



# Federal Circuit Court Rules 2001

**Statutory Rules No. 195, 2001 as amended**

made under the

*Federal Circuit Court of Australia Act 1999*

**Compilation start date:** 11 June 2013

**Includes amendments up to:** SLI No. 56, 2013

This compilation has been split into 2 volumes

**Volume 1: Chapters 1–8**

Volume 2: Schedules 1 and 3, Dictionary and Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### The compiled instrument

This is a compilation of the *Federal Circuit Court Rules 2001* as amended and in force on 11 June 2013. It includes any amendment affecting the compiled instrument to that date.

This compilation was prepared on 14 June 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

### Uncommenced provisions and amendments

If a provision of the compiled instrument is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

### Modifications

If a provision of the compiled instrument is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled instrument has expired or otherwise ceased to have effect in accordance with a provision of the instrument, details of the provision are set out in the endnotes.

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## **Chapter 1—All proceedings**

### **Part 1—Introduction**

#### **1.01 Name of Rules**

These Rules are the *Federal Circuit Court Rules 2001*.

#### **1.02 Commencement**

These Rules commence on 30 July 2001.

##### **1.02A Authority**

These Rules are made under the *Federal Circuit Court of Australia Act 1999*.

#### **1.03 Objects**

- (1) The object of these Rules is to assist the just, efficient and economical resolution of proceedings.
- (2) In accordance with the objects of the Act, the Rules aim to help the Court:
  - to operate as informally as possible
  - to use streamlined processes
  - to encourage the use of appropriate dispute resolution procedures.
- (3) The Court will apply the Rules in accordance with their objects.
- (4) To assist the Court, the parties must:
  - avoid undue delay, expense and technicality
  - consider options for primary dispute resolution as early as possible.
- (5) If appropriate, the Court will help to implement primary dispute resolution.

## Rule 1.04

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### 1.04 Dictionary

The dictionary defines terms used in these Rules.

### 1.05 Application

- (1) It is intended that the practice and procedure of the Court be governed principally by these Rules.
- (2) However, if in a particular case the Rules are insufficient or inappropriate, the Court may apply the Federal Court Rules or the Family Law Rules, in whole or in part and modified or dispensed with, as necessary.
- (3) Without limiting subrule (2):
  - (a) the provisions of the Family Law Rules set out in Part 1 of Schedule 3 apply, with necessary changes, to family law or child support proceedings; and
  - (b) the provisions of the Federal Court Rules set out in Part 2 of Schedule 3, apply, with necessary changes, to general federal law proceedings.

Note: These Rules have effect subject to any provision made by an Act, or by rules or regulations under an Act, with respect to the practice and procedure in particular matters: see subsection 81(2) of the Act.

General outline:

- Chapter 1 applies to all proceedings
- Chapter 2 applies to family law and child support proceedings
- Chapter 3 applies to all proceedings other than family law and child support proceedings
- Chapter 5 applies to proceedings under the *Australian Human Rights Commission Act 1986*
- Chapter 6 applies to proceedings under other Acts including the *Administrative Decisions (Judicial Review) Act 1977* and the *Administrative Appeals Tribunal Act 1975*.

Rule 1.06

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**1.06 Court may dispense with rules**

- (1) The Court may in the interests of justice dispense with compliance, or full compliance, with any of these Rules at any time.
- (2) If, in a proceeding, the Court gives a direction or makes an order that is inconsistent with any of these Rules, the direction or order of the Court prevails in that proceeding.

## **Part 2—Documents**

### **Division 2.1—General**

#### **2.01 Requirements for documents**

- (1) A document (other than a form) to be filed must:
  - (a) be set out on 1 side only of size A4 durable white paper of good quality; and
  - (b) be legible and without erasures, blotting out or material disfigurement; and
  - (c) have a margin at the left side of at least 30 mm; and
  - (d) have clear margins of at least 10 mm on the top, bottom and right sides; and
  - (e) be written in English; and
  - (f) be:
    - (i) printed in a font of not less than 12 points; or
    - (ii) hand-printed clearly in ink in a way that is permanent and can be photocopied to produce a copy satisfactory to the registrar; and
  - (g) have a space of not less than 8 mm between the lines of printing.
- (1A) However, unless the Court otherwise orders, strict compliance with subrule (1) is not required if the document:
  - (a) is readable, including when it is bound; and
  - (b) can be easily scanned and photocopied.
- (2) This rule does not apply to a document annexed to an affidavit.

Note: The Court may give directions limiting the length of documents to be filed: see section 51 of the Act.

#### **2.02 Document must have distinctive number**

A document filed in connection with a particular proceeding must bear the distinctive number of the proceeding.

### **2.03 Document to be signed**

- (1) A document to be filed (other than an affidavit, annexure or exhibit) must be signed by a party or by the lawyer for the party unless the nature of the document is such that signature is inappropriate.
- (2) If a document (other than an affidavit) is required by these Rules to be signed, that requirement is met if the signature is attached to the document by electronic means, by, or at the direction of, the signatory.

### **2.04 Forms**

- (1A) The Chief Judge may approve a form for a provision of these Rules.
- (1) Unless the Court otherwise orders, strict compliance with forms is not required and substantial compliance is sufficient.
- (2) A document prepared in the form prescribed for a similar purpose for the Family Court or the Federal Court may be taken to substantially comply with the appropriate form for a proceeding.
- (3) However, unless otherwise provided in these Rules, a document to be filed in a proceeding must be headed:

FEDERAL CIRCUIT COURT OF AUSTRALIA

At (*Registry*).

## Division 2.2—Filing documents

### 2.05 How documents may be filed

- (1) A document may be filed by:
- (a) delivering it to the registry; or
  - (b) sending it to the registry by post; or
  - (c) fax or electronic communication, as permitted by this Division.

Note: The *Federal Court and Federal Circuit Court Regulation 2012* and the *Family Law (Fees) Regulation 2012* provide that a document may not be filed in a registry of the Court unless the fee payable for the filing has been paid. Both regulations also provide for an exemption or deferral of a fee, or payment of the fee on invoice, in certain circumstances.

- (1A) However, a document may not be filed by electronic communication if the document (including an attachment) is over 100 pages long.

- (2) A document is filed when it is accepted for filing by a Registrar and sealed with the seal of the Court or marked with a Court stamp, as required by Division 2.4.

Note: For the design, custody and affixation of the seal and validity of stamps: see sections 47 and 48 of the Act.

- (3) However, a document sent by fax or electronic communication, if accepted, is taken to have been filed:
- (a) if the whole document is received by 4.30 pm on a day the Registry is open for business—on that day; and
  - (b) in any other case—on the next day the Registry is open for business.

Note: Because of the Court's computer security firewall, there may be a delay between the time a document is sent by electronic communication and the time the document is filed.

### 2.06 Registrar may refuse to accept document

A Registrar may refuse to accept a document for filing if:



- (a) the document appears on its face to be an abuse of process, or frivolous, scandalous or vexatious; or
- (b) the document is filed in connection with a pending proceeding and the registry is not the appropriate registry; or
- (c) the rules relating to the electronic filing of documents have not been complied with.

## **2.07 Filing by fax**

- (1) An authorised Registrar may approve at least 1 fax number for each Registry for receiving documents.
- (2) A document sent to a Registry by fax must be:
  - (a) sent to an approved fax number for the Registry; and
  - (b) accompanied by a cover sheet stating:
    - (i) the sender's name, postal address, telephone number, fax number and any document exchange number; and
    - (ii) the number of pages sent; and
    - (iii) the action sought in relation to the document.
- (3) If the document is in an existing proceeding, it must be sent to an approved fax number for the Registry that is the appropriate place for the proceeding.
- (4) If the document is required to be signed or stamped, and is accepted at the Registry, the Registrar must:
  - (a) make 1 copy of the document; and
  - (b) if the sender asks that the document be held for collection—hold it for collection for 7 days; and
  - (c) if the sender does not ask for the document to be held for collection, or having asked does not collect the document within 7 days—return the document by sending it:
    - (i) by fax to the fax number stated on the cover sheet; or
    - (ii) if no fax number is stated, to the postal address stated on the cover sheet.
- (5) The sender of a document to a Registry by fax must:

**Rule 2.07A**

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- (a) keep the original document and the transmission report evidencing successful transmission; and
  - (b) produce the original document or the transmission report as directed by the Court.
- (6) If the Court directs that the original document be produced, the first page of the document must be endorsed with:
  - (a) a statement that the document is the original of a document sent by fax; and
  - (b) the day that the document was sent by fax.

**2.07A Filing by electronic communication**

- (1) An authorised Registrar:
  - (a) may approve the formats for electronic versions of documents that will be accepted by a Registry; and
  - (b) may approve at least one email address for any Registry for the purpose of receiving documents by electronic communication.
- (2) A document sent to a Registry for filing by electronic communication must:
  - (a) be sent using the Commonwealth Courts Portal at <http://www.comcourts.gov.au>; and
  - (b) be in an electronic format approved for the Registry; and
  - (c) be in a form that complies with rule 2.04; and
  - (d) be able to be printed with the content, and in the form, created.
- (3) An affidavit may be filed by electronic communication only by sending an image of the affidavit as required by subrule (2).
- (4) If the document is in an existing proceeding, it must be sent to the Registry that is the appropriate place for the proceeding by using:
  - (a) the Court's Internet home page at <http://www.fmc.gov.au>; or
  - (b) the Commonwealth Courts Portal at <http://www.comcourts.gov.au>.

**2.07B Other requirements for filing by electronic communication**

- (1) If a document sent by a person by electronic communication is required to be signed or stamped, and is accepted at a Registry, a Registrar must:
  - (a) for a document that, under these Rules, must be endorsed with a date for hearing—insert a notice of filing and hearing as the first page of the document; and
  - (b) for any other document—insert a notice of filing as the first page of the document; and
  - (c) make 1 copy of the document (including the notice mentioned in paragraph (a) or (b) (whichever applies)); and
  - (d) if the sender requests that the document be held for collection—hold it for collection for 7 days; and
  - (e) if the sender does not request that the document be held for collection or, having made a request, does not collect the document within 7 days—return the document by sending it:
    - (i) by electronic communication to the email address stated on the cover sheet; or
    - (ii) if no email address is stated, to the postal address stated on the cover sheet.
- (2) A notice mentioned in paragraph (1)(a) or (b) is part of the document for the purpose of these Rules.
- (3) The person who sent the document must, as directed by the Court:
  - (a) if the document is an image of an affidavit—produce the original of the affidavit; or
  - (b) in any other case—produce a paper copy of the document.
- (4) If the Court directs that an original affidavit or a paper copy of a document be produced, the person who sent the document must:
  - (a) for an original affidavit—attach a statement to the affidavit stating the following:
    - (i) that it is the original of the affidavit sent by electronic communication;
    - (ii) the date that the affidavit was sent by electronic communication; or

**Rule 2.07B**

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- (b) in any other case—endorse the first page with a statement that the paper copy is a true copy of the document sent by electronic communication, and the date that the document was sent by electronic communication.
- (5) If a document has been filed electronically and a notice has been inserted as the first page of the document as required by paragraph (1)(a) or (b), the notice is treated as part of the document for the Act and these Rules (including any rules about service of the document).

## **Division 2.3—Searching records**

### **2.08 Searching records**

- (1) The following persons may search the court record relating to a family law or child support case, and inspect and copy a document forming part of the court record:
  - (a) the Attorney-General;
  - (b) a party, a lawyer for a party, or an independent children's lawyer, in the case;
  - (c) with the permission of the Court, a person with a proper interest:
    - (i) in the case; or
    - (ii) in information obtainable from the court record in the case;
  - (d) with the permission of the Court, a person researching the court record relating to the case.
- (2) For subrule (1), the parts of the court record that may be searched, inspected and copied are:
  - (a) court documents; and
  - (b) with the permission of the Court, any other part of the court record.
- (2A) A permission:
  - (a) for paragraphs (1)(c) and (d) and (2)(b)—may include conditions, including a requirement for consent from a person, or a person in a class of persons, mentioned in the court record; and
  - (b) for paragraph (1)(d)—must specify the research to which it applies.
- (3) In considering whether to give permission under this rule, the Court must consider the following matters:
  - (a) the purpose for which access is sought;
  - (b) whether the access sought is reasonable for that purpose;

**Rule 2.08**

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- (c) the need for security of court personnel, parties, children and witnesses;
  - (d) any limits or conditions that should be imposed on access to, or use of, the court record.
- (4) Rule 2.32 of the Federal Court Rules applies to the searching of records in a proceeding that is not a family law or child support proceeding.
- (5) In this rule:

***court document*** includes a document filed in a case, but does not include correspondence or a transcript forming part of the court record.

Note 1: Section 121 of the Family Law Act restricts the publication of court proceedings.

Note 2: Access to court records may be affected by the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

## **Division 2.4—Seal and stamp of Court**

### **2.09 Use of seal of Court**

The seal of the Court must be attached to:

- (a) Rules of Court; and
- (b) any other documents the Court or a Judge directs or the law requires.

Note 1: The seal must be attached to all writs, commissions and process issued from the Court: see subsection 49(1) of the Act. It may also be used to enter an order: see rule 16.08.

Note 2: The design of the seal is decided by the Minister and the seal is kept in custody as directed by the Chief Judge: see section 47 of the Act.

### **2.10 Stamp of Court**

- (1) The Registrar must keep in his or her custody a stamp designed, as nearly as practicable, to be the same as the design of the seal of the Court.
- (2) The stamp of the Court must be attached to all process filed in the Court and orders entered and to other documents as directed by the Court.

Note: Documents marked with the stamp are as valid and effectual as if sealed with the seal of the Court: see subsection 48(2) of the Act.

### **2.11 Methods of attaching the seal or stamp**

The seal or stamp of the Court may be attached to a document:

- (a) by hand; or
- (b) by electronic means; or
- (c) in another way.

## **Part 3—Sittings, registry hours and time**

### **Division 3.1—Sittings, holidays and registry hours**

#### **3.01 Sittings**

- (1) The Court sits at times and places as directed by the Chief Judge.
- (2) Unless the Judge constituting the Court otherwise directs, the Court does not sit:
  - (a) on a Saturday or Sunday; or
  - (b) on a day that is a public holiday where the registry is located.

#### **3.02 Registry hours**

- (1) A registry must be open for business when the registry facilities shared by the registry under arrangements made under section 92 of the Act are open for business.
- (2) A registry may be open at other times for urgent business at the direction of a Judge.



## **Division 3.2—Time**

### **3.03 Meaning of *month***

In these Rules and in a judgment, decree, order or any document in a proceeding, unless the context otherwise indicates:

*month* means a calendar month.

### **3.04 Calculating time**

- (1) This rule applies to a period of time fixed by these Rules or by a judgment, decree, order or any document in a proceeding.
- (2) If a period of more than 1 day is to be calculated by reference to a particular day or event, the particular day or the day of the event must not be counted.
- (3) If a period of 5 days or less would, but for this subrule, include a day when the registry is closed, that day must not be counted.
- (4) If the last day for taking an action that requires attendance at a registry is a day when the registry is closed, the action may be taken on the next day when the registry is open.
- (5) Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply to these Rules.

### **3.05 Extension or shortening of time fixed**

- (1) The Court may extend or shorten a time fixed by these Rules or by a judgment, decree or order.
- (2) A Registrar may extend or shorten a time fixed by these Rules.
- (3) The time fixed may be extended even if the time fixed has passed.
- (4) A time fixed by these Rules or by a judgment, decree or order for service, filing or amendment of a document may be extended by consent without an order.

## **Part 4—Starting proceedings**

### **Division 4.1—General rules about starting proceedings**

#### **4.01 Application**

- (1) Unless otherwise provided in these Rules, a proceeding must be started by filing an application in accordance with the approved form.
- (2) An application for final orders may include an application for interim or procedural orders.
- (3) A person may not file an application for an interim or procedural order unless:
  - (a) an application for a final order has been made in the proceeding; or
  - (b) the application includes an application for a final order.
- (4) If a person makes an application in a case before final orders have been made in a proceeding, the application must be made in accordance with rule 4.08.

#### **4.02 Content of application**

An application must precisely and briefly state the orders sought and (if the application is for a general federal law proceeding) the basis on which the orders are sought.

#### **4.03 Response to application**

- (1) A respondent to an application may file a response in accordance with the approved form.
- (2) A response must be filed and served within 14 days of service of the application to which it relates.

#### **4.04 Content of response**

- (1) A response may:
  - (a) indicate consent to an order sought by the applicant; or
  - (b) ask the Court to make another order; or
  - (c) ask the Court to dismiss the application; or
  - (d) seek orders in a matter other than the matter set out in the application; or
  - (e) make a cross-claim against the applicant, or another party.
- (2) A response must precisely and briefly state any orders sought and (if the proceeding is a general federal law proceeding) the basis on which the orders are sought.

#### **4.05 Affidavit to be filed with application or response**

- (1) A person filing an application or response, whether seeking final, interim or procedural orders, must also file an affidavit stating the facts relied on.
- (2) However, an affidavit is not required:
  - (a) in an application for interim or procedural orders—if the evidence relied on is in an affidavit or affidavits filed in the pending proceeding; or
  - (b) in a proceeding that is not a child support proceeding or family law proceeding—if the person filing an application files a statement of claim or points of claim; or
  - (c) in an application filed in the Fair Work Division in accordance with rule 45.04, 45.06, 45.07, 45.08 or 45.12; or
  - (d) in an application filed in accordance with rule 46.3.
- (3) If a statement of claim or points of claim are filed under paragraph (2)(b), a respondent:
  - (a) must file a defence or points of defence instead of an affidavit; and
  - (b) may file a cross-claim.

Note: Subsection 43(2) of the Act provides for the Rules of Court made under the Family Law Act and *Federal Court of Australia Act 1976* to apply, with necessary modifications, to the practice and procedure of

**Chapter 1** All proceedings

**Part 4** Starting proceedings

**Division 4.1** General rules about starting proceedings

**Rule 4.07**

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the Court for particular jurisdictions of the Court if the Rules are insufficient. Those Rules may be used to direct how pleadings are to be dealt with in the Court, if subrules 4.05(2) and (3) apply.

**4.07 Reply in certain circumstances**

- (1) If a response to an application or cross-claim seeks orders in a matter (other than the orders set out in the application) the applicant may file and serve a reply to the response in accordance with the approved form.
- (2) A reply must be filed and served within 14 days of service of the response to which it relates.

**4.08 Application in a case**

- (1) An application in a case must be made in accordance with the approved form.
- (2) In addition to the requirements in rule 4.05, the application must state:
  - (a) the name and address of the person making the application in a case; and
  - (b) the names and addresses for service of all persons affected by the order which is sought; and
  - (c) the names and addresses of the parties in the application filed for starting proceedings, as stated in that application.
- (3) The application and supporting affidavit must be served on all persons against whom the order is sought, in accordance with Part 6.

## **Division 4.2—Rules for proceedings if Civil Dispute Resolution Act applies**

### **4.09 Applicant's genuine steps statement**

- (1) If Part 2 of the Civil Dispute Resolution Act applies to a proceeding, the applicant to the proceedings must, when filing the application mentioned in subrule 4.01(1), file the applicant's genuine steps statement in accordance with the approved form.
- (2) The applicant's genuine steps statement must comply with section 6 of the Civil Dispute Resolution Act.

Note 1: *Civil Dispute Resolution Act* is defined in the Dictionary.

Note 2: A party who wants to start a proceeding must have regard to the Civil Dispute Resolution Act before starting the proceeding to determine whether the Civil Dispute Resolution Act applies to the proceeding that the party wants to start.

Note 3: A lawyer must comply with section 9 of the Civil Dispute Resolution Act if that Act applies to the proceeding.

### **4.10 Respondent's genuine steps statement**

- (1) If an applicant has filed a genuine steps statement, the respondent must file the respondent's genuine steps statement in accordance with the approved form within 14 days of service of the applicant's application.
- (2) The respondent's genuine steps statement must comply with section 7 of the Civil Dispute Resolution Act.

Note 1: *Civil Dispute Resolution Act* is defined in the Dictionary.

Note 2: Rule 4.09 requires an applicant in a proceeding to which the Civil Dispute Resolution Act applies to file an applicant's genuine dispute resolution statement at the same time as the application is filed.

Rule 5.01

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## **Part 5—Urgent applications**

### **5.01 Urgent application**

In an urgent case where service on the respondent is not practicable, on application the Court may make an order until a specified time or until further order.

### **5.02 Form of application**

Unless the Court orders otherwise, an urgent application must be made in the form approved for the purpose of starting a proceeding under subrule 4.01(1) or an application in a case under subrule 4.08(1).

### **5.03 Evidence**

- (1) Unless the Court otherwise orders, the applicant must establish by affidavit or, with the leave of the Court, orally:
  - (a) whether there are previous proceedings between the parties and, if so, the nature of the proceedings; and
  - (b) whether there are any current proceedings in any court in which the applicant or the respondent are parties; and
  - (c) the particulars of any orders currently in force between the parties, including the courts in which they were made; and
  - (d) the steps that have been taken to tell the respondent or the respondent's legal representative of the applicant's intention to make the application or the reasons why no steps were taken; and
  - (e) the nature and immediacy of the damage or harm which may result if the order is not made; and
  - (f) why the making of the order is a matter of urgency and why an abridgement of the time for service of the application and the fixing of an early hearing date would not be more appropriate; and

Rule 5.03

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- (g) if the application relates to a financial matter, the capacity of the applicant to give an undertaking as to damages; and
  - (h) the other facts, matters and circumstances relied on by the applicant in support of the application.
- (2) Paragraph (1)(d) does not apply to an application for an interim injunction under section 46PP of the Human Rights Act.

## **Part 6—Service**

### **Division 6.1—General**

#### **6.01 Address for service**

- (1) A party to a proceeding must give an address for service.
- (2) A party may give an address for service:
  - (a) by filing a relevant document that includes an address for service; or
  - (b) by filing a notice of address for service in accordance with the approved form.
- (3) An address for service:
  - (a) must be an address in Australia; and
  - (b) must include a telephone number at which the party may be contacted during normal business hours; and
  - (c) may include a fax number or an email address for the party.
- (4) If the party is represented by a lawyer who has general authority to act for the party, the address for service for the party must be the address of the lawyer.
- (5) If the party is represented by a lawyer and the notice for service provides the lawyer's email address, the party agrees for the party's lawyer to receive documents at the lawyer's email address.
- (6) If the party is not represented by a lawyer but provides an email address, the party agrees to receive documents at the email address.

Note: The parties may agree on how service is to be carried out. For example, the parties may agree that service be at a fax number.

#### **6.02 Change of address for service**

If a party's address for service changes for any reason during a proceeding, the party must file a notice of address for service and serve the notice on each other party within 7 days of the change.



### **6.03 Service of documents**

- (1) A document to be served in a proceeding must be filed and sealed.
- (2) An application and any document filed with it must be served on each party in the proceeding within the time mentioned in rule 6.19.
- (3) If a document, other than an application and its related documents, is required to be served, the person who files the document must serve a copy of it as soon as practicable:
  - (a) on each other party in the proceeding who has an address for service in the proceeding; and
  - (b) on any independent children's lawyer in the proceeding.

### **6.04 Court's discretion in relation to service**

Nothing in this Part affects the power of the Court:

- (a) to authorise service of a document in a way that is not provided for in this Part; or
- (b) to find that a document has been served; or
- (c) to find that a document has been served on a particular day.

### **6.05 Affidavit of service**

- (1) Unless the Court otherwise orders, any evidence of service to be given must be given by affidavit.
- (2) For subrule (1), the approved form may be used.

## **Division 6.2—Service by hand in particular cases**

### **6.06 When is service by hand required**

- (1) Service by hand is required for an application starting a proceeding or a subpoena requiring attendance of a person.
- (2) However, service by hand is not required if:
  - (a) there are current proceedings for which there is a notice of address for service for the person to be served; or
  - (b) the Court directs that an application may be served in another way; or
  - (c) a lawyer accepts service for a party and subsequently files an address of service; or
  - (d) a lawyer accepts service for a person other than a party.

### **6.07 Service by hand**

- (1) A person serving a document by hand on an individual must give a copy of the document to the person to be served.
- (2) However, if the person to be served does not take the copy of the document, the person serving it may put it down in the presence of the person to be served and tell the person what it is.
- (3) In a family law or child support proceeding, the person serving a document must not be the party on whose behalf it is served.

### **6.08 Service by hand on a corporation, unincorporated association or organisation**

- (1) Unless the Court otherwise orders, a person serving a document by hand on a corporation, unincorporated association or organisation must leave a copy of the document with a person apparently an officer of or in the service of the corporation, unincorporated association or organisation:
  - (a) for a corporation:
    - (i) at the registered office of the corporation; or

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- (ii) if there is no registered office, at the principal place of business or the principal office of the corporation; and
  - (b) for an unincorporated association—at the principal place of business or the principal office of the association or on an officer holder; and
  - (c) for an organisation—at the office of the organisation shown in the copy records of the organisation lodged in the Industrial Registry under section 268 of the *Workplace Relations Act 1996*.
- (2) Despite subrule (1), service by hand may be effected:
- (a) on a company, as defined in section 9 of the *Corporations Act 2001*, in any manner permitted by section 109X of that Act; and
  - (b) on the liquidator of a company, in the manner permitted by paragraph 109X(1)(c) of that Act; and
  - (c) on an administrator of a company, in the manner permitted by paragraph 109X(1)(d) of that Act.

**6.09 Service of application on unregistered business**

- (1) This rule applies if:
- (a) a proceeding is brought against a person in relation to a business carried on by the person under a name other than the person's name; and
  - (b) the name is not registered under an applicable State or Territory law; and
  - (c) the proceeding is started in the name under which the person carries on the business.
- (2) The application may be served by leaving a copy at the person's place of business with a person who appears to have control or management of the business there.

**6.10 Service of application on partnership**

- (1) An application against a partnership must be served:
- (a) on 1 or more of the partners; or

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- (b) on a person at the principal place of business of the partnership who appears to have control or management of the business there; or
  - (c) if there is a registered office of the partnership, at that office.
- (2) An application served in accordance with this rule is taken to be served on each of the partners who are partners when the application is filed.
- (3) However, the application must also be served on any person whom the applicant seeks to make liable as a partner who is not a partner when the application is filed.

## **Division 6.3—Ordinary service**

### **6.11 Service other than by hand**

- (1) If a document is not required to be served by hand, the document may be served on a person at the person's address for service:
  - (a) by delivering it to the address in a sealed envelope addressed to the person; or
  - (b) by sending it to the address by pre-paid post in a sealed envelope addressed to the person; or
  - (c) by fax transmission addressed to the person and sent to a fax receiver at the address; or
  - (d) if the address includes the number of a document exchange box of a lawyer, by sealing the document in an envelope that complies with any prepayment requirements of the document exchange and is addressed to the lawyer (at that box address) and placing the envelope:
    - (i) in that box; or
    - (ii) in a box provided at another branch of the document exchange for delivery of documents to the box address; or
  - (e) if the person has filed a notice authorising service by email—by sending the document to the email address; or
  - (f) if the party is represented by a lawyer, and the address for service provides the lawyer's email address—by sending it to the lawyer's email address.
- (2) If the person does not have an address for service, the document may be served on the person:
  - (a) by delivering it to the person's last known address or place of business in a sealed envelope addressed to the person; or
  - (b) by sending it by pre-paid post in a sealed envelope addressed to the person at the person's last known address or place of business; or
  - (c) if a law of the Commonwealth or of the State or Territory in which service is to be effected provides for service of a

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document on a corporation or organisation, by serving the document in accordance with such provision.

**6.12 When service is effected**

A document served by post, fax or electronic communication is taken to have been served:

- (a) if it was posted to an address in Australia—on the day when the document would be delivered in the ordinary course of the post; or
- (b) if it was posted by airmail to an address outside Australia—on the twenty-eighth day after posting; or
- (c) if the document was sent by fax—on the next business day after the document was sent; or
- (d) if the document was sent by electronic communication—on the next business day after the document was sent.

**6.13 Special requirements for service by fax**

- (1) A document served by fax transmission must include a cover page stating the following:
  - (a) the sender's name and address;
  - (b) the name of the person to be served;
  - (c) the date and time of transmission;
  - (d) the total number of pages, including the cover page, transmitted;
  - (e) the telephone number from which the document is transmitted;
  - (f) the name and telephone number of a person to contact if there is a problem with transmission;
  - (g) that the transmission is for service.
- (2) An affidavit of service of a document by fax transmission must have the transmission report indicating successful transmission annexed.

## **Division 6.4—Substituted service and dispensing with service**

### **6.14 Substituted service**

- (1) If, for any reason, it is impracticable to serve a document in a way required under this Part, the Court may make an order dispensing with service or substituting another way of serving the document.
- (2) The Court may specify the steps to be taken for bringing the document to the attention of the person to be served.
- (3) The Court may specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time.

### **6.15 Matters to be taken into account**

When making an order for dispensing with service or for substituted service, the Court may have regard to:

- (a) whether reasonable steps have been taken to attempt to serve the document; and
- (aa) whether it is likely that the steps that have been taken have brought the existence and nature of the document to the attention of the person to be served; and
- (b) whether the person to be served could become aware of the existence and nature of the document by means of advertising or another means of communication that is reasonably available; and
- (c) the likely cost to the party serving the document, the means of that party and the nature of the proceedings; and
- (d) any other relevant matter.

### **6.16 Failure to comply with condition**

Failure to comply with a condition of an order for substituted service does not prevent the Court from finding that the document is taken to have been served on a date specified in the order.

## **Division 6.5—Time for service**

### **6.17 General time limit**

Unless the Court otherwise orders, a document may not be served more than 12 months after it is filed.

### **6.18 Time for service of subpoena**

A subpoena may not be served more than 3 months after it is issued.

### **6.19 Time for service of applications**

Unless the Court orders otherwise, an application and any document filed with it may not be served:

- (a) less than 3 days before the day fixed for the hearing of an application in a case; or
- (b) less than 7 days before the day fixed for the hearing of any other application.



## **Part 7—Amendment**

### **Division 7.1—General**

#### **7.01 Power to amend**

- (1) At any stage in a proceeding, the Court or a Registrar may allow or direct a party to amend a document (other than an affidavit) in the way and on the conditions the Court or the Registrar thinks fit.
- (2) Subject to rule 7.03, the Court or a Registrar may allow an amendment even if the effect would be to include a cause of action arising after the proceeding was started.

#### **7.02 Who may be required to make amendment**

If the Court orders an amendment to be made to a document, the Court may order a party, a Registrar, a Judge's associate or another appropriate person to make the amendment.

## **Division 7.2—General federal law proceedings**

### **7.03 Amendment after limitation period**

- (1) This rule applies if an application in a general federal law proceeding for leave to make an amendment is made after the end of a relevant period of limitation current at the date when the proceeding was started.
- (2) The Court may give leave to make an amendment correcting the name of a party, even if it is alleged that the effect would be to substitute a new party, if:
  - (a) the Court considers it appropriate; and
  - (b) the Court is satisfied that the mistake sought to be corrected was genuine and was not misleading or such as to cause reasonable doubt as to the identity of the party.
- (3) The Court may give leave to make an amendment changing the capacity in which a party seeks orders (whether as applicant or respondent by counterclaim) if:
  - (a) the Court considers it appropriate; and
  - (b) the capacity in which the party will seek orders is one in which, at the time when the proceeding was started by the party, the party might have sought orders.
- (4) The Court may give leave to make an amendment even if the effect is to include a new cause of action, if:
  - (a) the Court considers it appropriate; and
  - (b) the new cause of action arises out of the same, or substantially the same, facts as a cause of action for which relief has already been claimed in the proceeding by the party seeking leave to amend.

## **Part 8—Transfer of proceedings**

### **8.01 Change of venue**

- (1) A party who files an application or response in a proceeding may apply to have the proceeding heard in another registry of the Court.
- (2) In considering an application, the Court must have regard to:
  - (a) the convenience of the parties; and
  - (b) the limiting of expense and the cost of the proceeding; and
  - (c) whether the matter has been listed for final hearing; and
  - (d) any other relevant matter.

### **8.02 Transfer to Federal Court or Family Court**

- (1) The Court may, at the request of a party or of its own motion, transfer a proceeding to the Federal Court or the Family Court.
- (2) Unless the Court otherwise orders, a request for transfer must be made on or before the first court date for the proceeding.
- (3) Unless the Court otherwise orders, the request must be included in a response or made by application supported by an affidavit.
- (4) In addition to the factors required to be considered by the Court under subsections 39(3) and (4) of the Act for transfer of proceedings to the Federal Court or the Family Court, the following factors are relevant:
  - (a) whether the proceeding is likely to involve questions of general importance, such that it would be desirable for there to be a decision of the Federal Court or the Family Court on one or more of the points in issue;
  - (b) whether, if the proceeding is transferred, it is likely to be heard and determined at less cost and more convenience to the parties than if the proceeding is not transferred;
  - (c) whether the proceeding will be heard earlier in the Court;

### Rule 8.03

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- (d) the availability of particular procedures appropriate for the class of proceeding;
- (e) the wishes of the parties.

Note: See subsections 39(3) and (4) of the Act for matters the Court must have regard to in deciding whether to transfer a proceeding to the Federal Court or the Family Court.

#### **8.03 Proceeding transferred to Federal Court or Family Court**

If a proceeding is transferred to the Federal Court or the Family Court, the Registrar must:

- (a) send to the proper officer of that court all documents filed and orders made in the proceeding; and
- (b) retain in the Court a copy of all orders made in the proceeding.

#### **8.04 Proceeding transferred from Federal Court or Family Court**

A sealed copy of the order of the Federal Court or the Family Court transferring a proceeding or appeal to the Court must, unless the Federal Court or the Family Court otherwise directs, be filed:

- (a) if the order is obtained by a party—by the party; and
- (b) if the order is made by the Federal Court or the Family Court of its own motion—by the applicant in the proceeding.

#### **8.05 Proceeding transferred from Federal Court or Family Court**

If a proceeding or appeal is transferred to the Court from the Federal Court or the Family Court, the Registrar must give it a distinctive number and, unless impractical to do so, allocate a first court date within 14 days of the transfer.

## **Part 9—Lawyers**

### **9.01 Change between acting in person and by lawyer**

- (1) If a party acts in person in a proceeding and later appoints a lawyer, the lawyer must, as soon as practicable, file and serve notice of the appointment on each other party.
- (2) If a party appoints a lawyer and later decides to act in person, the party must, as soon as practicable, file and serve notice of acting in person on the lawyer and each other party.
- (3) The party's former lawyer remains the lawyer on the record until the party serves the notice on the former lawyer.
- (4) Notice under this rule must contain details of an address for service in accordance with the approved form.

### **9.02 Change of lawyer**

- (1) A party may, at any stage in a proceeding, appoint another lawyer in place of the lawyer then acting for the party.
- (2) The newly appointed lawyer must, as soon as practicable, file and serve on each other party and the party's former lawyer notice of the appointment.
- (3) The party's former lawyer remains the lawyer on the record until the newly appointed lawyer has complied with subrule (2).
- (4) Notice for this rule must contain details of an address for service in accordance with the approved form.

### **9.03 Withdrawal as lawyer**

- (1) A lawyer for a party may withdraw from the record in a proceeding by filing a notice of withdrawal, in accordance with the approved form, and serving the notice on each other party.

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- (2) However, a lawyer may not file or serve a notice of withdrawal without leave of the Court unless the lawyer has, not less than 7 days before filing the notice, served a notice of intention to withdraw on the party for whom the lawyer is acting.
- (3) A notice of intention to withdraw must be in accordance with the approved form.
- (4) A lawyer may serve a party with a notice of intention to withdraw by posting it to the residential or business address of the party last known to the lawyer.
- (5) If a party's lawyer withdraws from the record, the party's last known residential or business address is the address for service until:
  - (a) the party appoints another lawyer; or
  - (b) the party files a notice of address for service.

**Note:** If a party's address for service changes for any reason during a proceeding, the party must file a notice of address for service: see rule 6.02.

**9.04 Corporation must be represented**

Except as provided by or under an Act or regulations made under an Act, or with the leave of the Court, a corporation may not start or carry on a proceeding otherwise than by a lawyer.

## **Part 10—How to conduct proceedings**

### **Division 10.1—First court date**

#### **10.01 Directions and orders**

- (1) At the first court date, the Court or a Registrar is to give orders or directions for the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court or a Registrar may hear and determine all or part of the proceedings.
- (3) The Court or a Registrar may make orders or directions in relation to the following:
  - (a) the manner and sufficiency of service;
  - (b) the amendment of documents;
  - (c) defining of issues;
  - (d) the filing of affidavits;
  - (e) cross-claims;
  - (f) the joinder of parties;
  - (g) primary dispute resolution;
  - (h) the admissibility of affidavits;
  - (i) discovery and inspection of documents;
  - (j) interrogatories;
  - (k) inspections of real or personal property;
  - (l) admissions of fact or of documents;
  - (m) the giving of particulars;
  - (n) the giving of evidence at hearing (including the use of statements of evidence and the taking of evidence by video link or telephone or other means);
  - (o) expert evidence and court experts;
  - (p) transfer of proceedings;
  - (q) costs;
  - (r) hearing date;

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- (s) any other matter that the Court or Registrar considers appropriate.

**10.02 Adjournment of first court date**

- (1) If the parties agree that, because of short service or other special circumstances, it is not appropriate to proceed on the date fixed the parties may ask a Registrar in writing to adjourn the first court date to another date.
- (2) The Registrar may adjourn the first court date to the date requested by the parties or to another date that is practicable.

**10.03 Fixing date for final hearing**

At the first court date the Court or a Registrar may:

- (a) fix a date for final hearing; or
- (b) direct the parties to arrange with the Registrar a date for final hearing; or
- (c) fix a date after which either party may request a date for final hearing; or
- (d) remove the matter from the list.



## **Division 10.2—Dispute Resolution**

### **10.04 Agreement reached by dispute resolution**

If the parties to a proceeding resolve the issues between them following a dispute resolution process, the parties may:

- (a) discontinue the proceeding; or
- (b) ask the Court to make consent orders.

Note 1: For proceedings (other than family law proceedings), parties may be advised to use dispute resolution processes. For the duty of the Court to advise people to use dispute resolution processes, see section 23 of the Act. For the duty of lawyers to advise parties to use dispute resolution processes, see section 24 of the Act. For the duty of designated officers of the Court to advise parties to use dispute resolution processes, see section 25 of the Act. For the duties imposed on the Court and lawyers to provide information about non-court-based family services and Court's processes and services in family law proceedings, see Part IIIA of the Family Law Act.

Note 2: For proceedings (other than family law proceedings), see sections 26, 34 and 35 of the Act, which contain provisions dealing with the Court's power to refer a matter for conciliation, mediation or arbitration.

Note 3: For family law proceedings, see in particular Parts II, III, IIIA and IIIB of the Family Law Act, which contain provisions dealing with family counselling, family dispute resolution and other processes that apply to the Court in relation to proceedings under that Act.

Note 4: For family counselling and family dispute resolution in family law and child support proceedings, see Part 23.

Note 5: For mediation and arbitration in general federal law proceedings, see Part 27.

### **10.05 Conciliation conference**

- (1) This rule applies if the Court refers a proceeding, or a part of a proceeding or a matter arising out of a proceeding, for conciliation under section 26 of the Act.

Note 1: Section 26 applies to proceedings other than proceedings under the Family Law Act. For dispute resolution in family law proceedings, see the Family Law Act.

**Rule 10.05**

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Note 2: The Court may refer a proceeding for conciliation under section 26 of the Act with or without the consent of the parties to the proceedings.

- (2) A conciliation conference must be held with:
  - (a) a Judge; or
  - (b) a Registrar; or
  - (c) another person appointed by the Court for the purpose.
- (3) Unless the Court or a Registrar otherwise orders:
  - (a) the parties must attend the conference in person; and
  - (b) each lawyer representing a party must also attend.
- (4) The parties must make a genuine effort to reach agreement on relevant matters in issue.
- (5) If an issue between the parties remains unresolved at the end of a conciliation conference, the Judge or Registrar may:
  - (a) give further directions; and
  - (b) make any other order, including an order for costs.

## **Division 10.3—Notice of constitutional matter**

### **10.06 Party to file notice of constitutional matter**

- (1) Unless the Court otherwise orders, a party to a proceeding who becomes aware that the proceeding involves a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*, must file a notice of a constitutional matter and serve a copy on each other party to the proceeding.
- (2) The notice may be in the form prescribed for the purpose under the Federal Court Rules and must state:
  - (a) the nature of the matter; and
  - (b) the facts showing that the matter is a matter to which subrule (1) applies.

## **Part 11—Parties and litigation guardians**

### **Division 11.1—Parties**

#### **11.01 Necessary parties**

- (1) Subject to any order of the Court, a person whose participation is necessary for the Court to completely and finally determine all matters in dispute in a proceeding must be included as a party in the proceeding.
- (2) The Court may require a person to be included as a party.
- (3) A person required to be included as an applicant who does not consent to be included may be included as a respondent.
- (4) The Court may decide a proceeding even if a person is incorrectly included or not included as a party.

#### **11.02 Party may include another person as a party**

- (1) A party to a proceeding may include any person as a party by:
  - (a) naming the person as a party in the application, response or reply; and
  - (b) serving on the person a copy of the application, response or reply and all other relevant documents filed in the proceeding.
- (2) A party may not include a person as a party after the first court date without the leave of the Court.
- (3) The Court may at any time order a party who has included a person as a party to file and serve on each other party in the proceeding an affidavit setting out the basis on which the person has been included.

### **11.03 Person may apply to be included**

- (1) A person may apply to the Court to be included as a party to a proceeding.
- (2) Unless the Court otherwise orders, the application must be supported by an affidavit stating:
  - (a) the person's interest in the proceeding or any matter in dispute between the person and a party in the proceeding; and
  - (b) the orders (if any) that the person will seek if included as a party.
- (3) The person must serve a copy of the application and affidavit on each party in the proceeding.
- (4) An order for inclusion of the party may be on limited terms.

### **11.04 Party may apply to be removed**

- (1) A party to a proceeding may apply to the Court to be removed as a party.
- (2) The party must file an affidavit stating:
  - (a) the relationship (if any) of the applicant to each other party; and
  - (b) the evidence in support of the application.
- (3) The party must serve a copy of the application and affidavit on each other party in the proceeding.

### **11.05 Court may order notice to be given**

The Court may at any time order a party, or a person applying to be included as a party, to notify any person of:

- (a) the proceeding; or
- (b) the application of the person to be included as a party.

### **11.06 Intervention by Attorney-General**

If intervening in a proceeding, the Attorney-General must:

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- (a) file a notice setting out the basis or grounds of the intervention and the orders (if any) sought; and
- (b) if the proceeding is under section 58 of the Family Law Act—file an affidavit setting out the facts and matters relied on in support of the intervention; and
- (c) serve a copy of the notice and affidavit (if any) on each other party in the proceeding.

**11.07 Child to whom state welfare law applies**

If, on an application under section 92 of the Family Law Act for leave to intervene in a proceeding in relation to a child to whom subsection 69ZK(1) of that Act applies, the Court does not grant leave, it may adjourn the proceeding and give the Attorney-General notice of its refusal to grant leave and of the date to which the proceeding is adjourned.

## **Division 11.2—Litigation guardian**

### **11.08 Person who needs a litigation guardian**

- (1) For these Rules, a person needs a litigation guardian in relation to a proceeding if the person does not understand the nature and possible consequences of the proceeding or is not capable of adequately conducting, or giving adequate instruction for the conduct of, the proceeding.
- (2) Unless the Court otherwise orders, a minor in a proceeding is taken to need a litigation guardian in relation to the proceeding.

### **11.09 Starting, continuing, defending or inclusion in proceeding**

- (1) A person who needs a litigation guardian may start, continue, respond to or seek to be included as a party to a proceeding only by his or her litigation guardian.
- (2) The litigation guardian of a party to a proceeding:
  - (a) must do anything required by these Rules to be done by the party; and
  - (b) may do anything permitted by these Rules to be done by the party.

### **11.10 Who may be a litigation guardian**

A person may be a litigation guardian in a proceeding if he or she is an adult and has no interest in the proceeding adverse to the interest of the person needing the litigation guardian.

### **11.11 Appointment of litigation guardian**

- (1) The Court may, at the request of a party or of its own motion, appoint or remove a litigation guardian or substitute another person as litigation guardian in a proceeding in the interests of a person who needs a litigation guardian.

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- (2) A person becomes a litigation guardian if he or she consents to the appointment by filing an affidavit of consent in the proceeding.
- (3) The Court may remove a litigation guardian at the request of the litigation guardian.

**11.12 Manager of the affairs of a party**

- (1) In this rule:

***manager of the affairs of a party*** includes a person who is authorised by or under a Commonwealth, State or Territory law to conduct legal proceedings in the name of, or for, a person who needs a litigation guardian.

- (2) A person who is a manager of the affairs of a party is entitled to be the litigation guardian in any proceeding to which the authority extends.
- (3) The Attorney-General may appoint in writing a person to be a manager of the affairs of a party for this rule, either generally or for a particular person.
- (4) A manager of the affairs of a party becomes the litigation guardian of a person who needs a litigation guardian in a proceeding if the manager of the affairs of the party files an affidavit of consent in relation to the person.

**11.13 Notice of becoming litigation guardian**

A person appointed as the litigation guardian of a party to a proceeding must, as soon as practicable after the appointment, give notice of the appointment to each other party and any independent children's lawyer in the proceeding.

**11.14 Costs and expenses of litigation guardian**

The Court may make orders for the payment of the costs and expenses of a litigation guardian (including the costs of an application for the appointment of the litigation guardian):

- (a) by a party; or



- (b) from the income or assets of the person for whom the litigation guardian is appointed.

### **11.15 Service**

- (1) A document required to be served by hand on a person who needs a litigation guardian must be served:
  - (a) on the person's litigation guardian for the proceeding; or
  - (b) if there is no litigation guardian—on a person who is entitled under subrule 11.12(1) to be the person's litigation guardian for the proceeding; or
  - (c) if there is no-one under paragraph (a) or (b)—on an adult who has the care of the person.
- (2) For paragraph (1)(c), a superintendent or other person in direct charge of a hospital or nursing home is taken to have the care of a person who is a patient in the hospital or nursing home.

Rule 12.01

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## Part 12—Court referral for legal assistance

### 12.01 Definitions for Part 12

In this Part:

***assisted party*** means a party receiving legal assistance under this Part.

***legal assistance*** means any of the following:

- (a) advice in relation to the proceeding;
- (b) representation at a directions, interlocutory or final hearing or mediation;
- (c) drafting or settling documents to be used in the proceeding;
- (d) representation generally in the conduct of the proceeding.

***Pro Bono lawyer*** means a lawyer who has agreed to accept a referral under rule 12.02 to provide pro bono legal assistance.

### 12.02 Referral for legal assistance

- (1) The Court may refer a party to a lawyer for legal assistance by issuing a referral certificate, in accordance with the approved form.
- (2) When making a referral under subrule (1), the Court may take the following matters into account:
  - (a) the means of the party;
  - (b) the capacity of the party to otherwise obtain legal assistance;
  - (c) the nature and complexity of the proceeding;
  - (d) any other matters the Court considers appropriate.
- (3) The referral certificate may state the kind of legal assistance for which the party has been referred.
- (4) The Registrar will attempt to arrange for the provision of legal assistance in accordance with the referral certificate to a Pro Bono lawyer.

**12.03 A party has no right to apply for a referral**

A party is not entitled to apply to the Court for a referral under rule 12.02.

**12.04 Acceptance of referral certificate and provision of legal assistance**

If a lawyer agrees to accept a referral under rule 12.02, the lawyer must provide legal assistance in accordance with the referral certificate.

**12.05 Ceasing to provide legal assistance**

If a Pro Bono lawyer no longer wishes to provide legal assistance, the lawyer must withdraw in accordance with rule 9.03.

## **Part 13—Ending a proceeding early**

### **Division 13.1—Discontinuance**

#### **13.01 Discontinuance**

- (1) A party may discontinue an application or response by filing a notice of discontinuance in accordance with the approved form.
- (2) A notice of discontinuance may be filed:
  - (a) at least 14 days before the day fixed for the final hearing of the application; or
  - (b) with the leave of the Court or a Registrar, at a later time.
- (3) However, a party may not file a notice of discontinuance without the leave of the Court or a Registrar if:
  - (a) in a proceeding under the Family Law Act:
    - (i) the proceeding relates to the property of a party; and
    - (ii) one of the parties dies before the proceeding is decided;or
  - (b) the proceeding is a creditor's petition.
- (4) A party filing a notice of discontinuance must, as soon as practicable, serve a copy of the notice on each other party in the proceeding.

#### **13.02 Costs**

- (1) If a party discontinues an application, or part of an application, another party in the proceeding may apply for costs.
- (2) Unless the Court or a Registrar directs otherwise, an application for costs must be made by a party within 28 days after service on the party of the notice of discontinuance.
- (3) If an order for costs is made against a party and the party brings against the party to whom the costs are payable a further

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proceeding on the same or substantially the same matter, the Court may stay the further proceeding until the costs are paid.

Rule 13.03

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## Division 13.1A—Order or judgment on default

### 13.03 Definitions

In this Division:

*applicant* includes a cross-claimant.

*claim* includes a cross-claim.

*respondent* includes a cross-respondent.

### 13.03A When a party is in default

- (1) For rule 13.03B, an applicant is in default if the applicant fails to:
  - (a) comply with an order of the Court in the proceeding; or
  - (b) file and serve a document required under these Rules; or
  - (c) produce a document as required by Part 14; or
  - (d) do any act required to be done by these Rules; or
  - (e) prosecute the proceeding with due diligence.
- (2) For rule 13.03B, a respondent is in default if the respondent:
  - (a) has not satisfied the applicant's claim; and
  - (b) fails to:
    - (i) give an address for service before the time for the respondent to give an address has expired; or
    - (ii) file a response before the time for the respondent to file a response has expired; or
    - (iii) comply with an order of the Court in the proceeding; or
    - (iv) file and serve a document required under these Rules; or
    - (v) produce a document as required by Part 14; or
    - (vi) do any act required to be done by these Rules; or
    - (vii) defend the proceeding with due diligence.

### 13.03B Orders on default

- (1) If an applicant is in default, the Court may order that:

Rule 13.03B

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- (a) the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant; or
  - (b) a step in the proceeding be taken within the time limited in the order; or
  - (c) if the applicant does not take a step in the time mentioned in paragraph (b)—the proceeding be stayed or dismissed, as to the whole or any part of the relief claimed by the applicant.
- (2) If a respondent is in default, the Court may:
  - (a) order that a step in the proceeding be taken within the time limited in the order; or
  - (b) if the claim against the respondent is for a debt or liquidated damages—grant leave to the applicant to enter judgment against the respondent for:
    - (i) the debt or liquidated damages; and
    - (ii) if appropriate—costs; or
  - (c) if the proceeding was commenced by an application supported by a statement of claim or the Court has ordered that the proceeding continue on pleadings—give judgment against the respondent for the relief that:
    - (i) the applicant appears entitled to on the statement of claim; and
    - (ii) the Court is satisfied it has power to grant; or
  - (d) give judgment or make any other order against the respondent; or
  - (e) make an order mentioned in paragraph (b), (c) or (d) to take effect if the respondent does not take a step ordered by the Court in the proceeding in the time limited in the order.
- (3) The Registrar must enter judgment for the debt or liquidated damages, costs and interest against the respondent as specified in leave granted under paragraph (2)(b), without giving notice, or further notice, to the respondent, if the applicant has filed in the Registry:
  - (a) an affidavit, or affidavits, proving:
    - (i) service of the application claiming judgment for the debt or liquidated damages; and

**Rule 13.03C**

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- (ii) that the respondent is in default; and
  - (b) an affidavit for the debt or liquidated damages in accordance with the approved form.
- (4) Unless the Court otherwise orders, if a respondent to a cross-claim is in default:
  - (a) a judgment or decision on any claim, question or issue in the proceeding on the originating process; or
  - (b) any other cross-claim in the proceeding;

is binding as between the cross-claimant and the respondent to the cross-claim, to the extent that the judgment or decision is relevant to any claim, question or issue in the proceeding on the cross-claim.
- (5) In subrule (4):

*decision* includes a decision by consent.

*judgment* includes a judgment by default or by consent.
- (6) The Court may make an order of the kind mentioned in subrule (1), (2) or (4), or any other order, or may give any directions, and specify any consequences for non-compliance with the order, that the Court thinks just.

**13.03C Default of appearance of a party**

- (1) If a party to a proceeding is absent from a hearing (including a first court date), the Court may do 1 or more of the following:
  - (a) adjourn the hearing to a specific date or generally;
  - (b) order that there is not to be any hearing, unless:
    - (i) the proceeding is again set down for hearing; or
    - (ii) any other steps that the Court directs are taken;
  - (c) if the absent party is an applicant—dismiss the application;
  - (d) if the absent party is a party who has made an interlocutory application or a cross-claim—dismiss the interlocutory application or cross-claim;



Rule 13.03D

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- (e) proceed with the hearing generally or in relation to any claim for relief in the proceeding.
- (2) If a party to a proceeding is absent from a hearing, the Court may also make an order of the kind mentioned in subrule 13.03B(1), (2) or (4), or any other order, or may give any directions, and specify any consequences for non-compliance with the order, that the Court thinks just.

**13.03D Court's powers in relation to contempt etc not affected**

Nothing in rule 13.03A, 13.03B or 13.03C is intended to limit the Court's powers in relation to contempt or sanctions for failure to comply with an order.

## **Division 13.2—Consent orders**

### **13.04 Application for order by consent**

- (1) The parties to a proceeding may apply for an order in terms of an agreement reached about a matter in dispute in the proceeding by filing a draft consent order signed by each party.
- (2) The draft consent order must state that it is made by consent.
- (3) The Court may make such orders as the Court considers appropriate in the circumstances.
- (4) If a Registrar has power to make the order, the Registrar may, unless the Registrar considers that the matter should be brought before the Court, make an order in accordance with the terms of the draft consent order.

#### **13.04A Consent parenting orders and allegations of abuse, family violence or other risk factors**

- (1) This rule applies if an application is made to the Court for a parenting order by consent in relation to a family law proceeding.
- (2) The parties must advise the Court whether or not any of the following allegations have been made in the proceeding:
  - (a) allegations of child abuse or neglect, or a risk of child abuse or neglect;
  - (b) allegations of family violence, or a risk of family violence;
  - (c) allegations of mental ill-health that is alleged to adversely impact on parenting capacity;
  - (d) allegations of drug or alcohol abuse;
  - (e) allegations of serious parental incapacity;
  - (f) any other allegation involving a risk to the child.
- (2A) Each party must also advise the Court, apart from any allegations made during the proceedings:

Rule 13.05

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- (a) whether the party considers that the child concerned has been, or is at risk of being, subjected or exposed to abuse, neglect or family violence; and
  - (b) whether the party considers that he or she, or another party to the proceedings, has been, or is at risk of being, subjected to family violence.
- (3) If an allegation mentioned in subrule (2) has been made, or a party advises the Court of any concerns mentioned in subrule (2A), the parties must explain to the Court how the parenting order attempts to deal with the allegation.
- (4) If the application for the parenting order will be considered in chambers, the parties must attach to the draft parenting order the approved form signed by each party or their legal representative.

**13.05 Additional information**

At any time before making a consent order, the Court or a Registrar may require a party to provide additional information.

## **Division 13.3—Summary disposal and stay**

### **13.07 Disposal by summary judgment**

- (1) This rule applies if, in a proceeding:
  - (a) in relation to the whole or part of a party's claim there is evidence of the facts on which the claim or part is based; and
  - (b) either:
    - (i) there is evidence given by a party or by some responsible person that the opposing party has no answer to the claim or part; or
    - (ii) the Court is satisfied that the opposing party has no reasonable prospect of successfully defending the claim or part.
- (2) The Court may give judgment on that claim or part and make any orders or directions that the Court considers appropriate.
- (3) If the Court gives judgment against a party who claims relief against the party obtaining the judgment, the Court may stay execution on, or other enforcement of, the judgment until determination of that claim.

### **13.08 Residue of proceeding**

- (1) This rule applies if in a proceeding:
  - (a) a party applies for judgment or an order for stay or dismissal under this Division; and
  - (b) the proceeding is not wholly disposed of by judgment or dismissal or is not wholly stayed.
- (2) The proceeding may be continued in relation to any claim or part of a claim not disposed of by judgment or dismissal and not stayed.
- (3) The Court may give directions for the further conduct of the proceeding.

### **13.09 Application**

An application for judgment or for an order that a proceeding be stayed or dismissed must be made by filing an application in accordance with the approved form.

### **13.10 Disposal by summary dismissal**

The Court may order that a proceeding be stayed, or dismissed generally or in relation to any claim for relief in the proceeding, if the Court is satisfied that:

- (a) the party prosecuting the proceeding or claim for relief has no reasonable prospect of successfully prosecuting the proceeding or claim; or
- (b) the proceeding or claim for relief is frivolous or vexatious; or
- (c) the proceeding or claim for relief is an abuse of the process of the Court.

Note: For additional powers of the Court in relation to family law proceedings that are frivolous or vexatious, see section 118 of the Family Law Act.

### **13.11 Certificate of vexatious proceedings order**

- (1) A person who wants the Chief Executive Officer of the Court to issue a certificate under subsection 88R(1) of the Act must make the request in writing and include in the request:
  - (a) the applicant's name and address; and
  - (b) the person's interest in making the request.
- (2) The request must be lodged in the Registry in which the vexatious proceedings order was made.
- (3) The certificate will state:
  - (a) the name of the person subject to the vexatious proceedings order; and
  - (b) if applicable, the name of the person who applied for the vexatious proceedings order; and
  - (c) the date on which the vexatious proceedings order was made; and

**Rule 13.11A**

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- (d) the orders made by the Court.

**13.11A Application for leave to institute proceedings**

An application under subsection 88T(2) of the Act for leave to institute a proceeding that is subject to a vexatious proceedings order must be made:

- (a) in accordance with the approved form; and
- (b) without notice to any other person.

Note 1: See subsection 88T(2) of the Act for the power for a person who is subject to a vexatious proceedings order to apply to the Court to institute a proceeding.

Note 2: See subsection 88T(3) of the Act for the contents of the affidavit that must be filed with the application.

**13.12 Dormant proceedings**

- (1) If a party has not taken a step in a proceeding for 6 months, the Court may, on its own initiative, order that the proceeding, or a part of the proceeding, be dismissed.
- (2) The Court must not make an order under subrule (1) if:
  - (a) there is a future listing for the proceeding or a part of the proceeding; or
  - (b) an application in a case relating to the proceeding has not been determined; or
  - (c) a party to the proceeding satisfies the Court that the proceeding, or part of the proceeding, should not be dismissed; or
  - (d) the Court has not given the parties to the proceeding notice under subrule (3).
- (3) The Court must, at least 14 days before making the order, give each party to the proceeding written notice of the date and time when it will consider whether to make the order.
- (4) Notice under subrule (3) must be sent by post in an envelope marked with the Court's return address:
  - (a) to each party's address for service; and

- (b) if a party has no address for service—to the party's last-known address.

## **Part 14—Disclosure**

### **Division 14.1—Answers to specific questions**

#### **14.01 Declaration to allow specific questions**

- (1) A declaration may be made under subsection 45(1) of the Act to allow interrogatories on the application of a party or on the Court's own motion.
- (2) If a declaration is made, the Court or a Registrar may make appropriate orders in relation to answers to specific questions, having regard to any relevant Family Law Rules or Federal Court Rules.

**Note:** Interrogatories are not allowed in relation to a proceeding unless the Court or a Judge declares that it is appropriate in the interests of the administration of justice: see section 45 of the Act.



## **Division 14.2—Obligation to disclose**

### **14.02 Declaration to allow discovery**

- (1) A declaration may be made under subsection 45(1) of the Act to allow discovery on the application of a party or on the Court's own motion.

Note: Discovery is not allowed in relation to a proceeding unless the Court or a Judge declares that it is appropriate in the interests of the administration of justice: see section 45 of the Act.

- (2) If a declaration is made, the Court or a Registrar may make an order for disclosure:
  - (a) generally; or
  - (b) in relation to particular classes of documents; or
  - (c) in relation to particular issues; or
  - (d) by a specified date.

### **14.03 Affidavit of documents**

A party who is ordered to disclose documents must file an affidavit of documents.

### **14.04 Production of documents to Court**

The Court may order a party to a proceeding to produce to it a document in the possession, custody or control of the party.

### **14.05 Claim for privilege**

- (1) This rule applies if, on application for the production by a party of a document for inspection by the party making the application or to the Court:
  - (a) privilege from production or inspection is claimed; or
  - (b) objection is made to production or inspection on any other ground.

**Rule 14.06**

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- (2) The Court may inspect the document for the purpose of determining whether the claim or objection is valid.

**14.06 Order for particular disclosure**

If, at any stage of a proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed, that some document or class of document relating to a matter in question in the proceeding may be, or may have been, in the possession, custody or control of a party, the Court may order the party:

- (a) to file an affidavit stating:
  - (i) whether the document, or a document of that class, is or has been in the possession, custody or control of the party; and
  - (ii) if it has been but is not then in the possession, custody or control of the party, when the party parted with it and what has become of it; and
- (b) to serve the affidavit on another party.

**14.07 Inspection of documents**

A document produced under an order may be inspected:

- (a) at the time and place specified in the order; or
- (b) at a time and place agreed by the parties.

**14.08 Copies of documents inspected**

Unless the Court otherwise orders, a party who inspects a document under this Division may make a copy of, or extract from, the document.

**14.09 Documents not disclosed or produced**

Unless the Court gives leave, a party is not entitled to put a document or a copy of a document in evidence or give, or cause to be given, evidence of the contents of a document:

- (a) if:

Rule 14.10

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- (i) the party has filed an affidavit of documents; and
  - (ii) the document was, when the party made the affidavit, in the possession, custody or control of the party or had been, in the possession, custody or control of the party; and
  - (iii) the document was not referred to in the affidavit or in any other affidavit of documents filed by the party under an order of the Court; or
- (b) if the party has been served with a subpoena to produce and does not produce the document.

**14.10 Documents referred to in document or affidavit**

- (1) If a document or affidavit filed by a party refers to another document, another party may request the party in writing for a copy of the document or to produce it for inspection.
- (2) The party requested to provide a copy of, or produce, a document must, within 4 days of the request, in writing to the party making the request:
  - (a) provide a copy of the document or appoint a time within 7 days, and a place where, it may be inspected; or
  - (b) claim that the document is privileged from production and state the grounds; or
  - (c) state that the document is not in his or her possession, custody or power and state his or her knowledge, information or belief about its whereabouts.

**14.11 Use of documents**

- (1) An order or undertaking, whether express or implied, not to use a document for any purpose other than for the proceeding in which it is disclosed does not apply to the document after it has been read to or by the Court or referred to in open Court in such terms as to disclose its contents.

Note: An implied undertaking arises where documents are produced in the process of discovery: *Harman v Secretary of State for the Home Department* [1983] 1 AC 280.

**Rule 14.11**

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- (2) Subrule (1) does not apply to a family law or child support proceeding and is subject to any order of the Court on the application of a party or of a person to whom the document belongs.

## Part 15—Evidence

- Note: Section 69ZT of the Family Law Act provides that particular provisions of the *Evidence Act 1995* dealing with:
- (a) general rules about giving evidence, examination in chief, re-examination and cross-examination;
  - (b) documents and other evidence;
  - (c) hearsay, opinion, admissions, evidence of judgements and convictions, tendency and coincidence, credibility and character;
- do not apply to child-related proceedings unless the Court is satisfied that there are exceptional circumstances and has taken into account the matters set out in paragraph 69ZT(3)(b) of that Act.

### Division 15.1—General

#### 15.01 Court may give directions

The Court may give directions:

- (a) as to the order of evidence and addresses; and
- (b) generally as to the conduct of a hearing.

- Note: The Act deals with a number of matters relating to evidence:
- directions may be given for evidence to be given orally or by affidavit: see section 64
  - directions may be given to limit the time for oral argument: see section 55
  - directions may be given to limit the length of written submissions: see section 56
  - directions may be given to limit the time for the giving of testimony: see section 62
  - for the administration of oaths and affirmations: see section 58
  - for orders and commissions for examination of witnesses: see section 60
  - for restriction or prohibition of publication of evidence: the name of a party or a witness or access to documents: see section 61
  - for offences by witnesses: see section 65
  - for use of video or audio links: see Division 5 of Part 6.

#### 15.02 Evidence if there is an independent children's lawyer

- (1) This rule:

**Rule 15.03**

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- (a) applies if an independent children's lawyer is to adduce evidence; and
  - (b) is subject to any direction made under rule 15.01.
- (2) If an applicant is to adduce evidence, the evidence must be adduced before evidence is adduced by a respondent, or an independent children's lawyer.
- (3) If a respondent is to adduce evidence, the evidence must be adduced before evidence is adduced by an independent children's lawyer.
- (4) A party or an independent children's lawyer may make an opening address immediately before adducing evidence.
- (5) If an independent children's lawyer is to make a closing address, the address must be made before a closing address is made by a respondent or an applicant.
- (6) If a respondent makes a closing address, the address must be made before a closing address is made by an applicant.

**15.03 Decisions without oral hearing**

The Court or a Judge may make a decision in a proceeding without an oral hearing if the parties to the proceeding consent to the making of the decision without an oral hearing.

**15.04 Court may call evidence**

- (1) The Court may of its own motion call any person as a witness in proceedings and give directions as to examination and cross-examination.
- (2) The Court may order a party to pay the expenses of the attendance of the witness.

Note: The Court may put a question to any witness to resolve or expedite proceedings: see section 63 of the Act.

**15.06 Transcript receivable in evidence**

A transcript of proceedings prepared at the direction of the Court may be received in evidence as a true record of the proceedings except to the extent that it is shown not to be a true record.

## Division 15.2—Expert evidence

### 15.06A Definition

In this Division:

*expert*, in relation to a question, means a person (other than a family and child counsellor or a welfare officer) who has specialised knowledge about matters relevant to the question based on that person's training, study or experience.

### 15.07 Duty to Court and form of expert evidence

For an expert's duty to the Court and for the form of expert evidence, an expert witness should be guided by the Federal Court practice direction guidelines for expert witnesses.

Note: While not intended to address all aspects of an expert's duties, the key points in the guidelines are:

- an expert witness has a duty to assist the Court on matters relevant to the expert's area of expertise
- an expert witness is not an advocate for a party
- the overriding duty of an expert witness is to the Court and not to the person retaining the expert
- if expert witnesses confer at the direction of the Court it would be improper for an expert to be given or to accept instructions not to reach agreement.

### 15.08 Expert evidence for 2 or more parties

- (1) This rule applies if 2 or more parties to a proceeding call expert witnesses to give opinion evidence about the same, or a similar, question.
- (2) The Court may give any direction that it thinks fit in relation to:
  - (a) the preparation by the expert witnesses (in conference or otherwise) of a joint statement of how their opinions on the question agree and differ; or
  - (b) the giving by an expert witness of an oral or written statement of:



Rule 15.09

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- (i) his or her opinion on the question; or
- (ii) his or her opinion on the opinion of another expert on the question; or
- (iii) whether in the light of factual evidence led at trial, he or she adheres to, or wishes to modify, any opinion earlier given; or
- (c) the order in which the expert witnesses are to be sworn, are to give evidence, are to be cross-examined or are to be re-examined; or
- (d) the position of witnesses in the courtroom (not necessarily in the witness box).

Example: The Court may direct that the expert witnesses be sworn one immediately after another, and that they give evidence after all or certain factual evidence has been led, or after each party's case is closed (subject only to hearing the evidence of expert witnesses) in relation to the question.

### **15.09 Court expert**

- (1) The Court may, at the request of a party or of its own motion:
  - (a) appoint an expert as court expert to inquire into and report on a question arising in the proceeding; and
  - (b) give directions about an experiment or test (other than a testing procedure for section 69W of the Family Law Act) for the purposes of the inquiry or report; and
  - (c) give further directions, including to extend or supplement the inquiry or report.
- (2) If possible, the court expert should be a person agreed upon between the parties.

### **15.10 Report of court expert**

- (1) The court expert must give the report to the Registrar together with the number of copies the Registrar directs.
- (2) The Registrar must send a copy of the report to each party.
- (3) The Court may:

**Rule 15.11**

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- (a) receive the report in evidence; or
  - (b) allow the examination of the court expert; or
  - (c) give other directions as to the use of the report.
- (4) A party wishing to cross-examine the court expert:
- (a) must arrange for the attendance of the court expert; and
  - (b) may issue a subpoena requiring his or her attendance; and
  - (c) unless the Court otherwise directs, must pay the reasonable expenses of the attendance.

**15.11 Remuneration and expenses of court expert**

Unless the Court otherwise directs, the parties are jointly liable to pay the reasonable remuneration and expenses of the court expert for preparing a report.

**15.12 Further expert evidence**

If a court expert has made a report on a question, a party may adduce evidence of another expert on the question with the leave of the court.

## **Division 15.4—Affidavits**

### **15.25 Form of affidavit**

The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject.

### **15.26 Making an affidavit**

- (1) The person making the affidavit must sign each page of the affidavit.

Note: For the persons before whom an affidavit may be made: see section 59 of the Act.

- (2) The affidavit must:

- (a) contain a jurat including:

- (i) the full name of the person making the affidavit; and
- (ii) whether the affidavit is sworn or affirmed; and
- (iii) the day and place the person makes the affidavit; and
- (iv) the full name and capacity of the person before whom the affidavit is made; and

- (b) be signed by the person making the affidavit in the presence of the person before whom it is made; and

- (c) then be signed by the person before whom it is made.

Note: A jurat is a clause placed at the end of an affidavit stating the time, place and officer before whom the affidavit is made.

- (3) Any interlineation, erasure or other alteration in the affidavit must be initialled by the person making the affidavit and the person before whom the affidavit is made.

### **15.27 Affidavit of illiterate or vision impaired person etc**

- (1) If the person making an affidavit is unable to read, or is physically incapable of signing it, the person before whom the affidavit is made must certify in or below the jurat that:

**Rule 15.28**

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- (a) the affidavit was read to the person making it; and
  - (b) the person seemed to understand the affidavit; and
  - (c) in the case of a person physically incapable of signing, the person indicated that the contents were true.
- (1A) Subrule (1) does not apply if the person making the affidavit has read the affidavit using:
  - (a) a computer with a screen reader, text-to-speech software or a braille display; or
  - (b) other technology for the vision impaired.
- (2) If the person making an affidavit does not have an adequate command of English:
  - (a) a translation of the affidavit and oath or affirmation must be read or given in writing to the person in a language that the person understands; and
  - (b) the translator must certify in or below the jurat that he or she has done so.
- (3) If an affidavit is made by a person who is incapable of reading it or incapable of signing it and a certificate under subrule (1) or (2) does not appear on the affidavit, it may not be used in a proceeding unless the Court or a Registrar is satisfied that:
  - (a) the affidavit was read, or if appropriate a translation read or given in writing, to the person; and
  - (b) the person seemed to understand the affidavit; and
  - (c) in the case of a person physically incapable of signing—the person indicated that the contents were true.

**15.28 Documents annexed or exhibited**

- (1) A document to be used in conjunction with an affidavit must be annexed to the affidavit.
- (2) However, if because of the nature of the document or its length it is impractical to annex the document, it may be made an exhibit to the affidavit.
- (3) An annexure must:

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Rule 15.29

- (a) be paginated; and
  - (b) bear a statement signed by the person before whom the affidavit is made identifying it as the particular annexure mentioned in the affidavit.
- (4) If there is more than 1 annexure, the pagination must be consecutive until the last page of the annexures and identified by page number in the affidavit.

Example: For an affidavit with 10 annexures totalling 100 pages, the first page of the first annexure is page 1 and the last page of the last annexure is page 100. An annexure would be identified in the affidavit in the following way: 'Annexed and marked with the letter G (pages 72-81) is a copy of the agreement for sale'.

- (5) An exhibit must:
- (a) be marked with the title and number of the proceeding; and
  - (b) be paginated; and
  - (c) bear a statement signed by the person before whom the affidavit is made identifying it as the particular exhibit mentioned in the affidavit.
- (6) A document annexed or exhibited to an affidavit must be served with the affidavit.

**15.29 Objectionable material may be struck out**

- (1) The Court or a Registrar may order material to be struck out of an affidavit at any stage in a proceeding if the material:
- (a) is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative; or
  - (b) contains opinions of persons not qualified to give them.
- (2) Unless the Court or a Registrar otherwise directs, any costs caused by the material struck out must be paid by the party who filed the affidavit.

**15.29A Use of affidavit without cross-examination of maker**

The Court may:

**Rule 15.30**

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- (a) dispense with the attendance for cross-examination of a person making an affidavit; or
- (b) direct that an affidavit be used without the person making the affidavit being cross-examined on the affidavit.

**Division 15.5—Admissions**

**15.30 Admission**

If an admission is made by a party, the Court may, on the application of another party, make an order to which the party applying is entitled on the admission.

**15.31 Notice to admit facts or documents**

- (1) A party to a proceeding (the *first party*) may, by notice in accordance with the approved form, ask another party to admit, for the proceeding, the facts or documents specified in the notice.
- (2) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or the authenticity of the document, the other party is taken to admit, for the proceeding only, the fact or the authenticity of the document.
- (3) The other party may, with the Court's leave, withdraw an admission taken to have been made under subrule (2).
- (4) Unless the Court otherwise orders, if the other party serves a notice disputing a fact or the authenticity of a document and the fact or the authenticity of the document is later proved in the proceeding, the party must pay the costs of the proof.

## **Part 15A—Subpoenas and notices to produce**

### **Division 15A.1—General**

#### **15A.01 Definitions for Part 15A**

In this Part:

***child welfare record*** means a record relating to child welfare held by a State or Territory agency mentioned in Schedule 9 to the *Family Law Regulations 1984*.

***criminal record***, for a person, means a record of offences for which the person has been found guilty.

***interested person***, for a subpoena, means a person who might reasonably have an interest in the subject matter of the subpoena.

***issuing party*** means the party at whose request a subpoena is issued.

***medical record***, for a person, means the histories, reports, diagnoses, prognoses, interpretations and other data or records, written or electronic, relating to the person's medical condition, that are maintained by a physician, hospital or other provider of services or facilities for medical treatment.

***person subpoenaed*** means a person required by a subpoena to produce a document or give evidence.

***police record***, for a person, means records relating to the person kept by police, including statements, police notes and records of interview.

#### **15A.02 Issue of subpoena**

- (1) The Court or a Registrar may, on the Court's or the Registrar's own initiative or at the request of a party, issue:
  - (a) a subpoena for production; or

**Rule 15A.03**

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- (b) a subpoena to give evidence; or
  - (c) a subpoena for production and to give evidence.
- (2) A subpoena must be in accordance with the approved form.
- (3) A subpoena must specify the name or designation by office or position of the person subpoenaed.
- (4) A subpoena requiring a person to produce a document or thing must include an adequate description of the document or thing and the time and place for production.
- (5) A party should not request the issue of a subpoena for production and to give evidence if production would be sufficient in the circumstances.

**15A.03 Documents and things in possession of another court**

- (1) The court must not issue a subpoena requiring the production of a document or thing in the possession of the Court or another court.
- (2) A party who seeks production of a document or thing in the possession of another court must give to a Registrar a written notice setting out:
  - (a) the name and address of the court having possession of the document; and
  - (b) a description of the document to be produced; and
  - (c) the date when the document is to be produced; and
  - (d) the reason for seeking production.
- (3) On receiving a notice under subrule (2), a Registrar may ask the other court, in writing, to send the document to the filing registry by a specified date.
- (4) A party may apply for permission to inspect and copy a document produced to the court.



#### **15A.04 Time limits**

- (1) A subpoena requiring production only may be made returnable at a time fixed by the Court.
- (2) A subpoena requiring attendance of a person must be made returnable on a day when the proceeding is listed for a hearing.
- (3) Unless the Court directs otherwise:
  - (a) a subpoena requiring attendance must be served at least 7 days before attendance under the subpoena is required; and
  - (b) a subpoena requiring production must be served at least 10 days before production under the subpoena is required.

Note: A subpoena must be served within 3 months of issue: see rule 6.18.

#### **15A.05 Limit on number of subpoenas**

- (1) Unless the Court directs otherwise, a party or independent children's lawyer must not request the issue of more than 5 subpoenas in a proceeding.
- (2) For this rule:

*proceeding* does not include part of a proceeding.

#### **15A.06 Service**

- (1) A subpoena must be served in accordance with Part 6.

Note: Under subrule 6.06(1), service by hand is required for an application starting a proceeding or a subpoena requiring the attendance of a person.
- (2) The issuing party must serve by ordinary service a copy of the subpoena on each other party, any interested person and any independent children's lawyer in the proceeding within a reasonable time before attendance or production under the subpoena is required.

**Rule 15A.07**

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**15A.07 Conduct money**

- (1) The person serving a subpoena must give the person subpoenaed conduct money sufficient for return travel between the place of residence or employment (as appropriate) of the person subpoenaed and the court.
- (2) The amount of conduct money must be at least \$25.

**15A.08 Undertaking not to require compliance with subpoena**

The issuing party for a subpoena may, by notice in writing served on the person subpoenaed and on each other party, undertake not to require the person subpoenaed to comply with the subpoena.

**15A.09 Setting aside subpoena**

On application, the Court may make an order setting aside all or part of a subpoena.

**15A.10 Order for cost of complying with subpoena**

Subject to rule 15A.11, the Court may, on application, make an order for the payment of any loss or expense incurred in complying with a subpoena.

**15A.11 Cost of complying with subpoena if not a party**

- (1) This rule applies if:
  - (a) a subpoena is addressed to a person who is not a party in the proceeding; and
  - (b) before complying with the subpoena, the person subpoenaed has given the issuing party notice that substantial loss or expense would be incurred in properly complying with the subpoena, including an estimate of the loss or expense; and
  - (c) the Court is satisfied that substantial loss or expense is incurred in properly complying with the subpoena.

Rule 15A.11

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- (2) Unless the Court or a Registrar otherwise directs, the amount of the loss or expense estimated under paragraph (1)(b) is payable by the issuing party.
- (3) The Court may fix the amount payable having regard to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory where the person is required to attend.
- (4) The amount payable is in addition to any conduct money paid.
- (5) If a party who is to pay an amount under this rule obtains an order for the costs of the proceeding, the Court may:
  - (a) allow the amount to be included in the costs recoverable; or
  - (b) make any other order it thinks fit.

Rule 15A.12

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**Division 15A.2—Production of documents and access by parties**

**15A.12 Application of Division 15A.2**

- (1) This Division:
  - (a) applies to a subpoena for production; and
  - (b) does not apply to a subpoena for production and to give evidence.
- (2) A person who inspects or copies a document under these Rules or an order must:
  - (a) use the documents only for the purpose of the proceedings; and
  - (b) not disclose the contents of the document or give a copy of it to any other person without the Court's permission.
- (3) However:
  - (a) a solicitor may disclose the contents or give a copy of the document to the solicitor's client or counsel; and
  - (b) a client may disclose the contents or give a copy of the document to his or her solicitor.

**15A.13 Right to inspection of document**

- (1) This rule applies if:
  - (a) the Court or a Registrar issues a subpoena for production of a document under rule 15A.02; and
  - (b) the issuing party serves a copy of the subpoena on each other party, any interested person and any independent children's lawyer in accordance with rule 15A.06, at least 10 days before the day stated in the subpoena for production; and
  - (c) the issuing party files a notice of request to inspect in an approved form.
- (2) If a person subpoenaed, another party or an interested person has not made an objection under rule 15A.14 by the date required for

production, each party and any independent children's lawyer may, after that day:

- (a) inspect a subpoenaed document; and
  - (b) take copies of a subpoenaed document, other than a child welfare record, criminal record, medical record or police record.
- (3) Unless otherwise ordered, the inspection is by appointment and without an order.

Note: For child welfare records, there may be restrictions on inspection imposed by protocols entered into between the Court and the relevant child welfare department.

#### **15A.14 Objection to production or inspection or copying of document**

- (1) A person who objects to producing a document subpoenaed, or another party or an interested person who objects to the inspection or copying of a document subpoenaed by a party to the proceedings, must notify the Registrar and the issuing party, in writing, of the objection and the grounds of the objection before the day stated in the subpoena for production.
- (2) If an issuing party seeks the production of a person's medical records, the person may, before the day stated in the subpoena for production, notify the Registrar in writing that he or she wants to inspect the records for the purpose of determining whether to object to the inspection or copying of the document by any other party.
- (3) If notice is given under subrule (2):
  - (a) the person may inspect the medical records and notify the Registrar in writing of an objection (including the grounds of the objection) within 7 days after the day stated in the subpoena for production; and
  - (b) unless otherwise ordered, no other person may inspect the medical records until the later of:
    - (i) 7 days after the day stated in the subpoena for production; or

**Rule 15A.15**

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- (ii) the hearing and determination of the objection, if any.
- (4) A subpoena that is the subject of a notice of objection under this rule must be referred to the Court or Registrar for the hearing and determination of the objection.

**15A.15 Subpoena for production of documents or things**

- (1) If a person is served with a subpoena for production:
  - (a) the person, or the person's agent, must produce the documents or things described in the subpoena at the registry stated in the subpoena; and
  - (b) the Registrar must issue a receipt to the person producing the document or thing.
- (2) Unless the subpoena specifically requires the production of the original documents or things, the person, or the person's agent, may produce a copy of the document or things.
- (3) The copy of the document or things may be:
  - (a) a photocopy; or
  - (b) in PDF on a CD-ROM; or
  - (c) in any other electronic form that the issuing party has indicated is acceptable.

**15A.16 Failure to comply with subpoena**

- (1) If a person fails, without lawful excuse, to comply with a subpoena, the Court or a Registrar may issue a warrant for the arrest of the person and order that person to pay any costs of failure to comply.
- (2) Subrule (1) does not affect any power of the Court to punish a person for failure to comply with a subpoena.

## **Division 15A.3—Notices to produce**

### **15A.17 Notice to produce**

- (1) A party may, by notice in writing, require another party to produce, at the hearing of the proceeding, a specified document that is in the possession, custody or control of that other party.
- (2) Unless the Court otherwise orders, the party given notice to produce must produce the document at the hearing.

Rule 16.01

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## **Part 16—Judgments and orders**

### **16.01 Court may make any judgment or order**

The Court may, at any stage in a proceeding on the application of a party, give any judgment or make any order even if the claim was not made in an originating process.

### **16.02 Date of effect**

Unless the Court otherwise orders, a judgment or order takes effect on the day when it is given or made.

### **16.03 Time for compliance**

- (1) Unless the Court otherwise orders, if an order (other than a parenting order) requires a person to do an act, the person must do so within 14 days after service of the order on the person.
- (2) Subrule (1) does not apply to that part of an order that requires a person to pay money unless the requirement is to pay money into Court.
- (3) If an order requires a person to do an act within a specified time, the Court may make an order requiring the person to do the act within another specified time.

### **16.04 Fines**

- (1) If the Court imposes a fine on a person, the Court must make an order requiring the person to pay the fine to a Registrar within a specified time.
- (2) The Registrar must pay into the Consolidated Revenue Fund all moneys paid to the Registrar as a fine imposed by the Court.



Rule 16.05

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**16.05 Setting aside**

- (1) The Court may vary or set aside its judgment or order before it has been entered.
- (2) The Court may vary or set aside its judgment or order after it has been entered if:
  - (a) the order is made in the absence of a party; or
  - (b) the order is obtained by fraud; or
  - (c) the order is interlocutory; or
  - (d) the order is an injunction or for the appointment of a receiver; or
  - (e) the order does not reflect the intention of the Court; or
  - (f) the party in whose favour the order is made consents.
- (3) This rule does not affect the power of the Court to vary or terminate the operation of an order by a further order.

Note: See sections 57 and 58 of the Family Law Act in relation to rescission of a divorce order.

**16.06 Undertakings**

Unless the Court otherwise orders, an undertaking to the Court has the same force and effect as an order of the Court.

**16.07 When must an order be entered**

- (1) An order must be entered if:
  - (a) the order takes effect on the signing of the order; or
  - (b) the order is to be served; or
  - (c) the order is to be enforced; or
  - (d) an appeal from the order has been instituted or an application for leave to appeal has been made; or
  - (e) some step is to be taken under the order; or
  - (f) the Court directs that the order be entered.
- (2) However, an order need not be entered if it merely (in addition to any provision as to costs):

## Rule 16.08

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- (a) makes an extension or abridgment of time; or
- (b) grants leave or makes a direction:
  - (i) to amend a document (other than an order); or
  - (ii) to file a document; or
  - (iii) for an act to be done by an officer of the Court other than a lawyer; or
- (c) gives directions about the conduct of proceedings.

### **16.08 Entry of orders**

- (1) An order may be entered:
  - (a) under an arrangement under section 90 of the Act; or
  - (b) under the seal of the Court signed by:
    - (i) a Judge; or
    - (ii) a Registrar; or
    - (iii) an officer of the Court acting with the authority of the Chief Executive Officer.
- (1A) For paragraph (1)(b), an order may be signed by electronic means.
- (2) An order may be entered, in accordance with subrule (1):
  - (a) in the registry; or
  - (b) in court; or
  - (c) in chambers.

## **Part 17—Separate decision on question**

### **17.01 Definition**

In this Part:

**question** includes a question or issue in a proceeding, whether of fact or law, or partly of fact and partly of law, and whether raised in a document, by agreement of the parties or otherwise.

### **17.02 Order for decision**

The Court may make an order for the decision by the Court of a question separately from another question at any time in a proceeding.

### **17.03 Separate question**

A separate question must:

- (a) set out the question or questions to be decided; and
- (b) be divided into paragraphs numbered consecutively.

### **17.04 Orders, directions on decision**

If a question is decided under this Part, the Court may make the orders and directions that the nature of the case requires.

### **17.05 Disposal of proceeding**

The Court may, in relation to a decision of a question under this Part:

- (a) dismiss the proceeding or any part of the proceeding; or
- (b) give judgment, including a declaratory judgment; or
- (c) make another order.

Rule 18.01

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## **Part 18—Referral of matter to officer of Court**

### **18.01 Court may refer matter**

- (1) The Court may refer to a Registrar, including in relation to assessment of damages or taking accounts, any claim or application for, or relating to, any matter before the Court for:
  - (a) investigation; and
  - (b) report; and
  - (c) recommendation.
- (2) A Registrar to whom a claim or application is referred for investigation may:
  - (a) take evidence on oath or affirmation; and
  - (b) obtain and receive in evidence a report from a family and child counsellor or welfare officer; and
  - (c) summon witnesses for the purpose of giving evidence or producing documents.

## **Part 19—Contempt**

### **19.01 Contempt in the face or hearing of Court**

- (1) If it appears to the Court that a person is guilty of contempt in the face of or in the hearing of the Court, the Court may:
  - (a) direct that the person attend before the Court; or
  - (b) issue a warrant for the person's arrest.
- (2) When the person attends before the Court, the Court must:
  - (a) tell the person of the contempt with which the person is charged; and
  - (b) allow the person to state his or her defence to the charge; and
  - (c) after hearing the defence, determine the charge; and
  - (d) make an order for the punishment or discharge of the person.
- (3) The Court may direct that the person be kept in custody or released until the charge is determined.
- (4) The Court may direct that the person give security for the person's attendance before the Court to answer the charge.

### **19.02 Contempt other than in the face or hearing of Court**

- (1) If it is alleged that a person has committed a contempt of the Court (other than contempt in the face or hearing of the Court), an application may be made to the Court for the person to be dealt with for the contempt.
- (2) An application must:
  - (a) be in accordance with the approved form; and
  - (b) state the contempt alleged; and
  - (c) be supported by an affidavit setting out the facts relied on.
- (3) An application may be made:
  - (a) if the contempt is in connection with a proceeding, by a party in the proceeding; or

**Rule 19.02**

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- (b) by the Marshal of the Court; or
  - (c) by an officer or staff member of the Australian Federal Police; or
  - (d) by a member of the police force of a State or Territory.
- (4) The Court may direct the Marshal to make an application.
- (5) If the Court considers that the person is likely to leave the jurisdiction of the Court, the Court may issue a warrant for the arrest and detention of the person in custody until the person:
  - (a) attends before the Court to answer the charge; or
  - (b) gives security, as directed by the Court, for his or her attendance before the Court to answer the charge.
- (6) When the person attends before the Court, the Court must:
  - (a) tell the person of the allegation; and
  - (b) ask the person to state whether he or she admits or denies the allegation; and
  - (c) hear any evidence in support of the allegation.
- (7) After hearing evidence in support of the allegation, the Court may:
  - (a) if the Court decides there is no prima facie case, dismiss the application; or
  - (b) if the Court decides there is a prima facie case:
    - (i) invite the person to state his or her defence to the allegation; and
    - (ii) after hearing any defence, determine the charge.
- (8) If the Court finds the charge proved, the Court may make an order for the punishment of the person.

## **Part 20—Registrars' powers**

### **Division 20.1—Delegation of powers to Registrars**

#### **20.00A Delegation of powers to Registrars**

- (1) For subsection 103(1) of the Act, a power of the Court mentioned in an item of the following table is delegated to a Registrar who is approved, or is in a class of Registrars who are approved, by the Chief Judge for the exercise of the power.

<b>Item</b>	<b>Legislative provision</b>	<b>Description of power (for information only)</b>
<b>Act</b>		
1	section 52	To order, at any stage, a change of venue
2	subsection 102(2)	All of the following: (a) to dispense with the service of any process of the Court (b) to make orders in relation to substituted service (c) to make orders in relation to discovery, inspection and production of documents (d) to make orders in relation to interrogatories (e) to make an order adjourning the hearing of proceedings (f) to make an order as to costs (g) to make an order about security for costs (h) to make an order exempting a party to proceedings from compliance with a provision of these Rules (i) to exercise a power of the Court prescribed by these Rules (j) to direct a party in family law or child support proceedings to answer particular questions

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**Division 20.1** Delegation of powers to Registrars

Rule 20.00A

Item	Legislative provision	Description of power (for information only)
		(k) to make orders under the following provisions of the Family Law Act: (i) sections 11F and 11G (ii) sections 13C and 13D (iii) subsection 65LA(1) (iv) paragraph 70NEB(1)(a) (ka) to direct a family consultant to give a report under section 62G of the Family Law Act (l) in family law or child support proceedings—to make: (i) an order under section 66Q, 67E, 77 or 90SG of the Family Law Act or (ii) an order for the payment of maintenance pending the disposal of the proceedings (m) to make an order the terms of which have been agreed upon by all the parties to the proceedings (n) to make orders for the enforcement of maintenance orders under the Family Law Act (o) to make an order exempting a party to family law or child support proceedings from compliance with a provision of regulations under the Family Law Act
<b><i>Fair Work Act 2009</i></b>		
2A	paragraph 545(2)(b)	To order a person to pay compensation
2B	subsection 548(4)	To amend the papers commencing the proceeding
2C	subsections 548(5) and (6)	To grant leave for a party to a small claims proceeding to be represented by a lawyer
2D	section 570	To order a party to pay costs incurred by another party
<b><i>Family Law Act</i></b>		
3	section 13B	To adjourn proceedings and advise parties to attend family counselling
4	sections 13E and 13F	To refer parties to arbitration with their consent and make procedural orders to assist arbitration



Rule 20.00A

<b>Item</b>	<b>Legislative provision</b>	<b>Description of power (for information only)</b>
5	subsection 44(1C)	To give leave for an application for a divorce order to be filed within 2 years after the date of marriage
6	subsection 45(2)	To transfer a case to another court
7	section 48	To make a divorce order in undefended proceedings
8	subsection 55(2)	To extend or reduce the time for a divorce order to take effect
9	section 55A	To make a declaration about arrangements for children after a divorce
10	section 57	To rescind a divorce order where the parties have become reconciled
11	subsection 60I(9)	To decide if subsection 60I(7) applies to an application for a Part VII order about a child
12	subsection 60I(10)	To order that a person attend family dispute resolution
13	subsection 60J(2)	To decide if subsection 60J(1) applies to an application for a Part VII order about a child because of a risk of child abuse or family violence
15	subsection 63E(3)	To register a revocation agreement
16	subsection 67M(2)	To make a location order
17	subsection 67N(2)	To make a Commonwealth information order
17A	subsection 67ZBB (2)	To make procedural orders for allegations of child abuse or family violence
18	section 68L	To make an order that a child's interests are to be independently represented
19	section 69ZW	To make an order in child-related proceedings requesting a State or Territory agency to provide documents or information
21	subsection 91B(1)	To request that a child welfare officer intervene in a case
22	subsection 92(1)	To make an order entitling a person to intervene in a case
23	subsection 97(1A)	To hear proceedings sitting in chambers

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**Rule 20.00A**

<b>Item</b>	<b>Legislative provision</b>	<b>Description of power (for information only)</b>
24	subsection 97(2)	To make an order about specified persons being present in Court
25	section 98A	To make an order approving an undefended application for divorce without the parties being present
26	section 101	To protect a witness in a case
27	section 106A	To appoint a person to execute a deed or instrument
28	subsection 114(3)	To grant an injunction
<b>Family Law Regulations</b>		
29	subregulation 4(1)	To make an order about practice and procedure in particular circumstances
30	regulation 5	To direct proceeding is void for non-compliance with the Family Law Regulations, these Rules or procedures related to these Rules
<b><i>Federal Circuit Court Rules 2001</i></b>		
31	Division 25B.2 (except paragraph 25B.13(c) in so far as that paragraph incorporates paragraphs 25B.11(c) and (d), rules 25B.33 to 25B.37, 25B.45 and 25B.47 and Subdivisions 25B.2.5 to 25B.2.7)	To enforce financial orders and obligations
32	rule 29.04	To give a direction for the enforcement or execution of an order
32A	rule 29.11	To make an order, issue a writ or take another step to enforce a judgment or order
33	rule 45.13	To grant leave for a party to a small claims application to be represented by a lawyer
34	rule 46.4	To grant leave for a party to a small claims proceeding to be represented by a lawyer

Rule 20.00A

<b>Item</b>	<b>Legislative provision</b>	<b>Description of power (for information only)</b>
<b><i>National Consumer Credit Protection Act 2009</i></b>		
35	section 178	To order a person to pay compensation
36	subsection 199(6)	To amend the papers commencing the proceedings
37	subsections 199(7) and (8)	To grant leave for a party to a small claims proceeding to be represented by a lawyer
38	section 200	To order a party to pay costs incurred by another party
<b><i>National Credit Code</i></b>		
39	section 37	To order a credit provider to provide a statement
40	subsection 38(7)	To determine a disputed liability and make consequential orders
41	subsection 74(2)	To make orders changing, or refusing to change, the terms of a credit contract
42	subsection 74(3)	To stay enforcement proceedings or make other orders relating to a debtor's application to change the terms of a credit contract
43	subsection 75(1)	To vary or revoke an order under subsection 74(2)
44	subsection 75(2)	To vary or revoke a stay or order under subsection 74(3)
45	section 76	To reopen an unjust transaction that gave rise to an unjust contract, mortgage or guarantee
46	section 78	To annul or reduce an unconscionable change to a rate, fee or charge
47	subsection 96(2)	To order or refuse to order a postponement
48	subsection 96(3)	To stay enforcement proceedings until an application for postponement has been heard
49	subsection 101(1)	To order a person to deliver mortgaged goods to a credit provider
50	subsection 101(2)	To make orders varying the place at which, or time or period within which, mortgaged goods must be delivered to a credit provider
51	subsection 106(1)	To order a credit provider to credit a mortgagor

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Rule 20.00A

Item	Legislative provision	Description of power (for information only)
52	subsection 106(2)	To order a credit provider to compensate a mortgagor or mortgagee
53	subsection 107(3)	To determine the amount of enforcement expenses that may be recovered by a credit provider
54	section 108	To order a credit provider to return possession of goods to a mortgagor
55	section 118	To order a credit provider to pay compensation to a debtor or guarantor
<b>Registration Act</b>		
56	section 113	To make orders for the recovery of debts

- (2) The powers of the Court mentioned in items 2A and 2D of the table may only be exercised by an approved Registrar when dealing with a claim mentioned in section 548 of the *Fair Work Act 2009*.
- (3) The powers of the Court mentioned in items 35 and 38 to 53 of the table may only be exercised by an approved Registrar when dealing with an application for an order mentioned in subsection 199(2) of the *National Consumer Credit Protection Act 2009*.

- Note: If a power of the Court is delegated to the Registrar under this rule:
- (a) the Registrar has, in exercising the power, the same protection and immunity as a Judge has in exercising that power; and
  - (b) a party, legal practitioner or witness appearing before a Registrar on the hearing of any application or matter, or on the conducting of any conference or enquiry, has the same protection and immunity as if appearing in a proceeding in the Court.

## **Division 20.2—Review of exercise of Registrars' powers**

### **20.01 Time for application for review**

- (1) For subsection 104(2) of the Act, application for review of the exercise of a power by a Registrar must be made within:
  - (a) for the exercise of a power of the Court under the Family Law Act or Family Law Regulations mentioned in items 3 to 30 of the table in rule 20.00A—28 days; and
  - (b) otherwise—7 days.
- (2) A time prescribed under subrule (1) may be extended in a proceeding:
  - (a) by the Court or a Registrar on any terms as the Court or Registrar thinks fit; or
  - (b) with the consent of the parties to the proceeding.

### **20.02 Application for review**

- (1) An application for review of an exercise of power by a Registrar must be in accordance with the approved form.
- (2) An application must be listed for a hearing as soon as possible and, unless impractical to do so, within 14 days after the date of filing.
- (3) The applicant must serve a sealed copy of the application on each other party to the proceeding within 7 days after it is filed.
- (4) Unless the Court or a Registrar otherwise orders, the application does not operate as a stay of the exercise of power under review.

### **20.03 Procedure for review**

The review of an exercise of power by a Registrar:

- (a) must proceed by way of a hearing de novo; and
- (b) may receive as evidence any affidavit or exhibit tendered before the Registrar; and
- (c) may with leave receive further evidence; and

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- (d) may receive as evidence:
  - (i) any transcript of the proceeding before the Registrar; or
  - (ii) if there is no transcript, an affidavit sworn by a person who was present at the proceeding before the Registrar as a record of the proceeding.

## **Part 21—Costs**

### **Division 21.1—Security for costs**

#### **21.01 Security for costs**

- (1) On application by a respondent, the Court may order the applicant to give the security that the Court considers appropriate for the respondent's costs of the proceeding.

- (2) For this rule:

***respondent*** includes an applicant if a cross-claim is made or the response to the application seeks orders in relation to matters not covered by the applicant.

- (3) An application must be made in accordance with the approved form and supported by an affidavit setting out the facts relied on.

Note: For the power of the Court to order an applicant in a proceeding to give security for the payment of costs and for other matters relating to security for costs: see section 80 of the Act in relation to proceedings other than family law or child support proceedings and section 117 of the Family Law Act for family law and child support proceedings.

## **Division 21.2—Orders for costs**

### **21.02 Order for costs**

- (1) An application for an order for costs may be made:
  - (a) at any stage in a proceeding; or
  - (b) within 28 days after a final decree or order is made; or
  - (c) within any further time allowed by the Court.
- (2) In making an order for costs in a proceeding, the Court may:
  - (a) set the amount of the costs; or
  - (b) set the method by which the costs are to be calculated; or
  - (c) refer the costs for taxation under Part 40 of the Federal Court Rules or under Chapter 19 of the Family Law Rules; or
  - (d) set a time for payment of the costs, which may be before the proceeding is concluded.

### **21.03 Determination of maximum costs**

- (1) The Court may specify the maximum costs that may be recovered on a party and party basis:
  - (a) by order at the first court date; and
  - (b) of its own motion or on the application of a party.
- (2) However, an amount specified must not include an amount that a party is ordered to pay because the party:
  - (a) has failed to comply with, or has sought an extension of time for complying with, an order or with any of these Rules; or
  - (b) has sought leave to amend a document; or
  - (c) has otherwise caused another party to incur costs that were not necessary for the economic and efficient progress of the proceeding or hearing of the proceeding.
- (3) The Court may vary the maximum costs specified if, in the Court's opinion, there are special reasons and it is in the interests of justice to do so.



#### **21.04 Costs reserved**

If the costs of a motion, application or other proceeding are reserved, the costs reserved follow the event unless the Court otherwise orders.

#### **21.05 Costs if proceedings transferred**

- (1) This rule applies if a proceeding is transferred to the Court from the Family Court or the Federal Court.
- (2) If the court from which the proceeding is transferred has not made an order for costs, the Court may make an order for costs including costs before the transfer.
- (3) Unless the court from which the proceeding is transferred otherwise orders, costs before the transfer must be in accordance with this Part.

#### **21.07 Order for costs against lawyer**

- (1) The Court or a Registrar may make an order for costs against a lawyer if the lawyer, or an employee or agent of the lawyer, has caused costs:
  - (a) to be incurred by a party or another person; or
  - (b) to be thrown away;because of undue delay, negligence, improper conduct or other misconduct or default.
- (2) A lawyer may be in default if a hearing may not proceed conveniently because the lawyer has unreasonably failed:
  - (a) to attend, or send another person to attend, the hearing; or
  - (b) to file, lodge or deliver a document as required; or
  - (c) to prepare any proper evidence or information; or
  - (d) to do any other act necessary for the hearing to proceed.
- (3) An order for costs against a lawyer may be made on the motion of the Court or Registrar, or on application by a party to the

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proceeding or by another person who has incurred the costs or costs thrown away.

- (4) The order may provide:
- (a) that the costs, or part of the costs, as between the lawyer and party be disallowed; or
  - (b) that the lawyer pay the costs, or part of the costs incurred by the other person; or
  - (c) that the lawyer pay to the party or other person the costs, or part of the costs, that the party has been ordered to pay to the other person.
- (5) Before making an order for costs, the Court or Registrar:
- (a) must give the lawyer, and any other person who may be affected by the decision, a reasonable opportunity to be heard; and
  - (b) may order that notice of the order, or of any proceeding against the lawyer be given to a party for whom the lawyer may be acting or any other person.

**21.08 Interest on outstanding costs**

Unless the Court otherwise orders, interest is payable on outstanding costs:

- (a) for a family law or child support proceeding—at the rate applying for rule 22.01; and
- (b) for any other proceeding—at the rate applying for rule 26.01.

## **Division 21.3—Costs and disbursements**

### **21.09 Application**

- (1) This Subdivision applies to costs payable, or to be taxed, under an Act, these Rules or an order of the Court, in a proceeding.
- (2) Subject to paragraphs 21.02(2)(c) and 21.11(2)(a), Chapter 19 of the Family Law Rules does not apply to a family law or child support proceeding in the Court.
- (3) Unless otherwise provided, these Rules do not regulate the fees to be charged by lawyers as between lawyer and client in relation to proceedings in the Court.

Note: For any dispute between a lawyer and a client about the fees charged by the lawyer, see the State or Territory legislation governing the legal profession in the State or Territory where the lawyer practises.

### **21.10 Costs and disbursements**

Unless the Court otherwise orders, a party entitled to costs in a proceeding (other than a proceeding to which the Bankruptcy Act applies) is entitled to:

- (a) costs in accordance with Parts 1 and 2 of Schedule 1; and
- (b) disbursements properly incurred.

Note: For costs in a proceeding to which the *Bankruptcy Act 1966* applies, see Part 13 of the *Federal Circuit Court (Bankruptcy) Rules 2006*.

### **21.11 Taxation of costs**

- (2) When taxing a statement of costs, a taxing officer must apply:
  - (a) for a family law or child support proceeding—the scale of costs set out in Schedule 3 to the Family Law Rules; and
  - (b) for a general federal law proceeding—the scale of costs set out in Schedule 2 to the Federal Court Rules.

- (3) In this rule:

***taxing officer*** means a Registrar.

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**21.12 Expenses for attendance by witness**

An amount paid, or to be paid, for attendance by a witness at a hearing is a disbursement properly incurred for a proceeding if:

- (a) the attendance is reasonably required; and
- (b) the amount is reasonable or is authorised, or approved, by the Court.

**21.13 Expenses for preparation of report by expert**

An amount paid, or to be paid, to an expert for preparation of a report for a party or an independent children's lawyer is a disbursement properly incurred for a proceeding if:

- (a) the report is reasonably required; and
- (b) the amount is reasonable or is authorised, or approved, by the Court.

**21.14 Solicitor as advocate**

- (1) If a solicitor appeared for a party on a hearing alone or instructed by another solicitor who is a member of the same firm, the amount to which the party is entitled for the hearing is limited to:
  - (a) 150% of the daily hearing fee for 1 solicitor; and
  - (b) a fee for preparation.
- (2) The party is not entitled to an amount for the preparation of a brief on hearing.

**21.15 Advocacy certificate**

The Court or a Registrar may certify that it was reasonable to employ an advocate, or more than 1 advocate, to appear for a party in a proceeding.

**21.16 Counsel as advocate**

If the employment of an advocate is certified as reasonable, the amount payable for counsel to appear is the daily hearing fee and advocacy loading in accordance with Parts 1 and 2 of Schedule 1.

## **Chapter 2—Family law and child support proceedings**

### **Part 22—General**

#### **22.01 Rate of interest**

For subsection 117B(1) of the Family Law Act, the rate of interest is the rate prescribed by the Family Law Rules for that subsection.

Note: The Court may order that interest is payable at another rate: see subsection 117B(2) of the Family Law Act.

## **Part 23—Family counselling and family dispute resolution**

**Note:** The Family Law Act imposes duties on the Court and lawyers to provide information about non-court based family services and court's processes and services (including services provided by family counsellors and family dispute resolution practitioners), and services available to help with a reconciliation: see sections 12E and 12F of that Act.

### **Division 23.1—Family counselling, family dispute resolution and family reports**

#### **23.01A Family reports**

- (1) A party to an application for final orders may apply for an order that a family report be prepared.
- (2) The Court may take the following matters into consideration when deciding whether to order a family report:
  - (a) whether the proceeding involves:
    - (i) an intractable or complex parenting proceeding; or
    - (ii) if a child is mature enough for the child's views to be significant in determining the proceeding—a dispute about the child's views; or
    - (iii) a dispute about the existence or quality of the relationship between a parent, or other significant person, and a child; or
    - (iv) allegations that a child is at risk of abuse; or
    - (v) family violence;
  - (b) whether there is any other relevant independent expert evidence available.
- (3) An application for a family report (whether made orally or in writing), and any order made, must identify the issues to be addressed by the report.

- (4) When ordering a family report, the Court may order a party or a child to attend for the purposes of preparing the report.
- (5) If a family report is prepared in accordance with an order made under this rule, the Court may:
  - (a) give copies of the report to each party, or the party's lawyer, and to any independent children's lawyer; and
  - (b) receive the report in evidence; and
  - (c) permit oral examination of the person making the report; and
  - (d) order that the report not be released to a person or that access to the report be restricted.

### **23.01 Report after family counselling or family dispute resolution**

At the end of court-ordered family counselling or family dispute resolution, the family counsellor or family dispute resolution practitioner must give to the Court a report of:

- (a) the number of family counselling and family dispute resolution sessions; and
- (b) the outcome; and
- (c) the recommended future management of the matter.

Note: In certain circumstances the Court may direct the parties to attend family counselling or family dispute resolution: see Part IIIB and Division 3 of Part VII (which deals with counselling in matters affecting children) of the Family Law Act.

## **Division 23.2—Family dispute resolution**

### **23.02 Referral for family dispute resolution**

If the Court makes an order referring any or all of the matters in dispute in a proceeding for family dispute resolution, the Court must:

- (a) refer the matter directly to a family dispute resolution practitioner for assessment so that the practitioner may proceed with family dispute resolution if assessed as appropriate; or
- (b) refer the matter to the Dispute Resolution Coordinator for assessment so that the Coordinator may arrange for family dispute resolution if assessed as appropriate; or
- (c) make any other order necessary to facilitate the family dispute resolution.



## **Part 24—Financial matters**

### **24.01 Application of Part**

This Part applies to proceedings in relation to financial matters.

#### **24.01A Interpretation**

- (1) In this Part:

*superannuation information form* has the same meaning as in the Family Law Rules.

- (2) An expression used in this Part and in Part VIIIIB of the Family Law Act has the same meaning in this Part as it has in the Family Law Act.

Note: The following expressions are defined in Part VIIIIB of the Family Law Act:

- eligible superannuation plan
- flagging order
- payment split
- splitting order
- superannuation interest.

### **24.02 Financial statement**

- (1) An applicant, or a respondent who files a response, must file and serve with the application or response:
- (a) a financial statement in accordance with the approved form;
  - or
  - (b) an affidavit of financial circumstances.
- (2) If an applicant, or a respondent who files a response, is seeking an order for property settlement and has a superannuation interest, he or she must attach to the financial statement or affidavit a completed superannuation information form in relation to the interest.

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- (3) However, an applicant or respondent need not comply with subrule (2) if, when the statement or affidavit is filed:
  - (a) the person has, in accordance with section 90MZB of the Family Law Act, made an application to the trustee of the eligible superannuation plan in which the superannuation interest is held for information about the interest; and
  - (b) the trustee has not provided the information.
- (4) An applicant or respondent to whom subrule (3) applies must file and serve a completed superannuation information form within 7 days after receiving the information from the trustee.

**24.03 Full and frank disclosure**

- (1) A party required under this Part to file a financial statement or affidavit of financial circumstances must make in the statement or affidavit a full and frank disclosure of his or her financial circumstances, including details of:
  - (a) any vested or contingent interest in property (including real or personal property, superannuation and legal and equitable interests); and
  - (b) income from all sources, including any benefit received in relation to, or in connection with, the party's employment or business interests; and
  - (c) the party's other financial resources; and
  - (d) any trust:
    - (i) of which the party is, or has been since the separation of the parties, the appointor or trustee; or
    - (ii) of which the party, or the party's child, spouse or de facto spouse is, or has been since the separation of the parties, an eligible beneficiary as to capital or income; or
    - (iii) of which a corporation is an eligible beneficiary as to capital or income if the party, or the party's child, spouse or de facto spouse is, or has been since the separation of the parties, a shareholder or director of the corporation; or

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- (iv) over which the party has, or has had since the separation of the parties, any direct or indirect power or control; or
- (v) of which the party has, or has had since the separation of the parties, the direct or indirect power to remove or appoint a trustee; or
- (vi) of which the party has, or has had since the separation of the parties, the power (whether subject to the concurrence of another person or not) to amend the terms; or
- (vii) of which the party has, or has had since the separation of the parties, the power to disapprove a proposed amendment of the terms or the appointment or removal of a trustee; or
- (viii) over which a corporation has, or has had since the separation of the parties, a power mentioned in subparagraphs (iv) to (vii), if the party is a director or shareholder of the corporation; and
- (e) any gift or other disposition of property made by the party since the separation of the parties; and
- (f) if there is a partnership, trust or company (except a public company) in which the party has an interest, copies of the 3 most recent financial statements and the last 4 business activity statements lodged by the partnership, trust or company.

**24.04 Production of documents (proceeding other than for maintenance only)**

- (1) Unless the Court or a Registrar otherwise orders, a party required under this Part to file a financial statement or affidavit of financial circumstances (other than a respondent in a proceeding for maintenance only) must serve on each other party who has an address for service in the proceeding the following documents:
  - (a) copies of the party's 3 most recent taxation returns;
  - (b) copies of the party's 3 most recent taxation assessments;
  - (c) if the party is a member of a superannuation plan:

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- (i) if not already filed or exchanged—the completed superannuation information form for any superannuation interest of the party; and
    - (ii) for a self-managed superannuation fund—the trust deed and copies of the 3 most recent financial statements for the fund;
  - (d) if the party has an Australian Business Number, copies of the last 4 business activity statements lodged;
  - (e) if there is a partnership, trust or company (except a public company) in which the party has an interest, copies of the 3 most recent financial statements and the last 4 business activity statements lodged by the partnership, trust or company.
- (2) The documents must be served within 14 days after the first court date.

### **24.05 Production of documents (proceedings for maintenance only)**

A respondent to an application for maintenance only must bring to the court on the first court date the following documents:

- (a) a copy of the respondent's taxation return for the most recent financial year;
- (b) a copy of the respondent's taxation assessment for the most recent financial year;
- (c) copies of the respondent's bank records for the 12 months immediately before the date when the application was filed;
- (d) the respondent's most recent pay slip;
- (e) if the respondent has an Australian Business Number, copies of the last 4 business activity statements lodged;
- (f) any document in the respondent's possession, custody or control that may assist the Court in determining the income, needs and financial resources of the respondent.

### **24.06 Amendment of financial statement**

If there is a significant change in the circumstances of a party who has filed a financial statement or affidavit of financial

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circumstances under this Part, the party must amend the statement or affidavit as soon as practicable by:

- (a) if the amendment may be clearly set out in 3 pages or less—filing and serving an affidavit setting out the amendment; or
- (b) otherwise—filing and serving an amended financial statement or affidavit.

**24.07 Service of application or order for superannuation interest**

- (1) This rule applies if, in an application, response or reply, a person:
  - (a) seeks a flagging order or splitting order in relation to a superannuation interest under Part VIIIB of the Family Law Act; or
  - (b) applies under section 79A or 90SN of that Act for an order to set aside an earlier order made in relation to a superannuation interest.
- (2) The person must, immediately after filing the application, response or reply, serve a sealed copy of that document on the trustee of the eligible superannuation plan in which the interest is held.
- (3) If the court makes a flagging order or splitting order or any other order in relation to the superannuation interest, the applicant must serve a copy of it on the trustee of the eligible superannuation plan in which the interest is held.

## **Part 25—Divorce**

### **Division 25.1—Application**

#### **25.01 Application for divorce order**

- (1) An application for a divorce order must be in accordance with the approved form.
- (2) The applicant must file with the application the relevant marriage certificate, unless the applicant has already filed it in relation to other proceedings in the same registry.
- (3) If the applicant is unable to file the marriage certificate, the applicant must:
  - (a) file an affidavit setting out the reasons; or
  - (b) give a Registrar an undertaking, satisfactory to the Registrar, to file the marriage certificate within a specified time.
- (4) If the marriage certificate is not in English, the applicant must file with the application:
  - (a) a translation of the marriage certificate in English; and
  - (b) an affidavit by the person who made the translation verifying the translation and setting out the person's qualifications.

#### **25.02 Service of application**

An application for a divorce order must be served on the respondent by:

- (a) service by hand in accordance with rule 6.07; or
- (b) sending it by pre-paid post in a sealed envelope addressed to the respondent at the respondent's last known address.

#### **25.03 Additional requirements for service by post**

A person serving a document by post must include with the document:

- (a) a form of acknowledgment of service in accordance with the approved form; and
- (b) an envelope that:
  - (i) is addressed to the address for service of the person on whose behalf the document is served; and
  - (ii) if the document is to be sent to an address in Australia, bears the correct postage for the return by post of the acknowledgment of service.

#### **25.04 Acknowledgment of service**

- (1) A person served with a document may acknowledge service of the document by an acknowledgment of service in accordance with the approved form.
- (2) An acknowledgment of service may be signed by the person on whom the document is served or by the person's lawyer.
- (3) If a lawyer signs, the filing of the acknowledgment is taken to be proof of service of the document to which it refers on the date on which service is acknowledged.

#### **25.05 Affidavit of service**

- (1) Unless the Court otherwise orders, any evidence of service to be given (other than for acknowledgment of service) must be given by affidavit in accordance with the appropriate approved form.
- (2) If the person making an affidavit of service can give evidence relating to the identity of the person served, the evidence may be included in the affidavit of service.

#### **25.06 Evidence of service**

- (1) Subject to the Court being satisfied that the identity of the person served is established, an acknowledgment of service of a document that is signed by the person served is evidence of service in accordance with the acknowledgment.

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- (2) If the server of a document can identify the person served, service may be proved by evidence to that effect by the server.
- (3) If the server of a document can identify a photograph of the person served, and another person who knows the person served identifies the photograph as a photograph of the person served, service may be proved by evidence to that effect by the server and the other person.
- (4) If a person other than the server of a document saw the document handed to, or put down in the presence of, the person served and can identify the person served, service may be proved by evidence to that effect given by that other person.

**25.07 Evidence of signature and identity of person served**

Evidence that the signature on an acknowledgment of service is the signature of the person required to be served may be given by an affidavit proving signature in accordance with the approved form.



## **Division 25.2—Response**

### **25.08 Response**

- (1) A party who wishes to oppose an application for a divorce order, or to object to the jurisdiction of the Court, must file a response in accordance with the approved form.
- (2) The party must serve the response on the applicant as soon as practicable after it is filed.

### **25.10 Time for filing response**

A respondent's response to an application must be filed within:

- (a) if the respondent is served with the application in Australia—28 days after service; and
- (b) otherwise—42 days after service.

## **Division 25.3—Attendance at hearing**

### **25.11 Attendance at hearing by electronic communication**

- (1) A party may apply to attend the hearing of an application for a divorce order by electronic communication.
- (2) Before making an application, the party must ask any other party whether the other party agrees, or objects, to the use of electronic communication for attending the hearing.
- (3) An application must:
  - (a) be in writing; and
  - (b) be made at least 7 days before the date fixed for the hearing; and
  - (c) set out the following information:
    - (i) the kind of electronic communication to be used;
    - (ii) the expense of using the electronic communication, including any expense to the court, and the applicant's proposals for paying those expenses; and
  - (d) set out details of the notice in relation to the application that has been given to any other party; and
  - (e) state whether any other party agrees or objects to the application.
- (4) An application may be considered in chambers, on the documents.
- (5) The Court may take the following matters into account when considering an application:
  - (a) the distance between the party's residence and the place where the Court is to sit;
  - (b) any difficulty the party has in attending because of illness or disability;
  - (c) the expense associated with attending;
  - (d) the expense to be incurred, or the savings to be made, by using the electronic communication;

- (e) any concerns about security, including family violence and intimidation;
  - (f) whether any other party objects to the request.
- (6) If the Court grants the application, the Court may:
  - (a) order a party to pay the expense of using the electronic communication; or
  - (b) apportion the expense between the parties.
- (7) If an application is granted, the party who made the application must immediately give written notice to each other party.

### **25.12 Failure to attend hearing**

Subject to Division 25.4:

- (a) if the applicant fails to attend the hearing in person or by a lawyer, the Court may dismiss the application; and
- (b) if the respondent fails to attend the hearing in person or by a lawyer, the applicant may proceed with the hearing as if the application were undefended.

## **Division 25.4—Hearing in absence of parties**

### **25.13 Seeking a hearing in absence of parties**

If, in an application for a divorce order (other than a case started by a joint application):

- (a) no response has been filed; and
- (b) at the date fixed for the hearing, there are no children of the marriage within the meaning of subsection 98A(3) of the Family Law Act; and
- (c) the applicant has requested that the case be heard in the absence of the parties; and
- (d) the respondent has not requested the court not to hear the case in the absence of the parties;

the court may determine the case in the absence of the parties.

### **25.14 Hearing in absence of parties—joint application**

If, in a joint application for a divorce order, the applicants request that the case be heard in their absence, the court may so determine the case.

Note: See subsection 98A(2A) of the Family Law Act.

### **25.15 Request not to hear case in parties' absence**

A respondent to an application for a divorce order who objects to the case being heard in the absence of the parties must, at least 7 days before the date fixed for the hearing, file and serve a written notice to that effect.

## **Division 25.5—Events affecting divorce order**

### **25.16 Application for rescission of divorce order**

- (1) An application under section 57 or 58 of the Family Law Act must be in accordance with the approved form.
- (2) The applicant must file and serve with the application an affidavit setting out:
  - (a) the reasons why the divorce order should be rescinded; and
  - (b) the evidence in support of the application.

### **25.17 Discontinuance of application**

- (1) An application for a divorce order may be discontinued with the leave of the Court or a Registrar.
- (2) The Court or Registrar may impose conditions, including conditions in relation to service.
- (3) A notice of discontinuance must be in accordance with the approved form.

### **25.18 Death of party**

If a party to an application for a divorce order dies after the divorce order is made but before the order takes effect, the surviving party must inform the Registry Manager of the death of the other party by filing:

- (a) the death certificate of the deceased party; or
- (b) an affidavit stating the details of the deceased party's date and place of death.

## **Part 25A—Child support and child maintenance**

### **25A.01 Application of Part 25A**

- (1) This Part applies to:
  - (a) an application or appeal under the Assessment Act or the Registration Act; and
  - (b) an application under Division 7 of Part VII of the Family Law Act; and
  - (c) an application under the *Child Support (Assessment) (Overseas-related Maintenance Obligations) Regulations 2000*; and
  - (d) an application under Parts III and IV of the Family Law Regulations.
- (2) Nothing in this Part affects the operation of Division 25B.2.

### **25A.02 Commencing proceedings**

- (1) An application under this Part must be made in accordance with the approved form.
- (2) A notice of appeal under this Part must be made in accordance with the approved form.

Note: For the procedure on the first court date see rule 10.01.

### **25A.03 Documents to be filed with applications**

- (1) A person must file with an application under this Part, the following documents:
  - (a) an affidavit setting out the facts and circumstances relied on and the grounds of the application, attaching:
    - (i) a copy of any assessment relevant to the application made by the Child Support Registrar; and
    - (ii) a copy of any decision relevant to the application made by the Child Support Registrar or SSAT, and any statement of reasons for that decision; and

- (iii) a copy of any orders relevant to the application;
  - (b) a completed financial statement in accordance with the approved form.
- (2) However, paragraph (1)(b) does not apply to:
  - (a) an appeal from a decision of the SSAT or the Child Support Registrar; or
  - (b) an application under subsection 106A(2) or 107(1) of the Assessment Act.

#### **25A.04 Child support agreements**

A person who makes an application about a child support agreement must register a copy of the agreement with the Court by filing 1 of the following:

- (a) an affidavit attaching the original agreement;
- (b) an affidavit attaching a copy of the agreement and stating that the copy is a true copy of the original agreement;
- (c) an affidavit stating that the original agreement has been lost and the steps taken to locate the agreement, and attaching a copy of a document received from the Child Support Registrar setting out the terms of the agreement as accepted by the Child Support Registrar.

#### **25A.05 Appeals from the SSAT or Child Support Registrar**

- (1) A person seeking to appeal a decision of the SSAT or the Child Support Registrar must attach to the notice of appeal:
  - (a) a copy of the SSAT's or Child Support Registrar's decision; and
  - (b) the statement of reasons for that decision.
- (2) The person may also file a completed financial statement in accordance with the approved form and any affidavits that are to be relied on in the appeal.
- (3) Rules 43.03, 43.04 and 43.05 apply, so far as they are relevant and not inconsistent with this rule, to an appeal from the SSAT or the Child Support Registrar.

## Rule 25A.06

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Note: Rule 43.03 relates to amendment of a notice of appeal, rule 43.04 relates to a notice of cross-appeal and contention, and rule 43.05 relates to directions at the first court date.

### **25A.06 Time limits**

- (1) A person must file an application for a declaration under subsection 106A(2) or 107(1) of the Assessment Act within 56 days of the service on the applicant of a notice given under section 33 or 34 of that Act.
- (2) A person must file an appeal from a decision of the SSAT within 28 days of receiving a written statement of reasons for the decision under subsection 103X(3) or (5) of the Registration Act.

Note: The Court may extend or shorten the time fixed by this Rule: see Rule 3.05.

### **25A.07 Service of application or notice of appeal**

- (1) The persons to be served with an application or appeal under this Part are:
  - (a) each respondent; and
  - (b) a parent or eligible carer of the child in relation to whom the application or appeal is made; and
  - (c) the Child Support Registrar; and
  - (d) for appeals from the SSAT—the Executive Director of the SSAT and any other parties to the appeal.
- (2) An application or appeal must be served at least 28 days before the hearing date, except an application for:
  - (a) an order staying a decision; or
  - (b) an order staying or otherwise affecting the operation or implementation of the Assessment Act or the Registration Act; or
  - (c) an urgent order for child maintenance.
- (3) A person seeking to appeal a decision of the SSAT must serve a notice of the appeal on the SSAT within 7 days of the day of filing the appeal.



- (4) Any documents on which the applicant or the appellant intends to rely must be served on the persons mentioned in subrule (1) at least 21 days before the hearing date.
- (5) An applicant or an appellant must serve on each respondent, with the application or notice of appeal, a brochure called *Child Support Applications* approved by the Chief Judge.

Note 1: The Assessment Act provides that the parties to a child support application should be the liable parent and the eligible carer. The Child Support Registrar does not need to be joined as a party but may intervene in the case if served with a copy of the application.

Note 2: For service of an application see Part 6.

Note 3: A response to an application must be filed and served within 14 days of service of the application to which it relates: see subrule 4.03(2).

Note 4: A response is not required in appeals but a notice of address for service under rule 6.01 must be filed and served.

### **25A.08 Evidence to be provided**

- (1) This rule applies to applications other than applications under subsection 106A(2) or 107(1) of the Assessment Act.
- (2) On the first court date and the hearing date of an application each party (other than the Child Support Registrar) must bring to the Court the following documents:
  - (a) a copy of the party's taxation returns for the 3 most recent financial years;
  - (b) the party's taxation assessments for the 3 most recent financial years;
  - (c) the party's bank records for the period of 3 years ending on the date when the application was filed;
  - (d) if the party receives wage or salary payments—the party's payslips for the past 4 pay periods;
  - (e) if the party owns or controls a business, either as a sole trader, in partnership or through a company—the business activity statements and the financial statements and accounts (including profit and loss statements and balance sheets) for the business for the 3 most recent financial years;

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- (f) any other document relevant to determining the income, needs and financial resources of the party.

Note: Documents that may need to be produced under paragraph (f) include documents setting out the details mentioned in rule 24.03.

- (3) Before the hearing date, a party must produce for inspection, if the documents mentioned in subrule (2) the other party to the proceedings makes a written request for their production.
- (4) If a request is made under subrule (3), the documents must be produced within 7 working days of the request being received.

## **Part 25B—Enforcement**

### **Division 25B.1—Applications for contravention of orders**

#### **25B.01 Application of Division 25B.1**

This Division applies to an application for an order:

- (a) under Division 13A of Part VII of the Family Law Act; or
- (b) under Part XIII A of the Family Law Act.

Note 1: Subsection 69C(2) of the Family Law Act specifies who may apply for an order in relation to a child. Division 13A of Part VII of the Family Law Act sets out the consequences of failing to comply with an order or other obligation that affects children. Part XIII A of the Family Law Act sets out the sanctions the Court may impose on a person who fails to comply with an order or other obligation that does not affect children. Part XIII B of the Family Law Act sets out the punishment the Court may impose on a person found to be in contempt of court.

Note 2: If a maintenance order is complied with before an application for contravention (Form 18) is heard by the Court, the failure to comply with the order that led to the application being filed does not constitute a contravention of the maintenance order (see subsection 112AP(1A) of the Family Law Act).

Note 3: The Court:

- (a) must not impose a sentence of imprisonment:
- (i) for non-compliance with a maintenance order unless it is satisfied that the contravention was intentional or fraudulent (see subsections 70NFB(4) and 112AD(2A) of the Family Law Act); or
- (ii) if it considers that another consequence is more appropriate (see subsections 70NFG(2) and 112AE(2) of the Family Law Act); and
- (b) cannot enforce an order of another court unless the order is registered in the first-mentioned court (see section 105 of the Family Law Act and regulation 17 of the Family Law Regulations).

Note 4: Part 19 sets out the rules relating to contempt.

#### **25B.02 How to apply for an order**

- (1) An application must be in accordance with the approved form.

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- (2) The applicant must file with the application an affidavit that:
- (a) states the facts necessary to enable the Court to make the orders sought in the application; and
  - (b) has attached to it a copy of any order, bond, agreement or undertaking that the Court is asked to enforce or that is alleged to have been contravened.

**25B.03 Failure of respondent to attend**

If a respondent fails to attend the hearing of the application in person or by a lawyer, the Court may:

- (a) determine the proceeding; or
- (b) issue a warrant for the respondent's arrest to bring the respondent before a court; or
- (c) adjourn the application.

**25B.04 Procedure at hearing**

At the hearing of the application, the Court must:

- (a) inform the respondent of the allegation; and
- (b) ask the respondent whether the respondent wishes to admit or deny the allegation; and
- (c) hear any evidence supporting the allegation; and
- (d) ask the respondent to state the response to the allegation; and
- (e) hear any evidence for the respondent; and
- (f) determine the proceeding.

Note: For the orders that may be made by the Court, see sections 67X, 70NBA, 70NCB, 70NDB, 70NDC, 70NEB, 70NFB, 70NFF, 112AD, 112AH and 112AP of the Family Law Act.

## **Division 25B.2—Enforcement of financial orders and obligations**

### **Subdivision 25B.2.1—General**

#### **25B.05 Application**

This Division applies to family law and child support proceedings.

Note: This Division is a modified form of Chapter 20 of the Family Law Rules.

#### **25B.06 Interpretation**

(1) In this Division:

*enforcement officer*, for the purpose of enforcing an order, includes:

- (a) the Sheriff or a delegate of the Sheriff; and
- (b) an officer of the Court or a person appointed by the Court.

*financial statement* has the same meaning as in rule 24.02.

(2) Subject to a contrary intention, a word or expression used in this Division that is also used in the Family Law Rules has the same meaning in this Division as it has in those Rules.

Note: The following words or expressions used in this Division are defined in the Dictionary at the end of the Family Law Rules:

- child support liability
- enforcement order
- Family Court
- payee
- payer
- sealed copy
- Third Party Debt Notice
- third party debtor.

#### **25B.07 Enforceable obligations**

(1) The following obligations may be enforced under this Division:

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- (a) an obligation to pay money;
  - (b) an obligation to sign a document under section 106A of the Family Law Act (see Subdivision 25B.2.7);
  - (c) an order entitling a person to the possession of real property (see Subdivision 25B.2.7);
  - (d) an order entitling a person to the transfer or delivery of personal property (see Subdivision 25B.2.7).
- (2) For paragraph (1)(a), an obligation to pay money includes:
- (a) a provision requiring a payer to pay money under:
    - (i) an order made under the Family Law Act, the Assessment Act or the Registration Act; or
    - (ii) a registered parenting plan; or
    - (iii) an award made in arbitration and registered under section 13H of the Family Law Act; or
    - (iv) a maintenance agreement registered under subsection 86(1) of the Family Law Act; or
    - (v) a maintenance agreement approved under section 87 of the Family Law Act; or
    - (vi) a financial agreement or termination agreement under Part VIIIA of the Family Law Act; or
    - (vii) a financial agreement under Part VIIIAB of the Family Law Act or a termination agreement under Part VIIIAB of the Family Law Act; or
    - (viii) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Family Law Act; or
    - (ix) an overseas maintenance order or agreement that, under the Family Law Regulations, is enforceable in Australia; and
  - (b) a liability to pay arrears accrued under an order or agreement; and
  - (c) a debt due to the Commonwealth under section 30 or 67 of the Registration Act; and
  - (d) a child support liability; and
  - (e) a fine or the forfeiture of a bond; and

- (f) costs, including the costs of enforcement.
- (3) For paragraph (1)(a), an obligation to pay money does not include an obligation arising out of costs for work done for a fresh application payable by a person to the person's lawyer.
- Note: For enforcement of lawyer-client costs for a fresh application, see the State or Territory legislation governing the legal profession in the State or Territory where the lawyer practices.
- (4) This Division applies to an agreement mentioned in paragraph (2)(a) as if it were an order of the Court in which it is registered or taken to be registered.

### **25B.08 When an agreement may be enforced**

A person seeking to enforce an agreement must first obtain an order:

- (a) for an agreement approved under section 87 of the Family Law Act—under paragraph 87(11)(c) of the Family Law Act; or
- (b) for a Part VIIIA financial agreement under the Family Law Act—under paragraph 90KA(c) of that Act; or
- (c) for a Part VIIIAB financial agreement under the Family Law Act—under paragraph 90UN(c) of that Act.

Note: A party seeking to enforce an order made in another court or registry, must first register a copy of the order (see subsection 105(2) of the Family Law Act). A payee must obtain the Court's permission to enforce an order against a deceased payer's estate (see subsection 105(3) of the Family Law Act).

### **25B.09 When a child support liability may be enforced**

- (1) This rule applies to a person seeking to enforce payment of a child support liability that is not an order and is not taken to be an order.
- (2) Before an enforcement order is made, the person must first obtain an order for payment of the amount owed by filing:
- (a) an application in a case and an affidavit setting out the facts relied on in support of the application; and

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- (b) if the payee is the Child Support Agency or is seeking to recover a liability under section 113A of the Registration Act—a certificate under section 116 of the Registration Act.
- (3) A payee who seeks to recover a child support liability in his or her own name under section 113A of the Registration Act must attach to the affidavit filed with the application a copy of the copy notice, given to the Child Support Agency, of his or her intention to institute proceedings to recover the debt due.

Note 1: After the Court has ordered payment of the amount owed, it may immediately make an enforcement order (see rule 25B.11).

Note 2: A payee who is enforcing a child support liability must notify the Registrar in writing of his or her intention to institute proceedings to recover the debt due (see subsection 113A(1) of the Registration Act).

**25B.10 Who may enforce an obligation**

The following persons may enforce an obligation:

- (a) if the obligation arises under an order (except an order mentioned in paragraph (c))—a party;
- (b) if the obligation arises under an order to pay money for the benefit of a party or child:
  - (i) the party or child; or
  - (ii) a person entitled, under the Family Law Act or Family Law Regulations, to enforce the obligation for the party or child;
- (c) if the obligation is a fine or an order that a bond be forfeited—the Sheriff of the Court, a Deputy Sheriff of the Court or an officer of the Court;
- (d) if the obligation is a child support liability—a person entitled to do so under the Registration Act.

Note: The payee of a liability may enforce an obligation—see section 113 of the Registration Act.

**25B.11 Enforcing an obligation to pay money**

An obligation to pay money may be enforced by one or more of the following enforcement orders:



- (a) an order for seizure and sale of real or personal property, including under an Enforcement Warrant (see Subdivision 25B.2.3);
- (b) an order for the attachment of earnings and debts, including under a Third Party Debt Notice (see Subdivision 25B.2.4);
- (c) an order for sequestration of property (see Subdivision 25B.2.5);
- (d) an order appointing a receiver (or a receiver and manager) (see Subdivision 25B.2.6).

Note: The Court may imprison a person for failure to comply with an order (see section 112AD of the Family Law Act). Division 25B.1 sets out the relevant procedure.

### **25B.12 Affidavit to be filed for enforcement order**

If these Rules require a person seeking an enforcement order to file an affidavit, the affidavit must:

- (a) if it is not required to be filed with an application—state the orders sought; and
- (b) have attached to it a copy of the order or agreement to be enforced; and
- (c) set out the facts relied on, including the following:
  - (i) the name and address of the payee;
  - (ii) the name and address of the payer;
  - (iii) that the payee is entitled to proceed to enforce the obligation;
  - (iv) that the payer is aware of the obligation and is liable to satisfy it;
  - (v) that any condition has been fulfilled;
  - (vi) details of any dispute about the amount of money owed;
  - (vii) the total amount of money currently owed and any details showing how the amount is calculated, including:
    - (A) interest, if any; and
    - (B) the date and amount of any payments already made;

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- (viii) what other legal action has been taken in an effort to enforce the obligation;
  - (ix) details of any other current applications to enforce the obligation;
  - (x) the amount claimed for costs, including costs of any proposed enforcement; and
- (d) be sworn no more than 2 days before it is filed.

Examples for paragraph (a):

- 1 An Enforcement Warrant.
- 2 A Third Party Debt Notice.
- 3 An order for filing and service of financial statement.
- 4 An order for production of documents.

**25B.13 General enforcement powers of Court**

The Court may make any of the following orders:

- (a) an order declaring the total amount owing under an obligation;
- (b) an order that the total amount owing must be paid in full or by instalments and when the amount must be paid;
- (ba) an order for payment under rule 25B.09;
- (c) an order for enforcement (see rule 25B.11);
- (d) an order in aid of the enforcement of an obligation;
- (e) an order to prevent the dissipation or wasting of property;
- (f) an order for costs;
- (g) an order staying the enforcement of an obligation (including an enforcement order);
- (h) an order requiring the payer to attend an enforcement hearing;
- (i) an order requiring a party to give further information or evidence;
- (j) an order that a payer must file a financial statement;
- (k) an order that a payer must produce documents for inspection by the Court;
- (l) an order dismissing an application;

- (m) an order varying, suspending or discharging an enforcement order.

Note: For the collection of child support, the Court has general powers set out in section 111B of the Registration Act.

#### **25B.14 Enforcement order**

- (1) An enforcement order must state:
- (a) the kind of enforcement order it is (see rule 25B.11); and
  - (b) the full name and address for service of the payee; and
  - (c) the full name and address of the payer; and
  - (d) the total amount to be paid.

Note: A document filed in or issued by the Court must meet the requirements set out in Division 2.1.

- (2) For paragraph (1)(d), a statement about the total amount to be paid must include:
- (a) the amount owing under the obligation to pay money; and
  - (b) the amount of interest owing, if any; and
  - (c) any costs of enforcing the order.

#### **25B.15 Discharging, suspending or varying enforcement order**

- (1) A party to an enforcement order may apply to the Court at any time to discharge, suspend or vary the order.

Note: An application under this subrule must be in an application in a case (see rule 4.08).

- (2) An application under subrule (1) does not stay the operation of the enforcement order.

#### **Subdivision 25B.2.2—Information for aiding enforcement**

Note: The duty of disclosure set out in rule 24.03 applies to a party to an enforcement application.

#### **25B.16 Processes for obtaining financial information**

- (1) Before applying for an enforcement order, a payee may:

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- (a) give a payer a written notice requiring the payer to complete and serve a financial statement in accordance with the approved form within 14 days after receiving the notice; or
  - (b) by filing an application in a case and an affidavit that complies with rule 25B.12, apply for an order, without notice to the respondent:
    - (i) requiring the payer to complete and file a financial statement in accordance with the approved form; or
    - (ii) requiring the payer to disclose information or produce to the payee copies of documents relevant to the payer's financial affairs.
- (2) A Registrar may hear an application under subrule (1), in chambers, in the absence of the parties, on the documents filed.

**25B.17 Enforcement hearing**

- (1) A payee may, by filing an application in a case and an affidavit that complies with rule 25B.12, require:
  - (a) the payer; or
  - (b) if the payer is a corporation—an officer of the corporation; to attend an enforcement hearing.
- (2) The payee may require the payer to produce documents at the enforcement hearing that are in the payer's possession or control and relevant to the enforcement application by serving with the application mentioned in subrule (1):
  - (a) a list of the documents required; and
  - (b) a written notice requiring that the documents be produced.
- (3) A payee must serve on a payer at least 14 days before an enforcement hearing:
  - (a) the documents mentioned in subrules (1) and (2); and
  - (b) a brochure approved by the Chief Judge, giving information about enforcement hearings and the consequences of failing to comply with an obligation.

Note 1: An enforcement hearing does not have to be held before the Court makes an enforcement order. The purpose of an enforcement hearing is to obtain information to help the enforcement of an order or other

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obligation and, if applicable, to help the Court to determine a dispute or issue an enforcement order.

Note 2: Rule 25B.13 sets out the orders that the Court may make at an enforcement hearing.

**25B.18 Obligations of payer**

- (1) A payer served with the documents mentioned in rule 25B.17 must:
  - (a) attend the enforcement hearing:
    - (i) to answer questions; and
    - (ii) to produce any documents required; and
  - (b) at least 7 days before the enforcement hearing, serve on the payee a financial statement in accordance with the approved form setting out the payer's financial circumstances.
- (2) Before the day of the enforcement hearing, the payer may produce any documents required to the payee at a mutually convenient time and place.

**25B.19 Subpoena of witness**

A party may request the Court to issue a subpoena to a witness for an enforcement hearing.

Note: Part 15A sets out the requirements for issuing subpoenas.

**25B.20 Failure concerning financial statement or enforcement hearing**

- (1) A person commits an offence if the person does not:
  - (a) comply with a notice under paragraph 25B.16(1)(a) requiring the person to complete and serve a financial statement; or
  - (b) comply with an order that the person complete and file a financial statement or produce copies of documents to the payee (see paragraph 25B.16(1)(b)); or
  - (c) if the person is served with an application for an enforcement hearing:

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- (i) comply with subparagraph 25B.18(1)(a)(ii) and paragraph 25B.18(1)(b); and
- (ii) attend the enforcement hearing in accordance with the application or an order; or
- (d) on attending an enforcement hearing in accordance with an application for an enforcement hearing or order, answer a question put to the person to the Court's satisfaction.

Penalty: 50 penalty units.

- (2) An offence against subrule (1) is an offence of strict liability.

Note: The Court may issue a warrant for the arrest of a payer if it is satisfied that the payer has received an application for an enforcement hearing and did not attend the enforcement hearing (see rule 25B.10).

- (3) If a person is prosecuted under section 112AP of the Family Law Act for an act or omission mentioned in subrule (1), an application must not be made under subrule (1) in respect of that act or omission.

**Subdivision 25B.2.3—Enforcement warrants**

**25B.21 Definitions**

In this Subdivision:

***affected person*** means a person claiming to be affected by the seizure of property by an enforcement officer under an Enforcement Warrant.

**25B.22 Request for Enforcement Warrant**

- (1) A payee may, without notice to the payer, ask the Court to issue an Enforcement Warrant by filing:
  - (a) an affidavit; and
  - (b) the Enforcement Warrant sought and a copy of it for service.
- (2) The affidavit must:
  - (a) comply with rule 25B.12; and

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- (b) include the following details of the property owned by the payer:
  - (i) for any real property:
    - (A) evidence that the payer is the registered owner; and
    - (B) details of registered encumbrances and of any other person with an interest in the property;
  - (ii) for any personal property:
    - (A) the location of the property; and
    - (B) whether there is any other person who may have an interest in the property, including as a part owner or under a hire purchase agreement, lease or lien.

Note: A person seeking to enforce the payment of a child support liability must first apply for an order for the amount owed (see rule 25B.09).

- (3) If an Enforcement Warrant is issued, the payee must give the enforcement officer:
  - (a) the Warrant; and
  - (b) either or both of the following:
    - (i) a written undertaking to pay all reasonable fees and expenses associated with the enforcement if they are greater than the amount recovered on the enforcement;
    - (ii) the amount (if any) required by the enforcement officer to be paid on account for the reasonable fees and expenses of the enforcement.

Note: Although the payee is liable to pay the enforcement officer any reasonable fees and expenses relating to the enforcement, the payee is entitled to recover those fees and expenses under the Enforcement Warrant (see subrules 25B.31(2) and (3)).

### **25B.23 Period during which Enforcement Warrant is in force**

An Enforcement Warrant remains in force for 12 months from the date when it was issued.

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**25B.24 Enforcement officer's responsibilities**

- (1) An enforcement officer must:
- (a) seize or sell property of the respondent in the sequence that the enforcement officer considers is best for:
    - (i) promptly enforcing the Warrant; and
    - (ii) avoiding undue expense or delay; and
    - (iii) minimising hardship to the payer and any other person affected;
  - (b) on enforcing the Warrant:
    - (i) serve a copy of the Warrant on the payer; or
    - (ii) leave the Warrant at the place where it was enforced; and
  - (c) give the payer an inventory of any property seized under the Warrant; and
  - (d) advertise the property in accordance with rule 25B.27; and
  - (e) sell the seized property:
    - (i) quickly, having regard to the parties' interests and the desirability of a beneficial sale of the property; and
    - (ii) at the place where it seems best for a beneficial sale of the property; and
    - (iii) by auction, tender or private sale.

Note: For the powers an enforcement officer has in relation to the enforcement of a warrant, see rule 25B.68.

- (2) The enforcement officer may do any of the following:
- (a) postpone the sale of the property;
  - (b) refuse to proceed with the sale of the property;
  - (c) seek further information or documents from a payee;
  - (d) defer enforcement until a fee or expense is paid or an undertaking to pay the fee or expense is given;
  - (e) require the payee to indemnify the enforcement officer against any claims arising from the enforcement;
  - (f) sign any documents relating to the transfer of ownership of the property, and any other documents necessary to give title of the property to the purchaser of the property;



- (g) recover reasonable fees and expenses associated with the enforcement.
- (3) For paragraph (2)(g), fees and expenses recovered by an enforcement officer for enforcing a Warrant are taken to be reasonable if the fees and expenses are in accordance with a legislative provision of the Commonwealth, or the State or Territory in which the warrant was enforced.

#### **25B.25 Directions for enforcement**

- (1) An enforcement officer may seek, by written request to the Court, procedural orders to assist in carrying out the enforcement officer's functions.
- (2) A request under subrule (1) must:
  - (a) comply with Division 2.1; and
  - (b) set out the procedural orders sought and the reason for the orders; and
  - (c) have attached to it a copy of the order appointing the enforcement officer.
- (3) The enforcement officer must give a copy of the request to all parties.
- (4) The Court may determine the request in chambers unless:
  - (a) within 7 days after the request is served on a party, the party makes a written objection to the request being determined in chambers; or
  - (b) the Court decides that an oral hearing is necessary.

#### **25B.26 Effect of Enforcement Warrant**

- (1) Property seized under an Enforcement Warrant remains the subject of the Enforcement Warrant until it is released by:
  - (a) full payment of the total amount owing under the Enforcement Warrant; or
  - (b) sale; or
  - (c) order; or

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- (d) consent of the payee.
- (2) If the payer pays the payee the total amount owed under the Enforcement Warrant:
  - (a) the payee must immediately give the enforcement officer written notice of the payment; and
  - (b) the enforcement officer must release any seized property to the payer.
- (3) In this rule:  
*total amount owed* includes the enforcement officer's fees and expenses incurred in enforcing the Warrant.

**25B.27 Advertising before sale**

- (1) Before selling property seized under an Enforcement Warrant, an enforcement officer must advertise a notice of the sale:
  - (a) at least once before the sale; and
  - (b) stating:
    - (i) the time and place of the sale; and
    - (ii) the details of the property to be sold; and
  - (c) in a newspaper circulating in the town or district in which the sale is to take place.
- (2) Subrule (1) does not apply if the property seized is perishable.
- (3) For a sale of real property, the notice of sale must include the following details:
  - (a) a concise description of the real property, including its location, that would enable an interested person to identify it;
  - (b) a general statement about any improvements of the real property;
  - (c) a statement of the payer's last known address;
  - (d) a statement of the payer's interest, and any entries in the land titles register, that affect or may affect the real property as at the date of the advertisement;
  - (e) a statement about where a copy of the contract for sale of the property can be obtained.

- (4) A copy of the advertisement must be served on the payer at least 14 days before the intended date of sale.

### **25B.28 Sale of property at reasonable price**

- (1) An enforcement officer must, in good faith and with reasonable care having regard to all circumstances relevant to the sale of property seized under an Enforcement Warrant, fix a reasonable price for the property.
- (2) For subrule (1), circumstances relevant to the sale price of real property seized under an Enforcement Warrant include:
- (a) the current value of the property, as provided to the enforcement officer under subparagraph 25B.31(1)(b)(vi); and
  - (b) the amount of the highest bid received for the property at any auction of the property.

Note: The enforcement officer or payee may apply, after giving notice to the payer, for an order entitling the enforcement officer to sell the property for the best price obtainable (see rule 25B.32).

### **25B.29 Conditions of sale of property**

- (1) This rule applies to the sale by an enforcement officer of property seized under an Enforcement Warrant.
- (2) The enforcement officer must specify as a condition of the sale of the property that the buyer:
- (a) must pay:
    - (i) a deposit of at least 10% of the price fixed for the property when the buyer's offer for the property is accepted by the enforcement officer; and
    - (ii) the balance of that price within the period determined by the enforcement officer; or
  - (b) must pay the whole of the price fixed for the property when the enforcement officer accepts the buyer's offer for the property.
- (3) The period mentioned in subparagraph (2)(a)(ii) must:

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- (a) be determined before the property is offered for sale; and
- (b) be a period of no longer than 42 days.

**25B.30 Result of sale of property under Enforcement Warrant**

- (1) An enforcement officer must, within 7 days after the day of settlement of a sale of property, file a notice in the Court stating the details of the result of the sale and the reasonable fees and expenses of the enforcement.
- (2) The enforcement officer must pay out of the money received from the enforcement:
  - (a) any amount still owing to the enforcement officer for the reasonable fees and expenses of the enforcement; and
  - (b) the balance of any amount owed to the payee under the Enforcement Warrant; and
  - (c) the remaining amount, if any, to the payer.

Note: This rule applies unless the Court orders otherwise (see rule 1.06).

**25B.31 Payee's responsibilities**

- (1) At least 28 days before an enforcement officer sells real property under an Enforcement Warrant, the payee must:
  - (a) send to the payer, at the payer's last known address, and to any mortgagee or other person who has an encumbrance registered on the title to the property that has priority over the Enforcement Warrant, written notice stating:
    - (i) that the Warrant has been registered on the title to the property; and
    - (ii) that the enforcement officer intends to sell the property to satisfy the obligation if:
      - (A) the total amount owing is not paid; or
      - (B) arrangements considered satisfactory to the payee have not been made by a date specified in the notice; and
    - (iii) the enforcement officer's name and address; and

- (b) provide the enforcement officer with evidence of the following:
  - (i) proof of compliance with paragraph (a);
  - (ii) that the Warrant has been registered on the land titles register;
  - (iii) details of the real property proposed to be sold including the address and description of the land title of the property;
  - (iv) details of all encumbrances registered against the real property on the date of registration of the Enforcement Warrant;
  - (v) the costs incurred to register the Enforcement Warrant;
  - (vi) the current value of the real property, as stated in a real estate agent's market appraisal.
- (2) The payee is liable to pay to the enforcement officer the reasonable fees and expenses of the enforcement.
- (3) The costs mentioned in subparagraph (1)(b)(v) and the fees and expenses mentioned in subrule (2) may:
  - (a) be added to, and form part of, the costs of the Enforcement Warrant; and
  - (b) be recovered under the Warrant.

Note: A person affected by an Enforcement Warrant may serve a notice of claim on the enforcement officer (see rule 25B.33).

### **25B.32 Orders for real property**

- (1) This rule applies to real property in relation to which:
  - (a) an Enforcement Warrant has been requested or issued; or
  - (b) an enforcement order for seizure and sale has been applied for or made.
- (2) A payee, payer or enforcement officer may apply for any of the following orders:
  - (a) that the real property be transferred or assigned to a trustee;
  - (b) that a party sign all documents necessary for the transfer or assignment;

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- (c) in aid of or relating to the sale of the real property, including any of the following orders:
  - (i) about the possession or occupancy of the real property until its sale;
  - (ii) specifying the kind of sale, whether by contract conditional on approval of the Court, private sale, tender or auction;
  - (iii) setting a minimum price;
  - (iv) requiring payment of the purchase price to a trustee;
  - (v) settling the particulars and conditions of sale;
  - (vi) for obtaining evidence of value;
  - (vii) specifying the remuneration to be allowed to an auctioneer, estate agent, trustee or other person;
- (d) about the disposition of the proceeds of the sale of the real property;
- (e) in relation to the reasonable fees and expenses of the enforcement.

Note: An application under subrule (2) must be in an application in a case (see rule 4.08).

- (3) The Court may hear an application under subrule (2) in chambers, in the absence of the parties, on the documents filed.

**25B.33 Notice of claim**

- (1) If an enforcement officer seizes, or intends to seize, property under an Enforcement Warrant, an affected person may serve a notice of claim on the enforcement officer.
- (2) A notice of claim must:
  - (a) be in writing; and
  - (b) state the name and address of the affected person; and
  - (c) identify each item of property that is the subject of the claim; and
  - (d) state the grounds of the claim.
- (3) The enforcement officer must serve a copy of the notice of claim on the payee.

- (4) The Enforcement Warrant must not be executed until at least 7 days after the notice of claim was served on the payee.

**25B.34 Payee to admit or dispute claim**

A payee who is served with a notice of claim under subrule 25B.33(3) must give the enforcement officer written notice about whether the payee admits or disputes the claim, within 7 days after the notice of claim was served.

**25B.35 Admitting claim**

If a payee admits an affected person's claim, the enforcement officer must return the property to its lawful owner in a way that is consistent with the affected person's claim.

**25B.36 Denial or no response to claim**

- (1) This rule applies if:
- (a) an enforcement officer has served an affected person's notice of claim on a payee; and
  - (b) within 7 days after the notice was served, the payee:
    - (i) disputes or does not admit the claim; or
    - (ii) fails to respond to the claim in accordance with rule 25B.34.
- (2) The following people may apply for an order to determine the claim:
- (a) each party to the Enforcement Warrant;
  - (b) the affected person;
  - (c) the enforcement officer.
- Note: An application under subrule (2) must be in an application in a case (see rule 4.08).
- (3) The Registrar must fix a date for hearing an application under this rule that is as close as practicable to 14 days after the date of filing.
- (4) The application must be served on the following people at least 7 days before the hearing of the application:

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- (a) each party to the Enforcement Warrant;
- (b) the affected person;
- (c) the enforcement officer.

**25B.37 Hearing of application**

On the hearing of an application under rule 25B.36, the Court may:

- (a) allow the claim; and
- (b) order that the affected person and anyone claiming under the affected person be barred from prosecuting the claim against the enforcement officer or payee.

Note: Rules 25B.13 and 25B.32 set out the orders the Court may make on the hearing of the application.

**Subdivision 25B.2.4—Third Party Debt Notice**

**25B.38 Application of Subdivision 25B.2.4**

This Subdivision applies to:

- (a) money deposited in a financial institution that is payable to a payer on call or on notice; and
- (b) money payable to a payer by a third party on the date when the enforcement order is served on the third party; and
- (c) earnings payable to a payer.

**25B.39 Money deposited in a financial institution**

- (1) Money deposited in an account in a financial institution that is payable on call is a debt due to the payer even if a condition relating to the account is unsatisfied.
- (2) Money deposited in an account in a financial institution that is payable on notice is a debt due to the payer at the end of the notice period required, starting on the date of service of the Third Party Debt Notice on the third party debtor.

Note: Some legislative provisions provide that payments under the legislation are exempt from payment: for example, some pensions.



#### **25B.40 Request for Third Party Debt Notice**

- (1) A payee may, without notice to the payer or third party, ask the Court to issue a Third Party Debt Notice requiring the payment to the payee of any money to which this Subdivision applies by filing:
  - (a) 3 copies of the Third Party Debt Notice; and
  - (b) an affidavit.
- (2) The affidavit must:
  - (a) comply with rule 25B.12; and
  - (b) include the following information:
    - (i) the name and address of the third party;
    - (ii) details of the debt to be attached to satisfy the obligation, including its nature and amount;
    - (iii) the information relied on to show that the debt is payable by the third party to the payer;
    - (iv) if it is sought to attach the payer's earnings:
      - (A) details of the payer's earnings; and
      - (B) details of the payer's living arrangements, including dependants; and
      - (C) the protected earnings rate; and
      - (D) the amount sought to be deducted from the earnings each payday; and
      - (E) any information that should be included in the Third Party Debt Notice to enable the employer to identify the payer.

Note: A person seeking to enforce the payment of a child support liability must first apply for an order for the amount owed (see rule 25B.09).

#### **25B.41 Service of Third Party Debt Notice**

A payee must serve on a payer and third party debtor:

- (a) a copy of the Third Party Debt Notice issued under rule 25B.40; and
- (b) a brochure approved by the Chief Judge setting out the effect of the Third Party Debt Notice and the third party debtor's obligations.

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**25B.42 Effect of Third Party Debt Notice—general**

- (1) If a Third Party Debt Notice is served on a third party debtor, a debt due or accruing to the payer from the third party debtor is attached and bound in the hands of the third party debtor to the extent specified in the Notice.
- (2) A Third Party Debt Notice to bind earnings or a regular payment comes into force at the end of 7 days after the order is served on the third party debtor.

**25B.43 Employer's obligations**

- (1) Under a Third Party Debt Notice directed to earnings, the payer's employer:
  - (a) must:
    - (i) deduct from the payer's earnings the amount specified in the notice; and
    - (ii) pay it to the person specified in the notice; and
    - (iii) give to the payer a notice specifying the deductions; and
  - (b) may:
    - (i) deduct from the payer's earnings an administrative charge of \$5 per deduction; and
    - (ii) keep the charge as a contribution towards the administrative cost of making payments under the notice.
- (2) The employer must ensure that an amount deducted under subrule (1) does not reduce the payer's earnings to less than the protected earnings rate.
- (3) A deduction paid or kept by an employer under subrule (1) is a valid discharge, to the extent of the deduction, of the employer's liability to pay earnings.

**25B.44 Duration of Third Party Debt Notice**

A Third Party Debt Notice continues in force until:

- (a) the total amount mentioned in the Notice is paid; or

- (b) the Notice is set aside.

### **25B.45 Response to Third Party Debt Notice**

- (1) A third party debtor who has been served with a Third Party Debt Notice or an order discharging, varying or suspending the Notice, may apply:

- (a) to dispute liability to make payments under the Notice; or  
(b) for procedural orders.

Note: An application under subrule (1) must be in an application in a case and filed with an affidavit (see rules 4.05 and 4.08).

- (2) The Court may hear an application under subrule (1) in chambers, in the absence of the parties, on the documents filed.

- (3) The Court may:

- (a) order that any money that has been paid to the payee in error:  
(i) be paid into and held in Court; or  
(ii) be returned to the third party debtor; or  
(iii) be sent to the payer; and  
(b) if the third party debtor has not paid the amount specified in the Notice or order mentioned in subrule (1)—order the third party debtor to pay all or part of what was required under the Notice or order.

Note: Rule 25B.13 sets out the orders that the Court may make on an application under this Subdivision.

### **25B.46 Discharge of Third Party Debt Notice**

If a third party debtor pays an amount mentioned in a Third Party Debt Notice to the payee, the debt is discharged to the extent of the payment.

### **25B.47 Claim by affected person**

A person other than the payee claiming to be entitled to the debt mentioned in a Third Party Debt Notice, or to any charge or lien on, or other interest in, the debt may apply for an order determining the claim.

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Note: An application under this rule must be in an application in a case and filed with an affidavit stating the facts and circumstances relied on (see rules 4.05 and 4.08).

**25B.48 Cessation of employment**

- (1) This rule applies if:
  - (a) a Third Party Debt Notice is in force; and
  - (b) the payer's employer is required by the Notice to redirect part of the payer's earnings to the payee.
- (2) If the payer ceases to be employed by the employer, the payer must, within 21 days after the payer ceases to be so employed, give the Court written notice stating:
  - (a) the payer has ceased employment with the employer; and
  - (b) the date on which the employment ceased; and
  - (c) if the payer has a new employer:
    - (i) the name and address of the new employer; and
    - (ii) the place of the payer's employment by the new employer; and
    - (iii) the amount of the payer's earnings from employment by the new employer.
- (3) If the payer ceases to be employed by the employer, the employer must, within 21 days after the payer ceases to be so employed, give the Court written notice of the date on which the payer's employment ceased.
- (4) If the Registrar does not receive a written objection from the payee or the payer within 21 days after a notice under subrule (2) or (3) is given, a new Third Party Debt Notice naming the new employer as the third party debtor will be issued.

**25B.49 Compliance with Third Party Debt Notice**

- (1) A third party debtor commits an offence if the third party debtor:
  - (a) does not comply with a Third Party Debt Notice or an order varying, suspending or discharging a Notice; or

- (b) unfairly treats a payer in respect of employment because of a Notice or an order made under this Division.

Penalty: 50 penalty units.

- (2) An offence against subrule (1) is an offence of strict liability.
- (3) A penalty imposed under subrule (1) does not affect:
  - (a) an obligation that the third party debtor may have in relation to the payer; or
  - (b) a right or remedy that the payer may have against the third party debtor under another legislative provision.
- (4) If the Court makes an order against a third party debtor under section 112AP of the Family Law Act in respect of an act or omission mentioned in subrule (1), the third party debtor must not be charged with an offence against subrule (1) in respect of that act or omission.

### **Subdivision 25B.2.5—Sequestration of property**

#### **25B.50 Application for sequestration of property**

- (1) A payee may apply to the Court for an enforcement order appointing a sequestrator of the property of a payer by filing an application in a case, setting out the details of the property to be sequestered, and an affidavit.
- (2) The affidavit must:
  - (a) comply with rule 25B.12;
  - (b) include the full name and address of the proposed sequestrator;
  - (c) include details of the sequestrator's fees; and
  - (d) have attached to it a consent to the appointment of the sequestrator, signed by the proposed sequestrator.
- (3) The Court may:
  - (a) hear an urgent application under subrule (1) without notice; and

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- (b) make an order that is expressed to operate only until a date fixed by the order.
- (4) The Court may hear an application under this rule in chambers, in the absence of the parties, on the documents filed.

**25B.51 Order for sequestration**

- (1) In considering an application for sequestration, the Court must be satisfied that:
  - (a) if the obligation to be enforced arises under an order—the payer has been served with the order to be enforced; and
  - (b) the payer has refused or failed to comply with the obligation; and
  - (c) an order for sequestration is the most appropriate method of enforcing the obligation.
- (2) On appointing a sequestrator, the Court may:
  - (a) authorise and direct the sequestrator:
    - (i) to enter and take possession of the payer’s property or part of the property; and
    - (ii) to collect and receive the income of the property, including rent, profits and takings of a business; and
    - (iii) to keep the property and income under sequestration until the payer complies with the obligation or until further order; and
  - (b) fix the remuneration of the sequestrator.

**Note:** For rules relating to the enforcement of obligations other than an obligation to pay money, see Subdivision 25B.2.7.

**25B.52 Order relating to sequestration**

- (1) This rule applies if any of the following people apply to the Court for an order relating to a sequestration order:
  - (a) a party to the sequestration order;
  - (b) a creditor of the payer;
  - (c) the Sheriff of the Court or a Deputy Sheriff of the Court;

- (d) a person whose interests are affected by an act or omission of, or decision made by, the sequestrator.
- (2) The Court may order:
  - (a) the sequestrator, or any other person associated with the sequestration, to attend to be orally examined; or
  - (b) the sequestrator to do or not do something; or
  - (c) the sequestrator to be removed from office.

Note: An application under subrule (1) must be in an application in a case and filed with an affidavit (see rules 4.05 and 4.08).

### **25B.53 Procedural orders for sequestration**

- (1) A sequestrator may seek, by written request to the Court, procedural orders about the sequestrator's functions.
- (2) A request under subrule (1) must:
  - (a) comply with Division 2.1; and
  - (b) set out the procedural orders sought and the reason for the orders; and
  - (c) have attached to it a copy of the order appointing the sequestrator.
- (3) The sequestrator must give a copy of the request to all parties.
- (4) The Court may determine the request in chambers unless:
  - (a) within 7 days of the request being served on a party, the party makes a written objection to the request being determined in chambers; or
  - (b) the Court decides that an oral hearing is necessary.

### **Subdivision 25B.2.6—Receivership**

#### **25B.54 Application for appointment of receiver**

- (1) A payee may apply for an enforcement order appointing a receiver of the payer's income or property by filing an application in a case and an affidavit.

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- (2) The affidavit must:
- (a) comply with rule 25B.12; and
  - (b) include the full name and address of the proposed receiver; and
  - (c) include details of the receiver's fees; and
  - (d) have attached to it the consent to the appointment of receiver, signed by the proposed receiver.

- (3) The Court may hear an application under subrule (1) in chambers, in the absence of the parties, on the documents filed.

Note: For the hearing of an application in the absence of the parties, see Division 25.4.

**25B.55 Appointment and powers of receiver**

- (1) In considering an application under subrule 25B.54(1), the Court must have regard to:
- (a) the amount of the debt; and
  - (b) the amount likely to be obtained by the receiver; and
  - (c) the probable costs of appointing and paying a receiver.
- (2) When appointing a receiver, the Court must make orders about:
- (a) the receiver's remuneration, if any; and
  - (b) the security to be given by the receiver; and
  - (c) the powers of the receiver; and
  - (d) the parties to whom, and the intervals or dates at which, the receiver is to submit accounts.
- (3) The Court may authorise a receiver to do (in the receiver's name or otherwise) anything the payer may do.
- (4) The receiver's powers operate to the exclusion of a payer's powers during the receivership.
- (5) The Court may, on application by an interested person, make procedural orders about the powers of the receiver.

Note: For rules relating to the enforcement of obligations other than an obligation to pay money, see Subdivision 25B.2.7.



### **25B.56 Security**

A receiver's appointment by the Court starts when:

- (a) the order appointing the receiver is made; and
- (b) the receiver files any security ordered that is acceptable to the Court for the performance of the receiver's duties.

### **25B.57 Accounts**

A party to whom a receiver must submit accounts may, on giving reasonable written notice to the receiver, inspect, either personally or by an agent, the documents and things on which the accounts are based.

### **25B.58 Objection to accounts**

- (1) A party who objects to the accounts submitted by a receiver may serve written notice on the receiver:
  - (a) specifying the items to which objection is taken; and
  - (b) requiring the receiver to file the receiver's accounts with the Court within a specified period that is at least 14 days after the notice is served.
- (2) The Court may examine the items to which objection is taken.
- (3) The Court:
  - (a) must, by order, declare the result of an examination under subrule (2); and
  - (b) may make an order for the costs and expenses of a party or the receiver.

### **25B.59 Removal of receiver**

The Court may:

- (a) set aside the appointment of a receiver at any time; and
- (b) make orders about the receivership and the receiver's remuneration.

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**25B.60 Compliance with orders and Rules**

If a receiver contravenes an order or these Rules, the Court may:

- (a) set aside the receiver's appointment; and
- (b) appoint another receiver; and
- (c) order the receiver to pay the costs of an application under this rule; and
- (d) deprive the receiver of remuneration and order the repayment of remuneration already paid to the receiver.

Note: This rule does not limit the Court's powers relating to contempt or the enforcement of orders.

**Subdivision 25B.2.7—Enforcement of obligations other than an obligation to pay money**

**25B.61 Application for other enforcement orders**

A person may apply, without notice to the respondent, for any of the following orders by filing an application in a case and an affidavit:

- (a) an order requiring a person to sign documents under section 106A of the Family Law Act;
- (b) an order to enforce possession of real property;
- (c) an order for the transfer or delivery of property.

Note: Part 4 sets out the process for making an application in a case, that is, by filing an application in a case and an affidavit. Part 25B sets out the procedure for making an application in relation to the contravention of an order when a penalty is sought to be imposed.

**25B.62 Warrant for possession of real property**

- (1) An order for the possession of real property may be enforced by a warrant for possession only if the respondent has had at least 7 days notice of the order to be enforced before the warrant is issued.
- (2) The Court may issue a warrant for possession authorising an enforcement officer to enter the real property described in the warrant and give possession of the real property to the person entitled to possession.

- (3) If a person other than the respondent occupies land under a lease or written tenancy agreement, a warrant for possession may be issued only if the Court gives permission.

#### **25B.63 Warrant for delivery**

A person entitled under an order for the delivery of personal property specified in the order may apply for that order to be enforced by a warrant authorising an enforcement officer to seize the property and deliver it to the person who is entitled to it under the order.

#### **25B.64 Warrant for seizure and detention of property**

- (1) If an order specifies a time for compliance and that time has passed without compliance, a person entitled to enforce the order may seek a warrant authorising an enforcement officer to seize and detain all real and personal property (other than prescribed property) in which the respondent has a legal or beneficial interest.
- (2) If the respondent complies with the order or is released from compliance, the Court may order that the property be returned to the respondent, after the costs of enforcement have been deducted.

### **Subdivision 25B.2.8—Other provisions about enforcement**

#### **25B.65 Service of order**

An order may be enforced against a person only if:

- (a) a sealed copy of the order is served on the person; or
- (b) the Court is otherwise satisfied that the person has received notice of the terms of the order.

#### **25B.66 Certificate for payments under maintenance order**

- (1) This rule applies if an order specifies that maintenance must be paid to a Registrar of a court or an authority.
- (2) The Registrar or authority must, at the request of the Court or a party to the order, give the Court or party a certificate stating the

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amounts that, according to the records of the Court or authority, have been paid and remain unpaid.

- (3) A certificate given in accordance with subrule (2) may be received by the Court in evidence.

**25B.67 Enforcement by or against a non-party**

- (1) If an order is made in favour of a person who is not a party to a case, the person may enforce the order as if the person were a party.
- (2) If an order is made against a person who is not a party to a case, the order may be enforced against the person as if the person were a party.

**25B.68 Powers of enforcement officer**

An enforcement officer may, when enforcing a warrant (with such assistance as the enforcement officer requires and, if necessary, by force) do any of the following:

- (a) enter and search any real property:
- (i) that is the subject of the warrant; or
  - (ii) for the purpose of seizing any property the subject of the warrant;
- (b) if the warrant is for the seizure and sale of real property—enter and eject from the property any person who is not lawfully entitled to be on the property;
- (c) take possession of or secure against interference any property the subject of the warrant;
- (d) remove any property the subject of the warrant from the place where it is found, place it in storage or deliver it to another person or place for a purpose authorised by the warrant.

Note: The powers specified in this rule are in addition to, and do not derogate from, any other powers conferred by law on the enforcement officer.

## **Division 25B.3—Location and recovery orders**

### **25B.69 Application of Division 25B.3**

This Division applies to the following orders:

- (a) a location order;
- (b) a Commonwealth information order;
- (c) a recovery order.

Note: See sections 67J to 67W of the Family Law Act.

### **25B.70 Application for order under Division 25B.3**

An application for an order to which this Division applies must be in accordance with the approved form.

Note: For the requirements for making a Commonwealth information order, see subsection 67N(3) of the Family Law Act.

### **25B.71 Service of recovery order**

- (1) This rule applies to a person who is ordered or authorised by a recovery order to take the action mentioned in paragraph 67Q(b), (c) or (d) of the Family Law Act.
- (2) If the person:
  - (a) is ordered to find and recover a child; and
  - (b) finds and recovers the child;the person must serve the recovery order on the person from whom the child is recovered at the time the child is recovered.
- (3) For the enforcement of a recovery order:
  - (a) the original recovery order is not necessary; and
  - (b) a copy of the sealed recovery order is sufficient.

### **25B.72 Application for directions for execution of recovery order**

- (1) The following people may, by written request to the Court, seek procedural orders in relation to a recovery order:
  - (a) a party;

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- (b) a person who is ordered or authorised by a recovery order to take the action mentioned in paragraph 67Q(b), (c) or (d) of the Family Law Act.
- (2) A request under subrule (1) must:
  - (a) comply with rules 2.01 to 2.03; and
  - (b) set out the procedural orders sought; and
  - (c) be accompanied by an affidavit setting out the facts relied on and the reason for the orders.
- (3) The Court may determine the request in chambers.

## **Division 25B.4—Warrants for arrest**

### **25B.73 Application for warrant**

- (1) A party may apply, without notice, for a warrant to be issued for the arrest of a respondent if:
  - (a) the respondent is required to attend court on being served with:
    - (i) an application for an enforcement hearing; or
    - (ii) a subpoena or order directing the respondent to attend court; or
    - (iii) an application for an order that a person be punished for contempt of court; and
  - (b) the respondent does not attend at court on the date fixed for attendance.
- (2) If a warrant is issued, it must have attached to it a copy of the application, subpoena or order mentioned in paragraph (1)(a).

Note: The Court may issue a warrant on an oral application.

### **25B.74 Execution of warrant**

- (1) A warrant may authorise:
  - (a) a member of the Australian Federal Police; or
  - (b) a member of the police service of a State or Territory; or
  - (c) the Marshal; or
  - (d) any other person appointed by the Court;to proceed to enforce the warrant.
- (2) A person authorised to enforce a warrant may act on the original warrant or a copy.
- (3) When the warrant is enforced, the person arrested must be served with a copy.

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**25B.75 Duration of warrant**

A warrant (except a warrant issued under subsection 65Q(2) of the Family Law Act) ceases to be in force 12 months after the date when it is issued.

**25B.76 Procedure after arrest**

- (1) If the Court issues a warrant for a person's arrest, it may order that the person arrested:
  - (a) be held in custody until the hearing of the proceeding; or
  - (b) be released from custody on compliance with a condition, including a condition that the person enter into a bond.
- (2) A person who arrests another person under a warrant must:
  - (a) arrange for the person to be brought before the court that issued the warrant or another court having jurisdiction under the Family Law Act, before the end of the holding period; and
  - (b) take all reasonable steps to ensure that, before the person is brought before a court, the person on whose application the warrant was issued is advised about:
    - (i) the arrest; and
    - (ii) the court before which the person arrested will be brought; and
    - (iii) the date and time when the person arrested will be brought before the court.
- (3) When a person arrested under a warrant is brought before a court, the Court may:
  - (a) if the Court issued the warrant:
    - (i) make any of the orders mentioned in subrule (1); or
    - (ii) adjourn the proceeding and direct an appropriate officer of the Court to take all reasonable steps to ensure that the person on whose application the warrant was issued is advised about the arrest and the date and time when the person must attend before the Court if the person wishes to bring or continue an application; or



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- (iii) if the application for which the warrant was issued is before the Court or the Court allows another application—hear and determine the application; or
  - (iv) if there is no application before the Court—order the person’s release from custody; and
- (b) if the Court did not issue the warrant:
  - (i) order that the person be held in custody until the person is brought before the court specified in the warrant; and
  - (ii) make any of the orders mentioned in subrule (1); and
  - (iii) make inquiries of the court that issued the warrant, (for example, inquiries about current applications and hearing dates).
- (4) A person arrested under this rule who is still in custody at the end of the holding period must be released from custody unless otherwise ordered.
- (5) This rule does not apply to a person who is arrested:
  - (a) under a warrant issued under subsection 65Q(2) of the Family Law Act; or
  - (b) without a warrant, under a recovery order; or
  - (c) without a warrant, under sections 68C and 114AA of the Family Law Act.

Note: The provisions mentioned in subrule (5) are excluded because the procedure on arrest is set out in the Family Law Act.

- (6) In this rule:

***holding period***, for a person arrested in accordance with a warrant, has the meaning given by subsection 65S(4) of the Family Law Act.

**25B.77 Application for release or setting aside warrant**

A person arrested in accordance with a warrant may apply:

- (a) for the warrant to be set aside; or
- (b) to be released from custody.

## **Chapter 3—Proceedings other than family law or child support**

### **Part 26—General**

#### **26.01 Rate of interest**

For paragraph 77(3)(a) of the Act, the rate of interest is the rate prescribed by the Federal Court Rules.

Note: This rate applies to all proceedings other than family law or child support proceedings. The Court may in a particular case determine a lower rate in the interests of justice: see paragraph 77(3)(b) of the Act.

## **Part 27—Dispute resolution**

### **Division 27.1—General**

#### **27.01 Proceeding referred to mediator or arbitrator**

- (1) If the Court orders a proceeding or any matter arising out of a proceeding to be referred to a mediator or, with the consent of the parties to an arbitrator, the mediation or arbitration must proceed in accordance with this Part.
- (1A) However, this Part does not apply if the Court refers a proceeding to a mediator for mediation under rule 45.13B.
- (2) Nothing in this Part affects an order or direction made under rule 10.01.

#### **27.02 Adjournment of proceeding**

- (1) Unless the Court otherwise orders, if an order for mediation or arbitration is made in relation to a proceeding, the proceeding is adjourned until the mediator or arbitrator reports to the Court.
- (2) A proceeding may be adjourned to a fixed date when the mediator or arbitrator must report to the Court on progress in the mediation or arbitration.

#### **27.03 Court may end mediation or arbitration**

- (1) The Court may:
  - (a) end a mediation or arbitration at any time; or
  - (b) terminate the appointment of a mediator or an arbitrator; or
  - (c) appoint a new mediator or arbitrator to replace a mediator or an arbitrator.
- (2) If the Court appoints a new arbitrator, the Court may order:
  - (a) that the new arbitrator must treat any evidence given, or any record, document or anything else produced, or anything

**Chapter 3** Proceedings other than family law or child support

**Part 27** Dispute resolution

**Division 27.1** General

**Rule 27.03**

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- done, in the course of the arbitration as if it had been given, produced or done before or by the new arbitrator; or
- (b) that any interim award made in the course of the arbitration is to be taken to have been made by the new arbitrator; or
  - (c) that the new arbitrator must adopt and act on any determination made by the previous arbitrator.
- (3) If the Court appoints a new mediator, the Court may order that the mediation continue in any way the Court directs.

## **Division 27.2—Mediation**

### **27.04 Nomination of mediator**

- (1) If the parties cannot reach agreement on a mediator within 14 days of an order for mediation, a Registrar must:
  - (a) nominate a person as the mediator; and
  - (b) give the parties written notice:
    - (i) of the name and address of the mediator; and
    - (ii) of the time, date and place of mediation; and
    - (iii) of any further documents to be given to the mediator by a party.
- (2) In fixing a time and date for the mediation, the Registrar must:
  - (a) consult the parties; and
  - (b) have regard to any time fixed by the Court for the mediation to be started or completed.

### **27.05 Mediation conference**

- (1) A mediation conference must be conducted:
  - (a) in accordance with any direction of the Court; and
  - (b) as a structured process in which the mediator assists the parties by encouraging and facilitating discussion between the parties so that:
    - (i) they may communicate effectively with each other about the dispute; and
    - (ii) if agreement is reached, with the consent of the parties the agreement can be included in a consent order.
- (2) If part only of a proceeding is the subject of an order for mediation, the mediator may at the end of the mediation report to the Court in terms agreed between the parties.

Rule 27.06

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**27.06 Mediator may end mediation**

If the mediator considers that a mediation should not continue, the mediator must, subject to any order of the Court:

- (a) end the mediation; and
- (b) advise the Court of the outcome.

## **Division 27.3—Arbitration**

### **27.07 Appointment of arbitrator**

- (1) If an order for arbitration is made, the Court may, with the consent of the parties, nominate a person to be the arbitrator.
- (2) If the person consents in writing to the appointment, the Court may appoint the person as the arbitrator.
- (3) The parties may ask the Court to make orders by consent setting out:
  - (a) the way in which the arbitration is to be conducted; and
  - (b) the time by which the arbitration is to be completed; and
  - (c) the way in which the arbitrator and the expenses of the arbitration are to be paid.
- (4) The parties may ask the Court to indicate to the arbitrator the way in which the arbitrator's report on the proceeding or any matter arising out of the proceeding is to be reported to the Court.

Rule 28.01

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## **Part 28—Cross-claims**

### **28.01 Cross-claim against applicant**

In a proceeding, a respondent may make a cross-claim against an applicant instead of bringing a separate proceeding.

### **28.02 Cross-claim after application**

A cross-claim may be made in relation to a matter arising after the start of the proceeding.

### **28.03 Cross-claim against additional party**

- (1) A respondent may make a cross-claim against a person other than the applicant (whether or not already a party to the proceeding) if:
  - (a) the applicant is also made a party to the cross-claim; and
  - (b) either:
    - (i) the respondent alleges that the other person is liable with the applicant for the subject matter of the cross-claim; or
    - (ii) the respondent claims against the other person relief relating to or connected with the subject matter of the original proceeding.
- (2) If a respondent makes a cross-claim against a person who is not a party to the original proceeding, the respondent must serve the response and cross-claim and the applicant's application on the person.
- (3) A person who is not a party to the original proceeding and is included as a respondent to a cross-claim becomes a party to the proceeding on being served with the response and cross-claim.
- (4) If a respondent makes a cross-claim against a person who is not a party to the original proceeding, these Rules apply as if:
  - (a) the cross-claim were an application; and



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Rule 28.04

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- (b) the party making the cross-claim were an applicant; and
- (c) the party against whom the cross-claim is made were a respondent.

**28.04 Cross-claim to be included in response**

A cross-claim must be included in the respondent's response.

**28.05 Response to cross-claim**

- (1) A cross-respondent may file a response to the cross-claim in accordance with the approved form.
- (2) A response must be filed and served within 14 days of service of the cross-claim to which it relates.

**28.06 Conduct of cross-claim**

- (1) These Rules apply (with necessary changes) to a cross-claim as if:
  - (a) the applicant on the cross-claim were the applicant in an original application; and
  - (b) the respondent to the cross-claim were the respondent to an original application.
- (2) However, if a respondent to a cross-claim has an address for service in the original proceeding, service by hand on the respondent is not required.
- (3) Subject to rule 28.07, a cross-claim must be heard at the same time as the original application.

**28.07 Exclusion of cross-claim**

The Court may at any time exclude a cross-claim from the proceeding in which it is made and give the directions that the Court considers appropriate about the conduct of the cross-claim.

Rule 28.08

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**28.08 Cross-claim after judgment etc**

A cross-claim may proceed after judgment is given in the original proceeding or after the original proceeding is stayed, dismissed, or discontinued.

**28.09 Judgment for balance**

If a respondent establishes a cross-claim against the applicant and there is a balance in favour of one of the parties, the Court may give judgment for the balance.

**28.10 Stay of claim**

The Court may stay the enforcement of a judgment given against a respondent until a cross-claim by the respondent is decided.

**28.11 Cross-claim for contribution or indemnity**

Unless the Court otherwise orders, if an applicant on a cross-claim makes a claim for contribution or indemnity in relation to a claim made against the applicant:

- (a) an order for the applicant must not be entered; and
- (b) an order for the applicant in relation to the cross-claim must not be enforced by execution until any order against the applicant has been satisfied.

**28.12 Offer of contribution**

- (1) This rule applies in a proceeding if:
  - (a) a party (the *first party*) may be held liable to contribute towards an amount of debt or damages that may be recovered from another party (the *second party*) in the proceeding; and
  - (b) at any time after entering an appearance in the proceeding, the first party makes an offer to the second party, without prejudice to the first party's defence, to contribute, to a specified extent, to the amount of the debt or damages.

Rule 28.12

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- (2) The first party's offer must not be brought to the attention of the Court until all issues in relation to the first party's liability, or the amount of the debt or damages, have been decided between the parties.

Rule 29.01

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## **Part 29—Enforcement**

### **29.01 Definition for Part 29**

In this Part:

*without notice* means without serving or advising another party or other person of an application to be made to the Court.

### **29.02 Application without notice for directions**

A party or an interested person may, without notice, apply to the Court for directions about the enforcement or execution of an order.

### **29.03 Condition precedent not fulfilled**

- (1) If an order is made in favour of a party subject to the fulfilment of a condition, the party cannot enforce the order until the condition is fulfilled.
- (2) However, the party may apply to the Court for an order for the revocation of the condition or the variation of the order.

### **29.04 Application for stay of judgment or order**

A party bound by a judgment or order may apply to the Court for an order that the judgment or order be stayed.

Note: The party may rely on events occurring after the judgment or order takes effect.

### **29.05 Failure to comply with Court order**

- (1) A person who is ordered by the Court to do, or not to do, an act or thing, must comply with the order.
- (2) A person who undertakes to the Court to do, or not to do, an act or thing, must comply with that undertaking.

Rule 29.06

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Note: If a person does not comply with an order of the Court, the Registrar may bring the person's failure, neglect or disobedience to the attention of the Court.

**29.06 Failure to attend Court in response to subpoena or order**

- (1) If the Court has issued a subpoena or made an order that a person attend Court:
  - (a) to give evidence; or
  - (b) to produce any document or thing; or
  - (c) to answer a charge of contempt; or
  - (d) for any other reason;and the person fails to attend, a party may apply to the Court for an order that a warrant, in accordance with the approved form, issue to the Sheriff, or another person named in the warrant:
  - (e) for the person's arrest and detention in custody until the person is brought before the Court; and
  - (f) for the production of the person before the Court.
- (2) Subrule (1) does not limit the power of the court to punish for contempt.
- (3) This rule does not apply to an order or direction of the Court requiring a party to comply with these Rules.

**29.07 Endorsement on order**

If an order requires a person to do, or not to do, an act or thing, whether within a certain time or not, and the consequences of failing to comply with the order may be committal, sequestration or punishment for contempt, the order must carry an endorsement that the person to be served with the order will be liable to imprisonment, sequestration of property or punishment for contempt if:

- (a) for an order that requires the person to do an act or thing—the person neglects or refuses to do the act or thing within the time specified in the order; or
- (b) for an order that requires the person not to do an act or thing—the person disobeys the order.

Rule 29.08

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**29.08 Service of order**

- (1) An order mentioned in rule 29.07 must be served personally on the person who is bound to do, or not to do, the act or thing:
  - (a) within the time mentioned in the order; or
  - (b) if no time is mentioned—within a time that would allow the person to comply with the order.
- (2) However, if the person:
  - (a) was present when the judgment was pronounced or the order was made; or
  - (b) was notified of the terms of the order orally, by telephone or electronically;the person is taken to have been served with the order at the time the person heard or was notified of the order.

**29.09 Application where person fails to comply with order**

- (1) If a person fails to comply with an order that the person is bound to comply with, a party may apply to the Court for the following orders:
  - (a) the committal of the person;
  - (b) the sequestration of the person's property.
- (2) If the person in default is a corporation or an organisation, a party may apply to the Court for an order:
  - (a) for the committal of an officer of the corporation or organisation; or
  - (b) for the sequestration of the property of the corporation or organisation.
- (3) However, no application may be made for an order under paragraph (2)(a) unless the officer:
  - (a) has been served with the order in accordance with subrule 29.08(1), and the order carries the endorsement in rule 29.07; or
  - (b) was present when the order was made or was notified of the order in accordance with subrule 29.08(2).

- (4) This rule applies if the Court has made:
- (a) an injunction; or
  - (b) an order in the nature of an injunction; or
  - (c) an order in the nature of mandamus or prohibition.

Note: Contempt is dealt with in Part 19.

### **29.10 Substituted performance**

- (1) If a person (the **first person**) is bound, but neglects or refuses, to do an act, a party may apply to the Court for an order:
- (a) that the act be done by another person, appointed by the Court; and
  - (b) that the first person pay the costs and expenses incurred by the making of the order.
- (2) Subrule (1) does not limit:
- (a) the power of the Court to punish for contempt; or
  - (b) any other mode of enforcement of the judgment or order available to the party.

### **29.11 Execution generally**

- (1) A party may apply to the Court to issue a writ, order or any other means of enforcement of a judgment or order that can be issued or taken in the Supreme Court of the State or Territory in which the judgment or order has been made, as if it were a judgment or order of that Supreme Court.
- (2) An order made under subrule (1) authorises the Sheriff, when executing the orders of the Court, to act in the same manner as a similar officer of the Supreme Court of the State or Territory in which the order is being executed is entitled to act.
- (3) A party who wants to enforce an order in more than one State or Territory may adopt the procedures and forms of process of the Supreme Court of the State or Territory in which the judgment or order has been made.

Note: It is not necessary to adopt different modes of procedure and forms of process in each State or Territory.

Rule 29.12

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**29.12 Stay of execution**

A party may apply to the Court for a stay of execution of a judgment or order.



## **Chapter 5—Human rights proceedings**

### **Part 41—Proceedings alleging unlawful discrimination**

#### **41.01 Application of Chapter**

- (1) This Chapter applies to a proceeding alleging unlawful discrimination.

**Note:** An affected person may apply to the Court for an order in relation to a complaint alleging unlawful discrimination if the complaint has been terminated by the President of the Commission: see section 46PO of the Human Rights Act.

- (2) Chapters 1 and 3 apply, so far as they are relevant and not inconsistent with this Chapter, to a proceeding alleging unlawful discrimination.

#### **41.02 Interpretation**

- (1) In this Chapter:

**Commission** means the Australian Human Rights Commission.

**special-purpose Commissioner** has the meaning given by section 46PV of the Human Rights Act.

- (2) An expression used in this Chapter and in the Human Rights Act has the same meaning in this Chapter as it has in the Human Rights Act.

**Note:** The following expressions are defined in the Human Rights Act:

- affected person
- alleged unlawful discrimination
- complaint
- unlawful discrimination.

#### **41.02A Form of application**

- (1) An application must be in accordance with the approved form.

**Rule 41.03**

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- (2) Rule 4.05 does not apply to an application in the approved form.

**41.03 Copy of application to be given to Commission**

At least 5 days before the date fixed for the first court date, the applicant must give to the Commission:

- (a) a sealed copy of the application showing the date, time and place of the first court date; and
- (b) a copy of any other documents filed.

**41.04 Form of response to application**

- (1) A response to an application must be in accordance with the approved form.
- (2) Rule 4.05 does not apply to a response to an application in the approved form.

**41.05 Appearance by special-purpose Commissioner**

If the Court grants leave to a special-purpose Commissioner to assist the Court in a proceeding, the special-purpose Commissioner must:

- (a) file a notice of address for service; and
- (b) serve a sealed copy of the notice on each party to the proceeding.

## **Chapter 6—Judicial review proceedings and administrative appeals**

### **Part 42—Judicial review**

Note: See Part 44 in relation to jurisdiction under section 476 of the *Migration Act 1958*.

#### **42.01 Application of Part**

- (1) This Part applies to a proceeding under the AD(JR) Act.

Note: *AD(JR) Act* is defined in the Dictionary.

- (2) Chapters 1 and 3 apply, so far as they are relevant and not inconsistent with this Chapter, to a proceeding under the AD(JR) Act.

#### **42.02 Application for order of review**

- (1) A person who wants to apply for an order of review under subsection 11(1) of the AD(JR) Act must file an originating application, in accordance with the approved form.
- (2) If the grounds of the application include an allegation of fraud or bad faith, the originating application must include details of the alleged fraud or bad faith.

#### **42.03 Application for extension of time**

- (1) A person who wants to apply for an extension of time within which to lodge an application for an order of review under paragraph 11(1)(c) of the AD(JR) Act must file an application for an extension of time, in accordance with the approved form.
- (2) An application for an extension of time must be accompanied by:
  - (a) an affidavit stating:
    - (i) briefly, but specifically, the facts on which the application relies; and

#### Rule 42.04

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- (ii) why the application was not filed within time; and
- (b) a draft application that complies with rule 42.02.

#### **42.04 Documents to be filed and served**

- (1) An applicant must, at the time of filing an application or as soon as practicable thereafter, file the following documents if they are in the applicant's possession:
  - (a) a statement of the terms of the decision that is the subject of the application; or
  - (b) a statement with respect to the decision:
    - (i) given to the applicant under section 13 of the AD(JR) Act or section 28 of the AAT Act; or
    - (ii) given by or on behalf of the person who made the decision, purporting to set out findings of facts, or a reference to the evidence or other material on which those findings were based or the reasons for making the decision.
- (2) A copy of each document must be served, within 5 days after filing, on each other party.

Note: *AAT Act* is defined in the Dictionary.

#### **42.05 Service**

A party to an application may apply to the Court for an order that:

- (a) the application be served on the Attorney-General; or
- (b) the application be served on a specified person or class of persons in a specified manner.

#### **42.06 Notice of objection to competency**

- (1) A respondent who objects to the competency of an application must, within 14 days after being served with the application, file a notice of objection to competency:
  - (a) in accordance with the approved form; and
  - (b) that briefly, but specifically, states the grounds of the objection.

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- (2) The applicant carries the burden of establishing the competency of an application.
- (3) A respondent may apply to the Court for the question of competency to be heard and determined before the hearing of the application.
- (4) If a respondent has not filed a notice under subrule (1), and the application is dismissed by the Court as incompetent, the respondent is not entitled to any costs of the application.
- (5) If the Court decides that an application is not competent, the application is dismissed.

Rule 43.01

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## **Part 43—Administrative Appeals Tribunal**

Note: See Part 44 in relation to jurisdiction under section 476 of the *Migration Act 1958*.

### **43.01 Definitions for Part 43**

In this Part:

***Registrar of the Tribunal*** means:

- (a) the Registrar of the Tribunal; or
- (b) the District Registrar or Deputy Registrar in the Registry in which the matter before the Tribunal is pending; or
- (c) any other officer for the time being performing the duties of the Registrar, a District Registrar or a Deputy Registrar.

***Tribunal*** means the Administrative Appeals Tribunal.

***without notice*** means without serving or advising another party or other person of an application to be made to the Court.

### **43.02 Application of Part**

- (1) This Part applies to an appeal from the Tribunal transferred to the Court from the Federal Court.
- (2) Chapters 1 and 3 apply, so far as they are relevant and not inconsistent with this Chapter, to an appeal from the Tribunal.

### **43.03 Form of application for stay of Tribunal decision**

A person who wants to make an application for an order under section 44A of the AAT Act for an order staying or otherwise affecting the operation or implementation of a Tribunal decision:

- (a) must file an application in a case; and
- (b) may, in an urgent case, make the application without notice.

#### **43.04 Notice of cross-appeal**

- (1) The rules of this Part apply to a cross-appeal as if it were an appeal.
- (2) A respondent who wants to appeal from a decision, or a part of a decision, from which the applicant has appealed, must file a notice of cross-appeal, in accordance with the approved form.

Note: The notice of cross-appeal must be filed within the time mentioned in subsection 44(2A) of the AAT Act.

- (3) The notice of cross-appeal must state the following:
  - (a) the part of the decision the respondent cross-appeals from or contends should be varied;
  - (b) the precise question or questions of law to be raised on the cross-appeal;
  - (c) any findings of fact that the Court is asked to make;
  - (d) the relief sought instead of the decision appealed from, or the variation of the decision that is sought;
  - (e) briefly, but specifically, the grounds relied on in support of the relief or variation sought.

Note: The Court can only make findings of fact in limited circumstances—see subsection 44(7) of the AAT Act.

- (4) The notice of cross-appeal must be filed within 21 days after the respondent was served with the notice of appeal.
- (5) The respondent must serve a copy of the notice of cross-appeal on:
  - (a) each other party to the proceeding; and
  - (b) the Registrar of the Tribunal.

#### **43.05 Notice of contention**

If a respondent does not want to cross-appeal from a decision of the Tribunal, but contends that the decision should be affirmed on grounds other than those relied on by the Tribunal, the respondent must, within 21 days after the notice of appeal is served, file a notice of contention, in accordance with the approved form.

Rule 43.06

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**43.06 Directions**

- (1) At the first court date, the Court or a Registrar must give directions for the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court or a Registrar may:
  - (a) determine the documents and matters to be included in the appeal papers and the order of inclusion; and
  - (b) determine what documents and matters were before the Tribunal; and
  - (c) settle the index; and
  - (d) determine the number of copies of the appeal papers required; and
  - (e) direct the joinder of parties; and
  - (f) direct the place and time of hearing.

**43.07 Preparation of appeal papers**

- (1) The appeal papers must be prepared to the satisfaction of the Registrar.
- (2) The title page of the appeal papers must state:
  - (a) the title of the proceedings; and
  - (b) the division of the Tribunal from which the appeal is brought; and
  - (c) the names of members constituting the Tribunal; and
  - (d) the lawyer and address for service for each party; and
  - (e) if a party is not represented by a lawyer—the address for service of the party.
- (3) Following the title page, there must be an index of the documents comprising the papers that states the date and page number of each document.
- (4) The papers must be paginated.
- (5) The papers must include all documents necessary to enable the questions of law raised by the appeal to be determined.



Rule 43.07

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- (6) A copy of the papers must be filed with a certificate by each party or each party's lawyer stating that it has been examined and is correct.
- (7) The papers must be clear and legible and securely fastened.
- (8) The applicant must file the number of copies required by the Registrar.

## **Part 44—Proceedings under the Migration Act 1958**

### **Division 44.1—Preliminary**

#### **44.01 Definitions for Part 44**

In this Part:

*Migration Act* means the *Migration Act 1958*.

*migration decision* has the meaning given by subsection 5(1) of the Migration Act.

#### **44.02 Application of Part 44**

- (1) This Part applies to a proceeding for a remedy to be granted in exercise of the Court's jurisdiction under section 476 of the Migration Act in relation to a migration decision.
- (2) This Part applies to a matter, or part of a matter, remitted to the Court by the High Court under section 44 of the *Judiciary Act 1903* and in accordance with section 476B of the Migration Act.
- (3) Subrule (2) is subject to any order of the High Court in the matter.

#### **44.03 Application of Chapters 1 and 3**

Chapters 1 and 3 apply, so far as they are relevant and not inconsistent with this Part, to a proceeding to which this Part applies.

## **Division 44.2—Matters commenced in the Court**

### **44.04 Application of Division 44.2**

This Division applies only to a matter commenced in the Court.

### **44.05 Application for order to show cause**

- (1) An application for a remedy to be granted in exercise of the Court's jurisdiction under section 476 of the Migration Act in relation to a migration decision must be made in accordance with the approved form.
- (2) An application must be supported by an affidavit including:
  - (a) a copy of the decision in relation to which the remedy is sought and any statement of reasons for the decision; and
  - (b) any document or other evidence the applicant seeks to rely on; and
  - (c) if an extension of time is sought—the evidence explaining the delay and showing why it is necessary in the interests of the administration of justice for the Court to grant an extension.

### **44.06 Response to application**

- (1) Each respondent who intends to oppose an application must file and serve a response, including each ground on which the respondent opposes the application and details of each ground.
- (2) For subrule (1), the grounds on which a respondent may oppose an application include the following:
  - (a) that the Court lacks jurisdiction to hear the application;
  - (b) delay in seeking the remedy;
  - (c) that there are, or have been, other judicial review proceedings in relation to the decision;
  - (d) that the applicant has not complied with subsection 486D(1) of the Migration Act.

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**Part 44** Proceedings under the Migration Act 1958

**Division 44.2** Matters commenced in the Court

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Note: Rules 4.03, 4.04 and 4.05 include requirements relating to responses.

## **Division 44.3—Matters remitted by the High Court**

### **44.07 Application of Division 44.3**

This Division applies only to a matter, or part of a matter, remitted to the Court by the High Court, subject to any direction of the High Court in the matter.

### **44.08 Filing of order of remittal**

- (1) A sealed copy of the order of the High Court, remitting a matter, or part of a matter, to the Court must be filed in the registry named in the order of remittal.
- (2) In the absence of a specification of a registry of the Court in a matter or part of a matter in the order, the Chief Executive Officer may direct that the order be filed in a particular registry.

### **44.09 Service of notice and order**

- (1) A Registrar must affix a notice to the High Court's order and allot a serial number to the order as if the order was an application filed in the registry.
- (2) The notice must:
  - (a) include the date for a first court date in the matter; and
  - (b) include a note to the effect that before taking any step in the proceeding, a party, other than the applicant, must enter an appearance in the registry unless the party has already entered an appearance in the High Court; and
  - (c) be in the form approved by the Chief Executive Officer.
- (3) A Registrar must affix the stamp of the Court to a sufficient number of copies of the notice for service in accordance with subrule (4).
- (4) A Registrar must cause sealed copies of the notice, together with copies of the High Court's order, to be served on each party to the

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proceeding in the High Court and on any other person whom the Court or a Registrar directs should be so served.

- (5) Service may be effected by delivery to a party's address for service in the proceeding before the High Court.

## **Division 44.4—General**

### **44.10 Stay of proceedings**

The Court may, at any time, grant, discharge or vary a stay of the proceedings to which an application for an order to show cause relates.

### **44.11 First court date**

Without limiting rule 10.01, at the first court date for an application for an order to show cause, the Court or a Registrar may give orders or directions for any of the following:

- (a) an immediate hearing under rule 44.12;
- (b) a future listing for a hearing under rule 44.12;
- (c) dispensing with a hearing under rule 44.12 and listing the matter for final hearing on the grounds set out in the application;
- (d) a stay or interim order;
- (e) an extension of time for the application;
- (f) an amendment of the application;
- (g) the provision of particulars, or further and better particulars, of a ground in an application or response;
- (h) the filing of further affidavits by the applicant;
- (i) the filing by a respondent or other person of a relevant document or other evidence;
- (j) the filing of affidavits by a respondent.

### **44.12 Show cause hearing**

- (1) At a hearing of an application for an order to show cause, the Court may:
  - (a) if it is not satisfied that the application has raised an arguable case for the relief claimed—dismiss the application; or
  - (b) if it is satisfied that the application has raised an arguable case for the relief claimed—adjourn the proceeding and order

**Rule 44.13**

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a respondent to show cause at a final hearing why an order for the relief claimed should not be made on such of the grounds mentioned in the application as are specified by the Court; or

- (c) without making an order under paragraph (b), make final orders in relation to the claims for relief and grounds mentioned in the application.

- (2) To avoid doubt, a dismissal under paragraph (1)(a) is interlocutory.

**44.13 Relief and grounds**

- (1) At a hearing of an application for an order to show cause, the applicant is confined to the relief sought and the grounds mentioned in the application.

Note: Rule 7.01 provides for the amendment of applications.

- (2) At a final hearing following a hearing under rule 44.12, the applicant is confined to the grounds specified in the Court's order to show cause.

**44.14 Writs**

A writ of a particular kind issued by the Court under this Part:

- (a) must be substantially in the form of a writ of that kind issued under the *High Court Rules 2004*; and
- (b) must be served and complied with in accordance with those Rules.

**44.15 Costs**

- (1) The Court may, in relation to a proceeding that is concluded, order that an unsuccessful party in the proceeding must pay the costs of a successful party in accordance with Division 1 of Part 3 of Schedule 1.
- (2) Unless the Court otherwise orders, an applicant who files a notice of discontinuance of an application for an order to show cause is



liable to pay a respondent's costs in accordance with Division 2 of Part 3 of Schedule 1.

## Chapter 7—Fair Work Division

### Part 45—Proceedings in the Fair Work Division

#### Division 45.1—General

##### 45.01 Definitions for Part 45

In this Part:

*Building and Construction Industry Improvement Act* means the *Building and Construction Industry Improvement Act 2005*.

*Fair Work Act* means the *Fair Work Act 2009*.

*Workplace Relations Act* means the *Workplace Relations Act 1996*.

##### 45.02 Expressions used in the Workplace Relations Act, the Fair Work Act and the Building and Construction Industry Improvement Act

Unless the contrary intention appears:

- (a) an expression used in Division 45.2 and in the Workplace Relations Act has the same meaning in Division 45.2 as it has in the Workplace Relations Act; and
- (b) an expression used in Divisions 45.3 and 45.4 and in the Fair Work Act has the same meaning in Divisions 45.3 and 45.4 as it has in the Fair Work Act; and
- (c) an expression used in Division 45.5 and in the Building and Construction Industry Improvement Act has the same meaning in Division 45.5 as it has in the Building and Construction Industry Improvement Act.

**45.03 Application of Part 45**

- (1) This Part applies to a proceeding in the Court to which the Workplace Relations Act, the Fair Work Act or the Building and Construction Industry Improvement Act applies.
- (2) Chapters 1 and 3 apply, to the extent that they are relevant and not inconsistent with this Chapter, to a proceeding in the Court to which the Workplace Relations Act, the Fair Work Act or the Building and Construction Industry Improvement Act applies.

## **Division 45.2—Unlawful termination of employment (Workplace Relations Act)**

### **45.04 Application in relation to alleged unlawful termination of employment (Workplace Relations Act)**

- (1) This rule applies to an application for an order in relation to an alleged unlawful termination of an employee's employment which occurred before 1 July 2009.

Note: Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* provides that the Workplace Relations Act continues to apply, on and after the WR Act repeal day, to conduct that occurred before the WR Act repeal day. The WR Act repeal day is 1 July 2009.

- (2) The application must be:
- (a) in accordance with the approved form; and
  - (b) accompanied by:
    - (i) a claim in accordance with the approved form; and
    - (ii) a certificate issued under subsection 650(2) of the Workplace Relations Act regarding the failure, or likely failure, of conciliation.

Note 1: Section 665 of the Workplace Relations Act sets out the orders the Court may make.

Note 2: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim in accordance with rule 4.05.

### **45.05 Application in relation to other alleged contraventions of the Workplace Relations Act**

An application for an order in relation to an alleged contravention of the Workplace Relations Act which is not mentioned in rule 45.04 must be in accordance with the approved form.

Note: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

## **Division 45.3—Contraventions of the Fair Work Act**

### **45.06 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, s 539(2), table, item 11)**

An application for an order in relation to an allegation that an employee was dismissed in contravention of a general protection mentioned in Part 3-1 of the Fair Work Act must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by:
  - (i) a claim in accordance with the approved form; and
  - (ii) unless the application includes an application for an interim injunction, a certificate issued by the Fair Work Commission under section 369 of the Fair Work Act that provides that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

Note 1: Sections 545 and 546 of the Fair Work Act state the orders the Court may make.

Note 2: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim in accordance with rule 4.05.

### **45.07 Application in relation to alleged unlawful termination of employment (Fair Work Act, s 539(2), table, item 35)**

An application for an order in relation to an alleged unlawful termination of an employee's employment that occurred on or after 1 July 2009 must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by:
  - (i) a claim in accordance with the approved form; and
  - (ii) unless the application includes an application for an interim injunction, a certificate issued by the Fair Work

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Commission under section 777 of the Fair Work Act that provides that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

- Note 1: Sections 545 and 546 of the Fair Work Act state the orders the Court may make.
- Note 2: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.
- Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim in accordance with rule 4.05.

**45.08 Application in relation to other alleged contraventions of Fair Work Act general protections**

An application for an order in relation to an alleged contravention, or an alleged proposed contravention, of a general protection mentioned in Part 3-1 of the Fair Work Act other than that mentioned in rule 45.06 must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by a claim in accordance with the approved form.

- Note 1: Sections 545 and 546 of the Fair Work Act state the orders the Court may make.
- Note 2: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.
- Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim in accordance with rule 4.05.

**45.09 Application in relation to other alleged contraventions of the Fair Work Act**

An application for an order in relation to an alleged contravention of the Fair Work Act which is not mentioned in rule 45.06, 45.07 or 45.08 must be in accordance with the approved form.

- Note: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

## **Division 45.4—Small claims**

### **45.10 Definitions for Division 45.4**

In this Division:

***small claim*** means a claim mentioned in section 548 of the Fair Work Act.

***small claim application*** means an application dealt with under this Division.

### **45.11 Small claims procedure**

- (1) An applicant may request that an application for compensation be dealt with under this Division if:
  - (a) the compensation is not more than \$20 000; and
  - (b) the compensation is for an entitlement mentioned in subsection 548(1A) of the Fair Work Act.
- (2) The Court is not bound by any rules of evidence and procedure when dealing with a small claims application and may act:
  - (a) in an informal manner; and
  - (b) without regard to legal forms and technicalities.

### **45.12 Starting proceedings**

A small claim application must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by a claim in accordance with the approved form.

Note 1: Sections 545 and 548 of the Fair Work Act state the orders the Court may make.

Note 2: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim in accordance with rule 4.05.

Rule 45.13

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**45.13 Lawyers—Fair Work Act small claims proceeding**

- (1) A party to a small claims application may not be represented by a lawyer without the leave of the Court.
- (2) If the Court grants a party leave to be represented by a lawyer, the leave may be given subject to conditions the Court considers appropriate.
- (3) For subrule (1), a party is not taken to be represented by a lawyer if the lawyer is an employee or officer of that party.

**45.13A Representation for corporations—Fair Work Act small claims proceeding**

Despite rule 9.04, an officer or employee of a corporation may represent the corporation in a small claims proceeding under this Division if the officer or employee is authorised by the corporation to represent the corporation in the proceeding.



## **Division 45.4A—Dispute Resolution—Fair Work Act proceedings**

### **45.13B Mediation—Fair Work Act proceedings**

- (1) This rule applies if the Court refers for mediation under section 34 of the Act a proceeding, or a part of a proceeding, or a matter arising out of a proceeding, to which this Part applies.

Note 1: Section 34 of the Act does not apply to family law proceedings. For dispute resolution in family law proceedings, see Part III of the Family Law Act.

Note 2: The Court may refer a proceeding for mediation under section 34 of the Act with or without the consent of the parties.

- (2) The mediator for the mediation must be:
- (a) a Judge; or
  - (b) a Registrar; or
  - (c) another person appointed by the Court for the purpose; or
  - (d) an FWC member nominated by the President of the Fair Work Commission.
- (3) Unless the Court or a Registrar otherwise orders:
- (a) the parties to the proceeding must attend the mediation in person; and
  - (b) the lawyer or lawyers representing the parties to the proceeding must attend the mediation.
- (4) Unless the Court otherwise orders, if an order for mediation is made, the proceeding is adjourned until the earlier of the following:
- (a) the day the mediator reports to the Court; or
  - (b) the day fixed by the Court on which the mediator must report to the Court about progress in the mediation.
- (5) The parties must make a genuine effort to reach agreement on relevant matters in issue.

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- (6) If the mediator considers that the mediation should not continue, the mediator must, subject to any order of the Court:
  - (a) end the mediation; and
  - (b) advise the Court of the outcome.
- (7) If an issue between the parties remains unresolved at the end of the mediation, the Judge or Registrar may:
  - (a) give further directions; and
  - (b) make any other order, including an order for costs.
- (8) In this rule:

***FWC member*** has the meaning given by section 12 of the Fair Work Act.

***President*** has the meaning given by section 12 of the Fair Work Act.

## **Division 45.5—Building and Construction Industry Improvement Act**

### **45.14 Applications**

An application for an order in relation to an alleged contravention of section 38 of the Building and Construction Industry Improvement Act must be in accordance with the approved form.

Note: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

Rule 46.1

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## **Chapter 8—Proceedings under National Consumer Credit Protection Act**

### **Part 46—Small claims application under National Consumer Credit Protection Act**

#### **46.1 Definitions**

In this Part:

*National Consumer Credit Protection Act* means the *National Consumer Credit Protection Act 2009*.

*small claims application* means an application for an order covered by subsection 199(2) of the National Consumer Credit Protection Act that is dealt with under this Part.

*small claims proceeding* means a proceeding relating to a small claims application.

#### **46.2 Small claims proceeding—National Consumer Credit Protection Act**

- (1) An applicant may request that an application for an order covered by subsection 199(2) of the National Consumer Credit Protection Act be dealt with under this Part.
- (2) The Court is not bound by any rules of evidence and procedure when dealing with a small claims application and may act:
  - (a) in an informal manner; and
  - (b) without regard to legal forms and technicalities.

#### **46.3 Starting a small claims proceeding**

A small claims application must be made in accordance with the approved form.

Note: Part 4 of Chapter 1 sets out the general rules about starting proceedings.

**46.4 Lawyers—National Consumer Credit Protection Act small claims proceeding**

- (1) A party to a small claims application may not be represented by a lawyer without the leave of the Court.
- (2) If the Court grants a party leave to be represented by a lawyer, the leave may be given subject to conditions the Court considers appropriate.
- (3) For subrule (1), a party is not taken to be represented by a lawyer if the lawyer is an employee or officer of that party.

**46.5 Representation for corporations—National Consumer Credit Protection Act small claims proceeding**

Despite rule 9.04, an officer or employee of a corporation may represent the corporation in a small claims proceeding under this Division if the officer or employee is authorised by the corporation to represent the corporation in the proceeding.