the order in the court's registry.

**18. Court fees payable in respect of proceedings**

- (1) Subject to subregulation (7), the following fees are payable in respect of proceedings under the Act —
  - (a) for a residence order, a contact order or a specific issues order —
    - (i) a filing fee of \$152 for each of the following applications —
      - (I) an application for final orders;
      - (II) a response to an application for final orders;
    - and
    - (ii) for an application for final orders that is defended — a hearing fee of \$303;
  - and
  - (b) for an appeal under section 211 from a decree of a court of summary jurisdiction — a hearing fee of \$303.
- (2) The person liable to pay a fee is —
  - (a) the person initiating the proceedings in respect of which the fee is payable; or
  - (b) if the court or a Registrar so orders —
    - (i) another party to the proceedings; or
    - (ii) each of 2 or more of the parties to the proceedings, including the person initiating the proceedings, in the proportions ordered,

but nothing in this subregulation prevents a person other than the person liable to pay the fee from paying the fee.
- (3) A filing fee is payable at the time when the application is filed.
- (4) A hearing fee is payable —
  - (a) if a court or a Registrar directs a time within which the fee must be paid — within that time; or
  - (b) in any other case — at the time when a date is fixed for the hearing of the proceedings.
- (5) Subject to subregulation (7), a Registrar must not accept an application for filing in any registry unless any filing fee under subregulation (1) has been paid.
- (6) Subject to subregulation (7), if, in relation to an application, a hearing fee payable under subregulation (1) is unpaid —
  - (a) a court may order that no proceedings, or no proceedings other than specified proceedings, are to take place, except by leave, in the matter to which the application relates;
  - (b) a person other than the person liable to pay the fee may pay the fee without affecting any power of the court to make an order for costs for the fee; and
  - (c) the court may vacate the date fixed for hearing.

- (7) A fee referred to in subregulation (1) is not payable if —
- (a) the person liable to pay the fee has been granted legal aid, under a legal aid scheme or service established under Commonwealth or State law or approved by the Attorney General of the Commonwealth, for the matter to which the proceedings relate;
  - (b) the applicant is, at the time the application is filed or a date is fixed for the hearing of the proceedings (as the case requires) —
    - (i) the holder of one of the following cards issued by the Commonwealth Department of Social Security —
      - (I) a health care card;
      - (II) a health benefit card;
      - (III) a pensioner concession card;
      - (IV) a Commonwealth seniors health card;
    - (ii) the holder of any other card issued by the Commonwealth Department of Social Security or the Commonwealth Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions;
    - (iii) an inmate of a prison or otherwise lawfully detained in a public institution;
    - (iv) under the age of 18 years;
    - (v) in receipt of youth allowance, or austudy payment, within the meaning of the *Social Security Act 1991* of the Commonwealth; or
    - (vi) in receipt of benefits under the Commonwealth of Australia student assistance scheme known as the ABSTUDY Scheme;
- or
- (c) a Registrar, having regard to the income, day to day living expenses, liabilities and assets of the person liable to pay the fee, waives payment of the fee because, in the Registrar's opinion, payment of the fee would cause financial hardship to the person.
- (8) If —
- (a) a fee referred to in subregulation (1) has been paid; and
  - (b) the fee is not payable under subregulation (7),
- a Registrar must refund to the applicant, or other person who paid the fee, an amount equal to the amount of the fee.
- (9) Upon written notice to a Registrar, a person who has paid a hearing fee is entitled to a refund of the fee if —
- (a) notice that the hearing for which the fee was paid will not proceed is given to the Registrar —
    - (i) if the hearing date was fixed less than 20 working days before that date — at least 2 working days before that date; or

- (ii) in any other case — at least 20 working days before the hearing date;
- and
- (b) the hearing —
  - (i) does not proceed; or
  - (ii) is conducted only to formalize the making of final orders.

#### 19. Biennial increases

A fee prescribed by regulation 18(1) is increased, in accordance with regulation 20, on each biennial anniversary of 1 July 1998.

#### 20. Calculation of increase

- (1) In this regulation —
  - “**fee**” means a fee prescribed by regulation 18(1);
  - “**CPI number**” means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician;
  - “**relevant period**” means any of the following periods —
    - (a) the 2 year period commencing on 1 July 1998;
    - (b) after that period — each 2 year period commencing on a biennial anniversary of 1 July 1998.
- (2) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{fee x latest CPI number}}{\text{earlier CPI number}}$$

where:

“**earlier CPI number**” is the CPI number for the last March quarter before the beginning of the relevant period;

“**fee**” is the fee in force at the end of the relevant period;

“**latest CPI number**” is the CPI number for the last March quarter before the end of the relevant period.

- (3) If, apart from this subregulation, the amount of a fee increased under subregulation (2) would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
- (4) Subject to subregulation (5), if at any time, whether before or after the commencement of this regulation, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this regulation.
- (5) If, at any time, whether before or after the commencement of this regulation, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the

application of this regulation after the change is made, regard shall be had only to numbers published in terms of the new reference base.

**21. Review of functions of Registrars**

An order, direction or decision made by a Registrar under these regulations is reviewable as if it were made by a Registrar in the exercise of any of the Registrar's non-delegated functions under the *Family Court Rules 1998* and the provisions of those rules that are applicable to the review of non-delegated functions of Registrars apply to a review for the purposes of this regulation.

**22. Repeal**

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

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

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