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Volume 1: **rules 1.01–27.03**
Volume 2: Schedules
Dictionary
Explanatory Guide
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Family Law Rules 2004* that shows the text of the law as amended and in force on 1 January 2018 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

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If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

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For more information about any editorial changes made in this compilation, see the endnotes.

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If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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.

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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.

(2) Compliance with subrule (1) is not necessary if:
- (a) for a parenting case—the case involves allegations of child abuse or family violence, or the risk of child abuse or family violence;
- (b) for a property case—the case involves allegations of family violence, or the risk 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;
- (g) the case is a child support application or appeal; or
- (h) the case involves a court's jurisdiction in bankruptcy under section 35 or 35B of the Bankruptcy Act.

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)).

Note 3: Subsections 60I(7) to (12) provide for attendance at family dispute resolution before applying for an order under Part VII of the Act in relation to a child.

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 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;

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(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;

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Rule 1.08

(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) and subclause 6.10(1) of Schedule 6).

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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.

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Rule 1.13

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.

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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;

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(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 Prohibition on recording

(1) A person must not photograph or record by electronic or mechanical means:
  (a) a hearing or part of a hearing:
  (b) a trial or part of a trial;
  (c) a conference under the Act, these Rules or an order of a court;
  (d) an attendance with a family consultant;
  (e) an attendance with a single expert under these Rules;
  (f) a conference of experts ordered by a court; or
  (g) a person who is in court premises.

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

(2) Subrule (1) does not apply to a photograph or recording made at the request of:
  (a) a court;
  (b) in relation to an attendance with a family consultant—the family consultant;
  (c) in relation to an attendance with an expert witness—the expert; or
  (d) in relation to a conference of experts—the experts.

(3) A person commits an offence if the person contravenes subrule (1).

Penalty: 50 penalty units.

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) subject to subrule (3), 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.

(3) For a case in which a court has jurisdiction in bankruptcy under section 35 or 35B of the Bankruptcy Act, the list may contain the given name of a party.

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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.

1.22 Methods of attaching the seal of the Court

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

(a) by hand; or

(b) by electronic means; or

(c) in any other way.

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Rule 2.01

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, respond to an application or seek orders in the course of a case;
- the documents you must file with an application or response; and
- the brochures that must be 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 seeking final orders (other than a consent order or a divorce), for example: • property settlement • parenting (including in relation to a child born under a surrogacy arrangement) • maintenance • child support • medical procedures • nullity • declaration as to validity of marriage, divorce or annulment • order relating to passport (see Division 4.2.7)	Initiating Application (Family Law)
2	Interim order sought at the same time as an application for final orders is made	Initiating Application (Family Law)
2A	Interim order sought after an application for final orders is made	Application in a Case
3	Procedural, ancillary or other incidental order relating to an order or application sought at the same time as an application for final orders is made	Initiating Application (Family Law)
3A	Procedural, ancillary or other incidental order relating to an order or application sought after an application for final orders is made	Application in a Case

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Item	Kind of application	Application form to be filed
4	Enforcement of a financial obligation or parenting order	Application in a Case
5	Review of an order of a Registrar or Judicial Registrar	Application in a Case
6	Divorce	Application for Divorce
7	Consent order when there is no current case	Application for Consent Orders
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
9	Contravention of an order under Part XIIIA of the Act not affecting children, for example, a breach of a property order	Application—Contravention
10	Failure to comply with a bond entered into in accordance with the Act	Application—Contravention
11	Contempt of court	Application—Contempt

Note 1: A respondent seeking orders in another cause of action may make an application in a Response to Initiating Application (Family Law) (see paragraph 9.01 (3) (c)).

Note 2: 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;

(ba) making an application for a parenting order in relation to a child born under a surrogacy arrangement, see Division 4.2.8;

(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 application relating to the failure of a party to comply with a bond, see Chapter 21;

(g) an appeal or an application relating to an appeal, see Chapter 22; and

(h) an application relating to a bankruptcy case, see Chapter 26.

Note 3: 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
2A	Initiating Application (Family Law) in which an order is sought under Part VII of the Act, for example, a parenting order	(a) a certificate given to the applicant by a family dispute resolution practitioner under subsection 60I(8) of the Act; or (b) if no certificate is required because paragraph 60I(9)(b), (c), (d), (e) or (f) of the Act applies—an affidavit in a form approved by the Chief Executive Officer unless another affidavit filed in the proceedings sets out the

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Rule 2.02

Item	Application	Documents to be filed with application
		factual basis of the exception claimed (c) if the application is for a parenting order in relation to a child born under a surrogacy arrangement—an affidavit in a form approved by the Chief Executive Officer Note: Division 4.2.8 of these Rules and section 60HB of the Act relate to children born under surrogacy arrangements.
2B	Initiating Application (Family Law) in which an order is sought relating to a de facto relationship	(a) the documents required by an item in this table that applies to the application (for example items 2A to 6 and 9); and (b) to satisfy the court for section 90SB of the Act that the relationship is or was registered under a prescribed law—the certificate of registration; and (c) for an applicant who has made a choice under subitem 86A(1) or 90A(1) of Schedule 1 to the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008*—a document that satisfies the requirements of subitem 86A(5) or 90A(5) of that Act
3	Initiating Application (Family Law), or Response to Initiating Application (Family Law), in which financial orders are sought, for example, property settlement, maintenance, child support	a completed Financial Statement (see rule 13.05)
4	Initiating Application (Family Law) or Response to Initiating Application (Family Law) in which property settlement orders are sought, and Reply responding to Response to Initiating Application (Family Law) in which property 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 Financial Statement) for a superannuation interest of the party filing the Initiating Application (Family Law), Response or Reply to an Initiating Application (Family Law)
5	Initiating Application (Family Law) or Response to an Initiating Application (Family Law) 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; • for nullity of marriage; • for a declaration as to validity of a marriage or divorce or annulment; or • relating to a passport	an affidavit (see section 66M of the Act and rules 4.06, 4.09, 4.29 and 4.30)
6	Initiating Application (Family Law) or Response to an Initiating Application	the documents mentioned in rule 4.18 for the application

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Item	Application	Documents to be filed with application
	(Family Law) in which a child support application or appeal is made	
7	Application for interim, procedural, ancillary or other incidental orders in an Initiating Application (Family Law) or Application in Case (other than an application seeking review of a decision of a Registrar or Judicial Registrar)	an affidavit (see rules 5.02 and 9.02)
9	Application for Consent Orders	(a) if the orders sought are for a de facto relationship—one of the documents mentioned in this column in item 2B; (b) if the orders sought relate to a superannuation interest (see rule 10.16)—a completed superannuation information form for the superannuation interest; (c) if the orders sought relate to parenting—the annexure mentioned in subrule 10.15A(3)
10	Application—Contravention, other than an application to which item 10A applies	an affidavit (see subrules 21.02(2) and (3))
10A	Application—Contravention in which an order is sought under Part VII of the Act	(a) an affidavit (see subrules 21.02(2) and (3)); and (b) either: (i) a certificate given to the applicant by the family dispute resolution practitioner under subsection 60I(8) of the Act; or (ii) if no certificate is required because paragraph 60I(9)(b), (c), (d), (e) or (f) of the Act applies—an affidavit in a form approved by the Chief Executive Officer unless another affidavit filed in the proceedings sets out the factual basis of the exception claimed
11	Application—Contempt	an affidavit (see subrule 21.02(2))

(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.

(5) An applicant in proceedings mentioned in subsection 100(1) of the Assessment Act or subsection 105(1) of the Registration Act is not required to file in the court a certificate given to the applicant by a family dispute resolution practitioner under subsection 60I(8) of the Family Law Act.

Note 1: A party must not file an affidavit with an Initiating Application (Family Law) unless an application seeking interim, procedural, ancillary or other incidental orders is included

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in the Initiating Application (Family Law) or 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.

2.02A Documents filed by electronic communication

A person who files a document by electronic communication must:

(a) include in the filed document and each copy served on another person any details the person knows about the location, date and time of the next court event in the matter; and

(b) if the Registry Manager notifies the person of the details of the next court event—give a copy of the notice as soon as practicable to each person on whom the document is or has been served.

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Part 2.2—Brochures

2.03 Service of brochures

A person who files an Initiating Application (Family Law) or an Application for Divorce must, when serving the application on the respondent, also serve a brochure prepared by the court for section 12F of the Act.

Note: In addition to the requirements of this rule, an applicant who has filed an application for enforcement must serve the relevant brochure on the respondent (see paragraph 20.11(3)(b)).

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Part 2.3—Notification in certain cases

Division 2.3.1—Cases involving allegation of abuse or family violence in relation to a child

2.04 Definition

In this Division:

Part VII order has the same meaning as in subsection 60I(1) of the Act.

Registry Manager has the same meaning as in section 67Z of the Act.

2.04A Application of Division 2.3.1

This Division applies to a case if an application is made to a court for a Part VII order in relation to a child in the case.

2.04D Prescribed form

(1) The prescribed form for a notice mentioned in subsection 67Z(2) or 67ZBA(2) of the Act is the Notice of Child Abuse, Family Violence or Risk of Family Violence.

Note: The Notice of Child Abuse, Family Violence or Risk of Family Violence is set out in Schedule 2.

(2) A person who files a notice referred to in subrule (1) must file an affidavit or affidavits setting out the evidence on which the allegations in the notice are based, no later than the time the notice is filed.

Note: For service of a notice filed in a case to which section 67Z or 67ZBA of the Act applies, subsections 67Z(2) and 67ZBA(2), respectively, require that a person that is the subject of the allegation in the notice must be served with a copy of the notice. The requirements for service of filed documents are set out in rule 7.04.

2.04E Notice of family violence in existing cases

(1) This rule applies if, in a case to which this Division applies:
  (a) proceedings were instituted before 7 June 2012; and
  (b) a party to the proceedings alleges that:
    (i) there has been family violence by one of the parties to the proceedings; or
    (ii) there is a risk of family violence by one of the parties to the proceedings; and
  (c) the party making the allegation did not file a notice mentioned in subsection 67Z(2) or 67ZBA(2) of the Act before 7 June 2012.

(2) The party making the allegation must file a Notice of Child Abuse, Family Violence or Risk of Family Violence in the court hearing the proceedings, and

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serve a true copy of the notice on the party referred to in subparagraph (1)(b)(i) or (ii).

(3) If a notice is filed in accordance with subrule (2), the court must treat the allegation as if it were an allegation to which section 67ZBB of the Act applied.

(4) If the alleged family violence (or risk of family violence) is abuse of a child (or a risk of abuse of a child), the Registry Manager must, as soon as practicable, 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 child or a member of the child's family:
  (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.

(3) If, during the case, a family violence order affecting the child or a member of the child's family is varied, any party affected by the variation must, as soon as practicable after the order is varied, file a copy of the variation.

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Division 2.3.2—Property settlement or spousal or de facto maintenance cases

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

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

(a) file the notice as soon as possible after the party is notified by the proceeds of crime authority under paragraph 79B(3)(b), 90M(3)(b) or 90VA(3)(b) of the Act; and

(b) if the person is required under paragraph 79B(3)(d), 90M(3)(d) or 90VA(3)(d) of the Act to give a document to the Registry Manager—attach the document to the notice.

2.07 Proceeds of crime

(1) If the proceeds of crime authority applies under section 79C, 90N or 90VB of the Act to stay a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings, the authority 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, 90P or 90VC of the Act to lift a stay of a property settlement or spousal maintenance case, or a de facto property settlement or maintenance proceedings, 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 proceeds of crime authority under section 79D, 90P or 90VC 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 (see Chapter 5).

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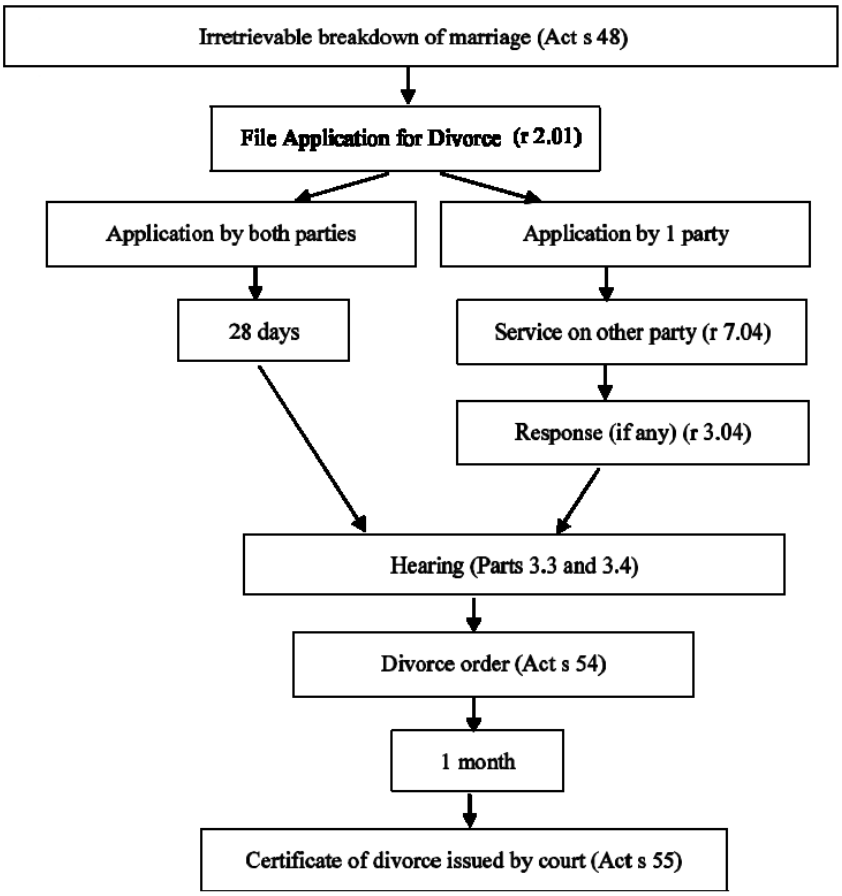
Chapter 3—Divorce

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.



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Part 3.1—Application for Divorce

3.01 Fixing of hearing date

(1) On the filing of an Application for Divorce, 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: An Application for Divorce (other than a joint application) must be served on the respondent (see rule 7.03).

Note 2: When an Application for Divorce is served, the respondent must also be given a brochure approved by the Chief Executive Officer (see rule 2.03).

3.02 Amendment of an Application for Divorce

An applicant may amend an Application for Divorce:
  (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 an Application for Divorce

An applicant may discontinue an Application for Divorce by filing and serving a Notice of Discontinuance 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 to be discontinued.

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Part 3.2—Response

3.04 Response

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

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

(b) if the respondent is served outside Australia—within 42 days after the day when the Application for Divorce is served on the respondent.

(2) If a respondent files a Response to an Application for Divorce:

(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 Response to an Application for Divorce, 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 Response to an Application for Divorce.

3.06 Response out of time

If a respondent files a Response to an Application for Divorce 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 Response to an Application for Divorce after the time allowed by rule 3.04 (see rule 1.14).

3.07 Affidavit to reply to information in an Application for Divorce

A respondent to an Application for Divorce 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.

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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 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.

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Part 3.4—Hearing in absence of parties

3.09 Seeking a hearing in absence of parties

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

(a) no Response 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, 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 an Application for Divorce 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).

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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.

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 an Application in a Case must file an affidavit (see rule 5.02).

3.13 Death of party

If a party to an Application for Divorce 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.

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Chapter 4—Application for Final Orders

Summary of Chapter 4

Chapter 4 sets out rules about:

- the general procedure for starting a case by an Initiating Application (Family Law) 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.

Note: This Chapter does not apply to:

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

(b) an application for an interim, procedural or other incidental order about an application seeking final orders whether made in an Initiating Application (Family Law) or an Application in a Case (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.

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Part 4.1—Introduction

4.01 Contents of Application for Final Orders

(1) In an Initiating Application (Family Law), 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 an Initiating Application (Family Law) and must not be made in a Response to an Initiating Application (Family Law) (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 an Initiating Application (Family Law) unless permitted or required to do so by these Rules.

Example: A party only seeking final orders for property settlement or parenting orders must not file an affidavit with an Initiating Application (Family Law).

4.03 First court date

On the filing of an Initiating Application (Family Law), the Registry Manager must fix a date:
  (a) in a parenting case—for a procedural hearing that is as near as practicable to 28 days after the application was filed;
  (b) in a financial case—for a case assessment conference that is as near as practicable to 28 days after the application was filed;
  (c) if the application includes both a financial case and a parenting case—for a case assessment conference that is as near as practicable to 28 days after the application was filed; or

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(d) if an earlier date is fixed for the hearing of that or another application so far as it concerns an interim, procedural or other ancillary order in the case—for a procedural hearing on the same day.

Note: Under subrule 5.05(4), a Registrar may, in exceptional circumstances, allow an application for an interim, procedural, ancillary or other incidental order to be listed for urgent hearing. Chapter 12 sets out the requirements for case assessment conferences and procedural hearings.

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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 Initiating Application (Family Law).

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.

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Division 4.2.2—Cross-vesting

4.06 Cross-vesting matters

(1) If a party filing an Initiating Application (Family Law) or a Response to Initiating Application (Family Law) relies on a cross-vesting law, the party must specify, in the application or response, 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 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 an Application in a Case.

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

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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 independent children's lawyer;
  (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 the form to be used to make an Initiating Application (Family Law) 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 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.

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(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 Initiating Application (Family Law), 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 Initiating Application (Family Law) 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.

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Division 4.2.4—Spousal or de facto maintenance

Note: Applications should not be made under this Division unless an associated matter is pending in the court or filing with the Federal Circuit Court is not available. Under section 33B of the Family Law Act 1975, the Family Court may transfer the proceeding to the Federal Circuit Court without notice to the parties.

4.14 Procedure on first court date

(1) On the first court date for an Application for spousal or de facto maintenance, 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

(1) On the first court date and the hearing date of an Application for spousal or de facto maintenance, each party must bring to the court the following documents:

(a) a copy of the party's taxation returns for the 3 most recent financial years;

(b) the party's taxation assessments for the 3 most recent financial years;

(c) the party's bank records for the period of 3 years ending on the date on which the application was filed;

(d) if the party receives wages or salary payments—the party's payslips for the past 12 months;

(e) if the party owns or controls a business, either as sole trader, partnership or a company—the business activity statements and the financial statements (including profit and loss statements and balance sheets) for the 3 most recent financial years of the business; and

(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 modification of a spousal maintenance order, see section 83 of the Act. For modification of a de facto maintenance order, see section 90SI of the Act.

(2) Before the hearing date, a party must produce the documents mentioned in subrule (1) for inspection, if the other party to the proceedings makes a written request for their production.

(3) If a request is made under subrule (2), the documents must be produced within 7 working days of the request being received

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Division 4.2.5—Child support and child maintenance

Overview of proceedings to which this Division applies

Child support

Applications may be made under the following provisions of the *Child Support (Assessment) Act 1989*:

- subsection 95(6), section 98 or 136 about a child support agreement that has been accepted by the Registrar
- sections 106A and 107 about who is or who is not the parent of the child
- section 111 seeking a departure from administrative assessment backdated over 18 months and up to 7 years
- section 118 for departure from administrative assessment as follows:

  •if the Child Support Registrar has refused to determine the departure application because the issues are too complex (sections 98E and 98R);

  •if the court has a discretion to determine the application because there is another application pending before the court and the court is satisfied that special circumstances exist to enable it to determine both applications (section 116);

  •if there is a minimum administrative assessment (paragraph 116(1)(c))
- section 123 for lump sum or non periodic payments of child support
- section 129 to vary a prior order for lump sum or non periodic child support
- section 139 seeking urgent maintenance after an application has been made for administrative assessment of child support, but has yet to be determined
- section 143 for recovery of child support paid when a person is not liable to pay child support

Note: Applications should not be made under this Division unless an associated matter is pending in the court or filing with the Federal Circuit Court is not available. Under section 33B of the *Family Law Act 1975*, the Family Court may transfer the proceeding to the Federal Circuit Court without notice to the parties.

Section 110B of the *Child Support (Registration and Collection) Act 1988* allows appeals from the Social Security Appeals Tribunal on questions of law.

Applications may be made under the section 111C of the *Child Support (Registration and Collection) Act 1988* for an order staying (suspending) the operation of the Act and the *Child Support (Assessment) Act 1989*, until the finalisation of court proceedings.

Child maintenance

Applications may be made for child maintenance under Division 7 of Part VII of the Family Law Act in relation to children to whom the child support scheme does not apply. Applications may also be made under Parts III and IV of the Family Law Regulations.

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4.16 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;

(b) an appeal under the Registration Act, other than an appeal from a court;

(ba) an application under section 111C of the Registration Act;

(c) an application under Division 7 of Part VII of the Family Law Act; and

(e) an application under Parts III and IV of the Family Law Regulations.

Note 1: Chapter 2 provides for the form to be used to make an Initiating Application (Family Law) 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 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.

4.17 Commencing proceedings

(1) An application under this Part must be made in accordance with an Initiating Application (Family Law).

(2) An appeal under this Part must be made in accordance with a Notice of Appeal (Child Support).

4.18 Documents to be filed with applications

(1) A person must file with an application mentioned in an item of Table 4.1, the documents mentioned in the item.

Table 4.1 Documents to file with applications

Item	Application	Documents to be filed with application
1	All applications for child support	An affidavit setting out the facts relied on in support of the application, attaching: (a) a schedule setting out the section of the Assessment Act or Registration Act under which the application is made; (b) a copy of any decision, notice of decision or assessment made by the Child Support Registrar relevant to the application and statement of reasons for that decision; 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, 111, 116, 123, 129, 136, 139 and 143 of	An affidavit setting out the facts relied on in support of the application, attaching: (a) the documents mentioned in this column in item 1;

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Item	Application	Documents to be filed with application
	the Assessment Act and 111C of the Registration Act	(b) a completed Financial Statement; (c) a copy of any relevant order or agreement
3	All applications for child maintenance	A completed Financial Statement

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.

4.19 Child support agreements

A person who makes an application in relation to a child support agreement must register a copy of the agreement with the court by filing one of the following:

(a) an affidavit attaching the original agreement;

(b) an affidavit attaching a copy of the agreement and stating that the copy is a true copy of the original agreement;

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

4.20 Time limits for applications under Assessment Act

A person must file an application for a declaration under subsection 106A(2) or 107(1) of the Assessment Act within 56 days after being served with a notice given under section 33 or 34 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 an Initiating Application (Family Law) or an Application in a Case 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.

4.21 Appeals on questions of law

(1) An appeal on a question of law from the Social Security Appeals Tribunal may be made by filing a Notice of Appeal (Child Support).

(2) A person must file with a Notice of Appeal (Child Support) a copy of the Statement of Reasons of the Social Security Appeals Tribunal.

4.22 Time limit for appeals on questions of law

A party to a proceeding before the Social Security Appeals Tribunal under Part VIIA of the Registration Act may file an appeal, on a question of law, from

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any decision of the Social Security Appeals Tribunal in that proceeding, within 28 days of the publication of the Statement of Reasons.

4.23 Service of application or notice of appeal

(1) The persons to be served with an application or notice of appeal under this Part are:

(a) each respondent;

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

(c) the Child Support Registrar; and

(d) for appeals from the Social Security Appeals Tribunal—the Executive Director of the Social Security Appeals Tribunal and any other parties to the appeal.

(2) Except for an application for an order staying a decision or an urgent order for child maintenance, an application or notice of appeal must be served at least 28 days before the hearing date.

(3) A person seeking to appeal a decision of the Social Security Appeals Tribunal must serve a notice of the appeal on the Executive Director of the Social Security Appeals Tribunal within 7 working days of the day of filing the appeal.

(4) Any documents on which the applicant or appellant intends to rely must be served on the persons mentioned in subrule (1) at least 21 days before the hearing date.

4.24 Service by Child Support Registrar

For rule 4.20, 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 maintenance application or a child support application or appeal, the Registrar must, if practicable, conduct a case assessment conference.

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, 111, 116, 123, 129, 136, 139 or 143 of the Assessment Act or section 111C of the Registration Act, or a child maintenance application.

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(2) On the first court date and the hearing date of the application, each party must bring to the court the following documents:

(a) a copy of the party's taxation returns for the 3 most recent financial years;

(b) the party's taxation assessments for the 3 most recent financial years;

(c) the party's bank records for the period of 3 years ending on the date on which the application was filed;

(d) if the party receives wages or salary payments—the party's payslips for the past 12 months;

(e) if the party owns or controls a business, either as sole trader, partnership or a company—the business activity statements and the financial statements (including profit and loss statements and balance sheets) for the 3 most recent financial years of the business; and

(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) of the Act.

(3) Before the hearing date, a party must produce the documents mentioned in subrule (2) for inspection, if the other party to the proceedings makes a written request for their production.

(4) If a request is made under subrule (3), the documents must be produced within 7 working days of the request being received.

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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 the form to be used to make an Initiating Application (Family Law) 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.

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Division 4.2.7—Applications relating to passports

4.30 Application relating to passport

A party seeking only an order that relates to a passport must file an Initiating Application (Family Law) 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 hearing date

On the filing of an application referred to in rule 4.30, the Registry Manager must fix a date for hearing that is as soon as practicable after the date when the application was filed.

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Division 4.2.8—Children born under surrogacy arrangements

4.32 Application of Division 4.2.8

This Division applies to an application for a parenting order in relation to a child who was born under a surrogacy arrangement.

Note: See also section 60HB of the Act in relation to children born under surrogacy arrangements.

4.33 Evidence supporting application—general

(1) The evidence in support of an application to which this Division applies must include the evidence, and establish the matters, mentioned in rules 4.34 to 4.36.

(2) The evidence may be given:
  (a) in the form of an affidavit; or
  (b) with the court's permission, orally.

4.34 Evidence from applicant and surrogate mother

(1) The evidence must include a copy of the surrogacy agreement (if any), however described.

(2) The evidence must include evidence from the applicant that establishes the applicant's personal circumstances, including those personal circumstances:
  (a) at the time the surrogacy procedure took place; and
  (b) in the period immediately before the surrogacy arrangement was entered into; and
  (c) in the period immediately before conception; and
  (d) in the period immediately after the birth of the child and during subsequent arrangements for the care of the child.

Note: If several applicants jointly file an application for a parenting order to which this Division applies, each applicant must file an affidavit that establishes the matters mentioned in paragraphs (2)(a) and (b).

(3) The evidence must include evidence from the surrogate mother that establishes the surrogate mother's personal circumstances, including those personal circumstances:
  (a) at the time the surrogacy procedure took place; and
  (b) in the period immediately before the surrogacy arrangement was entered into; and
  (c) in the period immediately before conception; and
  (d) in the period immediately after the birth of the child and during subsequent arrangements for the care of the child.

(4) The evidence must include evidence from the surrogate mother as to the following:

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(a) whether the surrogacy arrangement was made with her informed consent;
(b) whether she received counselling before entering into the surrogacy arrangement;
(c) whether she received any legal advice before entering into the surrogacy arrangement.

4.35 Evidence about child's identity

The evidence must include evidence regarding the identity of the child, including the following:

(a) evidence regarding the surrogacy arrangement entered into between:
  (i) the applicant and the surrogate mother; or
  (ii) the applicant and the clinic (if any) at which the surrogacy procedure was performed; or
  (iii) the applicant, the surrogate mother and the clinic (if any);
(b) a certified copy of the child's birth certificate;
(c) a report, prepared in accordance with regulation 21M of the Regulations, relating to the information obtained as a result of carrying out a parentage testing procedure;
(d) if the child is an Australian citizen:
  (i) a certified copy of the child's Australian citizenship certificate; or
  (ii) if the child's name is mentioned on an Australian citizenship certificate issued to one of the child's parents—a certified copy of the parent's Australian citizenship certificate;
(e) if an order of the kind referred to in subsection 60HB(1) of the Act has been made in relation to the child—a copy of the order.

4.36 Evidence about relevant law in child's birth country

The evidence must include evidence regarding the law in the country where the child was born in relation to:

(a) surrogacy arrangements; and
(b) the rights of the surrogate mother in relation to the child; and
(c) the rights of the surrogate mother's husband (if any) or de facto partner (if any) in relation to the child.

4.37 Procedure on first hearing date

On the first court date for an application for a parenting order to which this Division applies, the court must:

(a) make procedural orders for the conduct of the case; and
(b) consider whether to make an order under section 68L of the Act that the child's interests in the proceedings are to be independently represented by a lawyer; and
(c) consider whether to direct a family consultant:
  (i) to prepare a family report; or

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(ii) to carry out other tasks, having regard to the functions of family consultants set out in section 11A of the Act; and

(d) consider whether a condition mentioned in paragraph 65G(2)(a) or (b) of the Act has been met in relation to the parenting order.

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Chapter 5—Applications for interim, procedural, ancillary or other incidental orders

Summary of Chapter 5

Chapter 5 sets out the procedure for making an application for interim, procedural, ancillary, or other incidental orders. 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 Restrictions in relation to applications

(1) A party may apply for an interim, procedural, ancillary or other incidental 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: A reference to ***application*** includes a reference to ***cross-application*** (see the dictionary).

(2) A party may apply for an interim, procedural, ancillary or other incidental 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 an Application in a Case by:
  (a) an independent children's lawyer;
  (b) the Director of Public Prosecutions, when making an application under section 79C, 79D, 90N, 90P, 90VB or 90VC of the Act, to stay or lift a stay of a property settlement or spousal or de facto maintenance case;
  (c) a bankruptcy trustee; or
  (d) a trustee of a personal insolvency agreement.

(4A) This rule does not apply to restrict the filing of an application for an order in relation to an arbitration by a party to the arbitration or an arbitrator conducting the arbitration.

(5) If a party applies for an interim, procedural, ancillary or other order at the start of a case, the application must be in an Initiating Application (Family Law).

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(6) If a party applies for an interim, procedural, ancillary or other order after a case has commenced, the application must be in an Application in a Case.

Note 1: An Application in a Case is used to make:
(a) an Application for review of a Judicial Registrar's or Registrar's order (see Chapter 18); and
(b) an Application to enforce an obligation to pay money or to enforce a parenting order (see Chapter 20 and rule 21.01).

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

5.01A Filing of applications seeking parenting orders during the Christmas school holiday period

(1) This rule applies to an application for a parenting order relating in whole or part to the school holiday period beginning in December in a year (the ***application year***) and extending to January in the following year.

(2) The application must be filed before 4.00 pm on the second Friday in November of the application year.

Note: Except in cases of urgency (where the usual criteria for an urgent hearing will apply), an application filed after the deadline under subrule (2) will be allocated the next available date in the usual way. That date may be after Christmas. In other words, if the deadline has passed, the fact that an application relates to the school holiday period will not of itself justify a listing before Christmas. In urgent cases, applications to abridge times and to list a matter on short notice can be made to the Registry.

5.02 Evidence in applications to which Chapter 5 applies

(1) A party who applies for an interim, procedural, ancillary or other incidental order in an Initiating Application (Family Law), or who files an Application in a Case, 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 an Application in a Case 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 Application address specific factors (see, for example, rule 5.12).

5.03 Procedure before filing

(1) Before filing an application seeking interim, procedural, ancillary or other incidental orders, 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).

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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).

5.05 Fixing a date for hearing or case assessment conference

(1) On the filing of an Application in a Case, or an Initiating Application (Family Law) in which application is made for interim, procedural, ancillary or other orders, 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 an Application in a Case is filed after another related application, the Application in a Case may be listed for the same first court date as the related application if a Registrar considers it to be reasonable in the circumstances.

Note: If an Initiating Application (Family Law) seeks interim, procedural, ancillary or other incidental orders, and an earlier date is fixed for the hearing of the application under subrule 5.05(4), the Application to the extent that it concerns final orders must be dealt with on the same court date (see subrule 4.03).

(4) The Registry Manager may fix an earlier date for the hearing of an Application in a Case, or an Initiating Application (Family Law) in which application is made for interim, procedural, ancillary or other incidental orders, 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 request permission to do any of the following things by electronic communication at a hearing:

(a) attend;

(b) make a submission;

(c) give evidence;

(d) adduce evidence from a witness.

(2) Before making a request, the party must ask any other party whether the other party agrees, or objects, to the use of electronic communication for the purpose proposed by the party.

(3) A request must:

(a) be in writing;

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(b) be made at least 7 days before the date fixed for the hearing;
(c) set out the information required under subrule 16.05(3);
(d) set out details of the notice in relation to the request that has been given to any other party;
(e) state whether any other party agrees or objects to the request; and
(f) state the expense to be incurred by using the electronic communication.

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

(5) 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) the expense to be incurred, or the savings to be made, by using the electronic communication;
(e) any concerns about security, including family violence and intimidation;
(f) whether any other party objects to the request.

(6) If the court grants the request, the court may:
(a) order a party to pay the expense of using the electronic communication; or
(b) apportion the expense between the parties.

(7) If 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.

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(5) Subrules 5.06(4) and (7) apply to a request under this rule.

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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 60CC 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 dispute resolution methods.

5.09 Affidavits

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.

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 and response, if any.

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

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Part 5.3—Application without notice

5.12 Application without notice

An applicant seeking that an interim 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.

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Rule 5.14

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.

(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.

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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.

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Rule 5.19

Part 5.6—Application for certain orders

5.19 Application for suppression or non-publication order

An applicant for an order to suppress publication of a judgment must file an affidavit that sets out evidence relating to the following:

(a) the public interest in suppressing or not suppressing publication;

(b) why further anonymisation of the judgment would not be sufficient;

(c) whether publication of the entire judgment should be suppressed or only part of the judgment;

(d) whether publication should be suppressed in one medium or in all media;

(e) whether a summary of the judgment should be made publicly available if publication of the judgement is suppressed;

(f) one or more of the grounds, mentioned in subsection 102PF(1) of the Act, on which the application is made.

Note: The Court anonymises all judgments in accordance with the requirements of section 121 of the Act.

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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 1: An independent children's lawyer is not a party to a case but must be treated as a party (see rule 8.02).

Note 2: Pre-action procedures must be complied with by all prospective parties under rule 1.05.

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.

Example: If a party seeks an order of a kind mentioned in section 90AE or 90AF of the Act, a third party who will be bound by the order must be joined as a respondent 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 is currently in force 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 1: The court may dispense with compliance with a rule (see rule 1.12).

Note 2: Pre-action procedures must be complied with by all prospective parties under rule 1.05.

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Part 6.2—Adding and removing a party

6.03 Adding a party

(2) A party may add another party after a case has started by amending the application or response to add the name of the party.

(3) A party who relies on subrule (2) must:

(a) file an affidavit setting out the facts relied on to support the addition of the new party, including a statement of the new party's relationship (if any) to the other parties; and

(b) serve on the new party:

(i) a copy of the application, amended application, response or amended response; and

(ii) the affidavit mentioned in paragraph (a); and

(iii) 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: Pre-action procedures must be complied with by all prospective parties under rule 1.05.

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.

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) an Application in a Case; 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.

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(2) The person intervening must file:
  (a) a Notice of Intervention by Person Entitled to Intervene; 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: The following are examples of when a person is entitled under the Act to intervene in a case without the court's permission:
  (a) subsection 79(10) authorises a creditor of a party to a case who may not be able to recover his or her debt if an order is made under section 79, and a person whose interests would be affected by an order under section 79, to become a party to the case;
  (aa) subsection 90SM(10) authorises a creditor of a party to a case who would not be able to recover a debt if an order is made under section 90SM of the Act, a party to a de facto relationship or marriage with a party to a case, a party to certain financial agreements and a person whose interests would be affected by the making of an order to become parties to the case;
  (b) section 91 of the Act and section 78A of the *Judiciary Act 1903* authorise the Attorney-General to intervene in a case;
  (c) section 92A of the Act authorises the people mentioned in subsection 92A(2) to intervene in a case without the court's permission;
  (d) section 145 of the Assessment Act authorises the Child Support Registrar to intervene in a case.

(3) On the filing of a Notice of Intervention by Person Entitled to Intervene, the Registry Manager must fix a date for a procedural hearing.

(4) The person intervening must give each other party written notice of the procedural hearing.

6.07 Notice of constitutional matter

(1) If a party is, or becomes, aware that a case involves a matter that:
  (a) arises under the Constitution or involves its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*; 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.

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Part 6.3—Case guardian

6.08A Interpretation

In this Part:

a manager of the affairs of a party includes a person who has been appointed, in respect of the party, a trustee or guardian under a Commonwealth, State or Territory law.

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

(1) 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.

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.

(2) A person who is a manager of the affairs of a party is taken to be appointed as the case guardian of the party if the person has filed:

(a) a notice of address for service; and

(b) an affidavit which:

(i) provides evidence that the person has been appointed manager of the affairs of the party; and

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(ii) states that the person consents to being appointed as the case guardian of the party.

6.11 Attorney-General may nominate case guardian

(1) If in the opinion of the court a suitable person is not available for appointment as a case guardian of a person with a disability, the court may request that the Attorney-General nominate, in writing, a person to be a case guardian.

(2) A person nominated by the Attorney-General to be a case guardian of a person with a disability is taken to be appointed as such if the person files:
(a) a consent to act in relation to the person with a disability;
(b) a copy of the written nomination of the person as a case guardian; and
(c) a Notice of Address for Service.

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 independent children's lawyer in the case.

Note: The case guardian may also need to file a Notice of Address for Service (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.

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Part 6.4—Progress of case after death

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 the legal personal representative of the deceased 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), 90SM(2), 90SM(8), 90SN(5), 90UM(8) and 105(3) of the Act.

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Part 6.5—Progress of a case after bankruptcy or personal insolvency agreement

6.16 Interpretation

In this Part:

bankruptcy proceedings means proceedings under the Bankruptcy Act, in the Federal Court or the Federal Circuit Court, in relation to:

(a) the bankruptcy of a relevant party; or

(b) a relevant party's capacity as a debtor subject to a personal insolvency agreement.

relevant case means any of the following:

(a) a pending case under section 66G, 66S, 74, 78, 79, 79A, 83, 90SE, 90SL, 90SM or 90SN of the Act;

(b) a pending case under Division 4 or 5 of Part 7 of the Assessment Act;

(c) a pending case for enforcement of an order made under a provision mentioned in paragraph (a) or (b).

relevant party means a person who is:

(a) a party to a marriage or de facto relationship; and

(b) a party to a relevant case in relation to that marriage or de facto relationship.

Note: The following terms are defined in the Act:

- bankruptcy trustee (subsection 4(1))
- debtor subject to a personal insolvency agreement (section 5)
- trustee, in relation to a personal insolvency agreement (subsection 4(1)).

6.17 Notice of bankruptcy or personal insolvency agreement

(1) If a relevant party is also a bankrupt or a debtor subject to a personal insolvency agreement, that party must notify:

(a) all other parties to the relevant case, in writing, about the bankruptcy or personal insolvency agreement;

(b) the bankruptcy trustee or the trustee of the personal insolvency agreement, as the case may be, about the relevant case in accordance with rule 6.18; and

(c) the court in which the relevant case is pending, in accordance with rule 6.19.

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

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Rule 6.18

6.18 Notice under paragraph 6.17(1)(b)

For paragraph 6.17(1)(b), notice to a bankruptcy trustee or a trustee of a personal insolvency agreement must:

(a) be in writing;

(b) be given within 7 days, or as soon as practicable, after the date on which the party becomes both:

(i) a relevant party; and

(ii) a bankrupt or debtor;

(c) attach a copy of the application starting the relevant case, response (if any), and any other relevant documents; and

(d) state the date and place of the next court event in the relevant case.

6.19 Notice under paragraph 6.17(1)(c)

For paragraph 6.17(1)(c), notice to the court must:

(a) be in writing;

(b) be given within 7 days, or as soon as practicable, after the date on which the party becomes both:

(i) a relevant party; and

(ii) a bankrupt or debtor; and

(c) attach a copy of the notices given in accordance with paragraphs 6.17(1)(a) and (b).

6.20 Notice of bankruptcy proceedings

(1) If a relevant party is a party to bankruptcy proceedings the party must give notice of the bankruptcy proceedings, in accordance with subrule (2), to:

(a) the court in which the relevant case is pending; and

(b) the other party (or parties) to the case.

(2) The notice must:

(a) be in writing;

(b) be given within 7 days, or as soon as practicable, after the date on which the party becomes a party to bankruptcy proceedings; and

(c) state the date and place of the next court event in the bankruptcy proceedings.

6.21 Notice of application under section 139A of the Bankruptcy Act

(1) If the bankruptcy trustee of a bankrupt party to a marriage or de facto relationship has applied under section 139A of the Bankruptcy Act for an order under Division 4A of Part VI of that Act, and the trustee knows that a relevant case in relation to the bankrupt party is pending in a court exercising jurisdiction under the Act, the trustee must notify:

(a) the court exercising jurisdiction under the Act in the relevant case, in accordance with subrule (2); and

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(b) if the bankruptcy trustee's application relates to an entity other than the other party to the marriage or de facto relationship—the other party to the marriage or de facto relationship, in accordance with subrule (3).

(2) For paragraph (1)(a), notice to the court must:
(a) be in writing;
(b) be given within 7 days, or as soon as practicable, after the bankruptcy trustee makes the application under section 139A of the Bankruptcy Act; and
(c) state the date and place of the next court event in the proceedings under section 139A of the Bankruptcy Act.

(3) For paragraph (1)(b), notice to the other party to the marriage or de facto relationship must:
(a) be in writing;
(b) be given within 7 days, or as soon as practicable, after the bankruptcy trustee makes the application under section 139A of the Bankruptcy Act;
(c) attach a copy of the application, other initiating process and any other relevant documents in the application under section 139A of the Bankruptcy Act; and
(d) state the date and place of the next court event in the proceedings under section 139A of the Bankruptcy Act.

6.22 Official name of trustee

(1) If a bankruptcy trustee or a trustee of a personal insolvency agreement is added as a party to a relevant case, the trustee must be added using the prescribed official name of the trustee.

(2) In subrule (1):

prescribed official name of the trustee has the meaning given by:
(a) for a bankruptcy trustee—subsection 161(2) of the Bankruptcy Act; and
(b) for a trustee of a personal insolvency agreement—subsection 219(2) of the Bankruptcy Act.

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Chapter 7—Service

Summary of Chapter 7

Chapter 7 sets out the rules for serving documents and proving service. The rules in this chapter apply only to the service of documents in Australia and non-convention countries. The Regulations deal with service in countries that are party to certain conventions. If there is an inconsistency between the Regulations and these Rules, the Regulations prevail (see subsection 125(3) of the Act).

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

7.01A Application

This Chapter does not apply to service of a document in a foreign country that is a party to a convention to which Australia is also a party regarding legal proceedings in civil and commercial matters.

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

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 Initiating Application (Family Law), when served, must be accompanied by the brochure mentioned in rule 2.03; 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.

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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	Initiating Application (Family Law)	Special service
3	Application in a Case fixing an enforcement hearing	Special service
4	Application for Divorce	Special service
5	A subpoena, or a copy of a subpoena, required to be served under rule 15.22 or 26B.17	The manner of service required by that rule
6	Application—Contravention	Special service by hand
7	Application—Contempt	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 15.22(1), 20.11(3) and 26B.17(1))	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
12	Document that is not required to be served by special service. For example: • an Application in a Case (other than an Application in a Case mentioned in item 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).

(1A) A person who serves a document filed by electronic communication must:

(a) if the Registry Manager has sent the person who filed the document a communication recording the date of filing—ensure that a copy of the communication is served; or

(b) in any other case—write on the front of the served copy of the document the date of filing.

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(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) an Affidavit of Service;

(d) a document signed by all parties;

(e) 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 independent children's lawyer.

(4) For subrule (1):

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

(a) all parties to the case;

(b) any independent children's lawyer; and

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

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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 in Australia by sending a copy of it to the person's last known address by post.

(2) A document may be served on a person in Australia 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 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 an Acknowledgement of Service. If an applicant wants to prove service by electronic communication (other than by facsimile), the applicant must still produce a signed Acknowledgement of Service. This means that the person served will need to print out and sign a hard copy of the Acknowledgement of Service 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).

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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 or Notice of Appeal 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(4)).

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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.

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Part 7.4—Proof of service

7.13 Proof of service

(1) Service of an application is proved:
  (a) by filing an Affidavit of Service;
  (b) by the respondent filing a Notice of Address for Service or a Response; or
  (c) if service was carried out by giving the document to a lawyer—by filing an Acknowledgement of Service that has been signed by the lawyer.

(2) Service of any other document is proved by filing an Affidavit of Service.

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 an Affidavit of Service, an Acknowledgement of Service signed by the respondent; and
  (b) evidence identifying the signature on the Acknowledgement of Service as the respondent's signature.

Note: If a person serving a document seeks to prove service under this rule, an Acknowledgment of Service must be signed by the person served with the document. However, if the Affidavit of Service with the Acknowledgement of Service 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.

(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;
  (b) the person served from a photograph; or
  (c) the person when accompanying the process server.

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

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(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 an Application in a Case and an affidavit (see rules 5.01 and 5.02).

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Part 7.6—Service in non-convention country

7.19 Service in non-convention country

(1) A person may serve a document on a person in a non-convention country:
  (a) in accordance with the law of the non-convention country; or
  (b) if the non-convention country permits service of judicial documents through the diplomatic channel—through the diplomatic channel.

(2) A person seeking to serve a document in a non-convention country through the diplomatic channel 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.

(3) If the Registry Manager receives a request under subrule (2), the Registry Manager must:
  (a) seal the documents to be served; and
  (b) send to the Secretary of the Department of Foreign Affairs and Trade:
    (i) the sealed documents; and
    (ii) a written request that the documents be sent to the government of the non-convention country for service.

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).

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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 an independent children's lawyer; 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 16.05).

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 Independent children's lawyer

(1) A party may apply for the appointment or removal of an independent children's lawyer by filing an Application in a Case.

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 an independent children's lawyer:

(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 independent children's lawyer be met by a party.

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

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(3) A person appointed as an independent children's lawyer:
  (a) must file a Notice of Address for Service;
  (b) must comply with these Rules and do anything required to be done by a party; and
  (c) may do anything permitted by these Rules to be done by a party.

(4) If an independent children's lawyer is appointed, the parties must conduct the case as if the independent children's lawyer were a party.

(5) The appointment of an independent children's lawyer ceases:
  (a) when the Initiating Application (Family Law) 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 independent children's lawyer (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 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 Notice of Address for Service.

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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.

(4) An address for service:
  (a) must be an address in Australia where documents may be left or received by post;
  (aa) must include a telephone number at which the party may be contacted; 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 Notice of Address for Service 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 Notice of Address for Service 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.

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Chapter 9—Response and reply

Summary of Chapter 9

Chapter 9 sets out the procedure for:

- responding to an Initiating Application (Family Law) (known as a Response to Initiating Application (Family Law);
- responding to an Application in a Case (known as a Response to an Application in a Case); and
- replying to a Response to Initiating Application (Family Law) seeking orders in a cause of action other than one mentioned in the application (known as a Reply).

Note: A Response to Application for Divorce is used to respond to an Application for Divorce (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 an Initiating Application (Family Law)

9.01 Response to an Initiating Application (Family Law)

(1) A respondent to an Initiating Application (Family Law) who seeks to oppose the orders sought in the application or seeks different orders must file a Response to an Initiating Application (Family Law).

(2) A Response to an Initiating Application (Family Law) must:
  (a) state the facts in the application with which the respondent disagrees;
  (b) state what the respondent believes the facts to be; and
  (c) give full particulars of the orders the respondent wants the court to make.

(3) In addition to the matters in subrule (2), a Response to an Initiating Application (Family Law) 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 Response to an Initiating Application (Family Law) 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 Response to an Initiating Application (Family Law) includes a request for orders in another cause of action; and

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

the respondent must file with the Response to an Initiating Application (Family Law) the document required under rule 2.02 to be filed for that cause of action.

9.02 Filing an affidavit with Response to Initiating Application (Family Law)

A respondent must not file an affidavit with a Response to Initiating Application (Family Law) unless:

(a) responding to interim, procedural, ancillary or other incidental orders sought in the Initiating Application;

(b) seeking interim, procedural, ancillary or other incidental orders in the Response; or

(c) required to do so by item 5 or 6 of Table 2.2.

9.03 Response objecting to jurisdiction

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

(a) must file a Response to an Initiating Application (Family Law); and

(b) is not taken to have submitted to the jurisdiction of the court by seeking other orders in the Response to an Initiating Application (Family Law).

(2) The objection to the jurisdiction must be determined before any other orders sought in the Response to an Initiating Application (Family Law).

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Part 9.2—Reply to Response to an Initiating Application (Family Law)

9.04 Applicant reply to Response to an Initiating Application (Family Law) (Reply)

An applicant must file a Reply if:

(a) in the Response to an Initiating Application (Family Law), 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 Response to an Initiating Application (Family Law); or

(ii) different orders in the cause of action mentioned in the Response to an Initiating Application (Family Law).

9.04A Additional party reply to Response to an Initiating Application (Family Law), (Reply)

(1) This rule applies if, in a Response to an Initiating Application (Family Law), a respondent seeks orders against a person other than the applicant (***an additional party***).

(2) An additional party who seeks to oppose the orders sought in the Response to an Initiating Application (Family Law), or who seeks different orders, must file a Reply.

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Part 9.3—Response to Application in a Case

9.05 Response to Application in a Case

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

9.06 Affidavit to be filed with Response to an Application in a Case

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

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

9.07 Affidavit in reply to Response to an Application in a Case

If:

(a) a respondent files a Response to an Application in a Case seeking orders in a cause of action other than a cause of action mentioned in the Application in a Case; and

(b) the applicant opposes the orders sought in the Response to an Application in a Case;

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

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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 (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, 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 or a Response to an Application in a Case 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 Response to an Application in a Case.

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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 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 at any time before the court makes an order disposing of the appeal.

(3) An offer to settle:
(a) must be in writing; and
(b) must not be filed.

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

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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) an application relating to an offer; or
  (b) an application for costs.

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, to the party making the offer.

(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.

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Rule 10.05

10.05 Counter-offer

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

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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;
  (b) if no conciliation conference has been held—28 days after the procedural hearing at which the case was allocated the first day before the Judge; or
  (c) 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 must 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.

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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 .

(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 Notice of Discontinuance 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.

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Part 10.3—Summary orders and separate decisions

Note: An application under this Part is made by filing an Application in a Case 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

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).

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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.

Note: 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)).

(1A) A party who files an Application for Consent Orders if there is no current case must:
  (a) lodge a draft consent order; or
  (b) tender a draft consent order to a judicial officer during a court event.

(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;
  (c) be signed by each of the parties; and
  (d) be accompanied by additional copies of the order:
    (i) so that there is a copy for each person to be served and an additional copy for the court; and
    (ii) each of which is certified by the applicant's lawyer, or by each party to the application, as a true copy.

(2A) Subrule (1) does not apply to an application for a parenting order in relation to a child born under a surrogacy arrangement.

Note: Applications for a parenting order in relation to a child born under a surrogacy arrangement must be made by Initiating Application: see paragraph (c) in item 2A of table 2.2 in rule 2.02. Division 4.2.8 of these Rules and section 60HB of the Act also relate to children born under surrogacy arrangements.

(3) Paragraph (1)(b) does not apply if a party applies for a consent order:
  (a) for step-parent maintenance under section 66M of the Act;
  (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 Initiating Application (Family Law) as soon as the consent is received.

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Note: If an independent children's lawyer has been appointed in a case, the court will not make a consent order unless the independent children's lawyer has also signed the draft consent order (see subrule 8.02(4)).

10.15A Consent parenting orders and allegations of abuse or family violence

(1) This rule applies if an application is made to the court in a current case for a parenting order by consent.

(2) If an application is made orally during a hearing or trial, each party, or if represented by a lawyer, the party's lawyer:

(a) must advise the court whether the party considers that the child concerned has been, or is at risk of being, subjected to or exposed to abuse, neglect or family violence;

(b) must advise the court whether the party considers that he or she, or another party to the proceedings, has been or is at risk of being subjected to family violence; and

(c) if allegations of abuse or family violence have been made—must explain to the court how the order attempts to deal with the allegations.

(3) For any other application each party, or if represented by a lawyer, the party's lawyer:

(a) must certify in an annexure to the draft consent order whether the party considers that the child concerned has been, or is at risk of being, subjected to or exposed to abuse, neglect or family violence;

(b) must certify in the annexure whether the party considers that he or she, or another party to the proceedings, has been or is at risk of being subjected to family violence; and

(c) if allegations of abuse or family violence have been made—must explain in the annexure how the order attempts to deal with the allegations.

10.16 Notice to superannuation trustee

(1) This rule applies in a property case if a party intends to apply for a consent order which is expressed to bind the trustee of an eligible superannuation plan.

(2) The party must, not less than 28 days before lodging the draft consent order or filing the Application for Consent Orders, notify the trustee of the eligible superannuation plan in writing of the following:

(a) the terms of the order that will be sought to bind the trustee;

(b) the next court event (if any);

(c) that 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);

(d) that 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).

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

(4) Despite subrule (3), if, after service of notice under subrule (2) on the trustee, the trustee consents, in writing, to the order being made, the parties may file the Application for Consent Orders or lodge the draft consent order.

Note: Eligible superannuation plan is defined in section 90MD of the Act.

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 an Application for Consent Orders lapses if:

(a) 90 days have passed since the date of the first statement of truth in the Application for Consent Orders; and

(b) the Application for Consent Orders has not been filed.

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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; 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: (ii) a procedural hearing; (iii) a family consultant; (iv) family counselling or family dispute resolution; (v) a conference or other court event; or (vi) a post-separation parenting program; (b) require a party, a party's lawyer or an independent children's lawyer 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) finalise the balance sheet setting out all assets, liabilities and financial resources that either party asserts are relevant to the determination of the case; (f) with the consent of the parties, order that a case or part of a case be submitted to arbitration; (g) order a party to provide particulars, or further and better particulars, of the orders sought by that party and the basis on which the orders are sought; (h) order a party to produce any relevant document in a financial case to the

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Rule 11.02

Item	Subject	Power
		court or to any other party for the purpose of developing and finalising the balance sheet
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; (l) make an order granting permission for a party to perform an action if a provision of the Rules requires a party to obtain that permission; (m) for a fee that is required by law to be paid—order that the fee must be paid by a specified date

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.

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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 an Application in a Case or, with the court's permission, orally at a court event.

11.04 Certificate of vexatious proceedings order

(1) A request under subsection 102QC(1) of the Act for a certificate relating to a vexatious proceedings order must:
  (a) be in writing; and
  (b) include the following:
    (i) the name and address of the person making the request;
    (ii) the person's interest in making the request.

(2) The request must be lodged in the Registry in which the vexatious proceedings order was made.

(3) For the purposes of paragraph 102QC(2)(b) of the Act, the certificate must specify the following information:
  (a) the name of the person subject to the vexatious proceedings order;
  (b) if applicable, the name of the person who applied for the vexatious proceedings order;
  (c) the orders made by the court under subsection 102QB(2) of the Act.

Note: The certificate must also specify the date of the vexatious proceedings order: see paragraph 102QC(2)(a) of the Act.

11.05 Application for leave to institute proceedings after vexatious proceedings order made

(1) This rule applies if the court has made an order under:

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(a) subsection 102QB(2) of the Act; or

(b) any of the following, as in force immediately before the commencement of Schedule 3 to the *Access to Justice (Federal Jurisdiction) Amendment Act 2012*:

(i) paragraph 118(1)(c) or subsection 118(2) of the Act;

(ii) paragraph 11.04(1)(b) of these Rules;

and the person against whom the order was made applies for leave to institute or continue proceedings.

(2) An application under subsection 102QE(2) of the Act must be:

(a) in the form of an Application in a Case; and

(b) made without notice to any other party.

Note 1: For the contents of the affidavit that must be filed with the application, see subsection 102QE(3) of the Act.

Note 2: For rules 11.04 and 11.05 as in force immediately before the commencement of Schedule 3 to the *Access to Justice (Federal Jurisdiction) Amendment Act 2012*, see Schedule 7 of these Rules.

(3) On the first court date for the application, the court may:

(a) dismiss the application; or

(b) order the person to:

(i) serve the application and affidavit; and

(ii) file and serve any further affidavits in support of the application; and

(iii) list the application for hearing.

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).

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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.

(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.

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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).

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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 Initiating Application (Family Law):

(i) at any time before the procedural hearing at which the case is allocated the first day before the Judge; or

(ii) if the court gives permission—at a later time;

(b) for an Application in a Case:

(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 an Initiating Application (Family Law) or Response to an Initiating Application (Family Law); 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.

(4) If a date is set for a further procedural hearing, the party amending the Initiating Application (Family Law) or Response to an Initiating Application (Family Law) under subrule (2) must give each other party written notice of the hearing.

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

(1) 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.

(2) If the court gives permission for a party to amend a document, the permission is taken to be given by court order.

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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.

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.

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Part 11.3—Venue

Division 11.3.1—Open court and chambers

11.16 Venue for proceedings

(1) Proceedings in the court (other than a trial) may be heard in chambers.

(2) If a case is determined in chambers, the judicial officer who determined the case must record the following:
  (a) the file number;
  (b) the names of the parties;
  (c) the date of the determination;
  (d) the orders made.

(3) If a judgment is given in proceedings:
  (a) the judgment must be pronounced in open court; and
  (b) if the reasons for judgment are reduced to writing—the written reasons must be published by delivering them to the Registrar or an associate in open court.

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Division 11.3.2—Transferring a case

11.17 Transfer to another court or registry

A party may apply to have a case:

(a) heard at another place; or

(b) transferred to another registry or court exercising jurisdiction under the Act.

11.18 Factors to be considered for transfer

(1) In making a decision under rule 11.17 or in deciding whether 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;

(g) the adequacy of the available facilities, having regard to any disability of a party or witness; and

(h) 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 Circuit 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 Circuit Court;

(c) whether the resources of the Federal Circuit Court are sufficient to hear and determine the case; and

(d) the interests of the administration of justice.

(2) Subrule (1) 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;

(b) the transfer of a case under the *Corporations Act 2001*; or

(c) a case that must be transferred in accordance with a legislative provision.

Note: Division 4.2.2 deals with cross-vesting laws and Chapter 25 deals with cases under the *Corporations Act 2001*.

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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.

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Chapter 12—Court events—Registrar managed

Summary of Chapter 12

Chapter 12 sets out rules about the events that parties to an Application for Final Orders may be required to attend before the first day before the Judge is allocated. Depending on whether it is a parenting case or a financial case, these include:

(a) a case assessment conference;

(b) an initial procedural hearing;

(c) the Child Responsive Program;

(d) a conciliation conference; and

(e) a procedural hearing where the case is set down for the first day before the Judge

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 12.1—Application of Chapter 12

12.01 Application of Chapter 12

This Chapter applies to all Initiating Applications (Family Law), 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 relates to a passport (see Division 4.2.7).

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Part 12.2—Specific court events

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 or an opinion as to value in relation to 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.

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Rule 12.03

12.03 Case assessment conference

(1) A case assessment conference must be held in the presence of a Registrar.

(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; and
  (c) to determine whether the case:
    (i) is suitable to remain in the Family Court; or
    (ii) should be transferred to another court exercising jurisdiction under the Act.

(3) At a case assessment conference, each party must, as far as practicable, identify each of the following:
  (a) any procedural orders sought;
  (b) the agreed issues;
  (c) the items to be included on the balance sheet;
  (d) any areas of controversy about the assets, liabilities, superannuation and financial resources of the parties;
  (e) any person who may be entitled to become a party to the case;
  (f) any other relevant matter related to the main purpose of these Rules (see rule 1.04).

(4) If the case is not settled by the end of the conference, the court will make procedural orders for the future conduct of the matter, including:
  (a) if appropriate—an order that the parties attend a conciliation conference; or
  (b) if the case is suitable to be allocated the first day before the Judge—procedural orders under rule 12.08.

(5) If the proceedings also involve parenting issues and the case is not settled by the end of the conference, the parties may be ordered to attend the Child Responsive Program.

Note 1: A party and a party's lawyer must attend a case assessment conference (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)).

Note 3: Evidence of a communication made at a case assessment conference may be excluded (see section 131 of the *Evidence Act 1995*).

12.04 Initial procedural hearing in a parenting case

(1) The purpose of an initial procedural hearing in a parenting case is:
  (a) to enable the person conducting the hearing:
    (i) to assess the case;
    (ii) to make recommendations about the future conduct of the case; and

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(iii) to determine whether the case is suitable to remain in the Family Court or should be transferred to another court exercising jurisdiction under the Act; and

(b) to enable the parties to attempt to resolve the case, or any part of the case, by agreement.

(2) If the case is not settled at the end of the hearing, the person conducting the hearing:

(a) must make procedural orders for the future conduct of the case; and

(b) may order the parties to attend the Child Responsive Program.

Note: A party to a parenting case must disclose a copy of an expert's report no later than 2 days before the first court event (see paragraph 15.55(1)(a)).

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) Within 28 days after the case assessment conference, each party must, as far as practicable, exchange with each other party:

(a) if not already exchanged, a copy of all the documents mentioned in rule 12.02; and

(b) any other documents ordered at the case assessment conference to be exchanged.

12.06 Financial questionnaire and balance sheet

(1) Within 21 days after the case assessment conference, each party must file a financial questionnaire in the form approved by the Chief Executive Officer.

(2) Within 28 days after the case assessment conference, the applicant must:

(a) prepare a balance sheet in the form approved by the Chief Executive Officer by completing all items and values asserted by the applicant; and

(b) send the balance sheet to the respondent.

(3) Within 21 days after receiving the balance sheet, the respondent must:

(a) add the respondent's estimated values for all items on the balance sheet prepared by the applicant;

(b) add any items to the balance sheet the respondent asserts have been omitted from the balance sheet and assert values for those items;

(c) complete the notes relating to all disputed items and all disputed values for items; and

(d) return the amended balance sheet to the applicant.

(4) Within 14 days after receiving the amended balance sheet, the applicant must:

(a) add the applicant's estimated values for all items added to the balance sheet by the respondent;

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(b) complete the notes relating to all disputed items and all disputed values for items; and

(c) file the balance sheet with the court.

Note 1: For the service requirements for a document filed with the court, see rule 7.04.

Note 2: Subsection 131(1) of the *Evidence Act 1995* does not apply to the financial questionnaire or balance sheet.

12.07 Conduct of a conciliation conference

(1) A conciliation conference must be conducted by a judicial officer.

(2) Each party at a conciliation conference must make a genuine effort to reach agreement on the matters in issue between them.

Note 1: A party and a party's lawyer must attend a conciliation conference (see subrule 12.11(1)).

Note 2: Evidence of a communication made at a conciliation conference may be excluded (see section 131 of the *Evidence Act 1995*).

12.08 Procedural hearing in a financial case

(1) For a financial case:

(a) if a conciliation conference has been held—a procedural hearing must take place immediately after the conciliation conference ends; and

(b) if a conciliation conference is not scheduled to be held before the first day before the Judge, the procedural hearing must be held at the conclusion of the case assessment conference.

(2) The purpose of the procedural hearing in a financial case is to enable the person conducting the hearing to make procedural orders for the conduct of the case, including orders for any of the following matters:

(a) if a conciliation conference has been held:

(i) the clarification of any disputed items in the balance sheet; and

(ii) the clarification of any issue arising out of a statement made by a party in a financial questionnaire;

(b) payment of the hearing fee;

(c) filing of undertakings as to disclosure;

(d) allocating a date for a compliance check as close as practicable to 21 days before the first day before the Judge;

(e) allocating the first day before the Judge.

12.09 Procedural hearing after the Child Responsive Program

(1) A procedural hearing must take place as soon as practicable after the parties complete the Child Responsive Program.

(2) The purpose of the procedural hearing after the Child Responsive Program is to enable the person conducting the hearing to make procedural orders for the conduct of the case, including orders for any of the following matters:

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(a) referring parties to family counselling, family dispute resolution and other family services;
(b) appointment of an independent children's lawyer;
(c) payment of the hearing fee;
(d) completion by each party of a parenting questionnaire;
(e) filing of undertakings as to disclosure;
(f) allocating a date for a compliance check as close as practicable to 21 days before the first day before the Judge;
(g) allocating the first day before the Judge.

Note: The court would usually order that the parties attend this event by electronic communication.

12.10 Procedural hearing where the application includes both a financial case and a parenting case

(1) This rule applies if:
(a) an application includes a financial case and a parenting case;
(b) the financial case remains unresolved after the conciliation conference; and
(c) the parenting case remains unresolved after the parties complete the Child Responsive Program.

(2) A procedural hearing must be held as soon as practicable after the later of:
(a) completion of the conciliation conference; or
(b) completion of the Child Responsive Program.

(3) The purpose of the procedural hearing is to enable the person conducting the hearing to take the actions mentioned in subrules 12.08(2) and 12.09(2).

Note: The court would usually order that the parties attend this event by electronic communication.

12.10A Expedition

(1) A party may apply to expedite the first day before the Judge.

Note: For the procedure for making an application in a case, see Chapter 5.

(2) The court may take into account:
(a) whether the applicant has acted reasonably and without delay in the conduct of the case;
(b) whether the application has been made without delay;
(c) any prejudice to the respondent; and
(d) whether there is a relevant 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) set an early first day before the Judge; and
(b) make procedural orders for the further conduct of the case.

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Rule 12.10A

(4) For paragraph (2)(d), a ***relevant 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 would affect the availability or competence of the party or witness;

(b) whether a party has been violent, harassing or intimidating to another party, a witness or any child the subject of, or affected by, the case;

(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 a child 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.

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Part 12.4—Attendance at court events

12.11 Party's attendance

(1) A party and the party's lawyer (if any) must attend each procedural hearing, case assessment conference or conciliation 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)).

Note 4: Rule 16.02 deals with compliance checks.

12.12 Attendance by electronic communication

Rules 5.06 and 5.07 apply in relation to the use of electronic communication to attend a court event (other than a trial) as if the court event were a hearing.

Note: Rule 16.05 sets out the requirements in relation to attending a trial 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 to an Application for Final Orders—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, 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.

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Rule 12.14

Part 12.5—Adjournment and postponement of court events

12.14 Administrative postponement of conferences or procedural hearings

(1) If the applicant and any party served agree that a case assessment conference or a procedural hearing should not proceed on the date fixed for it, the applicant and any party served may request the Registry Manager to postpone the conference or hearing.

(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 making the request 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 conference or 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.

(4) The Registry Manager must not postpone a conference more than once or any 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.

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Chapter 13—Disclosure

Summary of Chapter 13

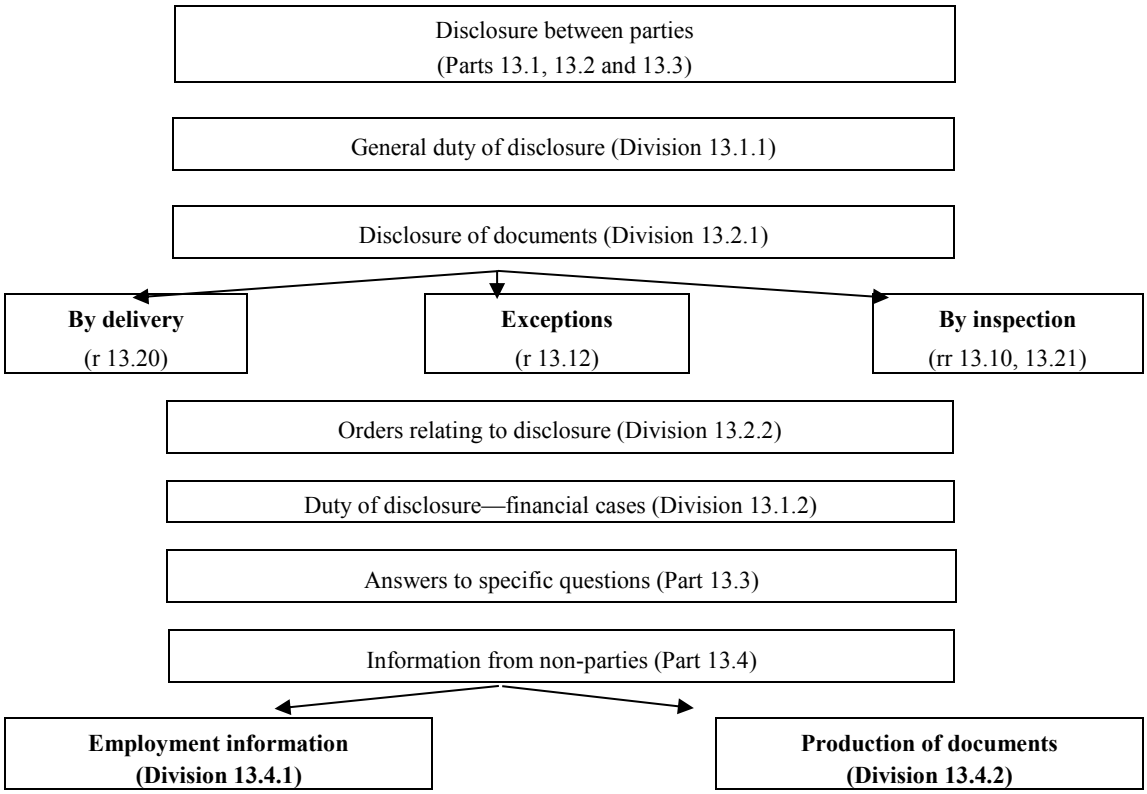
Chapter 13 sets out the rules about:

- 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.



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Part 13.1—Disclosure between parties

Division 13.1.1—General duty of disclosure

13.01 General duty of disclosure

(1) Subject to subrule (3), 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)).

(3) This rule does not apply to a respondent in an application alleging contravention or contempt.

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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 or de facto relationship 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

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(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

(1) A party starting, or filing a response or reply to, a financial case (other than by an Application for Consent Orders) must file a Financial Statement at the same time.

(2) If a party is aware that the completion of a Financial Statement 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

If a party's financial circumstances have changed significantly from the information set out in the Financial Statement or the affidavit filed under rule 13.05, the party must, within 21 days after the change of circumstances, file:

(a) a new Financial Statement; or

(b) if the amendments can be set out clearly in 300 words or less—an affidavit containing details about the party's changed financial circumstances.

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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 4.26(2);

(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.

13.07A Use of documents

A person who inspects or copies a document, in relation to a case, under these Rules or an order:

(a) must use the document for the purpose of the case only; and

(b) must not otherwise disclose the contents of the document, or give a copy of it, to any other person without the court's permission.

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 independent children's lawyer; or

(b) in correspondence prepared and sent by or to another party or independent children's lawyer.

(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.

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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

Subject to rule 15.55, 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:

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(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 an independent children's lawyer) 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 independent children's lawyer) 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 independent children's lawyer) to give full and frank disclosure of all information relevant to the issues in the case, in a timely manner; and

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(c) undertake to the court that, to the best of my knowledge and ability, I have complied with, and will continue to comply 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 at least 28 days before the first day before the Judge.

Note: The court may shorten or extend the time for compliance with a rule (see rule 1.14).

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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 Contravention Application;

(g) a Contempt Application.

13.18 Party may seek order about disclosure

A party to an application to which this Division applies 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.

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Division 13.2.3—Disclosure of documents—Initiating Applications (Family Law)

13.19 Application of Division 13.2.3

(1) This Division applies to all Initiating Applications (Family Law), 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; or
  (d) an Initiating Application (Family Law) seeking an interim, procedural, ancillary or other incidental order.

(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 a case has been allocated to a first day before the Judge, 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

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(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: Rule 13.07 sets out the documents to which the duty of disclosure applies.

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) 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).

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Note 2: An application under this Chapter is made by filing an Application in a Case 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.

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Part 13.3—Answers to specific questions

13.25 Application of Part 13.3

This Part applies to all applications seeking final orders, 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; or

(d) an Initiating Application (Family Law) seeking an interim, procedural, ancillary or other incidental order.

13.26 Service of specific questions

(1) After a case has been allocated to a first day before a Judge, 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.

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Rule 13.28

13.28 Orders in relation to specific questions

(1) 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.

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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.

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Rule 14.01

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 an Initiating Application (Family Law) seeking interim, procedural, ancillary or incidental orders, or an Application in a Case (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 for interim, procedural, ancillary or other incidental orders, see Chapter 5.

14.02 Service of application

(1) A party who has applied for an order under rule 14.01 must:

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(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 for interim, procedural, ancillary or other incidental orders, 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.

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Rule 14.05

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 for interim, procedural, ancillary or other incidental orders, see Chapter 5.

14.06 Notice to superannuation trustee

(1) This rule applies in a property case if:

(a) a party seeks an order to bind the trustee of an eligible superannuation plan; and

(b) the case has been listed for the first day before the Judge.

(2) The party must, not less than 28 days before the first day before the Judge, notify the trustee of the eligible superannuation plan in writing of the terms of the order that will be sought at the trial to bind the trustee, and the date of the trial.

(3) If the court makes an order binding the trustee of an eligible superannuation plan, the party that sought the order must serve a copy of the order on the trustee of the eligible superannuation plan in which the interest is held.

Note 1: Subrule 7.13(2) sets out how to prove service of a copy of an order.

Note 2: Eligible superannuation plan is defined in section 90MD of the Act.

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14.07 Notice about intervention under Part VIII or VIIIAB of Act

(1) A person who applies for an order under Part VIII of the Act must serve a written notice on each person mentioned in subsection 79(10) of the Act.

(2) A person who applies for an order under Part VIIIAB of the Act must serve a written notice on each person mentioned in subsection 90SM(10) of the Act.

(3) The notice must:

(a) state that the person to whom the notice is addressed may be entitled to become a party to the case under the subsection of the Act for which the notice is served;

(b) include a copy of the application for the order sought; and

(c) state the date of the next relevant court event.

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Rule 15.01

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*).

Sections 69ZT to 69ZX of the Act apply to a case to which Division 12A of Part VII of the Act applies.

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.

15.01 Definition

In this Chapter:

relevant date, for an affidavit, report or document proposed to be entered into evidence, means the earlier of:

(a) the first day of the trial in which the affidavit, report or document is to be relied on in evidence; or

(b) the first day when the affidavit, report or document is to be relied on in evidence.

Part 15.1—Children

15.02 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.

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15.04 Family reports

If a family report is prepared in a case, the court may:

(a) release copies of the report to each party, or the party's lawyer, and to an independent children's lawyer;

(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.

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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 No general right to file affidavits

A party may file an affidavit without the leave of the court only if a provision of the Rules or an order of the court allows the affidavit to be filed in that way.

15.06 Reliance on affidavits

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

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.

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(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.

Example 1: The second of July, Nineteen Hundred and Sixty-Four must be written as '2 July 1964'.

Example 2: Twenty dollars must be written as '$20.00'.

Note 1: 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.

15.12 Documents attached

(1) A document to be used in conjunction with an affidavit must:

(a) subject to subrules (2), (5) and (7), be attached to the affidavit;

(b) have its pages consecutively numbered beginning on the first page of the document with:

(i) if the document is the first or only document used in conjunction with the affidavit—the numeral '1'; or

(ii) if the document is not the first document used in conjunction with the affidavit—the numeral following the numeral appearing on the last page of the preceding document; and

(c) bear a statement, signed by the witness before whom the affidavit is made, identifying it as the document used in conjunction with the affidavit.

(2) A document to be used in conjunction with an affidavit must not be attached to the affidavit if:

(a) the document is more than 2.5 cm in thickness; or

(b) if the document is not more than 2.5 cm in thickness—the document and the affidavit, including any other documents to be used in conjunction with the affidavit, when combined are more than 2.5 cm in thickness.

(3) If a document to be used in conjunction with an affidavit must not be attached to the affidavit because of subrule (2), the document must be filed:

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(a) if the document is not more than 2.5 cm in thickness—in a separate volume; or

(b) if the document is more than 2.5 cm in thickness—in as many separately indexed volumes, each not more than 2.5cm in thickness, as are required to contain the document.

(4) An index of contents must be included at the beginning of:

(a) if more than 1 document is attached to an affidavit in accordance with paragraph (1)(a)—the documents attached to the affidavit; or

(b) if more than 1 volume is filed in accordance with paragraph (3)(b)—each volume.

(5) If a document to be used in conjunction with an affidavit is unable to be attached to the affidavit, the document must be identified in the affidavit and filed.

(6) Paragraph (1)(c) does not apply to an attachment to an Affidavit of Service .

(7) If an affidavit is filed electronically and the document or documents to be used in conjunction with the affidavit consist, in total, of more than 50 pages:

(a) each document must be filed as an exhibit to the affidavit;

(b) each document must be served at the same time as the hard copy of the affidavit; and

(c) a hard copy of each exhibit must be filed with the court at least 48 hours before the court event in which the affidavit is to be relied on.

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.

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 relevant date, 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.

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(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.

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Part 15.3—Subpoenas

Division 15.3.1—General

15.16 Interpretation

(1) In this Part:

interested person, in relation to a subpoena, means a person who has a sufficient interest 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.

subpoena for production means a subpoena mentioned in paragraph 15.17(1)(a).

(2) In this Part, a reference to a document includes a reference to an object.

Note: For the definition of ***document***, see the *Acts Interpretation Act 1901*.

15.17 Issuing a subpoena

(1) Subject to rule 22.34, the court may issue:
(a) a subpoena for production;
(b) a subpoena to give evidence; or
(c) a subpoena for production and to give evidence.

(1A) A subpoena mentioned in subrule (1) must be in the approved form.

(2) Subject to rule 15.21, the court will issue a subpoena mentioned in subrule (1) at the request of a party only if:
(a) the party has requested permission from the court; and
(b) the court has granted permission.

Note: A request for permission should generally be made at a court event.

(3) For subrule (2), a request for the court's permission:
(a) may be made orally or in writing;
(b) may be made without giving notice to any other parties; and
(c) may be determined in chambers in the absence of the other parties.

(3A) A party must not request the issue of a subpoena for production and to give evidence if production would be sufficient in the circumstances.

(4) A subpoena must identify the person to whom it is directed by name or description of office.

(5) A subpoena may be directed to 2 or more persons if:

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(a) the subpoena is to give evidence only; or
(b) the subpoena requires each named person to produce the same document (rather than the same class of documents).

(6) 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.

(7) A subpoena to give evidence must specify the time and place at which the person must attend court to give evidence.

(8) A subpoena for production and to give evidence must:
(a) identify the document to be produced; and
(b) specify the time and place at which the person must attend court to produce the document and give evidence.

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).

15.20 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 Subpoenas to produce documents

A party or an independent children's lawyer may seek the issue of a subpoena to produce documents for the hearing of an application seeking interim, procedural, ancillary or other incidental orders without permission from the court.

15.22 Service

(1) The issuing party for a subpoena must serve the named person, in accordance with subrule (1A), with:
(a) the subpoena; and
(b) the brochure, approved by the Chief Executive Officer, containing information about subpoenas.

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(1A) A document required to be served under subrule (1) must be served:

(a) in relation to a subpoena for production—either:

(i) by ordinary service; or

(ii) by a manner of service agreed between the issuing party and the named person; and

(b) in relation to a subpoena to give evidence, or a subpoena for production and to give evidence—by hand.

(2) The issuing party for a subpoena must serve a copy of the subpoena, in accordance with subrule (2A), on:

(a) each other party; and

(b) each interested person in relation to the subpoena; and

(c) the independent children's lawyer (if any).

(2A) A document required to be served under subrule (2) must be served:

(a) by ordinary service; or

(b) by a manner of service agreed between the issuing party and the person to be served.

(3) Unless the court directs otherwise, a document required to be served under subrule (1) or (2) must be served:

(a) in relation to a subpoena for production—at least 10 days before the day on which production in accordance with the subpoena is required; and

(b) in relation to a subpoena to give evidence—at least 7 days before the day on which attendance in accordance with the subpoena is required; and

(c) in relation to a subpoena for production and to give evidence—at least 10 days before the day on which production and attendance in accordance with the subpoena is required.

(4) A subpoena must not be served on a child without the court's permission.

Note: Chapter 7 also contains other requirements relating to service.

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.

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15.24 When compliance is not required

(1) A named person does not have to comply with the subpoena if:
  (a) the person was not served in accordance with these Rules; or
  (b) conduct money was not tendered to the person:
    (i) at the time of service; or
    (ii) at a reasonable time before the day on which attendance or production in accordance with the subpoena is required.

(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

(1) If:
  (a) a subpoena is issued in relation to proceedings; and
  (b) the named person or an interested person in relation to the subpoena, or an independent children's lawyer in the proceedings:
    (i) seeks an order that the subpoena be set aside in whole or in part; or
    (ii) seeks any other relief in relation to the subpoena;

  the person must, before the day on which attendance or production in accordance with the subpoena is required, apply to the court, in writing, for the relevant order.

(2) If a person makes an application under subrule (1), the subpoena must be referred to the court for the hearing and determination of the application.

  Note: An application to set aside a subpoena issued in an appeal will be listed for determination before the court hearing the appeal.

(3) The court may compel a person to produce a document to the court for the purpose of determining an application under subrule (1).

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Division 15.3.2—Production of documents and access by parties

15.27 Application of Division 15.3.2

This Division applies to a subpoena for production.

15.29 Compliance with subpoena

(1) A named person may comply with a subpoena for production by providing to the court, at the place specified in the subpoena, on or before the day on which production in accordance with the subpoena is required:
  (a) the required documents and a copy of the subpoena; or
  (b) copies of the required documents attached to an affidavit.

(2) For paragraph (1)(b), the affidavit must:
  (a) state that is it an affidavit under rule 15.29;
  (b) have attached to it a copy of the subpoena for production;
  (c) verify the attached copies as accurate copies of the original documents mentioned in the subpoena; and
  (d) be sworn by the named person.

(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.

(4) In this rule:

copy includes:
  (a) a photocopy; and
  (b) a PDF copy on a CD-ROM; and
  (c) a copy in any other electronic form that the issuing party for the subpoena has indicated is acceptable.

15.30 Right to inspect and copy documents

(1) This rule applies if:
  (a) the court issues a subpoena for production in relation to proceedings; and
  (b) at least 10 days before the day (the ***production day***) on which production in accordance with the subpoena is required, the issuing party:
    (i) serves the named person with the subpoena and the brochure in accordance with subrule 15.22(1); and
    (ii) serves each person mentioned in subrule 15.22(2) with a copy of the subpoena in accordance with that subrule; and

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(c) no objection under rule 15.31 to production of a document required in accordance with the subpoena is made by the production day; and
(d) the named person complies with the subpoena; and
(e) on or after the production day, the issuing party files a notice of request to inspect in an approved form.

(2) Each party to the proceedings, and any independent children's lawyer in the proceedings, may:
(a) inspect a document produced in accordance with the subpoena; and
(b) take copies of a document (other than a child welfare record, criminal record, medical record or police record) produced in accordance with the subpoena.

(3) Subrule (2) has effect subject to paragraph 15.31(4)(c) (inspection of medical records).

(4) Unless the court orders otherwise, an inspection under paragraph (2)(a):
(a) must be by appointment; and
(b) may be made without an order of the court.

15.31 Objections relating to production of documents

Objection to producing, or to inspection or copying of, a document

(1) Subrule (2) applies if a subpoena for production is issued in relation to proceedings, and:
(a) the named person objects to producing a document in accordance with the subpoena; or
(b) any of the following objects to the inspection or copying of a document identified in the subpoena:
(i) the named person;
(ii) an interested person in relation to the subpoena;
(iii) another party to the proceedings;
(iv) any independent children's lawyer in the proceedings.

(2) The person or party (the ***objector***) must, before the day on which production in accordance with the subpoena is required, give written notice of the objection and the grounds for the objection, to:
(a) the Registry Manager; and
(b) if the objector is not the named person—the named person; and
(c) each party, or other party, to the proceedings; and
(d) each independent children's lawyer, or each other independent children's lawyer, in the proceedings.

Objection relating to inspection or copying of medical records

(3) If a subpoena for production requires the production of a person's medical records, the person may, before the day (the ***production day***) on which

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production in accordance with the subpoena is required, notify the Registry Manager in writing that the person wishes to inspect the medical records for the purpose of determining whether to object to the inspection or copying of the records.

(4) If a person (the ***potential objector***) gives notice under subrule (3):
  (a) the potential objector may inspect the medical records; and
  (b) if the potential objector wishes to object to the inspection or copying of the records—the potential objector must, within 7 days of the production day, give written notice of the objection and the grounds for the objection, to the Registry Manager; and
  (c) unless the court orders otherwise, no other person may inspect the medical records until the later of:
    (i) 7 days after the production day; and
    (ii) if the potential objector makes an objection under paragraph (b)—the end of the hearing and determination of the objection.

Referral of subpoena to the court

(5) If a person makes an objection under subrule (2) or paragraph (4)(b), the subpoena must be referred to the court for the hearing and determination of the objection.

(6) The court may compel a person to produce a document to the court for the purpose of ruling on an objection under subrule (2) or paragraph (4)(b).

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.

15.34 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.

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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 at least 28 days, and no later than 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 24.14(4)).

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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).

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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:

(a) an Initiating Application (Family Law) and an affidavit; or

(b) after a case has commenced—an Application in a Case and an affidavit.

(2) The affidavit filed with the application 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 independent children's lawyer.

(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.

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(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.

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Part 15.5—Expert evidence

Division 15.5.1—General

15.41 Application of Part 15.5

(1) This Part (other than rule 15.55) does not apply to any of the following:

(a) 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 any or all of the following:

(i) the results of an examination, investigation or observation made;

(ii) a description of any treatment carried out or recommended;

(iii) expressions of opinion limited to the reasons for carrying out or recommending treatment and the consequences of the treatment, including a prognosis;

(b) evidence from an expert who has been retained for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case, being evidence:

(i) about that expert's involvement with a party, child or subject matter of a case; and

(ii) describing the reasons for the expert's involvement and the results of that involvement;

(c) evidence from an expert who has been associated, involved or had contact with a party, child or subject matter of a case for a purpose other than the giving of advice or evidence, or the preparation of a report for a case or anticipated case, being evidence about that expert's association, involvement or contact with that party, child or subject matter;

(d) evidence from family consultant employed by a Family Court (including evidence from a person appointed under regulation 8 of the Regulations).

Example: An example of evidence excluded from the requirements of this Part (other than rule 15.55) is evidence from a treating doctor or a teacher in relation to the doctor's or teacher's involvement with a party or child.

(2) Nothing in this Part prevents an independent children's lawyer communicating with a single expert witness.

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;

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(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 Definition

In this Part:

expert's report means a report by an expert witness, including a notice under subrule 15.59(5).

Note: ***expert***, ***expert witness*** and ***single expert witness*** are defined in the Dictionary.

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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.

Note: Subrule 15.54(3) sets out the requirements that apply to instructions to a single expert witness appointed by agreement between the parties.

(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;

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

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 tender a report or adduce evidence from another expert witness on the same issue if it is satisfied that:

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(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.

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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) An independent children's lawyer 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.

Note 1: A party who files an Application in a Case 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.

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(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).

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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, Divisions 15.5.4, 15.5.5 and 15.5.6 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.

(3) The parties must give the expert an agreed statement of facts on which to base the report.

(4) However, if the parties do not agree on a statement of facts:
   (a) unless the court directs otherwise—each of the parties must give to the expert a statement of facts on which to base the report; and
   (b) the court may give directions about the form and content of the statement of facts to be given to the expert.

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 first court event; 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.

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(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 independent children's lawyer (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 independent children's lawyer consent to the report being used or the expert witness being called, or the court orders otherwise.

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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) Before final orders are made, 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.

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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 Divisions 15.5.4, 15.5.5 and 15.5.6 of the *Family Law Rules 2004* and have used my best endeavours to comply with them.

I have complied with the requirements of the following professional codes of conduct or protocol, being [*state the name of the code or protocol*].

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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.

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Note: For the court's power to order costs, see subsection 117(2) of the Act.

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Division 15.5.6—Clarification of single expert witness reports

15.64A Purpose

(1) The purpose of this Division is to provide ways of clarifying a report prepared by a single expert witness.

(2) Clarification about a report may be obtained at a conference under rule 15.64B or by means of questions under rule 15.65.

15.64B Conference

(1) Within 21 days after receipt of the report of a single expert witness, the parties may enter into an agreement about conferring with the expert witness for the purpose of clarifying the report.

(2) The agreement may provide for the parties, or for one or more of them, to confer with the expert witness.

(3) Without limiting the scope of the conference, the parties must agree on arrangements for the conference.

(4) It is intended that the parties should be free to make any arrangements for the conference that are consistent with this Division.

Note: For example, arrangements for a conference might include the attendance of another expert, or the provision of a supplementary report.

(5) Before participating in the conference, the expert witness must be advised of arrangements for the conference.

(6) In seeking to clarify the report of the expert witness, the parties must not interrogate the expert witness.

(7) If the parties do not agree about conferring with a single expert witness, the court, on application by a party, may order that a conference be held in accordance with any conditions the court determines.

15.65 Questions to single expert witness

(1) A party seeking to clarify the report of a single expert witness may ask questions of the single expert witness under this rule:
  (a) within 7 days after the conference under rule 15.64B; or
  (b) if no conference is held, within 21 days after receipt of the single expert witness's report by the party.

(2) The questions must:
  (a) be in writing and be put once only;
  (b) be only for the purpose of clarifying the single expert witness's report; and

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(c) not be vexatious or oppressive, or require the single 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

(1) The reasonable fees and expenses of a single expert witness incurred in relation to a conference are to be paid as follows:
(a) if only one of the parties attends the conference—by that party; or
(b) if more than one of the parties attends the conference—by those parties jointly.

(2) If a single expert witness answers questions under rule 15.66, his or her reasonable fees and expenses incurred in answering any questions are to be paid by the party asking the questions.

(3) A single expert witness is not required to undertake any work in relation to a conference or answer any questions until the fees and expenses for that work or those answers are paid or secured.

(4) Subrule (3) is not affected by subrule 15.66(1).

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

(5) In this rule:

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attend includes attendance by electronic communication.

15.67A Application for directions

A party may apply to the court for directions relating to a conference with a single expert witness or the asking or answering of questions under this Division.

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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 28 days before the relevant date; 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) Divisions 15.5.4, 15.5.5 and 15.5.6 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.

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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.

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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.

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(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 16.05 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.

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.

15.77 Parenting questionnaire

(1) This rule applies to a parenting case.

(2) Each party to the case must file a completed questionnaire at least 28 days before the first day before the Judge.

(3) The questionnaire must be in the form approved by the Chief Executive Officer.

Note: For the service requirements for a document filed with the court, see rule 7.04.

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Chapter 16—Court events—Judge managed

Summary of Chapter 16

Chapter 16 sets out the trial process after the case has been allocated to the first day before the Judge. Further specific provisions in Chapter 16A apply to a trial to which Division 12A of Part VII of the Act applies.

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—Preliminary

16.01 Application

This Chapter applies to all Applications for final orders, 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; and

(e) an application in which the only order sought relates to a passport (see Division 4.2.7).

16.02 Compliance check

(1) The purpose of a compliance check is:

(a) to check that all procedural orders have been complied with;

(b) to consider any new issues that may have arisen since the last court event and their effect on the listing of the matter for the first day before the Judge; and

(c) in a financial case—to check the completeness of the balance sheet.

(2) At the compliance check, the court may make orders about the further conduct of the case.

Note: The court would usually order that the parties attend this event by electronic communication.

16.03 Vacating dates that are Judge managed

(1) A party seeking to vacate the first day before the Judge, or any subsequent date when the case has been set down before the Judge, must apply to do so at the earliest possible time before the allocated date.

(2) The first day before the Judge or any subsequent date will only be vacated for substantial and significant reason.

(3) If final agreement has been reached between the parties, the applicant must:

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(a) immediately tell the court in writing after agreement is reached; and
(b) arrange for the case to be finalised by consent order, or discontinuance or dismissal.

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Part 16.2—Proceedings before the Judge—general

Note: Before the first day before the Judge, the Judge should have available to read:

- in a parenting case—the application and response and each parties parenting questionnaire;
- in a financial case—the application and response, each parties financial statement, each parties financial questionnaire and the balance sheet; and
- any other documents ordered to be filed before the first day before the Judge.

16.04 Trial management

For Part 16.3, the court may make any order about the conduct of the trial, including an order:

(a) related to the issues on which the court requires evidence, including:

(i) the nature of the evidence (including expert evidence) required to decide the issues;

(ii) which witnesses a party may call on a particular issue;

(iii) how the evidence is to be adduced;

(iv) granting permission to issue subpoenas to produce documents or to attend, or both;

(v) preparation by a family consultant of a family report, or requiring the family consultant to undertake other investigations or carry out other tasks having regard to the functions of family consultants set out in section 11A of the Act;

(vi) determining any evidentiary questions that arise;

(vii) the time to be taken for evidence in chief, cross examination or re-examination of witnesses to give evidence, and submissions; or

(viii) the sequence of evidence and addresses;

(b) limiting the time for the presentation of a parties case; or

(c) allocating a date or series of dates for the trial.

16.05 Attendance, submissions and evidence by electronic communication

Note: The issue of whether a party wishes to attend, make a submission, give evidence or adduce evidence from a witness at any court event that is Judge managed by electronic communication will be discussed at the appropriate court event, 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 16.05.

(1) A party may apply for permission to do any of the following things by electronic communication at any court event that is Judge managed:

(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:

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(a) filed at least 28 days before the event; and
(b) listed before the 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 (c) 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;
(h) if the application relates to evidence to be adduced from a witness in a foreign country—the matters required to be addressed under rule 16.06;
(i) if the application relates to making a submission, giving evidence or adducing evidence from New Zealand—the facilities that enable evidence to be given or a submission to be made, as required by Part 4 of the *Evidence and Procedure (New Zealand) Act 1994*.

Note: Part 4 of the *Evidence and Procedure (New Zealand) Act 1994* (the ***EP Act***) applies to proceedings in a federal court, or a court specified in regulations made under the EP Act, in which a direction is made for the use of video link or telephone to take evidence or make a submission from New Zealand.

Subsection 25(2) of the EP Act sets out the matters of which a court must be satisfied before it may make a direction under subsection 25(1) of that Act. The EP Act also

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provides that evidence is not to be given, or a submission made, from New Zealand unless the place where the court is sitting and the place where the evidence is to be given or a submission made are equipped with facilities enabling the persons at each place to see and hear each other in the case of video link (see section 26), or to hear each other in the case of a telephone conference (see section 27).

(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.

(6) For paragraph (3)(h):

foreign country has the meaning given by subrule 16.06(2).

16.06 Foreign evidence by electronic communication

(1) In addition to the requirements of rule 16.05, a party who proposes to adduce evidence by electronic communication from a witness in a foreign country must satisfy the court:

(b) that the party has made appropriate inquiries to determine the attitude of the foreign country's government to the taking of evidence by electronic communication; and

(c) whether permission is needed from the foreign country's government to adduce evidence from a witness in that country by electronic communication; and

(d) if permission is needed, whether permission has been granted or refused; and

(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.

Note: Chapter 5 sets out the procedure for making an application for interim, procedural, ancillary or other incidental orders.

(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 subrule (1) because these countries do not object to the taking of evidence by electronic communication.

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

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country. For the requirements for a letter of request to the judicial authorities of a foreign country, see rule 15.73.

16.07 Parties' participation

(1) Each party to an application set down for hearing on the first day before the Judge must attend in person and, if legally represented, with their legal representatives.

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

(2) If a party does not attend on the first day before the Judge, 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 in a manner ordered by the court.

(3) If no party attends the first day before the Judge, the court may dismiss all applications before it.

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Part 16.3—Proceedings before the Judge—parenting and financial cases

16.08 Trial management hearing

(1) The purpose of the trial management hearing is:
  (a) for the presiding Judge, with the assistance of the parties and their legal representatives, to discuss and identify the orders sought and issues in dispute between the parties arising from the applications before the court; and
  (b) in the ordinary course, to hear and determine any interlocutory issues or interim applications that are outstanding on the day of the trial management hearing, or to make appropriate arrangements for the determination of those applications; and
  (c) in a parenting case—to receive evidence, including from the family consultant in the case; and
  (d) in a financial case—to consider the balance sheet; and
  (e) to consider and determine a plan for the trial.

(2) If evidence is taken at the trial management hearing, the presiding Judge must preside at the trial.

Note: Subrule (2) applies unless the court orders otherwise (see rule 1.12). If evidence is not taken at the trial management hearing, the presiding Judge will usually preside at the trial.

16.09 Further days before the Judge

The purpose of any further days before the Judge is:
  (a) to further identify the issues for which evidence is required; and
  (b) to make procedural orders about filing and exchange of all remaining evidence; and
  (c) to allocate dates for any further days before the Judge and the trial.

16.10 The trial

(1) The trial takes place on the day or dates allocated.

(2) At the trial the Judge will hear the evidence and receive submissions.

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Rule 16A.01

Chapter 16A—Division 12A of Part VII of the Act

Summary of Chapter 16A

Chapter 16A sets out the requirements for consent to the application of Division 12A of Part VII of the Act to a case and the additional procedures for certain trials to which Division 12A of Part VII of the Act applies.

Division 12A of Part VII of the Act applies to proceedings:

- that come wholly or partly under Part VII of the Act, or any other proceedings which involve the court's jurisdiction under the Act if the parties in those proceedings consent to Division 12A applying to those proceedings; and
- that were commenced by application:
  (a) on or after 1 July 2006; or
  (b) before 1 July 2006 if the parties to the proceedings consent, and the court grants permission (the court's permission may be sought in accordance with rule 12.04 of these Rules).

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

If a rule in another Chapter (other than Chapter 1) conflicts with a rule in this Chapter, the rule in this Chapter applies.

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

Part 16A.1—Consent for Division 12A of Part VII of the Act to apply to a case

16A.01 Definition

In this Part:

the prescribed form means a form authorised by the Chief Executive Officer for the purposes of a party in a case giving consent to the application of Division 12A of Part VII of the Act to the case.

16A.02 Application of Part 16A.1

This Part applies if the consent of the parties to a case is necessary before Division 12A of Part VII of the Act can apply to the case.

16A.03 Consent for Division 12A of Part VII of the Act to apply

If a party to a case seeks to consent to the application of Division 12A of Part VII of the Act to the case, or part of the case, the party must:

(a) give consent in accordance with the prescribed form; and
(b) file a copy of the form.

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16A.04 Application for Division 12A of Part VII of the Act to apply for case commenced by application before 1 July 2006

For the purposes of seeking the leave of the court for Division 12A of Part VII of the Act to apply to a case commenced by an application filed before 1 July 2006, an application for permission may be made to the court at a procedural hearing.

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Part 16A.2—Trials of certain cases to which Division 12A of Part VII of the Act applies

16A.05 Definitions

In this Part:

trial Judge means the Judge to whom a trial, in a case to which Division 12A of Part VII of the Act applies, is allocated.

trial Judicial Registrar means the Judicial Registrar to whom a trial, in a case to which Division 12A of Part VII of the Act applies, is allocated.

16A.06 Application

(1) Subject to subrules (2) and (3), this Part applies to the trial of a case:
  (a) that is pending in the Family Court; and
  (b) to which Division 12A of Part VII of the Act applies.

(2) This Part does not apply to the trial of a case which involves 1 or more of the following applications only:
  (a) a Medical Procedure Application referred to in Division 4.2.3 of these Rules;
  (b) a Maintenance Application referred to in Division 4.2.4 of these Rules;
  (c) a child support application referred to in Division 4.2.5 of these Rules;
  (d) an application relating to a passport referred to in Division 4.2.7 of these Rules.

(4) To the extent to which a rule in this Part applies to the trial of a case mentioned in subrule (1), and does not conflict with a rule in Chapter 1, the rule in this Part applies to the case and overrides all other provisions in these Rules.

16A.10 Parties to be sworn etc

(1) On the first day of a trial, all parties, and any family consultant, may be administered an oath or affirmation.

(2) A person is bound by the oath or affirmation administered under subrule (1) until the end of the trial.

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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 any other case—when it is signed.

(2) An order takes effect on the date when it is made, unless otherwise stated.

(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.

17.01A When must an order be entered

(1) An order must be entered if:
  (a) the order takes effect on the signing of the order; or
  (b) the order is to be served; or
  (c) the order is to be enforced; or
  (d) an appeal from the order has been instituted or an application for leave to appeal has been made; or
  (e) a step is to be taken under the order; or
  (f) the court directs that the order be entered.

(2) However, an order need not be entered if it only (in addition to any provision as to costs):
  (a) makes an extension or abridgment of time; or
  (b) grants leave or makes a direction:
    (i) to amend a document (other than an order); or
    (ii) to file a document; or
    (iii) for an act to be done by an officer of the court other than a lawyer; or
  (c) gives directions about the conduct of proceedings.

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17.01B Entry of orders

(1) An order is entered by:
  (a) the court, a person at the direction of the court, or a Registrar attaching the seal of the court to the order; and
  (b) a judicial officer signing the order.

(2) For paragraph (1)(b), an order may be signed by electronic means.

(3) An order may be entered, in accordance with subrule (1):
  (a) in a registry of the court; or
  (b) in court; or
  (c) in chambers.

17.02 Varying or setting aside orders

(1) The court may at any time vary or set aside an order, if:
  (a) it was made in the absence of a party; or
  (b) it was obtained by fraud; or
  (c) it is interlocutory; or
  (d) it is an injunction or for the appointment of a receiver; or
  (e) it does not reflect the intention of the court; or
  (f) the party in whose favour it was made consents; or
  (g) there is a clerical mistake in the order; or
  (h) there is an error arising in the order from an accidental slip or omission.

(2) Subrule (1) does not affect the power of the court to vary or terminate the operation of an order by a further order.

17.02A Varying or setting aside reasons for judgment

The court may, at any time:
  (a) vary or set aside reasons for judgment if the reasons were issued by mistake; or
  (b) correct a clerical mistake in reasons for judgment, or an error arising in reasons for judgment from any accidental slip or omission.

17.03 Rate of interest

The prescribed rate at which interest is payable under paragraphs 87(11)(b), 90KA(b) and 90UN(b), and subsection 117B(1) of the Act is:
  (a) in respect of the period from 1 January to 30 June in any year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
  (b) in respect of the period from 1 July to 31 December in any year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

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Note: For the date from which interest is payable, see paragraphs 87(11)(b) and 90KA(b) and subsection 117B(1) 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).

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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 of the Family Court of Australia; 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 in the Family Court by a Judge or a Judicial Registrar.

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

18.01A Definitions

In this Chapter:

Deputy Registrar means a Deputy Registrar of the Family Court of Australia.

Registrar means the Chief Executive Officer or a Registrar of the Family Court of Australia.

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.

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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 13K of the Act;

(c) an order or declaration under section 78, 79 or 79A, subsection 87(8), 90J(3) or 90K(1), section 90SL, 90SM or 90SN or subsection 90UL(3) or 90UM(1) of the Act, if the gross value of the property is more than $2 000 000;

(d) an order under section 70NFD of the Act to vary or discharge an order under paragraph 70NFB(2)(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;

(ea) an order under section 118 of the Act;

(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
1	rule 4.07
2	Division 4.2.3
2A	Division 4.2.8
3	Part 10.3
4	rule 11.04
5	rule 11.05

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)(c), (d) and (e) 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:

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(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.

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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 Chief Executive Officer 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
Family Law Act	
1	subsection 46(3A)
2	section 63H
3	section 65D (except an excluded child order)
5	section 65L
6	sections 66G, 66M, 66P and 66Q
7	section 66S
8	section 66W
9	subsection 67D(1) and section 67E
10	subsection 67M(2)
11	subsection 67N(2)
11A	section 67U
12	section 67ZD
13	subsections 68B(1) and (2)
15	sections 69V and 69VA, subsection 69W(1), section 69X and subsection 69ZC(2)
16	sections 74 and 77
17	subsection 83(1)
18	subsection 87(3)
18A	sections 90SE and 90SG
18B	section 90SI

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Item	Legislative provision
18C	paragraphs 94(2D) (b), (h), (i) and (j)
18D	paragraphs 94AAA(10)(b), (h), (i) and (j)
19	section 100B
20	section 102A
21	section 106A
21A	subsection 117(2)
Assessment Act	
22	section 139
Registration Act	
23	subsection 105(2)

(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
2	Part 6.3
3	subrule 10.11(5)
4	rule 13.14
5	rule 15.02
6	Part 15.4
8	Division 20.3.2
9	rule 20.37
9A	rule 20.39
10	Part 20.5
11	Part 20.6
12	Part 20.7
13	Part 21.4

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
Family Law Act	
1	section 11F
2	section 11G

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Item	Legislative provision
3	section 13B
4	section 13C
5	section 13D
6	sections 13E and 13F
7	section 27A
8	sections 33B and 33C
9	subsection 37A(1) (except subparagraph (e) (iv) and paragraph (f) and subject to subsection 37A(6))
10	subsection 44(1C)
11	subsection 45(2)
12	section 48 (if the case is undefended)
13	subsection 55(2)
14	section 55A
15	section 57
16	subsection 60I(9)
16A	subsection 60I(10)
16B	subsection 60J(1)
17	section 62G
18	subsection 63E(3)
18A	paragraph 65G(2)(b)
18B	paragraphs 67ZBB(2)(a), (b) and (c) (procedural orders only)
19	section 68L
19A	subsection 68M(2)
20	section 69ZW
21	paragraphs 79(9)(c) and 90SM(9)(c)
22	subsection 91B(1)
23	subsections 92(1) and (2)
24	subsection 97(1A)
25	subsection 97(2)
26	section 98A
27	section 101
30	subsection 117(2) (except an order as to security for costs)
Family Law Regulations	
31	subregulation 4(1)
32	regulation 5
33	paragraph 6(1)(a)
33A	subregulation 67Q(4)
Bankruptcy Act	
34	section 33

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Item	Legislative provision
35	section 81
36	section 264B
37	subsection 309(2)
Trans-Tasman Proceedings Act 2010	
38	subsection 31(1)
39	paragraph 32(1)(b)
40	subsections 36(1), (4) and (6)
41	subsection 37(4)
42	section 38

(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
1	Part 1.2
2	Part 1.3
3	rule 5.06
4	rule 5.07
5	Part 5.4
6	rule 6.04
6A	rule 6.05
7	rule 6.15
8	Chapter 7
9	rule 8.02
10	rule 10.11 (except subrule (5))
11	Part 10.4
12	rule 11.01 (except paragraphs 3 (d) and (k) of Table 11.1)
13	paragraph 11.02(2)(d) (except the reference, by incorporation, in that paragraph to paragraphs 3(d) and (k) of Table 11.1), and paragraphs 11.02(2)(e) and (g)
14	paragraph 11.03(1)(a)
15	subrule 11.10(1)
16	rule 11.14
18	Part 11.3
19	Chapter 12
20	Chapter 13 (except paragraph 13.14(b))
21	rule 14.01 (except subrules (2) and (5))
22	rule 15.04
24	rule 15.13

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Item	Provision of Rules
25	Divisions 15.3.1 and 15.3.2
31	Part 15.5
31A	Rule 16A.04
31B	paragraph 17.02(1)(g)
32	Chapter 19 (except Parts 19.3 and 19.8) and Schedule 6 (except Parts 6.2 and 6.8 and clauses 6.17 and 6.18)
33	Chapter 20 (except paragraph 20.07(c) in so far as that paragraph incorporates paragraphs 20.05(c) and (d), Division 20.3.2, rules 20.37 and 20.39, and Parts 20.5, 20.6 and 20.7)
36	Chapter 23
37	Chapter 24
38	rule 26.05
39	paragraph 26.12(a)
40	rule 26.13
41	paragraph 26.18(a)
42	rule 26.29
43	rule 26.30
45	Part 26B.1
46	Divisions 26B.2.1 and 26B.2.2

Note: Under subsection 37B(2) of the Act, the Chief Executive Officer 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.

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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 an Appeal in the Regional Appeal Registry within 14 days after the order is made (see rule 22.40).

18.08 Review of order or decision

(1) 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 and a copy of the order appealed from in the filing registry within the time mentioned in the item.

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
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
5	Order made by a Judicial Registrar, Registrar or Deputy Registrar in a bankruptcy case	within 21 days after the Judicial Registrar, Registrar or Deputy Registrar makes the order

(2) A party may apply for a review of any other order or decision made under these Rules by a Registrar or Deputy Registrar by filing an Application in a Case and a copy of the order or decision appealed from in the filing registry within 28 days after the order or decision is made.

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Note 1: 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.

Note 2: A person may apply for an extension of the time in which an application must be made (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 divorce order 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.

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Rule 19.01

Chapter 19—Party/party costs

Summary of Chapter 19

Chapter 19 regulates the costs between parties for fresh applications in family law cases, except any part of a case in which a Family Court is exercising its bankruptcy jurisdiction. Chapter 26 contains provisions which regulate the charges of lawyers for a part of a case involving bankruptcy matters.

For a dispute between a lawyer and a client about the costs charged by the lawyer:

(a) for a fresh application commenced after 30 June 2008;

(b) under a new agreement between the lawyer and the client entered into after 30 June 2008; or

(c) under a new retainer entered into by a client in the client's case after 30 June 2008, if the client instructs a new lawyer in a new firm;

see the State or Territory legislation governing the legal profession in the State or Territory where the lawyer practices.

For the meaning of ***fresh application***, see the Dictionary.

Schedule 6 *Costs— rules before 1 July 2008* sets out the rules that apply to cases not covered by this Chapter.

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) Subject to subrule (3), this Chapter:

(a) applies to costs for work done for a case, or in complying with pre-action procedures, in relation to a fresh application, paid or payable by one party to another; and

(b) creates a duty for lawyers to give information about costs to their clients.

(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.

(3) This Chapter does not apply to costs in any part of a case in which a Family Court is exercising its jurisdiction under section 35, 35A or 35B. of the Bankruptcy Act.

19.02 Interest on outstanding costs

Interest is payable on outstanding costs at the rate mentioned in rule 17.03.

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Part 19.2—Obligations of a lawyer about costs

19.03 Duty to inform about costs

(1) 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.

(2) In this rule:

lawyer does not include counsel instructed by another lawyer.

19.04 Notification of costs

(1) This rule applies to the following court events:

(a) conciliation conference;

(b) the first day of the allocated dates mentioned in rule 16.10;

(c) any other court events that the court orders.

(2) 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;

(b) the estimated future costs of the party up to and including each future court event; and

(c) any expenses paid or payable to an expert witness or, if those expenses are not known, an estimate of the expenses.

(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 (2); 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 the first day of the trial, an independent children's lawyer must give to the court and each party a written statement of the actual costs incurred by the independent children's lawyer up to and including the trial.

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Rule 19.04

(5) In a financial case, a notice under subrule (2) 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:

lawyer does not include counsel instructed by another lawyer.

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Part 19.3—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 for interim, procedural, ancillary or other incidental orders.

(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.

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Rule 19.07

(3) If security for costs is paid into court, the court may order that it be paid out of court.

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Part 19.4—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 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).

Note 4: For costs orders related to appeals, see Part 22.10.

(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.

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(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.

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Part 19.5—Calculation of costs

19.18 Method of calculation of costs

(1) The court may order that a party is entitled to costs:
  (a) of a specific amount;
  (b) as assessed on a particular basis (eg lawyer and client, party/party or indemnity);
  (c) to be calculated in accordance with the method stated in the order; or
  (d) for part of the case, or part of an amount, assessed in accordance with Schedule 3.

Example: For paragraph (1)(c), the stated method may be in accordance with Schedule 3 but with an additional percentage for complexity.

(2) If costs are payable under the Act or these Rules, or the court orders that costs be paid and does not specify the method for their calculation, the costs are to be assessed on a party/party basis.

(3) In making an order under subrule (1), 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, or in complying with pre-action procedures; and
  (f) expenses properly paid or payable.

19.19 Maximum amount of party/party costs recoverable

(1) This rule sets out the maximum amount of party/party costs a person may recover:
  (a) if the court orders that costs are to be paid and does not fix the amount; and
  (b) if a person is entitled to costs under these Rules.

(2) The maximum amount of costs that a person may recover under this rule is as follows:
  (a) for fees—an amount calculated in accordance with Schedules 3 and 4;
  (b) for an expense mentioned in Schedule 4 (other than item 101)—the amount specified in Schedule 4 for that expense;
  (c) for any other expenses—a reasonable amount.

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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.

19.21 Service of lawyer's itemised costs account

(1) A person entitled to party and party costs must serve an itemised costs account on the person liable to pay the costs within 4 months after the end of the case.

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

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(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 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 Notice Disputing Itemised Costs Account 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 Notice Disputing Itemised Costs Account 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 in the filing registry of the court where the case was conducted the itemised costs account and the Notice Disputing Itemised Costs Account no later than 42 days after the Notice Disputing Itemised Costs Account 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 Notice Disputing Itemised Costs Account

A party may amend an itemised costs account or a Notice Disputing Itemised Costs Account 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 Notice Disputing Itemised Costs Account 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 Notice Disputing Itemised Costs Account (see subrule 19.32(2)).

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Division 19.6.2—Assessment process

19.26 Fixing date for first court event

(1) On the filing of an itemised costs account and a Notice Disputing Itemised Costs Account 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 Notice Disputing Itemised Costs Account is filed.

19.27 Notification of hearing

A party filing a Notice Disputing Itemised Costs Account 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;

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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 Notice Disputing Itemised Costs Account;

(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 as an issue a disputed item included in the Notice Disputing Itemised Costs Account.

(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.

(4) Within 14 days after the costs assessment order is made, a party may ask the Registrar to give reasons for the Registrar's decision about a disputed item.

19.33 Powers of Registrars

(1) A Registrar may do any of the following at an assessment hearing:

(a) summon a witness to attend;

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(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.

(2) 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.

(3) 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;

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(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 Notice Disputing Itemised Costs Account 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 Notice Disputing Itemised Costs Account 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

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(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 Notice Disputing Itemised Costs Account under rule 19.23; and

(iv) that the time for serving a Notice Disputing Itemised Costs Account 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.

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Part 19.7—Specific costs matters

19.40 Costs in court of summary jurisdiction

A party cannot recover from another party costs, for work done by a lawyer in a court of summary jurisdiction, that are more than 80% of the amount mentioned in Schedule 3 that may be charged for the work.

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

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) an approved form;
  (b) the Form in Schedule 2; or
  (c) a document in a form approved by the Chief Executive Officer.

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.

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(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: 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)).

19.49 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:

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(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.

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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.

(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 applicant receives the Registrar's reasons given after a request made under subrule 19.32(4).

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 as a disputed item in the Notice Disputing Itemised Costs Account;
    (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, and the party has made a request under subrule 19.32(4).

(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).

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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) an award made in arbitration and registered under section 13H of the Act;
  - (iv) a maintenance agreement registered under subsection 86(1) of the Act;
  - (v) a maintenance agreement approved under section 87 of the Act;
  - (vi) a financial agreement or termination agreement under Part VIIIA of the Act;
  - (via) a financial agreement under Part VIIIAB of the Act or a termination agreement under Part VIIIAB of the Act;
  - (vii) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Act; or
  - (viii) 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;

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(e) a fine or the forfeiture of a bond; and

(f) costs, including the costs of enforcement.

(2A) For paragraph (1)(a), an obligation to pay money does not include an obligation arising out of costs for work done for a fresh application payable by a person to the person's lawyer.

Note: For enforcement of lawyer-client costs for a fresh application, see the State or Territory legislation governing the legal profession in the State or Territory where the lawyer practices.

(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 Part VIIIA of the Act—under paragraph 90KA(c) of the Act; or

(c) for a financial agreement under Part VIIIAB of the Act—under paragraph 90UN(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 and an affidavit setting out the facts relied on in support of the Application; and

(b) if the payee is the Child Support Agency or is seeking to recover a liability under section 113A of the Registration Act—a certificate under section 116 of the Registration Act.

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

Note 1: After the court has ordered payment of the amount owed, it may immediately make an enforcement order (see rule 20.05).

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

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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 or the Assessment Act.

Note: The payee of a liability may enforce an obligation—see section 113 of the Registration Act and section 79 of the Assessment Act.

20.05 Enforcing an obligation to pay money

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

(a) an order for seizure and sale of real or personal property, including under an Enforcement Warrant (see Part 20.3);

(b) an order for the attachment of earnings and debts, including under a Third Party Debt Notice (see Part 20.4);

(c) an order for sequestration of property (see Part 20.5);

(d) an order appointing a receiver (or a receiver and manager) (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 for enforcement order

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

(a) if it is not required to be filed with an application—state the orders sought;

(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

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(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; 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;

(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.

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

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;

(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 must 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.

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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 an Application in a Case (see rule 5.01).

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

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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) within 14 days after receiving the notice; or

(b) by filing an Application in a Case 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 Financial Statement; 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.

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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 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 Chief Executive Officer, giving information about enforcement hearings and the consequences of failing to comply with an obligation.

Note: Rule 20.07 sets out the orders that the court may make at an enforcement hearing.

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 Financial Statement 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.

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Note: Part 15.3 sets out the requirements for issuing subpoenas.

20.14 Failure concerning Financial Statement or enforcement hearing

(1) A person commits an offence if the person does not:

(a) comply with a notice under paragraph 20.10(1)(a) requiring the person to complete and serve a Financial Statement;

(b) comply with an order that the person complete and file a Financial Statement 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.

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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 under an Enforcement Warrant.

20.16 Request for Enforcement Warrant

(1) A payee may, without notice to the payer, ask a Family Court to issue an Enforcement Warrant by filing:
  (a) an affidavit; and
  (b) the Enforcement Warrant sought and a copy of it for service.

(2) The affidavit must:
  (a) comply with rule 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) either or both of the following:
    (i) a written undertaking to pay all reasonable fees and expenses associated with the enforcement if they are greater than the amount recovered on the enforcement;
    (ii) the amount (if any) required by the enforcement officer to be paid on account for the reasonable fees and expenses of the enforcement.

Note: Although the payee is liable to pay the enforcement officer any reasonable fees and expenses relating to the enforcement, the payee is entitled to recover those fees and expenses under the Enforcement Warrant (see subrule 20.23(2)).

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20.17 Period during which Enforcement Warrant is in force

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.

Note: For the powers an enforcement officer has in relation to the enforcement of a warrant, see rule 20.60.

(2) The enforcement officer may:

(a) postpone the sale of the property;

(b) refuse to proceed with the sale of the property;

(c) seek further information or documents from a payee;

(d) defer enforcement until a fee or expense is paid or an undertaking to pay the fee or expense is given;

(e) require the payee to indemnify the enforcement officer against any claims arising from the enforcement;

(f) sign any documents relating to the transfer of ownership of the property, and any other documents necessary to give title of the property to the purchaser of the property; and

(g) recover reasonable fees and expenses associated with the enforcement.

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

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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.

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(3) For a sale of real property, the notice of sale must include the following details:
   (a) a concise description of the real property, including its location, that would enable an interested person to identify it;
   (b) a general statement about any improvements of the real property;
   (c) a statement of the payer's last known address;
   (d) a statement of the payer's interest, and any entries in the land titles register, that affect or may affect the real property as at the date of the advertisement;
   (e) a statement about where a copy of the contract for sale of the property can be obtained.

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

20.21A Sale of property at reasonable price

(1) An enforcement officer must, in good faith and with reasonable care having regard to all circumstances relevant to the sale of property seized under an Enforcement Warrant, fix a reasonable price for the property.

(2) For subrule (1), circumstances relevant to the sale price of real property seized under an Enforcement Warrant include:
   (a) the current value of the property, as provided to the enforcement officer under subparagraph 20.23(1)(b)(vi); and
   (b) the amount of the highest bid received for the property at any auction of the property.

Note: The enforcement officer or payee may apply, after giving notice to the payer, for an order entitling the enforcement officer to sell the property for the best price obtainable (see rule 20.24).

20.21B Conditions of sale of property

(1) This rule applies in relation to the sale by an enforcement officer of property seized under an Enforcement Warrant.

(2) The enforcement officer must specify as a condition of the sale of the property that the buyer:
   (a) must pay:
      (i) a deposit of at least 10% of the price fixed for the property when the buyer's offer for the property is accepted by the enforcement officer; and
      (ii) the balance of that price within the period determined by the enforcement officer; or
   (b) must pay the whole of the price fixed for the property when the enforcement officer accepts the buyer's offer for the property.

(3) The period mentioned in subparagraph (2)(a)(ii) must:
   (a) be determined before the property is offered for sale; and

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(b) be a period of no longer than 42 days.

20.22 Result of sale of property under Enforcement Warrant

(1) An enforcement officer must, within 7 days after the day of settlement of a sale of property, file a notice in the court stating the details of the result of the sale and the reasonable fees and expenses of the enforcement.

(2) The enforcement officer must pay out of the money received from the enforcement:

(a) any amount still owing to the enforcement officer for the reasonable fees and expenses of the enforcement;

(b) the balance of any amount owed to the payee under the Enforcement Warrant; and

(c) the remaining amount, if any, to the payer.

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

20.23 Payee's responsibilities

(1) At least 28 days before an enforcement officer sells real property under an Enforcement Warrant, the payee must:

(a) send to the payer, at the payer's last known address, and to any mortgagee or other person who has an encumbrance registered on the title to the property that has priority over the Enforcement Warrant, written notice stating:

(i) that the Warrant has been registered on the title to the property;

(ii) that the enforcement officer intends to sell the property to satisfy the obligation if:

(A) the total amount owing is not paid; or

(B) arrangements considered satisfactory to the payee have not been made by a date specified in the notice; and

(iii) the enforcement officer's name and address; and

(b) provide the enforcement officer with evidence of the following:

(i) proof of compliance with paragraph (a);

(ii) that the Warrant has been registered on the land titles register;

(iii) details of the real property proposed to be sold including the address and description of the land title of the property;

(iv) details of all encumbrances registered against the real property on the date of registration of the Enforcement Warrant;

(v) the costs incurred to register the Enforcement Warrant;

(vi) the current value of the real property, as stated in a real estate agent's market appraisal.

(1A) The payee is liable to pay to the enforcement officer the reasonable fees and expenses of the enforcement.

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(2) The costs mentioned in subparagraph (1)(b)(v) and the fees and expenses mentioned in subrule (1A) may:

(a) be added to, and form part of, the costs of the Enforcement Warrant; and

(b) be recovered under the Warrant.

Note: A person affected by an Enforcement Warrant may serve a notice of claim on the enforcement officer (see rule 20.25).

20.24 Orders for real property

(1A) This rule applies to real property in relation to which:

(a) an Enforcement Warrant has been requested or issued; or

(b) an enforcement order for seizure and sale has been applied for or made.

(1) A payee, payer 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;

(d) about the disposition of the proceeds of the sale of the real property; or

(e) in relation to the reasonable fees and expenses of the enforcement.

Note: An application under subrule (1) must be in an Application in a Case (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.

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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 an Application in a Case (see rule 5.01).

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(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: Rules 20.07 and 20.24 set out the orders the court may make on the hearing of the application.

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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 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

(1) A payee may, without notice to the payer or third party, ask a Family Court to issue a Third Party Debt Notice requiring the payment to the payee of any money to which this Part applies by filing:

(a) 3 copies of the Third Party Debt Notice; 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

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(E) any information that should be included in the Third Party Debt Notice to enable the employer to identify the payer.

Note: A person seeking to enforce the payment of a child support liability must first apply for an order for the amount owed (see rule 20.03).

20.33 Service of Third Party Debt Notice

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

(a) a copy of the Third Party Debt Notice issued under rule 20.32; and

(b) a brochure called *Third Party Debt Notices*, approved by the Chief Executive Officer and setting out the effect of the Third Party Debt Notice and the third party debtor's obligations.

20.34 Effect of Third Party Debt Notice—general

(1) If a Third Party Debt Notice is served on a third party debtor, a debt due or accruing to the payer from the third party debtor is attached and bound in the hands of the third party debtor to the extent specified in the Notice.

(2) A Third Party Debt Notice to bind earnings or a regular payment comes into force at the end of 7 days after the order is served on the third party debtor.

20.35 Employer's obligations

(1) Under a Third Party Debt Notice directed to earnings, the payer's employer:

(a) must:

(i) deduct from the payer's earnings the amount specified in the notice;

(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 continues in force until:

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

(b) the Notice is set aside.

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20.37 Response to Third Party Debt Notice

(1) A third party debtor who has been served with a Third Party Debt Notice or an order discharging, varying or suspending the Notice, may apply:
  (a) to dispute liability to make payments under the Notice; or
  (b) for procedural orders.

Note: An application under subrule (1) must be in an Application in a Case and filed with an affidavit (see rules 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 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, 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 an Application in a Case 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 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

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(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 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 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.

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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, 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.

Note: For the hearing of an application in the absence of the parties, see Part 5.4.

20.43 Order for sequestration

(1) In considering an application for sequestration, the court must be satisfied that:
  (a) if the obligation to be enforced arises under an order—the payer has been served with the order to be enforced;
  (b) the payer has refused or failed to comply with the obligation; and
  (c) an order for sequestration is the most appropriate method of enforcing the obligation.

(2) On appointing a sequestrator, the court may:
  (a) authorise and direct the sequestrator:
    (i) to enter and take possession of the payer's property or part of the property;
    (ii) to collect and receive the income of the property, including rent, profits and takings of a business; and
    (iii) to keep the property and income under sequestration until the payer complies with the obligation or until further order; and
  (b) fix the remuneration of the sequestrator.

Note: For rules relating to the enforcement of obligations other than an obligation to pay money, see Part 20.7.

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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 an Application in a Case 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.

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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 and an affidavit.

(2) The affidavit must:
  (a) comply with rule 20.06;
  (b) include the full name and address of the proposed receiver;
  (c) include details of the receiver's fees; and
  (d) have attached to it the consent to the appointment of receiver, signed by the proposed receiver.

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

Note: For the hearing of an application in the absence of the parties, see Part 5.4.

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.

Note: For rules relating to the enforcement of obligations other than an obligation to pay money, see Part 20.7.

20.48 Security

A receiver's appointment by the court starts when:

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(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.

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Part 20.7—Enforcement of obligations other than an obligation to pay money

Note: For the powers an enforcement officer has in relation to the enforcement of a warrant, see rule 20.60.

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 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 an Application in a Case 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 respondent has a legal or beneficial interest.

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(2) If the respondent complies with the order or is released from compliance, the court may order that the property be returned to the respondent, after the costs of enforcement have been deducted.

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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.

20.60 Powers of enforcement officer

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

(a) enter and search any real property:

(i) that is the subject of the warrant; or

(ii) for the purpose of seizing any property the subject of the warrant;

(b) if the warrant is for the seizure and sale of real property—enter and eject from the property any person who is not lawfully entitled to be on the property;

(c) take possession of or secure against interference any property the subject of the warrant;

(d) remove any property the subject of the warrant from the place where it is found, place it in storage or deliver it to another person or place for a purpose authorised by the warrant.

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

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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;
- an order that a person be punished for contravening an order, bond or sentence, or for contempt of court; or
- an order to locate or recover children Application should not be made under this Chapter unless an associated matter is pending in the court or filing with the Federal Circuit Court is not available. Under section 33B of the Family Law Act 1975, the Family Court may transfer the proceeding to the Federal Circuit Court without notice to the parties.

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 a bond or order to the punishment of a person for failure to comply with an order, bond or sentence. 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 time lost with a child;
- compensates a person for expenses incurred in attempting to spend time with a child;
- 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 be alleged only 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.

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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 or Part XIIIA of the Act; 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. Division 13A of Part VII of the Act sets out the consequences of failing to comply with an order or other obligation that affects children. Part XIIIA of the Act sets out the sanctions the court may impose on a person who fails to comply with an order or other obligation that does not affect children. Part XIIIB of the Act sets out the punishment the court may impose on a person found to be in contempt of court.

Note 2: If a maintenance order is complied with before an Application for Contempt is heard by the court, the failure to comply with the order that led to the Application for Contempt being filed does not constitute a contempt of court (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 70NFB(4) and 112AD(2A) of the Act); or

(ii) if it considers that another consequence is more appropriate (see subsections 70NFG(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
1A	Contravention of subsection 67X(2) of the Act in relation to a recovery order	Application—Contravention
2	Contravention of an order (of a kind included in the definition of an ***order under this Act affecting children*** under section 4 of the Act) under Division 13A of Part VII of the Act affecting children, for example, a breach of a parenting order	Application—Contravention

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Item	Kind of application	Application form to be filed
3	Contravention of an order (of a kind included in the definition of an ***order under this Act*** under section 112AA of the Act) under Part XIIIA of the Act not affecting children, for example, a breach of a property order	Application—Contravention
4	An order that another person be punished for contempt of court	Application—Contempt
5	Failure to comply with a bond entered into in accordance with the Act	Application—Contravention

Example for item 1 of Table 21.1

A party may use an Application in a Case 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 time not spent with a child as a result of the failure to comply; or

(b) before the time due to be spent with a child, the other party refuses to comply with the handover arrangements.

(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) for an application mentioned in item 1 of Table 21.1—has attached to it a copy of any order, bond, agreement or undertaking that the court is asked to enforce or that is alleged to have been contravened.

Example for paragraph (2)(a)

If a person alleges, in an Application for Contempt, 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 alleges in an Application for Contravention that a person has behaved in a way that showed a serious disregard of his or her obligations under a parenting order (see paragraph 70NFA(2)(b) 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.

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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 family counselling, family dispute resolution or a specified parenting program (see section 65F of the Act).

21.06 Response to an application

A respondent to an application mentioned in item 1A, 2, 3, 4 or 5 of Table 21.1 may file an affidavit but is not required to do so.

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) for a respondent to an application mentioned in item 1A, 2, 3, 4 or 5 of Table 21.1—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 1A, 2, 3, 4 or 5 in Table 21.1, the court must:
  (a) inform the respondent of the allegation;

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(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 orders that may be made by the court, see sections 67X, 70NBA, 70NCB, 70NDB, 70NDC, 70NEB, 70NFB, 70NFF, 112AD, 112AH and 112AP of the Act.

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Part 21.2—Parenting orders—compliance

21.09 Duties of program provider

(1) The provider of a post-separation parenting program required to inform the court of a matter under section 70NED of the Act must do so by notice in accordance with subrule (2).

(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 70NEG of the Act.

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Rule 21.11

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 67J to 67W 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.

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 an Application in a Case (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.

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(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.

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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 mentioned in item 1A, 2, 3, 4 or 5 of Table 21.1; 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 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:

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(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.

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Rule 22.01

Chapter 22—Appeals

Summary of Chapter 22

Chapter 22 sets out the procedures to appeal an order including where leave to appeal is required.

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, 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 the Federal Circuit Court (whether heard by the Full Court or a single Judge);

(c) an appeal to the Family Court from an order of a Family Law Magistrate of Western Australia (whether heard by the Full Court or a single Judge);

(d) an appeal to a single Judge of the Family Court 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).

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Part 22.2—Starting an appeal

Note: 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, the Federal Circuit Court or a Family Law Magistrate of Western Australia (see subsection 94AA(1) of the Act and regulation 15A of the Regulations); or

(b) an order, made by a court, mentioned in section 102, 102A or 105 of the Assessment Act or section 107, 107A or 110 of the Registration Act.

22.02 Starting an appeal

(1) A person may start an appeal by filing a Notice of Appeal:

(a) for an appeal from a court of summary jurisdiction other than a Family Law Magistrate of Western Australia—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.

(2) If an appeal cannot be started without the leave of the court, leave must be sought in the Notice of Appeal.

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 Notice of Appeal may be argued except with the court's permission. A Notice of Appeal may be amended only in accordance with rule 22.09.

Note 3: Chapter 24 sets out the requirements for documents and filing.

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 Notice of Appeal, including a Notice of Appeal in which leave to appeal is sought, 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 or to make an application for leave to appeal (see rule 1.14).

22.04 Parties to an appeal

Each person who is directly affected by the orders sought in the Notice of Appeal, or who is likely to be interested in maintaining the order under appeal, must be made a respondent to the appeal or the application for leave to 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.

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22.05 Service

A copy of a Notice of Appeal must be served on each party to the appeal, in accordance with rule 22.04, within 14 days after it is filed.

Note: A party may apply for an extension of time to serve a copy of a Notice of Appeal (see rule 1.14).

22.06 Notice about appeal to other courts

(1) If an appeal is from an order of a court other than a Family Court, the appellant must give a copy of the Notice of Appeal to the Registrar of that court within 14 days after filing the Notice of Appeal.

(2) A party seeking leave to appeal from an order of another court must give a copy of the Notice of Appeal in which leave to appeal is sought 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.

22.07 Cross-appeal

A respondent to an appeal or an independent children's lawyer who intends to argue that an order under appeal should be varied or set aside must cross-appeal by filing a Notice of Appeal endorsed as a cross-appeal.

22.08 Time for cross-appeal

A Notice of Appeal for a cross-appeal must be filed within the later of:
  (a) 14 days after the Notice of Appeal for the appeal is served on the cross-appellant; or
  (b) 28 days after the date the order appealed from was made.

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 rule 1.14).

22.09 Amendment of Notice of Appeal

(1) The grounds of appeal and the orders sought in a Notice of Appeal may be amended without permission, at any time up to and including the date fixed for filing of the summary of argument by the appellant.

(2) If a Notice of Appeal is amended, the grounds of appeal and the orders sought in a Notice of Appeal endorsed as a cross-appeal may be amended without permission, at any time within 7 days after service of the amended Notice of Appeal.

Note 1: A party may apply for permission to amend a Notice of Appeal at a later time. 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.

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22.10 Documents filed in a current appeal

If an appeal has been started, a document filed in the appeal must be filed in the same Registry in which the appeal was filed.

22.11 Stay

(1) The filing of a Notice of Appeal 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 leave 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 filed in the Registry in which the order under appeal was made and be heard by the Judge of the Family Court, Judge of the Federal Circuit Court 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: 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).

22.12 Application for leave to appeal

In considering an application for leave to appeal from an order, a Judge, a Regional Appeal Registrar or other Registrar may make procedural orders, including:

(a) an order requiring the applicant to file a written undertaking to pay any filing fee;

(b) an order that the proposed appeal be argued at the same time as the application for leave to appeal; or

(c) an order that the application be dealt with by the court without an oral hearing and orders in relation to the conduct of the application, including the filing of written submissions.

Note: 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.

22.13 Filing draft index to appeal books

(1) This rule applies to an appeal that is not an appeal from a court of summary jurisdiction other than a Family Law Magistrate of Western Australia.

(2) The appellant must file a draft index to the appeal book within:

(a) 28 days after:

(i) filing the Notice of Appeal; or

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Rule 22.13

(ii) the date when the reasons for judgment that relate to the order the subject of the appeal are issued (being the date of the certificate of the Associate to the Judicial Officer that appears on the published reasons for judgment); or

(b) if the court extends the period mentioned in paragraph (a)—the period ordered by the court.

(3) If the appellant fails to comply with subrule (2), the appeal is taken to be abandoned.

Note 1: A party may apply for an extension of time (see rule 1.14).

Note 2: See rules 22.19 and 22.20 for what must be included in the appeal books.

Note 3: A document that is filed must also be served on each party to the appeal (see rule 22.04).

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Part 22.3—Appeal to Full Court

22.14 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 Circuit Court or a Family Law Magistrate of Western Australia, when the jurisdiction of the court in relation to the appeal is to be exercised by the Full Court;

(c) an appeal to the Full Court 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 Circuit Court or a Family Law Magistrate of Western Australia, 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 give the parties to the appeal written notice of which Part of these Rules apply.

22.15 Procedural hearing

As soon as reasonably practical after the filing of a draft index the Regional Appeal Registrar must:

(a) fix a date for a procedural hearing for the appeal before a Regional Appeal Registrar or other Registrar or, if the Regional Appeal Registrar considers it appropriate, a Judge of the Appeal Division or other Judge (if a Judge of the Appeal Division is unavailable); and

(b) give the parties to the appeal written notice of the date fixed for the procedural hearing.

Note: An application or appeal will usually be listed before a Regional Appeal Registrar, but may be listed before a Judge of the Appeal Division or another Judge if there is no Judge of the Appeal Division available (see rule 1.13).

22.16 Attendance at first procedural hearing

(1) The appellant or the appellant's lawyer must attend on the first procedural hearing for the appellant's appeal.

(2) Any of the following persons may also attend on the first procedural hearing:

(a) a respondent in the appeal;

(b) a lawyer for a respondent in the appeal;

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(c) an independent children's lawyer in the appeal.

Note: A party may request permission to attend the procedural hearing by electronic communication (see rule 22.31) or be excused from attending the procedural hearing (see rule 1.12).

22.17 Orders to be made at procedural hearing

(1) A Regional Appeal Registrar or Registrar conducting a procedural hearing may, if the Registrar considers it appropriate, adjourn the hearing to a Judge at any time.

(2) Orders about the following matters may be made at a procedural hearing:
(a) the documents 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) the preparation of the appeal books and the number of copies;
(d) the date by which the appeal books must be filed and served;
(e) the conduct of the appeal (including the likely duration of the appeal);
(f) any other matter which the Registrar or Judge considers necessary.

22.18 Preparation of appeal books

(1) The appellant or, if so ordered, the cross-appellant is responsible for preparing and filing the appeal books, including arranging to obtain any transcript required to be included in 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 to prepare and file the appeal books:
(a) a respondent;
(b) the Regional Appeal Registrar.

Note: If the Regional Appeal Registrar prepares the appeal books, the appellant or cross-appellant (if so ordered) is still responsible for obtaining the transcript (see rule 22.27).

(3) When making an order under subrule (2), the court may order the appellant to pay the costs of preparing 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 22.17(2)(c)). 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 22.21).

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22.19 Contents of appeal books

(1) Unless otherwise ordered under paragraph 22.17(2)(a), the appeal books must contain only the following documents:

(a) documents put in evidence at the hearing or trial to which the appeal relates and which are relevant to the grounds of appeal and necessary to enable the court hearing the appeal to reach its decision;

(b) if the appeal involves a challenge to the exclusion of evidence, the document:

(i) that is the subject of the challenge; and

(ii) that was tendered, but not admitted as evidence, at the hearing or trial to which the appeal relates.

(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.

22.20 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;

(b) the order appealed from;

(c) reasons for judgment;

(d) any relevant previous or subsequent order;

(e) each relevant application;

(f) any relevant response;

(g) relevant affidavits;

(h) any family or expert report received in evidence in the case that is relevant to the appeal;

(i) a list of exhibits and each relevant exhibit (if practicable);

(j) the relevant parts of the transcript;

(k) if the appeal involves a challenge to the exclusion of evidence—the document that is the subject of the challenge.

(4) The pages of the appeal books, including the transcript, must be numbered consecutively.

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(5) The appeal books must be securely fastened to make 1 or more volumes, each of which is no more than 25 mm thick.

(6) Each page in an appeal book must comply with the requirements for documents mentioned in subrule 24.01(1).

Note: The Regional Appeal Registrar may refuse to accept the books for filing if they do not comply with these Rules or an order.

22.21 Failure to file appeal books by due date

If the appellant fails to file the appeal books by the date ordered, the appeal is taken to be abandoned.

Note: A party may apply for an extension of time to file the appeal books (see rule 1.14).

22.22 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 28 days before the first day of the sittings in which the appeal is listed for hearing; and

(b) for the respondent and any independent children's lawyer—at least 7 days before the first day of the sittings in which the appeal is listed for hearing.

Note: The Court may shorten or extend the time for compliance with a rule (see rule 1.14).

(2) For subrule (1), a summary of argument must:

(a) set out each ground of appeal and, for 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 email address (if any) or document exchange number (if any) at which the signatory may be contacted.

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Part 22.4—Appeal from Federal Circuit Court or a Family Law Magistrate of Western Australia heard by single Judge

22.23 Application of Part 22.4

This Part applies to an appeal from an order of the Federal Circuit Court or a Family Law Magistrate of Western Australia 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 Circuit Court or a Family Law Magistrate of Western Australia, 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 give the parties to the appeal written notice of which Part of these Rules applies.

22.24 Procedural hearing

(1) The single Judge who is to hear the appeal may direct that the appeal be listed before that Judge, or another Judge or Regional Appeal Registrar, for a procedural hearing

(2) The Judge or Regional Appeal Registrar may make procedural orders in chambers, in the absence of the parties, on the documents filed.

22.25 Attendance at procedural hearing

(1) The appellant or the appellant's lawyer must attend on the first procedural hearing for the appellant's appeal.

(2) Any of the following persons may also attend on the first procedural hearing:

(a) a respondent in the appeal;

(b) a lawyer for a respondent in the appeal;

(c) an independent children's lawyer in the appeal.

Note: A party may request permission to attend the procedural hearing by electronic communication (see rule 22.31) or be excused from attending the procedural hearing (see rule 1.12).

22.26 Procedural orders for conduct of appeal

(1) The procedural orders made by a Judge or Regional Appeal Registrar in chambers under subrule 22.24(2) or at a procedural hearing may include orders about the following:

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(a) whether an appeal book is required for the hearing of the appeal and, if so, whether rules 22.18, 22.19 and 22.20 are to apply with or without any variation;

(b) if an appeal book is not required, the arrangements for ensuring that the documents mentioned in rule 22.27 are before the court at the hearing of the appeal;

(c) a timetable for the party responsible to file and serve:

(i) the reasons for judgment of the Judge of the Federal Circuit Court or of the Family Law Magistrate of Western Australia and those parts of the transcript of the hearing likely to be relevant to the appeal;

(ii) a list of documents to be relied on, or an appeal book;

(iii) a summary of argument; and

(iv) a list of authorities to be relied on;

(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)(c)(iii) must comply with subrule 22.22(2).

22.27 Documents for appeal hearing if appeal book not required

(1) The documents that must be before the Judge on the hearing of the appeal are:

(a) the Notice of Appeal;

(b) the order of the Judge of the Federal Circuit Court or of the Family Law Magistrate of Western Australia;

(c) reasons for judgment of the Judge of the Federal Circuit Court or of the Family Law Magistrate of Western Australia;

(d) any relevant previous or subsequent order;

(e) the application relied on before the Judge of the Federal Circuit Court or the Family Law Magistrate of Western Australia;

(f) any response relied on before the Judge of the Federal Circuit Court or the Family Law Magistrate of Western Australia;

(g) relevant affidavits relied on before the Judge of the Federal Circuit Court or the Family Law Magistrate of Western Australia;

(h) any family report received in evidence;

(i) relevant exhibits tendered before the Judge of the Federal Circuit Court or the Family Law Magistrate of Western Australia;

(j) the relevant part or parts of the transcript of the hearing before the Judge of the Federal Circuit Court or the Family Law Magistrate of Western Australia; and

(k) if the appeal involves a challenge to the exclusion of evidence—the document that is the subject of the challenge.

(2) The documents to be relied on in the appeal 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.

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Part 22.5—Appeal from court of summary jurisdiction other than a Family Law Magistrate of Western Australia

22.28 Application of Part 22.5

This Part applies to an appeal from an order of a court of summary jurisdiction other than a Family Law Magistrate of Western Australia.

22.29 Fixing of hearing date

On the filing of a Notice of Appeal, the Registry Manager must fix a date for the hearing of the appeal that is as near as practicable to 56 days after the Notice of Appeal was filed.

Note: The appellant must give a copy of the Notice of Appeal to the Registrar of the court of summary jurisdiction within 14 days after filing the Notice of Appeal (see rule 22.06).

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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 Notice of Appeal and the summary of argument. The appeal court may restrict the time allowed for oral argument.

22.30 Non-attendance by party

If a party does not attend, in person or by lawyer, when an appeal is called on for the hearing of the appeal, 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.

22.31 Attendance by electronic communication

(1) A party may request permission from the court to attend the hearing of an appeal or an application for leave to appeal or an application in relation to an appeal or a procedural hearing by electronic communication.

(2) The request must:

(a) be in writing;

(b) for an application in relation to an appeal or a procedural hearing—be made at least 14 days before the date fixed for the hearing of the application or the procedural hearing;

(c) for an application for leave to appeal or an appeal—be made at least 14 days before the date fixed for the sitting of the Full Court during which application for leave to appeal or the appeal will be heard;

(d) address all of the matters mentioned in subrule 16.05(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 or application to be heard by the Full Court—a Judge of the Appeal Division;

(b) for an appeal or application to be heard by a single Judge—the Judge hearing the appeal or application; or

(c) for a procedural hearing—the Registrar or Judge who is to conduct the procedural hearing.

(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.

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(5) The court may order a party to pay the expenses of attending by electronic communication, apportion the expenses between the parties, or make no order about the expenses.

(6) This rule does not apply if the court of its own motion decides to hear an appeal, or an application for leave to an appeal or procedural hearing, by electronic communication.

22.32 Attendance of party in prison

(1) A party who is in prison must attend a procedural hearing, the hearing of an appeal, an application in relation to an appeal or an application for leave to appeal, by electronic communication, if practicable.

(2) A party may seek permission from the court to attend a procedural hearing, the hearing of an appeal, an application for leave to appeal or an application in relation to an appeal, in person.

(3) A request under subrule (2) must:
  (a) be in writing;
  (b) be made at least 14 days before the date fixed for the procedural hearing or the hearing of the appeal, the application for leave to appeal or the application in relation to 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.

22.34 Subpoenas

(1) A subpoena may be issued in an appeal only if leave to issue the subpoena has been given by:
  (a) the Full Court; or
  (b) for an appeal heard by a single Judge—that Judge.

(2) A document produced in compliance with a subpoena issued in accordance with subrule (1) may be inspected only with the leave of the Full Court or the Judge mentioned in paragraph (1)(b).

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Part 22.7—Applications in relation to appeals

Division 22.7.1—How to make an application

22.35 Application of Part 22.7

This Part applies if a party seeks to make an application in relation to an appeal (other than an application for leave to appeal).

22.36 Application in relation to appeal

A party may make an application in relation to an appeal by filing an Application in an Appeal together with an affidavit stating the facts relied on in support of the application.

Note 1: See rule 22.10 for where to file an application.

Note 2: 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.

22.37 Hearing date for application

On the filing of an Application in an Appeal, the Regional 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 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

(ii) the Regional Appeal Registrar considers it appropriate.

22.38 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 22.37(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

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(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.

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Division 22.7.2—Specific applications relating to appeals

22.39 Further evidence on appeal

(1) A party to an appeal, other than an appeal that is a hearing *de novo*, 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.

(2) The affidavit filed with the application must either describe the nature of the further evidence or 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.

(4) The hearing date for an application to adduce further evidence will be the same as the date fixed for hearing of the appeal or application for leave to appeal.

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.

22.40 Review of Regional Appeal Registrar's order

A party may apply for a review of a Regional Appeal Registrar's order relating to the conduct of an appeal by filing an Application in an Appeal 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).

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Part 22.8—Concluding an appeal, an application for leave to appeal or an application in relation to an appeal

22.41 Consent orders on appeal

(1) This rule applies if the parties to an appeal agree about the orders the court will be asked to make on appeal.

(2) The parties may file a draft consent order, setting out the terms of their agreement.

(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 Regional 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.

22.42 Discontinuance of appeal or application

(1) A party may discontinue an appeal, an application for leave to appeal or an application in relation to an appeal by filing a notice of discontinuance.

(2) The party may be ordered to pay the costs of all other parties.

(3) An application for costs must be filed within 28 days after the filing of the notice of discontinuance.

22.43 Abandoning an appeal

(1) If the appeal is taken to be abandoned, the appellant may be ordered to pay the costs of all other parties.

(2) An application for costs of an abandoned appeal must be filed within 28 days after the date the appeal became abandoned.

22.44 Application for reinstatement of appeal

A party may apply to have an appeal taken to be abandoned under this Chapter reinstated.

22.45 Dismissal of appeal and applications for non-compliance or delay

(1) This rule applies if:

(a) the appeal is not taken to have been abandoned; and

(b) a party (the ***defaulting party***) has not:

(i) met a requirement under these Rules or the Regulations;

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Rule 22.45

(ii) complied with an order in relation to the appeal (including an application for leave to appeal or application in relation to an appeal); or

(iii) shown reasonable diligence in proceeding with an appeal or application.

(2) A court having jurisdiction in the appeal or application may:

(a) if the defaulting party is the appellant or the applicant:

(i) dismiss the appeal or application; or

(ii) fix a time by which a requirement is to be met and order that the appeal or application 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 or application will proceed if the order imposing the requirement is not complied with; or

(ii) proceed to hear the appeal or application.

(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.

(4) An application for costs in relation to an appeal or application dismissed under this rule must be made within 28 days after the dismissal.

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Part 22.9—Case stated

22.46 Application of Part 22.9

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.

22.47 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 Regional Appeal Registrar 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.

22.48 Objection to draft case stated

(1) A party served with a copy of a draft case stated under paragraph 22.47(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.

22.49 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.

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Rule 22.50

22.50 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 22.49:

(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.

22.51 Fixing of hearing date

On the filing of copies of the signed case stated under rule 22.50, 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.

22.52 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 22.22(2).

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Part 22.10—Costs orders

22.53 Order for costs

(1) A party to an appeal or an application for leave to appeal may apply for an order that another person pay costs.

(2) An application for costs may be made:
  (a) at any stage during an appeal or an application for leave to appeal; or
  (b) by filing an application in relation to an appeal within 28 days after the court makes an order disposing of the appeal or an application for leave to appeal.

(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:
  (a) the filing of a notice of discontinuance by the other party (see rule 22.42); or
  (b) the abandonment of an appeal (see rule 22.43); or
  (c) the dismissal of an appeal (see rule 22.45); or
  (d) the dismissal of an application in relation to an appeal (see rule 22.45).

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 appeal is finished.

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Rule 23.01

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 in divorce or validity of marriage cases), see regulation 17 of the Regulations.

23.01A Registration of State child orders under section 70C or 70D of the Act

(1) For section 70C of the Act, a State child order made under a law of a prescribed State may be registered in a court having jurisdiction under Part VII of the Act by filing a sealed copy of the order in a registry of the court.

(2) For section 70D of the Act, a State child order made by a court of a State may be registered in another State, in a court having jurisdiction under the Act, by filing a sealed copy of the order in a registry of the court of the other State.

(3) In this rule:

State includes a Territory.

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23.01B Registration of de facto maintenance orders under section 90SI of the Act

For subsection 90SI(1) of the Act, an order with respect to the maintenance of a party to a de facto relationship may be registered in a court exercising jurisdiction under the Act by filing a sealed copy of the order in a registry of the court.

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.

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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.

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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;

(g) for a document that is not included in Schedule 2—have a coversheet, in a form approved by the Chief Executive Officer, that includes the following:

(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 independent children's lawyer 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.

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(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 Forms

(1) The Chief Justice, in consultation with the other judges, may approve a form for the purposes of these Rules.

(2) A reference in these Rules to a Notice of Child Abuse, Family Violence or Risk of Family Violence is a reference to the form in Schedule 2.

(3) Strict compliance with an approved form or the form 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.

(4) A document in a form approved for the Federal Circuit Court is taken to be in substantial compliance with the form approved for the same purpose under these Rules.

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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 and received by the registry;
    (ii) posted to and received by the registry;
    (iii) sent to the court by electronic communication under rule 24.06 (facsimile) and received by the registry;
    (iv) sent to the court by electronic communication under rule 24.07 (e-mail and Internet) and received by the court; or
    (v) accepted for filing by a judicial officer in court during a court event; and
  (b) the filing fee (if any) is paid.

(2) A document that is sent for filing by electronic communication after 4.30 pm according to legal time in the Australian Capital Territory is taken to have been received by the filing registry on the next day when the filing registry is open.

(3) 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 1 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. The Court's procedures and facilities for electronic filing through the Internet are set out on the Commonwealth Courts Portal: see http://www.familycourt.gov.au.

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

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(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: For service by facsimile and restrictions relating to the number of pages that may be faxed, see rule 7.16.

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):
(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.

(6) When receiving a document for filing by email or through the Internet, the Registry Manager may send to the person filing the document an electronic communication recording the date of receipt or the date and time of receipt.

Note 1: 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.

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Note 2: An Acknowledgment of Service 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 Acknowledgment of Service.

If an Acknowledgement of Service 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.

24.09 Documents filed during a case

(1) A document filed in a case that has started, other than a document filed by electronic communication through the Internet, must be filed in the filing registry.

(2) A document filed by electronic communication through the Internet in a case that has started must bear the file number of the case.

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 Rejection of documents

(1) A Registrar or judicial officer may reject a document filed or received 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;

(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); or

(g) is sent for filing through the Internet and the person sending the document has not complied with the court's electronic filing procedures.

(2) If a judicial officer rejects a document filed or received for filing under subrule (1), the judicial officer may give directions about any step already taken on the document, including a direction about costs.

(3) A person may apply for review of a Registrar's decision under subrule (1) or directions given by a judicial officer under subrule (2) by filing an Application in a Case without notice.

Note: When a document sent for filing by electronic communication through the Internet is rejected, the court may notify each party to the case and each person to whom the document is directed.

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Rule 24.11

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.

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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, and inspect and copy a document forming part of the court record:

(a) the Attorney-General;

(b) a party, a lawyer for a party, or an independent children's lawyer, in the case;

(ba) if the case affects, or may affect, the welfare of a child—a child welfare officer of a State or Territory;

(c) with the permission of the court, a person with a proper interest:

(i) in the case; or

(ii) in information obtainable from the court record in the case;

(d) with the permission of the court, a person researching the court record relating to the case.

(1A) An arbitrator conducting an arbitration relating to a case may search the court record relating to the case, and inspect and copy a document forming part of the court record.

(2) The parts of the court record that may be searched, inspected and copied in accordance with subrule (1) or (1A) are:

(a) court documents; and

(b) with the permission of the court—any other part of the court record.

(2A) A permission:

(a) for paragraphs (1)(c) and (d) and (2)(b)—may include conditions, including a requirement for consent from a person, or a person in a class of persons, mentioned in the court record; and

(b) for paragraph (1)(d)—must specify the research to which it applies.

(3) In considering whether to give permission under this rule, the court must consider the following matters:

(a) the purpose for which access is sought;

(b) whether the access sought is reasonable for that purpose;

(c) the need for security of court personnel, parties, children and witnesses;

(d) any limits or conditions that should be imposed on access to, or use of, the court record.

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(4) In this rule:

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

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

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

24.14 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.

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Chapter 25—Applications under the Corporations Act 2001 and the Corporations (Aboriginal and Torres Strait Islander) Act 2006

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* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* 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*
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

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Rule 25.04

25.04 Application under *Corporations Act 2001* or *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

An application under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* must not be dismissed only because it has been made in the wrong form.

25.05 Transfer of cases under *Corporations Act 2001* or *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

A person seeking:

(a) to have a case under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* transferred from a Family Court to another court; or

(b) procedural orders under subsection 1337P (1) of the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;

must do so by filing an Application in a Case 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 an Application in a Case 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.

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Chapter 26—Cases to which the Bankruptcy Act 1966 applies

Summary of Chapter 26

Chapter 26 sets out the rules about a case in which a Family Court has jurisdiction in bankruptcy under section 35, 35A or 35B of the *Bankruptcy Act 1966*. Delegation of the Family Court's power in such cases is set out in Chapter 18 of these Rules.

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 26.1—Introduction

26.01 Application of Chapter 26

(1) In a bankruptcy case, the rules in Chapter 1 apply to the case and override all other provisions in these Rules.

(2) To the extent to which a rule in this Chapter applies to a bankruptcy case, and does not conflict with a rule in Chapter 1, the rule in this Chapter applies to the case and overrides all other provisions in these Rules.

(3) A rule in Chapter 25 of these Rules does not apply to a bankruptcy case.

26.02 Expressions used in the Bankruptcy Act

Unless the contrary intention appears, an expression used in this Chapter and in the Bankruptcy Act has the same meaning in this Chapter as it has in the Bankruptcy Act.

Note: The following expressions are used in this Chapter and defined in section 5 of the Bankruptcy Act:

- bankrupt
- books
- creditor
- District
- examinable affairs
- examinable person
- Official Receiver
- property
- the trustee.

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Part 26.2—General

26.04 Bankruptcy Application and Bankruptcy Application in a Case

(1) Unless this Chapter otherwise provides, a person must make an application required or permitted by the Bankruptcy Act to be made to the court:

(a) if the application is not made in a bankruptcy case already commenced—by filing a Bankruptcy Application in the form *Bankruptcy—Application*; and

(b) otherwise—by filing a Bankruptcy Application in a Case in the form *Bankruptcy—Application in a Case*.

(2) A person may make an application to the court in relation to a bankruptcy case in respect of which final relief has been granted by filing a Bankruptcy Application in a Case in the form *Bankruptcy—Application in a Case*.

(3) The form *Bankruptcy—Application* must state:

(a) each section of the Bankruptcy Act, or each regulation of the *Bankruptcy Regulations 1996*, under which the case is brought; and

(b) the relief sought.

(4) The form *Bankruptcy—Application in a Case* must state:

(a) if appropriate, each section of the Bankruptcy Act, or each regulation of the *Bankruptcy Regulations 1996*, or each rule of court under which the application is made; and

(b) the relief sought.

Note: Each application and appeal mentioned below must be commenced by filing the form *Bankruptcy—Application*. The list is not exhaustive:

(a) an application, under section 78 of the Bankruptcy Act, for the issue of a warrant for the arrest of a debtor or bankrupt;

(b) an appeal, under subsection 82(5) of the Bankruptcy Act, against an estimate by the trustee of the value of a debt or liability provable in a bankruptcy;

(c) an application, under section 153B of the Bankruptcy Act, for the annulment of a bankruptcy;

(e) an application, under section 180 of the Bankruptcy Act, for acceptance of a trustee's resignation from the office of trustee of an estate;

(f) an application, under section 183 of the Bankruptcy Act, for release of a trustee from the trusteeship of an estate.

26.05 Leave to be heard

(1) The court may grant leave to be heard in a bankruptcy case to a person who is not a party to the case.

(2) The court may grant the leave on conditions and may revoke the leave at any time.

(3) The court may order the person to pay costs if:

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(a) the granting of leave to the person causes additional costs for a party to the case; and

(b) the court considers that the costs should be paid by the person.

(4) The court may also order that the person is not to be further heard in the case until the costs are paid or secured to the court's satisfaction.

(5) The court may grant leave or make an order under this rule on the court's own initiative or on the application of a party or another person having an interest in the case.

(6) An application for leave or for an order must be made by filing the form *Bankruptcy—Application in a Case*.

26.06 Appearance at application or examination

A person who intends to appear at the hearing of an application, or take part in an examination, must file the form *Bankruptcy—Notice of Appearance*.

26.07 Opposition to Bankruptcy Application or a Bankruptcy Application in a Case

(1) In this rule:

application includes the forms *Bankruptcy—Application* and *Bankruptcy—Application in a Case*.

(2) A person who intends to oppose an application must, at least 3 days before the date fixed for the hearing of the application:

(a) file the form *Bankruptcy—Notice of Appearance*;

(b) file the form *Bankruptcy—Notice stating grounds of opposition to an Application or Application in a Case*;

(c) file an affidavit in support of the grounds of opposition; and

(d) serve the notices and supporting affidavit on the applicant.

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Part 26.3—Examinations

Division 26.3.1—Interpretation

26.08 Definition for Part 26.3

In this Part:

relevant person means a relevant person within the meaning of section 81 of the Bankruptcy Act.

Note: ***Examinable person*** is defined in subsection 5(1) of the Bankruptcy Act.

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Division 26.3.2—Examination of relevant person

26.09 Application for summons (Bankruptcy Act s 81)

(1) An application to the court for a relevant person to be summoned for examination in relation to the person's bankruptcy must be in accordance with the form *Bankruptcy—Application for summons to examine relevant person or examinable person*.

(2) The application must be accompanied by:
  (a) a draft of each summons applied for; and
  (b) an affidavit identifying:
    (i) each relevant person to be summoned; and
    (ii) if the summons is to require the relevant person to produce books at the examination, the books that are to be produced.

Note: A relevant person may be required to produce books at an examination that are in the possession of the person and relate to the person or to any of the person's examinable affairs—see subsection 81(1B) of the Bankruptcy Act.

26.10 Hearing of application

The application may be heard in the absence of a party or in chambers.

26.11 Requirements of summons

(1) A summons must be in accordance with the form *Bankruptcy—Summons for Examination*.

(2) A Registry Manager must:
  (a) sign and seal the summons; and
  (b) give it to the applicant for service on the relevant person.

(3) If the summons requires the relevant person to produce books at the examination, the summons must identify the books that are to be produced.

26.12 Service of summons

At least 8 days before the date fixed for the examination, the applicant must:
  (a) serve the summons on the relevant person by special service, or in another way directed by the court; and
  (b) give written notice of the date, time and place fixed for the examination to each creditor of the relevant person of whom the applicant has knowledge.

Note: Part 7.2 of the Rules deals with special service.

26.13 Failure to attend examination

If the relevant person does not attend the examination in accordance with the summons, the court may:

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(a) adjourn the examination generally or to another day, time or place; or
(b) discharge the summons.

26.14 Application for discharge of summons

(1) A relevant person who is served with a summons and wishes to apply for an order to discharge the summons may do so by filing:
   (a) the form *Bankruptcy—Application in a Case* in the proceeding in which the summons was issued; and
   (b) an affidavit setting out the grounds in support of the application.

(2) As soon as possible after filing the form *Bankruptcy—Application in a Case* and supporting affidavit, the relevant person must serve a copy of each document:
   (a) on the person who applied for the summons; and
   (b) if the person who applied for the summons is not the Official Receiver, on the Official Receiver.

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Division 26.3.3—Examination of examinable person

26.15 Application for summons (Bankruptcy Act s 81)

(1) An application to the court for an examinable person to be summoned for examination in relation to the bankruptcy of a relevant person must be in accordance with the form *Bankruptcy—Application for summons to examine relevant person or examinable person*.

(2) A single application may be made for the summons of 2 or more examinable persons in relation to a relevant person's bankruptcy.

(3) The application must be accompanied by:
  (a) a draft of each summons applied for; and
  (b) an affidavit (***the supporting affidavit***) that complies with subrule (4).

(4) The supporting affidavit must:
  (a) state whether the applicant is:
    (i) a creditor who has a debt provable in the bankruptcy;
    (ii) the trustee of the relevant person's estate; or
    (iii) the Official Receiver;
  (b) state the facts relied on by the applicant to establish that each person to be summoned is an examinable person; and
  (c) if the summons is to require an examinable person to produce books at the examination:
    (i) identify the books that are to be produced; and
    (ii) give details of:
      (A) any inquiry by the applicant about the books to be produced; and
      (B) any refusal by the examinable person to cooperate with the inquiry.

Note: An examinable person may be required to produce books at an examination that are in the possession of the person and relate to the relevant person or to any of the relevant person's examinable affairs—see subsection 81(1B) of the Bankruptcy Act.

(5) The supporting affidavit may be filed in a sealed envelope marked 'Affidavit supporting application for summons for examination under subsection 81(1) of the *Bankruptcy Act 1966*'.

(6) If the supporting affidavit is filed in a sealed envelope in accordance with subrule (5), the Registry Manager must not make it available for public inspection.

26.16 Hearing of application

The application may be heard in the absence of a party or in chambers.

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Rule 26.17

26.17 Requirements of summons

(1) A summons must be in accordance with the form *Bankruptcy—Summons for Examination*.

(2) A Registry Manager must:
  (a) sign and seal the summons; and
  (b) send it to the applicant for service on each examinable person to be summoned for examination.

(3) If the summons requires an examinable person to produce books at the examination, the summons must identify the books that are to be produced.

26.18 Service of summons

At least 8 days before the date fixed for the examination, the applicant must:
  (a) serve the summons on each examinable person by special service or in another way directed by the court; and
  (b) give written notice of the date, time and place fixed for the examination to each creditor of the relevant person of whom the applicant has knowledge.

Note: Part 7.2 of the Rules deals with special service.

26.19 Application for discharge of summons

(1) An examinable person who is served with a summons and wishes to apply for an order to discharge the summons may do so by filing:
  (a) the form *Bankruptcy—Application in a Case* in the case in which the summons was issued; and
  (b) an affidavit setting out the grounds in support of the application.

(2) As soon as possible after filing the form *Bankruptcy—Application in a Case* and supporting affidavit, the examinable person must serve a copy of each document:
  (a) on the person who applied for the summons; and
  (b) if the person who applied for the summons is not the Official Receiver, on the Official Receiver.

26.20 Conduct money and witnesses expenses

(1) A person (other than a relevant person) who, in accordance with a summons, attends an examination to give evidence or produce documents is entitled to be paid:
  (a) enough conduct money to cover the reasonable expenses of travelling from and to the place where the person lives, and any reasonable accommodation expenses; and
  (b) reasonable expenses for the person's attendance as a witness.

(2) The expenses must be paid by the applicant for the summons.

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(3) The expenses mentioned in paragraph (1)(a) must be paid a reasonable time before the person is to attend the examination.

(4) In this rule:

conduct money means a sum of money or its equivalent, such as pre-paid travel, sufficient to meet a person's reasonable expenses of attending an examination and returning after so attending.

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Rule 26.21

Part 26.4—Annulment of bankruptcy

26.21 Application of Part 26.4

This Part applies to an application under section 153B of the Bankruptcy Act for the annulment of a bankruptcy.

26.22 Requirements of application

(1) The application must be accompanied by an affidavit (***the supporting affidavit***) setting out the grounds on which the annulment is sought.

(2) The application and the supporting affidavit must be served on the trustee at least 7 days before the date fixed for the procedural hearing of the application.

26.23 Notice to creditors

(1) The applicant must give notice of the application to each person known to the applicant to be a creditor of the bankrupt.

(2) The notice must be in accordance with the form *Bankruptcy—Notice to creditors of annulment application*.

(3) The applicant must serve the notice on each creditor at least 7 days before the date fixed for the procedural hearing of the application.

26.24 Procedural hearing—report by trustee

(1) When the application and the supporting affidavit are filed, the Registry Manager must fix a date for a procedural hearing.

(2) At the procedural hearing, the court may make:
  (a) an order requiring the trustee to prepare a report for the periods before and after the bankruptcy;
  (b) orders for the future conduct of the case; and
  (c) an order allocating a date or dates for the hearing of the case.

(3) A report required under paragraph (2)(a) must include information about:
  (a) the bankrupt's conduct;
  (b) the bankrupt's examinable affairs; and
  (c) the administration of the bankrupt's estate.

(4) The report must:
  (a) be in the form of an affidavit; and
  (b) be filed at least 5 days before the first date allocated under paragraph (2)(c).

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26.25 Service of annulment order

If the court orders an annulment, the applicant must serve a sealed copy of the order on the trustee and the Official Receiver for the District in which the order was made, within 2 days after the applicant receives the sealed order.

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Part 26.5—Trustees

26.26 Applications in relation to the appointment of a trustee

(1) This rule applies to an application under section 90-20 of Schedule 2 to the Bankruptcy Act for either of the following orders:
  (a) an order that a person cease to be the trustee of an estate;
  (b) an order that another person be appointed as the trustee of an estate.

(2) The application must be accompanied by an affidavit stating the grounds in support of the application.

(3) At least 28 days before the date fixed for the hearing of the application, the applicant must serve the application and supporting affidavit on the trustee and any petitioning creditor.

(4) At least 14 days before the date fixed for the hearing of the application, the applicant must serve the application and supporting affidavit on each person known to the applicant to be a creditor of the estate.

(5) If the court makes the order sought, the applicant must, as soon as practicable, serve a copy of the order on the Official Receiver.

26.27 Resignation or release of trustee (Bankruptcy Act ss 180 and 183)

(1) An application for acceptance of a trustee's resignation from the office of trustee of an estate, or release of a trustee from the trusteeship of an estate, must be accompanied by:
  (a) an affidavit stating the grounds in support of the application; and
  (b) if the application is for release of a trustee from the trusteeship of an estate:
    (i) a statement giving details of the realisation of the bankrupt's property and the distribution of the estate by the trustee; and
    (ii) a copy of the books referred to in section 70-10 of Schedule 2 to the Bankruptcy Act in relation to the estate.

(2) The application and supporting documents must be served on:
  (a) the Official Receiver;
  (b) the bankrupt; and
  (c) anyone else (including a creditor) as ordered by the court.

(3) If the court makes the order sought, the applicant must serve a copy of the sealed order on the Official Receiver for the District in which the order was made, within 2 days after the applicant receives the sealed order.

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Part 26.6—Warrants

26.28 Arrest of bankrupt(Bankruptcy Act s 78)

(1) An application for the issue of a warrant for the arrest of a bankrupt must state the grounds for the issue of the warrant.

(2) The application must be accompanied by an affidavit stating the facts in support of the application.

(3) The warrant must be in accordance with the form *Bankruptcy—Arrest Warrant*.

(4) If a bankrupt is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to the Registry Manager in the Registry from which the warrant was issued.

26.29 Apprehension of person failing to attend Court (Bankruptcy Act s 264B(1))

(1) A warrant for the apprehension of a person who fails to comply with a summons must be in accordance with the form *Bankruptcy—Apprehension Warrant*.

(2) The court may order that the warrant be kept in the Registry:
  (a) for a stated time; and
  (b) on any conditions that the court considers appropriate.

(3) If a person is arrested under the warrant, the person who carried out the arrest must immediately give notice of the arrest to a Registry Manager in the Registry from which the warrant was issued.

Note: For the procedure to be followed if a person is apprehended under a warrant and it is not practicable to bring the person before the Court or a Registrar on the day the person is apprehended, see Part 14 of the Bankruptcy Regulations.

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Part 26.7—Costs

26.30 Order for costs

(1) Unless the court otherwise orders, a person who is entitled to costs in a case to which the Bankruptcy Act applies is entitled to costs in accordance with Part 40 of the *Federal Court Rules 2011*.

(2) In making an order for costs, the court may fix the amount of the costs.

(3) If the court fixes the amount of the costs, Part 40 of the *Federal Court Rules 2011* does not apply to a bill of costs submitted for the costs, except for the issue of a certificate of taxation.

26.31 Application of Part 40 of *Federal Court Rules 2011*

(1) For the purposes of applying a provision of Part 40 of the *Federal Court Rules 2011* to this Part, a reference in those Rules to:

(a) 'the Court' or 'Court' is taken to be a reference to a Family Court;

(b) 'application' is taken to include a reference to an application in a Family Court started by the form *Bankruptcy—Application* or transferred to a Family Court under section 35A of the Bankruptcy Act;

(ba) 'interlocutory application' is taken to include a reference to an application in a Family Court started by the form *Bankruptcy—Application in a Case*;

(c) a Registrar, Deputy Registrar, District Registrar, Deputy District Registrar or taxing officer is taken to be a reference to a Registrar of a Family Court; and

(d) the entry of orders is taken to be:

(i) if the reference relates to a party seeking to enter an order—a reference to the application of the party for an order in relation to costs in a Family Court; and

(ii) if the reference relates to a judicial officer who signs and seals an order to authenticate the order—a reference to the making of an order by a judicial officer in relation to costs in a Family Court.

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Chapter 26A—Cases to which the Trans-Tasman Proceedings Act 2010 applies

Summary of Chapter 26A

Chapter 26A sets out the rules about a case in a Family Court to which the *Trans-Tasman Proceedings Act 2010* applies. Delegation of the Family Court's power in such cases is set out in Chapter 18 of these Rules.

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.

26A.01 Application of Division 34.4 of the *Federal Court Rules 2011*

Division 34.4 of the *Federal Court Rules 2011*, as modified by rule 26A.02 or an order, applies to a proceeding in a Family Court as if the rules in that Division were provisions of these Rules.

26A.02 Modification of the *Federal Court Rules 2011*

(1) For the purposes of rule 26A.01, Division 34.4 of the *Federal Court Rules 2011* is modified as follows:

(a) a reference to an originating application is taken to be a reference to an Initiating Application (Family Law);

(b) a reference to an interlocutory application is taken to be a reference to an Application in a Case;

(c) a reference to an application, a certificate of non-compliance or a subpoena being in accordance with a Form is to be disregarded.

(2) For the purposes of rule 26A.01, Division 34.4 of the *Federal Court Rules 2011* is also modified in accordance with Table 26A.1.

Table 26A.1—Additional modifications of the *Federal Court Rules 2011*

Item	Provision	Omit	Substitute
1A	Paragraph 34.62(b)	other of these Rules	provisions of the *Family Law Rules 2004*
1	Paragraph 34.63(1)(b)	rules 8.01 and 8.03	rule 2.01 of the *Family Law Rules 2004*

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Rule 26A.03

Table 26A.1—Additional modifications of the *Federal Court Rules 2011*

Item	Provision	Omit	Substitute
2	Subparagraph 34.64(a)(ii)	rule 17.01	rule 5.01 of the *Family Law Rules 2004*
3	Subrule 34.68(2)	the whole of the subrule	

26A.03 Service of subpoena

A subpoena to which Division 2 of Part 5 of the *Trans-Tasman Proceedings Act 2010* applies must also be accompanied by an information sheet in a form approved by the Chief Executive Officer.

Note 1: Subsection 32(2) of the *Trans-Tasman Proceedings Act 2010* requires the subpoena to be accompanied by a copy of the order giving leave for service and a notice in the prescribed form.

Note 2: Section 33 of the *Trans-Tasman Proceedings Act 2010* requires the reasonable expenses of complying with the subpoena to be paid at the time of service of the subpoena or at some other reasonable time before compliance with the subpoena is required.

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Chapter 26B—Arbitration

Summary of Chapter 26B

Chapter 26B sets out rules relating to arbitration. In particular, the Chapter contains rules about disclosure (Part 26B.1) and subpoenas (Part 26B.2) in arbitrations. See also Part 5 of the Regulations for additional requirements relating to arbitration. Delegation of the Family Court's powers in relation to arbitration is set out in Chapter 18 of these Rules.

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 26B.1—Disclosure relating to arbitration

26B.01 General duty of disclosure

(1) Each party to an arbitration has a duty to the arbitrator and each other party to the arbitration to give full and frank disclosure of all information relevant to the arbitration, in a timely manner.

(2) Without limiting subrule (1), a party to an arbitration must make full and frank disclosure of the party's financial circumstances, including the following:
  (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; or
    (ii) of which the party, or the party's child, spouse or de facto spouse, is an eligible beneficiary as to capital or income; or
    (iii) of which a corporation is an eligible beneficiary as to capital or income if the party, or the party's child, spouse or de facto spouse, is a shareholder or director of the corporation; or
    (iv) over which the party has any direct or indirect power or control; or
    (v) of which the party has the direct or indirect power to remove or appoint a trustee; or

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(vi) of which the party has the power (whether subject to the concurrence of another person or not) to amend the terms; or

(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, or 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;

(h) liabilities and contingent liabilities.

(3) Paragraph (2)(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.

(4) In this rule:

legal entity means a corporation (other than a public company), trust, partnership, joint venture business or other commercial activity.

26B.02 Duty of disclosure—documents

(1) The duty of disclosure, under subrule 26B.01(1), of a party to an arbitration applies to each document that:

(a) is or has been in the possession, or under the control, of the party; and

(b) is relevant to an issue in dispute between the parties to the arbitration.

(2) This Part does not affect:

(a) the right of a party to an arbitration 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; or

(b) another right of access to a document other than under this Part; or

(c) an agreement between parties to an arbitration for disclosure by a procedure that is not described in this Part.

26B.03 Use of documents

A person who inspects or copies a document produced under this Chapter in relation to an arbitration:

(a) must use the document for the purposes of the arbitration only; and

(b) must not otherwise disclose the contents of the document, or give a copy of it, to any other person without the court's permission.

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26B.04 Party may require production of documents

(1) A party to an arbitration may, by written notice, require another party to the arbitration to provide a copy of, or produce for inspection, a document referred to:

(a) in a document provided by a party to the arbitration to another party to the arbitration; or

(b) in correspondence prepared and sent by or to another party to the arbitration.

(2) Subject to rule 26B.08, a party required to provide a copy of a document must provide the copy within 14 days after receiving the written notice.

26B.05 Documents that need not be produced

(1) A party to an arbitration must disclose, but need not produce:

(a) a document for which there is a claim of privilege from production; or

(b) a document a copy of which has already been provided, if the copy contains no change, obliteration or other mark or feature that may affect the outcome of the arbitration.

Note: Rule 26B.06 sets out the requirements for challenging a claim of privilege from disclosure.

(2) Subrule (1) has effect despite rules 26B.04, 26B.07 and 26B.08.

26B.06 Objection to production

(1) This rule applies if:

(a) a party to an arbitration (the ***disclosing party***) claims:

(i) privilege from production of a document under this Part; or

(ii) that the disclosing party is unable to produce a document required to be produced under this Part; and

(b) another party to the arbitration, by written notice to the disclosing party, challenges the claim.

(2) The disclosing party must, within 7 days after receiving the notice, give a statement setting out the basis of the claim to:

(a) the other party; and

(b) the arbitrator.

(3) If a statement is given to the arbitrator under subrule (2) in relation to a claim and the arbitrator considers that determining the claim would not involve determining a question of law, the arbitrator must determine the claim or terminate the arbitration.

(4) If a statement is given to the arbitrator under subrule (2) in relation to a claim and the arbitrator considers that determining the claim would involve determining a question of law, the arbitrator must notify the parties.

Note: See also rule 26B.09 (applications for orders relating to disclosure).

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(5) If the arbitrator terminates a section 13E arbitration under subrule (3), the arbitrator must, within 7 days, inform the court.

26B.07 Disclosure by giving a list of documents

(1) This rule applies if:
  (a) the parties to an arbitration have made an arbitration agreement in relation to the arbitration; or
  (b) the parties to an arbitration have been given a notice under regulation 67G of the Regulations.

(2) A party to the arbitration (the ***requiring party***) may, by written notice, require another party to the arbitration (the ***disclosing party***) to give the requiring party a list of documents to which the duty of disclosure under subrule 26B.01(1) applies.

  Note: An arbitrator may require a person to produce documents: see regulation 67N of the Regulations.

(3) The disclosing party must, within 21 days after receiving the notice, give the requiring party a list of the documents to which the disclosing party's duty of disclosure under subrule 26B.01(1) applies.

  Note: Rule 26B.02 sets out the documents to which the duty of disclosure under subrule 26B.01(1) applies.

(4) The list must identify:
  (a) the documents (if any) that are no longer in the possession, or under the control, of the disclosing party (with a brief statement about the circumstances in which the documents left the party's possession or ceased to be under the party's control); and
  (b) the documents (if any) for which privilege from production is claimed.

(5) The requiring party may, by written notice, require the disclosing party to do either of the following in relation to a document included in a list in accordance with subrule (3):
  (a) produce the document for inspection;
  (b) provide a copy of the document.

(6) If the disclosing party receives a notice under paragraph (5)(b) in relation to a document, the disclosing party must, within 14 days after receiving the notice, give the requiring party a copy of the document at the requiring party's expense.

(7) Subrule (6) has effect subject to subrule (8) and rule 26B.08.

(8) Subrule (6) does not apply to a document:
  (a) in relation to which privilege from production is claimed; or
  (b) that is no longer in the disclosing party's possession or control.

(9) If:
  (a) the disclosing party gives the requiring party a list in accordance with subrule (3); and

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(b) after doing so, a document identified in the list in accordance with paragraph (4)(a) is located by, or comes into the possession or under the control of, the disclosing party;

the disclosing party must, within 7 days, notify the requiring party of that fact.

26B.08 Disclosure by inspection of documents

(1) This rule applies if a party to an arbitration (the ***disclosing party***) receives a notice from another party to the arbitration (the ***requiring party***) under subrule 26B.04(1) or paragraph 26B.07(5)(a) requiring the disclosing party to produce a document for inspection.

(2) This rule also applies if:

(a) a party to an arbitration (the ***disclosing party***) receives a notice from another party to the arbitration (the ***requiring party***) under subrule 26B.04(1) or paragraph 26B.07(5)(b) requiring the disclosing party to provide a copy of a document; and

(b) it is not convenient for the disclosing party to provide a copy of a document required by the notice because of the number and size of the documents specified in the notice.

(3) The disclosing party must, within 14 days after receiving the notice:

(a) notify the requiring party, in writing, of a convenient place and time at which the document may be inspected; and

(b) produce the document for inspection at that place and time; and

(c) allow copies of the document to be made, at the requiring party's expense.

(4) Unless the parties agree otherwise, the time notified under paragraph (3)(a) must not be more than 21 days after the day on which the notice referred to in subrule (1) or (2) was given.

Note: The court may shorten or extend the time for compliance with a rule (see rule 1.14).

(5) If the requiring party fails to inspect the document at the time notified under paragraph (3)(a), the requiring party is not entitled to inspect the document at a later time unless the requiring party tenders an amount to the disclosing party for the reasonable costs of providing another opportunity for inspection.

Note: The court may dispense with the obligation to tender an amount (see rule 1.12).

26B.09 Applications for orders relating to disclosure

Applications by a party to an arbitration

(1) A party to an arbitration may apply for an order that the party be partly or fully relieved of the duty of disclosure under subrule 26B.01(1).

(2) If:

(a) a party to an arbitration (the ***requiring party***) gives another party to the arbitration (the ***disclosing party***) a notice under subrule 26B.04(1), 26B.07(2) or 26B.07(5); and

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(b) the disclosing party fails to comply with the notice; and
(c) either:
(i) the disclosing party has not made a claim under rule 26B.06 in relation to a document to which the notice relates; or
(ii) the disclosing party has made such a claim, and the arbitrator has determined the claim under subrule 26B.06(3) or has notified the parties under subrule 26B.06(4) in relation to the claim;

the requiring party may apply for an order under subrule (3).

(3) For subrule (2), the requiring party may apply for an order that the disclosing party:
(a) comply with a notice given by the requiring party to the disclosing party under subrule 26B.04(1), 26B.07(2) or 26B.07(5); or
(b) disclose a document or class of documents to the requiring party by providing a copy of the document or documents or producing the document or documents for inspection; or
(c) give the requiring party and the arbitrator a written statement:
(i) that a specified document, or class of documents, does not exist or has never existed; or
(ii) setting out the circumstances in which a specified document or class of documents ceased to exist or passed out of the possession or control of the disclosing party.

Applications by an arbitrator

(4) An arbitrator may apply for an order that:
(a) a party to the arbitration comply with a notice given to the party under subrule 26B.04(1), 26B.07(2) or 26B.07(5); or
(b) a party to the arbitration comply with a determination by the arbitrator under subrule 26B.06(3); or
(c) a party to the arbitration give the arbitrator and each other party to the arbitration a written statement:
(i) that a specified document, or class of documents, does not exist or has never existed; or
(ii) setting out 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.

Note: For additional powers of the arbitrator, see subregulation 67N(1) of the Regulations.

All applications

(5) An application under this rule must be made by filing:
(a) an application in accordance with the approved form; and
(b) an affidavit stating the facts relied on in support of the application.

(6) A person making an application under this rule must satisfy the court that the order is necessary to facilitate the effective conduct of the arbitration.

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Note: 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).

(7) In making an order under this rule, the court may consider the following:
  (a) whether the disclosure sought is relevant to an issue in dispute between the parties to the arbitration;
  (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 arbitration;
  (d) the likely effect on the outcome of the arbitration of disclosing, or not disclosing, the document or class of documents.

(8) If a party to an arbitration objects to the production, in accordance with an order under this rule, of a document for inspection or copying, the court may inspect the document to decide the objection.

26B.10 Costs of compliance

If the cost of complying with the duty of disclosure under subrule 26B.01(1) would be oppressive to a party to an arbitration, the court may order another party to the arbitration to:
  (a) pay the costs; or
  (b) contribute to the costs; or
  (c) give security for costs.

26B.11 Electronic disclosure

The court may make an order directing that documents be disclosed for the purposes of this Part by electronic communication.

Note: This rule does not limit the power of an arbitrator to require the production of documents under paragraph 67N(1)(b) of the Regulations.

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Part 26B.2—Subpoenas

Division 26B.2.1—General

26B.12 Application of this Part

This Part applies in relation to subpoenas issued, or to be issued, in relation to an arbitration.

26B.13 Interpretation

(1) In this Part:

interested person, in relation to a subpoena, means a person who has a sufficient interest in the subpoena.

issuing party means the party for whom a subpoena is issued in accordance with this Part.

named person means a person required by a subpoena issued in accordance with this Part to give evidence or produce documents.

subpoena for production means a subpoena mentioned in paragraph 26B.14(1)(b).

subpoena for production and to give evidence means a subpoena mentioned in paragraph 26B.14(1)(c).

subpoena to give evidence means a subpoena mentioned in paragraph 26B.14(1)(a).

(2) In this Part, a reference to a document includes a reference to an object.

Note: For the definition of ***document***, see the *Acts Interpretation Act 1901*.

26B.14 Issuing a subpoena

(1) The court may, on application, issue a subpoena requiring a person:
  (a) to attend an arbitration to give evidence; or
  (b) to produce documents to the court in relation to an arbitration; or
  (c) to produce documents to the court in relation to an arbitration and attend the arbitration to give evidence.

(2) A subpoena mentioned in subrule (1) must be in the approved form.

(3) An application, under subregulation 67N(2) of the Regulations, by a party to an arbitration for the issue of a subpoena:
  (a) may be made orally or in writing; and
  (b) may be made without giving notice to any other party to the arbitration; and

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(c) may be determined in chambers in the absence of the other parties to the arbitration.

(4) A party to an arbitration must not request the issue of a subpoena for production and to give evidence if production would be sufficient in the circumstances.

(5) A subpoena must identify the person to whom it is directed by name or description of office.

(6) A subpoena may be directed to 2 or more persons if:
(a) the subpoena is to give evidence only; or
(b) the subpoena requires each named person to produce the same document (rather than the same class of documents).

(7) 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 day the arbitration is to start.

(8) A subpoena to give evidence must specify the time and place at which the person must attend the arbitration to give evidence.

(9) A subpoena for production and to give evidence must:
(a) identify the document to be produced; and
(b) specify the time and place at which the person must attend the arbitration to produce the document and give evidence.

26B.15 Subpoena not to issue in certain circumstances

The court must not issue a subpoena:
(a) on application by a self-represented party, unless the party has first obtained the Registrar's permission to make the application; or
(b) for production of a document in the custody of the court or another court.

Note: Rule 26B.27 sets out the procedure to be followed when a party seeks to produce to the court a document from another court.

26B.16 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.

26B.17 Service

(1) The issuing party for a subpoena must serve the named person, in accordance with subrule (1A), with:
(a) the subpoena; and
(b) the brochure, approved by the Chief Executive Officer, containing information about subpoenas.

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(1A) A document required to be served under subrule (1) must be served:

(a) in relation to a subpoena for production—either:

(i) by ordinary service; or

(ii) by a manner of service agreed between the issuing party and the named person; and

(b) in relation to a subpoena to give evidence, or a subpoena for production and to give evidence—by hand.

(2) The issuing party for a subpoena must serve a copy of the subpoena, in accordance with subrule (2A), on:

(a) each other party to the arbitration; and

(b) each interested person in relation to the subpoena.

(2A) A document required to be served under subrule (2) must be served:

(a) by ordinary service; or

(b) by a manner of service agreed between the issuing party and the person to be served.

(3) Unless the court directs otherwise, a document required to be served under subrule (1) or (2) must be served:

(a) in relation to a subpoena for production—at least 10 days before the day on which production in accordance with the subpoena is required; and

(b) in relation to a subpoena to give evidence—at least 7 days before the day on which attendance in accordance with the subpoena is required; and

(c) in relation to a subpoena for production and to give evidence—at least 10 days before the day on which production and attendance in accordance with the subpoena is required.

(4) A subpoena must not be served on a child without the court's permission.

Note: Chapter 7 also contains other requirements relating to service.

26B.18 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 item 101 of the table in Part 1 of Schedule 4.

(2) A named person served with a subpoena to give evidence, or a subpoena for production and to give evidence, is entitled to be paid a witness fee by the issuing party, in accordance with Part 2 of Schedule 4, immediately after attending the arbitration in compliance with the subpoena.

(3) A named person may apply to the court 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.

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26B.19 When compliance is not required

(1) A named person does not have to comply with a subpoena if:
  (a) the named person was not served in accordance with these Rules; or
  (b) conduct money was not tendered to the person:
    (i) at the time of service; or
    (ii) at a reasonable time before the day on which attendance or production in accordance with the subpoena is required.

(2) If a named person is not to be called to give evidence at the arbitration, or to produce a document to the court, in compliance with the subpoena, the issuing party may release the named person from the obligation to comply with the subpoena.

26B.20 Duration of subpoena

A subpoena remains in force until whichever of the following first occurs:
  (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 arbitration ends.

26B.21 Objection to subpoena

(1) If a named person, or an interested person, in relation to a subpoena:
  (a) seeks an order that the subpoena be set aside in whole or in part; or
  (b) seeks any other relief in relation to the subpoena;

the person must, before the day on which attendance or production in accordance with the subpoena is required, apply to the court, in writing, for the relevant order.

(2) If a person makes an application under subrule (1), the subpoena must be referred to the court for the hearing and determination of the application.

(3) The court may compel a person to produce a document to the court for the purpose of determining an application under subrule (1).

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Division 26B.2.2—Production of documents and access by parties

26B.22 Application of Division 26B.2.2

This Division applies to a subpoena for production.

26B.23 Compliance with subpoena

(1) A named person may comply with a subpoena for production by providing the required documents and a copy of the subpoena to the court:
  (a) at the place specified in the subpoena; and
  (b) on or before the day on which production in accordance with the subpoena is required.

(2) The named person, when complying with the subpoena for production, must inform the Registry Manager in writing 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 destroy the documents when they are no longer required by the court.

(3) In this rule:

copy includes:
  (a) a photocopy; and
  (b) a PDF copy on a CD-ROM; and
  (c) a copy in any other electronic form that the issuing party for the subpoena has indicated is acceptable.

26B.24 Right to inspect and copy documents

(1) This rule applies if:
  (a) the court issues a subpoena for production; and
  (b) at least 10 days before the day (the ***production day***) on which production in accordance with the subpoena is required, the issuing party:
    (i) serves the named person with the subpoena and the brochure in accordance with subrule 26B.17(1); and
    (ii) serves each person mentioned in subrule 26B.17(2) with a copy of the subpoena in accordance with that subrule; and
  (c) no objection under rule 26B.25 to production of a document required in accordance with the subpoena is made by the production day; and
  (d) the named person complies with the subpoena; and
  (e) on or after the production day, the issuing party files a notice of request to inspect in an approved form.

(2) Each party to the proceedings may:
  (a) inspect a document produced in accordance with the subpoena; and

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(b) take copies of a document (other than a child welfare record, criminal record, medical record or police record) produced in accordance with the subpoena.

(3) Subrule (2) has effect subject to paragraph 26B.25(4)(c) (inspection of medical records).

(4) Unless the court orders otherwise, an inspection under paragraph (2)(a):
(a) must be by appointment; and
(b) may be made without an order of the court.

26B.25 Objections relating to production of documents

Objection to producing, or to inspection or copying of, a document

(1) Subrule (2) applies if a subpoena for production is issued in relation to an arbitration, and:
(a) the named person objects to producing a document in accordance with the subpoena; or
(b) the named person or an interested person in relation to the subpoena, or another party to the arbitration, objects to the inspection or copying of a document identified in the subpoena.

(2) The person or party (the ***objector***) must, before the day on which production in accordance with the subpoena is required, give written notice of the objection and the grounds for the objection, to:
(a) the Registry Manager; and
(b) if the objector is not the named person—the named person; and
(c) each party, or other party, to the arbitration; and
(d) the arbitrator.

Objection relating to inspection or copying of medical records

(3) If a subpoena for production requires the production of a person's medical records, the person may, before the day (the ***production day***) on which production under the subpoena is required, notify the Registry Manager in writing that the person wishes to inspect the medical records for the purpose of determining whether to object to the inspection or copying of the records.

(4) If a person (the ***potential objector***) gives notice under subrule (3):
(a) the potential objector may inspect the medical records; and
(b) if the potential objector wishes to object to the inspection or copying of the records—the potential objector must, within 7 days of the production day, give written notice of the objection and the grounds for the objection, to the Registry Manager; and
(c) unless the court orders otherwise, no other person may inspect the medical records until the later of:
(i) 7 days after the production day; and

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(ii) if the potential objector makes an objection under paragraph (b)—the end of the hearing and determination of the objection.

Referral of subpoena to the court

(5) If a person makes an objection under subrule (2) or paragraph (4)(b), the subpoena must be referred to the court for the hearing and determination of the objection.

(6) The court may compel a person to produce a document to the court for the purpose of ruling on an objection under subrule (2) or paragraph (4)(b).

26B.26 Court permission to inspect documents

A person may not inspect or copy a document produced in compliance with a subpoena for production unless:

(a) rule 26B.24 applies; or

(b) the court gives permission.

26B.27 Production of document from a court

(1) A party to an arbitration who seeks to produce to the court a document in the possession of the court or another court must give the Registry Manager a written notice setting out the following:

(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;

(d) the reason for seeking production.

(2) If the Registry Manager receives a notice under subrule (1) in relation to a document in the possession of another court, 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 under this rule.

26B.28 Return or destruction of documents produced

(1) If:

(a) a named person has informed the Registry Manager under paragraph 26B.23(2)(a) that a document produced by the person in compliance with a subpoena is to be returned to the named person; and

(b) the document is in the possession of the Registry Manager at the end of the arbitration;

the Registry Manager must return the document to the named person at least 28 days, and no later than 42 days, after the end of the arbitration.

(2) If:

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(a) a named person has informed the Registry Manager under paragraph 26B.23(2)(b) that a document produced by the person in compliance with a subpoena may be destroyed; and

(b) the document is in the possession of the Registry Manager at the end of the arbitration;

the Registry Manager may destroy the document, in an appropriate way, not earlier than 42 days after the end of the arbitration.

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Division 26B.2.3—Non-compliance with subpoena

26B.29 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, and given conduct money, in accordance with these Rules;

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).

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Part 26B.3—Other rules relating to arbitration

26B.30 Referral of question of law by an arbitrator

(1) A referral of a question of law by an arbitrator under section 13G of the Act must be made by application in accordance with the approved form.

(2) The arbitrator must give each party to the arbitration a copy of the application within 7 days after making the application.

26B.31 Referral of other matters to the court by the arbitrator

(1) A referral by an arbitrator of a matter to the court under paragraph 67H(3)(b), 67K(b) or 67L(1)(b) of the Regulations must be made by written notice to the Registry Manager.

Note: Regulation 67H is about costs of arbitrations. Regulation 67K is about suspension of arbitrations for failure to comply with directions. Regulation 67L is about termination of arbitrations for lack of capacity.

(2) A referral by an arbitrator of a matter to the court under paragraph 67L(1)(b) of the Regulations must be made within 7 days after the arbitration is terminated.

26B.32 Informing the court about awards made in arbitration

An arbitrator must inform the court of the matters referred to in paragraph 67P(4)(b) of the Regulations, by written notice to the Registry Manager, within 7 days after the award is made.

26B.33 Registration of awards made in arbitration

(1) A copy of an application to register an arbitration award required to be served under subregulation 67Q(2) of the Regulations must be served within 14 days of the day on which the application is filed.

(2) The applicant must file an Affidavit of Service within 7 days of the day on which a copy of the application is so served.

26B.34 Response to applications in relation to arbitration

(1) This rule applies if:
  (a) an application is made to the court in relation to an arbitration (whether the application is made under this Chapter, the Regulations, or the Act); and
  (b) a respondent to the application:
    (i) seeks to oppose the application; or
    (ii) seeks different orders to those sought in the application.

(2) The respondent must file:
  (a) a response in accordance with the approved form; and

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(b) an affidavit stating the facts relied on in support of the response.

(3) The response and affidavit must be filed and served within 7 days after the day on which the application was served.

26B.35 Arbitrator to notify court when certain arbitrations end

If one or more subpoenas are issued in relation to a relevant property or financial arbitration, the arbitrator must inform the court if the arbitration is suspended, terminated or otherwise ends.

Note: See regulation 67P of the Regulations for the duty of the arbitrator to notify the court when a section 13E arbitration ends.

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Rule 27.01

Chapter 27—Transitional provisions

Part 27.1—Transitional provisions relating to the Family Law Amendment (Costs) Rules 2017

27.01 Application of Schedule 3 (itemised scale of costs)

Schedule 3, as substituted by the *Family Law Amendment (Costs) Rules 2017*, applies to work done on or after 1 January 2018.

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Rule 27.03

Part 27.2—Transitional provisions relating to the Family Law Amendment (Insolvency Law Reform) Rules 2017

27.03 Transitional—release of trustee

(1) This rule applies if:

(a) an application referred to in paragraph 26.27(1)(b) is made after 1 September 2017 for the release of a trustee from the trusteeship of an estate; and

(b) because of item 143 of Schedule 1 to the *Insolvency Law Reform Act 2016*, the trustee is required to keep accounts and records (the ***old accounts***) in relation to the estate in accordance with section 173 of the Bankruptcy Act (as that section was in force immediately before it was repealed by Schedule 1 to the *Insolvency Law Reform Act 2016*).

(2) In addition to the books referred to in subparagraph 26.27(1)(b)(ii), a copy of the old accounts must accompany the application.

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