



Western Australia

Family Court Act 1997

Family Court Rules 2021

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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.]

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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
<i>Family Court Rules 2021</i> 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
<i>Family Court Rules 2021</i> (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.]*

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