Western Australia

Family Court Act 1997

Family Court Rules 2021

Western Australia

Family Court Rules 2021

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Family Court Act 1997

Family Court Rules 2021

## Part 1 — Preliminary

### Division 1 — Introduction

##### 1. Citation

These rules are the *Family Court Rules 2021*.

##### 2. Commencement

These rules come into operation as follows —

(a) Part 1 Division 1 — on the day on which these rules are published in the *Gazette*;

(b) the rest of the rules — on the later of —

(i) the day after that day; and

(ii) 23 August 2021.

##### 3. Application

These rules apply to the federal and non‑federal jurisdictions of the Family Court of Western Australia and the Magistrates Court throughout Western Australia in relation to matters contained in these rules.

##### 4. Terms used

In these rules —

Act means the *Family Court Act 1997*;

address for service means the street address, postal address or email address given by a party where documents may be left for the party or to where documents may be sent for the party;

affidavit means a document that complies with rules 238, 239 and 483;

appeal —

(a) means an appeal to the Court from a court of summary jurisdiction; and

(b) includes a cross‑appeal;

appellant includes a cross‑appellant;

applicant includes a cross‑applicant who is seeking other orders in response to an application;

application includes —

(a) an initiating application; and

(b) an application in a case; and

(c) an application for divorce; and

(d) an application for consent orders; and

(e) an application for contempt; and

(f) an application alleging a contravention of an order of the Court or of a provision of the Act or of the Family Law Act; and

(g) a notice of appeal; and

(h) a cross‑application set out in a response to an application (response to an initiating application) or response to an application in a case;

approved form, in relation to a provision of these rules, means a form approved under rule 486 for the purposes of the provision;

assessment hearing means a hearing conducted by a registrar at which the amount to be paid on an itemised costs account is assessed;

attend means to present at a court event (including by electronic communication);

bankrupt has the meaning given by the Bankruptcy Act section 5(1);

Bankruptcy Act means the *Bankruptcy Act 1966* (Commonwealth);

bankruptcy case means a case in which a court has jurisdiction in bankruptcy under the Bankruptcy Act section 35, 35A or 35B;

Bankruptcy Regulations means the *Bankruptcy Regulations 2021* (Commonwealth);

case means a proceeding under the Act, the Family Law Act, the regulations, these rules or any other law that vests jurisdiction in a court;

case guardian —

(a) means a person appointed by the court under rule 105 to manage and conduct a case for a child or a person with a disability; and

(b) includes a next friend, guardian ad litem, tutor or litigation guardian;

child‑related proceedings includes child‑related proceedings as defined in the Family Law Act section 69ZM;

Child Support Act means, as the case requires, either or both of —

(a) the Child Support (Assessment) Act; and

(b) the Child Support (Registration and Collection) Act;

Child Support Agency means the agency of the Commonwealth Department of Social Services that administers a Child Support Act;

child support agreement has the meaning given by the Child Support (Assessment) Act section 81;

child support application or appeal means an application or appeal in which the only orders sought are under a Child Support Act;

child support assessment includes —

(a) an administrative assessment for child support under the Child Support (Assessment) Act Part 5; and

(b) an amended assessment to give effect to an order;

child support liability means an amount owing under a Child Support Act (including a child support assessment or registered child support agreement) that may be registered for collection by the Child Support Agency;

Child Support Registrar means the Child Support Registrar under the Child Support (Registration and Collection) Act section 10;

conduct money means money paid by a party to a witness, before the witness appears at a court event for the party, for —

(a) travel between the witness’s place of residence or employment and the court; and

(b) if necessary, reasonable accommodation expenses for the witness; and

(c) in the case of a subpoena for production, the reasonable costs of complying with the subpoena;

contact has the same meaning as in the Family Law Act Part VII;

corporation includes —

(a) a company; and

(b) a body corporate; and

(c) an unincorporated body that may sue or be sued or hold property in the name of its secretary or of an officer of the body appointed for that purpose;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

Corporations Rules means the *Federal Court (Corporations) Rules 2000* (Commonwealth);

costs —

(a) means an amount paid or to be paid for work done by a lawyer; and

(b) includes expenses;

costs agreement means a written agreement between a party and the party’s lawyer, about the costs to be charged by the lawyer for work done for a case for the party, in accordance with —

(a) for an agreement entered into before 1 July 2008, *Family Law Rules 2004* (Commonwealth) Schedule 6 clause 6.15, as applied by Schedule 2 Division 2 clause 2; or

(b) for an agreement entered into after 30 June 2008, the law of a State or Territory;

costs assessment order means an order made by a registrar fixing the total amount payable for costs under rule 348(1), 349(3) or 354(2);

costs notice means a brochure, approved by the executive manager of the Court appointed under section 25(1)(c) of the Act, about costs under Part 19 or Schedule 2;

counsel includes a barrister and a solicitor acting as a barrister;

court means —

(a) the Court; and

(b) the Magistrates Court in the exercise of —

(i) the federal jurisdiction with which it is invested by the Family Law Act; and

(ii) the non‑federal jurisdiction with which it is invested by the Act;

court event includes —

(a) a hearing or part of a hearing; and

(b) a trial or part of a trial; and

(c) a conference; and

(d) an attendance with a family consultant performing the functions of a family consultant; and

(e) an attendance with a single expert witness performing the functions of a single expert witness;

cross‑vesting law means a law relating to cross‑vesting jurisdiction of —

(a) the Commonwealth, other than the Corporations Act Part 9.6A; or

(b) a State or Territory;

declaration as to validity, in relation to a marriage, divorce or annulment, means an order that the marriage, divorce or nullity order is valid or invalid;

discontinue, in relation to a case, means to withdraw all or part of the case;

draft consent order means a document that complies with rule 166(3);

each person to be served has the meaning given in rule 122(4);

earnings include —

(a) wages, salary, fees, bonus, commission or overtime pay; and

(b) other money payable in addition to or instead of wages or salary; and

(c) a pension, annuity or vested superannuation money; and

(d) money payable instead of leave; and

(e) royalties; and

(f) retirement benefits due or accruing; and

(g) any salary sacrifice arrangement; and

(h) performance‑based incentives and non‑monetary benefits;

ECMS means the electronic case management system for the management of proceedings in Western Australian courts and tribunals;

electronic has the meaning given in the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* section 5;

electronic communication means —

(a) a video link; or

(b) an audio link; or

(c) another appropriate electronic means of communication;

eligible carer has the meaning given by the Child Support (Assessment) Act section 7B;

enforcement officer includes —

(a) a Marshal, a delegate of the Marshal or any other officer of the court; or

(b) a person appointed by the court for the purpose of enforcing an order;

enforcement order —

(a) means an order requiring a person to comply with an obligation; and

(b) includes the following —

(i) an enforcement warrant;

(ii) a third party debt notice;

(iii) an order for the seizure and sale of real or personal property;

(iv) an order varying an enforcement order;

expense means an amount paid to a third party (other than a lawyer) for work done in a case or services provided for a party;

expert means an independent person who has relevant specialised knowledge based on the person’s training, study or experience;

expert witness means an expert who has been instructed to give or prepare independent evidence for the purpose of a case;

family report means a report concerning the best interests of a child, prepared under section 73 of the Act or the Family Law Act section 55A(2) or 62G;

filing registry means the registry of the court in which a case has commenced or to which a case is transferred;

final order means the order of the court that finally decides a case commenced by an initiating application;

financial agreement means an agreement that is a financial agreement under section 205ZN, 205ZO or 205ZP of the Act, or the Family Law Act section 90B, 90C or 90D, other than an ante‑nuptial (pre‑marriage) or post‑nuptial (after marriage) settlement to which the Family Law Act section 85A applies;

financial case means a case (other than an appeal) involving an application —

(a) relating to the maintenance of 1 of the parties to a marriage, or to a de facto relationship after the breakdown of the relationship, including an application for permission to start a spouse maintenance case; or

(b) relating to the property of the parties to a marriage, or to a de facto relationship after the breakdown of the relationship, or of either of them, including —

(i) an application for permission to start a property case; and

(ii) an application to set aside an order altering property interests; and

(iii) an application in relation to a financial agreement or termination agreement; and

(iv) an application in relation to a transaction to defeat a claim;

or

(c) relating to the vested bankruptcy property in relation to a bankrupt party to a marriage, or to a de facto relationship after the breakdown of the relationship; or

(d) relating to the maintenance of children; or

(e) under the Child Support (Assessment) Act section 116, 123 or 129; or

(f) relating to child‑bearing expenses; or

(g) for the purposes of Part 20 Division 1 — that includes an application for the enforcement of a financial obligation;

financial orders includes orders in relation to —

(a) maintenance; or

(b) a child support application under the Child Support (Assessment) Act section 116, 123 or 129; or

(c) contribution to child‑bearing expenses; or

(d) property;

fresh application means any of the following applications (including compliance with pre‑action procedures associated with them) made after 30 June 2008 —

(a) an application for final orders;

(b) an application that includes an application for final orders;

(c) an application in a case filed in connection with a fresh application;

(d) an application for divorce;

(e) an application for consent orders;

(f) a contempt, contravention or enforcement application, unless an allegation of the contempt, contravention or breach relates to an interim or interlocutory order made in a pending or ongoing application for final orders filed before 1 July 2008;

(g) an application relating to contempt in the face of the court arising from an event occurring after 30 June 2008;

(h) an appeal, and a re‑hearing following an appeal;

(i) an application for review of final orders made by a registrar;

hearing means the process, other than a trial, of determining —

(a) an application in a case; or

(b) an application for divorce; or

(c) an application mentioned in rule 74; or

(d) part of a case; or

(e) an enforcement application;

itemised costs account means a document prepared in accordance with rule 339;

judicial officer includes a judge, a registrar, and a magistrate (including a family law magistrate);

lawyer means a person who is enrolled as a legal practitioner of —

(a) a federal court; or

(b) the Supreme Court of a State or Territory;

legislative provision includes —

(a) a provision in an applicable Act; and

(b) these rules; and

(c) the regulations; and

(d) any other applicable regulations made under the Act or the Family Law Act; and

(e) any conventions mentioned in a regulation made under the Act or the Family Law Act;

maintenance application means an initiating application in which the only orders sought are for maintenance (including a variation of a previous maintenance order) or a contribution towards child‑bearing expenses;

medical procedure application means an initiating application seeking an order authorising a major medical procedure for a child that is not for the purpose of treating a bodily malfunction or disease;

member benefit statement means a statement issued by or on behalf of the trustee of a superannuation fund setting out a person’s entitlement to benefits from the fund as at a date specified in the statement;

non‑convention country means a country with which Australia does not have a convention as to service of documents;

oath includes affirmation;

order, relating to a passport, includes —

(a) an order permitting a child to leave Australia; and

(b) an order relating to the issue, control or surrender of a passport;

parenting case means a case in which the application seeks a parenting order or a child‑related injunction under the Act or the Family Law Act, other than an application for child maintenance;

party has the meaning given in rule 95;

payee means a person who is entitled to take action against a payer to enforce an obligation to pay money, created by an assessment, order or agreement, with which the payer has not complied;

payer means a person who has an obligation to pay money to, or do an act to financially assist, a payee under an assessment, order or agreement;

permission means the leave or consent of the court;

person includes a corporation, authority or party;

person with a disability, in relation to a case, means a person who, because of a physical or mental disability —

(a) does not understand the nature or possible consequences of the case; or

(b) is not capable of adequately conducting, or giving adequate instruction for the conduct of, the case;

pre‑action procedure means the set of principles and procedures (the text of which is set out in Schedule 1) with which the parties must comply before starting a case;

prescribed child welfare authority means the CEO as defined in the *Children and Community Services Act 2004* section 3;

prescribed property, for a person, means —

(a) clothes, bed, bedding, kitchen furniture (except an automatic dishwasher or microwave) and washing machine; and

(b) ordinary tools of trade, plant and equipment, professional instruments and reference books, the combined value of which is not more than $5 000;

property includes —

(a) real and personal property; and

(b) superannuation;

property case means a case in which orders (other than consent orders) are sought relating to —

(a) the property of the parties to a marriage, or to a de facto relationship after the breakdown of the relationship, or of either of them; or

(b) the vested bankruptcy property in relation to a bankrupt party to a marriage, or to a de facto relationship after the breakdown of the relationship;

protected earnings rate means the actual threshold income amount that would apply to a payer under the Bankruptcy Act Part VI Division 4B if the payer were a bankrupt;

registered, in relation to a document, means accepted for filing;

regulations means, as the case requires —

(a) the *Family Court Regulations 1998*; and

(b) the *Family Law Regulations 1984* (Commonwealth); and

(c) any other applicable regulations made under the Act or the Family Law Act;

seal means a stamp or other impression (including, in the case of an electronic document, an electronic or virtual stamp) that the court puts on a document to indicate that the document has been issued by the court;

sealed copy means a document that bears a court seal;

security for costs means the security that a respondent may ask the court to order the applicant to pay for costs that may be awarded to the respondent;

serve means to give or deliver a document to a person in the manner required by these rules;

service by electronic means includes service by facsimile, email or any other form of electronic transmission;

sign means write a person’s name, including a mark by a person who is unable to write their name;

single expert witness means an expert witness who is appointed by agreement between the parties or by the court to give evidence or prepare a report on an issue;

special federal matter has the meaning given by the *Jurisdiction of Courts (Cross‑vesting) Act 1987* (Commonwealth) section 3(1);

step means a procedural act taken in the conduct or management of a case;

superannuation information form means a form approved under rule 486 for obtaining information from the trustee of a superannuation fund in family law cases;

sworn, for an affidavit or evidence, means an oath by a witness that the witness is telling the truth;

third party debt notice means a notice given to a third party who holds money for, or owes money to, a payer demanding that the money be paid to a payee to satisfy an obligation that the payer owes the payee;

third party debtor means a person from whom a payee claims a debt that is owed to the payer;

transcript means a written or electronic transcription of a hearing or a trial prepared by a contractor providing transcription services to the court for the case;

trial means the process of determining a case started by an initiating application specified in item 1 of the Table to rule 26;

undertaking as to damages has the meaning given in rule 316(4);

unreasonable, in relation to costs for work done in a case, means costs for work that would not normally be done in a case of a particular type;

work done for a case includes work done in relation to the case (including in relation to the pre‑action procedure) and work done in anticipation of starting the case;

working day means a day other than a Saturday, a Sunday or a public holiday;

written notice means a document (for example, a letter) that complies with rule 483(1) or (2).

[Divisions 2‑6 have not come into operation.]

[Parts 2‑30 have not come into operation.]

[Schedules 1‑3 have not come into operation.]



Notes

This is a compilation of the *Family Court Rules 2021*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

| **Citation** | **Published** | **Commencement** |
| --- | --- | --- |
| *Family Court Rules 2021* Pt. 1 Div. 1 | SL 2021/148 18 Aug 2021 | 18 Aug 2021 (see r. 2(a)) |

Uncommenced provisions table

To view the text of the uncommenced provisions see *Subsidiary legislation as made* on the WA Legislation website.

| **Citation** | **Published** | **Commencement** |
| --- | --- | --- |
| *Family Court Rules 2021* (other than Pt. 1 Div. 1) | SL 2021/148 18 Aug 2021 | 23 Aug 2021 (see r. 2(b)) |

Defined terms

*[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]*

**Defined term Provision(s)**

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appeal 4

appellant 4

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application 4

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ECMS 4

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eligible carer 4

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