Family Law Rules 2004

Statutory Rules 2003 No. 375 as amended

made under the

Family Law Act 1975

This compilation was prepared on 29 March 2004
taking into account amendments up to SR 2004 No. 53

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Chapter 1 Introduction

Summary of Chapter 1

Chapter 1 sets out the rules relating to:

- the main purpose of these Rules, and the obligations of parties, lawyers and the court;
- the court's general powers that are to apply in all cases; and
- other preliminary matters, including sittings, definitions, calculation of time and publication.

These Rules are not, and should not be read as if they were, a complete code of the court's powers. Other powers are found in the provisions of various Acts, the court's inherent jurisdiction and the common law.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 1.1 Preliminary

1.01 Name of Rules

These Rules are the *Family Law Rules 2004*.

1.02 Commencement

These Rules commence on 29 March 2004.

Note The *Family Law Rules 1984* (the ***old Rules***), as in force under the *Family Law Act 1975* immediately before the commencement of these Rules (the ***new Rules***), are repealed — see the *Family Law Repeal Rules 2004*. The new Rules apply to a case that was commenced in accordance with the old Rules and not determined before the repeal of those Rules — see rule 4 of the *Family Law Repeal Rules 2004*.

1.03 Rules in Chapter 1 prevail

(1) Chapter 1 sets out the general rules that the court may apply in all cases.

(2) If a rule in another Chapter conflicts with a rule in Chapter 1 of these Rules, the rule in Chapter 1 applies.

Part 1.2 Main purpose of Rules

1.04 Main purpose of Rules

The main purpose of these Rules is to ensure that each case is resolved in a just and timely manner at a cost to the parties and the court that is reasonable in the circumstances of the case.

Note Section 43 of the Act sets out the principles that the court must apply when exercising its jurisdiction under the Act.

1.05 Pre-action procedure

(1) Before starting a case, each prospective party to the case must comply with the pre-action procedures, the text of which is set out in Schedule 1, including attempting to resolve the dispute using primary dispute resolution methods.

(2) Compliance with subrule (1) is not necessary if:

(a) for a parenting case — the case involves allegations of child abuse or family violence;

(b) for a property case — the case involves allegations of family violence or fraud;

(c) the application is urgent;

(d) the applicant would be unduly prejudiced;

(e) there has been a previous application in the same cause of action in the 12 months immediately before the start of the case;

(f) the case is an Application for Divorce; or

(g) the case is a Child Support Application or Appeal.

Note 1 The court publishes a brochure setting out the pre-action procedures for financial cases and parenting cases.

Note 2 The court may take into account a party's failure to comply with a pre-action procedure when considering whether to order costs (see paragraph 1.10 (2) (d)).

1.06 Promoting the main purpose

The court must apply these Rules to promote the main purpose, and actively manage each case by:

(a) encouraging and helping parties to consider and use a primary dispute resolution method rather than having the case resolved by trial;

(b) having regard to unresolved risks or other concerns about the welfare of a child involved;

(c) identifying the issues in dispute early in the case and separating and disposing of any issues that do not need full investigation and trial;

(d) at an early stage, identifying and matching types of cases to the most appropriate case management procedure;

(e) setting realistic timetables, and monitoring and controlling the progress of each case;

(f) ensuring that parties and their lawyers comply with these Rules, any practice directions and procedural orders;

(g) considering whether the likely benefits of taking a step justify the cost of that step;

(h) dealing with as many aspects of the case as possible on the same occasion;

(i) minimising the need for parties and their lawyers to attend court by, if appropriate, relying on documents; and

(j) having regard to any barriers to a party's understanding of anything relevant to the case.

1.07 Achieving the main purpose

To achieve the main purpose, the court applies these Rules in a way that:

(a) deals with each case fairly, justly and in a timely manner;

(b) encourages parties to negotiate a settlement, if appropriate;

(c) is proportionate to the issues in a case and their complexity, and the likely costs of the case;

(d) promotes the saving of costs;

(e) gives an appropriate share of the court's resources to a case, taking into account the needs of other cases; and

(f) promotes family relationships after resolution of the dispute, where possible.

1.08 Responsibility of parties and lawyers in achieving the main purpose

(1) Each party has a responsibility to promote and achieve the main purpose, including:

(a) ensuring that any orders sought are reasonable in the circumstances of the case and that the court has the power to make those orders;

(b) complying with the duty of disclosure (see rule 13.01);

(c) ensuring readiness for court events;

(d) providing realistic estimates of the length of hearings or trials;

(e) complying with time limits;

(f) giving notice, as soon as practicable, of an intention to apply for an adjournment or cancellation of a court event;

(g) assisting the just, timely and cost-effective disposal of cases;

(h) identifying the issues genuinely in dispute in a case;

(i) being satisfied that there is a reasonable basis for alleging, denying or not admitting a fact;

(j) limiting evidence, including cross-examination, to that which is relevant and necessary;

(k) being aware of, and abiding by, the requirements of any practice direction or guideline published by the court; and

(l) complying with these Rules and any orders.

(2) A lawyer for a party has a responsibility to comply, as far as possible, with subrule (1).

Note The court recognises that a lawyer acts on a party's instructions and may be unable to establish whether those instructions are correct.

(3) A lawyer attending a court event for a party must:

(a) be familiar with the case; and

(b) be authorised to deal with any issue likely to arise.

Note The court may take into account a failure to comply with this rule when considering costs (see subrule 19.10 (1)).

Part 1.3 Court's powers in all cases

1.09 Procedural orders in cases of doubt or difficulty

If the court is satisfied that:

(a) a legislative provision does not provide a practice or procedure; or

(b) a difficulty arises, or doubt exists, in relation to a matter of practice or procedure;

it may make such orders as it considers necessary.

1.10 Court may make orders

(1) Unless a legislative provision states otherwise, the court may make an order, on application or on its own initiative, in relation to any matter mentioned in these Rules.

(2) When making an order, the court may:

(a) impose terms and conditions;

(b) make a consequential order;

(c) specify the consequence of failure to comply with the order; and

(d) take into account whether a party has complied with a pre-action procedure.

1.11 Court may set aside or vary order

The court may set aside or vary an order made in the exercise of a power under these Rules.

1.12 Court may dispense with Rules

(1) These Rules apply unless the court, on application or its own initiative, orders otherwise.

(2) The court may dispense with compliance with any of these Rules at any time, before or after the occasion for compliance arises.

(3) In considering whether to make an order under this rule, the court may consider:

(a) the main purpose of these Rules (see rule 1.04);

(b) the administration of justice;

(c) whether the application has been promptly made;

(d) whether non-compliance was intentional; and

(e) the effect that granting relief would have on each party and parties to other cases in the court.

1.13 Judicial officer hearing application

Unless a legislative provision states otherwise, if:

(a) these Rules provide that an application or appeal is to be heard by a particular judicial officer or particular class of judicial officer; and

(b) such a person is unavailable;

the application or appeal may be listed before another judicial officer who has jurisdiction to hear the application or appeal.

1.14 Shortening or extension of time

(1) A party may apply to the court to shorten or extend a time that is fixed under these Rules or by a procedural order.

(2) A party may make an application under subrule (1) for an order extending a time to be made even though the time fixed by the rule or order has passed.

(3) A party who makes an application under subrule (1) for an extension of time may be ordered to pay any other party's costs in relation to the application.

1.15 Time for compliance

If a rule or order requires a person to take an action but does not specify a time by which the action is to be taken, the person must take the action as soon as practicable.

Part 1.4 Other preliminary matters

1.16 Definitions — the dictionary

(1) The dictionary at the end of these Rules defines and explains certain words and expressions.

(2) Within a definition, the defined term is identified by ***bold italics***.

(3) The dictionary is part of these Rules.

(4) A definition of a word or expression in the dictionary applies to each use of the word or expression in these Rules, unless the context does not permit.

1.17 Notes, examples etc

(1) The following are explanatory only and are not part of these Rules:

(a) chapter summaries;

(b) examples;

(c) flow charts;

(d) notes.

(2) The explanatory guide at the end of these Rules is not part of these Rules and is not to be used in interpreting these Rules.

Note 1 See section 13 and paragraph 15AB (2) (a) of the *Acts Interpretation Act 1901*.

Note 2 In interpreting these Rules:

Specific prevails over the general

In these Rules, if there is a conflict between a general rule and a specific rule, the specific rule prevails.

Use of 'and' and 'or' between paragraphs etc

A series of paragraphs may be joined by the word *and* or *or*, which will appear between the last 2 paragraphs only. The series is to be read as if the same word appears between each paragraph in the series — for example:

(1) This is:
(a) a paragraph;
(b) another paragraph; and
(c) yet another paragraph.

and

(2) This is:
(a) a paragraph;
(b) another paragraph; or
(c) yet another paragraph.

If the paragraphs are to be read as a list, the words *and* or *or* are not used — for example:

(3) A provision may include the following:
(a) a paragraph;
(b) another paragraph;
(c) yet another paragraph.

1.18 Sittings

The Family Court of Australia must sit at the times and places the Chief Justice directs.

1.19 Permission to record court event

A person must not photograph, or record by electronic or mechanical means, any court event.

Note Section 121 of the Act restricts publication of information relating to cases.

1.20 Publishing lists of cases

(1) A list of cases to be heard in the court prepared by a Registry Manager may be:

(a) published in the law list in a newspaper; and

(b) made available to members of the legal profession and their employees.

Note See subsection 121 (2) of the Act.

(2) The list may contain:

(a) the family name of a party, but not a given name;

(b) the file number of a case;

(c) the name of the judicial officer for a hearing or trial;

(d) the time and place where a named judicial officer will sit; and

(e) the general nature of an application.

1.21 Calculating time

(1) Time in a case runs during a period when the filing registry is closed.

(2) If:

(a) the period allowed by these Rules or an order for an action to be validly taken is 5 days or less; and

(b) the period includes a day when the filing registry is closed;

that day is not counted.

(3) For the calculation of time of one day or more from a particular day, or from the occurrence of a particular event, the particular day, or the day when the event occurs, is not counted.

(4) If the last day for taking an action requiring attendance at a filing registry is on a day when the filing registry is closed, the action may be taken on the next day when the filing registry is open.

(5) Subsection 36 (2) of the *Acts Interpretation Act 1901* does not apply to these Rules.

Chapter 2 Starting a case

Summary of Chapter 2

Chapter 2 sets out rules about:

- the form of application you must file to start a case in a court;
- the documents you must file with an application; and
- the brochures and notices that must be filed, given or served in a case.

Before starting a case, you must comply with the court's pre-action procedures (see subrule 1.05 (1) and Schedule 1).

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 2.1 Applications

2.01 Which application to file

A person starting a case must file an application as set out in Table 2.1.

Table 2.1 Applications

Item	Kind of application	Application form to be filed
1	Application for Final Orders (other than a consent order or a divorce), for example: • property settlement • parenting • maintenance • child support • medical procedures	Application for Final Orders (Form 1)

Rule 2.01

Item	Kind of application	Application form to be filed
	• nullity • declaration as to validity of marriage, divorce or annulment • passport	
2	Interim order in a case	Application in a Case (Form 2)
3	Procedural, ancillary or other incidental order relating to an order, application or appeal	Application in a Case (Form 2)
4	Enforcement of a financial obligation or parenting order	Application in a Case (Form 2)
5	Review of an order of a Registrar or Judicial Registrar	Application in a Case (Form 2)
6	Divorce	Application for Divorce (Form 3)
7	Consent order when there is no current case	Application for Consent Orders (Form 11)
8	Contravention of an order under Division 13A of Part VII of the Act affecting children, for example, a breach of a contact order	Application — Contravention (Form 18)
9	Contravention of an order under Part XIIIA of the Act not affecting children, for example, a breach of a property order	Application — Contravention (Form 18)
10	Contempt of court	Application — Contempt (Form 19)

Note 1 If a party seeks interim orders as well as final orders, the party may file a Form 2 at the same time as a Form 1.

Note 2 A respondent seeking orders in another cause of action may make an application in Form 1A (see paragraph 9.01 (3) (c)).

Note 3 For further information about:

(a) a divorce application, see Chapter 3;

(b) starting a case for final orders other than a divorce, see Chapter 4;

(c) making an Application in a Case, see Chapter 5;

(d) an application for a consent order, see Chapter 10;

(e) an application for contempt, enforcement or contravention, see Chapters 20 and 21; and

(f) an appeal or an application relating to an appeal, see Chapter 22.

Note 4 An application seeking orders under the Act may not be filed in a court of a Territory unless the applicant or respondent ordinarily resides in the Territory at the time the application is filed (see subsection 39 (8) and section 69K of the Act).

2.02 Documents to be filed with applications

(1) A person must file with an application mentioned in an item of Table 2.2, the document mentioned in the item if the document has not already been filed.

Table 2.2 Documents to be filed with applications

Item	Application	Documents to be filed with application
1	Application for Final Orders (Form 1)	the marriage certificate or divorce or nullity order
2	Form 1, in which parenting orders are sought between parties who have never been married to each other	the child's birth certificate
3	Form 1, or Response (Form 1A), in which financial orders are sought, for example, property settlement, maintenance, child support	(a) for Form 1 only — one of the documents mentioned in this column in item 1 or 2; (b) a completed Form 13 (see rule 13.05)
4	Form 1 or Form 1A in which property settlement orders are sought, and Reply (Form 1B) responding to Form 1A in which property settlement orders are sought as a new cause of action	(a) the documents mentioned in this column in item 3; (b) a completed superannuation information form (attached to the Form 13) for a superannuation interest of the party filing the Form 1, 1A or 1B

Rule 2.02

Item	Application	Documents to be filed with application
5	Form 1 or Form 1A relying on a cross-vesting law, or seeking an order under Part 4.2: • for a medical procedure; • for step-parent maintenance, if there is consent or the application is unopposed; • for nullity of marriage; • for a declaration as to validity of a marriage or divorce or annulment; or • relating to a passport	(a) for Form 1 only — one of the documents mentioned in this column in item 1 or 2; (b) an affidavit (see rules 4.06, 4.09, 4.16, 4.29 and 4.30)
6	Form 1 or Form 1A in which a Child Support Application or Appeal is made	(a) for Form 1 only — one of the documents mentioned in this column in item 1 or 2; (b) the documents mentioned in rule 4.19 for the application
7	Application in a Case (Form 2) other than an application seeking review of a decision by a Registrar or Judicial Registrar	(a) an affidavit (see rule 5.02); (b) for a Form 2 permitted by subrule 5.04 (3) — one of the documents mentioned in this column in item 1 or 2
8	Application for Divorce (Form 3)	the marriage certificate
9	Application for Consent Orders (Form 11)	(a) one of the documents mentioned in this column in item 1 or 2; (b) for a Form 11 in which orders are sought in relation to a superannuation interest (see rule 10.16) — a completed superannuation information form for the superannuation interest

Item	Application	Documents to be filed with application
10	Application — Contravention (Form 18)	an affidavit (see subrules 21.02 (2) and (3))
11	Application — Contempt (Form 19)	an affidavit (see subrule 21.02 (2))

(2) If an applicant is required to file a document mentioned in item 1, 2 or 8 of Table 2.2, the applicant may file an image, photocopy or certified copy of the document.

(3) If an applicant is unable to file a document mentioned in item 1, 2 or 8 of Table 2.2, the applicant must file:

(a) an affidavit setting out the reasons why the document was not filed; or

(b) a written notice containing an undertaking to file the document within the time specified in the notice.

(4) If a document mentioned in Table 2.2 is not in English, the person filing the document must file:

(a) a translation of the document, in English; and

(b) an affidavit, by the person who made the translation, verifying the translation and setting out the person's qualifications to make the translation.

Note 1 A party must not file an affidavit with an Application for Final Orders (Form 1) unless permitted to do so by Chapter 4 or an order (see rules 1.12 and 4.02).

Note 2 A document that is filed must be served (see rules 7.03 and 7.04).

Note 3 For information about filing documents, see Chapter 24.

Part 2.2 Brochures

2.03 Preparation and distribution of brochures

(1) This rule applies to a person who:

(a) is:

(i) seeking to start a case;

(ii) a party to a case;

(iii) seeking to intervene in a case relating to children under Part VII of the Act; or

(iv) interested in the care, welfare and development of a child who is the subject of a case; and

(b) is required, under section 17, subsection 19J (2) or section 62H of the Act, to be provided with information.

(2) A lawyer representing a person to whom this rule applies must ensure that the person is given a brochure prepared by the court for section 17, subsection 19J (2) or section 62H of the Act (whichever is applicable).

Note If a person to whom this rule applies is not represented by a lawyer, the court will make the brochure available to the person as required by the Act.

(3) A person who files an Application for Final Orders (Form 1) or an Application for Divorce (Form 3) must, when serving the application on the respondent, also serve a brochure prepared by the court for section 17, subsection 19J (2) or section 62H of the Act (whichever is applicable).

Note In addition to the requirements of this rule, an applicant who has filed a Maintenance Application, Child Support Application or Appeal, or an Application for an Enforcement Hearing must serve the relevant brochure on the respondent (see rule 4.13 and subrules 4.23 (2) and 20.11 (3)).

Part 2.3 Notification in certain cases

2.04 Notice of Child Abuse or Risk of Abuse (Act s 67Z)

(1) A party who alleges that a child to whom a case relates has been abused, or is at risk of being abused, must file a Notice of Child Abuse or Risk of Abuse (Form 4).

(2) A party who files a Form 4 must serve a copy on each person to be served, including the person:

(a) who is alleged to have abused the child; or

(b) from whom the child is alleged to be at risk of abuse.

Note Section 67Z of the Act provides that, if a notice is filed under that section, the Registry Manager must notify a prescribed child welfare authority.

2.05 Family violence order

(1) A party must file a copy of any family violence order affecting the parties or a child of the parties:

(a) when a case starts; or

(b) as soon as practicable after the order is made.

(2) If a copy of the family violence order is not available, the party must file a written notice containing:

(a) an undertaking to file the order within a specified time;

(b) the date of the order;

(c) the court that made the order; and

(d) the details of the order.

2.06 Notification of proceeds of crime order or forfeiture application (Act ss 79B and 90M)

If a party to a property settlement or spousal maintenance case is required to give the Registry Manager written notice under subsection 79B (3) or 90M (3) of the Act of a proceeds of crime order or forfeiture application, the party must:

(a) attach to the notice a sealed copy of the proceeds of crime order or forfeiture application, if not already filed; and

(b) file the notice as soon as possible after the party is notified by the Director of Public Prosecutions under paragraph 79B (3) (b) or 90M (3) (b) of the Act.

2.07 Proceeds of crime

(1) If the Director of Public Prosecutions applies under section 79C or 90N of the Act to stay a property settlement or spousal maintenance case, the Director must, at the same time, file a sealed copy of the proceeds of crime order or forfeiture application covering the property of the parties to the marriage or either of them, if not already filed.

(2) An application under section 79D or 90P of the Act to lift a stay of a property settlement or spousal maintenance case must have filed with it:

(a) proof that the proceeds of crime order has ceased to be in force or that the forfeiture application has been finally determined; and

(b) if made by a party, the written consent of the Director of Public Prosecutions under section 79D or 90P of the Act.

Note A party seeking a stay of a case or an order lifting a stay under this rule must file an Application in a Case (Form 2) (see Chapter 5).

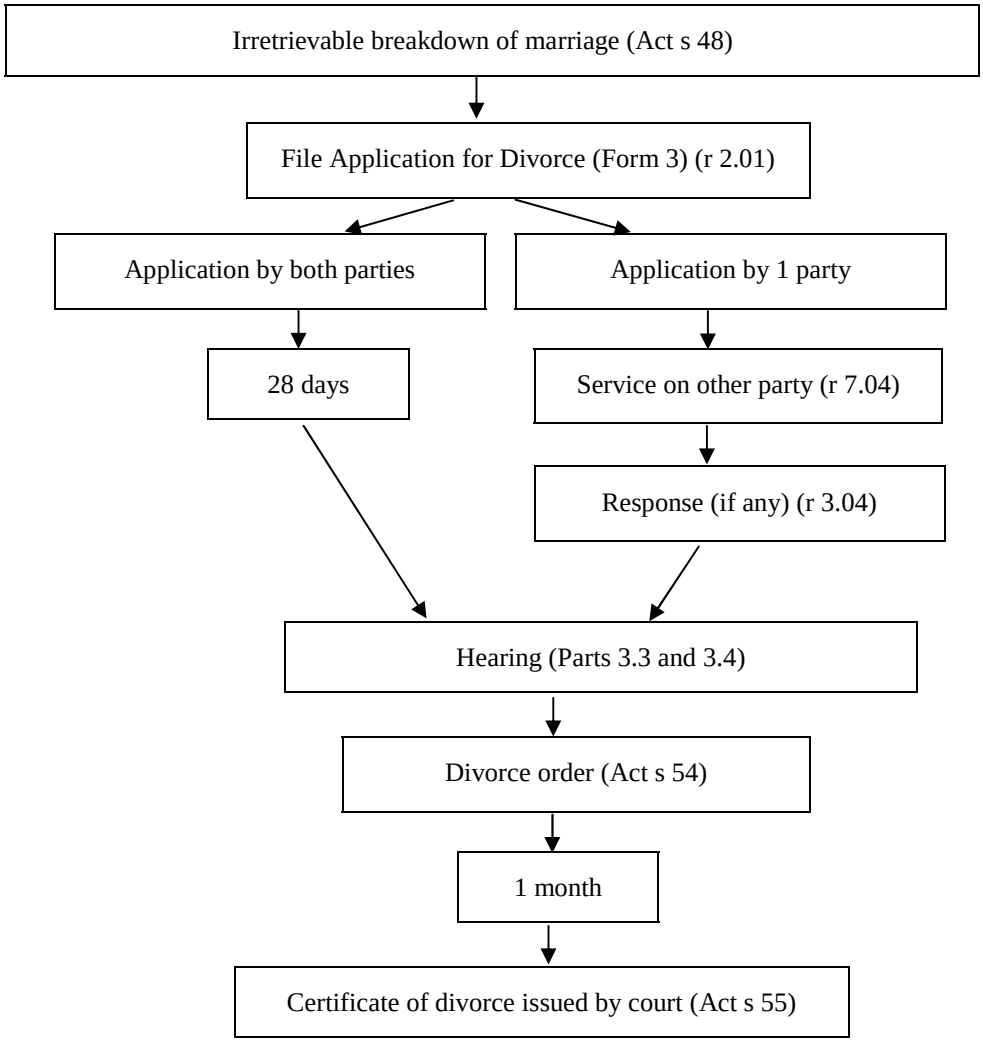
Chapter 3 Divorce

Summary of Chapter 3

Chapter 3 sets out the procedure for obtaining a divorce. You may also need to refer to other Chapters in these Rules, particularly Chapters 7 and 24, when applying for a divorce.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.


Irretrievable breakdown of marriage (Act s 48)
File Application for Divorce (Form 3) (r 2.01)
Application by both parties
Application by 1 party
28 days
Service on other party (r 7.04)
Response (if any) (r 3.04)
Hearing (Parts 3.3 and 3.4)
Divorce order (Act s 54)
1 month
Certificate of divorce issued by court (Act s 55)

Part 3.1 Application for Divorce

3.01 Fixing of hearing date

(1) On the filing of an Application for Divorce (Form 3), the Registry Manager must fix a date for the hearing of the application.

(2) The date fixed must be:

(a) for a joint application — at least 28 days after the application is filed; or

(b) for any other application:

(i) if the respondent is in Australia — at least 42 days after the application is filed; or

(ii) if the respondent is outside Australia — at least 56 days after the application is filed.

Note 1 A Form 3 (other than a joint application) must be served on the respondent (see rule 7.03).

Note 2 When a Form 3 is served, the respondent must also be given a brochure approved by the Principal Registrar (see rule 2.03 and section 17 of the Act).

3.02 Amendment of Form 3

An applicant may amend a Form 3:

(a) within 14 days before the hearing; or

(b) within any shorter time permitted by the court or consented to by the respondent.

3.03 Discontinuance of Form 3

An applicant may discontinue an Application for Divorce (Form 3) by filing and serving a Notice of Discontinuance (Form 10) at least 7 days before the date fixed for the hearing.

Note The court may, at the hearing, give permission for an Application for Divorce (Form 3) to be discontinued.

Part 3.2 Response

3.04 Response

(1) A respondent to an Application for Divorce (Form 3) who seeks to oppose the divorce or contest the jurisdiction of the court must file a Response to an Application for Divorce (Form 3A):

(a) if the respondent is served in Australia — within 28 days after the day when the Form 3 is served on the respondent; or

(b) if the respondent is served outside Australia — within 42 days after the day when the Form 3 is served on the respondent.

(2) If a respondent files a Form 3A:

(a) the hearing must proceed in open court; and

(b) each party must attend or be represented by a lawyer.

Note A document that is filed must be served (see rules 7.03 and 7.04).

3.05 Objection to jurisdiction

(1) If, in a Form 3A, a respondent objects to the jurisdiction of the court, the respondent will not be taken to have submitted to the jurisdiction of the court by also seeking an order that the application be dismissed on another ground.

(2) The objection to the jurisdiction must be determined before any other orders sought in the Form 3A.

3.06 Response out of time

If a respondent files a Form 3A after the time allowed under subrule 3.04 (1):

(a) the applicant may consent to the late filing; or

(b) if the applicant does not consent, the court may continue the case as if the response had not been filed.

Note The respondent may apply to the court for permission to file a Form 3A after the time allowed by rule 3.04 (see rule 1.14).

3.07 Affidavit to reply to information in Form 3

A respondent to a Form 3 who disputes any of the facts set out in the application, but does not oppose the divorce, may, at least 7 days before the date fixed for the hearing of the application, file and serve an affidavit setting out the facts in dispute.

Part 3.3 Attendance at hearing

3.08 Attendance at hearing

(1) A party may apply under rule 5.06 to attend the hearing of an Application for Divorce (Form 3) by electronic communication.

(2) Subject to Part 3.4:

(a) if the applicant fails to attend the hearing in person or by a lawyer, the application may be dismissed; 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.

Part 3.4 Hearing in absence of parties

3.09 Seeking a hearing in absence of parties

If, in an Application for Divorce (Form 3) (other than a case started by a joint Application):

(a) no Response (Form 3A) has been filed;

(b) at the date fixed for the hearing, there are no children of the marriage within the meaning of subsection 98A (3) of the Act;

(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.

3.10 Hearing in absence of parties — joint application

If, in a joint Application for Divorce (Form 3), the applicants request that the case be heard in their absence, the court may so determine the case.

Note The court must not determine the Application in the absence of the parties if there are any children of the marriage who are under 18 and the court is not satisfied that proper arrangements have been made for their care, welfare and development (see subsection 98A (2A) of the Act).

3.11 Request not to hear case in parties' absence

A respondent to a Form 3 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.

Note 1 If a respondent seeks that a case not be heard in the absence of the parties, the court must not determine the case in the absence of the parties (see subsection 98A (1) of the Act).

Note 2 A notice under this rule must comply with subrule 24.01 (1).

Part 3.5 Events affecting divorce order

3.12 Application for rescission of divorce order

A party may, before a divorce order nisi becomes absolute, apply for the order to be rescinded by filing an Application in a Case (Form 2).

Note 1 Sections 57 and 58 of the Act set out the circumstances in which the court may rescind a divorce order nisi.

Note 2 A party filing a Form 2 must file an affidavit (see rule 5.02).

3.13 Death of party

If a party to an Application for Divorce (Form 3) dies after the divorce order nisi is made but before the order becomes absolute, 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.

Chapter 4 Application for Final Orders

Summary of Chapter 4

Chapter 4 sets out rules about:

- the general procedure for starting a case by a Form 1 seeking final orders, for example, an Application for Property Settlement or Parenting Orders; and
- the procedure for starting specific applications such as an Application relying on cross-vesting laws, for a medical procedure, maintenance, child support or a declaration as to validity of a marriage.

Before starting a case, you must comply with the court's pre-action procedures (see subrule 1.05 (1) and Schedule 1).

You may also need to refer to other Chapters in these Rules when making an application, in particular, Chapters 6, 7 and 24. The flow chart at the beginning of Chapter 12 sets out the procedure that applies to an Application for Final Orders, other than applications mentioned in Part 4.2.

Note This Chapter does not apply to:

(a) an Application for Divorce (see Chapter 3);

(b) an Application for an Interim or Procedural Order or other incidental order relating to an Application for Final Orders (see Chapter 5);

(c) an Application for Review of a Judicial Registrar's or a Registrar's Order (see Chapter 18);

(d) an Application to enforce an obligation to pay money (see Chapter 20);

(e) an Application resulting from a contravention of an order or in relation to contempt (see Chapter 21);

(f) an Application relating to an appeal (see Chapter 22); or

(g) an appeal (see Chapter 22).

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 4.1 Introduction

4.01 Contents of Application for Final Orders (Form 1)

(1) In an Application for Final Orders (Form 1), the applicant must:

(a) give full particulars of the orders sought; and

(b) include all causes of action that can be disposed of conveniently in the same case.

Note Under paragraph 1.08 (1) (a), any orders sought must be reasonable in the circumstances of the case and within the power of the court.

(2) A party seeking any of the following must not include any other cause of action in the Application:

(a) an order that a marriage be annulled;

(b) a declaration as to the validity of a marriage, divorce or annulment;

(c) an order authorising a medical procedure under Division 4.2.3.

Note An application for an order mentioned in subrule (2) may only be made in a Form 1 and must not be made in a Form 1A (see subrule 9.01 (4)).

(3) Despite subrule (2), a party may seek the following orders in the same Application:

(a) an order that a marriage be annulled;

(b) a declaration as to the validity of a marriage, divorce or annulment.

Note For amendment of an application, see Division 11.2.2.

4.02 Filing affidavits

A party must not file an affidavit with a Form 1 unless permitted or required to do so by this Chapter or rule 2.02.

Example

A party seeking property settlement or parenting orders must not file an affidavit with a Form 1.

4.03 First court date

On the filing of a Form 1, the Registry Manager must fix a date:

(a) for a case assessment conference or procedural hearing that is as near as practicable to 28 days after the application was filed; or

(b) if an earlier date is fixed for the hearing of an Application in a Case (Form 2) filed with the Form 1 — for a procedural hearing on the same day.

Note Under subrule 5.05 (4), a Registrar may, in exceptional circumstances, allow a Form 2 to be listed for urgent hearing. Chapter 12 sets out the requirements for case assessment conferences and procedural hearings.

Part 4.2 Specific applications

Division 4.2.1 General

4.04 General provisions still apply

If a rule in this Part specifies particular requirements for an application, those requirements are in addition to the general requirements for an Application for Final Orders (Form 1).

4.05 Application by Attorney-General for transfer of case

If the Attorney-General of the Commonwealth, or of a State or Territory, applies for the transfer of a case under Division 4.2.2 (Cross-vesting) or Chapter 25 (*Corporations Act 2001*), the Attorney-General does not, by that application, automatically become a party to the case.

Division 4.2.2 Cross-vesting

4.06 Cross-vesting matters

(1) If a party filing an Application for Final Orders (Form 1) or a Response to Application for Final Orders (Form 1A) relies on a cross-vesting law, the party must specify, in the Form, the particular State or Territory law on which the party relies.

(2) A party relying on a cross-vesting law after a case has started must file an Application in a Case (Form 2) seeking procedural orders in relation to the matter.

(3) A party to whom subrule (1) or (2) applies must also file an affidavit stating:

(a) that the claim is based on the State or Territory law and the reasons why the Family Court should deal with the claim;

(b) the rules of evidence and procedure (other than those of the relevant Family Court) on which the party relies; and

(c) if the case involves a special federal matter — the grounds for claiming the matter involves a special federal matter.

4.07 Transfer of case

A party to a case to which rule 4.06 applies may apply to have the case transferred to another court by filing a Form 2.

Note An application under this rule must be listed for hearing by a Judge.

Division 4.2.3 Medical procedure

4.08 Application for medical procedure

(1) Any of the following persons may make a Medical Procedure Application in relation to a child:

(a) a parent of the child;

(b) a person who has a parenting order in relation to the child;

(c) the child;

(d) the child representative;

(e) any other person concerned with the care, welfare and development of the child.

(2) If a person mentioned in paragraph (1) (a) or (b) is not an applicant, the person must be named as a respondent to the application.

Note 1 Section 65C of the Act sets out who may apply for a parenting order.

Note 2 Chapter 2 provides for a Form 1 to be used to make an Application for Final Orders and the documents to be filed with that application.

4.09 Evidence supporting application

(1) If a Medical Procedure Application is filed, evidence must be given to satisfy the court that the proposed medical procedure is in the best interests of the child.

(2) The evidence must include evidence from a medical, psychological or other relevant expert witness that establishes the following:

(a) the exact nature and purpose of the proposed medical procedure;

(b) the particular condition of the child for which the procedure is required;

(c) the likely long-term physical, social and psychological effects of the procedure on the child:

(i) if the procedure is carried out; and

(ii) if the procedure is not carried out;

(d) the nature and degree of any risk to the child from the procedure;

(e) if alternative and less invasive treatment is available — the reason the procedure is recommended instead of the alternative treatments;

(f) that the procedure is necessary for the welfare of the child;

(g) if the child is capable of making an informed decision about the procedure — whether the child agrees to the procedure;

(h) if the child is incapable of making an informed decision about the procedure — that the child:

(i) is currently incapable of making an informed decision; and

(ii) is unlikely to develop sufficiently to be able to make an informed decision within the time in which the procedure should be carried out, or within the foreseeable future;

(i) whether the child's parents or carer agree to the procedure.

(3) The evidence may be given:

(a) in the form of an affidavit; or

(b) with the court's permission, orally.

4.10 Service of application

The persons on whom a Medical Procedure Application and any document filed with it must be served include the prescribed child welfare authority.

Note For service of an Application for Final Orders (Form 1), see rules 7.03 and 7.04.

4.11 Fixing of hearing date

(1) On the filing of a Medical Procedure Application, the Registry Manager must fix a date for a hearing before a Judge of a Family Court.

(2) The date fixed must be:

(a) as soon as possible after the date of filing; and

(b) if practicable, within 14 days after the date of filing.

Note Under subrule 9.08 (1), a Response to an Application (Form 1A) must be filed at least 7 days before the date fixed for the hearing of the application.

4.12 Procedure on first court date

On the first court date for a Medical Procedure Application, the court must:

(a) make procedural orders for the conduct of the case and adjourn the case to a fixed date of hearing; or

(b) hear and determine the application.

Division 4.2.4 Maintenance

4.13 Information to respondent

An applicant in a Maintenance Application must serve with the application a brochure called *Maintenance Applications*, approved by the Principal Registrar.

Note 1 Chapter 2 provides for a Form 1 to be used to make an Application for Final Orders and the documents to be filed with that application.

Note 2 The brochure required to be served under this rule is in addition to the brochures required to be served under subrule 2.03 (3).

4.14 Procedure on first court date

(1) On the first court date for a Maintenance Application, the Registrar must, if practicable, conduct a case assessment conference.

(2) If the case is not resolved at the case assessment conference, the Registrar may make orders for the conduct of the case, including the exchange of affidavits between the parties and the listing of the case for hearing.

4.15 Evidence to be provided

Each party to a Maintenance Application must bring the following documents to the court on the first court date and the hearing date:

(a) a copy of the party's taxation return for the most recent financial year;

(b) the party's taxation assessment for the most recent financial year;

(c) the party's bank records for the period of 12 months ending on the date when the Maintenance Application was filed;

(d) if the party receives wage or salary payments — the party's 3 most recent pay slips;

(e) if the party owns or controls a business — the business activity statements for the business for the previous 12 months;

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

Note 1 Documents that may need to be produced under paragraph (f) include documents setting out the details mentioned in rule 13.04.

Note 2 For variation of a maintenance order, see subsection 66S (3) and section 83 of the Act.

4.16 Application for step-parent to maintain

(1) This rule applies to an application for a child maintenance order (including an order under section 66M of the Act) if:

(a) the parties are the parent and step-parent of the child or children to whom the application relates; and

(b) the respondent consents to, or does not oppose, the order sought.

(2) The applicant must:

(a) file with the application and Financial Statement (Form 13), an affidavit setting out the facts relied on in support of the application, including:

(i) whether the parties are separated;

(ii) the financial circumstances of the parties;

(iii) the reason for seeking the order; and

(iv) the obligations, or potential obligations, of each party for child support for any other child; and

(b) serve a copy of the documents filed on:

(i) any person mentioned in paragraph (a) or (b) of the definition of ***each person to be served*** in subrule 7.04 (4) who is to be served;

(ii) each other person who is a parent or eligible carer of the child in relation to whom the application is made; and

(iii) any other person likely to be affected by the child maintenance order sought.

Example

The parent of a child that the step-parent has a duty to maintain and the Child Support Agency may be persons affected by the order sought.

4.17 Maintenance orders

If a court orders a person to pay maintenance or other money for the benefit of a child or a party to a marriage, the court must specify the following information in the order:

(a) the name of the person or authority to whom the money must be paid;

(b) if the maintenance is to be paid as a lump sum — the time by which it must be paid;

(c) if the maintenance is to be paid by instalments:

(i) the date by which the first instalment must be paid; and

(ii) the intervals at which the instalments must be paid;

(d) if necessary, the method by which the money must be paid or disbursed;

(e) the period for which the maintenance is payable.

Note An order made in accordance with this rule is subject to the Registration Act. For example, if the payee of the order registers it with the Child Support Agency for collection, the amount will be payable over a period specified by the Child Support Registrar.

Division 4.2.5 Child support

4.18 Application of Division 4.2.5

This Division applies to:

(a) an application under the Assessment Act, other than an application for leave to appeal from an order of a court exercising jurisdiction under the Assessment Act; and

(b) an appeal under the Assessment Act or Registration Act, other than an appeal from a court.

Note 1 Chapter 2 provides for a Form 1 to be used to make an Application for Final Orders and the documents to be filed with that Form.

Note 2 Chapter 22 sets out the procedure for appealing from a decision of a court.

Note 3 The Assessment Act provides that the parties to a Child Support Application or Appeal should be the liable parent and the eligible carer. The Child Support Registrar does not need to be joined as a party but, after being served with a copy of the application, may intervene in the case.

4.19 Documents to be filed with applications and appeals

(1) A person must file with a Child Support Application or Appeal mentioned in an item of Table 4.1, the documents mentioned in the item.

Table 4.1 Documents to file with applications and appeals

Item	Application or appeal	Documents to be filed with application or appeal
1	All applications and appeals to which this Division applies	an affidavit setting out the facts relied on in support of the application or appeal, attaching: (a) a schedule setting out: (i) the section of the Assessment Act or Registration Act under which the application or appeal is made; (ii) the grounds of the application or appeal; and (iii) the issues to be determined in the case; (b) a copy of any decision, notice of decision or assessment made by the Child Support Registrar relevant to the application or appeal; and (c) a copy of any document lodged by a party with the Child Support Registrar, or received by a party from the Child Support Registrar, relevant to the decision or assessment
2	Application under section 98, 116, 123 or 129 of the Assessment Act	(a) the documents mentioned in this column in item 1; (b) a completed Form 13; (c) a copy of any relevant order or agreement

Note The documents required to be filed with an application under this rule are in addition to the documents required to be filed under rule 2.02.

(2) For paragraph (c) of item 1 of Table 4.1, if the applicant does not have a copy of a document lodged by the other party with the Child Support Agency, the applicant may file the summary of the document prepared by the Child Support Agency.

4.20 Application under Assessment Act s 95 (6)

A person who makes an application under subsection 95 (6) of the Assessment Act in relation to a child support agreement must register a copy of the agreement with the court.

4.21 Time limits for appeals and applications under Assessment Act

A person must file an application or appeal under subsection 106 (1), 106A (1), 107 (1) or 110 (1) or section 132 of the Assessment Act within 28 days after receiving:

(a) for an application under subsection 106 (1), 106A (1) or 107 (1) of the Assessment Act — a notice given under section 34 or subsection 98ZC (2) of that Act; and

(b) for an appeal under subsection 110 (1) or section 132 of the Assessment Act — a notice given under subsection 98ZC (2) of that Act.

Note 1 A person may apply for an extension of time to file after the time limit mentioned in this rule by filing a Form 2 and an affidavit (see rules 1.14 and 5.01).

Note 2 For information about when a document is taken to be served, see rule 7.17.

4.22 Time limit for appeal under Registration Act s 88

A person served with a notice under subsection 87 (2) of the Registration Act must file an appeal under section 88 of that Act within 28 days after the day when the notice was served.

4.23 Service of application or appeal

(1) The persons to be served with a Child Support Application or Appeal include:

(a) a parent or eligible carer of the child in relation to whom the application or appeal is made; and

(b) the Child Support Registrar.

(2) An applicant in a Child Support Application made under section 98, 116, 123 or 129 of the Assessment Act must serve on the respondent, with the application, a brochure called *Child Support Applications* approved by the Principal Registrar.

Note 1 The brochure required to be served under subrule (2) is in addition to the brochures required to be served under subrule 2.03 (3).

Note 2 For service of an application, see rules 7.03 and 7.04.

4.24 Service by Child Support Registrar

For rules 4.21 and 4.22, if the Child Support Registrar serves a document on a person under the Assessment Act or Registration Act, the document is taken to have been served on the person on the day specified in rule 7.17.

4.25 Procedure on first court date

(1) On the first court date of a Child Support Application or Appeal, the Registrar must conduct:

(a) for an application made under section 98, 116, 123 or 129 of the Assessment Act — a case assessment conference; and

(b) for any other application or appeal — a procedural hearing.

Note The Registry Manager fixes the first court date (see rule 4.03).

(2) If the application or appeal is not resolved on the first court date, the Registrar may make orders for the future conduct of the case, including the exchange of affidavits between the parties and the listing of the case for hearing.

4.26 Evidence to be provided

(1) This rule applies to a Child Support Application under section 98, 116, 123 or 129 of the Assessment Act.

(2) On the first court date and the hearing date of the application, each party must bring to the court the documents mentioned in rule 4.15 that are relevant to an issue in the case.

Division 4.2.6 Nullity and validity of marriage and divorce

4.27 Application of Division 4.2.6

This Division applies to the following applications:

(a) an application for an order that a marriage is a nullity;

(b) an application for a declaration as to the validity of a marriage;

(c) an application for a declaration as to the validity of a divorce or annulment of marriage.

Note Chapter 2 provides for a Form 1 to be used to make an Application for Final Orders and the documents to be filed with that application.

4.28 Fixing hearing date

(1) On the filing of an application under this Division, the Registry Manager must fix a date for the hearing of the application.

(2) The date fixed must be:

(a) if the respondent is in Australia — at least 42 days after the application is filed; or

(b) if the respondent is outside Australia — at least 56 days after the application is filed.

4.29 Affidavit to be filed with application

An applicant must file with the application an affidavit stating:

(a) the facts relied on;

(b) for an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage — details of the type of marriage ceremony performed; and

(c) for an application for a declaration as to the validity of a divorce or annulment of marriage:

(i) the date of the divorce or order of nullity;

(ii) the name of the court that granted the divorce or order of nullity; and

(iii) the grounds on which the divorce or order of nullity was ordered.

Division 4.2.7 Applications relating to passports

4.30 Application relating to passport

A party seeking an order relating to a passport must file an Application for Final Orders (Form 1) and an affidavit stating the facts relied on.

Note An application under this rule includes an application under section 67ZD, 68B or 114 of the Act. See also section 7A of the *Passports Act 1938*.

4.31 Fixing of hearing date

On the filing of a Form 1, the Registry Manager must:

(a) if the only order sought relates to a passport — fix a date for hearing by a Judge of the Family Court that is as soon as practicable after the date when the application was filed; or

(b) in any other case — fix a first court date for the application in accordance with rule 4.03.

Chapter 5 Applications in a case

Summary of Chapter 5

Chapter 5 sets out the procedure for making an Application for an Order other than an Application for Final Orders or Divorce. You may also need to refer to other Chapters in these Rules when making an Application, in particular, Chapters 2, 4, 7 and 24.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 5.1 General

5.01 Applications in a case

A party must file an Application in a Case (Form 2) if:

(a) the party seeks an interim order;

(b) the party seeks a procedural order, ancillary order, interlocutory order or other incidental order relating to an application or order;

(c) these Rules provide for an application to be made in Form 2; or

(d) no Form is prescribed under these Rules for the party's application.

Note 1 A Form 2 is used to make:

(a) an Application for review of a Judicial Registrar's or Registrar's order (see Chapter 18);

(b) an Application to enforce an obligation to pay money or to enforce a parenting order (see Chapter 20 and rule 21.01); and

(c) an Application for procedural orders in relation to an appeal (see Chapter 22).

Note 2 A party may ask for a procedural order orally (see paragraph (h) of item 3 of Table 11.1 in rule 11.01).

5.02 Evidence in applications in a case

(1) A party who files a Form 2 must, at the same time, file an affidavit stating the facts relied on in support of the orders sought.

(2) Subrule (1) does not apply to a Form 2 in which a review of the order of a Judicial Registrar or Registrar is sought.

Note Some rules require that the affidavit filed with the Form address specific factors (see, for example, rule 5.12).

5.03 Procedure before filing

(1) Before filing a Form 2, a party must make a reasonable and genuine attempt to settle the issue to which the application relates.

(2) An applicant does not have to comply with subrule (1) if:

(a) compliance will cause undue delay or expense;

(b) the applicant would be unduly prejudiced;

(c) the application is urgent; or

(d) there are circumstances in which an application is necessary (for example, if there is an allegation of child abuse, family violence or fraud).

Note The court may take into account a party's failure to comply with subrule (1) when considering any order for costs (see subsections 117 (2) and (2A) of the Act).

5.04 Restrictions in relation to applications

(1) A party may apply for an interim order in relation to a cause of action only if:

(a) the party has made an application for final orders in that cause of action; and

(b) final orders have not been made on that application.

Note 1 A Form 2 may be filed at the same time as a Form 1.

Note 2 A reference to ***application*** includes a reference to ***cross-application*** (see the dictionary).

(2) A party may apply for an ancillary or procedural order only if the order sought relates to a current case.

(3) Subrule (2) does not apply if the party is seeking:

(a) permission to start a case or extend a time limit to start a case;

(b) to start a case for a child or a person with a disability under rule 6.10; or

(c) an order for costs.

(4) This rule does not apply to restrict the filing of a Form 2 by:

(a) a child representative; or

(b) the Director of Public Prosecutions when making an application under section 79C, 79D, 90N or 90P of the Act to stay or lift a stay of a property settlement or spousal maintenance case.

5.05 Fixing a date for hearing or case assessment conference

(1) On the filing of a Form 2, the Registry Manager must fix a date for a hearing, procedural hearing or case assessment conference on a date that is as near as practicable to 28 days after the application was filed.

(2) An application in which the only orders sought are procedural orders must be listed for a hearing on the first court date.

(3) If a Form 2 is filed:

(a) at the same time as the related Application for Final Orders (Form 1) — both applications must be listed for the same first court date (see rule 4.03); or

(b) after another related Application, the Form 2 may be listed for the same first court date as the related application if a Registrar considers it to be reasonable in the circumstances.

(4) The Registry Manager may fix an earlier date for the hearing of a Form 2 if a Registrar is satisfied that:

(a) the reason for the urgency is significant and credible; and

(b) there is a harm that will be avoided, remedied or mitigated by hearing the application earlier.

Note The court may order costs against a party who has unreasonably had a matter listed for urgent hearing.

(5) If a date for a hearing is fixed, the application must, as far as practicable, be heard by the court on that day.

5.06 Attendance by electronic communication

(1) A party may seek permission from the court to use electronic communication to do any of the following at a hearing:

(a) attend;

(b) adduce evidence of a party or witness;

(c) make a submission to the court.

(2) A request under subrule (1) must:

(a) be in writing;

(b) be made at least 7 days before the date fixed for the hearing;

(c) address each matter mentioned in subrule 16.08 (3); and

(d) set out:

(i) details of the notice in relation to the request that has been given to any other party;

(ii) whether any other party objects to the request; and

(iii) the expense to be incurred by using electronic communication.

(3) A request may be considered in chambers, on the documents.

(4) The court may take the following matters into account when considering a request:

(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) any concerns about security, including family violence and intimidation;

(e) whether any other party objects to the request.

(5) In granting a request, the court may:

(a) order a party to pay the expenses of the attendance by electronic communication; or

(b) apportion the expenses between the parties.

(6) If a request is granted, the party who made the request must immediately give written notice to the other parties.

5.07 Attendance of party or witness in prison

(1) A party who is in prison must attend at a hearing by electronic communication.

(2) A party who intends to adduce evidence from a witness in prison must:

(a) arrange for the witness to attend and give evidence at the hearing by electronic communication; and

(b) advise the court and the other parties about that arrangement at least 2 days before the date fixed for the hearing.

(3) A party may seek permission from the court for a party or witness who is in prison to attend the hearing in person.

Example

A party may apply for an order under subrule (3) if a prison or court has no facilities for the hearing to proceed by electronic communication.

(4) A request under subrule (3) must:

(a) be in writing;

(b) be made at least 7 days before the date fixed for the hearing;

(c) set out the reasons why permission should be granted; and

(d) inform the court whether the other party objects to the request.

(5) Subrules 5.06 (3) and (6) apply to a request under this rule.

Part 5.2 Hearing — interim and procedural applications

5.08 Interim orders — matters to be considered

When considering whether to make an interim order, the court may take into account:

(a) in a parenting case — the best interests of the child (see section 68F of the Act);

(b) whether there are reasonable grounds for making the order;

(c) whether, for reasons of hardship, family violence, prejudice to the parties or the children, the order is necessary;

(d) the main purpose of these Rules (see rule 1.04); and

(e) whether the parties would benefit from participating in one of the primary dispute resolution methods.

5.09 Admissibility of affidavit

(1) The following affidavits may be relied on as evidence in chief at the hearing of an interim or procedural application:

(a) subject to rule 9.07, one affidavit by each party;

(b) one affidavit by each witness, provided the evidence is relevant and cannot be given by a party.

(2) If an application is for a parenting order, the affidavit mentioned in paragraph (1) (a) must be in the form approved by the Principal Registrar.

Note 1 Subrule 15.06 (1) provides that an affidavit may be relied on at a hearing or trial only if it was filed and served in accordance with these Rules or an order.

Note 2 Section 75 of the *Evidence Act 1995* provides that 'In an interlocutory proceeding, the hearsay rule does not apply to evidence if the party who adduces it also adduces evidence of its source'. However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

Note 3 Rule 15.21 provides that a party must not, without the court's permission, request the issue of more than 3 subpoenas for the hearing of an Application in a Case (Form 2). However, a child representative may request the issue of more than 3 subpoenas (see subrule 15.21 (2)).

5.10 Hearing time of interim or procedural application

(1) The hearing of an interim or procedural application must be no longer than 2 hours.

(2) Cross-examination will be allowed at a hearing only in exceptional circumstances.

5.11 Party's failure to attend

(1) If a party does not attend when a hearing starts, the other party may seek the orders sought in that party's application, including (if necessary) adducing evidence to establish an entitlement to the orders sought against the party not attending.

(2) If no party attends the hearing, the court may dismiss the Application in a Case (Form 2) and the Response to an Application in a Case (Form 2A), if any.

Note A reference to ***application*** includes a reference to ***cross-application*** (see the dictionary).

Part 5.3 Application without notice

5.12 Application without notice

An applicant seeking that an interim order, enforcement order or procedural order be made without notice to the respondent must:

(a) satisfy the court about why:

(i) shortening the time for service of the application and the fixing of an early date for hearing after service would not be more appropriate; and

(ii) an order should be made without notice to the other party; and

(b) in an affidavit or orally, with the court's permission, make full and frank disclosure of all the facts relevant to the application, including:

(i) whether there is a history or allegation of child abuse or family violence between the parties;

(ii) whether there has been a previous case between the parties and, if so, the nature of the case;

(iii) the particulars of any orders currently in force between the parties;

(iv) whether there has been a breach of a previous order by either party to the case;

(v) whether the respondent or the respondent's lawyer has been told of the intention to make the application;

(vi) whether there is likely to be any hardship, danger or prejudice to the respondent, a child or a third party if the order is made;

(vii) the capacity of the applicant to give an undertaking as to damages;

(viii) the nature of the damage or harm that may result if the order is not made;

(ix) why the order must be urgently made; and

(x) the last known address or address for service of the other party.

Note The applicant must file any existing family violence order when filing the application (see rule 2.05).

5.13 Necessary procedural orders

If the court makes an order on application without notice, the order must be expressed to operate:

(a) until a time specified in the order; or

(b) if the hearing of the application is adjourned — until the date of the hearing.

Part 5.4 Hearing on papers in absence of parties

5.14 Request for hearing in absence of parties

A party applying for an interim order, enforcement order or procedural order may, in the application, ask the court to determine the application in the absence of the parties.

Note This Part also applies to an Application in an Appeal (see rule 22.45).

5.15 Objection to hearing in absence of parties

If a respondent objects to an application being determined by the court in the absence of the parties:

(a) the respondent must notify the court and the other party, in writing, of the objection at least 7 days before the date fixed for the hearing; and

(b) the parties must attend on the first court date for the application.

Note A notice under this rule must comply with rule 24.01.

5.16 Court decision to not proceed in absence of parties

Despite parties consenting to a hearing being held in their absence, the court may postpone or adjourn the application and direct the Registry Manager:

(a) to fix a new date for hearing the application; and

(b) to notify the parties that they are required to attend court for the hearing.

5.17 Procedure in hearing in absence of parties

(1) If the application is to be determined in the absence of the parties, each party must file, at least 2 days before the date fixed for hearing the application:

(a) a list of documents to be read by the court; and

(b) a supporting submission.

Rule 5.17

(2) A supporting submission must:

(a) state the reasons why the orders sought by that party should be made;

(b) refer to any material in a document filed with the application by the page number of the document, and should not repeat the text of that material;

(c) not be more than 5 pages;

(d) have all paragraphs consecutively numbered;

(e) be signed by the party or the lawyer who prepared the submission; and

(f) include the signatory's name, telephone number, facsimile number (if any) and e-mail address (if any) at which the signatory can be contacted.

Part 5.5 Postponement of interim hearing

5.18 Administrative postponement of interim hearing

(1) If the parties agree that the hearing of an interim application should not proceed on the date fixed for the hearing, the parties may request the Registry Manager to postpone it.

(2) A request must:

(a) be in writing;

(b) specify why it is appropriate to postpone the hearing;

(c) specify the date to which the hearing is sought to be postponed;

(d) be signed by each party or the party's lawyer; and

(e) be received by the Registry Manager no later than 12 noon on the day before the date fixed for the hearing.

(3) If a request is made, the Registry Manager must tell the parties:

(a) that the event has been postponed; and

(b) the date to which it has been postponed.

Chapter 6 Parties

Summary of Chapter 6

Chapter 6 sets out who are the necessary parties to a case and how a person becomes, or ceases to be, a party or a case guardian.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 6.1 General

6.01 Parties

A party includes the following:

(a) an applicant in a case;

(b) an appellant in an appeal;

(c) a respondent to an application or appeal;

(d) an intervener in a case.

Note A child representative is not a party to a case but must be treated as a party (see rule 8.02).

6.02 Necessary parties

(1) A person whose rights may be directly affected by an issue in a case, and whose participation as a party is necessary for the court to determine all issues in dispute in the case, must be included as a party to the case.

(2) If an application is made for a parenting order, the following must be parties to the case:

(a) the parents of the child;

(b) any other person in whose favour a parenting order has been made in relation to the child;

(c) any other person with whom the child lives and who is responsible for the care, welfare and development of the child;

(d) if a State child order is currently in place in relation to the child — the prescribed child welfare authority.

(3) If a person mentioned in subrule (2) is not an applicant in a case involving the child, that person must be joined as a respondent to the application.

Note The court may dispense with compliance with a rule (see rule 1.12).

Part 6.2 Adding and removing a party

6.03 Adding a party

(1) A party may include another person as a respondent by naming the person in the application.

(2) A party may add another party after a case has started by:

(a) amending the application or response, as the case may be, to add the name of the person; and

(b) by serving on the new party a copy of the application or response, and any other relevant document filed in the case.

Note 1 For amendment of an application, see Division 11.2.2.

Note 2 If a Form is amended after the first court date, the Registry Manager will set a date for a further procedural hearing (see subrule 11.10 (3)).

Note 3 A reference to ***application*** includes a reference to ***cross-application*** (see the dictionary).

6.04 Removing a party

A party may apply to be removed as a party to a case.

Note Rule 5.01 sets out the procedure for making an Application in a Case (Form 2).

6.05 Intervention by a person seeking to become a party

If a person who is not a party to a case (other than a person to whom rule 6.06 applies) seeks to intervene in the case to become a party, the person must file:

(a) a Form 2; and

(b) an affidavit:

(i) setting out the facts relied on to support the application, including a statement of the person's relationship (if any) to the parties; and

(ii) attaching a schedule setting out any orders that the person seeks if the court grants permission to intervene.

Note Part IX of the Act deals with intervention in a case. Once a person has, by order or under rule 6.06, intervened in a case, the person becomes a party with all the rights and obligations of a party (see subsections 91 (2) and 91A (4), paragraph 91B (2) (b) and subsections 92 (3) and 92A (3) of the Act).

6.06 Intervention by a person entitled to intervene

(1) This rule applies if the Attorney-General, or any other person who is entitled under the Act to do so without the court's permission, intervenes in a case.

(2) The person intervening must file:

(a) a Notice of Intervention by Person Entitled to Intervene (Form 5); and

(b) an affidavit:

(i) stating the facts relied on in support of the intervention; and

(ii) attaching a schedule setting out the orders sought.

Note For example, section 91 of the Act and section 78A of the *Judiciary Act 1903* authorise the Attorney-General to intervene in a case, section 92A of the Act authorises the people mentioned in subsection 92A (2) to intervene in a case without the court's permission, and section 145 of the Assessment Act authorises the Child Support Registrar to intervene in a case.

(3) On the filing of a Form 5, the Registry Manager must fix a date for a procedural hearing.

6.07 Notice of constitutional matter

(1) If a party is, or becomes, aware that a case involves a matter that:

(a) is within the meaning of section 78B of the *Judiciary Act 1903*, arises under the Constitution or involves its interpretation; and

(b) is a genuine issue in the case;

the party must give written notice of the matter to the Attorneys-General of the Commonwealth, and each State and Territory, and to each other party to the case.

(2) The notice must state:

(a) the nature of the matter;

(b) the issues in the case;

(c) the constitutional issue to be raised; and

(d) the facts relied on to show that section 78B of the *Judiciary Act 1903* applies.

Note Section 78B of the *Judiciary Act 1903* provides that once a court becomes aware that a case involves a matter referred to in that section, it is the court's duty not to proceed to determine the case unless and until it is satisfied that notice of the case has been given to the Attorneys-General of the Commonwealth and of the States and Territories.

Part 6.3 Case guardian

6.08 Conducting a case by case guardian

(1) A child or a person with a disability may start, continue, respond to, or seek to intervene in, a case only by a case guardian.

(2) Subrule (1) does not apply if the court is satisfied that a child understands the nature and possible consequences of the case and is capable of conducting the case.

Note 1 For service on a person with a disability, see rule 7.09.

Note 2 If a case is started by a child or person with a disability without a case guardian, the court may appoint a case guardian to continue the case.

6.09 Who may be a case guardian

A person may be a case guardian if the person:

(a) is an adult;

(b) has no interest in the case that is adverse to the interest of the person needing the case guardian;

(c) can fairly and competently conduct the case for the person needing the case guardian; and

(d) has consented to act as the case guardian.

6.10 Appointment, replacement or removal of case guardian

A person may apply for the appointment, replacement or removal of a person as the case guardian of a party.

Note 1 Chapter 5 sets out the procedure for making an Application in a Case (Form 2).

Note 2 An application in relation to a case guardian may be made by a party or a person seeking to be made the case guardian or by a person authorised to be a case guardian.

6.11 Attorney-General may appoint case guardian

(1) The Attorney-General may appoint, in writing, a person to be an authorised person for this rule, either generally or for a particular person.

(2) An authorised person is taken to be appointed as the case guardian of a person with a disability if the authorised person files:

(a) a consent to act in relation to the person;

(b) a copy of the notice of appointment of the person as an authorised person; and

(c) a Notice of Address for Service (Form 8).

Note A consent to act must comply with subrule 24.01 (1).

6.12 Notice of becoming case guardian

A person appointed as a case guardian of a party must give written notice of the appointment to each other party and any child representative in the case.

Note The case guardian may also need to file a Notice of Address for Service (Form 8) (see rules 8.05 and 8.06).

6.13 Conduct of case by case guardian

(1) A person appointed as the case guardian of a party:

(a) is bound by these Rules;

(b) must do anything required by these Rules to be done by the party;

(c) may, for the benefit of the party, do anything permitted by these Rules to be done by the party; and

(d) if seeking a consent order (other than an order relating to practice or procedure), must file an affidavit setting out the facts relied on to satisfy the court that the order is in the party's best interests.

(2) The duty of disclosure applies to a case guardian for a child and a person with a disability.

Note 1 The court may order a case guardian to pay costs.

Note 2 Rule 13.01 sets out the elements of the duty of disclosure.

6.14 Costs of case guardian

The court may order the costs of a case guardian to be paid:

(a) by a party; or

(b) from the income or property of the person for whom the case guardian is appointed.

Part 6.4 Progress of case after death or bankruptcy

6.15 Death of party

(1) This rule applies to a property case or an application for the enforcement of a financial obligation.

(2) If a party dies, the other party or the legal personal representative must ask the court for procedural orders in relation to the future conduct of the case.

(3) The court may order that a person be substituted for the deceased person as a party.

Note 1 The court may make other procedural orders, including that a person has permission to intervene in the case (see rules 1.12 and 6.05).

Note 2 For the effect of the death of a party in certain cases, see subsections 79 (1A), 79 (8), 79A (1C) and 105 (3) of the Act.

6.16 Bankruptcy of party

(1) If a party to a property case or an application for the enforcement of a financial obligation is, or becomes bankrupt, the party must:

(a) notify the other party, in writing, of the bankruptcy; and

(b) serve a copy of the application, response, and any relevant documents, on the trustee of the bankrupt party's estate.

(2) A party may apply for procedural orders for the future conduct of the case.

Note Under section 35A of the *Bankruptcy Act 1966*, if a case is pending in the Federal Court, the Federal Court may, on the application of a party to the case or on its own initiative, transfer the case to the Family Court.

Chapter 7 Service

Summary of Chapter 7

Chapter 7 sets out the rules for serving documents and proving service.

When a court determines a case, the judicial officer must be satisfied that all the documents filed that are to be relied on in the case have been served or otherwise brought to the attention of the other parties to the case.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 7.1 General

7.01 Service

Service of a document may be carried out by special service (see Part 7.2) or ordinary service (see Part 7.3) unless otherwise required by a legislative provision.

Note Certain applications must have other documents served with them. For example, an Application for Final Orders (Form 1), when served, must be accompanied by the brochure mentioned in subrule 2.03 (3); when a subpoena is served, the witness must be paid conduct money.

7.02 Court's discretion regarding service

(1) A court may find that a document has been served or that it has been served on a particular date, even though these Rules or an order have not been complied with in relation to service.

Note Rule 7.17 also sets out when a document is taken to have been served.

(2) The court may order a party, or a person applying to intervene in a case under rule 6.05, to serve a document or give written notice of a matter or case to a person specified in the order.

7.03 Service of documents

A person must serve a document in the manner set out in Table 7.1.

Table 7.1 Service of documents

Item	Document	Form of service
1	Application for Final Orders (Form 1)	Special service
2	Application in a Case (Form 2) filed at the same time as a Form 1	Special service
3	Form 2 fixing an enforcement hearing	Special service
4	Application for Divorce (Form 3)	Special service
5	Subpoena (Form 14)	Special service by hand
6	Application — Contravention (Form 18)	Special service by hand
7	Application — Contempt (Form 19)	Special service by hand
8	Document mentioned in item 3, 4, 5 or 6 of Table 2.2 in rule 2.02 that must be filed with a Form mentioned in this Table	The form of service set out in this Table for that Form
9	Brochure required by these Rules to be served with a Form mentioned in this Table (see rules 2.03 and 4.13 and subrules 4.23 (2), 15.28 (1) and 20.11 (3))	The form of service set out in this Table for that Form
10	Order made on application without notice (see rule 5.12)	Special service
11	Offer to settle (see subrule 10.01 (1)) and Withdrawal of offer to settle (see rule 10.03)	Special service

Item	Document	Form of service
12	Document that is not required to be served by special service. For example: • a Form 2 (other than a Form 2 mentioned in item 2 or 3) and any document filed with it • a document filed after a case is started • a notice required to be given under these Rules	Ordinary service

7.04 Service of filed documents

(1) A document that is filed must be served on each person to be served:

(a) as soon as possible after the date of filing and within 12 months after that date; or

(b) if a provision elsewhere in these Rules specifies a time for service — within the specified time.

Note If a document is not served within the time required, service after that time is ineffective unless the court otherwise orders (see rules 1.12, 7.02 and 11.02).

(2) Despite subrule (1) and rule 7.03, the following documents do not have to be served on any other party:

(a) a joint application;

(b) an application without notice;

(c) a copy of a marriage or birth certificate, order or decree filed under rule 2.02;

(d) an Affidavit of Service (Form 7);

(e) a document signed by all parties;

(f) an affidavit seeking the issue, without notice, of an Enforcement Warrant under rule 20.16 or a Third Party Debt Notice under rule 20.32.

Note A draft consent order signed by all parties does not have to be served on the other parties to the application. However, if an order is sought affecting a superannuation interest, it must be served on the trustee of the superannuation fund in which that interest is held (see rule 10.16).

(3) If a document or notice is served on or given to a party under these Rules, a copy of the document or notice must also be served on or given to any child representative.

(4) For subrule (1):

each person to be served, for a case, includes:

(a) all parties to the case;

(b) any child representative; and

(c) any other person specifically required by a legislative provision or order to be served in the case.

Part 7.2 Special service

Note Special service of a document may be performed by delivering the document:

- to the person to be served by hand (see rule 7.06) or by post or electronic communication (see rule 7.07); or
- if a lawyer representing the person undertakes, in writing, to accept service of the document, by delivering it to the person's lawyer (see rule 7.08).

7.05 Special service

A document that must be served by special service must be personally received by the person served.

Note For proof of service, see Part 7.4.

7.06 Special service by hand

(1) A document to be served by hand must be given to the person to be served (the ***receiver***).

(2) If the receiver refuses to take the document, service occurs if the person serving the document:

(a) places it down in the presence of the receiver; and

(b) tells the receiver what it is.

(3) A party must not serve another party by hand but may be present when service by hand occurs.

7.07 Special service by post or electronic communication

(1) A document may be served on a person by sending a copy of it to the person's last known address:

(a) if in Australia — by post; or

(b) if outside Australia — by airmail, unless a legislative provision provides otherwise.

(2) A document may be served on a person by sending it to the person by electronic communication.

(3) A person serving a document by post or electronic communication must include with the document:

(a) an Acknowledgement of Service (Form 6) for the person served to sign; and

(b) for service by post within Australia — a stamped self-addressed envelope.

Note Subrule 24.07 (3) does not apply to a Form 6. If an applicant wants to prove service by electronic communication (other than by facsimile), the applicant must still produce a signed Form 6. This means that the person served will need to print out and sign a hard copy of the Form 6 and arrange for the signed copy to be returned to the applicant in a form in which the applicant is able to identify the signature on the signed copy as that of the person served (see note to rule 7.14).

7.08 Special service through a lawyer

A document is taken to be served by special service on a person if:

(a) a lawyer representing the person agrees, in writing, to accept service of the document for the person; and

(b) the document is served on the lawyer in accordance with rule 7.06 or 7.07.

7.09 Special service on person with a disability

(1) A document that is required to be served by special service on a person with a disability, must be served:

(a) on the person's case guardian;

(b) on the person's guardian appointed under a State or Territory law; 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), the person in charge of a hospital, nursing home or other care facility is taken to have the care of a person who is a patient in the hospital, nursing home or facility.

Note If a person with a disability wants to start, continue or respond to, or seek to intervene in, a case, the person may do so through a case guardian (see rule 6.08).

7.10 Special service on a prisoner

(1) A document that is required to be served by special service on a prisoner must be served by special service on the person in charge of the prison.

(2) At the time of service of an Application, Subpoena (Form 14) or Notice of Appeal (Form 20) on a prisoner, the prisoner must be informed, in writing, about the requirement to attend by electronic communication under rule 5.07, subrule 12.12 (4) or rule 22.40 (whichever is applicable).

7.11 Special service on a corporation

A document that is required to be served by special service on a corporation must be served in accordance with section 109X of the *Corporations Act 2001*.

Note A subpoena must be served on the proper officer or other person entitled to accept service of a subpoena for a corporation (see subrule 15.17 (3)).

Part 7.3 Ordinary service

7.12 Ordinary service

If special service of a document is not required, the document may be served on a person:

(a) by any method of special service;

(b) if the person has given an address for service:

(i) by delivering it to the address in a sealed envelope addressed to the person;

(ii) by sending it to the address by post in a sealed envelope addressed to the person; or

(iii) by sending it to the facsimile or e-mail address stated in the address for service by electronic communication addressed to the person (see rule 7.16);

(c) if the person has not given an address for service:

(i) by handing it to the person;

(ii) by delivering it to the person's last known address or place of business in a sealed envelope addressed to the person; or

(iii) by sending it by post in a sealed envelope addressed to the person at the person's last known address or place of business;

(d) if a lawyer representing the person agrees, in writing, to accept service of the document, by sending it to the lawyer; or

(e) if the person's address for service includes the number of a lawyer's document exchange box, by delivering it in a sealed envelope, addressed to the lawyer at that box address, to:

(i) that box; or

(ii) a box provided at another branch of the document exchange for delivery of documents to the box address.

Part 7.4 Proof of service

7.13 Proof of service

Service of an application is proved:

(a) by filing an Affidavit of Service (Form 7);

(b) by the respondent filing a Notice of Address for Service (Form 8) or a Response; or

(c) if service was carried out by giving the document to a lawyer — by filing an Acknowledgement of Service (Form 6) that has been signed by the lawyer.

7.14 Proof of special service

(1) This rule applies if a document is required to be served by special service and the applicant seeks to prove service by way of affidavit.

(2) If service was by post or electronic communication, service is proved by:

(a) attaching to a Form 7, a Form 6 signed by the respondent; and

(b) evidence identifying the signature on the Form 6 as the respondent's signature.

Note If a person serving a document seeks to prove service under this rule, an Acknowledgment of Service (Form 6) must be signed by the person served with the document. However, if the Form 7 with the Form 6 is filed by electronic communication, subrule 24.07 (4) applies to the original affidavit and the signed acknowledgment.

7.15 Evidence of identity

(1) A statement by a person of the person's identity, office or position is evidence of the identity, the holding of the office or position.

Rule 7.15

(2) Another person may give evidence about the identity, office or position of a person served.

Example

A person may give evidence about the identity of another person by identifying:

(a) the signature of the person served on the Acknowledgment of Service (Form 6);

(b) the person served from a photograph; or

(c) the person when accompanying the process server.

Part 7.5 Other matters about service

7.16 Service by electronic communication

(1) Service of a document may be carried out by facsimile only if the total number of pages (including the cover page) to be transmitted:

(a) is not more than 25; or

(b) if the person on whom the document is to be served has first agreed to receiving more than 25 pages — is not more than the number of pages agreed to be transmitted.

(2) A document served by electronic communication must include a cover page stating:

(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) that the transmission is for service of court documents;

(f) the name and telephone number of a person to contact if there is a problem with transmission; and

(g) a return electronic address.

7.17 When service is taken to have been carried out

A document is taken to have been served:

(a) on the date when service is acknowledged;

(b) if served by post to an address in Australia — on the third day after it was posted;

(c) if served by airmail to an address outside Australia — on the fourteenth day after it was posted;

(d) if served by electronic communication — on the day when it was sent;

(e) if served by delivery to a document exchange — on the next working day after the day when it was delivered; or

(f) on a date fixed by the court.

7.18 Service with conditions or dispensing with service

(1) A party who is unable to serve a document may apply, without notice, for an order:

(a) to serve the document in another way; or

(b) to dispense with service of the document, with or without conditions.

(2) The factors the court may have regard to when considering an application under subrule (1) include:

(a) the proposed method of bringing the document to the attention of the person to be served;

(b) whether all reasonable steps have been taken to serve the document or bring it to the notice of the person to be served;

(c) whether the person to be served could reasonably become aware of the existence and nature of the document by advertisement or another form of communication that is reasonably available;

(d) the likely cost of service; and

(e) the nature of the case.

(3) If the court orders that service of a document is:

(a) dispensed with unconditionally; or

(b) dispensed with on a condition that is complied with;

the document is taken to have been served.

Note An application under this rule is made by filing a Form 2 and an affidavit (see rules 5.01 and 5.02).

Part 7.6 Service in non-convention country

7.19 Service in non-convention country

(1) A person seeking to serve a document on a person in a non-convention country must:

(a) request the Registry Manager, in writing, to arrange service of the document under this Part; and

(b) lodge 2 copies of each document to be served, translated, if necessary, into an official language of that country.

(2) If the Registry Manager receives a request under subrule (1), the Registry Manager must:

(a) seal the documents to be served; and

(b) send to the Secretary of the Attorney-General's Department:

(i) the sealed documents; and

(ii) a written request that the documents be sent to the government of the non-convention country for service.

Note Regulation 12 of the Regulations deals with service of documents in convention countries.

7.20 Proof of service in non-convention country

(1) This rule applies if:

(a) a document is sent to the Secretary of the Attorney-General's Department for service on a person in a non-convention country; and

(b) an official certificate or declaration by the government or court of the country, stating that the document has been personally served, or served in another way under the law of the country, is sent to the court.

(2) The certificate or declaration is proof of service of the document and, when filed, is a record of the service and has effect as if it were an affidavit of service.

Note If service cannot be carried out under this rule, the applicant may apply for an order dispensing with service (see rule 7.18).

Chapter 8 Right to be heard and address for service

Summary of Chapter 8

Chapter 8 sets out rules about:

- the people who may be heard by the court and the requirements for their address for service;
- the appointment of a child representative; and
- lawyer's conflict of interest and ceasing to act.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 8.1 Right to be heard and representation

8.01 Right to be heard and representation

(1) A person (other than a corporation or authority) who is entitled to be heard in a case may conduct the case on the person's own behalf or be represented by a lawyer.

(2) A corporation or authority that is entitled to be heard in a case may be represented by a lawyer, or an officer of the corporation or authority.

Note 1 For the right of a lawyer to appear in a court exercising jurisdiction under the Act, see Part VIIIA of the *Judiciary Act 1903*.

Note 2 A party may apply to appear at a hearing or trial by electronic communication (see rules 5.06 and 16.08).

Note 3 A party is not entitled to be represented by a person who is not a lawyer unless the court otherwise orders. The court will give permission for representation by a person other than a lawyer only in special circumstances.

8.02 Child representative

(1) A party may apply for the appointment or removal of a child representative by filing an Application in a Case (Form 2).

Note A party may ask for a procedural order orally (see paragraph (h) of item 3 of Table 11.1 in rule 11.01).

(2) If the court makes an order for the appointment of a child representative:

(a) it may request that the representation be arranged by a legal aid body that is a relevant authority within the meaning of subsection 116C (5) of the Act; and

(b) it may order that the costs of the child representative be met by a party.

Note Section 68L of the Act provides for the separate representation of children.

(3) A person appointed as a child representative:

(a) must be aware of and have the guidelines for child representatives published by the court;

(b) must file a Notice of Address for Service (Form 8);

(c) must comply with these Rules and do anything required to be done by a party; and

(d) may do anything permitted by these Rules to be done by a party.

(4) If a child representative is appointed, the parties must conduct the case as if the child representative were a party.

(5) The appointment of a child representative ceases:

(a) when the Application for Final Orders (Form 1) is determined or withdrawn; or

(b) if there is an appeal — when the appeal is determined or withdrawn.

Note 1 If a document or notice is served on or given to a party under these Rules, the document or notice must also be served on or given to any child representative (see subrule 7.04 (4)).

Note 2 This rule applies unless the court orders otherwise (see rule 1.12).

8.03 Lawyer — conflicting interests

A lawyer acting for a party in a case must not act in the case for any other party who has a conflicting interest.

Note This rule does not purport to set out all the situations in which a lawyer may not act for a party.

8.04 Lawyer — ceasing to act

(1) A lawyer may cease to act for a party:

(a) by serving on the party a Notice of Ceasing to Act (Form 9) and, no sooner than 7 days after serving the notice, filing a copy of the notice; or

(b) with the court's permission.

(2) If:

(a) a party's address for service is the party's lawyer's address; and

(b) the lawyer ceases to act for the party;

the party's last known residential address is the address for service until the party files a Form 8.

Part 8.2 Address for service

8.05 Address for service

(1) A party must give an address for service if:

(a) the party files or responds to an application; or

(b) the party seeks to be heard by the court.

(2) A party must give only one address for service for each application filed.

(3) A party may give an address for service:

(a) in the first document filed by the party; or

(b) by filing a Notice of Address for Service (Form 8).

(4) An address for service:

(a) must be an address in Australia where documents may be left or received by post; and

(b) may include a facsimile number and an address for service by electronic communication.

(5) A party may include an address for service by electronic communication only if documents sent to or from that address can be read by the computer software of each party and the court.

Note If an address for service includes a facsimile number or an address for service by electronic communication, documents served on the person by that method are taken by the court to be served on the person on the day when the documents were transmitted to that address (see paragraph 7.17 (d)).

8.06 Change of address for service

If a party's address for service changes during a case, the party must file a Form 8 within 7 days after the change.

Note 1 A new address for service will be needed if a party:

(a) acts in person and changes address;

(b) initially acts in person and later appoints a lawyer;

(c) initially appoints a lawyer and later acts in person; or

(d) changes lawyers during the case.

Note 2 Until a Form 8 is filed and served, the previous address remains on the court record as the address for service and all documents will be served at that address unless subrule 8.04 (2) applies.

Chapter 9 Response and reply

Summary of Chapter 9

Chapter 9 sets out the procedure for:

- responding to a Form 1 (known as a Response (Form 1A));
- responding to a Form 2 (known as a Response (Form 2A)); and
- replying to a Form 1A seeking orders in a cause of action other than one mentioned in the application (known as a Reply (Form 1B)).

Note A Form 3A is used to respond to a Form 3 (see rule 3.04).

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 9.1 Response to Form 1

9.01 Response to Form 1 (Form 1A)

(1) A respondent to an Application for Final Orders (Form 1) who seeks to oppose the orders sought in the application or seeks different orders must file a Response to an Application for Final Orders (Form 1A).

(2) A Form 1A must state:

(a) the facts in the application with which the respondent disagrees;

(b) what the respondent believes the facts to be; and

(c) the orders the respondent wants the court to make.

(3) In addition to the matters in subrule (2), a Form 1A may:

(a) consent to an order sought by the applicant;

(b) ask that the application be dismissed; or

(c) ask for orders in another cause of action.

(4) A Form 1A must not include a request for any of the following orders:

(a) a divorce order;

(b) an order that a marriage be annulled;

(c) a declaration as to validity of a marriage, divorce or annulment;

(d) an order under Division 4.2.3 authorising a medical procedure.

Note If:

(a) a Form 1A includes a request for orders in another cause of action; and

(b) documents would be required to be filed under rule 2.02 to support that cause of action;

the respondent must file with the Form 1A the document required under rule 2.02 to be filed for that cause of action.

9.02 Filing an affidavit with Form 1A

A respondent must not file an affidavit with a Form 1A unless required to do so by item 5 or 6 of Table 2.2 in rule 2.02.

Note A Form 1A may be filed to respond to a special application mentioned in Part 4.2, including an Application relying on a Cross-vesting Law, a Medical Procedure Application, a Child Support Application or Appeal, an Application for an Order that a Marriage is a Nullity, an Application for a Declaration as to the Validity of a Marriage, Divorce or Annulment of Marriage, and an application relating to a passport.

9.03 Response objecting to jurisdiction

(1) A respondent seeking to object to the jurisdiction of the court:

(a) must file a Form 1A; and

(b) is not taken to have submitted to the jurisdiction of the court by seeking other orders in the Form 1A.

(2) The objection to the jurisdiction must be determined before any other orders sought in the Form 1A.

Part 9.2 Reply to Form 1A

9.04 Reply to Form 1A (Form 1B)

An applicant must file a Reply (Form 1B) if:

(a) in the Response to an Application for Final Orders (Form 1A), the respondent seeks orders in a cause of action other than a cause of action mentioned in the application; and

(b) the applicant seeks:

(i) to oppose the orders sought in the Form 1A; or

(ii) different orders in the cause of action mentioned in the Form 1A.

Part 9.3 Response to Form 2

9.05 Response to Form 2 (Form 2A)

A respondent to an Application in a Case (Form 2) who seeks to oppose the Application or seeks different orders must file a Response to an Application in a Case (Form 2A).

9.06 Affidavit to be filed with Form 2A

(1) A respondent who files a Form 2A must, at the same time, file an affidavit stating the facts relied on in support of the Form 2A.

(2) Subrule (1) does not apply to a Form 2A filed in response to an application to review an order of a Judicial Registrar or Registrar.

9.07 Affidavit in reply to Form 2A

If:

(a) a respondent files a Form 2A seeking orders in a cause of action other than a cause of action mentioned in the Form 2; and

(b) the applicant opposes the orders sought in the Form 2A;

the applicant may file an affidavit setting out the facts relied on.

Part 9.4 Filing and service

9.08 Time for filing and service of response or reply

(1) A party may respond to an application by filing and serving a Response (Form 1A) (and any affidavit filed with it) at least 7 days before the date fixed for the case assessment conference, procedural hearing or hearing to which the response relates.

(2) If a party wishes to file a Reply (Form 1B), the party must file and serve the reply as soon as possible after the response is received.

(3) All affidavits in a case started by an Application in a Case (Form 2) or a Response to an Application in a Case (Form 2A) must be filed at least 2 days before the date fixed for the hearing.

Note The affidavits to which subrule (3) applies include those affidavits that must be filed with the application or response and any affidavit by the applicant responding to the orders sought in a new cause of action in a Form 2A.

Chapter 10 Ending a case without a trial

Summary of Chapter 10

Chapter 10 sets out how a party may resolve a case without a trial and the procedure to end a case, if agreement is reached.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 10.1 Offers to settle

Note Each party is encouraged at all times to make an offer to settle to the other party in an effort to resolve a case. This Part sets out the rules that apply to offers to settle in the Family Court. Part 10.1 contains two Divisions.

Division 10.1.1 applies to all offers to settle and provides for:

(a) how an offer is made;

(b) the form an offer is to take;

(c) how an offer is accepted or withdrawn;

(d) the timing of acceptance or withdrawal; and

(e) what to do when an offer is accepted and a case is resolved.

Division 10.1.2 applies only to offers to settle in property cases in which an offer to settle must be made after a conciliation conference.

Division 10.1.1 General

10.01 How to make an offer

(1) A party may make an offer to another party to settle all or part of a case by serving on the other party an Offer to Settle (Form 60) at any time before the court makes an order disposing of the case.

Note See also paragraph 117 (2A) (f) and section 117C of the Act in relation to offers to settle.

(2) A party may make an offer to settle all or part of an appeal by serving on the other party an Offer to Settle (Form 60) at any time before the court makes an order disposing of the appeal.

(3) An offer to settle:

(a) if made under subrule (1), lapses when the court makes an order disposing of the application; or

(b) if made under subrule (2), lapses when the court makes an order disposing of the appeal.

(4) A party may make more than one offer to settle.

Note A later offer to settle has the effect of withdrawing an earlier offer (see subrule 10.03 (3)).

10.02 Open and 'without prejudice' offer

(1) An offer to settle is made without prejudice (a ***without prejudice offer***) unless the offer states that it is an open offer.

(2) A party must not mention the fact that a without prejudice offer has been made, or the terms of the offer:

(a) in any document filed; or

(b) at a hearing or trial.

(3) If a party makes an open offer, any party may disclose the facts and terms of the offer to other parties and the court.

(4) Subrule (2) does not apply to:

(a) prevent the filing of an Offer to Settle (Form 60), a notice withdrawing an offer or an acceptance of an offer;

(b) the inclusion of a reference to a without prejudice offer in a document:

(i) mentioned in paragraph (a); or

(ii) filed with an application relating to an offer or an application for costs.

Note Subrule (2) does not apply to an application to extend the time in which to make an offer under Division 10.1.2.

10.03 How to withdraw an offer

(1) A party may withdraw an offer to settle by serving a written notice on the other party that the offer is withdrawn.

(2) A party may withdraw an offer to settle at any time before:

(a) the offer is accepted; or

(b) the court makes an order disposing of the application or appeal to which the offer relates.

(3) A second or later offer by a party has the effect of withdrawing an earlier offer.

10.04 How to accept an offer

(1) A party may accept an offer to settle by notice, in writing.

(2) A party may accept an offer to settle at any time before:

(a) the offer is withdrawn; or

(b) the court makes an order disposing of the application or appeal.

(3) If an offer to settle is accepted, the parties must lodge a draft consent order.

Note 1 The draft consent order should set out the orders agreed to by the parties and must be signed by both parties. Once lodged, it will be considered by the court under rule 10.17. The parties may agree to the dismissal of all applications.

Note 2 Paragraph 6.13 (1) (d) requires that, if a party seeks a consent order and a case guardian has been appointed for the party, the case guardian must file an affidavit stating why the consent order is in the best interests of the party, and any other matter the court may require.

10.05 Counter-offer

A party may accept an offer to settle even though the party has made a counter-offer to settle.

Division 10.1.2 Offer to settle — property cases

10.06 Compulsory offer to settle

(1) This rule applies to a property case.

(2) Each party must make a genuine offer to settle to all other parties within:

(a) 28 days after the conciliation conference; or

(b) such further time as ordered by the court.

(3) The offer to settle must state that it is made under this Division.

Example

The offer to settle must include a statement along the following lines:

'This offer to settle is made under Division 10.1.2 of the *Family Law Rules 2004*.'.

Note 1 For rules about making, withdrawing and accepting an offer, see Division 10.1.1.

Note 2 An offer to settle is a factor that may be taken into account when the court exercises its discretion in relation to costs (see paragraph 117 (2A) (f) of the Act).

Note 3 Rule 11.02 sets out the consequences of failing to comply with these Rules.

10.07 Withdrawal of offer

A party who withdraws an offer to settle made under this Division must, at the same time, make another genuine offer to settle.

Part 10.2 Discontinuing a case

10.10 Definition

In this Part:

case includes:

(a) part of a case;

(b) an order sought in an application; and

(c) an application for a consent order when there is no current case (see Part 10.4).

10.11 Discontinuing a case

(1) A party may discontinue a case by filing a Notice of Discontinuance (Form 10).

(2) A party must apply to the court for permission to discontinue a case if:

(a) the case relates to property of the parties, or a party, and one of the parties dies before the case is determined; or

(b) in an Application for Divorce — there are less than 7 days before the date of the hearing.

Note Under subsection 79 (8) of the Act, a party may continue with an application for property even if one of the parties has died.

(3) Discontinuance of a case by a party does not discontinue any other party's case.

Note If one or more joint applicants, but not all, discontinue a case, any discontinuing applicant becomes a respondent.

(4) If a party discontinues a case, another party may apply for costs within 28 days after the Form 10 is filed.

(5) If:

(a) a party is required to pay the costs of another party because of the discontinuance of a case; and

(b) the party required to pay the costs starts another case on the same, or substantially the same, grounds before paying the costs;

the other party may apply for the case to be stayed until the costs are paid.

Part 10.3 Summary orders and separate decisions

Note An application under this Part is made by filing a Form 2 and an affidavit (see rules 5.01 and 5.02).

10.12 Application for summary orders

A party may apply for summary orders after a response has been filed if the party claims, in relation to the application or response, that:

(a) the court has no jurisdiction;

(b) the other party has no legal capacity to apply for the orders sought;

(c) it is frivolous, vexatious or an abuse of process; or

(d) there is no reasonable likelihood of success.

10.13 Application for separate decision

After the final resolution event, a party may apply for a decision on any issue, if the decision may:

(a) dispose of all or part of the case;

(b) make a trial unnecessary;

(c) make a trial substantially shorter; or

(d) save substantial costs.

10.14 What the court may order under this Part

On an application under this Part, the court may:

(a) dismiss any part of the case;

(b) decide an issue;

(c) make a final order on any issue;

(d) order a hearing about an issue or fact; or

(e) with the consent of the parties, order arbitration about the case or part of the case.

Note This list does not limit the powers of the court. The court may make orders on an application, or on its own initiative (see rule 1.10).

Part 10.4 Consent orders

10.15 How to apply for a consent order

(1) A party may apply for a consent order:

(a) in a current case:

(i) orally, during a hearing or a trial;

(ii) by lodging a draft consent order; or

(iii) by tendering a draft consent order to a judicial officer during a court event; or

(b) if there is no current case — by filing an Application for Consent Orders (Form 11), and attaching a draft consent order.

Note 1 See rule 24.08 for copies required.

Note 2 A case guardian for a party seeking a consent order (other than an order relating to practice or procedure), must file an affidavit setting out the facts relied on to satisfy the court that the consent order is in the party's best interests (see paragraph 6.13 (1) (d)).

(2) A draft consent order must:

(a) set out clearly the orders that the parties ask the court to make;

(b) state that it is made by consent; and

(c) be signed by each of the parties.

(3) Paragraph (1) (b) does not apply if a party applies for a consent order:

(a) for step-parent maintenance under rule 4.16;

(b) relying on a cross-vesting law;

(c) approving a medical procedure;

(d) for a parenting order when section 65G of the Act applies; or

(e) for an order under the Assessment Act or Registration Act.

(4) A party applying for a consent order in a case mentioned in subrule (3) must file an Application for Final Orders (Form 1) as soon as the consent is received.

Note If a child representative has been appointed in a case, the court will not make a consent order unless the child representative has also signed the draft consent order (see paragraph 8.02 (3) (c)).

10.16 Order for superannuation interest

(1) This rule applies if:

(a) a party intends to apply for a consent order in relation to a superannuation interest (the ***order sought***); and

(b) the order sought will impose an obligation on the trustee of the eligible superannuation plan in which the interest is held (the ***trustee***) to take particular action in relation to the interest (for example, under a splitting order).

(2) At least 28 days before filing the Form 11 or lodging the draft consent order, the party must serve the following documents on the trustee:

(a) a copy of the draft consent order that the parties intend to apply for, signed by the parties or the parties' lawyers;

(b) a written notice stating that:

(i) the parties intend to apply for the order sought if no objection to the order is received from the trustee within the time mentioned in subrule (3); and

(ii) if the trustee objects to the order sought, the trustee must give the parties written notice of the objection within the time mentioned in subrule (3).

(3) If the trustee does not object to the order sought within 28 days after receiving a notice under subrule (2), the party may file the application.

(4) Despite subrule (3), if, after service of the draft consent order on the trustee, the trustee consents, in writing, to the order being made, the parties may file the Form 11 or lodge the draft consent order.

10.17 Dealing with a consent order

If a party applies for a consent order, the court may:

(a) make an order in accordance with the orders sought;

(b) require a party to file additional information;

(c) dismiss the application

Note A party applying for a consent order must satisfy the court as to why the consent order should be made.

10.18 Lapsing of respondent's consent

A respondent's consent to an application that an order be made in the same terms as the draft consent order attached to a Form 11 lapses if:

(a) 90 days have passed since the date of the first affidavit in the Form 11; and

(b) the Form 11 has not been filed.

Chapter 11 Case management

Summary of Chapter 11

Chapter 11 sets out the ways the court may manage a case to achieve the main purpose of these Rules (see rule 1.04), including:

- making procedural orders;
- limiting the issues in dispute;
- permitting amendment of applications or documents to clarify the issues in dispute;
- using simplified procedures for small claims; and
- changing the venue of a case.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 11.1 Court's powers of case management

11.01 General powers

The court may exercise any of the powers mentioned in Table 11.1 to manage a case to achieve the main purpose of these Rules (see rule 1.04).

Table 11.1 Court's powers

Item	Subject	Power
1	Attendance	(a) order a party to attend: (i) an information session; (ii) a procedural hearing; (iii) counselling or mediation;

Item	Subject	Power
		(iv) a conference or other court event; or (v) a specialist family court program or post-separation parenting program; (b) require a party, a party's lawyer or a child representative to attend court
2	Case development	(a) consolidate cases; (b) order that part of a case be dealt with separately; (c) decide the sequence in which issues are to be tried; (d) specify the facts that are in dispute, state the issues and make procedural orders about how and when the case will be heard or tried; (e) refer a particular case or a part of a case for special management by a judicial officer; (f) with the consent of the parties, order that a case or part of a case be submitted to arbitration
3	Conduct of case	(a) hold a court event and receive submissions and evidence by electronic communication; (b) postpone, bring forward or cancel a court event; (c) adjourn a court event; (d) stay a case or part of a case; (e) make orders in the absence of a party; (f) deal with an application without an oral hearing; (g) deal with an application with written or oral evidence or, if the issue is a question of law, without evidence; (h) allow an application to be made orally; (i) determine an application without requiring notice to be given; (j) order that a case lose listing priority; (k) make a self-executing order

Note 1 The powers mentioned in this rule are in addition to any powers given to the court under a legislative provision or that it may otherwise have.

Note 2 Rule 1.10 provides that a court may make an order on its own initiative and sets out what other things the court may do when making an order or giving a party permission to do something.

11.02 Failure to comply with a legislative provision or order

(1) If a step is taken after the time specified for taking the step by these Rules, the Regulations or a procedural order, the step is of no effect.

Note A defaulter may apply to the court for relief from this rule (see rule 11.03).

(2) If a party does not comply with these Rules, the Regulations or a procedural order, the court may:

(a) dismiss all or part of the case;

(b) set aside a step taken or an order made;

(c) determine the case as if it were undefended;

(d) make any of the orders mentioned in rule 11.01;

(e) order costs;

(f) prohibit the party from taking a further step in the case until the occurrence of a specified event; or

(g) make any other order the court considers necessary, having regard to the main purpose of these Rules (see rule 1.04).

Note This list does not limit the powers of the court. It is an expectation that a non-defaulting party will minimise any loss.

11.03 Relief from orders

(1) A party may apply for relief from:

(a) the effect of subrule 11.02 (1); or

(b) an order under subrule 11.02 (2).

(2) In determining an application under subrule (1), the court may consider:

(a) whether there is a good reason for the non-compliance;

(b) the extent to which the party has complied with orders, legislative provisions and the pre-action procedures;

(c) whether the non-compliance was caused by the party or the party's lawyer;

(d) the impact of the non-compliance on the management of the case;

(e) the effect of non-compliance on each other party;

(f) costs;

(g) whether the applicant should be stayed from taking any further steps in the case until the costs are paid; and

(h) if the application is for relief from the effect of subrule 11.02 (1) — whether all parties consent to the step being taken after the specified time.

Note 1 This list does not limit the powers of the court. See also subrule 1.12 (3).

Note 2 A party may make an application under this rule by filing a Form 2 or, with the court's permission, orally at a court event.

11.04 Frivolous or vexatious case

(1) If the court is satisfied that an applicant has frequently started a case or appeal that is frivolous, vexatious or an abuse of process, it may:

(a) dismiss the applicant's application; and

(b) order that the applicant may not, without the court's permission, file or continue an application.

(2) The court may make an order under subrule (1):

(a) on its own initiative; or

(b) on the application of:

(i) a party;

(ii) for the Family Court of Australia — a Registry Manager; or

(iii) for the Family Court of a State — the Executive Officer.

(3) The court must not make an order under subrule (1) unless it has given the applicant a reasonable opportunity to be heard.

Note Under section 118 of the Act, the court may dismiss a case that is frivolous or vexatious and, on application, may prevent the person who started the case from starting a further case. Chapter 5 sets out the procedure for making an application under this rule.

11.05 Application for permission to start a case

(1) This rule applies if:

(a) the court has made an order under subsection 118 (1) of the Act or paragraph 11.04 (1) (b); and

(b) the person against whom the order was made applies for permission to start or continue a case.

(2) The application must be in Form 2 and must be made without notice to any other party.

Note An applicant must file an affidavit stating the facts relied on to establish the need for the orders sought (see rule 5.02).

(3) On the first court date for the application:

(a) the court may dismiss the application; or

(b) the court may:

(i) order the person to:

(A) serve the application and affidavit; and

(B) file and serve any further affidavits in support of the application; and

(ii) list the application for hearing.

(4) The court must not grant permission to start or continue a case unless it is satisfied that the case has a reasonable likelihood of success.

11.06 Dismissal for want of prosecution

(1) If a party has not taken a step in a case for one year, the court may:

(a) dismiss all or part of the case; or

(b) order an act to be done within a fixed time, in default of which the party's application will be dismissed.

(2) The court must not make an order under subrule (1) unless, at least 14 days before making the order, the court has given the parties written notice of the date and time when it will consider whether to make the order.

(3) If:

(a) an application is dismissed under subrule (1);

(b) a party is ordered to pay the costs of another party; and

(c) before the costs are paid, the party ordered to pay them starts another application on the same or substantially the same grounds;

the other party may apply for the case to be stayed until the costs are paid.

Note This rule applies unless the court orders otherwise (see rule 1.12).

Part 11.2 Limiting issues

Division 11.2.1 Admissions

Note To reduce cost and delay, parties are encouraged to make admissions in relation to facts and documents. The admission is for the purposes of the case only, in order to narrow the issues in dispute. A party should give the other party written notice of any admissions as early as practicable in the case. For example, if admissions are made before the disclosure process, disclosure may be able to be limited and the costs of the case reduced.

11.07 Request to admit

(1) A party may, by serving a Notice to Admit on another party, ask the other party to admit, for the purposes of the case only, that a fact is true or that a document is genuine.

(2) A Notice to Admit must include a note to the effect that, under subrule 11.08 (2), failure to serve a Notice Disputing a Fact or Document will result in the party being taken to have admitted that the fact is true or the document is genuine.

(3) If a Notice to Admit mentions a document, the party serving the Notice must attach a copy of the document to the notice, unless:

(a) the other party has a copy of the document; or

(b) it is not practicable to attach the copy to the Notice.

(4) If paragraph (3) (b) applies, the party must:

(a) in the Notice:

(i) identify the document; and

(ii) specify a convenient place and time at which the document may be inspected; and

(b) produce the document for inspection at the specified place and time.

11.08 Notice disputing fact or document

(1) If a party who is served with a Notice to Admit seeks to dispute a fact or document specified in the Notice, the party must serve on the party who served the Notice, within 14 days after it was served, a Notice Disputing the Fact or Document.

(2) If a party does not serve a notice in accordance with subrule (1), the party is taken to admit, for the purposes of the case only, that the fact is true or the document is genuine.

Note Section 191 of the *Evidence Act 1995* sets out requirements about agreed facts as evidence in a case. However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

(3) If:

(a) a party serves a Notice Disputing a Fact or Document; and

(b) the fact or the genuineness of the document is later proved in the case;

the party who served the Notice may be ordered to pay the costs of proof.

Note Sections 48 and 51 of the *Evidence Act 1995* set out requirements about proof of documents. However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

11.09 Withdrawing admission

(1) A party may withdraw an admission that a fact is true or a document is genuine only with the court's permission or the consent of all parties.

(2) When allowing a party to withdraw an admission, the court may order the party to pay any other party's costs thrown away.

(3) In subrule (1):

admission includes an admission in a document in the case or taken to be made under subrule 11.08 (2).

Note The court may, on application, order that a party not pay costs (see rule 1.12).

Division 11.2.2 Amendment

11.10 Amendment by a party or court order

(1) A party who has filed an application or response may amend the application or response:

(a) for a case started by an Application for Final Orders (Form 1):

(i) within 28 days after the final resolution event; or

(ii) at any later time, with the consent of the other parties or by order;

(b) for an Application in a Case (Form 2):

(i) at or before the first court date; or

(ii) at any later time, with the consent of the other parties or by order; and

(c) for all other applications — at any time, with the consent of the other parties or by order.

Note An amendment of an application may be necessary to ensure that the court determines the real issues between the parties or to avoid multiple cases.

(2) A party who:

(a) has filed a Form 1 or Form 1A; and

(b) seeks to add or substitute another cause of action or another person as a party to the case;

must amend the Form in accordance with this Division.

(3) If an amendment mentioned in subrule (2) is made after the first court date, the Registry Manager must set a date for a further procedural hearing.

Note A reference to ***application*** includes a reference to ***cross-application*** (see the dictionary).

11.11 Time limit for amendment

A party who has been given permission by the court to amend an application must do so within 7 days after the order is made.

Note The court may shorten or extend the time for compliance with a rule (see rule 1.14).

11.12 Amending a document

A party must amend a document by filing a copy of the document:

(a) with the amendment clearly marked; and

(b) if the document is amended by order — endorsed with the date when the order and amendment are made.

Example

An amendment may be made by:

(a) placing a line through the text to be changed; and

(b) underlining the new text or using a different type-face to indicate the new text.

Note Rule 13.06 sets out the requirements for amending a Financial Statement (Form 13).

11.13 Response to amended document

If an amended document that has been served on a party affects a document (the ***affected document***) previously filed by the party, the party may amend the affected document:

(a) in accordance with rule 11.12; and

(b) not more than 14 days after the amended document was served on the party.

11.14 Disallowance of amendment

The court may disallow an amendment of a document.

Example

The court may disallow an amendment if it is frivolous, vexatious or not in accordance with these Rules or an order.

Division 11.2.3 Small claims

11.15 Small claims

(1) Subrule (2) applies if the court determines that:

(a) a case is to be determined as a small claim; and

(b) it is not appropriate to transfer the case to the Federal Magistrates Court for hearing (see rule 11.19).

(2) At the trial:

(a) the parties must not call witnesses, other than the parties themselves, without the court's permission;

(b) evidence must be given orally; and

(c) each party must produce all relevant documents.

(3) The following rules do not apply to a case that is to be determined as a small claim:

(a) Chapter 12;

(b) Chapter 13, except Part 13.1;

(c) Parts 15.4 and 15.5;

(d) Part 16.2.

Note 1 The type of case that the court may decide to determine as a small claim includes:

(a) a dispute about an item of property, such as a car or furniture;

(b) a case in which there is minimal property or only personal property;

(c) some specific issues in a parenting case; and

(d) a dispute about the time or place of collection of a child for contact.

Note 2 A lawyer may recover 80% of the scale for costs in a small claim (see subrule 19.40 (2)).

Part 11.3 Venue

Division 11.3.1 Open court and chambers

11.16 Cases in chambers

(1) Subject to subrule (2), a court may exercise its jurisdiction in chambers.

(2) A trial must be heard in open court.

(3) A judicial officer who determines a case in chambers must:

(a) record:

(i) the file number;

(ii) the names of the parties;

(iii) the date of the determination; and

(iv) the orders made; and

(b) sign the record.

Note 1 An order made in chambers has the same effect as an order made in open court.

Note 2 The court may make orders about who may be present in court during a case (see subsection 97 (2) of the Act).

Division 11.3.2 Transferring a case

11.17 Application of Division 11.3.2

This Division does not apply to:

(a) a case raising, or relying on, a cross-vesting law in which a party objecting to the case being heard in the Family Court applies to have the case transferred to another court; or

(b) the transfer of a case under the *Corporations Act 2001*.

Note Division 4.2.2 deals with cross-vesting laws and Chapter 25 deals with cases under the *Corporations Act 2001*.

11.18 Transfer to another court or registry

A party may apply to have a case transferred to another registry or court exercising jurisdiction under the Act by filing an Application in a Case (Form 2) in the registry in which the case was started.

Note A party may make an oral application to have a case heard at a different place within the same region, that is, to have the hearing transferred from a circuit centre to the place where the filing registry is located.

11.19 Factors to be considered for transfer

In deciding whether to transfer a case to another registry or court, or to remove a case from another court under subsection 46 (3A) of the Act, the court may consider:

(a) the public interest;

(b) whether the case, if transferred or removed, is likely to be dealt with:

(i) at less cost to the parties;

(ii) at more convenience to the parties; or

(iii) earlier;

(c) the availability of a judicial officer specialising in the type of case to which the application relates;

(d) the availability of particular procedures appropriate to the case;

(e) the financial value of the claim;

(f) the complexity of the facts, legal issues, remedies and procedures involved;

(h) the adequacy of the available facilities, having regard to any disability of a party or witness; and

(i) the wishes of the parties.

Note Subsection 33B (6) of the Act provides that, in deciding whether a case should be transferred to the Federal Magistrates Court, the court must have regard to:

(a) any rules of the court applying to the transfer of cases;

(b) whether cases in respect of an associated matter are pending in the Federal Magistrates Court;

(c) whether the resources of the Federal Magistrates Court are sufficient to hear and determine the case; and

(d) the interests of the administration of justice.

Division 11.3.3 Transfer of court file

11.20 Transfer between courts

If an order is made to transfer a case from a court to another court, the Registry Manager, after receiving the file, must:

(a) fix a date for a procedural hearing; and

(b) give each party notice of the date fixed.

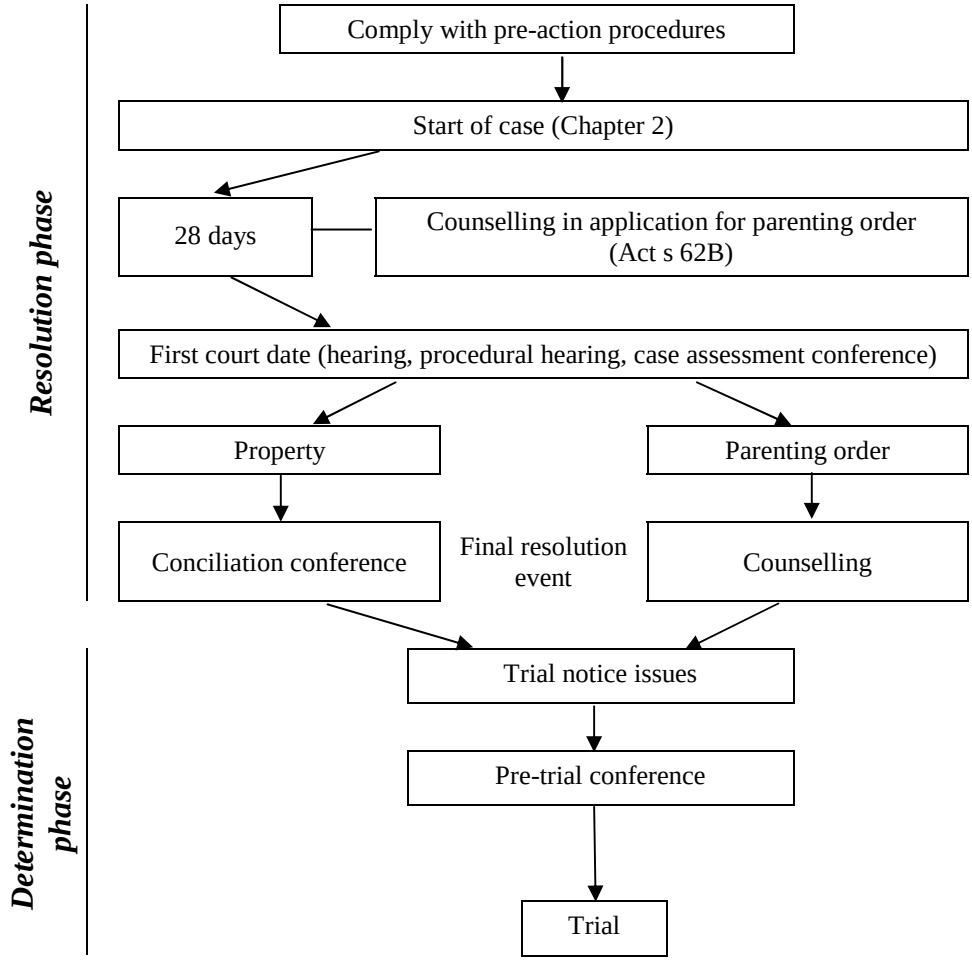
Chapter 12 Court events

Summary of Chapter 12

Chapter 12 sets out rules about the events that parties to an Application for Final Orders (Form 1) may be required to attend during the course of the case. These include a case assessment conference, a procedural hearing, counselling and mediation, a conciliation conference, a pre-trial conference and a trial.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.


Resolution phase
Comply with pre-action procedures
Start of case (Chapter 2)
28 days
Counselling in application for parenting order (Act s 62B)
First court date (hearing, procedural hearing, case assessment conference)
Property
Parenting order
Conciliation conference
Final resolution event
Counselling
Determination phase
Trial notice issues
Pre-trial conference
Trial

Part 12.1 Application of Chapter 12

12.01 Application of Chapter 12

This Chapter applies to all Applications for Final Orders (Form 1), except:

(a) a Medical Procedure Application;

(b) a Maintenance Application;

(c) a Child Support Application or Appeal;

(d) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment;

(e) an application in which the only order sought is about a passport; and

(f) a case to be determined as a small claim under rule 11.15.

Part 12.2 Court events — resolution phase

Note 1 When a Form 1 is filed, the Registry Manager will fix a date (the ***first court date***) for:

(a) a procedural hearing; or

(b) a case assessment conference and procedural hearing (see rule 4.03).

Note 2 A lawyer for a party has an obligation to advise the party about costs before the first court date and each subsequent court event (see rule 19.04).

12.02 Property case — exchange of documents before first court date

At least 2 days before the first court date in a property case, each party must, as far as practicable, exchange with each other party a copy of all of the following documents:

(a) a copy of the party's 3 most recent taxation returns and assessments;

(b) if relevant, documents about any superannuation interest of the party, including:

(i) if not already filed, the completed superannuation information form for the superannuation interest; and

(ii) if the party is a member of a self-managed superannuation fund — a copy of the trust deed and the 3 most recent financial statements for the fund;

(c) for a corporation in relation to which a party has a duty of disclosure under rule 13.04:

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns;

(ii) a copy of the corporation's most recent annual return that lists the directors and shareholders; and

(iii) if relevant, a copy of the corporation's constitution;

(d) for a trust in relation to which a party has a duty of disclosure under rule 13.04:

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the trust deed;

(e) for a partnership in relation to which a party has a duty of disclosure under rule 13.04:

(i) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(ii) a copy of the partnership agreement;

(f) for a person or entity mentioned in paragraph (a), (c), (d) or (e) — any business activity statements for the 12 months ending immediately before the first court date;

(g) unless the value is agreed — a market appraisal of the value of any item of property in which a party has an interest.

Note All parties have a general duty of disclosure (see Chapter 13). For examples of the type of property about which disclosure must be made, see rule 13.04.

12.03 Case assessment conference

(1) A case assessment conference must be held in the presence of a Registrar, mediator or both.

(2) The purpose of a case assessment conference is:

(a) to enable the person conducting the conference to assess and make any recommendations about the appropriate future conduct of the case; and

(b) to enable the parties to attempt to resolve the case, or any part of the case, by agreement.

(3) If the case is not settled by the end of the conference, the parties must immediately attend a procedural hearing.

Note 1 A party and a party's lawyer must attend a case assessment conference and a procedural hearing (see subrule 1.08 (3) and rule 12.11).

Note 2 A party to a parenting case must disclose a copy of an expert's report no later than 2 days before a case assessment conference (see paragraph 15.55 (1) (a)).

12.04 Procedural hearing

(1) At a procedural hearing, the court:

(a) may investigate the possibility of settlement of any issue in the case; and

(b) must:

(i) consider any recommendations made at the case assessment conference;

(ii) make orders in relation to the future conduct of the case;

(iii) list the case for the next appropriate court event; or

(iv) make a consent order.

Note 1 The next appropriate court event may be a conciliation conference in a property case, mediation in a parenting case, a procedural hearing, a hearing or a trial.

Note 2 The orders the court may make at a procedural hearing include:

(a) an order that a party produce a specific document for inspection and copying by the other party before the conciliation conference in a property case (see rule 12.05 and subrule 13.22 (4)); and

(b) an order permitting a party to obtain an expert's report.

(2) At a procedural hearing, each party must, as far as practicable, identify:

(a) any procedural orders sought;

(b) the agreed issues; and

(c) any relevant matters relating to the main purpose of these Rules (see rule 1.04).

12.05 Property case — exchange of documents before conciliation conference

(1) This rule applies to a party to a property case in which the parties are required to attend a conciliation conference.

(2) At least 7 days before the conciliation conference, each party must, as far as practicable, exchange with each other party:

(a) a conciliation conference document;

(b) if not already exchanged, a copy of all the documents mentioned in rule 12.02;

(c) all documents containing evidence about:

(i) the financial matters mentioned in the party's Financial Statement (Form 13) and the conciliation conference document completed by the party for the conference;

(ii) financial contributions made when the parties began cohabiting;

(iii) any inheritances, gifts or compensation payments received after the parties began cohabiting;

(iv) any purchase of property since the parties separated;

(v) any disposal of property within the meaning of paragraph 13.04 (1) (g);

(vi) any increase or reduction of liabilities since the parties separated; and

(vii) the value of any superannuation interest of a party, including the basis on which the value has been worked out and any documents used to work out the value; and

(d) any other documents ordered at the procedural hearing or otherwise, or agreed between the parties to be exchanged.

(3) At least 7 days before the conciliation conference, each party must lodge in the filing registry a copy of the conciliation conference document given to the other party under paragraph (2) (a).

(4) At the end of the conciliation conference, the Registrar must return to each party the conciliation conference document lodged by the party.

Note At a procedural hearing or conciliation conference, the court may make an order for specific documents to be produced or exchanged if it is satisfied that it is required for the purposes of resolving the case (see subrule 13.22 (4)).

12.06 Conduct of a conciliation conference

(1) A conciliation conference must be conducted by a judicial officer, who may be assisted by a mediator.

Note The parties to a property case will be ordered to attend a conciliation conference unless the conference is dispensed with by order under subsection 79 (9) of the Act.

(2) Each party at a conciliation conference must make a genuine effort to reach agreement on the matters in issue between them.

(3) If a case is not settled at the end of a conciliation conference, the judicial officer conducting the conference may make orders in relation to the conduct of the case.

Note 1 A party and a party's lawyer must attend a conciliation conference (see subrule 12.11 (1)).

Note 2 The procedural orders that may be made under subrule (3) include an order about disclosure of documents, obtaining an expert's report and an extension of time for making a compulsory offer to settle under rule 10.06.

Part 12.3 Court events — determination phase

Note If a case is not settled at the final resolution event, it enters the determination phase of the court's case management system and a trial notice will be issued.

12.07 Trial notice

If all issues in a case are not resolved at the end of the final resolution event, a trial notice may be issued by the court:

(a) after the conclusion of the final resolution event;

(b) when an order is made that the parties attend a pre-trial conference; or

(c) if no pre-trial conference is to be held — when the case is listed for trial.

12.08 Compliance certificate

Each party must file a written notice at least 14 days before the pre-trial conference:

(a) certifying:

(i) whether the case is ready to proceed to trial and, if not, why not;

(ii) that, to the best of the party's knowledge, all orders in the trial notice have been complied with;

(iii) if the date of actual compliance with an order differs from the date ordered, the order affected and the date of actual compliance; and

(iv) whether there is a reason why the pre-trial conference may not be able to proceed on the date fixed for the conference; and

(b) acknowledging that if, at the pre-trial conference:

(i) a party has not complied with a procedural order set out in the trial notice; or

(ii) the case is not otherwise ready to be set down for trial;

the case will not be set down for trial and orders may be made, including an order for costs against a defaulting party or the defaulting party's lawyer.

12.09 Non-compliance

(1) If, within the time specified in a trial notice:

(a) the orders in the trial notice are not complied with; or

(b) a compliance certificate is not filed;

the Registry Manager may cancel the pre-trial conference.

(2) If the pre-trial conference is cancelled, the Registry Manager must list the case for further procedural orders by a Judge.

Note See rules 11.01 and 11.02 for the court's powers relating to case management and default.

(3) If:

(a) a pre-trial conference is cancelled; and

(b) within 12 weeks after the date when the conference was cancelled:

(i) the orders in the trial notice are not complied with; and

(ii) a compliance certificate is not filed;

the court must dismiss the orders sought by the non-complying party unless there are exceptional circumstances.

12.10 Conduct of pre-trial conference

(1) Each party at a pre-trial conference must:

(a) satisfy the Registrar that the case is ready for trial; and

(b) provide information to the Registrar, including:

(i) a reasoned assessment of the likely length of a trial;

(ii) the expected length of opening and closing addresses; and

(iii) a list of witnesses and the time needed for examination and cross-examination of the witnesses.

(2) At the end of the pre-trial conference, the Registrar may:

(a) fix a trial date; and

(b) make any orders necessary to ensure the parties have the case ready for trial.

Part 12.4 Attendance at court events

12.11 Party's attendance

(1) A party and the party's lawyer (if any) must attend a procedural hearing, case assessment conference, conciliation conference or pre-trial conference.

(2) Subrule (1) does not apply if the parties are seeking a consent order that will finally dispose of the case.

Note 1 A request under rule 5.14 for an application to be determined in the absence of the parties does not apply to a court event mentioned in Chapter 12 because rule 5.14 applies only to interim, procedural or enforcement orders.

Note 2 If, at a court event mentioned in subrule (1), the parties intend to seek a consent order that will finally dispose of the case, a party or the party's lawyer may be excused from attending the event.

Note 3 A lawyer attending a court event for a party must be familiar with the case and authorised to deal with any issue in the case (see subrule 1.08 (3)).

12.12 Request to attend by electronic communication

(1) A party may request permission to attend a court event by electronic communication.

Note Subrule 5.06 (4) sets out the matters the court may take into account when considering a request under subrule (1).

(2) A request must:

(a) be in writing;

(b) be made at least 7 days before the date fixed for the procedural hearing or conference;

(c) set out the reasons why the court should grant permission;

(d) set out whether any child representative and any other party agrees to the party attending by electronic communication; and

(e) be served on each other party.

(3) If the court grants the request, the court may:

(a) order a party to pay the expense of the attendance; or

(b) apportion the expense between the parties.

(4) A party who is in prison must attend at a procedural hearing or conference by electronic communication.

12.13 Failure to attend court events

(1) If an applicant does not attend a case assessment conference or procedural hearing, the court may:

(a) dismiss the application; or

(b) make an order for the future conduct of the case.

(2) If a respondent does not attend a case assessment conference or procedural hearing, the court may:

(a) if respondent has not filed a Response (Form 1A) — make the order sought in the application;

(b) list the case for dismissal or hearing on an undefended basis; or

(c) make an order for the future conduct of the case.

(3) If a party does not attend a conciliation conference or pre-trial conference, the court may:

(a) list the case for dismissal or hearing on an undefended basis; and

(b) make an order for the future conduct of the case.

Note See rules 11.01 and 11.02 for the court's power to make orders for the conduct of a case.

Part 12.5 Adjournment and postponement of court events

12.14 Administrative postponement of conferences or procedural hearings

(1) If the parties agree that a case assessment conference, procedural hearing or conciliation conference should not proceed on the date fixed for the conference or hearing, the parties may request the Registry Manager to postpone it.

(2) A request must:

(a) be in writing;

(b) specify why it is appropriate to postpone the event;

(c) specify the date to which the event is sought to be postponed;

(d) be signed by each party or the party's lawyer; and

(e) be received by the Registry Manager:

(i) for a case assessment conference or procedural hearing — no later than 12 noon on the day before the date fixed for the conference or hearing; or

(ii) for a conciliation conference — at least 7 days before the date fixed for the conference.

(3) If a request is made, the Registry Manager must tell the parties:

(a) that the event has been postponed; and

(b) the date to which it has been postponed.

(4) The Registry Manager must not postpone a conference more than once or a procedural hearing more than twice.

(5) A court event mentioned in subrule (1) must not be postponed to a date that is more than 8 weeks after the date fixed for the event.

12.15 Adjournment of case conference

A case assessment conference will not ordinarily be adjourned.

Note If a case assessment conference is unable to proceed, a procedural hearing will be conducted (see subrule 12.03 (3)).

12.16 Adjournment or postponement of pre-trial conference

A pre-trial conference:

(a) must not be postponed; and

(b) may only be adjourned in exceptional circumstances.

Chapter 13 Disclosure

Summary of Chapter 13

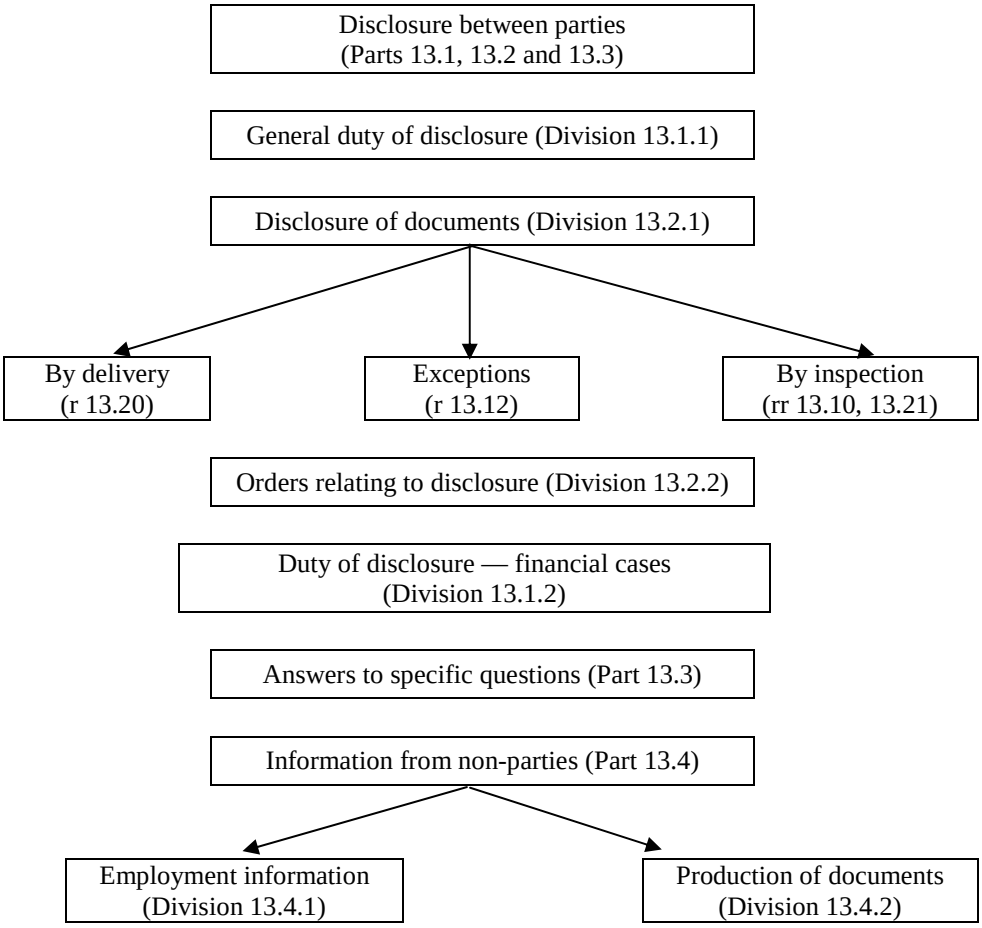
Chapter 13 sets out the rules about:

- a party's duty to make early, full and continuing disclosure of all information relevant to the case to each other party and the court; and
- the timing, extent and method of discharging the duty of disclosure and how the duty can be enforced.

The aim of disclosure is to help parties to focus on genuine issues, reduce cost and encourage settlement, of the case.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.


Disclosure between parties
(Parts 13.1, 13.2 and 13.3)
General duty of disclosure (Division 13.1.1)
Disclosure of documents (Division 13.2.1)
By delivery
(r 13.20)
Exceptions
(r 13.12)
By inspection
(rr 13.10, 13.21)
Orders relating to disclosure (Division 13.2.2)
Duty of disclosure — financial cases
(Division 13.1.2)
Answers to specific questions (Part 13.3)
Information from non-parties (Part 13.4)
Employment information
(Division 13.4.1)
Production of documents
(Division 13.4.2)

Part 13.1 Disclosure between parties

Division 13.1.1 General duty of disclosure

13.01 General duty of disclosure

(1) Each party to a case has a duty to the court and to each other party to give full and frank disclosure of all information relevant to the case, in a timely manner.

Note Failure to comply with the duty may result in the court excluding evidence that is not disclosed or imposing a consequence, including punishment for contempt of court. This Chapter sets out a number of ways that a party is either required, or can be called upon, to discharge the party's duty of disclosure, including:

(a) disclosure of financial circumstances (see Division 13.1.2);

(b) disclosure and production of documents (see Division 13.2.1); and

(c) disclosure by answering specific questions in certain circumstances (see Part 13.3).

(2) The duty of disclosure starts with the pre-action procedure for a case and continues until the case is finalised.

Note The duty of disclosure applies to a case guardian for a child and a person with a disability (see subrule 6.13 (2)).

Division 13.1.2 Duty of disclosure — financial cases

13.02 Purpose of Division 13.1.2

(1) This Division sets out the duty of disclosure required by parties to a financial case.

(2) This Division does not apply to a party to a property case who is not a party to the marriage to which the application relates, except to the extent that the party's financial circumstances are relevant to the issues in dispute.

13.03 Definition

In this Division:

party to a financial case includes a payee or other respondent to an enforcement application.

13.04 Full and frank disclosure

(1) A party to a financial case must make full and frank disclosure of the party's financial circumstances, including:

(a) the party's earnings, including income that is paid or assigned to another party, person or legal entity;

(b) any vested or contingent interest in property;

(c) any vested or contingent interest in property owned by a legal entity that is fully or partially owned or controlled by a party;

(d) any income earned by a legal entity fully or partially owned or controlled by a party, including income that is paid or assigned to any other party, person or legal entity;

(e) the party's other financial resources;

(f) any trust:

(i) of which the party is the appointor or trustee;

(ii) of which the party, the party's child, spouse or de facto spouse is an eligible beneficiary as to capital or income;

(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 a shareholder or director of the corporation;

(iv) over which the party has any direct or indirect power or control;

(v) of which the party has the direct or indirect power to remove or appoint a trustee;

(vi) of which the party has the power (whether subject to the concurrence of another person or not) to amend the terms;

(vii) of which the party has 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 a power mentioned in any of subparagraphs (iv) to (vii), if the party, the party's child, spouse or de facto spouse is a director or shareholder of the corporation;

(g) any disposal of property (whether by sale, transfer, assignment or gift) made by the party, a legal entity mentioned in paragraph (c), a corporation or a trust mentioned in paragraph (f) that may affect, defeat or deplete a claim:

(i) in the 12 months immediately before the separation of the parties; or

(ii) since the final separation of the parties; and

(h) liabilities and contingent liabilities.

(2) Paragraph (1) (g) does not apply to a disposal of property made with the consent or knowledge of the other party or in the ordinary course of business.

(3) In this rule:

legal entity means a corporation (other than a public company), trust, partnership, joint venture business or other commercial activity.

Note The requirements in this rule are in addition to the requirements in rules 12.02 and 12.05 to exchange certain documents before a conference in a property case.

13.05 Financial statement (Form 13)

(1) A party starting, or filing a response or reply to, a financial case (other than by an Application for Consent Orders (Form 11)) must file a Financial Statement (Form 13) at the same time.

(2) If a party is aware that the completion of a Form 13 will not fully discharge the duty to make full and frank disclosure, the party must also file an affidavit giving further particulars.

Note The court may order a party to file an affidavit giving further particulars in relation to the party's financial affairs.

13.06 Amendment of Financial Statement (Form 13)

(1) This rule applies if, before a conciliation conference, pre-trial conference or trial, or at the time of seeking a consent order, a party's financial circumstances have changed significantly from the information set out in the Form 13 or affidavit filed under rule 13.05.

(2) At least 7 days before the conciliation conference, pre-trial conference or trial, or at the time of seeking a consent order, the party must file:

(a) a new Form 13 with the amendments clearly marked; or

(b) if the amendments are able to be clearly set out in 300 words or less, an affidavit containing details about the party's changed financial circumstances.

Part 13.2 Duty of disclosure — documents

Division 13.2.1 Disclosure of documents — all cases

13.07 Duty of disclosure — documents

The duty of disclosure applies to each document that:

(a) is or has been in the possession, or under the control, of the party disclosing the document; and

(b) is relevant to an issue in the case.

Note 1 For documents that parties must produce to the court:

(a) on the first court date for a Maintenance Application, see rule 4.15;

(b) on the first court date for a Child Support Application or Appeal, see rule 4.19;

(c) at a conference in a property case, see Part 12.2; and

(d) at a trial, see Chapters 15 and 16.

Note 2 Rule 13.15 provides that a party must file a written notice about the party's duty of disclosure.

Note 3 Rule 15.76 provides that a party may give another party a notice to produce a specified document at a hearing or trial.

Note 4 A document disclosed to a party must be used for the purposes of the case only and must not be used for any other purpose without the consent of the other party or an order.

13.08 Inspection of documents

(1) A party may, by written notice, require another party to provide a copy of, or produce for inspection, a document referred to:

(a) in a document filed or served by a party on another party or child representative; or

(b) in correspondence prepared and sent by or to another party or child representative.

(2) A party required to provide a copy of a document must provide the copy within 21 days after receiving the written notice.

13.09 Production of original documents

A party may, by written notice, require another party to produce for inspection an original document if the document is a document that must be produced under the duty of disclosure.

13.10 Disclosure by inspection of documents

(1) If a party is required to produce a document for inspection under rule 13.08 or 13.09, the party must:

(a) notify, in writing, the party requesting the document of a convenient place and time to inspect the document;

(b) produce the document for inspection at that place and time; and

(c) allow copies of the document to be made, at the expense of the party requesting it.

(2) The time fixed under paragraph (1) (a) must be within 21 days after the party receives a written notice under rule 13.08 or 13.09 or as otherwise agreed.

Note The court may shorten or extend the time for compliance with a rule (see rule 1.14).

13.11 Costs for inspection

A party who fails to inspect a document under a notice given under rule 13.08 or 13.09 or paragraph 13.20 (3) (a) may not later do so unless the party tenders an amount for the reasonable costs of providing another opportunity for inspection.

Note The court may, on application, order that a party not pay costs (see rule 1.12).

13.12 Documents that need not be produced

A party must disclose, but need not produce to the party requesting it:

(a) a document for which there is a claim for privilege from disclosure; or

(b) a document a copy of which is already disclosed, if the copy contains no change, obliteration or other mark or feature that is likely to affect the outcome of the case.

Note Rule 13.13 sets out the requirements for challenging a claim of privilege from disclosure.

13.13 Objection to production

(1) This rule applies if:

(a) a party claims:

(i) privilege from production of a document; or

(ii) that the party is unable to produce a document; and

(b) another party, by written notice, challenges the claim.

(2) The party making the claim must, within 7 days after the other party challenges the claim, file an affidavit setting out details of the claim.

Note If there is a dispute about disclosure, an application may be made to the court (see rules 13.18 and 13.22).

13.14 Consequence of non-disclosure

If a party does not disclose a document as required under these Rules:

(a) the party:

(i) must not offer the document, or present evidence of its contents, at a hearing or trial without the other party's consent or the court's permission;

(ii) may be guilty of contempt for not disclosing the document; and

(iii) may be ordered to pay costs; and

(b) the court may stay or dismiss all or part of the party's case.

Note 1 Under rule 15.76, a party who discloses a document under this Part must produce the document at the trial if a notice to produce has been given.

Note 2 Section 112AP of the Act sets out the court's powers in relation to contempt of court.

13.15 Undertaking by party

(1) A party (except a child representative) must file a written notice:

(a) stating that the party:

(i) has read Parts 13.1 and 13.2 of these Rules; and

(ii) is aware of the party's duty to the court and each other party (including any child representative) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner;

(b) undertaking to the court that, to the best of the party's knowledge and ability, the party has complied with, and will continue to comply with, the duty of disclosure; and

(c) acknowledging that a breach of the undertaking may be contempt of court.

(2) A party commits an offence if the party makes a statement or signs an undertaking the party knows, or should reasonably have known, is false or misleading in a material particular.

Penalty: 50 penalty units.

Note Subrule (2) is in addition to the court's powers under section 112AP of the Act relating to contempt and the court's power to make an order for costs.

(3) If the court makes an order against a party under section 112AP of the Act in respect of a false or misleading statement mentioned in subrule (2), the party must not be charged with an offence against subrule (2) in respect of that statement.

(4) A notice under subrule (1) must comply with subrule 24.01 (1) and be as follows:

'This Notice is filed in accordance with rule 13.15 of the *Family Law Rules 2004*.

I [*insert name*]:

(a) have read Parts 13.1 and 13.2 of the *Family Law Rules 2004*;

(b) am aware of my duty to the court and to each other party (including any child representative) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner; and

(c) undertake to the court that, to the best of my knowledge and ability, I have carried out and complied with my duty of disclosure.

I understand the nature and terms of this undertaking and that if I breach the undertaking, I may be guilty of contempt of court.

……	……
(*signature of person making statement*)	(*full name of person making statement*)
……	
(*date of signature*)	
……	……
(*signature of witness*)	(*full name of witness*)
……	
(*date of signature*)	

Note 1 For the consequences of failing to comply with this rule, see rule 11.02.

Note 2 A party who breaches an undertaking may be found guilty of contempt of court and may be punished by imprisonment (see section 112AP of the Act).

13.16 Time for filing undertaking

A notice under rule 13.15 must be filed:

(a) for a case that has a pre-trial conference — at least 21 days before the date fixed for the pre-trial conference; and

(b) for any other case — at least 7 days before the date fixed for the hearing or trial.

Note The court may shorten or extend the time for compliance with a rule (see rule 1.14).

Division 13.2.2 Disclosure of documents — certain applications

13.17 Application of Division 13.2.2

This Division applies to the following applications:

(a) an Application for Divorce;

(b) an Application in a Case;

(c) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment;

(d) a Maintenance Application;

(e) a Child Support Application or Appeal;

(f) a Small Claim;

(g) a Contravention Application;

(h) a Contempt Application;

(i) a case listed for trial without a pre-trial conference.

13.18 Party may seek order about disclosure

A party to an application under this Division may seek only the following orders about disclosure:

(a) that another party deliver a copy of a document;

(b) that another party produce a document for inspection by another party.

Division 13.2.3 Disclosure of documents — Applications for Final Orders

13.19 Application of Division 13.2.3

(1) This Division applies to all Applications for Final Orders (Form 1), except:

(a) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment;

(b) a Maintenance Application;

(c) a Child Support Application or Appeal;

(d) a Small Claim; or

(e) a case listed for trial without a pre-trial conference.

(2) This Division does not affect:

(a) the right of a party to inspect a document, if the party has a common interest in the document with the party who has possession or control of the document;

(b) another right of access to a document other than under this Division; or

(c) an agreement between the parties for disclosure by a procedure that is not described in this Division.

13.20 Disclosure by service of a list of documents

(1) After the final resolution event for a case, a party (the ***requesting party***) may, by written notice, ask another party (the ***disclosing party***) to give the requesting party a list of documents to which the duty of disclosure applies.

(2) The disclosing party must, within 21 days after receiving the notice, serve on the requesting party a list of documents identifying:

(a) the documents to which the duty of disclosure applies;

(b) the documents no longer in the disclosing party's possession or control to which the duty would otherwise apply (with a brief statement about the circumstances in which the documents left the party's possession or control); and

(c) the documents for which privilege from production is claimed.

Note Rule 13.07 sets out the documents to which the duty of disclosure applies.

(3) The requesting party may, by written notice, ask the disclosing party to:

(a) produce a document for inspection; or

(b) provide a copy of a document.

(4) The disclosing party must, within 14 days after receiving a notice under paragraph (3) (b), give the requesting party, at the requesting party's expense, the copies requested, other than copies of documents:

(a) in relation to which privilege from production is claimed; or

(b) that are no longer in the disclosing party's possession or control.

(5) If a document that must be disclosed is located by, or comes into the possession or control of, a disclosing party after disclosure under subrule (2), the party must disclose the document within 7 days after it is located or comes into the party's possession or control.

Note The court may shorten or extend the time for compliance with a rule (see rule 1.14).

13.21 Disclosure by inspection of documents

(1) This rule applies if:

(a) a party has requested the production of a document for inspection under paragraph 13.20 (3) (a); or

(b) it is not convenient for a disclosing party to provide copies of documents under paragraph 13.20 (3) (b) because of the number and size of the documents.

(2) The disclosing party must, within 14 days after receiving the notice under subrule 13.20 (3):

(a) notify the requesting party, in writing, of a convenient place and time at which the documents may be inspected;

(b) produce the documents for inspection at that place and time; and

(c) allow copies of the documents to be made at the requesting party's expense.

13.22 Application for order for disclosure

(1) At or after the final resolution event, a party may seek an order that:

(a) another party comply with a request for a list of documents in accordance with rule 13.20;

(b) another party disclose a specified document, or class of documents, by providing to the other party a copy of the document, or each document in the class, for inspection by the other party;

(c) another party produce a document for inspection;

(d) a party file an affidavit stating:

(i) that a specified document, or class of documents, does not exist or has never existed; or

(ii) the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of that party; or

(e) the party be partly or fully relieved of the duty of disclosure.

(2) A party making an application under subrule (1) must satisfy the court that the order is necessary for disposing of the case or an issue or reducing costs.

Note 1 Before making an application under this Chapter, a party must make a reasonable and genuine attempt to settle the issue to which the application relates (see rule 5.03).

Note 2 An application under this Chapter is made by filing a Form 2 and an affidavit (see rules 5.01 and 5.02). The court may allow an oral application at the conciliation conference or another court event.

(3) In making an order under subrule (1), the court may consider:

(a) whether the disclosure sought is relevant to an issue in dispute;

(b) the relative importance of the issue to which the document or class of documents relates;

(c) the likely time, cost and inconvenience involved in disclosing a document or class of documents taking into account the amount of the property, or complexity of the corporate, trust or partnership interests (if any), involved in the case; and

(d) the likely effect on the outcome of the case of disclosing, or not disclosing, the document or class of documents.

(4) If the disclosure of a document is necessary for the purpose of resolving a case at the conciliation conference, a party (the ***requesting party***) may, at the first court event, seek an order that another party:

(a) provide a copy of the document to the requesting party; or

(b) produce the document to the requesting party for inspection and copying.

(5) The court may only make an order under subrule (4) in exceptional circumstances.

(6) If a party objects to the production of a document for inspection or copying, the court may inspect the document to decide the objection.

13.23 Costs of compliance

If the cost of complying with the duty of disclosure would be oppressive to a party, the court may order another party to:

(a) pay the costs;

(b) contribute to the costs; or

(c) give security for costs.

13.24 Electronic disclosure

The court may make an order directing disclosure of documents by electronic communication.

Note The court has practice guidelines about disclosure by electronic communication.

Part 13.3 Answers to specific questions

13.25 Application of Part 13.3

This Part applies to all Applications for Final Orders (Form 1), except:

(a) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment;

(b) a Maintenance Application;

(c) a Child Support Application or Appeal;

(d) a Small Claim; or

(e) a case listed for trial without a pre-trial conference.

13.26 Service of specific questions

(1) After the final resolution event, a party (the ***requesting party***) may serve on another party (the ***answering party***) a request to answer specific questions.

(2) A party may only serve one set of specific questions on another party.

(3) The specific questions must:

(a) be in writing;

(b) be limited to 20 questions (with each question taken to be one specific question); and

(c) not be vexatious or oppressive.

(4) If an answering party is required, by a written notice served under rule 13.20 or an order, to give the requesting party a list of documents, the answering party is not required to answer the questions until the time for disclosure under Part 13.2 or an order has expired.

(5) The requesting party must serve a copy of any request to answer specific questions on all other parties.

13.27 Answering specific questions

(1) A party on whom a request to answer specific questions is served must answer the questions in an affidavit that is filed and served on each person to be served within 21 days after the request was served.

(2) The party must, in the affidavit:

(a) answer, fully and frankly, each specific question; or

(b) object to answering a specific question.

(3) An objection under paragraph (2) (b) must:

(a) specify the grounds of the objection; and

(b) briefly state the facts in support of the objection.

13.28 Orders in relation to specific questions

(1) After the final resolution event, a party may apply for an order:

(a) that a party comply with rule 13.27 and answer, or further answer, a specific question served on the party under rule 13.26;

(b) determining the extent to which a question must be answered;

(c) requiring a party to state specific grounds of objection;

(d) determining the validity of an objection; or

(e) that a party who has not answered, or who has given an insufficient answer, to a specific question be required to attend court to be examined.

(2) In considering whether to make an order under subrule (1), the court may take into account whether:

(a) the requesting party is unlikely, at the trial, to have another reasonably simple and inexpensive way of proving the matter sought to be obtained by the specific questions;

(b) answering the questions will cause unacceptable delay or undue expense; and

(c) the specific questions are relevant to an issue in the case.

Part 13.4 Information from non-parties

Division 13.4.1 Employment information

13.29 Purpose of Division 13.4.1

This Division sets out the information a party may require from an employer of a party to a financial case.

13.30 Employment information

(1) The court may order a party to advise the court, in writing, within a specified time, of:

(a) the name and address of the party's employer or, if the party has more than one employer, each of those employers; and

(b) other information the court considers necessary to enable an employer to identify the party.

(2) Subrule (3) applies if:

(a) a party (the ***requesting party***) requests the employer of another party (the ***employee***) to give particulars about:

(i) the employer's indebtedness to the employee;

(ii) the employee's present rate of earnings, or of all the earnings of the employee that became payable during a specified period; or

(iii) the employee's conditions of employment; and

(b) the employer refuses, or fails to respond to, the requesting party's request.

(3) The requesting party may apply for an order that the employer advise the court, in writing, within a specified time, of the particulars mentioned in paragraph (2) (a).

Note A document purporting to be a statement within the meaning of subrule (1) or (2) may be admitted as evidence of its contents (see section 48 of the *Evidence Act 1995*). However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

Division 13.4.2 Non-party documents

13.31 Purpose of Division 13.4.2

This Division sets out the procedure for obtaining the production of documents by a person who is not a party to a case.

13.32 Definitions

In this Division:

non-party means a person who is not a party to, or a child representative in, a case.

requesting party means a party who serves a Notice of Non-party Production of Documents (Form 12) on a non-party.

13.33 Notice of Non-party Production of Documents

(1) A requesting party may serve a Notice of Non-party Production of Documents (Form 12) on a non-party, requiring the non-party to produce to the requesting party a specified document or class of documents:

(a) relevant to an issue in the case;

(b) in the possession, or under the control, of the non-party; and

(c) that the non-party may be required to produce at the trial.

(2) A Form 12 may be served only if there is no other reasonably simple and inexpensive way of proving the issue sought to be proved by the document specified in the Form.

13.34 Service on others affected by Notice

At least 7 days before serving a non-party with a Form 12, a requesting party must serve a copy of the Form on:

(a) each other party to the case; and

(b) any other person about whom information is sought by the Form.

Note The court may:

(a) dispense with compliance with a rule (see rule 1.12); and

(b) shorten or extend the time for compliance with a rule (see rule 1.14).

13.35 Compliance with Form 12

A non-party who has been served with a Form 12 must, not earlier than 7 days, and within 14 days, after receiving the Form:

(a) comply with the requirements of the Form; or

(b) object to the production of some or all of the documents specified in the Form, in accordance with rule 13.39.

Note 1 Under rule 13.40, the operation of a Form 12 is stayed if a person objects to it.

Note 2 Some legislative provisions prohibit government departments from communicating certain information; for example, see section 150 of the Assessment Act and section 16 of the Registration Act.

Note 3 The court may shorten or extend the time for compliance with a rule (see rule 1.14).

13.36 Production of documents

(1) A non-party must produce, for inspection by a requesting party, a document specified in a Form 12 at the place stated in the Form or at a time and place convenient to the requesting party and non-party.

(2) Subrule (1) does not apply if the operation of a Form 12 is stayed under rule 13.40.

13.37 Copying produced documents

(1) A requesting party may copy a document produced under subrule 13.36 (1).

(2) A party who copies a document under subrule (1):

(a) must use the copy for the purposes of the case only; and

(b) must not use the copy for any other purpose, without an order or the consent of the non-party.

13.38 Costs of production

(1) A requesting party must pay the reasonable costs incurred by a non-party in producing a document under subrule 13.36 (1) as ordered or agreed.

(2) The amount payable under subrule (1) must be at least equal to the minimum amount of conduct money mentioned in Part 1 of Schedule 4.

Note The court may order that a party is not required to pay costs (see rule 1.12).

13.39 Objection to production

(1) Any of the following persons may object to the production of some or all of the documents specified in a Form 12:

(a) the non-party named in the Form;

(b) a person affected by the production.

(2) An objection must:

(a) be in writing;

(b) state the reasons for the objection; and

(c) within 7 days after the person objecting received the Form 12, be served:

(i) on the requesting party; and

(ii) if the person objecting is not the non-party on whom the Form was served — on the non-party.

Note 1 The court may shorten or extend the time for compliance with a rule (see rule 1.14).

Note 2 A person may object to the production of a document required by a Form 12 if, for example, the document is not described with sufficient particularity to enable the non-party to understand what is required, if there is a claim of privilege or if it is claimed that the document or its contents is confidential.

13.40 Stay of Form 12

Service of a Notice of Objection under subrule 13.39 (2) operates as a stay of a non-party's obligation to produce the documents specified in the Form 12.

13.41 Court's decision about Form 12

(1) If:

(a) a non-party does not comply with rule 13.35; or

(b) a person makes an objection under rule 13.39;

a requesting party may apply for an order for the non-party's compliance or for a decision about the objection.

(2) A party making an application under subrule (1) must satisfy the court:

(a) of the matters set out in rule 13.33; and

(b) that the order is necessary for disposing of the case or an issue, or reducing costs.

(3) A party may only apply for an order under subrule (2) after the final resolution event, except in exceptional circumstances.

(4) If an objection under rule 13.39 is upheld, the requesting party may be ordered to pay the costs of the person who made the objection.

13.42 Orders about non-party disclosure

The court may make any order about non-party production of documents, including an order:

(a) requiring production;

(b) lifting a stay (see rule 13.40);

(c) varying the requirements of, or setting aside, the Form 12; or

(d) about the costs of production.

Chapter 14 Property orders

Summary of Chapter 14

Chapter 14 sets out the procedure to be taken in property cases to obtain orders for inspection, detention, possession, valuation, insurance, preservation of property and with respect to a superannuation interest.

An application made under this Chapter must be in Form 2 (see Chapter 5 for the procedure).

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

14.01 Orders about property

(1) The court may make an order for the inspection, detention, possession, valuation, insurance or preservation of property if:

(a) the order relates to the property of a party, or a question may arise about the property in a case; and

(b) the order is necessary to allow the proper determination of a case.

(2) The court may order a party:

(a) to sell or otherwise dispose of property that will deteriorate, decay or spoil; and

(b) to deal with the proceeds of the sale or disposal in a certain way.

(3) A party may ask the court to make an order in relation to property authorising a person to:

(a) enter, or to do another thing to gain entry or access to, the property;

(b) make observations, and take photographs, of the property;

(c) observe or read images or information contained in the property including, for example, playing a tape, film or disk, or accessing computer files; or

(d) copy the property or information contained in the property.

(4) If the court makes an order under this rule, it may also order a party to pay the costs of a person who is not a party to the case and who must comply with the order.

(5) The court may make an order under subrule (1) binding on, or otherwise affecting, a person who is not a party to a case.

Note For the procedure for making an application in a case, see Chapter 5.

14.02 Service of application

(1) A party who has applied for an order under rule 14.01 must:

(a) make a reasonable attempt to find out who has, or claims to have, an interest in the property to which the application relates; and

(b) serve the application and any supporting affidavits on that person.

(2) The court may allow an application for an order under this Part to be made without notice.

14.03 Inspection

A party may apply for an order that the court inspect a place, process or thing, or witness a demonstration, about which a question arises in a case.

Note For the procedure for making an application in a case, see Chapter 5.

14.04 Application for Anton Piller order

(1) A party may apply for an Anton Piller order:

(a) requiring a respondent to permit the applicant, alone or with another person, to enter the respondent's premises and inspect or seize documents or other property;

(b) requiring the respondent to disclose specific information relevant to the case; and

(c) restraining the respondent, for a specified period of no more than 7 days, from informing anyone else (other than the respondent's lawyer) that the order has been made.

(2) The applicant may apply for an Anton Piller order without notice to the respondent.

(3) An application for an Anton Piller order must be supported by an affidavit that includes:

(a) a description of the document or property to be seized or inspected;

(b) the address of the premises where the order is to be carried out;

(c) the reason the applicant believes the respondent may remove, destroy or alter the document or property unless the order is made;

(d) a statement about the damage the applicant is likely to suffer if the order is not made;

(e) a statement about the value of the property to be seized; and

(f) if permission is granted, the name of the person (if any) who the applicant wishes to accompany the applicant to the respondent's premises.

Note For the procedure for making an application in a case, see Chapter 5.

(4) If an Anton Piller order is made, the applicant must serve a copy of it on the respondent when the order is acted on.

14.05 Application for Mareva order

(1) A party may apply for a Mareva order restraining another person from removing property from Australia, or dealing with property in or outside Australia, if:

(a) the order will be incidental to an existing or prospective order made in favour of the applicant; or

(b) the applicant has an existing or prospective claim that is able to be decided in Australia.

(2) The applicant must file with the application an affidavit that includes:

(a) a description of the nature and value of the respondent's property, so far as it is known to the applicant, in and outside Australia;

(b) the reason why the applicant believes:

(i) property of the respondent may be removed from Australia; and

(ii) dealing with the property should be restrained by order;

(c) a statement about the damage the applicant is likely to suffer if the order is not made;

(d) a statement about the identity of anyone, other than the respondent, who may be affected by the order and how the person may be affected; and

(e) if the application is made under paragraph (1) (b), the following information about the claim:

(i) the basis of the claim;

(ii) the amount of the claim;

(iii) if the application is made without notice to the respondent, a possible response to the claim.

Note For the procedure for making an application in a case, see Chapter 5.

14.06 Service of application or order for superannuation interest

(1) This rule applies in a property case if:

(a) a party:

(i) seeks a flagging order or a splitting order in relation to a superannuation interest under Part VIIIB of the Act; or

(ii) applies under section 79A of the Act for an order to set aside an earlier order made in relation to a superannuation interest; and

(b) the case has been listed for a trial.

(2) The party must, not less than 28 days before the date fixed for the trial, provide to the trustee of the eligible superannuation plan in which the interest is held, a written notice of the orders that will be sought at the trial in relation to the superannuation interest.

Rule 14.06

(3) If the court makes an order splitting, flagging or otherwise affecting a superannuation interest, the party must serve a copy of the order on the trustee of the eligible superannuation plan in which the interest is held.

Note The following terms are defined in section 90MD of the Act:

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

Chapter 15 Evidence

Summary of Chapter 15

Chapter 15 sets out rules about evidence generally and in relation to children, affidavits, subpoenas, assessors and expert witnesses. Evidence adduced at a hearing or trial must be admissible in accordance with the provisions of the Act, the *Evidence Act 1995* and these Rules. Note, though, that, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

A person may be prosecuted for knowingly making a false statement in evidence (see section 35 of the *Crimes Act 1914*).

Note In certain circumstances, the court may dispense with requirements for compliance with the rules of evidence (see section 190 of the *Evidence Act 1995*).

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 15.1 Children

15.01 Restriction on child's evidence

(1) A party applying to adduce the evidence of a child under section 100B of the Act must file an affidavit that:

(a) sets out the facts relied on in support of the application;

(b) includes the name of a support person; and

(c) attaches a summary of the evidence to be adduced from the child.

Note For the procedure for making an application in a case, see Chapter 5.

(2) If the court makes an order in relation to an application mentioned in subrule (1), it may order that:

(a) the child's evidence be given by way of affidavit, video conference, closed circuit television or other electronic communication; and

(b) a person named in the order as a support person be present with the child when the child gives evidence.

Note Subsections 100B (1) and (2) of the Act provide that a child (other than a child who is, or is seeking to become, a party to a case) must not swear an affidavit and must not be called as a witness or remain in court unless the court otherwise orders.

15.02 Interviewing a child

(1) A judicial officer may interview a child who is the subject of a case under Part VII of the Act.

(2) The interview may be conducted in the presence of a family and child counsellor, mediator or another person specified by the judicial officer.

(3) If the child expresses a wish during the interview that is relevant to the case, the judicial officer may order a family report to be prepared.

15.03 Family reports

(1) A party to an Application for Final Orders (Form 1) may apply for an order that a family report be prepared at or after the issue of a trial notice.

(2) The court may take the following matters into consideration when deciding whether to order a family report:

(a) whether the case involves:

(i) an intractable or complex parenting case;

(ii) if a child is mature enough for the child's wishes to be significant in determining a case — a dispute about the child's wishes;

(iii) a dispute about the existence or quality of the relationship between a parent, or other significant person, and a child;

(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 a child representative;

(b) receive the report in evidence;

(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.

15.04 Family reports in certain consent cases

If the court orders a family report to be prepared for subparagraph 65G (2) (a) (ii) of the Act, the report writer must:

(a) investigate whether a person to whom paragraph 65G (1) (b) of the Act applies has been convicted of:

(i) an offence under the Act; or

(ii) any other offence relevant to the welfare of a child; and

(b) include details of any such convictions in the report.

Part 15.2 Affidavits

Note The filing of an affidavit does not make it become evidence. It is only when the affidavit is relied upon by a party at a hearing or trial that it becomes, for that hearing or trial (subject to any rulings on admissibility), part of the evidence.

15.05 Evidence in chief by affidavit

(1) Evidence in chief at a hearing or trial must be given by affidavit.

(2) Oral evidence may be adduced at a hearing or trial only if:

(a) a witness refuses to swear an affidavit; and

(b) notice to that effect has been given under subparagraph 15.07 (2) (b) (ii).

Note This rule applies unless the court orders otherwise (see rule 1.12).

15.06 Reliance on affidavits

(1) An affidavit may be relied on at a hearing or trial only if it is filed and served in accordance with these Rules or an order.

(2) The court may order that an affidavit that does not comply with these Rules or an order must not be relied on at a hearing or trial.

(3) An affidavit filed with an application may be relied on in evidence only for the purpose of the application for which it was filed.

Note Rule 5.09 sets out which affidavits may be relied on at an interim or procedural hearing.

15.07 Filing an affidavit

(1) This rule applies to a case started by an Application for Final Orders (Form 1) or Response to Application for Final Orders (Form 1A) except:

(a) a Medical Procedure Application;

(b) a Maintenance Application;

(c) a Child Support Application or Appeal;

(d) an application for an order that a marriage is a nullity or a declaration as to the validity of a marriage, divorce or annulment; or

(e) an application about a passport.

(2) Each party must file, at least 14 days before a pre-trial conference:

(a) one affidavit setting out the party's evidence in chief; and

(b) for each witness the party intends calling at the trial:

(i) one affidavit made by the witness, setting out the witness's evidence in chief; or

(ii) if the witness refuses to swear an affidavit — a notice to that effect, setting out the name of the witness and a summary of the evidence sought to be adduced from the witness.

Note 1 The court may, by order, vary a requirement in this rule when the trial notice is issued.

Note 2 At the trial, a party may not refer to or rely on an affidavit filed in relation to an earlier application or hearing unless the court orders otherwise (see subrule 15.06 (3)).

15.08 Form of affidavit

An affidavit must:

(a) be divided into consecutively numbered paragraphs, with each paragraph being, as far as possible, confined to a distinct part of the subject matter;

(b) state, at the beginning of the first page:

(i) the file number of the case for which the affidavit is sworn;

(ii) the full name of the party on whose behalf the affidavit is filed; and

(iii) the full name of the deponent;

(c) have a statement at the end specifying:

(i) the name of the witness before whom the affidavit is sworn and signed; and

(ii) the date when, and the place where, the affidavit is sworn and signed; and

(d) bear the name of the person who prepared the affidavit.

Note An affidavit must comply with subrule 24.01 (1), including being legibly printed by machine.

15.09 Making an affidavit

(1) An affidavit must be:

(a) confined to facts about the issues in dispute;

(b) confined to admissible evidence;

(c) sworn by the deponent, in the presence of a witness;

(d) signed at the bottom of each page by the deponent and the witness; and

(e) filed after it is sworn.

(2) Any insertion in, erasure or other alteration of, an affidavit must be initialled by the deponent and the witness.

(3) A reference to a date (except the name of a month), number or amount of money must be written in figures.

Examples

1. The second of July, Nineteen Hundred and Sixty-Four must be written as '2 July 1964'.
2. Twenty dollars must be written as '$20.00'.

Note 1 Subsection 186 (1) of the *Evidence Act 1995* specifies who may witness an affidavit. However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

Note 2 Rule 24.07 sets out the requirements for filing an affidavit by electronic communication.

15.10 Affidavit of illiterate or blind person etc

(1) If a deponent is illiterate, blind, or physically incapable of signing an affidavit, the witness before whom the affidavit is made must certify, at the end of the affidavit, that:

(a) the affidavit was read to the deponent;

(b) the deponent seemed to understand the affidavit; and

(c) for a deponent physically incapable of signing — the deponent indicated that the contents were true.

(2) If a deponent does not have an adequate command of English:

(a) a translation of the affidavit and oath must be read or given in writing to the deponent in a language that the deponent understands; and

(b) the translator must certify that the affidavit has been translated.

15.11 Affidavit outside Australia

A person may make an affidavit outside Australia in accordance with:

(a) this Part; or

(b) the law of the place where the person makes the affidavit.

15.12 Documents attached

(1) A document referred to in an affidavit:

(a) must:

(i) be attached to the affidavit; or

(ii) if the document is too large or otherwise unable to be attached — be identified in the affidavit and filed; and

(b) must bear a statement, signed by the witness before whom the affidavit is made, identifying it as the document mentioned in the affidavit.

(2) Paragraph (1) (b) does not apply to an attachment to an Affidavit of Service (Form 7).

15.13 Striking out objectionable material

(1) The court may order material to be struck out of an affidavit if the material:

(a) is inadmissible, unnecessary, irrelevant, unreasonably long, scandalous or argumentative; or

(b) sets out the opinion of a person who is not qualified to give it.

(2) If the court orders material to be struck out of an affidavit, the party who filed the affidavit may be ordered to pay the costs thrown away of any other party because of the material struck out.

Note 1 Only a person who is an expert in a particular area may give an opinion on a matter relating to that area of expertise (see Part 15.5). Section 76 of the *Evidence Act 1995*, subsection (1) of which provides that 'evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed', does not apply to expert evidence (see section 79 of the *Evidence Act 1995*). However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

Note 2 Section 75 of the *Evidence Act 1995* provides that 'In an interlocutory proceeding, the hearsay rule does not apply to evidence if the party who adduces it also adduces evidence of its source.'.

15.14 Notice to attend for cross-examination

(1) This rule applies only to a trial.

(2) A party seeking to cross-examine a deponent must, at least 14 days before the trial, give to the party who filed the affidavit a written notice stating the name of the deponent who is required to attend court for cross-examination.

(3) If a deponent fails to attend court in response to a notice under subrule (2), the court may:

(a) refuse to allow the deponent's affidavit to be relied on;

(b) allow the affidavit to be relied on only on the terms ordered by the court; or

(c) order the deponent to attend for cross-examination.

(4) If:

(a) a deponent attends court in response to a notice under subrule (2); and

(b) the deponent is not cross-examined, or the cross-examination is of little or no evidentiary value;

the party who required the deponent's attendance may be ordered to pay the deponent's costs for attending and any costs incurred by the other party because of the notice.

15.15 Deponent's attendance and expenses

The court may make orders for the attendance, and the payment of expenses, of a deponent who attends court for cross-examination under rule 15.14.

Part 15.3 Subpoenas

Division 15.3.1 General

15.16 Interpretation

(1) In this Part:

court date means the date specified in a subpoena for attending court to give the evidence or produce the document mentioned in the subpoena.

issuing party means the party for whom a subpoena is issued.

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

(2) In this Part, a reference to a document includes a reference to an object.

Note See section 25 of the *Acts Interpretation Act 1901* for the definition of ***document***.

15.17 Issuing a subpoena (Form 14)

(1) The court may, on its own initiative or at a party's request, issue:

(a) a subpoena for production;

(b) a subpoena to give evidence; or

(c) a subpoena for production and to give evidence.

(2) A subpoena must be in Form 14.

(3) A subpoena must identify the person to whom it is directed by name or description of office.

(4) A subpoena may be directed to 2 or more persons if:

(a) the subpoena is to give evidence only; or

(b) the subpoena requires the production of the same documents from each named person.

(5) A subpoena for production:

(a) must identify the document to be produced and the time and place for production; and

(b) may require the named person to produce the document before the date of the trial.

15.18 Subpoena not to issue in certain circumstances

The court must not issue a subpoena:

(a) at the request of a self-represented party, unless the party has first obtained the Registrar's permission to make the request; or

(b) for production of a document in the custody of the court or another court.

Note 1 Rule 15.34 sets out the procedure to be followed when a party seeks to produce to the court a document from another court.

Note 2 A prisoner required to give evidence at a hearing must do so by electronic communication, if practicable. Otherwise the party requiring the prisoner's attendance must seek an order for the prisoner's personal attendance (see rule 5.07).

15.19 Time for issuing a subpoena

(1) In a case started by an Application for Final Orders (Form 1), a party may ask the court to issue a subpoena after the issue of a trial notice.

(2) A party may ask the court to issue a subpoena after a hearing or trial date has been fixed in:

(a) a case started by a Form 1 that is listed for trial without a pre-trial conference;

(b) a case started by an Application in a Case (Form 2);

(c) an Application for Divorce (Form 3); or

(d) an appeal.

Note A subpoena to produce must be served at least 7 days before the court date (see rule 15.28).

15.20 Amendment of subpoena

A subpoena that has been issued but not served may be amended by the issuing party filing the amended subpoena with the amendments clearly marked.

15.21 Limit on number of subpoenas

(1) Subject to subrule (2), a party must not request the issue of more than 3 subpoenas for the hearing of any of the following applications:

(a) an Application in a Case (Form 2);

(b) a Child Support Application or Appeal;

(c) a Maintenance Application.

(2) A child representative may request the issue of more than 3 subpoenas to produce documents for the hearing of a Form 2.

Note 1 In a case to be determined as a small claim, only the parties may give evidence, unless the court orders otherwise (see rule 11.15).

Note 2 A party may seek permission from the court to issue additional subpoenas.

15.22 Service

(1) A subpoena must be served on the named person by hand.

(2) A subpoena must not be served on a child without the court's permission.

Note For service generally, see Chapter 7. For particular requirements in relation to service of a subpoena to produce documents, see rule 15.28.

15.23 Conduct money and witness fees

(1) A named person is entitled to be paid conduct money by the issuing party at the time of service of the subpoena, of an amount that is:

(a) sufficient to meet the reasonable expenses of complying with the subpoena; and

(b) at least equal to the minimum amount mentioned in Part 1 of Schedule 4.

(2) A named person served with a subpoena to give evidence and a subpoena to give evidence and produce documents is entitled to be paid a witness fee by the issuing party in accordance with Part 2 of Schedule 4, immediately after attending court in compliance with the subpoena.

(3) A named person may apply to be reimbursed if the named person incurs a substantial loss or expense that is greater than the amount of the conduct money or witness fee payable under this rule.

15.24 When compliance is not required

(1) A named person does not have to comply with the subpoena if:

(a) the named person was not served in accordance with these Rules (see rule 15.22 and subrule 15.28 (1)); or

(b) conduct money was not tendered to the person at the time of service or within a reasonable time before the court date.

(2) If a named person is not to be called to give evidence or produce a document to the court in compliance with the subpoena, the issuing party may excuse the named person from complying with the subpoena.

15.25 Discharge of subpoena obligation

(1) A subpoena remains in force until the earliest of the following events:

(a) the subpoena is complied with;

(b) the issuing party or the court releases the named person from the obligation to comply with the subpoena;

(c) the hearing or trial is concluded.

(2) For paragraph (1) (c), a trial or hearing is concluded when all parties have finished presenting their case.

15.26 Objection to subpoena

If a named person or a person having sufficient interest in a subpoena:

(a) seeks an order that the subpoena be set aside in whole or in part;

(b) objects to the production of a document required by the subpoena;

(c) seeks to be paid for any loss or expense relating to the person's attendance, or the production of a document, in compliance with the subpoena; or

(d) seeks any other relief in relation to the subpoena;

the person must attend court on the court date to apply for the order.

Note An application to set aside a subpoena issued in an appeal will be listed for determination before the court hearing the appeal.

Division 15.3.2 Production of documents and access by parties

15.27 Application of Division 15.3.2

(1) This Division applies to a subpoena for production.

(2) A person who inspects or copies a document under these Rules or an order must:

(a) use the document for the purpose of the case only; and

(b) not disclose the contents of the document or give a copy of it to any other person without the court's permission.

15.28 Service of subpoena for production

(1) A party who requests the issue of a subpoena for production must, at least 7 days before the court date:

(a) serve the named person, by hand, with:

(i) the subpoena;

(ii) a brochure called *Subpoena (Information for Named Person)*, approved by the Principal Registrar giving information about subpoenas; and

(iii) if the party intends to rely on rule 15.30 — the written notice mentioned in subrule 15.30 (2); and

(b) serve all other parties and the child representative (if any), by ordinary service, with a copy of the subpoena for production and, if applicable, the notice mentioned in subparagraph (a) (iii).

(2) At the time of service of the subpoena, the named person must be paid conduct money under subrule 15.23 (1).

Note 1 A person may ask permission to serve a subpoena at a later time than that set out in subrule (1) (see rule 1.14).

Note 2 Paragraph 15.17 (5) (b) provides that a subpoena for production may require the named person to produce a document before the date of the trial.

15.29 Compliance with subpoena

(1) A named person may comply with a subpoena for production by:

(a) attending, on the court date, at the place specified in the subpoena and providing the documents to the court; or

(b) no later than 2 days before the court date:

(i) producing the documents to the Registry Manager together with a copy of the subpoena; or

(ii) filing an affidavit attaching photocopies of the documents instead of producing the original documents.

(2) The affidavit must:

(a) state that it is filed in compliance with a subpoena to produce documents and identify the subpoena;

(b) identify the attached documents as copies of the original documents referred to in the subpoena; and

(c) be sworn by the named person.

Note See section 48 of the *Evidence Act 1995* about proving the contents of a document. However, subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

(3) The named person, when complying with the subpoena for production, must inform the Registry Manager in writing about whether:

(a) the documents referred to in the subpoena are to be returned to the named person; or

(b) the Registry Manager is authorised to dispose of the documents when they are no longer required by the court.

15.30 Right to inspect and copy

(1) This rule applies if:

(a) the issuing party serves the named person and the other parties, including the child representative (if any), in accordance with rule 15.28 at least 21 days before the court date; and

(b) the named person complies with the subpoena at least 7 days before the court date.

(2) The written notice mentioned in subparagraph 15.28 (1) (a) (iii) must state that:

(a) if the named person:

(i) complies with the subpoena at least 7 days before the court date; and

(ii) does not object to a party or any child representative inspecting or copying the document; and

(b) if no other party or person objects to the document being inspected and copied by the parties or any child representative;

each party and any child representative is entitled, without an order, to inspect and take copies of the document from 7 days before the court date.

(3) The issuing party must file an Affidavit of Service (Form 7), setting out the details of the party's compliance with paragraph (1) (a).

(4) If the named person, a party or a child representative has not made an objection under rule 15.31 by the seventh day before the court date, each party and any child representative is entitled, after the seventh day and without an order, to inspect and take copies of the document.

Note Some legislative provisions prohibit government departments from communicating certain information; for example, see section 150 of the Assessment Act and section 16 of the Registration Act.

15.31 Objection to inspection or copying of document

(1) This rule applies if the named person, or a person having sufficient interest in a subpoena for production:

(a) objects to the production of a document identified in the subpoena; or

(b) objects to a document identified in the subpoena being inspected or copied by any of the parties.

(2) The person must, as soon as practicable after being served with the subpoena and at least 10 days before the court date, give written notice of the objection, or other order sought, in accordance with Part F of Form 14, to:

(a) the Registry Manager;

(b) the named person, if applicable;

(c) the other parties; and

(d) any child representative.

(3) A notice under this rule operates as a stay on the operation of the parties' and child representative's right, under subrule 15.30 (4), to inspect and copy a document produced under a subpoena.

15.32 Court permission to inspect documents

A person may not inspect or copy a document produced in compliance with a subpoena for production, but not yet admitted into evidence, unless:

(a) rule 15.30 applies; or

(b) the court gives permission.

15.33 Claim for privilege

The court may compel a person to produce a document to the court for the purpose of ruling on an objection to the production of the document under a subpoena for production.

15.34 Production of document from another court

(1) A party who seeks to produce to the court a document in the possession of another court must give the Registry Manager a written notice setting out:

(a) the name and address of the court having possession of the document;

(b) a description of the document to be produced;

(c) the date when the document is to be produced; and

(d) the reason for seeking production.

(2) On receiving a notice under subrule (1), a Registrar may ask the other court, in writing, to send the document to the Registry Manager of the filing registry by a specified date.

(3) A party may apply for permission to inspect and copy a document produced to the court.

15.35 Return of documents produced

(1) This rule applies to a document produced in compliance with a subpoena that is to be returned to the named person.

(2) If the document is tendered as an exhibit at a hearing or trial, the Registry Manager must return it within 42 days after the final determination of the application or appeal.

(3) If:

(a) a document is not tendered as an exhibit at a hearing or trial; and

(b) the party who filed the subpoena has been given 7 days written notice of the Registry Manager's intention to return it;

the Registry Manager may return the document to the named person at a time that is earlier than the time mentioned in subrule (2).

(4) If the Registry Manager has received written permission from the named person to destroy the document:

(a) subrules (2) and (3) do not apply; and

(b) the Registry Manager may destroy the document, in an appropriate way, not earlier than 42 days after the final determination of the application or appeal.

Note A document:

(a) tendered into evidence by a party; and

(b) not produced in compliance with a subpoena;

must be collected by the party who tendered it (see subrule 16.10 (4)).

Division 15.3.3 Non-compliance with subpoena

15.36 Non-compliance with subpoena

If:

(a) a named person does not comply with a subpoena; and

(b) the court is satisfied that the named person was served with the subpoena and given conduct money (see rule 15.23);

the court may issue a warrant for the named person's arrest and order the person to pay any costs caused by the non-compliance.

Note A person who does not comply with a subpoena may be guilty of contempt (see section 112AP of the Act).

Part 15.4 Assessors

15.37 Application of Part 15.4

This Part applies to all applications except:

(a) an Application for Divorce;

(b) an application for an order that a marriage is a nullity; or

(c) an application for a declaration as to the validity of a marriage, divorce or annulment.

15.38 Appointing an assessor

(1) A party may apply for the appointment of an assessor by filing an Application in a Case (Form 2) and an affidavit.

(2) The affidavit must:

(a) state:

(i) the name of the proposed assessor;

(ii) the issue about which the assessor's assistance will be sought; and

(iii) the assessor's qualifications, skill and experience to give the assistance; and

(b) attach the written consent of the proposed assessor.

(3) The court may appoint an assessor on its own initiative only if the court has:

(a) notified the parties of the matters mentioned in subrule (2); and

(b) given the parties a reasonable opportunity to be heard in relation to the appointment.

15.39 Assessor's report

(1) The court may direct an assessor to prepare a report.

(2) A copy of the report must be given to each party and any child representative.

(3) An assessor must not be required to give evidence.

(4) The court is not bound by any opinion or finding of the assessor.

Note This rule applies unless the court orders otherwise (see rule 1.12).

15.40 Remuneration of assessor

(1) An assessor may:

(a) be remunerated as determined by the court; and

(b) be paid by the court, or a party or other person, as ordered by the court.

(2) The court may order a party or other person to pay, or give security for payment of, the assessor's remuneration before the assessor is appointed to assist the court.

Part 15.5 Expert evidence

Division 15.5.1 General

15.41 Application of Part 15.5

This Part does not apply to evidence from a medical practitioner or other person who has provided, or is providing, treatment for a party or child if the evidence relates only to:

(a) the results of an examination, investigation or observation made;

(b) a description of any treatment carried out or recommended; or

(c) expressions of opinion limited to the reasons for carrying out or recommending treatment and the consequences of the treatment.

Example for rule 15.41

An example of a person excluded from the requirements of this Part is a treating doctor or a teacher who is asked to give evidence because of the doctor's or teacher's involvement with a party or child.

15.42 Purpose of Part 15.5

The purpose of this Part is:

(a) to ensure that parties obtain expert evidence only in relation to a significant issue in dispute;

(b) to restrict expert evidence to that which is necessary to resolve or determine a case;

(c) to ensure that, if practicable and without compromising the interests of justice, expert evidence is given on an issue by a single expert witness;

(d) to avoid unnecessary costs arising from the appointment of more than one expert witness; and

(e) to enable a party to apply for permission to tender a report or adduce evidence from an expert witness appointed by that party, if necessary in the interests of justice.

15.43 Definitions

In this Part:

expert means an independent person who has relevant specialised knowledge, based on the person's training, study or experience, but does not include:

(a) a mediator employed by a Family Court (including a person appointed under regulation 8 of the Regulations); or

(b) an expert who has been appointed by a party for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case.

expert's report means a report by an expert witness, including a notice under subrule 15.59 (5).

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

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

Division 15.5.2 Single expert witness

15.44 Appointment of single expert witness by parties

(1) If the parties agree that expert evidence may help to resolve a substantial issue in a case, they may agree to jointly appoint a single expert witness to prepare a report in relation to the issue.

(2) A party does not need the court's permission to tender a report or adduce evidence from a single expert witness appointed under subrule (1).

15.45 Order for single expert witness

(1) The court may, on application or on its own initiative, order that expert evidence be given by a single expert witness.

(2) When considering whether to make an order under subrule (1), the court may take into account factors relevant to making the order, including:

(a) the main purpose of these Rules (see rule 1.04) and the purpose of this Part (see rule 15.42);

(b) whether expert evidence on a particular issue is necessary;

(c) the nature of the issue in dispute;

(d) whether the issue falls within a substantially established area of knowledge; and

(e) whether it is necessary for the court to have a range of opinion.

(3) The court may appoint a person as a single expert witness only if the person consents to the appointment.

(4) A party does not need the court's permission to tender a report or adduce evidence from a single expert witness appointed under subrule (1).

15.46 Orders the court may make

The court may, in relation to the appointment of, instruction of, or conduct of a case involving, a single expert witness make an order, including an order:

(a) requiring the parties to confer for the purpose of agreeing on the person to be appointed as a single expert witness;

(b) that, if the parties cannot agree on who should be the single expert witness, the parties give the court a list stating:

(i) the names of people who are experts on the relevant issue and have consented to being appointed as an expert witness; and

(ii) the fee each expert will accept for preparing a report and attending court to give evidence;

(c) appointing a single expert witness from the list prepared by the parties or in some other way;

(d) determining any issue in dispute between the parties to ensure that clear instructions are given to the expert;

(e) that the parties:

(i) confer for the purpose of preparing an agreed letter of instructions to the expert; and

(ii) submit a draft letter of instructions for settling by the court;

(f) settling the instructions to be given to the expert;

(g) authorising and giving instructions about any inspection, test or experiment to be carried out for the purposes of the report; or

(h) that a report not be released to a person or that access to the report be restricted.

15.47 Single expert witness's fees and expenses

(1) The parties are equally liable to pay a single expert witness's reasonable fees and expenses incurred in preparing a report.

(2) A single expert witness is not required to undertake any work in relation to his or her appointment until the fees and expenses are paid or secured.

Note 1 This rule applies unless the court orders otherwise (see rule 1.12).

Note 2 If there is a dispute about fees, a party or the expert witness may request the court to determine the dispute (see paragraph 15.46 (d)).

15.48 Single expert witness's report

(1) A single expert witness must prepare a written report.

(2) If the single expert witness was appointed by the parties, the expert witness must give each party a copy of the report at the same time.

(3) If the single expert witness was appointed by the court, the expert witness must give the report to the Registry Manager.

Note An expert witness may seek procedural orders from the court under rule 15.60 if the expert witness considers that it would not be in the best interests of a child or a party to give a copy of a report to each party.

(4) An applicant who has been given a copy of a report must file the copy but does not need to serve it.

15.49 Appointing another expert witness

(1) If a single expert witness has been appointed to prepare a report or give evidence in relation to an issue, a party must not tender a report or adduce evidence from another expert witness on the same issue without the court's permission.

(2) The court may allow a party to adduce evidence from another expert witness on the same issue if it is satisfied that:

(a) there is a substantial body of opinion contrary to any opinion given by the single expert witness and that the contrary opinion is or may be necessary for determining the issue;

(b) another expert witness knows of matters, not known to the single expert witness, that may be necessary for determining the issue; or

(c) there is another special reason for adducing evidence from another expert witness.

15.50 Cross-examination of single expert witness

(1) A party wanting to cross-examine a single expert witness at a hearing or trial must inform the expert witness, in writing at least 14 days before the date fixed for the hearing or trial, that the expert witness is required to attend.

(2) The court may limit the nature and length of cross-examination of a single expert witness.

Division 15.5.3 Permission for expert's evidence

15.51 Permission for expert's reports and evidence

(1) A party must apply for the court's permission to tender a report or adduce evidence at a hearing or trial from an expert witness, except a single expert witness.

(2) A child representative may tender a report or adduce evidence at a hearing or trial from one expert witness on an issue without the court's permission.

15.52 Application for permission for expert witness

(1) A party may seek permission to tender a report or adduce evidence from an expert witness by filing an Application in a Case (Form 2).

Note 1 A party who files a Form 2 must, at the same time, file an affidavit stating the facts relied on in support of the orders sought (see subrule 5.02 (1)).

Note 2 The court may allow a party to make an oral application (see paragraph (h) in item 3 of Table 11.1 in rule 11.01).

(2) The affidavit filed with the application must state:

(a) whether the party has attempted to agree on the appointment of a single expert witness with the other party and, if not, why not;

(b) the name of the expert witness;

(c) the issue about which the expert witness's evidence is to be given;

(d) the reason the expert evidence is necessary in relation to that issue;

(e) the field in which the expert witness is expert;

(f) the expert witness's training, study or experience that qualifies the expert witness as having specialised knowledge on the issue; and

(g) whether there is any previous connection between the expert witness and the party.

(3) When considering whether to permit a party to tender a report or adduce evidence from an expert witness, the court may take into account:

(a) the purpose of this Part (see rule 15.42);

(b) the impact of the appointment of an expert witness on the costs of the case;

(c) the likelihood of the appointment expediting or delaying the case;

(d) the complexity of the issues in the case;

(e) whether the evidence should be given by a single expert witness rather than an expert witness appointed by one party only; and

(f) whether the expert witness has specialised knowledge, based on the person's training, study or experience:

(i) relevant to the issue on which evidence is to be given; and

(ii) appropriate to the value, complexity and importance of the case.

(4) If the court grants a party permission to tender a report or adduce evidence from an expert witness, the permission is limited to the expert witness named, and the field of expertise stated, in the order.

Note Despite an order under this rule, a party is not entitle to adduce evidence from an expert witness if the expert's report has not been disclosed or a copy has not been given to the other party (see rule 15.58).

Division 15.5.4 Instructions and disclosure of expert's report

15.53 Application of Division 15.5.4

This Division does not apply to a market appraisal or an opinion as to value in relation to property obtained by a party for the purposes of a procedural hearing or conference under paragraph 12.02 (g) or subrule 12.05 (2).

15.54 Instructions to expert witness

(1) A party who instructs an expert witness to give an opinion for a case or an anticipated case must:

(a) ensure the expert witness has a copy of the most recent version of, and has read, this Part of these Rules; and

(b) obtain a written report from the expert witness.

(2) All instructions to an expert witness must be in writing and must include:

(a) a request for a written report;

(b) advice that the report may be used in an anticipated or actual case;

(c) the issues about which the opinion is sought;

(d) a description of any matter to be investigated, or any experiment to be undertaken or issue to be reported on; and

(e) full and frank disclosure of information and documents that will help the expert witness to perform the expert witness's function.

15.55 Mandatory disclosure of expert's report

(1) A party who has obtained an expert's report for a parenting case, whether before or after the start of the case, must give each other party a copy of the report:

(a) if the report is obtained before the case starts — at least 2 days before the case assessment conference; or

(b) if the report is obtained after the case starts — within 7 days after the party receives the report.

(2) The party who discloses an expert's report must disclose any supplementary report and any notice amending the report under subrule 15.59 (5).

(3) If an expert's report has been disclosed under this rule, any party may seek to tender the report as evidence.

(4) Legal professional privilege does not apply in relation to an expert's report that must be disclosed under this rule.

15.56 Provision of information about fees

A party who has instructed an expert witness must, if requested by another party, give each other party details of any fee or benefit received, or receivable, by or for the expert witness, for the preparation of the report and for services provided, or to be provided, by or for the expert witness in connection with the expert witness giving evidence for the party in the case.

15.57 Application for provision of information

(1) This rule applies if the court is satisfied that:

(a) a party (the ***disclosing party***) has access to information or a document that is not reasonably available to the other party (the ***requesting party***); and

(b) the provision of the information or a copy of the document is necessary to allow an expert witness to carry out the expert witness's function properly.

(2) The requesting party may apply for an order that the disclosing party:

(a) file and serve a document specifying the information in enough detail to allow the expert witness to properly assess its value and significance; and

(b) give a copy of the document to the expert witness.

Note An expert witness may request the court to make an order under this rule (see rule 15.60).

15.58 Failure to disclose report

A party who fails to give a copy of an expert's report to another party or the child representative (if any) must not use the report or call the expert witness to give evidence at a hearing or trial, unless the other party and child representative consent to the report being used or the expert witness being called, or the court orders otherwise.

Division 15.5.5 Expert witness's duties and rights

15.59 Expert witness's duty to the court

(1) An expert witness has a duty to help the court with matters that are within the expert witness's knowledge and capability.

(2) The expert witness's duty to the court prevails over the obligation of the expert witness to the person instructing, or paying the fees and expenses of, the expert witness.

(3) The expert witness has a duty to:

(a) give an objective and unbiased opinion that is also independent and impartial on matters that are within the expert witness's knowledge and capability;

(b) conduct the expert witness's functions in a timely way;

(c) avoid acting on an instruction or request to withhold or avoid agreement when attending a conference of experts;

(d) consider all material facts, including those that may detract from the expert witness's opinion;

(e) tell the court:

(i) if a particular question or issue falls outside the expert witness's expertise; and

(ii) if the expert witness believes that the report prepared by the expert witness:

(A) is based on incomplete research or inaccurate or incomplete information; or

(B) is incomplete or may be inaccurate, for any reason; and

(f) produce a written report that complies with rules 15.62 and 15.63.

(4) The expert witness's duty to the court arises when the expert witness:

(a) receives instructions under rule 15.54; or

(b) is informed by a party that the expert witness may be called to give evidence in a case.

(5) An expert witness who changes an opinion after the preparation of a report must give written notice to that effect:

(a) if appointed by a party — to the instructing party; or

(b) if appointed by the court — to the Registry Manager and each party.

(6) A notice under subrule (5) is taken to be part of the expert's report.

15.60 Expert witness's right to seek orders

(1) A single expert witness may, by written request to the court, seek a procedural order to assist in carrying out the expert witness's function.

Note The written request may be by letter and may, for example:

(a) ask for clarification of instructions;

(b) relate to the questions mentioned in Division 15.5.6; or

(c) relate to a dispute about fees.

(2) The request must:

(a) comply with subrule 24.01 (1); and

(b) set out the procedural orders sought and the reason the orders are sought.

(3) The expert witness must serve a copy of the request on each party and satisfy the court that the copy has been served.

(4) The court may determine the request in chambers unless:

(a) within 7 days of being served with the request, a party makes a written objection to the request being determined in chambers; or

(b) the court decides that an oral hearing is necessary.

15.61 Expert witness's evidence in chief

(1) An expert witness's evidence in chief comprises the expert's report, any changes to that report in a notice under subrule 15.59 (5) and any answers to questions under rule 15.66.

(2) An expert witness has the same protection and immunity in relation to the contents of a report disclosed under these Rules or an order as the expert witness could claim if the contents of the report were given by the expert witness orally at a hearing or trial.

15.62 Form of expert's report

(1) An expert's report must:

(a) be addressed to the court and the party instructing the expert witness;

(b) have attached to it a summary of the instructions given to the expert witness and a list of any documents relied on in preparing the report; and

(c) be verified by an affidavit of the expert witness.

(2) The affidavit verifying the expert's report must state the following:

'I have made all the inquiries I believe are necessary and appropriate and to my knowledge there have not been any relevant matters omitted from this report, except as otherwise specifically stated in this report.

I believe that the facts within my knowledge that have been stated in this report are true.

The opinions I have expressed in this report are independent and impartial.

I have read and understand Part 15.5 of the *Family Law Rules 2004* and have used my best endeavours to comply with it.

I have complied with the requirements of the following professional codes of conduct or protocol, being [*state the name of the code or protocol*].

I understand my duty to the court and I have complied with it and will continue to do so.'.

15.63 Contents of expert's report

An expert's report must:

(a) state the reasons for the expert witness's conclusions;

(b) include a statement about the methodology used in the production of the report; and

(c) include the following in support of the expert witness's conclusions:

(i) the expert witness's qualifications;

(ii) the literature or other material used in making the report;

(iii) the relevant facts, matters and assumptions on which the opinions in the report are based;

(iv) a statement about the facts in the report that are within the expert witness's knowledge;

(v) details about any tests, experiments, examinations or investigations relied on by the expert witness and, if they were carried out by another person, details of that person's qualifications and experience;

(vi) if there is a range of opinion on the matters dealt with in the report — a summary of the range of opinion and the basis for the expert witness's opinion;

(vii) a summary of the conclusions reached;

(viii) if necessary, a disclosure that:

(A) a particular question or issue falls outside the expert witness's expertise;

(B) the report may be incomplete or inaccurate without some qualification and the details of any qualification; or

(C) the expert witness's opinion is not a concluded opinion because further research or data is required or because of any other reason.

15.64 Consequences of non-compliance

If an expert witness does not comply with these Rules, the court may:

(a) order the expert witness to attend court;

(b) refuse to allow the expert's report or any answers to questions to be relied on;

(c) allow the report to be relied on but take the non-compliance into account when considering the weight to be given to the expert witness's evidence; and

(d) take the non-compliance into account when making orders for:

(i) an extension or abridgment of a time limit;

(ii) a stay of the case;

(iii) interest payable on a sum ordered to be paid; or

(iv) costs.

Note For the court's power to order costs, see subsection 117 (2) of the Act.

Division 15.5.6 Questions to single expert witness

15.65 Questions to single expert witness

(1) A party wanting to ask a single expert witness questions about the expert's report must do so before the hearing or trial.

(2) The questions must:

(a) be in writing and be put once only, within 21 days after the party receives a copy of the report;

(b) be only for the purpose of clarifying the expert's report; and

(c) not be vexatious or oppressive, or require the expert witness to undertake an unreasonable amount of work to answer.

(3) The party must give a copy of any questions to each other party.

Note A party may cross-examine a single expert witness (see rule 15.50).

15.66 Single expert witness's answers

(1) A single expert witness must answer a question received under rule 15.65 within 21 days after receiving it.

(2) An answer to a question:

(a) must be in writing;

(b) must specifically refer to the question; and

(c) must:

(i) answer the substance of the question; or

(ii) object to answering the question.

(3) If the single expert witness objects to answering a question or is unable to answer a question, the single expert witness must state the reason for the objection or inability in the document containing the answers.

(4) The single expert witness's answers:

(a) must be:

(i) attached to the affidavit under subrule 15.62 (2);

(ii) sent by the single expert witness to all parties at the same time; and

(iii) filed by the party asking the questions; and

(b) are taken to be part of the expert's report.

15.67 Single expert witness's costs for answers

(1) A single expert witness's reasonable fees and expenses incurred in answering any questions are to be paid by the party asking the questions.

(2) Despite subrule 15.66 (1), a single expert witness is not required to answer any questions until the fees and expenses for answering them are paid or secured.

Note This rule applies unless the court orders otherwise (see rule 1.12).

Division 15.5.7 Evidence from 2 or more expert witnesses

15.68 Application of Division 15.5.7

This Division applies to a case in which 2 or more parties intend to tender an expert's report or adduce evidence from different expert witnesses about the same, or a similar, question.

15.69 Conference of expert witnesses

(1) In a case to which this Division applies:

(a) the parties must arrange for the expert witnesses to confer at least 14 days before the pre-trial conference; and

(b) each party must give to the expert witness the party has instructed a copy of the document entitled *Experts' Conferences — Guidelines for expert witnesses and those instructing them in cases in the Family Court of Australia*, the text of which is set out in Schedule 5.

(2) The court may, in relation to the conference, make an order, including an order about:

(a) which expert witnesses are to attend;

(b) where and when the conference is to occur;

(c) which issues the expert witnesses must discuss;

(d) the questions to be answered by the expert witnesses; or

(e) the documents to be given to the expert witnesses, including:

(i) Part 15.5 of these Rules;

(ii) relevant affidavits;

(iii) a joint statement of the assumptions to be relied on by the expert witnesses during the conference, including any competing assumptions; and

(iv) all expert's reports already disclosed by the parties.

(3) At the conference, the expert witnesses must:

(a) identify the issues that are agreed and not agreed;

(b) if practicable, reach agreement on any outstanding issue;

(c) identify the reason for disagreement on any issue;

(d) identify what action (if any) may be taken to resolve any outstanding issues; and

(e) prepare a joint statement specifying the matters mentioned in paragraphs (a) to (d) and deliver a copy of the statement to each party.

(4) If the expert witnesses reach agreement on an issue, the agreement does not bind the parties unless the parties expressly agree to be bound by it.

(5) The joint statement may be tendered as evidence of matters agreed on and to identify the issues on which evidence will be called.

15.70 Conduct of trial with expert witnesses

At a trial, the court may make an order, including an order that:

(a) an expert witness clarify the expert witness's evidence after cross-examination;

(b) the expert witness give evidence only after all or certain factual evidence relevant to the question has been led;

(c) each party intending to call an expert witness is to close that party's case, subject only to adducing the evidence of the expert witness;

(d) each expert witness is to be sworn and available to give evidence in the presence of each other;

(e) each expert witness give evidence about the opinion given by another expert witness; or

(f) cross-examination, or re-examination, of an expert witness is to be conducted:

(i) by completing the cross-examination or re-examination of the expert witness before another expert witness; or

(ii) by putting to each expert witness, in turn, each question relevant to one subject or issue at a time, until the cross-examination or re-examination of all witnesses is completed.

Part 15.6 Other matters about evidence

15.71 Court may call evidence

(1) The court may, on its own initiative:

(a) call any person as a witness; and

(b) make any orders relating to examination and cross-examination of that witness.

(2) The court may order a party to pay conduct money for the attendance of the witness.

15.72 Order for examination of witness

(1) A court may, at any stage in a case:

(a) request that a person be examined on oath before a court, or an officer of that court, at any place in Australia; or

(b) order a commission to be issued to a person in Australia authorising that person to take the evidence of any person on oath.

(2) The court receiving the request, or the person to whom the commission is issued, may make procedural orders about the time, place and manner of the examination or taking of evidence, including that the evidence be recorded in writing or by electronic communication.

(3) The court making the request or ordering the commission may receive in evidence the record taken.

15.73 Letters of request

(1) If, under the *Foreign Evidence Act 1994*, a court orders a letter to be issued to the judicial authorities of a foreign country requesting that the evidence of a person be taken, the party obtaining the order must file:

(a) 2 copies of the appropriate letter of request and any questions to accompany the request;

(b) if English is not an official language of the country to whose judicial authorities the letter of request is to be sent — 2 copies of a translation of each document mentioned in paragraph (a) in a language appropriate to the place where the evidence is to be taken; and

(c) an undertaking:

(i) to be responsible for all expenses incurred by the court, or by the person at the request of the court, in respect of the letter of request; and

(ii) to pay the amount to the Registry Manager of the filing registry, after being given notice of the amount of the expenses.

(2) A translation filed under paragraph (1) (b) must be accompanied by an affidavit of the person making the translation:

(a) verifying that it is a correct translation; and

(b) setting out the translator's full name, address and qualifications for making the translation.

(3) If, after receiving the documents mentioned in subrules (1) and (2) (if applicable), the Registrar is satisfied that the documents are appropriate, the Registry Manager must send them to the Secretary of the Attorney-General's Department for transmission to the judicial authorities of the other country.

Note Rules 5.06 and 16.08 set out the procedure for arranging for a party or a witness to attend a hearing or trial by electronic communication.

15.74 Hearsay evidence — notice under section 67 of the *Evidence Act 1995*

A Notice of Previous Representation for subsection 67 (1) of the *Evidence Act 1995* must be attached to an affidavit that sets out evidence of the previous representation.

Note 1 Subsection 67 (1) of the *Evidence Act 1995* provides that specified exceptions to the hearsay rule do not apply to evidence unless the party adducing the evidence gives reasonable written notice. For the relevant specified exceptions, see subsections 63 (2) and 64 (2) of that Act. See subsection 67 (3) of the *Evidence Act 1995* and regulation 5 of the Evidence Regulations for the requirements for a notice under section 67.

Note 2 Subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

15.75 Transcript receivable in evidence

A transcript of a hearing or trial may be received in evidence as a true record of the hearing or trial.

15.76 Notice to produce

(1) A party may, no later than 7 days before a hearing or 28 days before a trial, by written notice, require another party to produce, at the hearing or trial, a specified document that is in the possession or control of the other party.

(2) A party receiving a notice under subrule (1) must produce the document at the hearing or trial.

Chapter 16 Trial

Summary of Chapter 16

Chapter 16 sets out how to prepare for and conduct a trial.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 16.1 Expedited trials

16.01 Expedited trial

(1) A party may apply for an expedited trial.

Note For the procedure for making an application in a case, see Chapter 5.

(2) The court may take into account whether:

(a) the applicant has acted reasonably and without delay in the conduct of the case;

(b) the application has been made without delay; and

(c) there is an exceptional circumstance in which the case should be given priority to the possible detriment of other cases.

(3) If the court is satisfied of the matters in subrule (2), the court may:

(a) order an expedited trial;

(b) set a trial date;

(c) specify how the trial will be conducted;

(d) define the issues;

(e) limit disclosure;

(f) set a timetable for the filing of affidavits; and

(g) identify the documentary evidence to be relied on.

(4) For paragraph (2) (c), an ***exceptional circumstance*** includes:

(a) whether the age, physical or mental health of, or other circumstance (such as an imminent move interstate or overseas) affecting a party or witness, that would affect the availability or competence of the party or witness;

(b) whether a party has been violent, harassing or intimidating to another party or a witness;

(c) whether the applicant is suffering financial hardship that:

(i) is not caused by the applicant; and

(ii) cannot be rectified by an interim order;

(d) whether the continuation of interim orders is causing the applicant or the children hardship;

(e) whether the purpose of the case will be lost if it is not heard quickly (for example, a job opportunity will be lost if not taken; property will be destroyed; an occasion will have passed);

(f) whether the case involves allegations of child sexual, or other, abuse; and

(g) whether an expedited trial would avoid serious emotional or psychological trauma to a party or child who is the subject of, or affected by, the case.

Part 16.2 Preparation for trial

Note Every attempt should be made to draft affidavits in an admissible form. It is necessary for the parties to resolve, before the trial, questions of admissibility of evidence contained in affidavits, and for the trial Judge to dispose of outstanding questions of admissibility when the party or witness is called.

16.02 Trial information

If a party seeks to change any of the information given to the Registrar under paragraph 12.10 (1) (b), the party must notify each other party and the court at least 14 days before the trial.

16.03 Notice in relation to evidence

(1) A party must notify each other party, in writing, at least 14 days before the trial, of:

(a) any objections to an affidavit filed by the other party (in particular, the specific material the party objects to, and the grounds for the objection);

(b) the documents the party intends to tender at the trial in evidence in chief; and

(c) if inspection of documents has not occurred, where and when the documents may be inspected.

(2) Each other party must, in writing, at least 3 days before the trial:

(a) reply to any objections notified under paragraph (1) (a); and

(b) advise:

(i) which documents notified under paragraph (1) (b) may be tendered by consent; and

(ii) if there are documents that may not be tendered by consent, why the consent is withheld.

(3) If a party gives any written notice, reply or advice under subrule (1) or (2), the party must also lodge a copy of the notice, reply or advice with the associate to the trial Judge at least 24 hours before the trial begins.

Note 1 Rule 13.14 provides that, if a party does not disclose a document required to be disclosed under the duty of disclosure, the document is not admissible at the trial without the consent of the other party or an order.

Note 2 Rule 15.76 provides that a party may give another party a notice to produce a specified document at a hearing or trial.

Part 16.3 Conduct of trial

Note Before a trial starts, the trial Judge should have available to read:

(a) the information given to the Registrar about the trial (see paragraph 12.10 (1) (b) and rule 16.02);

(b) the documents relied on by each party (see rule 15.06);

(c) the summary of argument by each party as ordered at the pre-trial conference;

(d) the lists of objections (if any) in relation to evidence (see rule 16.03);

(e) the lists of documents intended to be tendered (see rule 16.03); and

(f) any other documents ordered to be filed before the trial (for example, in some cases, a joint case summary document may be ordered to be filed).

16.04 Conduct of trial — general

The court must ensure, in the conduct of a trial, that:

(a) the parties focus on issues that are in dispute; and

(b) the case is conducted expeditiously.

Note 1 An affidavit must not be relied on at the trial unless it is filed in accordance with these Rules or an order (see subrule 15.06 (1)).

Note 2 The court may dispense with compliance with a rule (see rule 1.12).

16.05 Trial management

(1) The court, having regard to the main purpose of these Rules, may make any order about the conduct of the trial, including an order:

(a) related to:

(i) the issues on which the court requires evidence;

(ii) the nature of the evidence required to decide the issues;

(iii) the number of witnesses a party may call on a particular issue;

(iv) how the evidence is to be adduced;

(v) excluding inadmissible evidence; and

(vi) the time to be taken for evidence in chief, cross-examination or re-examination of a witness and submissions;

(b) requiring submissions to be made in a specified way;

(c) limiting the duration of an oral submission, or of the length of a written submission or affidavit;

(d) limiting the time for presentation of a party's case; and

(e) determining the duration of the trial.

(2) The court must not make an order under subrule (1) that detracts from:

(a) the attainment of justice;

(b) each party's entitlement to a fair and just hearing; or

(c) each party being given a reasonable opportunity to adduce evidence, cross-examine and re-examine witnesses, and to address the court.

16.06 Sequence of evidence

(1) An applicant must adduce evidence before a respondent or child representative adduces evidence.

(2) A respondent must adduce evidence before a child representative adduces evidence.

16.07 Opening and closing address

(1) A party or a child representative may make an opening address with the court's permission.

(2) A child representative must make any closing address before the applicant or respondent makes a closing address.

(3) A respondent must make any closing address before the applicant makes a closing address.

Note The court may require the parties to address the court in another sequence (see rule 1.12).

16.08 Attendance, submissions and evidence by electronic communication

Note The issue of whether a party wishes to make a submission or adduce evidence from a witness at the trial by electronic communication will be discussed at the pre-trial conference, and any application in that respect will be referred to a Judge without formal application or affidavit material. In other cases, an application should be made under rule 16.08.

(1) A party may apply for permission to do any of the following things by electronic communication in a trial:

(a) attend;

(b) make a submission;

(c) give evidence;

(d) adduce evidence from a witness.

Note For the procedure for making an application in a case, see Chapter 5.

(2) The application must be:

(a) filed at least 28 days before the date of the trial; and

(b) listed before the trial Judge.

Note The court may shorten or extend the time for compliance with a rule (see rule 1.14).

(3) The affidavit filed with the application must set out the facts relied on in support of the application, including the following:

(a) what the applicant seeks permission to do by electronic communication;

(b) the kind of electronic communication to be used;

(c) if the party proposes to give evidence, make a submission, or adduce evidence from a witness by electronic communication — the place from which the party proposes to give or adduce the evidence, or make the submission;

(d) the facilities at the place mentioned in paragraph (d) that will enable all eligible persons present in that place to see or hear each eligible person in the place where the court is sitting;

(e) if the applicant seeks to adduce evidence from a witness by electronic communication:

(i) whether an affidavit by the witness has been filed;

(ii) whether the applicant seeks permission for the witness to give oral evidence;

(iii) the relevance of the evidence to the issues;

(iv) whether the witness is an expert witness;

(v) the name, address and occupation of any person who is to be present when the evidence is given;

(vi) if the applicant proposes to refer the witness to a document, whether:

(A) the document has been filed; and

(B) the witness will have a copy of the document; and

(vii) whether an interpreter is required and, if so, what arrangements are to be made;

(f) the expense of using the electronic communication, including any expense to the court, and the applicant's proposals for paying those expenses;

(g) whether the other parties object to the use of electronic communication for the purpose specified in the application and, if so, the reason for the objection.

(4) The application may be decided in chambers on the documents filed.

(5) The court may order:

(a) a party to pay the expenses of the attendance by electronic communication; or

(b) that the expenses are to be apportioned between the parties.

16.09 Foreign evidence by electronic communication

(1) In addition to the requirements of rule 16.08, a party who proposes to adduce evidence by telephone or video conference or other electronic communication from a witness in a foreign country, must satisfy the court:

(a) that the party has read the information published by the Attorney-General's Department regarding its arrangements with other countries for the taking of evidence, to determine the attitude of the foreign country's

government to the taking of evidence by electronic communication;

(b) if the attitude of the foreign country's government to the taking of evidence by electronic communication cannot be ascertained from sources within Australia — that the party has made appropriate inquiries through diplomatic channels, a lawyer or a provider of technical facilities in the foreign country to determine that attitude;

(c) whether permission is needed from the foreign country's government to adduce evidence from a witness in that country by electronic communication;

(d) if permission is needed, whether permission has been granted or refused;

(e) if permission has been refused, the reason for refusal; and

(f) whether there are any special requirements for the adducing of evidence, including:

(i) the administration of an oath; and

(ii) the form of the oath.

(2) In this rule:

foreign country means a country other than Canada, New Zealand, the United Kingdom or the United States of America.

Note 1 A party seeking to adduce evidence from a witness in Canada, New Zealand, the United Kingdom or the United States of America does not have to comply with the requirements of subrule (1) because these countries do not object to the taking of evidence by video link.

Note 2 The court, instead of granting permission for a party to adduce evidence by electronic communication from a witness in a foreign country, may direct the Registry Manager to send a letter of request to the judicial authorities in the foreign country, requesting the court to take evidence from the witness in accordance with the law of the foreign country. For the requirements for a letter of request to the judicial authorities of a foreign country, see rule 15.73.

16.10 Exhibits

(1) The Registry Manager must take charge of every exhibit.

(2) The list of exhibits is part of the court record.

(3) A court may direct that an exhibit be:

(a) kept in the court;

(b) returned to the person who produced it; or

(c) disposed of in an appropriate manner.

(4) A party who tenders an exhibit into evidence must collect the exhibit from the Registry Manager at least 28 days, and no later than 42 days, after the final determination of the application or appeal (if any).

(5) Subrule (4) does not apply to a document produced by a person as required by a subpoena for production.

Note For the return of a document produced in compliance with a subpoena, see rule 15.35.

16.11 Party's failure to attend

(1) If a party does not attend when a trial starts, the other party may seek the orders sought in that party's application by, if necessary, adducing evidence to establish an entitlement to those orders.

(2) If no party attends, the court may dismiss all applications.

16.12 Vacating trial date

(1) A party seeking to vacate a trial date must apply to do so at the earliest possible time before the date fixed for trial.

(2) Both parties must attend the hearing of the application.

(3) A trial may only be vacated:

(a) by order of a Judge or Judicial Registrar; and

(b) in exceptional circumstances.

(4) If final agreement has been reached between the parties, the applicant must:

(a) immediately notify the court after agreement is reached; and

(b) arrange for the case to be finalised by consent order or discontinuance.

Chapter 17 Orders

Summary of Chapter 17

Chapter 17 sets out when an order is made, how errors in orders are corrected, the rate of interest and other requirements in relation to certain monetary orders.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

17.01 When an order is made

(1) An order is made:

(a) in a hearing or trial — when it is pronounced in court by the judicial officer; or

(b) in chambers — when the judicial officer signs the order (see paragraph 11.16 (3) (b)).

(2) An order takes effect on the date when it is made, unless otherwise stated.

Note After an order is made, it is issued by the court. The issued order embodies the terms of the order in a document that is signed and sealed.

(3) A party is entitled to receive:

(a) a sealed copy of an order;

(b) if the order is rectified by the court — a sealed copy of the rectified order; and

(c) a copy of any published reasons for judgment.

(4) Subrule (3) does not apply to a procedural order.

17.02 Errors in orders

(1) If a party claims that there is an error in an order issued by the court, the party must give written notice of the error to the Registry Manager and all parties.

(2) A Registrar may rectify an error that appears obvious on reading the order.

Example

A kind of amendment that a Registrar may make under subrule (2) is the correction of a typographical error.

(3) If the Registrar:

(a) is in doubt about whether there is an error in an order; or

(b) believes that an error in an order has, or may have, arisen from an accidental slip or omission;

the Registrar may take action under subrule (4).

(4) If subrule (1) or (3) applies, the party or Registrar may, after giving reasonable notice to each party, refer the order to the judicial officer who made it.

Note If the judicial officer who made the order is unavailable, it may be referred to another judicial officer (see rule 1.13).

(5) A judicial officer may, after giving each party a reasonable opportunity to be heard, rectify a suspected error referred to the judicial officer.

Note An amendment of an order may be made under this rule only if it is an error obvious when reading the order. Any other amendment must be remedied by appeal or consent.

17.03 Rate of interest

For paragraphs 87 (11) (b) and 90KA (b) and subsection 117B (1) of the Act, the rate of interest prescribed is 9.55% a year.

Note For the date from which interest is payable, see section 117B of the Act.

17.04 Order for payment of money

(1) This rule applies if a person is ordered by the court (other than by way of consent) to pay money and:

(a) the person is not present, or represented by a lawyer, in court when the order is made; or

(b) the order is made in chambers.

(2) The person must be served with a sealed copy of the order:

(a) if the order imposes a fine — by the Marshal or other officer of the court; or

(b) in any other case — by the person who benefits from the order.

Note A party must not personally serve another party by hand but may be present when service takes place (see subrule 7.06 (3)). For service of documents generally, see Chapter 7.

17.05 Order for payment of fine

If a court orders the payment of a fine or the forfeiture of a bond, the fine or forfeited amount must be paid immediately into the filing registry.

Note 1 A person may apply to the court for more time to pay a fine (see rule 1.14).

Note 2 If the court makes an order on an application without notice to the respondent, the order will operate until a time specified in the order (see rule 5.13).

Chapter 18 Powers of Judicial Registrars, Registrars and Deputy Registrars

Summary of Chapter 18

Chapter 18 sets out:

- the powers of the court that are delegated to Judicial Registrars, Registrars and Deputy Registrars; and
- the process for reviewing an order made by a Judicial Registrar or Registrar.

Note A power or function expressed by these Rules to be conferred on a Registrar may also be exercised by:

- in the Family Court of Australia — a Judge, a Judicial Registrar or a Registrar;
- in the Family Court of Western Australia — a Judge;
- in the Supreme Court of a State or Territory — a Judge; and
- in a court of summary jurisdiction — a Magistrate.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 18.1 Delegation of powers to Judicial Registrars and Registrars

Division 18.1.1 General

18.01 Exercise of powers and functions

(1) A power or function expressed by these Rules to be conferred on a Deputy Registrar may also be exercised by a Judicial Registrar or a Registrar.

(2) A power or function expressed by these Rules to be conferred on a Registrar may also be exercised by a Judicial Registrar.

(3) A Judicial Registrar, Registrar or Deputy Registrar exercising a power of the court or performing any function in connection with a power of the court has the same protection and immunity as a Judge or Magistrate.

Division 18.1.2 Delegation to Judicial Registrars

18.02 Delegation of powers to Judicial Registrars

(1) All of the powers vested in the Family Court by legislative provisions in relation to a case in which the court is exercising original jurisdiction are delegated to each Judicial Registrar except the power to make:

(a) an excluded child order;

(b) an order setting aside a registered award under section 19G of the Act;

(c) an order or declaration under section 78, 79 or 79A or subsection 87 (8), 90J (3) or 90K (1) of the Act, if the gross value of the property is more than $2 000 000;

(d) an order under section 70NL of the Act to vary or discharge an order under paragraph 70NJ (3) (a) of the Act that was not made by a Judicial Registrar;

(e) an order under section 112AK of the Act to vary or discharge an order under section 112AD of the Act that was not made by a Judicial Registrar;

(f) an order under the *Marriage Act 1961*;

(g) an order reviewing the exercise of a power by a Judicial Registrar, Registrar or Deputy Registrar; and

(h) any of the orders under these Rules mentioned in Table 18.1.

Table 18.1 Powers not delegated to Judicial Registrars

Item	Provision of these Rules	Description (for information only)
1	rule 4.07	Power to transfer a cross-vesting matter
2	Division 4.2.3	Power to make an order in relation to a medical procedure application
3	Part 10.3	Power to make a summary order or separate decision relating to an application that is not within the Judicial Registrar's jurisdiction
4	rule 11.04	Power to make an order in relation to a frivolous or vexatious case
5	rule 11.05	Power to make an order in relation to an application for permission to start a case

Note The powers of the court in its appellate jurisdiction, set out in Part X of the Act, are not delegated to Judicial Registrars.

(2) Despite paragraph (1) (f), the power to make an order under subsection 92 (1) of the *Marriage Act 1961* is delegated to a Judicial Registrar.

(3) Paragraphs (1) (b), (c), (d), (e) and (h) do not apply to an order that is:

(a) an order until further order;

(b) an order made in an undefended case; or

(c) an order made with the consent of all the parties to the case.

(4) Paragraph (1) (c) does not apply if:

(a) the order is a flagging order; or

(b) the parties consent to the exercise of the power by a Judicial Registrar.

(5) For paragraph (1) (c), the value of any superannuation interest must be included in the calculation of the gross value of the property.

Note Under section 90MC of the Act, a superannuation interest is to be treated as property for the purposes of paragraph (ca) of the definition of ***matrimonial cause*** in section 4 of the Act.

18.03 Property value exceeding limit — power to determine case

If, in a case:

(a) a Judicial Registrar exercises the power of the court mentioned in paragraph 18.02 (1) (c); and

(b) it becomes apparent during the trial that the gross value of the property to be dealt with in the case exceeds $2 000 000;

the Judicial Registrar may continue to hear and determine the case.

Note Under section 90MC of the Act, a superannuation interest is to be treated as property for the purposes of paragraph (ca) of the definition of ***matrimonial cause*** in section 4 of the Act.

Division 18.1.3 Delegation of powers to Registrars and Deputy Registrars

18.04 Application of Division 18.1.3

This Division applies:

(a) to a Registrar or Deputy Registrar who is enrolled as a lawyer of the High Court or of the Supreme Court of a State or Territory; and

(b) subject to any arrangement made under subsection 37B (2) of the Act.

Note Under subsection 37B (2) of the Act, the Principal Registrar may direct which Registrars or Deputy Registrars are to perform any functions or exercise any power under the Act, Regulations or these Rules in particular matters or classes of matters.

18.05 Registrars

(1) Each power of the court mentioned in an item of Table 18.2 is delegated to each Registrar who is approved, or is in a class of Registrars approved, by a majority of the Judges to exercise the power.

Table 18.2 Powers delegated to Registrars

Item	Legislative provision	Description (for information only)
Family Law Act		
1	section 37A	Power to make a parenting order in an undefended case
2	section 63H	Power to make an order concerning a registered parenting plan until further order
3	section 65D	Power to make a parenting order until further order
4	paragraph 65G (2) (b)	Power to make a parenting order by consent in favour of a non-parent without a family report
5	section 65L	Power to make an order requiring compliance with a parenting order to be supervised by a family and child counsellor or welfare officer
6	sections 66G, 66P and 66Q	Power to make an order for child maintenance
7	section 66S	Power to discharge or vary a child maintenance order
8	section 66W	Power to make an order for the recovery of arrears due under a child maintenance order
9	subsection 67D (1) and section 67E	Power to make an order in relation to the birth of a child, including for financial assistance
10	subsection 67M (2)	Power to make a location order
11	subsection 67N (2)	Power to make a Commonwealth information order
12	section 67ZD	Power to make an order to deliver up a passport to a Registrar until further order
13	subsections 68B (1) and (2)	Power to make an order, or grant an injunction, until further order

Item	Legislative provision	Description (for information only)
14	subsection 68M (2)	Power to make an order that a child be made available for a psychiatric or psychological examination
15	sections 69V and 69VA, subsection 69W (1), section 69X and subsection 69ZC (2)	Power to make an order in relation to the parentage of a child
16	sections 74 and 77	Power to make an order, including an urgent order, for the maintenance of a party
17	subsection 83 (1)	Power to vary or discharge a spouse maintenance order
18	subsection 87 (3)	Power to make an order approving a maintenance agreement
19	section 100B	Power to make an order allowing a child to swear an affidavit or be called as a witness
20	section 102A	Power to make an order granting permission for a child to be examined
21	section 106A	Power to direct a Deputy Registrar to sign documents
Assessment Act		
22	section 139	Power to make an order for the payment of urgent maintenance
Registration Act		
23	subsection 105 (2)	Power to make procedural orders for the resolution of any difficulty arising in relation to the application of subsection 105 (1) of the Registration Act or in relation to a particular case

(2) Each power vested in the court by these Rules and mentioned in an item of Table 18.3 is delegated to each Registrar.

Table 18.3 Powers under Rules delegated to Registrars

Item	Provision of Family Law Rules	Description (for information only)
1	rule 6.05	Power to make an order in relation to a person seeking to intervene in a case to become a party
2	Part 6.3	Power to make an order in relation to a case guardian
3	subrule 10.11 (5)	Power to make an order staying a case until an order to pay costs in relation to an earlier case has been complied with
4	rule 13.14	Power to make an order in relation to a case heard by a Registrar as a consequence of a party's failure to disclose a document as required under these Rules
5	rule 15.01	Power to make an order in relation to adducing the evidence of a child
6	Part 15.4	Power to make an order in relation to the appointment of an assessor
7	Division 20.2.2	Power to make an order in relation to an enforcement hearing
8	Division 20.3.2	Power to make an order in relation to a notice of claim made in response to an Enforcement Warrant
9	rule 20.37	Power to make an order in relation to a Third Party Debt Notice (Form 17)
10	Part 20.5	Power to make an order in relation to sequestration of property
11	Part 20.6	Power to make an order in relation to the appointment of a receiver
12	Part 20.7	Power to make an order in relation to enforcement of an obligation (except an obligation to pay money)
13	Part 21.4	Power to make an order in relation to a warrant for arrest in a case within a Registrar's jurisdiction

18.06 Deputy Registrars

(1) Each power of the court mentioned in an item of Table 18.4 is delegated to each Deputy Registrar.

Table 18.4 Powers delegated to Deputy Registrars

Item	Legislative provision	Description (for information only)
Family Law Act		
1	sections 14C, 16A and 16B	Power to refer parties to counselling and to adjourn the case until the parties have received counselling
2	sections 19B and 19BA	Power to refer parties to mediation and to adjourn the case until the parties have had mediation
3	sections 19D and 19E	Power to refer parties to arbitration and to make procedural orders to assist arbitration
4	sections 33B and 33C	Power to transfer a case, in whole or in part, to the Federal Magistrates Court
5	subsection 37A (1)	All powers except the powers in paragraph (f) *Note* The delegations mentioned in this item are subject to the restrictions imposed by subsection 37A (6) of the Act.
6	subsection 44 (1C)	Power to make an order for divorce within 2 years of the date of marriage
7	section 45	Power to transfer a case to another court
8	subsection 46 (3A)	Power to remove a case from a court of summary jurisdiction
9	section 48	Power to make a decree of dissolution of marriage in an undefended case
10	subsection 55 (2)	Power to reduce or increase the time for a decree absolute

Item	Legislative provision	Description (for information only)
11	section 55A	Power to make a declaration about arrangements for children after a divorce
12	section 57	Power to rescind a decree nisi
13	section 62F	Power to order parties to attend counselling
14	section 62G	Power to order a family report
15	subsection 63E (3)	Power to approve a parenting plan
16	subsection 65F (1)	Power to make an order that the parties attend mediation with a family and child counsellor or a welfare officer to discuss the matter to which the case relates
17	section 68L	Power to make an order that a child is to be separately represented
18	paragraph 79 (9) (c)	Power to make an order dispensing with requirement to attend a conference
19	subsection 91B (1)	Power to request that a prescribed child welfare authority intervene in a case in which a child's welfare is or may be affected
20	subsections 92 (1) and (2)	Power to make an order entitling a person to intervene in a case
21	subsection 97 (1A)	Power to exercise powers in chambers
22	subsection 97 (2)	Power to make an order that a specified person is not, or specified persons are not, to be present in court during the case or during a specified part of the case that is within the Deputy Registrar's power
23	section 98A	Power to make an order granting an undefended Application for Divorce in the absence of the parties
24	section 101	Power to protect a witness in relation to a case being heard by the Deputy Registrar

Item	Legislative provision	Description (for information only)
25	section 109A	Power to enforce an order in relation to a financial matter
26	subsection 114 (3)	Power to grant an injunction in relation to an obligation to be enforced under Chapter 20
27	subsection 117 (2)	Power to make a costs order in a case before the Deputy Registrar, except an order for security for costs
Family Law Regulations		
28	subregulation 4 (1)	Power to make an order in relation to practice and procedure if satisfied that the Act, the Regulations or these Rules do not adequately provide for a particular situation or there is a difficulty or doubt about practice or procedure
29	regulation 5	Power to make an order in relation to a case if a party has not complied with the Regulations or these Rules
30	paragraph 6 (1) (a)	Power to relieve a party from non-compliance with a regulation, rule or order made by a Registrar

(2) Each power vested in the court by these Rules and mentioned in an item of Table 18.5 is delegated to each Deputy Registrar.

Table 18.5 Powers under Rules delegated to Deputy Registrars

Item	Provision of Rules	Description (for information only)
1	Part 1.2	Power to make an order in relation to promoting or achieving the main purpose of these Rules
2	Part 1.3	Power: (a) to make a procedural order in case of doubt or difficulty; (b) to make an order on application or own initiative in relation to a matter mentioned in these Rules; (c) to set aside or vary an order made in exercise of a power under these Rules; (d) on application or own initiative, to dispense with compliance of any of these Rules; (e) to hear an application if another Deputy Registrar is unavailable; (f) on application, to shorten or extend a time for doing an act under these Rules; and (g) to specify a time by which an action under a rule or order is to be taken
3	rule 5.06	Power to permit a party to attend, adduce evidence or make a submission by electronic communication
4	rule 5.07	Power to make an order in relation to attendance of party or witness in prison
5	Part 5.4	Power to make an order in relation to a hearing on the papers in the absence of the parties, except in relation to an interim order

Rule 18.06

Item	Provision of Rules	Description (for information only)
6	rule 6.04	Power to remove a party to a case
7	rule 6.15	Power to make an order about the progress of a case after a party dies
8	Chapter 7	Power to make an order in relation to service
9	rule 8.02	Power to make an order to appoint or remove a child representative
10	rule 10.11 (except subrule (5))	Power to permit a case to be discontinued
11	Part 10.4	Power to make an order in relation to a consent order
12	rule 11.01 (except paragraphs 3 (d) and (k) of Table 11.1)	Power to exercise the court's powers in relation to case management
13	paragraphs 11.02 (2) (d) and (g)	Power to exercise the court's power to make orders if a party does not comply with a legislative provision or order
14	paragraph 11.03 (1) (a)	Power to grant relief from the effect of subrule 11.02 (1)
15	subrule 11.10 (1)	Power to order amendment of application or response
16	rule 11.14	Power to disallow an amendment of a document
17	rule 11.15	Power to order that a case be determined as a small claim
18	Part 11.3	Power to determine a case in chambers, and to transfer a case or a court file
19	Chapter 12	Power to make an order in relation to the court events that parties to an Application for Final Orders must attend
20	Chapter 13 (except rule 13.14)	Power to make an order in relation to disclosure in a case
21	rule 14.01 (except subrules (2) and(5))	Power to make an order for the inspection or valuation of property

Item	Provision of Rules	Description (for information only)
22	rule 15.03	Power to make an order in relation to the preparation of a family report
23	rule 15.06	Power to make an order in relation to the reliance on an affidavit at a hearing or trial
24	rule 15.13	Power to order that objectionable material be struck out of an affidavit
25	rule 15.18	Power to permit a self-represented party to request the issue of a subpoena
26	subrule 15.19 (2)	Power to issue a subpoena after a hearing or trial date has been fixed
27	subrule 15.22 (2)	Power to permit a subpoena to be served on a child
28	rule 15.26	Power to make an order to set aside a subpoena or in relation to payment of loss or expense or other relief in relation to a subpoena
29	rule 15.32	Power to permit a person to inspect or copy a document produced in compliance with a subpoena
30	subrule 15.34 (3)	Power to permit a party to inspect and copy a document from another court produced to the court
31	Part 15.5	Power to make an order in relation to the appointment of an expert witness and expert evidence
32	Chapter 19 (except Parts 19.2 and 19.8)	Power to make an order in relation to costs and the assessment of costs
33	Chapter 20 (except Divisions 20.2.2 and 20.3.2, rule 20.37, and Parts 20.5, 20.6 and 20.7)	Power to make an order in relation to enforcement of financial orders and obligations
34	rule 22.18	Power to conduct a settlement conference or procedural hearing
35	rule 22.20	Power to make orders at a procedural hearing

Item	Provision of Rules	Description (for information only)
36	Chapter 23	Power to make an order in relation to registration of documents
37	Chapter 24	Power to make an order in relation to general requirements for documents and their filing and procedures relating to registry records

Note Under subsection 37B (2) of the Act, the Principal Registrar may direct which Registrars or Deputy Registrars are to perform any function or exercise any power under the Act, the regulations or these Rules in particular matters or classes of matters.

Part 18.2 Review of decisions

18.07 Application of Part 18.2

This Part:

(a) applies to an application for the review of an order of a Judicial Registrar, Registrar or Deputy Registrar; and

(b) does not apply to an application for a review of an order made by an Appeal Registrar.

Note 1 Subsection 37A (9) of the Act provides that a party may apply for the review of a Registrar's order.

Note 2 A party seeking a review of an Appeal Registrar's order relating to the conduct of an appeal may file an Application in a Case (Form 2) in the Regional Appeal Registry within 14 days after the order is made (see rule 22.52).

18.08 Review of order

A party may apply for a review of an order mentioned in an item of Table 18.6 by filing an Application in a Case (Form 2) and a copy of the order appealed from in the filing registry within the time mentioned in the item.

Note Chapter 5 sets out the procedure for filing an application in a case. The application for review will be listed for hearing by a Judge within 28 days after the date of filing of the application.

Table 18.6 Orders that may be reviewed

Item	Order	Time within which application must be made
1	Order made by a Judicial Registrar exercising a power delegated under rules 18.02 and 18.03 and subrule 18.05 (1)	within 28 days after the Judicial Registrar makes the order

Rule 18.09

Item	Order	Time within which application must be made
2	Order made by a Registrar exercising a power mentioned in subrule 18.05 (1)	within 28 days after the Registrar makes the order
3	Order made by a Judicial Registrar or Registrar exercising a power delegated under subrule 18.05 (2)	within 7 days after the Judicial Registrar or Registrar makes the order
4	Order made by a Judicial Registrar, Registrar or Deputy Registrar exercising a power delegated under rule 18.06	within 7 days after the Judicial Registrar, Registrar or Deputy Registrar makes the order

Note A person may apply for an extension of a time mentioned in Table 18.6 (see rule 1.14).

18.09 Stay

(1) Subject to subrule (3), the filing of an application for a review of an order does not operate as a stay of the order.

(2) A party may apply for a stay of an order in whole or in part.

Note Chapter 5 sets out the procedure for making an application in a case.

(3) If a decree nisi has been granted by a Judicial Registrar, Registrar or Deputy Registrar, an application for review of the order is taken to be an appeal within the meaning of subsection 55 (3) of the Act.

18.10 Power of court on review

(1) A court must hear an application for review of an order of a Judicial Registrar, Registrar or Deputy Registrar as an original hearing.

Note In an original hearing, the court rehears the whole matter and does not simply review the decision of the original court.

(2) The court may receive as evidence:

(a) any affidavit or exhibit tendered in the first hearing;

(b) any further affidavit or exhibit;

(c) the transcript (if any) of the first hearing; or

(d) if a transcript is not available, an affidavit about the evidence that was adduced at the first hearing, sworn by a person who was present at the first hearing.

Chapter 19 Costs

Summary of Chapter 19

Chapter 19 regulates the charges of lawyers in family law cases. You may also need to refer to other Chapters in these Rules, particularly Chapters 7 and 24.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 19.1 General

19.01 Application of Chapter 19

(1) This Chapter applies to costs for work done for a case paid or payable by:

(a) a client to a lawyer; or

(b) if paragraph (a) does not apply — one person to another person.

(2) A party may only recover costs from another party in accordance with these Rules or an order.

Note A self-represented party is not entitled to recover costs for work done for a case (except work done by a lawyer) but, if so ordered, may be entitled to recover some payments.

19.02 Interest on outstanding costs

Interest is payable on outstanding costs at the rate mentioned in rule 17.03.

19.03 Duty to inform about costs

(1) When a lawyer receives instructions to act for a party (the ***client***) in a case, the lawyer must give the client:

(a) a costs notice; and

(b) written advice about:

(i) the basis on which costs will be calculated;

(ii) an estimate, if practicable, or a range of estimates of the total costs of conducting the case;

(iii) how party and party costs may apply in addition to the client's own costs; and

(iv) whether any other lawyer or an expert witness will be retained and, if so, the estimated cost.

(2) The lawyer must, when sending an account or itemised costs account to a client, include in the account a notice referring to the costs notice.

(3) If an offer to settle is made during a property case, the lawyer for each party must tell the party:

(a) the party's actual costs, both paid and owing, up to the date of the offer to settle; and

(b) the estimated future costs to complete the case;

to enable the party to estimate the amount the party will receive if the case is settled in accordance with the offer to settle, after taking into account costs.

19.04 Notification of costs

(1) Immediately before each court event, the lawyer for a party must give the party a written notice of:

(a) the party's actual costs, both paid and owing, up to and including the court event; and

(b) the estimated future costs of the party up to and including each future court event.

(2) If a notice under subrule (1) is given immediately before a trial, it must include the following details:

(a) the actual costs incurred by the party up to and including the first day of the trial;

(b) any expenses paid or payable to an expert witness or, if those expenses are not known, an estimate of any expenses;

(c) the costs payable for each day of the trial, excluding the first day;

(d) the estimated length of the trial.

(3) At each court event:

(a) a party's lawyer must give to the court and each other party a copy of the notice given to the party under subrule (1); and

(b) an unrepresented party must give to the court and each other party a written statement of:

(i) the actual costs incurred by the party up to and including the event; and

(ii) the estimated future costs of the party up to and including each future court event.

(4) Immediately before a trial, a child representative must give to the court and each party a written statement of the actual costs incurred by the child representative up to and including the trial.

(5) In a financial case, a notice under subrule (1) or a statement under paragraph (3) (b) must specify the source of the funds for the costs paid or to be paid unless the court orders otherwise.

Note The court may relieve a party from being required to disclose the source of the funds if, for example, the source is a third party (see rule 1.12).

(6) At the end of a court event, the court must return the copy of the notice or statement given under this rule to the person who gave it.

(7) In this rule:

court event does not include counselling or mediation with a mediator in a parenting case.

Part 19.2 Security for costs

19.05 Application for security for costs

(1) A respondent may apply for an order that the applicant in the case give security for the respondent's costs.

Note Chapter 5 sets out the procedure for making an application in a case.

(2) In deciding whether to make an order, the court may consider any of the following matters:

(a) the applicant's financial means;

(b) the prospects of success or merits of the application;

(c) the genuineness of the application;

(d) whether the applicant's lack of financial means was caused by the respondent's conduct;

(e) whether an order for security for costs would be oppressive or would stifle the case;

(f) whether the case involves a matter of public importance;

(g) whether a party has an order, in the same or another case (including a case in another court), against the other party for costs that remains unpaid;

(h) whether the applicant ordinarily resides outside Australia;

(i) the likely costs of the case;

(j) whether the applicant is a corporation;

(k) whether a party is receiving legal aid.

(3) In subrule (1):

respondent includes an applicant who has filed a reply because orders in a new cause of action have been sought in the response.

19.06 Order for security for costs

If the court orders a party to give security for costs, the court may also order that, if the security is not given in accordance with the order, the case of the party be stayed.

Note The court may, on application or on its own initiative, dismiss a case for want of prosecution.

19.07 Finalising security

(1) Security for costs may be applied in satisfaction of any costs ordered to be paid.

(2) Security for costs may be discharged by order.

(3) If security for costs is paid into court, the court may order that it be paid out of court.

Part 19.3 Costs orders

19.08 Order for costs

(1) A party may apply for an order that another person pay costs.

(2) An application for costs may be made:

(a) at any stage during a case; or

(b) by filing an Application in a Case (Form 2) within 28 days after the final order is made.

(3) A party applying for an order for costs on an indemnity basis must inform the court if the party is bound by a costs agreement in relation to those costs and, if so, the terms of the costs agreement.

Note 1 The court may make an order for costs on its own initiative (see rule 1.10).

Note 2 A party may apply for an order for costs within 28 days after the filing of a notice of discontinuance by the other party (see subrule 10.11 (4)).

Note 3 A party may apply for an extension of time to make an application (see rule 1.14).

(4) In making an order for costs, the court may set a time for payment of the costs that may be before the case is finished.

19.09 Costs order for cases in other courts

(1) This rule applies to a case in the Family Court that:

(a) has been transferred from another court; or

(b) is on appeal from a decision of another court.

(2) The Family Court may make an order for costs in relation to the case before the other court.

(3) The order may specify:

(a) the amount to be allowed for the whole or part of the costs; or

(b) that the whole or part of the costs is to be calculated in accordance with these Rules or the rules of the other court.

19.10 Costs orders against lawyers

(1) A person may apply for an order under subrule (2) against a lawyer for costs thrown away during a case, for a reason including:

(a) the lawyer's failure to comply with these Rules or an order;

(b) the lawyer's failure to comply with a pre-action procedure;

(c) the lawyer's improper or unreasonable conduct; and

(d) undue delay or default by the lawyer.

(2) The court may make an order, including an order that the lawyer:

(a) not charge the client for work specified in the order;

(b) repay money that the client has already paid towards those costs;

(c) repay to the client any costs that the client has been ordered to pay to another party;

(d) pay the costs of a party; or

(e) repay another person's costs found to be incurred or wasted.

19.11 Notice of costs order

(1) Before making an order for costs against a lawyer or other person who is not a party to a case, the court must give the lawyer or other person a reasonable opportunity to be heard.

(2) If a party who is represented by a lawyer is not present when an order is made that costs are to be paid by the party or the party's lawyer, the party's lawyer must give the party written notice of the order and an explanation of the reason for the order.

Part 19.4 Lawyer and client costs

19.12 Costs not to be charged

(1) A lawyer must not charge:

(a) an amount for costs improperly, unreasonably or negligently incurred by the lawyer; or

(b) for work done for the administration of the lawyer's office.

(2) A lawyer must not make an agreement with a client to avoid the requirement under paragraph (1) (a).

(3) Despite any rule in this Chapter, if:

(a) the client instructs the lawyer, in writing, to do work for a case, or incur an expense of a particular kind or amount, that the lawyer advises the client would be unreasonable and unlikely to be recovered on a party and party basis; and

(b) the lawyer does the work, or incurs the expense, in accordance with the client's instructions;

the lawyer may, as between the lawyer and the client, charge an amount for the costs incurred.

19.13 Steps before costs recovery

A lawyer may start or continue a case to recover costs from a client only if:

(a) the lawyer has served on the client an account and a costs notice, and no request for an itemised costs account has been made under rule 19.20; or

(b) an itemised costs account has been served on the client and:

(i) a Notice Disputing Itemised Costs Account (Form 15) has not been served under rule 19.23;

(ii) a Form 15 has been served under rule 19.23 and the dispute has been resolved by agreement between the parties; or

(iii) a Form 15 has been filed under subrule 19.24 (3) and the dispute has been determined or the Form 15 has been withdrawn.

19.14 Costs agreements

(1) A lawyer may make a written agreement (the ***costs agreement***) with a client about the costs to be charged by the lawyer for work done for a case for the client.

(2) The costs agreement must:

(a) specify the type and amount of work to be done by the lawyer;

(b) set out:

(i) the costs payable by the client for the work as a lump sum; or

(ii) the basis on which the costs will be calculated;

(c) state whether a partner, employed lawyer or clerk will work on the case and, if so, that person's charge out rate;

(d) be fair and reasonable; and

(e) be signed by the lawyer and the client.

(3) The costs agreement may:

(a) relate to part only of a case; and

(b) be amended by written agreement.

(4) The costs agreement must not include a provision:

(a) preventing the client from taking civil action (including liability for negligence) against the lawyer;

(b) by which all or part of the costs payable for work done are calculated by reference to:

(i) an amount ordered by the court;

(ii) the amount of an agreed settlement or consent order; or

(iii) the value of the property or money that may be recovered in a case to which the work relates; or

(c) that makes the costs payable only if the outcome of the case is in the client's favour.

19.15 Notice about costs agreement

At the time of making a costs agreement with a client, a lawyer must:

(a) give each other party to the costs agreement a costs notice; and

(b) advise those parties to obtain independent legal advice about the costs agreement.

19.16 Validity and effect of costs agreement

A party to a costs agreement may apply for an order:

(a) confirming, varying or setting aside the costs agreement; or

(b) determining any question relating to the validity or effect of the costs agreement.

19.17 Setting aside costs agreement

The court may set aside a costs agreement if:

(a) it is unfair or unreasonable;

(b) it does not comply with this Part;

(c) the client was subject to undue influence or misrepresentation, or was fraudulently induced to enter the agreement; or

(d) the lawyer has not complied with rule 19.03, subrule 19.14 (2) or (4) or rule 19.15.

Part 19.5 Calculation of costs

19.18 Lawyer and client costs

The maximum amount of costs that a lawyer may charge and recover from a client for work done for a case is:

(a) an amount calculated in accordance with a costs agreement between the lawyer and the client for the work; or

(b) if there is no costs agreement, an amount calculated in accordance with Schedule 3.

19.19 Party and party costs

(1) Costs are to be calculated in accordance with Schedule 3 if:

(a) the court orders that costs are to be paid and does not fix the amount; or

(b) a person is entitled to costs under these Rules.

(2) The court may order that Schedule 3 does not apply and that a party is entitled to costs:

(a) of a specific amount;

(b) as assessed on a lawyer and client basis or an indemnity basis;

(c) to be calculated in accordance with the method stated in the order; or

(d) for part of the case, or for part of an amount, assessed by reference to Schedule 3.

Example

For paragraph (2) (c), the stated method may be in accordance with the Schedule 3 but with an additional percentage for complexity.

(3) In making an order under subrule (2), the court may consider:

(a) the importance, complexity or difficulty of the issues;

(b) the reasonableness of each party's behaviour in the case;

(c) the rates ordinarily payable to lawyers in comparable cases;

(d) whether a lawyer's conduct has been improper or unreasonable;

(e) the time properly spent on the case; and

(f) expenses properly paid or payable.

Part 19.6 Claiming and disputing costs

Division 19.6.1 Itemised costs account

Note This Division provides that, if an account payable by a person is not in an itemised form, the person has the right to request an itemised account (an ***itemised costs account***). The person may then dispute the itemised costs account by following the procedures set out in this Division. A person may apply to extend the time for taking any action required under these Rules (see rule 1.14).

19.20 Request for itemised costs account

A person who has received an account (except an itemised costs account) and wants to dispute the account, or any part of it, must, within 28 days after receiving the account, request the lawyer who sent it to serve an itemised costs account for the whole or part of the account disputed.

Note A lawyer must give a costs notice to a client on receiving instructions and must, when serving an account or an itemised costs account, include a reference to the costs notice (see subrule 19.03 (2)).

19.21 Service of lawyer's itemised costs account

(1) A person entitled to costs must serve an itemised costs account on the person liable to pay the costs within 28 days after:

(a) for lawyer and client costs — receiving a request for an itemised costs account; or

(b) for party and party costs:

(i) the order requiring payment of costs was made; or

(ii) the date when the entitlement to costs arose.

Note A person entitled to costs may serve an itemised costs account even if the person liable to pay the costs has not requested it.

(2) For party and party costs, the person entitled to costs must serve a costs notice at the same time as the itemised costs account is served under subrule (1).

19.22 Lawyer's itemised costs account

(1) An itemised costs account (the ***account***) must specify each item of costs and expense claimed.

(2) Each item specified in the account must be numbered and described in sufficient detail to enable the account to be assessed.

(3) The account must set out, in columns across the page, the following information:

(a) in relation to each item for which costs are payable:

(i) the date when the item occurred;

(ii) a description of the item, including whether the work was done by a lawyer or an employee or agent of a lawyer;

(iii) the amount payable for the item;

(b) at the end of the column setting out the amount payable — the total amount payable for the items.

(4) For each expense claimed, the account must include:

(a) the date when the expense was incurred;

(b) the name of the person to whom the expense was paid;

(c) the nature of the expense; and

(d) the amount paid.

19.23 Disputing itemised costs account

A person served with an itemised costs account may dispute it by serving on the person entitled to the costs a Notice Disputing Itemised Costs Account (Form 15) within 28 days after the account was served.

Note 1 A person may apply for an extension of time to dispute an account (see rule 1.14).

Note 2 If no Form 15 is received and the costs are not paid, the person entitled to the costs may seek a costs assessment order (see rule 19.37).

Note 3 If the parties agree on the amount to be paid for costs, they may file a draft consent order (see Part 10.4 for consent orders).

19.24 Assessment of disputed costs

(1) This rule applies if a Form 15 has been served under rule 19.23.

(2) The parties to a dispute in relation to costs must make a reasonable and genuine attempt to resolve the dispute.

(3) If the parties are unable to resolve the dispute, either party may ask the court to determine the dispute by filing the itemised costs account and the Form 15 no later than 42 days after the Form 15 was served.

(4) The court may take into account a failure to comply with subrule (2) when considering any order for costs.

Note 1 A party may apply for an extension of the time mentioned in subrule (3) (see rule 1.14).

Note 2 A person filing a document must serve the document on each person to be served (see subrule 7.04 (4)).

19.25 Amendment of itemised costs account and Form 15

A party may amend an itemised costs account or a Form 15 by filing the amended document with the amendments clearly marked:

(a) at least 14 days before the date fixed for the assessment hearing; or

(b) after that time with the consent of the other party.

Note 1 A party amending an itemised costs account or Form 15 may apply for an extension of the time mentioned in paragraph (a) (see rule 1.14).

Note 2 The only items that may be raised at an assessment hearing are those items included in the itemised costs account or Form 15 (see subrule 19.32 (2)).

Division 19.6.2 Assessment process

19.26 Fixing of date for assessment

(1) On the filing of an itemised costs account and a Notice Disputing Itemised Costs Account (Form 15) under subrule 19.24 (3), the Registrar must fix a date for:

(a) a settlement conference (see rule 19.28);

(b) a preliminary assessment (see rule 19.29); or

(c) an assessment hearing (see rule 19.32).

(2) The date fixed must be at least 21 days after the Form 15 is filed.

19.27 Notification of hearing

A party filing a Form 15 must give the party who served the itemised costs account at least 14 days notice of the court event and the date fixed for the event under rule 19.26.

19.28 Settlement conference

At a settlement conference for an itemised costs account, the Registrar:

(a) must:

(i) give the parties an opportunity to agree about the amount for which a costs assessment order should be made; or

(ii) identify the issues in dispute; and

(b) must make procedural orders for the future conduct of the assessment process.

19.29 Preliminary assessment

(1) At a preliminary assessment of an itemised costs account, the Registrar must, in the absence of the parties, calculate the amount (the ***preliminary assessment amount***) for which, if the costs were to be assessed, the costs assessment order would be likely to be made.

(2) The Registrar must give each party written notice of the preliminary assessment amount.

19.30 Objection to preliminary assessment amount

(1) A party may object to the preliminary assessment amount by:

(a) giving written notice of the objection to the Registrar and the other party; and

(b) paying into court a sum equal to 5% of the total amount claimed in the itemised costs account as security for the cost of any assessment of the account;

within 21 days after receiving written notice of the preliminary assessment amount.

(2) On receiving a notice and security, the Registrar must fix a date for an assessment hearing for the itemised costs account.

(3) The party objecting may be ordered to pay the other party's costs of the assessment from the date of giving notice under paragraph (1) (a) unless the itemised costs account is assessed with a variation in the objecting party's favour of at least 20% of the preliminary assessment amount.

Note The court may order that a party is not required to pay security under paragraph (1) (b).

19.31 If no objection to preliminary assessment

If:

(a) a Registrar does not receive a notice of objection under paragraph 19.30 (1) (a); and

(b) an amount as security for costs is not paid under paragraph 19.30 (1) (b);

the Registrar may make a costs assessment order for the amount of the preliminary assessment amount.

19.32 Assessment hearing

(1) The Registrar conducting an assessment hearing for a disputed itemised costs account must:

(a) determine the amount (if any) to be deducted from each item included in the Form 15;

(b) determine the total amount payable for the costs of the assessment (if any);

(c) calculate the total amount payable for the costs allowed;

(d) deduct the total amount (if any) of costs paid or credited; and

(e) calculate the total amount payable for costs.

(2) At the assessment hearing, a party may only raise an item included in the itemised costs account or the Form 15.

(3) At the end of the assessment hearing, the Registrar must:

(a) make a costs assessment order; and

(b) give a copy of the order to each party.

Note At an assessment hearing, the onus of proof is on the person entitled to costs. That person should bring to the hearing all documents supporting the items claimed.

19.33 Powers of Registrars

(1) A Registrar may do any of the following at an assessment hearing:

(a) summon a witness to attend;

(b) examine a witness;

(c) require a person to file an affidavit;

(d) administer an oath;

(e) order that a document be produced;

(f) make an interim or final costs assessment order;

(g) adjourn the assessment hearing;

(h) if satisfied that there has been a gross or consistent breach of a lawyer's obligations under this Chapter — refer an issue to the appropriate professional regulatory body;

(i) refer to the court any question arising from the assessment;

(j) determine whether costs were reasonably incurred, were of a reasonable amount and were proportionate to the matters in issue;

(k) make a consent order fixing the amount of costs to be paid;

(l) dismiss an account if:

(i) it does not comply with these Rules or an order; or

(ii) the person entitled to costs does not attend the assessment hearing;

(m) order costs;

(n) do, or order another person to do, any other act that is required to be done under these Rules or an order.

Example for paragraph 19.33 (1) (h)

An example of the kind of issue that may be referred to a professional regulatory body for a lawyer is if the lawyer grossly overcharged a client or failed to disclose an important issue.

(2) On being satisfied that the time for reviewing a costs assessment order has passed, the Registrar must:

(a) determine how any amount paid as security for the costs of assessment is to be distributed or refunded; and

(b) order that the payment be made out of court.

19.34 Assessment principles

(1) A Registrar must not allow costs that, in the opinion of the Registrar:

(a) are not reasonably necessary for the attainment of justice; and

(b) are not proportionate to the issues in the case.

Note A lawyer may charge an amount for costs unreasonably incurred if the client gives the lawyer written instructions to do work for a case, or incur an expense of a particular kind or amount, that the lawyer has advised the client would be unreasonable and unlikely to be recovered on a party and party basis (see subrule 19.12 (3)).

(2) An itemised costs account for work that is the subject of a costs agreement must be assessed in accordance with the costs agreement.

(3) If the court has ordered costs on an indemnity basis, the Registrar must allow all costs reasonably incurred and of a reasonable amount, having regard to, among other things:

(a) the scale of costs in Schedule 3;

(b) any costs agreement between the party to whom costs are payable and the party's lawyer; and

(c) charges ordinarily payable by a client to a lawyer for the work.

(4) When assessing costs as between party and party, a Registrar must not allow:

(a) costs incurred because of improper, unnecessary or unreasonable conduct by a party or a party's lawyer;

(b) costs for work (in type or amount) that was not reasonably required to be done for the case; or

(c) unusual expenses.

19.35 Allowance for matters not specified

(1) A Registrar may allow a reasonable sum for work properly performed that is not specifically provided for in Schedule 3.

(2) When considering whether to allow an amount for costs or an expense, the Registrar may consider:

(a) any other fees paid or payable to the lawyer and counsel for work to which a fee or allowance applies;

(b) the complexity of the case;

(c) the amount or value of the property or financial resource involved;

(d) the nature and importance of the case to the party concerned;

(e) the difficulty or novelty of the matters raised in the case;

(f) the special skill, knowledge or responsibility required, or the demands made, of the lawyer by the case;

(g) the conduct of all the parties and the time spent on the case;

(h) the place where, and the circumstances in which, work or any part of it was done;

(i) the quality of work done and whether the level of expertise was appropriate to the nature of the work; and

(j) the time in which the work was required to be done.

19.36 Neglect or delay before Registrar

(1) This rule applies if, after a Form 15 disputing an itemised costs account has been filed under subrule 19.24 (3), a party or a party's lawyer:

(a) fails to comply with these Rules or an order; or

(b) puts another party to unnecessary or improper expense or inconvenience.

(2) The Registrar may:

(a) order the party to pay costs; or

(b) disallow all or part of the costs in the account.

19.37 Costs assessment order — costs account not disputed

(1) This rule applies to a person entitled to costs who:

(a) has served an itemised costs account under rule 19.21; and

(b) has not received a Form 15 under rule 19.23.

(2) A Registrar may make a costs assessment order if the person has filed:

(a) a copy of the itemised costs account; and

(b) an affidavit stating:

(i) when the itemised costs account was served on the person liable to pay the costs;

(ii) the amount (if any) that has been received or credited for the costs;

(iii) that the person liable to pay the costs has not served a Form 15 under rule 19.23; and

(iv) that the time for serving a Form 15 has passed.

(3) If a costs assessment order is made under subrule (2), the person entitled to costs must serve a copy of the order on the person liable to pay costs.

19.38 Setting aside a costs assessment order

(1) This rule applies to a party who is liable to pay costs and receives a costs assessment order under rule 19.31 or subrule 19.37 (3).

(2) The party may, within 14 days after receiving the costs assessment order, apply to have it set aside.

Note If a party wishes to object to a costs assessment order after an assessment hearing has taken place, the party must do so in accordance with Part 19.8.

Part 19.7 Specific costs matters

19.39 Application of Part 19.7

So far as this Part applies to lawyer and client costs, this Part does not apply if there is a valid costs agreement between a lawyer and a client.

19.40 Costs in court of summary jurisdiction

(1) This rule applies to a lawyer doing work for a case:

(a) conducted in a court of summary jurisdiction; or

(b) to be determined as a small claim.

Note For requirements relating to small claims, see rule 11.15.

(2) The lawyer must not charge for the work a fee that is more than 80% of the amount mentioned in Schedule 3 that may be charged for the work.

19.41 Charge for each page

(1) A lawyer may charge the amount specified in Schedule 3 for a document only if it complies with the requirements for documents specified in rule 24.01.

(2) For Schedule 3, the calculation of the number of words in a document excludes words that are part of a Form in Schedule 2 or a document in a form approved by the Principal Registrar.

19.42 Proportion of costs

If the scale in Schedule 3 provides for an amount to be charged that is based on time or number of words, the amount to be charged is an amount that is proportionate to the time or number of words actually taken or written.

19.43 Costs for reading

If it is reasonable for a lawyer to read more than 50 pages for a case, the amount to be charged under item 104 in Schedule 3 is at the discretion of the Registrar.

19.44 Postage within Australia

The charge mentioned in Schedule 3 for producing a document (including a letter) includes an allowance for:

(a) preparing one file copy of the document; and

(b) postage of the document in Australia.

19.45 Waiting and travelling time

(1) Subrule (2) applies if:

(a) a lawyer has travelled less than 100 kilometres from the lawyer's place of business to attend court; and

(b) it is not appropriate or proper for an agent to attend court instead of the lawyer.

(2) The lawyer may charge an amount for time reasonably spent attending a court event if the lawyer was:

(a) at court waiting for the court event to start or resume after the time allocated; or

(b) travelling to or from court.

(3) A lawyer who attends court for the hearing of 2 or more cases may charge, for each case, an amount that is reasonable, having regard to the time spent at each hearing:

(a) travelling to or from court; or

(b) waiting for each hearing to start or resume.

(4) The total amount that may be charged under this rule for all cases must not be more than the amount that may be charged under Part 1 of Schedule 3 for one case.

Note 1 The lawyer may charge a higher amount in certain circumstances (see subrule 19.12 (3)).

Note 2 This rule applies unless the court orders otherwise (see rule 1.12).

19.46 Agent's fees

The costs claimed by a lawyer for work done by another lawyer as agent of the lawyer must not be more than the amount the lawyer would have been entitled to charge under Schedule 3 if the lawyer had personally done the work.

Note This rule applies unless the court orders otherwise (see rule 1.12). An agent may claim for an amount that is specifically authorised by a client (see subrule 19.12 (3)).

19.47 Expenses for attendance by witness

An amount paid, or to be paid, under Schedule 4 for attendance by a witness at a trial or hearing is a necessary expense for a case if:

(a) the attendance was required for the case; and

(b) the amount is reasonable or approved by the court.

19.48 Expenses payable to expert witness

The amount paid, or to be paid, under Schedule 4 to an expert witness for the preparation of a report or an attendance to give evidence at a hearing or trial is a necessary expense for a case if:

(a) both:

(i) the report or attendance is necessary to resolve or determine a case; and

(ii) for an attendance to give evidence, the court has given permission for the evidence to be given; and

(b) the amount is reasonable or approved by the court.

19.49 Costs of cases not started together

(1) This rule applies if:

(a) a lawyer starts a case for a client that could reasonably have been started at the same time, and in the same court, as another case between the same parties; and

(b) the case was not started at that time in that court.

(2) The lawyer may charge for work done for all the cases only the amount the lawyer could have charged if the lawyer had started all the cases at the same time in the same court.

19.50 Certificate as to counsel

The judicial officer hearing a case may certify that it was reasonable to engage a lawyer (including Queen's Counsel and Senior Counsel) as counsel to attend for a party.

19.51 Lawyer as counsel — party and party costs

(1) This rule applies to party and party costs for fees paid or to be paid to a lawyer engaged as counsel.

(2) The fees are a necessary expense for a case if:

(a) either:

(i) the case was heard by the Full Court; or

(ii) in any other case — it was reasonable to engage counsel to attend in the case;

(b) for a hearing or trial, counsel:

(i) was present for a considerable part of the hearing or trial; and

(ii) gave substantial assistance during the period to which the fees relate in the conduct of the case; and

(c) the fees are not more than the amount otherwise payable under these Rules for counsel engaged to attend in a case.

19.52 Lawyer as counsel — assessment of fees

(1) This rule applies to party and party costs for fees paid or to be paid to a lawyer engaged as counsel.

(2) The Registrar may allow the costs of engaging more than one counsel, including counsel who is not Queen's Counsel or Senior Counsel.

(3) If:

(a) counsel is engaged to attend at a trial; and

(b) the trial takes more than one day;

the Registrar may allow a fee in accordance with Part 2 of Schedule 3 for each further day or part of a day.

(4) The Registrar must not allow:

(a) a fee paid to counsel as a retainer;

(b) a reading fee, unless:

(i) the case is unusually complex; or

(ii) the amount of material involved is particularly large;

(c) for a case before a court of summary jurisdiction — an amount for counsel's fees, other than in accordance with item 203 or 204 of Schedule 3; or

(d) if a daily fee for counsel's attendance is payable in accordance with Part 2 of Schedule 3 — an additional amount for work done for the case by counsel on any day for which the daily fee applies.

19.53 Lawyer as counsel — lawyer and client costs

(1) This rule applies to costs as between lawyer and client if:

(a) an amount is claimed for counsel's fees; and

(b) the lawyer performing the work of counsel is:

(i) another lawyer instructed by the lawyer for the client; or

(ii) also performing the work of solicitor for the client.

(2) The fees for counsel are properly incurred if:

(a) either:

(i) the case was heard by the Full Court; or

(ii) in any other case:

(A) it was reasonable to engage a lawyer to attend as counsel in the case; or

(B) the client asked that a lawyer be engaged to attend as counsel in the case; and

(b) the fees are reasonable and are not more than the amount otherwise payable under these Rules for counsel to attend.

Part 19.8 Review of assessment

19.54 Application for review

(1) A party may apply to the court to review the decision of a Registrar under rule 19.32 by filing an Application in a Case (Form 2).

(2) A party must include in the affidavit filed with the application:

(a) the number of each item in the itemised costs account to which the party objects to the Registrar's decision;

(b) the reasons for objecting to the decision; and

(c) the decision sought from the court for each objection.

19.55 Time for filing an application for review

An application for review must be filed within 14 days after the costs assessment order is made.

19.56 Hearing of application

(1) An application for review must be heard by a Judge.

(2) At the hearing of the application:

(a) the court must not receive any new evidence;

(b) the court may:

(i) exercise all the powers of the Registrar;

(ii) set aside or vary the Registrar's decision; and

(iii) return any item to the Registrar for reconsideration; and

(c) a party may raise an issue only if it:

(i) was identified in an itemised costs account or Notice Disputing Itemised Costs Account (Form 15);

(ii) concerns the costs of assessing the itemised costs account;

(iii) concerns an alleged error of calculation in, or omission from, the assessment of the itemised costs account; or

(iv) concerns an alleged error of law or fact by the Registrar.

(3) A hearing of an application for review does not operate as a stay of the decision reviewed.

Note This rule applies unless the court orders otherwise (see rule 1.12).

Chapter 20 Enforcement of financial orders and obligations

Summary of Chapter 20

Chapter 20 sets out the processes for enforcing obligations in financial cases.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 20.1 General

20.01 Enforceable obligations

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

(a) an obligation to pay money;

(b) an obligation to sign a document under section 106A of the Act (see Part 20.7);

(c) an order entitling a person to the possession of real property (see Part 20.7);

(d) an order entitling a person to the transfer or delivery of personal property (see Part 20.7).

(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 Act, the Assessment Act or the Registration Act;

(ii) a registered parenting plan;

(iii) a maintenance agreement registered under subsection 86 (1) of the Act;

(iv) a maintenance agreement approved under section 87 of the Act;

(v) a financial agreement or termination agreement under Part VIIIA of the Act;

(vi) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Act; or

(vii) an overseas maintenance order or agreement that, under the Regulations, is enforceable in Australia;

(b) a liability to pay arrears accrued under an order or agreement;

(c) a debt due to the Commonwealth under section 30 or 67 of the Registration Act;

(d) a child support liability;

(e) a fine or the forfeiture of a bond; and

(f) costs, including the costs of enforcement.

(3) This Chapter 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.

20.02 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 Act — under paragraph 87 (11) (c) of the Act; or

(b) for a financial agreement — under paragraph 90KA (c) of the 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 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 Act).

20.03 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 (Form 2) and an affidavit setting out the facts relied on in support of the Application; and

(b) if the payee is the Child Support Agency — a certificate under section 116 of the Registration Act.

Note 1 After the court has ordered payment of the amount owed, it may immediately make an enforcement order (see rule 20.05).

Note 2 Only the Child Support Agency can enforce payment of a registered child support liability, that is, a liability registered for collection by the Agency.

20.04 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 Act or 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 Marshal 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.

20.05 Enforcing an obligation to pay money

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

(a) an Enforcement Warrant under which real property or personal property may be seized and sold (see Part 20.3);

(b) a Third Party Debt Notice, including attachment of earnings and debts (see Part 20.4);

(c) an order for sequestration of property (see Part 20.5);

(d) receivership (including management) (see Part 20.6).

Note The court may imprison a person for failure to comply with an order (see section 112AD of the Act). Chapter 21 sets out the relevant procedure.

20.06 Affidavit to be filed with application for enforcement order

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

(a) state the type of enforcement order sought;

(b) have attached to it a copy of the order or agreement to be enforced;

(c) set out the facts relied on, including:

(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;

(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; and

(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)

An Enforcement Warrant; a Third Party Debt Notice; an order for filing and service of Financial Statement (Form 13); an order for production of documents.

20.07 General enforcement powers of court

The court may make an order:

(a) declaring the total amount owing under an obligation;

(b) that the total amount owing must be paid in full or by instalments and when the amount must be paid;

(c) for enforcement (see rule 20.05);

(d) in aid of the enforcement of an obligation;

(e) to prevent the dissipation or wasting of property;

(f) for costs;

(g) staying the enforcement of an obligation (including an enforcement order);

(h) requiring the payer to attend an enforcement hearing;

(i) requiring a party to give further information or evidence;

(j) that a payer must file a Financial Statement (Form 13);

(k) that a payer must produce documents for inspection by the court;

(l) dismissing an application; or

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

20.08 Enforcement order

(1) An enforcement order must state:

(a) the kind of enforcement order it is (see rule 20.05);

(b) the full name and address for service of the payee;

(c) the full name and address for service of the person to whom the debt is to be paid, if the person is not the payee mentioned in paragraph (b);

(d) the full name and address of the payer; and

(e) the total amount to be paid.

Note A document filed in or issued by a court must meet the general requirements set out in rule 24.01.

(2) For paragraph (1) (e), a statement about the total amount to be paid may include:

(a) the amount owing under the obligation to pay money;

(b) the amount of interest owing, if any; and

(c) any costs of enforcing the order.

20.09 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 subrule (1) must be in a Form 2 (see rule 5.01).

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

Part 20.2 Information for aiding enforcement

Note The duty of disclosure set out in Division 13.1.2 applies to a party to an enforcement application.

Division 20.2.1 Processes for aiding enforcement

20.10 Processes for obtaining financial information

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

(a) give a payer a written notice requiring the payer to complete and serve a Financial Statement (Form 13) within 14 days after receiving the notice; or

(b) by filing an Application in a Case (Form 2) and an affidavit that complies with rule 20.06, apply for an order, without notice to the respondent:

(i) requiring the payer to complete and file a Form 13; 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.

Division 20.2.2 Enforcement hearings

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

20.11 Enforcement hearing

(1) A payee may, by filing an Application in a Case (Form 2) and an affidavit that complies with rule 20.06, require:

(a) the payer; or

(b) if the payer is a corporation — an officer of the corporation;

to attend an enforcement hearing.

Note An application for an enforcement hearing will be listed for a hearing (not a case conference) within 28 days after the application is filed (see rule 5.05).

(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, by special service on a payer at least 14 days before an enforcement hearing:

(a) the documents mentioned in subrules (1) and (2); and

(b) a brochure called *Enforcement Hearings*, approved by the Principal Registrar, giving information about enforcement hearings and the consequences of failing to comply with an obligation.

20.12 Obligations of payer

(1) A payer served with the documents mentioned in rule 20.11 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 Form 13 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.

20.13 Subpoena of witness

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

Note Part 15.3 sets out the requirements for issuing subpoenas.

20.14 Failure concerning Financial Statement (Form 13) or enforcement hearing

(1) A person commits an offence if the person does not:

(a) comply with a notice under paragraph 20.10 (1) (a) requiring the person to complete and serve a Form 13;

(b) comply with an order that the person complete and file a Form 13 or produce copies of documents to the payee (see paragraph 20.10 (1) (b));

(c) if the person is served with an enforcement hearing application:

(i) comply with subparagraph 20.12 (1) (a) (ii) and paragraph 20.12 (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 enforcement hearing application 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 A court may issue a warrant for the arrest of a payer if it is satisfied that the payer has received an enforcement hearing application and did not attend the enforcement hearing (see rule 21.16).

(3) If a person is prosecuted under section 112AP of the 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.

Part 20.3 Enforcement warrants

Division 20.3.1 General

20.15 Definitions

In this Part:

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

enforcement officer includes the Marshal, a delegate of the Marshal or any other officer of the court or a person appointed by the court.

20.16 Request for Enforcement Warrant (Form 16)

(1) A payee may, without notice to the payer, request an Enforcement Warrant (Form 16) 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 20.06; and

(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 20.03).

(3) If an Enforcement Warrant is issued, the payee must give the enforcement officer:

(a) the Warrant; and

(b) a written undertaking to pay all costs associated with the enforcement if the costs and expenses of the enforcement are greater than the amount recovered on the enforcement.

20.17 Validity and renewal of Enforcement Warrant

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

20.18 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;

(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;

(c) give the payer an inventory of any property seized under the Warrant;

(d) advertise the property in accordance with rule 20.21; and

(e) sell the seized property:

(i) quickly, having regard to the parties' interests and the desirability of a beneficial sale of the property;

(ii) at the place where it seems best for a beneficial sale of the property; and

(iii) by auction, tender or private sale.

(2) An enforcement officer may, when enforcing a warrant:

(a) enter any real property (using such force as may be necessary) that is the subject of the warrant or the place where the property that is the subject of the warrant is located; and

(b) if the warrant is for the seizure and sale of real property — eject from the property any person who is not lawfully entitled to be on the property.

20.19 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 subrule 24.01 (1);

(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 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.

20.20 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;

(b) sale;

(c) order; or

(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.

20.21 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;

(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.

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

20.22 Result of sale notice

An enforcement officer must, within 7 days after the day of settlement of a sale of property, file a notice in the court stating:

(a) the details of the result of the sale;

(b) the fees and expenses of the enforcement; and

(c) the distribution of the money recovered.

20.23 Payee's responsibilities

(1) 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, written notice that:

(i) the Warrant has been registered on the land titles register against the real property; and

(ii) the enforcement officer intends to sell the real 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

(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 costs mentioned in subparagraph (1) (b) (v) may:

(a) be added to, and form part of, the costs of the Enforcement Warrant; and

(b) be recovered under the Warrant.

20.24 Orders for real property

(1) For real property that is the subject of an Enforcement Warrant, a payee or enforcement officer may apply for an order:

(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;

(c) in aid of or relating to the sale of the real property, including an order:

(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; and

(vii) specifying the remuneration to be allowed to an auctioneer, estate agent, trustee or other person; or

(d) about the disposition of the proceeds of the sale of the real property.

Note An application under subrule (1) must be in a Form 2 (see rule 5.01).

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

Division 20.3.2 Claims by person affected by an Enforcement Warrant

20.25 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;

(b) state the name and address of the affected person;

(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.

20.26 Payee to admit or dispute claim

A payee who is served with a notice of claim under subrule 20.25 (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.

20.27 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.

20.28 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 20.26.

(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 a Form 2 (see rule 5.01).

(3) The Registry Manager 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:

(a) each party to the Enforcement Warrant;

(b) the affected person;

(c) the enforcement officer.

20.29 Hearing of application

On the hearing of an application under rule 20.28, 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 Rule 20.07 sets out the orders the court may make on the hearing of the application.

Part 20.4 Third Party Debt Notice

20.30 Application of Part 20.4

This Part applies to:

(a) money deposited in a financial institution that is payable to a payer on call or on notice;

(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.

20.31 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 (Form 17) on the third party debtor.

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

20.32 Request for Third Party Debt Notice (Form 17)

(1) A payee may, without notice to the payer or third party, ask the court to issue a Third Party Debt Notice (Form 17) requiring the payment to the payee of any money to which this Part applies by filing:

(a) 3 copies of the Form 17; and

(b) an affidavit.

(2) The affidavit must:

(a) comply with rule 20.06; 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;

(B) details of the payer's living arrangements, including dependants;

(C) the protected earnings rate;

(D) the amount sought to be deducted from the earnings each payday; and

(E) any information that should be included in the Form 17 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 20.03).

20.33 Service of Third Party Debt Notice (Form 17)

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

(a) a copy of the Third Party Debt Notice (Form 17) issued under rule 20.32; and

(b) a brochure called *Third Party Debt Notices*, approved by the Principal Registrar and setting out the effect of the Form 17 and the third party debtor's obligations.

20.34 Effect of Third Party Debt Notice — general

(1) If a Third Party Debt Notice (Form 17) 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 Form 17 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.

20.35 Employer's obligations

(1) Under a Third Party Debt Notice (Form 17) directed to earnings, the payer's employer:

(a) must:

(i) deduct from the payer's earnings the amount specified in the notice;

(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.

20.36 Duration of Third Party Debt Notice

A Third Party Debt Notice (Form 17) continues in force until:

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

(b) the Notice is set aside.

20.37 Response to Third Party Debt Notice

(1) A third party debtor who has been served with a Third Party Debt Notice (Form 17) 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 a Form 2 and filed with an affidavit (see rules 5.01 and 5.02).

(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;

(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 20.07 sets out the orders that the court may make on an application under this Part.

20.38 Discharge of Third Party Debt Notice

If a third party debtor pays an amount mentioned in a Third Party Debt Notice (Form 17) to the payee, the debt is discharged to the extent of the payment.

20.39 Claim by affected person

A person other than the payee claiming to be entitled to the debt mentioned in a Third Party Debt Notice (Form 17), or to any charge or lien on, or other interest in, the debt may apply for an order determining the claim.

Note An application under this rule must be in a Form 2 and filed with an affidavit stating the facts and circumstances relied on (see rules 5.01 and 5.02).

20.40 Cessation of employment

(1) This rule applies if:

(a) a Third Party Debt Notice (Form 17) 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) that the payer has ceased employment with the employer;

(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;

(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 Registry Manager 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 (Form 17) naming the new employer as the third party debtor will be issued.

20.41 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 (Form 17) 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 Chapter.

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.

Note See Chapter 21 for how to make an application against a third party debtor who does not comply with an enforcement order.

(4) If the court makes an order against a third party debtor under section 112AP of the 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.

Part 20.5 Sequestration of property

20.42 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 (Form 2), setting out the details of the property to be sequestered, and an affidavit.

(2) The affidavit must:

(a) comply with rule 20.06;

(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

(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.

20.43 Order for sequestration

(1) In considering an application for sequestration, the court must be satisfied that:

(a) the payer has been served with the order to be enforced;

(b) the payer has refused or failed to comply with that order; 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;

(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.

20.44 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 Marshal;

(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;

(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 a Form 2 and filed with an affidavit (see rules 5.01 and 5.02).

20.45 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 subrule 24.01 (1);

(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.

Part 20.6 Receivership

20.46 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 (Form 2) and an affidavit.

(2) The affidavit must:

(a) comply with rule 20.06;

(b) include the full name and address of the receiver; and

(c) 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.

20.47 Appointment and powers of receiver

(1) In considering an application under subrule 20.46 (1), the court must have regard to:

(a) the amount of the debt;

(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;

(b) the security to be given by the receiver;

(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.

20.48 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.

20.49 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.

20.50 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.

20.51 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.

20.52 Compliance with orders and Rules

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

(a) set aside the receiver's appointment;

(b) appoint another receiver;

(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.

Part 20.7 Enforcement of obligations other than an obligation to pay money

20.53 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 (Form 2) and an affidavit:

(a) an order requiring a person to sign documents under section 106A of the Act;

(b) an order to enforce possession of real property;

(c) an order for the transfer or delivery of property.

Note Chapter 5 sets out the process for making an application in a case, that is, by filing a Form 2 and an affidavit. Chapter 21 sets out the procedure for making an application in relation to the contravention of an order when a penalty is sought to be imposed.

20.54 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) A 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.

20.55 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.

20.56 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 payer 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 payer, after the costs of enforcement have been deducted.

Part 20.8 Other provisions about enforcement

20.57 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.

20.58 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 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.

20.59 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.

Chapter 21 Enforcement of parenting orders, contravention of orders and contempt

Summary of Chapter 21

Chapter 21 sets out how a party may seek an order:

- to enforce a parenting order;
- that a person be punished for contravening an order or for contempt of court; or
- to locate or recover children.

Before filing an application, a party should consider the result that the party wants to achieve. The remedies available from the court range from the enforcement of an order to the punishment of a person for failure to obey an order. For example, the court may make an order that:

- ensures the resumption of the arrangements set out in an earlier order;
- compensates a person for lost contact time;
- varies an existing order;
- puts a person on notice that if the person does not comply with an order, the person will be punished; or
- punishes a person by way of a fine or imprisonment.

Contempt of court should only be alleged if the conduct complained of is serious enough to warrant such a serious charge, for example, if it is alleged that the contravention of an order involves a flagrant challenge to the court's authority (see subsection 112AP (1) of the Act). A person found to be in contempt of the court may be imprisoned.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 21.1 Applications for enforcement of orders, contravention of orders and contempt of court

21.01 Application of Part 21.1

This Part applies to an application for an order:

(a) to enforce a parenting order;

(b) under Division 13A of Part VII of the Act, because it is alleged that a person has contravened an order affecting children;

(c) under Part XIIIA of the Act, because it is alleged that a person has contravened an order not affecting children; or

(d) that another person be punished for contempt of court.

Note 1 Subsection 69C (2) of the Act specifies who may apply for an order in relation to a child.

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 Form 18 being filed does not constitute a contravention of the maintenance order (see subsection 112AP (1A) of the 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 70NJ (6) and 112AD (2A) of the Act); or

(ii) if it considers that another consequence is more appropriate (see subsections 70NO (2) and 112AE (2) of the 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 Act and regulation 17 of the Regulations).

21.02 How to apply for an order

(1) A person seeking to apply for an order under this Part must file an application as set out in Table 21.1.

Table 21.1 Applications

Item	Kind of application	Application form to be filed
1	Enforcement of parenting order	Application in a Case (Form 2)
2	Contravention of an order under Division 13A of Part VII of the Act affecting children, for example, a breach of a contact order	Application — Contravention (Form 18)
3	Contravention of an order under Part XIIIA of the Act not affecting children, for example, a breach of a property order	Application — Contravention (Form 18)
4	An order that another person be punished for contempt of court	Application — Contempt (Form 19)

Example for item 1 of Table 21.1

A party may use an Application in a Case (Form 2) if:

(a) the party does not want the other party to a parenting order to be punished for a failure to comply with the order but wants to be compensated for a contact period lost; or

(b) before a contact period, the other party refuses to comply with the terms of contact handover.

(2) A person filing an application mentioned in Table 21.1 must file with it 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, agreement or undertaking that the court is asked to enforce or that is alleged to have been contravened.

Example for paragraph (2) (a)

If a person alleges, in a Form 19, that a party is in contempt because of a contravention of an order that involved a flagrant challenge to the court's authority (see subsection 112AP (1) of the Act), or a serious disregard of the respondent's obligations under a parenting order (see paragraph 70NJ (1) (c) of the Act), the affidavit must set out the alleged facts necessary to prove this.

Note An application and affidavit must be served by hand on the respondent (see Table 7.1).

(3) If the application is for an order mentioned in item 2 of Table 21.1, the affidavit must also state:

(a) whether a court has previously found that the respondent contravened the primary order without reasonable excuse; and

(b) the details of any finding made under paragraph (a), including:

(i) the date and place of the finding;

(ii) the court that made the finding; and

(iii) the terms of the finding in sufficient detail to show that the finding related to a previous contravention by the respondent of the primary order.

21.03 Application made or continued by Marshal

The Family Court may direct the Marshal to make or continue an application under this Chapter.

21.04 Contempt in the court room

(1) This rule applies if it appears to the court that a person is guilty of contempt in the court room.

(2) The court may:

(a) order the person to attend before the court; or

(b) issue a warrant for the person's arrest.

Note 1 The procedure in this rule is in addition to the procedure mentioned in rule 21.02.

Note 2 Contempt in the court room interferes with the administration of justice. Examples of actions that may be contempt include:

(a) assaulting or threatening a Judge or another person;

(b) insulting the court;

(c) disrupting court proceedings; and

(d) disrespect or other misbehaviour in court.

21.05 Fixing of hearing date

On the filing of an application under subrule 21.02 (1), the Registry Manager must fix a date for a hearing that is as near as practicable to 14 days after the date of filing.

Note When an application is filed, the court may order the parties to attend counselling or a specified parenting program (see section 65F of the Act).

21.06 Response to an application

(1) A respondent may file an affidavit to respond to an application under this Part.

(2) A respondent to an application for an order that the respondent be punished for contempt of court is not required to file an affidavit.

Note A respondent is not required to file a response to a Form 18 or 19. If the respondent seeks an order that the primary order be varied, the respondent must file an application in accordance with Chapter 4 or 5, whichever is applicable.

21.07 Failure of respondent to attend

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

(a) determine the case;

(b) issue a warrant for the respondent's arrest to bring the respondent before a court; or

(c) adjourn the application.

21.08 Procedure at hearing

At the hearing of an application mentioned in item 2, 3 or 4 in Table 21.1, the court must:

(a) inform the respondent of the allegation;

(b) ask the respondent whether the respondent wishes to admit or deny the allegation;

(c) hear any evidence supporting the allegation;

(d) ask the respondent to state the response to the allegation;

(e) hear any evidence for the respondent; and

(f) determine the case.

Note For the penalties that may be imposed by the court, see sections 67X, 70NG, 70NJ, 112AD and 112AP of the Act.

Part 21.2 Parenting orders — compliance

21.09 Duties of program provider

(1) If a person is ordered, under section 70NG of the Act, to attend a program, the program provider must give the court notice:

(a) if the order is made under subparagraph 70NG (1) (a) (i) of the Act — if the person:

(i) fails to attend the provider for the initial assessment; or

(ii) is considered unsuitable to attend a program; or

(b) if the order is made under subparagraph 70NG (1) (a) (ii) of the Act:

(i) if the person fails to attend the program, or part of the program; or

(ii) the program provider considers that the person is unsuitable to continue attending all or part of the program.

(2) The notice must:

(a) be in writing and addressed to the Registry Manager of the filing registry; and

(b) comply with subrule 24.01 (1).

21.10 Relisting for hearing

If the Registry Manager receives a notice under subrule 21.09 (1), the Registry Manager may list the case for further orders under section 70NIA of the Act.

Part 21.3 Location and recovery orders

21.11 Application of Part 21.3

This Part applies to the following orders:

(a) a location order;

(b) a Commonwealth information order;

(c) a recovery order.

Note See sections 67H to 67Q of the Act.

21.12 Application for order under Part 21.3

A person may apply for an order to which this Part applies by filing an Application in a Case (Form 2).

Note 1 For the requirements for making a Commonwealth information order, see subsection 67N (3) of the Act.

Note 2 An affidavit must be filed with a Form 2 (see rule 5.02)

21.13 Fixing of hearing date

The Registry Manager must fix a date for a hearing that is within 14 days after the application was filed, if practicable.

21.14 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 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.

21.15 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;

(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 Act.

(2) A request under subrule (1) must:

(a) comply with subrule 24.01 (1);

(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.

Part 21.4 Warrants for arrest

21.16 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 under rule 20.11;

(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 (Form 19); 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.

21.17 Execution of warrant

(1) A warrant may authorise:

(a) a member of the Australian Federal Police;

(b) a member of the police service of a State or Territory;

(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 sealed copy.

(3) When the warrant is enforced, the person arrested must be served with a copy.

21.18 Duration of warrant

A warrant (except a warrant issued under subsection 65Q (2) of the Act) ceases to be in force 12 months after the date when it is issued.

21.19 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 case; 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 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;

(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);

(ii) adjourn the case and direct the Registry Manager 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;

(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;

(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 Act;

(b) without a warrant, under a recovery order; or

(c) without a warrant, under sections 68C and 114AA of the Act.

Note The provisions mentioned in subrule (5) are excluded because the procedure on arrest is set out in the Act.

21.20 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 22 Appeals

Summary of Chapter 22

Chapter 22 sets out the procedures to appeal an order.

The purpose of an appeal is to correct an error, unfairness or wrongful exercise of judicial discretion. Appeals ensure public confidence in the administration of justice and, in appropriate cases, clarify and develop the law and help maintain a high standard of court orders.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 22.1 Introduction

22.01 Application of Chapter 22

(1) This Chapter applies to the following appeals:

(a) an appeal to the Full Court from an order of a Judge or Judges of the Family Court of Australia, a Family Court of a State or a Supreme Court of a State or Territory;

(b) an appeal to the Family Court from an order of a Federal Magistrates Court (whether heard by the Full Court or a single Judge);

(c) an appeal from an order of a court of summary jurisdiction.

(2) This Chapter does not apply to the following appeals:

(a) an appeal from an assessment or decision under the Assessment Act or the Registration Act that was not made by a court (see Division 4.2.5);

(b) a review of an order of a Judicial Registrar or Registrar to a Judge of a Family Court (see Chapter 18).

Part 22.2 Starting an appeal

Note 1 A person needs the court's permission to appeal from:

(a) an interlocutory order, other than an interlocutory order relating to a child welfare matter, of a Family Court or the Federal Magistrates Court (see subsections 94AA (1) and (2A) of the Act and regulation 15A of the Regulations); or

(b) an order made by a court under section 102, 102A or 105 of the Assessment Act or section 107, 107A or 110 of the Registration Act.

Note 2 Divisions 22.7.1 and 22.7.2 describe how to make an application for permission to appeal an order.

22.02 Starting an appeal

A person may start an appeal by filing a Notice of Appeal (Form 20):

(a) for an appeal from a court of summary jurisdiction — in the registry of a Family Court that is closest to the court of summary jurisdiction that made the order appealed from; and

(b) in any other case — in the Regional Appeal Registry.

Note 1 A filing fee may be payable (see regulation 16 of the Regulations).

Note 2 At the hearing of the appeal, only the grounds stated in the Form 20 may be argued except with the court's permission. A Form 20 may be amended only in accordance with rule 22.09.

Note 3 Chapter 24 sets out the requirements for documents and filing. For the number of copies of a document to file, see rule 24.08.

Note 4 A document that is filed must be served on each party to be served (see subrule 7.04 (1)).

22.03 Time for appeal

A Form 20 must be filed within 28 days after the date the order appealed from was made.

Note 1 Rule 17.01 sets out when an order is made.

Note 2 A person may apply for an extension of time to appeal (see paragraphs 94 (2D) (a) and 94AAA (10) (a) of the Act, paragraphs 102 (8) (a) and 102A (9) (b) of the Assessment Act, paragraphs 107 (7) (a) and 107A (9) (b) of the Registration Act and Division 22.7.1).

22.04 Parties to appeal

Each person who is directly affected by the orders sought in the Form 20, or who is likely to be interested in maintaining the order under appeal, must be made a respondent to the appeal.

Note An application may be made to have a person added or removed as a party to an appeal (see paragraphs 94 (2B) (a) and 94AAA (8) (a) of the Act, paragraphs 102 (6) (a) and 102A (7) (a) of the Assessment Act and paragraphs 107 (5) (a) and 107A (7) (a) of the Registration Act). See Division 22.7.1 for how to make an application relating to an appeal.

22.05 Service

(1) A copy of a Form 20 must be served on each person to be served within 14 days after it is filed.

(2) In subrule (1):

each person to be served includes any child representative appointed in the case under appeal.

Note For who each person to be served is, see subrule 7.04 (4). The court may order that the Form 20 be served on another person.

22.06 Notice about appeal to other courts

If an appeal is from an order of a court other than a Family Court, the appellant must give a copy of the Form 20 to the Registrar of that court within 14 days after filing the Form.

22.07 Cross-appeal

A respondent to an appeal or a child representative who intends to argue that an order under appeal should be varied or set aside must cross-appeal by filing a Form 20 endorsed as a cross-appeal.

22.08 Time for cross-appeal

A Form 20 for a cross-appeal must be filed within 14 days after the Form 20 for the appeal is served on the cross-appellant.

Note 1 A document that is filed must also be served on each person to be served (see subrule 7.04 (1)).

Note 2 A person may apply for an extension of time to cross-appeal (see paragraphs 94 (2D) (a) and 94AAA (10) (a) of the Act, paragraphs 102 (8) (a) and 102A (9) (b) of the Assessment Act, paragraphs 107 (7) (a) and 107A (9) (b) of the Registration Act and Division 22.7.1).

22.09 Amendment of Notice of Appeal (Form 20)

A Form 20 may be amended without permission, at any time up to and including the date fixed for the procedural hearing for the appeal.

Note 1 A party may apply for permission to amend a Form 20 at a later time. See also paragraphs 94 (2D) (b) and 94AAA (10) (b) of the Act, paragraphs 102 (8) (b) and 102A (9) (c) of the Assessment Act and paragraphs 107 (7) (b) and 107A (9) (c) of the Registration Act. See Division 22.7.1 for how to apply for permission to amend grounds of appeal.

Note 2 Rule 11.12 provides for how to amend a document.

22.10 Documents filed in a current appeal

If an appeal has been started, a document filed in the appeal must be filed:

(a) for an appeal to the Full Court or from the Federal Magistrates Court — in the Regional Appeal Registry; and

(b) for an appeal from a court of summary jurisdiction — in the Appeal Registry.

22.11 Exhibits

A person to whom an exhibit has been returned must give it to the Appeal Registry when asked to do so by the Appeal Registrar.

22.12 Stay

(1) The filing of a Form 20 does not stay the operation or enforcement of the order appealed from, unless otherwise provided by a legislative provision.

(2) If an appeal has been started, or a party has applied for permission to appeal against an order, any party may apply for an order staying the operation or enforcement of all, or part, of the order to which the appeal or application relates.

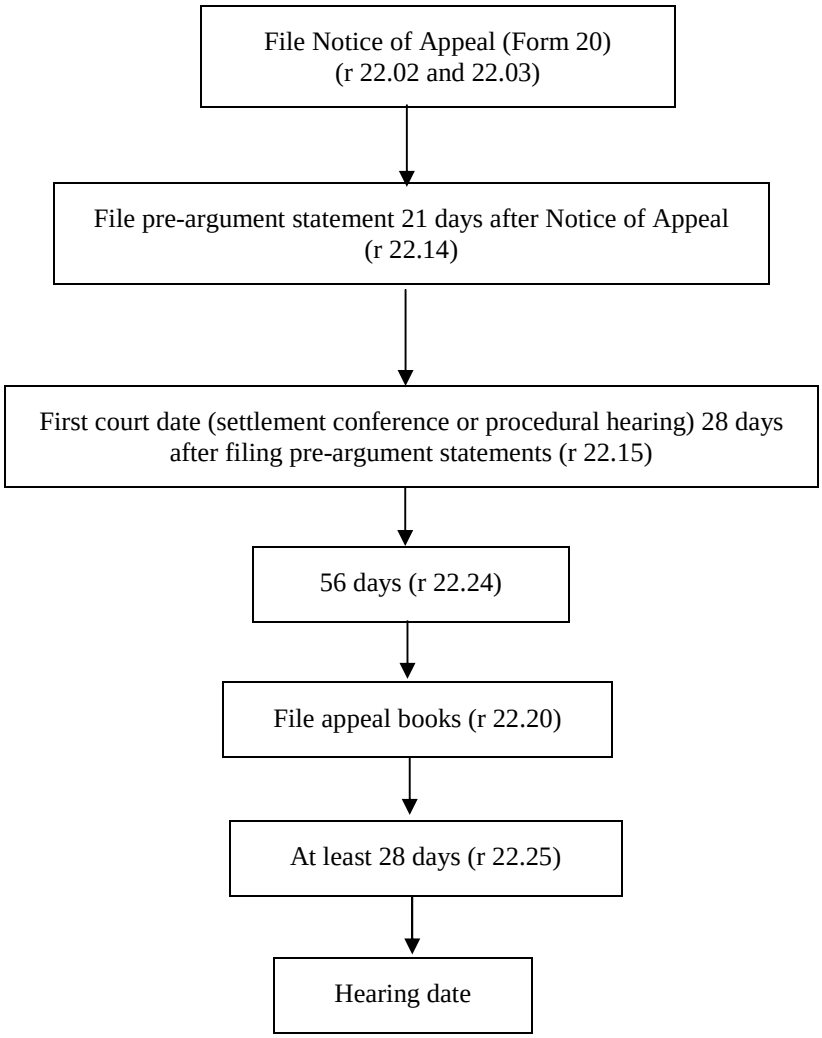
(3) An application for a stay must be made to the Judge, Federal Magistrate or Magistrate who made the order under appeal.

Note 1 Under subsection 55 (3) of the Act, a divorce order is stayed until after an appeal against it is determined or discontinued.

Note 2 See Division 22.7.1 for how to make an application for a stay.

Note 3 An application for a stay may be listed before another judicial officer if the judicial officer who made the order under appeal is unavailable (see rule 1.13).

Part 22.3 Appeal to Full Court



22.13 Application of Part 22.3

This Part applies to the following appeals:

(a) an appeal to the Full Court:

(i) from an order of a Judge or Judges of a Family Court exercising the original jurisdiction of the court; or

(ii) under subsection 94 (1AA) of the Act;

(b) an appeal to the Full Court from an order of the Federal Magistrates Court, when the jurisdiction of the court in relation to the appeal is to be exercised by the Full Court;

(c) an appeal from a single Judge of a Supreme Court of a State or Territory.

Note On the filing of an appeal from an order of the Federal Magistrates Court, the Chief Justice must decide whether the jurisdiction of the Family Court is to be exercised by the Full Court or a single Judge. There is no right to an appeal against this decision.

If the appeal is to be heard by:

(a) a Full Court — Part 22.3 applies; and

(b) a single Judge — Part 22.4 applies.

The Regional Appeal Registrar will tell the appellant, within 14 days, if possible, after the filing of a Form 20 which Part of these Rules apply.

22.14 Pre-argument statement

An appellant must file a pre-argument statement in the Regional Appeal Registry within 21 days after the Notice of Appeal (Form 20) was filed.

Note 1 A reference to ***appeal*** includes a reference to ***cross-appeal*** and a reference to ***appellant*** includes a reference to ***cross-appellant*** (see the dictionary).

Note 2 For the number of copies of a document to file, see rule 24.08.

Note 3 For service of documents filed, see rules 7.03 and 7.04.

Note 4 Rule 22.56 provides that an appeal will be taken to be abandoned 28 days after the Form 20 was filed if the pre-argument statement is not filed.

Note 5 A pre-argument statement is a document in which an appellant must concisely state the issues to be raised at the hearing of the appeal (see the dictionary).

22.15 Fixing of first court date

On the filing of a pre-argument statement, the Regional Appeal Registrar must:

(a) fix a date for the first court date for the appeal before a Judge of the Appeal Division that is as near as practicable to 28 days after the filing of the pre-argument statement; and

(b) give the parties to the appeal written notice of the Appeal Registry and the first court date.

Note An application or appeal may be listed before another Judge if there is no Judge of the Appeal Division available (see rule 1.13).

22.16 Filing draft index to appeal books

(1) An appellant must file a draft index to the appeal books at least 7 days before the first court date for the appeal.

(2) If the draft index is not filed in accordance with subrule (1), the Regional Appeal Registrar must:

(a) cancel the date fixed for the first court date for the appeal; and

(b) not fix a new date for the first court date until the draft index is filed.

Note 1 See rules 22.21 and 22.22 for what must be included in the appeal books.

Note 2 For the number of copies of a document to file, see rule 24.08.

Note 3 An appeal will be taken to be abandoned 3 months after the cancellation of the first court date if the index is not filed (see subrule 22.56 (2)).

22.17 Attendance on first court date

(1) Each party who wishes to be heard on an appeal and the party's lawyer (if any) must attend on the first court date.

(2) A child representative may attend on the first court date.

Note A party may request permission to attend the first court date by electronic communication (see rule 22.39) or be excused from attending the first court date (see rule 1.12).

22.18 Procedure on first court date

On the first court date, the Judge may conduct a settlement conference or a procedural hearing or both.

22.19 Settlement conference

Each party at a settlement conference must make a genuine effort to reach agreement on the matters in issue between them.

22.20 Procedural hearing

Orders about the following matters must be made at a procedural hearing:

(a) the documents and other material mentioned in rule 22.21 that are to be included in the appeal books;

(b) the part or parts of the transcript of the hearing relevant to the appeal that are to be included in the appeal books;

(c) who is to obtain the transcript;

(d) the preparation of the appeal books, including by whom and the number of copies;

(e) the date by which the appeal books must be filed and served;

(f) if practicable, the sittings of the Full Court in which the appeal may be listed for hearing.

Note 1 The court may make orders about the conduct of the appeal.

Note 2 At a procedural hearing, a Judge may also consider making any necessary orders under subsection 94 (2B) or (2D), 94AAA (8) or (10) of the Act, subsection 102 (6) or (8) or 102A (7) or (9) of the Assessment Act, or subsection 107 (5) or (7) or 107A (7) or (9) of the Registration Act, if applicable.

Note 3 Parties may be asked to assist the court to estimate the likely duration of the appeal.

22.21 Appeal books

(1) The appeal books must contain only the following documents:

(a) the documents ordered to be included at the procedural hearing, that is:

(i) relevant documents put in evidence at the hearing or trial to which the appeal relates; and

(ii) if the appeal involves a challenge to the exclusion of evidence, the document:

(A) that is the subject of the challenge; and

(B) that was tendered, but not admitted as evidence, at the hearing or trial to which the appeal relates;

(b) the documents mentioned in rule 22.22.

(2) The appeal books must not mention any offer to settle that has been made or the terms of the offer unless the terms of the offer are relevant to the appeal.

(3) In this rule:

relevant documents means documents that are:

(a) relevant to the grounds of appeal; and

(b) necessary to enable the court hearing the appeal to reach its decision.

22.22 Form of appeal books

(1) Each volume of the appeal books must have:

(a) a title page stating:

(i) the names of the parties to the appeal;

(ii) the court where the order appealed from was made; and

(iii) the address for service of each party; and

(b) an index stating the documents included in the appeal books, and the date and page number of each document.

(2) The appeal books must include a certificate signed by the person who prepared them, certifying that the books have been prepared in accordance with these Rules and the orders made at the procedural hearing.

(3) The documents in the appeal books must be arranged in the following order:

(a) the Notice of Appeal (Form 20);

(b) the order appealed from;

(c) any relevant subsequent order;

(d) the reasons for judgment;

(e) each relevant application, affidavit and other document, in order of filing;

(f) any family report received in evidence in the case that is relevant to the appeal;

(g) the relevant parts of the transcript;

(h) a list of the exhibits;

(i) each relevant exhibit, if practicable.

(4) The pages of the appeal books, including the transcript, must be numbered consecutively.

(5) The appeal books must be securely fastened to make one or more volumes, each of which is no more than 25 millimetres thick.

(6) Each page in an appeal book must comply with the requirements for documents mentioned in subrule 24.01 (1).

Note 1 An appeal book may be filed by electronic communication (see rule 24.05).

Note 2 The Regional Appeal Registrar may refuse to accept the books for filing if they do not comply with these Rules or an order.

22.23 Transcript of hearing

The appellant or, if so ordered, the cross-appellant must arrange to obtain the relevant parts of the transcript of the hearing within 28 days after the procedural hearing.

Note A party may apply for an extension of time to comply with rule 22.23 (see rule 1.14).

22.24 Preparation of appeal books

(1) The appellant is responsible for preparing the appeal books.

(2) If a Judge or Regional Appeal Registrar is satisfied that preparing the appeal books would impose exceptional hardship on the appellant, the Judge or Regional Appeal Registrar may order either of the following people to prepare the appeal books:

(a) a respondent;

(b) the Appeal Registrar.

Note If the Appeal Registrar prepares the appeal books, the appellant or cross-appellant (if so ordered) is still responsible for obtaining the transcript (see rule 22.23).

(3) When making an order under subrule (2), the court may order the appellant to pay the costs of preparing the appeal books.

(4) The party responsible for filing the appeal books must, within 56 days after the procedural hearing, file and serve the appeal books.

Note 1 The party filing the appeal books must file and serve the number of copies ordered to be filed (see paragraph 22.20 (d)). The number to be filed will include enough copies for each member of the Full Court. In addition, the number required to be served will be 2 copies for each other party.

Note 2 A party may apply for an extension of time (see rule 1.14).

Note 3 If a party fails to comply with the requirements for filing and serving the appeal books, the appeal is taken to be abandoned (see rule 22.56).

22.25 Fixing a date for appeal

When the appeal books have been filed and the appeal is ready to proceed, the Regional Appeal Registrar must:

(a) fix a date for the hearing of the appeal during a sitting of the Full Court; and

(b) give each party to the appeal written notice of the date and place of that sitting, at least 28 days before the start of that sitting.

22.26 Summary of argument and list of authorities

(1) Each party must file and serve a summary of argument and a list of authorities to be relied on:

(a) for the appellant — at least 14 days before the first day of the sittings in which the appeal is listed for hearing;

(b) for the respondent — at least 7 days before the first day of the sittings in which the appeal is listed for hearing; and

(c) for any child representative — at least 3 days before the first day of the sittings in which the appeal is listed for hearing.

(2) For subrule (1), a summary of argument must:

(a) set out in relation to each ground of appeal, a statement of the arguments setting out the points of law or fact and the authorities relied on;

(b) set out the orders sought;

(c) not exceed 10 pages;

(d) have all paragraphs numbered consecutively;

(e) be signed by the lawyer who prepared the summary or by the party; and

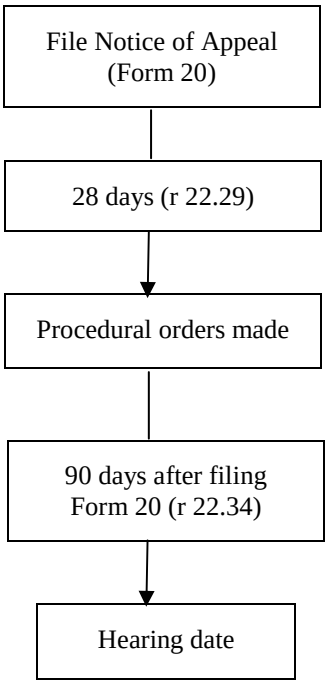
(f) include the signatory's name, telephone number, facsimile number and e-mail address (if any) or document exchange number (if any) at which the signatory may be contacted.

Note 1 At the hearing of the appeal, each party will be expected to speak to the party's written submission. It is not appropriate to simply read through the submission. The court may impose time limits on each party, which will be strictly adhered to unless a new matter arises during argument.

Note 2 For the number of copies of a document to file, see rule 24.08.

Note 3 This rule applies unless the court orders otherwise (see rule 1.12). For example, the court may allow a summary of argument to be longer than 10 pages.

Part 22.4 Appeal from Federal Magistrates Court heard by single Judge



22.27 Application of Part 22.4

This Part applies to an appeal from an order of the Federal Magistrates Court for which the Chief Justice has determined that the jurisdiction of the court is to be exercised by a single Judge.

Note On the filing of an appeal from an order of the Federal Magistrates Court, the Chief Justice must decide whether it is appropriate for the jurisdiction of the Full Court to be exercised by a single Judge. There is no right to appeal against this decision.

If the appeal is to be heard by:

(a) a Full Court — Part 22.3 applies; and

(b) a single Judge — Part 22.4 applies.

The Regional Appeal Registrar will tell the parties to the appeal which Part of these Rules applies.

22.28 Notice of Appeal Registry and referral to Judge

(1) If an appeal is to proceed under this Part, the Regional Appeal Registrar must, within 14 days after the Notice of Appeal (Form 20) is filed:

(a) give each party to the appeal written notice of the registry that is to be the Appeal Registry; and

(b) arrange for the appeal to be referred to the Judge conducting the appeal.

(2) A Judge may make procedural orders in chambers, in the absence of the parties, on the documents filed.

22.29 Fixing of date for procedural hearing

If the Judge conducting an appeal directs that it be listed for a procedural hearing, the Regional Appeal Registrar must fix a date for the procedural hearing that is as near as practicable to 28 days after the Form 20 is filed.

22.30 Attendance at procedural hearing

Each party who wishes to be heard on an appeal, and that party's lawyer (if any), must attend the procedural hearing.

Note A party may request permission to attend the procedural hearing by electronic communication (see rule 22.39) or be excused from attending the procedural hearing (see rule 1.12).

22.31 Procedural orders for conduct of appeal

(1) The procedural orders made by a Judge in chambers under subrule 22.28 (2) or at a procedural hearing must include orders about the following:

(a) a timetable for the filing, by each party, of:

(i) a list of documents to be relied on by the party;

(ii) a summary of argument; and

(iii) a list of authorities to be relied on;

(b) the party to be responsible for ensuring that the documents mentioned in rule 22.32 are before the court at the hearing of the appeal;

(c) a timetable for the party responsible to obtain, file and serve:

(i) the Magistrate's reasons for judgment; and

(ii) those parts of the transcript of the hearing likely to be relevant to the appeal;

(d) a date for the hearing of the appeal.

(2) A summary of argument filed by a party as required by an order made under subparagraph (1) (a) (ii) must comply with subrule 22.26 (2).

22.32 Documents for appeal hearing

(1) Subrule 22.21 (2) applies to the documents to be relied on in an appeal under this Part as if a reference in that subrule to 'appeal books' were a reference to the documents to be relied on in an appeal under this Part.

(2) Subrule 22.21 (3) applies to the documents to be relied on in an appeal under this Part as if a reference to 'relevant documents' were a reference to the documents to be relied on in an appeal under this Part.

(3) Unless otherwise ordered under paragraph 22.31 (1) (b), the appellant is responsible for ensuring that the documents before the Judge on the hearing of the appeal are:

(a) the Notice of Appeal (Form 20); and

(b) the following documents that were filed in the court appealed from:

(i) the application;

(ii) any response;

(iii) relevant affidavits relied on before the Federal Magistrate;

(iv) any family report received in evidence;

(v) relevant exhibits tendered before the Federal Magistrate;

(vi) the relevant part or parts of the transcript of the hearing;

(vii) reasons for judgment of the Federal Magistrate;

(viii) the Federal Magistrate's order;

(ix) any relevant subsequent order.

22.33 Transmission of papers

The Registrar of the Federal Magistrate's Court must send the court file relating to the appeal to the Appeal Registry as soon as practicable after receiving:

(a) a copy of the Form 20 under rule 22.06; or

(b) a copy of the application for permission to appeal under rule 22.46.

22.34 Date fixed for appeal hearing

The date fixed for the hearing of the appeal must, if practicable, be a date that is no later than 90 days after the Form 20 was filed.

Part 22.5 Appeal from court of summary jurisdiction

22.35 Application of Part 22.5

This Part applies to an appeal from an order of a court of summary jurisdiction.

22.36 Fixing of hearing date

On the filing of a Notice of Appeal (Form 20), the Registry Manager must fix a date for the hearing of the appeal that is as near as practicable to 56 days after the Form 20 was filed.

Note The appellant must give a copy of the Form 20 to the Registrar of the court of summary jurisdiction within 14 days after filing the Form 20 (see rule 22.06).

22.37 Transmission of papers

The Registrar of the court appealed from must send the court file relating to the appeal to the Appeal Registry as soon as practicable after receiving:

(a) a copy of the Form 20 under rule 22.06; or

(b) a copy of the application for permission to appeal under rule 22.46.

Part 22.6 Powers of appeal courts and conduct of appeal

Note 1 The following provisions set out the powers of the appeal court:

(a) subsections 93A (2), 94 (2) and 94AAA (6) and section 96 of the Act;

(b) subsections 102 (4), 102A (5) and 105 (6) of the Assessment Act;

(c) subsections 107 (3), 107A (5) and 110 (8) of the Registration Act.

Note 2 Oral argument will ordinarily be restricted to issues raised by the Form 20 and the summary of argument. The appeal court may restrict the time allowed for oral argument.

22.38 Non-attendance by party

If a party does not attend, in person or by lawyer, when an appeal is called on for hearing, the court may:

(a) if the appellant does not attend — dismiss the appeal; or

(b) if the respondent does not attend — proceed with the appeal.

22.39 Attendance by electronic communication

(1) A party may request permission from the court to attend a settlement conference or hearing of an application or appeal by electronic communication.

(2) The request must:

(a) be in writing;

(b) for a settlement conference or hearing of an application relating to an appeal — be made at least 7 days before the date fixed for that event;

(c) for an appeal hearing — be made at least 28 days before the date fixed for the sitting of the Full Court during which the appeal will be heard;

(d) address all of the matters mentioned in subrule 16.08 (3), if applicable; and

(e) set out the notice given of the request to any other party and whether there is any objection to the request.

(3) The request may be determined, in chambers, in the absence of the parties by:

(a) for an appeal to be heard by the Full Court — a Judge of the Appeal Division; or

(b) for an appeal to be heard by a single Judge — the Judge conducting the settlement conference or hearing of the application or appeal.

(4) The court may take the following matters into account when considering the request:

(a) the party's distance from the place where the event is to be held;

(b) any physical difficulty the party has in attending because of illness, disability or concerns about security.

(5) The court may:

(a) order a party to pay the expenses of attending by electronic communication; or

(b) apportion the expense between the parties.

22.40 Attendance of party in prison

(1) A party who is in prison must attend at a settlement conference, procedural hearing or the hearing of an appeal by electronic communication, if practicable.

(2) A party may seek permission from the court to attend an appeal in person.

Example

A party may apply for an order under subrule (2) if a prison or court has no facilities for the appeal to proceed by electronic communication.

(3) A request under subrule (2) must:

(a) be in writing;

(b) be made at least 28 days before the date fixed for the appeal;

(c) set out the reasons why permission should be granted; and

(d) set out the notice given of the request to any other party and whether there is any objection to the request.

22.41 Short reasons for decision

The court, in exercising its power under subsection 102 (5) or 102A (6) of the Assessment Act or subsection 107 (4) and 107A (6) of the Registration Act, to give reasons in short form for its decision to dismiss an appeal must do so by stating them in the following form:

Short reasons for decision

File number	Applicant(s)
At	Respondent(s)

The Court/Full Court is of the opinion that the appeal does not raise any question of general principle.

The Court's reasons in short form are: [*set out short reasons*]

The appeal is dismissed [*insert particulars of any costs order*]

Date:

Part 22.7 Applications in relation to appeals

Division 22.7.1 How to make an application

22.42 Application of Part 22.7

This Part applies if a party seeks to make an application in relation to an appeal, including an application for permission to appeal from an order.

Example

A party may apply for an order:

(a) that the appeal court receive evidence on the hearing of an appeal that is in addition to the evidence admitted in the case appealed from (see rule 22.51);

(b) under subsection 94 (2B) or (2D) or 94AAA (8) or (10) of the Act, subsection 102 (6) or (8) or 102A (7) or (9) of the Assessment Act or subsection 107 (5) or (7) or 107A (7) or (9) of the Registration Act; or

(c) under these Rules, for example, for a stay or an extension of time.

22.43 Application in relation to appeal

A party may make an application in relation to an appeal by filing an Application in a Case (Form 2).

Note 1 See Chapter 5 for the procedure for making an application in a case. A party must also file an affidavit. See rules 22.10 and 22.46 for where to file an application.

Note 2 The applicant must file enough copies of the documents to provide one copy for each member of the appeal court and to enable service on all parties and any child representative (see rule 24.08), and as many additional copies as ordered by the Regional Appeal Registrar.

Note 3 A document that is filed must be served (see subrule 7.04 (1)). If a time limit is given for an action, service must also be effected within that time.

22.44 Hearing date for application

(1) On the filing of an Application in a Case (Form 2), the Appeal Registrar must:

(a) fix a date for a hearing of the application; or

(b) refer the application to a Judge in chambers if:

(i) the application is for permission to appeal;

(ii) the applicant has asked the court, in the application, to determine it without an oral hearing and the respondent has not objected to the request (see Part 5.4); or

(iii) the Appeal Registrar considers it appropriate.

(2) The date fixed under paragraph (1) (a) for the hearing of an application must:

(a) if the application is for adducing further evidence — be the same as that fixed for the hearing of the appeal;

(b) if the appeal to which the application relates has been listed for a procedural hearing or hearing — be the same as the date for the procedural hearing or hearing; and

(c) in any other case — be a date that is as near as practicable to 28 days after the filing of the application.

22.45 Decision without an oral hearing

(1) Part 5.4 applies to an application in relation to an appeal as if a reference in that Part:

(a) to an application for an interim or procedural order were a reference to an application in relation to an appeal; and

(b) to 'in the absence of the parties' were a reference to 'without an oral hearing'.

(2) If an application is referred to a Judge in chambers in accordance with paragraph 22.44 (1) (b), the Judge may:

(a) order that the application be dealt with by the court without an oral hearing and:

(i) make procedural orders in relation to the conduct of the application, including the filing of written submissions; or

(ii) determine the application; or

(b) direct that a date for hearing be fixed for the application and require the parties to attend.

Note 1 The court has the power to determine some applications relating to an appeal without an oral hearing (see subsections 94 (2C) and (2E), 94AAA (9) and (11), and 94AA (3) of the Act, subsections 102 (7) and (9), and 102A (8) and (10), of the Assessment Act and subsections 107 (6) and (8), and 107A (8) and (10), of the Registration Act). The court may decide to deal with an application without an oral hearing on its own initiative or on application.

Note 2 For the requirements for withdrawing or discontinuing an application, see Part 10.2.

Division 22.7.2 Application for permission to appeal

Note A party needs the court's permission to appeal from:

(a) an interlocutory order, other than an interlocutory order relating to a child welfare matter, of a Family Court or the Federal Magistrates Court (see subsections 94AA (1) and (2A) of the Act and regulation 15A of the Regulations); and

(b) an order made by a Judge, the Federal Magistrates Court or a court of summary jurisdiction under section 102, 102A or 105 of the Assessment Act or section 107, 107A or 110 of the Registration Act.

22.46 Time for filing application for permission to appeal

(1) A party may file an application for permission to appeal within 28 days after the order appealed from was made.

Note A party may apply for an extension of time to make an application (see rule 1.14).

(2) An Application in a Case (Form 2) and an affidavit must be filed:

(a) for an appeal from a court of summary jurisdiction — in the registry closest to the court in which the order appealed from was made; or

(b) in any other case — in the Regional Appeal Registry.

(3) The affidavit must:

(a) state the facts relied on in support of the application; and

(b) have attached to it:

(i) a copy of the order to which the application relates;

(ii) the reasons for judgment (if any); and

(iii) a draft of the proposed Notice of Appeal (Form 20).

Note An appeal from the Federal Magistrates Court will be referred to the Chief Justice for a decision about whether the court's jurisdiction in relation to the appeal is to be exercised by a single Judge or the Full Court.

22.47 Notice to others of appeal

A party seeking permission to appeal from an order of another court must give a copy of the application filed under subrule 22.46 (1) to:

(a) the Registrar of the other court; and

(b) for an appeal from a court exercising jurisdiction under the child support legislation — the Child Support Registrar.

Note If an application for permission to appeal has been filed, a party may apply for a stay of the order to which the appeal relates (see rule 22.12).

22.48 Orders about conduct of application

In considering an application for permission to appeal from an order, a Judge may make procedural orders, including an order:

(a) requiring the appellant to file a written undertaking to pay any filing fee; or

(b) that the proposed appeal be argued at the same time as the application for leave to appeal.

Note An application for permission to appeal from an order of another court may be listed for hearing at the same time as the hearing of the appeal. Alternatively, the application may be dealt with before the hearing and if the court gives an applicant permission to appeal, the appeal process commences.

Division 22.7.3 Other applications relating to appeals

22.49 Security for costs

(1) A respondent may apply for security for costs within 21 days after the service on the respondent of the Notice of Appeal (Form 20).

(2) Part 19.2 applies to an application for security for costs in an appeal as if the appellant is the applicant in the case.

Note For the rules on how to make an application, the procedure and by whom the application will be heard, see Division 22.7.1.

22.50 Expediting an appeal

A party to an appeal may apply for an order to expedite the listing of the appeal.

Note For the rules on how to make an application, the procedure and by whom the application will be heard, see Division 22.7.1.

22.51 Further evidence on appeal

(1) A party to an appeal who seeks to apply for an order that the court receive further evidence on the hearing of the appeal, must file the application at least 14 days before the date of commencement of the sittings in which the appeal is listed for hearing.

Note An appeal is ordinarily heard on the record of evidence given at the primary court hearing. If the appellant wants the court to consider evidence that was not given in the primary court hearing, permission must be obtained from the appeal court. Permission is only granted in exceptional circumstances.

(2) The affidavit filed with the application must include the further evidence that the applicant wants the court to admit at the hearing of the appeal.

(3) Any other party to the appeal may file an affidavit in response to the application at least 7 days before the date of commencement of the sittings in which the appeal is listed for hearing.

Note 1 For the rules on how to make an application, the procedure and by whom the application will be heard, see Division 22.7.1.

Note 2 Documents relating to further evidence should not be included in the appeal books.

22.52 Review of Appeal Registrar's order

A party may apply for a review of an Appeal Registrar's order relating to the conduct of an appeal by filing an Application in a Case (Form 2) in the Regional Appeal Registry, within 14 days after the order is made.

Note 1 The Regional Appeal Registrar must list the application for review for hearing by a Judge of the Appeal Division (or, if no Judge of the Appeal Division is available, another Judge).

Note 2 The court may shorten or extend the time for compliance with a rule (see rule 1.14).

Part 22.8 Concluding an appeal

22.53 Consent orders on appeal

(1) This rule applies if the parties to an appeal agree:

(a) about the orders the court will be asked to make on appeal; or

(b) that the appeal should be dismissed.

(2) The parties may file a draft consent order, setting out the terms of their agreement.

Note A consent order may be considered by the court without an oral hearing — see subsections 94 (2C) and (2E), 94AAA (9) and (11), and 94AA of the Act, subsections 102 (7) and (9), and 102A (8) and (10), of the Assessment Act, and subsections 107 (6) and (8), and 107A (8) and (10), of the Registration Act.

(3) If the parties:

(a) agree about the orders the court will be asked to make on appeal; and

(b) disagree about the order for costs;

the Appeal Registrar may fix a date for hearing for the argument about costs, without requiring appeal books to be prepared or a procedural hearing to be held.

22.54 Discontinuance of appeal

Part 10.2 applies to an appeal as if it were a case.

22.55 Dismissal of appeal

A respondent to an appeal may apply for the appeal to be dismissed on the basis that it is incompetent.

Note An application under this rule is made by filing an Application in a Case (Form 2) and affidavit (see Chapter 5). In an appeal to be heard by the Full Court, the application will be listed for hearing by the Full Court. For an appeal from the Federal Magistrates Court, the application will be listed for hearing by a Judge.

22.56 Abandoning an appeal

(1) If, by the date for compliance (as fixed in accordance with these Rules or extended by an order), an appellant does not file:

(a) a pre-argument statement; or

(b) the appeal books;

an appeal is taken to be abandoned at the end of the 28th day after the date for compliance.

(2) If the draft index to the appeal books is not filed within 3 months after the date of cancellation of the first court date under paragraph 22.15 (a), the appeal is taken to be abandoned.

(3) If the appeal is taken to be abandoned, the appellant may be ordered to pay the costs of the other parties to the appeal.

22.57 Application for reinstatement of appeal

(1) A party may apply to have an appeal abandoned under subrule 22.56 (1) reinstated.

(2) In determining an application under subrule (1), the court may consider, among other things, the following:

(a) the main purpose of these Rules (see rule 1.04);

(b) the administration of justice;

(c) whether the application has been made promptly;

(d) whether the non-compliance was intentional;

(e) whether there is a good reason for the non-compliance;

(f) the extent to which the party has otherwise complied, in the case, with orders and legislative provisions;

(g) whether the non-compliance was caused by the party or the party's lawyer;

(h) the effect of non-compliance on each other party;

(i) the effect that reinstating the appeal would have on each other party and on parties to other cases in the court;

(j) an order for costs, including costs on an indemnity basis;

(k) whether a party should be prevented from taking any further steps in the appeal until the costs are paid.

22.58 Dismissal of appeal for non-compliance or delay

(1) This rule applies if:

(a) rule 22.56 does not apply; and

(b) a party (the ***defaulting party***) has not:

(i) met a requirement under these Rules or the Regulations;

(ii) complied with an order; or

(iii) shown reasonable diligence in proceeding with an appeal.

(2) A court having jurisdiction in the appeal may:

(a) if the defaulting party is the appellant:

(i) dismiss the appeal; or

(ii) fix a time by which a requirement is to be met and order that the appeal will be dismissed if the order imposing the requirement is not complied with; or

(b) if the defaulting party is the respondent:

(i) fix a time by which a requirement is to be met and order that the appeal will proceed if the order imposing the requirement is not complied with; or

(ii) proceed to hear the appeal.

(3) The court may make an order under subrule (2) on its own initiative if, at least 14 days before making the order, written notice has been given to the parties about the date and time when the court will consider whether to make the order.

Part 22.9 Appeal to High Court

22.59 Application for certificate to appeal to High Court of Australia

A party may apply for a certificate mentioned in paragraph 95 (b) of the Act by filing an application in the Regional Appeal Registry within 28 days after the order to which the application relates was made.

Part 22.10 Case stated

22.60 Application of Part 22.10

This Part applies to a case (a ***case stated***) under the Act, the Assessment Act or the Registration Act in relation to which the court and a party want a Full Court to determine a question of law arising in the case.

Note Section 94A of the Act, section 103 of the Assessment Act and section 108 of the Registration Act specify the kinds of cases in which a question of law may arise for determination by a Full Court.

22.61 Case stated

(1) If a Judge orders a party to prepare a case stated to the Full Court, the party must:

(a) confer with each other party about the terms of a draft case stated; and

(b) prepare the draft case stated based on the agreed terms.

(2) The draft case stated must concisely state the facts and the question of law to be determined.

(3) When the draft of the case stated is completed, the party who prepared it must:

(a) ask the Registry Manager to list the case for a procedural hearing to have the draft case stated settled by the Judge; and

(b) serve a copy of the draft case stated and a notice of the date fixed for the procedural hearing on each other party and any other person the Judge directs.

22.62 Objection to draft case stated

(1) A party served with a copy of a draft case stated under paragraph 22.61 (3) (b) may object to its terms, or seek an amendment of it, by giving written notice to the party who prepared the draft of:

(a) any objections; or

(b) any amendments sought to be made when the draft is settled by the Judge.

(2) The party must give the notice within 7 days after the copy of the draft case stated was served on the party.

22.63 Settlement and signing

(1) The party who prepared the draft case stated must lodge:

(a) the draft case stated;

(b) any objections or amendments sought by the other party; and

(c) a request that the Judge settle the draft case stated.

(2) The party who prepared the draft case stated must, within 3 days after it has been settled, file a copy of the case stated, as settled, for signature by the Judge.

22.64 Filing of copies of case stated

A party who prepares a draft case stated must, within 7 days after it has been signed under rule 22.63:

(a) file 5 copies of the case stated in the Regional Appeal Registry; and

(b) serve 2 copies of the case stated on each other party and any other person the Judge directs.

22.65 Fixing of hearing date

On the filing of copies of the signed case stated under rule 22.64, the Regional Appeal Registrar must:

(a) fix a date for the hearing of the case stated during a sitting of the Full Court; and

(b) give each party written notice about the hearing.

22.66 Summary of argument and list of authorities

(1) A summary of argument to be presented and a list of cases to be relied on at the hearing of a case stated must be filed and served:

(a) by the party who prepares the draft case stated — at least 21 days before the commencement of the sittings at which the case stated is listed for hearing;

(b) by each other party — at least 14 days before the commencement of the sittings at which the case stated is listed for hearing; and

(c) by a child representative (if any) — at least 7 days before the commencement of the sittings at which the case stated is listed for hearing.

(2) The summary of argument must be in accordance with subrule 22.26 (2).

Chapter 23 Registration of documents

Summary of Chapter 23

Chapter 23 sets out the procedure for:

- registration of agreements, orders and child support debts;
- registration of maintenance agreements; and
- revoking registered parenting plans.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 23.1 Registration of agreements, orders and child support debts

23.01 Registration of agreements

(1) This rule applies to an agreement that:

(a) may be registered in a court having jurisdiction under the Act; and

(b) is not a parenting plan or an agreement revoking a parenting plan.

Note Paragraph (1) (a) includes provisions of a child support agreement that may be registered in the court under the Assessment Act.

(2) A party to an agreement mentioned in subrule (1) may register the agreement by filing an affidavit to which a copy of the agreement is attached.

Note 1 An agreement made under section 86 or 87 of the Act after 27 December 2000 cannot be registered (see subsections 86 (1A) and 87 (1A) of the Act).

Note 2 For requirements relating to the registration of orders (other than an order for principal relief), see regulation 17 of the Regulations.

23.02 Registration of debt due to the Commonwealth under child support legislation

A debt due to the Commonwealth under section 30 of the Registration Act may be registered in a court by filing a certificate issued under subsection 116 (2) of that Act.

Part 23.2 Parenting plans

23.03 Requirements for registration of an agreement revoking a registered parenting plan

(1) This rule applies to an agreement to revoke a registered parenting plan (a ***revocation agreement***).

(2) A revocation agreement must:

(a) be signed by each party to the parenting plan; and

(b) be a single document that complies with rule 24.01.

(3) A party may register a revocation agreement by filing:

(a) an affidavit, to which a copy of the revocation agreement is attached; and

(b) a written statement, by each party to the revocation agreement:

(i) specifying that the party has been given independent legal advice about the meaning and effect of the agreement; and

(ii) counter-signed by the lawyer who gave the advice.

Note See subparagraph 63E (2) (b) (i) of the Act.

(4) The affidavit must state:

(a) the name, age and place of residence of each child to whom the revocation agreement relates; and

(b) why the parties propose to revoke the registered parenting plan.

23.04 Court may require service or additional information

Before deciding whether to register a revocation agreement, the court may:

(a) order that a copy of the affidavit filed under subrule 23.03 (3) be served on a specified person; or

(b) require a party to file additional information.

23.05 Application may be dealt with in chambers

An application for registration of a revocation agreement may be dealt with in chambers, in the absence of the parties and their lawyers (if any).

Note Section 63E of the Act provides that the court may register an agreement revoking a registered parenting plan if it considers it appropriate to do so, having regard to the best interests of the child to which the plan relates.

Chapter 24 Documents, filing, registry

Summary of Chapter 24

Chapter 24 sets out:

- the general requirements for documents and their filing; and
- procedures relating to registry records, including the removal of a document from a registry, and searching, inspecting and copying court documents.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

Part 24.1 Requirements for documents

24.01 General requirements

(1) A document for filing must:

(a) appear on one or both sides of white A4 paper;

(b) be legibly printed:

(i) by machine; or

(ii) if it is not an affidavit — in ink, by hand;

(c) have left and right margins:

(i) sufficient to enable the page to be read when bound; and

(ii) no wider than 2.5 cm;

(d) have line spacing not exceeding 1.5 lines;

(e) have each page consecutively numbered;

(f) have all pages securely fastened; and

(g) for a document that is not included in Schedule 2 — include the following on the first page:

(i) on the right side of the page — a space that is at least 5 cm wide and 5 cm long, containing the following information:

(A) the full name of the court and registry where the document will be filed;

(B) the court file number;

(C) the client identification number;

(D) a blank space for the court's use only to insert the date of filing;

(ii) the name of the document and the rule number under which the document is filed;

(iii) the full name of each party to the case and of any child representative appointed;

(iv) if not already provided, the full name, address for service, telephone number, facsimile number and e-mail address (if any) of the person filing the document.

(2) Subrule (1) does not need to be strictly complied with if the nature of the document, or the manner of filing, means that strict compliance would be impracticable.

(3) A document that is filed electronically has the same status as a document in paper form.

(4) A document filed or served under these Rules (other than an affidavit) may be signed or given by a party or by the lawyer for the party.

Note The rules relating to filing by electronic communication apply only if the court has the facility to accept documents by electronic communication.

24.02 Corporation as a party

If a document (including an application for permission to intervene) names a corporation as a party, the document must include the corporation's full name, registered office and Australian Business Number (ABN).

24.03 Change of name of party

(1) If a party's name is changed after the start of a case, the party must give written notice of the change of name to the court and each other party.

(2) The new name must be used in all documents later filed.

24.04 Compliance with forms

(1) Strict compliance with a form included in Schedule 2 is not required, and substantial compliance is sufficient.

Note A form must be completed in accordance with any directions specified in the form, but the directions may be omitted from the completed document.

(2) A document in a form prescribed for the Federal Magistrates Court is taken to be in substantial compliance with the form prescribed for the same purpose in these Rules.

Part 24.2 Filing documents

24.05 How a document is filed

(1) A document is filed if:

(a) the document is:

(i) delivered to the registry;

(ii) posted to the registry; or

(iii) sent to the registry by electronic communication under rule 24.06 (facsimile) or 24.07 (e-mail and Internet);

(b) the filing fee (if any) is paid or waived; and

(c) the Registry Manager has accepted the document for filing and marked the date of filing on it.

(2) A document is filed if it is accepted for filing by a judicial officer in court during a court event.

(3) On the issue of a subpoena, the Registry Manager must seal a sufficient number of copies for service.

(4) A document that is sent for filing by electronic communication after the filing registry has closed is taken to have been received by the filing registry on the next day when the filing registry is open.

(5) Except as otherwise required by these Rules or an order, a document to be relied on in a court event must be filed at least one day before the date fixed for that event.

Note 1 For information about filing fees, see regulation 11 of the Regulations.

Note 2 A person sending a document by electronic communication is responsible for ensuring that the document is received by the court.

Note 3 A judicial officer may require a party to give an undertaking to pay a filing fee before accepting a document for filing.

Note 4 The rules relating to filing by electronic communication apply only if the court has the facility to accept documents by electronic communication: see http://www.familycourt.gov.au.

24.06 Filing a document by facsimile

(1) A document may be filed by facsimile if:

(a) the matter is urgent;

(b) the total number of pages, including the cover page, is not more than 25; and

(c) it is not practicable to lodge the document in the filing registry in any other way because:

(i) the filing party is unrepresented, and lives more than 20 kilometres from the registry; or

(ii) the filing party is represented by a lawyer whose principal office is more than 20 kilometres from the registry.

(2) The document must be:

(a) sent to an approved facsimile number; and

(b) accompanied by:

(i) a letter to the Registry Manager, setting out the facts relied on under subrule (1) for filing the document by facsimile; and

(ii) a cover page in accordance with subrule 7.16 (2).

Note 1 For service by facsimile and restrictions relating to the number of pages that may be faxed, see rule 7.16.

Note 2 For the number of copies of a document to be provided for service, see rule 24.08.

24.07 Filing by e-mail and Internet

(1) If a document is sent for filing by e-mail, the sender must:

(a) send the document:

(i) to an approved e-mail address;

(ii) in the approved electronic format; and

(iii) in a current case, to the filing registry; and

(b) include a cover page in accordance with subrule 7.16 (2).

(2) If a document is sent for filing through the Internet, the sender must comply with the court's electronic filing procedures.

(3) If a document (other than an Acknowledgement of Service (Form 6)):

(a) is filed by electronic communication; and

(b) is required to be signed, but not sworn;

the document is taken to be signed, before it is transmitted, by the party or lawyer who filed it.

(4) If a document that is required to be sworn is filed by electronic communication, the document:

(a) is taken to have been sworn by the deponent before it is transmitted; and

(b) must bear the name of the deponent, witness and date of swearing.

(5) If a party or a party's lawyer files a sworn document by electronic communication, the party or lawyer must:

(a) keep the printed form of the document bearing the original signature until the end of the case or appeal; and

(b) make the document available for inspection on request.

Note An Acknowledgment of Service (Form 6) must be signed by the person served with the documents if the party serving the documents wants to prove service by affidavit in accordance with rule 7.13. If the affidavit is filed by electronic communication, the party who served it must keep, and make available if necessary, the original of the affidavit and the Form 6.

If an Acknowledgment of Service (Form 6) is required to be signed to prove service, the person served will need to sign the acknowledgment and return it so that the other party can identify the signature.

24.08 Additional copies for filing

A person filing a document must, at the time of filing or, if the document is filed by electronic communication, within 7 days after filing, give the Registry Manager:

(a) sufficient additional copies to ensure that there is a copy for each person to be served (see subrule 7.04 (4)); and

(b) for a Full Court appeal — 3 additional copies for the members of the Full Court.

Note For examples of specific rules setting out special requirements for persons to be served, see rules 2.04, 4.10, 4.16, 4.23, 7.04, 22.05 and 22.06.

24.09 Documents filed during a case

A document filed in a case that has started must be filed in the filing registry.

Note 1 In urgent circumstances, the court may order that an application be listed for hearing in another registry, or that a hearing or conference take place by electronic communication.

Note 2 For where to file documents in an appeal, see rule 22.10.

24.10 Refusal to accept document for filing

(1) A Registrar may refuse to accept a document for filing if the document:

(a) is not in the proper form in accordance with these Rules;

(b) is not executed in the way required by these Rules;

(c) does not otherwise comply with a requirement of these Rules;

(d) is tendered for filing after the time specified in these Rules or an order for filing the document;

(e) on its face, appears to the Registrar to be an abuse of process, frivolous, scandalous or vexatious; or

(f) is tendered for filing in connection with a current case in a registry that is not the filing registry (see rules 22.10 and 24.09).

(2) A person may apply for review of a Registrar's decision under subrule (1) by filing an Application in a Case (Form 2) without notice.

24.11 Filing a notice of payment into court

A person who pays money into court must file a Notice of Payment into Court, stating the amount and purpose for which the money is paid into court.

Note See paragraphs 66P (1) (f), 67D (2) (e) and 80 (1) (f) of the Act.

Part 24.3 Registry records

24.12 Removal of document from registry

A document may be removed from a registry only if:

(a) it is necessary to transmit the document between registries; or

(b) the court permits the removal.

24.13 Searching court record and copying documents

(1) The following persons may search the court record relating to a case, or inspect or copy a document forming part of the record:

(a) the Attorney-General;

(b) a party, a lawyer for a party, or a child representative, in a 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.

(2) Subject to subrule (1), the court must not provide any information relating to a case to a person unless a legislative provision provides otherwise.

Chapter 25 Applications under the *Corporations Act 2001*

Summary of Chapter 25

Chapter 25 sets out the procedure for a case started in or transferred to a Family Court under the *Corporations Act 2001*.

The rules in Chapter 1 relating to the court's general powers apply in all cases and override all other provisions in these Rules.

A word or expression used in this Chapter may be defined in the dictionary at the end of these Rules.

25.01 Application of Chapter 25

This Chapter applies to a case started in, or transferred to, a Family Court under the *Corporations Act 2001*.

25.02 Application of Corporations Rules

The Corporations Rules, as modified by rule 25.03 or an order, apply to an application under the *Corporations Act 2001* in a Family Court as if those rules were provisions of these Rules.

25.03 Modification of Corporations Rules

The Corporations Rules, in their application under rule 25.02, are modified in accordance with Table 25.1.

Table 25.1 Modification of Corporations Rules

Provision	*omit each mention of*	*insert*
Rule 5.9	the Registrar	the Registrar or Judicial Registrar
Rule 15.1	Order 50	Part 22.10 of the *Family Law Rules 2004*

Rule 25.04

Provision	*omit each mention of*	*insert*
Division 16, heading, and rule 16.1, heading	Registrars	Registrars and Judicial Registrars
Rule 16.1	paragraph 35A (1) (h) of the *Federal Court of Australia Act 1976*,	subsections 26B (1) and 37A (1) of the *Family Law Act 1975*,
Rules 16.1 and 16.2	a Registrar	a Registrar or Judicial Registrar
Schedule 2, heading	Registrar	Registrar or Judicial Registrar

25.04 Application under *Corporations Act 2001*

An application under the *Corporations Act 2001* must not be dismissed only because it has been made in the wrong form.

25.05 Transfer of case under *Corporations Act 2001*

A person seeking:

(a) to have a case under the *Corporations Act 2001* transferred from a Family Court to another court; or

(b) procedural orders under subsection 1337P (1) of the *Corporations Act 2001*;

must do so by filing an Application in a Case (Form 2) and an affidavit.

Note Rule 11.20 sets out the procedure to be followed if a case is transferred to another court.

25.06 Fixing a date for hearing

On the filing of a Form 2 under rule 25.05, the Registry Manager must fix a date for hearing that is as near as practicable to 28 days after the date of filing or the date fixed for the hearing of the application starting the case, if possible.

Schedule 1 Pre-action procedures

(rule 1.05)

Part 1 Financial cases (property settlement and maintenance)

1 General

(1) Each prospective party to a case in the Family Court of Australia is required to make a genuine effort to resolve the dispute before starting a case by:

(a) participating in primary dispute resolution, such as negotiation, conciliation, mediation, arbitration and counselling;

(b) exchanging a notice of intention to claim and exploring options for settlement by correspondence; and

(c) complying, as far as practicable, with the duty of disclosure.

(2) Unless there are good reasons for not doing so, all parties are expected to have followed these pre-action procedures before filing an application to start a case.

(3) There may be serious consequences, including costs penalties, for non-compliance with these requirements.

(4) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures include cases:

(a) involving urgency;

(b) involving allegations of family violence;

(c) involving allegations of fraud;

(d) in which there is a genuinely intractable dispute;

(e) in which a person would be unduly prejudiced or adversely affected if notice is given to another person (in the dispute) of an intention to start a case; and

(f) in which a time limitation is close to expiring.

(5) The objects of these pre-action procedures are:

(a) to encourage early and full disclosure in appropriate cases by the exchange of information and documents about the prospective case;

(b) to provide parties with a process to help them avoid legal action by reaching a settlement of the dispute before starting a case;

(c) to provide parties with a procedure to resolve the case quickly and limit costs;

(d) to help the efficient management of the case, if a case becomes necessary (that is, parties who have followed the pre-action procedure should be able to clearly identify the real issues which should help to reduce the duration and cost of the case); and

(e) to encourage parties, if a case becomes necessary, to seek only those orders that are reasonably achievable on the evidence.

(6) At all stages during the pre-action negotiations and, if a case is started, during the conduct of the case itself, the parties must have regard to:

(a) the need to protect and safeguard the interests of any child;

(b) the continuing relationship between a parent and a child and the benefits that cooperation between parents brings a child (that is, helping to maintain as good a continuing relationship between the parties and the child as is possible in the circumstances);

(c) the potential damage to a child involved in a dispute between the parents, particularly if the child is encouraged to take sides or take part in the dispute;

(d) the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them;

(e) the need to avoid protracted, unnecessary, hostile and inflammatory exchanges;

(f) the impact of correspondence on the intended reader (in particular, on the parties);

(g) the need to seek only those orders that are reasonably achievable on the evidence and that are consistent with the current law;

(h) the principle of proportionality and the need to control costs because it is unacceptable for the costs of any case to be disproportionate to the financial value of the subject matter of the dispute; and

(i) the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.

Note The duty of disclosure extends to the requirement to disclose any significant changes (see clause 4 of this Part).

(7) Parties must not:

(a) use the pre-action procedures for an improper purpose (for example, to harass the other party or to cause unnecessary cost or delay); or

(b) in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.

(8) The court expects parties to take a sensible and responsible approach to the pre-action procedures.

(9) The parties are not expected to continue to follow the pre-action procedures to their detriment if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

2 Compliance

(1) The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.

(2) If a case is subsequently started, the court may consider whether these requirements have been met and, if not, what the consequences should be (if any).

(3) The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and considering orders for costs (see paragraphs 1.10 (2) (d), 11.03 (2) (b) and 19.10 (1) (b)).

(4) Unreasonable non-compliance may result in the court ordering the non-complying party to pay all or part of the costs of the other party or parties in the case.

(5) In situations of non-compliance, the court may ensure that the complying party is in no worse a position than he or she would have been if the pre-action procedures had been complied with.

Examples of non-compliance with pre-action procedures

Not sending a written notice of proposed application; not providing sufficient information or documents to the other party; not following a procedure required by the pre-action procedures; not responding appropriately within the nominated time to the written notice of proposed application; not responding appropriately within a reasonable time to any reasonable request for information, documents or other requirement of this procedure.

3 Pre-action procedures

(1) A person who is considering filing an application to start a case must, before filing the application:

(a) give a copy of these pre-action procedures to the other prospective parties to the case;

(b) make inquiries about the primary dispute resolution services available; and

(c) invite the other parties to participate in primary dispute resolution with an identified person or organisation or other person or organisation to be agreed.

(2) Each prospective party must:

(a) cooperate for the purpose of agreeing on an appropriate primary dispute resolution service; and

(b) make a genuine effort to resolve the dispute by participating in primary dispute resolution.

(3) If the prospective parties reach agreement, they may arrange to have the agreement made binding by filing an Application for Consent Orders (Form 11).

(4) Before filing an application, the proposed applicant must give to the other party (the ***proposed respondent***) written notice of his or her intention to start a case if:

(a) there is no appropriate primary dispute resolution service available to the parties;

(b) a party fails or refuses to participate in primary dispute resolution; or

(c) the parties are unable to reach agreement by primary dispute resolution.

(5) The notice under subclause (4) must set out:

(a) the issues in dispute;

(b) the orders to be sought if a case is started;

(c) a genuine offer to resolve the issues;

(d) a time (the ***nominated time***) (that is at least 14 days after the date of the letter) within which the proposed respondent is required to reply to the notice.

(6) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (4), stating whether the offer is accepted and, if not, setting out:

(a) the issues in dispute;

(b) the orders to be sought if a case is started;

(c) a genuine counter-offer to resolve the issues; and

(d) the nominated time (that is at least 14 days after the date of the letter) within which the claimant must reply.

(7) It is expected that a party will not start a case by filing an application in a court unless:

(a) the proposed respondent does not respond to a notice of intention to start a case; or

(b) agreement is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

4 Disclosure and exchange of correspondence

(1) Parties to a case have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner (see rule 13.01).

(2) In attempting to resolve their dispute, parties should, as soon as practicable on learning of the dispute and, if appropriate, as a part of the exchange of correspondence under clause 3 of these pre-action procedures, exchange:

(a) a schedule of assets, income and liabilities;

(b) a list of documents in the party's possession or control that are relevant to the dispute; and

(c) a copy of any document required by the other party, identified by reference to the list of documents.

(3) Parties are encouraged to refer to the Financial Statement and rules 4.15, 12.05 and 13.04 as a guide for what information to provide and documents to exchange.

(4) Parties are not required to exchange documents that are not subject to the duty of disclosure under rule 13.12 and that would not be ordered to be disclosed by a court (see rule 13.12).

(5) The documents that the court would consider appropriate to include in the list of documents and exchange include:

(a) in a maintenance case:

(i) a copy of the party's taxation return for the most recent financial year;

(ii) the party's bank records for the 12 months ending on the date when the maintenance application was filed;

(iii) if the party receives wage or salary payments — the party's 3 most recent pay slips;

(iv) if the party owns or controls a business — the business activity statements for the business for the previous 12 months; and

(v) any other document relevant to determining the income, expenses, assets, liabilities and financial resources of the party; and

(b) in a property settlement case:

(i) a copy of the party's 3 most recent taxation returns and assessments;

(ii) documents about any superannuation interest of the party, including:

(A) a completed superannuation information form for the superannuation interest;

(B) if the party is a member of a self-managed superannuation fund — a copy of the trust deed and the 3 most recent financial statements for the fund; and

(C) the value of the superannuation interest, including the basis on which the value has been worked out and any documents working out the value;

(iii) for a corporation in relation to which a party has a duty of disclosure under rule 13.04:

(A) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns;

(B) a copy of the corporation's most recent annual return that lists the directors and shareholders; and

(C) a copy of the corporation's constitution and any amendments;

(iv) for a trust in relation to which a party has a duty of disclosure under rule 13.04:

(A) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(B) a copy of the trust deed, including any amendments;

(v) for a partnership in relation to which a party has a duty of disclosure under rule 13.04:

(A) a copy of the financial statements for the 3 most recent financial years, including balance sheets, profit and loss accounts, depreciation schedules and taxation returns; and

(B) a copy of the partnership agreement, including any amendments;

(vi) for a person or entity mentioned in subparagraph (i), (iii), (iv) or (v) — any business activity statements for the previous 12 months; and

(vii) unless the value is agreed, a market appraisal of the value of any item of property in which a party has an interest.

(6) It is reasonable to require a party who is unable to produce a document for inspection to provide a written authority addressed to a third party authorising the third party to provide a copy of the document in question to the other party, if this is practicable.

(7) Parties should agree to a reasonable place and time for the documents to be inspected and copied at the cost of the person requesting the copies.

Note The court will refer to Chapter 13 as a guide for what is regarded as reasonable conduct by the parties in making these arrangements.

(8) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates.

(9) Documents produced by a person to another person in compliance with the pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the case only.

(10) Parties must bear in mind that an object of the pre-action procedures is to control costs and, if possible, resolve the dispute quickly.

(11) Disagreements about disclosure may be better managed by the court within the context of a case.

5 Expert witnesses

(1) There are strict rules about instructing and obtaining reports from an expert witness (see Part 15.5).

(2) In summary:

(a) an expert witness must be instructed in writing and must be fully informed of his or her obligations;

(b) if possible, parties should seek to retain an expert witness only on an issue in which the expert witness's evidence is necessary to resolve the dispute;

(c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties; and

(d) if separate experts' reports are to be relied on at a hearing, the court requires the reports to be disclosed.

6 Lawyers' obligations

Note See also rules 1.08 and 19.03.

(1) Lawyers must, as early as practicable:

(a) advise clients of ways of resolving the dispute without starting legal action;

(b) advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty;

(c) subject to it being in the best interests of the client and any child, endeavour to reach a solution by settlement rather than start or continue legal action;

(d) notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement if, in the lawyer's opinion, the compromise or settlement is a reasonable one;

(e) in cases of unexpected delay, explain the delay and whether or not the client may assist to resolve the delay;

(f) advise clients of the estimated costs of legal action (see rule 19.03);

(g) advise clients about the factors that may affect the court in considering costs orders;

(h) give clients documents prepared by the court (if applicable) about:

(i) the legal aid services and primary dispute resolution services available to them; and

(ii) the legal and social effects and the possible consequences for children of proposed litigation; and

(i) actively discourage clients from making ambit claims or seeking orders that the evidence and established principle, including recent case law, indicates is not reasonably achievable.

(2) The court recognises that the pre-action procedures cannot override a lawyer's duty to his or her client.

(3) It is accepted that it is sometimes impossible to comply with a procedure because a client may refuse to take advice, however, a lawyer has a duty as an officer of the court and must not mislead the court.

(4) If a client wishes not to disclose a fact or document that is relevant to the case, a lawyer has an obligation to take the appropriate action, that is, to cease to act for the client.

Part 2 Parenting cases

1 General

(1) Each prospective party to a case in the Family Court of Australia is required to make a genuine effort to resolve the dispute before starting a case by:

(a) participating in primary dispute resolution, such as negotiation, conciliation, mediation, arbitration and counselling;

(b) exchanging a notice of intention to claim and exploring options for settlement by correspondence; and

(c) complying, as far as practicable, with the duty of disclosure.

(2) Unless there are good reasons for not doing so, all parties are expected to have followed the pre-action procedures before filing an application to start a case.

(3) There may be serious consequences, including costs penalties, for non-compliance with these requirements.

(4) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures include cases:

(a) involving urgency;

(b) involving allegations of child abuse;

(c) involving allegations of family violence;

(d) in which there is a genuinely intractable dispute; and

(e) in which a person would be unduly prejudiced or adversely affected if another person to the dispute is given notice of an intention to start a case.

(5) The objects of these pre-action procedures are:

(a) to encourage early and full disclosure in appropriate cases by the exchange of information and documents about the prospective case;

(b) to provide parties with a process to help them avoid legal action by reaching a settlement of the dispute before starting a case,

(c) to provide parties with a procedure to resolve the case quickly and limit costs;

(d) to help the efficient management of the case, if a case becomes necessary (that is, parties who have followed the pre-action procedure should be able to clearly identify the real issues which should help to reduce the duration and cost of the case); and

(e) to encourage parties, if a case becomes necessary, to seek only those orders that are reasonably achievable on the evidence.

(6) At all stages during the pre-action negotiations and, if a case is started, during the conduct of the case itself, the parties must have regard to:

(a) the best interests of any child;

(b) the continuing relationship between a parent and a child and the benefits that cooperation between parents brings a child (that is, helping to maintain as good a continuing relationship between the parties and the child as is possible in the circumstances);

(c) the potential damage to a child involved in a dispute between the parents, particularly if the child is encouraged to take sides or take part in the dispute;

(d) the principle that people should not seek orders about a child when an application is motivated by intentions other than the best interests of the child;

(e) the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them;

(f) the need to avoid protracted, unnecessary, hostile and inflammatory exchanges;

(g) the impact of correspondence on the intended reader (in particular, on the parties);

(h) the need to seek only those orders that are reasonably achievable on the evidence and that are consistent with the current law; and

(i) the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.

Note The duty of disclosure extends to the requirement to disclose any significant changes (see clause 4 of this Part).

(7) Parties must not:

(a) use the pre-action procedures for an improper purpose (for example, to harass the other party or to cause unnecessary cost or delay); or

(b) in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.

(8) The court expects parties to take a sensible and responsible approach to the pre-action procedures.

(9) The parties are not expected to continue to follow the pre-action procedures to their detriment if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

2 Compliance

(1) The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.

(2) If a case is subsequently started, the court may consider whether these requirements have been met, and if not, what the consequences should be (if any).

(3) The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and considering orders for costs (see paragraphs 1.10 (2) (d), 11.03 (2) (b) and 19.10 (1) (b)).

(4) Unreasonable non-compliance may result in the court ordering the non-complying party to pay all or part of the costs of the other party or parties in the case.

(5) In situations of non-compliance, the court may ensure that the complying party is in no worse a position than he or she would have been if the pre-action procedures had been complied with.

Examples of non-compliance with pre-action procedures

Not sending a written notice of proposed application; not providing sufficient information or documents to the other party; not following a procedure required by the pre-action procedures; not responding appropriately within the nominated time to the written notice of proposed application; not responding appropriately within a reasonable time to any reasonable request for information, documents or other requirement of this procedure.

3 Pre-action procedures

(1) A person who is considering filing an application to start a case must, before filing the application:

(a) give a copy of these pre-action procedures to the other prospective parties to the case;

(b) make inquiries about the primary dispute resolution services available; and

(c) invite the other parties to participate in primary dispute resolution with an identified person or organisation or other person or organisation to be agreed.

(2) Each prospective party must:

(a) cooperate for the purpose of agreeing on an appropriate primary dispute resolution service; and

(b) make a genuine effort to resolve the dispute by participating in primary dispute resolution.

(3) If the prospective parties reach agreement, they may arrange to have the agreement made binding by filing an Application for Consent Orders (Form 11).

(4) Before filing an application, the proposed applicant must give to the other party (the ***proposed respondent***) written notice of his or her intention to start a case if:

(a) there is no appropriate primary dispute resolution service available to the parties;

(b) a party fails or refuses to participate in primary dispute resolution; or

(c) the parties are unable to reach agreement by primary dispute resolution.

(5) The notice under subclause (4) must set out:

(a) the issues in dispute;

(b) the orders to be sought if a case is started;

(c) a genuine offer to resolve the issues;

(d) a time (the ***nominated time***) (that is at least 14 days after the date of the letter) within which the proposed respondent is required to reply to the notice.

(6) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (4), stating whether the offer is accepted and, if not, setting out:

(a) the issues in dispute;

(b) the orders to be sought if a case is started;

(c) a genuine counter-offer to resolve the issues; and

(d) the nominated time (that is at least 14 days after the date of the letter) within which the claimant must reply.

(7) It is expected that a party will not start a case by filing an application in a court unless:

(a) the proposed respondent does not respond to a notice of intention to start a case; or

(b) agreement is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

4 Disclosure and exchange of correspondence

(1) Parties to a case have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner (see rule 13.01).

(2) In attempting to resolve their dispute, parties should as soon as practicable on learning of the dispute and, if appropriate, as a part of the exchange of correspondence under clause 3 of these pre-action procedures, exchange copies of documents in their possession or control relevant to an issue in the dispute (for example, medical reports, school reports, letters, drawings, photographs).

(3) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates.

(4) Documents produced by a person to another person in compliance with these pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the case only.

5 Expert witnesses

(1) There are strict rules about instructing and obtaining reports from an expert witness (see Part 15.5).

(2) In summary:

(a) an expert witness must be instructed in writing and must be fully informed of his or her obligations;

(b) if possible, parties should seek to retain an expert witness only on an issue in which the expert witness's evidence is necessary to resolve the dispute;

(c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties; and

(d) if separate experts' reports are obtained, the court requires the reports to be disclosed.

6 Lawyers' obligations

Note See also rules 1.08 and 19.03.

(1) Lawyers must, as early as practicable:

(a) advise clients of ways of resolving the dispute without starting legal action;

(b) advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty;

(c) subject to it being in the best interests of the client and any child, endeavour to reach a solution by settlement rather than start or continue legal action;

(d) notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement if, in the lawyer's opinion, the compromise or settlement is a reasonable one;

(e) in cases of unexpected delay, explain the delay and whether or not the client may assist to resolve the delay;

(f) advise clients of the estimated costs of legal action (see rule 19.03);

(g) advise clients about the factors that may affect the court in considering costs orders;

(h) give clients documents prepared by the court (if applicable) about:

(i) the legal aid services and primary dispute resolution services available to them; and

(ii) the legal and social effects and the possible consequences for children of proposed litigation; and

(i) actively discourage clients from making ambit claims or seeking orders that the evidence and established principle, including recent case law, indicates is not reasonably achievable.

(2) The court recognises that the pre-action procedures cannot override a lawyer's duty to his or her client.

(3) It is accepted that it is sometimes impossible to comply with a procedure because a client may refuse to take advice, however, a lawyer has a duty as an officer of the court and must not mislead the court.

(4) If a client wishes not to disclose a fact or document that is relevant to the case, a lawyer has an obligation to take the appropriate action, that is, cease to act for the client.

Schedule 2 Forms

(rule 2.01)

Warning:	You need to use the links provided in the following table to download the forms in this document. Please note that if you save this document to disk you will not be able to download the PDF forms.

Form number	Form title	Reference	Downloadable PDF form
Form 1	Application for Final Orders	(rule 2.01)	download Form 1
Form 1A	Response to an Application for Final Orders	(rule 9.01)	download Form 1A
Form 1B	Reply	(rule 9.04)	download Form 1B
Form 2	Application in a Case	(rule 5.01)	download Form 2
Form 2A	Response to an Application in a Case	(rule 9.05)	download Form 2A
Form 3	Application for Divorce	(rules 2.01 and 3.01)	download Form 3
Form 3A	Response to an Application for Divorce	(rule 3.04)	download Form 3A
Form 4	Notice of Child Abuse or Risk of Abuse	(rule 2.04)	download Form 4
Form 5	Notice of Intervention by Person Entitled to Intervene	(rule 6.06)	download Form 5
Form 6	Acknowledgment of Service	(rule 7.13)	download Form 6
Form 7	Affidavit of Service	(rule 7.13)	download Form 7
Form 8	Notice of Address for Service	(subrule 8.05 (3))	download Form 8
Form 9	Notice of Ceasing to Act	(rule 8.04)	download Form 9
Form 10	Notice of Discontinuance	(rule 10.11)	download Form 10

Form number	Form title	Reference	Downloadable PDF form
Form 11	Application for Consent Orders	(rule 10.15)	download Form 11
Form 12	Notice of Non-party Production of Documents	(rule 13.33)	download Form 12
Form 13	Financial Statement	(rule 13.05)	download Form 13
Form 14	Subpoena	(subrule 15.17 (2))	download Form 14
Form 15	Notice Disputing Itemised Costs Account	(rule 19.23)	download Form 15
Form 16	Enforcement Warrant	(rule 20.16)	download Form 16
Form 17	Third Party Debt Notice	(rule 20.32)	download Form 17
Form 18	Application — Contravention	(rule 21.02)	download Form 18
Form 19	Application — Contempt	(rule 21.02)	download Form 19
Form 20	Notice of Appeal	(rules 22.02 and 22.07)	download Form 20
Form 60	Offer to settle	(rule 10.01)	download Form 60

Warning: You need to use the links provided in the table to download the forms in this document. Please note that if you save this document to disk you will not be able to download the PDF forms.

Schedule 3 Itemised scale of costs

(rule 19.18)

Note The amounts in this Schedule are inclusive of GST.

Part 1 Fees for lawyer's work done

Item	Matter for which charge is made	Charge
101	Drafting documents (other than letters)	$14.10 per 100 words
102	Producing documents in printed form (other than letters)	$4.85 per 100 words
103	Drafting and producing letters (including fax or e-mail transmissions)	$16.20 per 100 words
104	Reading documents	$6.60 per 100 words
105	Scanning of documents (where reading is not necessary)	$2.65 per 100 words
106	For a document or letter mentioned in item 101, 102, 103, 104 or 105 containing more than 3 000 words	The amount allowed by the Registrar
107	Photocopy or other reproduction of a document	20 cents per page
108	Time reasonably spent by a lawyer on work requiring the skill of a lawyer (except work to which any other item in this Part applies)	$165.00 per hour
109	Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (except work to which any other item in this Part applies)	$107.30 per hour

Part 2 Fees for counsel's work done

Item	Matter for which charge is made	Charge
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))	$190–$270 per hour
202	Conferences (including court appointed conferences), if necessary	$190–$270 per hour
203	Short attendances (for example, procedural hearings, interim or procedural hearings, summary hearings taking less than 3 hours)	$170–$795
204	Short defended hearings (taking at least 3 hours but not more than 1 day)	$580–$1 340
205	Other defended hearings	$1 340–$1 970 per day
206	Reserved judgment	$190–$270 per hour

Part 3 Basic composite amount for undefended divorce

Item	Matter for which charge is made	Charge
301	If the lawyer employed another lawyer to attend at court for the applicant and there is a child of the marriage under 18 years old	$720
302	If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18 years old	$535
303	If the lawyer did not employ another lawyer to attend at court for the applicant and there is a child of the marriage under 18 years old	$675
304	If the lawyer did not employ another lawyer to attend at court for the applicant and there is no child of the marriage under 18 years old	$505
305	If the lawyer did not attend at court for the hearing under section 98A of the Act	$435

Part 4 Basic composite amount for application for Enforcement Warrant or Third Party Debt Notice

Item	Matter for which charge is made	Charge
401	An Enforcement Warrant under rule 20.16	$435
402	A Third Party Debt Notice under rule 20.32	$435

Schedule 4 Conduct money and witness fees

(rules 15.23 and 19.47)

Part 1 Conduct money

Item	Matter for which allowance is paid	Amount of allowance
101	Minimum amount	The minimum amount for conduct money is $10
102	Travel	(a) the amount to be paid for fares on public transport for return travel between the place of employment or residence and the court; or (b) if no public transport is available, the amount calculated at the rate of 80 cents per kilometre required to be travelled between the place of employment or residence and the court
103	Accommodation and meals	A reasonable allowance for accommodation and meals to be incurred during the estimated time of the hearing or trial

Part 2 Witness fees

Item	Type of witness	Amount of fee
201	All witnesses	$75 per day, or part of a day, for necessary absence from the witness's place of employment or residence
202	Expert witnesses	Such further amount as the court allows for the preparation of a report and absence from the expert witness's place of employment

Schedule 5 Experts' Conferences — Guidelines for expert witnesses and those instructing them in cases in the Family Court of Australia

(rule 15.69)

Part 1 Introduction

1.1 Purpose of guidelines

These guidelines are intended to encourage compliance with the provisions of Part 15.5 of the *Family Law Rules 2004* and should be read with those Rules.

1.2 Effect of Division 15.5.7 of Rules

Division 15.5.7 of the *Family Law Rules 2004* provides that if 2 or more parties intend to tender an expert's report or adduce evidence from different expert witnesses about the same, or a similar, question:

(a) the parties must arrange for the expert witnesses to confer at least 14 days before the pre-trial conference; and

(b) each party must give to the expert witness the party has instructed, a copy of these guidelines.

Part 2 Experts' conference

2.1 Object of experts' conference

The objects of an experts' conference include:

(a) the just, quick and cost effective disposal of the case to which the conference relates;

(b) identifying and narrowing issues for determination;

(c) shortening the trial and enhancing the prospects of settlement;

(d) requiring the expert witnesses to reach a conclusion on the evidence (the joint statement given under paragraph 15.69 (3) (e) of the *Family Law Rules 2004* may be used in cross-examination of an expert witness at the trial); and

(e) avoiding or reducing the need for the expert witnesses to attend court to give evidence.

2.2 Preparation for an experts' conference

(1) Separate experts' conferences may be required between experts in different specialities in relation to different issues arising in the case.

(2) Subrule 15.69 (2) of the *Family Law Rules 2004* provides that the court may, in relation to an experts' conference, order:

(a) which expert witnesses are to attend;

(b) where and when the conference is to occur;

(c) which issues the expert witnesses must discuss;

(d) the questions to be answered by the expert witnesses; and

(e) the documents to be given to the expert witnesses, including:

(i) Part 15.5 of the *Family Law Rules 2004*;

(ii) relevant affidavits;

(iii) a joint statement of the assumptions to be relied on by the expert witnesses during the conference, including any competing assumptions; and

(iv) all expert's reports already disclosed by the parties.

(3) Any questions to be answered by the expert witnesses at an experts' conference should be:

(a) questions specified by the court or agreed to by the parties and any other question a party wishes to submit for consideration; and

(b) framed to resolve an issue or issues in the case.

(4) If possible, questions should be capable of being answered with a 'yes' or 'no' response or, if not, by a very brief response.

(5) The documents mentioned in paragraph (2) (e) and any other documents agreed to by the parties should be given to the expert witnesses at least 7 days before the experts' conference.

2.3 Convening an experts' conference

(1) If the court has not fixed a place and date for an experts' conference, the parties should fix a mutually convenient date, time and place for the conference.

(2) The party who appointed an expert witness must ensure that the expert witness is given a reasonable opportunity to prepare for the experts' conference and, in particular, the party must ensure that the expert witness is given:

(a) an opportunity to clarify with the instructing lawyers or the court any question put to the expert witness; and

(b) access to any additional material that the parties are able to provide and that the expert witness considers relevant.

(3) The conference should not normally take place until at least 7 days after the expert witnesses have received the documents mentioned in paragraph 2.2 (2) (e) and any other documents agreed to by the parties.

2.4 The role of expert witnesses at an experts' conference

(1) Each expert witness should respond to the questions asked.

(2) Each answer by an expert witness must:

(a) be based on the facts in the witness statements or affidavits; and

(b) set out the assumption on which it is based.

(3) For paragraph (2) (b), if there is an alternative result on a different assumption, the expert witness must state this in his or her answer.

(4) The expert witnesses may specify in the joint statement required by paragraph 15.69 (3) (e) of the *Family Law Rules 2004*, other questions that the expert witnesses believe would be useful for them to consider.

(5) If an expert witness has a contrary view to another expert witness, the expert witness should express it.

(6) An expert witness should accept as fact the matters stated in witness statements or assumptions submitted to the expert witness.

(7) It is not an expert witness's role to decide any disputed question of fact or the credibility of any witness.

(8) If there are competing assumptions, alternative answers may have to be given to a question or questions, specifying which of the assumptions are adopted for each answer.

2.5 Conduct of experts' conference

(1) An experts' conference should be conducted in a manner that is flexible, free from undue complexity and fair to all parties.

(2) The expert witnesses may:

(a) appoint one of their number as a chairperson; or

(b) if one of the expert witnesses so requests and the parties agree or the court orders, appoint another person to act as chairperson.

(3) If secretarial or administrative assistance is requested by the expert witnesses, the parties should provide that assistance.

(4) If the expert witnesses agree, one of them or a secretarial assistant may be appointed to take notes at the conference about matters agreed, matters not agreed and reasons for disagreement.

(5) The conference may be adjourned and reconvened as necessary.

(6) Subrule 15.69 (3) of the *Family Law Rules 2004* provides that, at the experts' conference, the expert witnesses must:

(a) identify the issues that are agreed and not agreed;

(b) if practicable, reach agreement on any outstanding issue;

(c) identify the reason for disagreement on any issue;

(d) identify what action (if any) may be taken to resolve any outstanding issues; and

(e) prepare a joint statement specifying the matters mentioned in paragraphs (a) to (d) and deliver a copy of the statement to each party.

2.6 Joint statement

(1) The joint statement required by paragraph 15.69 (3) (e) of the *Family Law Rules 2004* should:

(a) be written by the expert witnesses participating in the experts' conference (the ***participating expert witnesses***); and

(b) be signed by all participating expert witnesses immediately after the conference ends or as soon as practicable after the conference.

(2) The participating expert witnesses should not seek advice or guidance from the parties or their lawyers before signing the joint statement.

(3) Subrule 15.69 (4) of those Rules provides that if the participating expert witnesses reach agreement on an issue, the agreement does not bind the parties unless the parties expressly agree to be bound by it.

(4) Subrule 15.69 (5) of those Rules provides that the joint statement may be tendered by consent as evidence of matters agreed on and to identify the issues on which evidence will be called.

2.7 Role of lawyers

(1) Lawyers attending a conference by order of the court or who are approached for advice by an expert witness participating in an experts' conference should respond jointly and not individually, unless authorised to do so by the lawyers for all other parties with an interest in the conference.

(2) Advice may be provided by:

(a) responding to any questions in relation to the legal process applicable to the case;

(b) identifying documents relevant to the case or experts' conference;

(c) providing further materials on request; and

(d) correcting any misapprehensions of fact or any misunderstanding concerning the conference process.

Dictionary

(rule 1.16)

Note 1 This dictionary is part of these Rules. There is also an explanatory guide that does not form part of these Rules but explains the meaning of other words and expressions used in these Rules.

Note 2 Section 18A of the *Acts Interpretation Act 1901* provides that other forms of a word or phrase have a corresponding meaning, therefore other forms of a word or phrase defined in this dictionary are not included, for example, ***file*** is defined but ***filed*** and ***filing*** are not. Those terms are assumed to have a corresponding meaning to ***file***.

Note 3 An expression used in these Rules has the same meaning as in the Act, unless these Rules state otherwise (see paragraph 46 (1) (b) of the *Acts Interpretation Act 1901*).

abuse, in relation to a child, has the meaning given by subsection 60D (1) of the Act.

Act means the *Family Law Act 1975*.

address for service means the address given by a party where documents may be left for the party or to where documents may be sent for the party (see rule 8.05).

affidavit means a document that complies with rules 15.08, 15.09 and 24.01.

affirmation — see the definition of ***oath*** in this dictionary.

appeal includes:

(a) an appeal to the Full Court of the Family Court of Australia from a Family Court or the Federal Magistrates Court:

(i) under subsection 94 (1), 94 (1AA) or 94AAA (1) of the Act;

(ii) with permission, under section 102 or 102A of the Assessment Act; or

(iii) with permission, under section 107 or 107A of the Registration Act;

(b) an appeal to a Family Court from a court of summary jurisdiction:

(i) under section 96 of the Act; or

(ii) with permission, under section 105 of the Assessment Act; or

(iii) with permission, under section 110 of the Registration Act; and

(c) a cross-appeal.

Note An appeal is the procedure that enables a person to challenge an order made in relation to the person's case.

Appeal Registrar, for an appeal, means the Registrar at the Appeal Registry for that appeal, and includes the Regional Appeal Registrar.

Appeal Registry means:

(a) for an appeal to the Full Court or from a decision of the Federal Magistrates Court — the registry determined by the Regional Appeal Registrar to be the registry for that appeal; and

(b) for an appeal from a court of summary jurisdiction — the registry in which the Notice of Appeal (Form 20) for the appeal was filed.

Note A Form 20 for an appeal from a decision of a court of summary jurisdiction must be filed in the registry of a Family Court that is closest to the court that made the order appealed from (see rule 22.02).

appellant includes a cross-appellant.

applicant includes a cross-applicant who is seeking other orders in a response to an application.

application includes:

(a) an Application for Final Orders (Form 1);

(b) an Application in a Case (Form 2);

(c) an Application for Divorce (Form 3);

(d) an Application for Consent Orders (Form 11);

(e) an Application for Contempt (Form 19);

(f) a Notice of Appeal (Form 20); and

(g) a cross-application set out in a response to an application (see Form 1A or 2A).

Assessment Act means the *Child Support (Assessment) Act 1989.*

assessment hearing means a hearing conducted by a Registrar at which the amount to be paid on an itemised costs account is assessed (see rule 19.32).

attend means present at a court event, including by electronic communication.

Note See rules 5.06, 12.12, 16.08 and 22.39 for attendance by electronic communication.

bankrupt has the meaning given by subsection 5 (1) of the *Bankruptcy Act 1966*.

case:

(a) means a proceeding under the Act, the Regulations, these Rules or any other law that vests jurisdiction in the Family Court; and

(b) for Part 10.2 — see rule 10.10.

case guardian means a person appointed by the court under rule 6.10 to manage and conduct a case for a child or a person with a disability, and includes a next friend, guardian ad litem, tutor or litigation guardian (see Part 6.3).

certified copy means a copy of a document certified to be an exact copy by the person having custody or control of the document, or by another person at the direction of that person, and includes a copy of the document bearing the seal of a court or other form of authentication.

child representative means a person appointed under section 68L of the Act to represent a child.

Child Support Agency means the part of the Department of Family and Community Services known by that name that administers the Assessment Act and the Registration Act.

child support agreement has the meaning given by section 81 of the Assessment Act.

Child Support Application or Appeal means an application or appeal in which the only orders sought are under the Assessment Act or the Registration Act (see Division 4.2.5).

child support assessment includes:

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

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

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

Child Support Registrar means the Child Support Registrar under section 10 of the Registration Act.

conciliation conference document means a document in a form approved by the Principal Registrar that is required to be completed and exchanged by the parties before a conciliation conference.

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

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

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

contact has the same meaning as in Part VII of the Act.

contravened an order under the Act affecting children has the meaning given by section 70NC of the Act.

corporation includes:

(a) a company;

(b) a body corporate; and

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

Corporations Rules means the *Federal Court (Corporations) Rules 2000*.

costs means an amount paid or to be paid for work done by a lawyer, and includes expenses.

costs agreement means a written agreement in accordance with rule 19.14 between a party and the party's lawyer about the costs to be charged by the lawyer for work done for a case for the party.

costs assessment order means an order made by a Registrar fixing the total amount payable for costs (see rules 19.31 and 19.32).

costs notice means a brochure, approved by the Principal Registrar, setting out a party's rights and responsibilities under Chapter 19.

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

Note See section 122 of the Act and sections 55A and 55B of the *Judiciary Act 1903*.

court means a court that:

(a) has jurisdiction under the Act; and

(b) is presided over by a judicial officer who has, or has been delegated, the power to exercise the jurisdiction.

court event includes a hearing, trial, conference or mediation.

court of summary jurisdiction means a magistrates' or local court of a State or Territory.

Cross-vesting Act means the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

cross-vesting law means a law relating to cross-vesting jurisdiction of:

(a) the Commonwealth, other than Part 9 of the *Corporations Act 2001*; or

(b) a State or Territory.

declaration as to validity, of a marriage, divorce or annulment, means an order that the marriage, divorce or nullity order is valid or invalid.

discontinue, for a case, means to withdraw all or part of the case.

divorce means dissolution of marriage (see section 48 of the Act).

draft consent order means a document that complies with subrule 10.15 (2).

each person to be served — see subrule 7.04 (4).

earnings includes:

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

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

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

(d) money payable instead of leave;

(e) royalties;

(f) retirement benefits due or accruing;

(g) any salary sacrifice arrangement; and

(h) performance-based incentives and non-monetary benefits.

electronic communication means:

(a) video link;

(b) audio link; or

(c) another appropriate electronic means of communication.

Examples of electronic communication

Telephone or video conferencing; closed circuit television; facsimile; e-mail.

eligible carer has the meaning given by section 7B of the Assessment Act.

enforcement order means an order requiring a person to comply with an obligation, including an Enforcement Warrant, a Third Party Debt Notice and an order varying an enforcement order.

expedited trial means a trial that is listed and heard sooner than it ordinarily would have been (see rule 16.01).

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

Family Court means:

(a) in a reference to the Family Court — the Family Court of Australia; or

(b) in a reference to a Family Court — the Family Court of Australia or a Family Court of a State.

family report means a report concerning the best interests of a child, prepared under subsection 55A (2), or section 62G or 65G, of the Act (see rule 15.03).

family violence has the meaning given by section 60D of the Act.

family violence order has the meaning given by section 60D of the Act.

Federal Magistrates Court means the court of that name created under the *Federal Magistrates Act 1999*.

file means to lodge in a court registry (see Part 24.2).

filing registry means the registry of a court in which a case is started or to which a case is transferred.

final order means the order of the court that finally decides a case commenced by an Application for Final Orders (Form 1).

final resolution event means:

(a) for a property case — a conciliation conference; and

(b) for a parenting case — conciliation, counselling or, if referred for further mediation, that mediation (counselling).

financial agreement means an agreement that is a financial agreement under section 90B, 90C or 90D of the Act, other than an ante-nuptial (pre-marriage) or post-nuptial (after marriage) settlement to which section 85A of the Act applies.

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

(a) relating to the maintenance of one of the parties to a marriage, including an application for permission to start a spouse maintenance case;

(b) relating to the property of the parties to a marriage or of either of them, including:

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

(ii) an application to set aside an order altering property interests under section 79A of the Act;

(iii) an application under section 85A of the Act in relation to a financial agreement;

(iv) an application under section 90K of the Act in relation to a financial agreement; and

(v) an application under section 106B of the Act in relation to a transaction to defeat a claim;

(c) relating to the maintenance of children;

(d) under section 98, 116, 123 or 129 of the Assessment Act;

(e) relating to child bearing expenses (see section 67B of the Act); or

(f) for the purposes of Part 13.1 that includes an application for the enforcement of a financial obligation.

financial orders includes orders in relation to:

(a) maintenance;

(b) a Child Support Application under section 98, 116, 123 or 129 of the Assessment Act;

(c) contribution to child bearing expenses; or

(d) property.

gross value, of property, means the value of the property excluding any mortgage, lien, charge or other security over the property.

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

(a) an Application in a Case (Form 2);

(b) an Application for Divorce (Form 3);

(c) an application mentioned in rule 4.27;

(d) part of a case; or

(e) an enforcement application.

holding period, for a person arrested in accordance with a warrant, has the meaning given by subsection 65S (4) of the Act.

itemised costs account means a document prepared in accordance with rule 19.22.

judicial officer includes a Judge, Judicial Registrar and Registrar.

lawyer means a solicitor, barrister or other legal practitioner who is entitled to practise in a Family Court.

Note See section 122 of the Act and sections 55A and 55B of the *Judiciary Act 1903*.

legislative provision includes a provision in an applicable Act, these Rules, the Regulations, any other regulations made under the Act and any conventions mentioned in a regulation made under the Act.

Maintenance Application means an Application for Final Orders (Form 1) in which the only orders sought are for maintenance (including a variation of a previous maintenance order) or a contribution towards child bearing expenses (see section 67B of the Act).

Marshal has the same meaning as in section 38P of the Act.

mediator includes a family and child counsellor and family and child mediator, and welfare officer (see subsection 4 (1) of the Act).

Medical Procedure Application means an Application for Final Orders (Form 1) seeking an order authorising a major medical procedure for a child that is not for the purpose of treating a bodily malfunction or disease.

Example

An example of a major medical procedure for a child that is not for the purpose of treating a bodily malfunction or disease is a procedure for sterilising or removing the child's reproductive organs.

non-convention country means a country with which Australia does not have a convention as to service of documents (see rule 7.19).

oath includes affirmation (see the definition of ***sworn*** and sections 21 to 25 of the *Evidence Act 1995*).

Note Subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

order includes:

(a) a decree, decision, declaration and judgment; and

(b) for an appeal or review of a decision — a refusal to grant an application or make an order.

parenting case means a case in which parenting orders are sought under Part VII of the Act.

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

Note The Child Support Registrar is a payee in relation to a registered child support liability.

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

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

Note The amount of a penalty unit at the commencement of these Rules is $110.

permission means the leave or consent of the court.

person includes a corporation, authority or party.

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

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

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

post-separation parenting program has the meaning given by section 70NB of the Act.

pre-action procedure means the set of principles and procedures, the text of which is set out in Schedule 1, with which the parties must comply before starting a case.

pre-argument statement means a document in an appeal in which an appellant must state concisely the issues to be raised at the hearing of the appeal (see rule 22.14).

prescribed child welfare authority has the meaning given by subsection 60D (1) of the Act.

prescribed property, for a person, means:

(a) clothes, bed, bedding, kitchen furniture (not including an automatic dishwasher or microwave) and washing machine; and

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

primary dispute resolution method has the meaning given by section 14E of the Act.

primary order has the meaning given by section 70NB of the Act.

property includes real and personal property and superannuation.

property case means a case in which orders (other than consent orders) are sought relating to the property of the parties to a marriage or of either of them.

protected earnings rate means the actual threshold income amount that would apply to a payer under Part VI, Division 4B of the *Bankruptcy Act 1966* if the payer were a bankrupt.

recovery order has the meaning given by section 67Q of the Act.

Regional Appeal Registrar means the Registrar at the Regional Appeal Registry for an appeal.

Regional Appeal Registry means:

(a) for an appeal other than an appeal from the Federal Magistrates Court or a court of summary jurisdiction:

(i) from an order in a case heard in the Brisbane, Darwin or Townsville Registry of the court — the Brisbane Registry;

(ii) from an order in a case heard in the Canberra, Newcastle, Parramatta or Sydney Registry of the court — the Sydney Registry; and

(iii) from an order in a case heard in the Adelaide, Dandenong, Hobart, Launceston or Melbourne Registry of the court — the Melbourne Registry;

(b) for an appeal from the Federal Magistrates Court or a court of summary jurisdiction:

(i) from an order in a case heard in the Northern Territory or Queensland — the Brisbane Registry;

(ii) from an order in a case heard in the Australian Capital Territory or New South Wales — the Sydney Registry; and

(iii) from an order in a case heard in South Australia, Tasmania or Victoria — the Melbourne Registry; and

(c) for an appeal to the Family Court of Western Australia — the Registry of the Family Court of Western Australia.

registered, for a document, means accepted for filing (see rule 24.05).

Registrar includes Principal Registrar and Deputy Registrar (except in Chapters 18 and 25).

Registration Act means the *Child Support (Registration and Collection) Act 1988*.

Regulations means the *Family Law Regulations 1984*.

seal means a stamp or other impression that the court puts on a document to indicate that the document has been issued by the court.

sealed copy means a document that bears a court seal.

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

serve means to give or deliver a document to a person in the manner required by these Rules.

service by electronic communication includes service by facsimile, e-mail or any other form of electronic transmission.

sign means write a person's name, including a mark by a person who is unable to write his or her name.

special federal matter has the meaning given by subsection 3 (1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

State child order has the meaning given by section 70B of the Act.

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

step-parent has the meaning given by subsection 60D (1) of the Act.

superannuation information form means a form approved by the Principal Registrar for obtaining information from the trustee of a superannuation fund in family law cases.

sworn, for an affidavit or evidence, means an oath by a witness that the witness is telling the truth (see also ***affirmation*** and ***oath***).

termination agreement has the meaning given by subsection 90J (1) of the Act.

Third Party Debt Notice means a notice given to a third party who holds money for, or owes money to, a payer demanding that the money be paid to a payee to satisfy an obligation that the payer owes the payee.

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

transcript mean a written record of a hearing or a trial prepared by a contractor providing transcription services to the court for the case.

trial means the final determination of a case commenced by an Application for Final Orders (Form 1), other than an application mentioned in rule 4.27.

trial notice means a document produced by the court after the final resolution event specifying the date for the pre-trial conference and setting out the procedural orders with which the parties must comply to ensure that the case is ready to proceed to a trial (see rule 12.07).

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

work done for a case includes work done in relation to the case and the pre-action procedure.

written notice means a document (for example, a letter) that complies with subrule 24.01 (1).

Note A number of words and expressions commonly used in Commonwealth legislation, and in these Rules, have, unless otherwise stated, the meaning or effect set out in certain Acts of general application. See, for example, the *Acts Interpretation Act 1901* and the *Crimes Act 1914*.

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Note This explanatory guide, unlike the dictionary, is not part of the Rules and is offered only as an explanation of the words and expressions mentioned in this guide.

adduce — to bring evidence before a court.

adjourn — to defer to another time a conference, hearing or trial that has started. Some events, such as a case assessment conference or trial, will not be adjourned unless unforeseen or exceptional circumstances arise. Usually, an adjournment is granted on terms that may include an order that the party who asked for the adjournment pay the other party's costs thrown away.

Anton Piller order — an interim injunction used to preserve evidence.

Note See *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55.

application without notice — an application that is heard by the court without first being served on the respondent.

arbitration — a dispute resolution process involving parties to a case and a neutral third party (an ***arbitrator***). If agreement is not reached, the arbitrator determines the case and the decision (an ***award***) is binding on the parties (see Part III, Division 5, Subdivision B of the Act).

assessor — a person specially qualified in the subject matter in which the assessor is appointed under Part 15.4. The assessor's function is to assist and advise the court on technical questions or issues arising in a case. Despite any advice or assistance that the court may receive from an assessor, the sole responsibility for the final decision in a case remains with the Judge presiding over the case. The Judge is not bound by an assessor's advice.

bond (or ***recognisance***) — a written obligation to do or not to do a particular act specified in the obligation.

business activity statement — a statement of a business's activities that allows the business to report its obligations for:

(a) goods and services tax;

(b) luxury car tax;

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(c) wine equalisation tax;
(d) pay as you go (PAYG) withholding and instalments;
(e) fringe benefits tax instalments;
(f) deferred company instalments; and
(g) superannuation fund instalments.

case assessment conference — a conference conducted by a court counsellor or Registrar at the start of a case (see rule 12.03).

case stated — a procedure in which a question of law is determined by the Full Court (see Part 22.10).

cause of action — a claim seeking an order, other than for interim or procedural relief, for which a court has jurisdiction, for example, a claim relating to the property of the parties, the parenting of a child, child support or maintenance (see definition of matrimonial cause in subsection 4 (1) of the Act).

chambers — a private room other than a court room in which a judicial officer makes a decision in relation to a case, on the papers, in the absence of the parties and their lawyers (if any) and without a transcript being taken of the hearing and determination.

child — a person under the age of 18 years.

closing address — the final statement made by a party to the court at the end of a hearing or trial in which the party summarises the evidence for the party's case and states the reasons why the party considers the order sought should be made (see rule 16.07).

common law — the law established by precedent from judicial decisions.

conciliation — a dispute resolution process in which an impartial third person assists the parties to the dispute to reach an agreement in the dispute.

conciliation conference — a conference held with a Registrar during the resolution phase of the court process (see rules 12.05 and 12.06).

Note 1 The purpose of a conciliation conference is to give parties an opportunity to resolve a dispute in a property case. Section 131 of the *Evidence Act 1995* (which deals with exclusion of evidence of settlement negotiations) applies to conciliation conferences.

Note 2 Subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

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conference — includes a case assessment conference, conciliation conference and pre-trial conference.

Note A conference:

- may be conducted by a Deputy Registrar and mediator; and
- must be attended by the parties and their lawyers (see rule 12.11).

consent order — an order that:

(a) is made if all parties:

(i) have reached agreement on an issue; and

(ii) lodge the written agreement in the form of a draft consent order for approval by the court; and

(b) is as binding as any other order made by the court.

control, in relation to a document — a person's enforceable right to obtain possession of a document from another person.

convention country — a country other than Australia to which a convention for service of documents applies.

costs thrown away — costs unnecessarily incurred by a party because of an action or omission by another party.

counselling — a conference held with a mediator to help parties to a case:

(a) to understand the needs of their children;

(b) to reach agreement about arrangements for their children; or

(c) to adjust to a separation or to court orders.

court record — includes the documents filed by the parties, a family report, orders and the settled reasons for judgment.

credit — reliability having regard to a witness's honesty and ability to observe or remember the fact or event about which the witness is giving evidence which is well capable of belief.

cross-appellant — a respondent to an appeal who wishes to appeal against orders.

cross-examine — the questioning of a witness by a party other than the party who called the witness to give evidence.

current case — a case in which final orders have not been made on the application.

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deponent — a person whose evidence is set out in an affidavit and who swears that the contents of the affidavit are true.

determination phase — the period of case management that starts when a trial notice is issued (see flow chart in Chapter 12).

e-mail address — the mailing address to and from which an electronic communication may be sent and received using the Internet, an intranet or other similar network.

enforcement hearing — a hearing conducted on the application of a payee when a payer and any witness is cross-examined about the payer's financial affairs and ability to pay a financial obligation.

Enforcement Warrant — a warrant, used to enforce the payment of a sum of money, by which an enforcement officer is commanded to seize and sell sufficient of the payer's property to satisfy an obligation (including interest and costs).

evidence — a statement to a court that is oral or written and tends to prove or disprove a fact.

evidence in chief — the evidence of a witness set out in an affidavit or given in court on being questioned by the party who called the witness to give evidence, other than evidence given in response to questioning on re-examination.

examination — questioning of a witness on oath.

exhibit — a document or thing that is tendered in evidence during a hearing or trial.

facsimile — a copy of a document that has been sent and reproduced by facsimile transmission.

financial institution — includes a bank, building society and credit union.

first court date — the first court date set when an application or appeal is filed.

foreign court — a court of a foreign country (see the definition in the dictionary to the *Evidence Act 1995*).

Note Subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

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frivolous — not worthy of serious consideration, insupportable in law, disclosing no cause of action or groundless (see also ***vexatious***).

image — a picture that has been created, copied, stored or transmitted in electronic form.

indemnity basis — an entitlement to costs, including costs under a costs agreement, for all costs incurred, other than costs that are unreasonable in amount or that have been incurred unreasonably.

information session — a session during which information is given about the procedures involved in a case in the Family Court.

injunction — an order requiring a person to do or refrain from doing a thing (see section 114 of the Act).

interim order — an order that operates until a final order is made (see Chapter 5).

interlocutory order — an order, not being a final order, made before trial (see regulation 15A of the Regulations).

intervener — a person who is entitled to, or is given permission to, become a party in a case, for example, the Attorney-General or any other person intervening under section 91 or 92 of the Act.

issue — includes any question of fact or law or both, being part of a case.

joint application — an Application for Divorce in which the husband and wife are the applicants.

Judicial Registrar — see sections 26A to 26N of the Act.

lawyer and client costs — the costs payable by a client to the client's lawyer.

legal personal representative, for a deceased party — the executor or administrator of the party's estate.

location order — an order that requires information to be provided by a third party about the location of a child (see subsection 67J (1) of the Act).

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maintenance — money paid by a person to:

(a) a spouse or former spouse (***spousal maintenance***); or

(b) a child (child maintenance).

Mareva order — an order preventing a person from removing property from Australia or dealing with property either in or outside Australia.

mediation — a conference, including counselling, held with a mediator to help parties:

(a) to understand the needs of their children;

(b) to reach agreement about arrangements for their children;

(c) to reach agreement about financial arrangements; or

(d) to adjust to a separation or to court orders.

Notice to Admit — a notice requiring a party to admit certain facts or the authenticity of certain documents for a case.

Notice to Produce — a notice requiring a party to bring certain documents to a hearing or trial.

nullity — nullity of marriage (see section 51 of the Act and sections 23 and 23B of the *Marriage Act 1961*).

open court — a court in which a judicial officer is sitting that is open to the public (see section 97 of the Act).

opening address — the introductory statement made by a party at the beginning of a hearing or trial, outlining the argument that will be presented and the evidence that will be introduced (see rule 16.07).

parental responsibility — all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children (see section 61B of the Act).

parenting order — includes orders for residence, contact, child maintenance and parental responsibility (see subsection 64B (1) of the Act).

parenting plan — a written plan agreed between parents about arrangements for the ongoing care, welfare and development of a child.

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party and party costs — the costs payable by one party to another party under these Rules or by order.

personal property — all property except land and other real estate.

postpone, for an event — to put off or to delay to a future fixed time before the start of the event.

practice direction — a direction about procedure that is published with the authority of the Chief Justice.

pre-trial conference — the event at which the readiness of parties for a trial is explored and, if a case is ready for trial, a trial date is allocated.

Principal Registrar — the most senior legal officer of the Family Court of Australia.

privilege from disclosure — the right of a party to refuse to disclose a document or answer a question on the ground of some special interest recognised by law, for example, legal professional privilege.

procedural hearing — a hearing at which procedural orders are made to progress a case.

procedural order — an order made about the practice or procedure to be taken by a party to progress a case.

producing, for disclosure of a document — includes searching for, arranging, copying and providing the document, if necessary.

proportionate, for a case — balancing the costs and expenses of the case with achieving a satisfactory outcome.

public interest — the importance of the outcome of a case to the public.

real property — land, structures and rights arising from land.

reasons for judgment — the reasons given by a judicial officer for the making of orders.

re-examination — the questioning of a witness by the party who called the witness to give evidence after the cross-examination of the witness.

registry — the office of the court, including the courtrooms.

Registry Manager — the officer of the court who is responsible for the management of a Registry.

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resolution phase — the period of case management starting on the filing of an Application for Final Orders (Form 1) (the end of the prevention phase) and ending when a trial notice is issued (the start of the determination phase) (see flowchart in Chapter 12).

respondent — a party named in an application or Notice of Appeal (Form 20) as a respondent.

response, in relation to an application — a form that a respondent uses to answer the orders sought in the application, including:

(a) for an Application for Final Orders (Form 1) — Form 1A;

(b) for an Application in a Case (Form 2) — Form 2A; and

(c) for an Application for Divorce (Form 3) — Form 3A.

security — a form of guarantee of or safeguard for compliance, for example, the payment of a sum of money into court that is returned if the obligation is met and forfeited if it is not.

self-executing order — an order, a term of which requires an act to be done and provides that non-compliance will automatically result in a stated consequence.

sequestration — temporary possession or occupation of property and collection of income.

sequestrator — a person appointed by the court under rule 20.43.

set aside — cancelled.

specialist family court program — a specific program offered by a Family Court to help people, for example, parenting after separation, group program or intractable contact program.

specific questions — written questions relevant to an issue in a case served by a party to the case on another party.

statement made on information and belief — a statement, in an affidavit filed in an Application in a Case (Form 2), made on information received from another source that is believed to be true.

stay, for a case — to suspend the case.

struck out:

(a) for a case — removed from the list of cases to be heard on a day, but able to continue with the court's permission; and

(b) for the contents of a document — not considered or relied on by the court in the determination of a case.

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subpoena — a witness summons issued by the court that requires a named person to attend the court to give evidence or bring documents, books or other things to the court.

subpoena for production — a witness summons requiring a named person to attend as directed and produce a document or other thing.

subpoena to give evidence — a witness summons requiring a named person to attend as directed for the purpose of giving evidence.

summary judgment — a judgment given in favour of an applicant if there is evidence to prove the claim and the respondent has no real defence.

tender, for a hearing or trial — to hand a document to the judicial officer during the hearing or trial with a request that the document be filed or admitted into evidence.

trial Judge — the Judge listed to determine a trial or who finally determines a case.

undefended basis — the court may order that a hearing or trial may proceed, because of the respondent's failure to comply with a rule or order, as if a response has not been filed. The court may make the orders set out in the application on being satisfied by evidence that the orders should be made.

undertaking as to damages — an undertaking that may be sought by the court from an applicant seeking orders without notice to the respondent.

> *Note* An undertaking as to damages is usually in the following form:
>
> I, (full name), personally (or by my solicitor) undertake to the court to abide by any order the court may make as to damages should the court in the future find that the respondent (or as the case may be) has sustained any damage by reason of this order for which I should accept responsibility.

vest — to pass legal ownership, rights or powers to another person.

vexatious, in relation to an application — having no reasonable prospect of success (see section 118 of the Act for the court's powers in relation to a vexatious case; see also ***frivolous***).

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without prejudice, in relation to an offer to settle — an offer made, orally or in writing, during settlement negotiations between parties that may not be revealed to the court (unless the parties agree otherwise) until the only outstanding issue is costs (see section 131 of the *Evidence Act 1995*).

Note Subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

witness — a person who gives evidence, orally or by affidavit, to the court.

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Notes to the *Family Law Rules 2004*

Note 1

The *Family Law Rules 2004* (in force under the *Family Law Act 1975*) as shown in this compilation comprise Statutory Rules 2003 No. 375 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Statutory Rules

Year and number	Date of notification in *Gazette*	Date of commencement	Application, saving or transitional provisions
2003 No. 375	23 Dec 2003	29 Mar 2003	
2004 No. 53	26 Mar 2004	29 Mar 2004	R. 4

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Chapter 13	
Part 13.2	
R. 13.16	am. 2004 No. 53
Chapter 15	
Part 15.3	
R. 15.30	am. 2004 No. 53
Chapter 20	
Part 20.3	
R. 20.18	am. 2004 No. 53
Part 22.3	
Part 22.3	am. 2004 No. 53
Schedule 2	
Schedule 2	
Form 2	am. 2004 No. 53
Form 11	am. 2004 No. 53
Form 13	rs. 2004 No. 53
Form 14	am. 2004 No. 53

Table A Application, saving or transitional provisions

Statutory Rules 2004 No. 53

4 Transitional

(1) If:

(a) a case was commenced in accordance with the 1984 Rules; and

(b) the case not finally determined before the repeal of those Rules;

the case must be continued in accordance with the 2004 Rules.

(2) If:

(a) an act or thing was done under the 1984 Rules before the repeal of those Rules; and

(b) the act or thing is of a kind that could be done under the 2004 Rules;

the act or thing is taken to have been done under the 2004 Rules.

(3) If:

(a) an obligation was incurred, or an undertaking was given, under the 1984 Rules before the repeal of those Rules; and

(b) the obligation is of a kind that could be incurred, or the undertaking is of a kind that could be given, under the 2004 Rules;

the obligation is taken to have been incurred, or the undertaking is taken to have been given, under the 2004 Rules.

(4) If:

(a) an act or thing was required to be done under the 1984 Rules before the repeal of those Rules; and

(b) the act or thing was not done before the repeal of those Rules; and

(c) the act or thing is of a kind that is required to be done under the 2004 Rules;

the act or thing is taken not to have been done for the purposes of the 2004 Rules.

(5) The 2004 Rules do not operate to revive any period of time for doing an act or thing that was required to be done under the 1984 Rules, if the period had expired before the repeal of those Rules.

(6) If:

(a) a period of time was running in relation to a matter under the 1984 Rules before the repeal of those Rules; and

(b) the period had not expired before the repeal of those Rules; and

(c) the matter is of a kind to which the 2004 Rules apply;

the period continues to run as if the 1984 Rules had not been repealed.

(7) In this rule:

1984 Rules means the *Family Law Rules 1984*, as in force immediately before the commencement of these Rules.

2004 Rules means the *Family Law Rules 2004*.

case has the meaning given by the dictionary to the *Family Law Rules 2004*.