Federal Circuit and Family Court of Australia (Family Law) Rules 2021

made under Chapter 3 of the

Federal Circuit and Family Court of Australia Act 2021

Compilation No. 3

Compilation date: 6 May 2024

Includes amendments: F2024L00509

Registered: 8 May 2024

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* that shows the text of the law as amended and in force on 6 May 2024 (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 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 Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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.

Editorial changes

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

Modifications

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 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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—Purpose and case management

Part 1.1—Preliminary

1.01 Name

These Rules are the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.

1.02 Commencement

(1) Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. The whole of these Rules	1 September 2021.	1 September 2021

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

(2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

Note 1: The *Family Law Rules 2004* (the ***old Rules***), as in force under the Family Law Act immediately before the commencement of these Rules (the ***new Rules***), are repealed (see the *Family Law Repeal Rules 2021*). The new Rules apply to a proceeding that was commenced in accordance with the old Rules and was not determined before the repeal of those Rules.

Note 2: The *Federal Circuit Court Rules 2001*, as in force under the *Federal Circuit Court of Australia Act 1999* immediately before the commencement of these Rules, are repealed as a consequence of the repeal of the *Federal Circuit Court of Australia Act 1999* by Schedule 3 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021*.

1.03 Authority

These Rules are made under Chapter 3 of the *Federal Circuit and Family Court of Australia Act 2021*.

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1.04 Overarching purpose

(1) The overarching purpose of these Rules, as provided by section 67 of the Federal Circuit and Family Court Act, is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.

Note 1: These Rules must be interpreted and applied, and any power conferred or duty imposed by them must be exercised or carried out, in the way that best promotes the overarching purpose (see subsection 67(3) of the Federal Circuit and Family Court Act).

Note 2: See sections 190 and 191 of the Federal Circuit and Family Court Act in relation to the overarching purpose of the Rules of the Federal Circuit and Family Court (Division 2). See also the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* which applies these Rules with modifications.

(2) Parties to family law proceedings must conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose.

Note: See subsection 68(1) of the Federal Circuit and Family Court Act.

(3) A party's lawyer must, in the conduct of a proceeding before the court (including negotiations for settlement) on the party's behalf:

(a) take account of the duty imposed on the party referred to in subrule (2); and

(b) assist the party to comply with the duty.

Note: See subsection 68(2) of the Federal Circuit and Family Court Act.

1.05 Definitions

(1) In these Rules:

abuse, in relation to a child, has the meaning given by subsection 4(1) of the Family Law Act.

address for service means the address given by a party where documents may be left for the party or where documents may be sent for the party (see rule 2.25).

adjourn means to defer or postpone a court event to another day or time.

affected person, in Divisions 11.1.3 and 11.1.4, means a person claiming to be affected by the seizure of property under an Enforcement Warrant.

affidavit means a formal written statement by a party or witness (see Part 8.3).

appeal includes:

(a) an appeal to the Federal Circuit and Family Court (Division 1) under subsection 26(1) of the Federal Circuit and Family Court Act; and

(b) for an appeal to the Federal Circuit and Family Court (Division 1) in respect of which leave to appeal is required under section 28 of the Federal Circuit and Family Court Act—an appeal with such leave; and

(c) a cross-appeal.

(see Chapter 13).

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Appeal Judicial Registrar means the Judicial Registrar at the National Appeal Registry for an appeal.

appellant includes a cross-appellant.

applicant includes a cross-applicant.

Application for Review means the form for seeking a review of the decision of a Judicial Registrar.

Application in a Proceeding means the form for making an interlocutory application.

application without notice means an application that is heard by the court without first being served on the respondent (see Part 5.2).

approved form means a form approved under rule 15.21 for the purposes of these Rules.

arbitration has the meaning given by section 10L of the Family Law Act.

Assessment Act means the *Child Support (Assessment) Act 1989*.

assessment hearing means a hearing conducted by a Judicial Registrar at which the amount to be paid on an itemised costs account is assessed (see rule 12.45).

assessor means a person specially qualified in the subject matter in which the assessor is appointed under Part 7.2 of these Rules.

Note: See section 102B of the Family Law Act in relation to the use of an assessor.

attend, in relation to a court event, includes attendance by electronic communication (see rules 13.32 and 15.16).

bankrupt has the meaning given by subsection 5(1) of the Bankruptcy Act. A reference in these Rules to a person, being a party to a marriage or a party to a de facto relationship, who is bankrupt includes a reference to a person:

(a) who has been discharged from bankruptcy; and
(b) whose property remains vested in the bankruptcy trustee under the Bankruptcy Act.

Bankruptcy Act means the *Bankruptcy Act 1966*.

cancellation fee means a cancellation fee or reservation fee charged by a barrister or solicitor advocate for a court event or dispute resolution event that does not proceed.

case assessment conference means a conference conducted by a Judicial Registrar.

case stated means a procedure in which a case or question is determined by the Federal Circuit and Family Court (Division 1) under section 34 of the Federal Circuit and Family Court Act (see Part 13.9 of these Rules).

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cause of action means a claim seeking an order (other than for interlocutory relief) for which a court has jurisdiction.

Chief Executive Officer has the meaning given by subsection 7(1) of the Federal Circuit and Family Court Act.

Child Support Agency means the Department (or part of the Department) that administers the Assessment Act and the Registration Act.

Child Support Application or Appeal means an application or appeal in which the only orders sought are under the Assessment Act or the Registration Act.

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

child support proceeding:

(a) means a proceeding under the Assessment Act or the Registration Act; and
(b) includes an appeal under section 44AAA of the *Administrative Appeals Tribunal Act 1975* (which provides for appeals from certain child support first review proceedings).

Child Support Registrar means the Child Support Registrar under section 10 of the Registration Act.

child welfare record means a record relating to child welfare held by a State or Territory agency referred to in regulation 12CBA of the Family Law Regulations.

Commonwealth information order has the meaning given by subsection 67J(2) of the Family Law Act.

conciliation conference means a dispute resolution process in which a judicial officer or an impartial third person assists the parties to the dispute to reach an agreement in the dispute.

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

(a) travel between the witness's place of residence or employment and the court; and
(b) if necessary, reasonable accommodation expenses for the witness; and
(c) in the case of a subpoena for production—the reasonable costs of complying with the subpoena.

contravened:

(a) in relation to an order under the Family Law Act affecting children—has the meaning given by subsection 4(1) of the Family Law Act; and
(b) otherwise—means failed to comply with (or follow) an order.

corporation includes:

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

Corporations Rules means the *Federal Court (Corporations) Rules 2000*.

costs means an amount paid or to be paid for work done by a lawyer, and includes expenses.

costs agreement means a written agreement between a party and the party's lawyer, about the costs to be charged by the lawyer for work done for a proceeding for the party, in accordance with the law of a State or Territory.

costs assessment order means an order made by a Judicial Registrar under rule 12.44, 12.45 or 12.50 fixing the total amount payable for costs.

costs brochure means a brochure, approved by the Chief Executive Officer, about costs under Chapter 12 (see subrule 12.34(2)).

costs notice means a notice of a party's actual and estimated future costs, and of any expenses paid or payable to an expert witness (see rule 12.06).

counsel means a barrister, or a solicitor acting as an advocate.

court, in relation to family law or child support proceedings, means a court that:
(a) is exercising jurisdiction in those proceedings by virtue of the Family Law Act or the Federal Circuit and Family Court Act; and
(b) is presided over by a judicial officer who has, or has been delegated, the power to exercise the jurisdiction.

court event includes the following events:
(a) a hearing or part of a hearing;
(b) a trial or part of a trial;
(c) a conference;
(d) an attendance with a family consultant performing the functions of a family consultant;
(e) an attendance with a court child expert performing the functions of a family consultant or a family counsellor.

court of summary jurisdiction means a magistrates' or local court of a State or Territory.

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

cross-appellant means a respondent to an appeal who appeals against one or more orders under appeal.

cross-vesting law means a law relating to the cross-vesting jurisdiction of:

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(a) the Commonwealth (other than under the *Corporations Act 2001*); or
(b) a State or Territory.

de facto relationship has the meaning given by section 4AA of the Family Law Act.

deponent means a person whose evidence is set out in an affidavit and who swears or affirms that the contents of the affidavit are true.

discontinue, in relation to a proceeding, means to withdraw all or part of an application or response.

dispute resolution includes a mediation and a conference (including a conciliation conference).

each person to be served means each person referred to in paragraphs 2.27(3)(a), (b) and (c).

earnings includes the following:
(a) wages, salary, fees, bonus, commission or overtime pay;
(b) other money payable in addition to or instead of wages or salary;
(c) a pension, annuity or vested superannuation money;
(d) money payable instead of leave;
(e) royalties;
(f) retirement benefits due or accruing;
(g) a salary sacrifice arrangement;
(h) performance-based incentives and non-monetary benefits.

electronic communication means:
(a) video link; or
(b) audio link; or
(c) another appropriate electronic means of communication.

Examples: Telephone or video conferencing; closed circuit television; e-mail.

eligible superannuation plan has the meaning given by section 90XD of the Family Law Act.

enforcement officer includes:
(a) an officer of the court who has power to enforce an order; and
(b) a person appointed by the court for the purpose of enforcing an order.

Note: In the Federal Circuit and Family Court (Division 1), this includes the Marshal, Deputy Marshal or a delegate of the Marshal or Deputy Marshal. In the Federal Circuit and Family Court (Division 2), this includes the Sheriff, Deputy Sheriff or a delegate of the Sheriff or Deputy Sheriff.

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

expert's report means a report by an expert witness, including a notice under subrule 7.18(5).

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

family consultant has the meaning given by section 11B of the Family Law Act.

family counselling has the meaning given by section 10B of the Family Law Act.

family counsellor has the meaning given by section 10C of the Family Law Act.

Family Court, in a reference to a Family Court, means the Federal Circuit and Family Court (Division 1) or a Family Court of a State.

family dispute resolution has the meaning given by section 10F of the Family Law Act.

family dispute resolution practitioner has the meaning given by section 10G of the Family Law Act.

Family Law Act means the *Family Law Act 1975*.

Family Law Magistrate of Western Australia means the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

family law proceeding means a proceeding under the Family Law Act.

Family Law Regulations means the *Family Law Regulations 1984* made under the Family Law Act.

family violence has the meaning given by subsection 4AB(1) of the Family Law Act.

family violence order has the meaning given by subsection 4(1) of the Family Law Act.

Federal Circuit and Family Court means:

(a) the Federal Circuit and Family Court (Division 1); or

(b) the Federal Circuit and Family Court (Division 2).

Federal Circuit and Family Court Act means the *Federal Circuit and Family Court of Australia Act 2021*.

Federal Circuit and Family Court (Division 1) means the Federal Circuit and Family Court of Australia (Division 1).

Federal Circuit and Family Court (Division 2) means the Federal Circuit and Family Court of Australia (Division 2).

file, in relation to a document, means file the document in accordance with Part 2.5.

filing registry, in relation to a proceeding, means the registry of a court in which the proceeding is started or to which the proceeding is transferred.

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final order means an order of a court that finally decides a proceeding.

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

financial orders includes orders in relation to any of the following:

(a) maintenance;
(b) a Child Support Application under section 116, 123 or 129 of the Assessment Act;
(c) contribution to child bearing expenses;
(d) property.

financial proceeding means a proceeding (other than an appeal) involving an application:

(a) relating to the maintenance of one of the parties to a marriage, or of a de facto relationship after the breakdown of the relationship, including an application for permission to start a spousal maintenance proceeding; or
(b) relating to the property of the parties to a marriage, or of a de facto relationship after the breakdown of the relationship, or of either of them, including the following:
    (i) an application for permission to start a property proceeding;
    (ii) an application to set aside an order altering property interests under section 79A or 90SN of the Family Law Act;
    (iii) an application under section 85A of the Family Law Act in relation to a financial agreement;
    (iv) an application under section 90K of the Family Law Act in relation to a financial agreement;
    (v) an application under section 90UM of the Family Law Act in relation to a Part VIIIAB financial agreement or a Part VIIIAB termination agreement;
    (vi) an application under section 106B of the Family Law Act in relation to a transaction to defeat a claim; or
(c) relating to the vested bankruptcy property in relation to a bankrupt party to a marriage, or of a de facto relationship after the breakdown of the relationship; or
(d) relating to the maintenance of children; or
(e) under section 116, 123 or 129 of the Assessment Act; or
(f) relating to child bearing expenses (see section 67B of the Family Law Act);

and includes, for the purposes of Part 6.1 of these Rules, a proceeding (other than an appeal) involving an application for the enforcement of a financial obligation.

first court date means the first hearing or other court event after an application or an appeal is filed (including a conference or procedural hearing).

fresh application means any of the following applications, including compliance with pre-action procedures associated with them:

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(a) an application for final orders;
(b) an application that includes an application for final orders;
(c) an Application in a Proceeding filed in connection with an application referred to in another paragraph of this definition;
(d) an Application for Divorce;
(e) an application for consent orders;
(f) a contempt, contravention or enforcement application;
(g) an application relating to contempt in the face of the court;
(h) an appeal, and a rehearing following an appeal;
(i) an Application for Review of final orders made by a Judicial Registrar.

Full Court or ***Full Court of the Federal Circuit and Family Court (Division 1)*** means a Full Court of the Federal Circuit and Family Court (Division 1) constituted in accordance with section 17 of the Federal Circuit and Family Court Act.

gross value, of property, means the value of the property excluding any mortgage, lien, charge or other security over the property.

harmful proceedings order has the meaning given by subsection 102QAC(1) of the Family Law Act.

hearing means the process, other than a trial, of determining:
(a) an Application in a Proceeding; or
(b) an Application for Divorce; or
(c) an application for:
(i) an order that a marriage is a nullity; or
(ii) a declaration as to the validity of a marriage or of a divorce or annulment of a marriage; or
(d) a part of a proceeding; or
(e) an enforcement application.

independent children's lawyer has the meaning given by subsection 4(1) of the Family Law Act.

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

interim order means an order made by a court that operates until another order or a final order is made (see Chapter 5).

interlocutory application means an application that is made in a proceeding that has already been started under these Rules and that is an application for an interlocutory order.

interlocutory order means:
(a) an interim order; or
(b) a procedural order; or
(c) an ancillary order; or

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(d) any other incidental order relating to an application or order.

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

itemised costs account means a document prepared in accordance with rule 12.35.

judicial officer includes a Judge and a Judicial Registrar.

Judicial Registrar (other than in Chapter 14) means:

(a) in relation to the Federal Circuit and Family Court (Division 1)—a Senior Registrar or Registrar of the Court; or

(b) in relation to any other court—the principal legal officer of the court or any other appropriate officer of the court.

Note: ***Judicial Registrar*** has a narrower meaning in Chapter 14 (see rule 14.01).

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

(a) a federal court; or

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

Note: See section 122 of the Family Law Act and sections 55A and 55B of the *Judiciary Act 1903*.

legal aid body means a person, authority or body that, from time to time, receives funding, whether directly or indirectly, from the Commonwealth for the purposes of, or in connection with, the provision of legal assistance by the person, authority or body in connection with matters arising under the Family Law Act.

legal entity means a corporation (other than a public company), trust, partnership, joint venture business or other commercial activity.

legislative provision includes a provision in an applicable Act, these Rules, the Family Law Regulations, any other regulations made under the Family Law Act and any conventions referred to in a regulation made under the Family Law Act.

litigation guardian means a person appointed by the court under rule 3.15 to manage and conduct a proceeding for a person who needs a litigation guardian (also known as a next friend, guardian ad litem or tutor) (see Part 3.5).

location order has the meaning given by subsection 67J(1) of the Family Law Act.

Marshal has the same meaning as in the Federal Circuit and Family Court Act.

Note: See sections 104 and 262 of the Federal Circuit and Family Court Act.

medical procedure proceeding means a proceeding to which rule 1.11 applies.

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

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counsellor, hospital or other provider of services or facilities for medical treatment.

minor means a person under the age of 18 years.

month has the meaning given by rule 15.04.

National Appeal Registry, for an appeal other than from an order of a court of summary jurisdiction, means:

(a) for an appeal from an order in a proceeding heard in Queensland, Lismore or the Northern Territory—the Brisbane Registry of the Federal Circuit and Family Court (Division 1); or

(b) for an appeal from an order in a proceeding heard in the Australian Capital Territory or New South Wales (other than Lismore or Albury)—the Sydney Registry of the Federal Circuit and Family Court (Division 1); or

(c) for an appeal from an order in a proceeding heard in South Australia, Tasmania, Victoria or Albury—the Melbourne Registry of the Federal Circuit and Family Court (Division 1); or

(d) for an appeal from an order made in Western Australia—the Registry of the Family Court of Western Australia.

non-convention country means a country with which Australia does not have a convention as to service of documents (see rule 2.49).

Notice of Child Abuse, Family Violence or Risk means the form referred to in rule 2.03.

notice of contention means a notice of contention referred to in rule 13.08.

oath includes affirmation.

Note 1: See the definition of ***sworn*** in this rule and in sections 21 to 24 of the *Evidence Act 1995*.

Note 2: Subject to sections 4 and 5 of the *Evidence Act 1995*, that Act does not apply to the Family Court of Western Australia or any other court of a State.

order includes:

(a) a decree, decision, declaration and judgment; and

(b) for an appeal or review of a decision—a refusal to grant an application or make an order.

ordinary service means service in accordance with Division 2.6.3.

parenting order has the meaning given by subsection 64B(1) of the Family Law Act.

parenting plan has the meaning given by subsection 63C(1) of the Family Law Act.

parenting proceeding means a proceeding in which the application seeks a parenting order or a child related injunction under Part VII of the Family Law Act (other than an application for child maintenance).

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party includes the following:

(a) an applicant in a proceeding;
(b) an appellant in an appeal;
(c) a respondent to an application or appeal;
(d) an intervener in a proceeding.

party to a financial proceeding includes a payee and any other respondent to an enforcement application.

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

Note: The Child Support Registrar is a payee in relation to a registered child support liability.

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

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

permission means the leave or consent of the court.

person includes a corporation, authority or party.

personal service means service in accordance with Division 2.6.2.

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

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

post-separation parenting program has the meaning given by subsection 4(1) of the Family Law Act.

pre-action procedures means the set of principles and procedures, the text of which is set out in Schedule 1, with which the parties must comply before starting a proceeding.

prescribed child welfare authority has the meaning given by subsection 4(1) of the Family Law Act.

prescribed property, for a person, means the following:

(a) clothes, bed, bedding, kitchen furniture (not including an automatic dishwasher or microwave) and washing machine;
(b) ordinary tools of trade, plant and equipment, professional instruments and reference books, the combined value of which is not more than $5,000.

primary order has the meaning given by subsection 4(1) of the Family Law Act.

property has the meaning given by subsection 4(1) of the Family Law Act.

Examples: Real property; personal property; superannuation.

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property proceeding means a proceeding in which orders (other than consent orders) are sought relating to:

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

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

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

recovery order has the meaning given by section 67Q of the Family Law Act.

Registration Act means the *Child Support (Registration and Collection) Act 1988*.

Registry Manager has the meaning given by subsection 4(1) of the Family Law Act.

seal means a stamp or other impression that the court puts on a document to indicate that the document has been issued by the court.

sealed copy means a document that bears a court seal.

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

serve means to give or deliver a document to a person in the manner required by these Rules (see Parts 2.6 and 2.7).

sign includes:

(a) to write one's own name; and

(b) if a person is unable to write the person's name—to make a mark; and

(c) to sign electronically.

single expert witness means an expert witness who is appointed by agreement between the parties, or by the court, to give evidence or prepare a report on an issue (see Division 7.1.2).

special federal matter has the meaning given by subsection 3(1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

specific questions has the same meaning as interrogatories.

State child order has the meaning given by subsection 4(1) of the Family Law Act.

step means a procedural act taken in the conduct or management of a proceeding.

step-parent has the meaning given by subsection 4(1) of the Family Law Act.

submitting notice means a submitting notice referred to in rule 2.22.

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subpoena means a summons issued by the court that requires a named person to do either or both of the following:

(a) attend the court to give evidence;

(b) bring one or more documents or things to the court.

superannuation information form means a form approved by the Chief Executive Officer for obtaining information from the trustee of a superannuation fund in family law proceedings.

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

Note: See also the definition of ***oath*** in this rule.

termination agreement has the meaning given by subsection 90J(1) of the Family Law Act.

Third Party Debt Notice means a notice given to a third party who holds money for, or owes money to, a payer that demands that any of that money be paid to a payee to satisfy an obligation that the payer owes the payee (see Division 11.1.4).

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

transcript means a written record of a hearing or a trial prepared by a contractor providing transcription services to the court for the proceeding.

trial means the process of determining a proceeding started by an Initiating Application (Family Law).

undertaking as to damages means an undertaking referred to in subrule 10.18(5).

vexatious proceedings order:

(a) has the meaning given by subsection 102Q(1) of the Family Law Act; and

(b) includes an order made under subsection 239(2) of the Federal Circuit and Family Court Act.

written notice means a document (for example, a letter) that complies with rule 2.14.

(2) A definition of a word or expression in subrule(1) applies to each use of the word or expression in these Rules, unless the context does not permit.

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Part 1.2—Case management

Division 1.2.1—General case management procedures

1.06 Court's general powers of case management

The court may exercise any of the powers referred to in Table 1.1 to manage a proceeding to achieve the overarching purpose of these Rules (see rule 1.04).

Table 1.1—Court's powers

Item	Subject	Power
1	Attendance	(a) order a party to attend: (i) a procedural hearing; or (ii) a conciliation conference or other court event; or (iii) a family consultant; or (iv) family counselling or family dispute resolution; or (v) another dispute resolution process as permitted by the Family Law Act (see rule 4.05); (b) require a party, a party's lawyer or an independent children's lawyer to attend court
2	Case development	(a) consolidate proceedings; (b) order that part of a proceeding 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 proceeding 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 proceeding; (f) with the consent of the parties, order that a proceeding or part of a proceeding 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 proceeding to the court or to any other party for the purpose of developing and finalising the balance sheet
3	Conduct of proceeding	(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 proceeding or part of a proceeding; (e) make orders in the absence of a party; (f) deal with an application without an oral hearing if the parties have consented to the application being decided without an oral hearing (see

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Table 1.1—Court's powers		
Item	**Subject**	**Power**
		rule 5.13);
		(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 proceeding 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 these 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: The powers referred to in Table 1.1 are in addition to any powers given to the court under a legislative provision or that it may otherwise have.

1.07 Case Management Practice Direction

(1) The Chief Justice may issue a Case Management Practice Direction that is intended to inform those who use the court about:
  (a) how the case management system works; and
  (b) the arrangements that regulate the progression of a proceeding; and
  (c) the court events that occur as a proceeding progresses.

(2) The Case Management Practice Direction must be published on the court's website.

(3) The Case Management Practice Direction is subject to these Rules which, among other things, set out the obligations of a party when conducting a case and the matters likely to be relevant to the court in exercising discretionary power.

(4) The court may depart from the Case Management Practice Direction if it considers it appropriate to do so having regard to the circumstances of the proceeding, other proceedings awaiting hearing, and available resources.

1.08 Other practice directions

(1) The Chief Justice may issue other practice directions setting out the procedural arrangements applicable to particular types of proceeding.

(2) Practice directions must be published on the court's website.

(3) Practice directions are subject to these Rules.

(4) The court may depart from a practice direction if it considers it appropriate to do so having regard to the circumstances of the proceeding, other proceedings awaiting hearing, and available resources.

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Division 1.2.2—Case management procedures in particular proceedings

1.09 Divorce proceedings

The following apply if a divorce order has been made:

(a) before the order takes effect, a party may make an application under section 57 or 58 of the Family Law Act for rescission of the order, by filing:
  (i) an Application in a Proceeding; and
  (ii) an affidavit setting out the reasons why the divorce order should be rescinded and the evidence in support of the application; and

(b) if a party to the proceeding dies before the order takes effect, the surviving party must inform the court of the death of the other party by filing:
  (i) the death certificate of the deceased party; or
  (ii) an affidavit stating the details of the deceased party's date and place of death.

1.10 Surrogacy proceedings

(1) This rule applies to applications for parenting orders in relation to a child who was born under a surrogacy arrangement if no final parenting order in relation to the child has been made under Part VII of the Family Law Act.

(2) The evidence in support of an application under this rule must include the following:
  (a) a copy of the surrogacy agreement (if any), however described;
  (b) evidence from each applicant that establishes the applicant's personal circumstances, including those personal circumstances:
    (i) at the time the surrogacy procedure took place; and
    (ii) in the period immediately before the surrogacy arrangement was entered into; and
    (iii) in the period immediately before conception; and
    (iv) in the period immediately after the birth of the child and during subsequent arrangements for the care of the child;
  (c) evidence from the surrogate mother that establishes the surrogate mother's personal circumstances, including those personal circumstances:
    (i) at the time the surrogacy procedure took place; and
    (ii) in the period immediately before the surrogacy arrangement was entered into; and
    (iii) in the period immediately before conception; and
    (iv) in the period immediately after the birth of the child and during subsequent arrangements for the care of the child;
  (d) evidence from the surrogate mother as to the following:

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(i) whether the surrogacy arrangement was made with her informed consent;
(ii) whether she received counselling before entering into the surrogacy arrangement;
(iii) whether she received any legal advice before entering into the surrogacy arrangement;

(e) 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);

(f) evidence regarding the identity of the child, including:
(i) a certified copy of the child's birth certificate;
(ii) a report, prepared in accordance with regulation 21M of the Family Law Regulations, relating to the information obtained as a result of carrying out a parentage testing procedure;
(iii) if the child is an Australian citizen—either a certified copy of the child's Australian citizenship certificate, or if the child's name is referred to on an Australian citizenship certificate issued to one of the child's parents, a certified copy of the parent's Australian citizenship certificate;
(iv) 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;

(g) evidence regarding the law in the country where the child was born in relation to:
(i) surrogacy arrangements; and
(ii) the rights of the surrogate mother in relation to the child; and
(iii) the rights of the surrogate mother's spouse (if any) in relation to the child.

1.11 Medical procedure proceedings

(1) This rule applies to applications:
(a) for an order authorising a major medical procedure for a child that is not for the purpose of treating a bodily malfunction or disease; or
(b) where there is a dispute about the Gillick competence of, or the diagnosis or treatment of a child for gender dysphoria as defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) at 302.85 or any subsequent or similar definition.

(2) Any of the following may make an application to which this rule applies:
(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;

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

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

(4) If an application to which this rule applies is filed, evidence must be given to satisfy the court that the proposed medical procedure is in the best interests of the child.

(5) 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.

(6) The evidence in support of an application under this rule may be given:
(a) in the form of an affidavit; or
(b) with the court's permission, orally.

(7) An application to which this rule applies and any document filed with it must be served on the prescribed child welfare authority.

1.12 Financial proceedings

(1) This rule applies to applications for financial orders other than those to which rule 1.13 applies.

(2) A person who applies for an order under Part VIII of the Family Law Act must serve a written notice on each person referred to in subsection 79(10) of that Act of whom the person applying for the order is aware.

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(3) A person who applies for an order under Part VIIIAB of the Family Law Act must serve a written notice on each person referred to in subsection 90SM(10) of that Act of whom the person applying for the order is aware.

(4) A notice under subrule (2) or (3) must:
  (a) state that the person to whom the notice is addressed may be entitled to become a party to the proceedings under subsection 79(10) or 90SM(1) of the Family Law Act (as applicable); and
  (b) include a copy of the application for the order sought; and
  (c) state the date of the next relevant court event.

(5) If, in an application for final orders or a response or reply to such an application, a person seeks a flagging order or splitting order in relation to a superannuation interest under Part VIIIB of the Family Law Act, or applies under section 79A or 90SN of that Act for an order to set aside an earlier order made in relation to a superannuation interest:
  (a) the person must, immediately after filing the application, response or reply, serve a sealed copy of that document on the trustee of the eligible superannuation plan in which the interest is held; and
  (b) if the court makes a flagging order or splitting order or any other order in relation to the superannuation interest—the party in favour of whom the order is made must serve a copy of it on the trustee of the eligible superannuation plan in which the interest is held.

(6) If, in a property proceeding, a party seeks an order to bind the trustee of an eligible superannuation plan and the proceeding has been listed for trial:
  (a) the party must, not less than 28 days before the first day of the trial, notify the trustee of the eligible superannuation plan in writing of:
    (i) the terms of the order that will be sought at the trial to bind the trustee; and
    (ii) the date of the trial; and
  (b) if the court makes an order binding the trustee of an eligible superannuation plan—the party in favour of whom the order is made must serve a copy of the order on the trustee of the eligible superannuation plan in which the interest is held.

1.13 Child support and child maintenance proceedings

(1) This rule applies to the following:
  (a) applications or appeals under the Assessment Act or Registration Act (other than an application for leave to appeal from an order of a court exercising jurisdiction under the Assessment Act or Registration Act);
  (b) an appeal under section 44AAA of the *Administrative Appeals Tribunal Act 1975*;
  (c) an application under Division 7 of Part VII of the Family Law Act;
  (d) an application under Part III or IV of the Family Law Regulations.

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(2) Parts 6.2 (Disclosure procedures) and 6.3 (Specific questions) of these Rules do not apply to applications or appeals to which this rule applies.

(3) 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.

(4) Each of the following persons is to be served with an application or appeal to which this rule applies:
  (a) each respondent;
  (b) a parent or eligible carer of the child in relation to whom the application is made;
  (c) the Child Support Registrar;
  (d) for appeals from the Administrative Appeals Tribunal to which this rule applies:
    (i) the Registrar of the Tribunal; and
    (ii) any other parties to the appeal.

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Division 1.2.3—Proceedings to which the Trans-Tasman Proceedings Act 2010 applies

1.14 Application of Division 34.4 of the *Federal Court Rules 2011*

Division 34.4 of the *Federal Court Rules 2011*, as modified by rule 1.15 of these Rules or an order, applies to a proceeding in a Family Court or the family law jurisdiction of the Federal Circuit and Family Court (Division 2) as if the rules in that Division were provisions of these Rules.

1.15 Modifications of the *Federal Court Rules 2011*

For the purposes of rule 1.14 of these Rules, Division 34.4 of the *Federal Court Rules 2011* applies as if:

(a) a reference to an originating application were a reference to an application for final orders; and

(b) a reference to an application, a certificate of non-compliance or a subpoena being in accordance with a Form were disregarded; and

(c) in paragraph 34.62(b), the words "other of these Rules" were omitted and the words "provisions of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*" were substituted; and

(d) subrule 34.63(1) read as follows: "A person who wants to start a proceeding for an order under the Trans-Tasman Proceedings Act must file an originating application, in accordance with rule 2.01 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*."; and

(e) paragraph 34.64(a) read as follows: "an interlocutory application, in accordance with rule 2.01 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*; and"; and

(f) subrule 34.68(2) were omitted.

1.16 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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Division 1.2.4—Applications under the Corporations Act 2001 and the Corporations (Aboriginal and Torres Strait Islander) Act 2006

1.17 Application of Division 1.2.4

This Division applies to a proceeding started in, or transferred to, a Family Court under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Note: The Federal Circuit and Family Court (Division 2) does not have jurisdiction under the *Corporations Act 2001* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

1.18 Application of the Corporations Rules

The Corporations Rules, as modified by rule 1.19 of these Rules 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 the Corporations Rules were provisions of these Rules.

1.19 Modification of the Corporations Rules

For the purposes of rule 1.18 of these Rules, the Corporations Rules apply as if:

(a) in rules 5.9 and 16.1, a reference to a Registrar were a reference to a Judicial Registrar; and

(b) in subrule 16.1(1), the reference to paragraph 35A(1)(h) of the *Federal Court of Australia Act 1976* were a reference to paragraph 98(2)(l) of the *Federal Circuit and Family Court of Australia Act 2021*; and

(c) in rule 16.2, a reference to a Registrar were a reference to a Judicial Registrar; and

(d) in the heading to Schedule 2, a reference to a Registrar were a reference to a Judicial Registrar.

1.20 Application under the *Corporations Act 2001* or the *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.

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Division 1.2.5—Proceedings to which the Bankruptcy Act 1966 applies

1.21 Application of Division 1.2.5

(1) This Division applies to a proceeding in which a Family Court has jurisdiction in bankruptcy under section 35, 35A or 35B of the Bankruptcy Act.

Note: This Division does not apply to bankruptcy proceedings in the Federal Circuit and Family Court (Division 2). In a proceeding in the Federal Circuit and Family Court (Division 2) to which the Bankruptcy Act applies, the *Federal Circuit and Family Court (Division 2) (Bankruptcy) Rules 2021* generally apply.

(2) If this Division applies to a proceeding, Division 1.2.4 does not apply to the proceeding.

1.22 Application of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*

Parts 1, 2, 7, 8 and 12 and Divisions 6.2, 6.3 and 13.1 of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*, as modified by rule 1.23 of these Rules or an order, apply to a proceeding in which a Family Court has jurisdiction in bankruptcy under section 35, 35A or 35B of the Bankruptcy Act as if the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* were provisions of these Rules.

1.23 Modifications of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*

(1) For the purposes of rule 1.22 of these Rules, the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* apply as if:

(a) a reference to an originating application were a reference to an application for final orders; and

(b) a reference to an interim application were a reference to an interlocutory application; and

(c) a reference to an application being in accordance with a particular Form were disregarded; and

(d) rules 1.07 and 2.02, paragraphs 7.01(b) and 7.04(1)(b), rule 7.05, subrule 7.06(4) and rule 12.03 of those Rules were omitted; and

(e) the modifications in Table 1.2 were made.

Table 1.2—Additional modifications of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*

Item	Provision	Omit (wherever occurring)	Substitute
1	Rules 6.07 and 6.13	in closed court	in chambers
2	Paragraphs 6.09(a) and 6.15(a)	by hand	by personal service

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Table 1.2—Additional modifications of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*

Item	Provision	Omit (wherever occurring)	Substitute
3	Paragraph 6.09(a), rule 6.10, subrule 6.11(4), rule 6.15, subrule 6.16(4) and rule 12.02	the Court or a Registrar	the court
4	Subrule 7.03(1)	a creditor of the bankrupt or a creditor of the estate of the deceased person.	a creditor of the bankrupt
5	Subrules 7.04(2) and 8.02(5)	rule 17.08 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*	rule 10.21 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*
6	Paragraph 7.04(3)(a)	the bankrupt or deceased person	the bankrupt
7	Subrule 7.06(1)	rule 7.01 or 7.05	paragraph 7.01(a)
8	Subrule 7.06(2)	the bankruptcy or the administration of the estate of the deceased person	the bankruptcy
9	Rule 12.01	debtor or bankrupt	bankrupt
10	Rule 13.01	Subject to Division 13.2,	Unless the court otherwise orders,

(2) For the purposes of rule 1.22 of these Rules and rule 13.01 of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* (as applied by rule 1.22 of these Rules), Part 40 of the *Federal Court Rules 2011* applies as if:

(a) a reference to the Court were a reference to a Family Court; and

(b) a reference to an application were a reference to an application in a Family Court started by an application for final orders or transferred to a Family Court under section 35A of the Bankruptcy Act; and

(c) a reference to an interlocutory application included a reference to an interlocutory application in a Family Court; and

(d) a reference to a Registrar or taxing officer were a reference to a Judicial Registrar of a Family Court.

1.24 Forms in proceedings to which the Bankruptcy Act applies

(1) For the purposes of a provision of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* that may apply to a proceeding because of this Division, a form may be approved:

(a) for use in the Federal Circuit and Family Court (Division 1)—by the Chief Justice of the Federal Circuit and Family Court (Division 1); or

(b) for use in the Family Court of Western Australia—by the Chief Judge of the Family Court of Western Australia.

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(2) A form approved under subrule (1) must be published on the relevant court's website.

(3) An application to which the Bankruptcy Act applies must not be dismissed only because it has been made in the wrong form.

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Division 1.2.6—Arbitration

1.25 Application of Division 1.2.6

This Division applies to an arbitration under the Family Law Act.

Note: Part 5 of the Family Law Regulations imposes additional requirements relating to arbitration.

1.26 Referral of question of law by an arbitrator

(1) A referral of a question of law by an arbitrator under section 13G of the Family Law Act must be made by application in accordance with the approved form.

Note: Subsection 13G(1) of the Family Law Act provides that the referral may be made to the Federal Circuit and Family Court (Division 2) or to a single judge of the Family Court of a State.

(2) The arbitrator must give each party to the arbitration a copy of the application within 7 days after making the application.

1.27 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 Family Law 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 Family Law Regulations must be made within 7 days after the arbitration is terminated.

1.28 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 Family Law Regulations, by written notice to the Registry Manager, within 7 days after making an award.

1.29 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 Family Law Regulations must be served within 14 days after the day the application is filed.

(2) The applicant must file an Affidavit of Service within 7 days after the day a copy of the application is so served.

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1.30 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 Family Law Regulations or the Family Law 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
  (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 the application was served.

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Part 1.3—Court's powers in relation to the Rules

1.31 Court may make orders or dispense with these Rules

(1) The court may, in the interests of justice, dispense with compliance, or full compliance, with any of these Rules at any time.

(2) If, in a proceeding, the court gives a direction or makes an order that is inconsistent with any of these Rules, the direction or order of the court prevails in that proceeding.

1.32 Applications for orders about procedures

A person who wants to start a proceeding, or take a step in a proceeding, may apply to the court for an order about the procedure to be followed if:

(a) the procedure is not prescribed by the Family Law Act, these Rules or by or under any other Act; or

(b) the person is in doubt about the procedure.

1.33 Failure to comply with specified time limit

If a step is taken after the time specified for taking the step by these Rules, the Family Law Regulations or a procedural order, the step is of no effect.

1.34 Application to allow step after specified time limit

(1) A party may apply for relief from the effect of rule 1.33.

(2) In determining an application under subrule (1), the court may consider the following:

(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 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 proceeding;

(e) the effect of the non-compliance on each other party;

(f) costs;

(g) whether the party should be stayed from taking any further steps in the proceeding until the costs are paid;

(h) whether all parties consent to the step being taken after the specified time.

Note: This subrule does not limit the powers of the court.

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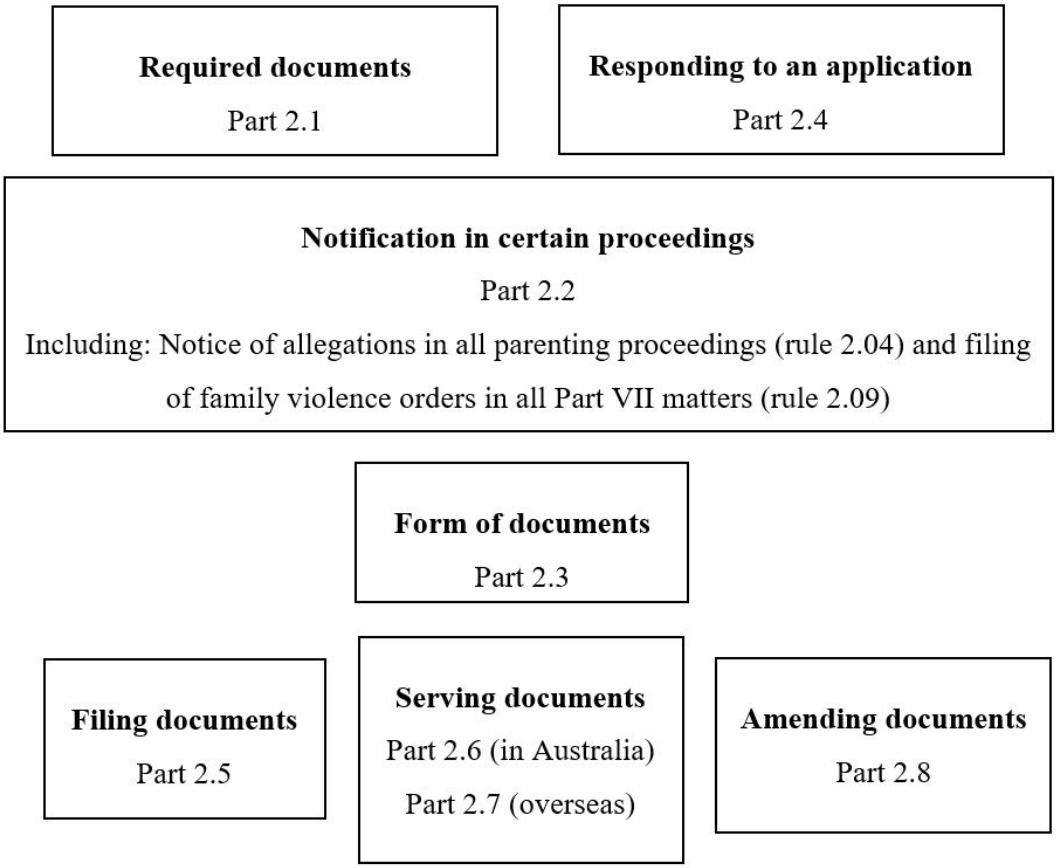
Chapter 2—Starting a proceeding



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Part 2.1—Required documents

2.01 Which application form must be filed

(1) Unless otherwise provided in these Rules, a proceeding must be started by filing an application for final orders in accordance with the relevant approved form.

(2) An application for final orders may include an application for an interlocutory order.

(3) A person must not file an application for an interlocutory order unless:
  (a) an application for final orders is current in the proceeding; or
  (b) the application includes an application for final orders; or
  (c) the application is permitted by rule 5.02.

(4) If a person makes an application for an interlocutory order after the start of the proceeding and before final orders have been made in the proceeding, the application must be made by filing an Application in a Proceeding.

(5) The required documents must be filed with an application if they have not already been filed in the proceeding.

(5A) An application must concisely state the orders sought.

(6) The relevant approved forms are set out in Table 2.1.

Table 2.1—Approved forms

Item	Kind of application	Application in the approved form to be filed
1	Application seeking final orders (other than a consent order or a divorce), for example: (a) property settlement; (b) parenting (including in relation to a child born under a surrogacy arrangement); (c) maintenance; (d) child support; (e) medical procedure; (f) nullity; (g) declaration as to validity of marriage, divorce or annulment; (h) order relating to a passport	Initiating Application (Family Law)
2	Interlocutory orders sought at the same time as an application for final orders is made	Initiating Application (Family Law)
2A	Application to vary or set aside a final order under paragraph 10.13(1)(b)	Initiating Application (Family Law)
3	Interlocutory orders sought after an application	Application in a Proceeding

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Rule 2.01

Table 2.1—Approved forms

Item	Kind of application	Application in the approved form to be filed
	for final orders is made	
4	Enforcement of a financial obligation	Application—Enforcement
5	Divorce	Application for Divorce
6	Consent order when there is no current proceeding	Application for Consent Orders
7	Contravention of an order under Division 13A of Part VII of the Family Law Act affecting children	Application—Contravention
8	Contravention of an order under Part XIIIA of the Family Law Act not affecting children	Application—Contravention
9	Failure to comply with a bond entered into in accordance with the Family Law Act	Application—Contravention
10	Contempt of court	Application—Contempt
11	Review of an order of a Judicial Registrar	Application for Review

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Part 2.2—Notification in certain proceedings

Division 2.2.1—Child abuse, family violence or other risks of harm to children

2.02 Definitions for Division 2.2.1

In this Division:

interested person:

(a) in a proceeding to which section 67Z of the Family Law Act applies—has the meaning given by subsection (4) of that section; and

(b) in a proceeding to which section 67ZBA of the Family Law Act applies—has the meaning given by subsection (4) of that section.

2.03 Approved form for notice for the purposes of sections 67Z and 67ZBA of the Family Law Act

A ***Notice of Child Abuse, Family Violence or Risk*** is the form approved for the purposes of sections 67Z and 67ZBA of the Family Law Act.

Note: A Notice of Child Abuse, Family Violence or Risk is also a method by which the court may fulfil its obligations under paragraph 69ZQ(1)(aa) of the Family Law Act.

2.04 Requirement to file Notice of Child Abuse, Family Violence or Risk in parenting proceedings

(1) A person who:

(a) makes an application to the Federal Circuit and Family Court for a parenting order; or

(b) files a response to such an application; or

(c) files any response which seeks a parenting order;

must file a Notice of Child Abuse, Family Violence or Risk with the application or response.

Note 1: If a Notice of Child Abuse, Family Violence or Risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused by a person, or that there has been family violence or that there is a risk of family violence by one of the parties to the proceeding, a true copy of the notice must be served on the person to whom the allegations relate: see subsections 67Z(2) and 67ZBA(2) of the Family Law Act.

Note 2: If a Notice of Child Abuse, Family Violence or Risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused, the Registry Manager must notify a prescribed child welfare authority: see subsection 67Z(3) and paragraph 67ZBA(3)(b) of the Family Law Act.

(2) A person who files a Notice of Child Abuse, Family Violence or Risk under subrule (1) that includes one or more allegations of child abuse, family violence or a risk of harm to a child must file an affidavit stating the evidence on which

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each allegation set out in the notice is based, no later than the time the notice is filed.

(3) Subrule (2) does not apply to a Notice of Child Abuse, Family Violence or Risk filed with an Application for Consent Orders in the Federal Circuit and Family Court.

Note: For additional obligations when an application is made for an interlocutory parenting order by consent, see rule 5.29, and when an application is made for a final parenting order by consent, see rule 10.05.

2.05 Notice of Child Abuse, Family Violence or Risk filed by an interested person

If:

(a) an interested person files a Notice of Child Abuse, Family Violence or Risk in a proceeding for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act; and

(b) the Notice of Child Abuse, Family Violence or Risk was not filed under rule 2.04;

the interested person must file an affidavit stating the evidence on which each allegation set out in the notice is based, no later than the time the notice is filed.

2.06 Amendment of Notice of Child Abuse, Family Violence or Risk

If:

(a) a person who is a party to a proceeding, or an interested person in the proceeding, has filed a Notice of Child Abuse, Family Violence or Risk in the proceeding; and

(b) after filing the notice, the person becomes aware of new facts or circumstances that would require the person to file a notice for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act in relation to those facts or circumstances;

the person must file:

(c) a new Notice of Child Abuse, Family Violence or Risk setting out those facts or circumstances; and

(d) an affidavit stating the evidence on which each allegation set out in the notice is based.

Note 1: A true copy of a Notice of Child Abuse, Family Violence or Risk that is filed for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act must be served on the person to whom the allegations relate: see subsections 67Z(2) and 67ZBA(2) of the Family Law Act.

Note 2: If a Notice of Child Abuse, Family Violence or Risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused, the Registry Manager must notify a prescribed child welfare authority: see subsection 67Z(3) and paragraph 67ZBA(3)(b) of the Family Law Act.

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2.07 Proceedings transferred from another court

(1) This rule applies if a proceeding in which a parenting order is sought is transferred to the Federal Circuit and Family Court from another court.

(2) Each party to the proceeding must file:
  (a) a Notice of Child Abuse, Family Violence or Risk; and
  (b) if the party's Notice of Child Abuse, Family Violence or Risk includes one or more allegations of child abuse, family violence or a risk of harm to a child—an affidavit stating the evidence on which each allegation set out in the notice is based.

(3) The Notice of Child Abuse, Family Violence or Risk and any related affidavit must be filed before the first court date for the proceeding in the court to which the proceeding is transferred.

(4) Nothing in this rule requires a party to refile a document under this Part that was filed in the proceeding before the transfer.

2.08 Content of Notice of Child Abuse, Family Violence or Risk

A Notice of Child Abuse, Family Violence or Risk filed in a proceeding must set out brief particulars of the facts and circumstances on which each allegation (if any) set out in the notice is based.

2.09 When a notice in an approved form for the purposes of sections 67Z and 67ZBA of the Family Law Act is taken to have been filed

If:
  (a) a person who is a party to a proceeding, or an interested person in a proceeding, files a Notice of Child Abuse, Family Violence or Risk in the proceeding; and
  (b) the Notice of Child Abuse, Family Violence or Risk alleges:
    (i) that a child to whom the proceeding relates has been abused or is at risk of being abused; or
    (ii) that there has been family violence, or there is a risk of family violence, by one of the parties to the proceeding;

the person is taken to have filed a notice in an approved form for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act in relation to the allegation.

2.10 Requirement to file family violence orders in certain proceedings

(1) A party to a proceeding who is seeking a parenting order or other order under Part VII of the Family Law Act in relation to a child must file a copy of any family violence order affecting the child or a member of the child's family.

(2) A party to a financial proceeding must file a copy of any family violence order affecting the party.

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(3) If a party is required by subrule (1) or (2) to file a copy of a family violence order but it is not available, the party must file a written notice setting out:
  (a) an undertaking to file the order within a specified time; and
  (b) the date of the order; and
  (c) the court that made the order; and
  (d) the details of the order.

(4) The family violence order, or the notice under subrule (3), must be filed:
  (a) when the proceeding starts; or
  (b) as soon as practicable after the family violence order is made.

(5) If, during the proceeding, a family violence order filed pursuant to subrule (1) or (2) is varied, each party affected by the variation must, as soon as practicable after the order is varied, file a copy of the variation.

(6) This rule does not require a party to file a copy of any document that has already been filed in the proceeding by another party.

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Division 2.2.2—Notification of other matters

2.11 Notification of proceeds of crime order or forfeiture application

If a party to a property settlement or spousal maintenance proceeding, or a de facto property settlement or maintenance proceeding, is required to give the Registry Manager written notice under subsection 79B(3), 90M(3) or 90VA(3) of the Family Law 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 Family Law Act; and

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

2.12 Proceeds of crime

(1) If the proceeds of crime authority applies under section 79C, 90N or 90VB of the Family Law Act to stay a property settlement or spousal maintenance proceeding, or a de facto property settlement or maintenance proceeding, 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 Family Law Act to lift a stay of a property settlement or spousal maintenance proceeding, 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 Family Law Act.

2.13 Notice of constitutional matter

(1) If a party is, or becomes, aware that a proceeding 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 proceeding;

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 proceeding.

(2) The notice must state:

(a) the nature of the matter; and

(b) the issues in the proceeding; and

(c) the constitutional issue to be raised; and

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(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 proceeding involves a matter referred to in that section, it is the court's duty not to proceed to determine the proceeding unless and until it is satisfied that notice of the proceeding has been given to the Attorneys-General of the Commonwealth and of the States and Territories.

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Part 2.3—Form of documents

2.14 Formal requirements for documents

(1) Documents, other than forms, filed with the court must:
  (a) be typed in at least 12 point font size (Times New Roman or equivalent) with line spacing of 1.5 lines; and
  (b) have margins (left, right, top and bottom) of approximately 2.5 cm; and
  (c) have each page consecutively numbered; and
  (d) have a coversheet in the approved form including the court file number distinctive to the proceeding.

(2) Paper documents should be:
  (a) legible and without erasures, blotting out or material disfigurement; and
  (b) printed on one side only of white A4 paper; and
  (c) securely bound or fastened.

(3) Electronic documents must be filed in PDF format.

(4) A document filed or served (other than an affidavit, annexure or exhibit) must be signed by a party or by the lawyer for the party unless the nature of the document is such that signature is inappropriate.

(5) Subrules (1) to (4) do 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.

Note: For formal requirements for affidavits, see Part 8.3.

2.15 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 Company Number (ACN).

2.16 Change of name of party

(1) If a party's name is changed after the start of a proceeding, 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.

(3) When written notice of the change of name is filed, the title of the proceeding is taken to have been amended accordingly.

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2.17 Documents not in English

If a document that must be filed with the court is not in English, the person filing the document must also 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.

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Part 2.4—Responding to an application

2.18 When to respond to an application

(1) A respondent to an application who seeks to do any of the following must file a response in accordance with the approved form:
  (a) indicate consent to an order sought by the applicant;
  (b) ask the court to make another order;
  (c) ask the court to dismiss the application;
  (d) seek orders in a matter other than the matter set out in the application.

(2) A response must be filed and served within 28 days after service of the application to which it relates.

Note 1: Rule 2.04 requires a Notice of Child Abuse, Family Violence or Risk to be filed with a response in a parenting proceeding.

Note 2: If a response seeks a parenting order or any other order under Part VII of the Family Law Act in relation to a child, rule 2.10 requires the respondent to file a copy of any family violence order affecting the child or a member of the child's family that has not already been filed in the proceeding.

Note 3: The consequences for a failure to comply with this rule can include orders as to costs (see rule 10.27(1)(d)).

(3) 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 rule 1.11 authorising a medical procedure.

2.19 Response objecting to jurisdiction

(1) A respondent seeking to object to the jurisdiction of the court:
  (a) must file a response; and
  (b) is not taken to have submitted to the jurisdiction of the court by seeking other orders in the response.

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

2.20 When to file an affidavit with a response

A respondent must not file an affidavit with a response to an application unless the respondent is:
  (a) responding to interlocutory orders sought in the application; or
  (b) seeking interlocutory orders in the response; or

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(c) required to do so by another provision of these Rules or by a practice direction.

2.21 How to reply to a response

(1) An applicant must file a reply if:
  (a) in the response, the respondent seeks orders in a cause of action other than a cause of action referred to in the application; and
  (b) the applicant seeks:
    (i) to oppose the orders sought in the response; or
    (ii) different orders in the cause of action referred to in the response.

(2) A person other than the applicant (an ***additional party***) must file a reply to a response if:
  (a) in the response, the respondent seeks orders against the additional party; and
  (b) the additional party seeks:
    (i) to oppose the orders sought in the response; or
    (ii) different orders to the orders sought in the response.

(3) If a party wishes to file a reply, the party must file and serve the reply within 14 days after service of the response to which the reply relates.

2.22 If the application or response is not contested

(1) If a party has been served with a document referred to in subrule (2), and the party does not want to contest the relief sought in the document, the party may file and serve a submitting notice in the approved form.

(2) The documents are the following:
  (a) an application for final orders;
  (b) a response to an application for final orders;
  (c) a reply to a response to an application for final orders.

(3) The submitting notice must:
  (a) state that the party submits to any order that the court may make; and
  (b) state whether the party wants to be heard on the question of costs; and
  (c) include an address for service.

(4) A submitting notice for a party served with a document referred to in subrule (2) must be filed:
  (a) before the first court date; or
  (b) if the party was added to the proceeding after that date—before the date for the next procedural hearing.

(5) A party who has filed a submitting notice may apply to the court for leave to withdraw the notice.

(6) An application under subrule (5) must be accompanied by an affidavit stating:

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(a) why the party wants to withdraw the submitting notice; and
(b) the party's intentions in relation to the further conduct of the proceeding.

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Part 2.5—Filing documents

2.23 How documents may be filed

(1) A document must be filed electronically as permitted by the court, unless it is not reasonably practicable to do so.

(2) If it is not reasonably practicable to file a document electronically, the document may be filed:
  (a) by delivering it to the registry; or
  (b) by sending it to the registry by post.

(3) A document is filed when:
  (a) the document is accepted for filing by the Registry Manager by affixing the seal of the court or a court stamp, as required by Part 15.1; or
  (b) a judicial officer orders, or directs, that the document be taken to have been filed.

(4) A document that is accepted for filing by the Registry Manager under paragraph (3)(a) is taken to have been filed:
  (a) if the document is received by 4.30 pm by legal time in the location of the filing registry on a business day—on that day; or
  (b) in any other case—on the next business day for the filing registry.

(5) Except as otherwise required by these Rules or an order, a document to be relied on in a court event must be filed at least 1 day before the date fixed for that event.

(6) A Judge or Judicial Registrar may require a party to give an undertaking to pay a filing fee before accepting a document for filing.

Note: Regulation 2.11(3) of the *Family Law (Fees) Regulations 2022* permits a Judge or a Judicial Registrar to allow a document to be filed despite the required fee not being paid.

(7) A person who pays money into court must file a Notice of Payment stating the amount and purpose for which the money is paid into court.

2.24 Rejection of documents

(1) The court may reject a document filed or received for filing if the document:
  (a) is not in the proper form in accordance with these Rules; or
  (b) is not executed in the way required by these Rules; or
  (c) does not otherwise comply with a requirement of these Rules; or
  (d) is tendered for filing after the time specified in these Rules or an order for filing the document, or is otherwise contrary to directions given; or
  (e) on its face, appears to the court to be an abuse of process, frivolous, scandalous or vexatious; or

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(f) is tendered for filing in connection with a current proceeding in a registry that is not the filing registry; or

(g) is filed electronically and the person filing the document has not complied with the court's electronic filing procedures.

Note: A person who starts a proceeding by making an application for an order under Part VII of the Family Law Act must file a certificate under subsection 60I(8) of the Family Law Act with the application or an affidavit if no certificate is required because an exception applies (see rule 4.02).

(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) If a decision under subrule (1) is made by the court constituted by a Judicial Registrar (other than an Appeal Judicial Registrar), a person may apply for review of the Registrar's decision under subrule (1), or directions given by the Registrar under subrule (2), by filing an Application for Review without notice.

Note: For review of an Appeal Judicial Registrar's decision to reject a document, see rule 13.40.

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Part 2.6—Serving documents—general

Division 2.6.1—General

2.25 Address for service

(1) A party to a proceeding must give an address for service.

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

(3) A party may give an address for service:
  (a) by filing a relevant document that includes an address for service; or
  (b) by filing a notice of address for service in accordance with the approved form.

(4) An address for service must include:
  (a) a current email address for the party; and
  (b) an address in Australia, unless disclosing this address would compromise the party's safety; and
  (c) a telephone number at which the party may be contacted during normal business hours.

(5) If, in a parenting proceeding, the address where a party or child is living is not disclosed to another party or parties, the address must be provided to the court by email and the address must not be disclosed other than in accordance with an order of the court.

(6) If the party is represented by a lawyer who has general authority to act for the party, the address for service for the party must be the address of the lawyer.

2.26 Change of address for service

If a party's address for service, including the email address, changes for any reason during a proceeding, the party must file a notice of address for service and serve the notice on each other party as soon as practicable and in any event 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 the party's address; or
  (b) initially acts in person and later appoints a lawyer; or
  (c) initially appoints a lawyer and later acts in person; or
  (d) changes lawyers during the proceeding.

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 3.10(2) applies.

2.27 General requirements for service of documents

(1) A document to be served in a proceeding must be filed and sealed.

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(2) An application and any document filed with it must be served on each party to the proceeding in the manner indicated in Table 2.2 in rule 2.28 and within the time referred to in rules 2.29 to 2.31.

(3) If a document, other than an application and its related documents, is required to be served, the person who files the document must serve a copy of it as soon as practicable:
  (a) on each other party to the proceeding who has an address for service in the proceeding; and
  (b) on any independent children's lawyer in the proceeding; and
  (c) on any other person specifically required by a legislative provision or order to be served in the proceeding.

2.28 Manner of service

(1) A person must serve a document in the manner set out in Table 2.2, unless otherwise required by a legislative provision.

(2) 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 the purposes of section 12F of the Family Law Act.

(3) A person who files an application for enforcement must, when serving the application on the respondent, also serve a brochure prepared by the court giving information about enforcement hearings.

(4) A document or brochure that must be served with a form must be served in the same manner as the form.

(5) 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 11.15 or a Third Party Debt Notice under rule 11.34.

Table 2.2—Service of documents

Item	Document	Manner of service
1	Initiating Application (Family Law) Application—Enforcement Application—Contravention Application—Contempt Order made on application without notice (see Part 5.2)	Personal service (see Division 2.6.2)
2	Application for Divorce (see Division 2.6.4)	Specific service requirements

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Table 2.2—Service of documents

Item	Document	Manner of service
	A subpoena or a copy of a subpoena (see rules 2.30 and 6.30) Third Party Debt Notice (see Division 11.1.4) Notice of Appeal (see rule 13.05) Documents required to be served with a Form (see subrule 2.28(4)) Brochures required to be served with a Form (see subrule 2.28(4))	
3	All other documents including: (a) an Application in a Proceeding (other than an application that must be served by personal service); and (b) notices required to be given under these Rules	Ordinary service (see Division 2.6.3)

2.29 General time limit for service

Unless the court otherwise orders, 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 no more than 12 months after that date; or

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

2.30 Time for service of subpoena

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

2.31 Time for service of applications

Unless the court directs otherwise, an application and any document filed with it must not be served:

(a) less than 3 days before the day fixed for the hearing of an interlocutory application; or

(b) less than 7 days before the day fixed for the hearing of any other application.

Note: A person may apply for an extension of time to make an application (see rule 15.06).

2.32 Proof of service

(1) Service of an application is proved:

(a) by filing an affidavit of service; or

(b) by the respondent filing a notice of address for service or a response; or

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(c) if service was carried out by giving the application 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.

(3) For the purposes of paragraph (1)(a) and subrule (2), the approved form may be used.

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

(5) Evidence about the identity, office or position of a person served may be given by another person.

Note: For proof of service of an Application for Divorce, see rules 2.45 to 2.47.

2.33 Court's discretion in relation to service

Nothing in this Part affects the power of the court:

(a) to authorise service of a document in a way that is not provided for in this Part; or

(b) to find that a document has been served; or

(c) to find that a document has been served on a particular day.

2.34 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 the following:

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

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

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

(d) the likely cost of service;

(e) the nature of the proceeding.

(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 Proceeding and an affidavit (see rules 5.02 and 5.04).

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Division 2.6.2—Personal service

2.35 Personal service—general

(1) A person serving a document personally on an individual must give a copy of the document to the person to be served.

(2) However, if the person to be served does not take the copy of the document, the person serving it may put it down in the presence of the person to be served and tell the person what it is.

(3) The person serving a document must not be the party on whose behalf the document is served, but the party may be present when personal service occurs.

2.36 Personal service through a lawyer

A document is taken to be served personally 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:

(i) in accordance with rule 2.35; or

(ii) in another manner as agreed with the lawyer.

2.37 Personal service on a person with a legal incapacity

(1) Despite rule 2.35, a document that is required to be served personally on a person with a legal incapacity must be served:

(a) on the person's litigation guardian; or

(b) if there is no litigation guardian—on a person who is entitled under subrule 3.16(2) to be the person's litigation guardian for the proceeding; or

(c) if there is no one under paragraph (a) or (b)—on an adult who has the care of the person.

(2) For the purposes of 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 care facility.

2.38 Personal service on a prisoner

(1) A document that is required to be served personally on a prisoner must be served:

(a) personally on the person in charge of the prison; or

(b) by post or electronic communication to the person in charge of the prison.

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

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

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(b) if the document is served by post in Australia—a stamped self-addressed envelope.

(3) At the time of service of an Application or Notice of Appeal on a prisoner, the prisoner must be informed, in writing, about the requirement to attend by electronic communication under rule 13.33 or 15.18 (whichever is applicable).

2.39 Personal service on a corporation

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

Note: Section 109X(1) of the *Corporations Act 2001* is as follows:

(1) For the purposes of any law, a document may be served on a company by:

(a) leaving it at, or posting it to, the company's registered office; or

(b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or

(c) if a liquidator of the company has been appointed—leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or

(d) if an administrator of the company has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

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Division 2.6.3—Ordinary service

2.40 Ordinary service

(1) If a document is not required to be served personally, the document may be served on a person at the person's address for service:

(a) by sending the document to the email address; or

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

(c) by sending it to the address by pre-paid post in a sealed envelope addressed to the person; or

(d) if the address includes the number of a document exchange box of a lawyer—by sealing the document in an envelope that complies with any prepayment requirements of the document exchange and is addressed to the lawyer (at that box address), and placing the envelope:

(i) in that box; or

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

(2) If the person does not have an address for service, the document may be served on the person:

(a) by sending it to the person's last known email address; or

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

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

(d) if a law of the Commonwealth or of the State or Territory in which service is to be effected provides for service of a document on a corporation or organisation—by serving the document in accordance with such provision.

2.41 When service is effected

A document served electronically or by post is taken to have been served:

(a) if the document was sent electronically—on the next business day after the document was sent; or

(b) if the document was posted to an address in Australia—on the day by which the document would be delivered in the ordinary course of the post; or

(c) if the document was posted by airmail to an address outside Australia—on the 28th day after posting.

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Division 2.6.4—Service of Application for Divorce

2.42 Service of application

An Application for Divorce must be served on the respondent by:

(a) personal service in accordance with rule 2.35; or

(b) sending it by pre-paid post in a sealed envelope addressed to the respondent at the respondent's last known address.

2.43 Additional requirements for service by post

A person serving an Application for Divorce by post must include with the document:

(a) a form of acknowledgment of service in accordance with the approved form; and

(b) an envelope that:

(i) is addressed to the address for service of the person on whose behalf the Application for Divorce is served; and

(ii) if the Application for Divorce is to be sent to an address in Australia—bears the correct postage for the return by post of the acknowledgment of service.

2.44 Acknowledgment of service

(1) A person served with an Application for Divorce may acknowledge service of the Application for Divorce by an acknowledgment of service in accordance with the approved form.

(2) An acknowledgment of service may be signed by the person on whom the Application for Divorce is served or by the person's lawyer.

(3) If a lawyer signs an acknowledgment of service, the filing of the acknowledgment is taken to be proof of service of the document to which the acknowledgment refers on the date on which service is acknowledged.

2.45 Affidavit of service

(1) Unless the court otherwise orders, any evidence of service of an Application for Divorce to be given (other than for acknowledgment of service) must be given by affidavit in accordance with the appropriate approved form.

(2) If the person making an affidavit of service can give evidence relating to the identity of the person served, the evidence may be included in the affidavit of service.

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2.46 Evidence of service

(1) Subject to the court being satisfied that the identity of the person served is established, an acknowledgment of service of an Application for Divorce that is signed by the person served is evidence of service in accordance with the acknowledgment.

(2) If the server of an Application for Divorce can identify the person served, service may be proved by evidence to that effect by the server.

(3) If the server of an Application for Divorce can identify a photograph of the person served, and another person who knows the person served identifies the photograph as a photograph of the person served, service may be proved by evidence to that effect by the server and the other person.

(4) If a person other than the server of an Application for Divorce saw the Application for Divorce handed to, or put down in the presence of, the person served and can identify the person served, service may be proved by evidence to that effect given by that other person.

2.47 Evidence of signature and identity of person served

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

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Part 2.7—Serving documents overseas

2.48 Serving documents in New Zealand

A person may serve a document on a person in New Zealand in accordance with the *Trans-Tasman Proceedings Act 2010* and Division 1.2.3 of these Rules.

2.49 Serving documents in all other countries

(1) A person may serve a document on a person in a country other than Australia or New Zealand:
  (a) if the country is a party to the Hague Service Convention—in accordance with Part IIAB of the Family Law Regulations; or
  (b) if the country is a party to another convention, that is in force for Australia, about legal proceedings in civil and commercial matters—in accordance with Part IIAC of the Family Law Regulations.

(2) 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.

(3) 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.

(4) If the Registry Manager receives a request under subrule (3), 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.

(5) 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;

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.

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Part 2.8—Amending documents

2.50 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 an Initiating Application (Family Law):

(i) at any time before the procedural hearing at which the proceeding is allocated a date or dates for trial; or

(ii) at a later time, with the consent of the other parties or by order;

(b) for an Application in a Proceeding:

(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.

(2) A party who:

(a) has filed an Initiating Application (Family Law) or a 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 proceeding;

must amend the form in accordance with this Part.

(3) 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.

2.51 Time limit for amendment

Unless the court otherwise orders, 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 15.06).

2.52 Amending a document

(1) To amend a document, a party must file a copy of the document:

(a) with the amendment clearly marked; and

(b) if the document is amended by order—endorsed with the date of the order and the date of the amendment.

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

(3) An amendment may be made by:

(a) placing a line through the text to be changed; and

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(b) underlining the new text or using a different typeface to indicate the new text.

(4) Amendment of a Financial Statement must comply with rule 6.06.

2.53 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 2.52; and

(b) not more than 14 days after the amended document was served on the party.

2.54 Disallowance of amendment

The court may disallow an amendment of a document, including if the amendment is frivolous, vexatious or not in accordance with these Rules or an order.

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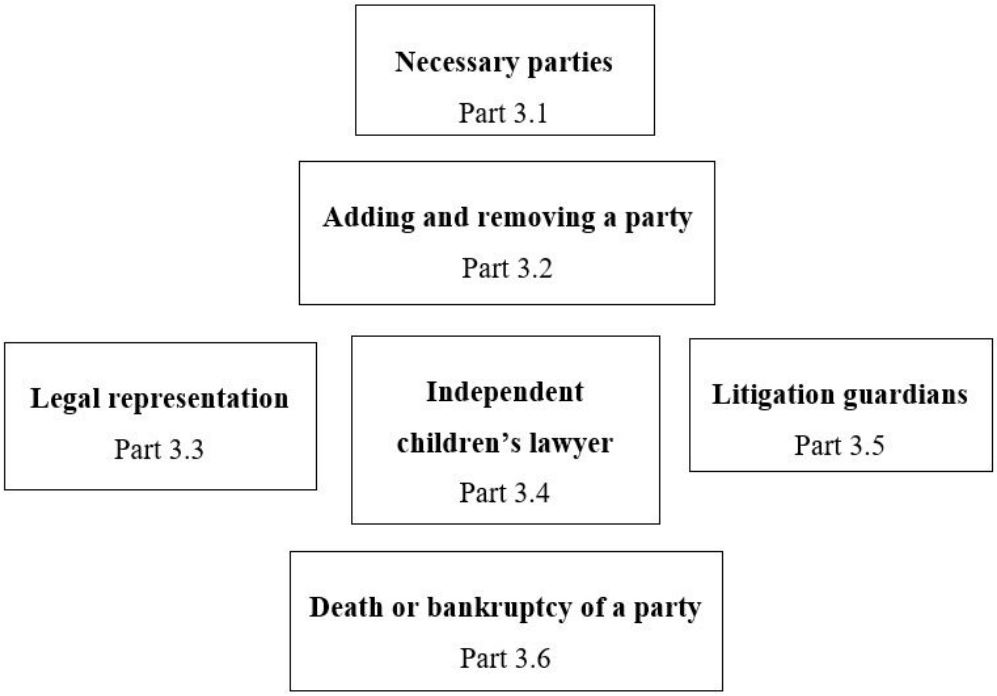
Chapter 3—Parties and representation



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Part 3.1—Necessary parties

3.01 Necessary parties

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

Example: If a party seeks an order of a kind referred to in section 90AE or 90AF of the Family Law Act, a third party who will be bound by the order must be joined as a respondent to the proceeding.

3.02 Necessary parties to applications for parenting orders

(1) If an application is made for a parenting order in relation to a child, the following must be parties to the proceeding:
  (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.

(2) If a person referred to in subrule (1) is not an applicant in a proceeding involving the child, the person must be joined as a respondent to the application.

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Part 3.2—Adding and removing a party

3.03 Adding a party

(1) A party to a proceeding may include any person as a party by:
  (a) naming the person as a party in the application, response or reply; and
  (b) serving on the person a copy of the application, response or reply and all other relevant documents filed in the proceeding.

(2) A party may add another party after a proceeding 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 referred to in paragraph (a); and
    (iii) any other relevant document filed in the proceeding; and
  (c) serve on the other parties:
    (i) a copy of the application, amended application, response or amended response; and
    (ii) the affidavit referred to in paragraph (a).

(4) A party may only add another party after the first court date with the leave of the court.

(5) A party who relies on subrule (4) must:
  (a) file:
    (i) an Application in a Proceeding; and
    (ii) an affidavit setting out the facts relied on to support the addition of the proposed new party, including a statement of the proposed new party's relationship (if any) to the other parties; and
  (b) serve on the proposed new party:
    (i) a copy of the Application in a Proceeding; and
    (ii) the affidavit referred to in subparagraph (a)(ii); and
    (iii) any other relevant document filed in the proceeding; and
  (c) serve on the other parties:
    (i) a copy of the Application in a Proceeding; and
    (ii) the affidavit referred to in subparagraph (a)(ii).

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3.04 Person may apply to be included

(1) A person may apply to the court to be included as a party to a proceeding by filing an Application in a Proceeding.

(2) Unless the court otherwise orders, the application must be supported by an affidavit stating:
  (a) the person's interest in the proceeding or any matter in dispute between the person and a party to the proceeding; and
  (b) the orders (if any) that the person will seek if included as a party.

(3) The person must serve a copy of the application and affidavit on each party to the proceeding.

(4) An order for inclusion of the party may be on limited terms.

Note: Part IX of the Family Law Act deals with intervention in a proceeding. If a person has, by order or under rule 3.07 of these Rules, intervened in a proceeding, 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 Family Law Act).

3.05 Party may apply to be removed

(1) A party to a proceeding may apply to the court to be removed as a party by filing an Application in a Proceeding.

(2) The party must file an affidavit stating:
  (a) the relationship (if any) of the applicant to each other party; and
  (b) the evidence in support of the application.

(3) The party must serve a copy of the application and affidavit on each other party to the proceeding.

3.06 Court may order notice to be given

The court may at any time order a party, or a person applying to be included as a party, to notify any other person of:
  (a) the proceeding; or
  (b) the application of the person to be included as a party.

3.07 Intervention by a person entitled to intervene

(1) This rule applies if either of the following intervenes in a proceeding:
  (a) the Attorney-General;
  (b) any other person who is entitled under the Family Law Act to intervene in the proceeding without the court's permission.

(2) The person intervening must file:
  (a) a Notice of Intervention by Person Entitled to Intervene; and
  (b) an affidavit:

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(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 Family Law Act to intervene in a proceeding without the court's permission:

(a) subsection 79(10) authorises a creditor of a party to a proceeding who may not be able to recover a 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 proceeding;

(b) subsection 90SM(10) authorises a creditor of a party to a proceeding who would not be able to recover a debt if an order is made under section 90SM of the Family Law Act, a party to a de facto relationship or marriage with a party to a proceeding, 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 proceeding;

(c) section 91 of the Family Law Act and section 78A of the *Judiciary Act 1903* authorise the Attorney-General to intervene in a proceeding;

(d) section 92A of the Family Law Act authorises the persons referred to in subsection 92A(2) of that Act to intervene in a proceeding without the court's permission;

(e) section 145 of the Assessment Act authorises the Child Support Registrar to intervene in a proceeding.

(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.

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Part 3.3—Legal representation

3.08 Right to be heard and representation

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

Note: For the right of a lawyer to appear in a court exercising jurisdiction under the Family Law Act, see Part VIIIA of the *Judiciary Act 1903*. See also sections 57 and 175 of the Federal Circuit and Family Court Act.

(2) Subject to section 57 of the Federal Circuit and Family Court Act, 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.

3.09 Corporation must be represented

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

3.10 Lawyer—ceasing to act

(1) A lawyer may cease to act for a party:
  (a) by:
    (i) serving on the party a Notice of Ceasing to Act and a blank Notice of Address for Service; and
    (ii) no sooner than 7 days after serving the notices, filing a copy of the Notice of Ceasing to Act; or
  (b) with the leave of the court.

(1A) A lawyer must not file a Notice under subrule (1) within 14 days before the day fixed for a final hearing except with the leave of the court, which must be sought in writing.

(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;

then, until the party files a Notice of Address for Service, the party's address for service is:
  (c) the party's last known email address; and
  (d) the party's last known residential address, unless disclosing this address would compromise the party's safety.

(3) If, in a parenting proceeding, a lawyer ceasing to act for a party does not disclose the party's last known residential address to another party or parties, the lawyer

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must provide the address to the court by email and the address must not be disclosed other than in accordance with an order of the court.

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Part 3.4—Independent children's lawyer

3.11 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 Proceeding.

(2) If the court makes an order for the appointment of an independent children's lawyer, the court may:
  (a) request that the representation be arranged by a legal aid body; and
  (b) order that the costs of the independent children's lawyer be met by one or more of the parties.

(3) A person appointed as an independent children's lawyer:
  (a) must file a Notice of Address for Service; and
  (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 proceeding 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; or
  (c) as otherwise ordered.

Note 1: Section 68L of the Family Law Act provides for the independent representation of children and section 68LA of that Act sets out the role of an independent children's lawyer.

Note 2: The duty of disclosure applies to an independent children's lawyer (see rule 6.01).

Note 3: 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 any independent children's lawyer (see paragraph 2.27(3)(b)).

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Part 3.5—Litigation guardians

3.12 Person who needs a litigation guardian

(1) For these Rules, a person needs a litigation guardian in relation to a proceeding if the person:
  (a) does not understand the nature and possible consequences of the proceeding; or
  (b) is not capable of adequately conducting, or giving adequate instruction for the conduct of, the proceeding.

(2) Unless the court otherwise orders, a minor in a proceeding is taken to need a litigation guardian in relation to the proceeding.

3.13 Starting, continuing, defending or inclusion in proceeding

(1) A person who needs a litigation guardian may start, continue, respond to or seek to be included as a party to a proceeding only by the person's litigation guardian.

(2) The litigation guardian of a party to a proceeding:
  (a) must do anything required by these Rules to be done by the party; and
  (b) may, for the benefit of the party, do anything permitted by these Rules to be done by the party.

Note 1: A person may apply for an interlocutory order to be appointed as a litigation guardian in relation to a prospective proceeding (see rule 5.02(2)(b)).

Note 2: Rule 6.01(3) applies the duty of disclosure to a litigation guardian appointed under this Part.

Note 3: Subrules 5.28(3) and 10.04(3) require a litigation guardian seeking a consent order to file an affidavit setting out the facts relied on to satisfy the court that the order is in the party's best interests.

3.14 Who may be a litigation guardian

A person may be a litigation guardian in a proceeding if the person:
  (a) is an adult; and
  (b) has no interest in the proceeding adverse to the interest of the person needing the litigation guardian; and
  (c) can fairly and competently conduct the proceeding for the person needing the litigation guardian.

3.15 Appointment of litigation guardian

(1) A person may apply for the appointment, replacement or removal of a person as the litigation guardian of a party.

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(2) The court may, at the request of a party or on its own initiative, appoint or remove a litigation guardian, or substitute another person as litigation guardian, in a proceeding in the interests of a person who needs a litigation guardian.

(3) A person becomes a litigation guardian if the person consents to the appointment by filing an affidavit of consent in the proceeding.

(4) The court may remove a litigation guardian at the request of the litigation guardian.

3.16 Manager of the affairs of a party

(1) In this rule:

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

(2) A person who is a manager of the affairs of a party is entitled to be the litigation guardian in any proceeding to which the person's authority extends.

(3) If, in the opinion of the court, a suitable person is not available for appointment as a litigation guardian for a person who needs a litigation guardian, the court may request that the Attorney-General appoint a person to be a manager of the affairs of the party.

(4) The Attorney-General may appoint, in writing, a person to be a manager of the affairs of a party for the purposes of this rule, either generally or for a particular person.

(5) A manager of the affairs of a party becomes the litigation guardian of a person who needs a litigation guardian in a proceeding if the manager of the affairs of the party files an affidavit of consent in relation to the person.

3.17 Notice of becoming litigation guardian

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

3.18 Costs and expenses of litigation guardian

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

(a) by a party; or

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

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Part 3.6—Death or bankruptcy of a party

Division 3.6.1—Death of party

3.19 Death of party

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

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

(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 proceeding (see rules 1.31 and 3.04).

Note 2: For the effect of the death of a party in certain proceedings, see subsections 79(1A), 79(8), 79A(1C), 90SM(2), 90SM(8), 90SN(5), 90UM(8) and 105(3) of the Family Law Act.

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Division 3.6.2—Bankruptcy or insolvency of party

3.20 Definitions for Division 3.6.2

In this Division:

bankruptcy proceedings means proceedings under the Bankruptcy Act, in the Federal Court or the Federal Circuit and Family Court (Division 2), 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 party means a person who is:

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

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

relevant proceeding means any of the following:

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

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

(c) a pending proceeding for enforcement of an order made under a provision referred to in paragraph (a) or (b).

Note: The following terms are defined in the Family Law Act:

(a) bankruptcy trustee (see subsection 4(1));

(b) debtor subject to a personal insolvency agreement (see section 5);

(c) trustee, in relation to a personal insolvency agreement (see subsection 4(1)).

3.21 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 proceeding, in writing, about the bankruptcy or personal insolvency agreement; and

(b) the bankruptcy trustee or the trustee of the personal insolvency agreement, as the case may be, about the relevant proceeding in accordance with rule 3.22; and

(c) the court in which the relevant proceeding is pending, in accordance with rule 3.23.

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

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3.22 Notice under paragraph 3.21(1)(b)

For the purposes of paragraph 3.21(1)(b), notice to a bankruptcy trustee or a trustee of a personal insolvency agreement must:

(a) be in writing; and

(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 application starting the relevant proceeding, response (if any), and any other relevant documents; and

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

3.23 Notice under paragraph 3.21(1)(c)

For the purposes of paragraph 3.21(1)(c), notice to the court must:

(a) be in writing; and

(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 3.21(1)(a) and (b).

3.24 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 proceeding is pending; and

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

(2) The notice must:

(a) be in writing; and

(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.

3.25 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 proceeding in relation to the bankrupt party is pending in a court exercising jurisdiction under the Family Law Act, the trustee must notify:

(a) the court exercising jurisdiction under the Family Law Act in the relevant proceeding, 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 the purposes of paragraph (1)(a), notice to the court must:
(a) be in writing; and
(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 the purposes of paragraph (1)(b), notice to the other party to the marriage or de facto relationship must:
(a) be in writing; and
(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) 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.

3.26 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 proceeding, 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; or
(b) for a trustee of a personal insolvency agreement—subsection 219(2) of the Bankruptcy Act.

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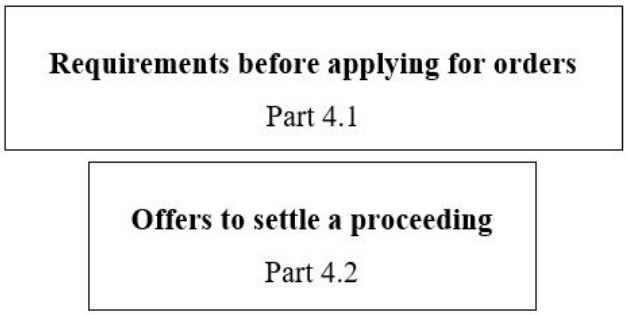
Chapter 4—Dispute resolution



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Part 4.1—Requirements before applying for orders

4.01 Compliance with pre-action procedures

(1) Subject to subrules (2) and (3), before starting a proceeding, each prospective party to the proceeding must comply with the pre-action procedures.

Note: The pre-action procedures are set out in Schedule 1.

(2) Compliance with subrule (1) is not necessary if:
(a) the proceeding is an application for divorce only; or
(b) the proceeding is an application relating to nullity or validity of marriage only; or
(c) the proceeding is a child support application or appeal; or
(d) the proceeding involves a court's jurisdiction in bankruptcy under section 35 or 35B of the Bankruptcy Act; or
(e) the court is satisfied that, in the circumstances, it was not appropriate for a party to comply with the pre-action procedures.

(3) For the purposes of paragraph (2)(e), circumstances include the following:
(a) for a parenting proceeding—the proceeding involves allegations of child abuse or family violence, or of a risk of child abuse or family violence;
(b) for a property proceeding—the proceeding involves allegations of family violence, or of a risk of family violence;
(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 proceeding.

(4) A person who starts a proceeding by making an application for final orders, or a respondent to an application for final orders, must indicate in the Genuine Steps Certificate filed with the application or response either:
(a) that the person has complied with the pre-action procedures; or
(b) the factual basis on which the court should be satisfied that it was not appropriate for the person to comply with the required pre-action procedures.

(5) A person who is legally represented must comply with subrule (4) through the person's legal representative.

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

Note 2: Subsections 60I(7) to (12) of the Family Law Act provide for attendance at family dispute resolution before applying for a parenting order in relation to a child.

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Rule 4.02

4.02 Requirement to file family dispute resolution certificate with application for a parenting order

(1) A person who starts a proceeding by making an application for an order under Part VII of the Family Law Act, such as a parenting order, must file with the application:

(a) a certificate given to the applicant by a family dispute resolution practitioner under subsection 60I(8) of the Family Law Act; or

(b) if no certificate is required because paragraphs 60I(9)(b), (c), (d), (e) or (f) of the Family Law 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.

(2) An applicant in proceedings referred to 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.

4.03 Requirements before seeking an interlocutory order

(1) Before filing an application seeking an interlocutory order, a party must make a reasonable and genuine attempt to settle the issue to which the application relates.

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

(a) compliance will cause undue delay or expense; or

(b) the application would be unduly prejudiced; or

(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).

(3) A person who makes an application for an interlocutory order must indicate, in the affidavit filed with the application, either:

(a) that the person has made a reasonable and genuine attempt to settle the issue to which the application relates; or

(b) which exception in subrule (2) applies to the application and the factual basis for the exception claimed.

(4) A person who is legally represented must comply with subrule (3) through the person's legal representative.

4.04 Consequences of failure to comply with rules 4.01 to 4.03

(1) If:

(a) a person makes an application for a final order without complying with the pre-action procedures; and

(b) the court considers that no exception in subrule 4.01(2) applied to the application;

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the court may stay the application, on its own initiative or on the application of the respondent, until the applicant complies with the pre-action procedures.

(2) The court may take into account a party's failure to comply with rule 4.01, 4.02 or 4.03 when considering whether to make an order as to costs.

(3) The court may take into account the involvement of a legal practitioner in a party's failure to comply with rule 4.01, 4.02 or 4.03 when considering whether to make an order as to costs.

Note: Rules 12.15-12.16 relate to the making of costs orders against lawyers.

4.05 Dispute resolution events

Court may require attendance at dispute resolution events

(1) In the exercise of its general powers of case management to achieve the overarching purpose of these Rules, the court may order a party to attend:
(a) a family consultant; or
(b) family counselling or family dispute resolution; or
(c) another dispute resolution event as permitted by the Family Law Act.

Judicial officers may conduct dispute resolution events

(2) A dispute resolution event may be conducted by a judicial officer.

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Part 4.2—Offers to settle a proceeding

Division 4.2.1—General

4.06 How to make an offer

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

Note: See also paragraph 117(2A)(f) and section 117C of the Family Law 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 4.08(3)).

4.07 Open and without prejudice offers

(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.

4.08 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.

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

4.09 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 each party or the party's legal representative (see subrules 5.28(2) and 10.04(2)).

Note 2: If a litigation guardian seeks a consent order (other than an order relating to practice or procedure), the litigation guardian must file an affidavit setting out the facts relied on to satisfy the court that the order is in the party's best interests (see subrules 5.28(3) and 10.04(3)).

4.10 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 4.2.2—Offers in property proceedings

4.11 Compulsory offer to settle

(1) This rule applies to a property proceeding.

(2) Each party must make a genuine offer to settle to all other parties within:
  (a) 28 days after a conciliation conference or mediation; or
  (b) if no conciliation conference or mediation has been held or is to be held—28 days after the first court date; 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 4.2.2 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*.

Note 1: 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 Family Law Act).

Note 2: Rule 10.27 sets out the consequences of failing to comply with these Rules.

4.12 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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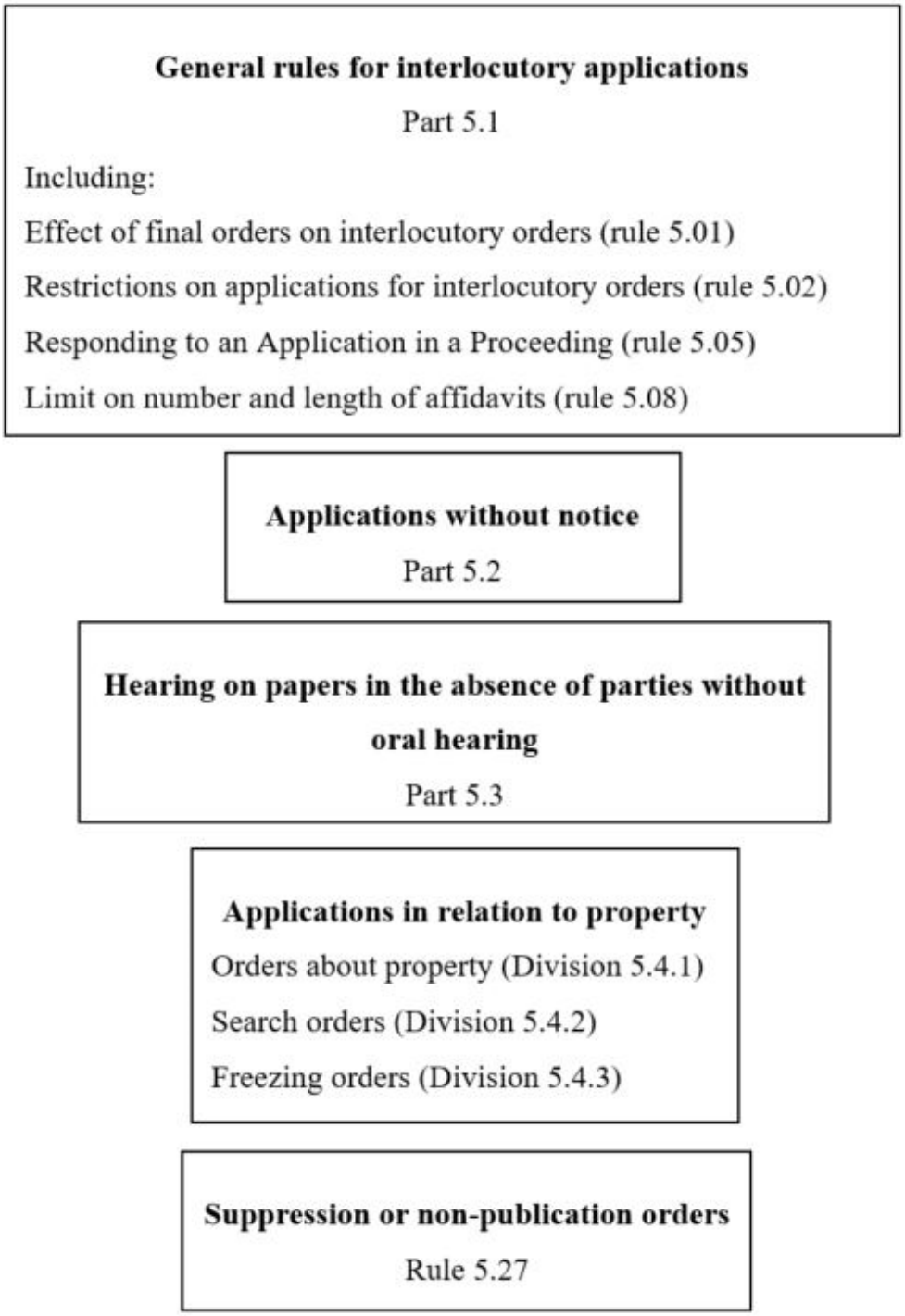
Chapter 5—Interlocutory orders



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Part 5.1—General

5.01 Effect of final orders on interlocutory orders

On the making of final orders in a proceeding, any interlocutory order made in the proceeding pending further order is automatically discharged and ceases to have continuing effect.

5.02 Restrictions on applications for interlocutory orders

(1) Subject to subrule (2), a party may apply for an interlocutory order in a proceeding.

(2) A person may apply for an interlocutory order only if the order sought relates to a current proceeding, unless the person is seeking:
  (a) permission to start a proceeding or extend a time limit to start a proceeding; or
  (b) to be appointed as a litigation guardian for a person under rule 3.15; or
  (c) to vary or set aside an order under rule 10.13 (other than a final order under paragraph 10.13(1)(b)); or
  (d) an order for costs.

(3) This rule does not apply to restrict the filing of an Application in a Proceeding by:
  (a) an independent children's lawyer; or
  (b) the Director of Public Prosecutions, when making an application under section 79C, 79D, 90N, 90P, 90VB or 90VC of the Family Law Act, to stay or lift a stay of a property settlement or spousal or de facto maintenance proceeding; or
  (c) a bankruptcy trustee; or
  (d) a trustee of a personal insolvency agreement.

(4) 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.

Note 1: Unless an exception applies, a party must make a reasonable and genuine attempt to settle the issue to which an interlocutory application relates, before filing the application (see rule 4.03).

Note 2: An application for an interlocutory order must be made using the form required by rule 2.01.

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5.03 Time for applications seeking parenting orders for end-of-year school holiday period

(1) This rule applies to an application for an interim 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 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 hearing 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 may be made to the registry.

5.04 Supporting affidavit to be filed with application

(1) A party who applies for one or more interlocutory orders must, at the same time, file and serve an affidavit stating the facts relied on in support of the orders sought.

(2) Subrule (1) does not apply to an application for review of an order of a Judicial Registrar.

5.05 Responding to an Application in a Proceeding

(1) A respondent to an Application in a Proceeding who seeks to oppose the application, or seeks different orders, must file and serve a Response to an Application in a Proceeding.

(2) A respondent who files and serves a Response to an Application in a Proceeding must, at the same time, file and serve an affidavit stating the facts relied on in support of the Response.

Note: A Response to an Application in a Proceeding must be filed and served within 28 days after service of the application to which it relates (see subrule 2.18(2)).

5.06 When affidavit in reply to a response may be filed

(1) If:

(a) a respondent files and serves a Response to an Application in a Proceeding seeking orders in a cause of action not referred to in the Application in a Proceeding; and

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

the applicant may file and serve an affidavit in reply setting out the facts relied on.

(2) In this rule:

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cause of action includes a claim seeking an order for interlocutory relief.

5.07 Time for filing affidavits

Each affidavit in support of or in opposition to an interlocutory application must be filed and served at least 2 business days before the date fixed for the hearing.

5.08 Limit on number and length of affidavits

(1) The following affidavits may be relied on as evidence in chief at the hearing of an application for interlocutory orders:
  (a) subject to rule 5.06, one affidavit by each party;
  (b) one affidavit by each witness, provided the evidence is relevant and cannot be given by a party.

(2) Unless express leave is granted by the court, an affidavit filed and served in support of or in opposition to an application for interlocutory orders must not exceed 25 pages.

(3) Unless express leave is granted by the court, an affidavit filed and served in support of or in opposition to an application for interlocutory orders must not contain more than 10 annexures.

5.09 Duration of hearing of interlocutory application

(1) Unless the court directs otherwise, the hearing of an application for interlocutory orders must be no longer than 2 hours.

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

5.10 Administrative postponement of interlocutory hearing

(1) If the parties agree that the hearing of an application for interlocutory orders 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; and
  (b) specify why it is appropriate to postpone the hearing; and
  (c) specify the date to which the hearing is sought to be postponed; and
  (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) whether the hearing has been postponed; and
  (b) if applicable, the date to which the hearing has been postponed.

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Part 5.2—Applications without notice

5.11 Applications without notice

An applicant seeking that an interlocutory 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 the following:
  (i) whether there is a history or allegation of child abuse or family violence between the parties;
  (ii) whether there have been any previous proceedings between the parties and, if so, the nature of the proceedings;
  (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 proceeding;
  (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;
  (x) the last known address or address for service of the other party.

5.12 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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Part 5.3—Hearing on papers in absence of parties without oral hearing

5.13 Decisions in the absence of the parties without an oral hearing

The court may determine an application for an interlocutory order in the absence of the parties without an oral hearing if:

(a) the parties to the application consent to the making of the decision in their absence without an oral hearing; and

(b) the court considers it appropriate to make the decision in the absence of the parties without an oral hearing.

Note: This Part also applies to an application in relation to an appeal (see rule 13.38).

5.14 Court decision to require attendance

Despite parties consenting to a hearing being held in their absence without an oral hearing, the court may:

(a) postpone or adjourn the application; and

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

(c) require the parties to attend court for the hearing.

5.15 Procedure for hearing in absence of parties without an oral hearing

(1) If an application is to be determined in the absence of the parties without an oral hearing, each party must file and serve, 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; and

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

(c) not be more than 5 pages; and

(d) have all paragraphs consecutively numbered; and

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

(f) include the signatory's name and email address and telephone number at which the signatory can be contacted.

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Part 5.4—Applications in relation to property

Division 5.4.1—Orders for inspection, etc, of property

5.16 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 proceeding; and
  (b) the order is necessary to allow the proper determination of a proceeding.

(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:
  (a) to enter, or do another thing to gain entry or access to, the property; or
  (b) to make observations, and take photographs, of the property; or
  (c) to 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) to 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 proceeding 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 proceeding.

5.17 Service of application

(1) A party who has applied for an order under rule 5.16 must:
  (a) make a reasonable attempt to find out who has, or claims to have, an interest in the property to which the application relates; and
  (b) serve the application and any supporting affidavits on that person.

(2) The court may allow an application for an order under this Division to be made without notice.

5.18 Inspection by court

A party may apply for an order that the court inspect a place, process or thing, or witness a demonstration, about a question that arises in a proceeding.

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Division 5.4.2—Search orders

5.19 Application for search order

(1) A party may apply for an order (in this Division called a ***search order***):
  (a) requiring a respondent to permit the applicant, alone or with another person, to enter the respondent's premises and do either or both of the following:
    (i) inspect or seize documents or other property;
    (ii) take copies of documents; and
  (b) requiring the respondent to disclose specific information relevant to the proceeding; 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 a search order without notice to the respondent.

(3) An application for a search order must be supported by an affidavit that includes the following:
  (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;
  (f) the name of the person (if any) who the applicant wishes to accompany the applicant to the respondent's premises if permission is granted;
  (g) the consent of one or more lawyers to act as independent lawyers for the purposes of rule 5.21;
  (h) the fees proposed to be charged by the independent lawyers.

(4) If a search order is made, the applicant must serve a copy of it on the respondent when the order is acted on.

5.20 Requirements for grant of search order

The court may make a search order if the court is satisfied that:
  (a) an applicant seeking the order has a strong prima facie case on an application for final orders; and
  (b) the potential or actual loss and damage to the applicant will be serious if the search order is not made; and
  (c) there is sufficient evidence in relation to a respondent that:
    (i) the respondent possesses important evidentiary material; and

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(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

5.21 Independent lawyers

(1) If the court makes a search order, the court must appoint one or more lawyers (the ***independent lawyers***), each of whom is independent of the applicant's lawyer:

(a) to supervise the execution of the order; and

(b) to do any other acts or things in relation to the order that the court considers appropriate.

(2) The court may appoint an independent lawyer to supervise execution of the order at any one or more premises, and a different independent lawyer or lawyers to supervise execution of the order at other premises, with each independent lawyer having power to do any other acts or things in relation to the order that the court considers appropriate.

5.22 Costs

(1) The court may make any order for costs that it considers appropriate in relation to an order made under this Division.

(2) Without limiting subrule (1), an order for costs includes:

(a) an order for the costs of any person affected by a search order; and

(b) an order for the costs of any independent lawyer.

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Division 5.4.3—Freezing orders

5.23 Application for freezing order

(1) A party may apply for an order (in this Division called a ***freezing 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 may apply for a freezing order without notice to the respondent.

(3) An application for a freezing order must be supported by an affidavit that includes the following:

(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 or may be dealt with in or outside Australia; and

(ii) removing or 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;

(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.

5.24 Ancillary orders

(1) The court may make an order (an ***ancillary order***) ancillary to a freezing order or prospective freezing order as the court considers appropriate.

(2) Without limiting subrule (1), an ancillary order may be made for either or both of the following purposes:

(a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;

(b) determining whether the freezing order should be made.

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5.25 Order may be against a person not a party to proceeding

The court may make a freezing order, or an ancillary order under rule 5.24, against a person even if the person is not a party to a proceeding in which substantive relief is sought against the respondent.

5.26 Costs

(1) The court may make any order as to costs it considers appropriate in relation to an order made under this Division.

(2) Without limiting subrule (2), an order as to costs includes an order as to the costs of any person affected by a freezing order or an ancillary order under rule 5.24.

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Part 5.5—Applications for suppression or non-publication orders

5.27 Application for suppression or non-publication order

An applicant for an order to suppress publication of a judgment must file and serve 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 judgment is suppressed;
(f) one or more grounds, referred to in subsection 102PF(1) of the Family Law Act, on which the application is made.

Note: All published judgments in family law proceedings are anonymised in accordance with the requirements of section 114Q of the Family Law Act.

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Part 5.6—Consent orders

5.28 Application for order by consent

(1) The parties to a proceeding may apply for an order in terms of an agreement reached about a matter in dispute in the proceeding:
  (a) by lodging a draft consent order; or
  (b) by tendering a draft consent order to a judicial officer during a court event; or
  (c) orally, during a court hearing or trial.

(2) A draft consent order must state that it is made by consent and must be signed by each party or the party's legal representative.

(3) If the litigation guardian of a party seeks a consent order (other than an order relating to practice or procedure), the litigation guardian must file an affidavit setting out the facts relied on to satisfy the court that the order is in the party's best interests.

5.29 Consent parenting orders and allegations of child abuse, family violence or other risks of harm to children

(1) This rule applies if an application is made to the court for an interlocutory parenting order by consent, unless the order is procedural only.

(2) The parties to the application must comply with Division 2.2.1.

(3) The parties must advise the court whether or not any allegations have been made in the proceeding of child abuse, family violence, or any risk of harm to a child in relation to whom the order is sought.

(4) Each party must also advise the court, apart from any allegation made in the proceeding:
  (a) whether the party considers that the child concerned has been, or is at risk of being, subjected or exposed to abuse, neglect or family violence; and
  (b) whether the party considers that the party, or another party to the proceedings, has been, or is at risk of being, subjected to family violence.

(5) If an allegation referred to in subrule (3) has been made, or a party advises the court of any concerns referred to in subrule (4), the parties must explain to the court how the proposed parenting order attempts to deal with the allegation or concern.

(6) The parties may comply with subrules (3) to (5):
  (a) if a draft parenting order is lodged or is tendered to a judicial officer during a court event—by attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or their legal representative; or

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(b) if the application is made orally during a court event—by each party or the party's legal representative advising the court of the required matters orally; or

(c) if the application for the parenting order is to be considered in chambers—by each party attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or the party's legal representative.

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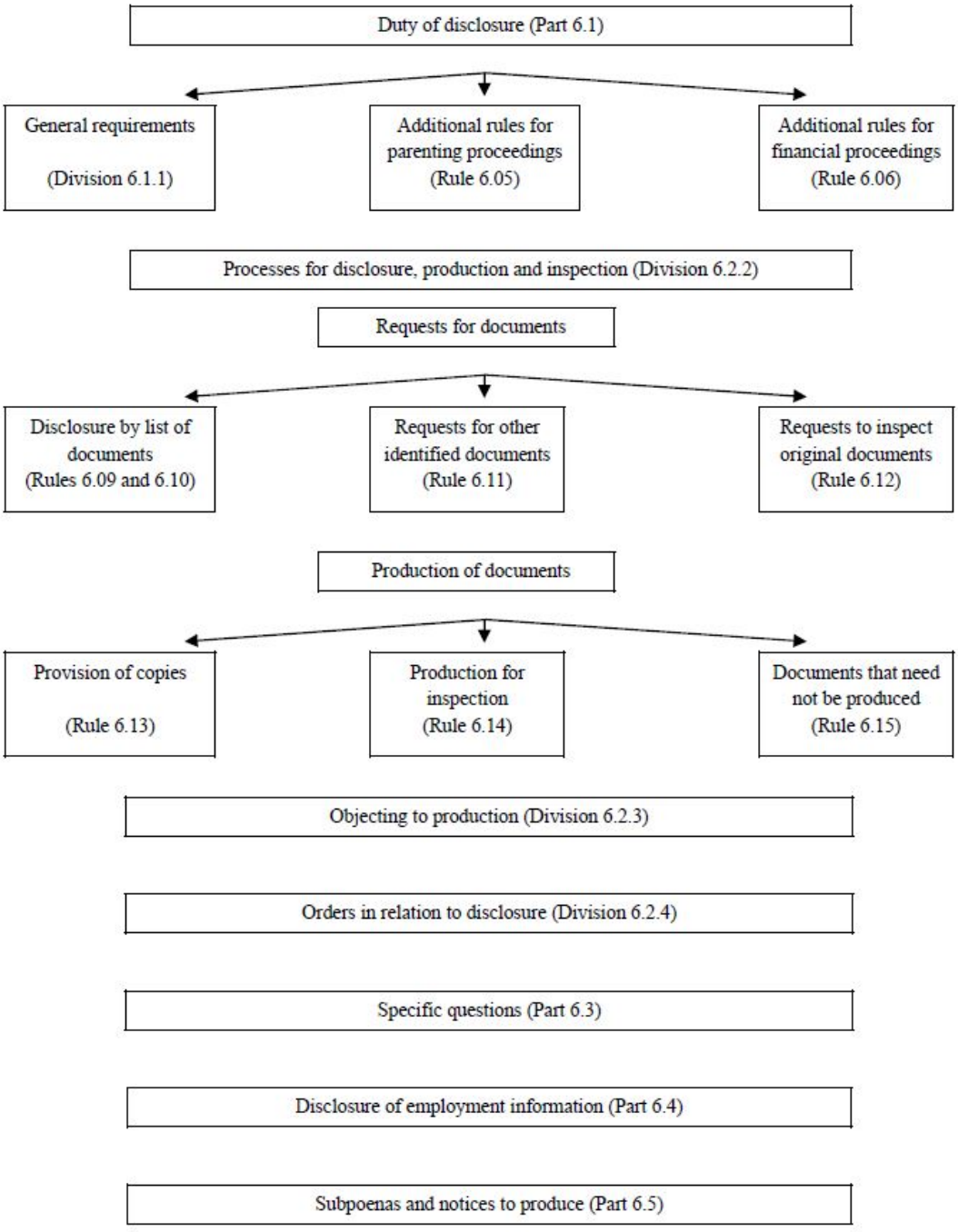
Chapter 6—Disclosure and subpoenas



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Part 6.1—Duty of disclosure

Division 6.1.1—General duty of disclosure

6.01 General duty of disclosure

(1) Subject to subrule (4), each party to a proceeding has a duty to the court and to each other party to give full and frank disclosure of all information relevant to the proceeding, in a timely manner.

Note: The proceedings to which the duty of disclosure applies include both parenting proceedings and financial proceedings. 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.

(2) The duty of disclosure applies from the start of the proceeding and continues until the proceeding is finalised.

Note: Parties are also expected to comply with the duty of disclosure when complying with the pre-action procedures.

(3) The duty of disclosure also applies to a litigation guardian appointed under Part 3.5.

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

6.02 Undertaking by party

(1) A party (but not an independent children's lawyer) must file a written notice:
  (a) stating that the party:
    (i) has read Parts 6.1 and 6.2 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 proceeding, in a timely manner; and
  (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 a 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 Family Law Act relating to contempt and the court's power to make an order for costs.

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(3) If the court makes an order against a party under section 112AP of the Family Law Act in respect of a false or misleading statement referred to 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 be in accordance with the approved form and must be filed before the first court date, unless the court otherwise orders.

6.03 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 proceeding.

Note: In particular types of proceedings, practice directions may specify the documents that must be disclosed in those proceedings. See also rules 6.05 and 6.06.

6.04 Use of documents

(1) A person who inspects or copies a document, in relation to a proceeding, under these Rules or an order:

(a) must use the document for the purpose of the proceeding 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.

(2) However:

(a) a solicitor may disclose the contents of the document or give a copy of the document to the solicitor's client or counsel; and

(b) a client may disclose the contents of the document or give a copy of the document to the client's solicitor or counsel; and

(c) this rule does not affect the right of a party to use a document or to disclose its contents if that party has a common interest in the document with the party who has possession or control of the document.

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Division 6.1.2—Duty of disclosure in specific types of proceedings

6.05 Duty of disclosure—parenting proceedings

(1) The duty of disclosure applies to a parenting proceeding.

(2) Documents that may contain information relevant to a parenting proceeding may include, among other documents:
  (a) criminal records of a party; and
  (b) documents filed in intervention order proceedings concerning a party; and
  (c) medical reports about a child or party; and
  (d) school reports.

6.06 Duty of disclosure—financial proceedings

(1) The duty of disclosure applies to a financial proceeding.

(2) Subrules (3) to (9) do not apply to a party to a property proceeding 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.

(3) Without limiting subrule (1), a party to a financial proceeding 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, 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
    (vi) of which the party has the power (whether subject to the concurrence of another person or not) to amend the terms; or

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(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 referred to 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 referred to in paragraph (c), a corporation or a trust referred to 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.

(4) Paragraph (3)(g) does not apply to a disposal of property made:

(a) with the consent or knowledge of the other party; or

(b) in the ordinary course of business.

(5) A party starting, or filing a response or reply to, a financial proceeding (other than by an Application for Consent Orders) must file, at the same time:

(a) a Financial Statement; and

(b) unless the party is required by these Rules to file an affidavit—a financial questionnaire in accordance with the approved form.

(6) 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.

(7) If a party's financial circumstances have changed significantly from the information set out in the Financial Statement or an affidavit filed under subrule (6), the party must, within 21 days after the change of circumstances, file:

(a) a new Financial Statement; or

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

(8) Without limiting subrule (1), unless the court otherwise orders, a party (the ***first party***) who is required by this rule to file a Financial Statement (other than a respondent to an application for maintenance only) must, before the first court date, serve on each other party who has an address for service in the proceeding the following documents:

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

(b) a copy of the party's 3 most recent taxation assessments;

(c) if the first party is a member of a superannuation plan:

(i) the completed superannuation information form for any superannuation interest of the party (unless it has already been filed or exchanged); and

(ii) for a self-managed superannuation fund—the trust deed and a copy of the 3 most recent financial statements for the fund;

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(d) if the party has an Australian Business Number—a copy of the last 4 business activity statements lodged;

(e) if there is a partnership, trust or company (other than a public company) in which the party has an interest—a copy of the 3 most recent financial statements and the last 4 business activity statements lodged by the partnership, trust or company.

(9) Without limiting subrule (1), a respondent to an application for maintenance only must bring to the court on the first court date the following documents:

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

(b) a copy of the respondent's taxation assessment for the most recent financial year;

(c) copies of the respondent's bank records for the 12 months immediately before the date when the application was filed;

(d) the respondent's most recent pay slip;

(e) if the respondent has an Australian Business Number—a copy of the last 4 business activity statements lodged;

(f) any document in the respondent's possession, custody or control that may assist the court in determining the income, needs and financial resources of the respondent.

(10) This rule does not require a party to be served with a document that has already been provided to the party.

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Part 6.2—Disclosure procedures

Division 6.2.1—Introduction

6.07 Application of Part 6.2

This Part does not apply 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.

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Division 6.2.2—Processes of disclosure, production and inspection

6.08 Application of Division 6.2.2

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; or

(b) any other 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.

6.09 Disclosure by list of documents

(1) After a proceeding has been allocated a first court date, 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; and

(b) the documents (if any) 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 (if any) for which privilege from production is claimed.

(3) If a document that must be disclosed is located by, or comes into the possession or control of, a disclosing party after service of the list 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.

6.10 Request for disclosed document

(1) This rule applies to a document disclosed under rule 6.09.

(2) The requesting party may, by written notice, ask the disclosing party to:

(a) provide a copy of the document in accordance with rule 6.13; or

(b) produce the document for inspection in accordance with rule 6.14.

6.11 Request for other identified document

(1) This rule applies to a document referred to:

(a) in a document filed or served by a party on another party or on an independent children's lawyer; or

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

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(2) A party may, by written notice, require another party to:
  (a) provide a copy of the document in accordance with rule 6.13; or
  (b) produce the document for inspection in accordance with rule 6.14.

6.12 Request to inspect original document

(1) 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.

(2) If a party receives a notice under subrule (1), the party must produce the document for inspection in accordance with rule 6.14.

6.13 Provision of copies of documents

(1) Subject to subrule (2) and rule 6.15, a party must provide copies of documents to the party requesting the copies:
  (a) within 21 days after receiving a notice under paragraph 6.10(2)(a) or 6.11(2)(a); and
  (b) at the expense of the party requesting the copies; and
  (c) if practicable, in an electronic format.

(2) If it is not convenient for a disclosing party to provide copies of documents under subrule (1) because of the number and size of the documents, the disclosing party must produce the documents for inspection in accordance with rule 6.14.

6.14 Production of documents for inspection

(1) A party must produce documents for inspection in accordance with this rule if the party:
  (a) receives a notice under paragraph 6.10(2)(b); or
  (b) receives a notice under paragraph 6.11(2)(b); or
  (c) receives a notice under paragraph 6.10(2)(a) or 6.11(2)(a) and subrule 6.13(2) applies; or
  (d) receives a notice under subrule 6.12(1).

(2) Subject to rule 6.15, a party must, within 14 days after receiving a notice referred to in subrule (1):
  (a) notify, in writing, the party requesting the document of a convenient place and time to inspect the document; and
  (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.

(3) The time fixed under paragraph (2)(a) must be within 21 days after the party receives the notice referred to in subrule (1) or as otherwise agreed.

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(4) A party who fails to inspect a document after receiving a notice under subrule (2) may not later do so unless the party tenders an amount for the reasonable costs of providing another opportunity for inspection.

6.15 Documents that need not be produced

(1) A party must disclose, but need not provide a copy of nor produce to the party requesting it:

(a) a document for which there is a claim of privilege from production; or

(b) a document that is no longer in the disclosing party's possession or control; or

(c) a document a copy of which has already been provided, if the copy contains no change, obliteration or other mark or feature that is likely to affect the outcome of the proceeding.

(2) Subrule (1) does not affect the operation of rule 7.14.

Note: Rule 7.14 requires the disclosure of an expert's report in a parenting proceeding.

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Division 6.2.3—Objecting to production

6.16 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.

(3) The court may inspect the document for the purpose of determining whether the claim is valid.

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Division 6.2.4—Orders in relation to disclosure

6.17 Consequences of non-disclosure

If a party does not disclose a document as required by these Rules:

(a) the party:

(i) must not offer the document, or present evidence of its contents, at a hearing or trial without the other party's consent or the court's permission; and

(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: A party who discloses a document under this Part must produce the document at the trial if a notice to produce has been given (see rule 6.42).

Note 2: Section 112AP of the Family Law Act sets out the court's powers in relation to a contempt of court.

6.18 Application for order for disclosure, production or inspection

(1) A party (the ***first party***) may seek an order that:

(a) another party comply with a request for a list of documents in accordance with rule 6.09; or

(b) another party provide an affidavit of documents; or

(c) another party disclose a specified document, or class of documents, by providing a copy of the document, or each document in the class; or

(d) another party produce a document for inspection; or

(e) another 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

(f) the first 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 appropriate in the interests of the administration of justice.

(3) The court may make an order of a kind referred to in subrule (1) on its own initiative if it is satisfied that the order is appropriate in the interests of the administration of justice.

(4) In making an order under subrule (1) or (3), the court may consider:

(a) whether the disclosure sought is relevant to an issue in dispute; and

(b) the relative importance of the issue to which the document or class of documents relates; and

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(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 proceeding; and

(d) the likely effect on the outcome of the proceeding of disclosing, or not disclosing, the document or class of documents.

(5) If the disclosure of a document is necessary for the purpose of resolving a proceeding at a dispute resolution event, a party (the ***requesting party***) may, on the first court date, 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.

(6) The court may make an order under subrule (5) only in exceptional circumstances.

(7) The court may inspect a document to decide:

(a) an application made under this rule; or

(b) whether to make an order under subrule (3).

6.19 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; or

(b) contribute to the costs; or

(c) give security for costs.

6.20 Electronic disclosure

The court may make an order directing electronic disclosure of documents.

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Part 6.3—Specific questions

6.21 Application of Part 6.3

This Part applies only in relation to an application seeking final orders.

6.22 Service of specific questions

(1) After a proceeding has been allocated a first court date, 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; and
  (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 6.09 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 6.2 or an order has expired.

(5) The requesting party must serve a copy of any request to answer specific questions on all other parties.

6.23 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.

6.24 Orders in relation to specific questions

(1) A party may apply for an order:
  (a) that a party comply with rule 6.23 and answer, or further answer, a specific question served on the party under rule 6.22; or

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(b) determining the extent to which a question must be answered; or
(c) requiring a party to state specific grounds of objection; or
(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) A party making an application under subrule (1) must satisfy the court that the order is appropriate in the interests of the administration of justice.

(3) 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; and
(b) answering the questions will cause unacceptable delay or undue expense; and
(c) the specific questions are relevant to an issue in the proceeding.

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Part 6.4—Disclosure from employer

6.25 Disclosure of employment information in proceedings for financial orders

(1) This rule sets out the information a party may require from an employer of a party to a financial proceeding.

(2) The court may order a party to inform 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 employer; and
  (b) other information the court considers necessary to enable an employer to identify the party.

(3) Subrule (4) 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; or
    (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; or
    (iv) the employee's accrued or potential leave entitlements as at a particular date or dates; or
    (v) any entitlement of the employee to earn bonuses and any conditions that the employee must satisfy in order to be paid such bonuses; and
  (b) the employer refuses, or fails to respond to, the requesting party's request.

(4) The requesting party may apply for an order that the employer inform the court, in writing, within a specified time, of the particulars referred to in paragraph (3)(a).

Note: A document purporting to include the information referred to in paragraph (2)(a) or (b), or the particulars referred to in paragraph (3)(a), 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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Part 6.5—Subpoenas and notices to produce

Division 6.5.1—Subpoenas: general

6.26 Issue of subpoena

(1) The court may, on the court's own initiative or at the request of a party, issue:
  (a) a subpoena for production; or
  (b) a subpoena to give evidence; or
  (c) a subpoena for production and to give evidence.

(2) A subpoena must be in accordance with the approved form.

(3) A subpoena must specify the name or designation by office or position of the person subpoenaed.

(4) A subpoena requiring a person to produce a document or thing must include an adequate description of the document or thing and the time and place for production.

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

6.27 Limits on requests for subpoenas

(1) A self-represented party must not request the issue of a subpoena without the permission of the court.

(2) A party or an independent children's lawyer must not request the issue of:
  (a) a subpoena to give evidence; or
  (b) a subpoena for production and to give evidence; or
  (c) a subpoena for production for a final hearing; or
  (d) a subpoena for production directed to another party to the proceeding;
without the permission of the court.

(3) Subject to subrules (1) and (2), a party may request the issue of up to 5 subpoenas for production for the hearing of an application for an interlocutory order without the permission of the court.

(4) Subject to subrules (1) and (2), an independent children's lawyer may request the issue of any number of subpoenas for production for the hearing of an application for an interlocutory order without the permission of the court.

(5) A request made under subrule (3) must state the total number of subpoenas the party has already requested under that subrule in the proceeding.

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6.28 Documents and things in possession of another court

(1) The court must not issue a subpoena requiring the production of a document or thing in the possession of the court or another court.

(2) A party who seeks production of a document or thing in the possession of another court must give to the Registry Manager a written notice setting out:
  (a) the name and address of the court having possession of the document; and
  (b) a description of the document to be produced; and
  (c) the date when the document is to be produced; and
  (d) the reason for seeking production.

(3) On receiving a notice under subrule (2), the Registry Manager may ask the other court, in writing, to send the document to the filing registry by a specified date.

(4) A party may apply for permission to inspect and copy a document produced to the court under this rule.

6.29 Time limits

(1) A subpoena requiring production only must be made returnable no later than 3 days before any court event to which the subpoena relates, unless the court otherwise orders.

(2) A subpoena requiring attendance of a person must be made returnable on a day when the proceeding is listed for a hearing.

(3) Unless the court directs otherwise:
  (a) a subpoena requiring attendance must be served at least 7 days before attendance under the subpoena is required; and
  (b) a subpoena requiring production must be served at least 10 days before production under the subpoena is required.

Note: A subpoena must be served within 3 months after it is issued (see rule 2.30).

6.30 Service

(1) A subpoena requiring the person subpoenaed to give evidence must be served by personal service.

(2) A subpoena for production only may be served:
  (a) by ordinary service; or
  (b) by a manner of service agreed between the issuing party and the person subpoenaed.

(3) The issuing party for a subpoena must serve by ordinary service a copy of the subpoena on each other party, any interested person and any independent children's lawyer in the proceeding.

Note 1: For personal service, see Division 2.6.2. For ordinary service, see Division 2.6.3.

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Note 2: For service on a corporation, a subpoena must be served on the proper officer or other person entitled to accept service of a subpoena for a corporation (see subrule 6.26(3)).

6.31 Conduct money and witness fees

(1) The person serving a subpoena must give the person subpoenaed conduct money sufficient for return travel between the place of residence or employment (as appropriate) of the person subpoenaed and the court.

(2) The amount of conduct money must be at least equal to the minimum amount referred to in Part 1 of Schedule 2.

(3) 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 2, immediately after attending court in compliance with the subpoena.

6.32 Undertaking not to require compliance with subpoena

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

6.33 Setting aside subpoena

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

6.34 Order for cost of complying with subpoena

Subject to rule 6.35, the court may, on application, make an order for the payment of any loss or expense incurred in complying with a subpoena.

6.35 Cost of complying with subpoena if not a party

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

(2) Unless the court otherwise directs, the amount of the loss or expense estimated under paragraph (1)(b) is payable by the issuing party.

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(3) The court may fix the amount payable having regard to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory where the person is required to attend.

(4) The amount payable is in addition to any conduct money paid.

(5) If a party who is to pay an amount under this rule obtains an order for the costs of the proceeding, the court may:

(a) allow the amount to be included in the costs recoverable; or

(b) make any other order it thinks appropriate.

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Division 6.5.2—Subpoenas: production of documents and access by parties

6.36 Use of documents produced in compliance with subpoena for production

(1) This Division:
  (a) applies to a subpoena for production; and
  (b) does not apply to a subpoena for production and to give evidence.

(2) A person who inspects or copies a document under these Rules or an order:
  (a) must use the document only for the purpose of the proceedings; 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.

(3) However:
  (a) a solicitor may disclose the contents or give a copy of the document to the solicitor's client or counsel; and
  (b) a client may disclose the contents or give a copy of the document to the client's solicitor or counsel; and
  (c) nothing in this rule prevents a client or a client's solicitor from providing a document to an expert for the purpose of the proceeding as permitted by Chapter 7.

6.37 Right to inspection of document

(1) This rule applies if:
  (a) the court issues a subpoena for production of a document under rule 6.26; and
  (b) the issuing party serves a copy of the subpoena on each other party, any interested person and any independent children's lawyer in accordance with rule 6.30, at least 10 days before the day stated in the subpoena for production; and
  (c) the issuing party files a notice of request to inspect in an approved form.

(2) If a person subpoenaed, another party or an interested person has not made an objection under rule 6.38 by the date required for production, each party and independent children's lawyer (if any) may, after that day:
  (a) inspect a subpoenaed document; and
  (b) take copies of a subpoenaed document, other than a child welfare record, criminal record, medical record or police record.

  Note: For ***child welfare record***, ***criminal record***, ***medical record*** and ***police record***, see rule 1.05.

(3) Unless otherwise ordered, the inspection is by appointment and without an order.

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

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6.38 Objection to production or inspection or copying of document

(1) A person who objects to producing a document subpoenaed, or another party or an interested person who objects to the inspection or copying of a document subpoenaed by a party to the proceedings, must, before the day stated in the subpoena for production, give written notice of the objection and the grounds of the objection to:
  (a) the Registry Manager; and
  (b) if the objector is not the person subpoenaed—the person subpoenaed; and
  (c) each party, or other party, to the proceeding; and
  (d) each independent children's lawyer, or each other independent children's lawyer, in the proceeding.

(2) If an issuing party seeks the production of a person's medical records, the person may, before the day stated in the subpoena for production, notify the Registry Manager in writing that the person wants to inspect the records for the purpose of determining whether to object to the inspection or copying of the document by any other party.

(3) If a person gives a notice under subrule (2):
  (a) the person may inspect the medical records and notify the Registry Manager in writing of an objection (including the grounds of the objection) within 7 days after the day stated in the subpoena for production; and
  (b) unless otherwise ordered, no other person may inspect the medical records until the later of the following:
    (i) 7 days after the day stated in the subpoena for production;
    (ii) the day of the hearing and determination of the objection (if any).

(4) A subpoena that is the subject of a notice of objection under this rule must be referred to the court for the hearing and determination of the objection.

(5) The court may compel a person to produce a document to the court for the purpose of ruling on an objection made under subrule (1) or paragraph (3)(a).

6.39 Subpoena for production of documents or things

(1) If a person is served with a subpoena for production:
  (a) the person, or the person's agent, must produce the documents or things described in the subpoena at the registry stated in the subpoena; and
  (b) the Registry Manager must issue a receipt to the person producing the document or thing.

(2) Unless the subpoena specifically requires the production of the original documents or things, the person, or the person's agent, may produce a copy of the document or things.

(3) The copy of the document or things may be:
  (a) a photocopy; or
  (b) in PDF format; or

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(c) in any other electronic form that the issuing party has indicated is acceptable.

6.40 Return of documents produced

(1) This rule applies to a document produced in compliance with a subpoena that is to be returned to the person subpoenaed.

(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 issuing party 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 person subpoenaed at a time that is earlier than the time referred to in subrule (2).

(4) If the Registry Manager has received written permission from the person subpoenaed 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.

(5) Nothing in this rule requires the Registry Manager:

(a) to return to the person subpoenaed any document that is produced in electronic form; or

(b) to obtain permission from the person subpoenaed to destroy such a document, in an appropriate way, not earlier than 42 days after the final determination of the application or appeal.

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Division 6.5.3—Non-compliance with subpoena

6.41 Failure to comply with subpoena

If:

(a) a person subpoenaed does not comply with a subpoena; and

(b) the court is satisfied that the person subpoenaed was served with the subpoena and given conduct money in compliance with rule 6.31;

the court may issue a warrant for the person's arrest and order the person to pay any costs caused by the non-compliance.

Note 1: A person who does not comply with a subpoena may be guilty of contempt (see section 112AP of the Family Law Act).

Note 2: A person does not need to comply with a subpoena if it was not served in compliance with rule 6.30 or the person serving the subpoena did not give the person subpoenaed conduct money in compliance with rule 6.31.

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Division 6.5.4—Notices to produce

6.42 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, in a form in which it can be accessed in court.

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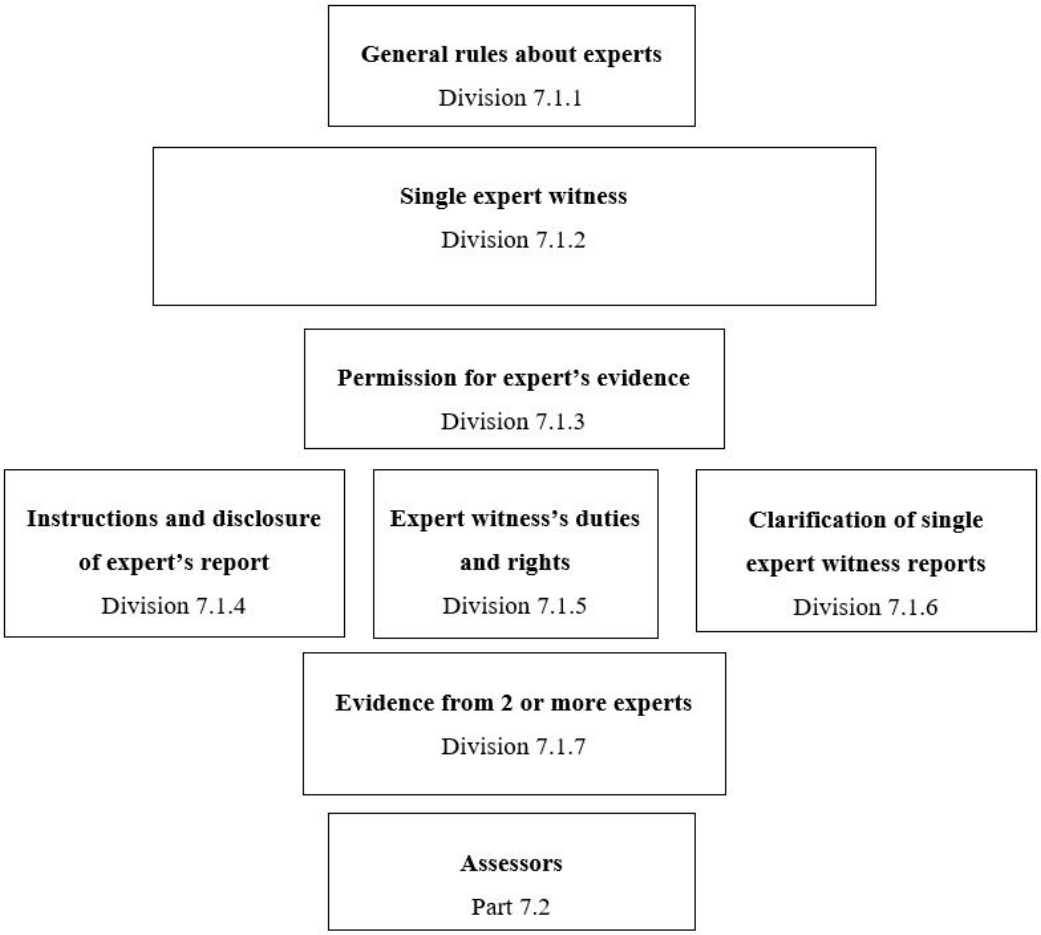
Chapter 7—Experts and assessors



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Part 7.1—Experts

Division 7.1.1—Introduction

7.01 Application of Part 7.1

(1) This Part (other than rule 7.14) 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 proceeding or anticipated proceeding, being evidence:

(i) about that expert's involvement with a party, child or subject matter of a proceeding; 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 proceeding for a purpose other than the giving of advice or evidence, or the preparation of a report for a proceeding or anticipated proceeding, being evidence about that expert's association, involvement or contact with that party, child or subject matter;

(d) evidence from a family consultant employed or engaged by the Federal Circuit and Family Court or the Family Court of a State.

Example: An example of evidence excluded from the requirements of this Part (other than rule 7.14) 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.

7.02 Purpose of Part 7.1

The purpose of this Part is as follows:

(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 proceeding;

(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;

(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 that is necessary in the interests of justice.

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Division 7.1.2—Single expert witness

7.03 Appointment of single expert witness by parties jointly

(1) If the parties agree that expert evidence may help to resolve a substantial issue in a proceeding, they may agree to jointly appoint a single expert witness to prepare a report in relation to the issue.

Note: Subrules 7.13(3) to (5) set 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).

(3) A party must not communicate unilaterally with a single expert witness, except as permitted by these Rules.

(4) Any communication between a party and a single expert witness must, at the same time, also be provided to all other parties engaging that single expert witness, except as permitted by these Rules.

7.04 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 any matters relevant to making the order, which may include the following (without limiting the matters which may be relevant):
  (a) the overarching purpose of these Rules (see rule 1.04) and the purpose of this Part (see rule 7.02);
  (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;
  (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).

7.05 Orders the court may make

The court may, in relation to the appointment of, instruction of, or conduct of a proceeding 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; or

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(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; or
(c) appointing a single expert witness from the list prepared by the parties or in some other way; or
(d) determining any issue in dispute between the parties to ensure that clear instructions are given to the expert; or
(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; or
(f) settling the instructions to be given to the expert; or
(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.

7.06 Single expert witness's fees and expenses

(1) Unless the parties agree otherwise or the court otherwise orders, the parties (but not an independent children's lawyer) are equally liable to pay a single expert witness's reasonable fees and expenses incurred in preparing a report.

Note: Rule 12.32 sets out the circumstances in which an amount paid to an expert for preparation of a report is a disbursement properly incurred in a proceeding.

(2) A single expert witness is not required to undertake any work in relation to the expert witness's appointment until the fees and expenses are paid or secured.

7.07 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, unless otherwise ordered, the expert witness must give the report to the Registry Manager.

Note 1: An expert witness may seek procedural orders from the court under rule 7.19 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.

Note 2: The delivery of an expert's report may occur by electronic means, if appropriate.

(4) An applicant who has been given a copy of a report under subrule (2) must file the copy but does not need to serve it.

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7.08 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:

(a) there is a substantial body of opinion contrary to any opinion given by the single expert witness and the contrary opinion is or may be necessary for determining the issue; or

(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.

7.09 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.

(3) Unless the court otherwise orders, a party who requires a single expert witness to attend court for cross-examination must pay the reasonable fees and expenses of the single expert witness's attendance.

Note: Rule 12.31 sets out the circumstances in which an amount paid for attendance by an expert at a hearing is a disbursement properly incurred in a proceeding.

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Division 7.1.3—Permission for expert's evidence

7.10 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, other than 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.

7.11 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 Proceeding.

(2) The affidavit filed with the application must state the following:
   (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;
   (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 the following:
   (a) the purpose of this Part (see rule 7.02);
   (b) the impact of the appointment of an expert witness on the costs of the proceeding;
   (c) the likelihood of the appointment expediting or delaying the proceeding;
   (d) the complexity of the issues in the proceeding;
   (e) whether the evidence should be given by a single expert witness rather than an expert witness appointed by one party only;
   (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 proceeding.

(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.

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Note: Despite an order under this rule, a party is not entitled 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 7.17).

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Division 7.1.4—Instructions and disclosure of expert's report

7.12 Application of Division 7.1.4

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.

7.13 Instructions to expert witness

(1) This rule applies to any expert witness, whether a single expert witness or an expert witness engaged by only one party or some parties.

(2) A party who instructs an expert witness to give an opinion for a proceeding or an anticipated proceeding must:
  (a) ensure the expert witness has a copy of the most recent version of, and has read, Divisions 7.1.4, 7.1.5 and 7.1.6 of these Rules; and
  (b) obtain a written report from the expert witness.

(3) All instructions to an expert witness must be in writing and must include:
  (a) a request for a written report; and
  (b) advice that the report may be used in an anticipated or actual proceeding; and
  (c) the issues about which the opinion is sought; and
  (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.

(4) If a single expert witness is appointed, the parties must give the expert an agreed statement of facts on which to base the report.

(5) However, if a single expert witness is appointed and 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.

7.14 Mandatory disclosure of expert's report

(1) A party who has obtained an expert's report for a parenting proceeding, whether before or after the start of the proceeding, must give each other party a copy of the report:
  (a) if the report is obtained before the proceeding starts—at least 2 days before the first court date; or

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(b) if the report is obtained after the proceeding starts—within 7 days after the party obtains the report.

(2) The party who discloses an expert's report must disclose any supplementary report and any notice amending the report under subrule 7.18(5).

(3) If an expert's report has been disclosed under this rule, any party may seek to tender the report as evidence.

(4) Legal professional privilege does not apply in relation to an expert's report that must be disclosed under this rule.

7.15 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 to the proceeding.

7.16 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 that the court make an order under this rule (see rule 7.19).

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

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Division 7.1.5—Expert witness's duties and rights

7.18 Expert witness's duty to the court

(1) An expert witness has a duty to assist 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 the following duties:
  (a) to 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) to conduct the expert witness's functions in a timely way;
  (c) to avoid acting on an instruction or request to withhold or avoid agreement when attending a conference of experts;
  (d) to consider all material facts, including those that may detract from the expert witness's opinion;
  (e) to 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 is based on incomplete research or inaccurate or incomplete information, or is incomplete or may be inaccurate, for any reason;
  (f) to produce a written report that complies with rules 7.21 and 7.22.

(4) The expert witness's duty to the court arises when the expert witness:
  (a) receives instructions under rule 7.13; or
  (b) is informed by a party that the expert witness may be called to give evidence in a proceeding.

(5) An expert witness who changes an opinion after the preparation of a report must give written notice to that effect:
  (a) if the expert witness is appointed by a party—to the instructing party; or
  (b) if the expert witness is 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.

7.19 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.

Note: The written request may be by letter and may, for example:

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(a) ask for clarification of instructions; or
(b) relate to questions referred to in Division 7.1.6; or
(c) relate to a dispute about fees.

(2) The request must:
(a) comply with rule 2.14; 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 after 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.

7.20 Expert witness's evidence in chief

(1) An expert witness's evidence in chief comprises:
(a) the expert's report; and
(b) any changes to that report in a notice under subrule 7.18(5); and
(c) any answers to questions under rule 7.27.

(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.

7.21 Form of expert's report

(1) An expert's report must:
(a) be addressed to the court and the party or parties instructing the expert witness; and
(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.

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I have read and understand Divisions 7.1.4, 7.1.5 and 7.1.6 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* 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*].

I understand my duty to the court and I have complied with it and will continue to do so.

7.22 Contents of expert's report

(1) An expert's report must:
  (a) state the reasons for the expert witness's conclusions; and
  (b) include a statement about the methodology used in the production of the report; and
  (c) include the material referred to in subrule (2) in support of the expert witness's conclusions.

(2) For the purposes of paragraph (1)(c), an expert's report must include the following in support of the expert witness's conclusions:
  (a) the expert witness's qualifications;
  (b) the literature or other material used in making the report;
  (c) the relevant facts, matters and assumptions on which the opinions in the report are based;
  (d) a statement about the facts in the report that are within the expert witness's knowledge;
  (e) 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;
  (f) 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;
  (g) a summary of the conclusions reached;
  (h) if necessary, a disclosure that:
    (i) a particular question or issue falls outside the expert witness's expertise; or
    (ii) the report may be incomplete or inaccurate without some qualification and the details of any qualification; or
    (iii) the expert witness's opinion is not a concluded opinion because further research or data is required or because of any other reason.

7.23 Consequences of non-compliance

If an expert witness does not comply with these Rules, the court may do any of the following:
  (a) order the expert witness to attend court;

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(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;

(d) take the non-compliance into account when making orders for:

(i) an extension or abridgment of a time limit; or

(ii) a stay of the proceeding; or

(iii) interest payable on a sum ordered to be paid; or

(iv) costs.

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

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Division 7.1.6—Clarification of single expert witness reports

7.24 Purpose of Division 7.1.6

(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 7.25 or by means of questions under rule 7.26.

7.25 Conference

(1) Within 21 days after receiving the report of a single expert witness, the parties may enter into a written 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 informed 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.

7.26 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 a conference (if any) is held under rule 7.25; or
  (b) if no conference is held under that rule—within 21 days after the party received the single expert witness's report.

(2) The questions must:
  (a) be in writing and be put once only; and
  (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.

7.27 Single expert witness's answers

(1) A single expert witness must answer a question received under rule 7.26 within 21 days after the later of the following:
   (a) the date the expert witness received the question;
   (b) the date the fees and expenses for answering the question are paid or secured.

(2) An answer to a question:
   (a) must be in writing; and
   (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 7.21(2); and
      (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.

7.28 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 7.27, the expert witness's 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) In this rule:

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attend includes attendance by electronic communication.

7.29 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 7.1.7—Evidence from 2 or more expert witnesses

7.30 Application of Division 7.1.7

This Division applies to a proceeding 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.

7.31 Conference of expert witnesses

(1) In a proceeding to which this Division applies:

(a) the parties must arrange for the expert witnesses to confer at least 28 days before the earlier of the following:

(i) the first day of the trial in which the experts' reports are to be relied on in evidence;

(ii) the first day when the experts' reports are otherwise to be relied on in evidence; and

(b) each party must give to the expert witness the party has instructed a copy of the court approved brochure entitled Experts' Conferences—Guidelines for expert witnesses and those instructing them in proceedings in the Federal Circuit and Family Court of Australia.

Note: The brochure is available on the court's website.

(2) The court may, in relation to the conference, make an order, including an order about:

(a) which expert witnesses are to attend; or

(b) where and when the conference is to occur; or

(c) which issues the expert witnesses must discuss; or

(d) the questions to be answered by the expert witnesses; or

(e) the documents to be given to the expert witnesses, including:

(i) a copy of Divisions 7.1.4, 7.1.5 and 7.1.6 of these Rules; and

(ii) relevant affidavits; and

(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; and

(b) if practicable, reach agreement on any outstanding issue; and

(c) identify the reason for disagreement on any issue; and

(d) identify what action (if any) may be taken to resolve any outstanding issues; and

(e) prepare a joint statement specifying the matters referred to in paragraphs (a) to (d) and deliver a copy of the statement to each party.

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(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.

7.32 Conduct of trial with expert witnesses

At a trial, the court may make an order in relation to the giving of evidence by expert witnesses, including an order that:

(a) an expert witness clarify the expert witness's evidence after cross-examination; or

(b) an expert witness give evidence only after all or certain factual evidence relevant to the question has been led; or

(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; or

(d) each expert witness is to be sworn and available to give evidence in the presence of each other; or

(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 7.2—Assessors

7.33 Application of Part 7.2

This Part applies to all applications other than:

(a) an application for divorce; or

(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.

7.34 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 proceeding has started, an Application in a Proceeding and an affidavit.

(2) The affidavit filed with the application must:

(a) state:

(i) the name of the proposed assessor; and

(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 referred to in subrule (2); and

(b) given the parties a reasonable opportunity to be heard in relation to the appointment.

7.35 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 an opinion or finding of the assessor, but there is a presumption that the court will adopt an opinion or finding of the assessor unless there are exceptional circumstances.

7.36 Remuneration of assessor

(1) An assessor may:

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(a) be remunerated as determined by the court; and
(b) be paid by the court, or a party or other person, as ordered by the court.

(2) The court may order a party or other person to pay, or give security for payment of, the assessor's remuneration before the assessor is appointed to assist the court.

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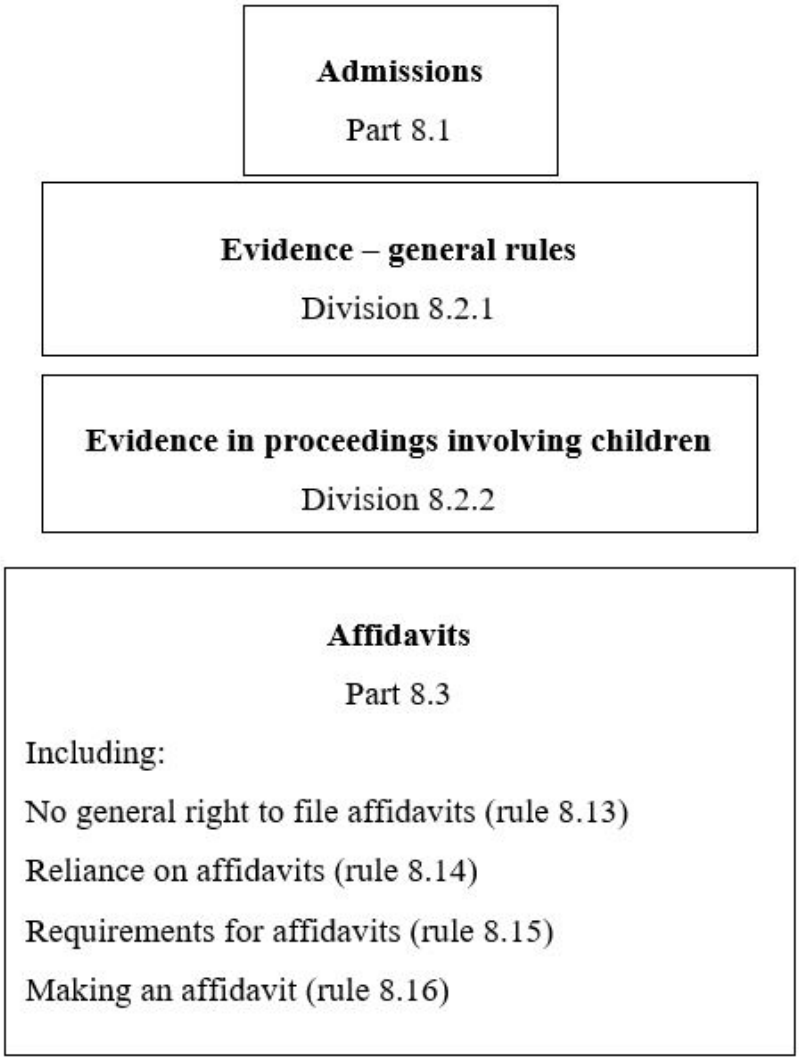
Chapter 8—Admissions and evidence



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Part 8.1—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 proceeding 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 proceeding. For example, if admissions are made before the disclosure process, disclosure may be able to be limited and the costs of the proceeding reduced.

8.01 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 proceeding 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 8.02(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 relates to 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 a copy to the Notice.

(4) If paragraph (3)(b) applies, the party serving the Notice 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.

8.02 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 Disputing the Fact or Document in accordance with subrule (1), the party is taken to admit, for the purposes of the proceeding 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 proceeding;

the party who served the Notice may be ordered to pay the costs of the proof.

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8.03 Withdrawing admission

(1) A party may withdraw an admission that a fact is true or that 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 proceeding or an admission that is taken to be made under subrule 8.02(2).

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Part 8.2—Evidence

Note: The *Evidence Act 1995* applies generally to family law proceedings in the Federal Circuit and Family Court, with some exceptions, for example, in child-related proceedings (see section 69ZT of the Family Law Act).

Division 8.2.1—General rules about evidence

8.04 How evidence may be given

Evidence in support of an application may be given:

(a) by way of affidavit; or

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

8.05 Court may call evidence

(1) The court may on its own initiative call any person as a witness in proceedings and give directions as to examination and cross-examination.

(2) The court may order a party to pay the expenses of the attendance of the witness.

8.06 Order for examination of witness

(1) A court may, at any stage in a proceeding:

(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 the person to take the evidence of another 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.

8.07 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; and

(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 referred to in paragraph (a) in a language appropriate to the place where the evidence is to be taken; and

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(c) an undertaking:

(i) to be responsible for all expenses incurred by the court, or by the person at the request of the court, in respect of the letter of request; and

(ii) to pay the amount to the Registry Manager of the filing registry, after being given notice of the amount of the expenses.

(2) A translation filed under paragraph (1)(b) must be accompanied by an affidavit of the person making the translation:

(a) verifying that it is a correct translation; and

(b) setting out the translator's full name, address and qualifications for making the translation.

(3) If, after receiving the documents referred to in subrules (1) and (2) (if applicable), the Judicial 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.

8.08 Transcript receivable in evidence

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

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Division 8.2.2—Evidence in proceedings involving children

8.09 Parenting questionnaire

Unless a party to a parenting proceeding is required by these Rules to file an affidavit, the party must file a completed Parenting Questionnaire in the approved form with the party's Initiating Application (Family Law) or Response to Initiating Application (Family Law).

8.10 Restriction on child's evidence

(1) A party applying to adduce the evidence of a child under section 100B of the Family Law Act must file an affidavit that:
  (a) sets out the facts relied on in support of the application; and
  (b) includes the name of a support person; and
  (c) attaches a summary of the evidence to be adduced from the child.

(2) If the court makes an order in relation to an application referred to 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 Family Law Act provide that a child (other than a child who is, or is seeking to become, a party to a proceeding) must not swear an affidavit and must not be called as a witness or remain in court unless the court otherwise orders.

8.11 Reports from family consultant

(1) A party to an application for final orders may apply for an order that a report (a ***family consultant's report***) concerning the best interests of a child be obtained from a family consultant under subsection 55A(2) or section 62G of the Family Law Act.

Note: A family consultant's report may be a child impact report, a specific issues report or a family report.

(2) When deciding whether to order a family consultant's report, the court may take the following matters into consideration, together with any other relevant matters:
  (a) whether the proceeding involves:
    (i) an intractable or complex parenting proceeding; or
    (ii) if a child is mature enough for the child's views to be significant in determining the proceeding—a dispute about the child's views; or
    (iii) a dispute about the existence or quality of the relationship between a parent, or other significant person, and a child; or
    (iv) allegations that a child is at risk of abuse; or

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(v) family violence;

(b) whether there is any other relevant independent expert evidence available;

(c) the capacity of each party to contribute to the cost of a single expert report instead of a family consultant's report.

(3) An application for a family consultant's report (whether made orally or in writing), and any order made, must identify the issues to be addressed by the report.

(4) When ordering a family consultant's report, the court may order a party or a child to attend for the purposes of preparing the report.

(5) If a family consultant's report is obtained in accordance with an order made under this rule, the court may do any of the following:

(a) by order or otherwise, give a copy of the report to any of the following:

(i) a party, a lawyer for a party, or an independent children's lawyer, in the proceeding;

(ii) a children's court (however described) of a State or Territory;

(iii) a prescribed child welfare authority;

(iv) an authority established by or under a law of a State or Territory for purposes including the provision of legal assistance;

(v) the convenor of any legal dispute resolution conference;

(vi) a member of the police force of a State or Territory;

(b) receive the report in evidence;

(c) permit oral examination of the person making the report;

(d) order that the report not be released to a person or that access to the report be restricted.

(6) If the court, other than by order, gives a copy of a family consultant's report to a person or body under subrule (5), the copy must be accompanied by a notice that states the following information:

(a) the people to whom a copy of the report may be provided;

(b) the status of the report at the time of its preparation;

(c) information about the potential consequences for unauthorised publication of information contained in the report.

8.12 Report after dispute resolution

(1) At the end of court-ordered dispute resolution, the dispute resolution practitioner who conducted the dispute resolution must prepare a report, in the approved form, as to:

(a) whether an agreement was reached on an interim or final basis; and

(b) the conduct of the parties, in terms of whether the parties attended the dispute resolution and whether they made a genuine effort to resolve the issues in dispute.

(2) If the dispute resolution practitioner is a judicial officer, the judicial officer must place the report on the court file.

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(3) If the dispute resolution practitioner is not a judicial officer:
   (a) the practitioner must give the report to the applicant; and
   (b) the applicant must file and serve the report.

(4) This rule does not apply to a dispute resolution event conducted by a Judge.

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Part 8.3—Affidavits

8.13 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.

8.14 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.

8.15 Requirements for affidavits

(1) 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; and

(b) state, at the beginning of the first page:

(i) the file number of the proceeding for which the affidavit is sworn (or affirmed); and

(ii) the full name of the party on whose behalf the affidavit is filed; and

(iii) the full name of the deponent; and

(iv) the full residential address of the deponent, unless disclosing this address would compromise the deponent's safety; and

(c) have a statement at the end specifying:

(i) the name of the witness before whom the affidavit is sworn (or affirmed) and signed; and

(ii) the date when, and the place where, the affidavit is sworn (or affirmed) and signed; and

(d) bear the name of the person who prepared the affidavit.

Note 1: An affidavit must also comply with the requirements for documents in rule 2.14.

Note 2: A professional witness may provide a business address in place of a residential address.

(2) If, in a parenting proceeding:

(a) the deponent of an affidavit is a party; and

(b) the affidavit does not disclose the deponent's address; and

(c) the deponent's address has not already been provided to the court;

the deponent's address must be provided to the court by email and the address must not be disclosed other than in accordance with an order of the court.

(3) A document that is to be used in conjunction with an affidavit:

(a) must be identified in the affidavit; and

(b) must be filed as an annexure or an exhibit to the affidavit; and

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(c) must be paginated; and
(d) must bear a statement signed by the person before whom the affidavit is made identifying it as the particular annexure or exhibit referred to in the affidavit; and
(e) must not be accepted as evidence in the proceeding unless and until it is separately tendered in evidence at the hearing of the application and accepted into evidence by the court.

(4) A document annexed or exhibited to an affidavit must be served with the affidavit.

8.16 Making an affidavit

(1) An affidavit must be:
(a) confined to facts about the issues in dispute; and
(b) confined to admissible evidence; and
(c) sworn or affirmed by the deponent, in the presence of a witness; and
(d) signed at the bottom of each page by the deponent and the witness; and
(e) filed after it is sworn or affirmed.

(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 (other than the name of a month), number or amount of money must be written in figures.

8.17 Affidavit of illiterate or vision impaired person etc.

(1) If the deponent is unable to read, or is physically incapable of signing it, the person before whom the affidavit is made must certify in or below the jurat that:
(a) the affidavit was read to the deponent; and
(b) the deponent seemed to understand the affidavit; and
(c) in the case of a deponent physically incapable of signing—the deponent indicated that the contents were true.

(2) Subrule (1) does not apply if the deponent has read the affidavit using:
(a) a computer with a screen reader, text-to-speech software or a braille display; or
(b) other technology for the vision impaired.

(3) If the deponent does not have an adequate command of English:
(a) a translation of the affidavit and oath or affirmation must be read or given in writing to the deponent in a language that the deponent understands; and
(b) the translator must certify in or below the jurat that the translator has done so.

(4) If an affidavit is made by a deponent who is incapable of reading it or incapable of signing it and a certificate under subrule (1) or (3) does not appear on the

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affidavit, the affidavit must not be used in a proceeding unless the court is satisfied that:

(a) the affidavit was read or, if appropriate, a translation of the affidavit was read or given in writing, to the deponent; and

(b) the deponent seemed to understand the affidavit; and

(c) in the case of a deponent physically incapable of signing—the deponent indicated that the contents were true.

8.18 Objectionable material may be struck out

(1) Subject to section 69ZT of the Family Law Act, the court may order material to be struck out of an affidavit at any stage in a proceeding if the material:

(a) is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative; or

(b) contains opinions of persons not qualified to give them.

Note: Section 69ZT of the Family Law Act provides that some provisions of the *Evidence Act 1995* do not apply to child related proceedings except in certain circumstances.

(2) Unless the court otherwise directs, any costs caused by the material struck out must be paid by the party who filed the affidavit.

8.19 Use of affidavit without cross-examination of maker

The court may:

(a) dispense with the attendance for cross-examination of a deponent of an affidavit; or

(b) direct that an affidavit be used without the deponent being cross-examined on the affidavit.

8.20 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 earlier of the following:

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

(b) the first day the affidavit is otherwise to be relied on in evidence;

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; or

(b) allow the affidavit to be relied on only on the terms ordered by the court; or

(c) order the deponent to attend for cross-examination.

(4) If:

(a) a deponent attends court in response to a notice under subrule (2); and

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(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.

8.21 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 8.20.

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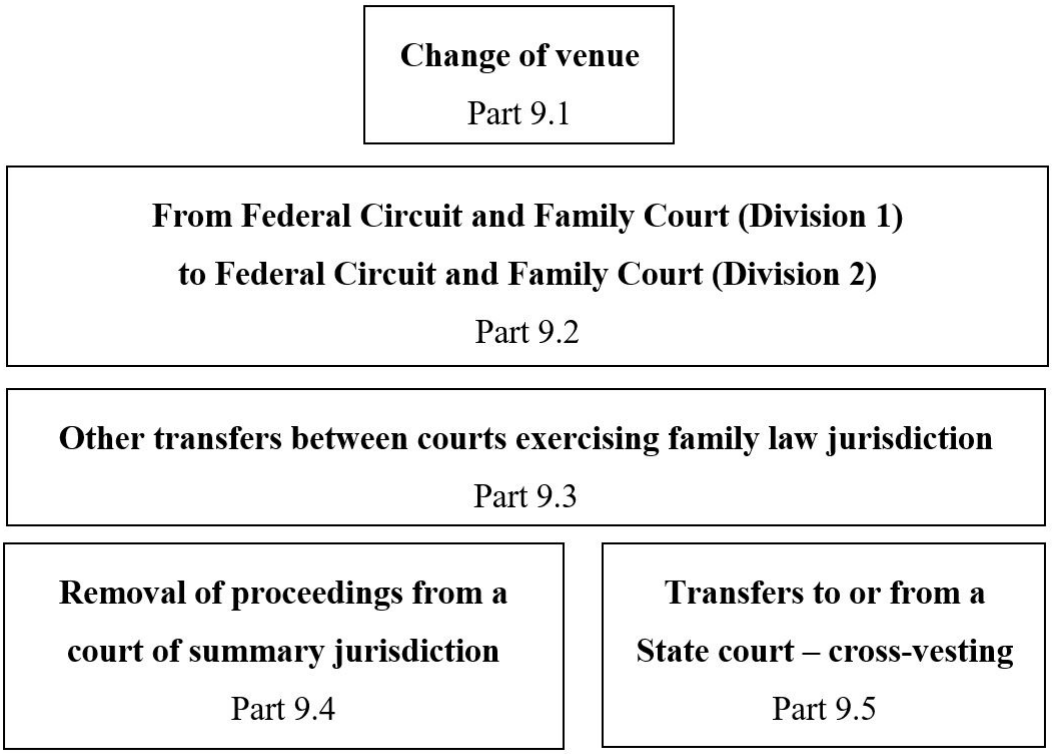
Chapter 9—Transferring proceedings



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Part 9.1—Change of venue

9.01 Change of venue

(1) A party who files an application or response in a proceeding may apply to have the proceeding heard in another registry of the court.

(2) An application under subrule (1) must be filed in the filing registry.

(3) In considering an application under subrule (1), the court must have regard to:
  (a) the adequacy of the available facilities, having regard to any disability of a party or witness, and any safety concerns; and
  (b) the convenience of the parties; and
  (c) limiting the expense and the cost of the proceeding; and
  (d) whether the matter has been listed for final hearing; and
  (e) any other relevant matter.

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Part 9.2—Transfer from Federal Circuit and Family Court (Division 1) to Federal Circuit and Family Court (Division 2)

9.02 Transfer to Federal Circuit and Family Court (Division 2)

(1) The Chief Justice of the Federal Circuit and Family Court (Division 1) may, on the application of a party or on the Chief Justice's own initiative, transfer a family law or child support proceeding pending in the Court to the Federal Circuit and Family Court (Division 2) under section 52 of the Federal Circuit and Family Court Act.

(2) Unless the Chief Justice otherwise orders, an application under this rule must be made by application supported by an affidavit or included in a response supported by an affidavit.

(3) In addition to the factors to which the Chief Justice must have regard under subsection 52(3) of the Federal Circuit and Family Court Act in deciding whether to transfer a proceeding to the Federal Circuit and Family Court (Division 2), the Chief Justice must have regard to the following matters:

(a) whether the proceeding is likely to involve questions of general importance, such that it would be desirable for there to be a decision of the Federal Circuit and Family Court (Division 1) on one or more of the points in issue;

(b) the financial value of the claim;

(c) the complexity of the facts, legal issues, remedies and procedures involved;

(d) whether the proceeding, if transferred, is likely to be dealt with:

(i) at less cost to the parties; or

(ii) at more convenience to the parties; or

(iii) earlier;

(e) the availability of a judicial officer specialising in the type of proceeding to which the application relates;

(f) the availability of particular procedures appropriate for the class of proceeding;

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

(h) the wishes of the parties.

9.03 Proceeding transferred to Federal Circuit and Family Court (Division 2)—transfer of documents

If a proceeding is transferred to the Federal Circuit and Family Court (Division 2), the Registry Manager of the Federal Circuit and Family Court (Division 1) must:

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(a) send to the Registry Manager of the Federal Circuit and Family Court (Division 2) all documents filed and orders made in the proceeding; and

(b) retain in the Federal Circuit and Family Court (Division 1) a copy of all orders made in the proceeding.

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Part 9.3—Other transfers between courts exercising family law jurisdiction

9.04 Application of Part 9.3

This Part does not apply to the transfer of a proceeding to which Part 9.2 applies.

9.05 Transfer of proceeding between courts exercising family law jurisdiction

(1) A court exercising jurisdiction under the Family Law Act (the ***transferring court***) may transfer a proceeding to another such court (the ***receiving court***) under section 45 of the Family Law Act.

(2) A transfer under this rule may occur on the application of a party or, to the extent permitted by section 45 of the Family Law Act, on the transferring court's own initiative.

(3) Unless the transferring court otherwise orders, an application for transfer must be made on or before the first court date for the proceeding.

(4) Unless the transferring court otherwise orders, the application for transfer must be made by application supported by an affidavit or included in a response supported by an affidavit.

(5) In deciding whether to transfer a proceeding under subrule (1), the transferring court may consider the following:
  (a) the public interest;
  (b) the financial value of the claim;
  (c) the complexity of the facts, legal issues, remedies and procedures involved;
  (d) whether the proceeding, if transferred, is likely to be dealt with:
    (i) at less cost to the parties; or
    (ii) at more convenience to the parties; or
    (iii) earlier;
  (e) the availability of a judicial officer specialising in the type of proceeding to which the application relates;
  (f) the availability of particular procedures appropriate for the class of proceeding;
  (g) the adequacy of the available facilities, having regard to any disability of a party or witness, and any safety concerns;
  (h) the wishes of the parties.

(6) Subrule (5) does not apply to:
  (a) a proceeding raising, or relying on, a cross-vesting law in which a party objecting to the proceeding being heard in the transferring court applies to have the proceeding transferred to another court; or
  (b) the transfer of a proceeding under the *Corporations Act 2001*; or

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

9.06 Proceeding transferred between courts exercising family law jurisdiction—transfer of file

If a proceeding is transferred under this Part, the Registry Manager of the transferring court must:

(a) send to the proper officer of the receiving court all documents filed and orders made in the proceeding; and

(b) retain in the transferring court a copy of all orders made in the proceeding.

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Part 9.4—Removal of proceedings from court of summary jurisdiction

9.07 Removal of proceedings from court of summary jurisdiction

(1) This rule applies to the following courts when exercising jurisdiction under the Family Law Act:
  (a) the Federal Circuit and Family Court (Division 2);
  (b) a Family Court of a State;
  (c) the Supreme Court of a State or Territory.

(2) The court may, on the application of a party or on its own initiative, order that a proceeding pending in a court of summary jurisdiction be removed to the court under subsection 46(3A) of the Family Law Act.

(3) Unless the court otherwise orders, the application must be made by application supported by an affidavit or included in a response supported by an affidavit.

(4) In deciding whether to remove a proceeding from a court under subsection 46(3A) of the Family Law Act, the court may consider the following:
  (a) the public interest;
  (b) the financial value of the claim;
  (c) the complexity of the facts, legal issues, remedies and procedures involved;
  (d) whether the proceeding, if removed, is likely to be dealt with:
    (i) at less cost to the parties; or
    (ii) at more convenience to the parties; or
    (iii) earlier;
  (e) the availability of a judicial officer specialising in the type of proceeding to which the application relates;
  (f) the availability of particular procedures appropriate to the proceeding;
  (g) the adequacy of the available facilities, having regard to any disability of a party or witness, and any safety concerns;
  (h) the wishes of the parties.

9.08 Proceeding removed from court of summary jurisdiction—transfer of file

If a proceeding is removed from a court of summary jurisdiction, the Registry Manager of the court of summary jurisdiction must:
  (a) send to the proper officer of the receiving court all documents filed and orders made in the proceeding; and
  (b) retain in the court of summary jurisdiction a copy of all orders made in the proceeding.

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Part 9.5—Transfers to or from a State court: cross-vesting

9.09 Application of Part 9.5

This Part applies only to proceedings in the Federal Circuit and Family Court (Division 1).

9.10 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 proceeding has started must file an Application in a Proceeding 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 a particular State or Territory law and the reasons why the Federal Circuit and Family Court (Division 1) should deal with the claim; and
  (b) the rules of evidence and procedure (other than those of the Federal Circuit and Family Court (Division 1)) on which the party relies; and
  (c) if the proceeding involves a special federal matter—the grounds for claiming the matter involves a special federal matter.

9.11 Transfer of proceeding

A party to a proceeding to which rule 9.10 applies may apply to have the proceeding transferred to another court by filing an Application in a Proceeding.

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

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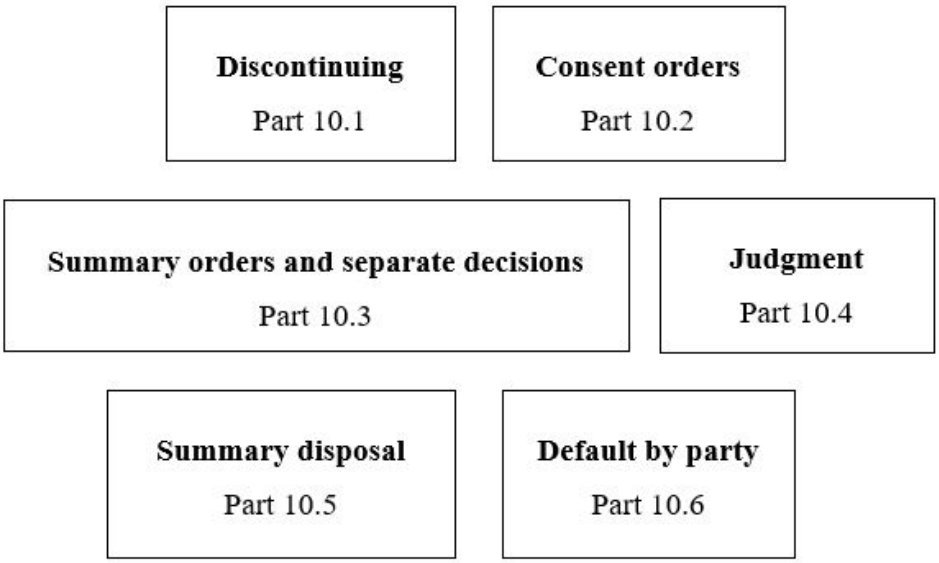
Chapter 10—Finalising a proceeding



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Part 10.1—Discontinuing a proceeding

10.01 Application of Part 10.1

In this Part:

application or response includes:

(a) a part of an application or response; and

(b) an order sought in an application or response; and

(c) an application for a consent order when there is no current proceeding (see rule 10.04(4)).

10.02 Discontinuance

(1) A party may discontinue an application or response by filing a notice of discontinuance in accordance with the approved form.

(2) A notice of discontinuance may be filed:

(a) at least 14 days before the day fixed for the final hearing of the application; or

(b) with the leave of the court, at a later time.

(3) However, a party must not file a notice of discontinuance in a proceeding under the Family Law Act without the leave of the court if:

(a) the proceeding relates to the property of a party; and

(b) one of the parties dies before the proceeding is decided.

(4) A party filing a notice of discontinuance must, as soon as practicable, serve a copy of the notice on each other party to the proceeding.

(5) Discontinuance of an application or response by a party does not discontinue any other party's application or response.

10.03 Costs

(1) If a party discontinues an application or response, another party to the proceeding may apply for costs.

(2) Unless the court directs otherwise, an application for costs must be made by a party within 28 days after service on the party of the notice of discontinuance.

(3) If an order for costs is made against a party, and the party brings against the party to whom the costs are payable a further proceeding on the same or substantially the same matter, the court may stay the further proceeding until the costs are paid.

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Part 10.2—Consent orders

10.04 Application for order by consent

(1) The parties to a proceeding may apply for an order in terms of an agreement reached about a matter in dispute in the proceeding:
  (a) by lodging a draft consent order; or
  (b) by tendering a draft consent order to a judicial officer during a court event; or
  (c) orally, during a court hearing or trial.

(2) A draft consent order must state that it is made by consent and must be signed by each party or the party's legal representative.

(3) If the litigation guardian of a party seeks a consent order (other than an order relating to practice or procedure), the litigation guardian must file an affidavit setting out the facts relied on to satisfy the court that the order is in the party's best interests.

(4) If there is no current proceeding regarding a matter within the court's jurisdiction, a person may apply to the court for an order in terms of an agreement reached about that matter by:
  (a) filing an Application for Consent Orders; and
  (b) lodging a draft consent order, or tendering a draft consent order to a judicial officer during a court event.

Note 1: An application under subrule (4) must be filed in the Federal Circuit and Family Court (Division 2). Section 50 of the Federal Circuit and Family Court Act prohibits the institution of family law or child support proceedings in the Federal Circuit and Family Court (Division 1).

Note 2: If an application under subrule (4) seeks an order in relation to a superannuation interest, proof of the value of the interest must be filed with the application to enable the court to determine the value of the interest as required by subsection 90XT(2) of the Family Law Act.

(5) Despite subrule (4), an application:
  (a) for an order for step-parent maintenance under section 66M of the Family Law Act; or
  (b) for an order relying on a cross-vesting law; or
  (c) for an order approving a medical procedure; or
  (d) for a parenting order when section 65G of the Family Law Act applies; or
  (e) for an order under the Assessment Act or Registration Act;

must be made by filing an Initiating Application (Family Law) rather than an Application for Consent Orders.

(6) This rule does not apply to an application for a parenting order in relation to a child born under a surrogacy arrangement if no final parenting order in relation to the child has been made under Part VII of the Family Law Act.

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Note: Rule 1.10 applies to an application for a parenting order in relation to a child who was born under a surrogacy arrangement.

10.05 Consent parenting orders and allegations of child abuse, family violence or other risks of harm to children

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

(2) The parties to the application must comply with Division 2.2.1.

(3) The parties must advise the court whether or not any allegations have been made in the proceeding of child abuse, family violence, or any risk of harm to a child in relation to whom the order is sought.

(4) Each party must also advise the court, apart from any allegation made in the proceeding:
   (a) whether the party considers that the child concerned has been, or is at risk of being, subjected or exposed to abuse, neglect or family violence; and
   (b) whether the party considers that the party, or another party to the proceedings, has been, or is at risk of being, subjected to family violence.

(5) If an allegation referred to in subrule (3) has been made, or a party advises the court of any concerns referred to in subrule (4), the parties must explain to the court how the proposed parenting order attempts to deal with the allegation or concern.

(6) The parties may comply with subrules (3) to (5):
   (a) if a draft parenting order is lodged or is tendered to a judicial officer during a court event—by attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or the party's legal representative; or
   (b) if the application is made orally during a court event—by each party or the party's legal representative advising the court of the required matters orally; or
   (c) if the application is made by an Application for Consent Orders—by each party or the party's legal representative advising the court of the required matters in the Application for Consent Orders; or
   (d) if the application for the parenting order is to be considered in chambers—by each party attaching to the draft parenting order the approved form for the purposes of this paragraph signed by each party or the party's legal representative.

10.06 Notice to superannuation trustee

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

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(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 referred to 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 referred to in subrule (3).

(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 subrules (2) and (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.

10.07 Dealing with an application for a consent order

(1) If a party applies for a consent order, the court may:
  (a) make an order in accordance with the orders sought; or
  (b) dismiss the application.

(2) At any time before the court determines an application for a consent order, it may require a party to file additional information.

(3) If a Judicial Registrar has power to make the order sought, the Registrar may determine the application for a consent order, unless the Registrar considers that the application should be brought before a Judge.

(4) An order made by consent has the same force and validity as an order made after a hearing by a Judge.

10.08 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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Part 10.3—Summary orders and separate decisions

10.09 Application for summary orders

(1) 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; or
  (b) the other party has no legal capacity to apply for the orders sought; or
  (c) it is frivolous, vexatious or an abuse of process; or
  (d) there is no reasonable likelihood of success.

(2) An application under this rule must be made by filing an application in accordance with the approved form.

10.10 Application for separate decision

(1) A party may apply for a decision on any issue, if the decision may:
  (a) dispose of all or part of the proceeding; or
  (b) make a trial unnecessary; or
  (c) make a trial substantially shorter; or
  (d) save substantial costs.

(2) An application under this rule must be made by filing an application in accordance with the approved form.

10.11 Orders that may be made under this Part

(1) On an application under this Part, the court may:
  (a) dismiss any part of the proceeding; or
  (b) decide an issue; or
  (c) make a final order on any issue; or
  (d) order a hearing about an issue or fact; or
  (e) with the consent of the parties, order arbitration about the proceeding or a part of the proceeding.

(2) If the court makes orders against a party who is claiming relief against the party who obtains the orders, the court may stay execution on, or other enforcement of, the orders until determination of that claim.

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Part 10.4—Judgment

10.12 Court may make any judgment or order

The court may, at any stage in a proceeding on the application of a party, give any judgment or make any order.

10.13 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.

(3) An application to vary or set aside a final order under paragraph (1)(b) must be made by filing an Initiating Application (Family Law).

10.14 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.

10.15 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 an enforcement officer; or
  (b) in any other case—by the person who benefits from the order.

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10.16 Fines

(1) If a court orders the payment of a fine or the forfeiture of a bond, the fine or forfeited amount must be paid into the filing registry.

(2) The fine or forfeited amount must be paid immediately, or by a time specified in the order.

10.17 Rate of interest

The prescribed rate at which interest is payable under paragraphs 87(11)(b), 90KA(b), 90UN(b) and subsection 117B(1) of the Family Law 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.

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

10.18 Undertakings

(1) Unless the court otherwise orders, an undertaking to the court has the same force and effect as an order of the court.

(2) An undertaking that is required or permitted to be given by a person under these Rules may be given orally or in writing.

(3) An undertaking given by a person in writing must be:

(a) signed by the person or the person's legal representative; and

(b) filed in the filing registry.

(4) If an undertaking is given by a person orally:

(a) a written record of the undertaking must be made; and

(b) the record must be:

(i) signed by the person or the person's legal representative; and

(ii) filed in the filing registry within 14 days of the undertaking being given; and

(iii) served within 14 days of the undertaking being given.

(5) An ***undertaking as to damages*** is an undertaking:

(a) to submit to such order (if any) as the court may consider to be just for the payment of compensation (to be assessed by the court or as the court may direct) to any person (whether or not that person is a party) affected by the operation of the order or undertaking or any continuation (with or without variation) of the order or undertaking; and

(b) to pay compensation referred to in paragraph (a) to the person affected by the order or undertaking.

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(6) Subrules (2) to (5) are subject to any requirements specified in these Rules for the giving of particular undertakings.

10.19 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 and sealed.

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

(3) A party is entitled to receive:
  (a) a sealed copy of an order; and
  (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.

10.20 When must an order be entered

(1) An order must be entered into the records of the court 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 merely (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.

10.21 Entry of orders

(1) An order may be entered:
  (a) in the Federal Circuit and Family Court (Division 1)—under an arrangement under section 79 of the Federal Circuit and Family Court Act; or
  (b) in any court—under the seal of the court signed by:

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(i) a Judge; or
(ii) a Judicial Registrar; or
(iii) an officer of the court acting with the authority of the Chief Executive Officer.

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

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

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Part 10.5—Summary disposal

10.22 Dismissal for want of prosecution

(1) If a party has not taken a step in a proceeding for 6 months, the court may, on its own initiative:
  (a) dismiss all or a part of the proceeding; or
  (b) order an act to be done within a fixed time, in default of which the party's application may be dismissed.

(2) The court must not make an order under subrule (1) if:
  (a) there is a future listing for the proceeding or a part of the proceeding; or
  (b) an Application in a Proceeding relating to the proceeding has not been determined; or
  (c) a party to the proceeding satisfies the court that the proceeding, or the part of the proceeding, should not be dismissed; or
  (d) the court has not given the parties to the proceeding notice under subrule (3).

(3) The court must, at least 14 days before making the order, give each party to the proceeding written notice of the date and time it will consider whether to make the order.

(4) Notice under subrule (3) must be sent by email or by post in an envelope marked with the court's return address:
  (a) to each party's address for service; and
  (b) if a party has no address for service—to the party's last known email address or last known postal address.

(5) If:
  (a) an application is dismissed under subrule (1); and
  (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 proceeding to be stayed until the costs are paid.

10.23 Certificate of vexatious proceedings order

(1) A person who wants the Chief Executive Officer of the court to issue a certificate under section 102QC of the Family Law Act must make the request in writing and include in the request:
  (a) the applicant's name and address; and
  (b) the person's interest in making the request.

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

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(3) The certificate must state:
  (a) the name of the person subject to the vexatious proceedings order; and
  (b) if applicable, the name of the person who applied for the vexatious proceedings order; and
  (c) the date the vexatious proceedings order was made; and
  (d) the orders made by the court.

10.24 Application for leave to institute proceedings—vexatious proceedings orders and harmful proceedings orders

Vexatious proceedings orders

(1) An application under subsection 102QE(2) of the Family Law Act for leave to institute a proceeding that is subject to a vexatious proceedings order must be made:
  (a) in accordance with the approved form; and
  (b) without notice to any other person.

Note 1: See subsection 102QE(2) of the Family Law Act for the power for a person who is subject to a vexatious proceedings order to apply to the court to institute a proceeding. For proceedings in the Federal Circuit and Family Court of Australia (Division 2), see subsection 242(2) of the Federal Circuit and Family Court Act.

Note 2: See subsection 102QE(3) of the Family Law Act for the contents of the affidavit that must be filed with the application. For proceedings in the Federal Circuit and Family Court of Australia (Division 2), see subsection 242(3) of the Federal Circuit and Family Court Act.

(2) On the first court date for the application, the court may:
  (a) dismiss the application; or
  (b) do the following:
    (i) order the person to serve the application and affidavit;
    (ii) order the person to file and serve any further affidavits in support of the application;
    (iii) list the application for hearing.

Harmful proceedings orders

(3) An application under subsection 102QAE(2) of the Family Law Act for leave to institute a proceeding that is subject to a harmful proceedings order:
  (a) must be made in accordance with the approved form supported by an affidavit; and
  (b) must not be served on a person unless the application for leave is granted, and an order is made, under section 102QAG of the Family Law Act.

Note 1: See subsection 102QAC(7) of the Family Law Act for the requirement for the court to make an order as to whether the other party is to be notified by the court:
  (a) if a party who is the subject of a harmful proceedings order makes an application for leave under section 102QAE of the Family Law Act; or
  (b) if the application is dismissed—that the application has been dismissed.

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Note 2: See subsection 102QAE(2) of the Family Law Act for the power for a person who is subject to a harmful proceedings order to apply to the court to institute a proceeding.

Note 3: See subsection 102QAE(3) of the Family Law Act for the contents of the affidavit that must be filed with the application.

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

(a) dismiss the application; or

(b) do the following:

(i) order the person to file and serve any further affidavits in support of the application;

(ii) list the application for hearing; or

(c) hear the application and, if leave is granted, order the person to file and serve the application and affidavit on the other party.

Note: An order made under subsection 102QAC(7) of the Family Law Act may require the court to notify the other party that the application has been dismissed.

(5) The court may dismiss the application in chambers without an oral hearing with or without the consent of the applicant.

Note: See subsections 102QAF(3) and (4) of the Family Law Act for the power of the court to dismiss the application in chambers without an oral hearing (either with or without the consent of the applicant).

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Part 10.6—Default

10.25 Application of Part 10.6

Nothing in this Part is intended to limit the court's powers in relation to contempt or sanctions for failure to comply with an order.

10.26 When a party is in default

(1) For the purposes of rule 10.27, an applicant is in default if the applicant fails to:
  (a) comply with an order of the court in the proceeding; or
  (b) file and serve a document required under these Rules; or
  (c) produce a document as required by Division 6.2.2; or
  (d) do any act required to be done by these Rules or the Family Law Regulations; or
  (e) prosecute the proceeding with due diligence.

(2) For the purposes of rule 10.27, a respondent is in default if the respondent fails to:
  (a) give an address for service before the time for the respondent to give an address has expired; or
  (b) file a response before the time for the respondent to file a response has expired; or
  (c) comply with an order of the court in the proceeding; or
  (d) file and serve a document required under these Rules; or
  (e) produce a document as required by Division 6.2.2; or
  (f) do any act required to be done by these Rules or the Family Law Regulations; or
  (g) defend the proceeding with due diligence; or
  (h) prosecute with due diligence any application the respondent has made in the proceeding.

10.27 Orders on default

(1) If a party is in default, the court may do any of the following:
  (a) order that the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the party;
  (b) set aside a step taken or an order made;
  (c) order that a step in the proceeding be taken within the time limited in the order;
  (d) order costs;
  (e) prohibit the party from taking a further step in the proceeding until the occurrence of a specified event;

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(f) make any order that is to take effect if the party does not take a step ordered by the court in the proceeding in the time limited in the order;

(g) proceed on the non-defaulting party's evidence together with:

(i) if considered appropriate by the court—such evidence as the defaulting party has filed; and

(ii) such evidence as tendered during cross-examination by the defaulting party; and

(iii) submissions by either party limited to the matters that are the subject of evidence;

(h) in exceptional circumstances—proceed on the non-defaulting party's evidence without hearing from the defaulting party.

(2) The court may make an order of the kind referred to in subrule (1), or any other order, or may give any directions, and specify any consequences for non-compliance with the order, that the court thinks just.

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Chapter 11—Enforcement of court orders and judgments

Enforcement of financial orders and obligations

Part 11.1

Including:

Enforcement Warrants (Division 11.1.3)

Third Party Debt Notices (Division 11.1.4)

Sequestration of property (Division 11.1.5)

Receivership (Division 11.1.6)

Enforcement of obligations other than to pay money (Division 11.1.7)

Contravention of orders and contempt

Part 11.2

Including:

Applications on contravention of orders (Division 11.2.1)

Contempt (Division 11.2.2)

Parenting orders: compliance (Division 11.2.3)

Location and recovery orders (Division 11.2.4)

Warrants for arrest (Division 11.2.5)

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Part 11.1—Enforcement of financial orders and obligations

Division 11.1.1—General

11.01 Enforceable obligations

(1) The following obligations and orders may be enforced under this Part:
  (a) an obligation to pay money;
  (b) an obligation to sign a document under section 106A of the Family Law Act (see Division 11.1.7);
  (c) an order entitling a person to the possession of real property (see Division 11.1.7);
  (d) an order entitling a person to the transfer or delivery of personal property (see Division 11.1.7).

(2) For the purposes of paragraph (1)(a), an obligation to pay money includes the following:
  (a) a provision requiring a payer to pay money under:
    (i) an order made under the Family Law Act, the Assessment Act or the Registration Act; or
    (ii) a registered parenting plan; or
    (iii) an award made in arbitration and registered under section 13H of the Family Law Act; or
    (iv) a maintenance agreement registered under subsection 86(1) of the Family Law Act; or
    (v) a maintenance agreement approved under section 87 of the Family Law Act; or
    (vi) a financial agreement or termination agreement under Part VIIIA of the Family Law Act; or
    (vii) a financial agreement under Part VIIIAB of the Family Law Act or a termination agreement under Part VIIIAB of the Family Law Act; or
    (viii) an agreement varying or revoking an original agreement dealing with the maintenance of a child under section 66SA of the Family Law Act; or
    (ix) an overseas maintenance order or agreement that, under the Family Law Regulations, is enforceable in Australia;
  (b) a liability to pay arrears accrued under an order or agreement;
  (c) a debt due to the Commonwealth under section 30 or 67 of the Registration Act;
  (d) a child support liability;
  (e) a fine or the forfeiture of a bond;
  (f) costs, including the costs of enforcement.

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(3) For the purposes of 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 ***fresh application***, see section 1.05. 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 practises.

(4) This Part applies to an agreement referred to in paragraph (2)(a) as if it were an order of the court in which it is registered or taken to be registered.

11.02 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 Family Law Act—under paragraph 87(11)(c) of the Family Law Act; or

(b) for a financial agreement under Part VIIIA of the Family Law Act—under paragraph 90KA(c) of the Family Law Act; or

(c) for a financial agreement under Part VIIIAB of the Family Law Act—under paragraph 90UN(c) of the Family Law Act.

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

11.03 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—Enforcement 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 the payee's own name under section 113A of the Registration Act must attach to the affidavit filed with the application a copy of the notice, given to the Child Support Agency, of the payee's intention to institute proceedings to recover the debt due.

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

11.04 Who may enforce an obligation

The following persons may enforce an obligation:

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(a) if the obligation arises under an order (other than an order referred to in paragraph (c))—a party;
(b) if the obligation arises under an order to pay money for the benefit of a party or child:
  (i) the party or child; or
  (ii) a person entitled, under the Family Law Act or Family Law Regulations, to enforce the obligation for the party or child;
(c) if the obligation is a fine or an order that a bond be forfeited—the Marshal or another 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 in relation to a liability may enforce an obligation (see section 113 of the Registration Act and section 79 of the Assessment Act).

11.05 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 Division 11.1.3);
(b) an order for the attachment of earnings and debts, including under a Third Party Debt Notice (see Division 11.1.4);
(c) an order for sequestration of property (see Division 11.1.5);
(d) an order appointing a receiver (or a receiver and manager) (see Division 11.1.6).

Note: The court may imprison a person for failure to comply with an order (see section 112AD of the Family Law Act). Part 11.2 of these Rules sets out the relevant procedure.

11.06 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; and
(b) have attached to it a copy of the order or agreement to be enforced; and
(c) set out the facts relied on, including the following:
  (i) the name of the payee;
  (ii) the address of the payee, unless disclosing this address would compromise the payee's safety;
  (iii) the name and address of the payer;
  (iv) that the payee is entitled to proceed to enforce the obligation;
  (v) that the payer is aware of the obligation and is liable to satisfy it;
  (vi) that any condition has been fulfilled;
  (vii) details of any dispute about the amount of money owed;

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(viii) the total amount of money currently owed and any details showing how the amount is calculated, including interest (if any) and the date and amount of any payments already made;

(ix) what other legal action has been taken in an effort to enforce the obligation;

(x) details of any other current applications to enforce the obligation; and

(xi) 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 the purposes of paragraph (a), orders that may be sought include an Enforcement Warrant; a Third Party Debt Notice; an order for filing and service of Financial Statement; an order for production of documents.

11.07 General enforcement powers of court

The court may make an order:

(a) declaring the total amount owing under an obligation; or

(b) stating that the total amount owing must be paid in full or by instalments and when the amount must be paid; or

(c) for payment of a child support liability (see rule 11.03); or

(d) for enforcement of an obligation to pay money (see rule 11.05); or

(e) in aid of the enforcement of an obligation; or

(f) to prevent the dissipation or wasting of property; or

(g) for costs; or

(h) staying the enforcement of an obligation (including an enforcement order); or

(i) requiring the payer to attend an enforcement hearing; or

(j) requiring a party to give further information or evidence; or

(k) that a payer must file a Financial Statement; or

(l) that a payer must produce documents for inspection by the court; or

(m) dismissing an application; or

(n) 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.

11.08 Enforcement order

(1) An enforcement order must state:

(a) the kind of enforcement order it is; and

(b) the full name and address for service of the payee; and

(c) the full name and address of the payer; and

(d) the total amount to be paid.

(2) For the purposes of paragraph (1)(d), a statement about the total amount to be paid must include:

(a) the amount owing under the obligation to pay money; and

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(b) the amount of interest owing (if any); and
(c) any costs of enforcing the order.

11.09 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, by filing an Application in a Proceeding.

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

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Division 11.1.2—Information for aiding enforcement

11.10 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 Proceeding and an affidavit that complies with rule 11.06, 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 Judicial Registrar may hear an application under subrule (1), in chambers, in the absence of the parties, on the documents filed.

11.11 Enforcement hearing

(1) A payee may, by filing an Application—Enforcement and an affidavit that complies with rule 11.06, require:
  (a) the payer; or
  (b) if the payer is a corporation—an officer of the corporation;

to attend an enforcement hearing.

Note: An 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.

(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 referred to 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 personal service on a payer at least 14 days before an enforcement hearing:
  (a) the documents referred to in subrules (1) and (2); and
  (b) a court approved brochure entitled Enforcement Hearings (which gives information about enforcement hearings and the consequences of failing to comply with an obligation).

11.12 Obligations of payer

(1) A payer served with the documents referred to in rule 11.11 must:
  (a) attend the enforcement hearing:
    (i) to answer questions; and

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(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.

11.13 Subpoena of witness

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

Note: Part 6.5 sets out the requirements for issuing subpoenas.

11.14 Failure concerning Financial Statement or enforcement hearing

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

(a) comply with a notice under paragraph 11.10(1)(a) requiring the person to complete and serve a Financial Statement; or

(b) comply with an order that the person complete and file a Financial Statement or produce copies of documents to the payee (see paragraph 11.10(1)(b)); or

(c) if the person is served with an Application—Enforcement:

(i) comply with subparagraph 11.12(1)(a)(ii) and paragraph 11.12(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 Application—Enforcement or an order, answer a question put to the person to the court's satisfaction.

Penalty: 50 penalty units.

Note: A court may issue a warrant for the arrest of a payer if it is satisfied that the payer was served with an Application—Enforcement and did not attend the enforcement hearing (see rule 11.79).

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

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Division 11.1.3—Enforcement warrants

11.15 Request for Enforcement Warrant

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

(2) The affidavit must:
  (a) comply with rule 11.06; and
  (b) include the following details about the real property (if any) owned by the payer:
    (i) evidence that the payer is the registered owner;
    (ii) details of registered encumbrances and of any other person with an interest in the property; and
  (c) include the following details about the personal property (if any) owned by the payer:
    (i) the location of the property;
    (ii) 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 11.03).

11.16 Payee's responsibilities if Enforcement Warrant is issued

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 11.25(2)).

11.17 Period during which Enforcement Warrant is in force

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

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11.18 Enforcement officer's responsibilities

(1) An enforcement officer executing an Enforcement Warrant must:
  (a) seize or sell property of the respondent in the sequence that the enforcement officer considers is best for:
    (i) promptly enforcing the Warrant; and
    (ii) avoiding undue expense or delay; and
    (iii) minimising hardship to the payer and any other person affected; and
  (b) on enforcing the Warrant:
    (i) serve a copy of the Warrant on the payer; or
    (ii) leave the Warrant at the place where it was enforced; and
  (c) give the payer an inventory of any property seized under the Warrant; and
  (d) advertise the property in accordance with rule 11.21; and
  (e) sell the seized property:
    (i) quickly, having regard to the parties' interests and the desirability of a beneficial sale of the property; and
    (ii) at the place where it seems best for a beneficial sale of the property; and
    (iii) by auction, tender or private sale.

Note: For the powers an enforcement officer has in relation to the enforcement of a warrant, see rule 11.62.

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

(3) For the purposes of 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.

11.19 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 rule 2.14; and

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(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 without an oral hearing if the court considers it appropriate to do so and the parties to the application consent to the making of the decision without an oral hearing.

11.20 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; or
(b) sale; or
(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.

11.21 Notice of sale

(1) Before selling property seized under an Enforcement Warrant, an enforcement officer must publish a notice of the sale, at least once before the sale, in a newspaper circulating in the town or district in which the sale is to take place. The notice must state:
(a) the time and place of the sale; and
(b) the details of the property to be sold.

(2) Subrule (1) does not apply if the property seized is perishable.

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

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

11.22 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 the purposes of 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 11.25(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 11.26).

11.23 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 referred to in subparagraph (2)(a)(ii) must:
  (a) be determined before the property is offered for sale; and
  (b) be no longer than 42 days.

11.24 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:
  (a) the details of the result of the sale; and
  (b) the reasonable fees and expenses of the enforcement.

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

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(a) any amount still owing to the enforcement officer for the reasonable fees and expenses of the enforcement; and
(b) the balance of any amount owed to the payee under the Enforcement Warrant; and
(c) the remaining amount (if any) to the payer.

11.25 Payee's responsibilities

(1) At least 28 days before an enforcement officer sells real property under an Enforcement Warrant, the payee must:
(a) send to the payer, at the payer's last known address, and to any mortgagee or other person who has an encumbrance registered on the title to the property that has priority over the Enforcement Warrant, written notice stating:
(i) that the Warrant has been registered on the title to the property; and
(ii) that the enforcement officer intends to sell the property to satisfy the obligation if the total amount owing is not paid, or 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) give the enforcement officer evidence of the following:
(i) proof of compliance with paragraph (a);
(ii) that the Warrant has been registered on the land titles register;
(iii) details of the real property proposed to be sold including the address and description of the land title of the property;
(iv) details of all encumbrances registered against the real property on the date of registration of the Enforcement Warrant;
(v) the costs incurred to register the Enforcement Warrant;
(vi) the current value of the real property, as stated in a real estate agent's market appraisal.

(2) The payee is liable to pay to the enforcement officer the reasonable fees and expenses of the enforcement.

(3) The costs referred to in subparagraph (1)(b)(v) and the fees and expenses referred to in subrule (2) may:
(a) be added to, and form part of, the costs of the Enforcement Warrant; and
(b) be recovered under the Warrant.

11.26 Orders for real property

(1) This rule applies to real property in relation to which:
(a) an Enforcement Warrant has been requested or issued; or
(b) an enforcement order for seizure and sale has been applied for or made.

(2) A payee, payer or enforcement officer may apply for an order:
(a) that the real property be transferred or assigned to a trustee; or

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(b) that a party sign all documents necessary for the transfer or assignment; or
(c) in aid of or relating to the sale of the real property, including any of the following orders:
(i) about the possession or occupancy of the real property until its sale;
(ii) specifying the kind of sale, whether by contract conditional on approval of the court, private sale, tender or auction;
(iii) setting a minimum price;
(iv) requiring payment of the purchase price to a trustee;
(v) settling the particulars and conditions of sale;
(vi) for obtaining evidence of value;
(vii) specifying the remuneration to be allowed to an auctioneer, estate agent, trustee or other person; or
(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.

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

11.27 Notice of claim by person affected by an Enforcement Warrant

(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.

Note: For ***affected person***, see rule 1.05.

(2) A notice of claim must:
(a) be in writing; and
(b) state the name and address of the affected person; and
(c) identify each item of property that is the subject of the claim; and
(d) state the grounds of the claim.

(3) The enforcement officer must serve a copy of the notice of claim on the payee.

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

11.28 Payee to admit or dispute claim

A payee who is served with a notice of claim under subrule 11.27(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.

11.29 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.

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11.30 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 11.28.

(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.

(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.

11.31 Hearing of application

On the hearing of an application under rule 11.30, 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 11.07 and 11.26 set out the orders the court may make on the hearing of the application.

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Division 11.1.4—Third Party Debt Notice

11.32 Application of Division 11.1.4

This Division applies to:

(a) money deposited in a financial institution that is payable to a payer on call or on notice; and

(b) money payable to a payer by a third party on the date when the enforcement order is served on the third party; and

(c) earnings payable to a payer.

11.33 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 for exemptions in relation to some payments: for example, some pensions.

11.34 Request for Third Party Debt Notice

(1) A payee may, without notice to the payer or third party debtor, ask the court to issue a Third Party Debt Notice requiring the payment to the payee of any money to which this Division applies by filing:

(a) 3 copies of the Third Party Debt Notice; and

(b) an affidavit.

(2) The affidavit must:

(a) comply with rule 11.06; and

(b) include the following information:

(i) the name and address of the third party debtor;

(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 debtor to the payer; and

(c) if it is sought to attach the payer's earnings—include the following information:

(i) details of the payer's earnings;

(ii) details of the payer's living arrangements, including dependants;

(iii) the protected earnings rate;

(iv) the amount sought to be deducted from the earnings each payday;

(v) any information that should be included in the Third Party Debt Notice to enable the employer to identify the payer.

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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 11.03).

11.35 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 11.34; and

(b) a court approved brochure entitled Third Party Debt Notices (which sets out the effect of the Third Party Debt Notice and the third party debtor's obligations).

11.36 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.

11.37 Employer's obligations

(1) Under a Third Party Debt Notice directed to earnings, the payer's employer:

(a) must:

(i) deduct from the payer's earnings the amount specified in the notice; and

(ii) pay it to the person specified in the notice; and

(iii) give to the payer a notice specifying the deductions; and

(b) may:

(i) deduct from the payer's earnings an administrative charge of $5 per deduction; and

(ii) keep the charge as a contribution towards the administrative cost of making payments under the notice.

(2) The employer must ensure that an amount deducted under subrule (1) does not reduce the payer's earnings to less than the protected earnings rate.

(3) A deduction paid or kept by an employer under subrule (1) is a valid discharge, to the extent of the deduction, of the employer's liability to pay earnings as required by the Third Party Debt Notice.

11.38 Duration of Third Party Debt Notice

A Third Party Debt Notice continues in force until:

(a) the total amount referred to in the Notice is paid; or

(b) the Notice is set aside.

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11.39 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.

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

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

Note: Rule 11.07 sets out the orders that the court may make on an application under this Part.

11.40 Discharge of Third Party Debt Notice

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

11.41 Claim by affected person

A person other than the payee claiming to be entitled to the debt referred to 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 by filing an Application in a Proceeding supported by an affidavit stating the facts and circumstances relied on.

11.42 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; and
  (b) the date on which the employment ceased; and
  (c) if the payer has a new employer:
    (i) the name and address of the new employer; and

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(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 must be issued.

11.43 Compliance with Third Party Debt Notice

(1) A third party debtor commits an offence of strict liability if the third party debtor:
(a) does not comply with:
(i) a Third Party Debt Notice; or
(ii) an order varying, suspending or discharging a Third Party Debt Notice; or
(b) unfairly treats a payer in respect of employment because of a Third Party Debt Notice or an order made under this Part.

Penalty: 50 penalty units.

(2) 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 Part 11.2 for how to make an application against a third party debtor who does not comply with an enforcement order.

(3) If the court makes an order against a third party debtor under section 112AP of the Family Law Act in respect of an act or omission referred to 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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Division 11.1.5—Sequestration of property

11.44 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—Enforcement, setting out the details of the property to be sequestered, and an affidavit.

(2) The affidavit must:
  (a) comply with rule 11.06; and
  (b) include the full name and address of the proposed sequestrator; and
  (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 5.3.

11.45 Order for sequestration

(1) In considering an application for sequestration, the court must be satisfied that:
  (a) if the obligation to be enforced arises under an order—the payer has been served with the order to be enforced; and
  (b) the payer has refused or failed to comply with the obligation; and
  (c) an order for sequestration is the most appropriate method of enforcing the obligation.

(2) On appointing a sequestrator, the court may:
  (a) authorise and direct the sequestrator:
    (i) to enter and take possession of the payer's property or part of the property; and
    (ii) to collect and receive the income of the property, including rent, profits and takings of a business; and
    (iii) to keep the property and income under sequestration until the payer complies with the obligation or until further order; and
  (b) fix the remuneration of the sequestrator.

Note: For rules relating to the enforcement of obligations other than an obligation to pay money, see Division 11.1.7.

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11.46 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 or another officer of the court;
  (d) a person whose interests are affected by an act or omission of, or decision made by, the sequestrator.

(2) The court may order:
  (a) the sequestrator, or any other person associated with the sequestration, to attend to be orally examined; or
  (b) the sequestrator to do or not do something; or
  (c) the sequestrator to be removed from office.

11.47 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 rule 2.14; and
  (b) set out the procedural orders sought and the reason for the orders; and
  (c) have attached to it a copy of the order appointing the sequestrator.

(3) The sequestrator must give a copy of the request to all parties.

(4) The court may determine the request in chambers unless:
  (a) within 7 days after the request is served on a party, the party makes a written objection to the request being determined in chambers; or
  (b) the court decides that an oral hearing is necessary.

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Division 11.1.6—Receivership

11.48 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—Enforcement and an affidavit.

(2) The affidavit must:
  (a) comply with rule 11.06; and
  (b) include the full name and address of the proposed receiver; and
  (c) include details of the receiver's fees; and
  (d) have attached to it the consent to the appointment of receiver, signed by the proposed receiver.

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

Note: For the hearing of an application in the absence of the parties, see Part 5.3.

11.49 Appointment and powers of receiver

(1) In considering an application under subrule 11.48(1), the court must have regard to:
  (a) the amount of the debt; and
  (b) the amount likely to be obtained by the receiver; and
  (c) the probable costs of appointing and paying a receiver.

(2) When appointing a receiver, the court must make orders about:
  (a) the receiver's remuneration (if any); and
  (b) the security (if any) to be given by the receiver; and
  (c) the powers of the receiver; and
  (d) the parties to whom, and the intervals or dates at which, the receiver is to submit accounts.

(3) The court may authorise a receiver to do (in the receiver's name or otherwise) anything the payer may do.

(4) The receiver's powers operate to the exclusion of a payer's powers during the receivership.

(5) The court may, on application by an interested person, make procedural orders about the powers of the receiver.

Note: For rules relating to the enforcement of obligations other than an obligation to pay money, see Division 11.1.7.

11.50 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.

11.51 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.

11.52 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.

11.53 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.

11.54 Compliance with orders and Rules

If a receiver contravenes an order or these Rules, the court may:
(a) set aside the receiver's appointment; and
(b) appoint another receiver; and
(c) order the receiver to pay the costs of an application under this rule; and
(d) deprive the receiver of remuneration and order the repayment of remuneration already paid to the receiver.

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

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Division 11.1.7—Enforcement of obligations other than an obligation to pay money

11.55 Application for other enforcement orders

A person may apply, without notice to the respondent, for any of the following orders by filing an Application—Enforcement and an affidavit:

(a) an order requiring a person to sign documents under section 106A of the Family Law Act;

(b) an order to enforce possession of real property;

(c) an order for the transfer or delivery of property.

11.56 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.

11.57 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.

11.58 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.

Note: For ***prescribed property***, see rule 1.05.

(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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Division 11.1.8—Other provisions about enforcement

11.59 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.

11.60 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.

11.61 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 proceeding, 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 proceeding, the order may be enforced against the person as if the person were a party.

11.62 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 remove 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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Part 11.2—Contravention of orders and contempt

Division 11.2.1—Applications on contravention of orders

11.63 Application of Division 11.2.1

This Division applies to an application for an order under the following:

(a) section 67X of the Family Law Act;

(b) Division 13A of Part VII of that Act;

(c) Part XIIIA of that Act.

Note 1: Subsection 69C(2) of the Family Law Act specifies who may apply for an order in relation to a child. Subsection 67X(3) of the Family Law Act sets out the consequences of contravening subsection 67X(2) in relation to a recovery order. Division 13A of Part VII of the Family Law Act sets out the consequences of failing to comply with an order or other obligation that affects children. Part XIIIA of the Family Law Act sets out the sanctions the court may impose on a person who fails to comply with an order or other obligation that does not affect children.

Note 2: 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 70NCE(1) and 112AD(2A) of the Family Law Act); or

(ii) if it considers that another consequence is more appropriate (see subsections 70NBF(4) and 112AE(2) of the Family Law Act); and

(b) cannot enforce an order of another court unless the order is registered in the first-mentioned court (see section 105 of the Family Law Act and regulation 17 of the Family Law Regulations).

11.64 How to apply for an order

(1) A person seeking to apply for an order under this Division must file an application as set out in Table 11.1.

Table 11.1—Applications on contravention of orders

Item	Kind of application	Application form to be filed
2	Contravention of subsection 67X(2) of the Family Law Act in relation to a recovery order	Application—Contravention
3	Contravention of a child-related order (within the meaning of subsection 70NBA(2) of the Family Law Act) under Division 13A of Part VII of the Family Law Act (for example, a breach of a parenting order)	Application—Contravention
4	Contravention of an order under this Act (as defined by section 112AA of the Family Law Act) under Part XIIIA of the Family Law Act not affecting children (for example, a breach of a property order)	Application—Contravention
5	Failure to comply with a bond entered into in accordance with the Family Law Act	Application—Contravention

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(2) A person filing an application referred to in Table 11.1 must file with it an affidavit that:
  (a) states the facts necessary to enable the court to make the orders sought in the application; and
  (b) has attached to it a copy of any order, bond, agreement or undertaking that is alleged to have been contravened.

Example: For the purposes of paragraph (2)(a), if a person alleges in an Application—Contravention that another person has behaved in a way that showed a serious disregard of the other person's obligations under a parenting order (see paragraph 70NBF(3)(b) of the Family Law Act), the affidavit must set out the alleged facts necessary to prove this.

Note: An application referred to in Table 11.1 and its supporting affidavit must be served personally on the respondent (see Table 2.2).

(3) The affidavit filed with an application referred to in item 3 of Table 11.1 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; and
    (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.

11.65 Application made or continued by Marshal

The court may direct the Marshal or another officer of the court to make or continue an application under this Division.

11.66 Fixing of hearing date

If an application is filed under subrule 11.64(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 13C of the Family Law Act).

11.67 Response to an application

A respondent to an application referred to in Table 11.1 may file an affidavit but is not required to do so.

11.68 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 proceeding; or

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

11.69 Procedure at hearing

At the hearing of an application referred to in Table 11.1, the court must:
(a) inform the respondent of the allegation; and
(b) ask the respondent whether the respondent wishes to admit or deny the allegation; and
(c) hear any evidence supporting the allegation; and
(d) ask the respondent to state the response to the allegation; and
(e) hear any evidence for the respondent; and
(f) determine the proceeding.

Note: For the orders that may be made by the court, see sections 67X, 70NBA, 70NBB, 70NBC, 70NBD, 70NBF, 70NCA, 70NCB, 112AD, 112AE, 112AF, 112AG, 112AH and 112AP of the Family Law Act.

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Division 11.2.2—Contempt

11.70 Contempt in the face or hearing of court

(1) If it appears to the court that a person is guilty of contempt in the face of or in the hearing of the court, the court may:
  (a) order that the person attend before the court; or
  (b) issue a warrant for the person's arrest.

(2) When the person attends before the court, the court must:
  (a) tell the person of the contempt with which the person is charged; and
  (b) allow the person to state the person's defence to the charge; and
  (c) after hearing the defence, determine the charge; and
  (d) make an order for the punishment or discharge of the person.

(3) The court may direct that the person be kept in custody or released until the charge is determined.

(4) The court may direct that the person give security for the person's attendance before the court to answer the charge.

Note: 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; and
  (b) insulting the court; and
  (c) disrupting court proceedings; and
  (d) disrespect or other misbehaviour in court.

11.71 Contempt applications

(1) If it is alleged that a person has committed a contempt of the court (whether or not the contempt occurred in the face or hearing of the court), an application may be made to the court for the person to be dealt with for the contempt.

(2) An application must:
  (a) be in accordance with the approved form; and
  (b) state the contempt alleged; and
  (c) be supported by an affidavit setting out the facts relied on.

Example: For the purposes of paragraph (2)(c), if a person alleges, in an Application—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 Family Law Act), the affidavit must set out the alleged facts necessary to prove this.

Note: An application under this rule and its supporting affidavit must be served personally on the respondent (see Table 2.2).

(3) An application may be made:
  (a) if the contempt is in connection with a proceeding—by a party to the proceeding; or
  (b) by the Marshal or another officer of the court; or

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(c) by an officer or staff member of the Australian Federal Police; or
(d) by a member of the police force of a State or Territory.

(4) The court may direct the Marshal or another officer of the court to consider making an application.

(5) If the court considers that the person is likely to leave the jurisdiction of the court, the court may issue a warrant for the arrest and detention of the person in custody until the person:
(a) attends before the court to answer the charge; or
(b) gives security, as directed by the court, for the person's attendance before the court to answer the charge.

(6) When the person attends before the court, the court must:
(a) tell the person of the allegation; and
(b) ask the person to state whether the person admits or denies the allegation; and
(c) hear any evidence in support of the allegation.

(7) After hearing evidence in support of the allegation, the court may:
(a) if the court decides there is no prima facie case—dismiss the application; or
(b) if the court decides there is a prima facie case:
(i) invite the person to state the person's defence to the allegation; and
(ii) after hearing any defence, determine the charge.

Note: If a maintenance order is complied with before an Application—Contempt is heard by the court, the failure to comply with the order that led to the Application—Contempt being filed does not constitute a contempt of court (see subsection 112AP(1A) of the Family Law Act).

(8) If the court finds the charge proved, the court may make an order for the punishment of the person.

Note: Part XIIIB of the Family Law Act sets out the punishment the court may impose on a person found to be in contempt of court.

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Division 11.2.3—Parenting orders: compliance

11.72 Duties of program provider

(1) The provider of a post-separation parenting program required to inform the court of a matter under subsection 70NBD(3) of the Family Law Act must do so by notice in accordance with subrule (2).

Note: Subsection 70NBD(3) of the Family Law Act requires the provider of a post-separation parenting program to inform the court if:

(a) the provider considers that a person ordered to attend the program under subsection 70NBD(1) is unsuitable to attend the program, or to continue attending the program; or

(b) a person ordered to attend the program under subsection 70NBD(1) fails to attend the program, or a part of it.

(2) The notice must:

(a) be in writing and addressed to the Registry Manager of the filing registry; and

(b) comply with rule 2.14.

11.73 Relisting for hearing

If the Registry Manager receives a notice under subrule 11.72(1), a Judicial Registrar or the Registry Manager may list the proceeding for further orders under subsection 70NBD(4) of the Family Law Act.

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Division 11.2.4—Location and recovery orders

11.74 Application of Division 11.2.4

This Division applies to the following orders:

(a) a location order;

(b) a Commonwealth information order;

(c) a recovery order.

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

11.75 Application for order under Division 11.2.4

A person may apply for an order to which this Division applies:

(a) if there is a current proceeding before the court—by filing an Application in a Proceeding supported by an affidavit; or

(b) in any other case—by filing an Initiating Application (Family Law).

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

11.76 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.

11.77 Service of recovery order

(1) This rule applies to a person who is ordered or authorised by a recovery order to take the action referred to in paragraph 67Q(b), (c) or (d) of the Family Law Act.

(2) If the person:

(a) is ordered to find and recover a child; and

(b) finds and recovers the child;

the person must serve the recovery order on the person from whom the child is recovered at the time the child is recovered.

(3) For the enforcement of a recovery order:

(a) the original recovery order is not necessary; and

(b) a copy of the sealed recovery order is sufficient.

11.78 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 referred to in paragraph 67Q(b), (c) or (d) of the Family Law Act.

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

(a) comply with rule 2.14; and

(b) set out the procedural orders sought; and

(c) be accompanied by an affidavit setting out the facts relied on and the reason for the orders.

(3) The court may determine the request in chambers.

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Division 11.2.5—Warrants for arrest

11.79 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 11.11; or

(ii) a subpoena or order directing the respondent to attend court; or

(iii) an application referred to in Table 11.1; or

(iv) an application under rule 11.71; 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 referred to in paragraph (1)(a).

Note: The court may issue a warrant on an oral application.

11.80 Execution of warrant

(1) A warrant may authorise:

(a) a member of the Australian Federal Police; or

(b) a member of the police service of a State or Territory; or

(c) the Marshal or another officer of the court; 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.

11.81 Duration of warrant

A warrant (other than a warrant issued under section 70NDA of the Family Law Act) ceases to be in force 12 months after the date when it is issued.

11.82 Procedure after arrest

(1) If the court issues a warrant for a person's arrest, it may order that the person arrested:

(a) be held in custody until the hearing of the proceeding; or

(b) be released from custody on compliance with a condition, including a condition that the person enter into a bond.

(2) A person who arrests another person under a warrant must:

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(a) arrange for the person arrested to be brought before the court that issued the warrant or another court having jurisdiction under the Family Law Act, before the end of the holding period; and

(b) take all reasonable steps to ensure that, before the person arrested is brought before a court, the person on whose application the warrant was issued is advised about:

(i) the arrest; and

(ii) the court before which the person arrested will be brought; and

(iii) the date and time when the person arrested will be brought before the court.

(3) When a person arrested under a warrant is brought before a court, the court may:

(a) if the court issued the warrant:

(i) make any of the orders referred to in subrule (1); or

(ii) adjourn the proceeding 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; or

(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 release from custody of the person arrested; and

(b) if the court did not issue the warrant:

(i) order that the person arrested be held in custody until the person is brought before the court specified in the warrant; and

(ii) make an order referred to 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 section 70NDA of the Family Law Act; or

(b) without a warrant, under a recovery order; or

(c) without a warrant, under sections 68C and 114AA of the Family Law Act.

Note: The provisions referred to in subrule (5) are excluded because the procedure on arrest is set out in the Family Law Act.

(6) In this rule:

holding period, for a person arrested in accordance with a warrant, has the meaning given by subsection 70PB(4) of the Family Law Act.

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11.83 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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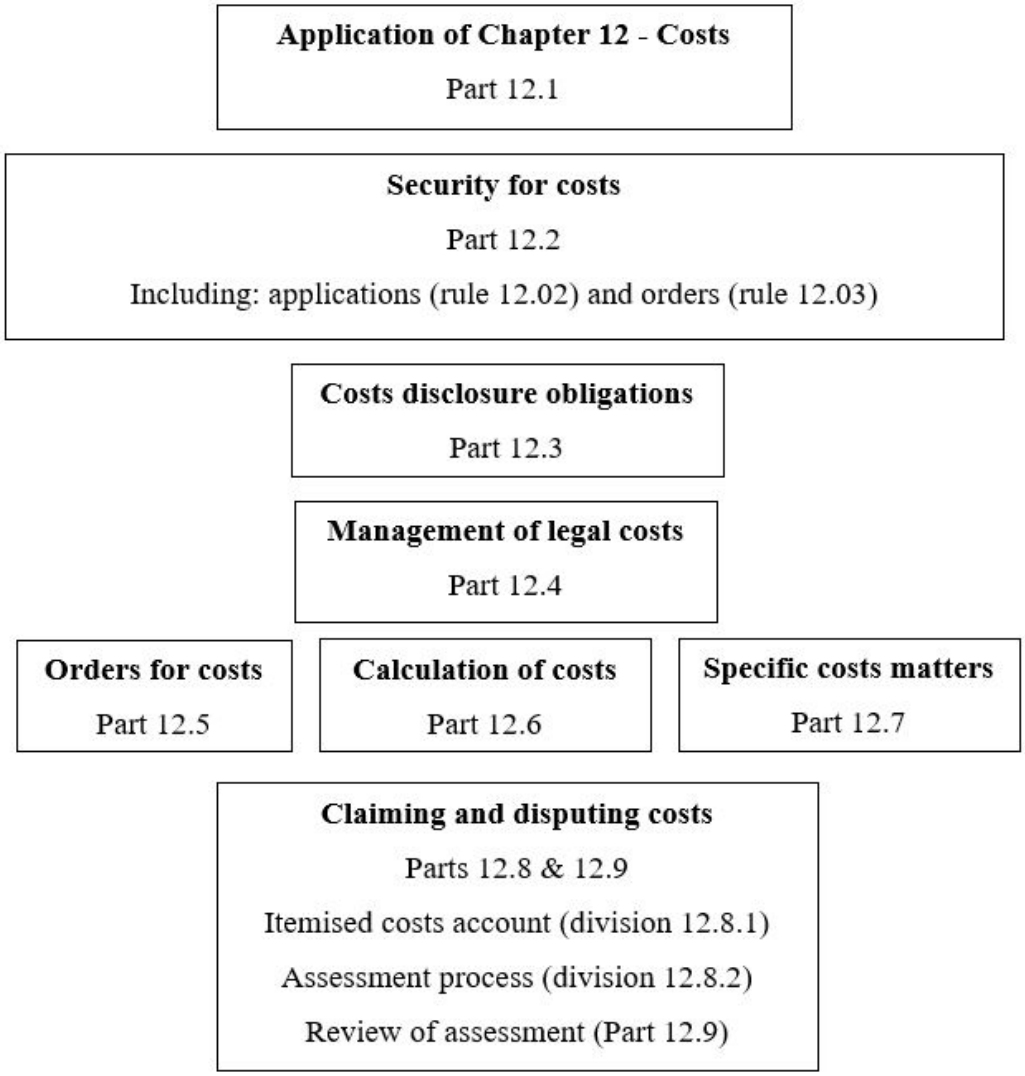
Chapter 12—Costs



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Part 12.1—Introduction

12.01 Application of Chapter 12

(1) Subject to subrule (3), this Chapter:

(a) applies to costs for work done for a proceeding, 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; and

(c) provides for court management of the costs incurred by the parties in relation to a proceeding.

Note: For ***fresh application***, see rule 1.05.

(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 proceeding (other than 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 proceeding in which a Family Court is exercising its jurisdiction under section 35, 35A or 35B of the Bankruptcy Act.

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Part 12.2—Security for costs

12.02 Application for security for costs

(1) A respondent may apply for an order that the applicant in the proceeding give security for the respondent's costs.

(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 proceeding;
  (f) whether the proceeding involves a matter of public importance;
  (g) whether a party has an order, in the same or another proceeding (including a proceeding in another court), against the other party for costs that remain unpaid;
  (h) whether the applicant ordinarily resides outside Australia;
  (i) the likely costs of the proceeding;
  (j) whether the applicant is a corporation;
  (k) whether a party is receiving legal aid;
  (l) any other relevant matter.

(3) In subrule (1):

respondent includes an applicant who has filed a reply because orders in a new cause of action were sought in the response.

12.03 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 application or response of the party be stayed.

12.04 Finalising security

(1) Security for costs may be applied in satisfaction of any costs ordered to be paid.

(2) Security for costs may be discharged by order.

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

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Part 12.3—Costs disclosure obligations

Note: Nothing in this Part derogates from a legal practitioner's costs disclosure obligations under State or Territory legislation.

12.05 Duty to inform about costs

(1) If an offer to settle is made during a property proceeding, the lawyer for each party must tell the party who the lawyer represents:

(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 finalise the proceeding;

to enable the party to estimate the amount the party will receive if the proceeding 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.

12.06 Costs notices

(1) Unless the court otherwise orders, this rule applies to all court events, except in an appeal to which Chapter 13 applies.

(2) Not less than 1 day 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 event; and

(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) Not less than 1 day before each court event:

(a) a party's lawyer must file with the court, and serve on each other party, a copy of the notice given to the party under subrule (2); and

(b) an unrepresented party must file with the court, and serve on 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) If a party is receiving legal aid:

(a) subrule (2) and paragraph (3)(a) do not apply to the party's lawyer; and

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(b) not less than 1 day before the first day of the trial, the party's lawyer must file with the court, and serve on each party, a written statement of the actual costs incurred by the lawyer up to and including the trial.

(5) Not less than 1 day before the first day of the trial, an independent children's lawyer must file with the court, and serve on each party, a written statement of the actual costs incurred by the independent children's lawyer up to and including the trial.

(6) In a financial proceeding, unless the court otherwise orders:
(a) 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; and
(b) a party who makes a payment to a lawyer for costs or future costs must disclose to the lawyer the source of funds from which the payment is made.

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 1.31).

(7) If a person fails to comply with subrule (3), (4) or (5), the person must file the relevant costs estimate or particulars of costs with the court and serve it on each other party within 3 days of the court event or within such other time period as the court directs.

(8) The court may record, by way of notation, on the face of a case management order the terms of any costs notice and any comments it has about costs incurred in the proceeding, including in relation to their consistency with previous costs notices, and their proportionality.

(9) In this rule:

lawyer does not include counsel instructed by another lawyer.

12.07 Costs notices and case management

When making any case management decision in relation to a claim relating to the property of the parties, the court may have regard to:
(a) any costs notices filed and served by the parties; and
(b) the additional costs involved in each proposed procedural step.

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Part 12.4—Management of legal costs

Division 12.4.1—Costs principles

12.08 Legal costs to be fair, reasonable and proportionate

(1) The legal costs incurred in a proceeding must be:
  (a) fairly, reasonably and proportionately incurred; and
  (b) fair, reasonable and proportionate in amount;
in the circumstances of the proceeding.

(2) In considering whether a party's legal costs have been fairly, reasonably and proportionately incurred, regard must be had to all relevant matters including, but not limited to, whether a lawyer representing the party, a lawyer representing any other party, or any self-represented litigant has:
  (a) complied with all relevant rules and orders of the court, including requirements that documents be filed or provided to other parties by a given date; and
  (b) acted reasonably in raising, pursuing or contesting a particular allegation or issue; and
  (c) made reasonable efforts, subject to the client's instructions, to resolve the dispute through negotiation, mediation or arbitration; and
  (d) made reasonable efforts to narrow the issues in dispute; and
  (e) filed no more interlocutory applications than are reasonably necessary in the circumstances of the proceeding; and
  (f) filed no more affidavits or other documents than are reasonably necessary in the circumstances of the proceeding.

(3) In considering whether a party's legal costs are fair, reasonable and proportionate in amount, regard must be had to all relevant matters including, but not limited to, whether the costs reasonably reflect:
  (a) the level of skill, experience, specialisation and seniority of the lawyers concerned; and
  (b) the level of complexity, novelty or difficulty of the issues involved, and the extent to which the proceeding involved a matter of public interest; and
  (c) the labour and responsibility involved; and
  (d) the circumstances in which lawyers acted, including any or all of the following:
    (i) the urgency of the work;
    (ii) the time spent on the work;
    (iii) the time when work was required to be carried out;
    (iv) the place where work was required to be carried out;
    (v) the number and importance of any documents involved; and
  (e) the quality of the work done; and
  (f) the retainer and the instructions (express or implied) given in the matter.

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(4) In considering whether a party's legal costs have been fairly, reasonably and proportionately incurred under subrule (2), or are fair, reasonable and proportionate in amount under subrule (3), regard must also be had to any applicable State or Territory law in relation to the regulation of legal practitioners in that State or Territory.

(5) In relation to an application for costs by one party against another, a cancellation fee levied by a barrister or solicitor advocate is taken not to be reasonable.

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Division 12.4.2—Maximum costs orders

12.09 Application of Division 12.4.2

This Division applies to proceedings under the Family Law Act other than the following:

(a) proceedings under Part VI of that Act;

(b) proceedings under Division 6, 9 or 13 of Part VII of that Act;

(c) proceedings to enforce a decree or injunction made under Division 6, 9 or 13 of Part VII of that Act;

(d) an arbitration conducted pursuant to Division 4 of Part II of that Act.

12.10 Maximum costs orders—general

(1) A party may apply to the court for an order specifying the maximum costs as between party and party that may be recovered for the proceeding.

(2) A maximum costs order may be made:

(a) at any court event; and

(b) on the court's own initiative or on the application of a party.

(3) A maximum costs order may be made in respect of:

(a) the proceeding as a whole; or

(b) any issues that are ordered to be tried separately.

(4) The court may make a maximum costs order in relation to any or all of the parties, if:

(a) it is in the interests of justice to do so; and

(b) there is a substantial risk that, without such an order, costs will be disproportionately incurred; and

(c) the court is not satisfied that the risk referred to in paragraph (b) can be adequately controlled by either or both of the following:

(i) case management directions or orders made under this Part;

(ii) a detailed assessment of costs.

(5) In considering whether to exercise its discretion to make a maximum costs order under this rule, the court must consider all the circumstances of the proceeding, including:

(a) whether there is a substantial imbalance between the financial positions of the parties; and

(b) whether the costs of determining the appropriate maximum amount are likely to be proportionate to the overall costs of the proceeding; and

(c) the stage which the proceeding has reached; and

(d) the costs that have been incurred to date and the likely future costs of the proceeding.

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(6) The amount specified in a maximum costs order must not include an amount that a party is ordered to pay because the party:
  (a) has failed to comply with, or has sought an extension of time for complying with, an order or any of these Rules; or
  (b) has sought leave to amend a document; or
  (c) has otherwise caused another party to incur costs that were not necessary for the economic and efficient progress of the proceeding or hearing of the proceeding.

(7) The court may vary an amount specified in a maximum costs order if, in the court's opinion, there are special reasons and it is in the interests of justice to do so.

Note: A maximum costs order does not affect the power of the court to make an adjustment to the parties' property taking into account their actual legal costs.

12.11 Application for a maximum costs order

(1) A party may apply for a maximum costs order by filing an Application in a Proceeding supported by an affidavit.

(2) The affidavit must:
  (a) set out:
    (i) whether the maximum costs order sought is in respect of the proceeding as a whole or a particular issue that has been ordered to be tried separately; and
    (ii) why a maximum costs order should be made; and
  (b) be accompanied by a costs budget setting out:
    (i) the costs incurred by the party to date in the proceeding (including legal costs and any disbursements); and
    (ii) an estimate of the costs that the party is likely to incur at each stage in the future conduct of the proceeding.

(3) The court may give directions for the determination of the application. The directions may:
  (a) direct any party to the proceedings to file:
    (i) a schedule of costs in the approved form; or
    (ii) written submissions on all or any part of the issues arising from the application; and
  (b) fix a date and time for the hearing of the application; and
  (c) indicate whether the judge hearing the application will sit with an assessor or a Judicial Registrar at the hearing of the application; and
  (d) include such further directions as the court considers appropriate.

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12.12 Application to vary a maximum costs order

An application to vary a maximum costs order must be made by an Application in a Proceeding supported by an affidavit setting out the reasons why the variation sought should be made.

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Part 12.5—Orders for costs

12.13 Order for costs

(1) The court may make an order for costs on its own initiative.

(2) A party may apply for an order that another person pay costs.

(3) An application for costs may be made:
  (a) at any stage during a proceeding; or
  (b) by filing an Application in a Proceeding within 28 days after the final order is made.

(4) 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 or costs agreements in relation to those costs and, if so, the terms of the costs agreement or costs agreements.

(5) In making an order for costs in a proceeding, the court may set a time for payment of the costs, which may be before the proceeding is concluded.

Note 1: Section 117(1) of the Family Law Act provides that, as a general rule, each party to family law proceedings shall bear the party's own costs. Section 117(2) of that Act provides that the court may, subject to subsections 117(2A), (4), (4A), (5) and (6) of that Act and the applicable Rules of Court, make such order as to costs as the court considers just, if the court is of the opinion that there are circumstances that justify it in doing so.

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 rule 10.03).

Note 3: A party may apply for an extension of time to make an application (see rule 15.06).

Note 4: For costs orders related to appeals, see Part 13.10.

12.14 Costs order for proceedings in other courts

(1) This rule applies to a proceeding in the Federal Circuit and Family Court that:
  (a) has been transferred from another court; or
  (b) is on appeal from a decision of another court.

(2) The court may make an order for costs in relation to the proceeding 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.

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12.15 Costs order against lawyer

(1) The court may make an order for costs against a lawyer if the lawyer, or an employee or agent of the lawyer, has caused costs to be incurred by a party or another person, or to be thrown away, because of:
  (a) a failure to comply with these Rules or an order; or
  (b) a failure to comply with a pre-action procedure; or
  (c) improper or unreasonable conduct; or
  (d) undue delay or default.

(2) A lawyer may be in default if a hearing may not proceed conveniently because the lawyer has unreasonably failed:
  (a) to attend, or send another person to attend, the hearing; or
  (b) to file, lodge or deliver a document as required; or
  (c) to prepare any proper evidence or information; or
  (d) to do any other act necessary for the hearing to proceed.

(3) An order under subrule (1) may be made on the initiative of the court, or on application by a party to the proceeding or by another person who has incurred the costs or costs thrown away.

(4) An order under subrule (1) may include an order that the lawyer:
  (a) not charge the lawyer's client for work specified in the order; or
  (b) repay money that the client has already paid towards those costs; or
  (c) repay to the client any costs that the client has been ordered to pay to another party or another person; or
  (d) pay the costs of a party; or
  (e) repay another person's costs found to be incurred or wasted.

12.16 Notice of costs order

(1) Before making an order for costs against a lawyer or other person who is not a party to a proceeding, 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 12.6—Calculation of costs

12.17 Method of calculation of costs

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

(2) If costs are payable under the Family Law 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 and party basis.

(3) In making an order under subrule (1), the court may consider the following:
  (a) the importance, complexity or difficulty of the issues;
  (b) the reasonableness of each party's behaviour in the proceeding including by having regard to the matters set out in subrule 12.08(2);
  (c) the rates ordinarily payable to lawyers in comparable proceedings;
  (d) whether a lawyer's conduct has been improper, unfair, unreasonable or disproportionate;
  (e) the time properly spent on the proceeding, or in complying with pre-action procedures;
  (f) whether expenses (paid or payable) are fair, reasonable and proportionate.

12.18 Maximum amount of party and party costs recoverable

(1) This rule sets out the maximum amount of party and party costs a person may recover:
  (a) if the court orders that costs are to be paid and does not fix the amount by means of a maximum costs order made under rule 12.10 or otherwise; 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 2 and 3;
  (b) for an expense referred to in Schedule 2 (other than item 101 of Part 1)—the amount specified in that Schedule for that expense;
  (c) for any other expenses—a reasonable amount.

12.19 Interest on outstanding costs

Interest is payable on outstanding costs at the rate referred to in rule 10.17.

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Part 12.7—Specific costs matters

12.20 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 referred to in Schedule 3 that may be charged for the work.

12.21 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 in rule 2.14.

(2) For the purposes of Schedule 3, the calculation of the number of words in a document excludes words that are part of:
  (a) an approved form; or
  (b) a document in a form approved by the Chief Executive Officer.

12.22 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.

12.23 Costs for reading

If it is reasonable for a lawyer to read more than 50 pages for a proceeding, the amount to be charged under item 104 in Schedule 3 is at the discretion of a Judicial Registrar.

12.24 Postage within Australia

The charge referred to 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.

12.25 Waiting and travelling time

(1) Subrule (2) applies if:
  (a) a lawyer has travelled less than 100 kilometres from the lawyer's place of business to attend court; and
  (b) it is not appropriate or proper for an agent to attend court instead of the lawyer.

(2) The lawyer may charge an amount for time reasonably spent attending a court event if the lawyer was:

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(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 proceedings may charge, for each proceeding, 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 proceedings must not be more than the amount that may be charged under Part 1 of Schedule 3 for one proceeding.

12.26 Agent's fees

The costs claimed by a lawyer (the ***principal lawyer***) for work done by another lawyer as agent of the principal lawyer must not be more than the amount the principal lawyer would have been entitled to charge under Schedule 3 if the principal lawyer had personally done the work.

12.27 Costs of proceedings not started together

(1) This rule applies if:
(a) a lawyer starts a proceeding for a client that could reasonably have been started at the same time, and in the same court, as another proceeding between the same parties; and
(b) the proceeding was not started at that time in that court.

(2) The lawyer may charge for work done for all the proceedings only the amount the lawyer could have charged if the lawyer had started all the proceedings at the same time in the same court.

12.28 Certificate as to counsel

The judicial officer hearing a proceeding may certify that it was reasonable to engage a lawyer (including King's Counsel and Senior Counsel) as counsel to attend for a party.

12.29 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 proceeding if:
(a) either:
(i) the proceeding was heard by a Full Court; or
(ii) in any other proceeding—it was reasonable to engage counsel to attend at the proceeding; and

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(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 proceeding; and
(c) the fees are not more than the amount otherwise payable under these Rules for counsel engaged to attend at a proceeding.

12.30 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) A Judicial Registrar may allow the costs of engaging more than one counsel, including counsel who is not King's Counsel or Senior Counsel.

(3) If:
(a) counsel is engaged to attend at a trial; and
(b) the trial takes more than 1 day;
a Judicial Registrar may allow a fee in accordance with Part 2 of Schedule 3 for each further day or part of a day.

(4) A Judicial Registrar must not allow:
(a) a fee paid to counsel as a retainer; or
(b) a reading fee, unless:
(i) the proceeding is unusually complex; or
(ii) the amount of material involved is particularly large; or
(c) for a proceeding 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 proceeding by counsel on any day for which the daily fee applies.

12.31 Expenses for attendance by witness

An amount paid, or to be paid, for attendance by a witness at a hearing is a disbursement properly incurred for a proceeding if:
(a) the attendance is reasonably required; and
(b) the amount is reasonable, or is authorised or approved by the court.

12.32 Expenses for preparation of report by expert

An amount paid, or to be paid, to an expert for preparation of a report for a party or an independent children's lawyer is a disbursement properly incurred for a proceeding if:
(a) the report is reasonably required; and
(b) the amount is reasonable, or is authorised or approved by the court.

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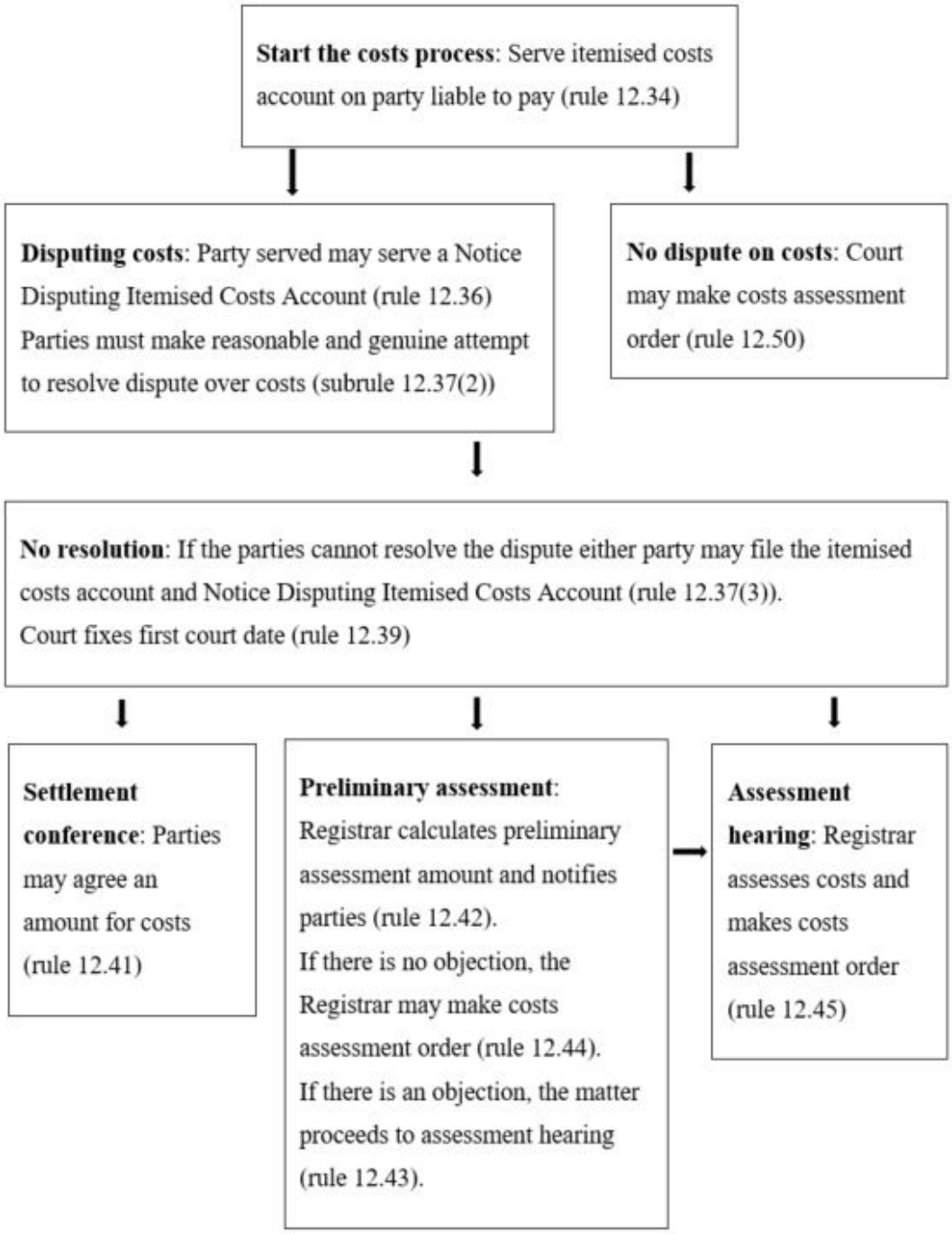
Rule 12.32

Part 12.8—Claiming and disputing costs



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Division 12.8.1—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 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 15.06).

12.33 Request for itemised costs account

A person who has received an account (other than 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.

12.34 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 proceeding.

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 brochure at the same time as the itemised costs account is served under subrule (1).

Note: A costs brochure is a brochure about costs approved by the Chief Executive Officer.

12.35 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:
  (a) in relation to each item for which costs are payable:
    (i) the date when the item occurred; and
    (ii) a description of the item, including whether the work was done by a lawyer or an employee or agent of a lawyer; and
    (iii) the amount payable for the item; and
  (b) at the end of the column setting out the amounts 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; and
  (b) the name of the person to whom the expense was paid; and
  (c) the nature of the expense; and
  (d) the amount paid.

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12.36 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: 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 12.50).

Note 2: If the parties agree on the amount to be paid for costs, they may lodge a draft consent order (see Part 10.2 for consent orders).

12.37 Assessment of disputed costs

(1) This rule applies if a Notice Disputing Itemised Costs Account has been served under rule 12.36.

(2) The parties to a dispute in relation to the 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 proceeding 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 any failure to comply with subrule (2) when considering any order for costs.

12.38 Amendment of itemised costs account or 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; or

(c) as ordered by the court.

Note: The only items that may be raised at an assessment hearing are those items included in the Notice Disputing Itemised Costs Account (see subrule 12.45(2)).

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Division 12.8.2—Assessment process

12.39 Fixing first court date

(1) If an itemised costs account and a Notice Disputing Itemised Costs Account is filed under subrule 12.37(3), a Judicial Registrar must fix a date for:
  (a) a settlement conference (see rule 12.41); or
  (b) a preliminary assessment (see rule 12.42); or
  (c) an assessment hearing (see rule 12.45).

(2) The date fixed must be at least 21 days after the Notice Disputing Itemised Costs Account is filed.

12.40 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 12.39.

12.41 Settlement conference

At a settlement conference for an itemised costs account, a Judicial 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.

12.42 Preliminary assessment

(1) At a preliminary assessment of an itemised costs account, a Judicial 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 Judicial Registrar must give each party written notice of the preliminary assessment amount.

12.43 Objection to preliminary assessment amount

(1) A party may object to the preliminary assessment amount calculated under rule 12.42 by:
  (a) giving written notice of the objection to the Judicial Registrar and the other party; and

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(b) paying into court a sum equal to 5% of the total amount claimed in the itemised costs account as security for the cost of any assessment of the account;

within 21 days after receiving written notice of the preliminary assessment amount.

(2) On receiving a notice and security, the Judicial 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).

12.44 No objection to preliminary assessment

(1) If:

(a) a Judicial Registrar does not receive a notice of objection under paragraph 12.43(1)(a); or

(b) an amount as security for costs is not paid under paragraph 12.43(1)(b);

the Judicial Registrar may make a costs assessment order for the amount of the preliminary assessment amount calculated under rule 12.42.

(2) A costs assessment order under this rule has the force and effect of an order of the court.

12.45 Assessment hearing

(1) The Judicial 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; and

(b) determine the total amount (if any) payable for the costs of the assessment; and

(c) calculate the total amount payable for the costs allowed; and

(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 Judicial Registrar must:

(a) make a costs assessment order; and

(b) give a copy of the order to each party.

Note 1: 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.

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Note 2: If it is not practicable to make the costs assessment order at the assessment hearing, the Judicial Registrar may reserve the Registrar's decision before making the order.

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

(5) A costs assessment order under this rule has the force and effect of an order of the court.

12.46 Powers of Judicial Registrars

(1) A Judicial Registrar may do any of the following at an assessment hearing:
- (a) summon a witness to attend;
- (b) examine a witness;
- (c) require a person to file an affidavit;
- (d) administer an oath;
- (e) order that a document be produced;
- (f) make an interim or final costs assessment order;
- (g) adjourn the assessment hearing;
- (h) if satisfied that there has been a gross or consistent breach of a lawyer's obligations under this Chapter—refer an issue to the appropriate professional regulatory body;
- (i) refer to the court any question arising from the assessment;
- (j) determine whether costs were fairly and reasonably incurred, were of a fair and 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 the purposes of paragraph (h), an issue that may be referred to a professional regulatory body 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 Judicial 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.

12.47 Assessment principles

(1) A Judicial Registrar must not allow costs that, in the opinion of the Registrar:
- (a) are not fair and reasonable; or

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(b) are not proportionate to the issues in the proceeding.

(2) If the court has ordered costs on an indemnity basis, the Judicial 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; and
(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) In assessing costs as between party and party, a Judicial Registrar must not allow:
(a) costs incurred because of improper, unnecessary or unreasonable conduct by a party or a party's lawyer; or
(b) costs for work (of a kind or amount) that was not reasonably required to be done for the proceeding; or
(c) unusual expenses.

12.48 Allowance for matters not specified

(1) A Judicial Registrar may allow a reasonable sum for work properly performed that is not specifically provided for in Schedule 3.

(2) In considering whether to allow an amount for costs or an expense, the Judicial Registrar may consider the following:
(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 proceeding;
(c) the amount or value of the property or financial resource involved;
(d) the nature and importance of the proceeding to the party concerned;
(e) the difficulty or novelty of the matters raised in the proceeding;
(f) the special skill, knowledge or responsibility required, or the demands made, of the lawyer by the proceeding;
(g) the conduct of all the parties and the time spent on the proceeding;
(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;
(j) the time in which the work was required to be done.

12.49 Neglect or delay before Judicial Registrar

(1) This rule applies if, after a Notice Disputing Itemised Costs Account was filed under subrule 12.37(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.

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(2) The Judicial Registrar may:
  (a) order the party to pay costs; or
  (b) disallow all or part of the costs in the itemised costs account.

12.50 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 12.34; and
  (b) has not been served with a Notice Disputing Itemised Costs Account under rule 12.36.

(2) A Judicial Registrar may make a costs assessment order if the person has filed:
  (a) a copy of the itemised costs account; and
  (b) an affidavit stating:
    (i) when the itemised costs account was served on the person liable to pay the costs; and
    (ii) the amount (if any) that has been received or credited for the costs; and
    (iii) that the person liable to pay the costs has not served a Notice Disputing Itemised Costs Account under rule 12.36; 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.

(4) A costs assessment order under this rule has the force and effect of an order of the court.

12.51 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 subrule 12.44(1) or 12.50(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 12.9.

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Part 12.9—Review of assessment

12.52 Application for review

(1) A party may apply to the court to review the decision of a Judicial Registrar at an assessment hearing under rule 12.45 by filing an Application for Review and an affidavit.

(2) The affidavit must include:
  (a) the number of each item in the itemised costs account to which the party objects to the Judicial Registrar's decision; and
  (b) the reasons for objecting to the decision; and
  (c) the decision sought from the court for each objection.

12.53 Time for filing an application for review

An application for review must be filed within 14 days after the applicant receives the Judicial Registrar's reasons for a decision about a disputed item requested under subrule 12.45(4).

12.54 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; and
  (b) the court may:
    (i) exercise all the powers of the Judicial Registrar; and
    (ii) set aside or vary the Judicial Registrar's decision; and
    (iii) return any item to the Judicial Registrar for reconsideration; and
  (c) a party may raise an issue only if:
    (i) it was identified as a disputed item in the Notice Disputing Itemised Costs Account; or
    (ii) it concerns the costs of assessing the itemised costs account; or
    (iii) it concerns an alleged error of calculation in, or omission from, the assessment of the itemised costs account; or
    (iv) it concerns an alleged error of law or fact by the Judicial Registrar, and the party has made a request under subrule 12.45(4).

(3) A hearing of an application for review does not operate as a stay of the decision reviewed.

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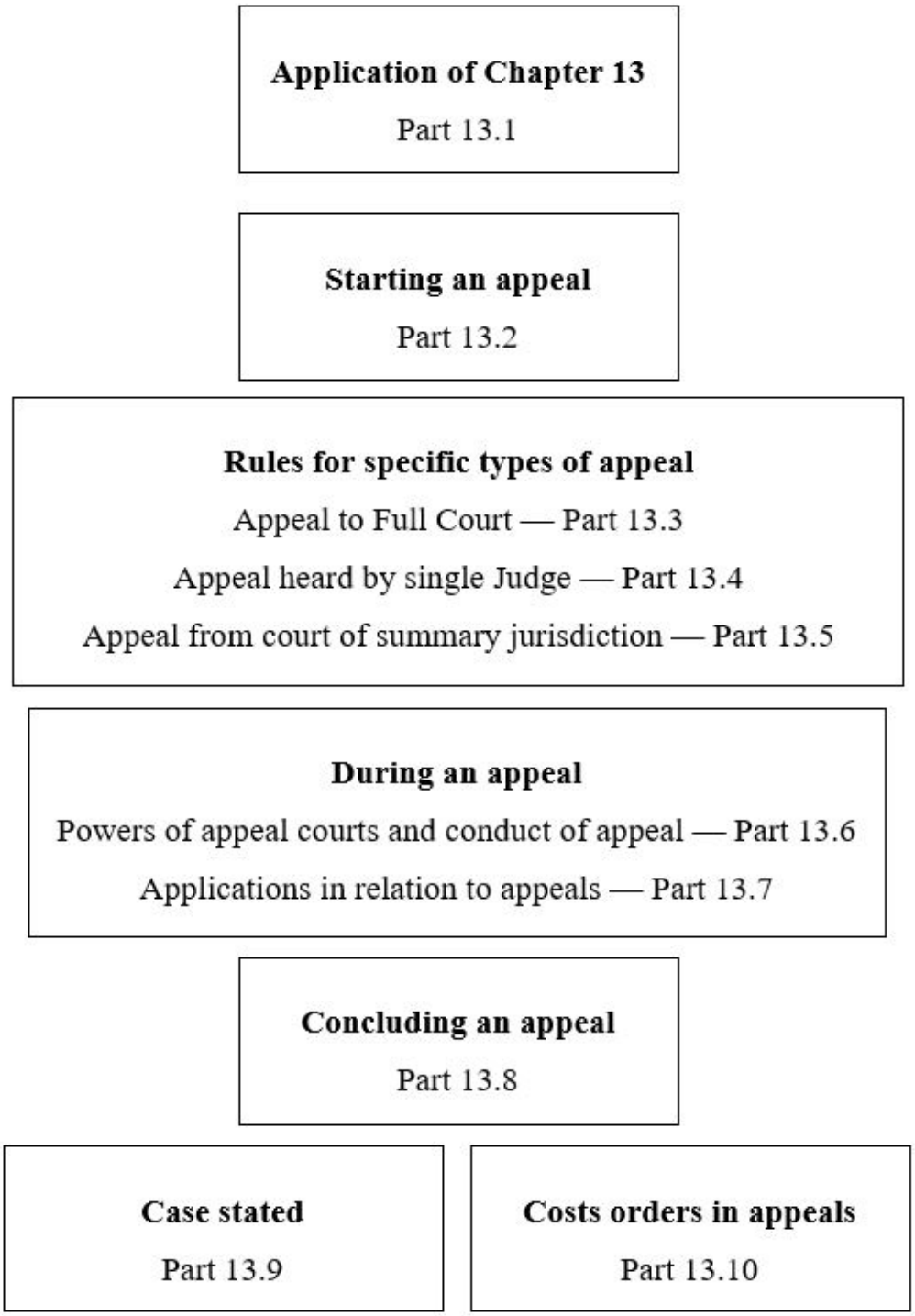
Chapter 13—Appeals



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Part 13.1—Introduction

13.01 Application of Chapter 13

(1) This Chapter applies to the following appeals:

(a) an appeal to a Full Court of the Federal Circuit and Family Court (Division 1) from an order of a Judge or Judges of the Federal Circuit and Family Court (Division 1), a Family Court of a State or a Supreme Court of a State or Territory;

(b) an appeal to the Federal Circuit and Family Court (Division 1) from an order of the Federal Circuit and Family Court (Division 2) (whether heard by a Full Court or a single Judge);

(c) an appeal to the Federal Circuit and Family Court (Division 1) from an order of a Family Law Magistrate of Western Australia (whether heard by a Full Court or a single Judge);

(d) an appeal to a single Judge of the Federal Circuit and Family Court (Division 1) from an order of a court of summary jurisdiction.

(2) This Chapter does not apply to:

(a) an appeal to the Federal Circuit and Family Court (Division 2):

(i) under the Assessment Act or Registration Act; or

(ii) under section 44AAA of the *Administrative Appeals Tribunal Act 1975*; or

(b) an application to a Judge for a review of an order of a Judicial Registrar who is not an Appeal Judicial Registrar (see Chapter 14).

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Part 13.2—Starting an appeal

13.02 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; or

(b) in any other case—in the National Appeal Registry.

Note 1: Leave of the court is needed to appeal from:

(a) an interlocutory order, other than an interlocutory order relating to a child welfare matter, of the Federal Circuit and Family Court or a Family Law Magistrate of Western Australia (see section 28 of the Federal Circuit and Family Court Act and the *Federal Court and Federal Circuit and Family Court Regulations 2012*); or

(b) an order, made by a court, referred to in section 28 of the Federal Circuit and Family Court Act, section 101 of the Assessment Act or section 106 of the Registration Act.

Note 2: The Notice of Appeal must be accompanied by the applicable filing fee or an application for a fee exemption or deferral.

(2) If an appeal cannot be started without the leave of the court, leave must be sought in the Notice of Appeal.

Note: At the hearing of the appeal, only the grounds stated in the Notice of Appeal (or Notice of Appeal as amended) may be argued except with the court's permission. A Notice of Appeal may be amended only in accordance with rule 13.10.

13.03 Time for appeal

(1) 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.

(2) Despite subrule (1), a Notice of Appeal in respect of an appeal from a judgment or decision referred to in paragraph 26(1)(h) of the Federal Circuit and Family Court Act must be filed:

(a) if the judgment or decision appealed from was made at an interlocutory stage of a proceeding—within 28 days after the judgment or decision was made; or

(b) if the judgment or decision appealed from was made at trial—within 28 days after the final orders were made.

Note 1: Rule 10.19 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 15.06).

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13.04 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 joined or removed as a party to an appeal (see paragraph 32(3)(a) of the Federal Circuit and Family Court Act).

13.05 Service

A copy of a Notice of Appeal must be served on each party to the appeal, by ordinary service, within 14 days after it is filed.

13.06 Notice about appeal to other courts

(1) If an appeal is from an order of a court (the ***other court***) other than the Federal Circuit and Family Court or a Family Court of a State, the appellant must give a copy of the Notice of Appeal to the Registrar of the other court within 14 days after filing the Notice of Appeal.

(2) A party seeking leave to appeal from an order of a court (the ***other court***) other than the Federal Circuit and Family Court or a Family Court of a State 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.

13.07 Cross-appeal

(1) 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.

(2) A Notice of Appeal for a cross-appeal must be filed within the later of the following:
  (a) 14 days after the Notice of Appeal for the appeal was served on the cross-appellant;
  (b) 28 days after the date the order appealed from was made.

13.08 Notice of Contention

(1) A respondent to an appeal or an independent children's lawyer who does not want to cross-appeal from any part of an order under appeal, but contends that the order should be affirmed on grounds other than those relied on by the court appealed from, must file a Notice of Contention.

(2) A Notice of Contention must be filed within 28 days after the Notice of Appeal was served on the respondent or the independent children's lawyer.

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13.09 Submitting notice

(1) A respondent who does not want to contest the relief sought in the Notice of Appeal may file a submitting notice under rule 2.22.

(2) A submitting notice for a respondent served with a Notice of Appeal must be filed within 14 days after the procedural hearing.

13.10 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: Rule 2.52 provides for how to amend a document.

13.12 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:
(a) be filed in the registry in which the order under appeal was made; and
(b) be heard by the Judge or Magistrate who made the order under appeal, unless that judicial officer is unavailable.

Note: Under subsection 55(3) of the Family Law Act, a divorce order is stayed until after an appeal against it is determined or discontinued.

13.13 Procedural orders in relation to an application for leave to appeal

In relation to an application for leave to appeal from an order, the court may make procedural orders, including the following:
(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;
(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: Subsection 32(7) of the Federal Circuit and Family Court Act provides for these Rules to permit the court to determine some applications relating to an appeal without an oral

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hearing. The court may decide to deal with an application without an oral hearing on its own initiative or on application.

13.14 Filing draft index to appeal book

(1) This rule applies to an appeal from an order of:
  (a) the Federal Circuit and Family Court (Division 1); or
  (b) the Federal Circuit and Family Court (Division 2); or
  (c) a Family Court of a State; or
  (d) the Supreme Court of a State or Territory; or
  (e) 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
    (ii) the date when the reasons for judgment that relate to the order the subject of the appeal were 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 referred to 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.

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Part 13.3—Appeals to Full Court

13.15 Application of Part 13.3

This Part applies to the following appeals:

(a) an appeal to a Full Court of the Federal Circuit and Family Court (Division 1) from an order of:
  (i) the Federal Circuit and Family Court (Division 1); or
  (ii) a Family Court of a State; or
  (iii) a single Judge of a Supreme Court of a State or Territory;

(b) an appeal to a Full Court of the Federal Circuit and Family Court (Division 1) from an order of:
  (i) the Federal Circuit and Family Court (Division 2); or
  (ii) a Family Law Magistrate of Western Australia;

if the Chief Justice has decided that the jurisdiction of the court in relation to the appeal is to be exercised by a Full Court.

Note: An appeal from an order of the Federal Circuit and Family Court (Division 2) or a Family Law Magistrate of Western Australia is to be heard by a single Judge of the Federal Circuit and Family Court (Division 1) unless the Chief Justice decides that the appeal is to be heard by a Full Court (see subsection 32(1) of the Federal Circuit and Family Court Act). There is no right to appeal against this decision.

This Part of these Rules applies in relation to appeals that are to be heard by a Full Court and Part 13.4 of these Rules applies in relation to appeals that are to be heard by a single Judge. The Appeal Judicial Registrar will give the parties to the appeal written notice of which Part of these Rules applies to the appeal.

13.16 Procedural hearing

As soon as reasonably practicable after the filing of a draft index to the appeal book, the Appeal Judicial Registrar must:

(a) fix a date for a procedural hearing for the appeal before an Appeal Judicial Registrar or other Judicial Registrar or, if the Appeal Judicial Registrar considers it appropriate, a Judge of the Federal Circuit and Family Court (Division 1); 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 an Appeal Judicial Registrar but may be listed before a Judge of the Federal Circuit and Family Court (Division 1).

13.17 Attendance at first procedural hearing

(1) The appellant or the appellant's lawyer must attend the first procedural hearing for the appellant's appeal.

(2) Any of the following persons may also attend the first procedural hearing:
  (a) a respondent in the appeal;

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(b) a lawyer for a respondent in the appeal;
(c) an independent children's lawyer in the appeal.

13.18 Orders to be made at procedural hearing

(1) An Appeal Judicial Registrar or other Judicial 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 book;
(b) the part or parts of a transcript of the hearing relevant to the appeal;
(c) the preparation of the appeal book and the format in which it is prepared;
(d) the date by which the appeal book must be filed and served;
(e) the dates by which the transcript, summaries of argument, lists of authorities, and costs schedules must be filed and served;
(f) the conduct of the appeal (including the likely duration of the appeal);
(g) any other matter that the Registrar or Judge considers necessary.

13.19 Preparation of appeal book and obtaining transcript

(1) The appellant or, if so ordered, the cross-appellant is responsible for preparing and filing the appeal book.

(2) If a Judge or Appeal Judicial Registrar is satisfied that preparing the appeal book would impose exceptional hardship on the appellant, the Judge or Appeal Judicial Registrar may order that either of the following are to prepare and file the appeal book:
(a) a respondent;
(b) the Appeal Judicial Registrar.

(3) When making an order under subrule (2), the court may order the appellant to pay the costs of preparing the appeal book.

(4) The appellant, or if so ordered the cross-appellant, is responsible for obtaining any transcript of the hearing relevant to the appeal or cross-appeal.

13.20 Contents of appeal book

(1) Unless otherwise ordered under paragraph 13.18(2)(a), the appeal book must contain only:
(a) the documents put in evidence at the hearing or trial to which the appeal relates, including the orders, applications, affidavits and exhibits relevant to the grounds of appeal or contention and necessary to enable the court hearing the appeal to reach its decision; and
(b) if the appeal involves a challenge to the exclusion of evidence—the document:
(i) that is the subject of the challenge; and

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(ii) that was tendered, but not admitted as evidence, at the hearing or trial to which the appeal relates.

(2) The appeal book must not mention any offer to settle that has been made, or the terms of the offer unless the terms of the offer are relevant to the appeal.

(3) Before the appellant's summary of argument is filed, the parties must file a schedule that identifies any material in the appeal book that was not relied on at trial or was struck out. If there is disagreement, the parties must be able, at the start of the hearing, to direct the court to the relevant transcript.

13.21 Form of appeal book

(1) The appeal book must have:
  (a) a title page stating:
    (i) the names of the parties to the appeal; and
    (ii) the court in which 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 book, and the date and page number of each document.

(2) The appeal book must include a certificate signed by the person who prepared it, certifying that the book has been prepared in accordance with these Rules and the orders made at the procedural hearing.

(3) The documents in the appeal book 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) any notice of contention;
  (h) any submitting notice;
  (i) relevant affidavits;
  (j) any family or expert's report received in evidence in the proceeding that is relevant to the appeal;
  (k) a list of exhibits and each relevant exhibit (if practicable);
  (l) 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 book must be numbered consecutively.

(5) Each page in the appeal book must comply with the requirements for documents referred to in rule 2.14.

Note 1: The appeal book must be filed electronically as permitted by the court, unless it is not reasonably practicable to do so (see rule 2.23).

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Note 2: The Appeal Judicial Registrar may refuse to accept the appeal book for filing if it does not comply with these Rules or an order.

13.22 Failure to file appeal book or transcript by due date

(1) If the appellant fails to file the appeal book by the date ordered, the appeal is taken to be abandoned.

(2) If the appellant fails to file the transcript 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 book or transcript (see rule 15.06).

13.23 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; or
  (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.

(2) For the purposes of 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 (together with references to the relevant pages of the appeal book and transcript); and
  (b) set out the orders sought (if they differ from the orders sought in the Notice of Appeal or any Amended Notice of Appeal); and
  (c) not exceed 15 pages, unless leave to exceed that number has been given; and
  (d) be easily legible, using a font size of at least 12 points and 1.5 line spacing; and
  (e) have all paragraphs numbered consecutively; and
  (f) be signed by the person who prepared the summary of argument; and
  (g) include the signatory's name, email address, telephone number and document exchange number (if any) at which the signatory may be contacted.

(3) If a party intends to challenge any findings of fact, the summary of argument must:
  (a) identify the error (including any failure to make a finding of fact); and
  (b) identify the finding that the party contends should have been made; and
  (c) state concisely why the finding, or failure to make a finding, is erroneous; and
  (d) refer to the evidence to be relied on in support of the argument (including any reference to the relevant pages of the appeal book and transcript).

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(4) Issues not identified in the summary of argument may not be advanced at the hearing of the appeal except with leave of the appeal court.

(5) For the purposes of subrule (1), a list of authorities must:
  (a) be divided into 2 parts as follows:
    (i) Part 1 must contain only those authorities that will be cited during the appeal;
    (ii) Part 2 must contain those authorities that might be called for during the appeal, but that it is not intended to cite; and
  (b) in relation to reported judgments:
    (i) if the judgment is available in an authorised report series—cite the judgment as reported in that series; and
    (ii) if the judgment is not available in an authorised report series—cite the judgment as reported where it is available; and
    (iii) in any case—identify the relevant page or pages in the report; and
  (c) in relation to unreported judgments:
    (i) if a medium neutral citation is available—provide that citation and identify the relevant paragraph or paragraphs; and
    (ii) if a medium neutral citation is not available—be accompanied by a copy of the judgment and identify, by page or paragraph number or numbers as appropriate, the relevant passage or passages.

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Part 13.4—Appeals from Federal Circuit and Family Court (Division 2) or Family Law Magistrate of Western Australia heard by single Judge

13.24 Application of Part 13.4

This Part applies to an appeal to the Federal Circuit and Family Court (Division 1) from an order of:

(a) the Federal Circuit and Family Court (Division 2); or

(b) a Family Law Magistrate of Western Australia;

if the jurisdiction of the court is to be exercised by a single Judge.

Note: An appeal from an order of the Federal Circuit and Family Court (Division 2) or a Family Law Magistrate of Western Australia is to be heard by a single Judge of the Federal Circuit and Family Court (Division 1) unless the Chief Justice decides that the appeal is to be heard by a Full Court (see subsection 32(1) of the Federal Circuit and Family Court Act). There is no right to appeal against this decision.

Part 13.3 of these Rules applies in relation to appeals that are to be heard by a Full Court and this Part of these Rules applies in relation to appeals that are to be heard by a single Judge. The Appeal Judicial Registrar will give the parties to the appeal written notice of which Part of these Rules applies to the appeal.

13.25 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 Appeal Judicial Registrar, for a procedural hearing.

(2) The Judge or Appeal Judicial Registrar may make procedural orders in chambers, in the absence of the parties, on the documents filed.

13.26 Attendance at procedural hearing

(1) The appellant or the appellant's lawyer must attend the first procedural hearing for the appellant's appeal.

(2) Any of the following persons may also attend 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.

13.27 Procedural orders for conduct of appeal

(1) The procedural orders made by a Judge or Appeal Judicial Registrar in chambers under subrule 13.25(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 13.19, 13.20 and 13.21 are to apply with or without any variation;
(b) if an appeal book is not required—the arrangements for ensuring that the documents referred to in rule 13.28 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 and Family Court (Division 2) 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; and
(ii) a list of documents to be relied on, or an appeal book; and
(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 be in accordance with subrule 13.23(2).

13.28 Documents for appeal hearing if appeal book not required

(1) If an appeal book is not required, the documents that must be before the Judge on the hearing of the appeal are as follows:
(a) the Notice of Appeal;
(b) the order of the Judge of the Federal Circuit and Family Court (Division 2) or of the Family Law Magistrate of Western Australia;
(c) reasons for judgment of the Judge of the Federal Circuit and Family Court (Division 2) 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 and Family Court (Division 2) or the Family Law Magistrate of Western Australia;
(f) any response relied on before the Judge of the Federal Circuit and Family Court (Division 2) or the Family Law Magistrate of Western Australia;
(g) relevant affidavits relied on before the Judge of the Federal Circuit and Family Court (Division 2) or the Family Law Magistrate of Western Australia;
(h) any family consultant's report (as referred to in rule 3.11) received in evidence;
(i) relevant exhibits tendered before the Judge of the Federal Circuit and Family Court (Division 2) 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 and Family Court (Division 2) or the Family Law Magistrate of Western Australia;
(k) if the appeal involves a challenge to the exclusion of evidence—the document that is the subject of the challenge.

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Rule 13.28

(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 13.5—Appeal from court of summary jurisdiction other than a Family Law Magistrate of Western Australia

13.29 Application of Part 13.5

This Part applies to an appeal from an order of a court of summary jurisdiction other than a Family Law Magistrate of Western Australia.

13.30 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 13.06).

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Part 13.6—Powers of appeal courts and conduct of appeal

Note 1: The following provisions set out the powers of the appeal court. See also paragraph 35(b) and subsection 36(1) of the Federal Circuit and Family Court Act and subsection 47A(6) of the Family Law 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.

13.31 Non-attendance by party

If a party does not attend, in person or by lawyer, when an appeal is called on for hearing, the court may:

(a) if the appellant does not attend—dismiss the appeal; or

(b) if the respondent does not attend—proceed with the appeal.

13.32 Attendance by electronic communication

(1) A party may request permission from the court to attend the hearing of an appeal, an application for leave to appeal or any other application in relation to an appeal, or a procedural hearing, by electronic communication.

(2) The request must:

(a) be in writing; and

(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; and

(c) for an application for leave to appeal or an appeal—be made at least 14 days before the date fixed for the hearing of the application for leave to appeal or the appeal; and

(d) address all of the matters referred to in subrule 15.16(4) that are 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 a Full Court—a Judge of the Federal Circuit and Family Court (Division 1); or

(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 Judicial 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:
  (a) order a party to pay the expenses of attending by electronic communication; or
  (b) apportion the expenses between the parties; or
  (c) make no order about the expenses.

(6) This rule does not apply if the court, on its own initiative, decides to hear an appeal, an application for leave to appeal, or any other application in relation to an appeal, or a procedural hearing, by electronic communication.

13.33 Attendance by party in prison

(1) A party who is in prison must attend the hearing of an appeal, an application for leave to appeal, or any other application in relation to an appeal, or a procedural hearing, by electronic communication, if practicable.

(2) A party may request permission from the court to attend a hearing referred to in subrule (1) in person.

(3) A request under subrule (2) must:
  (a) be in writing; and
  (b) be made at least 14 days before the date fixed for the relevant hearing; and
  (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.

13.34 Subpoenas

(1) A subpoena may be issued in an appeal only if leave to issue the subpoena has been given by:
  (a) for an appeal heard by a Full Court—that 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 referred to in paragraph (1)(a) or the Judge referred to in paragraph (1)(b).

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Part 13.7—Applications in relation to appeals

Division 13.7.1—How to make an application

13.35 Application of Part 13.7

This Part applies if a party seeks to make an application in relation to an appeal (other than an application for leave to appeal).

13.36 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.

13.37 Hearing date for application

On the filing of an Application in an Appeal, the Appeal Judicial 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 parties to the application consent to the making of the decision in the absence of the parties without an oral hearing and the court considers it appropriate to make the decision in the absence of the parties without an oral hearing (see Part 5.3); or

(ii) the Appeal Judicial Registrar considers it appropriate.

13.38 Decision in the absence of parties without oral hearing

(1) Part 5.3 applies to an application in relation to an appeal as if a reference in that Part to an application for an interlocutory order were a reference to an application in relation to an appeal.

(2) If an application is referred to a Judge in chambers in accordance with paragraph 13.37(b), the Judge may:

(a) order that the application be dealt with by the court in the absence of the parties without an oral hearing and:

(i) make procedural orders in relation to the conduct of the application, including the filing of written submissions; or

(ii) determine the application; or

(b) direct that a date for hearing be fixed for the application and require the parties to attend.

Note 1: Subsection 32(7) of the Federal Circuit and Family Court Act provides for these Rules to permit the court to determine some applications relating to an appeal without an oral hearing. 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 10.1.

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Division 13.7.2—Specific applications relating to appeals

13.39 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 state:
  (a) briefly but specifically, the facts on which the application relies; and
  (b) the grounds of appeal to which the application relates; and
  (c) the evidence that the applicant wants the appeal court to receive, or at least the nature of the further evidence; and
  (d) the reason why the evidence was not adduced at the hearing.

(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 is the same as the date fixed for the hearing of the appeal or the application for leave to appeal.

Note: Documents relating to further evidence should not be included in the appeal book.

13.40 Review of Appeal Judicial Registrar's order

(1) A party may apply for a review of:
  (a) an Appeal Judicial Registrar's order relating to the conduct of an appeal; or
  (b) the rejection of a document by an Appeal Judicial Registrar.

Note: Rule 2.24 sets out the grounds on which a document may be rejected.

(2) An application under subrule (1) may be made by filing an Application in an Appeal in the National Appeal Registry, within 21 days after the order is made or the document is rejected.

Note: The Appeal Judicial Registrar must list the application for review for hearing by a Judge of the Federal Circuit and Family Court (Division 1) (see section 100 of the Federal Circuit and Family Court Act).

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Part 13.8—Concluding an appeal, an application for leave to appeal or any other application in relation to an appeal

13.41 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 Appeal Judicial Registrar may fix a date for hearing for the argument about costs, without requiring an appeal book to be prepared or a procedural hearing to be held.

13.42 Discontinuance of appeal or application

(1) A party may discontinue an appeal, an application for leave to appeal or any other 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 notice of discontinuance is filed.

13.43 Abandoning an appeal

(1) If an 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 is taken to have been abandoned.

13.44 Application for reinstatement of appeal

A party may apply to have an appeal taken to be abandoned under this Chapter reinstated.

13.45 Dismissal of appeal and applications for non-compliance or delay

(1) This rule applies if:

(a) an appeal is not taken to have been abandoned; and

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(b) a party (the ***defaulting party***) has not:

(i) met a requirement under these Rules or the Family Law Regulations; or

(ii) complied with an order in relation to the appeal (including an application for leave to appeal or any other 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 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 13.9—Case stated

13.46 Application of Part 13.9

This Part applies to a proceeding (a ***case stated***) in relation to which the court and a party want the Federal Circuit and Family Court (Division 1) to determine a question of law arising in the proceeding under section 34 of the Federal Circuit and Family Court Act.

13.47 Case stated

(1) If a Judge orders a party to prepare a case stated for the consideration of the Federal Circuit and Family Court (Division 1), 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 Appeal Judicial Registrar to list the proceeding for a procedural hearing to have the draft case stated settled by the Judge; and
  (b) serve 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.

13.48 Objection to draft case stated

(1) A party served with a draft case stated under paragraph 13.47(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 draft case stated was served on the party.

13.49 Settlement and signing

(1) The party who prepared the draft case stated must lodge:
  (a) the draft case stated; and
  (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 the case stated, as settled, for signature by the Judge.

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13.50 Filing of case stated

A party who prepares a draft case stated must, within 7 days after it has been signed under rule 13.49:

(a) file the case stated in the National Appeal Registry; and

(b) serve the case stated on each other party and any other person the Judge directs.

13.51 Fixing of hearing date

On the filing of the signed case stated under rule 13.50, the Appeal Judicial Registrar must:

(a) fix a date for the hearing of the case stated; and

(b) give each party written notice about the hearing.

13.52 Summary of argument and list of authorities

(1) A summary of argument to be presented and a list of authorities 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 in which the case stated is listed for hearing; and

(b) by each other party—at least 14 days before the commencement of the sittings in 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 in which the case stated is listed for hearing.

(2) The summary of argument must be in accordance with subrule 13.23(2).

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Part 13.10—Costs orders

13.53 Filing of costs schedule in certain appeals

(1) This rule applies to an appeal to which Part 13.3 or 13.4 applies.

(2) A party who intends to seek costs at the conclusion of the hearing of the appeal, subject to the outcome of the appeal, must:
  (a) file and serve, no later than 7 days before the first day of the sittings in which the appeal is listed for hearing, a schedule of the costs to be sought at the scale prescribed by these Rules; and
  (b) be in a position to address the court as to costs (including quantum), whether sought by or against that party, at the conclusion of the hearing.

(3) If a party files a schedule of costs under subrule (2), all parties must be in a position to address the court on the question of costs (including quantum) at the conclusion of the hearing.

Note: A party may include indemnity costs in a costs schedule as well as costs to be sought at the scale prescribed by these Rules.

13.54 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.

Note: A party may apply for an order for costs within 28 days after:
  (a) a notice of discontinuance is filed by the other party (see rule 13.42); or
  (b) an appeal is taken to be abandoned (see rule 13.43); or
  (c) an appeal is dismissed (see rule 13.45); or
  (d) an application in relation to an appeal is dismissed (see rule 13.45).

(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.

(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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Chapter 14—Registrars and delegated powers

Part 14.1—Introduction

14.01 Definitions for Chapter 14

In this Chapter, unless the context otherwise requires:

Judicial Registrar means a Registrar of the Federal Circuit and Family Court (Division 1).

Senior Judicial Registrar means:

(a) the Chief Executive Officer; or

(b) a Senior Registrar of the Federal Circuit and Family Court (Division 1).

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Part 14.2—Delegation of powers to Senior Judicial Registrars and Judicial Registrars

14.02 Application of Part 14.2

(1) This Part applies to a Senior Judicial Registrar or Judicial Registrar who is enrolled as a lawyer of the High Court or of the Supreme Court of a State or Territory.

(2) This Part applies in the Federal Circuit and Family Court (Division 1), subject to any arrangement made by the Chief Executive Officer as to the Senior Judicial Registrars and Judicial Registrars of the Federal Circuit and Family Court (Division 1) who are to perform any of the functions or exercise any of the powers of the Federal Circuit and Family Court (Division 1), delegated by these Rules under subsection 98(1) of the Federal Circuit and Family Court Act, in particular matters or classes of matters. Any such arrangement made by the Chief Executive Officer is subject to any directions of the Chief Justice.

Note: See section 85 of the Federal Circuit and Family Court Act.

14.03 Delegation of powers to Senior Judicial Registrars and Judicial Registrars

(1) Each power of the Federal Circuit and Family Court (Division 1) referred to in column 1 of an item of the table in clause 2 of Schedule 4 and marked with a tick (✓) in column 3 of that item is delegated to each Senior Judicial Registrar of the Court.

(2) Each power of the Federal Circuit and Family Court (Division 1) referred to in column 1 of an item of the table in clause 2 of Schedule 4 and marked with a tick (✓) in column 4 of that item is delegated to each Judicial Registrar of the Court.

Note: If a power of a court is delegated to a Senior Judicial Registrar or a Judicial Registrar under this rule:

(a) the Senior Judicial Registrar or Judicial Registrar has, in exercising the power, the same protection and immunity as a Judge has in performing the functions of a Judge (see sections 101 and 257 of the Federal Circuit and Family Court Act); and

(b) a party, legal practitioner or witness appearing before the Senior Judicial Registrar or Judicial Registrar on the hearing of an application or matter, or on the conducting of any conference or inquiry, has the same protection and immunity as if appearing in a proceeding in the relevant court (see subsections 98(4) and 254(4) of the Federal Circuit and Family Court Act).

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Part 14.3—Review of exercise of power by Senior Judicial Registrar or Judicial Registrar

14.04 Application of Part 14.3

This Part:

(a) applies to an application for review of an exercise of power by a Senior Judicial Registrar or Judicial Registrar; and

(b) does not apply to an application for a review of an order made by an Appeal Judicial Registrar.

Note 1: A party may apply for review of an exercise of power by a Senior Judicial Registrar or Judicial Registrar (see sections 100 and 256 of the Federal Circuit and Family Court Act).

Note 2: A party seeking a review of an Appeal Judicial Registrar's order relating to the conduct of an appeal or the rejection of a document for filing by an Appeal Judicial Registrar may file an Application in an Appeal in the National Appeal Registry within 21 days after the order is made or the document is rejected (see rule 13.40).

14.05 Application for review of order or decision

(1) A party may apply for a review of an exercise of a power referred to in the table in clause 2 of Schedule 4 by a Senior Judicial Registrar or Judicial Registrar by filing an Application for Review and a copy of the order or decision sought to be reviewed in the filing registry within 21 days after the order or decision is made.

(2) A party may apply for a review of any other exercise of a power under these Rules by a Senior Judicial Registrar or Judicial Registrar by filing an Application for Review and a copy of the order or decision sought to be reviewed in the filing registry within 21 days after the order or decision is made.

(3) The applicant must serve a sealed copy of the application on each other party to the proceeding as soon as practicable and in any event not later than 7 days after it is filed.

(4) An Application for Review must be listed for a hearing as soon as possible and, unless it is not practicable to do so, within 28 days after the date of filing.

Note 1: An Application for Review does not need to be supported by an affidavit stating the facts relied on in support of the orders sought (see subrule 5.04(2)).

Note 2: A person may apply for an extension of time in which an application must be made (see rule 15.06).

14.06 Stay

(1) Subject to subrule (3), the filing of an application for review of an exercise of power does not operate as a stay of any order.

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(2) A party may apply for a stay of an order in whole or in part by filing an Application in a Proceeding.

(3) If a divorce order has been granted by a Senior Judicial Registrar or Judicial Registrar, an application for review of that exercise of power is taken to be an appeal within the meaning of subsection 55(3) of the Family Law Act.

14.07 Procedure for review

(1) A court must hear an application for review of an exercise of power by a Senior Judicial Registrar or Judicial 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; or
(b) with the leave of the court, any further affidavit or exhibit; or
(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.

(3) The court may determine an application for review in the absence of the parties without an oral hearing if:
(a) the parties to the application consent to the making of the decision in their absence without an oral hearing; and
(b) the court considers it appropriate to make the decision in the absence of the parties without an oral hearing.

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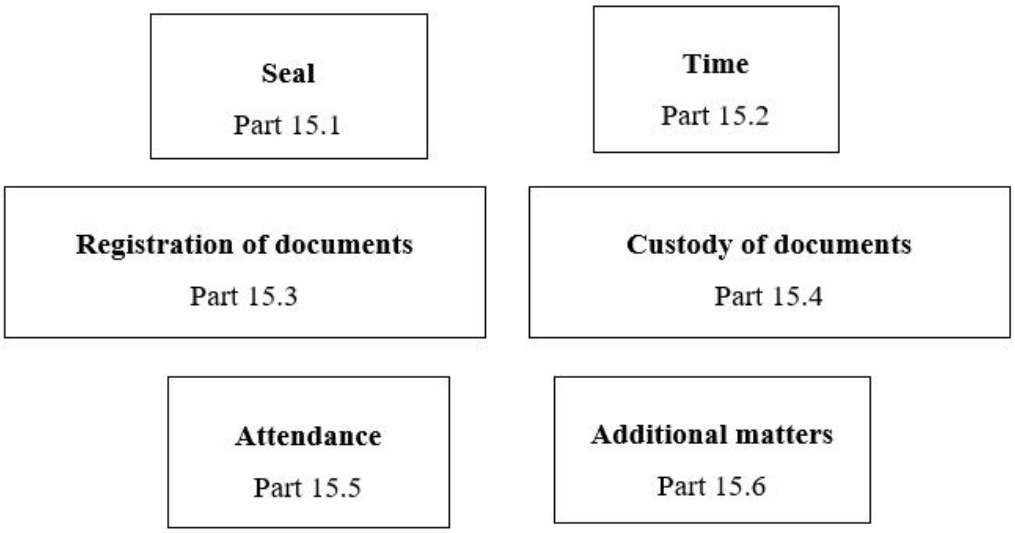
Chapter 15—General



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Part 15.1—Seal

15.01 Use of seal of court

The seal of the court must be attached to:

(a) Rules of Court; and

(b) any other documents the court directs or the law requires.

15.02 Stamp of court

(1) The Registry Manager must keep in the Registry Manager's custody a stamp designed, as nearly as practicable, to be the same as the design of the seal of the court.

(2) The stamp of the court must be attached to:

(a) all process filed in the court; and

(b) orders entered; and

(c) other documents as directed by the court.

(3) Documents marked with the stamp of the court are as valid and effectual as if they were sealed with the seal of the court.

15.03 Methods of attaching the seal or stamp

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

(a) by hand; or

(b) by electronic means; or

(c) in another way.

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Part 15.2—Time

15.04 Meaning of *month*

In these Rules and in a judgment, decree, order or any document in a proceeding, unless the context otherwise indicates, ***month*** means a calendar month.

15.05 Calculating time

(1) This rule applies to a period of time fixed by these Rules or by a judgment, decree, order or any document in a proceeding.

(2) If a period of more than 1 day is to be calculated by reference to a particular day or event, the particular day or the day of the event must not be counted.

(3) If a period of 5 days or less would, but for this subrule, include a day when the registry is closed, that day must not be counted.

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

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

15.06 Shortening or extension of time

(1) The court may at any time, on the application of a party or the court's own initiative, shorten or extend a time that is fixed under these Rules or by a procedural order.

(2) A party may apply under subrule (1) for an order extending a time even though the time fixed by the rule or procedural 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.

15.07 Time for compliance with orders

A person ordered to do an act or thing or to pay money into court must do so:

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

(b) if no time is specified in the order—within 14 days after the date of service of the order on the person.

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Part 15.3—Registration of documents

15.08 Registration of agreements

(1) This rule applies to an agreement that:

(a) may be registered in a court having jurisdiction under the Family Law 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 to which this rule applies 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 Family Law Act after 27 December 2000 cannot be registered (see subsections 86(1A) and 87(1A) of the Family Law Act).

Note 2: For requirements relating to the registration of orders (other than in divorce or validity of marriage proceedings), see regulation 17 of the Family Law Regulations.

15.09 Registration of State child orders under section 70C or 70D of the Family Law Act

(1) For the purposes of section 70C of the Family Law 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 Family Law Act by filing a sealed copy of the order in a registry of the court.

(2) For the purposes of section 70D of the Family Law 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 Family Law 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.

15.10 Registration of de facto maintenance orders under section 90SI of the Family Law Act

For the purposes of subsection 90SI(1) of the Family Law 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 Family Law Act by filing a sealed copy of the order in a registry of the court.

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15.11 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 15.4—Custody of documents

15.12 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.

15.13 Searching court record and copying documents

(1) The following persons may search the court record relating to a proceeding, 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 proceeding;

(c) if the proceeding affects, or may affect, the welfare of a child:

(i) a child welfare officer of a State or Territory; or

(ii) with the leave of the court, a police officer of a State or Territory;

(d) with the permission of the court, a person with a proper interest:

(i) in the proceeding; or

(ii) in information obtainable from the court record in the proceeding;

(e) with the permission of the court, a person researching the court record relating to the proceeding.

(2) An arbitrator conducting an arbitration relating to a proceeding may search the court record relating to the proceeding, and inspect and copy a document forming part of the court record.

(3) The parts of the court record that may be searched, inspected and copied in accordance with subrule (1) or (2) are:

(a) court documents; and

(b) with the permission of the court, any other part of the court record.

(4) A permission:

(a) for the purposes of paragraphs (1)(d) and (e) and (3)(b), may include conditions, including a requirement for consent from a person, or a person in a class of persons, referred to in the court record; and

(b) for the purposes of paragraph (1)(e)—must specify the research to which it applies.

(5) 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;

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(d) any limits or conditions that should be imposed on access to, or use of, the court record.

(6) In this rule:

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

Note 1: Sections 114Q and 114R of the Family Law Act restrict the publication of court proceedings. Section 114S of the Family Law Act sets out when a communication is not a communication to the public.

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

15.14 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; or
(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 42 days, and no later than 60 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 6.40.

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Part 15.5—Attendance

15.15 Party's attendance

(1) Unless the court otherwise directs, a party and the party's lawyer (if any) must attend each court event.

(2) Subrule (1) does not apply to:
  (a) an Application for Consent Orders; or
  (b) a divorce hearing that does not require a party's attendance under the Family Law Act; or
  (c) a hearing in chambers in the absence of the parties.

15.16 Attendance by electronic communication

(1) A party may request permission to do any of the following things by electronic communication at a court event:
  (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; and
  (b) be made at least 5 business days before the date fixed for the court event, or if the court event is a trial, at least 28 days before the date fixed for the trial to start; and
  (c) set out the facts relied on in support of the request; and
  (d) set out details of the notice in relation to the request that has been given to any other party; and
  (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.

Note: Requests made after the relevant date set out in paragraph (3)(b) above may not be considered.

(4) The facts referred to in paragraph (3)(c) above must include the following:
  (a) what the party 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

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which the party proposes to give or adduce the evidence, or make the submission;

(d) the facilities at the place referred to in paragraph (4)(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 party seeks to adduce evidence from a witness by electronic communication:

(i) whether an affidavit by the witness has been filed; and

(ii) whether the party seeks permission for the witness to give oral evidence; and

(iii) the relevance of the evidence to the issues; and

(iv) whether the witness is an expert witness; and

(v) the name, address and occupation of any person who is to be present when the evidence is given, unless disclosing this address would compromise the person's safety; and

(vi) if the party proposes to refer the witness to a document—whether the document has been filed and whether 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 party's proposals for paying those expenses;

(g) whether the other parties object to the use of electronic communication for the purpose specified in the request and, if so, the reason for the objection;

(h) if the request relates to evidence to be adduced from a witness in a foreign country (as defined by subrule 15.17(2))—the matters required to be addressed under rule 15.17;

(i) if the request relates to a remote appearance from New Zealand—the matters required to be addressed under Division 2 of Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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

(6) 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;

(g) the nature of the hearing.

(7) If the court grants the request, the court may:

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(a) order a party to pay the expense of using the electronic communication; or
(b) apportion the expense between the parties.

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

15.17 Foreign evidence by electronic communication

(1) In addition to the requirements of rule 15.16, a party who proposes to adduce evidence by electronic communication from a witness in a foreign country must satisfy the court:
(a) 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
(b) whether permission is needed from the foreign country's government to adduce evidence from a witness in that country by electronic communication; and
(c) if permission is needed—whether permission has been granted or refused; and
(d) if permission has been refused—the reason for refusal; and
(e) whether there are any special requirements for adducing evidence, including:
(i) the administration of an oath; and
(ii) the form of the oath.

(2) In this rule and in paragraph 15.16(4)(h):

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 country. For the requirements for a letter of request to the judicial authorities of a foreign country, see rule 8.07.

15.18 Attendance by party or witness in prison

(1) A party who is in prison must attend a court event 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 14 days before the date fixed for the hearing.

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(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; and
(b) be made at least 28 days before the date fixed for the hearing or trial to start; and
(c) set out the reasons why permission should be granted; and
(d) inform the court whether the other party objects to the request.

(5) Subrules 15.16(5) and (8) apply to a request under this rule.

15.19 Failure to attend a court event

(1) If a party to a proceeding is absent from a court event (including a first court date), the court may do one or more of the following:
(a) adjourn the court event to a specific date or generally;
(b) order that there is not to be any court event, unless:
(i) a new date for the court event is fixed; or
(ii) any other steps that the court directs are taken;
(c) if the absent party is an applicant—dismiss the application;
(d) if the absent party is a party who has made an interlocutory application—dismiss the interlocutory application;
(e) proceed with the hearing generally or in relation to any claim for relief in the proceeding.

(2) If a party to a proceeding is absent from a court event, the court may also make an order of the kind referred to in subrule 10.27(1) (orders on default), or any other order, or may give any directions, and specify any consequences for non-compliance with the order, that the court thinks just.

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Part 15.6—Additional matters

15.20 Notes, examples etc.

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

(a) examples;
(b) flowcharts;
(c) notes.

15.21 Forms

(1) The Chief Justice of the Federal Circuit and Family Court (Division 1), in consultation with the other judges, may approve a form for the purposes of these Rules for use in the Federal Circuit and Family Court (Division 1).

Note: All approved forms are published on the court's website (http://www.fcfcoa.gov.au).

(2) Unless the court otherwise orders, strict compliance with an approved form is not required and substantial compliance is sufficient.

(3) However, unless otherwise provided by these Rules, a document to be filed in a proceeding must be headed with the name of the court, division (where applicable) and registry in which it is filed.

15.22 Sittings

The Federal Circuit and Family Court (Division 1) must sit at the times and places the Chief Justice directs.

15.23 Prohibition on recording

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

Note: Sections 114Q and 114R of the Family Law Act restrict the publication of information relating to proceedings. Section 114S of the Family Law Act sets out when a communication is not a communication to the public.

(2) Subrule (1) does not apply to a photograph or recording made at the request of:
(a) a court; or

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(b) in relation to an attendance with a family consultant—the family consultant; or
(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.

15.24 Publishing lists of proceedings

(1) A list of proceedings to be heard in the court prepared by a Registry Manager may be:
(a) published in the law list in a newspaper; and
(b) published on the court's website; and
(c) made available to members of the legal profession and their employees.

Note: A person commits an indictable offence if the person communicates to the public a list of proceedings that refers to the names of parties (see section 114R of the Family Law Act).

(2) The list may contain:
(a) subject to subrule (3), the family name of a party, but not a given name; and
(b) the file number of a proceeding; and
(c) the name of the judicial officer for a hearing or trial; and
(d) the time and place where a named judicial officer will sit; and
(e) the general nature of an application.

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

15.25 Venue for proceedings

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

Note: See section 97 of the Family Law Act. For proceedings in the Federal Circuit and Family Court (Division 2), see also section 186 of the Federal Circuit and Family Court Act.

(2) If a proceeding is determined in chambers, the judicial officer who determined the proceeding 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 a proceeding:
(a) the judgment must be pronounced in open court; and

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(b) if the reasons for judgment are reduced to writing—the written reasons must be published by delivering them to a Judicial Registrar or an associate in open court.

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Schedule 1—Pre-action procedures

Note 1: See rule 1.05 (definition of ***pre-action procedures***).

Note 2: Part 1 of this Schedule sets out the pre-action procedures for financial proceedings. Part 2 of this Schedule sets out the pre-action procedures for parenting proceedings. If a proceeding involves both financial and parenting matters, both Parts must be complied with.

Part 1—Financial proceedings

1 General

(1) Each prospective party to a proceeding in the Federal Circuit and Family Court of Australia must make a genuine effort to resolve the dispute before filing an application to start proceedings by following the pre-action procedures outlined in clause 3 of this Part.

(2) There may be serious consequences for non-compliance with the pre-action procedures, including costs penalties or a stay of proceedings pending compliance.

(3) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures are outlined in subrule 4.01(2).

(4) The objectives of the pre-action procedures are as follows:
  (a) to encourage early and full disclosure in appropriate proceedings by the exchange of information and documents about the prospective proceeding;
  (b) to provide parties with a process to avoid legal action by reaching a settlement of the dispute before starting a proceeding;
  (c) to provide parties with a procedure to resolve the proceeding quickly and limit costs;
  (d) to ensure the efficient management of proceedings in the court, if proceedings become necessary;
  (e) to encourage parties, if proceedings become necessary, to seek only those orders that are reasonably achievable on the evidence;
  (f) to give effect to the overarching purpose of the family law practice and procedure provisions as provided by section 67 of the *Federal Circuit and Family Court of Australia Act 2021*.

(5) At all stages during the pre-action procedures and, if a proceeding is started, during the conduct of the proceedings, the parties must have regard to the following:
  (a) the best interests of any child, including the need to protect and safeguard the child against risk or harm;
  (b) the developmental, psychological, emotional and cultural needs of the child, the capacity of each person who is proposed to have parental responsibility for the child to provide for those needs, and the benefit to the

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child of being able to have a relationship with people who are significant to them, where it is safe to do so;

(c) the potential damage to a child involved in a dispute between the parents, particularly if the child is encouraged to take sides or take part in the dispute;

(d) the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them;

(e) the need to avoid protracted, unnecessary, hostile and inflammatory exchanges;

(f) the impact of correspondence on the intended reader (in particular, on the parties);

(g) the need to seek only orders that are reasonably achievable on the evidence and that are consistent with the current law;

(h) the principle of proportionality and the need to control costs because it is unacceptable for the costs of any proceeding to be disproportionate to the financial value of the subject matter of the dispute;

(i) the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.

Note The duty of disclosure extends to the requirement to disclose any significant changes (see clause 4 of this Part).

(6) Parties must not:

(a) use the pre-action procedures for an improper purpose (for example, to harass the other party or cause unnecessary cost or delay); or

(b) in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.

(7) The court expects parties to take a sensible and responsible approach to the pre-action procedures.

(8) The parties are not expected to continue to follow the pre-action procedures if it is not safe to do so, or if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

(9) At the time of filing an application to start a proceeding or a response to that application, a party must file a Genuine Steps Certificate outlining:

(a) both:

(i) the party's compliance with the pre-action procedures; and

(ii) the genuine steps taken by the party to resolve the dispute; or

(b) the basis of any claim for an exemption from compliance with either or both the requirements referred to in subparagraphs (a)(i) and (ii).

2 Compliance

(1) The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.

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(2) If a proceeding is subsequently started, the court may consider whether these requirements have been met and, if not, any consequences for non-compliance.

(3) The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and considering orders for costs (see rule 10.27 and paragraphs 1.34(2)(b) and 12.15(1)(b)).

(4) Unreasonable non-compliance may result in the court staying the proceeding pending compliance, or ordering the non-complying party to pay all or part of the costs of the other party or parties in the proceeding.

(5) In situations of non-compliance, the court may ensure that the complying party is in no worse position than the party would have been in had the pre-action procedures been complied with.

Note: Examples of non-compliance with the pre-action procedures include the following:

(a) not sending a written notice of proposed application;
(b) not providing sufficient information or documents to the other party;
(c) not following a procedure required by the procedures;
(d) not responding appropriately within the nominated time to the written notice of proposed application;
(e) not responding appropriately within a reasonable time to any reasonable request for information, documents or other requirement of the procedures.

3 Pre-action procedures

(1) A person who is considering filing an application to start a proceeding must, before filing the application, and only if it is safe to do so:
  (a) give a copy of these pre-action procedures to the other prospective parties to the proceeding; and
  (b) make inquiries about the dispute resolution services available; and
  (c) invite the other parties to participate in dispute resolution with an identified person or organisation or other person or organisation to be agreed.

(2) To the extent that it is safe to do so, each prospective party must:
  (a) cooperate for the purpose of agreeing on an appropriate dispute resolution service; and
  (b) make a genuine effort to resolve the dispute by participating in dispute resolution.

(3) If the prospective parties reach agreement, they may arrange to formalise the agreement by filing an Application for Consent Orders.

(4) Before filing an application, the proposed applicant must give to the other party (the ***proposed respondent***) written notice (***notice of intention to start a proceeding***) of the proposed applicant's intention to start a proceeding if:
  (a) there is no appropriate dispute resolution service available to the parties; or
  (b) a party fails or refuses to participate in dispute resolution; or
  (c) the parties are unable to reach agreement by dispute resolution.

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(5) A notice of intention to start a proceeding must set out:
  (a) the issues in dispute; and
  (b) the orders to be sought if proceedings are started; and
  (c) a genuine offer to resolve the issues; and
  (d) a time (the ***nominated time***) that is at least 14 days after the date of the notice within which the proposed respondent must reply to the notice.

(6) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (4), stating whether the offer is accepted and, if not, setting out:
  (a) the issues in dispute; and
  (b) the orders to be sought if proceedings are started; and
  (c) a genuine counter-offer to resolve the issues; and
  (d) a time that is at least 14 days after the date of the proposed respondent's reply within which the proposed applicant must reply.

(7) It is expected that a person will not start a proceeding by filing an application in a court unless:
  (a) the proposed respondent does not respond to a notice of intention to start a proceeding; or
  (b) agreement between the proposed parties is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

4 Disclosure and exchange of correspondence

(1) Parties to a proceeding have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner (see rule 6.01).

(2) As soon as practicable on learning of the dispute and in the course of exchanging correspondence under clause 3 of this Part, parties must exchange the following:
  (a) a schedule of assets, income and liabilities;
  (b) a list of documents in the party's possession or control that are relevant to the dispute;
  (c) a copy of any document required by the other party, identified by reference to the list of documents.

(3) Parties must refer to the Financial Statement and rule 6.06 of these Rules as a guide for the information to provide and documents to exchange.

(4) The documents that the court considers appropriate to include in the list of documents and to exchange include:
  (a) in financial proceedings (other than an application for maintenance only)—those listed in subrule 6.06(8); and
  (b) in an application for maintenance only—those listed in rule 6.06(9).

(5) It is reasonable to require a party who is unable to produce a document for inspection to provide a written authority addressed to a third party authorising

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the third party to provide a copy of the document in question to the other party, if this is practicable.

(6) Parties must agree to a reasonable place and time for the documents to be inspected and copied at the cost of the person requesting the copies.

Note: The court will refer to Chapter 6 of these Rules as a guide for what is regarded as reasonable conduct by the parties in making these arrangements.

(7) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates, unless an exception applies under subrule 6.04(2).

(8) Documents produced by a person to another person in compliance with the pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the proceeding only.

(9) Parties must bear in mind that an object of the pre-action procedures is to control costs and, if possible, resolve the dispute quickly.

(10) Parties must also file an undertaking as to disclosure that states that the party is aware of the ongoing duty of disclosure and has complied with this duty, to the best of the party's knowledge and ability, before the first court date (see rule 6.02).

5 Expert witnesses

(1) There are strict rules about instructing and obtaining reports from an expert witness (see Part 7.1 of these Rules).

(2) In summary:

(a) an expert witness must be instructed in writing and must be fully informed of the obligations as an expert witness (see rule 7.13); and

(b) parties should obtain expert evidence only in relation to a significant issue in dispute; and

(c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties (see rule 7.03); and

(d) the court must grant permission to a party to adduce evidence from another expert witness on the same issue (see rule 7.08).

6 Lawyers' obligations

(1) Lawyers must, as early as practicable:

(a) advise clients of ways of resolving the dispute without starting legal action; and

(b) advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty; and

(c) endeavour to reach a solution by settlement rather than start or continue legal action, subject to this being in the best interests of the client and any child; and

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(d) notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement that, in the lawyer's opinion, is a reasonable one; and

(e) in cases of unexpected delay, explain the delay and whether or not the client may assist to resolve the delay; and

(f) advise clients of the estimated costs of legal action (see rule 12.05); and

(g) advise clients about the factors that may affect the court in considering costs orders; and

(h) give clients documents prepared by the court about:

(i) the legal aid services and dispute resolution services available to them; and

(ii) the legal and social effects and the possible consequences for children of proposed litigation; and

(i) actively discourage clients from making ambit claims or seeking orders that the evidence and established principles, including recent case law, indicate is not reasonably achievable.

(2) The court recognises that the pre-action procedures cannot override a lawyer's duty to the lawyer's client.

(3) It is accepted that it is sometimes difficult to comply with a pre-action procedure because a client may refuse to take advice; however, a lawyer has a duty as an officer of the court and must not mislead the court.

(4) On application, the court may make an order for costs against a lawyer if the lawyer has failed to comply with pre-action procedures (see rule 12.15).

(5) If a client wishes not to disclose a fact or document that is relevant to the proceeding, a lawyer has an obligation to take the appropriate action; that is, to cease acting for the client.

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Part 2—Parenting proceedings

1 General

(1) Each prospective party to a proceeding in the Federal Circuit and Family Court of Australia is required to make a genuine effort to resolve the dispute before filing an application to start proceedings by following the pre-action procedures outlined in clause 3 of this Part. This accords with section 60I of the *Family Law Act 1975*.

(2) There may be serious consequences for non-compliance with the pre-action procedures, including costs penalties or a stay of proceedings pending compliance.

(3) The circumstances in which the court may accept that it was not possible or appropriate for a party to follow the pre-action procedures are outlined in subrule 4.01(2).

(4) The objectives of the pre-action procedures are as follows:
  (a) to encourage early and full disclosure in appropriate proceedings by the exchange of information and documents about the prospective proceeding;
  (b) to provide parties with a process to avoid legal action by reaching a settlement of the dispute before starting a proceeding;
  (c) to provide parties with a procedure to resolve the proceeding quickly and limit costs;
  (d) to ensure the efficient management of proceedings in the court, if proceedings become necessary;
  (e) to encourage parties, if proceedings become necessary, to seek only those orders that are reasonably achievable on the evidence;
  (f) to give effect to the overarching purpose of the family law practice and procedure provisions as provided by section 67 of the *Federal Circuit and Family Court of Australia Act 2021*.

(5) At all stages during the pre-action procedures and, if a proceeding is started, during the conduct of the proceedings, the parties must have regard to the following:
  (a) the best interests of any child, including the need to protect and safeguard them against risk or harm;
  (b) the developmental, psychological, emotional and cultural needs of the child, the capacity of each person who is proposed to have parental responsibility for the child to provide for those needs, and the benefit to the child of being able to have a relationship with people who are significant to them, where it is safe to do so;
  (c) the potential damage to a child involved in a dispute between the parents, particularly if the child is encouraged to take sides or take part in the dispute;

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(d) the impact of parenting applications that may be motivated by intentions other than the best interests of the child;
(e) the best way of exploring options for settlement, identifying the issues as soon as possible, and seeking resolution of them;
(f) the need to avoid protracted, unnecessary, hostile and inflammatory exchanges;
(g) the impact of correspondence on the intended reader (in particular, on the parties);
(h) the need to seek only orders that are reasonably achievable on the evidence and that are consistent with the current law;
(i) the duty to make full and frank disclosure of all material facts, documents and other information relevant to the dispute.

Note: The duty of disclosure extends to the requirement to disclose any significant changes (see clause 4 of this Part).

(6) Parties must not:
(a) use the pre-action procedures for an improper purpose (for example, to harass the other party or to cause unnecessary cost or delay); or
(b) in correspondence, raise irrelevant issues or issues that may cause the other party to adopt an entrenched, polarised or hostile position.

(7) The court expects parties to take a sensible and responsible approach to the pre-action procedures.

(8) The parties are not expected to continue to follow the pre-action procedures if it is not safe to do so, or if reasonable attempts to follow the pre-action procedures have not achieved a satisfactory solution.

(9) At the time an application to start a proceeding is filed:
(a) each party must file a Genuine Steps Certificate outlining:
(i) the party's compliance with the pre-action procedures and the genuine steps taken by them to resolve the dispute; or
(ii) the basis of any claim for an exemption from compliance with either or both the matters referred to in subparagraph (i); and
(b) the applicant must file a certificate by a family dispute resolution practitioner in accordance with subsection 60I(8) of the *Family Law Act 1975*, unless an exception applies under subsection 60I(9) of that Act.

2 Compliance

(1) The court regards the requirements set out in these pre-action procedures as the standard and appropriate approach for a person to take before filing an application in a court.

(2) If a proceeding is subsequently started, the court may consider whether these requirements have been met and, if not, any consequences.

(3) The court may take into account compliance and non-compliance with the pre-action procedures when it is making orders about case management and

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considering orders for costs (see rule 10.27 and paragraphs 1.34(2)(b) and 12.15(1)(b)).

(4) Unreasonable non-compliance may result in the court staying the proceeding pending compliance, or ordering the non-complying party to pay all or part of the costs of the other party or parties in the proceeding.

(5) In situations of non-compliance, the court may ensure that the complying party is in no worse position than the party would have been in had the pre-action procedures been complied with.

Note: Examples of non-compliance with the pre-action procedures include the following:

(a) not sending a written notice of proposed application;
(b) not providing sufficient information or documents to the other party;
(c) not following a procedure required by the procedures;
(d) not responding appropriately within the nominated time to the written notice of proposed application;
(e) not responding appropriately within a reasonable time to any reasonable request for information, documents or other requirement of the procedures.

3 Pre-action procedures

(1) A person who is considering filing an application to start a proceeding must, before filing the application and only if it is safe to do so:
  (a) give a copy of these pre-action procedures to the other prospective parties to the proceeding; and
  (b) make inquiries about the family dispute resolution services available; and
  (c) invite the other parties to participate in family dispute resolution with an identified person or organisation or other person or organisation to be agreed.

(2) To the extent that it is safe to do so, each prospective party must:
  (a) cooperate for the purpose of agreeing on an appropriate family dispute resolution service; and
  (b) make a genuine effort to resolve the dispute by participating in family dispute resolution (see section 60I of the *Family Law Act 1975*).

(3) If the prospective parties reach agreement, they may arrange to formalise the agreement by filing an Application for Consent Orders.

(4) Before filing an application, the proposed applicant must give to the other party (the ***proposed respondent***) written notice (***notice of intention to start a proceeding***) of the proposed applicant's intention to start a proceeding if:
  (a) there is no appropriate family dispute resolution service available to the parties; or
  (b) a party fails or refuses to participate in family dispute resolution; or
  (c) the parties are unable to reach agreement by family dispute resolution.

(5) A notice of intention to start a proceeding must set out:
  (a) the issues in dispute; and
  (b) the orders to be sought if a proceeding is started; and

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(c) a genuine offer to resolve the issues; and

(d) a time (the ***nominated time***) that is at least 14 days after the date of the notice within which the proposed respondent is required to reply to the notice.

(6) The proposed respondent must, within the nominated time, reply in writing to the notice under subclause (4), stating whether the offer is accepted and, if not, setting out:

(a) the issues in dispute; and

(b) the orders to be sought if a proceeding is started; and

(c) a genuine counter-offer to resolve the issues; and

(d) the time that is at least 14 days after the date of the proposed respondent's reply within which the proposed applicant must reply.

(7) It is expected that a party will not start a proceeding by filing an application in a court unless:

(a) the proposed respondent does not respond to a notice of intention to start a proceeding; or

(b) agreement between the proposed parties is unable to be reached after a reasonable attempt to settle by correspondence under this clause.

4 Disclosure and exchange of correspondence

(1) Parties to a proceeding have a duty to make full and frank disclosure of all information relevant to the issues in dispute in a timely manner (see rule 6.01).

(2) As soon as practicable on learning of the dispute and in the course of exchanging correspondence under clause 3 of this Part, parties must exchange copies of documents in their possession or control relevant to an issue in dispute (for example, medical reports, school reports, letters, drawings, photographs).

(3) Parties should refer to subrule 6.05(2) which lists relevant documents that must be disclosed in parenting proceedings.

(4) Parties must not use a document disclosed by another party for a purpose other than the resolution or determination of the dispute to which the disclosure of the document relates, unless an exception applies under subrule 6.04(2).

(5) Documents produced by a person to another person in compliance with the pre-action procedures are taken to have been produced on the basis of an undertaking from the party receiving the documents that the documents will be used for the purpose of the proceeding only.

(6) Parties must also file an undertaking as to disclosure that states that the party is aware of the ongoing duty of disclosure and has complied with this duty, to the best of the party's knowledge and ability, before the first court date (see rule 6.02).

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5 Expert witnesses

(1) There are strict rules about instructing and obtaining reports from an expert witness (see Part 7.1).

(2) In summary:

(a) an expert witness must be instructed in writing and must be fully informed of the obligations as an expert witness (see rule 7.13); and

(b) parties should obtain expert evidence only in relation to a significant issue in dispute; and

(c) if practicable, parties should agree to obtain a report from a single expert witness instructed by both parties (see rule 7.03); and

(d) the court must grant permission to a party to adduce evidence from another expert witness on the same issue (see rule 7.08).

6 Lawyers' obligations

(1) Lawyers must, as early as practicable:

(a) advise clients of ways of resolving the dispute without starting legal action; and

(b) advise clients of their duty to make full and frank disclosure, and of the possible consequences of breaching that duty; and

(c) endeavour to reach a solution by settlement rather than start or continue legal action, subject to this being in the best interests of the client and any child; and

(d) notify the client if, in the lawyer's opinion, it is in the client's best interests to accept a compromise or settlement that, in the lawyer's opinion, is a reasonable one; and

(e) in cases of unexpected delay, explain the delay and whether or not the client may assist to resolve the delay; and

(f) advise clients of the estimated costs of legal action (see rule 12.05); and

(g) advise clients about the factors that may affect the court in considering costs orders; and

(h) give clients documents prepared by the court about:

(i) the legal aid services and family dispute resolution services available to them; and

(ii) the legal and social effects and the possible consequences for children of proposed litigation; and

(i) actively discourage clients from making ambit claims or seeking orders that the evidence and established principles, including recent case law, indicate is not reasonably achievable.

(2) The court recognises that the pre-action procedures cannot override a lawyer's duty to the lawyer's client.

(3) It is accepted that it is sometimes difficult to comply with a pre-action procedure because a client may refuse to take advice; however, a lawyer has a duty as an officer of the court and must not mislead the court.

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(4) On application, the court may make an order for costs against a lawyer if the lawyer has failed to comply with pre-action procedures (see rule 12.15).

(5) If a client wishes not to disclose a fact or document that is relevant to the proceeding, a lawyer has an obligation to take the appropriate action; that is, to cease acting for the client.

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Schedule 2—Conduct money and witness fees

Note: See rules 6.31 and 12.18.

Part 1—Conduct money

Conduct money		
Item	**Matter for which allowance is paid**	**Amount of allowance**
101	Minimum amount	The minimum amount for conduct money is $25
102	Travel	Either: (a) the amount to be paid for fares on public transport for return travel between the place of employment or residence and the court; or (b) if no public transport is available—the amount calculated at the rate of 80 cents per kilometre required to be travelled between the place of employment or residence and the court
103	Accommodation and meals	A reasonable allowance for accommodation and meals to be incurred during the estimated time of the hearing or trial

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Part 2—Witness fees

Witness fees

Item	Kind of witness	Amount of fee
201	All witnesses	$75 per day, or part of a day, for necessary absence from the witness's place of employment or residence
202	Expert witnesses	Such further amount as the court allows for the preparation of a report and absence from the expert witness's place of employment

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Schedule 3—Scale of costs in family law and child support matters

Note: See rules 12.17, 12.18, 12.20 to 12.26, 12.30, 12.47 and 12.48.

Part 1A—Application of this Schedule

1 Application of this Schedule

This Schedule, as substituted by the *Federal Circuit and Family Court of Australia (Family Law) Amendment (2022 Measures No. 1) Rules 2022*, applies to work done or services performed on or after 1 January 2023.

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Part 1—Costs allowable for lawyer's work done and services performed

Costs—lawyer's work		
Item	**Matter for which charge may be made**	**Amount (including GST)**
101	Drafting a document (other than a letter)	$23.55 per 100 words
102	Producing a document (other than a letter) in printed form	$8.03 per 100 words
103	Drafting and producing a letter (including a fax or an email)	$27.03 per 100 words
104	Reading a document	$11.01 per 100 words
105	Scanning a document (if reading is not necessary)	$4.32 per 100 words
106	For a document or letter referred to in item 101, 102, 103, 104 or 105 containing more than 3,000 words	The amount allowed by the Registrar
107	Photocopy or other reproduction of a document	92 cents per page
108	Time reasonably spent by a lawyer on work requiring the skill of a lawyer (other than work to which any other item in this Part applies)	$276.33 per hour
109	Time reasonably spent by a lawyer, or by a clerk of a lawyer, on work (other than work to which any other item in this Part applies)	$179.14 per hour

Note: See rule 12.23 in relation to item 104.

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Part 2—Costs allowable for counsel's work done and services performed

Costs—counsel's work			
Item	**Matter for which charge may be made**	**Amount (including GST)** **Senior counsel**	**Amount (including GST)** **Junior counsel**
201	Chamber work (including preparing or settling any necessary document, opinion, advice or evidence, and any reading fee (if allowed))	$531.44–$911.08 per hour	$317.26–$452.51 per hour
202	Attendance at a conference (including a court-appointed conference), if necessary	$531.44–$911.08 per hour	$317.26–$452.51 per hour
203	Attendance of less than 3 hours (for example, a procedural hearing or a summary hearing)	$531.44–$3,796.00	$283.84–$1,330.09
204	A hearing or trial taking at least 3 hours but not more than 1 day	$986.96–$7,592.73	$941.05–$2,175.32
205	Other hearings or trials	$2,505.47–$7,592.73 per day	$2,242.76–$3,296.54 per day
206	Reserved judgment	$531.44–$911.08 per hour	$317.26–$452.51 per hour

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Part 3—Basic composite amount for undefended divorce

Costs—undefended divorce		
Item	**Matter for which charge may be made**	**Amount (including GST)**
301	If the lawyer employed another lawyer to attend at court for the applicant and there is a child of the marriage under 18	$1,167.14
302	If the lawyer employed another lawyer to attend at court for the applicant and there is no child of the marriage under 18	$868.35
303	If the lawyer did not employ another lawyer to attend at court for the applicant and there is a child of the marriage under 18	$1,095.76
304	If the lawyer did not employ another lawyer to attend at court for the applicant and there is no child of the marriage under 18	$819.92
305	If the lawyer did not attend at court for the hearing under section 98A of the Act	$705.47

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Part 4—Basic composite amount for request for Enforcement Warrant or Third Party Debt Notice

Costs—Enforcement Warrant or Third Party Debt Notice		
Item	**Matter for which charge may be made**	**Amount (including GST)**
401	An Enforcement Warrant under rule 11.15	$705.47
402	A Third Party Debt Notice under rule 11.34	$705.47

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Schedule 4—Delegated powers

Note: See rules 14.03 and 14.05.

1 Definitions

In the table in clause 2:

Assessment Act means the *Child Support (Assessment) Act 1989*.

Bankruptcy Act means the *Bankruptcy Act 1966*.

Bankruptcy Rules means the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*.

CEO means the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court (Division 1).

Family Law Regulations means the *Family Law Regulations 1984* made under the *Family Law Act 1975*.

FCFCOA Act means the *Federal Circuit and Family Court of Australia Act 2021*.

FCFCOA Rules means the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021* (that is, these Rules).

FLA means the *Family Law Act 1975*.

Registration Act means the *Child Support (Registration and Collection) Act 1988*.

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010*.

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2 Delegations to Senior Judicial Registrars and Judicial Registrars

The following table sets out the powers of the Federal Circuit and Family Court (Division 1) that are delegated to Senior Judicial Registrars and Judicial Registrars. The description of the power in column 2 of an item of the table is for information only.

Delegations to Senior Judicial Registrars and Judicial Registrars

Item	Column 1 Provision	Column 2 Description of power	Column 3 Senior Judicial Registrar	Column 4 Judicial Registrar
Part 1—Divorce				
1.1	Section 48 FLA if the proceedings are undefended	To make a divorce order in undefended proceedings	✓	✓
1.2	Subsection 44(1C) FLA	To give leave for an application for a divorce order to be filed within 2 years after the date of marriage	✓	✓
1.3	Subsection 55(2) FLA	To reduce or increase the time for a divorce order to take effect	✓	✓
1.4	Section 55A FLA	To make a declaration about arrangements for children after a divorce	✓	✓
1.5	Section 57 FLA	To rescind a divorce order if parties reconciled	✓	✓
1.6	Section 98A FLA	To make an order granting an undefended application for divorce in the absence of the parties	✓	✓
Part 2—Consent orders				
2.1	Paragraph 98(2)(q) FCFCOA Act	To make an order the terms of which have been agreed on by all parties to the proceedings	✓	✓
2.1A	Part 5.6 FCFCOA Rules	To deal with an application for a consent order	✓	✓
2.2	Part 10.2 FCFCOA Rules	To deal with an application for a consent order	✓	✓

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
Part 3—Parenting orders				
3.1	Section 65D FLA (other than an excluded child order (see paragraph 98(3)(d) FCFCOA Act)), but only if the order is an order until further order	To make an interim parenting order until further order	✓	
3.2	Section 65D FLA (other than an excluded child order (see paragraph 98(3)(d) FCFCOA Act)), but only if the order is made in undefended proceedings	To make a parenting order in undefended proceedings	✓	✓ but only if the order made in undefended proceedings is to come into effect 21 days after the order is served on the non-appearing party
3.3	Section 65D FLA (other than an excluded child order (see paragraph 98(3)(d) FCFCOA Act)), but only if the order is made with the consent of all the parties to the proceedings	To make a parenting order with the consent of all parties to the proceedings	✓	✓
3.4	Section 63H FLA	To make an order concerning a registered parenting plan until further order	✓	
3.5	Section 65L FLA	To make an order requiring compliance with a parenting order to be supervised by a family consultant	✓	

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Delegations to Senior Judicial Registrars and Judicial Registrars

Item	Column 1 Provision	Column 2 Description of power	Column 3 Senior Judicial Registrar	Column 4 Judicial Registrar
3.6	Paragraph 65G(2)(b) FLA	To make a parenting order by consent in favour of a non-parent without attendance at a conference with a family consultant	✓	✓
3.7	Subject to item 3.8 of this table, subsection 69ZR(1) FLA	To make a finding of fact, determine a matter or make an order in relation to an issue before final orders are made	✓ but only if: (a) the proceeding is to be heard by a Senior Judicial Registrar or Judicial Registrar; or (b) the order is made on an undefended basis; or (c) the order is made by consent	✓ but only if: (a) the proceeding is to be heard by a Judicial Registrar; or (b) the order is made by consent
3.8	Paragraph 69ZR(1)(c) FLA	To order a party to undergo a drug or alcohol screen or test without consent	✓	✓
3.9	Section 65DAAA FLA	To reconsider a final parenting order	✓ but only if: (a) a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to	

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
			exercise the power; or (b) the order is made with the agreement or consent of all of the parties to the final parenting order	
Part 4—Property orders				
4.1	Section 78 FLA Section 90SL FLA but only if the Judicial Registrar or Senior Judicial Registrar is otherwise exercising delegated power to make final property orders	To make a declaration as to the title or rights that a party has in respect of property	✓	✓
4.2	Section 79 FLA Section 90SM FLA but only if the order is an interim order	To make an interim property order	✓	
4.3	Section 79 FLA Section 90SM FLA but only if the order is made in undefended proceedings	To make a property order in undefended proceedings	✓	✓ but only if the order made in undefended proceedings is to come into effect 21 days after the order is served on the non-appearing party

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Delegations to Senior Judicial Registrars and Judicial Registrars

Item	Column 1 Provision	Column 2 Description of power	Column 3 Senior Judicial Registrar	Column 4 Judicial Registrar
4.4	Section 79 FLA Section 90SM FLA but only if the order is made with the consent of all the parties to the proceedings	To make a property order with the consent of all parties to the proceedings	✓	✓
4.4A	Section 79 FLA Section 90SM FLA but only if the gross value of the property pool, inclusive of superannuation, is less than $2 million	To make a final property order	✓ but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power	
4.5	Paragraphs 79(9)(c) and 90SM(9)(c) FLA	To make an order dispensing with requirement to attend a conciliation conference	✓	✓
4.6	Section 79A FLA Section 90SN FLA but only if the gross value of the property pool, inclusive of superannuation, is less than $2 million	To vary or set aside property orders	✓ but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power	

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
Part 5—Maintenance of a party				
5.1	Section 74 FLA Section 90SE FLA	To make an order for the spousal maintenance of a party To make an order for the maintenance of a party to a de facto relationship	✓	✓ but only if: (a) all of the following apply: (i) the order is an order until further order; (ii) the order is made in undefended proceedings; (iii) the order is to come into effect at least 21 days after the order is served on the other party; or (b) the order is made with the consent of all the parties to the proceedings
5.2	Section 77 FLA	To make an urgent order for the spousal maintenance of a party, pending the disposal of the	✓	✓

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Delegations to Senior Judicial Registrars and Judicial Registrars

Item	Column 1 Provision	Column 2 Description of power	Column 3 Senior Judicial Registrar	Column 4 Judicial Registrar
	Section 90SG FLA Paragraph 98(2)(p) (qualified by subsection 98(7)) FCFCOA Act	proceedings To make an urgent order for the maintenance of a party to a de facto relationship, pending the disposal of the proceedings		but only if: (a) all of the following apply: (i) the order is an order until further order; (ii) the order is made in undefended proceedings; (iii) the order is to come into effect at least 21 days after the order is served on the other party; or (b) the order is made with the consent of all the parties to the proceedings
5.3	Subsection 83(1) FLA Section 90SI FLA	To discharge, suspend, revive or vary a spousal maintenance order To discharge, suspend, revive or vary an order with respect to the maintenance of a party to a de facto	✓	✓ but only if: (a) all of the following apply:

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
		relationship		(i) the order is an order until further order; (ii) the order is made in undefended proceedings; (iii) the order is to come into effect at least 21 days after the order is served on the other party; or (b) the order is made with the consent of all the parties to the proceedings
5.4	Section 90F FLA	To make an order in relation to certain provisions in a financial agreement	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all

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Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
				the parties to the proceedings
Part 6—Child maintenance				
6.1	Sections 66G, 66L, 66M, 66P and 66Q FLA	To make an order for child maintenance, including in relation to an adult child	✓	
6.2	Section 66S FLA	To discharge or vary a child maintenance order	✓	
6.3	Subsection 67D(1) and section 67E FLA	To make an order in relation to the birth of a child, including for financial assistance	✓	
Part 7—Agreements				
7.1	Subsection 87(8) FLA	To revoke the approval of a maintenance agreement	✓	
7.2	Subsection 90J(3) FLA Subsection 90UL(3) FLA	To make orders preserving or adjusting the rights of persons who were parties to a terminated financial agreement	✓ but only if: (a) the gross value of the property pool, inclusive of superannuation, is less than $2 million and the Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to	

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
			exercise the power; or (b) the order is an order until further order; or (c) the order is made in undefended proceedings; or (d) the order is made with the consent of all the parties to the proceedings	
7.3	Section 90K FLA Section 90UM FLA	To set aside a financial agreement	✓ but only if: (a) the gross value of the property pool, inclusive of superannuation, is less than $2 million and the Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power; or	

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Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
			(b) the order is made in undefended proceedings; or (c) the order is made with the consent of all the parties to the proceedings	
Part 8—Location and recovery orders				
8.1	Subsection 67M(2) FLA	To make location orders other than Commonwealth information orders	✓	✓
8.2	Subsection 67N(2) FLA	To make Commonwealth information orders	✓	✓
8.3	Section 67U FLA	To make a recovery order in relation to a child	✓	
8.4	Section 67ZD FLA	To make an order to deliver up a passport to a Judicial Registrar until further order	✓	
Part 9—Parentage				
9.1	Sections 69V and 69VA, subsection 69W(1), section 69X and subsection 69ZC(2) FLA	To make an order in relation to the parentage of a child	✓	
Part 10—Compliance and enforcement				
10.1	Subject to item 10.2 of this table, Division 13A of Part VII FLA (other than subparagraph 70NBF(1)(d)(ii) and section 70NCD) and only if:	To make orders to enforce compliance with orders under the Family Law Act affecting children, and to do any other thing referred to in Division 13A of Part VII FLA	✓	

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Delegations to Senior Judicial Registrars and Judicial Registrars				
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	(a) the order that is alleged to have been contravened is an order until further order; or (b) the orders to enforce compliance are made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings			
10.2	Section 70NBC FLA but only if: (a) the order to be varied or suspended was made by a Senior Judicial Registrar or Judicial Registrar; or (b) the order to be varied or suspended is an order until further order; or (c) the order to suspend or vary is made in undefended proceedings; or (d) the power is exercised with the consent of all the parties to the proceedings	To vary or suspend a child-related order that is a parenting order	✓	
10.3	Subject to item 10.4 of this table, Part XIIIA FLA (other than paragraph 112AD(2)(d)) and only if: (a) the order that is alleged to have been	To make orders in relation to imposing sanctions for failure to comply with orders, and other obligations, that do not affect children	✓	

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	contravened is an order until further order; or (b) the orders to enforce compliance are made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings			
10.4	Subsection 112AK(1) FLA but only if: (a) the order to be varied or discharged was made by a Senior Judicial Registrar or Judicial Registrar; or (b) the order to be varied or discharged is an order until further order; or (c) the order to discharge or vary is made in undefended proceedings; or (d) the power is exercised with the consent of all the parties to the proceedings	To vary or discharge an order made under section 112AD FLA in respect of a contravention of an order	✓	
10.5	Part 11.1 FCFCOA Rules	To make an order in relation to enforcement of financial orders and obligations	✓	✓
10.6	Division 11.2.5 FCFCOA Rules but only in proceedings that are otherwise within the jurisdiction of a	To make an order in relation to a warrant for arrest	✓	✓

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Delegations to Senior Judicial Registrars and Judicial Registrars				
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	Senior Judicial Registrar or Judicial Registrar			
Part 11—Injunctions				
11.1	Subsections 68B(1) and (2) FLA but only if: (a) the order is an order until further order; or (b) the order is made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings	To make an order, or grant an injunction, until further order	✓	
11.2	Subsections 114(1), (2A) and (3) FLA but only if: (a) the order is an order until further order; or (b) the order is made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings	To make an order, or grant an injunction, until further order	✓	
11.3	Paragraph 90SS(1)(k) and subsection 90SS(5) FLA	To make an order, or grant an injunction, until further order	✓	

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	but only if: (a) the order is an order until further order; or (b) the order is made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings			
11.4	Section 90AF FLA but only if: (a) the order is an order until further order; or (b) the order is made in undefended proceedings; or (c) the power is exercised with the consent of all the parties to the proceedings	To make an injunction under section 114 FLA binding a third party	✓	
Part 12—Costs				
12.1	Subsection 117(2) FLA Paragraph 98(2)(i) and subsection 98(6) FCFCOA Act but only in relation to costs of, or in connection with, an application heard	To make a costs order	✓	✓

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Delegations to Senior Judicial Registrars and Judicial Registrars				
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	by a Senior Judicial Registrar or Judicial Registrar			
12.2	Subsection 117(2) FLA Paragraph 98(2)(i) and subsection 98(6) FCFCOA Act but only in relation to costs of, or in connection with, an application heard by a Senior Judicial Registrar or Judicial Registrar	To make an order as to costs to fund litigation	✓	
12.3	Subsection 117(2) FLA Paragraph 98(2)(j) FCFCOA Act	To make an order for security for costs	✓	✓
12.4	Chapter 12 FCFCOA Rules	To make orders in relation to costs, the provision of costs estimates and the assessment of costs, but only in relation to section 117 FLA	✓	✓
12.5	Part 12.2 FCFCOA Rules	To make orders in relation to security for costs	✓	✓
Part 13—Appeals				
13.1	Paragraphs 32(2)(a),(b),(c) and (d), by consent, and paragraph 32(2)(e) FCFCOA Act	To make orders in relation to the following procedural applications: (a) for extension of time within which to institute an appeal; (b) for an extension of time within which to file an application for leave to appeal; (c) for leave to amend the grounds of an appeal;	✓	✓ if a Judicial Registrar is designated by the CEO (subject to any directions of the Chief Justice) to exercise the power

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		(d) to stay an order of the Federal Circuit and Family Court (Division 1) made in its appellate jurisdiction (by consent of all parties only) (e) for security for costs in relation to the appeal		
13.2	Paragraphs 32(3)(a) and (d), by consent, and paragraphs 32(3)(b), (c), (e), (f), (g), (h) and (i) FCFCOA Act	To make orders in relation to the following applications: (a) to join or remove a party to an appeal (by consent of all parties and any person proposed to be joined only); (b) to give summary judgment; (c) to make an interlocutory order pending, or after, the determination of an appeal, and to vary or set aside that order; (d) to make an order to dismiss an appeal for want of prosecution, and to vary or set aside that order; (e) to: (i) make an order to dismiss an appeal for failure to comply with a direction of the Court or failure of the appellant to attend a hearing relating to the appeal; and (ii) vary or set aside that order; (f) to give directions under subsection 69(1) FCFCOA Act about practice and procedure to be followed in the proceeding;	✓ if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power	✓ if a Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power

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Delegations to Senior Judicial Registrars and Judicial Registrars				
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		(g) to give other directions about the conduct of the appeal, including about: (i) use of written submissions; and (ii) limiting the time for oral argument; (h) to make an order by consent disposing of an appeal to the court (including an order for costs)		
13.3	Rule 13.13 FCFCOA Rules	To make procedural orders relating to an application for leave to appeal	✓	✓
13.4	Rule 13.18 FCFCOA Rules	To make orders at a procedural hearing	✓	✓
13.5	Rule 13.19 FCFCOA Rules	To make orders about the preparation of the appeal books	✓	✓
13.6	Rules 13.25 and 13.27 FCFCOA Rules	To make procedural orders in chambers for the conduct of the appeal	✓	✓
13.7	Paragraph 13.32(3)(c) and subrule 13.32(5) FCFCOA Rules	To determine a request by a party for attendance by electronic communication in relation to a procedural hearing; and make an order as to expenses	✓	✓
13.8	Rule 13.44 FCFCOA Rules	To reinstate an appeal taken to have been abandoned	✓	✓
13.9	Rule 13.45 FCFCOA Rules	To dismiss an appeal and applications for non-compliance or delay	✓ but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject	✓ but only if a Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions

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			to any directions of the Chief Justice) to exercise the power	of the Chief Justice) to exercise the power
13.10	Rule 13.54 FCFCOA Rules	To determine an application in an appeal seeking costs, but only after a notice of discontinuance has been filed	✓	✓
Part 14—Case management and overarching purpose				
14.1A	Subsections 44(3) and 44(6) FLA	To grant leave to institute proceedings out of time	✓	
14.1	Subsection 68(3) FCFCOA Act	To make an order for the purpose of enabling a party to comply with the overarching purpose of the family law practice and procedure provisions	✓	✓
14.2	Section 69 FCFCOA Act	To give directions about the practice and procedure to be followed in relation to a civil proceeding or part of a civil proceeding	✓	✓
14.3	Part 1.2 FCFCOA Rules	To exercise the Court's powers in relation to case management	✓	✓
14.4	Subrules 1.07(4) and 1.08(4) FCFCOA Rules	To depart from the Case Management Practice Direction and other Practice Directions if considered appropriate	✓	✓
14.5	Paragraph 98(2)(k) FCFCOA Act	To make an order exempting a party from compliance with a provision of the regulations or Rules of Court	✓	✓
14.6	Rules 1.31, 1.32, 15.06 and 15.07 FCFCOA Rules	The following powers:	✓	✓

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		(a) to make a procedural order in case of doubt or difficulty; (b) to make an order on application or own initiative in relation to a matter referred to in the FCFCOA Rules; (c) on application or own initiative, to dispense with compliance with any of these Rules; (d) on application, to shorten or extend a time for doing an act under the FCFCOA Rules; (e) to specify a time by which an action under a rule or order is to be taken		
14.7	Rule 10.27 FCFCOA Rules	To make orders to stay or dismiss as to the whole or any part of the relief claimed, to order costs and to make other necessary orders if a party is in default	✓	✓
14.8	Rule 1.34 FCFCOA Rules	To grant relief from the effect of rule 1.33 of the FCFCOA Rules	✓	✓
Part 15—Filing, form and custody of documents				
15.1	Section 63 FCFCOA Act	To give directions about the length of documents required or permitted to be filed in the Court	✓	✓
15.2	Rules 2.14 to 2.16, 2.23 and 2.24 and 15.12 to 15.14 FCFCOA Rules	To make orders in relation to general requirements for documents and their filing and procedures relating to registry records	✓	✓

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Part 16—Service of documents				
16.1	Paragraph 98(2)(d) FCFCOA Act	To dispense with the service of any process	✓	✓
16.2	Paragraph 98(2)(e) FCFCOA Act	To make orders in relation to substituted service	✓	✓
16.3	Parts 2.6 and 2.7 FCFCOA Rules	To make orders in relation to service	✓	✓
Part 17—Amending documents				
17.1	Rules 2.50 and 2.52 FCFCOA Rules	To make orders for amendment of application or response	✓	✓
17.2	Rule 2.54 FCFCOA Rules	To disallow an amendment of a document	✓	✓
Part 18—Parties, representation and intervention				
18.1	Subsection 91B(1) FLA	To request that a prescribed child welfare authority intervene in proceedings	✓	✓
18.2	Subsections 92(1) and (2) FLA	To make order entitling a person to intervene in proceedings	✓	✓
18.2A	Subrule 3.03(4) FCFCOA Rules	To grant leave to a party to add a party to a proceeding after the first court date	✓	✓
18.3	Rule 3.04 FCFCOA Rules	To make order in relation to a person seeking to intervene in proceedings to become a party	✓	✓
18.4	Rule 3.05 FCFCOA Rules	To remove a party to proceedings	✓	✓
18.5	Rule 3.06 FCFCOA Rules	To order notice to be given of proceedings or the application of a person to be included as a party	✓	✓
18.6	Rule 3.19 FCFCOA Rules	To make orders about the progress of proceedings after a party dies	✓	✓

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Part 19—Independent children's lawyers				
19.1	Section 68L FLA	To order that a child's interests are to be independently represented	✓	✓
19.2	Section 68M(2) FLA	To make an order, on application by the independent children's lawyer, that a child be made available for an examination for the purposes of preparing a report in connection with the proceedings	✓	✓
19.3	Rules 3.11 FCFCOA Rules	To appoint or remove an independent children's lawyer	✓	✓
19.4	Subsection 68LA(5D) FLA	To determine whether exceptional circumstances exist that justify an independent children's lawyer not performing a duty and to make an order requiring the independent children's lawyer to perform a duty	✓	✓ but only if the final order is to be made by a Judicial Registrar
Part 20—Litigation guardians				
20.1	Part 3.5 FCFCOA Rules	To make orders in relation to litigation guardians	✓	✓
Part 21—Family counselling, family dispute resolution and other family services				
21.1	Section 13B FLA	To refer parties to family counselling and to adjourn the proceedings in the interim	✓	✓
21.2	Section 13C FLA Paragraph 98(2)(n) FCFCOA Act	To refer parties to family counselling, family dispute resolution and other family services and to adjourn the proceedings in the interim	✓	✓
21.3	Section 13D FLA	To make orders as a result of failure to attend family	✓	✓

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	Paragraph 98(2)(n) FCFCOA Act	counselling, family dispute resolution or other family services		
21.4	Subsection 60I(9) FLA	To determine whether subsection 60I(7) applies to an application for a Part VII order in relation to a child	✓	✓
21.5	Subsection 60I(10) FLA	To order that a person attend family dispute resolution	✓	✓
21.6	Subsection 60J(2) FLA	To determine whether subsection 60J(1) applies to an application for a Part VII order in relation to a child	✓	✓
21.7	Section 65LA(1) FLA Paragraph 98(2)(n) FCFCOA Act	To make order directing a party to attend a post-separation parenting program	✓	✓
21.8	Rule 4.04 FCFCOA Rules	To stay an application until the applicant complies with the pre-action procedures	✓	✓
21.9	Rule 4.05 FCFCOA Rules	To order attendance at alternative dispute resolution	✓	✓
Part 22—Arbitration				
22.1	Sections 13E and 13F FLA	To refer parties to arbitration, with consent of parties, and to make procedural orders thought appropriate to facilitate the effective conduct of the arbitration, including: (a) orders for disclosure; and (b) orders in respect of subpoenas	✓	✓

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Part 23—Interlocutory orders and conduct of proceedings				
23.1	Paragraphs 67ZBB(2) (a), (b) and (c) (procedural only) FLA	To make procedural orders in relation to allegations of child abuse or family violence	✓	✓
23.2	Subsection 97(1A) FLA	To hear proceedings sitting in chambers	✓	✓
23.3	Subsection 97(2) FLA	To make orders about specified persons being present in court during proceedings or part of proceedings	✓	✓
23.4	Section 101 FLA	To protect a witness in relation to a proceeding being heard by a Senior Judicial Registrar or Judicial Registrar	✓	✓
23.5	Subsection 66(2) FCFCOA Act	To make an order declaring that a proceeding is not invalid by reason of a formal defect or an irregularity	✓	✓
23.6	Paragraph 98(2)(h) FCFCOA Act	To adjourn the hearing of proceedings	✓	✓
23.7	Part 5.3 FCFCOA Rules	To make orders in relation to a hearing on the papers in the absence of the parties	✓	✓
23.8	Rule 5.16 (other than subrules (2) and (5)) FCFCOA Rules	To make order for the inspection or valuation of property	✓	✓
23.9	Rule 14.06	To stay an order in whole or in part pending review of an exercise of delegated power by a Senior Judicial Registrar or Judicial Registrar	✓	✓ but only in relation to an exercise of power by a Judicial Registrar

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Part 24—Disclosure and orders to obtain information				
24.1	Subdivision DA of Division 8 of Part VII FLA	To make orders for information etc. in child-related proceedings	✓	✓
24.2	Paragraph 98(2)(g) FCFCOA Act	To make orders in relation to interrogatories	✓	✓
24.3	Parts 6.1, 6.2 (other than rule 6.17), 6.3 and 6.4 FCFCOA Rules	To make orders in relation to disclosure in proceedings	✓	✓
24.4	Rule 6.17 FCFCOA Rules	To make order to stay or dismiss all or part of a party's case that is being heard by a Senior Judicial Registrar or Judicial Registrar as a consequence of a party's failure to disclose a document as required under the Rules	✓	
Part 25—Subpoenas and notices to produce				
25.1	Part 6.5 FCFCOA Rules	To issue a subpoena, order production and inspection of documents, and hear objections to a subpoena	✓	✓
25.2	Subrule 6.27(1) FCFCOA Rules	To give permission to a self-represented party to issue a subpoena	✓	✓
Part 26—Experts and assessors				
26.1	Part 7.1 FCFCOA Rules	To make orders in relation to the appointment of an expert witness and expert evidence	✓	✓
26.2	Part 7.2 FCFCOA Rules	To make orders in relation to the appointment of an assessor	✓	✓

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Part 27—Admissions and evidence				
27.1	Section 100B FLA	To make order allowing a child to swear an affidavit or be called as a witness	✓	
27.2	Section 102A FLA	To make order giving leave for a child to be examined	✓	
27.3	Section 106A FLA	To make order directing a person to execute a deed or instrument	✓	✓
27.4	Section 106A FLA	To direct a Judicial Registrar to sign documents	✓	not applicable
27.5	Rule 8.04 FCFCOA Rules but only for a proceeding that being heard by a Senior Judicial Registrar or Judicial Registrar, or with the consent of the parties	To give directions that particular testimony is to be given orally or by affidavit	✓	✓
27.6	Section 102C FLA but only for a proceeding that is being heard by a Senior Judicial Registrar or Judicial Registrar	To direct or allow testimony to be given by video link or audio link	✓	✓
27.7	Section 102D FLA but only for a proceeding that is being heard by a Senior Judicial Registrar or Judicial Registrar	To direct or allow a person to appear by way of video link or audio link	✓	✓
27.8	Section 102E FLA but only for a proceeding that is being	To direct or allow a person to make a submission by way of video link or audio link	✓	✓

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	heard by a Senior Judicial Registrar or Judicial Registrar			
27.9	Section 102K FLA but only for a proceeding that is being heard by a Senior Judicial Registrar or Judicial Registrar	To make orders for the payment of expenses in connection with giving testimony, appearing, or making submissions, by video link or audio link	✓	✓
27.9A	Subparagraph 102NA(1)(c)(iv) FLA	To make an order applying mandatory protections for parties in certain cases	✓ but only if a Senior Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power	
27.9B	Section 128 *Evidence Act 1995*	To give a witness a certificate in relation to certain evidence	✓ but only in relation to a proceeding to be heard and determined by a Senior Judicial Registrar	
27.10	Rule 8.10 FCFCOA Rules	To make order in relation to adducing the evidence of a child	✓	
27.11	Subrule 8.17(4) FCFCOA Rules	To give permission for an affidavit to be used in a proceeding if the deponent is illiterate or vision impaired and there is no certificate under	✓	✓

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		subrule 8.17(1) or (3) on the affidavit		
27.12	Rule 8.18 FCFCOA Rules	To order that objectionable material be struck out of an affidavit	✓	✓
Part 28—Reports and appointments with family consultants				
28.1	Section 11F FLA Paragraph 98(2)(n) FCFCOA Act	To order parties to attend appointment or a series of appointments with a family consultant	✓	✓
28.2	Section 11G FLA Paragraph 98(2)(n) FCFCOA Act	To make an order as a result of failure to attend appointment with family consultant	✓	✓
28.3	Section 62G FLA Paragraph 98(2)(o) FCFCOA Act	To direct a family consultant to give a report	✓	✓
28.4	Rule 8.11 FCFCOA Rules	To make an order in relation to the preparation of a report	✓	✓
Part 29—Change of venue and transfers				
29.1	Subsection 45(2) FLA	To transfer a proceeding to another court	✓	✓
29.2	Subsection 46(3A) FLA	To remove a proceeding from a court of summary jurisdiction	✓	
29.3	Section 65 FCFCOA Act	To direct, at any stage, that a proceeding or part of a proceeding be conducted or continued at a specified place subject to conditions (if any)	✓	✓
29.4	Part 9.1 FCFCOA Rules	To order a change of venue	✓	✓
Part 30—Discontinuance				
30.1	Rules 10.02 and 10.03 FCFCOA Rules	To permit proceedings to be discontinued	✓	✓

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30.2	Subrule 10.03(3) FCFCOA Rules	To stay proceedings until an order to pay costs in relation to earlier proceedings has been complied with	✓	✓
Part 31—Summary orders				
31.1	Section 102QAB FLA	To summarily dismiss an application with no reasonable prospects of success	✓	✓ but only if: (a) the order is made: (i) in undefended proceedings; or (ii) with the consent of all the parties to the proceedings; and (b) a Judicial Registrar is approved by the Chief Justice or CEO (subject to any directions of the Chief Justice) to exercise the power
31.2	Paragraphs 10.09(1)(c) and (d)	To make summary orders if a party claims that:	✓	✓

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	FCFCOA Rules	(a) an application or response is frivolous, vexatious or an abuse of process; or (b) there is no reasonable likelihood of success		but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
31.3	Paragraphs 10.11(1)(a), (d) and (e) and subrule 10.11(2) FCFCOA Rules	The following powers: (a) to dismiss any part of a proceeding; (b) to order a hearing about an issue or fact; (c) with the consent of the parties, to order arbitration about a proceeding or part of a proceeding; (d) to stay execution pending determination of claim	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
Part 32—Varying and setting aside orders				
32.1	Paragraphs 10.13(1)(a), (b), (c), (d) and (f) FCFCOA Rules	Powers to make orders varying or setting aside an order if: (a) the order was made in the absence of a party; or (b) the order was obtained by fraud; or (c) the order is interlocutory; or	✓	

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		(d) the order is an injunction or for the appointment of a receiver; or (e) the party in whose favour the order was made consents		
32.2	Paragraphs 10.13(1)(e), (g) and (h) FCFCOA Rules	To make orders varying or setting aside an order if: (a) the order does not reflect the intention of the court; or (b) there is a clerical mistake in the order; or (c) there is an error arising in the order from an accidental slip or omission	✓ but only if the order being varied or set aside was made by a Senior Judicial Registrar or Judicial Registrar	✓ but only if the order being varied or set aside was made by a Judicial Registrar
Part 33—Summary dismissal				
33.1	Rule 10.22 FCFCOA Rules	To dismiss all or part of a proceeding if a party has not taken a step in the proceeding for 6 months in certain circumstances	✓	✓
Part 34—General—seal and registration of documents				
34.1	Rule 15.01 FCFCOA Rules	To direct that the seal of the Court be attached to a document	✓	✓
34.2	Rule 15.02 FCFCOA Rules	To direct that the stamp of the Court be attached to a document	✓	✓
34.3	Part 15.3 FCFCOA Rules	To make an order in relation to registration of documents	✓	✓
Part 35—Attendance by electronic means				
35.1	Rules 8.13 and 15.16 FCFCOA Rules	To permit a party to attend, adduce evidence or	✓	✓

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
		make a submission by electronic communication		
35.2	Rule 15.18 FCFCOA Rules	To make an order in relation to attendance of party or witness in prison	✓	✓
35.3	Rule 15.19 FCFCOA Rules but only in relation to an interim or procedural application or response	To dismiss an interim or procedural application or response if no party attends	✓	✓
Part 36—Legitimacy of child				
36.1	Subsection 92(1) *Marriage Act 1961*	To make an order declaring legitimacy of a child	✓	
Part 37—Child support				
37.1A	Sections 106A and 107 Assessment Act	To make a declaration that a person should, or should not, be assessed in respect of the costs of a child	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
37.1B	Division 3 of Part 7 Assessment Act	To amend an administrative assessment that is more than 18 months old	✓	✓ but only if: (a) the order is made in undefended proceedings; or

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Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
				(b) the order is made with the consent of all the parties to the proceedings
37.1	Divisions 4 and 5 of Part 7 Assessment Act	To make orders in relation to the provision of child support in certain circumstances	✓	✓ but only if the order is made: (a) in undefended proceedings; or (b) with the consent of all the parties to the proceedings
37.2	Section 139 Assessment Act	To make an order for the payment of maintenance if a child is in urgent need of financial assistance	✓	✓ but only if the order is made: (a) in undefended proceedings; or (b) with the consent of all the parties to the proceedings
37.3	Subsection 105(2) Registration Act	To make procedural orders for the resolution of any difficulty arising in relation to the application of subsection 105(1) of the Registration Act or in relation to a particular proceeding	✓	✓

Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
37.4	Section 111B Registration Act	To do a thing referred to in subsection 111B(1) of the Registration Act	✓	✓
37.4A	Section 111C Registration Act	To grant a stay	✓	✓ but only if: (a) the order is made in undefended proceedings; or (b) the order is made with the consent of all the parties to the proceedings
37.5	Section 113 Registration Act	To make an order for the recovery of debts	✓	✓
Part 38—Family Law Regulations				
38.1	Subregulation 4(1)	To make an order in relation to practice and procedure if satisfied that the Family Law Act, the Family Law Regulations or the Rules of Court do not adequately provide for a particular situation or there is a difficulty or doubt about practice or procedure	✓	✓
38.2	Regulation 5	To make an order in relation to proceedings if a party has not complied with the Family Law Regulations or the Rules of Court	✓	✓
38.3	Paragraph 6(1)(a)	To relieve a party from non-compliance with a regulation or rule, or an order made by a Judicial	✓	✓

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Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
		Registrar		
38.4	Subregulation 23(6)	To register an overseas child order received other than from the Secretary of the Attorney-General's Department	✓	✓
Part 39—Bankruptcy Act proceedings				
39.1	Section 33 Bankruptcy Act	Powers in relation to adjournment, amendment of process and extension and abridgement of times	✓	✓
39.2	Section 81 Bankruptcy Act	Powers in relation to examinations	✓	✓
39.3	Section 264B Bankruptcy Act	To issue a warrant	✓	✓
39.4	Subsection 309(2) Bankruptcy Act	To order substituted service	✓	✓
39.5	Rules 1.21 and 1.22 FCFCOA Rules Rule 2.03 Bankruptcy Rules	To grant leave to a person who is not a party to a proceeding to be heard	✓	✓
39.6	Rules 1.21 and 1.22 FCFCOA Rules Rule 6.09 Bankruptcy Rules	To direct the manner of service of a summons for examination	✓	✓
39.7	Rules 1.21 and 1.22 FCFCOA Rules Rule 6.10 Bankruptcy Rules	To adjourn or discharge a summons	✓	✓
39.8	Rules 1.21 and 1.22 FCFCOA Rules Rule 6.15 Bankruptcy Rules	To direct the manner of service of a summons for examination	✓	✓
39.9	Rules 1.21 and 1.22 FCFCOA Rules Rule 12.02 Bankruptcy Rules	To order that a warrant be kept in the Registry	✓	✓
39.10	Rules 1.21 and 1.22 FCFCOA Rules	To order costs	✓	✓

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Clause 2

Delegations to Senior Judicial Registrars and Judicial Registrars				
Item	**Column 1** **Provision**	**Column 2** **Description of power**	**Column 3** **Senior Judicial Registrar**	**Column 4** **Judicial Registrar**
	Rule 13.01 Bankruptcy Rules			
Part 40—Trans-Tasman Act proceedings				
40.1	Section 31(1) Trans-Tasman Proceedings Act	To give leave to serve a subpoena in New Zealand	✓	✓
40.2	Paragraph 32(1)(b) Trans-Tasman Proceedings Act	To make directions about service of a subpoena in New Zealand	✓	✓
40.3	Subsections 36(1), (4) and (6) Trans-Tasman Proceedings Act	To set aside a subpoena in whole or part, including without a hearing or by a remote hearing	✓	✓
40.4	Subsection 37(4) Trans-Tasman Proceedings Act	To make orders about the payment of reasonable expenses in complying with a subpoena	✓	✓
40.5	Section 38 Trans-Tasman Proceedings Act	To issue a certificate where a person has failed to comply with a subpoena	✓	✓
40.6	Division 1.2.3 FCFCOA Rules	Powers to make orders in cases to which the Trans-Tasman Proceedings Act applies	✓	✓
Part 41—Communication of details of family law proceedings				
41.1	Subsection 114Q(2) and subparagraph 114R(2)(b)(i) FLA	To give a direction about, or approve, a communication to the public of an account of proceedings or a list of proceedings	✓	✓

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

<u>underlining</u> = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Federal Circuit and Family Court of Australia (Family Law) Rules 2021	27 Aug 2021 (F2021L01197)	1 Sept 2021 (r 1.02(1) item 1)	
Federal Circuit and Family Court of Australia (Family Law) Amendment (2022 Measures No. 1) Rules 2022	27 Nov 2022 (F2022L01526)	Sch 2: 1 Jan 2023 (r 2(1) item 3) Remainder: 28 Nov 2022 (r 2(1) items 1, 2, 4)	—
Federal Circuit and Family Court of Australia (Family Law) Amendment (2024 Measures No. 1) Rules 2024	2 May 2024 (F2024L00509)	6 May 2024 (r 2(1) item 1)	—

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Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1.1	
r 1.05	am F2024L00509
Part 1.2	
Division 1.2.1	
r 1.06	am F2024L00509
Division 1.2.2	
r 1.09	am F2022L01526
Part 1.3	
r 1.33	rs F2024L00509
r 1.34	am F2024L00509
Chapter 2	
Part 2.1	
r 2.01	am F2022L01526; F2024L00509
Part 2.2	
Division 2.2.1	
r 2.04	am F2022L01526
Part 2.3	
r 2.16	am F2024L00509
Part 2.4	
r 2.18	am F2024L00509
Part 2.5	
r 2.23	am F2024L00509
Part 2.6	
Part 2.6 heading	am F2022L01526
Chapter 3	
Part 3.3	
r 3.10	am F2024L00509
Part 3.4	
r 3.11	am F2024L00509
Part 3.5	
r 3.13	am F2022L01526
Chapter 4	
Part 4.1	
r 4.05	rs F2024L00509
Part 4.2	
Division 4.2.1	

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Provision affected	How affected
r 4.09	am F2022L01526
Division 4.2.2	
r 4.11	am F2024L00509
Chapter 5	
Part 5.1	
r 5.02	am F2024L00509
Part 5.5	
r 5.27	am F2024L00509
Part 5.6	
Part 5.6	ad F2022L01526
r 5.28	ad F2022L01526
r 5.29	ad F2022L01526
Chapter 6	
Part 6.1	
Division 6.1.2	
r 6.06	am F2022L01526
Chapter 7	
Part 7.1	
Division 7.1.1	
r 7.01	am F2022L01526
Division 7.1.2	
r 7.07	am F2022L01526
Division 7.1.5	
r 7.22	am F2022L01526
Part 7.2	
r 7.35	am F2022L01526
Chapter 8	
Part 8.2	
Division 8.2.2	
r 8.09	am F2022L01526
r 8.11	am F2024L00509
r 8.12	rs F2024L00509
Part 8.3	
r 8.15	am F2022L01526
Chapter 10	
Part 10.2	
r 10.04	am F2022L01526
r 10.05	am F2022L01526
Part 10.4	
r 10.13	am F2024L00509

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Endnote 4—Amendment history

Provision affected	How affected
Part 10.5	
r 10.24	am F2024L00509
Part 10.6	
r 10.26	am F2024L00509
r 10.27	am F2024L00509
Chapter 11	
Chapter 11	am F2024L00509
Part 11.2	
Part 11.2 heading	am F2024L00509
Division 11.2.1	
Division 11.2.1 heading	am F2024L00509
r 11.63	am F2024L00509
r 11.64	am F2024L00509
r 11.67	am F2024L00509
r 11.68	am F2024L00509
r 11.69	am F2024L00509
Division 11.2.2	
r 11.71	am F2024L00509
Division 11.2.3	
r 11.72	am F2024L00509
r 11.73	am F2024L00509
Division 11.2.5	
r 11.79	am F2024L00509
r 11.81	am F2024L00509
r 11.82	am F2024L00509
Chapter 12	
Part 12.7	
r 12.28	am F2022L01526
r 12.30	am F2022L01526
Chapter 13	
Part 13.2	
r 13.02	am F2024L00509
Chapter 14	
Part 14.3	
r 14.07	am F2022L01526
Chapter 15	
Part 15.4	
r 15.13	am F2022L01526; F2024L00509
Part 15.5	
r 15.19	am F2024L00509

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Endnote 4—Amendment history

Provision affected	How affected
Part 15.6	
r 15.23	am F2024L00509
r 15.24	am F2024L00509
Schedule 1	
Part 1	
c 1	am F2024L00509
c 2	am F2024L00509
Part 2	
c 1	am F2024L00509
c 2	am F2024L00509
Schedule 3	
Schedule 3	rs F2022L01526
Schedule 4	
c 2	am F2022L01526
	ed C1
	am F2024L00509

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